

Analysis of Compliance of the BLM’s Northwest Colorado Greater Sage-Grouse Draft LUPA/EIS (DEIS) with National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ), and the BLM’s own Policies and Procedures

November 26, 2013

[Analysis by Mary Darling (Darling Geomatics) in relation to the Draft LUPA/EIS and BLM 2013 Checklist for Use in Preparing National Environmental Policy Act (NEPA) Documents and for Complying with NEPA, Council on Environmental Quality (CEQ), and Departmental Procedures.]

As background, the BLM prepared a January 2013 memorandum to transmit guidance to be used by bureaus and offices to ensure uniform compliance with the policies and procedural requirements of NEPA, the CEQ regulations implementing NEPA, departmental regulations at [43 CFR Part 46](#), and the Departmental Manual at [Part 516 DM, Chapters 1-15](#). This analysis uses the NEPA checklist from the BLM Environmental Statement Memorandum to assess compliance.

1. NEPA Application Considerations

Does the decision involve a “major Federal action” that may have a “significant” impact on the quality of the human environment? ([40 CFR § 1502.3](#))

Analysis – Undisputedly – Yes.

Does the action fall into one of these categories?

A major Federal action does **not** include funding assistance solely in the form of general revenue sharing funds (e.g., funds distributed under the State and Local Fiscal Assistance Act of 1972, 31 USC 1221 et. seq.) with no Federal agency control over the use of the funds. Another example is Payments in Lieu of Taxes (or PILT) which are Federal payments to local governments that help offset losses in property taxes due to nontaxable Federal lands within their boundaries (31 USC 6901, et. seq.) ([40 CFR § 1508.18\(a\)](#)) Is the action one of these types?

2. Circumstances When There is a Major Federal Action, but NEPA Does Not Apply

Does the decision or action qualify as a major Federal action that has been specifically exempted by Congress from the usual compliance with NEPA requirements? (Consult with the Office of the Solicitor)

Analysis - No

3. Initial Development/Internal Scoping

Is there a proposal for a Federal action?

Analysis – Yes

Has the bureau formulated a concise “proposal” and conducted internal scoping to define potential effects and alternatives?

Analysis – Yes

Can the potential effects (impacts) of the proposal, and all feasible alternatives to it, be meaningfully evaluated?

Analysis – Yes

If not, review the proposal to determine the appropriate level of NEPA documentation or develop a better definition of the proposed action.

[\(43 CFR § 46.100\)](#)

Has the bureau or office developed a “purpose and need” statement?

Analysis – Yes

Is the proposal a major Federal action having the potential to significantly affect the quality of the human or natural environment?

Analysis – Not necessarily. The No Action Alternative (Current Management) can continue to be implemented without proposing a new major federal action. The GRSG and its habitat can and should be protected under the No Action Alternative. The EIS was unnecessary.

If so, is an environmental impact statement (EIS) planned?

Analysis – The Draft LUPA/EIS did not need to be planned. The agencies used a top down approach and Washington DC personnel dictated the preparation of new plans, regardless of the adequacy of existing regulatory mechanisms under the No Action Alternative.

When the USFWS attempted to analyze existing regulatory mechanisms to determine whether or not they were adequate to protect GRSG, USFWS did not direct BLM and USFS to create new plans with new regulatory measures. Instead, USFWS merely pointed out that they did not have the ability to assess regulatory mechanisms because of how the information was being reported.

As stated by USFWS at 75 FR 13976 – “the BLM ... reported information at a different scale than was used for their landscape mapping. Therefore, we lack the information necessary to assess how this

regulatory mechanism effects sage-grouse conservation... .”

As stated by USFWS at 75 FR 13980 “The land use planning process and other regulations available to the USFS give it the authority to adequately address the needs of sage-grouse, although the extent to which they do so varies widely across the range of the species. We do not have information regarding the current land health status of USFS lands in relation to the conservation needs of greater sage-grouse; thus, we cannot assess whether existing conditions adequately meet the species’ habitat needs.”

It seems clear from the Warranted but Precluded determination quoted above that USFWS was seeking evidence that the current regulatory mechanisms within BLM and USFS would be implemented and that the effectiveness of those mechanisms would be documented.

If not, why not?

Analysis – See above.

Has NEPA compliance already been completed for this action in a previous document?

Analysis – Yes. Both agencies completed previous NEPA documents with decisions that can continue to be implemented under the No Action Alternative.

4. Categorical Exclusions

Analysis – N/A

5. Deciding Between an environmental assessment (EA) or EIS

Analysis – N/A

6. Developing the EA ([43 CFR Subpart D](#))

7. Cooperating Agencies ([40 CFR §§ 1501.5](#) and [1501.6](#). See also [43 CFR § 46.230](#))

Have you invited eligible Federal, state, tribal and local governmental entities to become cooperating agencies (required for an EIS, or you must explain in the EIS why an eligible entity was denied cooperating agency status).

Analysis - Yes

As the lead agency, did you establish a formal cooperating agency/lead agency relationship with a Memorandum of Understanding, Memorandum of Agreement, or other document that formally delineates the commitments and expectations of the lead and cooperating agencies?

Analysis - Yes

8. Public Participation

Has a Notice of Intent to Prepare an Environmental Impact Statement been published in the Federal Register?

Analysis - Yes

Is there an alternative that is supported by the affected community and stakeholders? If so, is this the preferred alternative? ([43 CFR § 46.110](#))

Analysis – The affected community and stakeholders represented by Garfield County support the No Action Alternative. In the alternative to this action, the Garfield County Sage-Grouse Conservation Plan should have been analyzed and carried forward as the preferred alternative for the area within the jurisdiction of Garfield County. An alternative that represented the local perspective could have been developed by combining the locally developed sage-grouse plans into one alternative. However, this idea was rejected during the cooperative agency meetings and later in coordination meetings with Garfield County.

Is staff trained in public participation practices? If not, training should occur before any public meeting is held.

Analysis – No comment.

Has public scoping been planned? Initiated? Completed? If not, what kind of public involvement is anticipated or did occur? ([43 CFR § 46.435](#))

Analysis - Yes

9. Tiered Analysis ([40 CFR §§ 1502.20, 1508.28](#))

Did you consider using tiering from an analysis broader in scope, or from an existing programmatic EIS?

Analysis – No comment.

10. Incorporation by Reference

Did you consider incorporating a comparable analysis from a previous document?

Analysis – No comment.

Is the analysis over 10 years old? If so, is it still relevant? Document the relevance. If not, have you attempted to obtain relevant information that is available at reasonable cost?

Analysis – No comment.

Does the EIS make use of incorporation by reference whenever and wherever it will cut down on bulk without impeding agency and public review of the action?

