

**Attachment E**  
**Comments and Responses to Public Comments on the Revised Draft Environmental Assessment**

Number	Comment Summary	Response
1.	Great Basin Resource Watch stated that its previous submittals [on the Draft EA] are adopted and incorporated into their newly submitted comments.	The BLM provided its responses to 61 unique comments submitted to the BLM in Attachment E of the Revised Draft Environmental Assessment (RDEA), including those previously made by Great Basin Resource Watch (GBRW).
2.	Great Basin Resource Watch stated that the existing ROW "...must be rescinded..."	<p>The BLM provided its rationale in issuing a ROW to Comstock Mining, LLC on July 6, 2012 (RDEA, Attachment E, response number 4). The BLM does not agree that the existing right-of-way (ROW) must be rescinded. In addition to the previous responses, we add the following:</p> <ul style="list-style-type: none"> <li>a. The original ROW was issued on July 6, 2012, more than three years ago. GBRW has been aware of the right-of-way amendment (ROWA) project since at least public scoping in January 2013. To the extent that GBRW takes issue with the original ROW, GBRW should have informed the BLM and appealed the original or renewed ROW years ago. The original and renewed ROW grants had been made publically available through the BLM's national "NEPA Register."</li> <li>b. GBRW has been aware of the original ROW grant and the processing of a ROWA grant for at least three years. In January 2013 as a part of the public scoping workshop, the BLM stated that Comstock Mining, LLC was operating under an existing ROW grant issued July 6, 2012. On February 15, 2013, GBRW submitted to the BLM comments during the public scoping for the Project. GBRW did not assert that the BLM erred in issuing the original ROW on July 6, 2012. The BLM clearly informed the public that the project was for a ROWA during the scoping workshops in January 2013, and the workshop for the draft EA in November 2014. GBRW Director John Hadder was in attendance at the January 29, 2013 public scoping meeting in Virginia City (see Scoping Sign-In Sheet). In the BLM's Scoping Report, published on March 28, 2013, the BLM also described in Section 1.2.1 the BLM's "...need is to respond to Comstock Mining LLC's application for an <i>amended ROW...</i>" [emphasis added] GBRW was notified by letter of the availability of the scoping report. At no time during the scoping period or after the release of the scoping report did GBRW question the validity of the original ROW. The first time that GBRW raised objections to the original ROW was in comments submitted during the public review of the Draft Environmental Assessment (DEA) on December 9, 2014 (see GBRW letter).</li> <li>c. On January 21, 2013, GBRW requested that the BLM provide GBRW a copy of Comstock Mining, LLC's Plan of Operations. On January 22, 2013 the BLM informed GBRW that Comstock Mining, LLC had not submitted to the BLM a Plan of Operations. The BLM informed GBRW that Comstock Mining, LLC had submitted a right-of-way application (SF-299) and draft Plan of Development. On January 24, 2013 GBRW renewed their request for Comstock Mining, LLC's right-of-way application (SF-299) and draft Plan of Development. On January 24, 2013 the BLM provided GBRW a copy of Comstock Mining, LLC's SF-299 dated July 11, 2012. On January 30, 2013, the BLM uploaded the Comstock Mining, LLC draft Plan of Development onto the project website and provided GBRW a hyperlink to the webpage. In GBRW's February 15, 2013 comment letter on public scoping, GBRW on page 3 specifically identified an error in the draft Plan of Development, clearly indicating they had accessed and read the draft Plan of Development, which described the need for the ROWA.</li> <li>d. On February 21, 2013 the BLM published a news release in regards to allowing Comstock Mining, LLC's Color-of-Title Class 1 claim to proceed, and BLM's allowance of haul trucks on the Lucerne Haul Road through Lot 51. Articles on the COT appeared in the <i>Reno-Gazette Journal</i> and <i>Nevada Appeal</i> on February 22, 2013 and in the <i>Elko Daily Press</i> on February 23, 2013.</li> <li>e. On December 4, 2014, GBRW requested a copy of the Cease and Desist order that the BLM had issued to Comstock Mining, LLC. On December 5, 2014 the BLM provided GBRW electronic copies of the Notice of Cease and Desist (dated May 21, 2012) and Close Trespass (dated July 6, 2012). On December 5, 2014 the BLM sent GBRW a second email with a June 6, 2012 Notice of Trespass letter attached.</li> <li>f. The BLM has provided GBRW with information about the ROW and ROWA, and invited GBRW to review the BLM's case files in Carson City (GBRW's offices are located in Reno). In responding to a FOIA request by GBRW on December 24, 2014, the BLM informed GBRW (page 2) "An analysis of your request has determined the following records are considered BLM Records Access Category 1(A) records, and therefore, are readily available to the public and do not require a FOIA request to obtain...The current case file (NVN 091237) – this file is available for public inspection and can be viewed and/or copied by visiting the Carson City District Office..." GBRW did not make an appointment with the BLM's Land and Realty Specialist to inspect the case file. GBRW did not respond to the BLM to further clarify which parts of the records it was seeking. The outcome of a conference call with GBRW in January 2014 was the BLM produced meeting minutes for the Project for the period of December 5, 2012 through November 6, 2014. No additional requests have been made to the BLM.</li> <li>g. In Section 1.1 of the Final Environmental Assessment (FEA), the BLM has provided additional details on the original trespass case, its resolution of the trespass case, and the rationale to renew the original ROW without changes in 2014.</li> </ul>

