EWAC®
Energy and Wildlife Action Coalition

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Comments regarding:

Bureau of Land Management, Proposed Revision to Rock Springs Resource Management Plan

Submitted by:

Energy and Wildlife Action Coalition

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The Energy and Wildlife Action Coalition ("EWAC")[1] submits these comments in response to the Bureau of Land Management ("BLM") Rock Springs Field Office Draft Resource Management Plan ("Rock Springs RMP") and Draft Environmental Impact State ment ("DEIS"), released for public comment on August 18, 2023. EWAC provides these comments based on the knowledge and experience of its membership.

The proposed Rock Springs RMP covers 3.6 million acres of public lands in portions of Lincoln, Sweetwater, Uinta, Sublette and Fremont Counties in southwest Wyoming. This would be the first full scale revision to BLM management plans applicable to this area since 1997. As the BLM is aware, the Biden-Harris Administration has prioritized renewable energy and the modernization of electric transmission and distribution infrastructure, with a particular focus on increasing use of federal lands to meet these objectives.[2] Despite this, the proposed changes to the Rock Springs RMP do not advance these goals, and in fact, may impede these objectives.

I. The Planning Effort Should Include Future Renewable Energy and Transmission Development

The Draft Rock Springs RMP Revision and DEIS are presented in a single document (the "Draft RMP/DEIS"). This document includes a set of planning issues identified by the Rock Springs Field Office, as well as planning criteria.[3] EWAC's members are particularly interested in renewable energy development and the associated electric transmission and distribution infrastructure. While the Draft RMP/DEIS identifies these as issues to be addressed in the RMP planning process,[4] it does not identify any planning criteria related to renewable energy or transmission development.[5] Further, while it indicates that reasonably foreseeable development scenarios have been developed for fluid minerals (oil and gas), as well as a Mineral Potential Report, there are no indications BLM has projected potential future wind energy development in the planning area, or the potential demand for new transmission lines.

The Draft RMP/DEIS contains only limited and outdated references to renewable energy policies. The only reference to policies regarding wind energy development is in Proposed Management Act 6102, which cites the 2005 Implementation of Wind Energy Development Program and Associated Land Use Plan Amendments, but no more recent policies.[6] Similarly, the Draft RMP/DEIS's only reference to electric transmission policies is a note that the 2005 Energy

[1] EWAC is a national coalition formed in 2014 whose members consist of electric utilities, electric transmission providers, and renewable energy entities operating throughout the United States, and related trade associations. The fundamental goals of EWAC are to evaluate, develop, and promote sound environmental policies for federally protected wildlife and closely related natural resources while ensuring the continued generation and transmission of reliable and affordable electricity. EWAC supports public policies, based on sound science, that protect wildlife and natural resources in a reasonable, consistent, and cost-effective manner. EWAC is a majority-rules organization and therefore specific decisions made by the EWAC Policy Committee may not always reflect the positions of every member.

[2] *See e.g.*, Executive Order 14008, "Executive Order on Tackling the Climate Crisis at Home and Abroad" (Feb. 1, 2021).

[3] Draft RMP/DEIS at 1-3 – 1-5.

[4] *Id*. at 1-3.

[5] *Id*. at 1-4 – 1-5.

[6] *Id*. at 2-113.

Policy Act directed BLM to participate in the identification of regional right-of way corridors to accommodate energy infrastructure.[7] That planning exercise was concluded in 2009.[8]

BLM's planning exercise for this RMP revision apparently has not taken into account the many policy directives that favor renewable energy development on public lands, many of which have been developed and implemented since 2009. As recognized by Congress and this Administration, the continued expansion of renewable energy production on public lands is a necessary component of the national effort to increase our reliance on electricity that is generated from renewable sources. The Energy Act of 2020 directs the Secretary of the Interior to "seek to issue permits that, in total, authorize production of not less than 25 gigawatts of electricity from wind, solar, and geothermal energy projects by not later than 2025, through management of public lands and administration of Federal laws."[9] This goal will be unachievable if BLM advances land planning decisions that would foreclose renewable development on significant portions of the land under its management. President Biden also has issued Executive Order 14008,[10] which directed the Secretary to "review siting and permitting processes on public lands" with a goal of increasing "renewable energy production on those lands . . . while ensuring robust protection for our lands, waters, and biodiversity and creating good jobs."

