



C.L. "BUTCH" OTTER
GOVERNOR

June 8, 2016

Jim Stobaugh, Project Manager
Gateway West Transmission Line Project
Bureau of Land Management
1387 S. Vinnell Way
Boise, ID 83709

RE: State of Idaho comments; Draft Supplemental Environmental Impact Statement and Draft Land Use Plan Amendments for Segments 8 and 9 of the Gateway West 500-kV Transmission Line Project, Idaho (81 Fed. Reg. 12932, March 11, 2016)

Dear Mr. Stobaugh,

I appreciate the opportunity to submit comments on the Draft Supplemental Environmental Impact Statement (DSEIS) and Land Use Plan Amendments for the Gateway West Transmission Line Project.

As you know, the State of Idaho, led by my Office of Energy Resources, has been working closely with the Bureau of Land Management (BLM), proponent utilities, local officials, and other State agencies to advance this project. These comments were developed through a coordinated effort and represent the views of the State of Idaho.

I am extremely frustrated that the BLM Washington, D.C. office chose to ignore the advice of its own local Resource Advisory Council (RAC), State agencies, local elected officials and stakeholders when it designated Alternatives 2 and 5 as co-preferred alternatives in the DSEIS. The rationale for selecting these preferred alternatives over RAC recommendations is not clearly stated in the DSEIS.

The BLM's co-preferred alternatives are inconsistent with the directives of the November 2013 Record of Decision (ROD) and are routes that the RAC analysis found to have unacceptable adverse impacts on resources and communities in Owyhee County. Alternatives 2 and 5 run through extensive private land holdings and/or disrupt Owyhee Front greenfield areas while possibly failing to meet the intended transmission reliability concerns of the proponent utilities. In issuing these co-preferred alternatives, the BLM failed to identify a consensus agreement on the transmission alignment for these routes and therefore failed to meet the intended purpose of the supplemental environmental impact statement process.

Gateway West Transmission Line

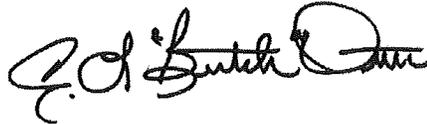
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The final decision on Gateway West Segments 8 and 9 must reflect an Idaho consensus. Alternative 1 – the RAC-recommended route and the proponents' revised proposed route – is the only acceptable alternative that avoids impacts to sage-grouse, is supported by the affected citizens, and is supported by Idaho's State and local elected officials.

These comments will further detail the issues that Idaho has with BLM's analysis and conclusion for the Gateway West Transmission Line Project. Please contact John Chatburn, administrator, Idaho Governor's Office of Energy Resources, if you have any questions.

As Always – Idaho, "Esto Perpetua"

A handwritten signature in black ink, appearing to read "C.L. Butch Otter". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

C.L. "Butch" Otter,
Governor of Idaho

cc: Hon. Mike Crapo, United States Senator
Hon. James Risch, United States Senator
Hon. Mike Simpson, United States Congressman
Hon. Raúl Labrador, United States Congressman
Secretary Jewell, Department of the Interior
Director Kornze, Bureau of Land Management
State Director Murphy, Bureau of Land Management

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9 of the Gateway West 500-kV Transmission
Line Project, Idaho



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Introduction

Project History.

On May 7, 2007, PacifiCorp (d/b/a Rocky Mountain Power) and Idaho Power Company (Proponents) applied to the Bureau of Land Management (BLM) for a right-of-way (ROW) grant to use the National System of Public Lands for the Gateway West Transmission Line Project (Project). The Proponents propose to construct and operate approximately 1000 miles of high voltage (230 kilovolt (kV) and 500 kV) transmission lines over 10 segments between Glenrock, Wyoming and the Hemingway Substation in southwest Idaho. The Project will allow for the delivery of up to 1,500 megawatts of additional capacity to serve customers and to allow for greater connectivity within the interconnected electrical transmission grid of the West.

On April 26, 2013, the BLM published the Final Environmental Impact Statement (2013 FEIS) for the Gateway West Transmission Line Project.¹ On November 12, 2013, the BLM published the Record of Decision (2013 ROD), where the BLM deferred its decision on an offering for Segments 8 and 9 due to the lack of complementary siting preferences among federal, state, and local authorizing entities in Idaho.²

Alternative 1 is the only viable alternative for Idaho.

The 2013 ROD directed the BLM to seek a consensus agreement with the Proponents and state and local authorizing entities for segments 8 and 9.³ Alternative 1, the Proposed Route for Segments 8 and 9 in the SEIS, is the only alternative that meets these criteria. The BLM tasked its Boise District Resource Advisory Council (RAC) to lead the effort in finding a consensus alignment. After hundreds of hours spent examining route options, observing presentations, and studying the issues, the RAC identified the routes that the Proponents then incorporated as their proposed action alternative. This is the only alternative that meets the primary objective of the 2013 ROD deferral.

Alternative 1 is Idaho's preferred route for several reasons. Not only will it result in the least amount of construction and operation disturbance, the Proposed Route will have the fewest impacts on sage-grouse, natural vegetation, waterbody crossings, prime farmland, and the fewest impacts on undisturbed land by falling within land already disturbed by existing infrastructure.⁴ All of the action alternatives pass through the Snake River Birds of Prey (SRBOP) National Conservation Area (NCA) for some distance. Alternative 1 provides the greatest amount of mitigation and enhancement, which will improve the resiliency of the NCA by providing opportunities for increased vegetation improvement, law enforcement, and educational opportunities. Transmission lines also provide raptors opportunities to perch, prey, and roost.⁵

¹ 78 Fed. Reg. 24771 (April 26, 2013)

² U.S. Bureau of Land Mgmt., U.S. Dep't of the Interior, RECORD OF DECISION FOR THE GATEWAY WEST TRANSMISSION LINE PROJECT, 3 (2013) (2013 ROD); *see also* 78 Fed. Reg. 68467 (Nov. 14, 2013).

