



March 4, 2011

Via e-mail (BattleMountainRMP@blm.gov) and overnight mail (with attachments)

Bureau of Land Management
 Attn: Battle Mountain RMP Scoping Comments
 50 Bastian Road
 Battle Mountain, NV 89820

Re: Scoping Comments – Battle Mountain Resource Management Plan Revision

Please accept and fully consider these scoping comments on behalf of The Wilderness Society. The membership of our organization includes thousands of Nevada citizens and more than five hundred thousand members and supporters nationally who care deeply about the management of our public lands. We appreciate this opportunity to comment and appreciate the Bureau of Land Management’s commitment to addressing the circumstances and values related to management of the public resources within Nevada.

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1. General Considerations

a. Opportunities for Public Participation

We encourage BLM to maximize public involvement in preparation of the Battle Mountain Resource Management Plan (RMP). In addition to the public comment periods required by the National Environmental Policy Act (NEPA) and BLM's regulations, there are other opportunities throughout these planning processes for public involvement, which are used by many BLM offices. Public involvement allows the public to provide useful information and bring concerns to BLM's attention throughout the planning process. The Battle Mountain District Office has already shown a commitment to encouraging public participation by hosting scoping meetings, and we commend BLM on this approach.

We would also encourage the BLM to provide for public input into the management situation analysis and identification of planning issues, and on a preliminary range of alternatives prior to preparing the draft RMP—all of which are steps other BLM offices have taken to expand opportunities for public comment. For instance, the Arizona Strip BLM Office provided preliminary management alternatives, giving the public a chance to submit comments and giving the BLM valuable insight into their management approaches (available on-line at: <http://governor.utah.gov/rdcc/Y2003/03-2902.pdf>). The Las Cruces Field Office (New Mexico) also held workshops and solicited public comments on preliminary alternatives for the Tri-County RMP (see RMP Newsletter 3, available at http://www.blm.gov/nm/st/en/fo/Las_Cruces_District_Office/tricounty_rmp.html).

The BLM will need to ensure sufficient data is available in preparation of the various planning documents. In this context, we would also note that other BLM offices have made inventory data available to the public to assist in identifying new data needs and also made base data available for public use. By way of example, along with its release of the Draft RMP, the Arizona Strip Field Office also provided zipped GIS files for all data layers needed to create the maps contained in the Draft RMP (and can be viewed on-line at <http://www.blm.gov/az/GIS/files.htm#strip>). The server space required for this operation is minimal and without this information, effective public participation in this process is severely hampered. This type of public participation is also consistent with the BLM's Land Use Planning Handbook (H-1601-1), which states that, "Documentation supporting the AMS [analysis of the management situation] should be maintained in the field office for public review" (Section III.A.4) and that, "Alternatives should be developed in an open, collaborative manner, to the extent possible" (Section III.A.5).

In another example, the St. George Field Office (Utah) employed GIS technology to assist commenters on the route inventory at open houses for its travel management planning process, which helped the public make substantive comments on routes. After the scoping meetings were concluded, BLM scheduled regular days and times that the public could visit the field office and work with GIS/Recreation staff with real-time GIS and aerial photos. We encourage the Battle Mountain District Office to similarly make GIS staff and data available to assist the public with comments on the route inventory and other resources. This process should involve more than simply asking the public to identify routes they use and want to remain open; but should also include asking the public to identify routes that are damaging, redundant or infrequently used and should be closed and/or restored.

Making analyses available before issuing the draft RMP is another excellent way to increase public understanding of and participation in the planning process. The Kemmerer Field Office (Wyoming), for

example, made their analysis of comments submitted on the Draft RMP and their ACEC evaluations public by posting them on their website months before they issued the Proposed RMP/FEIS¹. The Uncompahgre Field Office (Colorado) made its draft evaluation of ACEC proposals available for public comment, and also posted its Visual Resource Inventory Scenic Quality Ratings online (http://www.blm.gov/co/st/en/fo/ufo/uncompahgre_rmp.html). Making such analyses available to the public before the publication of the formal draft planning documents will better prepare participants to understand the complex analyses and large amounts of data in the drafts and increase the relevance and usefulness of comments and other public participation. We hope to see these types of opportunities provided to the many members of the public who are interested in the development of the Battle Mountain RMP.

Recommendations: The BLM should make every attempt to seek public input and encourage the public to participate in the RMP, including holding workshops, making a preliminary range of alternatives available for public comment prior to issuing the draft planning documents, providing interim information regarding inventories of routes, lands with wilderness characteristics, and visual resources, posting GIS files, and posting analyses such as ACEC evaluations and analysis of comments submitted on the draft to the planning website.

b. Cooperating Agencies

Based on the BLM's current regulations governing cooperating agencies (43 C.F.R. § 1610), cooperating agencies will have a very strong presence throughout the planning process. In order to permit the public to better understand the roles of these agencies, we request that BLM identify those agencies and tribal and local government entities that have been granted cooperating agency status, and disclose the areas of expertise or other qualifications that form the basis of their cooperating agency status.

Recommendation: The BLM should identify the agencies and tribal and local government entities granted cooperating agency status and post this information on the planning website.

c. Protection of Natural Resources

(i) FLPMA

The Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. § 1701 *et seq.*, imposes a duty on BLM to identify and protect the many natural resources found in the public lands governed by the Battle Mountain RMP. FLPMA requires BLM to inventory its lands and their resource and values, "including outdoor recreation and scenic values." 43 U.S.C. § 1711(a). FLPMA also obligates BLM to take this inventory into account when preparing land use plans, using and observing the principles of multiple use and sustained yield. 43 U.S.C. § 1712(c)(4); 43 U.S.C. § 1712(c)(1). Through management plans, BLM can and should protect wildlife, scenic values, recreation opportunities and wilderness character in the public lands through various management decisions, including by excluding or limiting certain uses of the public lands. See 43 U.S.C. § 1712(e). This is necessary and consistent with the definition of multiple use, which identifies the importance of various aspects of wilderness characteristics (such as recreation, wildlife, natural scenic values) and requires BLM's consideration of the relative values of these resources but "not necessarily to the combination of uses that will give the greatest economic return." 43 U.S.C. § 1702(c).

¹ <http://www.blm.gov/rmp/kemmerer/docs.htm>

Under FLPMA, BLM is also obligated to “give priority to the designation and protection of areas of critical environmental concern [ACEC].” 43 U.S.C. § 1712(c)(3). ACECs are areas “where special management is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes.” 43 U.S.C. § 1702(a). For potential ACECs, management prescriptions are to be “fully developed” in the RMP. Manual 1613, Section .22 (Develop Management Prescriptions for Potential ACECs). ACECs also include Research Natural Areas (RNAs), established for their significant biological and physical features, including plant or animal species or geological, soil or water features. RNAs have “ecological or other natural history values of scientific interest” and are managed for research and educational purposes. Outstanding Natural Areas (ONAs) are another type of ACEC, established to preserve scenic values and natural wonders. ONAs contain unusual natural characteristics and are managed primarily for educational and recreational purposes.

The resources in the Battle Mountain planning area include many values that merit protection through special designations. Protection of existing ACECs and due consideration of proposed ACECs, including RNAs and ONAs, must be a priority in the Battle Mountain RMP planning process.

(ii) Range of Alternatives

The range of alternatives is “the heart of the environmental impact statement.” 40 C.F.R. § 1502.14. NEPA requires BLM to “rigorously explore and objectively evaluate” a range of alternatives to proposed federal actions. See 40 C.F.R. §§ 1502.14(a) and 1508.25(c).

NEPA’s requirement that alternatives be studied, developed, and described both guides the substance of environmental decision-making and provides evidence that the mandated decision-making process has actually taken place. Informed and meaningful consideration of alternatives -- including the no action alternative -- is thus an integral part of the statutory scheme.

Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228 (9th Cir. 1988), cert. denied, 489 U.S. 1066 (1989) (citations and emphasis omitted).

An agency violates NEPA by failing to “rigorously explore and objectively evaluate all reasonable alternatives” to the proposed action. City of Tenakee Springs v. Clough, 915 F.2d 1308, 1310 (9th Cir. 1990) (quoting 40 C.F.R. § 1502.14). This evaluation extends to considering more environmentally protective alternatives and mitigation measures. See, e.g., Kootenai Tribe of Idaho v. Veneman, 313 F.3d 1094, 1122-1123 (9th Cir. 2002) (and cases cited therein); see also Env’tl Defense Fund., Inc. v. U.S. Army Corps. of Eng’rs, 492 F.2d 1123, 1135 (5th Cir. 1974); City of New York v. Dept. of Transp., 715 F.2d 732, 743 (2nd Cir. 1983) (NEPA’s requirement for consideration of a range of alternatives is intended to prevent the EIS from becoming “a foreordained formality.”); Utahns for Better Transportation v. U.S. Dept. of Transp., 305 F.3d 1152 (10th Cir. 2002), modified in part on other grounds, 319 F.3d 1207 (2003); Or. Env’tl. Council v. Kunzman, 614 F.Supp. 657, 659-660 (D. Or. 1985) (stating that the alternatives that must be considered under NEPA are those that would “avoid or minimize” adverse environmental effects).

NEPA requires that an actual “range” of alternatives is considered, such that the Act will “preclude agencies from defining the objectives of their actions in terms so unreasonably narrow that they can be

accomplished be only one alternative (i.e. the applicant's proposed project)." Colorado Environmental Coalition v. Dombeck, 185 F.3d 1162, 1174 (10th Cir. 1999), citing Simmons v. United States Corps of Engineers, 120 F.3d 664, 669 (7th Cir. 1997). This requirement prevents the EIS from becoming "a foreordained formality." City of New York v. Department of Transp., 715 F.2d 732, 743 (2nd Cir. 1983). See also, Davis v. Mineta, 302 F.3d 1104 (10th Cir. 2002).

Given the broad purpose of the preparation of the Battle Mountain RMP and the information compiled by the public regarding natural and cultural values of these lands, the range of alternatives for these lands should include a number of alternatives to protect their conservation values. Through management plans, BLM can and should protect natural and cultural values through various management decisions, including by excluding or limiting certain uses of the public lands. See, 43 U.S.C. § 1712(e). This is necessary and consistent with the definition of multiple use, which identifies the importance of cultural resources, recreation, wildlife, and natural scenic values, and requires BLM's consideration of the relative values of these resources but "not necessarily to the combination of uses that will give the greatest economic return." 43 U.S.C. § 1702(c).

(iii) Layering Special Designations

In addition, there is no *per se* bar to managing and protecting the many values of these lands through overlapping designations, such as Wilderness Study Areas (WSAs) and ACECs or Special Recreation Management Areas (SRMA) and Wild and Scenic River Segments. For example, BLM's Jarbidge RMP (and subsequent amendments) in southern Idaho designated the Bruneau/Jarbidge River ACEC and the Salmon Falls Creek ACEC, which overlap the Bruneau River-Sheep Creek WSA, Jarbidge River WSA, and Lower Salmon Falls Creek WSA, and includes the Salmon Falls Creek, deemed eligible for inclusion in the National Wild and Scenic Rivers System. See BLM, Jarbidge Field Office, Idaho, Analysis of the Management Situation for the Jarbidge Resource Management Plan: Resource Management Plan/Environmental Impact Statement at 212-216 and Figure 39 (Locations of Current ACECs) (July 2007), available at http://www.blm.gov/pgdata/etc/medialib/blm/id/plans/jarbidge_rmp/documents/analysis_of_the_management.Par.59385.File.dat/part13.pdf; Figure 40: Wilderness Study Areas, available at http://www.blm.gov/pgdata/etc/medialib/blm/id/plans/jarbidge_rmp/documents/analysis_of_the_management.Par.18048.File.dat/part14.pdf (excerpts attached to these comments). These overlapping designations ensure that BLM protects both the relevant and important values associated with the ACECs and the wilderness character of the WSAs, both through current management and in the event WSAs are released during the life of the plan. In certain situations, overlapping designations are needed to fully protect the resources, for example IMP management of WSAs might differ greatly from the special management attention envisioned for the relevant and important values of a particular ACEC or in the event of congressional WSA release.

In addressing objections to "layering" of designations (through "establishment of ACECs or SRMAs over WSAs and Wild and Scenic Rivers") raised in connection with the Monticello (Utah) RMP, the BLM responded, appropriately:

"Layering" is planning. Under FLPMA's multiple use mandate, BLM manages many different resource values and uses on public lands. Through land use planning BLM sets goals and objectives for each of those values and uses, and prescribes actions to accomplish those objectives. Under the multiple use concept, BLM doesn't necessarily manage every value and use on every acre, but routinely manages many different values and uses on the same areas of

public lands. The process of applying many individual program goals, objectives, and actions to the same area of public lands may be perceived as “layering”. BLM strives to ensure that the goals and objectives of each program (representing resource values and uses) are consistent and compatible for a particular land area. Inconsistent goals and objectives can lead to resource conflicts, failure to achieve the desired outcomes of a land use plan, and litigation. Whether or not a particular form of management is restrictive depends upon a personal interest or desire to see that public lands are managed in a particular manner. All uses and values cannot be provided for on every acre. That is why land use plans are developed through a public and interdisciplinary process. The interdisciplinary process helps ensure that all resource values and uses can be considered together to determine what mix of values and uses is responsive to the issues identified for resolution in the land use plan. Layering of program decisions is not optional for BLM, but is required by the FLPMA and National BLM planning and program specific regulations.

FLPMA directs BLM to manage public lands for multiple use and sustained yield (Section 102(a)(7)). As a multiple-use agency, the BLM is required to implement laws, regulations and policies for many different and often competing land uses and to resolve conflicts and prescribe land uses through its land use plans. BLM’s Land Use Planning Handbook requires that specific decisions be made for each resource and use (Planning Handbook “H-1601-1”). Specific decisions must be included in each of the alternatives analyzed during development of the land use plan. As each alternative is formulated, each program decision is overlaid with other program decisions and inconsistent decisions are identified and modified so that ultimately a compatible mix of uses and management prescriptions result.

Monticello Proposed RMP, Response to Comments, comment no. 007-48 (attached).

As clarified by the BLM, because different designations serve different purposes, and management is often limited to protect only those values relevant to those particular designations, the fact that an ACEC may lie within a WSA does not justify failing to designate the ACEC and the fact that a proposed SRMA may overlap with an ACEC does not obviate the need for the SRMA.

Recommendation: The BLM must uphold its responsibility to protect the abundant natural values present in the Battle Mountain planning area when developing management alternatives in the Battle Mountain RMP and evaluating their environmental consequences, as required by both FLPMA and NEPA, 42 U.S.C. § 4321 *et seq.*

d. Special Management Proposals and Management Zones

As noted above, the BLM has a variety of tools for protecting natural values. We also encourage the BLM to use designation of recreation management areas and areas of critical environmental concern to protect natural values as part of an overall management approach to creating, enhancing, and protecting quiet recreation experiences, protecting critical species habitats, and providing needed expansions of protections around current WSAs, ACECs, and SRMAs.

