

*Land Use Planning Protest Resolution
Report*

for the

**Missoula Proposed Resource
Management Plan and Final
Environmental Impact
Statement (PRMP and FEIS)**

December 29, 2020

This page intentionally left blank.

Contents

Acronyms	ii
Introduction	1
Protesting Party Index	2
NEPA – Range of Alternatives.....	5
NEPA – Grazing.....	7
NEPA – Lands with Wilderness Characteristics	13
NEPA – Purpose and Need.....	16
NEPA – Impact Analysis.....	17
FLPMA – Monitoring and Adaptive Management	18
FLPMA – Unnecessary and Undue Degradation	20
FLPMA – Consistency with Other Plans: Travel Management	21
FLPMA – Protest Process	23
Wild and Scenic Rivers	24
Endangered Species Act – Consultation.....	25

Acronyms

AMS	Analysis of the Management Situation
ATV	all-terrain vehicle
AUM	animal unit months
AWR	Alliance for the Wild Rockies
BLM	Bureau of Land Management
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
EIS	environmental impact statement
ESA	Endangered Species Act
FEIS	Final Environmental Impact Statement
FLPMA	Federal Land Policy and Management Act
LWC	lands with wilderness characteristics
NEPA	National Environmental Policy Act
OHV	off-highway vehicle
ORV	outstandingly remarkable value
PRMP	Proposed Resource Management Plan
RMP	Resource Management Plan
TTM	Travel and Transportation Management
WSA	Wilderness Study Area
WSR	Wild and Scenic River
WWP	Western Watersheds Project

Introduction

Upon release of the Final Impact Statement (EIS) and Proposed Resource Management Plan (RMP), a 30-day protest period began on February 13, 2020, at which time any person who previously participated in the planning process and had an interest that is or may be adversely affected by the proposed plan could submit a protest on the proposed plan. A protest could raise only those issues which were submitted for the record during the planning process.

All protests had to be in writing and filed with the Bureau of Land Management (BLM), either as a hard copy or electronically via the ePlanning website by the close of the protest period, which was March 16, 2020. All protest letters sent to the BLM via fax or e-mail were considered invalid unless a properly filed protest was also submitted.

The ePlanning page for each planning project contained a tool for submitting a valid protest electronically. The link to the respective ePlanning project page where a protest could be filed was included in the Notice of Availability for the Final EIS and Proposed RMP, and in related news releases and Dear Reader letters.

All protests had to be filed within the 30-day protest period, which began on the date that the notice of receipt of the Final EIS/Proposed RMP is published in the Federal Register (FR), February 13, 2020.

The following items must have been included to constitute a valid protest (see 43 C.F.R. Part 1610.5-2):

- The name of the RMP or RMPA and final EIS being protested;
- The name, mailing address, telephone number and interest of the person filing the protest (in other words, how the protestor will be adversely affected by the approval or amendment of the plan);
- A statement of the issue or issues being protested;
- A statement of the part or parts of the plan or amendment being protested (including Chapter, Section, Page, and/or Map);
- A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party, or an indication of the date the issue or issues were discussed for the record; and
- A concise statement explaining why the State Director's decision is believed to be wrong.

Protestors were informed that before including their personal identifying information in their protests, their entire protest—including personal identifying information—may be made publicly available at any time. BLM cannot guarantee that personal identifying information would be withheld upon request.

In order for the issue raised in a protest to be valid, it had to include the following:

- It must be in the record that the protest issue has been raised in the planning process before, or that the issue provides significant new information (in other words, it came to light near the end of the draft RMP or RMPA comment period);
- The protest must relate to a planning issue, not an implementation issue;

- The protest must clearly state what law/regulation/policy the BLM is violating (i.e., names the law/regulation/policy specifically or uses key words that make it clear);
- The protest must clearly explain why the proposed RMP or RMPA violates the stated law/regulation/policy;
- The protest must give a reference in the document where the violation stated occurs; and
- The protest must be concise.

If the protest lacked any of the above elements, it was deemed invalid.

The 30-day protest period ended on March 16, 2020. The BLM then reviewed all protest issues for the proposed planning decisions in accordance with 43 C.F.R. § 1610.5-2. The BLM received 72 protest letters, and the BLM reviewed all protest issues for the proposed planning decisions. The BLM’s Acting Assistant Director for Resources and Planning concluded that the BLM Montana State Director followed the applicable laws, regulations, and policies, and considered all relevant resource information and public input. The Acting Assistant Director for Resources and Planning addressed the protests and issued a Protest Resolution Report to protesting parties and posted the Report on the BLM’s website – no changes to the Proposed RMP Amendment were necessary. The decision for each protest, regarding its validity and its approval or denial, was recorded in writing and along with the reasons for the decision. The decision was sent to the protesting party by certified mail, return receipt requested.

On October 16, 2020 the United States District Court for the District of Montana set aside the Missoula Approved RMP because the Court determined that William Perry Pendley “exercised the Director’s exclusive authority to resolve protests” on proposed RMP decisions. The Department disagrees with the court’s decision, and, as particularly relevant here, with the assertion that only the BLM Director may resolve protests on resource management plans. Moreover, as described above, Mr. Pendley did not actually resolve the protests for the Missoula RMP. Nonetheless, the Department recognizes that the Court has set aside the Missoula RMP based on its conclusions to the contrary. Accordingly, following the Court’s order, the Secretary and his staff completed an independent evaluation of a proposed Protest Resolution Report and Proposed Record of Decision. Following that review, the Secretary approved this Protest Resolution Report, issued a written decision to protesting parties, and posted this Report on the BLM’s website. The decision of the Secretary is the final decision of the Department of the Interior.

Specific information related to the protests received can be found below.

Protesting Party Index

Letter Number	Protester	Organization	Determination
PP-MT-MissouRMP-20-001	Jean Publiee		Dismissed – Incomplete*
PP-MT-MissouRMP-20-002	Winston Smith		Dismissed – Incomplete*
PP-MT-MissouRMP-20-003	Michele Dieterich		Dismissed – Comments Only
PP-MT-MissouRMP-20-004	Mary Langenderfer		Dismissed – Incomplete*

Letter Number	Protester	Organization	Determination
PP-MT-MissouRMP-20-005	Scott Bosse	American Rivers	Denied – Issues and Comments
PP-MT-MissouRMP-20-006 ¹	Mike Garrity Jeff Juel	Alliance for the Wild Rockies	Denied – Issues and Comments
PP-MT-MissouRMP-20-007	Erin Clark	Montana Wilderness Association	Denied – Issues and Comments
PP-MT-MissouRMP-20-008 ²	Jocelyn Leroux	Western Watersheds Project	Denied – Issues and Comments
PP-MT-MissouRMP-20-019	Mark Connell		Dismissed – Comments Only
PP-MT-MissouRMP-20-020	Rocio Muhs		Dismissed – Incomplete*
PP-MT-MissouRMP-20-021	Mark LoParco		Dismissed – Incomplete*
PP-MT-MissouRMP-20-022	Toddy Perryman		Dismissed – Incomplete*
PP-MT-MissouRMP-20-023	Kathryn Showen		Dismissed – Incomplete*
PP-MT-MissouRMP-20-024	Trish Foster		Dismissed – Incomplete*
PP-MT-MissouRMP-20-025	David Rockwell		Dismissed – Incomplete*
PP-MT-MissouRMP-20-026	T Jeffries		Dismissed – Incomplete*
PP-MT-MissouRMP-20-027	Adrienne Fleckman		Dismissed – Incomplete*
PP-MT-MissouRMP-20-028	Jeffrey Troxel		Dismissed – Incomplete*
PP-MT-MissouRMP-20-029	Linda Carroll		Dismissed – Incomplete*
PP-MT-MissouRMP-20-030	Fred Opperman		Dismissed – Incomplete*
PP-MT-MissouRMP-20-031	Adele Wolff		Dismissed – Incomplete*
PP-MT-MissouRMP-20-032	Doug Ferrell		Dismissed – Comments Only
PP-MT-MissouRMP-20-033	Jessica Zephyrs		Dismissed – Incomplete*
PP-MT-MissouRMP-20-034	Brad Anderson		Dismissed – Incomplete*
PP-MT-MissouRMP-20-035	Cindy Rosin		Dismissed – Incomplete*
PP-MT-MissouRMP-20-036	Patrick Hurley		Dismissed – Incomplete*
PP-MT-MissouRMP-20-037	Oliver Weltzien		Dismissed – Incomplete*
PP-MT-MissouRMP-20-038	Sarah Stewart		Dismissed – Incomplete*
PP-MT-MissouRMP-20-039	Dylan Flather		Dismissed – Incomplete*
PP-MT-MissouRMP-20-040	Shelley Eisenrich		Dismissed – Incomplete*
PP-MT-MissouRMP-20-041	Edward Joy		Dismissed – Incomplete*
PP-MT-MissouRMP-20-042	Pamela Small		Dismissed – Incomplete*
PP-MT-MissouRMP-20-043	Teresa Denney		Dismissed – Incomplete*
PP-MT-MissouRMP-20-044	Aevind Burgess		Dismissed – Incomplete*
PP-MT-MissouRMP-20-045	Bob Oettinger		Dismissed – Incomplete*
PP-MT-MissouRMP-20-046	Cathy Reich		Dismissed – Incomplete*
PP-MT-MissouRMP-20-047	Rick Whitman		Dismissed – Incomplete*
PP-MT-MissouRMP-20-048	John Edwards		Dismissed – Incomplete*
PP-MT-MissouRMP-20-049	Robert Carroll		Dismissed – Incomplete*

¹ Letter PP-MT-MissouRMP-20-006 was signed by Mike Garrity and submitted in ePlanning by Jeffrey Juel. In this report is it referenced as Mike Garrity et al.

