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January 20, 2016

BLM Carson City District
Attn: Colleen Sievers, Project Manager
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re: Comment on (Supplemental) Changes to the Nevada and California Greater Sage-Grouse Bi-State Distinct Population Segment Carson City Field Office Consolidated Resource Management Plan and the Tonopah Field Office Resource Management Plan Amendment, Nevada

Thank you for the opportunity to respond to your proposed RMP changes. We will focus our comments on the four issues identified in your November 11, 2015 Federal Register "Notice" as a courtesy to you and so we can save time and expense of preparing a lengthy letter. However your Notice statement is not entirely clear about limiting comments to the four "changes". If larger portions of the RMP revision has been reopened to comment then we need more time to respond and hereby request an extension of time for comment.

FIM Corporation has prepared and submitted comments about each of the agency documents related to sage grouse and land use planning that include but are not limited to the following:

January 26, 2014 FIM Corporation comment regarding the "Draft Land Use Plan Amendment/Draft Environmental Impact Statement (Draft LUPA/DEIS) for the Nevada and Northeastern California Sub-Region, a component piece of the Bureau of Land Management (BLM) and US Forest Service (USFS) National Greater Sage Grouse Planning Strategy."

April 24, 2015 FIM Corporation Comments on the Carson City District Draft Resource Management Plan

June 28, 2015 PROTEST OF NEVADA AND NORTHEASTERN CALIFORNIA GREATER SAGE-GROUSE PROPOSED LAND USE PLAN AMENDMENT AND FINAL ENVIRONMENTAL IMPACT STATEMENT

Beginning with our January 26, 2014 comment letter and continuing with comments to both the Forest Service and BLM concerns up to and including the protest letter we submitted in June 2015, our submissions have included many pages of prepared text and hundreds of pages of supporting documents that we used as reference material for citation. Each of our earlier letters and comments are to be considered as fully included in this letter by reference and copies will be provided to BLM upon request.

It is very inappropriate to move forward with this RMP amendment process based on the Greater Sage Grouse EIS since that document is the subject of on-going litigation. Please delay your RMP amendment until such time as the law suit filed by private interests, a number of Nevada counties, the Nevada Attorney General, and others is resolved.

An issue that is not listed in your Notice but needs to be resolved is your use of the phrase Distinct Population Segment (DPS). This phrase is unique to the Endangered Species Act language and its use seems to replace the FLPMA authority of the BLM with the ESA authority of the US Fish and Wildlife Service. You have not defined what the DPS phrase means in a document that is not related to ESA regulation. Words we use are important and warrant clear definition and careful usage. Calling these birds the "Bi-State" sage grouse and defining what that means might be useful but the use of ESA verbiage (DPS) is confusing at best and seen as threatening to those of us who live here. Please revise your document by removing the reference to DPS classification of the western Nevada sage grouse populations.

The authors have also failed to recognize that the personal Testimony of a dependable witness is considered factual in court and must be considered factual by agencies such as the BLM. Empirical evidence is probably more factual than scientific sampling procedures which depend on statistical analysis to determine dependability and the Federal Ninth Circuit obviously agrees with that when they ruled that the US Forest Service cannot use habitat descriptions as a proxy for sage grouse populations; the agencies must count the number of birds. In a similar effort, BLM has accepted a number of allegedly scientific papers as factual which are clearly biased and do not meet the Office of Management and Budget (OMB) standards of rigorous Peer Review. In general any so called peer reviewed scientific paper should be rejected if it contains any statements that are about a subject that was not studied in the experimental approach; in other words those published authors have written an opinion not a scientific finding that can be mathematically tested.

You fail to include and the authors fail to base their conclusions on the historic record of sage grouse population changes as provided by eye witness accounts since the early Nineteenth Century. It is well established that sage grouse in the Great Basin of Nevada and California were infrequently observed and not at all abundant prior to 1850. Please review the Journals of the Walker Party as recorded by Zenas Leonard, and other historic records. By 1950 sage grouse were very abundant at locations throughout what is now labeled as Great Basin sage grouse habitats. Written history

and personal testimony shows that the historic high numbers of Sage grouse occurred after settlement brought the establishment of ranches in the Great Basin. Please correct your text to fully accept the series of reports authored by Nevada Assemblyman Ira Hansen and the web site of Nevada Naturalist and Rancher Cliff Gardner <http://www.gardnerfiles.com/>. It is clear that areas of sage grouse "habitat" that had not been in any way affected by domestic livestock or anthropogenic disturbance (as used by the BLM authors) had no sage grouse populations prior to 1850. However, sage grouse habitats that were greatly affected by livestock and people supported large numbers of sage grouse after 1950.

