



May 13, 2015

Ruth Welch, State Director
Bureau of Land Management
Colorado State Office
2850 Youngfield Street
Lakewood, Colorado 80215-7210

[Hand Delivered]

Re: Garfield County Comments concerning the BLM's Northwest Colorado Greater Sage-Grouse Draft Resource Management Plan and Final Environmental Impact Statement (FEIS)

Dear Ms. Welch,

Thank you for the opportunity to comment on the Bureau of Land Management's ("BLM") and USDA Forest Service's ("USFS") Northwest Colorado Greater Sage-Grouse Land Use Plan Amendment and Final Environmental Impact Statement ("FEIS"). This letter and supporting documents attached are exhibits comprising Garfield County's (the County) formal comments.

While the County appreciates the ability to provide the BLM with formal comments on such an important issue, we are dismayed that the BLM only provided 10 working days for Cooperating Agencies to respond to such a large document that contains radically new and different information not previously disclosed during any of the Cooperating Agency meetings in the development of the alternatives in the Draft EIS. As a result, we believe the BLM presents us with an unrealistic and disingenuous review process having the effect of precluding meaningful Cooperating Agency comments. Nonetheless, we offer these comments and supporting documentation within the required timeframe. Since the direction provided by the BLM to review this FEIS states that the bulk of the DEIS remains unchanged with the exception of the new national language provided by BLM leadership in Washington DC, the County reiterates and resubmits our original comments¹ on the Draft Environmental Impact Statement (DEIS) herewith including a wide variety of additional comments and supporting documentation that reinforces points provided in this letter. Garfield County's overriding concern remains the fact, as these comments will demonstrate, that the BLM

¹ See Garfield County comments on the BLM's NW Colorado Greater Sage Grouse Draft Resource Management Plan and Draft EIS, December 2, 2013 and resubmitted with Data Quality Act Challenge, April 9, 2015 attached as Exhibits T, X, Z, AA, and BB.

did not coordinate their efforts and policies in the FEIS with local plans including the Garfield County Greater Sage Grouse Conservation Plan, as amended. As a result, there continue to be significant inconsistencies between provisions in the FEIS and Garfield County's Plan that remain unresolved despite the sincere efforts by Garfield County to seek resolution.

By way of background, the County participated as a Cooperating Agency via a Memorandum of Understanding as the BLM crafted the four alternatives in the DEIS prior to its public release. Additionally, the County asserted Coordination with state and federal agencies² and hosted four formal Coordination³ meetings with a variety of state and federal agencies including the BLM. The purpose of these Coordination meetings was to provide a forum to attempt to point out and resolve inconsistencies between the BLM's planning efforts and local efforts by Garfield County, specifically including the *Garfield County Greater Sage-Grouse Conservation Plan*⁴ and the *Greater Sage-Grouse Conservation Plan: Parachute – Piceance – Roan*.⁵ Unfortunately, despite the County's sincere efforts to work closely with the BLM, these inconsistencies between the BLM's FEIS and the County's local and regional land use plans remain unresolved.

As you know, we continue to have serious concerns that BLM and the USFS have violated the National Environmental Policy Act ("NEPA").⁶ Garfield County, Moffat County, Jackson County, Routt County and others have raised grave concerns about the integrity of this process from the very beginning.⁷ Unfortunately, from our review of the FEIS, virtually nothing has been done to address these concerns. That the Cooperators have only days to review and comment on this FEIS of approximately 2,000 pages is unacceptable and indicative of the agencies' continued top-down approach. The management restrictions and closures in the FEIS will have a direct impact on the economy and the future viability of Garfield County and its citizens in the planning area and beyond.

At the release of the FEIS to Cooperating Agencies on April 29, 2015, the BLM provided direction to Cooperating Agencies to focus our comments on the new information that was provided in the form of "national language" from Washington DC. Again, while we do not have the time or resources to provide in-depth comments truly required, we do offer the following comments.

1. NSO in PHMA without waiver or modification for unleased fluid minerals: This illustrates the arbitrary one-size-fits-all concept at its best and does nothing to incorporate / understand local ecological site variability or addresses specific threats as required by the IM 2012-044.

² See Resolution 2012-51 Asserting Coordination Regarding the Greater Sage Grouse with All Federal and State Agencies maintaining Jurisdiction Over Lands And/ Or Resources Located Within Garfield County attached as Exhibit E

³ See Official Transcripts for Coordination meetings held by Garfield County attached as Exhibits G, I, J, and N.

⁴ See Garfield County Greater Sage Grouse Conservation Plan, as amended, November 17, 2014 attached as Exhibit V.

⁵ See Greater Sage Grouse Conservation Plan: Parachute – Piceance – Roan Working Group, April 29, 2008 attached as Exhibit A

⁶ See 42 U.S.C. § 4321 et seq.

⁷ See August 13, 2012 letter to BLM State Director Helen Hankins incorporated by reference herein as Exhibit H

2. We are deeply concerned over the new provision for unleased fluid minerals where exceptions to activity in NSO can only be granted by the unanimous approval of a three member panel consisting of the USFWS, BLM, and CPW. This effectively gives the USFWS veto power over a non-candidate species on BLM land and is unacceptable.
3. It appears that the new national language from Washington DC elevates the restrictions for GHMA the same as PHMAs without any scientific basis to do so. As a result, this is another primary example where the BLM has arbitrarily applied land use policy without the benefit or support of any scientific rationale for its basis.
4. Garfield County is very concerned by the exceptions granted by the BLM in this FEIS for two very large wind energy projects known as the TransWest and Energy Gateway South Transmission Line projects. The BLM admitted these projects were pet Presidential projects and therefore receive a "pass" from the provisions in the FEIS; however, their construction will result in immediately consuming all disturbance cap allowance space for Moffatt County without any due process and by executive fiat, that effectively eliminates any kind of alternative use including those which are less impactful and a less permanent resulting in long lasting socio-economic impacts to Moffatt County and Northwest Colorado.

This policy exception in the FEIS indicates the BLM finds it acceptable to allow 1) the destruction of massive acres of sagebrush and 2) the installation of tall structures for transmission lines in Priority and General Habitat Management Areas for wind energy projects that the FEIS specifically prohibits. Oddly, natural gas exploration and development does not enjoy such a pass. Ironically, both of these actions are identified by the BLM and USFWS as primary threats to loss of habitat and species decline which supports the notion that there appears to be two separate standards for wildlife impacts driven by politics rather than science which have manifested in this FEIS. Garfield County believes this action by the federal government proves the very point that this FEIS process has been disingenuous from its inception with a forgone conclusion where national language from Washington DC presented at the eleventh hour would trump any local Cooperating Agency input across the west with no real focus on realistic conservation measures.

5. Garfield County is a Cooperating Agency in the Roan Plateau Resource Supplemental EIS (SEIS). We have been told by the BLM that the GRSG will not be analyzed in the Roan SEIS but the SEIS will be amended from the NW Colorado Sub-regional GRSG LUPA, and EIS, contrary to the statement on 1-4; line 26-31.
6. [Page 1-5, Line 6-11] Garfield County disagrees with the statement that the National Technical Team Report (NTT Report) provides the latest science and best biological judgement to assist in making management decisions relating to the GRSG. To the contrary, Garfield County supports the analysis in the NTT Data Quality Act Challenge⁸ that raises serious questions about the scientific integrity of that Report such that it should not be used as the basis for Alternatives in the FEIS. Ultimately, the statement that the NTT 2011 report provides the latest science and best

⁸ See BLM NTT Data Quality Act Challenge files with the BLM on March 18, 2015, attached as Exhibit Z.

biological judgment to assist in making management decisions relating to the GRSG is inconsistent with the findings of Garfield County and the policies in the Garfield County Sage Grouse Plan.

7. [Page 1-5, Line 12-14] Garfield County questions the accuracy of the habitat mapping for Garfield County as provided in the FEIS. As CPW and the BLM both explained to Garfield County⁹, the mapping provided by CPW to the BLM is a Sensitive Wildlife Habitat map used for consultation purposes rather than a depiction of actual priority habitat. This Sensitive Wildlife Habitat map was generated from a 50,000 ft. viewpoint as testified by CPW in a Garfield County Coordination meeting on September 5, 2012.¹⁰ Current mapping in the GRSG FEIS (notably all the mapping FEIS Figures that depict Priority and General Habitat as well as Linkage / Connectivity areas) is not the best available science and remains inconsistent with high-resolution and fully reproducible habitat mapping found in the Garfield County GRSG Conservation Plan¹¹ or in the peer reviewed manuscript used as the basis for habitat modeling in Garfield County.¹²
8. [Page 1-6, Line 24-33] The USGS “Conservation Buffer Distance Estimates for GRSG – A Review” as discussed in the Data Quality Act Challenge of the USGS Monograph Report¹³ is inconsistent with Garfield County findings. Garfield County questions buffer distance estimates as they might apply to habitat in Garfield County which is naturally fragmented with wildly undulating and steep topography and vegetation type variability uncommon to the national (and typical) range. The BLM’s science and application of buffers is inconsistent with findings in the Garfield County Plan.
9. [Page 1-8, Line 12-13] Garfield County is quite concerned about the Conservation Objectives Team Report (COT Report) and formally supported the Data Quality Challenge regarding the same.¹⁴ Garfield County also questions the professional adequacy of the team members such that some are not GRSG biologists.
10. [Page 1-10, Line 17-18] Garfield County questions the Purpose and Need of the GRSG LUPA and the USFWS March, 2010 “warranted but precluded” ESA listing petition decision. Garfield County questions the non-transparent “sue and settlement agreement” with the plaintiffs and the USFWS. Garfield questions the USFWS population estimates and the model used regarding extinction prediction. The same points were raised in the Center for Environmental Science, Accuracy and Reliability report, “Science or Advocacy.”¹⁵

⁹ See Letter to Mike King, Director, Colorado Department of Natural Resources, October 21, 2013 attached as Exhibit S.

¹⁰ See Garfield County Coordination Meeting Official Transcript on September 5, 2013, lines 4-9, page 80, attached as Exhibit J.

¹¹ See Garfield County Greater Sage-Grouse Conservation Plan, as amended, November 17, 2015 attached as Exhibit V.

¹² See Use of Modeling in a Geographic Information System to Predict Greater Sage-Grouse Habitat, January 21, 2015, attached as Exhibit Y.

¹³ See USGS Monograph Report Data Quality Act Challenge filed with the USGS on March 18, 2015, attached as Exhibit BB.

¹⁴ See USFWS Conservation Objectives Team Report Data Quality Act Challenge filed with the USFWS on March 18, 2015, attached as Exhibit AA.

¹⁵ See Center for Environmental Science, Accuracy & Reliability’s Report entitled, “Science or Advocacy” as a part of the Data Quality Act Challenge of the USGS Monograph filed with the USGS on March 18, 2015,

11. [Page 110, Line 24-26] GRSG populations in Garfield County and NW Colorado are not in decline. In fact, the PPR population which includes Garfield County shows a 112 percent increase since 2010 (High Male Count) in data from Colorado Parks and Wildlife (CPW).¹⁶
12. The FEIS (Section 13.5) is inconsistent with the Garfield County Plan in that the FEIS only addresses predation on sage grouse indirectly, through habitat management, whereas the Garfield County Plan and amendments address predation through specific cause and effect mechanisms, uses an approach similar to Integrated Pest Management (IPM) to mitigate predation, and seeks USDA guidance if it is determined that predation has a deleterious population-level effect on the PPR population.
13. [Page 1-31, Line 34-39] Unlike the FEIS, the Garfield County GSG Conservation Plan points out predation as a significant threat to Greater Sage Grouse survival. The FEIS appears to barely identify it as a threat of any kind to the GSG and suggests mitigation by removing tall structures to reduce predator perches and maintaining residual herbaceous cover to reduce predation during GRSG nesting and early brood-rearing. This approach is inconsistent with the policies provided in the Garfield County Plan which include a scientific basis supporting the serious nature of predation as a threat as well as management policies that are not addressed or considered in the FEIS. Specifically, the County's Plan policies contains the following that is inconsistent with the FEIS:

Predation of sage-grouse eggs, juveniles, and adults occurs naturally, but can increase in association with human development, unless precautions are undertaken. Scientific research has shown that the predators on sage grouse are generalists, meaning that they prey on other species as well, and in some cases their populations are subsidized by human sources of food. Sage-grouse eggs are preyed upon by red foxes, coyotes, badgers, ravens, and (sometimes) black-billed magpies. Common predators of juvenile and adult sage-grouse include golden eagles, prairie falcons (as well as other raptors), coyotes, badgers, red fox and bobcats. Younger birds (especially broods), may be preyed upon by raven, red fox, northern harrier, ground squirrel, snakes, and weasels. However, of these predators, research has shown that ravens are the most abundant and have the greatest impact on the populations studied.