² Letters PP-MT-MissouRMP-20-009 through -018 were attachments referenced in letter PP-MT-MissouRMP-20-008.

Letter Number	Protester	Organization	Determination
PP-MT-MissouRMP-20-050	Christine Lustik		Dismissed – Incomplete*
PP-MT-MissouRMP-20-051	Rochelle Gravance		Dismissed – Incomplete*
PP-MT-MissouRMP-20-052	Joan Daoust		Dismissed – Incomplete*
PP-MT-MissouRMP-20-053	Casey Charles		Dismissed – Incomplete*
PP-MT-MissouRMP-20-054	Laura Krum		Dismissed – Incomplete*
PP-MT-MissouRMP-20-055	Dana Davis		Dismissed – Incomplete*
PP-MT-MissouRMP-20-056	Susan Ohlson		Dismissed – Incomplete*
PP-MT-MissouRMP-20-057	Byron Thompson		Dismissed – Incomplete*
PP-MT-MissouRMP-20-058	Sara Schroeder		Dismissed – Incomplete*
PP-MT-MissouRMP-20-059	Sarah Roubik		Dismissed – Incomplete*
PP-MT-MissouRMP-20-060	James Wiley		Dismissed – Incomplete*
PP-MT-MissouRMP-20-061	Jerry O’Connell		Dismissed – Incomplete*
PP-MT-MissouRMP-20-062	Rachael Caldwell		Dismissed – Incomplete*
PP-MT-MissouRMP-20-063	Charles Caldwell		Dismissed – Incomplete*
PP-MT-MissouRMP-20-064	Joann Asker		Dismissed – Incomplete*
PP-MT-MissouRMP-20-065	Henry Hudson		Dismissed – Incomplete*
PP-MT-MissouRMP-20-066	Patrick McGuffin		Dismissed – Incomplete*
PP-MT-MissouRMP-20-067	William Sheehan		Dismissed – Incomplete*
PP-MT-MissouRMP-20-068	Will Rawn		Dismissed – Incomplete*
PP-MT-MissouRMP-20-069	Patrick Phillips		Dismissed – Incomplete*
PP-MT-MissouRMP-20-070	Kate Mabry		Dismissed – Comments Only
PP-MT-MissouRMP-20-071	Stephen Jones		Dismissed – Incomplete*
PP-MT-MissouRMP-20-072	Jeffrey Juel	Alliance for the Wild Rockies	Dismissed – Comments Only
PP-MT-MissouRMP-20-073	Patrick Marx		Dismissed – Comments Only

* The protesting party did not include one or more of the requirements at 43 CFR 1610.5-2(a)(2)(i)-(v) with their submission:

- The name, mailing address, telephone number, and interest of the person filing the protest;
- A statement of the issue(s) being protested;
- A statement of the part(s) of the proposed plan or amendment being protested;
- A copy of all documents addressing the issue(s) that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record during the planning process (at a minimum the protesting party must indicate how they participated in the planning process); and
- A concise statement explaining why the State Director’s decision is believed to be wrong.

NEPA – Range of Alternatives

Alliance for the Wild Rockies

Mike Garrity et al.

Issue Excerpt Text: AWR concluded: “If the BLM does not see fit to include our core components in its Preferred Alternative for revision of the Missoula Resource Management Plan, we request the draft EIS include an alternative based upon our core components in order to compare its effects with those of other alternatives. We look forward to the opportunity to assist the planning team in this effort.” (Emphasis added.) Our efforts yielded nothing substantial concerning an alternative we found favorable in the draft RMP. So in our comments on the draft RMP we proposed, for full analysis in a Supplemental Draft EIS, an Ecological/Biocentric RMP informed by sound scientific principles and setting a positive future for these lands-one which emphasize the outstanding wild, natural and appropriate recreational values. Still, the BLM failed to properly consider AWR’s comments concerning alternatives to the BLM’s. This violates the Planning regulations at 43 CFR § 1610.4-5

Western Watersheds Project

Jocelyn Leroux

Issue Excerpt Text: BLM failed to analyze an alternative that allows for the permanent retirement of grazing allotments that are waived by the permittee for the purpose of permanently ending grazing on that allotment. Given the extensive research cited in WWP’s comments and scoping comments, this should have been considered as an alternative that would reduce undue degradation and improve the health of the ecosystems in the plan area. WWP previously commented that “this proven conservation tool is extremely effective in solving conflicts between native wildlife and domestic livestock.” And pointed out that “the land use planning process is the perfect opportunity to examine changing allocations as a result of conservation efforts such as permit retirement” (p. 14). Yet, permanent permit retirement is not mentioned anywhere in the PRMP/FEIS and instead both acres available to livestock and AUMs increase under the Proposed Alternative.

Montana Wilderness Association

Erin Clark

Issue Excerpt Text: Alternative A, No Action: This alternative would carry forward the management prescriptions established in the 1986 Garnet Resource Area RMP. Under this alternative, no lands would be managed to protect their wilderness characteristics because no lands were identified as having wilderness characteristics during this planning period. In 2013, the BLM established a new procedure under Manual 6330 for identifying and inventorying wilderness characteristics. Under this Alternative, all units identified using the 6330 procedures would be managed not to protect their wilderness characteristics. Because of the important procedural changes in inventorying and identifying wilderness character on BLM lands since the 1986 management prescriptions, the goals, objectives, and actions in this alternative are not a meaningful baseline from which the other action alternatives can reasonably be compared. Instead, the actions that the agency proposes during this process are the first time this field office has to make decisions specifically relating to wilderness character in non-WSA landscapes.

Summary:

The Bureau of Land Management (BLM) failed to analyze an adequate range of alternatives for grazing in the Missoula Proposed Resource Management Plan (PRMP) and Final Environmental Impact Statement (FEIS) (BLM 2020), including an alternative that included permanent grazing permit retirements, and an ecological/biocentric alternative. Additionally, the BLM’s No Action Alternative is not an accurate baseline to compare the other alternatives against, as it does not take into account newer policies requiring identifying and inventorying wilderness characteristics.

Response:

When preparing an environmental impact statement (EIS), the National Environmental Policy Act (NEPA) requires an agency to rigorously explore and objectively evaluate all reasonable alternatives and, for alternatives eliminated from detailed study, to briefly discuss the reasons for their having been eliminated (40 CFR 1502.14(a)).³ The range of alternatives aims to resolve conflicts among all resources and to meet the purpose and need as well as other goals. When there are potentially a very large number of alternatives, the BLM may elect to analyze a reasonable number to cover the full spectrum of alternatives (BLM Handbook H-1790-1, Section 6.6.1 quoting Question 1b, Council on Environmental Quality [CEQ], Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981).

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

The BLM developed a reasonable range of alternatives that meet the purpose and need of the Missoula PRMP and FEIS (BLM 2020) and that address resource issues identified by the BLM and the public during the scoping period. The Missoula PRMP and FEIS analyzed four alternatives and one sub-alternative, which are described in Chapter 2 (see FEIS, pp. 27 through 96). The alternatives analyzed in the Missoula PRMP and 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.

The FEIS states that the PRMP meets the purpose and need with an emphasis on healthy forests through active vegetation management while sustaining and enhancing ecological integrity for plant, wildlife, and fish habitat across the landscape. The BLM considered a number of other alternatives but determined that they did not meet the purpose and need. One of these alternatives contemplated closing the entire decision area to livestock grazing (see FEIS, Section 2.7, p. 87). However, as stated in Section 2.7, the overarching purpose and need of the Missoula PRMP and FEIS is to ensure public lands are managed in accordance with the Federal Land Policy and Management Act (FLPMA) under the principles of multiple use and sustained yield; therefore, the complete exclusion of any resource use from the planning area—recreation, livestock grazing, etc.—does not meet the PRMP's stated purpose and need. Nevertheless, the alternatives analyzed in the Missoula PRMP and FEIS present a number of variations of acres open to livestock grazing, including managing 145,558 acres as available for livestock grazing in the PRMP to Sub-alternative C, which would manage 107,241 acres as available for livestock grazing (see FEIS, p. 74). When considered in the context of the approximately 162,600 acres of potential grazing area, and the vegetation composition and vegetation communities for grazing as described in the FEIS on pages 102 through 110 describing the area amenable to grazing, the range of alternatives represents an adequate range.

Additionally, as discussed in Appendix S, *Response to Comments*, the BLM also considered but did not analyze in detail an ecological/biocentric alternative (see FEIS, Appendix S, p. 3). Although an

³ References to the CEQ regulations throughout this protest resolution report and within the underlying EIS are to the regulations in effect prior to September 14, 2020. The revised CEQ regulations effective September 14, 2020 are not referred to in this protest resolution report or in the underlying EIS because the NEPA process associated with the proposed action began prior to this date (See 40 C.F.R. § 1506.13).

ecological/biocentric alternative was not specifically analyzed in the Missoula PRMP and FEIS, the BLM adjusted Alternatives B and C in response to public comments on the Missoula Draft Resource Management Plan (RMP) and EIS (BLM 2019) and included Sub-alternative C based on public comments to analyze other components of an ecological/biocentric alternative. Sub-alternative C reduces animal unit months (AUM) by 25 percent with the intention of allocating more forage for wildlife (see FEIS, p. 5). Section 2 of the FEIS provides a comparison of impacts by alternative (see FEIS, pp. 87 through 96). The BLM also considered the Alliance for the Wild Rockies' comments as shown in Appendix S (p. 3).