In addition to designating areas for special management, the BLM can include management zones in the RMP. Management zones can form an important part of development an approach to comprehensive travel and transportation management (CTTM) planning, as well as planning for recreation and other activities governed by the RMP. CTTM is an interdisciplinary and holistic process that involves more than

a route-by-route evaluation. BLM must take a complete look at all of the resource allocations and uses in the planning area and designate the route network that is appropriate for activities and access, while also closing or limiting travel in areas where important or sensitive resources should be prioritized or may conflict with certain types of travel. According to BLM policy guidance, CTTM should be “outcome-based,” meaning that the network should be integrated with the RMP’s desired outcomes with prescriptions that:

- Meet all resource program goals and objectives, and be consistent with social and environmental objectives for allowing travel and determining transportation networks in the area,
- Provide appropriate levels of access and associated benefits to both recreation travelers and resource users,
- Ensure that prescribed setting characteristics are maintained and establish the primary means and modes of travel allowed for accomplishing the planning objectives.

IM 2008-014, Attachment 1.

In addition, BLM must manage the lands in the field office for “multiple uses,” which means “making the most judicious use of the land for some or all of these resources or related services . . . ; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses.” FLPMA, 43 U.S.C. § 1702(c) (emphasis added).

One approach that has been successfully implemented by BLM to integrate CTTM into the goals of the RMP is to create management zones to guide decisions in the RMP. Management zones emphasize certain types of management and experiences for the planning area as allocated in the RMP. These broadly-defined landscapes describe the type of uses and experiences that will be expected in the specific areas and other management decisions, such as designated routes for travel, can be made based on the criteria for that zone. This is exactly the type of process envisioned by the BLM and stated in policy guidance.

The selection of travel management areas should parallel identified Recreation Management Zones (RMZ) within Special Recreation Management Areas (SRMA). Both recreation management objectives and recreation setting prescriptions guide and constrain the kinds of travel, as well as the location of travel routes. All road and trail construction and maintenance must be constrained to fit within these setting prescriptions. IM 2008-014.

In the same guidance, BLM states that “[f]ield Offices may choose to establish TMAs or management zones . . . that cover the entire planning area.” *Id.*, Attachment 1 (emphasis added). Here, with a broad mixture of land ownership and uses of BLM land throughout the planning area, the St. George Field Office would benefit greatly from delineating management zones as a baseline for designating routes.

There are several examples where BLM has defined these types of management zones in RMPs. One is the Grand Staircase-Escalante National Monument Management Plan (MMP). In this plan, BLM described four zones to “provide guidance to help define permitted or excluded activities and any stipulations pertaining to them.” MMP at 8. These zones included Frontcountry, Passage, Outback, and Primitive Zones. *Id.* at 8-9.

Another example is the Craters of the Moon National Monument RMP which included the Frontcountry, Passage, Primitive, and Pristine Zones for the entire planning area. Craters RMP at 13-14. The plan describes the use of zones as a useful way to guide decisions to meet desired conditions.

Management zoning is established throughout the planning area to provide and maintain a range of recreation and access for different user types with varying interests and abilities. Each separate zone has distinct settings to be provided and maintained. Physical settings consider the degree of naturalness and amount and type of facilities, as well as proximity to roads. Social settings consider the number of contacts with other people, the size of groups, and evidence of other users. Managerial settings consider the amount of visitor management used to achieve desired social and resource conditions, the compatibility of traditional land uses with the recreational environment, and the type of access and vehicle use allowed in the area.

Other management zones for the broader planning area that we have seen include titles like “Rustic” zones or can parallel labels for Recreation Management Zones that are designated in SRMAs. There is currently no standard way to create management zones for a planning area; they are often based on the needs and uses of that particular area. However, once designated, zones can provide guidance for not only travel and transportation management decisions, but also for management of other uses, such as right-of-way exclusion or avoidance, and management prescriptions, such as visual resource management classifications.

Recommendations: BLM should designate the management zones as proposed above to help guide the comprehensive travel and transportation management process, as well as other management decisions and prescriptions in the Battle Mountain RMP.

e. Analysis of Environmental Consequences

NEPA requires federal agencies to assess the direct, indirect and cumulative environmental impacts of proposed actions, taking a “hard look” at environmental consequences and performing an analysis commensurate with the scale of the action at issue. 42 U.S.C. § 4321 et seq; 40 C.F.R. § 1508.8; *see also Metcalf v. Daley*, 214 F.3d 1135, 1151 (9th Cir. 2000); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989). NEPA defines “cumulative impact” as:

the impact on the environment which results from the incremental impact of the action **when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions**. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. § 1508.7. (emphasis added). Throughout these comments, we have identified analyses required to evaluate the direct, indirect and cumulative impacts of decisions made in the RMP, such as health impact assessments and air quality modeling.

Recommendation: The analyses discussed in these scoping comments must be completed prior to authorizing activities that will contribute to these impacts, such as oil and gas leasing, in order to determine whether and under what conditions they can be approved, such that significant impacts on the environment can be prevented. To the extent that the BLM defers any of the recommended analyses, we request that the RMP commit to a time period for completion and confirm that they will be completed prior to approval of contributing activities.

f. Land Tenure Decisions

BLM should review the previous plans and decisions and look at future land tenure decisions with an eye towards providing adequate open space for the growing public, maintaining key viewsheds and taking into consideration new proposals for open space and trails and special management areas. Section 102(a)(1) of FLPMA requires that BLM-managed lands be retained in federal ownership unless BLM determines through the land use planning process that disposal of a particular parcel will serve the national interest. 43 U.S.C. 1701. Land tenure decisions must achieve the goals, standards, and objectives outlined in the land use plan.

With the growing population has come a desire to develop more land, some of which may be appropriate. However, the BLM must retain land near sensitive and ecologically important areas, including those within existing or proposed ACECs or other special management areas, and including specifically citizen-proposed special management areas. Lands identified in new citizen proposals for open space and/or other special management that include lands not owned by BLM should be given priority for acquisition. BLM should only pursue land tenure decisions if they will serve the national interest by supporting key values and resources, such as protecting ecologically important areas and providing open space. In addition, disposal or exchange may be appropriate where the BLM determines that lands will be dedicated to renewable energy development, if those lands are already degraded, closest to the load served for siting development, and can be sold or exchanged with a commitment to obtain lands with higher conservation values (such as wildlife corridors).

As local entities are also developing plans and considering the best uses for nearby lands, the relationship between the RMP and these plans will be important, since BLM's decisions can affect local open space, parks and trail plans. Particular care should be taken to prevent sale or exchange of BLM parcels highly valued by local communities for the open space, wildlife habitat, and recreation opportunities they provide. Further, disposal or exchange may be appropriate to assist with development around local communities.

Recommendations: The BLM should work with local governments and Tribes when identifying areas where disposal of public lands may be appropriate. However, BLM should identify areas such as ACECs, citizen wilderness proposals, or sensitive species habitat for retention and acquisition. BLM should not dispose of parcels valued by local communities for their open space, wildlife habitat, and recreation opportunities.

2. Protection of Lands with Wilderness Characteristics

- (a) BLM must inventory for wilderness character and manage to protecting wilderness characteristics in the RMP.

The lands governed by the Battle Mountain RMP contain pristine wildlands, including those identified in citizen inventories like that conducted by the Nevada Wilderness Project. Section 201 of FLPMA mandates that BLM inventory the resources of the public lands, their resources and values. 43 U.S.C. § 1711. In the land use planning process, including revision of RMPs, Section 202 of FLPMA requires that BLM take into account the inventory and determine which multiple uses are best suited to which portions of the planning area. 43 U.S.C. § 1712. BLM's mandate of multiple use and sustained yield, as

well as other relevant law and BLM's current guidance, provides for inventory and protection of wilderness values.

Wilderness character is a resource for which BLM must keep a current inventory. As the U.S. Court of Appeals for the Ninth Circuit recently held:

wilderness characteristics are among the 'resource and other values' of the public lands to be inventoried under § 1711. BLM's land use plans, which provide for the management of these resources and values, are, again, to "rely, to the extent it is available, on the inventory of the public lands, their resources, and other values." 43 U.S.C. § 1712(c)(4).

Oregon Natural Desert Ass'n v. Bureau of Land Management, 531 F.3d 1114, 1119 (9th Cir. 2008). Therefore, BLM is required to consider "whether, and to what extent, wilderness values are now present in the planning area outside of existing WSAs and, if so, how the Plan should treat land with such values." *Id.* at 1143. These obligations also apply to WSAs released by Congress, which BLM found to have wilderness characteristics. As the court stated: "wilderness characteristics are a value which, under the FLPMA, the Bureau has the continuing authority to manage, even after it has fulfilled its 43 U.S.C. § 1782 duties to recommend some lands with wilderness characteristics for permanent congressional protection." *Id.* at 1142.

Secretarial Order 3310, issued by Secretary of the Interior Salazar on December 23, 2010, affirms that protection of wilderness characteristics is a "high priority" for the public lands and that the BLM should protect the "open and natural productive state" of these lands. The Order further directs the agency to not only inventory for wilderness characteristics, but also to formally designate lands where those values are identified as "Lands with Wilderness Characteristics." In a land use planning process, like this one, the BLM should designate these lands as Wild Lands. Further, the BLM is required to protect its ability to designate Wild Lands by identifying and protecting lands with wilderness characteristics as other projects and interim management decisions arise. The Order provides for the agency to determine, in accordance with the Order and other policy, that impairment of wilderness characteristics is appropriate based on law and other resource considerations. However, in light of the importance of the wilderness resource and the vulnerability of these values, the BLM should designate the Lands with Wilderness Characteristics identified through this planning process and/or during interim inventory to respond to other proposed uses as Wild Lands and manage those lands to protect such values.²

Management prescriptions to protect wilderness characteristics should include, but not be limited to:

- VRM Class I
- Closed to motorized use and off-trail mechanized use
- ROW Exclusion
- Closed to mineral leasing; and retire existing leases as they expire

² We are aware of the April 2003 settlement agreement (Utah Settlement) between Secretary of the Interior Norton and the State of Utah in which BLM abdicated its authority to designate any additional WSAs, and we maintain that this agreement is invalid and will ultimately be overturned in pending litigation. In addition, the Utah Settlement is based on an interpretation of FLPMA §§ 201, 202, and 603 that is contrary to FLPMA's plain language. Section 603 did not supersede or limit BLM's authority under § 201 to undertake wilderness inventories, but rather relies explicitly on BLM having exactly that authority under § 201. Nor did § 603 in any way limit BLM's discretion under § 202 to manage its lands as it sees fit, including managing areas as § 202 WSAs in accordance with the Interim Management Policy (IMP). Every prior administration has created WSAs under § 202 and they plainly had authority to do so. This administration has such authority as well, making this a reasonable alternative deserving of consideration in this NEPA process.

- Recommend for withdrawal from mineral entry
- Retain lands in federal ownership

Manual 6302, Consideration of Lands with Wilderness Characteristics in the Land Use Planning Process, identifies these and other actions as appropriate for protecting Wild Lands.

- (b) Wilderness character is a valuable resource and important multiple use of the lands governed by the Battle Mountain RMP.

As discussed above, wilderness is a resource to be inventoried and managed under BLM’s multiple use mandate. BLM has identified “wilderness characteristics” to include naturalness and providing opportunities for solitude or primitive recreation. In making decisions about managing Lands with Wilderness Characteristics and designating Wild Lands in this planning process, BLM should recognize the wide range of values associated with lands with wilderness characteristics:

(i) Scenic values – FLPMA specifically identifies “scenic values” as a resource of BLM lands for purposes of inventory and management (43 U.S.C. § 1711(a)), and the unspoiled landscapes of lands with wilderness characteristics generally provide spectacular viewing experiences. The scenic values of these lands will be severely compromised if destructive activities or other visual impairments are permitted.

(ii) Recreation – FLPMA also identifies “outdoor recreation” as a valuable resource to be inventoried and managed by BLM. 43 U.S.C. § 1711(a). Lands with wilderness characteristics provide opportunities for primitive recreation, such as hiking, camping, hunting and wildlife viewing. Most, if not all, primitive recreation experiences will be foreclosed or severely impacted if the naturalness and quiet of these lands are not preserved.

(iii) Wildlife habitat and riparian areas – FLPMA acknowledges the value of wildlife habitat found in public lands and recognizes habitat as an important use. 43 U.S.C. § 1702(c). Due to their unspoiled state, lands with wilderness characteristics provide valuable habitat for wildlife, thereby supporting additional resources and uses of the public lands. As part of their habitat, many species are also dependent on riparian and other wetland habitats, especially during either seasonal migrations or seasons and years when surrounding habitats are dry and unproductive. Wilderness quality lands support biodiversity, watershed protection and overall healthy ecosystems. The low route density, absence of development activities and corresponding dearth of motorized vehicles, which are integral to wilderness character, also ensure the clean air, clean water and lack of disturbance necessary for productive wildlife habitat and riparian areas (which support both wildlife habitat and human uses of water).

Further, inventorying lands with wilderness characteristics will also provide important data on existing large blocks of habitat and how BLM can restore these blocks of habitat to better match the historic range of variability. Swanson et al. (1994) contend that managing an ecosystem within its range of variability is appropriate to maintain diverse, resilient, productive, and healthy ecosystems for viable populations of native species. Using the historical range of variability, they believe, is the most scientifically defensible way to meet society’s objective of sustaining habitat. Patrick Daigle and Rick Dawson, Extension Note 07; Management Concepts for Landscape Ecology (Part 1 of 7). October 1996. <http://www.for.gov.bc.ca/hfd/pubs/docs/en/en07.pdf>; citing Swanson, F. J.; Jones, J. A.; Wallin, D. O.; Cissel, J. H. 1994. Natural variability--implications for ecosystem management. In: Jensen, M. E.; Bourgeron, P. S., tech. eds. Eastside Forest Ecosystem Health Assessment--Volume II: Ecosystem management: principles and applications. Gen. Tech. Rep. PNW-GTR-318. Portland, OR: U.S. Dept. of

Agriculture, Forest Service, Pacific Northwest Research Station: pp 89-106.

Identifying, restoring and protecting substantial roadless areas in the lands governed by the Battle Mountain RMP can provide crucial benefits to wildlife, especially to endangered and sensitive species.

(iv) Cultural resources – FLPMA also recognizes the importance of “historical values” as part of the resources of the public lands to be protected. 43 U.S.C. § 1702(c). The lack of intensive human access and activity on lands with wilderness characteristics helps to protect these resources. The Notice of Intent for the Battle Mountain RMP revision identifies managing and protecting cultural and historical resources as an issue to be addressed in the RMP. Managing lands to protect wilderness qualities will also help protect cultural and archaeological sites.

