

***Land Use Planning Protest Resolution
Report***

for the

**Wyoming Pipeline Corridor
Initiative Proposed Resource
Management Plan
Amendment and Final
Environmental Impact
Statement (PRMPA/FEIS)**

January 15, 2021

This page intentionally left blank.

Contents

Acronyms	ii
Introduction	1
Protesting Party Index	2
Greenhouse Gas and Climate Change Impact Analysis	3
Conforming with the 2015 Wyoming Approved RMP Amendment for the Greater Sage-Grouse.....	6
Greater Sage-Grouse Impact Analysis	7
Public Notification and Participation	11
Wildlife Impact Analysis.....	13

Acronyms

ARMPA	Approved Resource Management Plan Amendments
BCF	billion cubic feet
BLM	Bureau of Land Management
BMP	best management practices
CEQ	Council on Environmental Quality
CFR.	Code of Federal Regulations
CH₄	methane
CO₂e	carbon dioxide equivalent
DOI	Department of the Interior
EIS	Draft Environmental Impact Statement
EIS	Environmental Impact Statement
EOR	enhanced oil recovery
FEIS	Final Environmental Impact Statement
FLPMA	Federal Land Policy and Management Act
FR	Federal Register
GHG	greenhouse gas
GHMA	General Habitat Management Areas
GIS	geographic information systems
GWP	global warming potential
MMT CO₂e	million metric tons carbon dioxide equivalent
N₂O	nitrous oxide
NEPA	National Environmental Policy Act
PHMA	Priority Habitat Management Areas
PRMPA	Proposed Resource Management Plan Amendment
RMP	Resource Management Plan
RMPA	Resource Management Plan Amendment
RMRGSGCS	Rocky Mountain Region Greater Sage-Grouse Conservation Strategy
ROD)	Record of Decision
ROW	right of way
WPCI	Wyoming Pipeline Corridor Initiative

Introduction

Upon release of the Final Environmental Impact Statement (FEIS) and proposed Resource Management Plan Amendment (RMPA), a 30-day protest period began on October 23, 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 November 23, 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 Resource Management Plan (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 was published in the *Federal Register* (FR), October 23, 2020.

The following items must have been included to constitute a valid protest (see 43 Code of Federal Regulations [CFR.] 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
- 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.
- 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 November 23, 2020. Three protest letters were received during the protest period. All protest issues for the proposed planning decision were reviewed in accordance with 43 CFR Section 1610.5-2.

The Secretary and his staff completed an independent evaluation of the proposed Protest Resolution Report and ROD. Following that review, the Secretary approved this Protest Resolution Report and issued a written decision to protesting parties, and this report was posted on the BLM’s website. The decision of the Secretary is the final decision of the Department of the Interior.

The protesting party index table, below, shows the list of the letters received during the protest period, the determination of the protest validity, and how each letter was addressed.

Protesting Party Index

Submission No.	Protester	Organization	Determination
PP-WY-WPCI-21-001	Wally J. Johnson	Sweetwater County Board of County Commissioners	Dismissed – Comments Only
PP-WY-WPCI-21-002	Brian Andersen		Dismissed – Comments Only
PP-WY-WPCI-21-003*	Kelly Fuller	Western Watersheds Project	Dismissed

Table Notes

**This protest submission included several signatories including Vera Smith, Defenders of Wildlife; Alison Kelly, Natural Resources Defense Council; Connie Wilbert, Sierra Club Wyoming Chapter; and Michael Saul, Center for Biological Diversity.*

Greenhouse Gas and Climate Change Impact Analysis

Western Watersheds Project

Kelly Fuller

Issue Excerpt Text: In its response to our DEIS comments, BLM arbitrarily refuses to provide the foregoing analysis of both the long- and short-term impacts of its decisions as required by NEPA, instead asserting: This EIS analyzes a planning decision to designate proposed corridors on BLM lands. Without specific project information available (because no projects have been proposed yet), the BLM has provided its best estimate of GHG emissions in Section 3.2.5.1 (with backup in Appendix I). Site specific NEPA would be conducted for future EOR projects within the proposed corridors and would analyze GHGs in greater detail and would include both the 20-year and 100-year GWP.¹³⁸ However, NEPA requires BLM to analyze the short- and long-term impacts of its decisions, 40 C.F.R. § 1508.27(a), using accurate scientific analysis, *Id.* § 1502.24, and at the earliest possible time. *Id.* § 1501.2. Analysis may be deferred only when it is impossible to prepare it until a later stage, which is not the case here.

Western Watersheds Project

Kelly Fuller

Issue Excerpt Text: In the FEIS, BLM failed to analyze the environmental effects of the anticipated GHG emissions (i.e., direct, indirect, and cumulative). Instead, BLM merely quantified the total emissions and used that number as a proxy for environmental effects. But BLM “must do more than quantify pollution” rather the agency “must also ‘discuss the actual environmental effects resulting from those emissions.’” *WildEarth Guardians v. Zinke*, 2019 WL 2404860, *8 (D. Mont. Feb. 11, 2019) (quoting *Ctr. for Biological Diversity v. Nat. Highway Traffic Safety Admin.*, 538 F.3d 1172, 1216 (9th Cir. 2008)). BLM must analyze the effects of GHG emissions in the same manner as it must for any other resource. See *Ctr. for Biological Diversity*, 538 F.3d at 1216-17.