Finally, CEQ regulations direct that EISs describe the No Action alternative (40 CFR 1502.14(d)). The No Action alternative is the only alternative that must be analyzed in an EIS that does not respond to the purpose and need for the action. The No Action alternative provides a useful baseline for comparison of environmental effects (including cumulative effects) and demonstrates the consequences of not meeting the need for the action. The No Action alternative is to continue to implement the management direction in the land use plan. Any other management approach is treated as an action alternative. The No Action alternative analyzed in the Missoula PRMP and FEIS is used as written and is not required under NEPA to be inclusive of updated policy, laws, and regulations. See the discussion under the "NEPA – Lands with Wilderness Characteristics" section below for a discussion related to the current policies and the FEIS.

The BLM considered a reasonable range of alternatives in the Missoula PRMP and FEIS in full compliance with NEPA. Accordingly, the protest is denied.

NEPA – Grazing

Western Watersheds Project

Jocelyn Leroux

Issue Excerpt Text: The administrative costs of grazing are often underestimated, and as WWP commented previously: Considering only direct costs, BLM range management costs in 2011 totaled \$77.3 million, while income from grazing fees was only \$4.5 million, leaving a net deficit to the U.S. Treasury of \$72.8 million.¹¹ This supports the conclusion that removing livestock is the most cost-effective way to improve degraded ecosystem conditions. Decreased grazing would additionally save the BLM costs associated with environmental analysis, litigation, grazing permit administration, predator control, weed spraying, and costly efforts to preserve species harmed by grazing. In the Proposed alternative, only 11 jobs and \$378,000 in labor income would be contributed to the labor economy. But nowhere in the PRMP/FEIS are the administrative costs associated with such livestock grazing considered. In contrast, recreation would employ 78 people and contribute \$2,340,000 to the labor economy. This is a larger industry that is supported by healthier public lands, a benchmark that can be reached by decreasing livestock grazing. By not considering the greater economic and social benefits from a broad range of alternatives and decreased livestock grazing, BLM once again violates FLPMA.

Western Watersheds Project

Jocelyn Leroux

Issue Excerpt Text: the most blatant failure of BLM to establish an accurate environmental baseline is on the grounds of BLM's decision to implement "prescriptive grazing." Prescriptive grazing is a vague term that will allow short-term grazing as a vegetation management tool, but no analysis of the impacts of prescriptive grazing is required. BLM states that site-specific analysis will occur prior to issuing a prescriptive grazing permit, but there is no overview of what impacts might come from this type of grazing.

Western Watersheds Project

Jocelyn Leroux

Issue Excerpt Text: WWP included in our scoping comments that the impacts of livestock grazing on lynx must be considered (p. 13) because of the habitat conditions that support a main food source for lynx, snowshoe hare. Snowshoe hare require aspen for food, yet livestock have a substantial impact on aspen growth and regeneration. Yet, nowhere in the PRMP/FEIS are livestock impacts mentioned in relation to lynx, a threatened species. This is a failure of the BLM and the PRMP/FEIS.

Western Watersheds Project

Jocelyn Leroux

Issue Excerpt Text: BLM failed to analyze the impacts of livestock grazing on elk and mule deer habitat. BLM stated that “vegetation management, livestock grazing, mining, and recreation are the most prominent resource uses within elk habitat areas on BLM lands” (p. 217) yet failed to provide an analysis of the specific impacts. On page 233 BLM states that the allocation of forage would remain at a 50/50 ratio, but this doesn’t account for climate change impacts such as drought. BLM points out in the AMS that elk and cattle have a dietary overlap and can compete for forage, but does not consider the best available science that light grazing (25% or less by livestock⁹) is appropriate to meet BLM’s mandate for sustainable use. WWP included extensive evidence (p. 4-6 scoping comments) that overgrazing is harmful to vegetation, and thus big game such as elk and mule deer. BLM failed to include management actions and analyses that would address the issue of forage competition between livestock and big game in the planning area, thus violating FLPMA and rendering the PRMP invalid.

Western Watersheds Project

Jocelyn Leroux

Issue Excerpt Text: The term “prescriptive grazing” or “prescription grazing” is not defined in the PRMP/FEIS. There are no sidebars that limit the extent or frequency of this use. There are no “targets” discussed or disclosed. The BLM has utterly failed to take a reasoned hard look at the potential impacts of this use.

Western Watersheds Project

Jocelyn Leroux

Issue Excerpt Text: WWP’s scoping comments included significant evidence that migratory birds that were reliant on sagebrush-steppe habitat are negatively impacted by livestock grazing¹⁰:

Population declines of 63% and 70% in shrub dependent and grassland bird species during the last 30 years across the U.S.

In the intermountain West, more than 50% of shrub-and grassland species show downward trends with sagebrush steppe as the highest priority for conservation based on trends for habitat and bird populations

Cattle grazing in sagebrush steppe first select grasses and forbs and avoid browsing on sagebrush. In addition, even light grazing can put pressure on the herbaceous plants favored by livestock and intensive spring grazing prevents bunchgrasses from reproducing, eventually eliminating the palatable native bunchgrasses.

However, BLM ignored this best available science and failed to include an analysis of the habitat requirements for migrant birds and the effects of livestock grazing at the permitted numbers in combination with all other habitat altering management proposed.

Alliance for the Wild Rockies

Mike Garrity et al.

Issue Excerpt Text: The FEIS Chapter 3 states: “Under the right conditions and appropriate locations, the BLM and its partners allow natural ignitions to burn and achieve resource management objectives.” Who really believes fire incident “commanders” will disappoint vested interests in firefighting (essentially a fire-industrial complex) and decide to allow fire to play out its natural role on these lands? And where is the data that supports the RMP claim that this has already been policy and practice? This is contradicted by the statements “Missoula BLM never developed a fire management plan that enabled the use of fire for resource benefit, thus full suppression of wildfires has been our management” (Chapter 3) and “Prescriptive grazing could be used as a management tool to reduce fine fuels assisting in the reduction of frequency and intensity of wildland fire” (Chapter 3).

Alliance for the Wild Rockies

Mike Garrity et al.

Issue Excerpt Text:

The FEIS fails to utilize the science concerning noxious weed spread from livestock grazing. The FEIS highly downplays the clear implication in scientific literature that livestock are a major vector for noxious weed spread.

Summary:

The Missoula PRMP and FEIS (BLM 2020) failed to:

- Analyze impacts of grazing on special status species, especially species that are in direct competition with livestock for forage,
- Consider relevant information in analyzing the economic effects of livestock grazing, and
- Properly define prescriptive grazing and take a hard look at its impacts.
- Provide data that supports allowing natural ignitions to burn to achieve resource management objectives, which is contradictory to using prescriptive grazing as a management tool.
- Utilize best available information to analyze the impacts of livestock grazing to migrant bird habitat and as a vector for noxious weed spread.

Response:

The effects analysis must demonstrate that the BLM took a hard look at the impacts of the action (BLM NEPA Handbook, H-1790-1, Section 6.8.1.2, *Analyzing Effects*). The CEQ regulations specify that the environmental information made available to public officials and citizens before decisions are made must be of “high quality” (40 CFR 1500.1(b)).

A hard look is a reasoned analysis containing quantitative or detailed qualitative information (BLM NEPA Handbook, H-1790-1, Section 6.8.1.2, *Analyzing Effects*). The BLM must use information of high quality and scientific integrity in its NEPA analysis, including information provided as part of public involvement (40 CFR 1500.1(b) and 1502.24). The NEPA documents are to be analytic, rather than encyclopedic (40 CFR 1500.4(b) and 1502.2(a)). 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 Missoula PRMP and FEIS (BLM 2020).

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.

Under CEQ regulations applicable at the time the Final EIS was prepared, the BLM 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 (40 CFR 1508.7) 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.”

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 provide 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 to start drilling), 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 BLM has considered management actions that weight the trade-offs for forage allocations between livestock and big game as well as analyzed the impacts on both livestock and big game such as elk and mule deer. Impacts from livestock grazing planning-level decisions on habitat types used by elk and mule deer are discussed in Section 3.8.8, *Wildlife Habitat and Special Status Species* (see FEIS, pp. 222 through 242), Section 3.4.3, *Livestock Grazing* (see FEIS, pp. 257 through 269), and Section 3.2.4, *Grasslands and Shrublands* (see FEIS, pp. 139 through 145). For example, when describing the effects from livestock grazing on wildlife, the BLM states, “Livestock grazing could reduce forage and cover available for big game, grizzly bears, and migratory and resident birds. The allocation of forage to determine animal unit months (AUMs) assumed 50/50 ratio for domestic livestock. The remaining forage is for wildlife and regrowth... Under each alternative, management would work to enhance or restore vegetation conditions and to reduce the negative effects of livestock grazing... Range improvements, adjustments to AUMs, season of use, removal of livestock from an area, water developments and fencing would enhance range conditions in the long-term. Adjustments to AUMs would maintain forage for wildlife, especially big game and grizzly bears...” (FEIS, p. 233). Furthermore, the BLM notes, “Vegetation management, livestock grazing, mining, and recreation are the most prominent resource uses within elk habitat areas on BLM-lands... Livestock grazing conflicts have been managed at the site-specific level. Elk and cattle have dietary overlap and can compete for forage, which can become critical on winter range. Cattle and elk do not typically utilize the same areas during the winter season since livestock are usually concentrated on private land” (FEIS, p. 217).

The BLM analyzed the impacts on Canada lynx, lynx critical habitat, and travel corridors in several sections of the FEIS including 3.2.2 Forest Vegetation, 3.3.8 Wildlife Habitat & Special Status Species, and 3.4.5 Forest Products. Regarding the effects of livestock grazing on Canada lynx, the BLM noted that the habitat for Canada lynx is “limited to cool-moist boreal forests supporting a minimum density of snowshoe hares (1 hare/5 acres) where winters are snowy. Two important human influences on snowshoe hare habitat are timber harvest and prescribed burning. Timber harvest and its related activities are a predominant land use affecting lynx habitat” (FEIS, p. 215). Furthermore, “Canada lynx, Canada lynx critical habitat, and American wolverine may be negatively and positively affected from vegetation management altering forage, denning, travel corridors, and vegetation cover. Canada lynx critical habitat is in juxtaposition with Lynx Analysis Units. Climate change may be the

major risk factor for Canada lynx and wolverine populations” (FEIS, p. 240). Therefore, grazing is not a predominant land use affecting lynx habitat and is therefore not analyzed further.