These strong policy directives favoring renewable energy development, and the associated electric infrastructure, on public lands should be recognized as planning criteria in this and every other RMP revision being undertaken by BLM.

II. BLM's Preferred Alternative Effectively Bars Renewable Energy and Transmission

While wind energy projects and transmission and distribution lines currently would be allowed in a substantial portion of the Rock Springs planning area, the BLM preferred alternative identified in the Draft RMP/DEIS would significantly curtail that access. Other than the "no action" alternative, the Draft RMP/DEIS identifies three alternatives. Alternative B maximizes conservation values. Alternative C maximizes resource development. Alternative D would blend conservation and resource development. In a departure from BLM's statutory multiple-use mandate,[11] the Draft RMP/DEIS identifies Alternative B, which maximizes conservation, as the agency's preferred alternative.[12]

As just one of the broad indicators of the conservation focus of BLM's preferred alternative, it would increase the size of areas of critical environmental concern ("ACECs") from today's 286,470 acres to 1,605,660 acres.[13] That represents forty-four percent of the 3.6 million acres covered by this Draft RMP.

[7] *Id*. at 1-6.
[8] *Id*.
[9] Energy Act of 2020 (P.L. 116-260, Division Z), Sec. 3104.
[10] E.O. 14008, *Tackling the Climate Crisis at Home and Abroad*, 86 Fed. Reg. 7619 (Feb. 1, 2021).
[11] 43 U.S.C. §1712(c)(1).
[12] Draft RMP/DEIS at ES-3.
[13] *Id*. at ES-5.

Of particular concern to EWAC's members, the BLM preferred alternative (Alternative B) would significantly reduce the portion of the planning area that is available for wind energy development and, through restrictions on transmission lines, make it more difficult to locate wind projects on nearby non-federal lands as well. Currently about 2.5 million acres in the planning area are open for wind energy, about 740,000 acres are classified as "avoidance" areas, and wind is excluded from only about 420,000 acres. Under BLM's preferred alternative, the exclusion area would increase to 2.5 million acres and only about 1 million acres would be open for wind.[14] Transmission also would not be allowed in the 2.5 million acres of right-of-way exclusion areas, a 481% increase in the area excluded under current management standards.[15]

Several elements of the preferred alternative that are related to ROWs, Natural Resources, National Historic Trails, and proposed wildlife stipulations would constrain or even prevent the development of planned and future high-voltage (230 kilovolt and above) transmission line projects. The barriers begin with the proposed changes to land classifications, significantly increasing ROW exclusion and avoidance areas and increasing ACECs from 286,470 to 2.1 million acres. Future transmission projects also would be constrained by limiting transmission corridor widths to 3,500 feet and determining that no new corridors will be established. These restrictions are inconsistent with national energy policies and are likely to generate economic impacts to this area and constrain Wyoming's ability to export energy to neighboring states and regions despite its ample energy resources. They also could increase impacts on private property by forcing the use of those lands for sub-optimal transmission routes. The restrictions on corridor width limits could impact the ability to co-locate specific planned 500 kV transmission projects such as the Anticline to Populus (Segment D3) and Shirley Basin to Anticline (Segment D2.2) transmission projects in existing transmission corridors, a practice that is strongly favored to reduce a wide variety of impacts. Also, the inability to designate new corridors could limit system reliability by forcing these backbone transmission lines into a single corridor.

The BLM did not include a detailed analysis of socioeconomic impacts when considering the elimination of approximately 1.7 million acres of land currently available for renewable energy development in the updated Management Plan. Excluding development from large portions of the management area will have significant negative impacts on local residents' career and ancillary support opportunities, as well as lost revenues associated with city, county, and state taxes and fees. The severe restrictions proposed under BLM's preferred alternative would result in an approximately 56% decrease in economic output and would decrease the available jobs by 56%. That amounts to the direct loss of nearly 3,000 jobs. Moreover, the numbers directly attributed to the preferred alternative fail to consider the ripple effects that will be felt across the State of Wyoming. If the BLM reduces the available area for renewable development as proposed in the preferred alternative, there will be a material loss of real estate, sales, excise and ad valorem taxes as well, resulting from the prohibition of future projects in current buildable areas.

