

**DEFICIENCIES IN THE
NORTHWEST COLORADO GREATER SAGE-GROUSE
DRAFT ENVIRONMENTAL IMPACT STATEMENT AND LAND USE PLAN AMENDMENT**

November 26, 2013

I. Overview

Garfield County finds the Northwest Colorado Greater Sage-Grouse Draft Environmental Impact Statement and Land Use Plan Amendment (DEIS) is deficient in numerous areas and does not comply with the National Environmental Policy Act (NEPA), Council on Environmental Quality Regulations (CEQ Reg.), Federal Land Policy and Management Act (FLPMA), Bureau of Land Management (BLM) NEPA Planning Regulations, BLM Departmental Procedures as well as U.S. Forest Service NEPA planning rules and departmental procedures.

Attached to this memo is an analysis using the NEPA checklist from the BLM Environmental Statement Memorandum that assesses whether the DEIS is compliant with the statutes, rules and procedures that govern the preparation of an environmental impact statement. In making this assessment, major failings of the DEIS have been identified and are being included through these comments for the purpose of providing the BLM and USFS and opportunity to correct the flaws prior to releasing a final statement. We find that the document needs to be redrafted to include the missing information and correct critical errors, and a supplemental statement should be prepared to carry forward the local plan alternative.

II. Analysis

A. Failure to Rigorously Analyze and Consider All Reasonable Alternatives

Selection and discussion of the alternatives in an Environmental Impact Statement are the foundation from which all other analysis and comparisons are made to complete a proper statement. In fact, CEQ regulations describe the alternative analysis as “the heart of the environmental impact statement.” (40 CFR 1502.14)

“This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment and the Environmental Consequences, it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public.”

To fulfill this duty, the lead agency is required to “Rigorously explore and objectively evaluate all reasonable alternatives.” (40 CFR 1502.14(a)) The Northwest Colorado Greater Sage-Grouse Draft Environmental Impact Statement (DEIS), fails to provide this analysis. It does this in three primary ways:

(1) By not preparing and carrying forward the local plan alternative that was discussed during scoping, thereby providing the local perspective on how best to conserve the sage-grouse;

(2) By not fully describing, discussing and analyzing the no action alternative with the same context and intensity as the action alternatives; and,

(3) By only carrying forward three similar action alternatives with vary degrees of application of the same conservation measures.

1. Failure to Prepare and Carry Forward the Local Plan Alternative

During the scoping process, the counties within the planning area participated as cooperating agencies, including Garfield County. Appropriately, during this forum, the counties advocated preparing one alternative that represented the local perspective, which would be a combination of five local sage grouse conservation plans that together covered the planning area. Each of the plans took into account the unique local topography and habitat of the different areas, as well as, the unique industries in each area and created policies and conservation measures that matched the local impacts on the greater sage-grouse. The local plans balanced sage-grouse conservation with the productive use of the land and advocated policies which provided for continued use of the land by the people who lived in the communities.

This was a distinctly different approach to sage-grouse conservation than the NTT, top down, eleven-state blanket set of policies mandated to be considered as an alternative by the Department of Interior Secretary. The counties felt that a local alternative should be included in order to ensure that all of the perspectives of the competing interests were appropriately represented in the environmental statement. In this way, the alternatives would be distinct with “sharply defining issues,” “providing a clear basis for choice among options.” Their request was summarily dismissed by the lead agency with little explanation as to why, other than Washington D.C. would not accept the local plan approach.

However, when national pressure was placed on the agency by environmental organizations that advocated complete removal of the productive resource industries, such as livestock and the oil and gas industries, an alternative representing their views was included. This is currently Alternative “C” in the DEIS.

Garfield County initiated coordination with the lead agency and the Bureau of Land Management (BLM) for the purpose of ensuring consistency with the local policies and to gain further explanation as to why the local perspective was not being included in the analysis. The County was told by the Northwest Colorado BLM Director that the reason the plan the County participated in (The Piceance-Parachute-Roan Plan, or PPR) would not work was because it was “voluntary,” and the agency could not implement such a program.

Given that feedback, Garfield County refined the PPR plan for the area within its jurisdiction and developed a series of mandatory policies that were based on the best available science that could be implemented by the BLM. The plan was submitted to the BLM during the scoping process prior to the completion of scoping comments giving the agency sufficient time to consider and include the Garfield Plan as a reasonable alternative for the area within the counties jurisdiction.