Direct, indirect, and cumulative impacts to Montana Bird Species of Concern are discussed in the FEIS (Chapter 3, pp. 241) and the PRMP includes migratory bird species within the category of priority species and habitat for management (FEIS, p.6). The environmental analysis in the FEIS determined that the PRMP would have no anticipated impacts on wildlife, including migratory birds (FEIS, p. 222), in part because the proposed plan requires design features in certain circumstances that are intended to avoid or reduce impacts to Bureau sensitive species and priority species, including elk and migratory birds (Chapter 2, pp. 44). For example, If migratory birds are present, DF-32 requires operators to implement project design features to avoid or minimize impacts from ground-disturbing activities (Appendix P, pp. P-5). Other proposed management actions for wildlife Habitat and Special Status Species include implementing design features to restore habitats, and to avoid or reduce impacts to wildlife, including migratory birds (FEIS, p. 44.) Programs would be designed and implemented to ensure stand composition, structure, and function for wildlife (FEIS, p. 223) and the timing of treatments anticipated at the project level would be considered during project planning and implementation to account for critical seasons of use such as migratory bird nesting (FEIS, p. 224).

Furthermore, the Standards for Rangeland Health and Guidelines for Livestock Grazing Management for Public Lands in Montana, North Dakota, and South Dakota provide a measurement of health for resource conditions including soils, riparian systems, upland vegetation, wildlife habitat, special status species, and air and water quality, and trigger action by the BLM when standards are not being met. These standards would apply to all the alternatives analyzed in the Missoula PRMP and FEIS (see FEIS, p. 50).

As described on page 50 of the Missoula PRMP and FEIS, for allotments where Standards for Rangeland Health are not met and livestock grazing is a significant causal factor for non-achievement, the BLM will take appropriate action to achieve or make progress toward achieving unmet rangeland health standards, which includes ensuring that the allotments provide habitat necessary to maintain native plant and animal species and special status species. Also, at the allotment level, the Missoula PRMP and FEIS includes a management action to allow grazing schedules and livestock grazing practices to be modified during times of drought, including drought caused by impacts from climate change (see FEIS, p. 50). At the implementation stage, the BLM will identify allotment-specific grazing management practices (e.g., livestock kind, duration, forage utilization, season of use, rest rotations, removal of cattle for a period of time) and livestock forage amounts based on monitoring and assessment information, as well as constraints and needs related to other resources, such as maintaining habitat and forage for big game, special status species, and threatened and endangered species (see FEIS, p. 259). Grazing management practices and levels of livestock grazing use must achieve the desired outcomes outlined in the land use plan, including rangeland health standards (or comprehensive Land Health Standards), or must result in significant progress toward fulfilling rangeland health standards; they must also conform to the guidelines required under 43 CFR 4180.2(b) (BLM H-1601-1, Appendix C, p. 15).

The PRMP also includes management direction for the BLM to follow the Standards for Rangeland Health, which were incorporated by reference (Section 2.3 FEIS). Three of the five Standards for Rangeland Health include weeds as a component of the criteria for that particular standards (1, 2, and 5) (see Section 3.2.1). Further, the FEIS discussed the potential impacts of livestock grazing to vegetative communities, including spread of noxious weeds in Sections 3.3.2, 3.3.3, and 3.3.8.

Regarding analysis of the administrative costs associated with livestock grazing, the BLM presents this information in Appendix M and summarizes it in the FEIS on pages 303 through 310. As noted in

Appendix M under the *Social Trends, Attitudes and Values* section (p. M-11), the BLM would address “how conflicts between livestock and other uses effect the true value of grazing on public land...[and] consider not only the costs of administering livestock grazing, but the potential opportunities for recreation that could be created where livestock grazing is reduced or eliminated, and the cost of negative environmental consequences.”

To accomplish this, the BLM used the IMPLAN modeling system with quantitative inputs, such as AUMs, recreation visits, and Department of the Interior payments to counties, to examine the direct contributions from the Missoula BLM and the indirect and induced effects (Appendix M, pp. M-3 to M-4). Livestock grazing assumptions for the economic impact analysis are discussed on page M-4 of Appendix M. Based on this methodology and the assumptions, the BLM provided an analysis for each alternative of the economic and social impacts of grazing, noting the economic impacts for the range and recreation actions followed by an analysis of the social impacts for the grazing and recreation actions. For example, the analysis notes that Alternative B “provides the greatest number of acres available to livestock grazing (145,559 acres), mostly as a result of more acres being available for prescriptive grazing as a management tool. This is estimated to result in the greatest level of AUMs in the considered alternatives at 6,660 AUMs annually (Table 14). This alternative would maintain or enhance the quality of life for livestock permittees and other stakeholders who value using BLM resources. Ranching also provides noneconomic benefits, such as support for tradition and heritage... Conversely, because this alternative has both the highest number of acres available to grazing, as well as highest average annual AUMs on BLM-managed lands, other stakeholders who find concern with the environmental consequences of or user conflicts with grazing livestock may find this alternative decreases their well-being relative to Alternatives A and C and Sub-alternative” (see FEIS, p. M-32).

Impacts from livestock management actions including prescribed grazing are discussed in Section 3.4.3, *Livestock Grazing* (see FEIS pp. 257 through 269). The Missoula PRMP and FEIS states that prescriptive grazing is an effective management tool for reducing fuels and assisting in frequency and intensity of woodland fires (see FEIS, pp. 143) and discussion/analysis of wildland fire management (see FEIS, pp. 46-48; Section 3.2, pp. 98-145). Prescriptive grazing can also be used to achieve specific habitat objectives such as the reduction of noxious weeds, or enhance desirable vegetation communities (see FEIS, p. 140). A definition of prescription livestock grazing is also included in the Missoula PRMP and FEIS, *Glossary* (see FEIS, p. 339).

Finally, with regard to wildland fire management actions in the PRMP/FEIS, the BLM’s Land Use Planning Handbook clearly states that “Fire management strategies must recognize the role of wildland fire as an essential ecological process and natural change agent” (BLM Land Use Planning Handbook, H-1610-1, Appendix C, Section J. Wildland Fire Management Land Use Plan Decisions). Further the BLM’s Fire Handbook requires, during the planning phase, the BLM to include “identification of geographic areas suitable and unsuitable for the use of wildland fire from unplanned ignitions to meet resource objectives.” (BLM Fire Planning Handbook, H-9211-1, p. 2-6). Currently, the Montana DNRC Southwest Land Office is responsible for fire suppression for BLM lands in the Missoula Field Office (FEIS, p. 114). The Missoula Field Office provides layers of data, including allocations in the RMP, when responding to a fire located on BLM-administered lands.

Consistent with these policies, the BLM developed three Fire Management Zones in the Missoula Proposed RMP/Final EIS (FEIS, p. 47). Fire Management Zones 2 and 3 identify areas where wildland fire is desired to manage ecosystems. The appropriate response to a given wildland fire in these zones, as mentioned in FEIS, is complex and requires site-specific information (time of year, weather, drought, safety, protection agency, etc.) that are determined at the time with other agencies. The Fire Management Zone 3 has fewer constraints than Fire Management Zone 2. In these areas, wildland fire could be allowed to play its natural role on the landscape. These lands include wilderness study areas, areas geographically far from values at risk, and where current vegetation

conditions are favorable to meet resource objectives by carefully managing wildfires. While fuels treatments can and could occur here, management of wildfire would be the preferred treatment method (FEIS, p. 47). Prescriptive grazing, like prescribed burning, is one of the management tools in the PRMP that are available to reduce fine fuels assisting in the reduction of frequency and intensity of wildland fire (FEIS, p. 140). The management action does not address responding to wildland fire. The BLM complied with NEPA's requirement to analyze the environmental consequences/impacts from livestock grazing in the Missoula PRMP and FEIS. Accordingly, the protest is denied.

NEPA – Lands with Wilderness Characteristics

Alliance for the Wild Rockies

Mike Garrity et al.

Issue Excerpt Text: The BLM fails to consider the wide body of research revealing that counties adjacent to Wilderness areas and National Parks show better economic sustainability than counties heavily reliant upon resource extraction. The BLM's biased use of science violates NEPA.

Montana Wilderness Association

Erin Clark

Issue Excerpt Text: The draft RMP indicates that LWC inventoried lands adjacent to WSAs or recommended wilderness were not recommended for LWC classification because if these areas were released from wilderness consideration or "no longer recommended as wilderness, the BLM lands with wilderness characteristics no longer meet the size criteria and will no longer qualify as lands with wilderness characteristics."³ The potential for future management change is not a valid determinant of whether these areas meet the criteria for LWC classification. Manual 6310 is clear that U.S. Forest Service Recommended Wilderness area adjacency qualifies a BLM inventoried area for lands with wilderness characteristics classification.