[14] *Id*.
[15] Draft RMP/DEIS at 4-136.

III. Proposed Restrictions Would Have a Significant Impact on Electrical Infrastructure

EWAC members also have concerns about the Draft RMP/DEIS's proposed design feature requiring undergrounding for all distribution lines. Installing new distribution power lines underground or converting existing lines from overhead to underground may not be feasible from engineering and operations perspectives. In addition, burying power lines can result in greater ground disturbance during construction and repairs, longer outage periods for customers, increased cost, and reduced reliability. Even where technologically feasible, the financial impacts of undergrounding are likely to be significant. BLM should remove undergrounding as a required design feature from all alternatives; it should, instead, be considered on a case-by-case basis.

Proposed restrictions on transmission and distribution structure height and color also may not be feasible or practical to implement on many projects due to engineering, safety, or cost measures and may not be consistent with the National Electric Safety Code (NESC).

The Draft RMP/DEIS's proposed restrictions on access are inconsistent with necessary electrical infrastructure operational and maintenance requirements. Access to power lines on BLM-managed lands where there are not designated access roads is obtained through BLM's ROW program. Access to authorized facilities is critical for the safe and reliable operation of the electrical grid and is needed for inspections, maintenance, repairs and wildlife prevention activities. The preferred alternative's significant increase in ROW exclusion and avoidance areas, by limiting access to electrical infrastructure, threatens security and public safety, and could increase wildfire risks. EWAC is concerned that the ROW exclusion areas, resource-related closures and access restrictions (in particular sections 4.19.2, 4.4, and 4.5), particularly when combined with the proposed removal and reclamation of existing travel routes identified in Appendix B, have been proposed without giving adequate consideration to necessary access to critical infrastructure and the potential that electrical infrastructure could effectively be land-locked.

While the Draft RMP/DEIS states that "[H]uman health and safety needs supersede all actions in this plan" (Table 2-1, #12), the content of the plan does not clearly reflect this priority, and it is likely that utility operations & maintenance (O&M) work (including routine maintenance, emergency work, and vegetation management) will be restricted or delayed at the field level due to resource restrictions included under the preferred alternative. Access to electrical infrastructure is necessary to address emergency conditions or situations and should be part of the human health and safety considerations. In such cases, human health and safety are the primary concerns, and utilities must do what is necessary to make the situation safe. In such situations, the utility must retain the ability to address any hazards as necessary and notify BLM as soon as possible.

The vegetation management provisions of the Draft RMP/DEIS also would significantly change past BLM practices. Past BLM Pesticide Use Proposals (PUP) allowed for approved herbicide use in aquatic sites and wetlands according to the label. While past use of herbicides near water resources may not justify future use, herbicides have been safely used near wetland and riparian areas with the BLM's approval for many years. Prohibiting herbicide and pesticide loading, maintenance, and refueling areas within ¼ mile of water sources, floodplains, riparian areas, and Special Status plant locations may impact an unreasonably large area. The use of only

mechanical or biological treatments may also lead to more impact to the resource with repeated and prolonged treatments by vegetation management crews. Herbicide application requires a shorter duration of work and less noise compared to mechanical treatments and could thereby reduce disturbance impacts to wildlife in certain situations.

IV. The Preferred Alternative is Not Consistent With FLPMA.

The BLM preferred alternative's wildlife management actions also are excessive and would have a significant adverse impact on renewable and transmission and distribution line development. A common feature of the preferred alternative's wildlife management actions is that they do not allow impacts to be avoided, minimized, or mitigated through the permitting process. In almost every case, however, the version of the same management action presented under Alternative D – the balanced alternative – would allow activities to proceed with mitigation for the impacts on wildlife and habitat. In this and other respects, Alternative D is more consistent with the Federal Land Policy Management Act ("FLPMA")[16] than is the BLM preferred alternative. For example, in the preferred alternative:

- Proposed Management Action 4418 would prohibit renewable energy projects in big game crucial winter range and parturition habitat, raptor concentration areas (high-use/high density raptor nesting/roosting/perching areas), unique habitats (e.g., aspen and mountain shrub) or new areas identified as part of site-specific investigations. This could potentially exclude renewable energy from millions of acres of land. The Draft EIS does not reference studies or present any other evidence that the operation of wind energy projects negatively impacts big game in crucial winter range. Indeed, the available evidence is to the contrary.[17] The definition of raptor concentration areas is too broad and potentially excludes renewable energy development from most, if not all, of the planning area given the high density of raptors and eagles in this area of Wyoming. Existing renewable energy siting guidance documents from WGFD and USFWS should be used to determine suitable areas for renewable energy development.[18]