[\(40 CFR § 1502.21\)](#)

Analysis - Yes

Has the incorporated material been accurately cited in the EIS and its content briefly described?
[\(40 CFR § 1502.21](#) and [43 CFR § 46.135\)](#)

Analysis - Yes

Is the material incorporated by reference reasonably available for inspection by potentially interested persons within the time allowed for comment? ([40 CFR § 1502.21](#))

Analysis – No. Many literature citations are only available online through research library subscriptions that the general public does not have access to. Others are not available unless purchased for considerable sums of money such as \$95 or higher.

Example - <http://sagemap.wr.usgs.gov/monograph.aspx>

“Pre-release of the 25 chapters formerly available on this web site occurred under special arrangements with the authors, the Cooper Ornithological Society, and the University of California Press. Per this agreement, pre-release chapters were removed when the book was published. The book is now available from the University of California Press and many major booksellers.”

So, after being paid once by a federal agency, some federal biologists allowed their publications to be locked in profit centers where the authors, the Cooper Ornithological Society (COS) and University of California Press (UCP) sell the publications for a considerable fee. The public cannot copy any text from the government authors/COS/UCP e-book version nor print any of its contents. This effectively limits distribution and restricts independent review while securing and increasing government authors/COS/UCP profits. Taxpayers paid for the production of almost all the referenced sage-grouse publications. This raises the question of whether the documents are a private product or a U.S. Government product since the taxpayers undoubtedly supported the production and publication that are now being sold online in a read-only format.

11. Incomplete or Unavailable Information ([40 CFR § 1502.22](#) and [43 CFR § 46.125](#)) If a bureau or office has evaluated reasonably foreseeable significant adverse effects on the human environment in an EIS and there is incomplete or unavailable information, has the bureau or office made it clear that the information is lacking?

Analysis – No – The there is a plethora of incomplete data, much of which is available, yet the document does not make it clear that the information is lacking. For example, the agencies used 1996 to 1998 federal wage data. Since there would be significant adverse effects to the socio-economic environment with any of the action alternatives, old economic data is unacceptable. The Draft LUPA/EIS did not discuss this weakness in the analysis.

The Draft LUPA/EIS contains incomplete data on private land and the socio-economic effects of each action alternative as the effects relate to private land and private industries, as well as how the action alternatives affect the local, regional, national and global economies.

The Draft LUPA/EIS contains incomplete information on the full extent of the significant adverse impacts to the local, regional, national and global economy from the loss of oil and gas, food production, jobs, etc.

12. Adopting another Agency's NEPA Document

Can another agency's NEPA document, whether an EA ([43 CFR § 46.320](#)) or an EIS ([40 CFR § 1506.3](#)), be adopted for the proposal under consideration? Does the analysis meet the standards of the CEQ regulations?

Analysis – The BLM and USFS had existing NEPA documents that they could have continued to utilize. The Draft LUPA/EIS was unnecessary. The Draft LUPA/EIS was put together too quickly and fails to analyze the adequacy of the No Action Alternative. Instead, the Draft LUPA/EIS uses a small number of recently written federal publications to make a strong federal case for a series of overly restrictive new federal policies that forsake anything except sage-grouse. The new federal policies ignore existing federal laws, regulations, and policies as well as state and local laws and private property rights. The Draft LUPA/EIS does not meet the standards of the CEQ regulations.

Have you independently reviewed and evaluated the analysis and assumed the responsibility for scope and content of the document?

Analysis – The agencies did NOT review and evaluate the analysis. Instead, BLM and USFS condoned a cut and paste process that allowed for incorporation of only a limited number of publications from certain government agencies. The governmental agency publications including the NTT report started with the end in mind (satisfy the litigious environmental groups by stopping oil, gas, mining, livestock grazing, etc. in eleven western states), then cherry picked any data that fit their “sky is falling” paradigm. This process created a flawed NEPA analysis.

As a case in point, information obtained from a FOIA response by Department of the Interior, Bureau of Land Management, and Office of the Solicitor to a request by Idaho Governor Otter's office (herein referred to as NTT FOIA Package) included an email stating the following:

“If we don't have the science I'm assuming it will be our best professional judgement. So, if you could get each of you to take a shot and identify a research citation that supports the biological recommendation along with the full citation I would greatly appreciate the help. Many of you were authors/editors of the SAB and/or an editor of a recent book, so you will have a much better handle on the recent literature than I. I will put together the literature cited and then can incorporate those citations into a more “final document” along with the literature cited. I would like to get this to Raul before COB Thursday. Thanks in advance.

Tony Apa

Sage-Grouse Research Biologist

Colorado Parks & Wildlife

Northwest Region Service Center”

BLM and USFS presented impacts (i.e. environmental consequences) by resource and alternative in the Draft LUPA/EIS, however the Draft LUPA/EIS fails to include any detailed or meaningful analysis of the

impacts to resources under any of the action alternatives, especially the socioeconomic impacts of withdrawing lands from locatable and saleable mineral development, livestock grazing, ROWs, etc. (See Draft LUPA/EIS Chapter 4).

The Draft LUPA/EIS authors can only speculate impacts because good science does not exist to back up the claims of benefits to GRSG from prohibitions of land uses. The agencies need to slow down and gather data before prohibiting the number of land use activities listed in the action alternatives.

As pointed out in the NTT FOIA Package:

“In several places (i.e. page 11) we noticed that there are references to only a few literature citations that attempt to portray the impacts to a program (lands, minerals, etc.) and as far as we know, there really are no studies that have been completed that show this direct correlation.”

The Draft LUPA/EIS fails to meet NEPA in that the authors do not discuss or analyze impacts the proposed withdrawals, segregations, and restrictions will have on GRSG except to say they will be beneficial. The Draft LUPA/EIS provides no quantitative analysis, data, convincing rationale or evidence of this assertion.

There is no attempt to quantify the impacts whether beneficial or adverse. Instead broad generalizations are used. Garfield County opposes any impact analysis that does not quantify the cumulative impacts the proposed management decisions will have on all uses of public lands, including locatable and saleable minerals exploration and development, livestock grazing, and ROWs. Detailed discussion of the impacts to locatable and saleable mineral operations and development, as well as to other land uses, must be thoroughly analyzed and developed, otherwise the Final LUPA/EIS documents will be vulnerable to legal challenges.

In Chapter 4, the Draft LUPA/EIS states there are numerous short-term negative impacts to GRSG, yet long-benefits. However, the Draft LUPA/EIS authors fail to explain the rationale for concluding that sage-grouse will benefit in the long- term – but certainly not in the short term. As an example, fire suppression and livestock grazing restrictions are likely to increase the potential for catastrophic fires; which would increase the potential for the spread of invasive species, which would then take decades to restore sagebrush ecosystems after wildfires. The impact analysis is fatally flawed and must be revised before the final EIS documents are published.