(v) Economic benefits – The recreation opportunities provided by wilderness quality lands also yield direct economic benefits to local communities. According to the U.S. Fish & Wildlife Service, in 2006 State residents and non-residents spent \$917 million on wildlife recreation in Nevada. (USFWS 2006, *National Survey of Hunting, Fishing and Wildlife-associated Recreation* - <http://www.census.gov/prod/2008pubs/fhw06-nv.pdf>). In addition, local communities that protect wildlands reap measurable benefits in terms of employment and personal income. For instance, a recent report by the Sonoran Institute (Sonoran Institute 2004, *Prosperity in the 21st Century West -The Role of Protected Public Lands*) found that:

Protected lands have the greatest influence on economic growth in rural isolated counties that lack easy access to larger markets. From 1970 to 2000, real per capita income in isolated rural counties with protected land grew more than 60 percent faster than isolated counties without any protected lands.

These findings confirm earlier research, showing that wilderness is in fact beneficial for local economies. Residents of counties with wilderness cite wilderness as an important reason why they moved to the county, and long-term residents cite it as a reason they stay. Recent survey results also indicate that many firms decide to locate or stay in the West because of scenic amenities and wildlife-based recreation, both of which are strongly supported by wilderness areas. (Morton 2000, *Wilderness: The Silent Engine of the West's Economy*). Other “non-market” economic values arise from the ability of wildlands to contribute to recreation and recreation-related jobs, scientific research, scenic viewsheds, biodiversity conservation, and watershed protection. (Morton 1999, *The Economic Benefits of Wilderness: Theory and Practice*; Loomis 2000, *Economic Values of Wilderness Recreation and Passive Use: What We Think We Know at the Turn of the 21st Century*). All of these economic benefits are dependent upon adequate protection of the wilderness characteristics of the lands.

(vi) Quality of life – The wildlands located within the Battle Mountain planning area help to define the character of this area and are an important component of the quality of life for local residents and future generations, providing wilderness values in proximity to growing population centers. Their protection enables the customs and culture of these communities to continue.

(vii) Balanced use – The vast majority of BLM lands are open to motorized use and development. FLPMA recognizes that “multiple use” of the public lands requires “a combination of balanced and diverse resource uses” that includes recreation, watershed, wildlife, fish, and natural scenic and historical values (43 U.S.C. § 1702(c)). FLPMA also requires BLM to prepare land use plans that may limit certain uses in some areas (43 U.S.C. § 1712). Many other multiple uses of public lands are compatible with protection

of wilderness characteristics – in fact, many are enhanced if not dependent on protection of wilderness qualities (such as primitive recreation and wildlife habitat). Protection of wilderness characteristics will benefit many of the other multiple uses of BLM lands, while other more exclusionary uses (such as off-road vehicle use and timber harvesting) will still have adequate opportunities on other BLM lands.

Recommendations: In accordance with Secretarial Order 3310 and new BLM Manuals 6301, 6302, and 6303, BLM should designate identified Lands with Wilderness Characteristics as Wild Lands, provide interim protection for wilderness characteristics during the preparation of the Battle Mountain RMP, and manage Wild Lands to protect their wilderness values. In addition, the BLM should acknowledge the many important values of wilderness characteristics identified above in the RMP’s management alternatives and thoroughly analyze this issue throughout the planning process.

(c) Specific lands to be protected

To assist the Battle Mountain District Office with inventorying and protecting lands in accordance with Secretarial Order 3310 and FLPMA, we are attaching a map depicting specific areas with wilderness characteristics that should be designated as Wild Lands to protect the opportunities they provide for primitive recreation and otherwise experiencing solitude, naturalness and scenic beauty. These proposed wilderness areas have been inventoried by Nevada Wilderness Project and Friends of Nevada Wilderness.

We would like to highlight that many of these proposed wilderness areas, and other areas which BLM will inventory during this RMP revision, are adjacent to existing WSAs or other roadless areas, and thus provide connectivity and an opportunity for landscape-scale conservation. For example, Castle Rock North and South and Goblin Knobs are adjacent to WSAs and should be protected to provide a connected natural landscape. These areas are also deserving of Wild Lands designation because of their unique geology and remoteness. Similarly, the Lava Flow, North Wall, and Easy Chair proposed wilderness areas are adjacent to WSAs and therefore should be protected to conserve these ecosystems at a landscape level.

This concept is supported by the recently released *America’s Great Outdoors* report, which recommends the agency incorporate landscape-scale conservation and restoration as a priority in BLM resource management plans and programs.³

Recommendations: The Battle Mountain District Office should ensure its inventory of lands with wilderness characteristics includes the areas depicted in the attached map, as well as other areas which BLM has previously found wilderness characteristics or otherwise believes may possess wilderness qualities. The RMP should give priority to protecting areas that are adjacent to WSAs and roadless areas and can support landscape-scale conservation.

3. Renewable Energy

The RMP should identify zones for renewable energy projects and limit all renewable energy development to those zones. Zones should be based on high-resource, low-conflict areas that are on already-degraded lands and near existing infrastructure. The BLM is already taking a similar approach in the ongoing Programmatic Environmental Impact Statement for Solar Energy Development, and is

³ <http://americasgreatoutdoors.gov/report/>

analyzing lands within the Battle Mountain District for solar energy zones. (The draft PEIS analyzes the Miller SEZ and the Gold Point SEZ in the Battle Mountain District.) We recommend the Battle Mountain District Office also adopt this approach for wind energy.

Within the zones, BLM should prioritize lands that are most suitable for development, ensure adequate protective measures are imposed on development, and require both on-site and off-site mitigation of impacts to resources, as well as loss of uses (such as recreation).

This approach is supported by IM 2011-061, which aims to guide applicants to areas that will raise as few environmental and cultural concerns as possible by establishing screening criteria to determine the level of potential conflict and requiring a pre-application process to engage stakeholders and identify conflicts early. Building on the BLM's guidance, the Battle Mountain RMP should incorporate screening criteria for solar and wind projects that ensures sensitive resources such as Lands with Wilderness Characteristics, ACECs, Recreation Management Areas, and other specially designated areas are protected from development.

For off-site mitigation, we also direct BLM's attention to IM 2008-204, which describes the broad type of actions that may be taken to address both direct impacts of a project and greater cumulative effects that development is having on a landscape. IM 2008-204 identifies and elaborates on the types of off-site mitigation that can be used, stating:

- Offsite mitigation may include, as appropriate:
 - In-kind: Replacement or substitution of resources that are of the same type and kind as those being impacted.
 - Example: For every acre of new, long-term surface disturbance in important sage-grouse nesting/early brood-rearing habitat in Area (A), (X) acres of unsuitable habitat in Area (B) is reclaimed, treated, or planted to create new or suitable nesting/early brood-rearing sage-grouse habitat.
 - Out-of-kind: Replacement or substitute resources that, while related, are of equal or greater overall value to public lands.
 - Example: For every acre of new, long-term surface disturbance in important sage-grouse nesting/early brood-rearing habitat in Area (A), the project proponent agrees to bury (Y) miles of existing power lines and remove the power poles used as hunting perches by raptors in Area (B).
 - In-lieu-fee: Payment of funds to the BLM or a natural resource management agency, foundation, or other appropriate organization for performance of mitigation that addresses impacts of a project.
 - Example: The applicant may make payment to the BLM or a conservation group based on the amount of acres that will be disturbed in exchange for commitment from the recipient to apply the funds toward local sage-grouse core habitat protection/restoration projects.

In the context of renewable energy development, there may be additional conservation priorities that can be pursued to mitigate the impacts of individual projects and BLM could begin discussions with interested stakeholders to identify these potential targets for off-site mitigation efforts or funding.

The RMP should ensure areas zoned for wind energy and rights-of-way are located appropriately to avoid impacts to sage grouse. High profile structures such as wind turbines and transmission lines should

be located more than 5 miles from active sage grouse leks, as supported by recent science. The Jarbidge (Idaho) Draft RMP would site all new high profile structures more than 5 miles from active leks in its preferred alternative (DRMP 2-271⁴) and we recommend the Battle Mountain RMP adopt this approach.

Recommendations: The Battle Mountain RMP should identify zones for all types of renewable energy development that prioritize high potential for energy development areas that contain degraded lands and are in close proximity to new transmission, while excluding sensitive conservation lands, such as citizen-proposed wilderness areas and ACECs. The RMP should also specifically preclude development outside the designated zones. Within the zones, the RMP should also set out prioritization criteria, which direct development to degraded lands and identifies other areas where development is more likely to lead to conflict, as well as setting out protective stipulations to safeguard other resources. We have provided a proposed “Sensitivity Based Prioritization for Development Areas within Renewable Energy Zones” (attached to these comments) to be used by the Battle Mountain District Office in implementing these recommendations. For off-site mitigation, BLM should provide for addressing a wide range of options to address the cumulative, far-reaching impact of renewable energy development (as set out in IM 2008-204) and should design a process to reach out to stakeholders and develop a set of conservation priorities to target in connection with off-site mitigation.

4. Travel Management

(a) Travel management decisions should be made in the RMP.

BLM’s internal guidance states that “each RMP will divide planning areas into OHV area designations that are open, limited or closed.” IM No. 2004-005; *see also* 43 C.F.R. § 8342.2(b). This internal guidance was also incorporated into the updated version of BLM’s *Land Use Planning Handbook*. H-1601, Appendix C, Section II.D (Comprehensive Trails and Travel Management). The *Land Use Planning Handbook* states that BLM should:

Complete a defined travel management network (system of areas, roads and/or trails) during the development of the land use plan, to the extent practical. If it is not practical to define or delineate the travel management network during the land use planning process, a preliminary network must be identified and a process established to select a final travel management network. (emphasis added)

The *Land Use Planning Handbook* (Appendix C, Section II.D) also sets out requirements for travel management at both the land use and implementation planning levels:

- At the land use plan level, BLM must identify areas for use based on program goals and objectives, primary users, reason for “allowing travel” into an area, setting character to be maintained (including Visual Resource Management and Recreation Opportunity Spectrum classifications), and primary means of travel appropriate to meet objectives and keep setting character; and
- At the implementation level, BLM must define a detailed travel management network, “establish a process” to identify roads, trails, etc. with criteria for selections, guidelines for management, monitoring and maintenance, and indicators for future plan maintenance.

⁴ Available at http://www.blm.gov/pgdata/etc/medialib/blm/id/plans/jarbidge_rmp/draft_rmp_eis_-_volume.Par.20595.File.dat/File_1.6-Chapter_2.pdf

Because the Notice of Intent for the Battle Mountain RMP revision lists “identifying off-highway vehicle designations and travel management” as an issue to be addressed in the plan, we assume BLM plans to complete comprehensive travel planning as part of this RMP. If the agency does not complete travel management plans for all of the planning areas as part of the RMP, then the RMP must identify not only areas for use, but also reasons for permitting travel into an area and appropriate criteria for determining routes that will be made available for different uses, taking into account such factors as undeveloped recreation opportunities available and natural settings.

The RMP should also identify priorities for implementation of the travel management plan, which may also be instructive in the event that the agency expects that additional travel planning will be needed. Special management areas, such as ACECs, special recreation management areas and citizen-proposed wilderness, must include travel designations within their boundaries. Priorities for sub-regions to receive comprehensive travel management planning, which can also be useful for guiding implementation, were identified in the Proposed RMP issued by the Little Snake Field Office (available on-line at: <http://www.co.blm.gov/ltra/rmp/index.htm>) and we would encourage you to further prioritize areas in this manner as well. Please see Appendix F from the Little Snake Proposed RMP (attached), which sets out criteria for prioritizing areas to receive comprehensive travel management planning, including:

- Special management areas
- Areas identified as “limited to designated roads and trails”
- Areas that meet fragile soil criteria
- User and resource conflicts
- Excessive complaints
- Wildlife/wild horse population trends
- Evidence of trail/road proliferation
- Areas with high road densities
- Impacts on cultural resources
- Unacceptable erosion
- Degradation of water quality
- Impacts on visual resources
- Loss of trail integrity
- Habitat fragmentation and damage
- Impacts on sensitive plants
- Need to provide a variety of user experiences

Recommendations: BLM must complete comprehensive travel management concurrently with the RMP process. The RMP should also identify priority areas for implementation of the travel plan.

(b) Landscape level planning.

Travel planning requires the agency to manage human travel across the landscape. The land use planning process, which addresses the broader landscape within a planning area, provides one of the best opportunities to make travel planning decisions in the appropriate context. While we understand that BLM does not have authority to close or relocate highways, major roads, or County roads, BLM must include these routes when analyzing the transportation network as they have a great impact on habitat fragmentation and reduction in core area size (discussed in length later in these comments and in Appendix 1). The placement and design of travel routes defines which areas will remain or become roadless, and which areas will be disturbed and how. In other words, route decisions determine the

fragmentation of the landscape, and, thus, how naturally or unnaturally a landscape will behave in terms of water flow and quality, wildlife migration, and species composition and function.

NEPA requires federal agencies to assess the direct, indirect and cumulative environmental impacts of proposed actions, taking a “hard look” at environmental consequences and performing an analysis commensurate with the scale of the action at issue. 42 U.S.C. § 4321 et seq; 40 C.F.R. § 1508.8; *see also Metcalf v. Daley*, 214 F.3d 1135, 1151 (9th Cir. 2000); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989). Travel planning affects the entire landscape and can only be thoroughly and properly assessed by considering potential impacts and making decisions at a comparable level. In terms of how to evaluate the potential impacts of travel management decisions, NEPA’s definition of “cumulative impact” is instructive:

the impact on the environment which results from the incremental impact of the action **when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions**. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. § 1508.7. (emphasis added). BLM must account for the direct, indirect, and cumulative impacts of all roads in the Battle Mountain District when completing a comprehensive travel management plan.

BLM policy guidance also defines comprehensive travel and transportation management planning as being integrated with the objectives of the RMP at the landscape level.

Managers should consider access needs and incorporate management prescriptions for all motorized and nonmotorized travel and access that occur on public lands. Travel management implementation should be accomplished in a holistic approach that provides clear direction for access and recreation opportunities while protecting sensitive areas and meeting resource management objectives. IM 2008-014, Attachment 1.

In addition, IM 2008-014 states that travel planning will “[s]upport the desired outcomes of other resource programs, as expressed in goals and objectives in the land use plan, along with any additional landscape prescriptions.” *Id.* Thus, in order to undertake comprehensive travel and transportation planning, BLM must look at the entire landscape and the impacts to the area from decisions made in the TMP.

Recommendation: BLM should address travel management on a landscape-level by evaluating the impacts of all roads in the planning area and tailoring its management prescriptions to account for and mitigate the landscape-wide impacts of these roads in conjunction with the objectives of the RMP.

(c) Minimization Criteria.