Montana Wilderness Association

Erin Clark

Issue Excerpt Text: BLM's manuals require the agency to be consistent from one area to the next. The manual on considering wilderness characteristics in land use planning (BLM 2012b) requires that the BLM Director shall "[c]oordinate with State Directors on considering and, as warranted, protecting lands with wilderness characteristics in land use plans." BLM 6320 Manual at 1. Similarly, both manuals require that the State Director must "provide for statewide program coordination" and "guidance." BLM 6310 Manual at 1; BLM 6320 Manual at 1. The State Director also must provide support to District and Field Offices "to ensure lands with wilderness characteristics and potential resource conflicts are adequately analyzed." BLM 6320 Manual at 2. There is a clear expectation of state-level oversight and coordination. In short, FLPMA and BLM's own manuals obligate BLM to undertake a robust, consistent, coordinated and transparent analysis of the impacts of its land use plans on Lands with Wilderness Characteristics. Unfortunately, BLM's Final EIS and Proposed RMP fails to adhere to these standards. ⁴ The FEIS fails to fully and properly analyze wilderness characteristics of units that are under 5,000 acres but adjacent to other BLM or other federal agency lands managed for wilderness characteristics.

Montana Wilderness Association

Erin Clark

Issue Excerpt Text: Montana Wilderness Association protests this plan's lack of wilderness characteristic protections for roadless areas that are fewer than 5,000 acres, but are contiguous with lands that have been formally determined to have wilderness or potential wilderness values or any federal lands managed for the protection of wilderness characteristics.

Montana Wilderness Association

Erin Clark

Issue Excerpt Text: The FEIS indicates that there are seven Wilderness areas (~498,000 acres) and several recommended wilderness areas managed by other agencies in the Missoula Field Office 2019 Draft RMP, Vol. 1, pg. 179. 3 2019 Draft RMP, Vol. 1, pg. 179. 8 planning area. Pg. 180. This language suggests that since other agencies provide and manage for Wilderness and recommended Wilderness in the area that the BLM does not need to fulfill this portion of their multiple-use mandate. The BLM cannot fulfill their mission through the actions and management provisions of another agency, such as the U.S. Forest Service. As such, it is inappropriate for the BLM to utilize the total volume of wilderness managed by other agencies in this region as a justification for minimizing their recognition of lands with wilderness characteristics.

Montana Wilderness Association

Erin Clark

Issue Excerpt Text: The FEIS' indication that multiple-uses will be prioritized over protecting wilderness characteristics fails to acknowledge that non-wildlife dependent recreation is a use that the BLM must manage for as part of their multiple-use mandate. BLM Manual 6130 explicitly states that "managing the wilderness resource is part of the BLM's multiple use mission". By not identifying any eligible units as LWCs and not recognizing non-wildlife dependent recreation the BLM Missoula Field Office fails to balance multiple uses in this plan.

Summary:

The BLM failed to follow its regulations and policies when determining which lands to consider for lands with wilderness characteristics classification in the Missoula PRMP and FEIS (BLM 2020).

Response:

The BLM's authority for managing lands to protect or enhance wilderness characteristics is derived directly from Section 202 of FLPMA, which gives the Secretary of the Interior authority to manage public lands for multiple use and sustained yield. Under Sections 201 and 202 of FLPMA the BLM maintains updated inventories for lands with wilderness characteristics and considers protection of and impacts on this resource in RMP-level planning (per IM No. 2011-154).

FLPMA clarifies that the term "multiple use" means that not every use is appropriate for every acre of public land, and that the Secretary can "make the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use" (FLPMA, Section 103(c)). Furthermore, FLPMA directs that the public lands be managed in a manner "that, where appropriate, will preserve and protect certain public lands in their natural condition" (FLPMA, Section 102(a)). FLPMA authorizes the Secretary of the Interior to use land use planning as a mechanism for allocating resource use, including wilderness character management, amongst the various resources in a way that provides for current and future generations. BLM Manuals 6310 and 6320 provide guidance in maintaining information regarding the presence or absence of wilderness characteristics, and to consider identified lands with wilderness characteristics in land use plans and when analyzing projects under NEPA. Specifically, BLM Manual 6320 requires the BLM to ensure that "wilderness characteristics inventories are considered and that, as warranted, lands with wilderness characteristics are protected in a manner consistent with this manual in BLM planning processes" (Manual 6320 at Section .04(c) (2)).

Lands with wilderness characteristics would be protected in five areas (approximately 2,523 acres) in Alternative C and four of the lands with wilderness characteristics units (approximately 2,365 acres) would be managed as the Wales Backcountry Conservation Area under Sub-Alternative C and the

Proposed Alternative (Chapter 2, pp. 86). Protections would be provided indirectly by other resource and resource use allocations for these areas. For example, VRM Class II, closed to mineral material sales, ROW avoidance areas, and closed to motorized travel. Section 3.3.6 of the Missoula PRMP and FEIS (BLM 2020) describes the methodology used for determining lands with wilderness characteristics, which includes consideration of guidance from BLM Manuals 6310 and 6320 (see FEIS, pp. 202 and 203). As discussed in that section, very few acres on BLM-managed lands in the planning area met the criteria for lands with wilderness characteristics, mostly due to the size requirement. Many areas that do not meet the size criteria for lands with wilderness characteristics would still be managed to maintain the intact and undeveloped nature of these areas, particularly areas that are used for wildlife-dependent recreation. For example, under Alternative B, should Congress release them from wilderness consideration, approximately 5,982 acres of Wales Creek would be managed as the adjacent Special Recreation Management Area and 5,602 acres would be managed as an area of critical environmental concern. The Hoodoos would be managed under general multiple use and sustained yield, although the upper reaches of Wet Cottonwood Creek and surrounding area would be managed to emphasize riparian habitat, important forage areas, and security habitat for elk (see FEIS, p. 11). Impacts on lands with wilderness characteristics are described in Section 3.3.6 of the Missoula PRMP and FEIS (see FEIS, pp. 204 and 205). NEPA does not require the BLM to conduct an analysis for impacts on lands with wilderness characteristics for areas that do not meet the criteria. Non-wildlife dependent recreation would be a priority in designated special recreation management areas (SRMAs) and opportunities would be available for both non-wildlife and wildlife-dependent recreation in wilderness study areas (WSAs). Whereas wildlife-dependent recreation would only be a priority in designated back country areas (BCAs) (Appendix L, pp. 1).

The purpose of the Missoula PRMP and FEIS is to document information regarding the presence or absence of wilderness characteristics within the study area, and to consider identified lands with wilderness characteristics when analyzing the land use plan under NEPA. The Missoula PRMP and FEIS adequately documents presence of lands with wilderness characteristics in Section 3.3.6 (see FEIS p. 202 through 205). The BLM is not required to analyze U.S. Forest Service Recommended Wilderness Area adjacent to the study area as part of the Missoula PRMP and FEIS NEPA process.

The CEQ's 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).

The methodology used to determine the economic impacts from management actions of the Missoula PRMP and FEIS are discussed in Section 3.7, *Socioeconomics* (see FEIS, pp. 296 and 297) and in more detail in Appendix M, *Socioeconomic Report* (pp. M-2 through M-4). As stated in those sections, the economic impacts analysis used the IMPLAN modeling system, which uses BLM expenditures and resource uses to estimate the economic consequences of project implementation. Quantitative inputs were obtained from various program areas for the analysis area (see FEIS, p. 296).

It is not necessary for the BLM to incorporate economic research from counties adjacent to the planning area into the Missoula PRMP and FEIS. The research does not provide additional information that would result in effects outside the range of effects already discussed in the Missoula PRMP and FEIS.

The BLM properly analyzed the effects of the plan amendment on lands with wilderness characteristics in the Missoula PRMP and FEIS. Accordingly, the protest is denied.

NEPA – Purpose and Need

Western Watersheds Project

Jocelyn Leroux

Issue Excerpt Text: As WWP noted in our prior comments (at pages 1-2) the BLM gets it wrong right out of the gate at the “Purpose and Need” statement. This remains true in the PRMP/FEIS wherein the BLM claims the need for the PRMP “is the result of a changing land base through exchanges and acquisitions, changing resource conditions, shifting demands for resource uses, new circumstances and information relevant to public lands in the planning area since the completion of the Garnet Resource Area RMP in 1986.” And the purpose of the FRMP/FEIS is: Maintain or restore ecological sustainability for forests and grasslands to provide quality habitat for terrestrial and aquatic wildlife species, and opportunities for sustainable timber harvest and livestock grazing. Provide for recreation opportunities and improve access. Manage for other social and scientific values (p. 1-2) By defining the need improperly, the basis of the PRMP/FEIS analysis is flawed.

As discussed in detail above and in previous comments (p. 2-12) climate change is exacerbating current and historical impacts on public lands and thus must be identified as a need for RMP revision. Rather than being central to the PRMP/FEIS as current science and our previous comments suggest it should be, climate change is a peripheral consideration that does not address the myriad threats from climate change to ecological, economic, and social health of the plan area.

Summary:

The BLM inappropriately defined the Purpose and Need by not identifying climate change as a need for action for the RMP amendment.

Response:

In accordance with NEPA, the BLM has discretion to establish the purpose and need for a proposed action (40 CFR 1502.13). The BLM must construct its purpose and need to conform to existing decisions, policies, regulation, or law (BLM Handbook H-1790-1, Section 6.2). The purpose and need may not be so narrow that only one alternative becomes a foreordained outcome, and may not be so broad that an infinite number of possibilities could accomplish the goals of the project. For a land use planning effort, the BLM utilizes plan evaluations to “identify resource needs and means for correcting deficiencies and addressing issues through plan maintenance, amendments, or new starts [revisions],” (BLM Handbook H-1601-1, Section V(B)).

