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Greg Sheehan
Utah State Director
Bureau of Land Management
440 West 200 South, Suite 500
Salt Lake City, UT 84101

RE: **Greater Sage-Grouse Range-wide Planning Draft RMP and EIS**

Dear Director Sheehan:

Duchesne County, Utah, (the County) through its elected Board of County Commissioners, has reviewed the Bureau of Land Management's ("BLM") Draft Resource Management Plan Amendment ("DRMP") and Draft Environmental Impact Statement ("DEIS") for greater sage-grouse and provides the following general and specific comments and concerns.

GENERAL COMMENTS/CONCERNS:

Duchesne County is a rural county with a land mass larger than the states of Rhode Island and Delaware combined. Approximately ten percent of this land mass is administered by the BLM. The County economy is the least diversified in Utah and is heavily dependent on continued multiple use of public lands (only 28% of the land in the county is privately owned). Because of this, the County has adopted a Resource Management Plan containing objectives and policies associated with the management of public lands.

The County agrees with the BLM that a balanced approach is critical here and supports the BLM's identification of Alternative 5 as the "preferred alternative" because it provides the best balance of the proposed alternatives. Conversely, Alternative 3 provides the least balanced approach and is not a reasonable alternative for consideration moving forward. For instance, and as discussed in more detail below, the removal of fluid mineral leasing and livestock grazing under Alternative 3 is inconsistent with BLM's multiple use mandate, inconsistent with state and county resource management plans, and contrary to Utah's Conservation Plan for Greater Sage Grouse.

The County is concerned about the length and complexity of the DRMP. The language simply needs to be more concise to ensure effective application of management throughout the GRSG range. The comments below outline multiple areas where confusion remains regarding the implementation of management procedures and this confusion is driven, in part, by the length and complexity of the DRMP.

The County is concerned about the BLM's approach to adaptive management in the DRMP. Generally, the County is concerned about the capacity of the BLM to conduct increased causal factor analyses associated with this plan in a timely fashion to ensure management restrictions are specific and targeted.

The efficiency and capacity of the causal factor analysis teams should be addressed in this plan. Clear guidelines and templates should also be included in an appendix for both full and initial causal factor analyses to increase efficiency.

Additionally, the County is specifically concerned about the method by which BLM intends to apply restrictions in the event of an inconclusive causal factor analysis (CFA). As drafted, an inconclusive causal factor analysis could result in management prescriptions that last indefinitely. More troubling still, there is significant discretion afforded local BLM officials for management prescriptions associated with an inconclusive CFA. The County does not support regulatory action without supporting evidence as currently suggested in the inconclusive CFA language. Instead, the County suggests continued monitoring and periodic re-evaluation for inconclusive CFAs. The County asks that the BLM reconsider its approach to inconclusive CFAs and allow for monitoring and re-evaluation in place of discretionary restrictions.

The County is concerned about the BLM's approach to predator management. Each of the alternatives requires a predator control plan before the implementation of control actions, including evidence that predators are limiting sage-grouse populations in a specified area. This will result in delayed implementation of control actions related to predation. There should instead be a specified response plan for control actions immediately after predation is identified as a causal factor in any sage-grouse population decline. This rapid response plan should include a cooperating agreement with all involved agencies (including APHIS, FWS, Department of Agriculture, BLM, Forest Service, and state wildlife agencies) to ensure the involvement of all interested agencies and minimize delay in implementation. Requiring individual response plans in each instance of decline will result in significant delays in implementation, to the detriment of affected sage-grouse.

SPECIFIC COMMENTS: (Text suggested to be deleted is overstruck. Suggested new text is underlined and bolded. Comments are bolded).

Page ES-3: "While the states have similar concepts in their RMPs (e.g., disturbance cap, adaptive management, livestock grazing, threats ~~on~~ **of** predation), the detail on application varies."

Page ES-4: ES.4.3 – Alternative 3: **The summary of Alternative 3 suggests that the BLM would designate ACECs but maintain the same allocations as the remainder of the PHMA. Accordingly, there would be no differentiation between ACEC management and PHMA management. This is inconsistent with the designation of ACECs, which can only be designated to the extent the resources contained therein require "special management." If management is the same for both ACEC and PHMA, there is no need for an additional ACEC designation and the County requests removal of ACEC consideration for habitat that does not require "special management."**

Page ES-6: Resource Uses: **The BLM should reconsider referencing an inverse relationship between livestock grazing and impacts on GRSG. While some of the other uses mentioned in this paragraph may qualify for this "inverse relationship," there is new science demonstrating that appropriately managed livestock grazing can have positive effects on sage-grouse. At minimum, therefore, the "inverse relationship" referenced here should be revised to allow for the positive effects of livestock grazing.**

Page ES-7: "Although the adverse economic impacts under Alternative 3 are likely to be concentrated in mineral extraction and livestock production sectors, reduced economic activity in public land-dependent sectors will have a ripple effect which causes economic activity in other sectors of the economy **to** slow."

Page ES-8: "Restrictions on O&G development under Alts 2, 4, 5, and 6 could have a large negative impact on economic and fiscal conditions in ~~some~~ **many** Western Colorado counties, which may affect social conditions and quality of life in some affected communities."

Page 1-1: "These planning and implementation-level habitat projects show that successful conservation of GRSG requires a shared vision among Tribes, states, **counties,** private citizens, landowners and federal land management agencies."

Page 1-3: "The quantity and quality of available habitat, as well as non-habitat factors such as disruptive activities**[such as wildfire], predation,** and prolonged drought can affect the size and trend of GRSG populations."

Page 1-3: "If a ~~triggers~~ **trigger** was met, the plans stated management changes may be appropriate."

Page 1-4: "Additional descriptions ~~on~~ **of** GRSG population and habitat are presented in Chapter 3."

Page 1-4: "Many of the BLM's state and federal partners are significant contributors to this new science, and much of it is based on the data collected by state wildlife agencies **and universities**."

Page 1-4: "The BLM considers this new information and relevant science from our previous **planning documents** in developing and analyzing proposed management on BLM administered lands."

Page 1-10: "This included prioritization of suppression efforts to limit loss of GRSG habitat, guidance for suppression efforts, the need for proactive efforts such as fuel breaks and fuel reduction projects, and considerations and commitments associated with reclamation and restoration after wildland fires in GRSG habitat management areas." **The document should reference the BLM's attempt to do programmatic analysis of fuel breaks and the results of the litigation that followed: see https://wildfiretoday.com/2021/01/15/environmental-groups-sue-blm-over-plans-to-construct-11000-miles-of-fuel-breaks/.**

Page 1-10: "Decision-makers and the public need to understand the impacts each **of the** alternatives would have on specific resources and resource uses."

Page 1-11: "All other existing management that is already designed to protect/manage the non-GRSG resources and /values **would remain in place**."

Page 1-11, Section 1.6.3: **The second to last sentence on this page is incomplete.**

Page 1-13, Section 1.2.2: **The County notes the significance of BLM's recognition that habitat loss associated with anthropogenic disturbance is less than one percent throughout the range, which is "less than what scientific literature has identified as the threshold where GRSG abandon leks." This information must be highlighted for consideration in BLM's alternatives analysis, particularly as it relates to disturbance cap implementation but also as it more generally relates to the ability to include development on the landscape without significant effect on lek attendance.**

Page 1-13, Section 1.8: The last sentence of the first full paragraph discusses some states' concerns over adaptive management and suggests those states either prefer Alternatives 1 and 2 or prefer the BLM defer "any population threshold entirely to the state wildlife management agency with no identified metric used to monitor habitat concerns through population trends." The County understands that Utah has expressed concern in the cooperating agency process regarding the need for deference to state-controlled population

metrics. Despite these concerns, however, Utah is not asking the BLM to forego the use of "identified metrics" in that process. Instead, the State is asking for a collaborative approach to adaptive management, wherein the BLM does not make apply management restrictions until after it has engaged the State in a review of the population metrics relied upon by the BLM. Stated differently, the State requests that a "population threshold" based on BLM's metrics be used as a starting point for a larger conversation of both the accuracy of the threshold and the need for any potential management changes. The County believes that this conversation with State officials must occur before the imposition of management restrictions.

Page 2-2: "Alternative 3 includes the greatest measures to protect and preserve GRSG ~~and its~~ habitat." **This statement may not be true, given that grazing would not be permitted. Grazing reduces fuel loads and the risk of wildfire, which is a major reason for the loss of GRSG habitat. If Alternative 3 does not allow for active vegetation management, the Alternative may produce unintended consequences not only relating to wildland fire severity, but also to the encroachment of undesirable vegetation. It should also be recognized here, by deleting the two words shown, that protecting GRSG habitat may not lead to preserving GRSG population levels. Predation, if not controlled more effectively, will reduce GRSG populations no matter how well the habitat is protected. This proposed amendment [which should be made to similar statements throughout the plan] recognizes the role of the BLM in managing habitat while the states manage the species.**

Page 2-2: "Alternative 5 considers other potential alignments of habitat management areas and associated management to try and balance GRSG conservation with public land uses." **The County agrees that a balanced approach is critical here. Alternative 5 provides the best balance of the proposed alternatives. Alternative 3 provides the least balanced approach.**

Page 2-6: "However, ~~the~~ many of the alternatives considered in detail address differing levels of management constraints within GRSG habitat and their associated effects on public land uses."

Page 2-16, Table 2-4: **There is confusion as to the summary of Alternatives 5 and 6. They reference back to Alternative 4, which merely states a withdrawal applicable to Montana. Need clarification as to what management will actually take place.**

Page 2-18, Table 2-4: **The County is concerned about the inclusion of coal "unsuitability evaluations" in GHMA. It appears the "unsuitability evaluations" will be limited to "essential habitat." However, the vast majority of "essential habitat" within the State of Utah is included within PHMA. Thus, although the practical effect of this language is unclear, it must be clarified by either removing GHMA from consideration altogether or specifying where the "essential habitat" determinations will be made.**

Page 2-19, Table 2-4: **The County is generally concerned that implementation of the non-habitat language will be inefficient and unworkable. Utah had language in prior plans regarding nonhabitat determinations, but those determinations did not occur in a timely fashion, and it was unclear whether local BLM could move forward with a non-habitat determination without amendments to the RMP and/or the associated mapping. The County makes a general recommendation that BLM include clearer direction on the timeline for completing a non-habitat determination. Finally, the County requests direct involvement in the development of best management practices or implementation-level planning to ensure non-habitat determinations can be made efficiently and effectively.**

Page 2-22: "For alternatives 3 through 6 the proposal is to achieve the ~~at a~~ minimum **standard of** no net habitat loss (full restoration of functional habitats or enhancement of habitats such that it offsets the loss of capacity in impacted areas)."

Page 2-23, Table 2-5: **The County is concerned that reference to "impact avoidance in GRSG habitats" is too vague and allows for avoidance outside of designated priority habitat. While avoidance may be prioritized in PHMA, this language would allow for avoidance prioritization in habitat outside of PHMA or potentially in marginal habitat. The County requests more clarity in the language.**

Page 2-23, Table 2-5: **The County is concerned about the inclusion of additional language regarding the need to complete mitigation prior to initiating activity and the ambiguity associated with the retention and monitoring requirement. First, the sentence must be clarified to ensure that "retention and monitoring" are also not required before activity can be initiated. More broadly, however, mitigation projects can be time-consuming and significantly delay development if they must be completed in advance of an approved activity. BLM should remove this language from the mitigation table. In the event BLM does not remove this language, it should be modified to allow for mitigation to occur contemporaneously with development.**

Page 2-23, Table 2-5: **The County is concerned that the mitigation language for all alternatives requires mitigation to be conducted in the same area of impact. The language states, specifically, "Mitigation shall be prioritized to occur within the same area of the impact (within the same HAF fine scale area), or if not possible, within the same neighborhood cluster to the extent practicable or nearest equivalent HMA designated habitat so that it provides habitat for GRSG populations affected by the project." This could significantly limit the application of mitigation measures using established mitigation banking systems. While it may be generally appropriate to direct mitigation to areas affected by development, there may also be instances where mitigation may be more beneficial outside of those areas. The County suggests a revision of the language to allow for mitigation outside of neighborhood clusters in some instances.**

Page 2-28: "Anthropogenic disturbance negatively impacts GRSG abundance and persistence (Knick et al., 2011, 2013)." **This statement is not always true. Certain types of anthropogenic disturbance, such as vegetation management [such as removal of encroaching conifers and mechanical treatment of invasive species] or construction of fuel breaks, can positively impact GRSG abundance and persistence.**

Page 2-35, Table 2-7: **The third paragraph of subparagraph 2 in Alternative 4 describes the process for compensatory mitigation review. The BLM should include explicit reference here to coordination with DWR regarding the biological effects of compensatory mitigation.**

Page 2-36, Table 2-7: **The County requests consideration of mitigation outside of the HAF fine scale, as outlined in the 4th bullet point under Criteria 3. This can include verification from a technical team that the area will provide benefit to sage-grouse. However, it will provide flexibility to allow for the implementation of projects outside of the limited HAF fine-scale area.**

Page 2-37, Table 2-7: **The requirement for mitigation to go into effect before the disturbance should be reconsidered, especially as drafted. There will be significant delay if BLM requires both completion of the mitigation and a determination of the "value of the mitigation," as compared to the habitat affected by the disturbance. Mitigation measures often take considerable time to provide measurable effects, which will significantly delay any project. Moreover, this proposed**

language does not specify how "value" will be measured and/or compared to habitat affected by the disturbance. This will cause significant confusion as to implementation. The County therefore recommends removal of this language and/or modification to ensure clarity and efficiency in implementation.

Page 2-41, Table 2-8: **Alternative 3 is not a reasonable alternative for consideration moving forward. The outright removal of fluid mineral leasing is inconsistent with BLM's multiple-use mandate.**

Page 2-49, Table 2-9: **Alternative 3 is not a reasonable alternative for consideration. The outright removal of all fluid mineral leases is inconsistent with BLM's multiple-use mandate.**

Page 2-52, Table 2-9: **The final sentence of Alternative 4 on this page is vague and may result in significant confusion as to when such an exception could be issued, who would consider those exceptions, and how that exception would apply. The County recommends revising the sentence for clarity of implementation in the event there is an inconclusive CFA.**

Page 2-56, Table 2-9: **Subsection e of Alternative 4 states the "compensation necessary to grant this exception must provide the offsetting benefit to the population being impacted by the potential development." However, it is unclear what qualifies as an "offsetting benefit" in this instance. Perhaps a reference to the mitigation framework would be helpful to add clarity.**

Page 2-57, Table 2-9: **The final sentence of Alternative 4 on this page is vague and may result in significant confusion as to when such an exception could be issued, who would consider those exceptions, and how that exception would apply. The County recommends revising the sentence for clarity of implementation in the event there is an inconclusive CFA.**

Page 2-58, Table 2-9: **The County requests clarity on why the "specifically for Wyoming" section outlined in Alternative 5 does not apply range-wide. Alternatively, the County requests similar language allowing for modifications if/when the appropriate state agency in Utah identifies an area that is "nonessential."**

Page 2-59, Table 2-9: **The final sentence of Alternative 4 on this page is vague and may result in significant confusion as to when such a modification could be issued, who would consider those modifications, and how modifications would apply. The County recommends revising the sentence for clarity of implementation in the event there is an inconclusive CFA.**

Page 2-73, Table 2-9: **The first bullet point in this exception refers to "areas of non-habitat" without reference to how that will be determined. At minimum, this should defer to the process for delineating "non-habitat" under this RMP.**

Page 2-76, Table 2-9: **The County is confused as to the meaning of "offsetting benefit" in the first paragraph of this page. Perhaps reference to the mitigation framework would be helpful to add clarity.**

Page 2-76, Table 2-9: **The final sentence of Alternative 4 on this page is vague and may result in significant confusion as to when such an exception could be issued, who would consider those exceptions, and how that exception would apply. The County recommends revising the sentence for clarity of implementation in the event there is an inconclusive CFA.**

Page 2-92: The **PEIS** is updating the BLM's RMPs related to solar energy development.

Page 2-93, Table 2-10: **There is reference in the first bullet point for Alternative 5 to "appropriate state authority." The County requests revision to reference the "appropriate state agency."**

Page 2-99: "Where sagebrush habitats are intact nest success and adult survival rates are high (Hagen 2011), indicating that predators generally do not limit GRSG populations." **It is incorrect to presume that predators generally do not limit GRSG populations. While adult survival rates may indeed be higher in areas with intact habitats, egg and chick survival is an issue in all forms of habitat, regardless of intactness, due to predation by a variety of birds, reptiles and mammals. In other words, the effects of predation on population size and population distribution is very high or high compared to other impacts: see, for example, Table 9 at: https://extension.usu.edu/utahcbcp/files/2012UBARMUpdateReportFinal.pdf).**

Page 2-99: **Section 2.5.9 mentions predation by ravens, but fails to mention predation by owls, eagles and other raptors (see Section 3.5.3), coyotes, red fox, racoons, skunks, badgers, bobcats, weasels, and snakes (see: Section 3.5.2 and https://www.blm.gov/blog/2022-07-27/sage-grouse-balance-predators and https://snakesexplorer.com/what-snakes-eat-eggs/ and https://www.pbs.org/wnet/nature/sagebrush-sea-food-web/12265/.**

Page 2-100, Table 2-11: **The County requests clarification as to the differences between Alternative 3 and Alternative 4. Alternative 4 states it is the same as Alternative 3, but then seemingly proceeds to outline differences.**

Page 2-100, Table 2-11: **The second paragraph of Alternative 3 unnecessarily constrains management responses for areas where ravens are affecting greater sage-grouse. Under this language, there must first be data presented regarding the limiting effect of predators in specific areas. This is followed by a strategy for monitoring removal efficacy. As discussed above and at minimum, there should be proactive plans in place with APHIS, FWS, and all related agencies to ensure action can be taken immediately after recognition of increased predation on GRSG populations.**

Page 2-101, Table 2-11: **It is unclear whether there are any requirements for the measures outlined in the final bullet point under Alternative 3. If there are such requirements for existing development, the County requests clarity as to who will be responsible for the cost of installing/maintaining predator control measures on existing development.**

Page 2-102, Table 2-11: **It is unclear whether there are any requirements for the measures outlined in the final bullet point under Alternative 3. If there are such requirements for existing development, the County requests clarity as to who will be responsible for the cost of installing/maintaining predator control measures on existing development.**

Page 2-103: **Section 2.5.10 should reference a recent study by the University of Idaho, which found that "Spring grazing resulted in a greater number of insects, a greater variety of insects and the insects found under the spring grazing treatment generally are bigger, which could provide more food for sage grouse." Scientists also learned that the presence of cattle in places where sage grouse nested, and grazing of spring grass, had no effect on nest success. See: https://www.uidaho.edu/news/feature-stories/sage-grouse-ten.**

Page 2-103: **Section 2.5.10 should also reference a recent study (https://digitalcommons.usu.edu/cgi/viewcontent.cgi?article=2978&context=extension_curall) that**

debunks the theory that a 7" grass height must be maintained when grazing in sage grouse habitat and that such a land health standard is not included in any of the alternatives.