The Battle Mountain RMP must comply with the applicable federal regulations (43 C.F.R. §§ 8342.1 and 8342.2), codifying Executive Orders (E.O.) 11644 and 11989, that instruct BLM on ORV management. Specifically, the Battle Mountain District Office must take into account not only increases in ORV use, but also the damages caused to the natural resources by such use, and the heightened conflict between user groups as the number of ORVs increase and heretofore non-motorized areas are being transformed into motorized areas.

BLM's regulations relating to management of off-road vehicles acknowledge the need to address the manner in which motorized recreation can prohibit other experiences, requiring that both areas and routes for off-road vehicles be located to "minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors." 43 C.F.R. § 8342.1.

The BLM's ORV regulations also provide for protection of other values that are critical parts of not only a healthy ecosystem on BLM lands, but also of enjoying quiet recreation activities, such as hunting, photography and bird-watching, requiring that management minimize "damage to soil, watershed, vegetation, air, or other resources of the public lands" and harassment of wildlife or disruption of habitat; and to prevent impairment of wilderness suitability or adverse effects on natural areas. 43 C.F.R. § 8342.1.

In designating areas as "open" to ORV use (such that cross-county travel is permitted) in compliance with these legal requirements, the Colorado BLM's guidance is instructive on evaluating such alternatives. IM CO-2007-020 (available on-line at: http://www.blm.gov/pgdata/etc/medialib/blm/co/information/efoia/2007/2007_im.Par.36137.File.dat/COIM2007-020.pdf) provides:

Open areas will be limited to a size that can be realistically managed and geographically identifiable but large enough in size to offer a high quality motorized riding/driving opportunity for participants. Expansive open areas allowing cross-country travel, without a corresponding and identified user need/demand, will not be designated in RMP revisions or new travel management plans.

We recommend the Battle Mountain District adopt a similar approach.

Recommendation: BLM must design a travel plan that minimizes conflicts among users and damage to natural resources. New open areas should not be designated and current open areas should be reevaluated to ensure that they are located and bounded to meet the minimization criteria and limited to a reasonable size for purposes of BLM management and enforcement.

(d) Mapping of routes.

As part of comprehensive travel management planning, BLM produces route maps to illustrate a base travel network, to generate various route designation proposals, and for purposes of receiving public comments. In these contexts, it is vital that the agency clearly mark on all maps or proposed maps areas with existing restrictions on motorized use, such as: wilderness areas, WSAs, primitive non-motorized designations, Wild and Scenic Rivers, and ACECs. Depicting existing restrictions will ensure that public comments are informed by the knowledge that additional routes will not be permitted in certain areas. Further, maps should indicate resources that could be affected by motorized use, such as wilderness characteristics and wildlife habitat. Public comments will then be informed by the potential resource conflicts and the best opportunities for designating areas for non-motorized recreation.

Route maps should also distinguish user-created routes from roads that were created and are maintained by the BLM to serve planned transportation needs. Also, user-created routes in areas that have motorized restrictions should only be shown as closed and/or for prioritizing restoration. To be

added to the transportation system, user-created routes must go through NEPA analysis to ensure they are not damaging resources and comply with BLM regulations, such as the minimization criteria for ORV use discussed in these comments.

In addition, as part of designating routes, BLM should use consistent definitions of roads, primitive roads, and trails. IM 2006-173 (“Implementation of Roads and Trails Terminology Report”), sets out and defines these terms, and includes a definition of a road as:

A linear route declared a road by the owner, managed for use by low-clearance vehicles having four or more wheels, and maintained for regular and continuous use.

It is important that BLM use these terms to distinguish both the types of routes and the appropriate types of motorized use.

Recommendations: BLM should identify both existing restrictions on motorized access and other areas that can be damaged by motorized use on all maps used in travel planning. User-created routes should be distinguished from legitimate roads on travel planning maps, and, where they were created illegally, should be excluded from the baseline inventory.

(e) Habitat fragmentation.

As mentioned in the beginning of this section of our comments, BLM must address travel management on a landscape level to ensure that BLM meets its responsibility as stewards of the public land and mitigates against habitat fragmentation. We have included The Wilderness Society’s recent Science and Policy Brief, “Habitat Fragmentation from Roads: Travel Planning Methods to Safeguard BLM Lands” (Appendix 1). Also included in Appendix 1 is a scoping brief entitled “Analysis of Habitat Fragmentation from Oil and Gas Development and its Impact on Wildlife: A Framework for Public Land Management Planning” and four scientific reports prepared by TWS and discussed in the habitat fragmentation report. These include *Fragmenting Our Lands: The Ecological Footprint from Oil and Gas Development*, *Protecting Northern Arizona’s National Monuments: The Challenge of Transportation Management*, *Wildlife at a Crossroads: Energy Development in Western Wyoming*, and *Ecological Effects of a Transportation Network on Wildlife*. In addition to summarizing the four reports included, “Habitat Fragmentation from Roads: Travel Planning Methods to Safeguard BLM Lands” provides a summary of available scholarly and government reports and studies on the impact of habitat fragmentation on wildlife, provides methods for calculating habitat fragmentation, and provides recommendations on how to integrate fragmentation analysis into travel management.

We also recommend that the BLM look at the travel planning criteria set out in the Record of Decision for the Dillon (MT) RMP (relevant sections attached and also available on-line at: <http://www.mt.blm.gov/dfo/rod/contents.htm>), as an example of criteria that incorporate key aspects of BLM’s ORV regulations as well as ecological metrics. This field office did not complete a comprehensive travel management plan as part of its RMP revision; however, it included road density targets and included an appendix outlining the principles it will use when completing a comprehensive travel management plan during implementation.

Recommendation: BLM should use the information provided in Appendix 1 to measure habitat fragmentation, conduct a thorough fragmentation analysis, and inform decisions regarding road closure and other limitations on use in the Battle Mountain RMP.

(f) Principles of travel management.

When completing a comprehensive travel management plan, it is vital to complete it in a systematic and transparent manner.

Key principles of travel planning

- (1) Travel management is part of land use planning and should address both recreation and transportation needs from a landscape perspective; therefore, travel planning must be coordinated with recreation management planning.
- (2) Prior to conducting an inventory or designation of routes, BLM should assess the present resources, requirements for protection, and which uses for recreation and development are compatible with these resources, requirements and other users.
- (3) BLM should use a legal definition of “road” when designating routes.
- (4) BLM’s consideration of ORV use should take into account its potential damage to resources and other uses, including exclusion of other users.
- (5) Where BLM presents a baseline travel system, it must present route maps in a responsible manner that does not legitimize or misrepresent the official status of the existing network of unauthorized ways/routes routes.
- (6) BLM should include a detailed closure and restoration schedule in the plan.
- (7) BLM should include and implement a monitoring plan.
- (8) BLM should include and implement education and outreach in the plan.

The RMP revision provides opportunities for BLM to evaluate its travel system goals and whether the current system of roads and trails is furthering or hampering these goals. BLM should create a travel network that best serves the many resources which the agency is tasked with managing and does not inadvertently do a disservice to any other resource or public land visitor.

The Wilderness Society and the Colorado Mountain Club developed a template for conducting travel management planning, including a detailed discussion of these key principles of travel planning, which we have attached and recommend that the BLM incorporate into the RMP as the process for travel planning.

Recommendations: BLM should follow the eight travel planning principles detailed above to ensure that only routes which truly serve a valid purpose for the public remain open. BLM should also create comprehensive travel and recreation management goals and designate routes accordingly.

5. Recreation

The Wilderness Society's hundreds of thousands of members are passionate about preserving traditional "quiet" forms of recreation such as hiking, backpacking, non-motorized hunting, angling, horseback riding, and birdwatching.

On the public lands, our members want to experience naturalness, quiet natural soundscapes, undeveloped scenery, an undisturbed natural landscape, the timelessness and geological sweep of the BLM's remote and rugged landscapes, a low level of facilities and management presence, and opportunities for uncrowded and solitary experiences. We want to be able to recreate in primitive, undeveloped, natural appearing settings. The experiences we are looking for are closeness to nature, a contemplative relationship with the natural world, savoring the total sensory experience of a natural landscape, escape from crowds, quieting our minds by escaping urban traffic and crowding, and a sense of humanity's place in the larger universe, as well as improved outdoor knowledge, independence, self-reliance and a sense of adventure.

We and our members are whole-hearted participants in these types of experiences with a keen interest in preserving for future generations these time-honored traditional experiences of the outdoors.

a. Preservation, creation and enhancement of opportunities for quiet recreation

The recreation resource on public lands is becoming increasingly valuable: more people want to recreate on a finite amount of public land. As mentioned above, the vast majority of recreationists and other public land visitors desire solitude, clean air, clean water, vast undeveloped landscapes, and a place to witness healthy natural systems thriving with native plants and wildlife. The Battle Mountain District can provide a wealth of these types of experiences, encompassing many natural and scenic landscapes.

(i) FLPMA and Off-Road Vehicle (ORV) Regulations Applicable to Noise

As discussed above, FLPMA requires the BLM to manage the multiple uses and resources of the public lands, which include fish and wildlife, watersheds, scenic values, recreation opportunities, scientific and historic values, and other natural values, such as wilderness characteristics. FLPMA also provides for the agency to do so by excluding or limiting certain uses of these lands. BLM's regulations relating to management of off-road vehicles, similarly acknowledge the need to address the manner in which motorized recreation can prohibit other experiences, requiring that both areas and routes for off-road vehicles be located to "minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, *taking into account noise and other factors.*" 43 C.F.R. § 8342.1 (emphasis added). Providing a "quiet" recreation experience, as also discussed in reference to opportunities for primitive, unconfined recreation and for solitude provided by lands with wilderness characteristics, also requires thoughtful management to provide for a quiet soundscape. Much research exists on the importance of natural sound to public land visitors. **We recommend the Battle Mountain District Office conduct a soundscape analysis to guide formulation of intended user experiences**, for example by analyzing how canyon topography and vegetation might reflect or propagate vehicular sound and how that might affect quiet users, neighboring homeowners and wildlife habitat effectiveness. We ask that the alternatives specifically compare impacts of, and the potential for the increase of ORV noise on natural sound and other resources, consistent with the BLM's regulations. We have included a more detailed discussion on soundscape modeling and management later in these comments.

(ii) National Visitor Use Monitoring Program

The Moab Field Office completed a National Visitor Use Monitoring Program (NVUM) as a pilot project for visitor use monitoring on BLM lands. The NVUM for the Moab Field Office was developed through an interagency agreement with the Forest Service to be useful, in part, for making decisions during the planning process. BLM's website on the program explains the NVUM's relevance and applicability:

Such visitor monitoring information enables BLM to incorporate statistically valid visitor use monitoring information into planning and management decisions as well as long-term monitoring assessment. The FS NVUM system provides BLM with accurate data with high confidence levels for reporting to Congress and constituents, thereby building credibility and establishing legal protection in decision-making.

BLM, Visitor Use Surveys & Research,

http://www.blm.gov/wo/st/en/prog/Recreation/national_recreation/visitor_use_surveys.html.

The information provided from the NVUM shows that motorized use is a small portion of recreation activity on public lands in the Moab Field Office. The NVUM states: "In terms of total participation, the top five recreation activities of the visits to the Moab Field Office were viewing natural features, hiking/walking/trail running, relaxing (hanging out, escaping heat and noise), viewing wildlife and driving for pleasure (Table 16)."

The Battle Mountain District Office should conduct a similar survey in preparation of the RMP. If the Battle Mountain District Office also finds that quiet-use recreation is the most prevalent type of activity on public lands within the field office, it should ensure the RMP reflects that finding and adequately accommodates quiet users.

(iii) Criteria for Addition of New Motorized Trails

In order to ensure that priority ORV management is addressed, the BLM should implement a prioritization hierarchy in which new construction is secondary to and incumbent upon successful restoration and prior achievement of other ORV related management goals. Management activities such as restoration and rehabilitation of existing impacts, signage and achieving compliance should take precedence over approving new motorized construction or adding motorized system trails that further increase the agency's management burden and might further retard other resource actions that are critical if not addressed first.

The goal of this priority hierarchy is to 1) take care of the resource impacts from past ORV related activities; 2) establish conditions to prevent new and/or reoccurring ORV related impacts; 3) secure long term commitments, stipulations, and thresholds of new and existing system routes; and (4) once above priorities have been met, new proposals can be considered and reviewed through NEPA.

Thus, in assessing whether additional motorized trails are to be considered, and if appropriate, approved, we recommend the following set of principles which builds upon the Royal Gorge Field Office's criteria set out in the Arkansas River Travel Management Plan Environmental Assessment, Appendix 6 (pp. 225-227).

To provide for appropriate motorized uses, while also protecting the area's resources, the BLM should establish the following criteria for addition of new motorized trails to help guide future management and development of the ORV activities in the Battle Mountain District:

1. Approve construction of new or additional trails only after the following conditions have been met:
 - a. The decision to approve the trail(s) has been authorized under a site specific EA or EIS that analyzes the site specific environmental effects of the proposal.
 - b. The proposal would further the goals and desired future conditions (DFCs) identified by the agency.
 - c. Priority implementation of effective on-the-ground closures (i.e. barriers, gates, berms) and restoration work (i.e. ripping/seeding, decommissioning, re-countouring, re-vegetation) has been completed and adequate funding and grants, partnerships/volunteer commitments, staff time allocations has been secured and employed.
 - d. Implementation of all necessary signage (for closed and open routes) has been fully installed and adequate funding and staff/volunteer time for installment has been committed to.
 - e. The proposal is sponsored under a partnership agreement that includes a plan for securing the necessary funds and/or volunteer commitments to construct and maintain the trail to accepted standards.
 - f. The proposal is accompanied by long term commitments, and stipulations and thresholds are agreed to that if surpassed, corrective management actions will be taken to protect resource health.
2. A significant factor in approving new trails depends on the ability to maintain existing trails to agreed standards. With the participation of cooperating partners, develop accepted standards and guidelines for constructing and maintaining new and existing trails.
3. With the participation of cooperating partners, establish a system and procedures for monitoring trail conditions and performing necessary maintenance work.
4. Continue and strengthen long-term partnerships with motorized user groups for the purposes of maintaining existing trail networks.

Note that new construction does not include incidental construction in order to reroute, mitigate, and/or prevent resource impacts as this would be included under number 1 (c); rather, this refers to new ORV opportunities that are considerable and are added to the current system and agency burden.

This approach is consistent with the letter and the spirit of BLM's obligation to minimize impacts from ORVs to other users and resources. As discussed previously in these comments, Executive Orders (EO No. 11644 (1972) as amended by Executive Order No. 11989 (1977)) and the BLM's regulations (43 C.F.R. § 8342.1) require BLM to ensure that areas and trails for off-road vehicle use are located to minimize damage to soil, watershed, vegetation, air, or other resources of the public lands, and to prevent impairment of wilderness suitability; to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands; and to minimize distress and other impacts to wildlife.

Recommendations: In managing recreation on the lands of the Battle Mountain District, the RMP should ensure that quiet recreation opportunities are given sufficient attention and that management of motorized recreation, in general, is also designed to protect the experiences of other public land visitors.