<p>3.</p>	<p>Great Basin Resource Watch stated that an Environmental Impact Statement (EIS) must be prepared.</p>	<p>The BLM is only required to prepare an EIS if the Proposed Action, in this case the ROWA, will significantly affect the quality of the human environment. A Plan of Operations (under the 3809 regulations) to mine on public lands has not been submitted to the BLM for its consideration and approval. All mining is on Comstock Mining, LLC's privately-owned lands. The BLM is not proposing to approve a mining Plan of Operations, which is only needed when an applicant applies to mine on public land (see Public Workshop PowerPoint slide #6). In this case, Comstock Mining, LLC is not proposing to mine on public lands, so there is no need or authority for the BLM to approve a mining Plan of Operations. To reach this determination the BLM has reviewed the following 3809 regulations:</p> <p>43 CFR 3809.2 (d) states, "This subpart does not apply to private land except as provided in paragraphs (a) and (c) of this section."</p> <p>The exceptions provided by paragraphs (a) and (c) are for private lands patented under the Stock Raising Homestead Act (see 43 C.F.R. § 3809.2(a)), and private lands patented post-1976 in the California Desert Conservation Area in Southern California, (see 43 C.F.R. § 3809.2 (c)). Neither of these exceptions is applicable to Comstock Mining, LLC's ROWA.</p> <p>43 CFR 3809.2 (a) states, "This subpart applies to all operations authorized by the mining laws on public lands where the mineral interest is reserved to the United States..." [emphasis added]</p> <p>Comstock Mining, LLC's mining operation is located on private land not subject to the 3809 regulations, and there are no reserved mineral interests of the United States on the private lands in Comstock Mining, LLC's open pit mine.</p> <p>43 CFR 3809.5 defines the term "Operations" as "...means all <i>functions, work, facilities, and activities on public lands</i> in connection with prospecting, exploration, and assessment work, development, extraction, and processing of mineral deposits locatable under the mining laws..." [emphasis added] Comstock Mining, LLC's open pit operation on private lands are not subject to the Mining Law (and 3809 regulations).</p> <p>The BLM has determined that 43 CFR 3809.11 ("When do I Have to Submit a Plan of Operations?") does not apply to a mining operation that occurs on private lands, because private lands are not subject to the 3809 regulations. Therefore the BLM cannot require Comstock Mining, LLC to submit a Plan of Operations for review and approval. Comstock Mining LLC's ROWA request before the BLM does not include mining exploration, or development or mining of locatable mineral resources from public land (subject to the 3809 regulations). Comstock Mining, LLC's ROWA request was made under the 2800 regulations (lands and realty). GBRW was informed of this on January 22, 2013. Access across public land segments to private lands, where mining occurs, does not constitute a 'trigger' of the 3809 regulations.</p> <p>The BLM provided its rationale that it could achieve a Finding of No Significant Impact (FONSI) based on a review of the ROWAs' context and intensity (RDEA, Attachment E, response number 3; RDEA, Draft FONSI). In addition to the previous response:</p> <p>This project differs from <i>Sierra Club v. United States Department of Energy</i>, 255 F.Supp2d 1177 (D. Colo. 2002) cited in GBRW's letter, as in that case the district court determined that an environmental impact statement (EIS) for an access road had to incorporate the effects of a mine, <i>because there was no other way to access the mine</i> and thus the mine depended on the road project for its operation. As previously described in RDEA, Attachment E, response numbers 5 and 15, and in response to comment number 5 below, the BLM has reasonably concluded that Comstock Mining, LLC could continue to operate its mining operation under the Non-Federal Alternative. The BLM has concluded that the ROWA does not cause significant effects per 40 CFR 1508.25 (Final FONSI).</p> <p>The BLM provided its rationale with regard to protection of the public interest and whether the issuance of a ROWA is a consistent use (RDEA, Attachment E, response number 8). In addition to the previous response, the BLM further clarifies:</p> <ol style="list-style-type: none"> <li>a. The issuance of the ROWA is not inconsistent with FLPMA, as Title V provides for such authorizations and the terms and conditions that the BLM may impose to protect the environment and public interest.