The lead agency did not sufficiently analyze or carry forward the Garfield County plan. Instead, it included the Plan and the County's analysis in the DEIS as an appendix for the public to comment. The BLM refused to carry forward the Plan stating that the conservation measures in the County's plan were incorporated into the other alternatives. Nothing could be further from the truth.

None of the alternatives remotely resemble the science-base approach of the Garfield plan, nor the habitat delineation, nor the policies based on local topography. The very appendix the BLM included in the DEIS that provides the County's plan also includes the County's analysis of the numerous inconsistencies between the three action alternatives and the County's plans, none of which have been addressed or resolved. Their statement that the County's policies are included in other alternatives is disputed by the evidence in their own DEIS pointing out the inconsistencies. The BLM's decision not to carry forward the Garfield plan was strictly a policy decision and one that does not comply with the requirements of NEPA.

NEPA requires that when there are unresolved conflicts between local plans and the proposed action that these conflicts be discussed in the Environmental Consequences section of the document. 40 CFR 1502.16 (Environmental Consequences) "It shall include discussions of:

(c) 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."

There is no such discussion in the DEIS in the environmental consequences section or any other section of the document.

Further, the agency is required to include an alternative in the analysis that resolves the conflict between the proposed action and the local plans and policies (40 CFR 1501.2).

"Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act."

There are considerable and numerous unresolved conflicts between the counties' plans and the proposed action and these were brought to the attention of the BLM repeatedly and at every opportunity throughout the development of the DEIS. But, the counties concerns were ignored. The evidence of this is the DEIS itself, which does not carry forward an alternative that resolves the conflicts with the counties in the planning area, and makes no mention of the action it will take to resolve these conflicts.

Had the BLM been forthcoming with the counties early in the process as to the reasons it would not consider the local plans, and then been willing to work with the counties to develop a local plan alternative that it could implement, then such an alternative could have been carried forward and

available for review by the public and decision makers. That Garfield County was able to refine its plan into an approach that could be adopted and implemented by the agency in just a few short months, demonstrates how easily this could have been done for the entire planning area during the two-year scoping process. However, the BLM was unwilling to carry forward an alternative that truly represented the local perspective. Instead, it slightly modified the NTT Alternative (B) and labeled this the local option (Alternative D) to give the appearance that all viewpoints are represented through the range of alternatives.

Washington D.C.'s perspective to create a single use landscape is clearly represented in Alternative B. The Environmental Organization's agenda to eliminate all use of the land is fully described and analyzed in Alternative C. Alternative D, the so-called local option, varies little from its parent, Alternative B, and differs considerably for the actual local plans already in existence across the planning area.

The DEIS is fatally flawed, as it fails to offer an alternative that represents all the reasonable alternatives by excluding any consideration of a local plan option. A supplemental statement should be prepared that carries forward the local plan alternative.

2. Failure to Fully Describe, Discuss and Analyze the No Action Alternative

Section 40 CFR 1502.14(b) requires that the document "devote substantial treatment to each alternative considered in detail including the proposed action so that reviews may evaluate their comparative merits." This includes the no action alternative. However, in this case, the no action alternative (A) is sparsely described. The side-by-side table analysis shows detailed policies in the three action alternatives, but rarely details the current existing policies. In some cases, the policies detailed in the "action" alternatives are already authorized under current law, but the document fails to note this in the "no action" alternative. This appears to be a deliberate attempt to lead reviewers to believe existing laws do not contain conservation measures sufficient to protect the Greater Sage-Grouse. Nothing could be further from the truth. The DEIS fails to acknowledge that there are existing laws, regulations and policies that mandate the BLM and USFS manage habitat for candidate, sensitive, threatened, endangered and other special species designations.

3. Failure to Sufficiently Distinguish Between Alternatives

The three action alternatives are variations of the NTT policies mandated from Washington D.C. For instance, two key fundamental components that dictate the direction of the conservation policies and restrict the policy options come directly from the NTT report. These are the delineations of habitat and the required design features.

The habitat is delineated into priority, general and linkage habitat in the NTT report and also in all three action alternatives. This type of habitat description may be appropriate in some areas, but not in all as is the case in Garfield County. However, by limiting each alternative through these habitat parameters, it follows that the conservation measures will have few variances.

In contrast, the Garfield County conservation plan defines the habitat areas as “suitable” and “unsuitable” with clear and reproducible parameters that can be verified and modified through ground-truthing. The suitable habitat area is much smaller (by 75%) than the BLM’s “priority” habitat. As a result, Garfield County was able to develop a no surface occupancy policy for these areas knowing that it was not guessing as to whether the habitat truly had the potential to contain sage-grouse, but instead knew the probability of sage-grouse presence was high. In so doing, the County’s policies then did not preclude use of unsuitable habitat.