Alternatives B and D are based on recommendations in the NTT Report. These alternatives lead to an absurd outcome that makes hands-off, complete and full preservation of sagebrush habitat the agencies primary objective – rather than documenting and implementing existing regulatory mechanisms to protect sage- grouse populations and their habitat now and into the future while maintain habitat for other species and allowing multiple use. Garfield County opposes this misguided objective and urges BLM and USFS to recognize that they already have the regulatory measures to conserve GRSG habitat and the opportunity to minimize the likelihood of the USFWS determining it is necessary to list the GRSG as a threatened or endangered species.

The likelihood that USFWS will determine it is necessary to list the GRSG increases significantly if BLM and USFS fail to develop appropriate conservation measures to address the fire and invasive species cycle – one of the main threats to sage-grouse habitat range wide. Unfortunately, the conservation

measures in the NTT Report do not mainly address habitat threats due the wildfire – invasive species cycle and focus inappropriately on restrictions and prohibitions on land uses and the regulated community. Alternative C is especially egregious in that it recommends complete removal for livestock from the land without adequately addressing the increased fuel loads, increased fire risks, and increased noxious weed risks as well as decreased grass and forb vigor, decreased insect production, and ultimate destruction of GRSG habitat.

The assumptions used in the Special Status Species analysis are flawed, partly due to the way in which the NTT Report mischaracterizes other studies in order to support arbitrary habitat and disturbance thresholds. The analysis also contains broad generalizations that the level of disturbance directly correlates to the level of adverse impacts to species (Draft LUPA/EIS Ch. 4), but does not provide data to support that assertion. Based on the above mentioned flaws, the Draft LUPA/EIS is “inadequate as to preclude meaningful analysis” (40 CFR §1502.9(a)); and therefore the BLM and USFS must prepare and re-issue a revised draft which provides the analysis necessary.

Additionally, the CEQ regulation at 40 CFR § 1502.16(c) requires BLM and USFS to include discussion of “[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies, and controls for the area concerned.” Garfield County contends that the surface use restrictions and land withdrawals proposed within sage-grouse habitat under Alternatives B, C and D described in the Draft LUPA/EIS conflict with BLM’s own policy in Manual 6840, USFS’s policies in Manual 2670, the Colorado Public Land Health Standards, the General Mining Law, and BLM’s multiple use mandates under FLPMA. The Draft LUPA/EIS contains fatal flaws which render the document both inadequate and inconsistent with existing laws and policies.

The artificial construct of a monumental conflict between sage-grouse conservation and mineral, oil and gas, livestock grazing and other commodity development in the planning area is merely a ruse. The real issue is land control. Certain environmental groups have lobbied, become politically influential, and are attempting to have their preservationist philosophies implemented via abuses of the Endangered Species Act. Unfortunately, the Draft LUPA/EIS fails to recognize and disclose this conflict.

The Draft LUPA/DEIS fails to adequately address mitigation and new technologies. The oil and gas industry has developed significantly since the original drilling program studies by Holloran (2005) at the Pinedale Anticline in Wyoming. However, the Draft LUPA/DEIS quotes Holloran (2005) over and over as if there is no new data.

Instead they should reference <http://www.pinedaleonline.com/news/2012/10/GreaterSageGrousestu.htm>:

“Unlike the preliminary data presented in the 2008 and 2009 annual reports which suggested that sage-grouse were avoiding habitats near natural gas development with relatively high levels of activity, the 2009-2010 data suggests that well pad density may be a bigger factor than human activity in avoidance of winter habitats by sage-grouse. However, the final report also suggested that collecting liquids related to natural gas development off-site via an LGS may reduce the impact of development to sage-grouse habitat selection. An LGS, which Ultra, Shell and QEP Energy Company proposed and are implementing on the Anticline, is a system of

pipelines used to move condensate and produced water from the well pads to centralized gathering facilities and trunk pipelines. The LGS system largely replaces the trucks that were formerly used to haul fluids.

Matt Holloran, Senior Ecologist for WWC said, "Sage-grouse certainly appear to be avoiding areas with high well pad densities during the winter. However, the results additionally suggest that sage-grouse may be avoiding well pads with decreased human activity to a lesser degree than those with more activity. Given the potential biological importance of decreased functional habitat loss as a result of management actions and the fact that many wells on the study area were converted to LGS during the study—potentially influencing our ability to detect an effect given the strong fidelity to seasonal ranges exhibited by the species—a follow-up investigation of population-level reaction to LGS may be warranted in 5 to 10 years."

"The data from the previous years' studies must be taken into account when looking at the 2009-2010 data in the final report regarding potential benefits to sage-grouse distribution from the use of liquids gathering systems," said Aimee Davison, Senior Regulatory Specialist for Shell. "We are convinced that the previous years' data showing the benefits of the LGS to winter habitat selection by sage-grouse remains important, particularly since the LGS was only recently installed in many of the areas studied. The LGS is in its infancy and the benefits to all wildlife including sage-grouse as a result of the cumulative decrease in human activity must be viewed in the long term."

It is estimated that once the LGS is operational field-wide it will reduce truck traffic by 165,000 trips per year when the field is at maximum production.

Using radio-transmitting collars and data-loggers, sage-grouse presence was recorded at defined habitat patches on the Pinedale Anticline. The study compared habitat containing pads with active winter drilling, pads both with and without LGS, plowed main haul roads, and control areas. Researchers studied the length of time and number of visits sage-grouse made to the distinct habitat patches relative to the level of and type of development activity occurring near these patches."

Detailed discussion of the impacts to each of the resources with respect to the proposed mitigation measures for sage-grouse found throughout the Draft LUPA/EIS must be thoroughly developed and analyzed before the Final LUP/EIS is published.

BLM and USFS have failed to clearly indicate a Preferred Alternative for Garfield County to analyze. Instead, the agencies state that Alternative D is the agencies' preliminary preferred alternative. The Draft LUPA/EIS states that *"Alternative D is not a final agency decision but instead an indication of the agencies' preliminary preference that reflects the best combination of decisions to achieve BLM and USFS goals and policies, meet the purpose and need, address the key planning issues, and consider the recommendations of cooperating agencies and BLM and USFS specialists. The alternatives present a range of management actions to achieve goal of Greater Sage-Grouse conservation for the BLM Colorado Northwest District and the Routt National Forest. Major planning issues addressed include realty actions, oil and gas, minerals, travel management, grazing, and fuels management."* (Draft LUPA/EIS page xv), emphasis added).

Garfield County recognizes that agencies are only required to identify a Preferred Alternative at the

time the final LUPA/EIS is published (40 CFR § 1502.14(e)); however Garfield County contends that if there are any changes to the “Preliminary Preferred Alternative” or if a new alternative is developed, chosen and published at the time of the final NEPA document, public involvement will be precluded and the detailed analysis/disclosure required under NEPA, will not be met. The agencies will not have complied with their procedural obligations under NEPA.

