



Twentymile Coal, LLC

29515 Routt County Road 27
Oak Creek, CO 80467
970.879.3800

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John Mehlhoff
Acting State Director, Colorado
USDI – Bureau of Land Management
2850 Youngfield Street
Lakewood, Colorado 80215

Dan Jiron
Regional Forester, Rocky Mountain Region
USDA – Forest Service
740 Simms Street
Denver, Colorado 80401

Re: Northwest Colorado Greater Sage-Grouse Draft Land Use Plan Amendment and Environmental Impact Statement

Dear Mr. Mehlhoff and Mr. Jiron:

As a major stakeholder and economic driver in Northwest Colorado Twentymile Coal, LLC (TC) is actively involved in natural resource development, and is a recognized leader in environmentally-responsible land management and conservation, including award-winning grouse conservation practices (USDI-OSM 2007 Excellence in Surface Coal Mining Reclamation Award). Coming from this practical perspective, with significant applicable “on-the-ground” experience, we are very concerned and wish to highlight and explain our concerns with a number of aspects of the Northwest Colorado Greater Sage-Grouse Draft Land Use Plan Amendment and Environmental Impact Statement (DLUPA/EIS).

There has been a significant ongoing effort in Colorado to protect, conserve and effectively manage our native grouse populations (both Greater Sage-Grouse (GSG) and Columbian Sharp-Tailed Grouse). This effort has involved direct input and participation of government, community, environmental, industry, and landowner stakeholders in the development and implementation of the “*Colorado Greater Sage Grouse Conservation Plan*”. As a result, GSG populations in Colorado have generally remained stable, and multiple-use land management practices and objectives, including grouse protection and conservation, are being realized.

Our concerns are primarily related to the basic need for specific conservation measures for GSG, potential restrictive land use policies which would result from implementation of Alternatives B, C, or D of the DLUPA/EIS, the questionable value of these policies relative to effective grouse protection and conservation, and the very significant adverse socio-economic impacts to our Northwest Colorado citizens, businesses, and communities, which would result. Specific areas of concern with the DLUPA/EIS document include the following:

- 1) The need for consideration of this species as “protected” and high-impact land use restrictions is reasonably in question
- 2) The basis for the environmental analysis and many of the resulting recommendations draw on the National Technical Team (NTT) Report, which does not reflect a representative or objective analysis of currently available scientific data
- 3) The range of alternatives analyzed, as required under the National Environmental Policy Act, is inadequate
- 4) The alternatives considered and analyzed do not adequately consider and address existing multiple-use mandates under Federal law and statutes
- 5) The basis and rationale for both the habitat delineations and disturbance caps are not adequately defined, and in the case of the disturbance caps, lack any reasonable scientific justification
- 6) The coal industry would be disproportionately impacted by the proposed exclusionary areas

- 7) Socio-economic impacts to Northwest Colorado citizens, businesses, and communities would be significant, and are not adequately recognized or addressed

These issues and concerns are significant and substantial, are associated with the potential for significant long-term adverse impacts on the citizens and economy of the entire Northwest Colorado region, and need to be considered and adequately addressed in the preparation of any final LUPA/EIS and preparation and issuance of a Record of Decision.

Need for GSG Conservation Measures - GSG populations are estimated at up to 500,000 throughout eleven western states and two Canadian provinces. Their sagebrush habitat is the most common lowland vegetation in the intermountain West. In many areas where they exist, populations are stable, or if declines have been identified, they can be tied to a range of factors including adverse weather, drought, predation, habitat loss, and other local or regional factors.

Concerns With NTT Report as the Basis for Analysis and Recommendations - The NTT Report fails to make use of the latest scientific and biological information available and to acknowledge lower impact technologies and mitigation currently in use. The heavy reliance of the DLUSA/EIS on the NTT report is extremely problematic as it contains overly burdensome recommendations that are not based on local conditions in northwest Colorado. An independent review of the report shows that it contains many methodological and technical errors, selectively presents scientific information to justify recommended conservation measures, and was disproportionately influenced by a small group of specialist advocates. As such, the NTT report does not represent the best scientific and commercial data available and should not be used as the basis of many of the proposed management restrictions.

Nothing in the NTT Report documents actual population-level declines in GSG. Rather, supposed declines are in reality localized effects on lek attendance potentially indicating displacement of the species, not mortality. The NTT Report has been used to support a four-mile buffer around active leks. Based on actual "on-the-ground" experience, grouse use areas are defined by vegetation, topography, aspect, and proximity to water, and cannot reasonably be approximated by a geometric figure or defined distance. The proposed buffer size is far greater than necessary and relies upon suspect data, assumptions, and modeling. Such extensive buffers effectively render huge swaths of the West inaccessible to productive uses of the land, harming local and state economies, and hampering needed energy development.