The purpose and need statement describes the problem or opportunity to which the BLM is responding (need) and what the BLM hopes to accomplish through the planning effort (purpose) (See BLM Handbook H-1790-1, Section 6.2). The BLM is not required to develop a broad purpose and need and is instead directed to draw on existing information to identify the appropriate purpose and need to provide for a reasonable range of alternatives. For a land use plan revision, the need statement reflects the challenges of implementing the current RMP identified in the plan evaluation, including any changed circumstances relevant to the planning area. (BLM Handbook H-1601-1, Section V(B))

The BLM established the purpose and need for the Missoula Field Office RMP revision to meet its obligations under FLPMA consistent with the CEQ regulations and BLM policy (FEIS, p. 17). As described in the PRMP/FEIS, the BLM conducted plan evaluations in 1991 and 2001 and used the information from these evaluations to inform the need for this RMP revision. As such, the need for

the Missoula Field Office RMP revision was established based on the specific, local problems and opportunities identified through the plan evaluations. This included findings related to “changing resource conditions” that have occurred since the 1968 Garnet Resource Area RMP’s approval, including “[f]orest vegetation conditions and resiliency to natural disturbances such as insect and disease infestations, and catastrophic wildfires.” This purpose and need provided the appropriate scope to allow the BLM to analyze a reasonable number of alternatives that represent alternative approaches for managing the public lands in the planning area related to the resource condition changes.

The BLM properly established the purpose and need for the Missoula Field Office RMP revision. Accordingly, the protest is denied.

NEPA – Impact Analysis

Alliance for the Wild Rockies

Mike Garrity et al.

Issue Excerpt Text: The FEIS (Chapter 3) fails to analyze and disclose the effects of ongoing climate change in analyzing impacts on resources, in violation of NEPA. It fails to analyze and disclose the full extent of climate change direct, indirect, and cumulative effects the RMP alternatives would cause, in violation of NEPA. And it fails to consider best available science on the subject, in violation of NEPA.

Alliance for the Wild Rockies

Mike Garrity et al.

Issue Excerpt Text: NEPA requires analysis of the impacts on wildlife of past, ongoing, and foreseeable management actions on land of all ownerships in a scientifically-based cumulative effects analysis area. The FEIS (Chapter 3) does not analyze or disclose such cumulative impacts. Schultz (2010) concludes that “the lack of management thresholds allows small portions of habitat to be eliminated incrementally without any signal when the loss of habitat might constitute a significant cumulative impact.” The RMP fails to recognize thresholds for population viability. The FEIS fails to analyze and disclose the quality of habitat in any wildlife corridors, including linkage areas between the geographical areas of the Missoula Field Office.

Summary:

The Missoula PRMP and FEIS (BLM 2020) failed to:

- Analyze and disclose impacts to resources from climate change.
- Analyze impacts on wildlife, specifically cumulative impacts recognizing thresholds for population viability, wildlife corridor habitat, and linkage areas.

Response:

The BLM 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).

The BLM has complied fully with the requirements of NEPA and prepared impact analyses for both climate change and wildlife appropriate to the nature and scope of the proposed management options

under consideration at the land use planning level. The impact analysis considers the effects of the planning effort when added to other past present and reasonably foreseeable (not highly speculative) Federal and non-Federal actions. The BLM analyzed and disclosed the relationship between the management approaches under the alternatives and climate and air quality in the PRMP/FEIS (Section 3.3.1). The BLM also analyzed and disclosed the relationship between the management approaches under the alternatives and wildlife species and habitats in the PRMP/FEIS (Section 3.3.8). Cumulative effects are specifically noted on pp. 240-242 of the PRMP/FEIS and identify both positive and negative effects within the analysis area. These analyses presented in the Missoula Field Office PRMP/FEIS provide the information necessary to enable the decision-maker to make a reasoned choice among alternatives.

The BLM adequately analyzed effects of climate change and wildlife species and habitats in the Missoula Field Office RMP. Accordingly, this protest is denied.

FLPMA – Monitoring and Adaptive Management

Alliance for the Wild Rockies

Mike Garrity et al.

Issue Excerpt Text: It would be unnecessarily time consuming for AWR to point out the ineffectiveness of all the Objectives and other RMP components because of the above-identified deficiencies. Chapter 2 of the RMP states, “(T)he BLM would implement ...plan effectiveness monitoring.” There is nothing in the RMP that resembles a program of RMP effectiveness monitoring. Even the Backcountry Conservation Areas (BCAs), a new designation, would manage land primarily for recreational uses, threatening important habitat, non-game animals, and plants. Appendix S (Responses to Public Comments) states, “The BLM adjusted the FEIS based on comments to include a section on Plan Implementation, Effectiveness Monitoring and Evaluation (FEIS, Chapter 5).” We protest the fact that an entire FEIS/RMP chapter has been inserted at this late stage, after the conclusion of the NEPA process. This violates NEPA. RMP/FEIS Chapter 5 states: The regulations in 43 CFR 1610.4-9 require that land use plans establish intervals and standards for monitoring, based on the sensitivity of the resource decisions. Land use plan monitoring is the process of tracking the implementation of land use plan decisions (implementation monitoring) and collecting data/information necessary to evaluate the effectiveness of land use plan decisions (effectiveness monitoring). This section describes the process to be used for monitoring the implementation and effectiveness of the resource management plan (RMP) decisions; other monitoring BLM conducts for other purposes are not described in this section. RMP/FEIS Chapter 5 states: The monitoring activities described in this section are not RMP decisions themselves; rather, they are activities intended to assist BLM monitor implementation and effectiveness of RMP decisions. However the RMP/FEIS still fails to describe any monitoring activities in this section! This violates planning regulations at 43 CFR § 1610.4-9 which require: Monitoring and evaluation. The proposed plan shall establish intervals and standards, as appropriate, for monitoring and evaluation of the plan. Such intervals and standards shall be based on the sensitivity of the resource to the decisions involved and shall provide for evaluation to determine whether mitigation measures are satisfactory, whether there has been significant change in the related plans of other Federal agencies, State or local governments, or Indian tribes, or whether there is new data of significance to the plan. The Field Manager shall be responsible for monitoring and evaluating the plan in accordance with the established intervals and standards and at other times as appropriate to determine whether there is sufficient cause to warrant amendment or revision of the plan. In failing to provide any details of what exactly is to be monitored, or how it is to be monitored, the RMP violates FLPMA.

Summary:

The Missoula PRMP and FEIS (BLM 2020) failed to comply with 43 CFR 1610.4-9, which states the proposed plan shall establish intervals and standards, as appropriate, for monitoring and evaluation of the plan.

Response:

BLM policy directs offices to identify land use plan implementation priorities within 1 year of signing the Record of Decision (BLM Instruction Memorandum 2013-14). As stated in Chapter 5, this policy will be used to monitor implementation of the revised Missoula RMP unless directed otherwise by new guidance in the future. “Establishing Implementation Priorities for Land Use Plans” involves a three-step process. The first step is identifying the work associated with implementing the land use plan, the geographic location of work in the planning area, and the accompanying program elements that measure that work. During the second step, the priority of the work identified in step one is recorded in a plan implementation worksheet, which is updated annually. In step three, the field office schedules work into the out-years in the relevant columns of the plan implementation worksheet.

Regulations at 43 CFR 1610.4-9 require that the proposed plan establish intervals and standards, as appropriate, for monitoring and evaluating the plan, based on the sensitivity of the resource decisions involved, but set no requirement for land use plans to establish the evaluation schedule. The BLM Planning Handbook (H-1610-1) explains that “The plan should be periodically evaluated (at a minimum every 5 years) as documented in an evaluation schedule... [and] prior to any plan revisions and for major plan amendments. Special or unscheduled evaluations may also be required to review unexpected management actions or significant changes in the related plans of Indian Tribes, other Federal agencies, and state and local governments, or to evaluate legislation or litigation that has the potential to trigger an RMP amendment or revision.” The BLM periodically reviews the progress in meeting the plan objectives and adhering to the management framework established by the plan. CEQ regulations implementing NEPA state that agencies may provide for monitoring to ensure that their decisions are carried out and should do so in important cases (40 CFR 1505.2(c)).

Chapter 5 of the Missoula PRMP and FEIS also describes activities intended to assist the BLM in monitor implementation and effectiveness of RMP decisions. Implementation and effectiveness monitoring must be carried out as part of land use planning (43 CFR 1610.4-9), but this kind of monitoring relates to the intervals and general standards for monitoring, not detailed information for guiding adaptive management activities under the plan. The BLM will address monitoring and adaptive management of resources through adaptive management strategy on a project-level/site-specific basis as needed to inform decision-making and allow adjustments to the plan (see FEIS, Chapter 5).

For example, Appendix B of the Missoula PRMP and FEIS, *Aquatic and Riparian Habitat Conservation Strategy*, consolidates programmatic direction and guidance for riparian and aquatic conservation and restoration. The strategy contains several key components including “monitoring and adaptive management for determining if the plan is being implemented and is achieving desired results” (see FEIS, p. B-1). The monitoring and adaptive management process is also described in that appendix (see FEIS, pp. B-7 through B-9).

The BLM has adequately complied with 43 CFR 1610.4-9 and will continue to comply with the regulation through the implementation of the Missoula PRMP. Accordingly, the protest is denied.

FLPMA – Unnecessary and Undue Degradation

Western Watersheds Project

Jocelyn Leroux

Issue Excerpt Text: BLM acknowledges this on page 102: “livestock grazing contributes to the introduction and/or spread of noxious weeds. Many weed species have the ability to adhere to fur and skin as well as pass through the digestive track; this allows weeds to spread very quickly. Wildlife also adds to this type of spread, but to a much lesser degree (R. De Clerck-Floate 1997).” However, the Proposed Alternative increases both the acres available for livestock grazing and the AUMs, ignoring the best available science and BLM’s own analysis about grazing impacts on rangelands; and failing to prevent unnecessary and undue degradation, thus violating FLPMA.