³ 2013 ROD at 3.

⁴ U.S. Bureau of Land Mgmt., U.S. Dep't of the Interior, Draft Supplemental Environmental Impact Statement for Segments 8 and 9 of the Gateway West Transmission Line Project, 2-63-65 (2016), (DSEIS).

⁵ *See* DSEIS at Appendix C.

Throughout this process, the BLM has adamantly opposed selecting the Proposed Alternative in order to avoiding siting the Project in the NCA as much as possible. This direction, brought on by the Washington D.C. Office, contradicts the purpose of initiating a supplemental EIS process for this Project. As our comments will outline, the BLM's pre-decisional process has directed the National Environmental Policy Act (NEPA) analysis towards an outcome that is not the best fit for wildlife, habitat, the NCA, affected counties, the State, or the Proponents, but only fits the desired political outcome of the Washington D.C. Office. The BLM must address and resolve the issues in these comments, and then provide stakeholders with the opportunity to review changes before the release of the Final Supplemental EIS. Any other approach will fail to adhere to the direction set forth in the 2013 ROD and will completely undermine the NEPA process.

Key Issues

The BLM formed the RAC subcommittee and delayed the ROD for Segments 8 and 9 in bad faith.

In the 2013 ROD, the BLM deferred its decision on Segments 8 and 9 “to allow additional time for federal, state and local permitting agencies to examine additional routing options,” and “work with state and local government representatives to find a routing solution for Segments 8 and 9. Public land resources, local government land use plan objectives, and effects to local economies will be part of these siting discussions.”⁶ The BLM requested that the RAC consider these issues. The RAC formed the Gateway West Subcommittee (Subcommittee) to consider issues surrounding siting Segments 8 and 9 of the Project. The Subcommittee held eleven public meetings, one work session, and two field tours between December 2013 and May 2014.⁷ In compliance with this mission, the Subcommittee recommended Alternative 1 in two detailed, scientifically-based reports which were adopted by the full RAC and submitted to BLM.⁸

Unfortunately, the BLM ignored the advice of the RAC and designated Alternatives 2 and 5 as Co-Preferred Alternatives in the Draft Supplemental Environmental Impact Statement (DSEIS).⁹ The BLM not did include a clear rationale for selecting the Co-Preferred Alternatives over the RAC recommendations in the DSEIS. Rather, in a press release, the BLM stated that it selected the Co-Preferred Alternatives “after weighing the impacts of the revised proposal against ... mitigation considerations for the Morley Nelson Snake River Birds of Prey National Conservation Area ... and BLM policy guidance related to NCAs.”¹⁰ The press release revealed

⁶ 2013 ROD at 37, *see also* DSEIS at 1-1.

⁷ U.S. Bureau of Land Mgmt., U.S. Dep't of the Interior, Boise District Resource Advisory Council Subcommittee Report on Gateway West Segments 8 and 9 Route Option In or Near the Morley Nelson Snake River Birds of Prey National Conservation Area, 3 (2014).

⁸ DSEIS at 1-1.

⁹ DSEIS at 2-29.

¹⁰ U.S. Bureau of Land Mgmt., U.S. Dep't of the Interior, Press Release, BLM RELEASES PLAN to Provide 1500 Megawatts of Energy to Southern Wyoming and Southern Idaho: Analysis Continues Public Engagement, Highlights Priority Energy Development, Mitigation Strategies and Protection of National Conservation Area (March 14, 2016) *available at* http://www.blm.gov/id/st/en/media_center/newsroom/2016/march0/blm_releases_plan.html.

that the BLM had no intention of examining additional routing options upon deferring its decision on Segments 8 and 9. As such, the BLM wasted the Subcommittee members' time, utilized the RAC process in bad faith, and violated the RAC Charter.

By failing to consider the findings of the Subcommittee's report, the BLM disregarded the many hours of voluntary service by the members of the Subcommittee and the public. Although the members of the Subcommittee knew the scope of their commitment when they were appointed, the number of hours volunteered was nothing short of extraordinary. In fact, the number of Subcommittee meetings over the span of seven months exceeded the number of annual meetings estimated for the entire RAC by 300-600%.¹¹ The BLM's intention to avoid the SRBOP NCA undermines the public-private partnership that is the RAC.

Moreover, the BLM did not follow proper procedure in disseminating the Subcommittee's reports. The RAC and its members were appointed to provide advice to Secretary of the Department of Interior through the Boise District Manager.¹² According to the BLM's own narration of events, the Subcommittee's reports were never presented to Secretary Jewell. In fact, the BLM fails to discuss what it did with the Subcommittee's reports after they were forwarded to the BLM.¹³ Unfortunately, this failure to follow protocol is only another example of the BLM undermining public efforts to participate in the NEPA process.

In fact, the BLM couldn't even be bothered to include one of the RAC's reports in the DSEIS. Appendix H contains the RAC reports, but fails to supply the *May 30, 2014 Boise District Resource Advisory Council Subcommittee Report on Gateway West Segments 8 and 9 Route Options In or Near the Morley Nelson Snake River Birds of Prey National Conservation Area* report. Appendix H only provides the RAC Subcommittee's Report on Mitigation and Enhancement. BLM's failure to even supply the RAC report in the DSEIS illustrates BLM's pre-decisional approach to this project, and its failure to comply with NEPA.¹⁴

The Department of Interior once praised BLM's resource advisory councils as "critical to the BLM in carrying out its conservation vision ... for the [National Landscape Conservation System]."¹⁵ The BLM must recognize that, in this case, the RAC is still critical to the BLM in carrying out its conservation vision for the SRBOP NCA. Accordingly, the BLM must give the Subcommittee's reports proper attention and consideration as well as forward the reports to Secretary Jewell.

Alternative 1 is consistent with the Morley Nelson Snake River Birds of Prey National Conservation Area enabling legislation.