Comprehensive travel management planning, including landscape level planning and road density analysis, as well as compliance with land health standards, will also ensure healthy ecosystems that can support positive recreation experiences.

b. Standards for Issuance of Special Recreation Permits

BLM should adopt unambiguous, protective criteria for issuance of special recreation permits (SRPs) in order to effectively manage the increase in commercial and competitive group activities that can have a significant impact on the lands in the Battle Mountain District. The BLM Handbook on Recreation Permit Administration (H-2930-1) clearly states that field offices can and should develop guidelines for issuing SRPs. The Handbook states: “Field Offices are encouraged to develop thresholds through land use planning for when permits are required for organized groups and events for specific types of recreation activities, land areas, or resource settings” H-2930-1 at 13. On the issue of Special Area Permits, the Handbook states: “Applications for Special Area Permits issued to individuals are processed according to the area-specific land use and/or business plan, or guidelines approved by the State Director.” H-2930-1 at 17. The Battle Mountain District Office therefore must provide clear guidelines for processing SRPs, because in this situation the Handbook directs that permit issuance will tier to the RMP.⁵

The Price Field Office Draft RMP, Appendix 14, (attached to these comments) provides an excellent example for evaluating SRP applications and issuing such permits. It classifies SRPs into four distinct classes, ranging from least intensive to most intensive, based on specific factors such as type of equipment, size of area used, number of participants, etc. These factors are defined and then compared in a simple permit classification matrix consisting of Classes I through IV (with I being for smaller and less impacting events and IV being for larger, more impacting events). Each Class also has an example of the type of event that may fit into the category. After the Class is determined, the BLM can then look to see how permit types fit into Recreation Opportunity Spectrum Classifications and/or Special Recreation Management Area (SRMA) or Extensive Recreation Management Area. Various SRMAs can be broken into classes and it is easy to see what types of uses and events should be permitted for each area. Because the standards set out in the Price Draft RMP are very specific (for example, surface disturbance of 5-40 acres ranks as “medium intensity”), BLM can easily determine whether to issue an SRP and where, and can better estimate cumulative impacts from such permits. The Battle Mountain RMP should use the model provided by the Price Draft RMP for classification of SRPs to define which uses may be appropriate or inappropriate in specific areas. BLM has not only the discretion to establish SRP guidelines, but also the obligation to do so in order to protect the resources that the RMP is intended to protect and sustain.

Furthermore, BLM issued new guidance recently clarifying the SRP manual (IM 2011-019). The guidance requires the agency and applicant to show that they have taken measures to sufficiently administer the permit and remedy damage that may occur from the event.

Recommendations: The BLM should set out clear standards for issuance of SRPs, to protect other uses and natural and cultural resources. Before issuing SRPs, the BLM must ensure that the agency has

⁵ Analysis of the impacts of permits on a cumulative basis is also best accomplished in the RMP, since it will provide for a more comprehensive, informed analysis that can look at both cumulative and site-specific environmental consequences, as required by NEPA.

sufficient resources available to administer the permit and that the applicant can remedy any resultant damage to the public lands.

c. Special Recreation Management Areas and Extended Recreation Management Areas

In the Battle Mountain RMP we encourage the BLM to use recreation management areas to preserve or restore primitive and backcountry recreation opportunities – providing a prescriptive approach to creating, enhancing and protecting quiet recreation experiences on our public lands, using the tools and guidance set out above.

In 2010, BLM issued new guidance (IM 2011-004) for recreation and visitor services planning in the land use planning process. The guidance changes recreation management to a three-category system wherein lands in the planning area can be designated as special recreation management areas (SRMAs), managed as extensive recreation management areas (ERMAs), or classified as public lands not designated as recreation management areas.

Management focus for SRMAs is to “protect and enhance a targeted set of activities, experiences, benefits, and desired recreation setting characteristics,” whereas ERMAs are managed to “support and sustain the principal recreation activities and the associated qualities and conditions of the ERMA.” In SRMAs, recreation is to be the dominant use, and in ERMAs management is “commensurate with the management of other resources and resource uses.” Whereas SRMAs are intended for more intensive management, ERMAs may be appropriate to designate for quiet-use, backcountry experiences and layer with other special designations that are compatible with quiet recreation, such as ACECs and lands with wilderness characteristics. Both SRMAs and ERMAs provide mechanisms for the BLM to actively manage different types of recreation to the benefit of users while protecting the other resources of the public lands. If ERMAs are designated for backcountry experiences, they should be closed to uses that are incompatible with those types of experiences such as oil and gas leasing and off-road vehicles.

The new guidance also includes an updated Recreation Setting Characteristic Matrix. We encourage BLM to not use the qualities in the matrix as a “bright-line test” to disqualify areas which are or could in the future provide a primitive recreation experience. Rather, the qualities should be used as a goal which proper management could help the areas achieve and focus on the experience that can be achieved.

In this manner, areas which have primitive character should be managed for that experience and desired future condition, even if they do not currently meet all of the criteria that the BLM has set for primitive physical settings or designation. By adopting such a prescriptive, or aspirational management approach, as opposed to a more descriptive or reactive approach of just basing the management of the RMAs on perceived evidence of human presence or an expectation of more people wanting to use the area, the BLM can ensure that some level of existing disturbance does not disqualify areas which do provide a primitive experience from a decision to manage them to protect and enhance such qualities and provide this important experience.

Recommendations: BLM should adopt a range of SRMAs and ERMAs and management prescriptions which provide adequate opportunities for non-motorized or quiet recreational experiences and are written to enhance the other values that ultimately contribute to the experiences of the area. BLM should use an aspirational approach which allows the agency to ensure that some level of existing disturbance does not disqualify areas which do provide a primitive experience from a decision to manage them to protect and enhance such qualities and provide this important experience.

6. Cultural and Historic Resources

FLPMA obligates the BLM to protect cultural, geologic, and paleontologic resource values (43 U.S.C. §§ 1701(a)(8) 1702(c)). In the context of historical and cultural resources, the National Historic Preservation Act of 1966 (“NHPA”) (16 U.S.C. § 470 et seq.) affords heightened protection to these resources, establishing a cooperative federal-state program for the protection of historic and cultural resources. In particular, the review process set out in Section 106 (16 U.S.C. § 470f) obligates the BLM to consider the effects of management actions on historic and cultural resources listed or eligible for inclusion under NHPA. Additionally, Section 106 requires the BLM to consider the effects of its management actions on all historic resources and to give the Advisory Council on Historic Preservation an opportunity to comment before the BLM takes action. Section 110 of the NHPA requires the BLM to assume responsibility for the preservation of historic properties it owns or controls (16 U.S.C. § 470h-2(a)(1)), and to manage and maintain those resources in a way that gives “special consideration” to preserving their historic, archaeological, and cultural values. Section 110 also requires the BLM to ensure that all historic properties under the jurisdiction of the field office are identified, evaluated, and nominated to the National Register of Historic Places. *Id.* § 470h-2(a)(2)(A).

Therefore, the Battle Mountain District Office must carefully consider the effects of all RMP decisions on the historical and cultural values located in the planning area. Since it will be difficult to evaluate the effect of decisions when the location of cultural resources is unknown, the BLM should undertake an archaeological inventory wherever necessary.

In conducting travel planning, the BLM should consider where motorized and non-motorized routes are directing people, inventory cultural resources along those routes, and carefully consider the potential impacts to those resources. Specifically, BLM should evaluate whether dust from vehicle use, energy development, and other authorized uses are impacting petroglyph panels. Aside from dust itself, dust suppressants have been shown to impact rock art in Nine Mile Canyon, Utah.⁶ These impacts must be analyzed and minimized.

Furthermore, the Pony Express National Historic Trail traverses the Battle Mountain District. National Historic Trails closely follow a historic trail or route of travel of national significance in order to identify and protect their history for public enjoyment. *See, e.g.*, BLM website on National Scenic and Historic Trails (<http://www.blm.gov/nlcs/nsht/>). The intended experiences of these trails are, therefore, not generally consistent with noticeable development and the RMP should focus on facilitating the purposes for which the trails were created, as summarized in the National Trails System Act, “to promote the preservation of, public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas and historic resources of the Nation.” 16 U.S.C. § 1241(a). RMP provisions regarding the trail should also be coordinated with, and complementary to, actions taken or anticipated for other federal-land portions of the trail and for private-land portions of the trail. Further, this consideration should include interpretative information, visitor access and services, and ensuring the protection of sensitive artifacts and sensitive natural lands in the vicinity and historic landscapes associated with the trail.

Recommendations: BLM’s goal should be to protect, conserve, and where appropriate restore cultural and historical sites and landscapes. To that end, BLM should:

⁶ Kloor, Keith. “Dust Storm Rising Over Threat to Famed Rock Art in Utah.” *Science* 319 (2008): 394. Available online at <http://www.ninemilecanyoncoalition.org/ninemilestudy.pdf>.

- Survey all known or discoverable cultural and historic sites, or those adjacent sites may be adversely affected.
- Determine the sites or areas that are most vulnerable to current and future impact and adopt management actions necessary to protect, conserve, and restore cultural resources.
- Complete a Cultural Resource Management Plan that coordinates with the objectives of the RMP and seeks to provide for an appropriate proactive process of inventorying for cultural resources, making determinations of eligibility for the National Register, and seeking to nominate eligible properties to the National Register. The RMP should establish a timeline for completing the Cultural Resources Management Plan, and prioritize areas to be inventoried for cultural resources.
- Outline specific management actions, such as stabilization, fencing, signing, closures, or interpretative development, to protect, conserve, and where appropriate restore cultural resources.
- Adopt measures to protect cultural resources from artifact collectors, looters, thieves, and vandals.
- Consult with the Native American community to determine whether there are sites or specific areas of particular concern, including sites of traditional religious and cultural significance.
- Manage the Pony Express National Historic Trail to preserve the visual and overall experience of users and their ability to appreciate the historic uses of this trail.

7. Wild and Scenic Rivers

We are glad to see in the scoping notice that the BLM plans to undertake a wild and scenic rivers eligibility study as part of the Battle Mountain RMP. Rivers deemed eligible for inclusion in the Wild and Scenic Rivers System must be managed to protect their values until the suitability determination is made, and suitable rivers must be managed so as to protect their qualities until Congress has an opportunity to designate the river as part of the System. Given that water is relatively sparse and that riparian areas are scarce in the study area, each stream is of tremendous value, and the BLM should fully protect these priceless resources via the Wild and Scenic Rivers Act and the Battle Mountain RMP.

Protect all eligible segments

Whether found suitable or not, all segments found eligible must, under the provisions of the Wild and Scenic Rivers Act and accompanying regulations, be managed in order to preserve the characteristics that make those segments eligible.

Protective measures must be specific to wild and scenic eligibility and suitability

Protective management prescriptions and requirements—specific to segments’ values that prompt findings of wild and scenic eligibility and suitability—must be included in the final RMP and so must be carefully analyzed in preparation of the draft plan. Consideration of other management prescriptions or designations that could, by coincidence, help protect features that contribute to the segments’ eligibility and suitability are helpful (wilderness study areas, areas of critical environmental concern, visual resource management classes, mineral withdrawals, etc.). Those coincidental protections and designations must, in the final RMP and in its implementation, specifically supplement wild and scenic river purposes, or similar measures must be provided in the final plan exclusively for wild and scenic river purposes.

Similarly, the BLM can protect river values through other special management designations. Such management designations should supplement, and not replace, complete consideration of wild and scenic river values or complete protection under the terms of the Wild and Scenic Rivers Act and its provisions for study and for interim protection.

Apply available protections to eligible and/or suitable segments

Whatever the ultimate collection of stream segments found to be suitable, BLM should consider the following management options for protecting each segment and apply those that are necessary for adequate protection:

- closed to off-highway vehicle use;
- withdrawn from mineral entry;
- VRM Class I or Class II areas;
- right-of-way exclusion areas;
- subject to remedial actions to ensure sensitive species habitat is maintained or enhanced;
- subject to extensive and reliable no-surface-occupancy stipulations for all activities;
- with related ACECs closed to off-highway vehicle use;
- with related ACECs closed to oil and gas exploration and development;
- among other appropriate measures.

Considerations for eligibility determinations

The criteria for eligibility evaluation are clear. BLM Manual 8351, Wild and Scenic Rivers – Policy and Program Direction for Identification, Evaluation, and Management, Section .31A states:

Basis for Determination. To be eligible, a river segment must be “free-flowing” and must possess at least one river-related value considered to be “outstandingly remarkable.” These factors are summarized in Illustration 1. *No other factors are considered in determining the eligibility of a river segment. All other factors are considered in determining suitability.*” (emphasis added)

Since more detailed management decisions about stream segments would be made later in the suitability determination phase, it makes sense to list as eligible *all* segments that have any variation of the primary eligibility criteria, including even one outstandingly remarkable value. When in doubt, include them as eligible.

Further, the BLM must disclose the scope of the outstandingly remarkable values (ORV) inventory process used in the draft eligibility report, and the BLM must extend that analysis to include all stream-related ORVs and study corridors wide enough to incorporate those ORVs. We note that some past wild and scenic have relied too heavily and arbitrarily on a one-quarter-mile “buffer” around identified segments in its initial identification of ORVs. BLM guidance is clear that such a “buffer” is not the appropriate measure for an ORV’s association with a river. For example, ORVs can “owe their location or existence to the presence of the river” (IM 04-196), a standard on which it would be arbitrary for BLM to place a numerical value. We are concerned that if BLM uses this arbitrary buffer, the agency will overlook significant ORVs that are tied to a segment.

Geologic and scenic ORVs, as examples, could easily extend or originate from distances greater than one-quarter-mile from a segment. In an arid western slope climate, important cultural and historic values that are directly tied to segments used as water sources and migration routes for historic human populations are likely to exist a variety of distances from a segment yet “owe their location or existence

to the presence of the river.” *Id.* With vast amount of BLM land having never undergone formal cultural survey, it is important that BLM employ generous and inclusive boundaries in their inventory.

Recommendations: The Battle Mountain RMP must carefully study *all* potentially eligible stream segments, adopt requirements to ensure eligible and suitable rivers are protected pending decisions on their designation, and ensure any designated rivers and river corridors are managed to preserve their values.

8. Wildlife Viability

(a) Science-based wildlife management

Given the sizable land management challenges of the coming decades— including federal land management agencies’ response to climate change and the complex natural resource dilemmas associated with climate change (i.e. species adaptation, extreme variability in natural processes)—it is imperative that the BLM, the Battle Mountain District Office and this RMP employ effective and efficient science-based planning and analysis methods to support robust and legitimate decision-making processes.