While predation on sage grouse occurs at all stages of the life cycle, it is predation on nests and broods that is generally recognized as having the largest deleterious effect on annual survivorship and recruitment in populations. Adding to this

attached as Exhibit BB Sub-Exhibit A and the Data Quality Act Challenges on both the COT Report and the USGS Monograph attached as Exhibits AA and BB

¹⁶ See Garfield County graph entitled "How are the Greater Sage Grouse doing in Colorado & PPR (Garfield & Rio Blanco Counties)?" attached as Exhibit CC.

problem is the fact that predators, such as ravens, are subsidized by humans to the point where they exceed historic levels in some areas by as much as 1,500%. In such cases, management actions, especially where predators like ravens are abundant and sage-grouse mortality is high (such as in the Plan Area), may be needed to ensure that sage-grouse populations are not depressed by a known and potentially mitigated source of mortality.

Ravens are clever and highly adaptable in their behavior. They use communication and group foraging which allows them to opportunistically exploit food resources associated with humans (e.g., landfills, trash, road kill, unattended food, and carrion from livestock operations). In contrast, sage-grouse are very stereotypic in their behavior and rely on cryptic coloration, which makes them vulnerable to predation by ravens. As a result of these and other unintended food subsidies, raven populations have greatly expanded in the West. This, in turn, has impacted many species, including desert tortoises, marbled murrelets, least terns, California condors, and sage-grouse.

While reducing human-supplied food subsidies to predators is an essential part of any management strategy, it may not be effective unless coupled with active deterrents or management actions to reduce raven density (i.e., Coates and Delehanty 2010; Dinkins 2013). The last reported research on nest and brood survival in the PPR population (Apa 2010), estimated annual nest success between zero and 40%, and substantially lower chick survival. By the end of that study, "Only 2 chicks remained radio-marked after 30 days of age. Apparent brood survival was 86% (n = 12/14) at 7 days, 62% (n = 9/14) at 14 days, and 14% (n = 2/14) at 30 days." Those data indicate predation could be holding back the PPR population.

Policy

- A. Encourage and review applicant's use of anti-perch devices, burying of powerlines, closed rubbish bins, removal of road kill and dead livestock, and other methods to discourage predators on sage-grouse and limit excess predation. If predation on sage-grouse is documented to have a deleterious effect on the PPR Area sage-grouse population, then allow for appropriate mitigation of predation under USDA guidance.***
- B. Encourage public agencies such as CPW, the BLM, and the USFWS to work with private land owners in areas of known Suitable Habitat to better understand the actual predation threat, then collaborate on the implementation of predator mitigation programs that discourage predators, reduce productivity and recruitment of predators, and reduce predator density.***

14. [Page 1-22, Lines 27 – 30]: The FEIS states the following: “The planning process is designed to help the BLM identify the uses of BLM-administered lands desired by the public and to consider these uses to the extent that they are consistent with the laws established by Congress and the policies of the executive branch of the federal government.” Please note that the federal laws and policies also require the agency to reach consistency with local plans such as the Garfield County Sage Grouse Plan, but the BLM has failed to utilize this planning process to achieve the required consistency.
15. [Page 1-23, Lines 2-6]: The FEIS states: “The BLM utilizes the public scoping process to identify planning issues to direct (drive) a revision or amendment of an existing plan. The scoping process also is used to introduce the public to preliminary planning criteria, which set the parameters, or sideboards, for conducting the planning process (Step 2).” Please note that the BLM Planning rules at 43 CFR 1610.4-2 require the agency to coordinate with local governments when developing the planning criteria. “(b) Planning criteria will generally be based upon applicable law, Director and State Director guidance, the results of public participation, and coordination with any cooperating agencies and other Federal agencies, State and local governments, and federally recognized Indian tribes.” The Planning criteria was not coordinated with Garfield County. The County was not given the opportunity to discuss with the BLM whether the proposed planning criteria conflicted with local plans and policies. This denied the County the opportunity to object to the use of the NTT report, among other issues, early in the process because such policies are not compatible with the unique local area. As a result, the “parameters, or sideboards” for the planning process were scientifically indefensible and inappropriate for the Garfield County unique area.
16. [Page 1-23, Line 7-9]: The FEIS states: “The BLM uses existing data from files and other sources and collects new data to address planning issues and to fill data gaps identified during public scoping (Step 3).” Although Garfield County provided credible science and analysis of the NTT report during the scoping process which demonstrated that the suggested policies of the NTT report in the Garfield County area were inappropriate, the County’s position was ignored, plans brushed aside.
17. [Page 1-23, Line 12-16]: The FEIS states: “Typically, the Analysis of the Management Situation is conducted at the outset of planning for an entire RMP or RMP revision and is incorporated by reference into development of a single focused RMPA.” (It should be noted that development of the AMS includes identifying any restrictions or constraints placed on the BLM in their planning process through local plans and policies). “In this case, direction for the RMPA is provided through new national policy (BLM Instruction Memorandum 2012-044: BLM 2012a).” Since the BLM relied on the national policy to guide the development of the plan amendment, the State Director had an additional duty to ensure the policy was consistent with local plans, but in this case failed to do so. The relevant portion of the planning rules requiring consistency with guidance policy are as follows: 43 CFR 1610.3-1 “(d) In developing guidance to Field Manager, in compliance with section 1611 of this title, the State Director shall: (1) Ensure that it is as consistent as possible with existing officially adopted and approved resource related plans, policies or programs of other Federal agencies, State agencies, Indian tribes and local governments that may be affected, as prescribed by § 1610.3-2 of this title;(2) Identify areas where the proposed guidance is inconsistent with such policies, plans or programs and provide reasons why the inconsistencies

exist and cannot be remedied; and(3) Notify the other Federal agencies, State agencies, Indian tribes or local governments with whom consistency is not achieved and indicate any appropriate methods, procedures, actions and/or programs which the State Director believes may lead to resolution of such inconsistencies.” There was no discussion with the State Director and Garfield County as to whether or not IM 2012-044 was consistent with Garfield County plans. Additionally, the County was never provided a reason why inconsistencies with its plans could not be remedied. Further, the County has never been notified by BLM as to what methods, procedures or actions would lead to resolution. The BLM failed to coordinate and reach consistency with Garfield County and IM 2012-044.

18. [Page 1-24, Line 1-3]: The FEIS acknowledges that the purpose of the first four steps in the planning process is to help clarify the purpose and need for the EIS and to identify key planning issues to be addressed. The FEIS identifies the “purpose” to be, “to identify and incorporate appropriate Sage-grouse conservation measures into the plans. In compliance with IM 2012-044, the measures to be considered include appropriate conservation measures developed by the NTT.” The IM cited also directs the BLM to consider and adjust the conservation measures to the unique local area. The BLM has failed to adequately consider the uniqueness of the Garfield County topography and habitat and has not prepared appropriate conservation measures for the area. They have compounded this failure by refusing to advance the Garfield County plan to be analyzed alongside the other alternatives.
19. [Page 1-24, Line 6-17]: The FEIS acknowledges that only those alternatives were advanced that comply with the purpose and need for the study. As explained above, the BLM failed to coordinate with Garfield County in the beginning planning stages as required by the BLM’s planning rules, and failed to fulfill the purpose and needs statement by creating “appropriate” conservation measures for the area, and finally have failed to advance the only conservation plan developed from a scientific basis appropriate to the area with policies appropriate for the unique habitat and uses.
20. [Page 1-28, Line 29] BLM Instructional Memorandum 2012 – 044, BLM National GRS G Land Use Planning Strategy under policy and action states, “the conservation measures developed by NTT must be considered and analyzed, as appropriate, through land use planning process by all BLM State and Field Offices that contain occupied GRS G habitat. While these conservation measures are range wide in scale, it is expected that at the regional and sub-regional planning scales, there may be some adjustments of these conservation measures in order to address local ecological site variability.” Garfield County specifically has local ecological site variability mentioned in IM 2012-44. The NW Colorado GRS G LUPA does not take into consideration the uniquely naturally fragmented habitat, dramatic changes in topography and vegetation in Garfield County. The LUPA is not consistent with Garfield County GRS G Conservation Plan (43 CFR; 1610. 3-2 Consistency requirements) nor has the BLM coordinated in the LUPA to address the inconsistencies with the Garfield County Plan. Although Garfield County attempted to Coordinate with the BLM¹⁷, the BLM has not resolved the conflicts and inconsistencies between the two Plans.

¹⁷ See Garfield County Coordination Meeting Official Transcripts attached as Exhibits G, I, J and N.

21. [Page 1-11, Line 22-24] Decisions in this LUPA are only applied to BLM-administered lands, National Forest Surface, and those lands that have a federal nexus due leased federal minerals. In our still valid comments regarding the DEIS¹⁸, Garfield County thoroughly explained our concerns regarding the BLM's intent to use disturbance cap programs to penalize (reduce cap threshold availability) activity on public lands because of their inventory of disturbance on private lands without legal authority to do so.
22. [Page 1-28, Line 34-37] Memorandum 2012-44, BLM National GRSG Land Use Planning Strategy relies on the NTT 2011 report and directs all planning efforts associated with the national strategy to consider and analyze the conservation measures presented in the report. Garfield County questions and challenges that NTT 2011 report, provides the latest science and best biological judgment to assist the BLM GRSG planning strategy. Refer to the NTT Data Quality Challenge.¹⁹ In addition, Garfield County finds the BLM relied almost exclusively on the NTT Report and ignored conservation measures submitted by various state and local governments, such as the Garfield County GRSG Conservation Plan.²⁰
23. [Page 1-28, Line 29] The BLM Instructional Memorandum 2012-044 states "the PPH and PGH data and maps have been/are being developed by the BLM through a collaborative effort between the BLM and the respective state wildlife agency and these science based maps were developed using the best available data and may change as new information becomes available. Such changes would be science-based and coordinated with the state wildlife agencies so that the resulting delimitation of PPH and PGH provides for sustainable populations."

As testified by the BLM during the formal Garfield County Coordination meetings²¹, there are no maps that have been developed by the BLM in the EIS. As stated in comments above, the Colorado Parks and Wildlife provided the habitat maps to the BLM which were designed as broad Sensitive Wildlife Maps used for consultation purposes and were not designed to identify specific GRSG priority habitat. In Garfield County, the best science-based habitat to date continue to be the objectively peer reviewed habitat maps contained in the Garfield County Greater Sage Grouse Conservation Plan and the maps are Garfield County GRSG peer reviewed maps.²² The BLM has not reviewed nor resolved the inconsistencies between the Garfield County Conservation Plan Map and the BLM LUPA/DEIS map for Garfield County.

¹⁸ See Garfield County comments to the BLM on the Draft Resource Management Plan Amendment and Draft Environmental Impact Statement filed with the BLM on December 2, 2013 attached as Exhibit T.

¹⁹ See BLM NTT Report Data Quality Act Challenge filed with the BLM on March 18, 2015, attached as Exhibit Z.

²⁰ See Garfield County Greater Sage Grouse Conservation Plan, as amended, November 17, 2014 attached as Exhibit V.

²¹ See Garfield County Coordination Meeting Official Transcripts attached as Exhibits G, I, J and N.

²² See the Manuscript: Use of Modelling in a Geographic Information System to Predict Greater Sage-Grouse Habitat, January 21, 2015, attached as Exhibit Y.