Page 2-107, Table 2-12: **The final sentence in the first paragraph of RM-3 under Alternative 4 needs clarification. Does the phrase "as workload capacity allows" apply to the creation of specific thresholds/responses or to the determination of when those thresholds have been met and responses are necessary?**

Page 2-108, Table 2-12: **The final sentence of the bullet point under Alternative 4 is ambiguous. What does it mean to "have the desired intent" and who will be making such determinations?**

Page 2-107, Table 2-12: **The final sentence in the first paragraph of RM-3 under Alternatives 5 and 6 needs clarification. Does the phrase "as workload capacity allows" apply to the creation of specific thresholds/responses or to the determination of when those thresholds have been met and responses are necessary?**

Page 2-109, Table 2-12: **The County requests clarity on who will pay the cost of upgrading and/or maintaining projects that negatively affect GRSG or GRSG habitat. Livestock producers should not have to bear the entire burden of upgrading range improvements.**

Page 2-111, Table 2-12: **The County requests clarity on who will pay the cost of upgrading and/or maintaining projects that negatively affect GRSG or GRSG habitat. Livestock producers should not have to bear the entire burden of upgrading range improvements.**

Page 2-112, Table 2-12: **Management Action RM-7 is inconsistent with state and county resource management plans. These plans call for reallocation and reauthorization of grazing permits that have been voluntarily relinquished. The County has a significant interest in maintaining strong agricultural production and this policy is meant to protect that interest. Additionally, if the BLM makes these areas a reservation or common allotment, they should be allowed to be used during drought years. It is nonsensical to restrict their use during drought years as these would be the best areas to remain healthy during use in drought because they have been rested the longest.**

Page 2-117: "Areas identified with the above criteria are analyzed in this EIS to determine if they meet the third FLPMA ~~required~~ **requirement**: the need for special management to protect and prevent irreparable damage."

Page 2-117: **Section 2.5.12 should also mention that several western state and county resource management plans contain policies and criteria associated with the designation of ACECs and that consistency with state and local plans is required by FLPMA.**

Page 2-118, Table 2-14: **The County does not support the designation of ACECs under either Alternative 3 or 6. Alternative 3, for instance, does not highlight what, if any, special management is required within the proposed ACECs. Instead, Alternative 3 defers ACEC management to the same prescriptions already outlined in Alternative 3. If there is no "special management" required beyond that which is contemplated by the RMP, there is no need for the designation of an ACEC. Additionally, the ACEC designations under Alternatives 3 and 6 are not consistent with state and county resource management plans. The County therefore supports the BLM's recognition of Alternative 5 as the preferred alternative.**

Page 2-120, 2.5.13: **The County understands that Utah has worked closely with the BLM in prior planning processes to develop a monitoring framework that effectively captures populations of concern using the state-provided lek count data. The County requests a separate alternative that considers the use of that system, with explicit deference to the state for population related data and population concerns. The state has jurisdiction over sage-grouse and should therefore have the authority to evaluate and make determinations regarding population-related thresholds.**

Page 2-120, 2.5.13: **References to local responses for GHMA should be removed. GHMA in Utah is often marginal habitat, at best. Allowing for discretionary review of potential adaptive management in GHMA could result in significant changes that will not affect the species. At minimum, there must be sideboards to such considerations outside of PHMA. However, given the decreased importance of GHMA throughout the State, this language should be removed altogether.**

Page 2-120: **"Sagebrush habitat fragmentation, loss and disturbance have been identified as the primary influences on GRSG population trends (Knick and Hanser, 2011)." It is incorrect to state that sagebrush habitat fragmentation, loss and disturbance have been identified as the primary influences on GRSG population trends. These conditions may be among the primary influences but there are others, such as drought and predation, that are just as important. In many areas of the West, the effects of predation on population size and population distribution is very high or high compared to other impacts: (see, for example, Table 9 at: https://extension.usu.edu/utahcbcp/files/2012UBARMUpdateReportFinal.pdf).**

Page 2-121, 2.5.12: **The County appreciates recognition of coordination as a first step in an initial causal factor analysis. To further ensure recognition of state primacy over the species, the County requests an explicit statement here that "state wildlife agencies will make the final determinations as to population trends that warrant adaptive management consideration."**

Page 2-123, Table 2-15: **The language in Alternatives 5 and 6 does not delineate between hard and soft thresholds. The County requests clarification in this language to ensure that it applies during the rapid assessment process for either a soft or hard threshold.**

Page 2-125, Table 2-15: **The County has significant concern regarding capacity for CFA: In comparing 2015 triggers for the 2016-2022 time period significantly more thresholds initiating a CFA would be crossed using TAWS relative to 2015 RMP triggers. In the 2016-2022 time period there were 6 hard triggers for Utah, with two CFAs still pending as of Dec 2023. TAWS produced 25 warnings in Utah in that same time period. How is CFA efficiency and capacity being addressed in this planning process? Clear guidelines and templates included in an appendix for both full and initial CFAs may increase efficiency significantly.**

Page 2-125, Table 2-15: **The County does not support the extended delay of new permitted activities when a soft threshold is met, and the full CFA is not completed within 6 months. As discussed above, TAWS will likely produce additional warnings in the state, stretching the capacity of local BLM to conduct these analyses. The result is further delay in review and ultimately further delay in permitting activities, even if no cause has been identified.**

Page 2-126, Table 2-15: **It is not clear what it meant by the phrase "income potential of the event."**

Page 2-126, Table 2-15: **Consider revising the "grazing exception" language as follows: "Grazing permits will be renewed following standard permit renewal regulations (43 CFR 4180). Grazing permits within PHMA will be analyzed and approved through NEPA and have adequate flexibility**

to adjust grazing management within the permit to address any situation occurring on the landscape, i.e., wildfire, drought, feral horses, etc." Adding additional terms and conditions to address temporary threshold exceedances are unnecessary when the renewed permit includes the flexibility for the authorized officer to adjust or modify the grazing practice accordingly. Grazing terms and conditions will only be adjusted during the term of the permit if improper livestock grazing is shown to be a significant causal factor under the SSS of Standards for Healthy Rangelands.

Page 2-127, Table 2-15: **The County requests removal of the following sentence: "If a reduction in the ability for the habitat to support GRSG occurs as a result of habitat impacts, additional restrictions may be necessary to preclude further habitat losses." There is no clarity as to what qualifies as "a reduction in the ability for habitat to support GRSG" and/or what "additional restrictions" would be allowed here.**

Page 2-128, Table 2-15: **The County has concerns about the capacity of agencies to complete the required post-fire evaluation, especially within the proposed 60-day time frame. In addition to state wildlife agency input, consider also allowing project proponents to contribute to habitat evaluation if habitat loss is precluding permitting.**

Page 2-128, Table 2-15: **The County does not support regulatory action without supporting evidence as currently suggested in the inconclusive CFA language. The County suggests continued monitoring and periodic re-evaluation for inconclusive CFAs. Suggested Language: "If no cause for a habitat or population decline can be determined the BLM shall continue to monitor habit condition through the Habitat Assessment Framework for continued declines in habitat condition, continue to monitor habitat loss, and continue to monitor anthropogenic disturbance. Populations shall be monitored in coordination with the state wildlife agency. Causal factor analysis should be repeated five years from initial trigger or sooner if a subsequent TAWS trigger is met."**

Page 2-129: **Another state specific circumstance that should be mentioned in Section 2.6 is that several western states and western counties have adopted resource management plans that contain policies associated with GRSG. As required by FLPMA, the BLM plans to manage GRSG must be consistent with these state and local plans to the greatest degree possible, consistent with federal law.**

Page 2-129: "The following sections present the alternatives associated with state-specific circumstances." Colorado **Section 2.6.1 Colorado (Idaho will become Section 2.6.2, and so on.**

Page 2-183, Table 2-39: **The County suggests removal of the "Net Conservation Gain" heading to reflect more appropriately the "no net loss" standard articulated under that heading. Otherwise, there will be confusion as to whether the "net conservation gain" standard applies.**

Page 2-185, MA-SSS-6, Table 2-39: **There is confusion here as to where the management will apply. As drafted, Alternative 4 suggests management will be applied to areas outside of GHMA. That would be a significant expansion of management outside of sage-grouse habitat within Utah. This must be clarified to ensure the GHMA management is appropriately limited.**

Page 3-2: "Declines in GRSG numbers and distribution are attributed primarily to the loss and degradation of sagebrush habitats." **It is incorrect to conclude that declines in GRSG numbers and distribution are attributed primarily to the loss and degradation of sagebrush habitats. Loss and degradation of habitat may be among the primary reasons but there are others, such as drought**

and predation, that are just as important. In many areas of the West, the effects of predation and drought on population size and population distribution is very high or high compared to other impacts: see, for example, Table 9 at: https://extension.usu.edu/utahcbcp/files/2012UBARMUpdateReportFinal.pdf).

Page 3-4: "Proximate reasons for population declines differ across the GRSG distribution, but ultimate underlying cause is loss, fragmentation, and/or degradation of suitable sagebrush habitat." **It is incorrect to state that the ultimate underlying cause of population decline is loss, fragmentation, and/or degradation of suitable sagebrush habitat. This may be one of the causes; but it is not the "ultimate underlying cause". In many areas of the West, the effects of predation and drought on population size and population distribution is very high or high compared to other impacts: see, for example, Table 9 at: https://extension.usu.edu/utahcbcp/files/2012UBARMUpdateReportFinal.pdf).**

Page 3-5: "Predators of GRSG include golden eagles (Aquila chrysaetos), great horned owls (Bufo virginianus), coyotes (Canis latrans), and common ravens (Corvus corax). Populations of golden eagles, great horned owls, and coyotes have not increased during the last century, so they likely have not contributed to GRSG population declines." **Red fox, racoons, skunks, badgers, bobcats, weasels and snakes need to be added to this list of predators (see Section 3.5.2 and https://www.pbs.org/wnet/nature/sagebrush-sea-food-web/12265/).**
Have the populations of these additional predators increased during the last century and contributed to GRSG population declines?

Page 3-6: "Areas outside of subpopulation centers are likely important for maintaining overall connectivity by allowing different genetic groups to converge (Cross et al. 2018; Oyler-McCance et al. 2022)." "Areas outside subpopulation centers are also priorities for conservation to protect areas where different genetic groups converge maintain overall connectivity." **These two sentences appear in the same paragraph and appear to be redundant.**

Page 3-7, Existing Habitat Management Areas: **The County suggests clarification in the second paragraph on this page. First, it defines sagebrush focal areas as a subset as PHMA. There should be clarification that SFA's may not be included as part of PHMAs in the ongoing planning process. Otherwise, there may be confusion if BLM ultimately removes SFAs from this plan. Second, the language equates GHMA to "remaining suitable habitat." While there may be some suitable habitat in GHMA in Utah, there are also areas designated as GHMA that are not habitat. The County requests clarification here, as GHMA is not defined or applied uniformly across the range.**

Page 3-10: "Due to negative impacts to GRSG associated with non-renewable energy development, **there** is concern that renewable energy development may also ~~have~~ negatively affect GRSG habitats and populations (NWCC 2017; Hanser et al. 2018)."

Page 3-10 and 3-11 (Persistent and Emerging Threats): **This section on Predation focuses on the impacts of ravens but fails to mention impacts from other predators such as golden eagles and other raptors (see Section 3.5.3), great horned owls, coyotes, red fox, racoons, skunks, badgers, bobcats, weasels and snakes (see Section 3.5.2).**

Page 3-11 (Persistent and Emerging Threats): **This section focuses on the impacts of wild horses but does not mention the impacts of wild burros, which are also over-populating the range.**

Page 3-19: "Susceptibility to wildfire occurrence~~, which~~ results from fuel loading, vegetation characteristics, or as a natural condition of the environment (for example, drought)."

Page 3-20: "Sagebrush range in good condition supports an abundant understory of protein rich bunchgrasses and forbs providing habitat for **use** by small mammals. Examples of species **that** are associated with sagebrush vegetation communities include…"

Page 3-21: "Common ravens (Corvus corax) populations have nearly doubled in the past 50 years (USFWS 2023) and **are** extremely adaptable to human-altered environments and disturbance (Howe et al. 2014)…. The continued expansion **of** human-related structures in sagebrush will likely drive increases in common ravens (USFWS 2023)."

Page 3-22: "Predatory snakes, such as gopher snakes, are unable **to** consume GRSG eggs but have been observed constricting and consuming a 19-day-**old** juvenile GRSG chick (McIntire 2020). Amphibians, specifically frogs and toads, are important indicators of ecosystem health because they are highly sensitive to environmental changes. Widespread population declines in the western United States are be attributed to disease, pollution, exposure to toxins from energy development, habitat loss and degradation, and the effects from climate change."

Page 3-23: "The BLM cooperates with USFWS **to** identify and properly manage recovery habitats."

Page 3-27, Pinyon Jay: **The last sentence of the second paragraph on this page references thinning activities for pinyon-juniper and states such activities "may be negatively impacting pinyon jay populations." This is an overly broad statement and there is no science cited in support. The County requests clarification on this point and/or a narrowing of the statement to ensure that it is not interpreted to mean all pinyon-juniper thinning should cease.**

Page 3-32: "Easements are authorizations for a non-exclusive interest in lands that specifies the right**s of** ~~to~~ the holder ~~the obligation of the BLM~~ to use and manage the lands in a manner consistent with the terms of the easement."

Page 3-35: "The North Park Basin occupies approximately 1.3 ~~in~~ thousand **square** miles…"

Page 3-37: "A federally designated Known Sodium Leasing Area covering a 1,085 square mile area almost entirely in Sweetwater County, Wyoming overlaps part of the planning area." "Within the planning area in Colorado, all of the sodium resources are found in the Parachute Creek Member of the Green River Formation." **It would be helpful here to know if any of these mineral areas are within GRSG HMA.**

Pages 3-37 and 3-38: **In the discussion of phosphate mining in Utah, there is no indication of how these resources areas overlap with GRSG HMA.**

Page 3-38: **In the discussion of Gilsonite mining in the Uinta Basin of Utah, there is no indication of how these resource areas overlap with GRSG HMA.**

Pages 3-38 to 3-40: **In the discussion of coal resources, there is no indication of how these resource areas overlap with GRSG HMA.**

Pages 3-41 and 3-48: "As new oil and gas development continues to occur, it is expected that mineral materials activity will continue." **Mineral materials activity will continue even if oil and gas development decreases as such materials will be needed for all forms of construction; including roads and facilities associated with wind and solar energy development, transmission lines and other multiple uses of BLM lands.**

Page 3-42: "The Oil Shale and Tar Sands ROD removed federal mineral estate within all GRSG HMAs in Utah from potential oil shale and tar sands leasing, subject to valid existing rights." **Please explain here why the ROD removed GRSG HMAs in Utah from oil shale and tar sands leasing but not in Colorado and Wyoming.**

Page 3-42: "Although resource potential within the Piceance Basin totals approximately 1.2 trillion barrels of oil in place, only part of it can be recovered depending **on** accessibility of the oil shale for development and method of mining used (Taylor 1987)."

Page 3-43: "Within a planning process, the BLM solicits requests for nominations with the Notice of Intent and then analyzes any nomination for relevance and importance. Any ACECs that meet at least one relevance criteria and at least one importance criteria must be brought forward for consideration in at least one alternative." **It should be noted here also that, pursuant to FLPLA, proposed ACECs must be evaluated for consistency with state and local land and resource management plans.**

Page 3-46: "Although coal accounts for a small percentage of total economic contributions and employment in local communities, jobs associated with coal mining tend to be high paying compared with other types of employment in rural communities." **The same should be said for all types of energy and mineral production jobs; not just coal, nonenergy and locatable mineral extraction.**

Page 3-47: "Sand and gravel, used often as construction aggregate, are an extremely important resource and extraction **rates fluctuate** directly with the amount of development—road building and maintenance, and urban development—nearby."

Page 3-48: **On this page, employment data is provided for a typical geothermal project but not for a typical wind or solar project.**

Page 3-50: "As wild horse and burro populations exceed AMLs, wild horses and burros can be causal factors for failing to meet applicable **land health** standards."

Page 3-50: "The BLM uses wild horse and burro funding for a variety of activities, including off-range holding activities, gathers, and **fertility control** ~~other activities~~."