Limited Range of Alternatives – The agencies have failed to comply with provisions of the National Environmental Policy Act (NEPA) and Council on Environmental Quality (CEQ) regulations, which require a well-defined range of management alternatives and a clear basis for choosing among the options. The alternatives identified and analyzed in the DLUSA/EIS focus almost exclusively on identified habitat (PPH, PGH, Linkage/Connectivity Habitat) categories and delineations, with conservation/mitigation identified primarily as restrictions on various land uses within the identified habitat areas. Habitat protection through exclusion of potentially competing land uses is only one of many potentially effective conservation/mitigation measures.

During scoping, the agencies received input from local and state governments that have been recognized as cooperating agencies in this process, as well as a broad range of potentially affected stakeholders. These various entities offered substantive input that should have been considered in identifying and developing a reasonable range of alternatives, but apparently was not. Of particular concern is the reliance on the NTT Report in identifying and developing the alternatives, while excluding proven effective conservation/mitigation measures developed and implemented by a range of stakeholders through state conservation plans. While the DLUSA/EIS does provide some discretion for Federal land management officials in assessing and determining the applicability of exclusionary provisions and unsuitability criteria (primarily under Alternative D), it effectively precludes consideration of reasonable alternative conservation/mitigation strategies, and eliminates direct input and involvement by many of the potentially impacted stakeholders.

Alternatives Considered and Analyzed Do Not Address Multiple-Use Mandates Under Federal Law – The alternatives presented and analyzed in the DLUPA/EIS should balance the need for GSG protection with due regard for the multiple use mandates under applicable Federal laws and statutes including the Multiple Use

Sustained Yield Act of 1960 (16 U.S.C. §§ 528-31), the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. §§ 1600-14), the National Forest Management Act of 1976 (16 U.S.C. §§ 1600 et seq.), and the Federal Land Policy and Management Act of 1976 (42 U.S.C. §§ 1732 and 43 U.S.C. §§ 1701-11):

“[t]he Secretary shall manage the public lands under principals of multiple-use and sustained yield.” Furthermore, FLPMA requires management of the public lands, *“...in a manner which recognizes the Nation’s need for domestic sources of minerals.”*

While the agencies claim they “will consider a range of reasonable alternatives, including appropriate management prescriptions”, the DLUPA/EIS does not include an alternative that is consistent with multiple-use and conforms with applicable Federal law and statutes. Without an alternative that focuses on multiple-use management of the subject lands, the range of the alternatives is limited, the EIS is fundamentally inadequate, and the specific applicable requirements under NEPA are not met.

The Basis and Rationale for Habitat Delineations and Disturbance Caps are Not Adequately Defined -

The proposal to impose rigid, uniform management restrictions for designated habitat areas is a very real concern, given that the mapping is somewhat general and in most cases is not reflective of actual habitat mapping and studies (note that the designation of “Preliminary Preferred Habitat” indicates some reasonable degree of uncertainty). The agencies have proposed to prohibit surface occupancy or disturbance within four miles of a lek in Preliminary Priority Habitat (PPH) during nesting, lekking, and early brood-rearing periods. The four-mile buffer around leks does not address the variations in habitat quality or use, and given the topography of the planning area and our actual on-the-ground experience, there is substantial acreage within four miles of leks that may not actually be GSG habitat, or may include previously identified leks that have been inactive for extended periods of time. CPW defines PPH as “areas of high probability of use within a four-mile buffer around leks that have been active within the last 10 years.” As a result, leks that may have been abandoned as long as ten years ago and are in fact inactive, may have been designated as PPH. In addition, enforcing rigid, uniform restrictions across thousands of acres may not actually benefit the species and its habitat, which is counter to the agencies’ objectives for this planning process.

Unfortunately, the management plans do not include any commitment or provision to ground-truth the mapped habitat areas on a project-specific basis before imposing restrictions, or to monitor its quality or use in the future. Without ground-truthing and future monitoring, the agencies will likely preclude multiple-use in areas that do not actually support GSG habitat or active leks, unnecessarily preventing economic activities without commensurate benefit to GSG populations and habitat.