The SRBOP NCA enabling legislation states that "the purposes for which the conservation area is established, and shall be managed, are to provide for the conservation,

¹¹ U.S. Bureau of Land Mgmt., U.S. Dep't of the Interior, State of Idaho Boise District Resource Advisory Council Charter § 9 (Jan. 5, 2015).

¹² *Id.* at §§ 5, 12.

¹³ DSEIS at 1-1.

¹⁴ 40 CFR §§1502.2(f), 1506.1.

¹⁵ U.S. Dep't of Interior, Press Release, National Landscape Conservation System Celebrates 10th Birthday (March 24, 2010); *available at* 2010 WL 1053608.

protection, and enhancement of raptor populations and habitats.”¹⁶ Despite a thinly veiled attempt to distract from the real reason behind the SRBOP designation, Alternative 1 is consistent with the enabling legislation. In fact, the BLM’s own science demonstrates that 500-kV transmission lines within the NCA are compatible with raptors.¹⁷

The BLM-issued, peer-reviewed, scientific studies regarding the relationship of raptors with transmission lines report that 500-kV transmission lines enhance opportunities for raptors to perch, nest, and roost.¹⁸ Raptors and ravens are attracted to 500-kV lines, and the productivity of hawks and eagles nesting on transmission towers is equal to, or better than, those nesting in the canyon.¹⁹ Importantly, these reports were based on data that was collected in part at the SRBOP NCA. The BLM conveniently ignores this information, and in doing so, fails to comply with NEPA by not analyzing both the beneficial and detrimental effects of the project.²⁰ The BLM is not using high-quality scientific analyses to make the decision to avoid the SRBOP NCA, as required under NEPA and BLM policy, but a political agenda.²¹

In fact, it is more likely that the infrastructure prohibition in BLM Manual 6100 is not consistent with the SRBOP NCA enabling legislation.²² The enabling legislation dictates that the Secretary of the Department of Interior “shall review the plan at least once every 5 years and shall make such revisions as may be necessary or appropriate.”²³ This language implies that the SRBOP NCA is to be managed on an individual basis and that management decisions must be made on information specific to the SRBOP NCA. The BLM and Secretary Jewell must make SRBOP NCA management decisions based on the enabling legislation, high-quality science, and NCA specific information.

The BLM’s environmental justice and socioeconomic analyses are grossly inadequate and understates the potential adverse impacts of the Project in Owyhee County.

A goal of NEPA is to ensure “all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings.”²⁴ Theoretically, the environmental justice and socioeconomic analyses should provide the practical and conceptual specificity to carry out the aforementioned goal, and other goals, of NEPA.²⁵ At a minimum, the analyses should lead

¹⁶ 16 U.S.C. § 460iii-2 (2012).

¹⁷ K.A. Engel, L.S. Young, K. Steenhof, J.A. Roppe & M.N. Kochert, Communal Roosting of common Ravens in Southwestern Idaho, *Wilson Bulletin* 104, 105-121 (1992). *See also* K. Steenhof, M.N. Kochert & J.A. Roppe, Nesting by Raptors and Common Ravens on Electrical Transmission Line Towers, *Journal of Wildlife and Management* 57, 271-281 (1993).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ 40 CFR §1508.8.

²¹ *See* 40 CFR §§ 1500.1, 1502.24; U.S. Bureau of Land Mgmt., U.S. Dep’t of the Interior, *ADVANCING SCIENCE IN THE BLM: AN IMPLEMENTATION STRATEGY*, 4 (2015).

²² U.S. Bureau of Land Mgmt., U.S. Dep’t of the Interior, 6100 – National Landscape Conservation System Management Manual § I(3)(2012) (BLM Manual 6100).

²³ 16 U.S.C. § 460iii-3 (2012).

²⁴ 42 U.S.C. § 4331(b)(2) (1994).

²⁵ *See* Council on Env’tl. Quality, *Environmental Justice: Guidance Under the National Environmental Policy Act* at 1(1997) (CEQ Guidance).

decision-makers to recognize and reject alternatives that will result in disproportionate adverse impacts in low-income and minority areas.

Unfortunately the BLM's environmental justice and socioeconomic analyses in the DSEIS are too inadequate to result in the agency avoiding existing patterns of inequality or leading decision-makers to reject alternatives that result in adverse impacts on populations of a certain race or income level. Rather, the BLM capitalizes on NEPA's inherent substantive limitations and treats these analyses as a procedural, "check-the-box," exercise. In its environmental justice analysis, the BLM fails to comply with CEQ or EPA environmental justice guidance, dismisses public participation, and does not support its conclusion that the "Project is not expected to have high and adverse... effects on nearby communities,"²⁶ and the BLM's socioeconomic analysis specifically excludes the tasks outlined in the 2013 ROD to consider the effects on local economies.

The BLM indicates that it followed EPA and CEQ guidance in composing its environmental justice analysis.²⁷ However, the EPA guidance, which requires a more detailed analysis than the CEQ guidance, is not reflected in the DSEIS. The EPA Guidance identifies "three vantage points" from which a federal agency is to approach an environmental justice analysis:

"1) whether there exists a potential for disproportionate risk; 2) whether communities have been sufficiently involved in the decision-making process; and 3) whether communities currently suffer, or have historically suffered, from environmental or health risk hazards."²⁸

Although the BLM does use U.S. Census Bureau data to identify minority and low-income communities that could be affected by the routes and alternatives for Segments 8 and 9, it looks no further than that data in determining whether there exists a potential for disproportionate risk.

When evaluating whether a minority or low-income population may be adversely affected by a federal action, the EPA Guidance states that minority or low-income communities "may be missed in a traditional census tract-based analysis."²⁹ In such cases, the EPA guidance holds that "[a]dditional caution is called for in using census data due to the possibility of distortion of population breakdowns."³⁰ In the DSEIS, the BLM used only census data to complete its inadequate analysis. In fact, this issue was raised by the Owyhee County Board of County Commissioners in 2013.³¹ Rather than obtaining local data to inform its analysis, BLM wrote off the concerns of the Owyhee County Board of County Commissioners by simply noting the definitions of minority and low-income communities as they applied to Owyhee County according to census data.³² Thus, the BLM's analysis of whether there exists a potential for

²⁶ DSEIS at 3.5-13.