The effective application of science to land management planning and decision-making requires three “essential ingredients”:

- Well-defined, measurable **standards** (e.g. wildlife population or habitat condition targets), developed via robust public involvement processes
- The employment of science-based **analytical tools** to evaluate compliance with the standards (e.g. population viability analysis, or the spatially explicit Decision Support System recommended by the Western Governors’ Association)
- **Consistent implementation** of science-based analysis and decision-making (i.e. dedicated funding for monitoring and science-based adaptive management processes)⁷

The Battle Mountain District Office should consider these essential elements as it moves forward with efforts to respond to the pressing land management challenges of the coming decades.

Well-defined standards

Providing functioning habitat for wildlife and ensuring the long-term persistence of wildlife populations are part of the BLM’s responsibilities to manage the public lands for multiple use and sustained yield. FLPMA specifically directs that management of public lands “takes into account the long-term needs of future generations” for wildlife, as well as other resources, and is implemented toward “achievement and maintenance in perpetuity” 43 U.S.C. §§ 1712(c)(1); 1702(c) and (h). Achieving these goals for wildlife can best be realized by establishing well-defined, measurable standards. The use of well-articulated concepts and operational planning practices associated with the literature and practice of population viability assessment may provide land managers with effective and efficient means of applying science-based conservation methods to wildlife planning decisions.

⁷ Rohlf, D.J. 2004. Science, Law, and Policy in Managing Natural Resources: Toward a Sound Mix Rather than a Sound Bite. Pages 127-142 in K. Arabas and J. Bowersox, editors. *Forest futures: science, politics, and policy for the next century*. Rowman and Littlefield, Lanham, Maryland, USA.

Science-based analytical tools

In order to adopt a legitimate, efficient and effective science-based planning framework, the Battle Mountain District Office should look to the well-established conservation planning and population viability assessment literature, as well as models employed by other BLM units and neighboring agencies.⁸ For example, some national forests monitor populations of “management indicator species” to measure the effects of management activities on unmeasured species and to provide insights into the integrity of the ecological systems to which they belong. The use of an indicator or focal species approach, in combination with robust knowledge of the link between species and habitats, allows managers an effective means to apply science-based principles to resource management decisions. Indeed, to meet the challenges of 21st century land management and conservation, agencies will need to cooperate on vital management planning activities, including the sharing and co-generation of biological information.

Another example of a comprehensive monitoring approach can be found in Appendix 2 - "Implementation, Monitoring, and Evaluation Process" - of the Jack Morrow Hills Coordinated Activity Plan, prepared by the Wyoming BLM, available at: http://www.blm.gov/pgdata/etc/medialib/blm/wy/field-offices/rock_springs/jmhcap/rod.Par.76416.File.dat/31apx02.pdf (and attached). We particularly note the following, as examples of the sort of detail that should be contained in the RMPs:

- Table A17-1 Resource Management Indicators - p. 8
- Table A17-2 Indicator Detail - pp. 9-11
- Table A17-3 Measurement Detail - pp. 12-14
- Figure A17-3 CAP Management Process - p. 16
- Discussion of the JMH CAP - pp. 20-21

Landscape-level planning

The adoption of a science-based approach to land use planning is also consistent with the agency’s commitments in the Healthy Lands Initiative (HLI). HLI is premised on the BLM’s recognition of major changes to the landscape arising from population growth, energy development and climate change. The goal of HLI is “to preserve the diversity and productivity of public and private lands across the landscape.” HLI is to be implemented through specific projects, which will “enable and encourage local BLM managers to set priorities across a broader scale and mitigate impacts to an array of resources in ways not previously available to them” and “give managers flexibility to identify lands where a particular resource might be emphasized in order to encourage sustained health and balance across a broader ecosystem or landscape.” See, generally, HLI Factsheet at: http://www.blm.gov/pgdata/etc/medialib/blm/wo/Communications_Directorate/public_affairs/healthy_lands_initiative.Par.80058.File.dat/HLI-National_FY09.pdf. Implementation of the management approach described above will further support efforts to address habitat fragmentation and climate change, as discussed in other sections of these scoping comments.

Recommendations: The Battle Mountain RMP should adopt planning and decision-making processes (including data collection, analysis, and monitoring) that employ measurable planning objectives at multiple biological scales (i.e. fish and wildlife populations, habitat and ecosystem conditions) to ensure

⁸ See U.S. Department of Agriculture, Committee of Scientists. (March 15, 1999). *Sustaining the People’s Lands: Recommendations for Stewardship of the National Forests and Grasslands into the Next Century*, from <http://www.fs.fed.us/emc/nfma/includes/cosreport/Committee%20of%20Scientists%20Report.htm>.

viable wildlife populations. Specifically, the RMP should put in place management actions to protect sage-grouse that are based on the most recent science and provide for adapting to emerging science.

(b) Wildlife Corridors

The Intermountain West contains multiple ecosystems that remain ecologically intact and biologically diverse; they are crucial for both Western economies and quality of life. But the balance between natural systems and human use is fragile and increasingly at risk. Proactive management on public lands is a necessary part of sustaining the health of wildlife and wildlands, and of human communities. To take a crucial step forward, BLM should identify and protect wildlife corridors to ensure that usable habitat and migration pathways will remain.

The Western Governors Association's *Wildlife Corridors Initiative*⁹ defines wildlife corridors as:

“Crucial habitats that **provide connectivity over different time scales** (including seasonal or longer), among areas used by animal and plant species...and serve to **maintain or increase essential genetic and demographic connection** of populations” (emphasis added).

Reduction in habitat connectivity through increased fragmentation – due to roads, residential and commercial development, energy development, and off-road vehicles – substantially decreases the amount of ecologically intact core habitat available for many wildlife species. Ecologists have long recognized that the loss of core habitat and habitat connectivity pose the greatest threats to species persistence and overall biodiversity (Wilcove et al. 1998).

Through resource management plans, BLM plans for the management of its lands at the landscape level, which gives the agency the ability to designate and protect naturally-occurring wildlife corridors. The BLM has the legal authority to implement protective management of wildlife corridors, and also the legal obligation to address threats to wildlife and wildlife habitat as stewards of the western public lands. Protecting wildlife corridors through administrative designations, like ACECs, is consistent with the BLM's obligations under the Federal Land Policy and Management Act (FLPMA), 42 U.S.C. § 1701, *et seq.*, and National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, *et seq.*

In the Pinedale Record of Decision and RMP, the BLM specifically designated and protected an important wildlife corridor as an ACEC. The BLM designated the Trapper's Point ACEC with the specific goal to “preserve the viability of the big game migration bottleneck, cultural and historic resources, and important livestock trailing use.” Pinedale ROD/RMP, 2008, p. 2-56, available on-line at: http://www.blm.gov/pgdata/etc/medialib/blm/wy/programs/planning/rmps/pinedale/rod.Par.45058.File.dat/05_Record_of_Decision_and_Approved_Pinedale_RMP.pdf.

We are currently completing a policy brief that details the legal and policy framework for designating wildlife corridors on BLM lands, and provides methods for identifying and protecting corridors. We expect to submit this brief to BLM in the near future, and hope the Battle Mountain District Office will use the brief to plan for wildlife corridors in the RMP.

Recommendations: To appropriately designate and protect wildlife corridors within the Battle Mountain District, BLM should:

⁹ http://www.westgov.org/index.php?option=com_content&view=article&id=123&Itemid=68

- collaborate with other state and federal agencies and non-governmental groups to obtain current data regarding crucial wildlife habitat and corridors;
- connect already designated wilderness areas and other reserves to ensure that wildlife populations have the ability to easily move between large areas of protected crucial habitat;
- identify species that will act as focal species for identifying important wildlife corridors and will also act as indicators for how well the wildlife corridors are working;
- use the best available science to decide upon the exact areas to be designated and protected;
- ensure that all designations include specific provisions regarding management so that designated wildlife corridors are protected and can function as designed; and
- constantly monitor the effectiveness of designated wildlife corridors and implement adaptive ecosystem management strategies.

9. Areas of Critical Environmental Concern

Both FLPMA and the BLM's ACEC Manual (1613) emphasize the BLM's important duty to designate and protect Areas of Critical Environmental Concern. For example, FLPMA states:

The Congress declares that it is the policy of the United States that - ...

regulations and plans for the protection of public land areas of critical environmental concern be promptly developed...FLPMA Title I Sec.102(a) [43 USC 1701]

The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern. FLPMA Title II Sec. 201(a) [43 USC 1711]

In the development and revision of land use plans, the Secretary shall - ...

give priority to the designation and protection of areas of critical environmental concern....FLPMA Title II Sec. 202(c) [43 USC 1712]

Therefore, ACEC designation and protective management are supposed to be a high priority within the BLM's mission. ACEC designation provides an important mechanism for the BLM to actively conserve and recover imperiled species so that the protections afforded by the Endangered Species Act and the designation of Critical Habitat are less necessary. Choosing not to conserve ACECs may contribute to the need to list species under the Act, and is inconsistent with the BLM's special status species obligations.

In evaluating ACEC proposals, BLM's ACEC Manual requires that each area recommended for consideration as an ACEC, including from external nominations, be considered by BLM, through collection of data on relevance and importance, evaluation by an interdisciplinary team and then, if they are not to be designated, the analysis supporting the conclusion "must be incorporated into the plan and associated environmental document." Manual 1613, Section .21 (Identifying Potential ACECs). An ACEC is to be as large as is necessary to protect the important and relevant values. Manual 1613, Section .22.B.2 (Size of area to receive special management attention).

In addition, the manual directs that, for ACECs proposed in at least on alternative, management prescriptions are to be "fully developed" in the RMP. Manual 1613, Section .22 (Develop Management Prescriptions for Potential ACECs). BLM should include specific management prescriptions for each designated ACEC that will protect the highlighted values, such as mineral withdrawal and travel

management and route designations. *Id.* and Section .33.C (Provision for Special Management Attention). Setting out more detailed management prescriptions in the RMP will ensure protection of the ACEC values and can obviate the need for additional planning activities.

The Center for Biological Diversity provided the Battle Mountain District Office with detailed information regarding potential ACECs to be designated in the RMP, based on the State of Nevada Natural Heritage Program. We recommend BLM review this information, ensure that it is incorporated into the baseline inventory, and give due consideration to protecting the species and areas addressed in CBD's comments through ACEC designation and/or other management prescriptions.

Recommendations: The Battle Mountain RMP must evaluate a range of alternatives for ACEC designations that protects sensitive and important resources in the planning area. The RMP should put robust management prescriptions in place to ensure adequate protection for the resources which ACECs are designated to protect. The RMP should retain all existing ACECs, and expand them or improve management prescriptions where necessary.

10. Visual Resource Management

It is BLM policy that visual resource management (VRM) classes are assigned to all public lands as part of the Record of Decision for RMPs. The objective of this policy is to “manage public lands in a manner which will protect the quality of the scenic (visual) values of these lands.” BLM Manual MS-8400.02. Under the authority of FLPMA, the BLM must prepare and maintain on a continuing basis an inventory of visual values for each RMP effort. 43 U.S.C. § 1701; BLM Manual MS-8400.06. Specifically, IB No. 98-135 states, “It is the intent and policy of both the Department and the Bureau of Land Management that the visual resource values of public lands must be considered in **all land-use planning efforts**” (emphasis added). In addition, IM 2009-167 states, “All field offices (FO) are required to have current VRIs in place and to have VRM classes designated within its LUPs. Both the inventory and management class determinations are critical for baseline NEPA visual impact analysis and compliance evaluation with visual resource management objectives and for facilitating appropriate advancement of all surface disturbing land use activities, including renewable energy projects.” Therefore, BLM must update the visual resources inventory for the Battle Mountain District and reclassify lands where necessary during the RMP process.

In addition, NEPA requires that measures be taken to “assure for all Americans . . . aesthetically pleasing surroundings.” Once established, VRM objectives are as binding as any other resource objectives, and no action may be taken unless the VRM objectives can be met. See IBLA 98-144, 98-168, 98-207 (1998). The RMP must make clear that compliance with VRM classes is not discretionary.

BLM should ensure that scenic value is a resource that is conserved and must establish clear management direction describing areas inventoried and possessing high scenic importance with clearly defined objectives that limit surface disturbance within important viewsheds, including:

1. Lands managed to preserve their natural values, such as primitive recreation areas and land with wilderness characteristics, should be managed as Class I to “preserve the existing character of the landscape.” BLM Manual 6302 affirms that VRM Class I may be appropriate to protect Wild Lands.

2. Lands within popular and easily accessible vantage points should be managed for visual resources, such as VRM Class II to “retain the existing character of the landscape,” including clear provisions dealing with oil and gas development, renewable energy infrastructure, and other human disturbance.
3. ACECs and other special management designations and prescriptions should be used to protect scenic landscapes and lookout points within the resource area with stipulations specifically addressing and managing human development impacts, including VRM Class I to “preserve the existing character of the landscape” or VRM Class II to “retain the existing character of the landscape” as appropriate.

Recommendations: BLM must update its inventory for visual resources on all lands within the planning area. We urge BLM to prioritize completion of this inventory, as well as to keep the public apprised of the values identified by posting the VRI for public review prior to assignment of VRM classes. Updated VRM classifications should be incorporated into the new RMP to reflect the inventory and the new designations.

11. Natural Soundscapes

Evaluating and protecting natural soundscapes is an important part of the land use planning process. As part of providing opportunities for quiet recreation, BLM must consider activities that interfere with the soundscape associated with quiet recreation opportunities. Research shows that for many people, especially quiet recreationists, the primary reason for visiting primitive landscapes is to attain a sense of solitude and tranquility, which are interrupted by non-natural noises. A study performed by psychologists at Colorado State University found that acoustic stressors impact visual landscape quality, meaning non-natural noise actually affects the perceived naturalness of a landscape (Mace 1999). Therefore, in order to preserve the naturalness of an area, BLM must preserve the natural soundscape.

Furthermore, the authors of the study note that “tranquility” and “solitude” are explicitly addressed in the Wilderness Act as values that must be preserved by land management agencies. BLM guidance directs the preservation of “naturalness” in Wilderness Study Areas, Visual Resource Management I zones, and other areas managed to protect wilderness qualities. All of these values are negatively impacted when the natural soundscape is impacted; therefore, BLM must retain the natural soundscape in primitive recreation areas and lands managed to protect wilderness characteristics.

a. BLM’s Obligation to Preserve Natural Soundscapes

BLM regulations implementing Executive Order 11644 (1972), as amended by E.O. 11989 (1977), orders the BLM to locate areas and trails to:

Minimize conflicts between off-road vehicle use and other existing or proposed recreation uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.

43 C.F.R. § 8342.1 (emphasis added).

In order to effectively and appropriately achieve this goal, the Colorado BLM issued “A Recreation and Visitor Services Strategy” (“Recreation Strategy”) to help field offices provide quality recreation

experiences for all users. The Recreation Strategy recognizes that BLM's obligation to provide recreation areas for many user types requires designation of quiet recreation zones. It defines "quiet recreation" as "Outdoor recreation enthusiasts such as hikers, skiers, mountain bikers, equestrians, bird watchers, hunters and anglers *who seek the opportunity to enjoy natural soundscapes*" (P. 17) (Emphasis added).