</li> <li>b. The issuance of the ROWA is not inconsistent with the 2001 Consolidated Resource Management Plan (CRMP). The lands in the Project Area are "available" for the issuance of ROW's under the 2800 regulations. The designation of the Virginia City National Historic Landmark and Historic District (1961) pre-dated the CRMP (2001) and the earlier planning documents that govern management of the public lands in the Project Area (1982). Under previous land use planning decisions, the BLM could have excluded the Project Area from the issuance of ROW's. The BLM could have also recommended a mineral withdrawal. If approved by the Secretary, this withdrawal could have prevented mining and exploration activities (Notice-level) from being permitted on public lands under the Mining Act. The BLM did not previously impose a ROW exclusion or mineral withdrawal in the Project Area, therefore the ROWA is consistent with the existing land use plan.</li> <li>c. The BLM has not proposed to make the Project Area a ROW exclusion or mineral withdrawal area under the ongoing land use plan revision (BLM 2014). Therefore the issuance of a ROW would continue to be allowed under the proposed land use plan revision.</li> </ol>
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4.	GBRW asserts that FLPMA requires the BLM to analyze and mitigate for the operations of the mine and mine facilities.	As described in response to comment #3, the BLM is not proposing to approve a mining Plan of Operations on public lands, and the operation of the mine and milling facilities are not connected to the ROWA. The FEA considers the effects of those activities in Section 5.0 (Cumulative Effects). The BLM is authorized under FLPMA to determine appropriate terms and conditions for the ROWA. To the extent that the ROWA would adversely affect historic properties within the Project Area, the BLM has addressed the resolution of such effects through the execution of a Memorandum of Agreement (Attachment D of the FEA).
5.	<p>Great Basin Resource Watch argues that the ROWA and mine are “connected actions” and therefore require analysis in a single EIS.</p> <p>Great Basin Resource Watch stated that the BLM in the Draft EA had admitted that the road and mine were “connected actions,” but in the Revised Draft EA the BLM made no mention or provided no rationale why the BLM now considers the road and mine not connected.</p>	<p>See response to comment #3 above. To the extent that GBRW argues that Comstock Mining, LLC’s mine and milling operations are “major federal actions” subject to NEPA, they are not. Comstock Mining LLC’s mine and milling facilities are located on private—not public—land. Comstock has not applied for a mining Plan of Operations, which is only required when mining on public land. The BLM is not processing any such application.</p> <p>The NEPA does not provide a definition of a “major federal action,” however the Council on Environmental Quality has clarified in its regulations that “major federal actions” are those “which are potentially subject to federal control and responsibility.” 40 CFR 1508.18. Furthermore, “actions include new and continuing activities, including projects and programs entirely or partially financed, assisted, conducted, regulated, or approved by federal agencies...” 40 CFR 1508.18(a). None of these characteristics describes the BLM relationship to Comstock Mining, LLC’s open pit mine, which needed no permit from the BLM for its location, construction, or operation on private land. BLM also provided no funding for the open pit mine. Since Comstock Mining, LLC needed no permit, approval or other regulatory decision for the open pit mine from the BLM, the BLM cannot be said to have any “federal control and responsibility” (40 CFR 1508.18) over the mine and thus has no basis to subject it to NEPA review. Thus, Comstock Mining, LLC’s on-going mining and milling activities are not discretionary actions that are subject to NEPA at this time.</p> <p>To the extent GBRW argues that Comstock Mining LLC’s on-going mining and milling activities are connected to the ROWA, the BLM disagrees. The BLM previously provided its rationale for this determination (RDEA, Attachment E, response numbers 5 and 15). The reconsideration was due to a review of the <i>Peterson</i> case, highlighted in the December 9, 2014 GBRW letter, and other case law. Also in <i>Great Basin Watch v. Hankins</i> 456 F.3d 955, 972 (9th Cir. 2006), the Circuit Court said:</p> <ul style="list-style-type: none"> <li>• “We apply an “independent utility” test to determine whether multiple actions are so connected as to mandate consideration in a single EIS. The crux of the test is whether “each of two projects would have taken place with or without the other and thus had ‘independent utility.’” <i>Wetlands Action Network</i>, 222 F.3d at 1118 (internal quotations and citation omitted). When <b>one of the projects</b> might reasonably have been completed without the existence of the other, the two projects have independent utility and are not “connected” for NEPA’s purposes. <i>Native Ecosystems Council</i>, 304 F.3d at 894.” [bold emphasis added]</li> <li>• “Where, as here, the agency declines to produce a single EIS, “plaintiffs must show that the [agency] was arbitrary and capricious in failing to prepare one comprehensive environmental statement.” <i>Native Ecosystems Council</i>, 304 F.3d at 894, citing <i>Kleppe v. Sierra Club</i>, 427 U.S. 390, 412, 96 S. Ct. 2718, 49 L.Ed.2d 576 (1976).</li> <li>• “In <i>Sylvester v. U.S. Army Corps of Eng’rs</i>, 884 F.2d 394, 400 (9th Cir.1989), we declined to require a single EIS covering both a resort complex and a golf course, where only the golf course (built on wetlands) implicated federal law. “[E]ach could exist without the other, although each would benefit from the other’s presence.”</li> </ul> <p>In the case of the ROWA, the BLM has clearly established that the mine has independent utility because a processing facility could be built without federal approval under the Non-Federal Alternative. The FEA provides qualitative and quantitative analysis of the mine and mill as a cumulative project to the extent that such information is publically available through approved State and county permits, or through other sources such as Geospatial analysis. This qualitative and quantitative analysis has been included in Cumulative Effects, Section 5.0 of the FEA.</p>