²⁷ *See Id.* at 3.5-2.

²⁸ U.S. Environmental Protection Agency, Final Guidance of Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses § 2.3 (1998) (EPA Guidance).

²⁹ EPA Guidance §2.1.

³⁰ *Id.*

³¹ *See* DSEIS at 3.5-10.

³² *Id.*

disproportionate risk is insufficient. As for the second and third vantage points, the BLM does not even discuss whether communities have been sufficiently involved in the decision-making process and whether communities currently suffer, or have historically suffered, from environmental or health risk hazards in its analysis.

The EPA guidance also requires analysts to examine a long list of demographic, geographic, economic, human health, and risk factors – each with associated specific variable factors – as part of their NEPA considerations.³³ In the DSEIS, the BLM looked at only three variable, demographic factors: race, low-income status, and agriculture production.³⁴ The BLM failed to analyze variable factors, including but not limited to, community identification, inconsistent standards, research gaps, and cultural expectations. According to EPA guidance, because the BLM failed to approach its environmental justice analysis from the three vantage points and failed to address the long list of factors that are to be included in its NEPA considerations, the BLM’s environmental justice analysis is inadequate.

By failing to analyze the environmental justice concerns according to EPA guidance, the BLM fails to comply with CEQ guidance in its environmental justice analysis as well. The CEQ guidance “interprets NEPA as implemented through the CEQ regulations in light of Executive Order 12898” by setting forth core principles that should supplement federal agencies NEPA analyses.³⁵ Rather than including all six core principles listed by the CEQ in order to publish a complete analysis, the BLM “cherry-picked” principles from the list to inadequately analyze. In particular, the BLM did not include the third CEQ guidance principle:

“[a]gencies should recognized the interrelated cultural, social, occupations, historical, or economic factors that may amplify the natural and physical environmental effects of the proposed agency action. These factors should include the physical sensitivity of the community or population to particular impacts; the effect of any disruption on the community structure associated with the proposed action; and the nature and degree of impact on the physical and social structure of the community.”³⁶

In the DSEIS, the BLM discuss nothing more than agriculture production, using “cookie-cutter” language to describe the affected population before concluding that the affected population would observe no adverse consequences from the project.³⁷ Therefore, BLM’s environmental justice analysis is substantively inadequate according to not only the EPA guidance, but also the CEQ guidance.

The BLM relies upon analysis from the 2013 FEIS to fulfil the majority of their socioeconomic analyses for the DSEIS. Specifically relating to property values, the 2013 FEIS states that “Some short term adverse impacts of residential property values (and salability) might occur on an individual basis as a result of the Proposed Route and Route Alternatives. However,

³³ *Id.* 2.0-2.3.

³⁴ *See generally* DSEIS at 3.5.

³⁵ CEQ Guidance at 21.

³⁶ *Id.* at 9.

³⁷ DSEIS at 3.5-7.

these impacts would be highly variable, individualized, and unpredictable.”³⁸ Once again, the BLM wrote off the concerns of residential property values brought forward of the Owyhee County Board of County Commissioners. The BLM’s Co-Preferred Alternative (Alternative 2) will directly impact a substantial amount of private property in an already economically disadvantaged county. Even though the BLM’s own 2013 ROD for the Project specifically requires the BLM to consider the effects to local economies in more detail, the BLM specifically ignores this responsibility to inform the reader that the siting of Alternative 2 would have substantial environmental justice and socioeconomic impacts on Owyhee County.

The BLM failed to comply procedurally by refusing to respond to issues raised by the public. The CEQ and EPA guidance rely heavily on public participation as a method of addressing inequity.³⁹ However in its analysis, the BLM has shown that environmental justice and socioeconomic concerns, like those expressed by the Owyhee County Board of County Commissioners, will not be brought to bear on the BLM’s substantive decision-making. The Owyhee County Commissioners raised several concerns regarding its large minority and low-income populations in the vicinity of the BLM’s Co-Preferred Alternatives. The BLM’s failure to analyze the Owyhee County Commissioners’ concerns is problematic because public participation, like that of the Owyhee County Commissioners, is important to the BLM’s understanding of these issues as they relate to the Project at the local level. However, as mentioned above, rather than properly analyzing the Owyhee County Commissioners concerns, the BLM dismisses the concerns by citing census data and inadequate analysis presented in the 2013 FEIS.⁴⁰ The Owyhee County Commissioners have given the BLM an opportunity to avoid existing patterns of inequality through the NEPA process.⁴¹ Unfortunately, the BLM has chosen to ignore it. The BLM has missed a chance to shape end results to better serve the public interest.

Lastly, the BLM’s analyses are conclusory. Quite simply, the BLM’s deficient analyses are nothing but a series of unsupported statements. The BLM presents insufficient evidence to conclude that minority and low-income populations in Owyhee County will not suffer disproportionately high and adverse effects the Co-Preferred Alternatives. Accordingly, because of the gravity of the environmental justice and socioeconomic issues, the BLM must perform complete, adequate, environmental justice and socioeconomic analyses that comply with EPA and CEQ guidance, analyzes public concerns, and provides specific, sufficient evidence so that one may understand how the BLM reached its conclusion.

Co-Preferred Alternative 5 fails to meet the Proponent’s reliability requirements.

The primary purpose of the Project is to provide safe, reliable, efficient, and cost effective electric service.⁴² The BLM’s Co-Preferred Alternative 5 fails to comply in meeting this purpose. The BLM’s Alternative 5 parallels routes 8G and 9K for 98.9 miles and

³⁸ U.S. Bureau of Land Mgmt., U.S. Dep’t of the Interior, Final Environmental Impact Statement for the Gateway West Transmission Line Project, 3.4-62 (2013 FEIS).