BLM and USFS must provide detailed analysis that supports why the No Action or Preferred Alternative is in the best interest of the agencies as well as the public. BLM’s Land Use Planning Manual and Land Use Planning Handbook, II.A.7, pg. 22 (Rel. 1-1693 03/11/05) provides that BLM must identify how the Preferred Alternative best meets the multiple use and sustained yield requirements of FLPMA. BLM has failed to demonstrate how any of the alternatives best satisfy statutory requirements; balance BLM goals, objectives, and policies; and which alternative represents the best way to satisfy the Purpose and Need, address key issues, and consider cooperating agencies’ recommendations.

The USFS Land Use Planning Manual and Land Use Planning handbook procedures (FSM 1950 and FSH 1909.15) provide that USFS “*must provide an evaluation of alternatives and identification of a preferred alternative to the extent required by NEPA, CEQ regulations, and Forest Service environmental policies.*” As discussed below, the USFS failed to provide adequate evaluation of alternatives and adequately identify the preferred alternative as required by NEPA, CEQ and USFS policies.

Alternatives B, C and D do not satisfy statutory requirements, do not balance BLM and USFS goals, objectives and policies, and are not the best fit for the Purpose and Need. The lack of meaningful analysis contained in the Draft LUPA/EIS constitutes a serious shortcoming that must be addressed. Consequently, the Draft LUPA/EIS is “inadequate as to preclude meaningful analysis” (40 CFR §1502.9(a)); and therefore the BLM and USFS must prepare and re-issue a revised draft which provides the analysis necessary to support each of the alternatives, including identifying the Preferred Alternative.

13. EIS Format and Content

The following format in the prescribed order is recommended. Have you included all of the following components? Does the EIS contain the elements from the list below in the prescribed order? ([40 CFR § 1502.10](#)) Explain any deviation from this format and these elements.

- Cover sheet (not to exceed one page)
- Summary
- Table of contents
- Purpose of and need for action
- Alternatives including proposed action
- Affected environment
- Environmental consequences
- List of preparers
- List of Agencies, Organizations, and persons to whom copies of the statement are sent
 - Index
 - Appendices (if any)

Does the “purpose and need” statement clearly specify the underlying need for why the agency is

initiating the proposed action and the reasons for the choice of alternatives including the proposed action? ([40 CFR § 1502.13](#); [43 CFR § 46.420\(a\)](#)) Does the range of alternatives, to a large extent, meet the objectives of the purpose of and need for the plan? ([40 CFR § 1502.14](#); [43 CFR § 46.420\(c\)](#))

Analysis – Draft LUPA/EIS pages xxvi - xxvii states:

*“The purpose of this LUPA is to identify and incorporate appropriate GRSG conservation measures into LUPs. In compliance with BLM Instruction Memorandum 2012-044, BLM National Greater Sage-Grouse Land Use Planning Strategy (BLM 2012a) (**Appendix A**), the measures to be considered include appropriate conservation measures developed by the National Technical Team (NTT). The BLM and USFS will consider such measures in the context of their multiple-use missions and propose to incorporate measures that will help conserve, enhance, and/or restore GRSG habitat by reducing, eliminating, or minimizing threats to that habitat. For purposes of this planning effort, conservation measures include both restrictions on land uses and programs that affect GRSG and measures to reduce the impacts of BLM/USFS programs or authorized uses. This would be done in concert with the BLM and USFS’s allocation of resources, in accordance with the mandates of FLPMA and NFMA.*

The need for this LUPA is to establish regulatory mechanisms in BLM and USFS LUPs to respond to the recent “warranted, but precluded” ESA listing petition decision from USFWS (75 Federal Register 13910, March 23, 2010). In its finding on the petition to list the GRSG, USFWS identified adequacy of regulatory mechanisms as a major threat. The USFWS also identified the principal regulatory mechanism for the BLM and USFS is conservation measures embedded in LUPs.

In addition, the purpose of this LUPA is as follows:

To reevaluate existing conditions, resources and uses

- To reconsider the mix of resource allocations and management decisions designed to conserve and enhance GRSG habitat and to eliminate, reduce, or minimize threats to GRSG PPH and PGH on BLM-administered and National Forest System lands within the Northwest Colorado District, in accordance with FLPMA, Multiple-Use Sustained-Yield Act of 1960, and applicable laws*
- To resolve multiple-use conflicts or issues between other resource values and resource uses in GRSG habitat; the resulting Northwest Colorado GRSG LUPA will establish consolidated guidance and updated goals, objectives, and management actions for the BLM-administered and National Forest System lands in the GRSG habitat; it also will address issues that have been identified through agency, interagency, and public scoping efforts*
- To disclose and assess the direct, indirect and cumulative impacts of the past, present, and reasonably foreseeable future actions that would result from GRSG management actions, identified in the alternatives, in accordance with the requirements of the National Environmental Policy Act (NEPA), its implementing regulations, and other applicable laws.”*

Garfield County contends that the Draft LUPA/EIS does not clearly specify the underlying need for why the agencies are initiating the proposed action. Both BLM and USFS discarded their own policy manuals including BLM Manual 6840 (effective December 12, 2008) and USFWS Manual 2670 (effective May 3, 2006), which already mandated protection of GRSG and other candidate species. Instead, the agencies arbitrarily and capriciously, without reasonable explanation, impose a

completely new regulatory framework without providing a reasonable explanation for doing so.

BLM did not need to write IM 2012-044 or the NTT Report since BLM Manual 6840 already mandated protections of GRSG:

BLM Manual 6840 states that the “purpose of this manual is to provide policy and guidance for the conservation of BLM special status species and the ecosystems upon which they depend on BLM-administered lands. BLM special status species are: (1) species listed or proposed for listing under the Endangered Species Act (ESA), and (2) species requiring special management consideration to promote their conservation and reduce the likelihood and need for future listing under the ESA, which are designated as Bureau sensitive by the State Director(s). All Federal candidate species, proposed species, and delisted species in the 5 years following delisting will be conserved as Bureau sensitive species.”

The objectives of BLM Manual 6840 special status species policy are:

“A. To conserve and/or recover ESA-listed species and the ecosystems on which they depend so that ESA protections are no longer needed for these species.

B. To initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA.
“

FSM 2670 already requires an analysis for federally listed or proposed species to determine whether the action may affect the species or critical habitat.

“The purpose of this analysis for sensitive species is to determine whether the action will contribute toward federal listing or loss of viability in the Planning Area. As part of the interdisciplinary process of designing alternatives under NEPA, develop design criteria to meet objectives for threatened, endangered, proposed, and sensitive species, and identify any necessary mitigation measures. The analysis must consider direct, indirect, and cumulative effects of the proposed action and any alternatives on the species and its habitat.