Western Watersheds Project

Kelly Fuller

Issue Excerpt Text: Merely quantifying GHG emissions and calculating what percentage they represent of U.S. GHG emissions is inadequate. *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1216-17 (9th Cir. 2008); see also *California*, 2020 WL 4001480, at *48- 49 (citing *San Juan Citizens All. v. BLM*, 326 F. Supp. 3d. 1227, 1248 (D.N.M. 2018) (rejecting “facile conclusion” that leasing decision’s climate impacts were “minor” and no cumulative impacts analysis was required); see also *Kleppe v. Sierra Club*, 427 U.S. 390, 414 (1976) (discussing “practical considerations” of studies)). Even in combination with a general, qualitative discussion of climate change, calculating only the tons of greenhouse gases emitted or a percent comparison to sectoral or national emissions fails to meaningfully assess the actual incremental impacts to property, human health, productivity, and so on.¹⁷⁵ Comparing an agency action’s emissions to a state, national, or global inventory reveals nothing about the significance of the action’s contributions to actual environmental impacts. See *California*, 2020 WL 4001480, at *46 (citing *Stack & Vandenberg, The One Percent Problem*, 111 COLUM. L. REV. 1385, 1393 (2011) (framing sources as less than 1% of global emissions is dishonest and a prescription for climate disaster)). An agency would therefore fall short of its legal obligations and statutory objectives by focusing only on volume estimates.

Western Watersheds Project

Kelly Fuller

Issue Excerpt Text: BLM provides no analysis of the GHG emissions associated with each alternative. Instead BLM defers this analysis to an unknown later time: Because no specific potential pipeline projects are proposed, emissions by alternative cannot be quantified at this time;

however, using surface disturbance and the Riley Ridge to Natrona Project as a proxy for fugitive dust and combustion emissions and GHGs, Alternative E would have the potential to generate the greatest amount of fugitive dust, combustion emissions, and GHGs, and Alternative C would have the potential to generate the least amount of fugitive dust, combustion emissions, and GHGs. Individual projects would require an analysis of impacts to air quality, including the quantification of emissions and determination of the need for a conformity analysis. Emissions of GHGs and production from EOR under the alternatives are not expected to differ significantly.²³⁰ BLM's failure to disclose the GHG emissions associated with each alternative makes it impossible for decisionmakers and the public to meaningfully analyze and differentiate among alternatives, including mitigation alternatives, to reduce GHG emissions and their implications for climate change, in violation of NEPA.

Summary:

The BLM failed to adequately analyze the short-term and long-term effects of greenhouse gas (GHG) emissions on climate change across alternatives at the planning stage; instead, BLM uses a proxy and defers the analysis to a later time in violation of the National Environmental Policy Act (NEPA).

Response:

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15)¹ and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a "hard look" at potential environmental impacts of adopting the Wyoming Pipeline Corridor Initiative (WPCI) Proposed Resource Management Plan Amendment (PRMPA).

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (i.e., impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1 § 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, which in this case is the allocation of right of way (ROW) corridors in a plan amendment.

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative, rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions. As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving a pipeline ROW permit), the scope of the analysis was conducted at a higher, programmatic level. 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 discussed their estimates of emissions in the WPCI Proposed RMPA/Final EIS. The Air Quality Technical Support Document prepared for the 2018 Converse County EIS (BLM 2018b:Appendix A) summarizes the results of CAMx modeling effort conducted in 2017 to consider the air quality resulting from a 2008 base year (i.e., existing conditions) scenario, which was assessed using a Three-State Air Quality Modeling Study modeling platform, and future scenarios (i.e., year

¹ References to the Council on Environmental Quality (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 CFR § 1506.13).

2028) considering reasonably foreseeable future development in Wyoming, Colorado, and Utah. The conclusions of that modeling effort were incorporated by reference into the WPCI Proposed RMPA/Final EIS cumulative analysis for air quality because the model considers the same reasonably foreseeable development identified in Appendix H of the Final EIS and considers cumulative impacts across the State of Wyoming (p. 4-1).