24. [Page 1-30, Line 17-22] Section 1.5.1: The Scoping Process: Garfield County questions the BLM's procedures and commitment to the scoping process. Under FLPMA regulations, "43 CFR 1610.3-1/3-2, Coordination of Planning Efforts, the BLM is to assist in resolving inconsistencies between federal and non-federal government plans, and develop resource management plans collaboratively with cooperating agencies. The BLM LUPA and FEIS is inconsistent with the Garfield County GRSB Conservation Plan pertaining to GRSB maps, buffers, disturbance caps, habitat management in GRSB general habitat and regulatory assurance. These inconsistencies have not been resolved nor has there been collaboration between the BLM and Garfield County.
25. [Page 1-31, Line 34-39] Issues identified for consideration in the NW Colorado LUPA are not consistent with the Garfield County GRSB Conservation Plan and Garfield County comments on the BLM RMPA and DEIS comments concerning predation and hunting as an issue and threat to the GRSB. Also refer to the COT Data Quality Challenge. Concerning Fluid Minerals, the largest LEK in the PPR is on a reclaimed well pad, 31 strutting males, CPW Nov 2014 PPR GRSB work group report.
26. [Page 1-32, Line 1-5] Planning Criteria - "Planning criteria are based on appropriate laws, regulations, BLM and Forest Service, service manual and Handbook sections, policy directives, as well as on public participation and coordination with cooperating agencies". Garfield County questions the planning criteria follow appropriate laws and regulations. Refer to comments above illustrating Garfield County's concerns over the BLM ignoring their own policy directives in IM 2012-44. Refer to the BLM desk guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners #2012.
27. Garfield County continues to question the apparent complete dismissal of hunting as a significant threat to the persistence of the species across the range. The Data Quality Act Challenge of the BLM's NTT Report²³ states the following:

The NTT Report virtually ignores hunting as a threat to GRSB. FWS has estimated the GRSB population to be 535, 542.179 Some 207,430 GRSB were harvested during hunting seasons between 2001 and 2007.180 New data and research published by Gibson et al. 2011 have refuted the frequently repeated belief that there is a no additive demographic effect of hunting on GRSB populations. Thus, the hunting of some populations can have an effect not only on those populations but also on nearby populations that are not hunted (but are linked by dispersal).181 The BLM must address and incorporate up-to-date information on threats to GRSB from hunting in the NTT Report to comply with the DQA and the Guidelines.

²³ See the BLM NTT Report Data Quality Act Challenge, filed with the BLM on March 18, 2015, attached as Exhibit Z.

Equally as concerning, 9 of the 11 states in the national range will continue to allow a hunting season managed by their respective state Fish and Game Departments in 2015 with the exclusion of North and South Dakota and Washington.

28. [Chapter and Page: 1-32, Row # or Line #: 6-10] 1.8 Relationship to other Policies, Plans and Programs. "While the BLM and Forest Service are not obligated to seek consistency, the agencies are required to describe the inconsistencies between the proposed action and other plan, policies and controls within the EIS." Garfield County alternative #2.11.2 BLM response to the inconsistencies with Garfield County GRSG conservation plan are inadequate in that it states "the Garfield County Plan is contained within the existing range of alternatives and is not significantly distinguishable from those alternatives." This statement is patently false. The Alternatives do not address / include specific components of the Garfield County Plan. The NW Colorado GRSG LUPA and FEIS does not address inconsistencies with the Garfield GRSG conservation plan in habitat maps, buffers disturbance caps, threats, regulatory assurance or implementation of policies. Additionally, as has been noted above, the BLM's statement that it is not obligated to reach consistency with Garfield County's plans is incorrect. While NEPA requires the identification of, analysis of and effort to resolve those conflicts, the BLM's planning rules require that consistency be met.
29. The BLM and FWS have taken a default position that the studies relied upon for the DEIS, COT Report, and NTT, including the Sage Grouse Monograph, have been peer reviewed and therefore meet an acceptable standard of data quality to be used in agency decision making. However, the record provided from Garfield County's Coordination meetings with the BLM, comments on the DEIS, and Data Quality Act challenges to the USFWS, BLM, and USGS, clearly show otherwise.
30. Most fundamentally, Garton et al. (2011), which is the central study in the USFWS 2010 warranted by precluded decision on the greater sage grouse and the COT Team Report, which the Northwest Colorado RMP is based upon, contains known mathematical errors, built in methodological bias, and data that has never been made available for scrutiny. Had the peer review of Garton et al. (2011) been adequate, those errors, bias, and use of secret data would have been identified and the paper would not have been published, or its use by the BLM and FWS for decision making.
31. Garfield County has exercised due diligence and demonstrated consistency with the Data Quality Act in uncovering and reporting the errors, biases, and lack of reproducibility in Garton et al. (2011), as well as other studies, to the BLM and FWS. This reporting has taken place during coordination meetings, in correspondence and comments on the DEIS, through a recent Data

Quality Act Challenge, and in testimony and responses questions before Congress.²⁴ and ²⁵ However, the BLM and FWS have consistently failed to act upon this information provided by the County and independent scientists, thus failing its responsibilities required by the Data Quality Act and the NEPA Coordination process.

32. We note the example above as the most egregious example of a fundamental inconsistency between the Garfield County Plan and the FEIS: whereas the Garfield County Plan adheres to the provisions of the Data Quality Act, the FEIS does not. The FEIS critically relies upon a selective presentation of studies, analyses that Garfield County has pointed out as being inaccurate, in error, and data that are not public. And finally, because the BLM and FWS have consistently ignored these Data Quality Act failures raised by Garfield County, the process by which the FEIS was developed also failed the basic requirements of the Data Quality Act and NEPA.
33. [Page 1-42, Line 11-45] Buffers: The FEIS is inconsistent with the Garfield County Plan in that it relies on one-size-fits-all NSO buffers around leks that do not address specific threats and are wholly inappropriate to Garfield County's unique circumstances. This appears to be driven primarily through the incorporation of national guidance language. In contrast, the Garfield County Plan uses an approach that is suited to its unique topography and sage grouse habitat, because it protects high quality habitat and leks through NSOs but recognizes that an activity or surface disturbance may still be allowed to occur within these areas if it produces no functional (behavioral) disturbance, results in no net loss to sage grouse habitat, or has no deleterious demographic effect on the population. Proposed LUPA management action concerning buffer from LEKS in PHMA and ADH. Due to naturally fragmented habitat, drastic changes in topography and vegetation in Garfield County and the PPR, there is no scientific evidence that buffers work in this terrain. With topography change within .6 mile could be 2000' below a lek and completely

²⁴ See Committee on Natural Resources. 2013a. Oversight Hearing On: "Defining Species Conservation Success: Tribal, State, and Local Stewardship vs. Federal Courtroom Battles and Sue-and-Settle Practices." Tuesday, June 4, 2013. U.S. House of Representatives, Committee on Natural Resources, Washington, D.C., U.S. Government Printing Office Serial No. 113-22. Available at: <http://www.gpo.gov/fdsys/pkg/CHRG-113hhr81318/pdf/CHRG-113hhr81318.pdf> Accessed 12 May 2014.

²⁵ See Committee on Natural Resources. 2013b. Oversight Hearing on: "*Transparency and Sound Science Gone Extinct?: The Impacts of the Obama Administration's Closed-Door Settlements on Endangered Species and People.*" U.S. House of Representatives, Committee on Natural Resources, Washington, D.C., August 1, 2013. U.S. Government Printing Office Serial No. 113-37. Available at: <http://www.gpo.gov/fdsys/pkg/CHRG-113hhr82446/pdf/CHRG-113hhr82446.pdf> Accessed 12 May 2014.

out of GRSB habitat. These buffers consistency have not been resolved between the Garfield County Greater Sage Grouse Conservation Plan and the NW Colorado BLM LUPA and FEIS. (Chapter and Page: 1-35, Row # or Line #: 31-35.)

Inconsistent with the Garfield County Plan is the fact that the FEIS bases its buffers, NSOs, and no new leasing requirements on erroneous assumption perpetuated in the review by Manier et al. (2014), in Harju et al. 2012, and response of birds at a single lek exposed to loud, distorted noise (Blickley et al. 2012). That assumption is that if a human activity results in a local, temporary displacement of birds at one or more leks, this somehow equates to a population level decline and must be avoided. The Garfield County Plan, in contrast, does not confound these local and demographic effects that the FEIS does. Manier et al. 2014 rely on surmise and speculation for buffer distances, including "interpreted values", "a distance range for possible conservation buffers based on interpretation of multiple sources" and "expert knowledge of the authors." That approach is inconsistent with the Data Quality Act, and therefore, the Garfield County Plan.

The FEIS is inconsistent with the Garfield County Plan in that the FEIS uses an inflexible approach to imposing buffers and fails recognize that both technology and mitigation evolve over time in ways that reduce impacts to sage grouse and other species. Therefore, a more flexible approach is required rather than the FEIS's which base buffer and NSO requirements on studies cited in, and unsubstantiated opinion of authors of, Mainer et al. (2014) that are outdated because they are based on yesterday's technology, BMPs, and mitigation. The Data Quality Act Challenge details the numerous failings of that outdated and opinion-based literature cited in the FEIS, Mainer et al. (2014) and NTT Report. In contrast, the Data Quality Act challenge and most recent scientific literature are not inconsistent the Garfield County Plan's approach to mitigation.

Inconsistent with the Garfield County Plan, which requires data transparency that is consistent with the Data Quality Act, the FEIS will rely on lek location and status data from the state wildlife agency to establish lek buffers. However, it has been the direct experience of Garfield County that Colorado Parks and Wildlife does not make these data public, or share these data with local governments, or the BLM.^{26, 27} Specifically, CPW responded:

"In regard to the request for "precise data on radio-collared sage grouse locations", we are denying additional access to those records in accordance with the provisions of the Colorado Open Records Act, specifically, 24-72-204 (2)(a)(III), which excludes specific details of bona fide research projects from release. Radio-collared sage-grouse data is currently being gathered and analyzed as part of an ongoing research study conducted by Colorado Parks and Wildlife. When the study is completed and the results are published, we will be able to provide the requested data."

²⁶ See Letter from Colorado Parks & Wildlife responding to Garfield County's Colorado Open Records Act (CORA) request denying the County's request for data, March 9, 2013, attached as Exhibit EE.

²⁷ See Garfield County's Colorado Open Records Act (CORA) request to Colorado Parks and Wildlife, March 5, 2013, attached as Exhibit DD.

34. [Page 1-41 – 43] Stipulations Applicable to Fluid Mineral Leasing and Land Use Authorizations: The FEIS's stipulations that "surface occupancy or use will be restricted to no more than 1 disruptive facility per 640 acres, and the cumulative value of all applicable surface disturbances, existing or future, must not result in greater than 3 percent loss of the sagebrush habitat within PHMA (as measured by Colorado Management Zone)." As discussed in formal Coordination meetings, in the Garfield County Plan, and before Congressional committee (Committee on Natural Resources 2013a), this one-size-fits-all-approach is entirely inconsistent with the topography and naturally fragmented habitat in Garfield County, and therefore, the Garfield County Plan. And as detailed in the Data Quality Act Challenge on the NTT report, these stipulations are based upon erroneous opinions of a handful of authors that fail the litmus test of science required by the Act.
35. [Page 1-42, Line 44-45] The FEIS stipulation to, "Apply Timing Limitation (GRSG TL-46e) within 4 miles of active leks during lekking, nesting, and early brood-rearing (March 1 to July15)" is inconsistent with the Garfield County Plan for the same obvious reasons as above. And as detailed in the Data Quality Act Challenge, such 4 mile buffers inevitably contain large areas of non-habitat and marginal habitat with a near zero probability of sage grouse use, and lack a defensible scientific basis.
36. [Page 1-43, Line 7-17] "The disturbance cap in Proposed LUPA/FEIS, was changed from 5 percent in lands that support sagebrush to 3 percent in PHMA." The disturbance cap has no scientific basis and is arbitrary.²⁸ The problem issue with the disturbance cap in Garfield County and the PPR is difference and inconsistency in the habitat mapping comments #3 and comments #9. The difference in PHMA between the two maps is significant and reflects to the disturbance cap.