Page 3-51: "Counties in the Utah analysis area received about $38.2 million in PILTs in 2023 for nearly 27.9 million acres of federal lands." **It would be helpful here to summarize the 2023 PILT payments that went to the other states in the planning area or refer to a table in Appendix 13.**

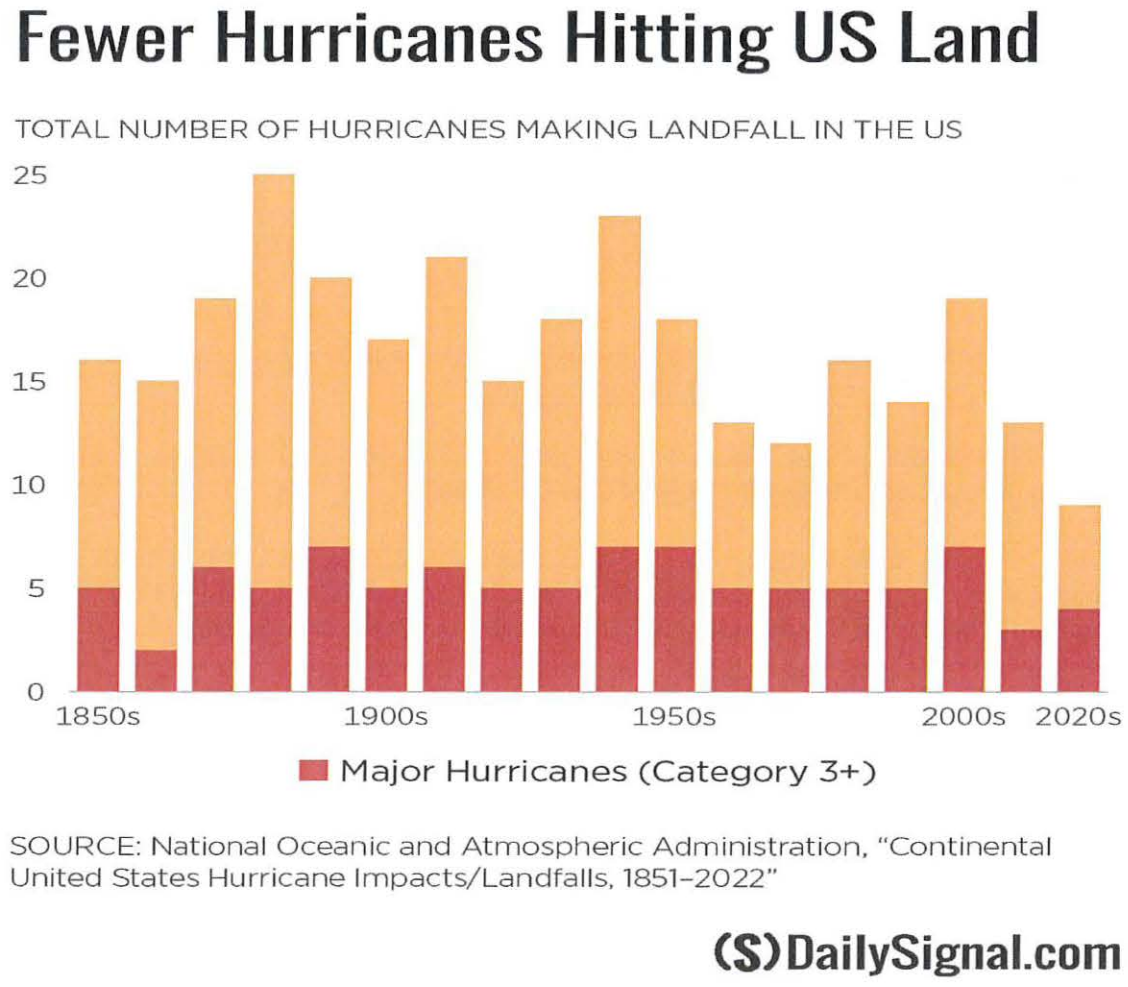
Page 3-51: "BLM-administered lands provide a range of goods and services that benefit society in a variety of ways **as required by the multiple use and sustained yield mandate in FLPMA**."

Page 3-54: "The loss of economic activity stemming from the closure of GRSG PHMA or making PHMA unavailable for authorized uses, in terms of affected jobs and labor income, may result in some additional communities meeting low-income criteria for consideration as potential future environmental justice communities." **The economic well-being of rural families should be given a high priority when making federal land use decisions; especially when such families are already suffering from the financial impacts of the inflationary policies of this administration.**

Page 3-54: "Concerns were identified about impacts on food prices and availability due to restrictions on grazing and mineral development (especially trona mining) in Wyoming and Idaho. These comments were in the context of economic conditions, however, increases in food prices and decreases in food

availability tend to disproportionately impact low-income individuals who have more limited means for finding alternatives. This issue will be carried forward and examined in the impacts analysis on environmental justice populations." **The same EJ concerns apply to impacts on the energy market if GRSG restrictions were to impact supplies of energy and further drive up already high prices. EJ populations are disproportionately impacted when the price of energy commodities such home heating and cooking fuels and vehicle fuels increase.**

Page 3-58: "Warming of the earth's climate since the industrial revolution has been observed to coincide with widespread effects throughout the earth-atmosphere system, including reductions in the extent and duration of polar sea ice and mountain winter snowpack, rising sea levels, increases in mean nighttime minimum temperatures, shifts in historical rainfall patterns, and changes in the *frequency, severity, and duration of weather events*. These effects, in turn, have affected natural and human systems regardless of cause, implicating the sensitivity of natural and human systems to changing climate (IPCC 2013, 2021)." **The data does not support the statement that weather events have become more frequent and severe (for example, see the chart below associated with hurricane landfalls:**



Page 3-60: "Livestock grazing, as a land use, plays a role by influencing the composition and health of vegetation. **Livestock grazing is often blamed for poor soil health conditions. To the contrary, properly-managed livestock grazing is beneficial. Some studies have shown that managed grazing can increase soil organic matter and improve its structure, which can result in improved water infiltration and storage, as well as reduced erosion. Managed grazing can also increase forage production, leading to increased carbon sequestration. Livestock grazing can help to improve the quality of soil. This is because grazing animals help to break up compacted soil and their manure adds important nutrients back into the soil, and it can also lead to increased water infiltration and improved drainage. Grazing animals can also help to control weeds because they will eat certain types of plants that are considered to be weeds, by farmers. Helping to keep these plants from taking over an area and crowding out other vegetation (see: https://vhive.buzz/how-does-livestock-grazing-benefit-the-environment/).**

Page 3-62: "Degradation by *excessive grazing*, recreation, erosion, or land developments have caused a reduction in soil function as one or perhaps many of the soil properties are changed thereby affecting the functions necessary for healthy soils." "In the planning area, impacts on soil resources have resulted from various factors, including increasing temperatures, changing precipitation patterns, wildfire seasons, infestations like pinebark beetle, juniper and cheatgrass invasion, *compaction from livestock grazing*,…". **It should be noted here that excessive grazing and compaction is often caused by overpopulated wild horse and burro herds; not by domestic livestock grazing, which is highly regulated. Big game animal herds can also cause these negative impacts on soil health.**

Page 3-66: "In the planning area, conditions affecting stream temperature, such as the amount of near-stream vegetation, channel shape, and hydrology, are most associated with land use practices. *Livestock grazing* has been identified as a significant factor (Weltz et al. 2017)." "These impairments can be linked to activities such as animal feedlots, crop production, *livestock grazing*, habitat alterations, construction activities, permitted discharges from industrial, municipal, and stormwater sources, and lesser so from channelization, sewage disposal, mine tailings, hardrock mining, industrial forestry, and recreation and tourism." **It should be noted here that water quality issues are often caused by overpopulated wild horse and burro herds; not by domestic livestock grazing, which is highly regulated. Big game animal herds can also cause these negative impacts on water quality.**

Pages 3-66 and 3-67: "Since most water in the planning area originates from precipitation, yearly climatic conditions play an important role in the *volume of water* available. This, in turn, determines available riparian habitat and conditions, particularly in systems that are more dependent on snowmelt and local precipitation events (Weltz et al. 2017)." " Activities associated with recreation, energy development, and grazing have resulted in significant impacts on water supply and quality within GRSG habitat." **The volume of water available in the planning area is also dependent on the level of, or lack of, vegetation management that is occurring. Invasive species such as Tamarisk/salt cedar and Russian Olive, if not controlled, will continue to consume significant quantities of water that would otherwise be available for beneficial use. For more than a decade, USGS scientists have been leaders in understanding salt cedar invasion on riparian ecosystems in the southwest including effects on plant communities, *water loss*, erosion, wildlife use and human recreational resources (see: https://www.usgs.gov/programs/biological-threats-and-invasive-species-research-program/science/invasive-plants-we-1).**

Page 3-67: "As early land management reduced vegetation in the watershed, overland flow of water increased, and stream channels deepened." **The increased overland flow of water and channel deepening has also been attributed to the trapping of beavers (see: https://northernwoodlands.org/articles/article/beaver-dam-analogs).**

Page 3-67: "Within GRSG habitat, recreation activities have resulted in surface disturbance, such as erosion, sediment production and gully creation that require mitigation to prevent water resource damage (Weltz et al. 2017). *OHV activity* has increased significantly in more easily accessible wildland urban interface boundaries as well as more remote areas, due in part to population growth. Expansion of the wildland urban interface is anticipated to have long-term impacts on surface water quality and flow, including increased runoff, changes in nutrient levels, and altered sedimentation patterns." **Motorized recreation is not the only contributor to water quality degradation from recreation. Hikers and equestrians can degrade water quality by causing soil loss along trails and recreation sites; by unsuitably disposing human or pet wastes; and by discharging wastewater, which includes soaps, oils, or other noxious chemicals, into the natural environment (see: https://www.sciencedirect.com/science/article/abs/pii/S0195925520308222.**

Page 3-68: " Changing and persistent drought conditions have also significantly impacted water availability and conditions (Weltz et al. 2017)." **The 2023 water year and the 2024 water year (to date) have snapped the streak of dry years and moderated drought conditions (see: https://water.utah.gov/wp-content/uploads/2024/03/Utah-Water-Conditions-3-5-2024.pdf).**

Page 3-68: " These may comprise archaeological, historic, or architectural sites, structures, **trails and roads,** objects, or places, and may include locations of traditional cultural or religious importance to a particular social and/or cultural group, often referred to as Traditional Cultural Properties (See Section 3.17, Tribal Interests)."

Page 3-69: "The majority of the planning area has not been inventoried since resource inventories are driven by project-based cultural resource **surveys**. New discoveries are documented regularly through regulatory compliance actions."

Page 3-69: "Cultural areas are often correlated to physiographic regions, with the current planning area falling within the Great Basin, Plateau, and Plains culture areas (d'Azevedo 1986). These cultural areas roughly correspond to distinctly different Indigenous groups with different languages and resource-based economic systems and social structures. While these areas are associated with cultural groups and distinct Tribes, cultural boundaries are fluid and overlapping. Tribes with interest in the planning area are listed and further discussed in Section 3.17, Tribal Interests." **The BLM should also recognize the importance of Traditional Ecological Knowledge and the culture associated with those who settled the West in the mid 1800's and have been stewarding the landscape since.**

Page 3-70: "These areas can encompass sacred sites, resource gathering areas, locations tied to historical reenactment, or places significant to various communities, such as those related to Japanese internment among others. While this section addresses traditional cultural resources or properties in the context of Tribal interests, it is important to recognize that traditional cultural resources or properties extend beyond Tribes and can hold significance for diverse ethnic and cultural groups **including those who homesteaded and built communities in the West."**

Page 3-73: "Although lands with wilderness characteristics share the same criteria used to identify wilderness and WSAs, they are not subject to protective requirements prior to a planning or project-level management decision, though consideration for protection opportunities is part of the land use planning process." **Text directly from the BLM Policy Manual 6320 may be appropriate here. "When the BLM has inventoried an area and determined that it possesses wilderness characteristics, the Bureau is not required to protect those characteristics as a priority over other resource values and multiple uses. Inventory and management are separate activities, carried out under different provisions of FLPMA (Sections 201 and 202, respectively). The Bureau has full discretion in how to**

manage an area that possesses wilderness characteristics and may decide not to protect such characteristics" (see: https://www.blm.gov/sites/default/files/docs/2021-01/BLM-Policy-Manual-6320.pdf).

Pages 3-73 through 3-75: **It is troubling to note in Section 3.18.1 that many BLM offices in California, Colorado, Idaho, Montana, portions of Nevada, Oregon, portions of Utah and portions of Wyoming have inventoried LWCs but have not followed through to determine if such lands should be managed for multiple use or to protect wilderness characteristics. This creates "de-facto" wilderness, which is not appropriate and is contrary to the multiple use and sustained yield mandate in FLPMA.**

Page 3-73, 3.18.1 Current Conditions of Lands with Wilderness Characteristics: **Request for clarity – can the plan identify whether the lands identified herein are within GHMA or PHMA in the Uintah Basin?**

Page 3-76: "Five key drivers are causing changes to recreation in the planning area: 1. Changing public expectations and demand for outdoor recreation opportunities, especially for dispersed recreation (BLM 2019b)." **The BLM should consider revision of this section to reflect post-COVID recreation trends as follows: "In fiscal year 2022, the agency recorded more than 81 million visits, representing a 40% increase in use since 2012, with almost a third of that increase occurring since 2020," the BLM said in its *Blueprint for 21st Century Outdoor Recreation*. "The BLM's budget for recreation resources management was $60.2 million in FY 2022, or $0.74 per visitor, compared to 2012, which was $0.84 per visitor." (See: https://www.aspentimes.com/news/blm-creates-blueprint-to-guide-outdoor-recreation-in-response-to-increased-public-lands-use/).**

Pages 3-76 and 3-77: "Many areas currently designated as open to cross-country travel will need to be changed to limited or closed designations to minimize resource impacts in the future. However, changing areas from OHV **open** to OHV limited or closed may not be possible due to RS 2477 rights associated with existing roads." **The County appreciates the acknowledgement that RS 2477 rights will prevent the closure of roads that have these valid, existing rights. In addition, the analysis should recognize that closing of historical routes before they are evaluated for National Register eligibility may prevent members of a rural community from engaging in traditional economic, artistic, or cultural activities that are rooted in the community's history and are important in maintaining the continuing cultural identity of the community. Finally, the analysis should recognize that allowing continued use of existing routes provides the best access for search and rescue efforts. Each year, thousands of visitors to federal lands require the assistance of search and rescue (SAR) services (see: https://crsreports.congress.gov/product/pdf/IF/IF12020). Maintaining access to the existing road network could be a matter of life and death for visitors who may not be well prepared for the challenges of the backcountry (see: https://www.deseret.com/opinion/2022/7/29/23283721/opinion-utah-national-parks-federal-land-should-get-federal-funding-for-search-and-rescue-helicopter/).**

Page 3-77: "Previously constructed roads may also require upgrading in width and ROW as ~~drilling operations~~ **extracted resources** are transported to collection and production facilities."

Page 4-1: "Habitat management and designations impact GRSG by influencing the level of activities and associated disturbances **that** can occur in GRSG habitat."

Pages 4-3 and 4-4: "…impacts have been observed when leks occur within 2.5 miles of a producing well, when greater than eight active wells are within 3.1 miles of leks, or when more than 200 active wells are within 11 miles of leks (Johnson et al. 2011)." "Population impacts have been observed when leks occur

within 2.5 miles of a producing well, when greater than eight active wells are within 3.1 miles of leks, or when more than 200 active wells are within 11 miles of leks (Johnson et al. 2011)." **It is redundant to refer to the Johnson, et al. study twice within three paragraphs in this section.**

Pages 4-3 and 4-4: "Other impacts have been documented within varying distances from energy infrastructure and at different well densities (Manier et al. 2014)." "Other impacts have been documented within varying distances from energy infrastructure and at different well densities (Manier et al. 2014)." **It is redundant to refer to the Manier et al. study twice within two paragraphs in this section.**

Page 4-4: "Infrastructure for mining is like that required for ~~oil and gas~~ **fluid minerals** but is more localized in extent, but mines may have a large footprint."

Page 4-4: "Surface mining has a greater direct habitat impact than underground mining but disturbance from above ground infrastructure for **underground mining** also results in direct loss of habitat if it occurs in GRSG habitat.

Page 4-5: "The full effect of ground shock on wildlife is unknown but noise from mining operations during lekking activity could result in lek or nest abandonment (Moore and Mills 1977)." **It should be noted here that such abandonment may be short term in nature given the results of the Remington and Braun study noted earlier in the paragraph.**

Page 4-5: "Although transmission and power line construction does not generally result in substantial direct habitat loss, it would **temporarily or** permanently disturb individual GRSG and habitat along the ROW due to the associated human activity, equipment, and noise, and would contribute to habitat fragmentation." **Human activity, equipment and noise is associated with short term construction of transmission lines; not with long term operations of the lines.**

Page 4-5: "Areas managed as ROW exclusion would prohibit development of all or certain types/ subsets of ROWs (e.g., utility scale wind and solar testing and development). In areas managed as ROW avoidance the BLM would consider allowing ROW on a case-by-case basis. This flexibility may be advantageous where federal and private landownership areas are mixed and exclusion areas may result in more widespread development, potentially in higher quality habitat, on private lands if BLM-administered lands could not be used." **This would be a good place to note that the BLM is currently preparing a utility scale solar PEIS and address whether GRSG HMA will be avoided in the alternatives being analyzed.**

Page 4-6: "The effect of roads can be direct through changes in habitat and GRSG populations and indirect through avoidance behavior (Lyon and Anderson 2003; USFWS 2010a). Roads alter and fragment habitat by impeding use of seasonal habitats, facilitating habitat degradation by creating a corridor along which invasive plants can spread, allowing for increased human noise disturbance, resulting in GRSG avoidance (i.e., functional habitat loss), direct mortality, and increasing mammalian and avian predator abundance (Formann and Alexander 1998)." **It should be noted here that not all effects of roads are negative. Many have observed GRSG taking "dust baths" in dirt roads as part of their plumage preening process (see: https://www.pressconnects.com/story/life/2017/06/14/ruffed-grouses-dust-bath-stops-time/396604001/ and https://www.blm.gov/blog/2022-06-30/all-days-walk-sage-grouse-summer. Utah NE Region Division of Wildlife Resources staff have also observed GRSG strutting in roads – essentially using roads as a lek (personal conversation with Miles Hanberg, NE Region DWR Manager, April 10, 2024).**

Page 4-9: "In areas of mixed land ownership, making public lands unavailable for grazing that are adjacent to private, **state or tribal** grazing lands would result in more fencing."