We encourage the Battle Mountain District Office to implement strategies similar to the Colorado strategy for minimizing conflict between user groups by establishing quiet use areas and mitigating potential noise impacts on these areas.

Additionally, courts have upheld the responsibility of federal land management agencies to evaluate noise impacts on the natural soundscape. *See Izaak Walton v. Kimbell*, 516 F.Supp.2d 982, 985, 995-96 (D. Minn. 2007) (EA prepared by USDA Forest Service for plan to construct snowmobile trail adjacent to Boundary Waters Canoe Area Wilderness failed to properly analyze noise impacts from snowmobile use, as required by NEPA; EA provided no quantitative evidence of analysis of decibel levels to be projected by snowmobile use of the trail into adjoining wilderness).

b. Effective Soundscape Analysis

In order to effectively preserve the natural soundscape in quiet recreation areas, BLM must quantitatively measure (1) the decibel (dB) levels of the natural soundscape; and (2) ORV dB levels on the natural soundscape. Quantification of ORV traffic volume, duration, and frequency are thus necessary components of soundscape analysis.

There are many tools available to BLM to adequately measure noise impacts and set prescriptions to prevent negative impacts. The Wilderness Society has created a GIS model based on the System for the Prediction of Acoustic Detectability (SPreAD), a workbook issued by the Forest Service and Environmental Protection Agency for land managers to "evaluate potential ... acoustic impacts when planning the multiple uses of an area." The Wilderness Society adapted the SPreAD model to a GIS environment so that potential noise impacts could be integrated with other variables being considered in the planning process. We recently completed an updated version of this software, which we can provide to the field office at your request. The SPreAD-GIS model can be implemented in your existing ArcGIS software at no additional cost. The SPreAD-GIS model was developed for the Forest Service, but its applicability extends seamlessly to BLM lands, as the inputs include vegetation and topography.

The Battle Mountain District Office should use the SPreAD-GIS model to determine what sounds will impact visitors in each segment of the planning area, and what steps must be taken to mitigate these impacts. It is important to note that the original SPreAD operates under the premise that in primitive recreation areas, *no noise should be audible above the natural soundscape*. We envision this model as eventually being used throughout the district, but at this stage believe BLM should at least apply it to special management areas, such as Wild Lands and backcountry recreation management areas, and/or other strategically prioritized portions of the field office.

Recommendations: The preservation of natural soundscapes is important to provide visitors with adequate opportunities for quiet recreation. The USGS finds that dissatisfaction with recreational opportunities can "diminish public support for land-management programs" (Ouren 2007). We encourage BLM to utilize the SPreAD-GIS model to analyze and preserve the natural soundscape of the planning area, especially in special management areas managed for quiet use recreation.

12. Oil and Gas Management

a. Scope of Oil and Gas Leasing

BLM must consider the following when deciding which areas to allow fluid mineral leasing and development: 1) the BLM has a multiple use mandate and must manage its lands for a variety of uses, not primarily for oil and gas development. 43 U.S.C. § 1712(c)(1); 2) BLM must consider a *reasonable* range of alternatives in regards to areas open to oil and gas leasing. 40 C.F.R. § 1502.14; and 3) any decision which leaves the vast majority of the field office open to oil and gas development will preclude the effectiveness or long term viability of any conservation measures as there is always the potential that those conservation measures could be jeopardized by oil and gas development, regardless of how low the potential for development is currently.

(i) *The BLM has a multiple use mandate and must manage its lands for a variety of uses, not primarily for oil and gas development.*

FLPMA obligates the BLM to abide by the principles of multiple use and sustained yield, especially during the land use planning process. Specifically, multiple-use is defined as:

...the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output. 43 U.S.C. § 1702(c).

The definition of multiple use makes it clear that the BLM is obligated to manage the land for a number of resources other than oil and gas leasing, and states specifically that the BLM should manage some land for less than all of the resources and should not always be concerned with managing the land in order to receive the greatest economic return. The definition of multiple-use makes it clear that simply because a particular resource exists does not mean that the BLM needs to be able to extract that resource for a profit. It is well within the realm of BLM's multiple-use mandate to not have a significant portion of the Battle Mountain District open to oil and gas leasing. Further, BLM should consider alternatives which choose not to re-lease areas formerly leased when those leases expire or are terminated. Areas where there are specific resource concerns or that are identified as important habitat should be considered for other uses besides oil and gas leasing. These areas may include, but are not limited to: Areas of Critical Environmental Concern, Recreation Management Areas, critical habitat, areas with cultural resources, and lands with wilderness characteristics.

BLM's answer to charges that it is not adequately protecting resources from oil and gas impacts is often to provide leasing with No Surface Occupancy (NSO) stipulations. While NSO stipulations are a marked improvement over offering leases with standard lease terms, it is important to note that NSO stipulations do not necessarily resolve the wildlife and other resource concerns associated with oil and gas leasing. There are adverse consequences to wildlife associated with oil and gas development, regardless of whether or not there is an NSO stipulation on the lease. An example of this, noted by Clait Braun (2006) in *A Blueprint for Sage-grouse Conservation and Recovery*, a copy of which is attached to these comments, is that "oil and gas development influenced the rate of nest initiation of sage-grouse in

excess of 3 km of construction activities. Clearly, the amount and (likely) frequency of noise associated with development has major negative effects on greater sage-grouse.”

Further, BLM often offers companies exceptions, modifications or waivers from the application of NSO stipulations. Having NSO stipulations on a majority of the lands within the field office is better than allowing surface occupancy in terms of wildlife and resource concerns, but that does not supplant the BLM’s obligation to manage for a variety of resources, of which oil and gas is only one.

(ii) NEPA requires the BLM to consider and evaluate a reasonable range of alternatives for oil and gas development.

The range of alternatives is “the heart of the environmental impact statement.” 40 C.F.R. § 1502.14. NEPA requires BLM to “rigorously explore and objectively evaluate” a range of alternatives to proposed federal actions. See 40 C.F.R. §§ 1502.14(a) and 1508.25(c). “An agency must look at every reasonable alternative, with the range dictated by the nature and scope of the proposed action.” Northwest Envtl Defense Center v. Bonneville Power Admin., 117 F.3d 1520, 1538 (9th Cir. 1997). An agency violates NEPA by failing to “rigorously explore and objectively evaluate all reasonable alternatives” to the proposed action. City of Tenakee Springs v. Clough, 915 F.2d 1308, 1310 (9th Cir. 1990) (quoting 40 C.F.R. § 1502.14). This evaluation extends to considering more environmentally protective alternatives and mitigation measures. See, e.g., Kootenai Tribe of Idaho v. Veneman, 313 F.3d 1094, 1122-1123 (9th Cir. 2002) (and cases cited therein). For this RMP, the consideration of more environmentally protective alternatives is consistent with the requirement of FLPMA to “minimize adverse impacts on the natural, environmental, scientific, cultural, and other resources and values (including fish and wildlife habitat) of the public lands involved.” 43 U.S.C. §1732(d)(2)(a).

NEPA requires that an actual “range” of alternatives is considered, such that the Act will “preclude agencies from defining the objectives of their actions in terms so unreasonably narrow that they can be accomplished by only one alternative (i.e. the applicant’s proposed project).” Colorado Environmental Coalition v. Dombeck, 185 F.3d 1162, 1174 (10th Cir. 1999), citing Simmons v. United States Corps of Engineers, 120 F.3d 664, 669 (7th Cir. 1997). This requirement prevents the EIS from becoming “a foreordained formality.” City of New York v. Department of Transp., 715 F.2d 732, 743 (2nd Cir. 1983). See also, Davis v. Mineta, 302 F.3d 1104 (10th Cir. 2002).

In order to comply with NEPA, BLM must consider a broad spectrum of alternatives in regards to which lands will be available for oil and gas leasing. A draft RMP which leaves all the lands within the planning area open to oil and gas leasing or only allows for very slight differences between the alternatives in this regard fails to meet the “reasonable range of alternatives” directive. BLM has an obligation to rigorously explore and evaluate a range of alternatives.

(iii) A decision which leaves the vast majority of the District open to oil and gas development necessarily negates the effectiveness or long term viability of any conservation measures as there is always the potential that those conservation measures could be jeopardized by oil and gas development, regardless of how low the potential for development is.

BLM has an opportunity in this RMP to make great strides in conservation and habitat restoration. However, the long term viability of these strategies, programs and goals could be severely impacted by oil and gas development. Oil and gas development is known to cause a variety of problems that are detrimental to wildlife, and by leaving nearly the entire planning area open to leasing, the BLM may

undermine any conservation efforts or goals it identifies in the RMP. The West is pockmarked with many places which were left open to oil and gas leasing based on the belief that these areas had low potential for development. As a result, when an economically recoverable reservoir of oil and/or gas was discovered, the area had insufficient protection measures in place.

This lack of forethought has created many problems for wildlife and other resources. The impacts from oil and gas development are now well known, as such, areas of high ecological or cultural resource density should simply not be available for leasing. For example, Clait Braun, a leading researcher on sage grouse in the west, has stressed the impacts that oil and gas development can have on sage grouse populations:

Road building, well pad construction, and noise disturbance associated with oil and gas development can fragment effective sage grouse habitat and compromise the quality of seasonal use areas. In addition, by creating more linear areas and smaller habitat patches, energy development can boost predation rates on sage grouse. So, for a variety of reasons, major oil and gas development reduces the area useable by sage grouse, which often leads to greater isolation of populations and a reduced ability to handle droughts, severe winters, or other natural disturbances.¹⁰

BLM simply cannot expect to have ecologically effective sage grouse habitat, or any other type of important wildlife habitat, and unlimited oil and gas development in the same area. A situation arrives in which the goals, programs, and designations BLM uses to protect a valuable resource is only effective until such time that the right technology and/or price of oil and gas reaches a point that a previously non-economically extractable supply becomes economically extractable, or until a previously unknown supply not thought to exist is discovered. History tells us that BLM must consider the impacts of oil and gas development across the planning area and close areas which have important wildlife, cultural, or wilderness values.

Specifically, sage grouse core habitat and winter habitat should be closed to oil and gas leasing, and connectivity needs must be taken into account as well. Non-core habitat within 4 miles of active leks should have an NSO stipulation, with no exceptions, modifications, or waivers. Recent science indicates sage grouse require a 4-mile buffer around active leks to prevent significant population declines.

Recommendations: In order for the BLM to comply with FLPMA and NEPA the agency should, at a minimum, consider and “rigorously explore” the possibility and design alternatives which do not leave a significant portion of the Field Office open to oil and gas leasing. See 43 U.S.C. § 1712(c)(1) and 40 C.F.R. §§ 1502.14(a) and 1508.25(c). We recommend, at a minimum, that the areas identified as having “low” oil and gas potential be removed from consideration for leasing. Further, BLM must consider a range of alternatives that will address what to do with currently leased lands which are not developed and are either terminated or expire. Not allowing oil and gas leasing in these areas would help the BLM move towards meeting its goal of managing the federal lands within its jurisdiction for a variety of uses, not primarily for oil and gas leasing. For lands which area identified as appropriate for leasing, a variety of non-waivable stipulations, conditions of approvals (COAs), and Best Management Practices (BMPs –

¹⁰ This paragraph is adapted from detailed scoping comments on Upper Green sage grouse population trends and management issues prepared by Dr. Braun and submitted to the Pinedale BLM in October, 2002. Contact Linda Baker, Upper Green River Valley Coordinator (307-360-7198) to receive a copy of his 14 page comment letter.

discussed later) should be developed to protect the many resources present in the planning area. Protecting sage grouse from oil and gas development is of utmost concern in this planning area.

b. Oil and Gas Leasing Reform

In May 2010, BLM issued IM 2010-117, instituting broad reforms to the agency's oil and gas leasing program. The new policy intends to promote more organized and efficient oil and gas leasing and development that reduces environmental conflicts. Part of the new guidance is a revised process for lease parcel review and issuance that involves, among other aspects, increased public participation and on-site review of parcels. According to the new process, field offices must now form interdisciplinary review teams that undertake comprehensive review of proposed lease parcels and document NEPA compliance prior to leasing. This thorough process can be streamlined in instances where a master leasing plan (MLP) has been completed, demonstrating adequate leasing review.

We encourage the Battle Mountain District Office to complete an MLP as part of this RMP. An RMP revision is an ideal time to undertake an MLP planning process, because BLM is analyzing resources on a landscape level and making large scale decisions such as where and how oil and gas leasing and development should proceed. By including the evaluations and decisions required in an MLP in the Battle Mountain RMP, the District Office will have set forth a course for well-planned oil and gas leasing and development that meets the agency's dual goals of providing more certainty for developers and protecting natural resources. This would also save the District Office from the necessity of producing an environmental assessment or environmental impact statement for every new lease parcel.

Recommendations: The Battle Mountain District Office must ensure the RMP complies with the new oil and gas guidance. BLM should consider completing a master leasing plan as part of the RMP to craft an oil and gas leasing and development strategy for the District that balances energy development with the other resources BLM is charged with managing.

c. Impacts of Oil and Gas Leasing

NEPA requires that federal agencies take a "hard look" at the direct and indirect environmental impacts of oil and gas development before any action that will lead to such development takes place. *See, e.g., Pennaco Energy, Inc. v. U.S. Department of the Interior*, 377 F.3d 1147 (10th Cir. 2004); *Conner v. Burford*, 848 F.2d 1441 (9th Cir. 1988); *Sierra Club v. Peterson*, 717 F.2d 1409 (D.C. Cir. 1983). NEPA's regulations further provide that the "effects" on the environment that agencies must consider include those that are "direct, indirect, or cumulative." 40 C.F.R. § 1508.8. The NEPA regulations define "cumulative impact" as:

the impact on the environment which results from the **incremental impact of the action when added to other past, present, and reasonably foreseeable future actions** regardless of what agency (Federal or non-Federal) or person undertakes such other actions. **Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.**

40 C.F.R. § 1508.7. (emphasis added). The analysis of impacts included in the RMP must adequately address the cumulative impacts of oil and gas operations within the region or the impacts inherent in the proposed action.

Federal case law amplifies that agencies must disclose the direct and indirect environmental effects a federal action will have on non-federal lands. *See City of Davis v. Coleman*, 521 F.2d 631, 677-81 (9th Cir. 1975) (where federal approval of highway project likely to have impacts on development of surrounding area, agency must analyze development impacts in EIS); *Coalition for Canyon Preservation v. Bowers*, 632 F. 2d 774, 783 (9th Cir. 1980) (same); *Sierra Club v. Marsh*, 769 F.2d 868, 877-89 (1st Cir. 1985) (striking down EA where agency failed to account for private development impacts likely to result from its approval of causeway and port facility); *Mullin v. Skinner*, 756 F.Supp 904, 920-22, (E.D. N.C. 1990) (striking down EA where agency failed to account for private development impacts likely to result from agency approval of bridge). Such impacts must be disclosed, particularly where facilitating private development may be the project's "reason for being." *See Citizens Comm. Against Interstate Route 675 v. Lewis*, 542 F.Supp. 496, 562 (S.D. Ohio 1982).