Fred Fulstone, based on over 70 years of observations of what are now called Bi-State sage grouse, has itemized the locations of the sage grouse habitats that he has personal knowledge of including areas within the Carson City BLM District. Fred concludes that there is plenty of feed and water for sage grouse so there must be other factors at work that have caused the numbers to go down and predators seem to be the most likely source of failed sage grouse reproduction. Bi-State Sage grouse population declines also coincide with the agency reductions of permitted domestic sheep grazing which means that agency regulation is another likely cause of declining sage grouse numbers. See Attachment #1: *Presentation to the Sagebrush Ecosystem Council, August 21, 2014 by Fred Fulstone*. Fred also discusses reduction of predator populations as a beneficial affect on the sage grouse habitat attributes in the mid-Twentieth that corresponded with greatly increased numbers of sage grouse. See Attachment #2: *Remarks prepared for the Symposium, "Sage-grouse of the Bi-State Area". October 30-31, 2012. Carson Valley Inn Casino Minden, Nevada by Fred Fulstone FIM Corporation, Smith Nevada*

BLM has included false assumptions concerning sage grouse habitat attributes including words that are not defined by assigning a limit to percentage disturbance and by attempting to identify connectivity and/or fragmentation both without the use of objective information and the items below should be rejected on that basis.

This is not a new problem for agency land management decisions. Forest Service officials discussed the increasing influence of political/cultural forces driving land management decisions "without regard to on-the-ground management needs" in a presentation to the Society for Range Management. See Attachment #3 *"The impact of political, cultural, and environment factors on the effectiveness of range managers" by Bobby Williamson, Chief of Range Management, USFS February 1989*. About the same time, Dr. Wayne Burkhardt encouraged the Susanville, CA BLM staff to develop management goals and define management objectives in terms of "quantifiable characteristics of vegetation that would meet or supply the goals." Attachment #4: *"Rangeland Management Objectives", Dr. Wayne Burkhardt's, Univ. of Nevada Reno, undated statement probably from the early 1990's*. Now, more than twenty years later we are still having the same arguments because plant community attributes are being subjectively described and any changes in the plant communities as a component of habitat are not being measured and objectively evaluated.

QUICK RESPONSES TO THE PROPOSED SUPPLEMENTAL CHANGES DATED
11/11/2015

1 --- ...a total anthropogenic disturbance of no more than 3 percent of the total BSSG habitat on Federal lands within the Bodie Mountain/Grant, Desert Creek/Fales, and White Mountains population management unit boundaries (C-Wild-S-04), and a total anthropogenic disturbance of no more than 1.5 percent of the total BSSG habitat on Federal lands within the Pine Nut Mountains population management unit (PMU)

BLM has offered no scientific or empirical data that demonstrates that either the 3% or 1.5% disturbance limits will result in a greater number of sage grouse or that any level of what they call disturbance actually interferes with sage grouse reproduction. The percentage of disturbance is entirely arbitrary and as such is contrary to the clear statements that are required by statute for NEPA documentation. Further the Federal Ninth Circuit decided that the US Forest Service cannot use habitat metrics as a proxy or substitute for direct knowledge about sage grouse populations; that and similar court decisions should mean that the BLM has also been directed to actually count the birds. Please remove those percentage limits until such a time as you can demonstrate through proper scientific monitoring that those limits are a factor affecting actual sage grouse population biology.

BLM has made a very deceptive statement by implying that something called "anthropogenic disturbance" is always detrimental to sage grouse populations. As discussed above, the assumption that anthropogenic disturbance is detrimental to sage grouse populations is false and would be rejected by rational decision makers.

It has been well demonstrated that human activities that are necessary for agricultural production that we call ranching have been beneficial to sage grouse and other wildlife. Those changes that benefited sage grouse also extended to many other wildlife species for over 150 years with sage grouse, mule deer, many neo-tropical migrant birds, and other wildlife reaching peak populations in about 1950-1970 in the presence of many times more sheep and cattle. If the goal of this sort of federal agency natural resource evaluation and planning is to enable more sage grouse to live in our part of the Great Basin then you must pay attention to the empirical observations of the past two hundred years or your plan will fail and your regulations will harm not help the sage hens.

The authors fail to mention or discuss the benefits that occur through anthropogenic disturbance instead they self righteously conclude that anthropogenic disturbance is always detrimental. BLM should at a minimum state that disturbance will be beneficial, detrimental, or have no effect on sage grouse numbers and not make any regulatory decisions until those determinations are made.