Page 4-9: "In addition, horse **and burro** populations ~~over appropriate management levels~~ can degrade riparian areas, decrease water quantity and quality, and increase soil erosion." **This edit is suggested because wild horse and burro populations can cause these impacts whether the populations are above, at or below AMLs.**

Page 4-9: "Fences used to manage horse **and burro** distribution represent a potential source of direct mortality to GRSG (Manier et al. 2013). Year-round water availability in horse **and burro** herd management areas and wild horse territories is required by the Wild and Free-Roaming Horses and Burros Act of 1971. This can result in year-long use of riparian areas by wild horses **and burros** and other modifications (e.g., fences, troughs)."

Page 4-9: "GRSG are prey for various predators including**, but not limited to,** coyotes, badgers, bobcats, red fox, hawks, and corvids (Mainer et al. 2013)."

Page 4-9: "Predation can be a threat to GRSG, especially in areas of low population density where there is limited habitat or poor habitat quality (USFWS 2010)." **This statement understates the impact of predation on GRSG. In many areas of the West, the effects of predation on population size and population distribution is very high or high compared to other impacts: see, for example, Table 9 at: https://extension.usu.edu/utahcbcp/files/2012UBARMUpdateReportFinal.pdf).**

Page 4-10: "Predators, especially coyotes are often controlled to prevent livestock loss, **and this** may reduce predation on GRSG."

Page 4-10, Predator Management: **The County requests development of a comprehensive plan for addressing predation, particularly as it relates to ravens. The proposed language, as drafted, allows for potential management in the event ravens are identified as an issue. However, it would be far more efficient and effective to proactively develop a comprehensive plan for predator control throughout the range, with assurances from each agency involved (FWS, APHIS, FS, BLM, etc.).**

Page 4-10: "However, the conservation value of an ACEC designation for GRSG depends on **the** area's purpose, and in some cases, surface-disturbing activities may be allowed. **It should also be noted here and in the evaluation of other alternatives that many states and counties have policies in their own resource management plans that may curtail the use of ACECs to benefit GRSG.**

Page 4-11: "Calculating disturbance at the project-level ~~means~~ may prevent some development that could occur if disturbance is only calculated at a coarser scale."

Page 4-12: "Development could still occur in UT GHMA potentially resulting **in** alteration, direct loss, and fragmentation of seasonal GRSG habitats."

Page 4-12: "In PHMA outside of SFAs, no waivers or modifications would be allowed; however, exceptions could be considered on a very limited basis, and only in circumstances where granting an exception would ~~have~~ either have no impacts or would reduce impacts on GRSG."

Page 4-14: "The oil and gas lease stipulations summarized in Appendix 2 would be applied in MT/DK; these stipulations would reduce the potential for impacts associated with fluid mineral leasing as described in ~~in~~ Nature and Types of Effects."

Pages 4-15 and 4-39: "Existing ROW corridors are preferred for collocation of new ROWs but could not be widened more than 50% greater than the original footprint." **Here and in other applicable alternatives, it should be noted that limiting the widening to 50% of the width existing may not be wide enough to safely accommodate a parallel transmission line (if a tower were to fail, the ROW must be wide enough to prevent such failure from impacting the parallel line).**

Page 4-16: "Impacts to GRSG and habitat from grazing~~, such as habitat alterations,~~ could occur in PHMA, GHMA, and ID IHMAs as described in Nature and Types of Effects." **There may be positive and negative impacts to GRSG from grazing. Mentioning habitat alterations here and in the analysis of other alternatives, implies that the impacts are considered negative.**

Page 4-16: "Whether removal of grazing would reduce the risk of invasive plant spread into the key RNAs is uncertain." **Findings are needed here, and in the analysis of other applicable alternatives, to recognize that removal of grazing in RNAs will increase fuel loads which will expose the habitat to greater risk of wildfire.**

Pages 4-16 and 4-17: "Under Alternative 1, wild horse **and burro** populations would continue to be managed for AMLs and in balance with other resource uses (e.g., rangeland health, livestock, and wildlife). Wild horse **and burro** gathers would be prioritized based on escalating or potential emergencies, public safety, nuisance animals, court orders, population growth suppression, and resource impacts associated with monitoring data, which is generally based on wild horse **and burro** population inventories, wild horse **and burro** condition, availability of sufficient water and forage resources, rangeland health, use levels of upland habitats, and riparian resource conditions. Evaluation of land health assessments in wild horse **and burro** HMAs could identify vegetation conditions that could prompt gathers, reducing wild horse **and burro** numbers and the associated impacts on GRSG habitats. **This section is to address wild horse and burro management, but as written, there is no discussion of burro management. This may need to be clarified in the analysis of other alternatives as well.**

Page 4-17: " Under Alternative 1, following more specific vegetation objectives and reducing opportunities for predators (e.g., by minimizing human resource subsidies) may, in some cases, improve the quality of habitat and decrease opportunities for predation as described under Nature and Types of Effects." **While minimizing human resource subsidies is one example of possible ways to reduce opportunities for predators, the BLM should better emphasize under all alternatives that coordination with state wildlife management agencies is critical to determining what other strategies may be helpful to reduce predation.**

Page 4-17: "Under Alternative 2, the GHMA designation in UT would be removed with all its corresponding management actions from the 2015 plan amendments. The removal of GHMA and their associated management actions would likely incentivize development in areas formally identified as GHMA and could therefore lead to GRSG habitat loss and alterations." **It should be noted here and in all applicable alternatives that GHMA in Utah is marginal habitat and only 5% of the GRSG population in Utah has been documented to utilize this habitat (see the state plan and Page 4-19).**

Pages 4-21 and 4-22: "Under Alternative 3, all HMAs would be managed as PHMA, over double the acreage of PHMA compared with Alternatives 1 and 2 (Table 2-3)." "The disturbance cap would not be applicable to new authorizations since all PHMA would be closed to new infrastructure projects." **Alternative 3 is contrary to the January 2019 Utah Conservation Plan for Greater Sage Grouse (see: https://wildlife.utah.gov/sage-grouse/Utah_Greater_Sage-grouse_Plan.pdf).**

Page 4-22: "Currently, the percentage of disturbance in PHMA/IHMA within fine scale HAF boundaries is well below 3% and below 1% in most areas (BLM data 2023), yet population and habitat trends are still declining (Herren et al. 2021)." **These findings show that disturbance caps are not the most effective tool that the BLM can use to help GRSG populations. Efforts to reduce predation and wildfire (associated with drought) are the most effective tools as predation and drought have been found to be the most critical impacts in many areas (see, for example, Table 9 at: https://extension.usu.edu/utahcbcp/files/2012UBARMUpdateReportFinal.pdf) and (Herren et al. 2021), which found that *"wildfire was the cause of the majority of habitat loss between 2012 and 2018."* The BLM made an admirable effort in 2020 to plan for 11,000 miles of fuel breaks across the GRSG range to address this major factor in habitat loss; however, this effort was derailed by ill-informed environmental groups (see: https://wildfiretoday.com/2021/01/15/environmental-groups-sue-blm-over-plans-to-construct-11000-miles-of-fuel-breaks/).**

Page 4-23: "In UT, all habitat would be PHMA, including GHMA from Alternative 1. PHMA would include some areas of unoccupied habitat, historic habitat where birds have not been observed in 20 years or more or may have never occurred (e.g., habitat west of Sanpete Valley), areas of non-habitat (e.g., phase 3 pinyon-juniper, rock outcrops), and areas which are currently not habitat but could become habitat through significant restoration. Including these areas under the more restrictive management of Alternative 3 raises the concern that the BLM would not use the least restrictive constraint to meet the resource protection objective in leasing restrictions for existing development rights. Under Alternative 3 in UT, all occupied leks are encompassed by PHMA." **This paragraph indicates some, but likely not all of the reasons why Alternative 3 is contrary to the January 2019 Utah Conservation Plan for Greater Sage Grouse (see: https://wildlife.utah.gov/sage-grouse/Utah_Greater_Sage-grouse_Plan.pdf).**

Page 4-23, Habitat Designation and Management: **The discussion herein demonstrates the unreasonableness of Alternative 3 in Utah, as it would include as PHMA "some areas of unoccupied habitat, historic habitat where birds have not been observed in 20 years or more or may have never occurred (e.g., habitat west of Sanpete Valley), areas of non-habitat (e.g., phase 3 pinyon-juniper, rock outcrops)." Indeed, the discussion recognizes that such inclusion would not be the least restrictive constraint necessary to meet the needs of the species. The HMA designations under Alternative 3 are therefore unreasonable and should not be included for consideration. Additionally, the paragraph indicates some, but not likely all, of the reasons why Alternative 3 is contrary to the January 2019 Utah Conservation Plan for Greater Sage Grouse (see: https://wildlife.utah.gov/sage-grouse/Utah_Greater_Sage-grouse_Plan.pdf).**

Page 4-23: "However, restrictions to development on BLM lands might push development onto private, **state and tribal** land, which could result in indirect impacts as described under Nature and Types of Effects."

Page 4-23: "All PHMA would be excluded from new ROW authorizations. New linear ROWs would be allowed only in designated ROW corridors. This would decrease the potential for impacts associated with ROW development. However, the inability to site ROWs in PHMA could lead to longer ROW routes in order to bypass closed areas. Longer routes would increase surface disturbance and other impacts of ROW siting on GRSG habitats outside of PHMA and may result in increased impacts on GRSG populations using habitat on adjacent private lands." **Alternative 3, and to a lesser extent, other alternatives, would hamper the nation's ability to site new transmission and distribution lines necessary to connect anticipated solar and wind power generation facilities to the grid and deliver power to customers. Construction of major transmission lines is very expensive. The TransWest Express power line will traverse 732 miles at a total cost of about $3 billion, or about $4.1 million**

per mile (see https://www.power-technology.com/projects/transwest-express-transmission-project-usa/). Designating all habitat as PHMA and then forcing power lines to avoid PHMA under Alternative 3 will add millions to the cost of new facilities and drive up electric bills for all Americans who have already suffered financially due to Biden Administration policies, which caused inflation to spike to the highest level in over 40 years. Despite recent moderation, consumer prices are up nearly 18% overall during Biden's time. Gasoline is up 29% (see: factcheck.org/2024/01/bidens-numbers-january-2024-update/).

Page 4-24: "PHMA in all states would be ROW exclusion areas for wind and solar energy development. Prohibiting wind energy development would eliminate the likelihood for habitat loss, degradation, fragmentation, and direct disturbance to birds in these areas." **Alternative 3, and to a lesser extent, other alternatives, run counter to the Biden Administration's climate goals to *"reduce greenhouse gas emissions 50-52 percent below 2005 levels in 2030, achieve a carbon pollution-free electricity sector by 2035, and achieve net-zero emissions by no later than 2050"* (see Executive Order #14082).**

Page 4-24: "However, if livestock are removed on BLM fences may be erected to fence out BLM lands from adjacent private**, state or tribal** grazing lands."

Page 4-24: "Additionally, removing livestock from BLM lands may concentrate grazing on private**, state and tribal** lands, potentially leading to overgrazing and decreased GRSG habitat suitability where concentrated grazing occurs."

Pages 4-24 and 4-25: "Gathers needed to remove wild horses and burros from herd management areas could disturb GRSG in the short term through human presence and noise." **Such gathers may not be possible if the Herd Management Area is within AMLs thanks to a March 30, 2024 U.S. District Court decision (see: https://friendsofanimals.org/wild-horses-in-nevada-utah-get-reprieve-thanks-to-foas-court-victory/). This may impact several of the BLM's alternatives.**

Page 4-25: "Under Alternative 3, all PHMA would be managed as ACECs." **It should be noted here that several western state and county resource management plans contain policies and criteria associated with the designation of ACECs and that proposed ACECs must be evaluated, pursuant to FLPMA, for consistency with these state and local plans. Failure to achieve consistency under Alternative 3 will likely lead to litigation.**

Page 4-25, ACEC Designation: **In evaluating ACECs, the BLM must identify and justify the difference between special management required for the ACEC and normal multiple-use management authorized by FLPMA. Alternative 3 does not provide justification for any "special management" beyond what is already proposed for PHMA. Indeed, the language outlined on this page expressly states that ACEC management would be the same as PHMA management under this alternative. As such, there is no basis for identifying ACECs under Alternative 3 because there is no need for "special management."**

Page 4-28: "In Idaho, lek buffers would be the same as under Alternative **???** (Appendix 19)."

Page 4-28: "However, since PHMA would apply to a smaller area under this alternative, the extent of protection from disturbance associated with ~~from~~ renewable energy development would be less.

Page 4-29: "Impacts from reducing opportunities for predators would be similar to those described for Alternative 1 with the exception that precluding new anthropogenic infrastructure ~~new anthropogenic infrastructure~~ would be avoided where possible."

Page 4-30, Habitat Designation and Management: **There is no justification for the suggestion here that any time lag could potentially be measured in "decades." This is particularly problematic in a state like Utah, where Utah's Watershed Restoration Initiative, and its associated mitigation banking system, can put mitigation into place much sooner than a decade. Moreover, the subsequent sentence suggests that both population and habitat declines are likely to occur to a greater extent than Alternative 4 as the result of this time lag. This language is highly speculative and unsupported. Suggested language change:**

> **"Allowing a project to proceed before compensatory mitigation is in place may result in a time lag, during which GRSG habitat may be fragmented and reduced in carrying capacity by project impacts. Habitat and population trends may continue to decline to a greater extent compared to Alternative 4 if this time lag occurs. Impacts from population and habitat adaptive management would be the same as described for Alternative 4."**

Page 4-33, Wild Horse and Burro Management: **There is a mismatch between the language outlined here and the language in the tables above for Alternatives 5 and 6. This section discusses management to the "low end" of AML, whereas the language in the table discusses only management to established AML. Request clarification regarding which will apply.**

Page 4-34: "Under Alternative 6, the acres of ACECs would be the same as in Alternative 3,…" **It should be noted here that several western state and county resource management plans contain policies and criteria associated with the designation of ACECs and that proposed ACECs must be evaluated, pursuant to FLPMA, for consistency with these state and local plans.**

Page 4-35: "Aboveground site-type ROWs**, solar energy projects** and wind energy projects would remove vegetation during the life of the project, often lasting several decades, but areas would be reclaimed after the ROW is decommissioned."

Page 4-35: "This flexibility may be advantageous where federal and ~~private~~ **non-federal** land ownership is mixed, as exclusion areas may result in more widespread development on private**, state and tribal** lands."

Page 4-39: "Removing wild horses and burros in those PHMA with existing herd management areas in all states would increase total vegetation, grass abundance and cover, and sagebrush canopy cover, species richness, and dominance of palatable forbs (Manier et al. 2013; Chambers et al. 2017)". **Such gathers may not be possible if the Herd Management Area is within AMLs thanks to a March 30, 2024 U.S. District Court decision (see: https://friendsofanimals.org/wild-horses-in-nevada-utah-get-reprieve-thanks-to-foas-court-victory/). This may impact several of the BLM's alternatives.**

Page 4-40: "Under Alternative 2, the GHMA designation in UT would be removed with all its corresponding management actions. This would likely incentivize development in areas formally identified as GHMA, and could lead to vegetation loss, sagebrush or riparian vegetation fragmentation, and increased weed spread." **Most GHMA land in Utah is not suitable for development due to the lack of infrastructure, so the impacts of removing GHMA in Utah under Alternative 2 will likely be insignificant.**

Page 4-41: "Reverting to the original management that resulted in the threshold being met would likely lead to impacts to vegetation that could cause the threshold to be met again." **This statement may not be true in all cases. Vegetation growth is influenced primarily by the joint effects of temperature and precipitation (see: https://www.nature.com/articles/s41598-021-93328-z). In years with average or**

above average precipitation, reverting to the original management may be totally appropriate due to healthier vegetation conditions during or following better water years. A study of GRSG populations in Wyoming found that "regional climatic variation is responsible for the inter-decadal population fluctuations experienced by sage-grouse in Wyoming (see: https://peerj.com/articles/5417/). Thus, reverting to original management may not always lead to impacts to vegetation that exceed a threshold; it depends upon local climate conditions that foster vegetation health.

Page 4-42: "Therefore, managing previously designated GHMA as PHMA would minimize potential impacts to vegetation to a greater extent than if they remained managed as GHMA. Expanding PHMA in some states to include areas of adjacent non-habitat, unoccupied historic habitat, or areas with potential to become habitat as PHMA would also increase protections for and minimize impacts to vegetation." **This statement may not be true, given that grazing would not be permitted. Grazing reduces fuel loads and the risk of wildfire, which is a major reason for the loss of GRSG habitat. If Alternative 3 does not allow for active vegetation management, the Alternative may produce unintended consequences not only relating to wildland fire severity, but also to the encroachment of undesirable vegetation.**

Page 4-43: "Closing PHMA in all states to fluid mineral leasing, salable minerals, and non-energy minerals **(subject to valid, existing rights)** would reduce the potential for impacts to vegetation, such as direct vegetation loss, increased fragmentation, and increased weed spread as described under the Nature and Types of Effects."