Because the WPCI Proposed RMPA/FEIS is a planning-level document analyzing the anticipated impacts resulting from the designation of corridors, the BLM is not required to analyze emissions estimates from future implementation actions such as exploration, development, drilling, completion (including hydraulic fracturing), production, gathering, boosting, processing, transportation, transmission, storage, distribution, refining, and end use on a quantitative level. Site-specific projects proposed within the designated corridors would require subsequent NEPA analysis and would be subject to Federal, state, and local permitting requirements. However, the BLM did disclose the likely effects of indirect effects from construction, operation, and maintenance of pipelines for the transport of CO₂ and EOR products and other compatible uses, and associated aboveground facilities in the corridors and the use of EOR in technically and economically feasible oil fields (§§ 3.2.5 through 3.2.7, pp. 3-6 to 3-9). For example, in Section 3.2.5.1, *Enhanced Oil Recovery with Carbon Dioxide*, the BLM provides estimates for how many million metric tons carbon dioxide equivalent (Mmt CO₂e) could be produced over the next 20 years, the average indirect carbon dioxide equivalent (CO₂e) from enhanced oil recovery (EOR), and how many billion cubic feet (BCF) of CO₂ would be necessary to produce 1 million barrels of oil (see p. 3-8). Further described in the section, BLM provides approximate equivalents of CO₂ and GHGs to provide context for the analysis. For example, the BLM states that “the average annual indirect CO₂e emissions from (EOR operations would be approximately equivalent to 3.3 million passenger vehicles driven for 1 year, the energy usage from 1.8 million homes in 1 year, or the emissions from four coal-fired power plants in 1 year” (p. 3-9). The BLM’s analysis concludes that “These emissions would contribute to and exacerbate the climate change impacts described in Section 3.2.2.3. Collectively, the incremental addition of GHG emissions from numerous currently proposed and future projects would have a large impact on a global scale” (p. 3-9).

Given the highly speculative nature of the WPCI as it relates to the development of an oil field, it is currently not possible to predict whether new production wells may be necessary (p. 3-8) to determine environmental effects. Furthermore, operators would recapture CO₂ from the production stream and reinject it into the field to support ongoing EOR. Any leakage of CO₂ occurring during the reinjection process from the reservoir or production process cannot be reasonably estimated at this time (p. 3-9), making the disclosing of environmental effects meaningless. When a site-specific CO₂ pipeline ROW proposal is submitted for approval, the BLM would further refine its GHG emission estimates to account for specific oil and gas production, transmission, and end-use activities related to the application.

BLM uses the Environmental Protection Agency’s GHG equivalency calculator (<https://www.epa.gov/energy/greenhouse-gases-equivalencies-calculator-calculations-and-references>) to analyze impacts from the WPCI Proposed RMPA/FEIS on GHG and climate change (p. 3-8 through 3-9). This baseline method of analysis was used in order to express GHG emissions on a scale relatable to the general public. The results of the analysis show that the CO₂e emissions from EOR operations would be equivalent to the emissions from 3.3 million passenger vehicles driven for 1 year. As stated above, when a site-specific CO₂ ROW proposal is submitted for approval, more specific emission factors will be used to analyze impacts on GHG and climate change from the proposal because BLM will have actual expected emissions of individual GHGs (e.g., CO₂, methane [CH₄], nitrous oxide [N₂O]) and will be able to prepare specific emission estimates for the project.

The BLM complied with NEPA’s requirement to analyze the environmental consequences/impacts on GHG and climate change in the WPCI planning effort.

Conforming with the 2015 Wyoming Approved RMP Amendment for the Greater Sage-Grouse

Western Watersheds Project

Kelly Fuller

Issue Excerpt Text: Designating the WPCI corridors through tens of thousands of acres of PHMA and GHMA and subsequent future development of pipelines in them would lead to reductions in the abundance or distribution of greater sage-grouse, given the many impacts to grouse and its habitat that would result. Thus, the designation of the WPCI corridors is incompatible with avoiding future anthropogenic disturbance in PHMA and GHMA per Management Objective 13. Nor does the WPCI proposal's Alternative E satisfy the ARMPA's MD LR 1, MD LR 2, or the retained provisions from the Casper, Pinedale and Rawlins RMPs. In addition, the WPCI FEIS states, "The BLM does not anticipate that the decision resulting from this analysis will affect the ROD and approved RMP amendments for the Rocky Mountain Region Greater Sage-Grouse Conservation Strategy (BLM 2015c)." FEIS at 1-3. This is questionable due to the large amount of designated grouse habitat that the corridors will cross and because the WPCI proposal was not included as a reasonably foreseeable development in the FEIS for the 2015 Wyoming Grouse ARMPA and thus not included in the ARMPA's cumulative effects analysis. See Wyoming Grouse ARMPA FEIS at 4-522 to 4-523. BLM must ensure that the WPCI FEIS and RMP amendments conform to the 2015 Wyoming RMP because FLPMA's implementing regulations require such conformity: "All future resource management authorizations and actions, and subsequent more detailed or specific planning, shall conform to the plan components of the approved resource management plan." 43 C.F.R. § 1610.6-3(a).

Summary:

BLM's proposed RMP amendment is not in conformance with the *2015 Wyoming Sage-Grouse Approved RMP Amendment* because it removes protections from Priority Habitat Management Areas (PHMA) and General Habitat Management Areas (GHMA) and therefore is in violation of the Federal Land Policy and Management Act (FLPMA).