6.	Great Basin Resource Watch stated that the BLM had an obligation to review the impacts of “...the mill, mine and road in one NEPA document as connected actions, or at a minimum, the cumulative impacts from these operations...”	The BLM provided its rationale on the analysis of the cumulative impacts from the mine and mill (RDEA, Attachment 5, response number 10). In in Cumulative Effects, Section 5.0 of the FEA, the BLM provided qualitative and quantitative analysis for the mine and mill as a cumulative project to the extent that such information is publically available through approved State and county permits, or through other sources such as Geospatial analysis.
7.	Great Basin Resource Watch stated that the BLM failed to provide “...quantified assessment of their (Comstock Mining LLC’s) [other projects] combined environmental impacts...”	The RDEA provided qualitative and quantitative analysis for the mine and mill as a cumulative project to the extent that such information is publically available through approved State and county permits, or through other sources such as Geospatial analysis. This qualitative and quantitative analysis had been included in in Cumulative Effects, Section 5.0 of the FEA.

8.	Great Basin Resource Watch asserts that the BLM failed to conduct a full cumulative effects analysis of the mine and mill.	<p>See response to comment #7. Additionally, the BLM has qualitatively and quantitatively described cumulative actions within each CESA Section 5.0 (FEA), which included the following:</p> <ul style="list-style-type: none"> <li>• A description of the current permits that Comstock Mining, LLC is operating under; and</li> <li>• A calculation of acres of impacted resources as a result of the operations as described in publically available permits issued by Storey County or the State of Nevada.</li> </ul> <p>The BLM has qualitatively and quantitatively disclosed all cumulative actions within each CESA to the extent that information is publically available or can be detailed through Geospatial analysis in Cumulative Effects, Section 5.0 of the FEA.</p>
9.	Great Basin Resource Watch asserts that the BLM failed to take a hard look at the cumulative effect of Comstock Mining, LLC's on-going mining and milling activities.	<p>See responses to comment #6 to 8. The BLM relied on the best available information about the mine and analyzed the cumulative effects of Comstock Mining, LLC's on-going mining and milling operations in the FEA.</p> <p>The RDEA provided qualitative and quantitative analysis for the mine and mill as a cumulative project to the extent that such information is publically available through approved State and county permits, or through other sources such as Geospatial analysis. This qualitative and quantitative analysis has been included in in Cumulative Effects, Section 5.0 of the FEA.</p>
10.	Great Basin Resource Watch cited <i>South Fork Band Council</i> 588 F.3d at 725 and <i>Colorado Environmental Coalition v. Office of Legacy Management</i> , 819 F.Supp.2d 1193, 1212 (D. Colo. 2011) as examples when the courts have required analysis of off-site ore processing as an "indirect effect."	<p>See response to 7 to 9. The BLM analyzed the cumulative effect of Comstock's on-going mining and milling operations, including the emissions from the transportation of ore under Comstock Mining, LLC's existing ROW and alternatives (Section 4.1.1, 4.1.2, 4.1.3, 5.3.1, 5.3.2 and 5.3.3 of the FEA).</p> <p>With regards to mining operations, the BLM has established that mine has independent utility, therefore air quality impacts associated with the mine do not constitute "indirect effects" of the ROWA.</p>
11.	Great Basin Resource Watch further stated that the "BLM asserts that no detailed analysis of the mine and mill's activities are necessary because they have received their permits..."	<p>The BLM made no such assertion. No such analysis is necessary because the BLM cannot require a Plan of Operations for mining on private lands (see response to comment #3), the mine has independent utility and as such the mine's effects are not caused by the ROWA (not "indirect effects").</p> <p>The RDEA provided qualitative and quantitative analysis of the mine and mill as a cumulative project to the extent that such information is publically available through approved State and county permits, or through other sources such as Geospatial analysis. This qualitative and quantitative analysis has been included in Cumulative Effects, Section 5.0.</p>
12.	Great Basin Resource Watch further stated "the Revised Draft EA fails in the cumulative analysis to project future impacts from existing mining and milling that would be possible with a complete Plan of Operations supplied by CMI."	See response to comment #3.