Page 4-43: "However, the inability to site ROWs in PHMA could lead to longer ROW routes in order to bypass closed areas which would in turn increase surface disturbance overall and other impacts of ROW siting on vegetation outside of PHMA." **The ROW restrictions in Alternative 3, and to a lesser extent, other alternatives, run counter to the Biden Administration's climate goals to *"reduce greenhouse gas emissions 50-52 percent below 2005 levels in 2030, achieve a carbon pollution-free electricity sector by 2035, and achieve net-zero emissions by no later than 2050"* (see Executive Order #14082). Further, Alternative 3, and to a lesser extent, other alternatives, would hamper the nation's ability to site new transmission and distribution lines necessary to connect anticipated solar and wind power generation facilities to the grid and deliver power to customers. Construction of major transmission lines is very expensive. The TransWest Express power line will traverse 732 miles at a total cost of about $3 billion, or about $4.1 million per mile (see https://www.power-technology.com/projects/transwest-express-transmission-project-usa/). Designating all habitat as PHMA and then forcing power lines to avoid PHMA under Alternative 3 will add millions to the cost of new facilities and drive up electric bills for all Americans who have already suffered financially due to Biden Administration policies, which caused inflation to spike to the highest level in over 40 years. Despite recent moderation, consumer prices are up nearly 18% overall during Biden's time. Gasoline is up 29% (see: factcheck.org/2024/01/bidens-numbers-january-2024-update/).**

Page 4-43: "Not utilizing livestock as a tool available for implementing fuels management treatments or invasive species control in sagebrush habitat areas could make PHMA more susceptible to a large-scale wildfire that would decrease native vegetation and increase the potential for noxious weed and invasive species growth in sagebrush vegetation communities within PHMA. Increased risk of wildfire would decrease protection of sagebrush habitats and may require repeated post-fire rehabilitation treatments to recover habitat function and continuity." **Not allowing livestock grazing in PHMA under Alternative 3 would be a huge mistake as (Herren et al. 2021), found that *"wildfire was the cause of the majority of habitat loss between 2012 and 2018."***

Page 4-44: "Under Alternative 3, no wild horse and burro herd management areas would be designated in PHMA and wild horses and burros would be removed in areas where there are currently herd management areas." **Such gathers may not be possible if the Herd Management Areas are within AMLs thanks to a March 30, 2024 U.S. District Court decision (see: https://friendsofanimals.org/wild-horses-in-nevada-utah-get-reprieve-thanks-to-foas-court-victory/). This may impact several of the BLM Alternatives.**

Page 4-44: "The updated language would allow for flexible management that could identify problems sooner and assist in reducing potential vegetation disturbances and **the spread of** invasive plants and noxious weeds ~~spread~~."

Page 4-45: "No net habitat loss and disturbance limits would not apply to the removal of invasive or encroaching vegetation, where such removal creates **or improves** habitat." **Any alternative selected by the BLM should include this provision allowing vegetation treatments that create or improve habitat for GRSG and not being counted toward disturbance limits.**

Page 4-46, Wild Horse and Burro Management: **There is a mismatch between the language outlined here and the language in the tables above for Alternative 5. This section discusses management to the "low end" of AML, whereas the language in the table discusses only management to establish AML. Request clarification regarding which will apply.**

Page 4-47: "Under Alternative 3, all PHMA would be unavailable for livestock grazing. This could limit the BLM's ability to achieve resource objectives as described under the Nature and Type of Effects, and could ~~alter~~ **increase** the risk of large-scale wildfires."

Pages 4-48 and 4-49: "This flexibility may be advantageous where federal**, state, tribal** and private landownership areas are mixed and exclusion areas may result in more widespread development on **state, tribal and** private lands if BLM-administered **lands** could not be used.

Page 4-50: "Additional range improvements for water availability ~~would place~~ **include** troughs that can create drowning risks for wildlife if not properly constructed with adequate escape ramps and maintained."

Page 4-55: "This action could ~~lead~~ **impact** wildlife such **as** migratory birds, small mammals, and reptiles by increasing predator perches from unburied lines that may lead to increased take of migratory birds and their nests by raptors and corvids; however, impacts of predator perches could be minimized on a site-scale by use of perch deterrents on poles."

Page 4-56: "Generally, these areas include habitats that are dominated by grasses and shrubs **rather** than by trees."

Page 4-57: "However, restrictions to development on BLM lands might push development onto **state, tribal or** private land, which could result in indirect **impacts** as described under Nature and Types of Effects."

Page 4-58: "Under Alternative 3, wild horses and burros would be removed from herd management areas within PHMA." **Such gathers may not be possible if the Herd Management Area is within AMLs thanks to a March 30, 2024 U.S. District Court decision (see: https://friendsofanimals.org/wild-horses-in-nevada-utah-get-reprieve-thanks-to-foas-court-victory/). This may impact several of the BLM's alternatives.**

Page 4-58: "Under Alternative 3, all PHMA would be managed as ACECs. **It should be noted here that several western state and county resource management plans contain policies and criteria associated with the designation of ACECs and that proposed ACECs must be evaluated, pursuant to FLPMA, for consistency with these state and local plans.**

Page 4-61, Wild Horse and Burro Management: **There is a mismatch between the language outlined here and the language in the tables above for Alternative 5. This section discusses management to the "low end" of AML, whereas the language in the table discusses only management to established AML. Request clarification regarding which will apply.**

Page 4-64: "All wild horses and burros would be removed from existing PHMA, which would result in short-term disturbance of herds by human presence and round up activities. Round ups would occur based on congressional funding for these actions, therefore the exact timeline is unknown. However, in the long-term, all wild horses and burros would be removed from PHMA and moved to holding facilities per wild horse and burro herd-removal guidelines under Public Law 92-195 as amended and 43 CFR Part 4700." **Such gathers may not be possible if the Herd Management Area is within AMLs thanks to a March 30, 2024 U.S. District Court decision (see: https://friendsofanimals.org/wild-horses-in-nevada-utah-get-reprieve-thanks-to-foas-court-victory/). This may impact several of the BLM's alternatives.**

Page 4-73: "Increasing the acres subject to NSO **in** Alternative 4 compared with Alternative 1 would reduce the HMA acres affected and potential for impacts as described in Nature and Types of Effects."

Page 4-74: "Because the presence of GRSG HMAs would not affect whether an area is available for livestock grazing (except in Oregon key RNAs) and existing areas designated would be maintained as available or unavailable for livestock grazing, impacts from livestock grazing management would be ~~the~~ similar to those described for Alternative 1.

Page 4-74: "For example, in HMAs, livestock grazing would be managed ~~to~~ toward meeting land health standards, the GRSG habitat objectives, avoid direct adverse impacts to key GRSG habitats from range improvements, and employ grazing management strategies that avoid concentrating livestock on key GRSG habitats during key seasons."

Page 4-76: "Collocating of new infrastructure within existing ROWs could reduce land use conflicts, additional land disturbances, and demarcate the preferred locations for utilities, which would simplify the processing on BLM-administered lands." **Collocation within existing ROWs is often not possible as major transmission lines require a 250-foot wide right of way. Such ROW widths are needed to ensure safety and continued service on parallel lines if a tower were to fail.**

Page 4-78: "Collectively, these GRSG conservation management actions would increase mitigation requirements for land use authorizations. This would result in more complex project designs, potentially excluding infrastructure placement in the most cost-effective or environmentally-suitable locations and potentially resulting in overall greater development costs. A corresponding effect could be a reduction in the number of authorization applications for activities and longer, more complicated review periods for those that are proposed in GRSG habitat." **These ROW restrictions run counter to the Biden Administration's climate goals to *"reduce greenhouse gas emissions 50-52 percent below 2005 levels in 2030, achieve a carbon pollution-free electricity sector by 2035, and achieve net-zero emissions by no later than 2050"* (see Executive Order #14082). Further, these restrictions would hamper the nation's ability to site new transmission and distribution lines necessary to connect anticipated solar and wind power generation facilities to the grid and deliver power to customers. Construction of major transmission lines is very expensive. The TransWest Express power line will**

traverse 732 miles at a total cost of about $3 billion, or about $4.1 million per mile (see https://www.power-technology.com/projects/transwest-express-transmission-project-usa/). These restrictions will add millions to the cost of new facilities and drive up electric bills for all Americans who have already suffered financially due to Biden Administration policies, which caused inflation to spike to the highest level in over 40 years. Despite recent moderation, consumer prices are up nearly 18% overall during Biden's time. Gasoline is up 29% (see: factcheck.org/2024/01/bidens-numbers-january-2024-update/).

Page 4-79: "Managing habitat as exclusion areas for utility-scale wind and solar energy ROW development would eliminate the BLM's ability to accommodate any new wind or solar energy demand on that portion of GRSG habitat. This would shift the burden to adjacent non-federal lands that do not have the siting requirements or mitigation standards and could potentially increase costs. ROW exclusions would also inhibit development on adjacent private and state land where transmission infrastructure would be needed across BLM-administered lands." **The ROW restrictions in Alternative 3, and to a lesser extent, other alternatives, run counter to the Biden Administration's climate goals to *"reduce greenhouse gas emissions 50-52 percent below 2005 levels in 2030, achieve a carbon pollution-free electricity sector by 2035, and achieve net-zero emissions by no later than 2050"* (see Executive Order #14082). Further, Alternative 3, and to a lesser extent, other alternatives, would hamper the nation's ability to site new transmission and distribution lines necessary to connect anticipated solar and wind power generation facilities to the grid and deliver power to customers. Construction of major transmission lines is very expensive. The TransWest Express power line will traverse 732 miles at a total cost of about $3 billion, or about $4.1 million per mile (see https://www.power-technology.com/projects/transwest-express-transmission-project-usa/). Designating all habitat as PHMA and then forcing power lines to avoid PHMA under Alternative 3 will add millions to the cost of new facilities and drive up electric bills for all Americans who have already suffered financially due to Biden Administration policies, which caused inflation to spike to the highest level in over 40 years. Despite recent moderation, consumer prices are up nearly 18% overall during Biden's time. Gasoline is up 29% (see: factcheck.org/2024/01/bidens-numbers-january-2024-update/).**

Page 4-80: "Areas within 0.5 miles **of the lek buffer** would be managed as ROW avoidance areas to address the indirect impacts to the adjacent PHMA and IHMA."

Page 4-80: "Closing areas within GRSG habitat to fluid mineral leasing would directly impact the fluid minerals program by prohibiting the development of those resources on federal mineral estate." **The negative economic impacts of this action will be substantial for federal, state, tribal and local governments. Please refer the reader to the applicable section of the socioeconomic analysis for further information.**

Page 4-84: "Overall, a determination of the extent to which increased costs and decreased efficiency would affect fluid minerals development is a function of project- and site-specific considerations and of market forces at the time. However, it is possible that some well pads, access roads, pipelines, and other facilities would be affected to the extent that marginal projects are economically nonviable, reducing the number of future oil and gas wells to an extent that may be considered significant at the local, state, or regional levels." "A total of approximately 77 percent of unleased federal oil and gas estate with medium oil and gas potential in the decision area would be inaccessible, either due to closure or NSO, under Alternative 1." " Application of the 3 percent disturbance cap in PHMA and IHMA could impact both new and existing fluid mineral activities by preventing or restricting new surface development." **Creating these obstacles to fluid mineral development is not wise during this time of high energy prices. The County is concerned that the BLM, through these proposed regulations and others, is**

picking winners and losers among companies and technologies (favoring wind and solar energy over fluid minerals) at a time when fluid minerals are very important for our economy and to maintain our lifestyles.

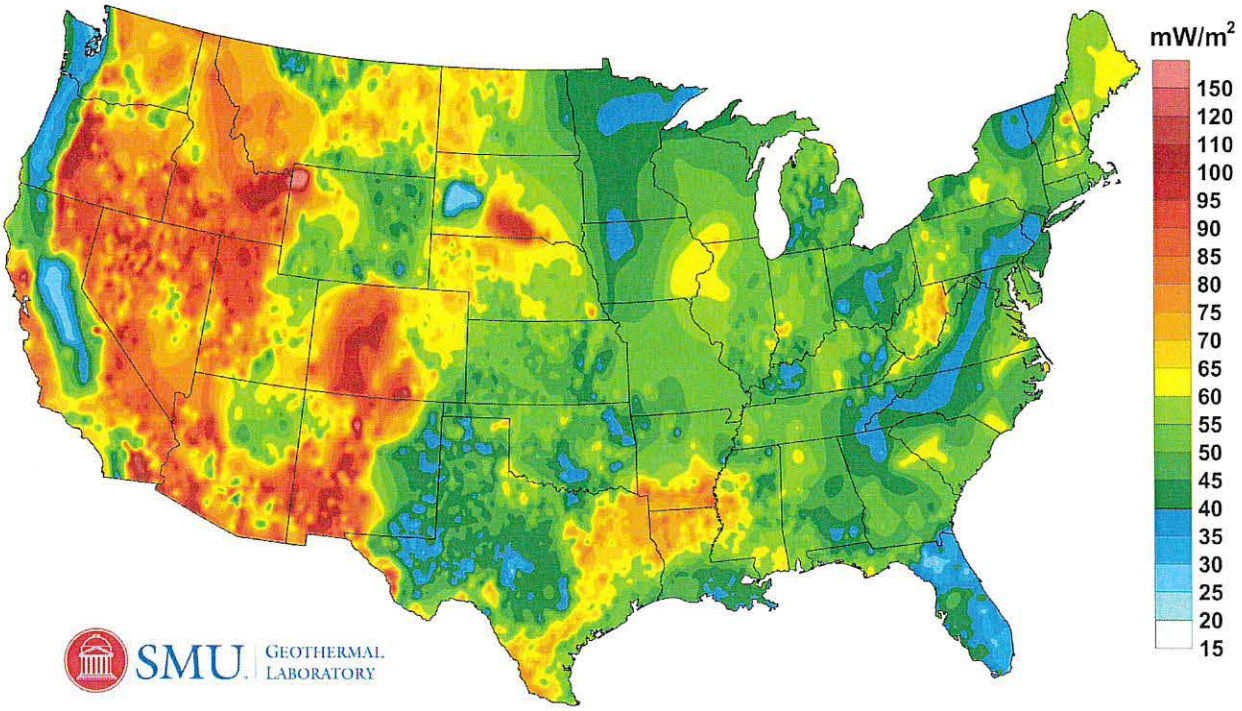
The County is concerned that the BLM may cause unintended harms by making it more difficult to lease federal lands for fluid mineral development. Shifting fluid mineral development off remote federal lands will put more development pressure on state, tribal and private lands, where the impacts on rural citizens and environmental justice communities will be greater.

The BLM should keep in mind that U.S. fluid mineral production is accomplished in a much cleaner manner than in other countries with lax environmental standards. Producing our own fluid minerals here is not only better for the world-wide environment, it reduces the costs and impacts of shipping fluid minerals here from abroad.

Federal onshore oil and gas production accounts for approximately 10 percent of domestically produced oil and 8 percent of domestically produced natural gas (Federal Register / Vol. 88, No. 140 / Monday, July 24, 2023).

Because of declining market participation, oil prices are moving around $25 per barrel for every 1 million barrel-per-day variation in supply or demand, according to JP Morgan (see: https://www.reuters.com/markets/commodities/oil-prices-turn-more-volatile-investors-exit-market-2022-08-17/). Onshore oil production amounts to 10,951,000 barrels per day (see: https://www.eia.gov/petroleum/production/#oil-tab). If 10% of that production is on federal lands; that's close to 1.1 million barrels per day. The tighter restrictions on leasing proposed could cause investors and producers to avoid or scale back operations on federal lands, which will cause oil prices to increase. Under the Biden Administration, gas prices have risen 51.2%, consumer confidence is 6.4 points lower and consumer prices are up nearly 15.7% (see: https://www.factcheck.org/2023/07/bidens-numbers-july-2023-update/). Proposing rules such as this will likely cause these numbers to increase, to the detriment of the American people.

Pages 4-86 and 4-87: " Under Alternative 1, 11,296,800 acres, or 44 percent of planning areas, would remain closed to geothermal leasing. This includes 2,832,200 acres with moderate to high geothermal potential (32 percent of the moderate to high geothermal potential acres in the decision area)." "The uncertainty wrought by this limitation could decrease the value of any future lease, disincentivize geothermal energy development in the western United States, and could affect the ultimate scope of rights authorized under any lease offered in the future." **The geothermal industry has the potential to become a powerhouse of U.S. economic growth, with particular benefits for rural communities. In addition, the geothermal and oil and gas industries share many similarities, presenting an opportunity to transition a skilled workforce as well as best practices from fossil fuels to clean energy, and help communities historically impacted by fossil fuel production and use transition to clean energy (see: https://www.energy.gov/eere/geothermal/enhanced-geothermal-shot). The limitations imposed to protect GRSG habitat would have the unintended consequence of limiting development of the promising renewable geothermal energy resource. The following map shows that most of the geothermal energy potential in the nation is in the West and much of it overlaps GRSG habitat.**



Source: https://michiganmaplibrary.blogspot.com/2012/02/geothermal-energy-potential-in-us.html

Pages 4-91 and 4-93: Impacts in Utah: "Application of the 3 percent disturbance cap in PHMA could impact both new and existing fluid mineral activities by preventing or restricting new surface development." "Application of lek buffers in GHMA could impact new and existing fluid mineral activities by restricting new surface development." "In PHMA, the density of energy and mining facilities would be limited to one energy/mining facility per 640 acres." " All of these combined would restrict oil and gas development. In the Carbon and Uintah Population Areas, where oil and gas potential is relatively high and some areas are at or exceeding the disturbance cap, the cumulative effect of all of the restrictions would likely reduce opportunities for oil and gas development on public lands." "Approximately 30,000 acres in GHMA would also be closed to fluid mineral leasing. GHMA near leks would be managed as NSO, the NSO buffer from the leks would vary by office. In GHMA, development would be subject to the disturbance cap, mitigation, lek buffers, and RDFs." **All of these restrictions under Alternative 1 and other alternatives would impose extreme limitations on fluid mineral activities, contrary to Utah law (see, for example, Title 63J, Chapter 8, Sections 105.2, 105.5, and 105.7) and Utah state and county resource management plans. FLPMA requires the BLM to seek consistency with state and local land use plans and state laws.**

Page 4-92: "Under Alternative 1, PHMA in Utah would be closed to commercial mineral material disposal. PHMA on lands in the Utah portion of the planning area would be closed to commercial mineral material disposal. This includes 1,196,000 acres with mineral material occurrence (92 percent of federal mineral estate with mineral material occurrence in the decision area)." **Closing 92% of the federal mineral estate with mineral materials is excessive. Provisions should be made to allow for site specific flexibility in cases where local biologists find that removal of mineral materials would not be detrimental to GRSG populations.**

Page 4-93: "Any exception must have ~~to~~ **the** concurrence of the state wildlife agency and the USFWS."