Response:

Assessing proposed implementation actions for plan conformity is a requirement of the BLM planning regulations (43 CFR § 1610.5-3). The intent of checking for conformity is to ensure that future proposed projects, such as approving pipeline rights-of-way, conform to the approved plans. A plan amendment, in contrast to an implementation action, changes or modifies the terms of the approved plan. Thus, "[i]f a proposed action is not in conformance, and warrants further consideration before a plan revision is scheduled, such consideration shall be through a plan amendment in accordance with the provisions of Section 1610.5-5" (43 CFR 1610.5-3(c)). A plan amendment is not required to conform to a preexisting land use plan under FLPMA.

Regardless, the corridors are consistent with the 2015 GRSG Plan Amendment and do not amend that planning direction. The need for the corridors arose from a proposal brought forward by the Wyoming State Governor's Office to support future development of carbon capture, utilization, and storage and EOR through the development of infrastructure connecting to existing oil fields within the State of Wyoming. The BLM determined that the proposal to designate one or more of the corridors described for the WPCI would likely result in a change in the scope of resource uses, terms, conditions, and decisions of the applicable RMPs and determined a plan amendment to one or more of the plans, thereby resulting in the need to amend some or all of the existing RMPs in the planning area. In the review of the Rocky Mountain Region Greater Sage-Grouse Conservation

Strategy (RMRGSGCS) RMP amendments, the BLM determined that corridors designated through the WPCI amendment are consistent with the goals, objectives, and management direction in the RMRGSGCS Amendment; thus, the BLM is not proposing to amend the direction in the RMRGSGCS Amendment (FEIS, Chapter 1, p. 1–3).

Specifically, the direction in the RMRGSGCS RMP Amendments provides that new pipelines may cross PHMAs if they are within designated RMP corridors or if they are in/adjacent to existing utilities or road and have completed a Density and Disturbance Calculation Tool analysis to meet the 5 percent threshold. Completely removing segments from and/or realigning segments to existing corridors within PHMA is consistent with this management action. A spectrum of alternatives was analyzed in the DEIS-alternatives that traverse through PHMAs, as well as alternatives that avoid PHMAs.

Any future projects developed in these corridors would apply the management direction in the 2015 Amendments or current Greater Sage-Grouse direction applicable to the project area. Direction and guidelines outlined in the 2015 Amendment include special status species monitoring, density and disturbance, noise, and more as well as allocation decisions for Greater Sage-Grouse habitat management areas (See Section 2.0 of the *BLM 2015 RMP Amendment for Greater Sage-Grouse*). Appendix C of the 2015 RMP Amendment, *Required Design Features*, includes best management practices (BMPs) to ensure regulatory certainty and protections for Greater Sage-Grouse. Any future projects will be reviewed for compliance with these required design features, and additional 2015 review for conformance with the 2015 Amendments will occur at the time of site-specific proposal reviews. These reviews would include a Density and Disturbance Calculation Tool analysis, inclusion of appropriate design features determined at the site-specific level, and the need for any additional environmental review documents, as necessary. The Proposed RMP Amendment (Alternative E) does not avoid PHMAs; however, it was routed to minimize impacts to Greater Sage-Grouse leks and habitat. Site-specific routing will occur as future corridor projects are submitted, reviewed, and processed.

Accordingly, this protest is denied.

Greater Sage-Grouse Impact Analysis

Western Watersheds Project

Kelly Fuller

Issue Excerpt Text: In the FEIS, BLM asserts that it is deferring full analysis of impacts to greater sage-grouse populations, seasonal habitats, or movement until future projects are proposed, claiming that it cannot do so now because there will be different types of projects. FEIS at K-34. This claim is incorrect, at least in regard to the impacts of developing pipelines. Although BLM may not know every single CO₂ source or oil field that could be impacted by future pipeline development (a.k.a. different types of future projects), BLM has much experience in preparing NEPA analyses for pipelines and could analyze now the impacts of developing pipelines in the proposed corridors in regard to statewide and local sage-grouse populations (abundance); sage-grouse distribution; sage-grouse genetic connectivity;²⁹ sage-grouse migration;³⁰ and sage-grouse redundancy, representation, and resilience.³¹ for the pipelines themselves. The width of the pipeline corridors is known: 300 feet wide for trunk corridors and 200 feet wide for lateral corridors. See FEIS at 2-3 to 2-5. Because the WPCI proposal is so large (the corridors reach across more than 1,100 miles of BLM land and building pipelines in them will also result in impacts to adjacent/connecting state and private land for a total of nearly 2,000 miles total), BLM's failure to analyze and disclose to the public how statewide and local sage-grouse populations; sage-grouse genetic connectivity; sage-grouse migration; and sage-grouse redundancy, representation, and

resilience would be impacted by the development of pipelines in the various corridor alternatives will result in a significant underestimation of impacts.

Western Watersheds Project

Kelly Fuller

Issue Excerpt Text: As discussed in our DEIS comments at 24-28, the BLM, in evaluating cumulative impacts, must not merely list ongoing and reasonably foreseeable projects without any supporting analysis and must actually analyze and disclose to the public the cumulative effects of those projects in sufficient detail to inform decision-making to comply with NEPA. The analysis must constitute more than listing generalities without supporting analyses. In this FEIS, the BLM presents minimal information on cumulative impacts to the greater sage-grouse and its habitats.