Compare this to the other three alternatives which take in 75% more land as priority habitat, much of which is unsuitable for the sage-grouse. The path then to develop conservation measures is narrow and must allow flexibility knowing that most of the land within the area will be unsuitable for the sage-grouse. This has led to a suite of conservation measures and design features which are confusing and impractical to implement, regardless of which of the three action alternatives are viewed. Garfield County’s approach offers more regulatory assurances than the BLM’s approach, which takes a flow chart and years of analysis to determine how to implement the policies.

The three action alternatives lead to the same confusion, which caused the U.S. Fish and Wildlife Service to determine that the sage-grouse habitat was threatened because they could not ascertain an adequate assessment of the habitat nor could they acquire adequate information from the BLM on its existing policies.

It seems clear that the BLM is intent on repeating this failure since all three action alternatives are designed using the NTT habitat delineation, which then narrow the options to those dictated through the NTT report.

The required design features for each of the three action alternatives are also from the NTT report. These features are the “means, measures, and practices,” that are to be implemented on the ground. They are what must be implemented, so they are the ultimate on the ground result of the policy. The DEIS states that these design features “were derived from the NTT report.” (DEIS page xxxii) Although it states that these design features vary by alternative, the variances are slight. For instance, the “Required Design Features” (Appendix I-14) for Alternative B on wildfire management is, “On critical fire weather days, pre-position additional fire suppression resources to optimize a quick and efficient response in GRSG habitat areas.” Alternative D requires that the agency “Pre-position fire suppression resources based on all resource values-at-risk.” (Appendix I-14) However, because Alternative D makes protecting the sage-grouse the highest value-at-risk, the two policies are essentially identical as they require the same response; prioritize sage-grouse over people on critical fire warning days.

While the DEIS claims the action alternatives are discrete, the analysis does not match the statement. They all are premised from the perspective that productive use of the land harms the sage-grouse. They all use the same methods and language defined in the NTT report. They all severely lock up the land from productive use compared to what is occurring today.

Not one of the alternatives offers a balanced approach that includes man and his environment working in productive harmony, which is the very essence of the purpose for the NEPA analysis. In fact, Congress declared the following to be our National Environmental Policy when it passed NEPA into law:

*“The Congress, ... recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that 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.**” (42 USC 4331)(emphasis added)*

Had the local plan alternative been considered and not summarily dismissed, then such an alternative would be available for a meaningful comparison that fulfilled the NEPA mandate to maintain conditions where man and nature exist in productive harmony. Instead, the DEIS fails to consider **all** reasonable alternatives and specifically excludes the one alternative that promises to fulfill our national environmental policy. A supplemental statement should be prepared which corrects this error.

B. Failure to Coordinate the Planning Criteria with Garfield County

BLM rules require that the planning criteria, which are the “standards, rules and factors used as the sideboards to resolve issues and develop alternatives” (DEIS xxix), be developed in coordination with local governments.

“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.” (43 CFR 1610.4-2 (b))

The DEIS states that this was accomplished.

“Criteria also were based on public participation and coordination with cooperating agencies, other federal agencies, state and local governments, and Indian tribes.” (DEIS xxix)

Garfield County attended all but one of the cooperating agency meetings, and reviewed the minutes of the meeting they were absent. Also, the county initiated and held three coordination meetings in which the BLM was directly involved. At no time during any of these meetings was there a discussion of the “planning criteria,” and was Garfield County’s input sought. The DEIS is in error by stating otherwise. The BLM failed to coordinate the planning criteria with Garfield County.

C. Failure to Resolve Inconsistencies with the Garfield County Greater Sage-Grouse Conservation Plan

As has been stated above, NEPA requires that conflicts with local government plans be resolved and when this cannot be achieved, the lead agency shall include an alternative that brings forward this perspective to be compared with the proposed action. This was not fulfilled.

At the very least, the BLM is obligated to explain why it was not able to resolve the conflicts.