Page 4-95: "In areas with development potential for oil and gas resources, closing PHMA to leasing would result in a reduction in oil and gas development and production as described under Nature and Type of Effects." **These restrictions under Alternative 3 are totally unacceptable to the County as indicated in comments associated with Pages 4-84, 4-85, 4-91 and 4-93 above.**

Page 4-95: "ACECs will be considered under this alternative, though because of the restrictive nature of the PHMA management under this alternative, there would be no different allocations between the PHMA and the potential ACEC boundaries." **If this is the case, there is no valid reason to consider ACECs under this alternative.**

Page 4-95: "State specific changes for Colorado**,** and Oregon **and Wyoming** are discussed below."

Page 4-96: "Impacts on fluid minerals under Alternative 5 would **be** less than those described for Alternative 4 because fewer acres would be subject to an NSO stipulation…"

Page 4-96: "Closing an area to non-energy solid mineral leasing would directly impact non-energy solid leasable minerals to the extent such minerals are known to exist by removing the possibility **of** any such mineral resources in that area from being accessed and extracted."

Page 4-97: "Under Alternative 1 most of the PHMA and IHMA in the planning area is closed to new leasing of nonenergy leasable minerals but states can consider expansion of existing leases." **The BLM leases certain solid minerals such as phosphate, sodium, potassium, sulphur, and gilsonite on public and other Federal lands. In addition, some hardrock minerals, depending on their location, may be considered leasable. Most of the minerals leased under this program are used to make fertilizer or feed stock (mineral supplement for livestock) or have other industrial processes (see: https://www.blm.gov/programs/energy-and-minerals/mining-and-minerals/nonenergy-leasable-materials.**

Phosphorus is an essential element for plant and animal nutrition. Most phosphorus is consumed as a principal component of nitrogen-phosphorus-potassium fertilizers used on food crops throughout the world. Phosphate rock minerals are the only significant global resources of phosphorus. The United States is the world's leading producer and consumer of phosphate rock, which is used to manufacture phosphate fertilizers and industrial products (see: https://www.usgs.gov/centers/national-minerals-information-center/phosphate-rock-statistics-and-information#:~:text=Phosphate%20rock%20minerals%20are%20the%20only%20significant%20global,used%20to%20manufacture%20phosphate%20fertilizers%20and%20industrial%20products.

In 1980, the United States produced about 54 million tons of phosphate rock, or about 40 percent of the world's production, of which a substantial amount was exported, both as phosphate rock and as chemical fertilizer. During the last decade, predictions have been made that easily ruinable, low-cost reserves of phosphate rock would be exhausted, and that by the end of this century, instead of being a major exporter of phosphate rock, the United States might become a net importer (see: https://www.usgs.gov/publications/phosphate-rock-resources-united-states).

As feared, U.S. phosphate production has decreased from 54 million tons in 1980 to 45.5 million tons in 1995 to 23 million in 2020, while China's skyrocketed from 27 million tons to 110 million (see: https://www.blm.gov/press-release/The-Bureau-of-Land-Management-Final-Rule-Streamlines-Royalty-Rate-Reduction-Process-for-Non-Energy-Solid-Minerals-Mined-on-Public-Lands).

Trona is a sodium mineral used to manufacture a wide range of products, from glass and detergents to paper and textiles (see: https://www.blm.gov/press-release/blm-kemmerer-seeks-input-proposal-lease-sodium-sweetwater-county). Trona is mined and processed into soda ash, an economically important commodity worldwide. Soda ash is an essential ingredient in the manufacturing industry, from industrial chemicals to home products such as baking soda. The number one use for soda ash is for making glass; as soda ash lowers the melting point of silica. Besides other chemicals, soda ash is used in making soaps and detergents, water purifiers, flue gas desulfurization equipment, paper, and numerous other products (see: https://www.wsgs.wyo.gov/products/wsgs-2014-trona-summary.pdf#:~:text=Wyoming%20produces%20natural%20soda%20ash%20from%20four%20trona,merged%20and%20began%20producing%20trona%20in%20Sweetwater%20County.

Gilsonite is a naturally occurring, solid, black, lightweight organic material that originates from the solidification of petroleum. Gilsonite has hundreds of industrial applications and is used by companies all over the world. Gilsonite is added to oil- and gas-well drilling mud to stabilize the borehole and decrease friction; it is also used in oil well cements. Gilsonite and gilsonite-derived resin wet and disperse carbon black pigment in printer's ink and bind pigment to the newsprint so it does not rub off. Addition of powdered gilsonite to asphalt paving mixes produces a more durable road surface. Paint-like mixtures of gilsonite, solvents, and other additives are used to coat and seal asphalt pavements like driveways and parking lots. Gilsonite is also used as an adhesive and waterproofing agent in the manufacture of roofing felt. Addition of gilsonite makes some paint and wood stain formulations more durable. Gilsonite is added to iron foundry moldings and mixtures to produce a smoother finish on the cast item and make it easier to unmold. Small amounts of gilsonite are used in fireworks and to manufacture high-purity carbon electrodes (see: https://geology.utah.gov/map-pub/survey-notes/gilsonite-an-unusual-utah-resource/.

The BLM should be very cautious to not impose GRSG habitat protections in a manner that will further cut domestic production of phosphorous, trona, gilsonite and other non-energy leasable minerals, which would increase our nation's reliance on foreign sources of these minerals.

Page 4-99: Impacts in Utah: "Based on the disturbance cap and these other restrictions, it is unlikely that the existing phosphate and gilsonite mines could expand or that new phosphate or gilsonite mines would be approved on federal mineral estate in the decision area." **As stated in the comments associated with Page 4-97, the BLM should not enact management restrictions in Utah that make it difficult to continue providing needed non-energy leasable minerals, such as phosphate and gilsonite, to the marketplace.**

Page 4-100: "Restricting access to phosphate could hamper the production of fertilizer products needed to produce food." **The BLM should not enact measures that would jeopardize the nation's fertilizer and food supply.**

Page 4-101: "Sodium. Under Alternative 1, none of the federal mineral estate with sodium occurrence in the decision area would be open to non-energy leasable mineral leasing. This would reduce the availability and potentially the amount of development of sodium in Utah." **More information is needed here to allow the County to better gauge the potential impact of BLM GRSG management on sodium production in the state.**

Page 4-102: "Under Alternative 3 all federal mineral estate in the federal mineral estate decision area (4,008,600 acres) would be closed to new prospecting and exploration and leasing. This allocation decision would impact gilsonite, phosphate, and sodium. New leases to expand existing mines for these

minerals also would not be permitted." **These restrictions under Alternative 3 are totally unacceptable to the County as indicated in comments associated with Pages 4-97, 4-99, 4-100 and 4-101 above.**

Page 4-105: "Measures to protect GRSG and its habitat (disturbance cap, lek buffers, net conservation gain requirements, and restrictions on noise and season) could affect the feasibility of new underground coal leases or the expansion of existing underground operations (e.g., increased costs and development delays due to limits on the timing of activities) but would not preclude them." **The BLM should not enact management restrictions in Utah that make it difficult to continue providing needed coal to the marketplace. In 2022, global coal demand reached its highest level ever, according to the International Energy Agency (IEA). Today, coal remains the world's largest energy source for electricity generation, steelmaking and cement production – maintaining a central role in the world economy. Global coal demand reached a record high in 2022 amid the global energy crisis, rising by 4% year-on-year to 8.42 billion tonnes (Bt). The growth engine for coal demand, which increased in both power and non-power sectors, was once again Asia. In China, demand rose by 4.6%, or 200 million tonnes (Mt). In India, it increased by 9%, or 97 Mt; and in Indonesia, where nickel smelters became a significant source of demand growth, it shot up by 32%, or 49 Mt. Overall, the IEA expects global coal demand to grow slightly (by 1.4%) both in power and non-power sectors in 2023 to around 8.54 Bt, a new record. The growth in coal demand in China (around 5%) and India (over 8%), as well as in Indonesia, Viet Nam and the Philippines – which together represent more than 70% of global coal demand – will more than offset decreasing coal demands in the United States and Europe, on a global level. (see: https://iea.blob.core.windows.net/assets/a72a7ffa-c5f2-4ed8-a2bf-eb035931d95c/Coal_2023.pdf. Based on this data, there will be a continuing demand for Utah coal for domestic use and export.**

While Utah coal has historically been used mostly for power generation, exciting new uses are on the horizon. According to the Utah Office of Energy Development, a multimillion-dollar research program underway at the University of Utah is working to develop cost-effective, carbon-friendly methods of turning coal-derived pitch into carbon fiber composite material. Combining Utah's vast coal resources with advanced research and state-of-the-art manufacturing is expected to create groundbreaking products from coal — including carbon fiber for vehicles and airplanes, carbon-based building materials, medical technology devices and more.

In addition to the work being conducted in Utah, the U.S. Department of Energy's Manufacturing High-value Carbon Products from Domestic Coal Initiative supports development of innovative ideas for creating commercially-viable technologies where domestic coal is an essential material.

Along with the many products that already use some coal-based components — including aspirin, soap, dyes, solvents, plastics and synthetic fibers — high-tech products that make use of coals properties while reducing costs and energy consumption could make a significant difference in Utah (see: https://energy.utah.gov/homepage/technology/coal-to-carbon/).

Nearly all Utah coal production in 2022, 88% (9.5 Mt), was produced from federal land, whereas only 390,000 t (3.6%) was from state-owned land (see: https://ugspub.nr.utah.gov/publications/circular/c-136.pdf). Due to the projected future demand for Utah coal, it is important that the BLM select an alternative that provides maximum flexibility and minimal impacts to the coal production industry in the state.

Page 4-107: "Designating areas as ACECs in an RMP could impact production of locatable mineral resources because such designations would impose additional administrative and financial requirements **on** certain exploration operators."

Page 4-110: "If demand for mineral materials could not be met by pits operated on federal lands, pits could be moved onto private or state lands where resources exist, this would generally increase costs associated with road construction and maintenance and other uses conducted by state, county and local governments which are able to develop federal mineral materials free of charge under free use permits." "In that case, the impacts of mining (such as noise, dust and truck traffic) could be shifted to areas where such impacts would be a nuisance to farmers and residential areas." **For these reasons, it is important to state and local governments that the BLM select an alternative (other than Alternative 3) that provides maximum flexibility and minimal impacts to mineral materials mining activities in the state and not shift the impacts of mineral materials mining from federal lands onto environmental justice communities.**

Pages 410-411: "In areas where closed but with an exception for expansion of existing pits impacts on both private users and state, county and local governments would likely be reduced in the short term as these users could continue using existing sources, but if resources at and around existing locations are exhausted as is likely at some locations in the longer term." **This sentence fails to state the consequences when resources do not exist around existing locations and expansion is not feasible.**

Page 411: "However, in many cases access ~~needed is~~ to a mineral material development is included as part of the permitted operational area and as a result would not need a separate ROW permit."

Page 411: "Alternatives requiring restoration of salable mineral pits in HMA that are no longer in use, to meet GRSG habitat conservation objectives could depending on application, reduce the availability of salable minerals in some cases, for example if a pit with a history of only being used once every few years were considered no longer in use and closed for restoration it would no long**er** be available."

Pages 4-116, 4-117, 4-118: "In Utah, the BLM anticipates differing effects for ~~this~~ oil shale and tar sands."

Page 4-118: "Allowing exceptions to avoidance and minimization measures in PHMA if the area is non-habitat and indirect impacts would not occur could allow consideration of leasing/permitting and development for mineral operations." **Alternative 2 is the only alternative acceptable to the County as it provides flexibility for the production of oil shale and tar sands, consistent with the state's own GRSG management plan. The largest known deposits of oil shale are in a 16,000-square mile area of the Green River Formation in Colorado, Utah, and Wyoming with total in-place oil shale resources estimated at 4.3 trillion barrels (see: https://www.blm.gov/programs/energy-and-development/mining-and-minerals/oil-shale-and-tar-sands). Because these vast oil reserves are important for meeting the nation's future energy demands, the BLM must select an alternative (other than Alternative 3) that provides maximum flexibility and minimal impacts to oil shale and tar sands research, demonstration and development activities.**

Page 4-119: "ACEC designations highlight areas where special management attention is needed to protect important historical, cultural, and scenic values, or fish and wildlife or other natural resources." **Although Appendix 5 contains more detail, this introduction should elaborate that there are certain criteria that must be met before an ACEC can be designated. To be designated as an ACEC, the area must meet the criteria of relevance and importance (as defined in BLM Manual 1613). Areas meeting the relevance criterion possess significant historic, cultural, or scenic values; fish or wildlife**

resources, including threatened and endangered species; or natural hazards. To meet the importance criterion, the resource must have substantial significance and value. This generally requires qualities of more than local significance and special worth, consequence, meaning, distinctiveness, or cause for concern (see: https://eplanning.blm.gov/public_projects/lup/63197/78289/88538/Appendix22_ACEC_Designation.pdf.)

The analysis should also note that the State of Utah Resource Management Plan and various Utah county resource management plans (see: https://rmp.utah.gov/) contain policies associated with the designation of ACECs. The Utah State Code [see: Section 63L-11-303 (6)] contains direction for state support or opposition to proposed ACECs. FLPMA requires the BLM to be consistent with these state and local government policies and regulations to the greatest degree possible.

Page 4-119: "As another group of large grazing ungulates, wild horses and burros, have the capability of overutilizing vegetation, causing degradation of soil and vegetative resources as described for livestock grazing. Closing ACECs to livestock grazing could help protect relevant and important values by eliminating soil and vegetation disturbance associated with livestock grazing; however, this could also increase the risk for wildfire due to increased fuel loads." **Big game animal herds can also overutilize vegetation and cause the described degradation. Rather than closing livestock grazing in ACECs (since livestock grazing is managed to meet or make progress toward land health standards), the BLM should instead focus on bringing wild horse and burro populations down to appropriate management levels in wild horse and burro herd management areas.**

Page 4-119: "Identifying ACECs as ROW exclusion or avoidance areas would protect relevant and important values by reducing (for avoidance areas) or eliminating (for exclusion areas) impacts from development requiring a ROW permit. Such developments include utilities, access roads, and renewable energy projects." **During the planning of recent transmission line projects in Utah and elsewhere in the West (such as Energy Gateway South and TransWest Express) and during the current consideration of amending the Section 368 corridors, the proliferation of ACECs, conservation easements and other special designations creates pinch points and makes it very difficult to find acceptable routes. Adopting an alternative that calls for ACECs to protect GRSG habitat will compound this problem and hamper the nation's ability to expand the power grid to accommodate renewable energy generation. This problem will worsen as the BLM continues to permit wind and solar energy development projects on federal lands.**

Page 4-123: "This action would allow projects to exceed the disturbance cap; however, in so doing, it could result in voluntary habitat improvement projects that could change vegetation conditions in the project area to shift away from a vegetation community more dominated by trees to one more dominated by grasses and shrubs, which could **positively** impact relevant and important values as described in the Nature and Type of Effects."

Page 4-124: "Additionally, under Alternative 3 in GRSG ACECs, management actions will be implemented to address the presence of wild horses and burros, aiming to reduce similar impacts on the landscape." **Such management actions may not be possible if the Herd Management Area is within AMLs thanks to a March 30, 2024 U.S. District Court decision (see: https://friendsofanimals.org/wild-horses-in-nevada-utah-get-reprieve-thanks-to-foas-court-victory/).**

Page 4-124: "New infrastructure development would be substantially limited as compared with Alternatives 1 and 2. All PHMA would be excluded from new ROW authorizations. New linear ROWs

would be allowed only in designated ROW corridors." **Designating all habitat as PHMA and then forcing power lines to avoid PHMA under Alternative 3 will add millions to the cost of new facilities and drive up electric bills for all Americans who have already suffered financially due to Biden Administration policies, which caused inflation to spike to the highest level in over 40 years. Despite recent moderation, consumer prices are up nearly 18% overall during Biden's time. Gasoline is up 29% (see: factcheck.org/2024/01/bidens-numbers-january-2024-update/). Further, these restrictions would hamper the nation's ability to site new transmission and distribution lines necessary to connect anticipated solar and wind power generation facilities to the grid and deliver power to customers. Construction of major transmission lines is very expensive. The TransWest Express power line will traverse 732 miles at a total cost of about $3 billion, or about $4.1 million per mile (see https://www.power-technology.com/projects/transwest-express-transmission-project-usa/).**

Page 4-129: " These secondary impacts on product prices and availability can be just as important for local economies as the direct impacts, especially in areas where trona extraction plays a large role in the ~~economie~~ **economy**, such as in Wyoming,…"

Page 4-130: "Economic and social impacts from changes in nonenergy leasable minerals would have larger impacts in regions that are reliant ~~of~~ **on** leasable mineral sectors compared with the reliance of other sectors.