Western Watersheds Project

Kelly Fuller

Issue Excerpt Text: This limited analysis of the cumulative impacts to the greater sage-grouse does not constitute a hard look adequate to inform decision-making. It is deficient because it presents inaccurate and inadequate information about the magnitude and intensity of the impacts of past, present, and anticipated projects on greater sage-grouse and its habitat, in violation of NEPA.

Western Watersheds Project

Kelly Fuller

Issue Excerpt Text: The Landfire data set detects change in vegetative systems when the change is significant (e.g., removal of vegetation) and not necessarily when habitat value is reduced (but possibly not extinguished) as a result of specific activities or disturbances. Hence, the disturbance data will not register significant adverse changes to sage-grouse habitat quality from activities such as route construction and use, fences, and grazing, and the buffer effects of industrial developments (e.g., it is estimated that lekking is disrupted within a several mile buffer of energy infrastructure). See DEIS at 3-101. Also see: Manier et al. 2014 at 14.39 Table H-1 thus captures acres where vegetation has been removed or significantly changed (e.g., fire) but underestimates acres where sage-grouse habitat quality has been reduced.

Western Watersheds Project

Kelly Fuller

Issue Excerpt Text: Hence, it is inappropriate for the BLM to rely on the change analysis as a complete representation of past impacts to greater sage-grouse habitat. Doing so ignores the significant impacts that result from reductions in habitat quality from activities and infrastructure that do not entirely remove or significantly modify vegetation but still have significant documented effects to the greater sage-grouse. Table H-1 considerably underestimates the adverse effects of past land use activities on greater sage-grouse and its habitat.

Western Watersheds Project

Kelly Fuller

Issue Excerpt Text: The Cumulative Impact Analysis Is Flawed Because the BLM Inappropriately Uses Vegetation Removal as the Surrogate for Habitat Degradation in Its Evaluation of Cumulative Impacts from Current and Reasonably Foreseeable Projects. The BLM in evaluating cumulative impacts to wildlife from past, present, and reasonably foreseeable projects uses vegetation removal from surface-disturbing activities as a surrogate for impact.

Western Watersheds Project

Kelly Fuller

Issue Excerpt Text: MD LR 3 states, “New pipelines through PHMAs will be allowed: (1) within an RMP corridor currently authorized for that use or designated through future RMP amendments; or (2) constructed in or adjacent to existing utilities (buried and above-ground) or roads. 2015

Wyoming grouse ARMPA at 61. Those areas of PHMA will lose that protection if they are designated as corridors. Some Wyoming sage-grouse populations are doing better than others, and BLM needs to analyze and disclose to the public the additional grouse information that it hasn't included in the FEIS in order to make a fully informed choice as it removes 2015 Wyoming Grouse ARMPA protection from some sage-grouse habitat by designating it as a corridor. Furthermore, BLM must complete a full analysis of impacts to greater sage-grouse of removing MD LR 3 protection from PHMA within the proposed corridors because the WPCI proposal was not included as a reasonably foreseeable development in the 2015 Wyoming ARMPA's cumulative effects analysis.

Summary:

The BLM failed to adequately analyze the direct, indirect, and cumulative impacts to Greater Sage-Grouse by deferring analysis until future projects are proposed and using vegetation removal as a surrogate for habitat degradation. Thus, underestimating acres of habitat quality reduction for the analysis in violation of NEPA.

Response:

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

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

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

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not authorizing a pipeline ROW), the scope of the analysis was conducted at a higher, programmatic level. 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 addresses degradation of Greater Sage-Grouse habitat and declining populations in the WPCI Proposed RMPA/FEIS in several subsections of Section 3.21, *Wildlife and Fisheries*. Section 3.21.5.5 (pp. 3-100 and 3-101) and subsequent sections for each alternative (pp. 3-102, -103, -104, -105, and -107) provide quantified analysis for the future potential development of the corridors and the anticipated acreage of PHMA and GHMA that may be disturbed should the entire width of the corridor be disturbed; the calculation was based on the maximum potential disturbance width and includes both new designated corridors and existing corridors through GHMA and PHMA.

The BLM's use of acres, conditions, and trends of vegetation and wildlife habitat as described in section 3.21.3 of the FEIS (p. 3-96) are accepted indicators for determining impacts on wildlife, including the Greater Sage-Grouse (see specifically the *Wyoming Greater Sage-Grouse RMP Amendment Final EIS* [2015] p. 4-250 and *Wyoming Greater Sage-Grouse Draft Supplemental EIS*

[2019] § 3.1.1 through 3.1.7 [pp. 3-2 through 3-3], § 3.3 [pp. 3-5 through 3-8], and § 4.5 [pp. 4-91 through 4-101]).