Western Watersheds Project

Jocelyn Leroux

Issue Excerpt Text: BLM again acknowledges on page 118 that “noxious and invasive plant species, for the most part, are associated with areas experiencing natural or human-made disturbances” such as livestock/wildlife paths and congregation areas. To reiterate what was said above: wildlife contribute to the spread of invasive plant species to a much lesser degree. BLM still failed to include any data on grass species in their analysis (p. 118), ignoring WWP’s prior comments including several detailed figures⁷ (included again below). These figures show the expanded suitability of invasive grasses into the plan area. As we have stated in our prior comments and will address again in detail below, climate change exacerbates the impacts of livestock grazing on vegetation communities. The combined impacts of climate change, soil resource degradation, and vegetation impacts under the Proposed Alternative clearly fails to comply with the requirements to avoid unnecessary and undue degradation under FLPMA.

Summary:

Management actions for grazing in the Missoula PRMP and FEIS (BLM 2020) would result in unnecessary and undue degradation of public lands, which violates FLPMA.

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.” However, Section 102(a)(7) of FLPMA declares that it is the policy of the United States that management of the public lands be on the basis 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 public.

The Missoula PRMP and FEIS (BLM 2020) is consistent with FLPMA’s mandate to prevent unnecessary or undue degradation. The Missoula PRMP and FEIS provides for the balanced management of the public lands in the planning area. In developing the Missoula PRMP and 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 Missoula PRMP and FEIS identifies appropriate allowable uses, management actions, and other mitigation measures that prevent the unnecessary or undue degradation of public lands. Proposed management changes would result in foreseeable effects on resources and uses in the planning area, but such effects could be justified in the balancing of competing interests, reflecting the BLM’s multiple-use mission. Adoption of the Missoula PRMP and FEIS would not violate FLPMA’s requirement to prevent unnecessary or undue degradation because the proposed plan would not authorize any public

land uses, much less any that would result in unnecessary or undue degradation. Congress recognized that through the BLM’s multiple-use mandate, there would be conflicting uses and impacts on the public land.

The Missoula PRMP and FEIS includes management direction for the BLM to follow the Standards for Rangeland Health, which were incorporated by reference into the RMP (see FEIS, Section 2.3). Three of the five Standards for Rangeland Health include weeds as a component of the criteria for that particular standard (see FEIS, Section 3.2.1). Grazing leases are generally reviewed on a 10-year schedule to determine whether standards are being met. At the site-specific review of the lease renewals, the BLM may adjust grazing levels, management practices, or range improvements when needed to meet or make progress toward meeting the Standards for Rangeland Health. The BLM would additionally delineate riparian habitat conservation areas at the project level in response to potential issues for aquatic species and habitat. Site-specific riparian management objectives would give primary emphasis to riparian-dependent resources. This may result in adjustments to the terms and conditions of livestock grazing leases or temporary removal of livestock grazing in these riparian areas to provide for riparian-dependent resources (see FEIS, p. 259).

The Missoula PRMP and FEIS (a sub-alternative to Alternative B) has more acres and AUMs available for livestock grazing than the other alternatives analyzed. This allows the BLM to use grazing as an active management tool to restore vegetative communities and allows the BLM flexibility at the site-specific level to adjust the terms and conditions. As described in Section 3.4.3 (see FEIS, pp. 254 through 261), making more acreage available for livestock grazing gives the BLM the ability to manage plant communities that provide forage and habitat, using livestock grazing for vegetation treatments.

The BLM received multiple comments on the Missoula Draft RMP and EIS (BLM 2019) regarding potential impacts of livestock grazing management actions on vegetative communities and the spread of invasive species (see FEIS, Appendix S). In response to these comments, the BLM adjusted Section 2.3, *Grassland and Shrubland Vegetation*, to include management direction for rangeland monitoring. Specifically, the BLM added Management Action 02: Monitor rangeland conditions on a routine schedule (approximately 10 years) with an interdisciplinary team; monitoring data may include but not be limited to Rangeland Health Assessments, forage utilization, pace transects, and photo points (see FEIS, p. 23). The addition of this management action would allow for monitoring and potential reduction of impacts from livestock grazing on vegetative communities.

The Missoula PRMP and FEIS will not result in “unnecessary or undue degradation of the lands” under Section 302(b) of FLPMA. The Missoula PRMP and FEIS would not authorize any uses of the public lands. In addition, the alternatives evaluated in the FEIS comply with all applicable statutes, regulations, and policy, including Standards for Rangeland Health. Accordingly, the protest is denied.

FLPMA – Consistency with Other Plans: Travel Management

Alliance for the Wild Rockies

Mike Garrity et al.

Issue Excerpt Text: FEIS Appendix S states, “The RMP level decisions include motorized and Non-motorized allocations for an area-Open, Limited, and Closed. The motorized allocation includes OHVs and snowmobiles. ...Specific route designations for motorized vehicles (ATVs, snowmobiles) and non-motorized (mountain biking, horseback trails, hiking) will be analyzed and identified during step-down travel management planning at the site-specific level within the Open, Limited, and Closed areas.” However, the RMP fails to mandate that such “step-down travel management planning at the site-specific level” would ever occur. The BLM is obligated to undertake this analysis at the RMP level. In failing to do so, it violates Executive Orders 11644 and 11989 and FLPMA.

Summary:

The Missoula PRMP and FEIS (BLM 2020) violates Executive Orders 11644 and 11989 because it failed to mandate step-down travel management planning.

Response:

BLM land use planning requirements are established by Sections 201 and 202 of FLPMA (43 U.S. Code 1711–1712) and the regulations in 43 CFR 1610, et seq. FLPMA requires the BLM to develop, maintain, and revise land use plans that provide for the use of BLM-administered lands (FLPMA 202(c)). RMPs are designed to guide and control future management actions and the development of subsequent, more detailed, and limited-scope plans for resources and uses (43 CFR 1601.0-2). An RMP is not a final implementation decision on actions that require further specific plans, process steps, or decisions under specific provisions of law and regulations (43 CFR 1601.0-5(n)). Land use planning–level decisions are broad in scope and guide future land management implementation actions; land use plan decisions establish goals and objectives for resource management (desired outcomes) and the measures needed to achieve these goals and objectives (management actions and allowable uses) (see BLM Land Use Planning Handbook, H-1610-1, p. 11).

Generally speaking, land use planning decisions do not authorize projects or any other on-the-ground activities. Instead, the BLM generally authorizes such uses by issuing implementation-level decisions, which must conform to the approved land use plan (43 CFR 1610.5-3(a)). Implementation decisions differ from the planning decisions described above because they generally represent the final authorization for on-the-ground action without further agency analysis or approval. Once a land use plan is established, the BLM will often undertake additional implementation planning efforts for specific program areas.

The BLM’s travel management guidance is provided in BLM Manual MS-1626, Travel and Transportation Management (TTM Manual). The TTM Manual makes clear that “the development of implementation-level TTM decisions concurrently with the development of the RMP is not a viable planning approach” (BLM Manual MS-1626, 3-1). The manual goes on to explain that because of the complex nature, potential for controversy, sizable datasets, and sometimes incomplete data available, specific route decisions should not be combined with, or included in, land use planning–level documents; rather, these site-specific decisions should generally be considered as part of a step-down, implementation-level analysis (BLM Manual MS-1626, 3-1). Section 1.3 Authority in MS-1626 also includes a list of major legal authorities relevant to the BLM land use and implementation planning processes relative to travel and transportation management; Executive Orders 11644 and 11989 are both included under the Authorities providing policies and procedures to ensure the control of off-road vehicle use to protect public lands. These authorities will help guide future site-specific level travel management planning.

Section 1.5, *Issues Considered but Not Further Analyzed*, of the FEIS states that site-specific travel management planning was considered as an issue but not analyzed. The planning-level decisions (allocations for open, closed, and limited motorized travel) and analysis follow the BLM Land Use Planning Handbook (H-1601-1) (p. 17). “These allocations set the stage for subsequent step-down travel management plans. Travel management designations (e.g., motorized or non-motorized trails, types of vehicles or use per route, seasonal restrictions, etc.) are implementation-level decisions, which align with the RMP allocations and are subject to site-specific NEPA analysis and public involvement” (see FEIS, p. 19). Also, as noted in the response to comments, “The RMP level decisions include motorized and nonmotorized allocations for an area—Open, Limited, and Closed... These allocations are in accordance with the RMP’s purpose and need in Chapter 1, and recreation goals and objectives as described in Chapter 2. Specific route designations for motorized vehicles ([all-terrain vehicles], snowmobiles) and non-motorized (mountain biking, horseback trails,

hiking) will be analyzed and identified during step-down travel management planning at the site-specific level within the Open, Limited, and Closed areas” (see FEIS, Appendix S, p. 38).

The BLM is not required to mandate step-down travel management planning pursuant to Executive Orders 11644 and 11989 because such planning is addressed in BLM Manual MS-1626, which takes into account the Executive Orders. Accordingly, the protest is denied.

FLPMA – Protest Process

Western Watersheds Project

Jocelyn Leroux

Issue Excerpt Text: The “dear reader” letter accompanying the Final EIS indicates that the “BLM director” will approve the Final RMP and issue a Record of Decision following the resolution of protests. However, the position of BLM director is currently vacant, and because purported BLM Acting Director William Perry Pendley does not meet the requirements imposed by the Federal Vacancies Reform Act (“FVRA”), his appointment is unlawful. See *L.M.-M. v. Cuccinelli*, Case No. 1:19-cv-02676-RDM ECF No. 34, Slip Op. at 41 (D.D.C. March 1, 2020). Consequently, any decisions he issues, including any decision regarding the Lewistown RMP, are also unlawful. *Id.* at 49-50.

Summary: The PRMP/FEIS is unlawful because William Pendley Perry is unlawfully appointed under the Federal Vacancies Reform Act and will approve the Final RMP and issue a Record of Decision following the resolution of protests.