BLM must consider impacts of region-wide development and also consider impacts on private lands. Existing development from neighboring planning areas as well as development within the District affects the Battle Mountain planning area. Similarly, although the BLM may not have formal control over adjacent private lands, these lands can also be affected by oil and gas development. The impacts of oil and gas development do not recognize management boundaries.

Recommendation: In considering the need and ways to manage these lands to protect the many resources of these public lands, the agency must consider the cumulative impacts from regional oil and gas development and the cumulative impacts to adjacent lands from oil and gas development. This analysis should inform the manner in which BLM allocates lands as available or unavailable for oil and gas development and the conditions under which development may be permitted.

d. Best Management Practices

Significant portions of the planning area will likely remain open to oil and gas development. As discussed with respect to the many other values of the lands within the planning area, many of these lands should not be open to leasing and others require non-waivable lease stipulations to protect their resources, such as wildlife habitat, water quality and wilderness characteristics. It is vital that the RMP require the use of best management practices (BMPs) for oil and gas exploration and development, which can drastically reduce the impacts of oil and gas development on the other natural resources of the public lands.

BLM's guidance requires consideration of BMPs for oil and gas development. BLM's Instruction Memorandum 2004-194 directs consideration of BMPs and both the IM and the recently updated Gold Book provide examples of BMPs that can be applied to both new and existing leases, in order to limit the damage from oil and gas development. It is critical that the RMPs consider and make BMPs mandatory in order to comply with BLM's guidance and obligations to protect the many natural values of these lands. Furthermore, the Battle Mountain District Office should ensure BMPs are consistent with the new state office standardized lease stipulations, as set out in IM 2010-117.

Recommendations: The RMP must identify BMPs and make them mandatory, especially in sensitive areas. BMPs should include:

- Phased or strategic development - in terms of timing (developing one area, then restoring before moving to another), location (such as staying out of big game corridors), limiting amount

of equipment in use at any given time, limiting amount of surface disturbance on a lease at any given time and requiring successful restoration before permitting additional disturbance;

- directional drilling;
- clustered drilling;
- closed loop drilling;
- interim reclamation;
- restoration standards;
- unitization; and
- increased bonding that will fund reclamation.

13. Socioeconomic Analysis

The analysis of the socio-economic impacts of the RMP must be thorough and accurate in order to responsibly manage the public lands. We have included with these comments a document entitled “Socio-Economic Framework for Public Land Management Planning: Indicators for the West's Economy,” which details our expectations for the baseline analysis of the region's economy as well as the analysis of the potential impacts of proposed management alternatives on the area (Appendix 2). We request that your analysis of socioeconomic considerations in the Battle Mountain planning area follow the approach set out in this document.

We recommend that the BLM use a total economic value approach that includes the estimation of non-market values for the wildlands and open spaces in the planning area. BLM recently affirmed its commitment to this approach in draft IM 2010-061, which explicitly directs managers to evaluate non-market values in RMP analyses. The total economic value analysis should include the full range of non-market values, including use values – such as recreation – as well as non-use values such as existence value (the benefit one gains just knowing wildlands are protected), option values (the benefit of knowing that one can visit a wildland for recreation) and bequest values (the benefit gained from knowing that wildlands are protected for future generations).

Also included in Appendix 2 are The Wilderness Society's recent report, *Natural Dividends: Wildland Protection and the Changing Economy of the Rocky Mountain West* and a scoping brief entitled “The Economic and Social Impacts of Oil and Gas Development,” which describes the significant and often hidden costs associated with oil and gas drilling. The analysis in the RMP must include an assessment of these costs in order to describe net (rather than gross) benefits of any proposed oil and gas leasing.

The benefits that flow from protected wildlands are now also important economic drivers in many rural areas. Scenic vistas make communities attractive to businesses and employees seeking the highest quality of life. Wildlands in rural Western counties are correlated with income, employment, and population growth (Lorah 2000). They also increase nearby property values for home owners and generate recreation and tourism dollars. Additionally, protected wild lands provide a number of vital natural services such as filtering our drinking water.

The BLM should analyze the benefits to the local communities from management which ensures that the area's scenic landscapes are protected, such as through special designations, and that the important economic role that protected public lands play in the local economy is continued and enhanced.

One of the most important purposes of public lands, including BLM lands, is the provision of non-market public goods such as opportunities for solitude, outdoor recreation, clean air, clean water, biodiversity, the preservation of wilderness and other undeveloped areas that would be underprovided if left entirely to market forces (Loomis 1993). FLPMA specifically incorporates such non-market resources as “the long-term needs of future generations” for recreation and “natural scenic, scientific and historical values” into the BLM’s multiple use mandate.¹¹ FLPMA further defines multiple use to require the agency to encompass non-market values into management, directing the BLM to achieve:

*harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the **quality of the environment** with consideration being given to the relative values of the resources and **not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.***¹² (emphasis added).

Resource economists recognize that some public goods and services produced by public land have characteristics that make them unprofitable to private enterprises. The aesthetic value of a scenic landscape, for example, would be difficult to divide up and sell to individual consumers, and to exclude “free riders” -- people who consume the scenic beauty but are unwilling to pay for it. As such, private firms have little incentive to produce such scenery and market forces cannot be relied upon to produce an adequate supply, even though additional view sheds may be economically rational and socially desirable.

Protected public lands perform natural services worth billions of dollars. These lands provide – free of charge – a host of “ecosystem services,” including air and water filtration, climate regulation, pest control, and seed dispersal. Based on a recent study by The Wilderness Society and The Gund Institute for Ecological Economics, the ecosystem service output of all US federal conservation lands is worth at least \$242 billion per year (Esposito et al. 2009). Another study considers just some of these values and finds “the annual economic benefit from watershed protection, carbon storage for climate regulation, and nutrient cycling for waste treatment is estimated to be between \$2 billion and \$3.5 billion” (Loomis and Richardson 2001).

Recommendations: The RMP should evaluate non-market values provided by wildlands, per BLM’s commitment set out in draft IM 2010-061. BLM should utilize the materials included in Appendix 2 to inform the RMP’s socioeconomic analysis and ensure a full accounting of the costs and benefits of each of the alternatives. The values of protected lands and the costs associated with motorized recreation should be incorporated into economic analysis.

14. Climate Change

BLM has a legal duty to address the impacts of climate change both from land management actions and to the resource area in the plan revision. There is a global scientific consensus that human-induced climate change is currently altering the landscape and ecological functions at an unprecedented rate. According to the U.S. Climate Change Science Program, the Southwest landscape could be greatly transformed due to drought, wildfire, invasive species, and rising temperatures.

¹¹ 43 U.S.C. § 1702(c).

¹² *Id.*

The Battle Mountain District will undoubtedly experience real effects of climate change during the 20 year period that the RMP is in effect. Many prescriptions in the RMP may contribute to and exacerbate the impacts of human-induced global climate change. In addition to a genuine analysis of impacts, it is imperative that BLM craft strategies for addressing the impacts of climate change both in terms of mitigating management decisions' contributions to climate change and adapting to inevitable impacts of climate change.

On September 14, 2009, Interior Secretary Salazar issued Secretarial Order (S.O.) No. 3289. This order unequivocally mandates all agencies within the Department of Interior to "analyze potential climate change impacts when undertaking long-range planning exercises, setting priorities for scientific research and investigations, developing multi-year management plans, and making major decisions regarding potential use of resources under the Department's purview." S.O. 3289, *incorporating* S.O. 3226 (emphasis added). This RMP revision falls squarely under this guidance and BLM must assess impacts from the proposed actions that may directly, indirectly, or cumulatively result in exacerbating climate change within this document.

BLM must fully analyze the cumulative and incremental impacts of the proposed decisions in the RMP. Center for Biological Diversity v. National Highway Traffic Safety Administration, 538 F.3d 1172, 1217 (9th Cir. 2008). In *CBD v. NHTSA*, the NHTSA failed to provide analysis for the impact of greenhouse gas emissions on climate change and was rebuked by the U.S. Court of Appeals for the Ninth Circuit, which observed that "[t]he impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct." 538 F.3d at 1217. For example, off-road vehicle designations, oil and gas management stipulations, and renewable energy development may significantly increase or reduce greenhouse gas emissions contributing to climate change and must be analyzed under NEPA.

Further, NEPA regulations require that NEPA documents address not only the direct effects of federal proposals, but also "reasonably foreseeable" indirect effects. These are defined as:

Indirect effects, which are caused by the action and are later in time or farther removed in distance, *but are still reasonably foreseeable*. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems." 40 C.F.R. § 1508.8(b) (emphasis added).

BLM is required to take a hard look at direct, indirect, and cumulative impacts to and from climate change in the planning area in the RMP.

To assist BLM with climate change analysis in the Battle Mountain RMP, we have attached The Wilderness Society's scoping brief entitled "Recommended Risk Assessment and Management Approach for Addressing Climate Change in BLM Land Use Planning." This brief provides strategies for assessing risk, vulnerability, and uncertainty in terms of climate change and management actions to reduce risk and contribute to adaptation.

Recommendations: The Battle Mountain District Office should utilize the attached scoping brief to address climate change in the RMP at the level which this type of planning process demands. The RMP should adopt management actions that reduce contributions to greenhouse gas emissions and climate change and promote adaptation.

Thank you for your consideration of our scoping comments. We look forward to seeing these issues addressed as the Battle Mountain RMP revision process continues.

Sincerely,

The Wilderness Society
BLM Action Center
Nada Culver, Director & Senior Counsel
Juli Slivka, Planning & Policy Associate

Attachments

1. BLM, Jarbidge Field Office, Idaho, Analysis of the Management Situation for the Jarbidge Resource Management Plan: Resource Management Plan/Environmental Impact Statement at 212-216 and Figure 39 (Locations of Current ACECs) and Figure 40 (Wilderness Study Areas), July 2007.
2. Monticello Proposed RMP, Response to Comments, comment no. 007-48
3. Map: Citizen Inventoried Lands with Wilderness Characteristics
4. "Sensitivity Based Prioritization for Development Areas Within Renewable Energy Zones"
5. Excerpts from the Record of Decision (ROD) for the Dillon Resource Management Area (Montana)
6. Little Snake Proposed RMP, Appendix F – Criteria for Subsequent Activity Planning
7. Travel Management Planning Template
8. Price Field Office Draft RMP, Appendix 14: Special Recreation Permits
9. Appendix 2 - "Implementation, Monitoring, and Evaluation Process" - of the Jack Morrow Hills Coordinated Activity Plan, prepared by the Wyoming BLM
10. *A Blueprint for Sage-grouse Conservation and Recovery*
11. "Recommended Risk Assessment and Management Approach for Addressing Climate Change in BLM Land Use Planning"

Appendix 1: Habitat Fragmentation

- a. *Habitat Fragmentation from Roads: Travel Planning Methods to Safeguard BLM Lands*, The Wilderness Society, 2006.

- b. Wilbert, M., Thomson, J., Culver, N. 2008. Analysis of Habitat Fragmentation from Oil and Gas Development and its Impact on Wildlife: A Framework for Public Land Management Planning. The Wilderness Society: Washington, DC. 31 p.
- c. Weller, C., Thomson, J., Morton, P., Aplet, G. 2002. Fragmenting Our Lands: The Ecological Footprint from Oil and Gas Development. The Wilderness Society: Washington, DC. 24 p.
- d. Hartley, D. A., Thomson, J. L., Morton, P., Schlenker-Goodrich, E. 2003. Ecological Effects of a Transportation Network on Wildlife. The Wilderness Society: Washington, DC. 27 p.
- e. Thomson, J. L., Hartley, D. A., Ozarski, J., Murray, K., Culver, N. W. 2004. Protecting Northern Arizona's National Monuments: The Challenges of Transportation Management. The Wilderness Society: Washington, DC. 39 p.
- f. Thomson, J. L., Schaub, T. S., Culver, N. W. Aengst, P.C. 2005. Wildlife at a Crossroads: Energy Development in Western Wyoming. The Wilderness Society: Washington, DC. 40 p.

Appendix 2: Socioeconomic Analysis

- a. Socio-Economic Framework for Public Land Management Planning: Indicators for the West's Economy
- b. The Economic and Social Impacts of Oil and Gas Development
- c. *Natural Dividends: Wildland Protection and the Changing Economy of the Rocky Mountain West*

References

Daigle, Patrick and Rick Dawson, Extension Note 07; Management Concepts for Landscape Ecology (Part 1 of 7). October 1996.

Esposito, V., S.R. Phillips, R. Boumans, A. Moulert, and J. Boggs. 2009. Climate change and ecosystem services: the contribution of and impacts on federal public lands in the United States. Presented at Ninth World Wilderness Congress, Merida, Mexico, November 6-13.

Harrison, Robin T. et al., US Forest Service, Project Record: Predicting Impact of Noise on Recreationists (1980).

Loomis, J.B. and Richardson, R. 2001. Economic values of the U.S. Wilderness system: Research evidence to date and questions for the future. *Int'l. Journal of Wilderness* 7(1): 31-34.

Lorah, P.A. 2000. Population Growth, Economic Security, and Cultural Change in Wilderness Counties in *Wilderness Science in a Time of Change Conference, Volume 2: Wilderness within the Context of Larger Systems*, pp 230-237. Proceedings RMRS-P-15-VOL-2, U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station, Ogden, UT.

Mace, Britton L. et al., *Aesthetic, Affective, and Cognitive Effects of Noise on Natural Landscape Assessment*, Society & Natural Resources, 12: 225-242, 1999.

Morton, P. 1999. The economic benefits of wilderness: theory and practice. *University of Denver Law Review*. Volume 76, No. 2 pp. 465-518.

Morton, P. 2000. *Wilderness, the silent engine of the west's economy*. The Wilderness Society: Washington, DC.

Ouren, Douglas S. et al., USGS, Environmental Effects of Off-Highway Vehicles on Bureau of Land Management Lands: A Literature Synthesis, Annotated Bibliographies, Extensive Bibliographies, and Internet Resources (2007).

Swanson, F. J.; Jones, J. A.; Wallin, D. O.; Cissel, J. H. 1994. Natural variability--implications for ecosystem management. In: Jensen, M. E.; Bourgeron, P. S., tech. eds. *Eastside Forest Ecosystem Health Assessment--Volume II: Ecosystem management: principles and applications*. Gen. Tech. Rep. PNW-GTR-318. Portland, OR: U.S. Dept. of Agriculture, Forest Service, Pacific Northwest Research Station: pp 89-106.

Wilcove, D.S. et al. 1998. Quantifying threats to imperiled species in the United States. *Bioscience* 48(8): 607-615.