- The vehicle travel restrictions that would be imposed by Proposed Management Action 4427 are overly restrictive and at a minimum should provide exceptions for electric infrastructure access. Year-round access is needed to electric power lines and wind energy projects for routine operations and maintenance work and any emergency repairs. The preferred alternative fails to provide an exception for access needed to repair and maintain existing infrastructure.

[16] 43 U.S.C. §§1701, *et seq*.

[17] Researched performed at an operating wind project in the Shirley Basin in coordinate with the Wyoming Game and Fish Department related to big game movement and wind energy projects stated: "*Our results suggest wind energy development did not influence pronghorn winter mortality; rather, pronghorn mortality on winter range was largely influenced by environmental (average time spent in sagebrush habitat and terrain ruggedness) and nonwind energy anthropogenic (distance to major roads) variables*" (Taylor et al., 2016).

[18] Taylor K.L., Beck J.L, and Huzurbazar S.V., 2016: *Factors Influencing Winter Mortality Risk for Pronghorn Exposed to Wind Energy Development.* Rangeland Ecology & Management 69 (2016) 108-116.

- Raptor-Related Management Actions:

    - Proposed Management Action 4428 would require protection of occupied and historic raptor nesting sites and associated feeding areas – with the area affected to be determined case-by-case.

    - Proposed Management Action 4430 would prohibit surface occupancy within one mile of occupied and historic raptor nests and associated feeding grounds (how "feeding grounds" are to be identified is undefined).

    - Proposed Management Action 4431 would restrict surface disturbing and disruptive activities seasonally within two miles of occupied and historic raptor nesting sites and associated feeding grounds.

  Protections for raptor nest sites should apply only to verified occupied nests in the current year an activity is being performed, not historic nest sites. The 'protections' that the preferred alternative would afford to nests that are not currently active or occupied are illogical, as the nests are vacant, and contradicts USFWS guidance. In addition, changing from species-specific buffer distances to a blanket one-mile buffer does not account for the unique biology of each species. EWAC encourages the BLM to be consistent with the USFWS and reference the Service's published raptor nest buffer distances rather than create arbitrary buffers for this Field Office (USFWS 2002, 2020). Raptor species vary in their sensitivity to human activity while nesting. Raptor protections should include allowing a biologist to monitor an occupied raptor nest while work is being done inside raptor nest buffers if it is appropriate for the species and type of work. Restrictions should not apply to raptor feeding areas, as this term is far too expansive. Raptors forage over large to very large areas, depending on the species. Indeed, nearly all of the Rock Springs Field Office could potentially fall under the category of a "raptor feeding area." Raptors are not particularly sensitive to activities near feeding areas, nor would activity in these areas be detrimental to their life cycle in most situations. This is particularly true of utility O&M activities that are typically limited in footprint and short in duration. Feeding areas are much less sensitive to disturbance impacts than nest areas; consequently, nest buffers would provide more appropriate protection to raptors. The preferred alternative includes measures intended to provide "additional management" to "protect raptors", however, these measures contradict USFWS guidance, are not based on current best science, do not offer tangible benefits to raptors, and appear instead to be a means to restrict development. The increased nest buffers and NSOs in the preferred alternative also fail to recognize that utility infrastructure can create nesting substrates for raptors, including several species listed as BLM Wyoming Sensitive Wildlife Species (bald eagle, peregrine falcon, and ferruginous hawk).[19]

[19] U.S. Fish and Wildlife Service. 2002. *Utah Field Office Guidelines for Raptor Protection From Human and Land Use Disturbances*, Salt Lake City, Utah: U.S. Fish and Wildlife Service, Utah Field Office (January 2020); USFWS Region 6, Recommendations for Avoidance and Minimization of Impact to Golden Eagles at Wind Energy Facilities, Revised May 21, 2020, version 2.0; Wyoming Game and Fish Department, Wyoming Game and Fish Department Guidelines for Wind and Solar Energy Development (2021).