2-- ...tall structures, which could serve as predator perches, will not be authorized within 4 miles of an active or pending lek

Regulating tall structures that serve as perches for avian predators, common ravens in particular, may in fact benefit sage grouse populations. The same logic applies to trees, especially with regard to certain raptor species. However, this statement fails to provide any objective measure of success. Please include the techniques you will use to demonstrate that the regulations are successful.

Direct control of those predators that are capable of limiting sage grouse population numbers is a much better and well documented technique. Please negotiate with state wildlife departments or with established predator control agencies to reduce or eliminate avian predators from the vicinity of sage grouse nesting and brood rearing areas.

Please explain how a strutting ground can be a "pending lek". It is well known that strutting occurs in sparsely vegetated often disturbed portions of the sage grouse habitat. For example a large and well used lek in the Bodie Hills is on the bank of a pond built to water sheep. Both the birds and the sheep benefit from that water development. Are "pending leks" defined as future locations of disturbance that will provide areas cleared of vegetation? Please describe what other factors determine which places on the landscape are known to be a pending lek.

3--... The BLM is designating exclusion areas for new high-power ($\geq 120kV$) transmission lines in BSSG habitat.

This change will limit future developments within our community including mines and future agricultural production. BLM has a responsibility to accommodate the productive sectors of local economies and this "change" is intended to stifle economic growth in our area. Please do not include this in the RMP.

4-- ... The BLM is clarifying language from Alternative C to provide for management of connectivity habitat. The BSSG landscape is fragmented by areas of agriculture and urbanization, as well as areas of naturally occurring and encroaching pinyon-juniper vegetation. Sage-grouse habitats within and between PMU are often separated by stretches of unsuitable areas that may inhibit sage-grouse movements across the landscape. Alternative C provides a limited amount of management direction to maintain or enhance suitability of connective area. Alternative C includes a goal about habitat and movement and an objective of improving degraded habitat, including areas with conifer encroachment (i.e., pinyon-juniper). Actions and Best Management Practices relating to connectivity apply primarily to mineral uses. Alternative C states that where valid existing rights exist, in connective habitat areas, vegetation characteristics suitable to sage-grouse should be maintained to the extent technically feasible (C-Min-S-01). In addition, Alternative C provides additional direction not specific to connectivity which states, "Vegetation treatments and post-disturbance restoration

should seed and/or transplant sagebrush to restore large patches of sagebrush cover and connect existing patches” (C-Wild-S-02). Given the fragmented nature of the bi-state landscape and the level of apparent isolation of subpopulations, additional management direction for connective habitat area is necessary to facilitate sage-grouse movement, reduce isolation, and increase genetic interchange between subpopulations.

Connectivity is a popular issue to discuss but, as in this case, it is an issue that has little or no objective data demonstrating that agency biologists know how to identify or provide connectivity that actually results in more sage grouse. In other words the “suitability” of connective habitat cannot be determined at this time with anything greater than arbitrary and subjective description and as such it is not allowed by NEPA policies.

We do agree that the expansion of Single Leaf Pinyon and Utah Juniper trees into soils that are best suited for the support of sagebrush dominated plant communities is a problem that can be identified and solved to the benefit of many species of wildlife. Regardless of whether connectivity of habitats is being interfered with, Pinyon-Juniper removal from areas that have the ecological potential for sagebrush dominated plant communities is a good idea and we encourage BLM to do just that.

Dramatic statements that the birds are inhibited from travelling through unsuitable connective habitat ignore the fact that they are birds and they can and do simply fly over those areas. This change in regulation for connectivity should be rejected or at least postponed until evidence exists that your proposed regulations will benefit the birds.

Your concern about connective corridors or areas includes a generalized statement that an undefined problem called “fragmentation” is caused by agriculture and urbanization. Empirical evidence indicates that much of the agricultural development within the Bi-State sage grouse area has been beneficial to the sage grouse populations as evidenced by the peak population of sage grouse occurring in about 1960 with very few observed prior to 1850. Your authors fail to recognize that many of our local agricultural developments that produce forage for livestock (pasture or alfalfa hay) also become actively used by sage grouse and other wildlife. The authors fail to identify and encourage forms of agriculture that is beneficial for wildlife including sage grouse.