³⁹ See CEQ Guidance at 13; EPA Guidance at §§ 4.0-4.2.

⁴⁰ DSEIS at 3.5-10.

⁴¹ See 40 C.F.R. at §§ 1501.1-2 (2012).

⁴² See 2013 ROD at 5.

unjustifiably puts the Proponents, ratepayers, citizens of Idaho, and electricity users of the Western Interconnection at risk of widespread outages due to the increased risk of fire impacting both segments of this alignment.

Siting transmission lines in close proximity is not a new issue. Federal agencies understand the risks of siting transmissions lines in close proximity for long distances, and the agencies have understood that simply meeting minimum separation requirements is not adequate enough to ensure reliability.⁴³ For example, the BLM and the Department of Energy recognized these criteria while designating the West Wide Energy Corridor, stating that:

“...by far the most cost effective preemptive strategy against multiple simultaneous line loss involves ensuring adequate distance separation between lines at the planning stage. Experience among WECC system operators has also shown that the nature of the land between lines...should dictate safe separation distances on a case-by-case basis... However, in forested areas or areas where vegetation provides substantial amounts of fuel for fires, greater line spacing (up to five miles) may be necessary to prevent adjacent lines from becoming simultaneously involved in faults caused by ionized smoke.”⁴⁴

The BLM even recognizes this risk multiple times throughout the document, and several routes were eliminated from further consideration due to not meeting these reliability objectives.⁴⁵ However, in the DSEIS the BLM ignores these risks for the sake of developing an alternative that meets a particular political agenda and adheres to an improperly developed policy document.⁴⁶ The BLM must disregard Alternative 5 as the Agency’s Co-Preferred Alternative in the Final Supplemental Environmental Impact Statement (Final SEIS) and ROD in order to ensure that the Project can provide safe and reliable electric services.

The BLM fails to comply with NEPA and its own Policy by not including an adequate alternative to the SRBOP Mitigation and Enhancement Portfolio Proposal.

The 2013 ROD deferred its decisions to grant a ROW for segments 8 and 9, in part due to the BLM needing time to evaluate the Proponents Mitigation and Enhancement Portfolio (MEP) Proposal.⁴⁷ The DSEIS specified that the Proponent’s proposed MEP was inadequate, and provided a Compensatory Mitigation Conceptual Model Example (Appendix K) as a framework to “to ensure that offsetting impacts to the SRBOP will lead to a net benefit to resources and values, i.e., achieve the enhancements required by the SRBOP enabling legislation.”⁴⁸

BLM policy specifies that the agency must notify the applicant as early as possible if mitigation is inadequate, and that the BLM must “identify and evaluate in the NEPA document

⁴³ See Western Electric Coordinating Council, TPL – (001 THRU 004) – WECC – 1 – CR – System Performance Criteria; available at <http://www.wecc.biz/Standards/WECC%20Criteria/Forms/AllItems.aspx>.

⁴⁴ U.S. Bureau of Land Mgmt., U.S. Dep’t of the Interior, Final West Wide Energy Corridor Programmatic Environmental Impact Statement, 2-57-58 (2008).

⁴⁵ DSEIS at 2-42, 2-45-2-47; see also DEIS at 1.4.5.

⁴⁶ BLM Manual 6100 at §I(3)(2012).

⁴⁷ See 2013 ROD at 1.8.

⁴⁸ DSEIS at 1-9.

an alternative(s) to the applicant's proposal."⁴⁹ The BLM failed to adhere to this policy in several instances. First, the BLM failed to notify the Proponents that the MEP package was inadequate in a timely manner. Through administrative review of the supplemental EIS afforded to Cooperating Agencies, the state of Idaho has been aware of the BLM's decision to classify the MEP as inadequate since May 2015. However the BLM failed to notify the Proponents of the inadequacies until the release of the DSEIS in March of 2016. The BLM publicly stated that they "didn't feel comfortable" selecting the Proposed Alternative as a Preferred Alternative due to an inadequate MEP.⁵⁰ The time between this administrative review, and release of the DSEIS, should have been spent collaborating with the Proponents and Cooperating Agencies to develop a MEP proposal that would meet the requirements of the enabling legislation. Instead the BLM remained silent on the issue until the release of the DSEIS.

The BLM also failed to provide an adequate alternative analysis of the Proponent's proposed MEP. BLM policy states that:

"[i]f the applicant proposes specific mitigation measures as a feature of its proposed action and the BLM believes the proposed mitigation may be inadequate, then the BLM will identify and evaluate in the NEPA document an alternative(s) to the applicant's proposal."⁵¹

The BLM's response to this requirement is extremely incomplete and unsatisfactory. The BLM identifies throughout the document areas where the MEP is inadequate, but fails to provide any alternative options. The BLM supplies Appendix K of the DSEIS, stating that "If an action alternative is selected in the Final SEIS, the BLM will fully apply compensatory mitigation analysis to the selected route alignments and present that analysis and the appropriate calculations in the Final SEIS."⁵² This response fails to align with the policy directive in BLM Manual 1794, specifically stating that the BLM will identify and evaluate an alternative to the applicants proposed action, not to the action alternative that the BLM identifies in the Final SEIS.

The BLM's failure to adhere to their own policy illustrates the BLM's pre-decisional approach to this project, and its failure to comply with NEPA.⁵³ The BLM must develop an alternative to the proponent's MEP and allow for stakeholder feedback prior to the release of the Final SEIS.

The BLM's analysis is void because BLM failed to comply with Section 202 of the Federal Land Policy and Management Act of 1976 (FLMPA).

Section 202 of FLMPA requires that the BLM must "develop, maintain, and when appropriate, revise land use plans which provide by tracts or areas for the use of the public

⁴⁹ U.S. Bureau of Land Mgmt., U.S. Dep't of the Interior, 2013-WO-IM-142 Regional Mitigation Manual Section 1794 §§17(b)(e) (BLM Manual1794).