13.	Great Basin Resource Watch asserts that the BLM must analyze activities "beyond the agency's immediate control."	The BLM does not dispute that an agency must consider the cumulative effect of reasonably foreseeable projects, including those that are beyond an agency's immediate control. In this case, however, the BLM has analyzed the cumulative effect of Comstock's on-going mining and milling operations in Cumulative Effects, Section 5.0 of the FEA. See also responses to comments 9 to 12.
14.	Great Basin Resources Watch asserts that the BLM is required to fully analyze the " <i>connected</i> mine, mill, and other facilities." [italics added for emphasis]	<p>As described in RDEA, Attachment E, response numbers 5 and 15 and comment response #5 above, the BLM has determined that the mine is not a "connected action" to the ROWA.</p> <p>In the FEA (pages 24-51) the BLM described the affected environment for the Project Area and alternatives. The "project" the BLM has been considering is a ROWA and not a Plan of Operations for a mine on private lands. The BLM has considered the baseline conditions of the ROWA Project Area as described in the FEA (Section 2.1). The Project Area had been subjected to the appropriate level of baseline studies (biological/cultural) to enable the BLM to compare the effects of the Proposed Action (construction, use, operation on an existing road in existence since at least 1978 and used repeatedly for mining related purposes), for comparison to the existing conditions (No Action/Current Management Alternative).</p> <p>As the BLM has demonstrated the independent utility of the mine itself, the mine is not a connected action or a feature of the Proposed Action. See also response to comment #5.</p>

15.	Great Basin Resource Watch asserted that “NEPA requires alternatives to be viable...”	<p>The BLM provided its rationale on why it considers the Non-Federal Alternative “reasonable” (RDEA, Attachment E, response number 36). In addition to the previous response:</p> <p>There is no such statement in the NEPA law itself that requires an alternative to be “viable.”</p> <p>As previously explained, CEQ Forty Questions Question 2a uses the term “reasonable” <i>not</i> “viable.” (FEA Section 2.2). GBRW in all three letters submitted to the BLM cited no case law that where a court established a standard to determine the ‘economic’ feasibility of an alternative. There is no standard for determining whether an alternative is economically feasible in the DOI NEPA regulations (43 CFR 46) nor the BLM NEPA Handbook (H-1790-1). Despite GBRW’s assertion that Comstock Mining, LLC is not an economically viable mining company, Comstock Mining, LLC has been operating an open pit mine since the summer of 2012.</p> <p>The BLM has determined that a Non-Federal Alternative involving the construction of an alternative heap-leach processing facility on private lands in Lyon County is neither remote nor speculative by review of the following:</p> <ul style="list-style-type: none"> <li>• Comstock Mining, LLC has land holdings in Spring Valley sufficient in size to construct a new processing facility.</li> <li>• Comstock Mining, LLC between July 2012 and January 2013 used street legal haul trucks to transport mined materials from the Lucerne Pit to their existing heap-leach processing facility in American Flat via State Route 342. State Routes 341/342 are under the jurisdiction of the Nevada Department of Transportation.</li> <li>• Equipment and components of the existing heap-leach processing facility in American Flat could be relocated to the new location in Spring Valley.</li> <li>• The new heap-leach processing facility in Spring Valley would be subject to applicable State and local laws, regulations and ordinances. There are no State or county laws or regulations that prohibit open pit mining in Spring Valley.</li> </ul>
16.	Great Basin Watch stated the BLM needs to “...clarify its rational behind the decision not to advance an EIS.”	The BLM provided its rational that it could achieve a Finding of No Significant Impact based on a review of the ROWAs’ context and intensity (RDEA, Attachment E, response number 3; RDEA, Draft FONSI). GBRW did not provide the BLM with any specific comment(s) on the draft FONSI that was made available for public review and comment.