The analysis assumptions are described in Section 3.1, *Introduction* (p. 3-1). Although the assumptions note that for purposes of analysis the calculations are for the “entire width of the corridor being disturbed and that increased EOR development would occur, and the analysis includes all areas that would be potentially affected by corridor designation on BLM lands, including adjacent lands owned or managed by different entities, to the extent possible” (p. 3-1), the BLM also acknowledges that the maximum disturbance calculations are unlikely to occur because

the corridors would not be completely disturbed at any single point in time, but would be sequentially disturbed and reclaimed as potential projects are proposed, approved, and completed. Application of various mitigation measures and BMPs as provided in the nine RMPs [and the 2015 Greater Sage-Grouse amendments] would further reduce the potential impacts of proposed corridor development (see Appendix E). Additionally, application of other BLM resource mitigation measures and BMPs, as well as the State of Wyoming’s construction and installation BMPs (see Appendix D) would further reduce the impact of potential future projects (p. 3-1).

As described in Section 3.21.5.5, the BLM recognizes the threats to Greater Sage-Grouse general population and habitat from the introduction of invasive plant species, changes in fire regimes, and direct removal resulting from changes in land use. The analysis of Greater Sage-Grouse population and habitat requirements is derived from scientifically recognized sources and provides an accurate basis for discussing potential impacts from the WPCI alternatives and reasonably foreseeable development. The WPCI Proposed RMPA/FEIS also includes a bibliography (Appendix B, *Literature Cited*), that lists information considered by the BLM in preparation of the FEIS. The BLM has reviewed the suggested data and information to determine whether the information is substantially different than the information considered and cited in the WPCI Proposed RMPA/FEIS. The suggested data and information does not provide additional information that would result in effects outside the range of effects already discussed in the WPCI Proposed RMPA/FEIS.

The Greater Sage-Grouse analysis for each alternative provided the acreage of PMHA and GMHA that could be disturbed if the pipeline corridors were fully built out, as well as the acreage of habitat and number of occupied leks within 2 miles and 4 miles of each corridor. The use of these defined analysis areas is based on the decisions and analysis from the *2015 Wyoming Approved Greater Sage-Grouse RMP Amendment* and associated FEIS, and provide the context for potential effects to the Greater Sage-Grouse. For example, the 2015 Amendment and FEIS note that a 2-mile buffer area protects Greater Sage-Grouse from habitat loss and disturbance from noise and human presence, and the 4-mile buffer provides additional protection for habitat, lekking activities, and habitat connectivity (2015 FEIS, pp. 4-278 and 4-525). The calculations provide the acreage and number of leks that may be indirectly impacted by the alternatives. However, further analysis on the anticipated impacts to the Greater Sage-Grouse would be assessed on a local scale when specific project proposals are received and reviewed. During land use planning it would be speculative to attempt to identify impacts associated with proposed site-specific siting decisions that might be proposed in the future. Additionally, at the time of any such future site-specific analysis, the required mitigation measures identified in the 2015 Approved RMP Amendments will be applied to the project design. Should a future proposal not conform to the goals, objectives, and management decisions of those plans, additional impacts and necessary next steps would be disclosed at that time.

The BLM must discuss the cumulative effects of the proposed action and the alternatives when preparing an EIS (BLM Handbook H-1790-1 § 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 addresses impacts from WPCI alternatives and past, present, and reasonably foreseeable future actions on Greater Sage-Grouse population and habitat in Section 4.11 and 4.22 (p. 4-6 and 4-11). The BLM has complied fully with the requirements of 40 CFR 1508.7 and prepared a cumulative impact analysis based on the broad nature and scope of the proposed management options under consideration at the land use planning level. The cumulative impact analysis considered the effects of the planning effort when added to other past present and reasonably foreseeable (not highly speculative) Federal and non-federal actions. The cumulative impacts section identifies all actions that were considered in the cumulative impacts analysis and provides a basis for the cumulative impacts analysis for each affected resource.

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

The BLM complied with NEPA's requirement to analyze the environmental consequences/impacts on Greater Sage-Grouse, including cumulative effects, in the WPCI planning effort. Accordingly, this protest is denied.

Public Notification and Participation

Western Watersheds Project

Kelly Fuller

Issue Excerpt Text: Members of the public with slow internet connections, costly satellite internet with low data caps, or dial-up internet had little access to the DEIS. Furthermore, many members of the public have no access to the internet at home. The FEIS presents no evidence that members of the public without access to the DEIS could view hard copies at BLM field offices or other places, nor that any places that may have had hard copies were open to the public during the public comment period. This is significant because locations that were closed during the public comment period due to the COVID-19 pandemic include the public rooms of Wyoming BLM field offices, which as of November 16, 2020 still remain closed to the public. Moreover, the DEIS's Notice of Availability, Dear Reader letter, and press release listed no locations for the public to access the DEIS, except on the internet. Even worse, the press release stated, "Public comments can only be submitted through the BLM's WPCI ePlanning project webpage," thus making internet access a requirement for commenting on the DEIS. This does not fulfill BLM's obligation to "insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken." 40 C.F.R. § 1500.1(b). Nor does it fulfill BLM's obligation under FLPMA to "give...the public adequate notice and an opportunity to comment upon...and to participate in...the management of[] the public lands." 43 U.S.C. § 1739(e).