⁵⁰ Scott Streater, *BLM conservation policy threatens key power line*, E&E NEWS, Apr. 15, 2016.

⁵¹ See BLM Manual 1794 §17(e).

⁵² DSEIS at Appendix K-2.

⁵³ 40 CFR §§1502.2(f), 1506.1.

lands.”⁵⁴ Standard practice provides for Resource Management Plans (RMPs) to guide resource management for 15-20 years. However, the majority of the RMPs, that provide the baseline for this project, are well over 25 years old:

Segment	Administrative Unit	Applicable Plan Name	Plan Year (Age)
8	Shoshone Field Office	Monument RMP	1986 (30 years)
8	Shoshone Field Office	Bennett Hills/Timmerman Hills MFP	1980 (36 years)
9	Burley Field Office	Cassia RMP	1985 (31 years)
9	Burley Field Office	Twin Falls RMP	1985 (31 years)
8	Jarbidge Field Office	Jarbidge RMP	2015 (1 year)
8 and 9	Four Rivers Field Office	Jarbidge RMP	1987 (29 years)
8	Four Rivers Field Office	Kuna MFP	1983 (33 years)
8 and 9	Four Rivers Field Office	Morley Nelson SRBOP NCA RMP	2008 (8 years)
8 and 9	Bruneau Field Office	Bruneau MFP	1983 (33 years)
8 and 9	Owyhee Field Office	Owyhee RMP	1999 (17 years)

The BLM is making amendments to RMPs that are so obsolete that they do not even incorporate the current administrative boundaries. For example, the DSEIS has to specify to the reader that even though the Jarbidge RMP was updated in 2015, a majority of the impacted land that was part of the prior 1987 RMP is technically part of the Four Rivers Field Office, where an RMP currently does not exist.⁵⁵ The BLM cannot possibly be making use of high quality scientific data and the best available science, as required under NEPA and BLM policy, when it’s proposing amendments to RMPs that are over 30 years old and invalid.⁵⁶ The BLM must update and finalize the applicable RMPs to provide for consistent and integrated land use decisions prior to issuing the Gateway West ROW.

The BLM’s Cumulative Effects Analysis is Grossly Inadequate.

BLM guidance specifies that the BLM “must address the cumulative impact of each alternative” and compare them against each other.⁵⁷ This is especially important for the sake of the DSEIS, because the point of the supplementation is that that each action alternative provides unique impacts on resources. However, the BLM failed to analyze or compare the alternatives for all impacted resources in its Cumulative Effects analysis. For example, and examination of OHV access provides the following:

“OHV use is increasing on public lands. OHV riders may have more opportunities available as a result of this project. New access roads used for construction and

⁵⁴ 43 U.S.C. § 1712; *see* 43 C.F.R. § 1610.3-2.

⁵⁵ DSEIS Appendix F at F-1.

⁵⁶ 40 CFR §§1500.1, 1502.24; U.S. Bureau of Land Mgmt., U.S. Dep’t of the Interior, *Advancing Science in the BLM: An Implementation Strategy 4* (2015).

⁵⁷ U.S. Bureau of Land Mgmt., U.S. Dep’t of the Interior, *Example of Cumulative Effects Analysis* (May 16, 2016) *available at*

http://www.blm.gov/wo/st/en/prog/planning/nepa/webguide/document_pages/example_of_cumulative.html.

maintenance provide additional avenues for riders to gain access to locations that were previously off limits or unavailable.”⁵⁸

The BLM uses over-broad statements like this throughout the Cumulative Effects analysis to justify for not analyzing the differences between the alternatives. However, segments that cross existing undisturbed habitat, or greenfields, will likely have significantly more impacts from OHV use than segments that cross already disturbed habitat.

The BLM fails to articulate this difference in the analysis, even though the difference is certainly quantifiable. The BLM is aware of how many miles of new roads (versus existing roads) each alternative will create, and could easily provide data on how many miles of new access roads may be available for OHV access, yet it fails to provide the information. This is the case for several of the resources identified in the Cumulative Effects section. The reader is completely unaware of the differences in significance between resource impacts because the BLM fails to articulate it for many of the resources. Instead the BLM relies on providing responses such as “...the Segments 8 and 9 revised proposed routes and other routes would have temporary and permanent effects...”⁵⁹ The BLM provides no quantitative values or comparisons so that the reader, and most importantly the decision maker, can identify and rank the severity of impacts by each alternative.

In order for the reader and decision makers to take a hard look at the cumulative effects of each of the proposed segments, the BLM must provide for a comparison of each action alternative for each of the impacted resources before the release of the Final SEIS.

The BLM failed to collaborate.

The 2013 ROD provided the BLM with the opportunity to find a consensus agreement to siting Segments 8 and 9.⁶⁰ The BLM has failed to adhere to this task. The BLM’s Co-Preferred Alternatives do not provide for an agreeable route among the state and local jurisdictions. To the contrary, the BLM’s Co-Preferred Alternatives are unanimously opposed by the state and local jurisdictions.

Procedurally, the BLM failed to collaborate with state and local jurisdictions by failing to incorporate the applicable county plans. While the BLM identifies the Elmore County Comprehensive Plan, the BLM fails to even mention the Owyhee and Gooding County Comprehensive Plans.⁶¹ The BLM’s failure to discuss the elements of these county plans does not comply with CEQ Implementing Regulations or the tasks outlined in the 2013 ROD.⁶²

The BLM also failed to collaborate with the Federal Energy Regulatory Commission (FERC) in regards to the Proponent’s Revised Proposed Route for Segment 9. The Proponents have proposed to double circuit the Proposed Segment 9 500-kV line with the existing

⁵⁸ DSEIS at 4-51.

⁵⁹ *Id.*

⁶⁰ *See generally* 2013 ROD.

⁶¹ DSEIS at 1-27.