17.	Great Basin Resource Watch stated that the BLM failed to provide detailed analysis of the impacts to surface and groundwater from the mine and mill.	<p>The BLM analyzed the potential effects to surface and groundwater in Section 4.6 of the FEA for the ROWA. As stated, impacts to groundwater are not expected from the ROWA because at a nearby well, the groundwater was 100 feet below the surface. Road modifications, use and maintenance under the ROWA would have no direct or indirect effect to groundwater. Only those resources potentially affected directly or indirectly by the Proposed Action were assessed for cumulative effects. Since no direct or indirect effect to groundwater is anticipated, there would be no cumulative effects to groundwater from the ROWA (see FEA, Section 5.8).</p> <p>The RDEA provided qualitative and quantitative analysis of the mine and mill as a cumulative project to the extent that such information is publically available through State and county permits that have been issued, or through other sources such as Geospatial analysis (FEA pages 73-104).</p>
18.	Great Basin Resource Watch stated that the BLM failed to provide detailed analysis of the impacts to air quality from the mine and mill.	The RDEA provided qualitative and quantitative analysis of the mine and mill as a cumulative project to the extent that such information is publically available through approved State and county permits, or through other sources such as Geospatial analysis. The BLM has provided the calculations for emissions from Comstock Mining, LLC’s heap-leach processing facility, open pit mine, and haul and administrative traffic in FEA Sections 4.1.1, 4.1.2, 4.1.3, 5.3.1, 5.3.2 and 5.3.3.
19.	Great Basin Resource Watch repeated its comments about potential impacts to mule deer migration and the BLM’s lack of analysis.	The BLM provided its rationale (RDEA, Attachment E, response number 17).

20.	Great Basin Resource Watch repeated its comments about the BLM’s failure to “protect the public interest” under FLPMA.	<p>The BLM provided its rationale (RDEA, Attachment E, response number 8). In addition to the previous response:</p> <p>Sections 501 (a) and (a) (7) of FLPMA states “The Secretary, with respect to public lands...are authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for... (7) such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under, or through such lands.”</p> <p>In <i>Kings Meadow Ranches</i> (126 IBLA 339) cited by GBRW, a right-of-way amendment was rejected by the BLM and IBLA affirmed the decision because the BLM determined “that the detriment of the project to the public interest would outweigh those private benefits.” This ROWA differs from that case in the following ways:</p> <ol style="list-style-type: none"> <li>a. In this case, the ROWA is to allow road improvements and modification to “...provide a safe roadway that can accommodate oversized haul trucks...” (FEA, Section 1.2) Through approval of the ROWA, haul traffic and public traffic would be segregated. Without the ROWA, public traffic is intermixed with oversized haul trucks, which poses a risk to the public through potential vehicle collisions. Therefore the public interest- use of the American Flat Road to access the Virginia &amp; Truckee Railroad for sightseeing, the former American Flat Mill site, and several private residences in the American Flat area- is served by this ROWA.</li> <li>b. Over the course of the processing this Project, including a public scoping, and two public comment periods, the vast majority of the comments received by the BLM were in support of this Project, many citing public safety as an important benefit of the ROWA.</li> </ol> <p>As described in the FEA, without BLM authorization, Comstock Mining, LLC could continue to operate under the Non-Federal Alternative. Between January 2012 and February 2013, Comstock Mining, LLC hauled mined ore north on State Route 342 from the Lucerne pit into the American Flat Road (DFONSI, page 4). As a result of the allowance of the Class 1 Color of Title claim in February 2013 (FEA, Section 1.1) Comstock Mining, LLC shifted their haul trucks from State Route 342 onto the Lucerne Haul Road through Lot 51. The public interest was served through the allowance by the BLM to use roads that cross public land segments, rather than State Route 342. State Routes 341/342 are under the jurisdiction of the Nevada Department of Transportation.</p> <p>Under the Non-Federal Alternative, Comstock Mining, LLC could haul mined ore south on State Route 342 from the Lucerne Pit into Spring Valley in Lyon County. Haul trucks would travel through the community of Silver City to the new processing facility. This would result in unnecessary impacts to the community and other users along State Route 342/341 when an alternative road with access through public land segments is available. The public interest would not be served by directing haul trucks south onto State Route 342/341. Public interest would be met by continuing to allow Comstock Mining, LLC to use their existing road authorizations across public land segments rather than State Route 342/341 and allow for minor modifications to serve the interest of public safety.</p>