I. Comments on FEIS Chapter 2. Proposed Action and Alternatives

On December 2, 2013, Garfield County provided testimony in our comments on the BLM's NW Colorado Greater Sage-Grouse Draft Resource Management Plan and Draft Environmental Impact Statement (DEIS) that:

"The BLM and USFS should make it clear to the DEIS readers including USFWS, that the existing RMP and LUP provide a plethora of regulatory mechanisms to manage and protect GRSG habitat as well as other multiple use objectives. This remains a fundamental failure of the DEIS by refusing to disclose this in the No Action Alternative."

Despite our urging, the BLM's FEIS continues to ignore the value of existing regulations highlighted by their inadequate analysis of the No Action alternative known as Alternative A. To be clear, Alternative A

²⁸ See Data Quality Act Challenges for the NTT Report, filed with the BLM on March 18, 2015 and attached as Exhibit Z.

did not consider other County, State and Federal requirements in permitting of activities on BLM lands, especially with regards to fluid minerals or other land use activities on public, private, or for activities with a Federal nexus. There are numerous statements in the FEIS regarding Alternative A that state there are no specific protection measures in place to protect GrSG or its habitats. Garfield County finds these statements to be not only completely false but also biased and pre-decisional.

In the No Action alternative, there is no mention of the following local, state and federal requirements:

- A. Garfield County, and other NW Colorado counties' requirements for permitting of activities within sage-grouse habitats specifically including the Garfield County Greater Sage-Grouse Conservation Plan²⁹. Garfield County requires an assessment of sage-grouse habitats and potential impacts of any land-use activity on both public and private lands; the No Action alternative makes no mention of this county plan and thus has failed to incorporate this local requirement.
- B. Colorado Oil & Gas Conservation Commission (COGCC) permitting: Through the COGCC permitting process for oil & gas development activities, consultation with Colorado Parks and Wildlife (CPW) is a requirement^{30, 31} regardless if the lands are publicly or privately owned or managed. CPW often provides GrSG protection measures or requires Wildlife Mitigation Plans, which the FEIS fails to consider. The No Action alternative makes no mention of this State requirement or how CPW is involved in protecting, mitigating, or enhancing GrSG habitats.
- C. Colorado Oil & Gas Conservation Commission (COGCC) permitting: Through the COGCC permitting process for oil & gas development activities, consultation with the Colorado Parks and Wildlife (CPW) is a requirement^{32, 33} regardless if the lands are publicly or privately owned or managed. CPW often provides GrSG protection measures or Wildlife Mitigation Plans, which the FEIS fails to consider. To underscore this oversight by the FEIS, the State of Colorado demonstrated the effectiveness of existing regulations and Conditions of Approval (COA) required through Permits to Drill in the "Synthesis Report"³⁴ that ultimately stated the following: *The State of Colorado audited COAs recommended by Colorado Parks and Wildlife through Colorado Oil and Gas Conservation Commission rules and found a 97% adoption and implementation rate:*

"Results show very high correlation between Best Management Practices (BMPs) recommended by SPW for protection of GrSG habitat and voluntary adoption. In other words, CPW met with operators every time a permit for drilling in GrSG habitat was sought. During

²⁹ See the Garfield County Greater Sage Grouse Conservation Plan, as amended, November 17, 2014 attached as Exhibit V.

³⁰ [https://www.colorado.gov/pacific/sites/default/files/AP_PO_CDPHE-Oil-and-Gas-Consultation-Program-Fact-Sheet%20\(2\).pdf](https://www.colorado.gov/pacific/sites/default/files/AP_PO_CDPHE-Oil-and-Gas-Consultation-Program-Fact-Sheet%20(2).pdf)

³¹ https://cogcc.state.co.us/RR_Docs_new/Rules_new2.html

³² [https://www.colorado.gov/pacific/sites/default/files/AP_PO_CDPHE-Oil-and-Gas-Consultation-Program-Fact-Sheet%20\(2\).pdf](https://www.colorado.gov/pacific/sites/default/files/AP_PO_CDPHE-Oil-and-Gas-Consultation-Program-Fact-Sheet%20(2).pdf)

³³ https://cogcc.state.co.us/RR_Docs_new/Rules_new2.html

³⁴ See <http://dnr.state.co.us/SiteCollectionDocuments/News/ColoradoSynthesisReport.pdf>

those consultations, CPW recommended a series of actions designed to minimize or eliminate impacts on habitat. Adoption of those recommendations by an operator is entirely voluntary under the 1200-series regulations, but our analysis suggests that they are adopted 97% of the time.”

The BLM has ignored these, and other, extensive existing regulatory mechanisms in the NTT Report in violation of the DQA and the Guidelines which are being used in the FEIS. This regulatory certainty should be acknowledged by BLM in all the alternatives analyses. The No Action alternative makes no mention of this State requirement or how CPW is involved in protecting, mitigating, or enhancing GrSG habitats.

- D. USFWS Section 7 or Section 10 Consultation: Given the No Action alternative fails to consider the local, state or federal permitting requirements for any activity, there is no consideration that USFWS has the ability, through the Section 7 or Section 10 consultation process, to review projects that may impact GrSG. The No Action alternative fails to consider the fact that GrSG is indeed a Candidate Species, and is therefore under the regulatory authority of both the BLM and USFWS. Chapter 4 fails to consider USFWS has the ability to comment on, and also ensure that reasonable and prudent measures are employed to protect GrSG and its habitats.

In summary, the No Action alternative only regurgitates current RMP management, and fails to adequately consider, incorporate, reference or acknowledge other federal, state and local planning and permitting requirements or processes. The current FEIS has thus failed to meet the requirements of NEPA and CEQ³⁵ regulations.

As is pointed out here and throughout these comments, the BLM has repeatedly refused to provide a hard look of the Garfield County Greater Sage Grouse Plan or incorporate it into any of the proposed alternatives in the FEIS. Recall, despite Garfield County’s repeated requests through formal comments and in Coordination meetings, the Plan was only included in the Appendix of the DEIS; it was never included in any of the alternatives, and seems to have been forgotten in Alternative A and in the effects analysis.

It is profoundly unfortunate that the BLM has assigned the Garfield County Sage-Grouse Conservation Plan as an “Alternative Eliminated from Detailed Analysis”. To be clear, the BLM has never analyzed the County’s Plan as an alternative in any of its EIS documents. The Greater Sage-Grouse Conservation Plan has been adopted by Garfield County Commissioners as a companion land use plan to their Land Use & Development Code; adherence to the Greater Sage-Grouse Conservation Plan is not just a recommended alternative for the BLM to consider in the FEIS, but it is also a Garfield County planning requirement for any surface use in GrSG habitats in the County. The BLM has failed to consider this and other local plans or processes in *Chapter 3. Affected Environment* and *Chapter 4. Environmental Consequences*, and the FEIS thus fails the NEPA and CEQ regulations to consider this as an existing condition.

³⁵ <https://ceq.doe.gov/>

II. Comments on Chapter 3. Affected Environment

Chapter 3 fails to consider other state, federal and local permitting, NEPA and USFWS/CPW consultation requirements, and thus fails to meet CEQ and NEPA requirements. Chapter 3 does not consider or reference sage-grouse habitat mapping in Garfield County. Garfield County has gone to great lengths to produce a peer reviewed, scientifically developed map of sage-grouse habitat in Garfield County. The BLM and FEIS simply discounted these efforts as an "Alternative Eliminated from Detailed Analysis", and failed to consider the best, scientifically available information, and thus fails to meet NEPA and CEQ requirements. Further, it appears the BLM didn't read the Garfield County Plan, as they state the mapping didn't consider mixed mountain shrublands, and only considered sagebrush habitats; it appears the BLM did not read the County's Conservation Plan, the County actually expanded habitat to include large areas of mixed mountain shrublands after extensive consultation with CPW biologists, despite the fact that there was no peer reviewed literature supporting the notion that sage-grouse use mixed mountain shrubland habitats. Because the BLM failed to use the best scientifically available information, the FEIS again fails to meet CEQ and NEPA requirements. This is one of many specific examples of how the FEIS is inconsistent with Garfield County's local Greater Sage-Grouse Conservation Plan.

Instead, the BLM and FEIS uses poor surrogates or is wrong in their effects analysis. In one part, the FEIS actually used mule deer habitat mapping as a surrogate for sage-grouse habitat in its effects analysis (see Chapter 4, Table 4.1, page 4-26)

"Table 4.1, Acres of Federal Mineral Estate in Mule Deer Habitat, shows the acres of leased and unleased mule deer habitat where it overlaps GRSG habitat. Although multiple big game species occupy sagebrush habitats, mule deer range most closely approximates GRSG habitat."
[Underline emphasis added, misspelled words are left as-is].

The Authorized Officer for the BLM, when required to administer these provisions, will be challenged when mule deer habitat is used as a surrogate for sage-grouse habitat, when multiple Counties in Colorado have gone to great lengths in developing accurate maps, coordinating with CPW, and have spent years and millions of dollars in on-the-ground efforts to protect and enhance sage-grouse and their habitats.

III. Comments on Chapter 4. Environmental Consequences

The No Action alternative did not consider other state, federal or local plans, and basic NEPA and CEQ requirements, and only considered current RMP guidance. In the Chapter 2 No Action alternative tables, the conclusions in Chapter 4 are flawed. There is no meaningful or measureable differentiation in the analysis process, and no quantification of how one Alternative would benefit sage-grouse over another, and no meaningful assessment of how the implementation of any Alternative would affect sage-grouse.

The following are examples of this point:

Impacts from Range Management of Terrestrial Wildlife [see Page 4-23]:

"Alternative A would allow livestock grazing, with no restrictions in place to protect GRSG habitat specifically and therefore would have the greatest impact on terrestrial wildlife."

Garfield County believes this statement is not only false, but it is equally misleading. To remind the BLM of what they actually said in the No Action Alternative, please look at what was actually said in the No Action alternative. Consider the following quotes from the FEIS (starting at page 2-82):

Little Snake RMP: Identify and initiate restoration and rehabilitation of sagebrush habitat while maintaining a mosaic of canopy cover and seral stages.

Special status, threatened and endangered species, and other plants and animals officially designated by the BLM and its habitats are maintained and enhanced by sustaining healthy, native plant and animal communities

Guidelines for Livestock Grazing Management A-3, #7, "Natural occurrences...should be combined with livestock management practices to move toward the sustainability of biological diversity across the landscape, including the maintenance, restoration, or enhancement of habitat to promote and assist recovery and conservation of threatened, endangered, or other special status species by helping provide natural vegetation patterns, a mosaic of successional stages, and vegetation corridors thus minimizing habitat fragmentation."

Roan Plateau RMP: Ensure that Land Health Standards are being met through Land Health assessments, and application of the GSFO (CRVFO) Monitoring Plan. Use a combination of administrative solutions (season of use revisions, livestock exclusion, and stocking level adjustments) and rangeland projects (e.g., fences and ponds) to direct livestock use to meet resource objectives and Land Health Standards.

Routt National Forest: Manage forage for livestock and wildlife based on specific habitat area objectives identified during allotment management plan revision (Management Area Prescription for 5.11, 5.12, 5.13, p. 2-40, p. 2-43, 2-45). Design livestock grazing prescriptions to include achievement of wildlife goals for deer and elk winter range (Management Area Prescription 5.41, p. 2-48).

Grand Junction RMP: Manage vegetation to meet BLM Standards for Public Land Health and Guidelines for Livestock Grazing Management in Colorado while taking in to account site potential as determined by ecological site inventories, Range/Ecological Site Descriptions, Soils, completed Land Health Assessments, and site-specific management objectives.

Implement changes in livestock use through allotment management plans, grazing use agreements, and terms and conditions on grazing permits for priority allotments based on the current prioritization process and/or land health issues

Revise or implement allotment management plans/grazing use agreements to resolve conflicts between grazing and management of soils, riparian, and water resources.

Little Snake RMP: Sustain the integrity of the sagebrush biome to maintain viable populations of **GRSG**...consistent with local conservation plans.

Identify and initiate restoration and rehabilitation of sagebrush habitat while maintaining a mosaic of canopy cover and seral stages.

Roan Plateau RMP: Ensure that Land Health Standards are being met through Land Health surveys, and application of the GSFO Monitoring Plan. Use a combination of administrative

solutions (season of use revisions, livestock exclusion, and stocking level adjustments) and rangeland projects (e.g., fences and ponds) to direct livestock use to meet resource objectives and Land Health Standards.