⁶² *See* 40 CFR §1506.2(d).

Bowmont-Canyon Creek 138-kV transmission line. The BLM states that the Bowmont-Canyon Creek line is under FERC authority and that the Proponents would need to obtain FERC approval to reconstruct the line.⁶³

An April 7, 2016 letter (attached as Appendix 1) from FERC to Idaho Power specifies that not only would FERC allow for the use of the existing ROW for a second transmission line, but they encourage it, stating that “it is reasonable to group similar uses of project lands together (i.e., adding a non-project transmission line within the project transmission line right of way would not likely introduce new or unique adverse effects to the project beyond those posed by the project transmission line).” The BLM’s complete failure to collaborate with another federal entity to identify the viability of the proposed action illustrates BLM’s pre-decisional approach to this project.

Issues related to Wildlife

The State of Idaho and the Idaho Department of Fish and Game (IDFG) reiterate the previous comments regarding the southern-most route for Segment 9. Alternative 9E would have greater adverse impacts on special status wildlife than Alternative 9D, particularly for sage-grouse. Routes 8G and 9K of the SDEIS are similar. While Routes 8G and 9K have been modified to avoid some sage-grouse habitats and leks in the vicinity of Oreana, these routes would have greater impacts to Important Habitat Management Areas (IHMA) than the Revised Proposed Route for both Segments 8 and 9.⁶⁴

Alternative 1, the Revised Proposed Routes, traverses the SRBOP NCA. Raptors and corvids have been shown to utilize transmission lines and associated lattice towers for nesting, roosting, and perching.⁶⁵ The concentration of ferruginous hawk nests on the existing 500 kV transmission line north of Interstate 84 further suggests use of transmission lines by raptors within the analysis area.⁶⁶ For Routes 8G and 9K, this could lead to increased raptor and corvid predation on sage-grouse and sage-grouse eggs. New transmission lines in the NCA (Revised Proposed Routes, Alternative 1) are not expected to adversely affect sage-grouse and may provide additional nesting, roosting, and perching substrates for raptors, the focal species for which the NCA was created.

The DSEIS states that the Revised Proposed Route for Segment 9 could adversely affect the Owyhee Front/Triangle local sage-grouse population.⁶⁷ This is an error that should be omitted. The Revised Proposed Route for Segment 9 is nowhere near the Owyhee Front/Triangle local sage-grouse population, nor does the analysis for Route 8H (the same route) contain the same assessment.

⁶³ DSEIS at 2-12-13.

⁶⁴ DSEIS at Tables D.11-11 – D.11-15.

⁶⁵ K.A. Engel, L.S. Young, K. Steenhof, J.A. Roppe & M.N. Kochert, Communal Roosting of common Ravens in Southwestern Idaho, *Wilson Bulletin* 104, 105-121 (1992). See also K. Steenhof, M.N. Kochert & J.A. Roppe, Nesting by Raptors and Common Ravens on Electrical Transmission Line Towers, *Journal of Wildlife and Management* 57, 271-281 (1993).

⁶⁶ DSEIS at Figure E.10-3.

⁶⁷ *Id.* at 3.11-17.

Potential negative effects to big game species (mule deer, elk, pronghorn antelope, and bighorn sheep) from project construction and operation are more likely to result from disturbance to wintering animals than from the presence of a transmission line assuming the proposed avoidance and mitigation measures are implemented.⁶⁸ Disturbance on winter range in southwest Idaho is generally a result of human activities, often related to motorized access. The results shown in the SDEIS for changes in fragmentation levels between routes and alternatives is a more useful and accurate indicator of potential effects to big game than a simple measure of acres affected because roads are considered in the fragmentation assessment, but not in the acreage assessment. For example, the Revised Proposed Route for Segment 8 crosses the most mule deer and elk winter range of any route, yet the reduction in patch size is comparable to other action alternatives due to the current level of fragmentation in the area. Alternative 1, the Revised Proposed Routes, would result in the least amount of patch size reduction of any action alternative.

In summary, Alternative 1, the Revised Proposed Routes, is likely to result in fewer adverse effects to wildlife resources than the other action alternatives analyzed, primarily through avoidance of sensitive sage-grouse habitats and big game winter range, as well as a neutral or positive effect to raptor habitats. The benefits of the co-preferred Alternatives 2 and 5 are presented as avoidance of the NCA. The avoidance of the NCA does not present a clear biological benefit for wildlife and thus, we view the rationale to avoid the NCA to be based on policy, not biology. The priority of policy versus biological benefit should be stated more clearly to clarify the BLM decision framework.

Issues Related to Special Status Plants

The DSEIS is correct that there is no threatened, endangered, or candidate plant species within or in proximity to the Analysis Area.⁶⁹ The DSEIS appropriately recognizes that slickspot peppergrass (*Lepidium papilliferum*) occurs within the Analysis Area and is currently being proposed for listing by the U.S. Fish and Wildlife Service (Service).

In February 2014, the Service simultaneously proposed to list slickspot peppergrass as threatened and designate critical habitat under the ESA.⁷⁰ On June 5, 2014, The State submitted detailed comments to the Service opposing the proposed listing and critical habitat designation. One of the State's key arguments focused on the fact that slickspot peppergrass elemental occurrences (EOs) coincide with sage-grouse habitat. The State pointed out that the Service failed to adequately analyze the positive impacts from sage-grouse conservation efforts on slickspot peppergrass. Like with sage-grouse, fire is the primary threat to slickspot peppergrass, and the Service did not analyze the associated benefits to the plant from the numerous conservation efforts focusing on fire prevention and suppression.

⁶⁸ Idaho Department of Fish and Game. Idaho Elk Management Plan 2014-2024 (2014). Idaho Department of Fish and Game, Boise, USA. *See also* Idaho Department of Fish and Game. Bighorn sheep management plan 2010 (2010). Idaho Department of Fish and Game, Boise, USA.

⁶⁹ SDEIS at 3.7-3.