*“To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and law (whether or not federally sanctioned). **Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.**” (40 CFR 1506.2(d)) (Emphasis Added)*

The DEIS is completely silent on this element. In Chapter 6, titled “Consultation and Coordination,” section 6.4 “Coordination and Consistency” should address this very issue. Instead it fails to even address how conflicts will be resolved with local plans. The complete section reads as follows:

*“The BLM’s planning regulations (43 CFR 1610) require that its RMPs be consistent with officially approved or adopted resource-related plans of other federal, state, local, and tribal governments, to the extent that those plans are consistent with federal laws and regulations applicable to public lands. Plans formulated by federal, state, local, and tribal governments that relate to management of lands and resources have been reviewed and considered as the LUPA/EIS has been developed. These plans can be found in **Chapter 1, Section 1.7, Relationship to Other Policies, Plans, and Programs.**” (DEIS pg. 988)*

There is no explanation as to what the conflicts are, why they cannot be resolved and how they will be resolved. NEPA requires this resolution be identified and explained in the DEIS so that the public and decision makers can make an informed decision as to the true impact of the proposed action. NEPA does not allow an agency to ignore and hide the conflicts by failing to disclose these in the DEIS. The statement above seems to indicate the BLM is aware of conflicts but will not acknowledge these in the DEIS. This cheats the public of vital information. In fact, we believe that if such conflicts were disclosed, it could change the outcome of the selected alternative because the true environmental impact of the proposed action will have been revealed.

The DEIS does not attempt to resolve any of the inconsistencies between the Garfield County plans and policies and the proposed action, even though the lead agency was aware of the conflicts. The initial analysis of inconsistencies made by the County during the scoping process (found in Appendix D) is still relevant and unresolved. Therefore, the County carries forward these concerns for consideration during this generation of comments and will expect these to be addressed by the agency. A consistency review should be initiated by the agency in coordination with the County to address these and other inconsistencies not specifically identified here.

These conflicts are not insignificant. For example, the County's Sage-Grouse plan requires that all policies rely on the best available science consistent with the standards of the Information Quality Act.

Principle #3: Sage-grouse management decisions shall be made based on the best available scientific information that is applicable to sage-grouse habitat in Garfield County. The scientific information used will be consistent with standards of the Information Quality Act (see definitions of Quality, Objectivity, Utility and Integrity), as determined by the County.

As is repeatedly pointed out in these comments and previous comments, much of the science relied upon to prepare the NTT report, and therefore this DEIS, will not meet the standards of the Information Quality Act (IQA). This includes the 3% disturbance cap, the four (4) mile buffer and the noise disturbance measures, to name a few. Further, the BLM knew the science behind the NTT report was flawed and, in some cases, knew that some of the conservation measures they had written violated the law, which is documented in the NTT email FOIA package.

The planning criteria also require that the science comply with the IQA. This puts the entire DEIS in question because the same agency that required the NTT report be relied upon when developing the alternatives, also knew that the science did not support these measures and did not comply with the IQA. Never the less, they moved forward with the flawed science, crafted a sweeping set of new policies that will fundamentally change the landscape, and placed statements in the DEIS asserting that everything conforms to the standards of the IQA. **This is a deliberate attempt to mislead the public.**

More egregious is that the habitat maps, which delineate the lands to be restricted, are not reproducible and the BLM is aware of this deficiency. The only habitat map that is reproducible is the map they refused to carry forward in the analysis, the Garfield County habitat map. The questionable process used to prepare the BLM's habitat maps, compiled by Colorado Parks and Wildlife (CPW), were revealed in a public coordination meeting attended by CPW and BLM. In this meeting, the CPW acknowledged that the habitat maps they provided to BLM were not reproducible, but rather were compiled making "judgment" calls. With no means to duplicate and verify the information, the BLM has knowingly asked the public to rely on maps that do not comply with the IQA.

It is for this very purpose that Principle 3 of the Garfield County plan exists; to ensure that regardless of which agency is implementing the measures for the conservation of the sage-grouse, it will be based on sound science and verifiable methods. Ultimately, it is the people and the sage-grouse that will be harmed if the BLM fails to disclose these and other conflicts, and correct the fatal flaws.

D. DEIS Prepared to Justify NTT Policy

The CEQ regulations for implementing NEPA set forth the manner in which environmental impact statements are to be prepared. One of these critical requirements is to ensure that statements are prepared to assess the impacts and are not to be prepared to justify a particular policy. The reason for the NEPA process would be irrelevant if Congress had intended the Act to simply become a procedural rubber stamp that would allow the agency to pursue its programs in the manner it preferred, regardless

of the impacts. Rather, the purpose of the Act is to ensure that all the impacts of the proposed action are fairly and thoroughly examined and that all reasonable approaches to implement the action are considered. The Environmental Impact Statement is not intended to be used as a device to justify a certain outcome.