Little Snake RMP: Overall habitat goals for the sagebrush biome and GRSG established

White River RMP: Livestock and big game management techniques will be used to retain ~50 percent herbaceous growth by weight through September 15, on GRSG brood and nest habitats.

Little Snake RMP:

- Manage for a diversity of seral stages within plant communities.
- Restore natural disturbance regimes, such as fire, and vegetation treatments to accomplish biodiversity objectives.
- Establish desired plant communities in coordination with stakeholders across the LSFO.
- Restore a diversity of seral stages within sagebrush communities.
- Maintain large patches of high-quality sagebrush habitats, consistent with the natural range of variability for sagebrush communities in northwest Colorado.

White River RMP: Acceptable desired plant communities will be managed in an ecological status of high-seral or healthy mid-seral for all rangeland plant communities. An exception may be provided for wildlife habitat -areas where specific cover types are needed. The required cover type in those wildlife habitat areas will be the desired plant communities. The ecological status of a desired plant community in specified wildlife habitat areas could be lower than high seral. In which case, the desired plant communities will be managed, at a minimum, to maintain an at-risk rating (Table 2.6 of Appendix D [of the White River RMP]) and have a stable to improving trend in ecological status.

Grand Junction RMP: Manage vegetation to meet BLM Standards for Public Land Health and Guidelines for Livestock Grazing Management in Colorado while taking in to account site potential as determined by ecological site inventories, Range/Ecological Site Descriptions, Soils, completed Land Health Assessments, and site-specific management objectives.

Implement changes in livestock use through allotment management plans, grazing use agreements, and terms and conditions on grazing permits for priority allotments based on the current prioritization process and/or land health issues.”

This type of approach is reiterated throughout the No Action alternative. Again, the FEIS effects analysis states that:

“Alternative A would allow livestock grazing, with no restrictions in place to protect GRSG habitat specifically and therefore would have the greatest impact on terrestrial wildlife.”
[underline emphasis added]

Clearly, the highlighted text above (which is not all-inclusive of resource protection measures that would benefit and protect GrSG and their habitats from the No Action section, but is just a sample of what was in Chapter 2) does not align whatsoever with the BLM’s statement in the FEIS that there are...“no restrictions in place to protect GRSG habitat...” and is a prime example where the BLM has ignored its duty

to properly analyze the No Action alternative. To this end, Garfield County finds that the one sentence “effects analysis” for impacts from Range Management on GrSG from implementation of the No Action alternative does not reflect the actual guidance which the BLM has in place to protect habitats, and that the effects analysis is biased, methodologically flawed, and pre-decisional, and the FEIS needs to be redone while actually considering the actual information presented in Chapter 2 as well as other forgotten existing federal, state and local protection measures such as the Garfield County Greater Sage Grouse Conservation Plan.

Another example of how the Effects Analysis is broken is from Fluid Minerals. While the FEIS presents many pages of summarized (albeit dated) literature on how oil & gas has detrimental impacts on Greater Sage-Grouse, the actual effects analysis of implementation of any Alternative is extremely brief and does not reflect existing federal, state and local planning as mentioned above, and fails to incorporate the existing NEPA process and reviews, and fails to utilize the best available science- and especially any conflicting viewpoints. The extremely brief effects analysis for Alternative A on Greater Sage-Grouse from oil and gas activities is limited to the following four sentences (see page 4-91):

Alternative A—In general, Alternative A would have the least protective measures for GRSG and sagebrush habitat, but this would vary depending on MZ (existing LUPs). Protective measures would generally include seasonal restrictions during the breeding, brood-rearing, and winter periods, NSO stipulations of 0.25 or 0.60 mile from a lek, and 1 and 5 percent voluntary disturbance caps on existing leases (see Chapter 2 for specifics). Certain lands (such as WSAs) would be closed to fluid minerals leasing, but this would benefit GRSG and sagebrush habitats only where they are coincident. Overall, Alternative A would have the greatest impacts on GRSG and sagebrush habitat.”

Recall, that one of the primary reasons for the FEIS and RMPA is the purported threat of oil and natural gas development in GrSG habitats; however, despite the importance of this topic, the actual effects analysis of continuing with existing management (which has led to the actual *increase* in lek attendance and *increased* sage-grouse populations in the past 3 years) is limited to 4 sentences. Again, the FEIS failed to consider the other NEPA and Section 7 requirements, COGCC & CPW review processes, ongoing habitat management, GrSG research and mitigation measures of CPW and other entities, and other County permitting requirements in this Alternative A analysis. It would appear from the Alternative A effects analysis that the BLM has no NEPA review process and does nothing to protect GrSG at this time, and that the CPW and USFWS has no involvement either. In contrast the LUPA effects analysis includes the following, apparently more robust effects analysis (starting on page 4-95):

“Under the Proposed LUPA, no new leasing would be permitted within 1 mile of active leks and no new surface occupancy would be allowed in PHMA. No modifications or waivers would be permitted. The Authorized Officer may grant an exception to this NSO stipulation only where the proposed action: 18

(i) Would not have direct, indirect, or cumulative effects on GRSG or its habitat; or,

(ii) Is proposed to be undertaken as an alternative to a similar action occurring on a nearby parcel, and would provide a clear conservation gain to GRSG.

Exceptions based on conservation gain (ii) may only be considered in (a) PHMA of mixed ownership where federal minerals underlie less than fifty percent of the total surface, or (b) areas of the public lands where the proposed exception is an alternative to an action occurring on a nearby parcel subject to a valid Federal fluid mineral lease existing as of the date of this RMP [revision or amendment]. Exceptions based on conservation gain must also include measures, such as enforceable institutional controls and buffers, sufficient to allow the BLM to conclude that such benefits will endure for the duration of the proposed action's impacts.

“Any exceptions to this lease stipulation may be approved by the Authorized Officer only with the concurrence of the State Director. The Authorized Officer may not grant an exception unless the applicable state wildlife agency, the USFWS, and the BLM unanimously find that the proposed action satisfies (i) or (ii). Such finding shall initially be made by a team of one field biologist or other GRSG expert from each respective agency. In the event the initial finding is not unanimous, the finding may be elevated to the appropriate BLM State Director, USFWS State Ecological Services Director, and state wildlife agency head for final resolution. In the event their finding is not unanimous, the exception will not be granted. Approved exceptions will be made publically available at least quarterly.”

Additionally, an NSO stipulation would be applied to within 2 miles of active leks in GHMA. Disturbances would be limited to 3 percent and 1 disturbance per 640 acres density of PHMA in each Colorado Management Zone, with no new leasing allowed if the disturbance cap exceeds this amount. Seasonal restrictions would apply to construction, drilling and completion activities within 5 4 miles of active leks during the sage-grouse reproduction period of March 1 to July15.

Under the Proposed LUPA, no new leasing would be permitted within 1 mile of active leks, and no new surface occupancy would be allowed in PHMA (see exception criteria below) and within 2 miles of active leks in GHMA (see Appendix D).

The Proposed LUPA would provide more protections to GRSG and GRSG habitat than Alternatives A and D. Because all of PHMA would be managed as No Surface Occupancy with very rare potential for exceptions, impacts would be similar to those described for Alternative B. The potential for direct habitat loss and indirect impacts would be similar to those described under Alternative B. Although 1 mile around active leks would be managed as closed to leasing (224,200 acres) under the Proposed LUPA compared with all PHMA (1,315,500 acres), all of PHMA would be managed as NSO with very rare exceptions, making the impacts on GRSG or GRSG habitat similar. Additionally, under the Proposed LUPA, disturbance would be limited to 3 percent in PHMA and density would be limited to 1 energy facility per 640 acres, providing greater protections for GRSG and GRSG habitat than Alternatives A and D and similar to those described for Alternative B.”

Garfield County finds the disparity in effects analysis, from just this one section an example that the FEIS is pre-decisional and that the level of detail and care in considering existing conservation measures of Alternative A vs. the BLM-preferred LUPA indicative of a pre-decisional effort to bias the reader and public that selecting the LUPA as the only viable option to protect Greater Sage-Grouse.

Additional evidence of the biased and pre-decisional nature of the FEIS includes statements such as the following, found on page 4-88:

“Direct Habitat Loss/Fragmentation/Indirect Habitat Loss or Avoidance

Direct Habitat Loss—Direct habitat loss from fluid minerals development would be attributed to vegetation clearing (from well pad, access road, and ancillary facilities construction) and longer-term facility occupation. Loss or modification of big sagebrush communities would not regain any shrubland character for GRSG for 20 to 30 years, following interim or final reclamation, or longer depending on length of occupation. In some cases, shrubland may not regain functional utility (e.g., roads and permanent facilities) to support GRSG over the life of the plan amendment. Small herbaceous inclusions in sagebrush-dominated landscapes can serve as important sources of herbaceous and invertebrate forage for brooding GRSG. Because of population size and habitat configuration (natural geographic patterns), these impacts may be more pronounced in certain zones (e.g., Colorado MZ 17). Conservation measures outlined in each alternative would reduce the potential for direct habitat loss across sagebrush landscapes within each MZ.”

Statements like this are found throughout the FEIS; where the scientific literature and our professional opinion is in disagreement that *“Loss or modification of big sagebrush communities would not regain any shrubland character for GRSG for 20 to 30 years”* [underline emphasis added] is intentionally biasing the public reader and Authorized Officer that only the LUPA can be selected. We disagree with the science and contest that the authors are not qualified to make such statements without scientific evidence consistent with the Data Quality Act.

The FEIS is fraught with an oversimplification of existing protection measures for Greater Sage-Grouse, a bias against any land use aside from measures to protect sage-grouse through the adoption of the LUPA. We consistently find statements that any impacts to lands would “render the habitat unsuitable” (page 4-79 as an example), and that the FEIS did not utilize existing science or provide substantive proof that Greater Sage-Grouse do not find any utility of habitats that have been temporarily disturbed, aside from some supposed returned utility after 20-30 years post-disturbance.

The FEIS does not consider existing timing stipulations, avoidance of habitat, impact minimization measures, existing NEPA procedures, current USFWS review, existing habitat and impact minimization and mitigation, and simply asserts that there are woefully inadequate protection measures in place, or as stated there are “no restrictions in place to protect GrSG habitat...”, which is false, misleading, biased and pre-decisional, and is not based on facts.

Considering that implementing the LUPA would have far-reaching socioeconomic impacts to northwest Colorado, we would have hoped that the BLM would have taken a hard look at the effects analysis, and

not just cut-n-paste random information and used pre-decisional language. We found many instances of repetitive statements of:

“The Proposed LUPA would provide more protections to GRSG and GRSG habitat than Alternatives A and D. Because all of PHMA would be managed as No Surface Occupancy with very rare potential for exceptions...”

Simply repeating this information and statistics from the LUPA while ignoring the No Action alternative is not a comparative effects analysis and does nothing to actually inform the reader of how sage-grouse would be affected if Alternative A, B, C, D or the LUPA is implemented. Statements biased against Alternative A such as: *“Various stipulations apply, but most are not specific to GRSG or GRSG habitat.”*(Page 4-109) are not supported by the language in Alternative A, or in the existing federal, state and local review processes. We find that the FEIS presents worst cases for anything but the LUPA, emphasizes the “bad” in Alternative A, and ignores existing review, avoidance, impact minimization or mitigation of potential impacts to sage-grouse on public lands or lands with a federal nexus. Ultimately, we find the FEIS is biased, pre-decisional, and inaccurate in its depiction of existing Greater Sage-Grouse protection measures and processes.

Additionally, NEPA requires that included in the “Environmental consequences” section is a discussion of the “Possible conflicts between the proposed action and the objectives of Federal, regional, State and local ... land use plans, policies and controls for the area concerned.” (40 C.F.R 1502.16 (c)) By failing to advance the Garfield County plan to be analyzed alongside the other alternatives, the BLM was able to again avoid informing the public and decision makers of the inconsistencies between local needs and the federal mandate, therefore denying the opportunity to fully consider whether the preferred alternative is the proper course

IV. Coordination

The Federal Land Policy and Management Act³⁶, the National Forest Management Act³⁷ and their corresponding rules, require both the BLM and USFS to coordinate their land use planning efforts with local governments. Congress recognized the importance of agencies working closely with local governments early in their planning to resolve conflicts with the purpose of reaching consistency. FLPMA specifically requires the BLM to be apprised of local plans, give consideration to local plans, meaningfully involve local governments in the planning process, and work to resolve inconsistencies between the two planning efforts. It is expected that these early efforts will give both government entities the opportunity to harmoniously work out any potential conflicts. However, if there are still conflicts at the end of the process, FLPMA places the burden of achieving consistency on the BLM.

“Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.”

The State Director in her April 29, 2015 letter, acknowledges her duty to achieve consistency with the Garfield County plans under FLPMA. While the statutory language clearly states that local plans must comply with federal laws and regulations, the letter misstates the specific language of the Act and finds that local plans must also comply with agency policies as well³⁸.

This is troubling since agency policies are internally prepared without public or Congressional input. They can and often do change when political shifts in the Executive Branch take place. Congress restricted the coordination consistency requirement to the federal laws and regulations and the purposes of the laws,

³⁶ 43 U.S.C.A. 1712(c) In the development and revision of land use plans, the Secretary shall—(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located,... In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

³⁷ 16 U.S.C.A. § 1604 (“(a) Development, maintenance, and revision by Secretary of Agriculture as part of program; coordination: As a part of the Program provided for by section 1602 of this title, the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and local governments and other Federal agencies.”).

³⁸ State Director April 29, 2015 - “As you are aware, under the Federal Land Policy and Management Act (FLPMA), land use plans of the Secretary of Interior shall be consistent with state and local plans to the maximum extent consistent with the purposes, policies and programs of Federal laws and regulations applicable to the federal lands.”

but did not expand this to include agency policy. Importantly, courts have ruled that agency policy cannot be held to the same standard as statutes and regulations.

As has been communicated throughout this planning process, Garfield County's plans fully comply with federal laws and regulations. Additionally, the plans incorporate, where appropriate, similar programs and policies as the agencies for the purpose of narrowing the issues upon which consistency should be met. However, there are some policies that have been deliberately rejected by the County, such as the NTT Report (reasons discussed throughout this review). As a result, the Greater Sage-Grouse Conservation Plan contains specific policies that directly conflict with the BLM's preferred alternative.

Additionally, the Garfield County Plan and the NTT Report are based upon notably different scientific premises and facts. The habitat mapping model used in Garfield County's plan is significantly more refined, accurate and sophisticated than the BLM's habitat calculations. As a result, the Garfield County policies are more refined, accurate and appropriate for the unique area. Although the FEIS claims that an alternative was included that had similar policies as Garfield County, this is blatantly false. It would be impossible to equate the policies and studies with those of Garfield County's plan because none of the alternatives were based on the advanced science and refined mapping used by Garfield County.

The National Environmental Policy Act³⁹ also requires coordination with local governments. The Act's purpose is to ensure the action proposed by the agency is properly analyzed so that the best decision can be made. It is for this purpose that where a conflict of the use of resources exists, the agencies are required to include an alternative that can be analyzed with equal scrutiny as other alternatives including the preferred. Conflicting perspectives were not intended to be brushed away, as the Garfield County Plan has been, but rather analyzed side by side. If the agencies preferred action is the best course then why would an agency fear it being compared to that put forward by the local government with the responsibility to protect the health, safety and welfare of the people?

By failing to bring forward the Garfield County Plan for rigorous analysis, even in the No Action alternative, the agencies have also failed to identify conflicts as required in Chapter 4 on Environmental Consequences. By not identifying any conflicts, the agencies then also avoid their responsibility to resolve those conflicts or mitigate those that cannot be resolved. Ultimately, because the agencies refused to fully coordinate they missed the many opportunities to resolve conflicts between the two planning process and failed to reach consistency under FLPMA. Additionally they failed to fully inform the public and decision makers of the conflicts between the proposed uses of the resources therefore denying them the opportunity to be fully informed of the environmental consequences as required under NEPA.

³⁹ 43 U.S.C. 4331(a) "it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans. (b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may —"

In interpreting and applying the concept of coordination, the courts have held that “coordination means more than *trying* to work together with someone else.”⁴⁰ Instead, coordination, by definition, means trying to work together with someone else by means of negotiating to harmoniously bring a common action, movement, or condition⁴¹ [emphasis added]. Coordination exceeds the definitions of cooperation, and consultation. Above all else, coordination is a process for reconciliation of conflicts between federal and local policies. Coordination provides local governments with the ability to present local customs, culture, and landscape variance and other considerations to federal agencies. Federal agencies, meanwhile, are required to consider such evidence from local governments and negotiate in good faith to resolve conflicts.

An agency's EIS cannot “virtually ignore” the powers of state and local governments.⁴² The procedure followed and steps taken by the federal agency in a given matter should be “clearly indicative of good faith.”⁴³ In good faith, the federal agency should initiate coordination with state and local agencies regarding prospective action “as soon as possible” and continue coordination throughout the entire process.⁴⁴ Coordination, if conducted correctly, results in a reliable identification of the extent of the impacts, and a sound planning process.⁴⁵ Ultimately, an EIS should be “the product of comprehensive coordination between federal, state, and local agencies” after “numerous public hearings and meetings were held before th[e] statement [i]s filed, at which the environmental effects ... [are] discussed.”⁴⁶

“NEPA requires agencies to take into account the comments and views of local governments that are authorized to develop environmental standards.”⁴⁷ Like NEPA, “the procedural requirements of the FLPMA are designed to protect the interests of local governments whenever federal agencies develop or implement federal land-use plans.”⁴⁸ Since “the FLPMA includes environmental objectives similar to those of NEPA (*see id.* § 1701(8)), the concrete interests asserted by [a] County that merit procedural protection under NEPA also merit protection under the FLPMA.”⁴⁹

In light of Garfield County's wealth of geographic-specific data, knowledge of its unique landscape and understanding of local culture, involvement in sage-grouse issues for over 10 years (as a participant in the PPR Plan), the BLM stood to benefit immensely from coordinating with Garfield County. In addition to coordination, the County also participated in the NEPA cooperating agency process. Since the

⁴⁰ *California Native Plant Soc. v. City of Rancho Cordova*, 172 Cal. App. 4th 603, 641, 91 Cal. Rptr. 3d 571, 602 (2009).

⁴¹ *Id.*

⁴² *Suffolk Cnty. v. Sec'y of Interior*, 562 F.2d 1368, 1375 (2d Cir. 1977).

⁴³ *Sierra Club v. Froehlke*, 534 F.2d 1289, 1300 (8th Cir. 1976).

⁴⁴ *Id.*

⁴⁵ *Concerned About Trident v. Schlesinger*, 400 F. Supp. 454, 475 (D.D.C. 1975).

⁴⁶ *Sierra Club v. Froehlke*, 534 F.2d 1289, 1300 (8th Cir. 1976).

⁴⁷ *Yount v. Salazar*, No. CV11-8171-PCT DGC, 2013 WL 93372, at *13 (D. Ariz. Jan. 8, 2013) (*citing* 42 U.S.C. § 4332(2)(C)).

⁴⁸ *Id.* (*citing* 43 U.S.C. § 1712(a), (c)(9)).

⁴⁹ *Id.* at *14.

beginning of the Cooperating Agency meetings, Garfield County reiterated on multiple occasions that the BLM did not acknowledge that the habitat in Garfield County was vastly different than that of the national range. As such, it required a more refined habitat and policy analysis tailored to our County. So much so, Garfield County went to great lengths to adopt its Greater Sage-Grouse Conservation Plan⁵⁰ which states:

The purpose of the Garfield County Greater Sage-Grouse Conservation Plan (the Plan) is to provide private and public land owners with land management principles, policies, incentives, and best management practices based on the best available science that are tailored to fit Garfield County's unique landscape and habitat characteristics for the betterment of the species.

Because of the County's unique landform, elevation, topography and vegetative cover that differ drastically from the rest of the national range, the Board of County Commissioners (the Board) commissioned an in-depth analysis, based on best available science, to determine what suitable habitat exists in the County at a refined level never before completed to obtain a very realistic and accurate picture of suitable habitat.

The habitat mapping⁵¹ contained in the Greater Sage Grouse Conservation Plan is the most refined and peer reviewed habitat mapping to date in Garfield County and represents best available science that has neither been read, evaluated or included in the FEIS by the BLM, but was also summarily ignored during the Cooperating Agency meetings as admitted to by BLM NW Colorado District Manager Jim Cagney and in a Coordination meeting on April 4, 2013.⁵² The habitat modeled by the County results in approximately 73,000 acres of suitable habitat which is a 68% decrease in the habitat mapping contained in the FEIS. This conflict remains unresolved despite significant attempts during Coordination meetings as well as meetings with the Director of the Colorado Department of Natural Resources.⁵³ Unfortunately, the BLM has, thus far, failed to comply with the aforesaid statutes and regulations to resolve conflicts between local and federal policies and plans.

II. The EIS Violates NEPA

NEPA⁵⁴ requires informed decisions – not environmentally “ideal” decisions.⁵⁵ The proper standard under NEPA is to analyze how action affects the human environment.⁵⁶ While NEPA requires federal agencies to consider the environmental consequences of federal actions, it does not mandate particular results.

⁵⁰ See Garfield County Greater Sage Grouse Conservation Plan, as amended, November 17, 2014 and attached as Exhibit V.

⁵¹ See Manuscript: “Use of Modeling in a Geographic Information System to Predict Greater Sage Grouse Habitat” attached as Exhibit Y.

⁵² See Official Transcript of Coordination meeting on April 4, 2013 and attached as Exhibit N.

⁵³ See Letter to Mike King, Director of the Colorado Department of Natural Resources, October 21, 2013 and attached as Exhibit S.

⁵⁴ 42 U.S.C. §4331 *et seq.*

⁵⁵ See Nicholas C. Yost, *NEPA Deskbook, 3rd Ed.*, at 6, Environmental Law Institute (2003).

⁵⁶ 42 U.S.C. § 4332(2)(C); *see also San Luis & Delta-Mendota Water Auth. v. Jewell*, 747 F.3d 581 (9th Cir. Cal. 2014).

Agencies are not constrained by NEPA from deciding that other values outweigh environmental costs.⁵⁷ The purpose of NEPA “is not to create paperwork—even excellent paperwork—but to foster excellent action.”⁵⁸ NEPA must “achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life’s amenities.”⁵⁹ The BLM has failed in this regard and the FEIS currently cannot be accepted by Garfield County.

NEPA is a procedural statute. It does not mandate any particular outcome or require an agency to select an alternative that has the fewest environmental consequences. NEPA simply requires that an agency give a “hard look” to the environmental consequences of any major federal action it is undertaking.⁶⁰ Once the procedural elements of NEPA have been satisfied and the environmental consequences given the required hard look, an agency may issue its decision relying on the factors and considerations specified in the statute under which it is acting—in this case, FLPMA among others.

A. Purpose and Need

Council on Environmental Quality (“CEQ”) regulations require a purpose and need statement to describe the proposed action, the purpose of the proposed action, and the underlying need to which the agency is responding.⁶¹ In this case, the purpose and need is, “to inform USFWS’s March 2010 ‘warranted, but precluded’ ESA listing petition decision” and ensure BLM and the USFS have adequate regulatory mechanisms in place.⁶²

The agencies assert that restrictions on land uses and programs must be implemented “to avoid the continued decline” of GRSG through conservation measures specified in the National Technical Team’s *A Report on National Greater Sage-Grouse Conservation Measures* (the “NTT Report”).⁶³ First, there is no “continued decline” relevant to greater sage-grouse populations in Colorado. Rather, populations are largely stable and increasing. Second, there are significant and fundamental flaws with the NTT Report that should preclude its wholesale use and definitive role in driving this EIS. The NTT Report was cited or mentioned at least 19 times in the FEIS. Measures incorporated into action alternatives in the EIS were largely derived from the NTT Report, and Alternative C is essentially the recommendations from the NTT report.⁶⁴

Garfield County has supplemented its comments on the FEIS with the Data Quality Act (“DQA”)⁶⁵ Challenges it filed against BLM on the NTT Report, USGS on the Sage-Grouse Monograph and the U.S. Fish and Wildlife Service on the Conservation Objectives Team (“COT”) Report. These DQA Challenges are also

⁵⁷ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

⁵⁸ 40 C.F.R. § 1500.1(c) (2005).