⁷⁰ *See* 79 Fed. Reg. 8,416; 79 Fed. Reg. 8,402.

It has been well over two years and the Service has yet to make a decision on their 2014 proposals. For purposes of BLM's analysis within the DSEIS, the plant remains off of the endangered species list and can only be classified as a proposed species, which does not carry any regulatory weight. Regardless of the uncertainty surrounding slickspot peppergrass's status, The DSEIS is premature in determining that construction and operation of certain routes within the Analysis Area "may affect, and are likely to adversely affect, slickspot peppergrass."⁷¹ This type of determination is reserved for the ESA Section 7 consultation process that analyzes whether proposed federal actions may affect species currently listed as threatened or endangered.⁷² Since slickspot peppergrass is not listed, such a determination is inappropriate in the NEPA context.

Impacts to the plant will be *de minimus* if the avoidance (*i.e.*, micrositing project facilities and/or spanning slickspots) and reclamation measures are implemented.⁷³ Therefore, the presence of slickspot peppergrass, whether it is listed under the ESA or not, should not impede the construction and operation of transmission lines analyzed in the SDEIS.

Issues related to Idaho Recreational Resources

Alternative 1 will have the least amount of impacts to recreation resources than the other range of alternatives. Several of the other action alternatives would place Segment 9 in the Owyhee Front Special Recreation Management Area (SRMA). This area is managed for its outstanding off-highway vehicle opportunities. The area also receives most of the OHV use in Southwest and South Central Idaho. Alternative 5 would impact both Bruneau Dunes State Parks and Thousand Springs State Park (Malad Gorge Unit). The location of parallel transmission lines only 250 feet apart would greatly increase the visual impacts to both of these parks, as well as the Owyhee Front SRMA.

Segment 9 will require specific micrositing when it passes by the Bruneau Dunes State Park. The Proponents and the U.S. Air Force need to work with the Idaho Department of Parks and Recreation to mitigate lighting impacts of the towers. The DSEIS fails to address the impacts that lighting of the towers will have on the park's night viewing opportunities, especially if two segments are co-located there. The BLM must provide an adequate visual resource analysis on the impacts to Bruneau Dunes State Park before the release of the Final EIS.

⁷¹ SDEIS at 3.7-12.

⁷² See 16 U.S.C. § 1536.

⁷³ SDEIS at 3.7-11-12.

Appendix 1: April 7, 2016 letter from the Federal Energy Regulatory Commission to Idaho Power

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D. C. 20426

OFFICE OF ENERGY PROJECTS

Project No. 2055-101 – Idaho
C.J. Strike Hydroelectric Project
Idaho Power Company

Mr. Lewis Wardle
Idaho Power Company
1221 West Idaho Street
Boise, Idaho 83707

April 7, 2016

Subject: Use of Project Transmission Line Right-of-Way

Dear Mr. Wardle:

This letter responds to a March 15, 2016 request from Idaho Power Company staff requesting clarification from the Commission regarding installation of a non-project transmission line inside the project transmission line right-of-way at the C.J. Strike Hydroelectric Project (FERC No. 2055).¹ The project is located in Owyhee and Elmore counties, Idaho, and occupies federal lands managed by the U.S. Bureau of Land Management (BLM).

Paragraph (c)(6) of Article 420 allows you to convey easements or rights-of-way across project lands for non-project overhead electric transmission lines that do not require erection of support structures within the project boundary. No later than January 31 of each year, you are to file a report briefly describing the conveyance, including the type, location, and nature of the interest conveyed. Alternatively, paragraph (d)(4) of Article 420 allows you to convey easements or rights-of-way across project lands for non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained. At least 60 days prior to conveying any interest under Article 420(d)(4), you must file a letter with the Commission stating your intent to convey the interest and briefly describing the type, location, and nature of the proposed use, as well as the identity of any federal or state agency officials consulted or approvals required.

Your March 15 notice states that you seek to use part of the project transmission line right-of-way for a second non-project transmission line, but that you are seeking confirmation from the Commission that doing so is an acceptable use of project lands.

¹ Order Issuing New License (108 FERC ¶ 61,129), issued August 4, 2004.

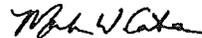
You do not believe the new transmission line would interfere with the existing transmission line right-of-way. Because the right-of-way crosses BLM land, you would seek appropriate authorization from the BLM.

In general, the use of project lands for installation of a non-project transmission line is acceptable if the use and occupancy would not adversely affect the scenic, recreational, or other environmental values of the project. Further, it is reasonable to group similar uses of project lands together (*i.e.*, adding a non-project transmission line within the project transmission line right-of-way would not likely introduce new or unique adverse effects to the project beyond those posed by the project transmission line). We note that your March 15 notice does not specify whether or not new support structures would need to be constructed, which is a key factor in determining whether prior Commission approval is needed or not [*i.e.*, whether or not the use falls under Article 420(d)(4) or (c)(6)] as well as a factor in determining the level of environmental effect that would occur due to ground disturbance. Similarly, the March 15 notice did not include information on the specific location of the proposed line or any evidence of consultation.

In summary, we find your intent to co-locate a new, non-project transmission line with the existing project transmission line to be a potentially-appropriate use of project lands, in general, but we would expect you to file the applicable information pursuant to Article 420(d)(4) or (c)(6), as appropriate.² You are reminded that Article 420(e) requires you to consult with federal and state fish and wildlife agencies, as appropriate, as well as the State Historic Preservation Officer, prior to conveying the interest.

Thank you for your cooperation. If you have any questions concerning this matter, please contact me at (678) 245-3083.

Sincerely,



Mark W. Carter
Environmental Biologist
Division of Hydropower
Administration and Compliance

² Even though Article 420(c) and (d) refer to conveyances made to third-parties for non-project uses and occupancies of project lands, we consider non-project uses and occupancies of project lands by the licensee to require the same standards for review, reporting, and/or prior approval as those for third-party conveyances.