The NTT Report has also been used to support disturbance caps of less than five percent and total disturbance caps of less than 30 percent without any scientific data that they are: (1) Scientifically defensible; (2) Achievable; (3) Would result in stable GSG populations; (4) Would not result in irreparable harm to other species; and (5) Would not unnecessarily have a negative effect on local economies. Limiting surface disturbance in 21 management zones using a cap is a central component of the management of GSG as proposed in the DLUPA/EIS. The methodology proposed for a cap in the DLUPA/EIS is not clearly defined and lacks scientific justification. The DLUPA/EIS does not clearly explain the scientific data or the source for that data that is being used to establish the cap, how the disturbance database would be managed and updated and by whom, if or how disturbance percentages will capture reclamation or habitat enhancements, whether and how temporary anthropogenic disturbances will be treated differently than permanent disturbances, and whether and how GSG populations will be actively monitored in each zone. Because a cap tool, like the one proposed in the DLUPA/EIS, presents myriad challenges that may inhibit consistent and clear implementation, the functionality of the tool must be clearly thought-out prior to be utilized as a policy and regulatory tool.

The agencies have not presented information that adequately demonstrates that limiting total disturbance to less than 30% in a particular management zone is actually achievable, scientifically defensible, and would result in stable populations in the management zones. Habitat disturbance should be managed according to more localized considerations including habitat quality and habitat distribution, as well the nature and variability of multiple use activities and their associated mitigation.

The cap approach affords agencies the unprecedented discretion to halt projects on public lands in order to compensate for disturbances on private land. While the agencies state they will not inventory private lands or monitor the activities of private landowners, they will track and account for large projects on private lands and apply them against disturbance caps. This approach represents a broad overreach of the agencies' authority, and is unacceptable. This type of management also disadvantages federal leaseholders that have no control over other developments on private lands. As a result, federal leases could be unreasonably abandoned, jeopardizing associated socio-economic benefits to local communities. The application of the cap concept could also compromise federal leaseholders' ability to exercise valid existing lease rights as a scenario may exist where a proposed project may be denied simply because other disturbances have decreased available cap space. This would increase the agencies' exposure to legal liability from denying existing lease rights.

The Coal Industry Would be Disproportionately Impacted by the Proposed Exclusionary Areas - In reviewing Table 2.2 of the DLUPA/EIS, other than under the very restrictive Alternative C, the only land uses that would be impacted at the same level as coal development by the proposed land exclusions under the proposed alternatives would be Lands and Realty (Alt. B), and Fluid Minerals Leasing (Alt. B). Review of the Agency Preferred Alternative (Alt. D) indicates that coal would be more severely impacted under the proposed land exclusions than any other use.

Socio-Economic Impacts to Northwest Colorado Are Not Adequately Addressed - The agencies grossly underestimate, misrepresent, and underreport the negative impact the management restrictions and closures in the DLUPA/EIS will have on future economic activities in the planning area. The socioeconomic analysis appears to be biased in favor of non-market valuation methods which by the agencies' own admission, "are not directly comparable to regional economic indicators commonly used to describe how natural resources on public lands contribute to the regional economic indicators such as output/sales, labor income, and employment." Due to this bias, the agencies appear to have artificially inflated non-market valuations and seriously underestimated the negative economic impact on local communities in the planning area.

The agencies portray the socioeconomic impacts on the entire planning area but do not delineate the effects that would result from the proposed management restrictions on specific areas, including counties. A more specific portrayal of the projected impacts, which was proposed by many cooperating agencies during the scoping process, would help those impacted fully understand the varying levels of socioeconomic impacts that will result from the DLUPA/EIS. It is also noted that the discussion of impacts on tax revenues and payments to the State and local governments focuses almost exclusively on oil and gas severance taxes and revenues, and neglects tax and payment impacts from the potential loss of coal revenues which are substantial for Routt and Moffat counties, and would be disproportionately impacted, as noted in the previous section.

Conclusion – As outlined and detailed by our comments, we are concerned that the DLUPA/EIS does not address the most reasonable, practical, and effective approach for conservation/mitigation of impacts on GSG in Northwest Colorado; an adaptation of the detailed conservation plans, reflecting a balanced multiple-use approach, developed through a collaborative process by the actual stakeholders. We are also concerned and respectfully request that the agencies review and address the issues identified in this comment letter before preparing the final LUPA/EIS and issuing a Record of Decision. As written, the DLUPA/EIS does not represent a balanced approach to the future conservation of GSG and economic development in the planning area, and is inadequate and inconsistent with applicable Federal laws and statutes in several key areas. We appreciate the opportunity to comment on the DLUPA/EIS and urge your careful and thoughtful consideration of the issues and concerns we have outlined, as you move forward.

Sincerely,



Jerry M. Nettleton
Manager Environmental Affairs
Twentymile Coal, LLC