21.	<p>Great Basin Resource Watch repeated its comments about the BLM’s failure to “protect the environment” under FLPMA.</p> <p>Great Basin Resource Watch further states that under Section 505 (b) of FLPMA, the BLM is required to “impose conditions that protect not only the land crossed by the right-of-way, but <b>all</b> [GBRW emphasis added] federal land affected by the approval of the ROW.” “...BLM must review the impacts to the environment from the mine and mill as well as the road use.”</p>	<p>In issuing any ROW grant, the BLM would provide for terms and conditions to minimize impacts to the environment from the authorization ROWA. See also response to comment 3 above, regarding the BLM’s federal responsibility in analyzing a project on private land.</p> <p>Section 505 (b) of FLPMA states the following:</p> <p>“SEC. 505. [43 U.S.C. 1765] Each right-of-way shall contain—...”</p> <p>“... (b) such terms and conditions as the Secretary concerned deems necessary to (i) protect <i>Federal property and economic interests</i>; (ii) <i>manage efficiently the lands which are subject to the right-of way or adjacent thereto</i> and protect the other lawful users of the lands adjacent to or traversed by such right-of-way; (iii) protect lives and property; (iv) protect the interests of individuals living in the general area traversed <i>by the right-of-way</i> who rely on the fish, wildlife, and other biotic resources of the area for subsistence purposes; (v) <i>require location of the right-of-way along a route that will cause least damage to the environment, taking into consideration feasibility and other relevant factors</i>; and (vi) otherwise protect the public interest in the <i>lands traversed by the right-of-way or adjacent thereto.</i>” [emphasis added]</p> <p>The mine and mill operated by Comstock Mining, LLC are <i>not located on federal land</i>. The BLM has a responsibility to manage public lands under FLPMA. Right-of-ways are issued by the BLM under Title V, for public lands only. Rights-of-ways are not issued on private lands because the BLM does not have jurisdiction under FLPMA for private lands. There is no obligation for the BLM under FLPMA to protect the public interest on private lands.</p>
22.	Individual commentor stated that the BLM failed to survey State Route 341 between Devil’s Gate and the new processing facility for migratory bird habitat.	The text in Section 3.4.3 of the FEA has been revised to identify the migratory bird habitat present along State Route 341/342. The affected environment sections for the Non-Federal Alternative has been revised in the FEA to include a description of State Route 341/342.
23.	Individual commentor stated that the BLM failed to analyze impacts to migratory bird habitat from increased noise and pollution from haul traffic on State Route 341 (RDEA Section 4.4.3).	The text in Section 4.4.3 of the FEA has been revised to disclose the noise impacts to migratory birds from the Non-Federal Alternative. Impacts from emissions for this alternative are disclosed in Section 4.1.3.

24.	Individual commentor stated that the BLM failed to obtain U.S. Census data concerning Silver City for its characterization of Socioeconomics (RDEA, Section 3.11)	The text in Section 3.11 of the FEA has been revised to include U.S. Census data from the 2009-2013 American Community Survey.
25.	Individual commentor stated that the BLM failed to consider the following potential Socioeconomics impacts to Silver City in the Non-Federal Alternative (RDEA, Section 4.11.3): <ul style="list-style-type: none"> <li>• Property values and related tax revenue;</li> <li>• Employment in retail and home businesses;</li> <li>• Quality of life, especially with respect to traffic, noise, dust, and other disturbances to day to day life; and</li> <li>• Safety issues resulting from use of State Route 341/342 for haul traffic; and</li> <li>• [Unspecified] expenses to associated preventative or compensatory measures.</li> </ul>	The BLM responds as follows: <ul style="list-style-type: none"> <li>• Impacts to property values and employment in retail and home businesses cannot be readily quantified. Section 4.11.3 has been revised in the FEA to disclose that the property tax revenue for Storey County would be paid to Lyon County under this alternative.</li> <li>• Impacts from traffic, noise, emissions, and fugitive dust from this alternative are disclosed in Chapter 4.0 of the FEA.</li> <li>• Safety issues from this alternative are also disclosed in Chapter 4.0 of the FEA.</li> <li>• The statement “expenses for preventative or compensatory measures” lacks specificity for the BLM to address.</li> </ul>
26.	Individual commentor stated that the BLM failed to consider the potential impacts to Land Use Authorization in Silver City (RDEA 4.9.3)	The text in Section 4.9.3 has been revised to state that potential impacts to land use authorizations (and zoning) from the Non-Federal Alternative would be the responsibility of Lyon County and maintenance of the road is the responsibility of the NDOT.