Response:

The protest incorrectly alleges that William Perry Pendley will approve the Final RMP and issue a Record of Decision following the resolution of protests. Mr. Pendley took no action on the issuance of the Proposed RMP or the resolution of the protests and will not approve or issue a Record of Decision for this planning effort. Pursuant to the BLM’s planning regulations (43 CFR 1610.5-2), the Proposed RMP/Final EIS was subject to a 30-day protest period that ended on March 16, 2020. Consistent with the delegation of authority provided by the 2016 BLM delegation of authority manual (MS- 1203), the BLM’s Acting Assistant Director for Resources and Planning worked with BLM Headquarters staff to review and resolve these protests. On June 19, 2020, the BLM issued a Protest Resolution Report and each protesting party was notified in writing of the BLM’s findings and the disposition of their protests. The Protest Resolution Report was made available on the BLM website.

On September 25, 2020, the U.S. District Court for the District of Montana ruled that BLM Deputy Director for Policy and Programs William Perry Pendley has unlawfully served as the Acting BLM Director for the last 424 days and enjoined him from exercising the authority of the BLM Director. *Bullock v. Bureau of Land Management et al.*, 4:20-cv-00062, (D. Mont. September 25, 2020). On October 16, 2020, after further briefing by the parties, the Court set aside the Missoula and Lewistown RMP Revisions – as well as the Miles City RMP Amendment – on the grounds that Mr. Pendley “exercised the Director’s exclusive authority to resolve protests” on all three plan decisions. Further, the Court determined that “[o]nly the Secretary of the Interior can perform functions or duties of the BLM Director.” *Bullock v. Bureau of Land Management et al.*, 4:20-cv-00062, *4 (D. Mont. October 16, 2020).

Following issuance of the October 16, 2020 Order, the Secretary independently reviewed the protests and proposed Protest Resolution Report, independently approving this Report. Accordingly, your protest is denied.

Wild and Scenic Rivers

American Rivers

Scott Bosse

Issue Excerpt Text: American Rivers believes that the BLM erred in finding these five Wild and Scenic eligible stream segments to be non-suitable for designation by relying heavily on three false assumptions under suitability criterion #8 as described on page G-10 of the Wild and Scenic River Suitability Report. Those assumptions are as follows: (1) The fish outstandingly remarkable value (ORV) for all five stream segments would be protected by the Endangered Species Act (ESA), the 2007 memorandum of understanding and conservation agreement for westslope cutthroat trout and Yellowstone cutthroat trout in Montana, the BLM's management policy on special status species, and Montana's fishing regulations (2) Water quality on all five segments would be protected by state and federal law (3) The Blackfoot Challenge, a local watershed conservation group, would continue its commitment to protect all five stream segments.

Montana Wilderness Association

Erin Clark

Issue Excerpt Text: The FEIS indicates that because of 'other management' schemes available to the BLM, the FEIS will not recognize these river segments as eligible. 'Other management' schemes include Endangered Species Act protections, state and federal laws protecting water quality, Blackfoot Special Recreation Management Area management, and Lewis and Clark National Historic Trail corridor management direction. Pg. 290. The FEIS, however, acknowledges that these other management schemes may not fully protect WSR values. The impacts section of the FEIS acknowledges that "outstandingly remarkable values would most likely remain protected even without interim management as eligible"(emphasis added). Pg. 290. Montana Wilderness Association protests the BLM's formal recognition and management of these river segments as WSR eligible. It's clear that in many cases with regards to WSR values, the agency's analysis of the Missoula Field Office eligible segments does not support its conclusion, i.e. the Missoula Field Office found outstandingly remarkable values present for all eligible segment lengths, but will not formally recognize these segments through the FEIS as WSR eligible. This amounts to an utter failure to take the required hard look, and accurately analyze the direct, indirect, and cumulative impacts of the agency's proposed action.

Summary:

The Missoula PRMP and FEIS (BLM 2020) used incorrect assumptions under suitability criterion 8 when making suitability determinations for wild and scenic stream segments. The BLM erroneously relied on the assumption that water quality would be protected by state and Federal water quality standards instead of the standards in Sections 1(b) and 10(a) of the Wild and Scenic Rivers Act. Additionally, the BLM's determinations for wild and scenic rivers eligible segments do not support its conclusion that the office found ORVs but that this information was not enough to formally recognize the segments as eligible.

Response:

To the extent possible under existing legal authorities, the BLM's policy goal for eligible and suitable rivers is to manage their free-flowing condition, water quality, tentative classification, and any ORVs

to ensure a decision on suitability can be made for eligible rivers or, in the case of suitable rivers, until Congress designates the river or releases it for other uses (BLM Manual Section 6400.3.5). During the land use planning process, the BLM assesses all eligible river segments and determines which are suitable or non-suitable for inclusion in the National Wild and Scenic Rivers System (BLM Handbook H-1601-1, Appendix C, p. 27).

In the Missoula PRMP/FEIS, the BLM identified all segments eligible for inclusion in the National Wild and Scenic Rivers System and determined which of those eligible segments are suitable for inclusion in the National Wild and Scenic Rivers System (see FEIS, pp. 288 through 291, and Table 3 in Appendix G). In determining the suitability of the segments, the BLM applied the 13 suitability criteria factors identified in BLM Manual 6400, including criterion 8, which requires the agency to evaluate local zoning and other land use controls in protecting a river's ORVs and preventing incompatible development. The BLM interdisciplinary team considered data from other agencies and the public as well as input provided by cooperating agencies when determining which sources would be effective as defining criterion 8 (see FEIS, pp. 288-289 and Appendix G, pp. G-11 to G-12).

In order to be assessed as outstandingly remarkable, a river-related value must be a unique, rare, or exemplary feature that is exceptional at a comparative regional or national scale (BLM Manual Section 6400.3.1.D.1). The determination of whether an area contains an ORV is a professional judgment on the part of the agency's study team (U.S. Department of the Interior/U.S. Department of Agriculture's Final Revised Guidelines for Eligibility, Classification, and Management of River Areas, 47 *Federal Register* 39457) (BLM Manual Section 6400.3.1.D).

The BLM identified ORVs for wild and scenic rivers in the Missoula PRMP and FEIS (BLM 2020) through a study process to determine which values or characteristics make the wild and scenic rivers worthy of special protection. The BLM documented the study process for identifying ORVs, and the rationale for ORV identifications, in Section 1.9.1 of the Missoula PRMP and FEIS (see FEIS, p. 26).

The Missoula PRMP and FEIS appropriately identified the suitability criteria and ORVs in compliance with the Wild and Scenic Rivers Act. Accordingly, the protest is denied.

Endangered Species Act – Consultation

Alliance for the Wild Rockies

Mike Garrity et al.

Issue Excerpt Text: the RMP approves of actions adversely affecting species listed or proposed for listing under the Endangered Species Act (ESA) in violation of that Act—and without undertaking consultation with the U.S. Fish and Wildlife Service as required under the ESA.

Alliance for the Wild Rockies

Mike Garrity et al.

Issue Excerpt Text: In addition, the RMP approves of actions adversely affecting bull trout—a species listed the Endangered Species Act (ESA) in violation of that Act—and without undertaking consultation with the U.S. Fish and Wildlife Service as required under the ESA. The FEIS Chapter 3 acknowledges, “Bull trout and west slope cutthroat trout were historically common throughout the decision area, but are now reduced to resident populations or locally extirpated.” (Emphasis added.)

Summary:

The BLM failed to adequately complete consultation under the ESA for the Missoula PRMP and FEIS (BLM 2020).

Response:

Section 7(a)(2) of the ESA requires Federal agencies to ensure that their proposed actions will not be “likely to jeopardize the continued existence of any [listed] species or result in the destruction or adverse modification of the critical habitat of such species” (16 U.S. Code 1336(a)(2)). The BLM is required to “consult under Section 7 of the Endangered Species Act with the [U.S. Fish and Wildlife Service] and/or [National Oceanic and Atmospheric Administration]-Fisheries for all actions that may affect listed species or designated critical habitat or confer if actions are likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat (see 50 CFR 402.14 and 402.10; and BLM Handbook H-6840)” (BLM Land Use Planning Handbook, H-1601-1, p. C-4).

In determining whether a proposed action “may affect” a listed species, or, conversely, whether there will be “no effect,” a Federal agency must determine which activities are encompassed by its proposed action, what the effects of those activities are likely to be on the environment, and whether those effects will “pose any effect” on a listed species or critical habitat. Only those proposed actions that “may affect” a listed species or critical habitat are subject to the ESA’s Section 7 consultation requirements.

Consistent with Section 7 of the ESA, when an action agency determines that a Federal action will have no effect on listed species or critical habitat, the agency will make a “no effect” determination. In that case, the ESA regulations do not require concurrence from the U.S. Fish and Wildlife Service, and the agency’s obligations under Section 7(a)(2) for that action are complete.

The Missoula PRMP and FEIS (BLM 2020) includes a description of the BLM’s compliance with Section 7 of the ESA for Grizzly Bears, Canada Lynx, Wolverine, and Bull Trout in Section 4.3, *USFWS Consultation*. The BLM conducted informal consultation with the U.S. Fish and Wildlife Service under Section 7(a)(2) of the ESA throughout the planning process. The BLM submitted a formal request for consultation on October 16, 2019. On June 6, 2020, USFWS issued Biological Opinions with determinations of no-jeopardy findings for the grizzly bear, Canada lynx, and bull trout. The BLM incorporated the Conservation Recommendations from the Biological Opinions into the Proposed RMP. Additionally, land use planning–level decisions are broad in scope and do not result in on-the-ground actions such as approving an application to drill or plan of operations. Future environmental analysis and Section 7 consultation for such projects will occur on a project-by-project basis.

The BLM has developed the Missoula PRMP and FEIS in full compliance with the ESA. Accordingly, the protest is denied.