Western Watersheds Project

Kelly Fuller

Issue Excerpt Text: the state's outreach to private landowners consisted of talking to landowners who were suggested by county commissioners, not outreach to all potentially affected landowners. That means landowners who were not suggested by county commissioners did not receive the same opportunity to have input into corridor siting that other landowners received. This is important because the FEIS shows that at least one segment of BLM's preferred Alternative E was chosen to avoid issues with private land.²⁴ Since BLM is mandated to serve all Americans, not just those suggested by county commissioners, BLM should have remedied this flaw in the corridor siting process and notified all potentially affected private landowners of public comment opportunities during the WPCI NEPA process. BLM did not, but BLM could have done so. Private land

ownership information is readily available in geographic information systems (GIS) format,²⁵ so BLM could have determined which landowners were potentially affected. BLM could also have required the WPCI proposal's sponsor/proponent (the State of Wyoming) to do this outreach. BLM's lack of outreach to potentially affected landowners does not fulfill the agency's obligations under NEPA and its implementing regulations to encourage and facilitate public involvement and to "insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken." 40 C.F.R. § 1500.1(b).

Summary:

BLM failed to provide adequate notification and opportunity for public involvement in the development of the PRMPA/FEIS in violation of NEPA.

Response:

The CEQ regulations require that agencies "make diligent efforts to involve the public in preparing and implementing their NEPA procedures" (40 CFR 1506.6(a)). The BLM recognizes that there are a wide variety of ways to engage the public in the NEPA process, with the primary goal of public involvement being to ensure that all interested and affected parties are aware of the BLM's proposed action. The BLM began the process with an understanding of the communities and areas where the planning action was to occur and compiled a core list of Federal, tribal, state, and local government agencies, as well as organizations and individuals anticipated to be interested and affected by the proposed action. Following scoping, the BLM expanded the contacts list and kept the agencies, groups, and individuals updated with postings and announcements on project status.

In this unprecedented time, the BLM, to the greatest extent possible, is working on maintaining service to the American people and our stakeholders that is consistent with evolving guidance from the Center for Disease Control and local health authorities. The WPCI published the Notice of Intent to prepare an EIS on November 15, 2019. Prior to the COVID-19 pandemic, the BLM held public scoping meetings in December 2019, under the normal process of conducting in-person meetings throughout Wyoming in four locations (Cheyenne, Casper, Thermopolis, and Rock Springs). The BLM published notices for public scoping and public comment periods in the FR and issued media releases (Appendix D). Meeting participation for the public was normal for this activity, and there is record of some private landowners attending. In addition, when the BLM developed the alternatives, the State of Wyoming conducted numerous desktop analyses and held meetings with Federal, state, county, and private landowners over several years to determine the placement of 25 segments that make up the proposed corridors.

On May 18, 2020, the BLM sent an email to notify Federal and state agencies, tribes, interested parties, those who requested to be placed on the WPCI mailing list, those who submitted scoping comments, and cooperating agencies of the draft public comment period. The email provided notification of the virtual public meetings, a registration link to sign up for the virtual public meeting, and the dates of the draft public comment period for the WPCI (FEIS, Appendix A, page A-2). Because of the pandemic, the two public meetings for the WPCI draft public comment period were conducted in a virtual format; the WPCI was the first project in Wyoming to utilize technology to communicate with all interested stakeholders regarding the WPCI.

The WPCI was well suited for a virtual meeting for several reasons: sometimes face-to-face meetings about BLM projects have sparse attendance, meeting venues are scattered about Wyoming in hard-to-reach locales, and questions are asked and answered in a vacuum and only audible to a few attendees. In addition, some public meetings in Wyoming are conducted utilizing an open house format and most often formal presentations are not made. WPCI public meetings during the

pandemic allowed the BLM to reach a greater number of interested public across varying time zones and in geographic locations that do not lend themselves to a substantial attendance. More importantly, the BLM Wyoming was able to minimize the health risks for our public and cooperators, provide robust information about the project, answer a great deal of questions that were raised so that all could hear the questions and corresponding answers, and maintain a trajectory for project completion despite the challenges of a pandemic.

As an example, 1 month after the BLM published the Draft EIS, a virtual public meeting was held on May 28, 2020, that generated 85 interested public registrations (57 attendees participated) for the two meetings held. For comparison, the BLM held the project scoping meetings before Covid-19 precipitated the need to move public meetings to a virtual platform. During four scoping meetings held throughout the project area, BLM recorded 34 attendees. There was actually more participation from the virtual meetings than experienced from the in-person scoping meetings.