Factors that may be considered in the analysis of effects include: the proportion of the species’ total population and range that is in the analysis area or is affected by the action; whether the habitat affected by the action is necessary for critical life functions (for example, feeding, breeding, nesting); timing, frequency and duration of human activity, especially as it relates to significant behavioral modification; any anticipated reductions in numbers or distribution of the species; and the potential of the species to recover from short-term impacts.

Based on the analysis, make a determination of the effects of each of the alternatives on federally listed or proposed species and critical habitat, and on Region 2 sensitive species. Use the appropriate language for each federally listed species, critical habitat, proposed species, proposed critical habitat (FSM 2671.43 through 2671.45), and sensitive species, and summarize the rationale for each.”

The BLM and USFS manuals clearly provide adequate regulatory mechanisms to protect GRSG as well as other sensitive species (defined by both agencies to include candidate species including GRSG).

Have proposals which are related closely enough to be, in effect, a single course of action been analyzed in a single EIS? If not, why not?

Analysis – No comment.

Was scoping initiated early and was it an open process for determining the scope of issues to be addressed and for identifying the significant issues related to the proposed action? ([40 CFR § 1501.7](#))

Analysis – Scoping was initiated early and was open. However, the agencies ignored public input including input provided by Garfield County in written documents and five coordination meetings. Instead, the BLM forced a top-down NTT plan that was put together by a team that prescribed measures that they knew violated the law. As clearly stated in NTT FOIS Package emails between NTT members:

“But, does the NTT really want to recommend something that is blatantly illegal ”

Are the alternatives and the proposed action clearly presented and capable of being compared as to their differing impacts? ([40 CFR § 1502.14](#))

Analysis – No - The alternatives and the proposed action are not clearly presented. Readers and the agency decision makers are not provided adequate information to make an informed decision. The alternatives are not presented in adequate depth to compare impacts. The impact analysis is superficial and meaningless.

Do all alternatives sharply define the issues and show a clear basis for choice among them?

Analysis – No – The three action alternatives fail to define virtually any issue other than agenda driven single species protection at the expense of all else. All three action alternatives are bad choices. The only good choice is the No Action Alternative.

Do the decision maker and the public understand the options based on the comparison made among the alternatives?

Analysis – No – The comparison of alternatives is woefully inadequate. Very few impacts were identified, whether positive or negative. Impacts that were identified were too general in nature. Most impacts were a cut and paste from a variety of irrelevant documents that do not apply to the unique nature of Garfield County and other parts of northwest Colorado.

The analysis failed to use the best available data. For example, the Draft LUPA/EIS used 1996 - 1998 federal wage data in the socio-economic impact section instead of 2012 data. Use of 15-16 year old federal data does not provide the public the ability to understand the options based on a comparison of alternatives.

Have all reasonable alternatives, including, where applicable, alternatives employing adaptive management strategies, been rigorously explored and objectively evaluated? (See [40 CFR § 1502.14](#) and [43 CFR § 46.145](#))

Analysis – No. The Draft LUPA/EIS failed to analyze the No Action alternative adequately. Instead of explaining the large number of existing regulatory mechanism including laws, regulations, and policies available to the agencies under the No Action alternative, the agencies summarily dismissed the alternative. Said dismissal was arbitrary and capricious, in violation of NEPA.

Were any alternatives, identified during the scoping process, eliminated from detailed study? If so, have the reasons been thoroughly explained? ([40 CFR § 1502.14](#))

Analysis – Yes and no. The local plan alternative was rejected during the scoping process, but there is no discussion as to why this was done in the DEIS. Garfield County requested that its sage-grouse plan be included as an alternative for the area within the counties jurisdiction. This plan could have been combined with other similar local plans that together would have covered the entire planning area, creating an alternative with conservation measures designed for each unique habitat, instead of the one-size fits all 11 state plan represented through the other three action alternatives. Although this idea was advocated by the local governments in the cooperative agency meetings and in coordination with Garfield County, it was summarily rejected. Had a local plan alternative that combined the local plans been carried forward, fully discussed and rigorously analyzed, the public and decision makers would have had the opportunity to compare conservation measures significantly different than the other alternatives and therefore compare the restrictions, impacts and benefits. A supplemental statement should be prepared that carries forward this alternative. It is a reasonable alternative that meets all the requirements of the purpose and needs statement and complies with all federal, state and local laws.

Were the alternatives chosen for detailed study awarded sufficient analysis to allow proper evaluation of their comparative merits, including a comparison of potential impacts and environmental consequences?

Analysis – No. Alternatives were inadequately analyzed. Proper evaluation of their comparative merits including potential impacts and environmental consequences was impossible. The Draft LUPA/EIS was quickly put together through a cut and paste process that is occurring across eleven western states. The superficial, general analysis presented throughout the Draft LUPA/EIS fails to comply with NEPA.

Did you include any reasonable alternatives that are not within the jurisdiction of the lead agency? If not, why not? These alternatives, too, should be included.

Analysis – The Draft LUPA/EIS failed to include the Garfield County Greater Sage Grouse Conservation Plan in an alternative. Instead, the agencies merely include the County Plan as an appendix for the public to read. The plan is scientifically based and needs to be included in the next version of the Draft LUPA/EIS.

Did you include a “no action” alternative? (See [40 CFR § 1502.14\(d\)](#) and [43 CFR § 46.30](#)).

Analysis – Though the LUPA/DEIS included a “no action” alternative, as described above, the no action alternative was not seriously considered.

Does the EIS succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration? ([40 CFR § 1502.15](#))

Analysis – No – the socioeconomic environment is not adequately described or analyzed.

Does the environmental consequences section include the environmental impacts of the alternatives and the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented? ([40 CFR § 1502.16](#)) This section should not duplicate discussions in the comparison of alternatives section. (See [40 CFR § 1502.14](#))

Analysis – The sections on unavoidable adverse environmental effects and irreversible and irretrievable commitments of resources is limited to two pages (Draft LUPA/EIS Pages 917-918). The section on unavoidable adverse environmental effects does not discuss the significant unavoidable adverse socioeconomic effects that would occur under any of the action alternatives. The unavoidable adverse environmental effects analysis does not meet NEPA.

The section on irreversible and irretrievable impacts is woefully inadequate in its discussion of socioeconomic impacts and needs to be rewritten to detail the numerous significant socioeconomic impacts that would occur with any of the action alternatives. The irreversible and irretrievable impact analysis does not meet NEPA.

Have you considered and included any needed mitigation? ([40 CFR §§ 1502.14\(f\)](#) and [1508.20](#)) See CEQ's January 14, 2011, memo on [Appropriate Use of Mitigation and Monitoring and Clarifying Appropriate Use of Mitigated Findings of No Significant Impact](#).