- Proposed Management Action 4424 would prohibit surface disturbance within ½ mile of big game migration corridors and Management Action 4421 would prohibit surface disturbance within winter ranges, migration corridors, and transitional habitats.

- Proposed Management Action 4616 would prohibit loss or modification of Special Status Species habitats.

- The preferred alternative's wildlife section also may be overstepping BLM's administrative authority. Migratory birds, eagles, and federally listed threatened/endangered species are managed by the USFWS, and other wildlife species fall under the jurisdiction of the State of Wyoming. The BLM should coordinate with, and defer to, lead agencies on stipulations related to these species, including survey requirements, seasonal nest buffers, and other protections. In some cases, permittees may hold wildlife permits with these agencies (such as USFWS Special Purpose Utility Permits, Eagle Incidental Take Permits, or WY Chapter 33 permits), and proposed language in Alternative B directly conflicts with these permits or guidance by these agencies. In addition to these concerns, proposed wildlife stipulations in the preferred alternative do not align with current best science, do not offer tangible benefits to raptors, and appear instead to be a means to restrict development.

Further, other elements of the BLM preferred alternative would have a compounding effect, severely limiting wind energy development and new electric transmission lines that might otherwise be outside of areas of wildlife concern. For example, Visual Resource Management ("VRM") classifications in the planning area currently are weighted toward Class III and Class IV, which allow significant visual contrasts.[20] Wind energy and electric transmission lines generally result in visual contrasts that require VRM Class III or Class IV designations. BLM's preferred alternative would increase the area classified as VRM Class II by almost 1.6 million acres.[21] The management objective for Class II areas is to retain the existing character of the landscape and allow only low changes in contrast from existing conditions.[22] The impact of widescale VRM Class II designations could be particularly significant for transmission lines, due to their linear nature. Proposed Management Action 5411, for BLM's preferred alternative, would prohibit siting contrasts in Class III or Class IV areas that are visible from Class I or Class II areas.[23] The text refers specifically to the impact of this restriction on wind energy development, but it would impact transmission lines as well.

Taken together, these various wildlife-related and non-wildlife exclusions, when layered on top of the dramatic increase in right-of-way and wind exclusion areas will likely leave very few places within the planning area where BLM could authorize a new wind energy project, and, similarly, very few transmission line routes are likely to remain viable.

[20] *Id*.at ES-5.
[21] Draft RMP/DEIS at ES-5.
[22] BLM Handbook 8431-1 at Appendix 2.
[23] Draft RMP/DEIS at 2-108.

V. The Draft RMP Revision Does Not Comply with FLMPA

FLPMA directs that all resource management plans use and observe the principles of multiple use and sustained yield.[24] Where there are competing resource uses and values in the same area, section 103(c) of FLMPA requires BLM to manage the public lands and their resource values so that they are utilized in the combination that will best meet multiple use and sustained yield mandates.[25] So, while the BLM preferred alternative may reflect the environmentally preferable alternative, in that it would protect, preserve, and enhance historical, cultural, and natural resources above all other uses,[26] it does not observe the principles of multiple use and sustained yield, as BLM is required to do in its land use planning process.[27]

Conclusion

EWAC is concerned that the Draft RMP/DEIS lacks any real prioritization of renewable energy and electric transmission and distribution infrastructure, and in fact, proposes changes that would impede the goals of the Biden-Harris Administration. Presented with only the alternatives set out in the Draft RMP/DEIS, EWAC would favor Alternative D, since it seeks a balance between conservation and resource development, or Alternative A, the "no action" alternative. However, EWAC would strongly prefer that BLM make the effort to project the demand for renewable energy development and new transmission lines within the planning area, reconsider its alternatives in light of the policies, Administration's goals, and legislative mandates favoring renewable energy development discussed above, and develop a new set of alternatives that more realistically reflect BLM's multiple use, sustained yield mandate.

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[24] 43 U.S.C. §1712(c)(1).
[25] 43 U.S.C. §1702(c).
[26] See 40 C.F.R. §1505.243 C.F.R. §46.30
[27] 43 U.S.C. §1712(c)(1).

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Comment Submission

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EWAC - Comments on Rock Springs WY RMP Amendment.pdf

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