Members of the public who had internet connectivity issues had the option of joining the virtual public meeting by phone. Contact information for the BLM and contractor staff were made available for members of the public to reach out to in the event of any questions or technical difficulties with the virtual public meetings. Members of the public also had the ability to pre-submit questions for the meeting upon registration and email or call the BLM with questions throughout the public comment period. These public meetings attracted the diverse group of intended stakeholders (e.g., non-government organizations, county, and state officials, the public, and Cooperators), including landowners, than hoped for. A formal presentation was conducted with a welcoming message, an overview of the Zoom meeting process, an informative slide presentation of the project, recommendations on how to provide comments on the Draft EIS, the NEPA process, a discussion of the alternatives, and a thorough Q&A session. All information discussed, including the entire set of questions asked and answered during the meetings were posted on ePlanning for attendees, as well as those that could not participate. The BLM considered all public comment submitted, regardless of how it was submitted to the BLM. The public meetings conducted during COVID met comparable experience regarding in-person meetings held in the past. The BLM will continue to coordinate with the public and other interested parties as required by NEPA and any other applicable laws during the decision-making process for any site-specific project.

Accordingly, this protest is denied.

Wildlife Impact Analysis

Western Watersheds Project

Kelly Fuller

Issue Excerpt Text: Failure to Acknowledge and Analyze Declining Ungulate Population Trends and Potential Impacts of Corridors Overlaying Migration Corridors In the FEIS, BLM did not recognize current declining population trends in mule deer and moose, nor did BLM include substantive analysis of the potential impacts, immediate and cumulative, to ungulate population stability that could result from disruptions in the ability of wildlife to occupy seasonal habitats, especially migration corridors.

Western Watersheds Project

Kelly Fuller

Issue Excerpt Text: The BLM failed to provide adequate information to allow meaningful evaluation by the interested public of potential impacts of the different action alternatives related to big game seasonal habitats. Even though we specifically asked the BLM to provide this additional information in previous comments (DEIS comments at 19), the BLM failed to provide adequate maps of migration corridors for mule deer, pronghorn, moose, elk, or bighorn sheep in the FEIS.

The BLM did not provide maps of stopover areas along migration corridors or identify their locations in any way. The BLM did not reveal where proposed corridors under each alternative would overlay migration corridors and stopover areas. Without this information, neither decisionmakers nor the public can evaluate the locations of these important resource conflict areas and are therefore unable to arrive at an informed opinion and provide meaningful comment. The BLM's response to our earlier request for this information was inadequate and disappointing (FEIS, Appendix K p. K-35). The depiction of sensitive resources is incomplete (completely lacking, as we have noted, stopover areas and migration corridors), and to expect the general public to have the technical knowledge and ability to access and evaluate GIS shapefiles is neither realistic nor reasonable. In addition, by providing information about stopover areas and migration corridors as GIS shapefiles rather than as the maps we requested in our DEIS comments, BLM has not fulfilled its obligation under current DOI NEPA regulations to "insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken." 40 C.F.R. § 1500.1(b).

Summary:

That BLM failed to adequately disclose and analyze the potential impacts to big game migration corridors from the proposed corridors and did not make this information readily available in a useable format to the public in violation of NEPA.

Response:

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

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

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

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving a pipeline ROW permit), the scope of the analysis was conducted at a higher, programmatic level. 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 WPCI RMPA/FEIS contains map figures that depict sensitive resources that were important in developing the alternatives. Due to the size of the WPCI analysis area, maps would have been ineffective in showing how big game migration corridors and stopover areas are overlapped by the proposed pipeline corridors. Instead, the FEIS uses tables for quantification of area of seasonal wildlife habitat, including migration corridors and stopover areas, overlapping proposed pipeline corridors under each action alternative (Appendix M, pp. M-18 through M-24, Tables 3.21-3, 3.21-7, 3.21-11, and 3.21-15). In order to present this information even more clearly to the general public, the BLM also included a table to show big game species, their seasonal habitat, and whether or not that

species would result in seasonal habitat effects under each alternative (Appendix M, p. M-24, Table 3.21-19).

The purpose of the WPCI amendment is the designation of pipeline corridors, which would not result in direct impacts to big game or their habitats; however, potential indirect impacts from management decisions within the WPCI could potentially occur on big game species and their habitats. The WPCI Proposed RMPA/Final EIS addresses potential direct and indirect impacts to wildlife species in Section 3.21, including impacts to big game migration routes and crucial or year-long seasonal habitats (pp. 3-97 through 3-107). BLM recognizes that the Wildlife Technical Report did not specifically identify designated migration corridors for ungulates. As addressed in Section 3.21.2 of WPCI Proposed RMPA/FEIS, Executive Order 2020-1 was published during preparation of the DEIS. Mule deer are the only big game species that currently has state-designated migration corridors. Proposed corridor segments that cross mule deer migration corridors are primarily in existing designated corridors and existing disturbed ROWs (Section 3.21.2, p. 3-94). Because specifics of potential infrastructure projects are unknown, the BLM is unable to analyze specific projects, or specific levels of human disturbance, because construction size and methods are unknown, but the impacts that are known or typically associated with the types of projects that could be built are included in the analysis. All site specific information will be analyzed in future NEPA analysis. BMPs, WPPCI design features, and mitigation measures from all nine RMPs are included in Appendix E that would be applied to minimize impacts of any future projects.

The BLM complied with NEPA's requirement to analyze the environmental consequences on wildlife in the WPCI planning effort. Accordingly, this protest is denied.