Page 4-136: "As noted in the Wild Horses and Burros section, the timeline for implementation of any management changes would be impacted by **litigation,** congressional funding and the associated wild horse management including gathers, storage capacity, and adoption rate." **Litigation must be recognized as an impact; especially in light of a March 30, 2024 U.S. District Court decision that will limit wild horse and burro gathers (see: https://friendsofanimals.org/wild-horses-in-nevada-utah-get-reprieve-thanks-to-foas-court-victory/).**

Page 4-138: "Over the long term, if restrictions continue, there could be impacts on availability of meat and household products." **The analysis mentions increased costs of meat and household products, but does not adequately address the likely increased costs of transportation fuels, home heating fuels and electricity if restrictive GRSG habitat protection measures are enacted. These are also "staples" that low income people must purchase regardless of price; disproportionately and severely impacting their budgets.**

Page 4-139: "On annual average, oil and gas production revenue and well development expenditures in the analysis areas is expected to result in a range of about 73,000 to 94,000 total jobs (from 28,000 to 34,000 direct jobs in the drilling oil and gas wells sector and the oil and gas extraction sector), $5.8 billion to $7.6 billion in total labor income (from $3.0 billion to $3.8 billion in direct labor income), and about $27.6 billion to $34.2 billion in economic output (from $19.0 billion to $22.8 billion in direct economic output) combined across 8 states." **This data is artificially low and needs to be revised to realistic numbers. In Utah alone, approximately 77, 970 jobs and $5.8 billion in labor income can be attributed to the petroleum industry. According to a recent study prepared for the Utah Petroleum Association by PricewaterhouseCoopers LLP (https://utahpetroleum.org/wp-content/uploads/2023/04/UPA-Economic-and-Fiscal-Impact-Final-Report_04112023.pdf):**

"At the state level, the report finds that each direct job in the petroleum industry supports approximately two additional jobs elsewhere in Utah's economy, resulting in an employment multiplier of three. Combining the direct, indirect, and induced impacts, the industry's total impact on employment is projected to grow by 14,570 jobs between 2021 and 2024, from 63,400 full-time and

part-time jobs in 2021 to 77,970 in 2024, a 23 percent increase. Counting direct, indirect, and induced impacts, the industry's total impact on state labor income (including proprietors' income) is projected to grow from $4.3 billion in 2021 to $5.8 billion in 2024, a 36 percent increase. The industry's total impact on Utah's value added (i.e., contribution to GDP) is projected to grow from $10.2 billion in 2021 to $13.4 billion in 2024, a 31 percent increase. For the 2020-2024 period, the industry's direct and total labor income impacts are estimated to total $9.0 billion and $24.1 billion, respectively. The impacts quantified in this analysis are limited to Utah and do not include any spillover effects on other states or spillover effects on Utah due to the industry's economic activities outside of Utah. Including such spillover effects would have significantly increased the overall impact of the industry on Utah. For the 2020-2024 period, the industry's direct and total value added impacts are estimated to total $30.9 billion and $55.4 billion, respectively."

Page 4-141: "On annual average, oil and gas production revenue and well development expenditures in the Utah analysis area is expected to result in about 7,000 total jobs (about 2,000 direct jobs in the drilling oil and gas wells sector and the oil and gas extraction sector), $454 million in total labor income (about $162 million in direct labor income), and about $2.5 billion in economic output (about $1.6 billion in direct economic output) throughout the state. Most of the impacts on employment and economic output from oil and gas production revenue and well development expenditures would occur in the analysis area, accounting for about 86.7 percent of the total economic output." **These numbers are artificially low. More accurate data can be found at: https://utahpetroleum.org/wp-content/uploads/2023/04/UPA-Economic-and-Fiscal-Impact-Final-Report_04112023.pdf). This will require an adjustment of the numbers in all alternatives.**

Page 4-142: "Under Alternative 1, the total royalty revenue generated from oil and gas production in Utah would be about $186 million. The Utah severance tax revenue is expected to be about $55.7 million, under Alternative 1, and the conservation fee is expected to generate about $223,000. Additionally, oil and gas production could generate about $55.6 million across the analysis area in county revenues from ad valorem taxes. These revenues that are disbursed to counties would continue to support local public services." **These numbers are artificially low. More accurate data can be found at: https://utahpetroleum.org/wp-content/uploads/2023/04/Oil-and-Gas-Sector-Impact-Utah_Final.pdf. This will require an adjustment of the numbers in all alternatives.**

Page 4-157: "In Utah, removing SFAs would reduce protections for GRSG and habitat, which could have negative impacts on cultural resources and decreased opportunities for American Indian and Alaska Native populations to maintain traditional cultural practices and values, such as observing lekking behavior." **The analysis fails to consider the positive financial impacts to environmental justice populations if SFAs are removed and increased costs of transportation and heating fuels may be avoided.**

Page 4-158: "On annual average, oil and gas production revenue and well development expenditures in the analysis area for 8 states combined is expected to result in about 25,000 to 36,000 fewer total jobs (about 11,000 to 14,000 fewer direct jobs), about $2.0 million to $2.9 billion less in total labor income (about $1.2 million to $1.6 billion less in direct labor income), and about $9.2 billion to $12.8 billion less in economic output (about $6.5 billion to $8.5 billion less in direct economic output) than under Alternative 1." **These numbers are artificially low; but even if they were correct, this decrease in jobs, labor income and economic output is totally unacceptable to the state. More accurate data can be found at: https://utahpetroleum.org/wp-content/uploads/2023/04/UPA-Economic-and-Fiscal-Impact-Final-Report_04112023.pdf).**

Page 4-161: "Under Alternative 3, on annual average, oil and gas production revenue and well development expenditures in the Utah analysis area is expected to result in about 700 fewer total jobs (about 200 fewer direct jobs), $47 million less in total labor income (about $17 million less in direct labor income), and about $252 million less in economic output (about $167 million less in direct economic output) across the state compared to development under Alternative 1. The decrease in projected oil and gas activity, under Alternative 3, would result in reductions in tax revenues, compared with Alternative 1. Under Alternative 3, the total royalty revenue generated from oil and gas production in Utah would be about $125 million, which is about $60.4 million less than under Alternative 1. The Utah severance tax revenue is expected to be about $50.0 million, which is about $5.6 million less than under Alternative 1. The conservation fee is expected to generate about $200,000, which is about $22,000 less than under Alternative 1. Additionally, oil and gas production could generate about $50.0 million across the analysis area in county revenues from ad valorem taxes, which is about $5.6 less than under Alternative 1. The reductions in tax revenues could put strain on local governments' budgets and could impact public services that are offered to the communities." **These numbers are artificially low; but even if they were correct, this decrease in tax revenue is totally unacceptable to the state. More accurate data can be found at: https://utahpetroleum.org/wp-content/uploads/2023/04/Oil-and-Gas-Sector-Impact-Utah_Final.pdf and https://utahpetroleum.org/wp-content/uploads/2023/04/UPA-Economic-and-Fiscal-Impact-Final-Report_04112023.pdf).**

Page 4-162: "Closures in land to new nonenergy mineral leasing could result in increases in prices in the short term of household products, such as products made from trona, as discussed in Nature and Type of Effects, due to an increase in cost that would likely occur to mining operators." **The analysis fails to mention the impacts associated with removing other types of nonenergy mineral materials from the marketplace, such as phosphate, sodium, potassium, sulphur, and gilsonite. Phosphorus is an essential element for plant and animal nutrition. Most phosphorus is consumed as a principal component of nitrogen-phosphorus-potassium fertilizers used on food crops throughout the world. Phosphate rock minerals are the only significant global resources of phosphorus. The United States is the world's leading producer and consumer of phosphate rock, which is used to manufacture phosphate fertilizers and industrial products (see: https://www.usgs.gov/centers/national-minerals-information-center/phosphate-rock-statistics-and-information#:~:text=Phosphate%20rock%20minerals%20are%20the%20only%20significant%20global,used%20to%20manufacture%20phosphate%20fertilizers%20and%20industrial%20products. The restrictions under Alternative 3 could impact phosphate production critical to produce the fertilizer needed to grow our food.**

Gilsonite is a naturally occurring, solid, black, lightweight organic material that originates from the solidification of petroleum. Gilsonite has hundreds of industrial applications and is used by companies all over the world. Gilsonite is added to oil- and gas-well drilling mud to stabilize the borehole and decrease friction; it is also used in oil well cements. Gilsonite and gilsonite-derived resin wet and disperse carbon black pigment in printer's ink and bind pigment to the newsprint so it does not rub off. Addition of powdered gilsonite to asphalt paving mixes produces a more durable road surface. Paint-like mixtures of gilsonite, solvents, and other additives are used to coat and seal asphalt pavements like driveways and parking lots. Gilsonite is also used as an adhesive and waterproofing agent in the manufacture of roofing felt. Addition of gilsonite makes some paint and wood stain formulations more durable. Gilsonite is added to iron foundry moldings and mixtures to produce a smoother finish on the cast item and make it easier to unmold. Small amounts of gilsonite are used in fireworks and to manufacture high-purity carbon electrodes (see: https://geology.utah.gov/map-pub/survey-notes/gilsonite-an-unusual-utah-resource/.

Page 4-163: "These impacts could put a lot of strain on communities, especially those that are dependent on the mining industry. These impacts would likely be larger in areas with high potential for locatable mineral development, assuming that there are existing mining claims on those lands as of the date of withdrawal." **The analysis should look at the bigger picture. Restrictions under Alternative 3 would further impact our ability to mine critical minerals and rare earth elements (REEs) domestically and force our nation to import these minerals and elements from countries that are enemies or have lax environmental standards and forced child labor.**

According to the report *Building Resilient Supply Chains, Revitalizing American Manufacturing, And Fostering Broad-Based Growth 100-Day Reviews under Executive Order 14017*; (found at: https://www.whitehouse.gov/wp-content/uploads/2021/06/100-day-supply-chain-review-report.pdf, "strategic and critical materials and their supply chains are the bedrock of value-added manufacturing and the development, production, delivery, and sustainment of essential services, such as telecommunications and computing, food and agriculture, finance, healthcare, education, transportation, and public safety. In civilian sectors of the U.S. economy, strategic and critical materials and their supply chains are essential to countless manufactured goods, ranging from personal electronics and consumables for fuel, food, and medical supplies, to home construction and sustaining the nation's critical infrastructure. Reliable access to strategic and critical materials strengthens the global economy and helps improve the quality of life. In the defense industrial base, strategic and critical materials ensure that U.S. Armed Forces and those of our allies can conduct and sustain operations, while expanding the output and development of military items to maintain technical dominance over adversaries. Without these materials, history shows that industrialized nations have been compelled to make performance trade-offs and suboptimal capital allocations, which contributed to their defeat on the battlefield." The restrictions in Alternative 3 run counter to the direction in Executive Order 14017 and have serious ramifications for the nation's economic health and national defense.

According to the American Geosciences Institute, "in 1993, 38 percent of world production of REEs was in China, 33 percent was in the United States, 12 percent was in Australia, and five percent each was in Malaysia and India. Several other countries, including Brazil, Canada, South Africa, Sri Lanka, and Thailand, made up the remainder. However, in 2008, China accounted for more than 90 percent of world production of REEs, and by 2011, China accounted for 97 percent of world production. Beginning in 1990 and beyond, supplies of REEs became an issue as the Government of China began to change the amount of the REEs that it allows to be produced and exported. The Chinese Government also began to limit the number of Chinese and Sino-foreign joint-venture companies that could export REEs from China" (see: https://www.americangeosciences.org/critical-issues/faq/what-are-rare-earth-elements-and-why-are-they-important). Continuing down the path of decreased REE production in the U.S., especially under Alternative 3, will contribute to continued Chinese dominance.

Page 4-163: "This would reduce federal, state, territorial, municipality, and non-profit access to mineral materials through free use permits, and would increase costs for these users by relocating mineral materials operations to nonpublic lands or to public lands that are further away from where the minerals are going to be used, which would increase transportation costs." **The analysis should also recognize that shifting mineral material operations off BLM onto state or private land, under Alternative 3, will also bring the noise and dust associated with mineral materials mining closer to residential and agricultural areas and into environmental justice communities rather than in more remote BLM locations.**

Page 4-164: "These BLM-management decisions could result in operators relocating development of wind and solar facilities to other non-federal locations." **If the federal government is going to continue promoting renewable energy development, such as wind and solar, the federal government must provide sufficient sites for such development, rather than relying and state, tribal and private property owners to do so. Alternative 3 would make it even more difficult to establish renewable energy generation and transmission facilities on and across BLM land.**

Page 4-166: "There could be higher potential for closures of ranches or ranches selling lands to create ranchettes, which could have substantial impacts on social and economic conditions in some surrounding communities." **The restrictions under Alternative 3 could indeed cause ranchers to sell out; not only for ranchette type development but for other forms of urban or rural development depending on the availability of water and other key infrastructure. This would reduce open space in communities and alter the culture and lifestyle of these areas.**

Page 4-169: "Under Alternative 3, on annual average, livestock grazing on allotments where PHMA accounted for at least 15 percent of the acreage in the Utah analysis area is expected to result in about 90 fewer total jobs (54 fewer direct jobs), $6.2 million less in total labor income (about $4.6 million less in direct labor income), and about $16.9 million less in economic output (about $10.8 million less in direct economic output) across the analysis area, compared with Alternative 1." **Does this analysis account for data from the 2022 U.S. Census of Agriculture? Looking at Table 3-11 in Appendix 13, it appears that 2012 data was used. The 2022 census data; available at: https://www.nass.usda.gov/Publications/AgCensus/2022/Full_Report/Volume_1,_Chapter_1_State_Level/Utah/st49_1_013_014.pdf shows 2022 cattle and calf sales in Utah of $427,502,000. Even considering the 15 percent figure, it appears that the loss in economic output could be much greater than indicated under Alternative 3.**

Page 4-170: "These impacts would disproportionately affect low-income environmental justice populations, because marginal increases in prices of meat and household products make up a larger percentage of the disposable income from low-income households than the general public and low-income households tend to have fewer alternatives if meat and household products become unavailable." **The analysis mentions increased costs of meat and household products, under Alternative 3 but does not adequately address the likely increased costs of transportation fuels, home heating fuels and electricity if restrictive GRSG habitat protection measures are enacted. These are also "staples" that low income people must purchase regardless of price; disproportionately and severely impacting their budgets.**

Page 4-171: "The loss of economic activity stemming from the closure of GRSG PHMA or making PHMA unavailable for authorized uses, as described in the subsections above in terms of affected jobs and labor income, may result in some additional communities meeting low-income criteria for consideration as potential environmental justice communities in the future." **The BLM should not select a GRSG management alternative that would impoverish American citizens as indicated above.**

Page 4-175: "Under Alternative 4 impacts on nonmarket and social conditions from changes in air quality and GHG emissions from mineral development may increase compared with Alternative 1 due to the wavers, exceptions, and modifications that would be allowed under Alternative 4, which could increase mineral extraction. This would likely result in adverse and disproportionate impacts on environmental justice populations,…" **Alternative 4 would also likely result in avoiding price increases to several staple products, such as transportation fuel, home heating fuel, electricity and other products associated with mineral development, which will be a beneficial impact of management under this alternative which may outweigh any adverse impacts on these populations.**

Page 4-175" "On annual average, this change is expected to result in about 560 fewer total jobs to 150 more total jobs (about 460 to 260 fewer direct jobs), about $34 million less in total labor income to $26 million more in total labor income (about $47 million to $23 million less in direct labor income), and about $54 million to $279 million less in economic output (about $141 million to $266 million less in direct economic output) than under Alternative 1, across these three states." **The wide ranges of economic impacts displayed above leave the reader with little confidence in the accuracy of these estimates.**

Page 4-180: "By improving landscape resiliency to wildfire and soil degradation, protection of the GRSG habitat would result in a general improvement in air quality." **In order for these benefits to occur, the BLM will need to adopt an alternative that allows for active management of the landscape, including prescribed fire, fuel breaks, livestock grazing, and mechanical vegetation treatments. For example, if Alternative 3 were selected, livestock grazing would be removed and resiliency to wildfire would be diminished.**

Page 4-180: "By restricting land uses that may emit air pollutants, protection of GRSG habitat would result in a general improvement in air quality." "Limiting oil and gas leasing and resultant development with the purpose of reducing disturbance to GRSG and their habitat could reduce air pollutant emissions or at a minimum, move sources to a different location." **Limiting oil and gas leasing on BLM land will not slow and may actually shift oil and gas development to state, tribal and private lands, which may be in close proximity to BLM lands (due to the "checkerboard" land patterns in many areas of the West). For example, in Utah, 37.8% of active oil wells are on tribal land, 32.4% are on federal land, 21.1% are on private land, 5% are on state land and 4% are on multiple lease types (see: https://oilgas.utah.gov/wellCounts.php. Since air emissions do not respect jurisdictional boundaries, it is unlikely that reducing disturbance to GRSG and their habitat on BLM lands will significantly reduce air pollutant emissions as stated above.**

Page 4-180: "Actions that limit leasing or development of nonenergy leasable minerals and mineral materials within GRSG key habitat areas could reduce non-oil and gas emissions by limiting exploration, construction, and operations associated with mining. However, restrictions on travel associated with mining could result in creating longer trips by redirecting travel around sensitive areas, and thereby increasing travel-related emissions." **Limiting development of nonenergy leasable minerals on BLM land will not slow and may actually shift such mineral development to state, tribal and private lands, which may be in close proximity to BLM lands (due to the "checkerboard" land patterns in many areas of the West). Since air emissions do not respect jurisdictional boundaries, it is unlikely that reducing such disturbance to GRSG and their habitat on BLM lands will significantly reduce air pollutant emissions as stated above.**

Page 4-180: "All proposed actions associated with restricting or prohibiting surface disturbing activity for GRSG core and connectivity habitat areas, nesting/early brood-rearing habitats, and winter habitats and concentration areas specified could reduce air emissions by limiting travel and activity." **Limiting construction of facilities, roads, and transmission lines, wind and solar plants on BLM land will not slow and may actually shift such facilities, roads, and transmission lines, wind and solar plants to state, tribal and private lands, which may be in close proximity to BLM lands (due to the "checkerboard" land patterns in many areas of the West). Since air emissions do not respect jurisdictional boundaries, it is unlikely that reducing such disturbance to GRSG and their habitat on BLM lands will significantly reduce air pollutant emissions as stated above.**

Page 4-181: "This would continue to reduce potential impacts on air quality associated with emissions and surface-disturbing activities in GHMA and eliminate sources of impacts on air quality in PHMA, as

described in the Nature and Types of Effects." **Limiting rights of way on BLM land will not slow and may actually shift such rights of way to state, tribal and private lands, which may be in close proximity to BLM lands (due to the "checkerboard" land patterns in many areas of the West). Since air emissions do not respect jurisdictional boundaries, it is unlikely that reducing such disturbance to GRSG and their habitat on BLM lands will significantly reduce impacts on air quality as stated above.**

Page 4-184: "Under Alternative 2, areas outside PHMAs that are within 5 miles of leks in Utah would be avoidance for wind development. This could increase the potential for impacts on air quality associated with changes in land protected from wind development compared with Alternative 1." **Wind energy development does not create air pollutants as very little land clearing is needed for tower locations and accessory structures. This increased potential seems negligible.**

Page 4-184: "Under Alternative 3, closing PHMA to fluid mineral leasing, salable mineral sales and disposal, and nonenergy mineral leasing would reduce potential impacts on air quality from actions such as surface disturbance, associated with mineral development as described under the Nature and Types of Effects." **Limiting development of fluid minerals, salable minerals and nonenergy leasable minerals on BLM land will not slow and may actually shift such mineral development to state, tribal and private lands, which may be in close proximity to BLM lands (due to the "checkerboard" land patterns in many areas of the West). Since air emissions do not respect jurisdictional boundaries, it is unlikely that reducing such disturbance to GRSG and their habitat on BLM lands will significantly reduce air pollutant emissions as stated above.**

Page 4-184: "Under Alternative 3, prohibiting development of wind, solar, and other major ROWs would eliminate the likelihood for impacts on air quality from changes in land protected from or open to such surface-disturbing activities in these areas. **Limiting rights of way on BLM land will not slow and may actually shift such rights of way to state, tribal and private lands, which may be in close proximity to BLM lands (due to the "checkerboard" land patterns in many areas of the West). Since air emissions do not respect jurisdictional boundaries, it is unlikely that reducing such disturbance to GRSG and their habitat on BLM lands will significantly reduce impacts on air quality as stated above.**

Page 4-186: "ACECs under Alternative 6 would restrict some uses, in accordance with the ACEC boundaries and restrictions under Alternative 3, which could reduce potential sources of pollutants." **Limiting land uses in ACECs may actually shift such land uses to state, tribal and private lands, which may be in close proximity to BLM lands (due to the "checkerboard" land patterns in many areas of the West). Since air emissions do not respect jurisdictional boundaries, it is unlikely that reducing such land uses will significantly reduce impacts on air quality as stated above.**

Page 4-186: "Protection of GRSG habitat may **not reduce GHG emissions but may simply** move sources of GHGs to different locations.