“Environmental Impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.” (40 CFR 1502.2(g))

The preparation of this DEIS was clearly put forward for the purpose of implementing the NTT policies mandated by Washington D.C.

The BLM contends that the NTT report was created to provide the agency with a science-based suit of conservation measures for the protection of the Greater Sage-Grouse. The report was generated in response to the U.S. Fish and Wildlife Service’s (USFWS) determination that listing of the grouse was warranted, but precluded. BLM has stated that a new set of conservation measures were needed across the 11 western states in an effort to preclude a listing.

However, the USFWS did not call for new conservation measures to be put in place. Rather, they found that the data available through the BLM and U.S. Forest Service (USFS) was lacking and incomplete preventing them from making an assessment on the quality of habitat or on the adequacy of existing regulatory measures. It was the agency’s reporting and monitoring activities that were identified as the problem.

“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... .” (USFWS Candidate Determination at 75 FR 13976)

“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.” (USFWS Candidate Determination at 75 FR 13980)

The BLM and USFS, therefore, are misleading the public into believing that the USFWS has directed the agency to put in place new conservation measures, when in fact, they have not. These new measures are at the direction of the Secretary of Interior, who is using this opportunity to make significant policy changes that will forever impact the western landscape. Hence, the preparation of the NTT report.

Although the NTT report was to be prepared to provide a scientific basis for new conservation measures, it instead became a vehicle to implement the policy objectives of the current administration. A review of the FOIA NTT emails shows that significant debates were had between the scientists and policy makers, with the policy makers ultimately prevailing. The conclusion then drawn is that the NTT report is ultimately a policy document where scientific citations are added to justify the policy, rather than policies being written based on the science. The following email is 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. (See **Exhibit M** for this and additional internal BLM correspondence on this issue.)

“If we don't have the science I'm assuming it will be our best professional judgment. 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”***

Secretary of Interior Salazar then issued an Interim Memorandum (IM 2012-044) directing the BLM to prepare an Environmental Impact Statement for the purpose of amending Resource Management Plans with new Greater Sage Grouse conservation measures. Included in this memorandum was the requirement that at least one of the alternatives considered had to be based on the conservation measures set forth in the NTT Report.

The purpose and need statement of this DEIS directs the agencies to include the NTT conservation measures and policies when preparing the alternatives.

“The purpose of this LUPA is to identify and incorporate appropriate GRSG conservation measures into LUP’s. 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). (DEIS page xxvi)

So, even if during the scoping process, the BLM determined that the conservation measures developed through the NTT report were not appropriate for Northwest Colorado, they were still required to pursue a pure NTT alternative. More importantly, however, what has resulted is three NTT based action alternatives, as discussed above. There are no alternatives carried forward that are distinctly unique

from the NTT approach. Further, the no action alternative, also not based on the NTT report, was minimally described so as to give the appearance that sufficient conservation measures are not currently in place.

As a result, we now have a DEIS out for public comment that restricts selection of an alternative to one of the three NTT based actions. We believe this was by design. First, the public has been misled into believing that a new suit of conservation measures are necessary to preclude a listing, when existing regulations are sufficient. Second, the NTT report was purported to have been created to provide the scientific basis for new measures, when instead it was created to justify the administration's new policies. Third, the Secretary has insisted that one of the alternatives in all the EIS's for Greater Sage-Grouse conservation be based on the NTT report. And fourth, the resulting document fails to fully disclose and analyze potential alternatives not based on the NTT report. As a result, unless major changes are made in the preparation of this document, the BLM has deliberately narrowed all options left on the table to one that is based on the NTT report.

It is our belief that this DEIS is being prepared to justify a new sweeping policy that will significantly change the western landscape. It is not being prepared for the purpose of providing a reasonable range of options to be equally compared and assessed. This DEIS has been prepared to justify putting into place the policies developed through the NTT report. It violates the very purpose of preparing an environmental impact statement.

III. Summary

Major flaws exist in the DEIS as released to the public exposing the administration to a legal challenge. These deficiencies must be corrected for the public and decision makers to understand the full breadth of impacts that will come as a result of the proposed action, and an alternative needs to be carried forward that represent the perspective of those who will be most directly impacted; local communities. It is the very essence of NEPA to do so. This document either needs to be redrafted in its entirety, or at the very least a supplemental statement prepared that corrects the deficiencies and provides full analysis of the no action alternative while also carrying forward the local plan alternative.