Analysis - The Draft LUPA/EIS includes Appendix I - Required Design Features, Preferred Design Features, and Suggested Design Features Regional Mitigation Strategy. The appendix fails to discuss mitigation measures available under the No Action Alternative and lists a litany of overly restrictive prohibitions that would serve to unnecessarily destroy the economy of Garfield Colorado and all NW Colorado.

Is the draft more than 150 pages? ([40 CFR § 1502.7](#)) Why is this length necessary? Is it possible to use tiered analyses? Is it possible to incorporate by reference?

Analysis - The draft includes 1,099 pages in the Draft LUPA/EIS plus 541 pages of appendices. This lengthy 1,640 page document is unnecessary in light of the fact that current management within the No Action Alternative provides adequate regulatory mechanisms to protect GRSG.

Did you make the draft EIS available for public review and invite comments? ([40 CFR §§ 1503.1–1503.3](#))

Analysis – The 1,660 page Draft LUPA/EIS was made available for public review but due to complexities and inadequacies within the document insufficient time was granted to fully assess deficiencies.

Did you allow at least 45 days for public comment? ([40 CFR §§ 1506.10\(c\)](#) and [\(d\)](#)) If not why not (must be a compelling reason)?

Analysis – Though more than 45 days was allowed, it was insufficient due to the large size of the Draft LUPA/EIS.

Did you respond to all substantive comments in your final document? How? Did you revise relevant analyses, introduce new data and findings, or provide the basis for refuting a comment? ([40 CFR § 1503.4](#))

Analysis – Not yet applicable.

Based on the responses to comments, are the changes to the final LUPA/EIS confined to minor corrections? Do the changes warrant preparing an abbreviated final EIS?

Analysis – Not yet applicable.

Does the cover sheet include a list of the responsible agencies including the lead agency and any cooperating agencies? ([40 CFR § 1502.11\(a\)](#))

Analysis – Not yet available.

Does the cover sheet include the title of the proposed action that is the subject of the EIS? If appropriate, the titles of related cooperating agency actions should be included, together with the State(s) and county(ies) (or other jurisdiction, if applicable) where the action is located? ([40 CFR § 1502.11\(b\)](#))

Analysis – Not yet available.

Does the cover sheet contain the name and complete contact information of the person who can supply additional information about the EIS? ([40 CFR § 1502.11\(c\)](#))

Analysis – Not yet available.

Does the cover sheet indicate the designation of the EIS as a draft, final, or draft or final supplement?

Analysis – Not yet available.

Does the cover sheet include a one paragraph abstract of the EIS? ([40 CFR §§ 1502.11\(d\), \(e\)](#))

Analysis – Not yet available.

Does the draft EIS identify the agency's preferred alternative or alternatives, if one or more exists?

Analysis – The Draft LUPA/EIS is vague on whether the "Preliminary Preferred Alternative" will be chosen as the preferred alternative in the Final LUPA/EIS.

Does the final EIS identify such alternative unless another law prohibits the expression of such a preference? ([40 CFR § 1502.14\(e\)](#)) Is there a reason why such an alternative may not have been

identified in either the draft or final EIS?

Analysis – The FEIS is not yet available.

Is the treatment of the environmental consequences scientific and analytical?

Analysis – The treatment of environmental consequences is not scientific and analytical. Instead the agencies choose one overly restrictive alternative from environmental groups and two NTT alternatives. All three action alternative were solely focused on GRSG. The environmental consequences of the no actions alternative were vague, general and biased. The environmental consequences for the action alternatives were a series of cut and paste statements with little true science or analysis.

OLD

NEW

[\(40 CFR § 1502.16\)](#) Does the analysis focus on significant issues and support the comparisons among the alternatives? Can readers make an informed comparison among the alternatives based on the scientific analysis of the environmental consequences associated with each alternative?

Analysis – The only issue addressed in any detail in the Draft LUPA/EIS was the GRSG. The issue is one that was manufactured by environmental groups to stop oil and gas development, livestock grazing, and other land uses. The issue is one of public policy, not biology.

The GRSG is a surrogate for protectionism. The problem is that almost any species in the USA can be used to stop economic development if the Sagebrush Sea / Save the Sage-Grouse Campaign is successful. Every species has cycles – every species has good and bad years. In any given year some subpopulations of the GRSG and every other wild animal in the USA will be stable or increasing, while other subpopulations are declining. For the GRSG, populations are related to predator cycles – as coyotes, ravens, foxes, badgers, and other predators’ peak in their cycle, GRSG decline. As prey species decline, predators decline, then the cycle repeats itself. Droughts, fires, sagebrush decadence, and many other factors influence sage-grouse cycles.

The LUPA/DEIS needs to be rewritten to address adverse consequences to other species if any of the action alternatives are chosen. As written, the DEIS fails to address the environmental and socioeconomic consequences of single species management. What happens to pinyon-juniper dependent species if their habitat is reduced to create more sagebrush habitat, as the Draft LUPA/DEIS proposes? Will the ferruginous hawk be listed as an endangered species because the pinyon-juniper forests that this hawk depends on are bulldozed to provide more sagebrush habitat? The same exact environmental groups that want to stop oil, gas, mining, agriculture, livestock, and other resource management through the GRSG have already petitioned USFWS to list ferruginous hawks.

What happens next year when the environmental groups choose their next campaign? Will the BLM and USFS be absorbed by the National Park system and the United States become a tourist nation with no industry?

The LUPA/DEIS fails to address the consequences of loss of heating fuel for the USA. Where will Colorado and the rest of the USA obtain heating fuels as oil and gas development projects are shut down in eleven western states? The environmental community and EPA have attacked coal. Now there is an attack on natural gas via the GRSG. The LUPA/DEIS must discuss where the USA will get

fuel to heat houses and commercial buildings. What products will need to be imported? What will the effect on global resources be if countries without environmental regulations export heating fuels to the USA?

The EIS will also need to discuss the nationwide consequence of this type of abuse of the Endangered Species Act. The prohibitions proposed in all action alternatives in reaction to the threat of listing the GRSG, a wide spread prey species that fluctuates as broadly in population numbers as rainfall fluctuates, is absurd.

The precedent setting consequences of all action alternatives needs to be addressed. What species will environmental groups choose next if it is this easy to create an artificial crisis based on quoting Holloran (2005) in regard to outdated Wyoming Pinedale Anticline well pad and road data and other site specific examples of old well drilling methods to predict a hypothetical crisis that cannot and will not occur in the future.

Have you properly acknowledged and/or referenced all sources of data and scientific findings used in the analysis?

Analysis: No. See discussion above.

Does the environmental consequences section clearly show the impacts likely to be associated with each of the impact producing factors that would occur from the adoption of any of the studied alternatives? Is there a clear demonstration of cause and effect?