⁵⁹ 42 U.S.C. §4331(b)(5).

⁶⁰ See *Methow Valley*, 490 U.S. at 350-51; *Kleppe*, 427 U.S. at 410, n.21 (Agency is to take a “hard look” at the environmental consequences).

⁶¹ 40 CFR § 1502.13.

⁶² DEIS at 6.

⁶³ *Id.*

⁶⁴ *Id.* at xxxii.

⁶⁵ 44 U.S.C. § 3516.

incorporated herein by reference.⁶⁶ Significant flaws with the NTT Report have also been incorporated into comments on this FEIS, as submitted in December of 2013 by American Petroleum Institute, Western Energy Alliance, IPAA and COGA. Garfield County incorporates those comments herein by reference.

The BLM wholly fail to mention compliance with authorizing statutes in the purpose and need. Rather, they aver that they will consider these measures “in the context of their multiple-use missions.”⁶⁷ The BLM and the USFS have no discretion to avoid their statutory missions nor to impact valid existing rights as discussed below.

B. Cooperating Agencies

Federal, state or local agencies may act as joint lead agencies in the preparation of an EIS.⁶⁸ Jurisdiction by law and special expertise also grant state, Tribal and local governmental entities the opportunity to participate as cooperating agencies.⁶⁹ The benefits of cooperating agency status include “fostering intergovernmental trust (e.g., partnerships at the community level) and a common understanding and appreciation for various governmental roles in the NEPA process.”⁷⁰

NEPA requires the various agencies involved to address their differing missions, laws and policies early in the process. The process should not move forward until differences are addressed in an agreed upon methodology.⁷¹ The lead agency must use, to the maximum extent practicable, the environmental analysis and recommendations of cooperating agencies consistent with its own responsibilities as lead agency.⁷² Otherwise, the EIS can be found to be inadequate.⁷³ CEQ FAQ 14(b)(A). Such is the case here. The BLM has wholly failed to recognize and incorporate the best scientific and commercial data available as provided by Garfield County—a cooperating agency in this process.

Federal agencies can rely upon state, regional and local plans in their consideration of environmental impacts under NEPA.⁷⁴ In this case, BLM and the USFS should have considered Garfield County’s Plan as its preferred alternative relative to applicable lands in the NEPA process. Instead, it has been relegated to merely a reference, and even forgotten from the No Action alternative. Reference to the efforts alone

⁶⁶ See Data Quality Act Challenges at Exhibits Z, AA, and BB also available at: <http://www.westernenergyalliance.org/knowledge-center/wildlife/greater-sage-grouse/DOA-Challenge>

⁶⁷ DEIS at 6.

⁶⁸ 40 C.F.R. §1501.5(b).

⁶⁹ James Connaughton, CEQ Chair, Memorandum for State and Local Governmental Entities, February 4, 2002.

⁷⁰ *Id.*; See also: 516 Department Manual 2.5, and discussion therein, 69 Fed.Reg. 10869, 10877 (March 8, 2004).

⁷¹ THE NEPA TASK FORCE: Report to the Council on Environmental Quality. Modernizing NEPA Implementation. September, 2003.

⁷² Section 1501.6(a)(2) (emphasis added); see also CEQ FAQ 14(b)(A).

⁷³ CEQ FAQ 14(b)(A).

⁷⁴ See, e.g. 40 CFR § 1502.21; *Georgia River Network v. U.S. Army Corps of Engineers*, 334 F. Supp. 2d 1329 (N.D. Ga. 2003) (agency properly relied upon federal, state and local regulations, including local land use plan); *Sierra Club North Star Chapter v. La Hood*, 693 F. Supp. 2d 958 (D. Minn. 2010) (accepting reliance on local plans in indirect effects analysis).

is insufficient.⁷⁵ Federal agencies must consider and rely upon state, regional, and local plans in their consideration of environmental impacts under NEPA.⁷⁶ Here, the EIS did not adequately consider Colorado Oil and Gas Conservation Commission (“COGCC”) rules regarding wildlife and surface water, the Colorado Greater Sage-grouse Conservation Plan, Garfield County’s Plan, and the BLM’s own NEPA process for authorizing land use activities in the development of the FEIS.

Colorado’s Department of Natural Resources is also a cooperating agency. In October of 2013, Governor Hickenlooper called upon the BLM to recognize and rely upon the meaningful local and state conservation measures already in place.⁷⁷ Later, in a letter from the Governor to NW Colorado BLM District Manager, Jim Cagney dated January 14, 2014, he reiterated significant concerns over provisions being proposed in the EIS including a lack of sound science to support some of the BLM conclusions. From our review of the FEIS, the Governor’s request fell on deaf ears.⁷⁸

C. Proposed Alternatives Are Inconsistent with Authorizing Statutes

Under NEPA, the agency’s “environmental impact statement must study reasonable alternatives in detail.”⁷⁹ The discussion of alternatives required by NEPA is limited by an agency’s statutory objectives and the “underlying purpose and need” to which the agency is responding in proposing alternatives.⁸⁰ The courts have excused federal agencies from considering alternatives that required legislative or administrative changes.⁸¹ As the Second Circuit Court of Appeals stated, “[S]tatutory objectives provide a sensible compromise between unduly narrow objectives an agency might choose to identify to limit consideration of alternatives and hopelessly broad societal objectives that would unduly expand the range of relevant alternatives.”⁸²

Neither NEPA nor the endangered Species Act (“ESA”) amends or alters the agencies’ statutory missions. This process must not conflict with BLM’s duties and authorities under FLPMA, the Mineral Leasing Act of 1920 (30 U.S.C. § 181 et seq.) or USFS duties and responsibilities under the National Forest Management

⁷⁵ See 43 CFR § 1610.

⁷⁶ See, e.g. 40 CFR § 1502.21; *Georgia River Network v. U.S. Army Corps of Engineers*, 334 F. Supp. 2d 1329, 1345 (N.D. Ga. 2003) (agency properly relied upon federal, state and local regulations, including local land use plan); *Sierra Club North Star Chapter v. La Hood*, 693 F. Supp. 2d 958, 990 (D. Minn. 2010) (accepting reliance on local plans in indirect effects analysis).

⁷⁷ Available at:

<http://www.colorado.gov/cs/Satellite?c=Page&childpagename=GovHickenlooper%2FCBONLayout&cid=1251647577416&pagename=CBONWrapper>.

⁷⁸ See letter from Governor Hickenlooper to NW Colorado BLM District Manager, Jim Cagney dated January 14, 2014 attached as Exhibit K.

⁷⁹ *Biodiversity Conservation Alliance v. Bureau of Land Mgmt.*, 608 F.3d 709, 714 (10th Cir. 2010).

⁸⁰ See *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978) (Where the Court rejected a claim that the Nuclear Regulatory Commission should have reviewed energy conservation as an alternative to the licensing of a nuclear power plant); see also 40 CFR § 1502.13; 40 CFR § 1508(9)(b).

⁸¹ See *Roosevelt Campobello International Park Commission v. EPA*, 684 F. 2d 1041 (1st. Cir. 1982) (Where the court held federal agencies need only consider alternatives which are consistent with the purposes of a proposed project).

⁸² *City of New York v. United States Dep’t of Transp.*, 715 F.2d 732, 743 (2d. Cir. 1983), appeal dismissed, 465 U.S. 1055 (1984).

Act (“NFMA”) (16 U.S.C. § 1600 et seq.) and the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. §§ 528-531). Nor can the EIS impact valid existing rights. Relevant statutes include the following:

1. FLPMA

Under FLPMA, the BLM is required to manage the public lands on the basis of multiple use and sustained yield.⁸³ “‘Multiple use management’ is a concept that describes the task of achieving a balance among the many competing uses on public lands, ‘including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and [uses serving] natural scenic, scientific and historical values.’”⁸⁴ FLPMA also mandates protection of valid existing rights.

2. Energy Policy Act of 2005

The Energy Policy Act of 2005 (EPCA) requires federal land management agencies to ensure that the least restrictive stipulations are utilized to protect many of the resource values to be addressed. Such is not the case in this FEIS. Here, the agencies failed to demonstrate that less restrictive measures were considered but found insufficient, and the FEIS purports that the LUPA is the only viable Alternative; insofar as the BLM also dismissed its own NEPA requirements, as well as other state and local statutes from Alternative A or Chapter 4.

3. Energy Policy and Conservation Act of 2000 (EPCA)

BLM Field Offices must review all current oil and gas lease stipulations to make sure their intent is clearly stated and that measures are the least restrictive necessary to accomplish the desired protection. Consideration of less restrictive measures must be included in the EIS. In April 2003, field offices were directed to comply with four EPCA planning integration principles:

- 1) Environmental protection and energy production are both desirable and necessary objectives of sound land management and are not to be considered mutually exclusive priorities.
- 2) The BLM must ensure appropriate accessibility to energy resources necessary for the nation's security while recognizing that special and unique non-energy resources can be preserved.
- 3) Sound planning will weigh relative resource values, consistent with the FLPMA.
- 4) All resource impacts, including those associated with energy development and transmission will be mitigated to prevent unnecessary or undue degradation (BLM 2003a).”

The alternatives considered in this FEIS are inconsistent with statutory authorities and unduly narrow and biased against multiple uses of public lands. For all of the above reasons, the FEIS analysis process is arbitrary, capricious and an abuse of discretion.⁸⁵

⁸³ 43 USC § 1701(a)(7) (2006).

⁸⁴ *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. at 58 (quoting 43 U.S.C. § 1702(c)).

⁸⁵ 5 U.S.C. § 706.

D. Climate Change

Garfield County takes issue with characterization of climate change as a “profound” threat. Analysis of climate change should be outside the scope of this EIS. First, its effects are not within the reasonably foreseeable future. Second, regional climate models are problematic because they compound the inherent problems in the global models and lack verifiability due to insufficient “calibration” data necessary to perform proper statistical analysis.⁸⁶ Localized climate projects are problematic for mountainous areas because current global climate models are unable to capture the variability of climate phenomena in mountainous regions at a local or regional scale.⁸⁷ Despite these gross limitations, BLM leaps to the conclusion that climate change is a threat in the planning area. This type of predetermined analysis is clearly inconsistent with the best available science standard under the ESA and the standards of quality and objectivity required by the DQA, and the question of climate change as it relates to changes in RMPA guidance with managing sage-grouse habitats is well outside the scope of the purpose and need of this FEIS. This NEPA process is not a proper tool to attempt to regulate climate change.

E. Insufficient Economic Analysis

[Chapter 3, Page: 252-282] The FEIS Social and Economic Conditions is a superficial discussion of potential impacts, it fails to give a concrete economic analysis of the proposed action. It greatly discounts the adverse effects of the proposed action. There is no analysis of loss of jobs in Garfield County, State and Federal revenues and property tax. Table 3.95, page 3-281 refers to tax revenues by County. There is no further analysis to show Garfield County property tax revenues are 70.2 percent attributable to oil and gas property tax. Nor do the Social/Economic conditions reflect the importance of oil and gas property taxes to the special districts in Garfield County. Three fire districts, two school districts, a hospital district and park district receive 70-95 percent of their property tax revenues from oil and gas property taxes.⁸⁸

The FEIS contains only a very brief discussion of the potential economic impacts. It fails to give a concrete economic impact analysis between the Alternatives. This cursory review is insufficient. Moreover, the BLM greatly discounts the adverse effects of implementation of the action alternatives. Regulatory

⁸⁶ The global model commonly relied upon is the 2007 Intergovernmental Panel on Climate Change (IPCC), which recognizes its fundamental uncertainties stating, “uncertainty in climate change projections has always been a subject of previous IPCC assessments. Uncertainty arises in various steps towards a climate projection (figure reference omitted). For a given emissions scenario, various biogeochemical models are used to calculate concentrations of constituents in the atmosphere. Various radiation schemes and parameterizations are required to convert these concentrations to radiative forcing. Finally, the response of the different climate system components (atmosphere, ocean, sea ice, land surface, chemical status of atmosphere and ocean, *etc.*) is calculated in a comprehensive climate model. In addition, the formulation of, and interaction with, the carbon cycle in climate models introduces important feedbacks which produce additional uncertainties.” Available at: http://www.ipcc.ch/publications_and_data/ar4/wg1/en/ch10s10-1.html; Foley, A.M., Uncertainty in Regional Climate Modeling: A Review, *Progress in Physical Geography*, 34(5) 647–670, 2010.