For example the farms in Smith Valley had so many sage grouse in the mid-1900s that there was an annual influx of hunters and other visitors to our area. At that time there were about 5 times as many sheep as there are today. Federal regulations have nearly destroyed our local sheep industry and as the numbers of sheep declined the sage grouse numbers also declined. A Lyon County ranch along the Walker River was sold some years ago first to a private environmental group and then to the Forest Service. This ranch was well known for its extensive meadows and hay lands that supported many broods of sage grouse every summer. Federal management of what had been a working ranch soon resulted in what the agency called natural habitat and

almost no surviving sage grouse. This example is repeated in many places and BLM language in this "change" will only result in more loss of sage grouse habitat areas that were formed with the development of the ranches and consequently additional loss of sage grouse numbers.

Specifying that "sagebrush" will be planted in areas to be seeded within project areas fails to include discussion of the past failures to establish sagebrush through wide scale seeding, fails to note the difficulty of selecting the taxonomically proper sagebrush to use for seed, and fails to account for the great cost that will be incurred with little expectation of a return on the taxpayers money. This wishful sounding statement should be removed from this "change" until such time as it becomes technically and economically feasible. Ecologically appropriate sagebrush species will re-occupy disturbed sites in due time anyway.

BLM's concluding statement about connectivity begins with a false assumption that seems to have been included for dramatic effect when the authors state "Given the fragmented nature of the bi-state landscape and ..." Once again the authors fail to define fragmented landscape in such a way that a problem can be identified and solved. As a statement suitable for a NEPA analysis the authors have expressed their conclusion without providing scientific or empirical evidence that the statement is true. Please do not "give" us these carelessly "given" conclusions.

The authors appropriately refer to the existence of existing rights within the areas regulated by the BLM. We wholeheartedly agree with the statement concerning existing rights and ask that the authors strengthen or clarify their statement because it is consistent with federal statutes and because we own valid existing rights within various BLM allotments including but not limited to:

- a) water rights for the beneficial use of livestock many of which vested prior to the year 1905
- b) water rights for the beneficial use of irrigation which have been fully adjudicated and are controlled by court decree
- c) Rights-of-way established prior to the passage of FLPMA in 1976
- d) Grazing preferences established through lawful allotment adjudication

BLM has failed to carefully account for our property rights in various statements and throughout each alternative in the RMP revision including these new statements when dealing with such topics as riparian standards at springs and streams, wild horses and burros, wildlife habitat regulation, and proposed closures of roads. Please design your management strategy in such a way that our existing rights will not be impaired unless we give you our permission to do so; or else please state that your RMP only applies to those portions of BLM regulated lands that lack any form of private property rights. Existing rights are subject to reasonable regulation which is defined by the Judge Smith and upheld by the Federal Court of Appeals and also by Judge Jones in Federal District Court in Reno as: "*Where reasonable regulation is defined as regulation which neither prohibits the ranchers from exercising their vested rights, nor limits their exercise of those rights so severely as to amount to a prohibition.*"

FIM Corporation is a family owned and operated ranch. We have intense interest in the development of BLM regulations that are based on sage grouse. These include our personal interest in wildlife which means that we take pleasure in having an abundance and variety of wildlife in the areas where we graze our sheep; we support biologically sound efforts that actually benefit wildlife. We live and work in close proximity to wildlife including sage grouse; the sage grouse habitat is in a real sense our home. Just as healthy habitat is necessary for robust wildlife populations keeping these rangelands healthy and productive is also necessary for the economic success of our ranch.

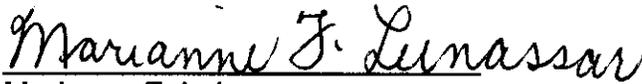
For over 70 years of ranching, it has been our experience that practical and successful land management decisions can be developed through cooperative work with agency employees, most of whom have been very skilled and knowledgeable concerning range management, wildlife biology and other disciplines. Unfortunately, recent actions by federal regulatory officials means that we also must participate in public and regulatory processes in order to have fully exhausted our administrative remedies in the event of future litigation.

Thank you for the opportunity to comment on these four issues.

Again, please remember that the technical data and information that supports our statements are already a matter of record with your agency having been submitted several times as attachments to various comment letters that you have on file.

Sincerely


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Attachment #1: *Presentation to the Sagebrush Ecosystem Council, August 21, 2014 by Fred Fulstone*

Attachment #2: *Remarks prepared for the Symposium, "Sage-grouse of the Bi-State Area". October 30-31, 2012. Carson Valley Inn Casino Minden, Nevada by Fred Fulstone FIM Corporation, Smith Nevada"*

Attachment #3 *"The impact of political, cultural, and environment factors on the effectiveness of range managers" by Bobby Williamson, Chief of Range Management, USFS February 1989*

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