Analysis: No. See discussion above

Is there a clear discussion of any adverse environmental effects which could not be avoided if the proposal or any of the alternatives were implemented? ([40 CFR § 1502.16](#))

Analysis: No. See discussion above

Is there a clear discussion of the relationship between short-term uses of the human and natural environment and the maintenance of long-term productivity? ([40 CFR § 1502.16](#))

Analysis: No. This discussion is absent from the DEIS. The analysis focuses on impacts to the “natural environment,” but fails to consider the impacts to the “human environment.” For instance, no analysis is made of the increased threat to human life and property that will take place if fire fighting resources are placed near priority sage-grouse habitats instead of being prioritized for the protection of human life. This is a major policy sift which will have devastating consequences to the communities that surround and support the sage-grouse habitat. This should have been disclosed and analyzed. This is but one example of the failure of the DEIS to consider and analyze the impact on the human environment, whether this be the direct, indirect or cumulative impacts, or whether this be the short-term use and long term productivity of the human environment. The DEIS completely fails to analyze and disclose the impact on the human environment as defined at 40 CFR 1508.14.

Did you include a necessary discussion of any irreversible or irretrievable commitment of resources which would result if the proposal were implemented? ([40 CFR § 1502.16](#))

Analysis: No. See discussion above.

Do all analyses of the environmental consequences include an even-handed treatment of all alternatives including the proposed action and the “no action” alternative although one or more of the alternatives may be unlikely (or less likely) to be selected?

Analysis. Absolutely not. The no action alternative and conservation measures already authorized to protect the sage-grouse are not described in the same detail as the three action alternatives, and therefore is not analyzed in the same detail. We believe this was a deliberate decision of the lead agency so as to influence the public and decision makers to support the three more restrictive alternatives.

Did you discuss the direct effects, the indirect effects, and the cumulative effects and their significance? ([40 CFR §§ 1502.16, 1508.8](#))

Analysis. No. The direct, indirect and cumulative effects on the “human” and environment specific to the productive use industries and the communities which support these industries were not adequately discussed. Again, we believe this was a deliberate effort to mislead the public and decision makers into believing the impacts of the three action alternatives would be minimal. Had a full and rigorous analysis been done, it is likely the public would not support any of the three action alternatives, and a more balanced alternative, such as the Garfield County SG Plan would be supported, or the no action alternative would have been preferred.

Is there an analysis of the possible conflicts between the proposed action and any objectives of the Federal, regional, State, local or Indian tribal land-use plans, policies, and controls for the area concerned? ([40 CFR § 1502.16\(c\)](#))

Analysis: No. There is no analysis of the possible conflicts between the proposed action and the Garfield County Sage Grouse Plan, nor special districts plans such as the Hospitals, Cities, and Fire Districts. There are numerous conflicts between the proposed action and the local plans, but no effort has been made to resolve or analyze these conflicts. Garfield County pointed out several of these conflicts in their scoping comments which were submitted according to the lead agency deadlines prior to the release of the DEIS. Although the lead agency had specific inconsistencies identified in these comments, they failed to address any of the conflicts in the DEIS. This is a significant flaw in the DEIS. NEPA requires these conflicts to be discussed and analyzed so that the public and decisionmakers can make an object and informed decision about the appropriateness of the action and the differences between alternatives. We believe that this was not an oversight of the lead agency, but a deliberative decision to mislead the public and decision makers about the true impacts of their proposed action.

Is there a discussion of the energy requirements and conservation potential of the various alternatives and mitigation measures? ([40 CFR § 1502.16\(e\)](#))

Analysis: The DEIS fails to properly consider the impact of preventing access to the energy stores, namely oil and gas production, within the sage-grouse habitat. As discussed above, neither the short-term or long-term impact of preventing extraction of these resources has been considered.

Is there a discussion of natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures? ([40 CFR § 1502.16\(f\)](#))

Analysis: No. See discussions above.

Does the EIS discuss urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures? ([40 CFR § 1502.16\(g\)](#))

Analysis: The DEIS fails to discuss and consider the impact on the built environment. See discussion above.

In the analysis, were any mitigation measures not already included in the proposed action or alternatives discussed? Did you include a means to mitigate adverse environmental impacts if not otherwise fully covered elsewhere? ([40 CFR § 1502.16\(h\)](#))

Analysis: No. There is no clear discussion on what mitigation will be utilized to reduce impacts.

Have the mitigation measures beyond those required by applicable Federal, state, and local regulation been described in sufficient detail to allow assessment of their potential effectiveness to reducing any impacts?

Analysis: No. There is limited information available on what mitigation will be used and how this will be employed, who will be making the analysis, i.e. the producer or the regulating agency, how data will be collected to monitor the impacts, among other key questions. Although NEPA requires that the mitigation to be utilized be clearly explained in the DEIS, this analysis fails to provide this information.

Is the EIS a “full disclosure” document? Are all major points of view on the environmental impacts and the alternatives, including the proposed action discussed appropriately?

Analysis: No. Although NEPA requires that the conflicts with local government be identified and resolved, that the analysis of the impacts include those at the local level, not just a regional level, these requirements were not fulfilled. Garfield County attended every cooperating agency meeting except one held to prepare the DEIS and also initiated five coordination meetings with the lead agency and other agencies in an effort to get the local impact of the proposed action considered and analyzed in the DEIS. However, these efforts were rejected and the Northwest Colorado BLM Director stated to Garfield County that he would not be including an alternative that represented the local position. The only representation of the local position has been relegated to an appendix with no analysis. We find this to be a deliberate decision to give the appearance of considering the local position while not providing any true analysis or representation of that position in the alternatives carried forward.

Is it written in plain language? ([40 CFR § 1502.8](#)) Were graphics used to ensure brevity and to enhance analytical adequacy? Were the graphics readily understandable to the general public?

Analysis: No. Data is incomplete, misleading, outdated, and scientifically unsound. While graphs were utilized they provided little relevant information. Even the various maps used in the DEIS to depict habitat are not reproducible.

Did preparation of the EIS use an interdisciplinary approach to insure the integrated use of natural and social sciences and the environmental design arts? ([40 CFR § 1502.6](#))

Analysis – It appears a combination of agency personnel and consultants were utilized. The problem was a top down, Washington DC directive that forced the environmental alternative (Alternative C) and two NTT alternatives to be assessed from a single species management perspective only. Local issues, especially socioeconomic issues, were ignored. The fact that portions of Colorado, including Garfield County, already have Sage-Grouse Plans and healthy GRGS populations was ignored.

The top down approach did not allow the NEPA team time to properly evaluate alternatives. Instead, the time table was so compressed that the multidisciplinary team did very little as a whole. Consultants used a library of EIS language to cut and paste meaningless, irrelevant sentences and paragraphs into the DEIS, to meet a time table instead of meeting NEPA.

Were the disciplines of the preparers appropriate to the scope and issues of the analysis? Was a multidisciplinary team used?