27.	Individual commentor stated that the BLM failed to consider potential impacts to Recreation and Travel Management in Silver City (RDEA 4.10.3).	The text in Section 4.10.3 has been revised to disclose noise and traffic impacts to Silver City and that maintenance of the road is the responsibility of the NDOT.
28.	Individual commentor states that the BLM is applying “an unprecedented <b>doctrine</b> of consistent/non-consistent use” when considering effects to setting [bold emphasis added] (RDEA, Section 4.2.1.2). Commentor states that the revision changing “consistent” to “similar” does not alter the BLM’s use of the “doctrine of consistent/non-consistent use.”	<p>The BLM is not aware of such a doctrine, and has not applied a so-called “doctrine of consistent/non-consistent use.” Section 4.2.1.2 of the FEA summarizes effects to historic mining-related resources from modern mining-related activities. One of the subjects considered during the Section 106 NHPA process was how modern mining-related activities and infrastructure may affect historic mining-related resources.</p> <p>It is not unprecedented to consider how a modern activity associated with mining does or does not affect historic properties associated with mining. The National Park Service is responsible for providing formal guidance on evaluating historic properties, assessing effects to historic properties, and resolving those effects, typically through National Register Bulletins. The <i>National Register Bulletin: Guidelines for Evaluating and Documenting Rural Historic Landscapes</i> states “... an open pit mine that has operated since the historic period retains its integrity, if recent extraction methods have been similar to those practiced historically, and if the character of the pit is similar, although greater in size, to that of the historic period” (McClelland et al. 1999:27).</p> <p>The Proposed Action (building/maintaining a haul road, and hauling ore in heavy haul trucks) is similar to historic use (construction/maintenance of haul roads and hauling of ore in heavy haul trucks) that occurred in the immediate vicinity of the project area during the period of significance for the National Historic Landmark/National Historic District.</p> <p>The BLM’s consideration of effects to historic properties followed the process defined in the implementing regulations for the NHPA at 36 CFR 800.5 and further defined in the State Protocol Agreement between the BLM and the NV SHPO for implementing the NHPA. Following consideration of the historic properties present, the activities in the Proposed Action, and opportunities for public input, the BLM made a determination of adverse effect in consultation with the SHPO. Nowhere in the Section 106 process or the RDEA did the BLM consider “consistent/non-consistent use” when assessing effects to historic properties.</p>
29.	Great Basin Resource Watch and individual commentor state that the Viewshed APE was too small/ too narrowly defined by the BLM.	<p>The BLM provided its rationale (RDEA, Attachment E, response number 19). In addition to the previous response:</p> <p>The BLM complied with 36 CFR 800.4 (a) (1) in determining and documenting the Area of Potential Effect in consultation with the SHPO.</p>
30.	Great Basin Resource Watch states that the BLM gives no explanation of why the Direct Effects APE is limited to 500 feet.	The BLM has clarified Section 3.2.1.1 of the FEA.
31.	Great Basin Resource Watch states that the BLM incorrectly/incompletely analyzed effects to the Virginia City National Historic Landmark/National Historic District.	<p>The BLM provided its rationale (RDEA, Attachment E, response number 20). The BLM disagrees. In addition to the previous response:</p> <p>Under the NEPA, the BLM evaluated the cumulative effects of the Proposed Action in five CESA figures (FEA, Table 5-1, and Figures 15-18). For cultural resources, the CESA was described as the whole Virginia City National Historic District and National Historic Landmark (FEA, Table 5-1, Figure 15, Section 5.4). The BLM did not improperly define the cumulative effects to cultural resources under the NEPA too narrowly.</p> <p>During the BLM’s consultation with the SHPO, the BLM documented its consideration of whether the Project would cause adverse effects to the Virginia City National Historic Landmark/National Historic District as a whole, and determined that the project would not adversely affect the Virginia City National Historic Landmark/National Historic District (6/10/2014 letter from BLM to SHPO, pages 6 and 7).</p> <p>The BLM has clarified Section 4.2.1.2 of the FEA.</p>

References: BLM 2014. *Carson City District Draft Resource Management Plan and Environmental Impact Statement*. November 2014.