⁸⁷ See, e.g. 78 Fed. Reg. 2509.

⁸⁸ See Economic Impacts of Sage-Grouse Management Supplement Report, Piceance Basin Development Analysis prepared by BBC Research and Consulting for Garfield County Community Development Department, attached as Exhibit FF.

hurdles and red tape are amongst the most formidable threats to the viability of multiple uses of public lands.

For example, the BLM insufficiently considered the economic impacts of oil and gas. The University of Colorado's Leeds School of Business reports that Colorado's oil and gas industry recorded \$9.3 billion in production value in 2012.⁸⁹ With direct employment of more than 51,200 jobs and average wages over \$74,800; oil and gas is crucial to a strong and growing economy in Colorado.⁹⁰ Domestic oil and gas production from northwestern Colorado will help reduce dependence on foreign oil and provide much-needed jobs and revenues. BLM has failed to adequately consider these issues in its NEPA analysis.

The BLM must also comply with Executive Order No. 13211.⁹¹ That order directs any agency that takes an action with a "significant adverse effect" on the supply of domestic energy resources to "appropriately weigh and consider the effects of the Federal Government's regulations on the supply, distribution, and use of energy," and to prepare and submit to OMB's Office of Information and Regulatory Affairs a "Statement of Energy Effects" for their "significant energy actions."⁹²

III. Best Available Science and Data Quality

The BLM should rely upon data of the highest integrity and accuracy in the FEIS. Throughout the FEIS, frequently cited sources fail to meet: (1) the best available science standard under the ESA;⁹³ and (2) standards of integrity, objectivity, and transparency under the DQA.

Moreover, BLM's Instruction Memorandum No. 2012-044 specifies, "[W]hile these conservation measures are range-wide in scale, it is expected that at the regional and sub-regional planning scales there may be some adjustments of these conservation measures in order to address local ecological site variability" and that "...it is anticipated that individual plans may develop goals and objectives that differ and are specific to individual planning areas." [emphasis added].

As you know, Garfield County has provided maps to a level of detail that far surpasses current BLM and state maps. Notwithstanding the direction in IM 2012-044⁹⁴ that maps, "...may change as new information becomes available," the BLM has failed to incorporate the best available science as provided by the County.

The FEIS also runs afoul of the Data Quality Act ("DQA").⁹⁵ Both the DQA and the Office of Management and Budget Guidelines ("OMB Guidelines") implementing it require agencies to "ensure and maximize"

⁸⁹ Brian Lewandowski and Richard Wobbekind, *Assessment of Oil and Gas Industry: 2012 Industry Economic and Fiscal Contributions in Colorado* (July 2013), http://www.coga.org/pdf_studies/UniversityofColorado_LeedsSchoolofBusiness_Oil&NaturalGasIndustry_EconomicStudy2012.pdf.

⁹⁰ *Id.*

⁹¹ Available at: <http://www.gpo.gov/fdsys/pkg/FR-2001-05-22/pdf/01-13116.pdf>.

⁹² Exec. Order No. 13211, 66 Fed. Reg. 28355 (May 18, 2001).

⁹³ 16 U.S.C. §1533(b)(1)(A).

⁹⁴ See BLM Instructional Memorandum dated December 27, 2011

⁹⁵ 44 U.S.C. §§3504(d)(1), 3516.

the quality, objectivity, utility, and integrity of information disseminated by federal agencies.⁹⁶ Here, BLM has failed to meet the requirements of the DQA and applicable Guidelines in the sufficiency of disclosure of data sources and methodology used in the information disseminated, and has dismissed other competing habitat mapping and management efforts. Moreover, the FEIS and documents relied upon therein, do not rise to the standards of objectivity, utility and integrity required under the DQA.

Existing conservation measures are among the important issues the FEIS failed to properly consider. For example, a study prepared by SWCA Environmental Consultants found that most major oil and natural gas companies have more stringent standards in place than federal agencies acknowledge.⁹⁷ From just a sample of 103 NEPA documents for oil and natural gas projects, the study found that companies have implemented 773 conservation measures for GRSG.⁹⁸ These measures include monitoring existing populations; restricting human activities to protect leks; interim and final reclamation; noxious weed control; dust suppression through application of water or chemical suppressant to roadways; seeding of all disturbed areas that are not used during the well production phase; NSO buffers to protect wetlands; general noise abatement; and habitat improvement and mitigation projects.⁹⁹

In addition, the Western Governors Association on released its 2014 Sage-Grouse Inventory on April 2, 2015. This highlights the effective conservation work undertaken by public, private and non-governmental groups during the past year across the 11-state range of the greater sage-grouse.¹⁰⁰ In addition to recording state and local government conservation initiatives, it also includes reports from federal agencies, conservation districts, tribes, industry and nonprofits.¹⁰¹

The BLM has impermissibly disregarded such efforts, and failed to incorporate these facts in Chapter 3. In addition, there has been no “full and fair discussion” as to sage-grouse status as a sensitive species¹⁰² or on the adverse impacts that the onerous proposed restrictions will have in the planning area. Finally, the agencies have clearly failed to recognize the states’ primary authority over wildlife management and the County’s vital role in land use planning and conservation.

⁹⁶ DQA §515(a), OMB Guidelines, § 11(2), 67 Fed. Reg. at 8458.

⁹⁷ SWCA Environmental Consultants, *Evaluation of the NEPA Process as an Adequate Regulatory Mechanism to Eliminate or Minimize Threats to Greater Sage-Grouse Associated with Oil and Gas Development Activities*, http://www.westernenergyalliance.org/sites/default/files/images/WesternEnergyAlliance_GRSG_NEPA_Final_071414.pdf (July 2014).

⁹⁸ *Id.* at pages 1, 6, and 8.

⁹⁹ *Id.* at page 7-8.

¹⁰⁰ Western Governors Association, *Sage-Grouse Inventory*, http://westgov.org/images/dmdocuments/2014_WGA_Sage_Grouse_Inventory_Final_lo_res.pdf (Released April 2, 2015).

¹⁰¹ *Id.* at page 4.

¹⁰² See 40 CFR § 1502.1.

IV. Conclusion

As stated at the outset of these comments, despite our sincere efforts to coordinate with the BLM and participate as a Cooperating Agency in this process, it is evident our comments, local plans, and peer reviewed best available science provided to the BLM over the last three years have been summarily dismissed. Nonetheless, we offer this body of comments in our continued effort to participate in good faith in hopes that the BLM will consider and properly evaluate our comments as originally required by the BLM's own Instructional Memorandum 2012-044, NEPA, FLPMA, etc. As evident throughout these comments, it is unfortunate the BLM has failed to properly evaluate the No Action Alternative because existing rules, regulations, policies and local plans are more than adequate for the conservation of habitat and preservation of the species. We strongly urge BLM to re-visit its mandate to manage for multiple-uses and to adopt and incorporate Garfield County's Greater Sage-Grouse Conservation Plan and mapping as the best available science into the preferred alternative for lands contained within Garfield County managed by the Bureau of Land Management.

Very truly yours,



Tom Jankovsky, Commissioner

(On behalf of the Garfield County Board of County Commissioners)

cc: The Honorable John Hickenlooper, Governor, State of Colorado
The Honorable Cory Gardner, U.S. Senate
The Honorable Michael Bennet, U.S. Senate
The Honorable Scott Tipton, U.S. House of Representatives
The Honorable Bob Rankin, State House of Representatives
Neil Kornze, Director, Bureau of Land Management
Tom Tidwell, Chief, U.S. Forest Service
Erin Jones, NEPA Coordinator, BLM, Grand Junction
Mike King, Executive Director, Colorado Department of Natural Resources
Robert Broscheid, Director, Colorado Parks & Wildlife

Exhibits Contained in three Ringed Binders

Volume I

- A. Parachute – Piceance – Roan (PPR) Working Group Plan, April 20, 2008
- B. BLM Instructional Memorandum 2012-044, December 27, 2011
- C. Letter to BLM requesting Cooperating Agency Status & Coordination, February 14, 2012
- D. Letter to BLM regarding Garfield County Scoping Comments, March 20, 2012

- E. Resolution 2012-51: Garfield County Asserting Coordination, June 18, 2012
- F. Letter to BLM Director Helen Hankins requesting Coordination, June 18, 2012
- G. Garfield County Coordination Meeting Transcript, July 17, 2012
- H. Letter to BLM Director, Helen Hankins, August 13, 2012
- I. Garfield County Coordination Meeting Transcript, August 27, 2012
- J. Garfield County Coordination Meeting Transcript, September 5, 2012
- K. Letter to Jim Cagney from Governor Hickenlooper, January 14, 2014
- L. Garfield County Greater Sage Grouse Conservation Plan, March 18, 2013
- M. Letter to BLM Director, Helen Hankins, March 21, 2013
- N. Garfield County Coordination Meeting Transcript, April 4, 2013
- O. Letter to Jim Cagney on DEIS, April 18, 2014

Volume II:

- P. Garfield County Comments to BLM on Preliminary DEIS, April 19, 2013
- Q. Garfield County Commissioner Tom Jankovsky Congressional Testimony, June 4, 2013
- R. Letter to Regional Director Noreen Walsh, USFWS requesting Coordination, September 3, 2013
- S. Letter to Mike King, Colorado Department of Natural Resources, October 21, 2013
- T. Garfield County comments on the BLM DEIS, December 2, 2013
- U. Garfield County Commissioner Tom Jankovsky Congressional Testimony, April 8, 2014
- V. Garfield County Greater Sage Grouse Conservation Plan, as amended, November 17, 2014
- W. Letter to BLM Director, Ruth Welch, December 1, 2014

Volume III:

- X. Letter to BLM Director attaching DQA Challenge to County DEIS Comments, April 9, 2015
- Y. Garfield County Greater Sage Grouse Habitat Modeling Manuscript: *"Use of Modeling in a Geographic Information System to Predict Greater Sage Grouse Habitat"*, January 21, 2015
- Z. Data Quality Act Challenge to BLM on NTT Report, March 18, 2015
 - Exhibit A- The NTT Report Fails to Meet DQA Standards*
 - Exhibit B- Studies Cited in the NTT and COT Reports Fail DQA Standards*
 - Exhibit C- Studies that Were Not Included in the NTT and COT Reports*
 - Exhibit D- Peer Review and Information Quality Breakdown in an Endangered Species Act Decision: The Case of the Greater Sage-Grouse*
- AA. Data Quality Act Challenge to USFWS on COT Report, March 18, 2015
 - Exhibit A- The COT Report Fails to Meet DQA Standards*
 - Exhibit B- Studies Cited in the NTT and COT Reports Fail DQA Standards*
 - Exhibit C- Studies that Were Not Included in the NTT and COT Reports*
 - Exhibit D- Peer Review and Information Quality Breakdown in an Endangered Species Act Decision: The Case of the Greater Sage-Grouse*
- BB. Data Quality Act Challenge to USGS on the Monograph, March 18, 2015
 - Exhibit A- Ecology and Conservation of Greater Sage-Grouse: Landscape Species and Its Habitats, An Analysis of the four most influential chapters of the monograph*

Exhibit B- A Comprehensive Review of Greater Sage-Grouse: Ecology and Conservation of a Landscape Species and Its Habitats

Exhibit C- Peer Review and Information Quality Breakdown in an Endangered Species Act Decision: The Case of the Greater Sage-Grouse

- CC. Garfield County Greater Sage-Grouse Populations in the PPR/ State of Colorado
- DD. Garfield County CORA Request to CPW, March 5, 2013
- EE. CPW Response to Garfield County CORA Request, March 8, 2013
- FF. BBC Research Report Regarding the Economic Impact of Sage-Grouse Management
- GG. Comments on FEIS on BLM Comment Matrix