Analysis – The preparers lacked socioeconomic information and expertise. This is common in federal agency documents; however, in the case at hand, due to the compressed time schedule, the lack of data and incomplete analysis is especially egregious. It appears the preparers have no understanding of the socioeconomic impacts; they copied numbers and did not care in the least what the numbers would mean to Colorado and the nation. The socioeconomic analysis showed a combination of lack of understanding and actual contempt for oil, gas, livestock grazing, and other historical uses.

Does the final EIS respond fully, objectively, and completely to the substantive comments submitted on the draft EIS? How? Did you revise relevant analyses, introduce new data and findings, or provide the basis for refuting a comment? ([40 CFR § 1503.4](#))

Analysis – Not yet available.

Are responsible alternatives to scientific inquiry, such as traditional knowledge, which are not discussed in the draft EIS, acknowledged and properly, respectfully, and professionally addressed in the final EIS?

Analysis – Not yet available. The DEIS needs to be redrafted to include a hard look at the No Action (Current Management) Alternative so that an honest, fair and open analysis of all feasible options for GRGS management under the No Action Alternative is rigorously analyzed. There is a strong argument for utilizing existing regulatory mechanisms to protect GRGS and their habitat instead of defaulting to NTT protectionism with utter disregard for existing laws and socioeconomic consequences.

Is your agency's response to the issues raised appropriate and clearly articulated? Did you make a substantial change to the proposed action that is relevant to the environmental concerns that would warrant preparing a supplement to the draft or final EIS? ([40 CFR § 1502.9\(c\)](#))

Analysis – Critical information was not considered in the DEIS as has been discussed above. The document either needs to be redrafted or a supplemental prepared that takes into account the missing impacts on the human environment as well as a complete and rigorous description of the no action alternative. Currently, the following laws have been violated through the preparation of this DEIS.

- NEPA – The overly broad NEPA analysis was merely a cut and paste exercise based on canned sentences from EIS templates.
- The action alternatives and analysis were based on a fatally flawed NTT report.
- FLPMA we violated due to the cessation of multiple use on the majority of public lands
- The DEIS does not comply with the National Forest Management Act (NFMA) of 1976 (P.L. 94-588) that requires alternative land management options to be presented, each of which have potential resource outputs (timber, range, mining, recreation) as well as socio-economic effects on local communities. Instead the DEIS superficially, with very little thought or analysis, threw in outdated irrelevant information including 1996-1998 federal wage data, and pretended to satisfy the NFMA.
- Existing BLM and USFWS sensitive species management direction in existing agency manuals was ignored in lieu of aggressive new protectionism policies.

Are there significant new circumstances or information relevant to the environmental concerns and that bear on the proposed action or its impacts that would warrant such an action, i.e., a supplement to an EIS? Would the purposes of NEPA be served by preparing a supplement? ([40 CFR § 1502.9\(c\)](#))

Analysis – Unless the DEIS is sufficiently revised to provide a detailed and accurate analysis of the socio-economic information relevant to all alternatives, there is a legal and rational basis for triggering a supplement to the EIS. At this time the DEIS glosses over economics as if BLM and USFS are putting a small neighborhood park into a subdivision. In reality, the agencies are proposing virtual national park status for over 1.7 million acres of public lands, most of which are currently under FLPMA with strong multiple use laws and regulations that are completely being discarded in favor of single-species management.

Does your agency have procedures in place for introducing a supplement to an EIS into the formal administrative record? Are these procedures known by bureau and office NEPA practitioners?

Analysis – No comment

If you have the need to supplement an EIS, are you aware that the supplement must be prepared, circulated, and filed with the Environmental Protection Agency in the same fashion (exclusive of scoping) as a draft and final EIS unless alternative procedures are approved by CEQ? ([40 CFR § 1502.9\(c\)\(4\)](#))

Analysis – Not comment

14. Documenting the Decision When the EA or EIS Has Been Completed

The bureau or office decision is separate from the analysis and should not be included as part of the supporting EA or EIS document. Has it been kept separate?

Analysis – Not yet an issue

If the bureau or office has prepared an EA and a FONSI, the FONSI should briefly explain why a proposed action will not have a significant effect on the human environment. ([40 CFR § 1508.13](#)) The responsible official's decision may be documented along with the FONSI or in a separate decision

record. (Note that if an EA has been prepared and the decision is to prepare an EIS or that no further action will be taken on the proposal, a FONSI is not required.) Has such documentation been prepared?

Analysis – Not applicable

If a bureau or office has prepared an EIS, a concise public Record of Decision (ROD) is needed which briefly explains the decision that the bureau or office is making and the NEPA analysis upon which it is based. Does the ROD do this? ([40 CFR § 1505.2](#))

Analysis – Not yet an issue

15. Effective Date of the Decision Based on an EA or an EIS

In the case of an EIS, has a minimum of 90 days passed from the time that EPA has published the Notice of Availability of a draft EIS in the *Federal Register* before a decision based on the EIS has been made? ([40 CFR § 1506.10\(b\)\(1\)](#))

Analysis – Not yet an issue

In the case of an EIS, has a minimum of 30 days passed from the time that EPA has published the Notice of Availability of the Final EIS in the *Federal Register* before a decision based on the EIS has been made? ([40 CFR § 1506.10\(b\)\(2\)](#))

Analysis – Not yet an issue

In the case of an EA prepared for a proposed action that is without precedent, or is similar to one which normally requires the preparation of an environmental impact statement, the finding of no significant impact must be made available for public review for 30 days before the bureau makes its final determination ([40 CFR § 1501.4\(e\)\(2\)](#)). Has sufficient time elapsed?

Analysis – Not applicable

16. Emergencies

The CEQ regulations provide that when an emergency makes it necessary to take an action likely to have significant environmental effects without following the procedures in the regulations, the bureau or office should consult with CEQ about “alternative arrangements.” ([40 CFR § 1506.11](#)) Alternative arrangements do not mean that the bureau or office can forgo any NEPA analysis. Department of the Interior regulations at [43 CFR § 46.150](#) set forth a procedure for taking emergency actions and for consulting with the Office of Environmental Policy and Compliance. Are you proposing to take an emergency action? Have the provisions of the regulations been followed?

17. References for Preparation of NEPA Documents

[The National Environmental Policy Act of 1969, as amended \(42 U.S.C. 4321-4347\)](#)

[Council on Environmental Quality regulations for Implementing the Procedural Provisions of the National Environmental Policy Act \(40 CFR Parts 1500-1508\)](#)

[Council on Environmental Quality Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act regulations \(46 Fed. Reg. 18026 \(March 23, 1981\)\)](#)

[Department of the Interior regulations for Implementation of the National Environmental Policy Act \(NEPA\) of 1969, at 43 CFR Part 46](#)

[Department of the Interior, Departmental Manual \(Part 516 DM, Chapters 1-15\)](#)

Individual bureau and office NEPA handbooks