Page 4-186: "Conservation activities to this effect can be expected to increase vegetation cover (e.g., sagebrush habitat) and enhance the soil, thereby increasing the amount of carbon that can be sequestered from the atmosphere and stored in the landscape in plants and organic soil." **However, if conservation on BLM land shifts development to state, tribal and private land, the shift will result in no net carbon sequestration gains to the overall landscape."**

Page 4-186: "Restricting or closing areas to mineral exploration and development activities would reduce or eliminate GHG from such activities where such restrictions or closures occur**, but could result in GHG emissions could merely be shifted from BLM land to state, tribal or private land**."

Page 4-187: "In exclusion areas which do not allow for ROWs, there would be no impacts on GHG emissions or changes to carbon sequestration **except for possible shifting of emissions from BLM land to state, tribal or private land where ROWs are not excluded**."

Page 4-187: "Impacts on GHG emissions and carbon sequestration from changes in livestock grazing would continue to largely be determined by variations in AUMs and site-specific management actions that involve surface-disturbing actions. Management actions that would continue to indirectly reduce impacts on climate change from changes in livestock grazing include managing for riparian vegetation, applying the principles of prescriptive livestock grazing to control time and timing of grazing during the hot season, and retiring grazing privileges on a voluntary basis." **Impacts from wild horses and burros and big game wildlife herds (see Page 4-186) need to be addressed here as well or does the BLM plan to do nothing to address the GHG and carbon sequestration impacts of these species?**

Page 4-190: "Impacts on GHG emissions and carbon sequestration from changes in livestock grazing would be similar to those described under Alternative 1. However, there would be more exceptions to restrictions on livestock grazing than under Alternative 1, which could have increased potential impacts on climate change in PHMA or IHMA." **Again, does the BLM have no plans to address impacts from wild horses and burros and big game wildlife herds on GHG and carbon sequestration?**

Pages 4-190 & 4-191: "Due to a reduction in the level of use from added restriction under Alternative 3, fluid, salable, and nonenergy mineral development, renewable energy development, livestock grazing, and most other major surface disturbing activities would result in the least amount of GHG emissions and surface disturbance **on BLM land**, compared with all alternatives. **However, such restrictions could shift such development and associated impacts to state, tribal or private lands, where the GHG emissions and surface disturbance would still occur."**

Page 4-191: "Under Alternative 6, impacts on GHG emissions and carbon sequestration would be similar to Alternative 5. ACECs under Alternative 6 would restrict some uses, in accordance with the ACEC boundaries and restrictions under Alternative 3, which could reduce surface disturbance and potential sources of GHGs **or merely shift them to non-federal lands**."

Pages 4-191 & 4-192: "Impacts on soil productivity and erosion can result from a number of causes, including improper livestock grazing, wild horses and burros, **big game wildlife herds,** surface-disturbing activities, vegetation treatment projects, prescribed burns, and wildfires.

Page 4-192: "These various restrictions on land protected from surface-disturbing activities and areas closed to surface-disturbing activities from mineral activities within PHMA, IHMA, and GHMA would continue to help minimize impacts on soil productivity and erosion **on BLM lands** as described under the Nature and Types of Effects **but could also result in a shifting of such impacts to non-federal lands**."

Page 4-192: "Classifying PHMA as exclusion or avoidance areas would decrease the potential for impacts on soil productivity and erosion **on BLM lands** associated with ROW development, such as the surface-disturbing activities described in the Nature and Types of Effects **but could also result in a shifting of such impacts to non-federal lands**."

Page 4-193: "Existing ROW corridors are preferred for collocation of new ROWs but could not be widened more than 50 percent greater than the original footprint." **Here and in other applicable alternatives, it should be noted that limiting the widening to 50% of the width existing may not be wide enough to safely accommodate a parallel transmission line (if a tower were to fail, the ROW must be wide enough to prevent such failure from impacting the parallel line).**

Page 4-193: "These measures would continue to reduce negative impact to soil productivity from the surface-disturbing activities **on BLM lands** as described in Nature and Types of Effects **but could also result in a shifting of such impacts to non-federal lands**."

Page 4-193: "Under Alternative 2, impacts from changes in livestock grazing would be similar to those described above under Alternative 1." **Again, does the BLM have no plans to address impacts from wild horses and burros and big game wildlife herds on soil resources?**

Page 4-194: "Management of PHMA as unavailable for livestock grazing would eliminate the possibility of the short-term, site-specific impacts from changes in livestock grazing and the associated impacts on soil productivity and erosion as described under the Nature and Types of Effects. Compared with Alternative 1, Alternative 3 contains greater restrictions on livestock grazing and would be more protective of soil productivity from impacts related to livestock grazing." **Does Alternative 3 include any features that would address soil health conditions impacted by wild horses and burros or big game wildlife herds?**

Page 4-195: "The inability to site ROWs in PHMA could lead to longer ROW routes to bypass closed areas. Longer routes would increase surface disturbance and other impacts of ROW sitting on soil productivity and erosion outside of PHMA and may result in increased impacts on soil productivity and erosion on adjacent **state, tribal or** private lands."

Page 4-195: "Under Alternative 3, PHMA would be ROW exclusion for wind and solar energy development. Prohibiting wind energy development would eliminate impacts on soil productivity and erosion from changes in land protected from or open to this type of surface-disturbing activity in these areas." **However, these prohibitions could result in the shifting of surface-disturbing activity and impacts on soils to state, tribal or private lands."**

Page 4-195: "Site-specific management actions would play a crucial role in determining the impacts on soil productivity and erosion resulting from changes in livestock grazing as described under the Nature and Type of Effects." **Does Alternative 4 include any features that would address soil health conditions impacted by wild horses and burros or big game wildlife herds?**

Page 4-196: "The impacts on soil productivity and erosion resulting from changes in livestock grazing would be determined by variations in site-specific management actions. These actions would strive to minimize concentrated compaction and aim to maintain or improve soil productivity and erosion as described under the Nature and Type of Effects." **Do Alternatives 5 or 6 include any features that would address soil health conditions impacted by wild horses and burros or big game wildlife herds?**

Page 4-197: "Water quality can be affected by introduction of waste matter into streams from domestic livestock (Weltz et al. 2017)." **Water quality can also be affected by introduction of waste matter into streams by wild horses, burros and big game animal herds. Is such considered a "natural factor", a "human-related factor" or both and why are livestock singled out?**

Page 4-198: "The land uses most commonly associated with stream degradation in the planning area is improper livestock grazing and excessive use by wild horses and burros because it is most prevalent, compared with other land use disturbances." **According to a study listed at: https://www.sciencedirect.com/science/article/abs/pii/B9780124058903000117#preview-section-abstract, "more than 99% of streams and rivers are considered to be impacted by human activity. Such activity includes the conversion of land for intensive agriculture, the fast expansion of urban areas, and the growing use of fertilizers, pesticides, and other contaminants. Conversion of lands across the West to agricultural use to feed growing populations resulted in stream channels being straightened and riparian vegetation removed to provide for rectangular fields suitable for irrigation. This may have had a more significant impact on stream degradation than livestock and wild horse/burro grazing.**

Page 4-198: "Therefore, the greater the amount of acreage restricted from a land disturbing use, the greater the protection of impacts from surface disturbing activities afforded to water resources." **However, water flows across jurisdictional boundaries and such restrictions could merely shift such surface disturbance and associated impacts on water resources from BLM lands to state, tribal or private lands."**

Page 4-200: "In turn, these management actions would continue to help minimize local impacts on water resource conditions from changes in livestock grazing, which would also continue to help minimize range-wide impacts for long-term benefits to water resource conditions as described in the Nature and Types of Effects." **Why no mention here and in the other alternatives of the impacts of overpopulated wild horse and burro management areas on water quality?**

Page 4-200: "These various restrictions **on** land protected from or open to surface disturbing activities within PHMA and GHMA would continue to help reduce impacts on water resource conditions as described under the Nature and Types of Effects." **However, water flows across jurisdictional boundaries and such restrictions could merely shift such surface disturbance and associated impacts on water resources from BLM lands to state, tribal or private lands."**

Page 4-210: "Existing ROW corridors are preferred for collocation of new ROWs but could not be widened more than 50 percent greater than the original footprint. These measures would continue to reduce negative impact to water resource conditions from surface-disturbing impacts described in the Nature and Types of Effects." **Here and in other applicable alternatives, it should be noted that limiting the widening to 50% of the width existing may not be wide enough to safely accommodate a parallel transmission line (if a tower were to fail, the ROW must be wide enough to prevent such failure from impacting the parallel line). It should also be noted that water flows across jurisdictional boundaries and BLM restrictions could merely shift surface disturbance, such as ROW corridors and associated impacts on water resources from BLM lands to state, tribal or private lands.**

Page 4-202: "Compared with Alternative 1, Alternative 3 contains greater restrictions on other resources and would most greatly reduce the potential for impacts on water resource conditions as described under the Nature and Type of Effects." "Alternative 3 would be more protective of water resource conditions from impacts related to changes in land protected from or open to livestock grazing compared with Alternative 1." **While these statements are partially true, Alternative 3 would ban livestock grazing, which could make BLM lands more susceptible to wildfire, which could negatively impact water resources as a result.**

Page 4-203: "Because many water-consuming activities would be restricted, Alternative 3 is also likely to result in increased storage **retention** of water in the landscape. Restrictions from Alternative 3 would improve the likelihood of more waters meeting fully supporting beneficial uses and increase or maintain the level of stream miles meeting state and federal water quality standards and designated beneficial uses." **This paragraph, as currently written, implies increased water storage, which would require some type of improved impoundment, which may be difficult to site and permit on BLM land in GRSG habitat.**

Page 4-203: " However, the inability to site ROWs in PHMAs could lead to longer ROW routes to bypass closed areas. Longer routes would increase surface disturbance and other impacts of ROW siting on water resource conditions outside of PHMA and may result in increased impacts on water resource conditions on adjacent private lands." **Alternative 3, and to a lesser extent, other alternatives, would hamper the nation's ability to site new transmission and distribution lines necessary to connect anticipated solar and wind power generation facilities to the grid and deliver power to customers. Construction of major transmission lines is very expensive. The TransWest Express power line will traverse 732 miles at a total cost of about $3 billion, or about $4.1 million per mile (see https://www.power-technology.com/projects/transwest-express-transmission-project-usa/). Designating all habitat as PHMA and then forcing power lines to avoid PHMA under Alternative 3 will add millions to the cost of new facilities and drive up electric bills for all Americans who have already suffered financially due to Biden Administration policies, which caused inflation to spike to the highest level in over 40 years. Despite recent moderation, consumer prices are up nearly 18% overall during Biden's time. Gasoline is up 29% (see: factcheck.org/2024/01/bidens-numbers-january-2024-update/).**

Page 4-203: "Under Alternative 4, site-specific management actions would continue to play a crucial role in determining the impacts on water resource conditions resulting from changes in livestock grazing as described under the Nature and Type of Effects." **Why no mention here and in the other alternatives of the impacts of overpopulated wild horse and burro management areas on water quality?**

Page 4-206: "While this will reduce potential for impacts on cultural resources in certain areas, it is likely at least some of the development related impacts will be displaced to locations outside of these protected areas, exposing cultural resources elsewhere to greater potential for impacts." **It should be noted in this section that, while surface disturbance can impact cultural resources, it can also lead to discoveries of cultural resources that further the body of scientific knowledge of the cultural history of the area.**

Page 4-207: "Similar to minerals management, closing areas to renewable energy development or restricting surface-disturbing activities during development of renewable energy projects would reduce potential impacts to cultural resources in these areas." **Many cultural resources have been discovered because of field surveys associated with anticipated renewable energy development projects. Reducing renewable energy development in GRSG habitat could have the unintended effect of reducing cultural resource surveys and discoveries in those areas."**

Page 4-207: "Generally speaking, management actions such as establishing ROW exclusion and avoidance areas offer increased protection to cultural resources in these areas from surface disturbing activities or alterations in setting like construction of highly visible features, and from increased access that often accompanies construction in ROWs." **Many cultural resources have been discovered because of field surveys associated with ROW projects. Reducing ROW grants in GRSG habitat could have the unintended effect of reducing cultural resource surveys and discoveries in those areas."**

Page 4-208: "However, as described in Section 2.9.7, livestock grazing is managed to meet or make progress toward land health standards, thus reducing the likelihood of these effects." **Since the BLM mentions livestock management here, it should be noted here how the BLM plans to manage overpopulations of wild horses and burros to address their impacts on cultural resources.**

Page 4-208: "While this would continue to reduce potential for impacts on cultural resources in HMAs, it is likely at least some of the development related impacts would be displaced to locations outside of HMA, exposing cultural resources in other areas to greater potential for impacts." **It should be noted here that the restrictions on surface disturbance may also reduce the number of new discoveries.**

Page 4-209: "Overall, restrictions from minerals management under Alternative 1 could make development more costly and difficult, or prevent development that could not be relocated to a suitable area. This would continue to be generally protective of cultural resources across the planning area." **Many cultural resources have been discovered because of field surveys associated with mineral development projects. Reducing mineral development on BLM lands under Alternative 1 and other alternatives could have the unintended effect of reducing cultural resource surveys and discoveries in those areas."**

Page 4-210: "Overall, the restrictions on renewable energy development under Alternative 1 could make development more costly and difficult or prevent any uses that could not be relocated to a suitable area. This would continue to be generally protective of cultural resources across the planning area." **Many cultural resources have been discovered because of field surveys associated with anticipated renewable energy development projects. Reducing renewable energy development in GRSG habitat under Alternative 1 and other alternatives could have the unintended effect of reducing cultural resource surveys and discoveries in those areas."**

Page 4-210: "While excluding or avoiding ROW development within HMAs under Alternative 1 would continue to reduce potential for impacts on cultural resources within these areas, it would likely result in a shift of these activities to suitable areas outside of HMAs, negatively impacting cultural resources outside of them." **Many cultural resources have been discovered because of field surveys associated with ROW projects. Reducing ROW grants in GRSG habitat under Alternative 1 and other alternatives could have the unintended effect of reducing cultural resource surveys and discoveries in those areas."**

Page 4-210: "Under Alternative 1, **in** all states where wild horses and burros overlap with GRSG habitat, **the BLM** would continue to manage wild horse and burro populations within established appropriate management levels (AMLs) and incorporate GRSG objectives into wild horse and burro management."

Page 4-212: " Under Alternative 3, the HMA designation scheme would create the highest acreage of PHMA, and along with the most robust version of the disturbance cap, offers the highest level of protection to cultural resources in HMAs from GRSG related restrictions among the alternatives." **While Alternative 3 may offer the highest level of protection of cultural resources, this alternative will reduce the number of cultural resource surveys performed by project proponents and reduce the number of cultural resource discoveries made."**

Page 4-213: "However, the exclusion of ROW development in PHMAs could lead to creation of longer ROW routes to get around closed areas. Longer ROW routes would increase potential for ground disturbing activities, changes to site setting, and increases in access outside of PHMAs." **Alternative 3, and to a lesser extent, other alternatives, would hamper the nation's ability to site new transmission and distribution lines necessary to connect anticipated solar and wind power generation facilities to**

the grid and deliver power to customers. Construction of major transmission lines is very expensive. The TransWest Express power line will traverse 732 miles at a total cost of about $3 billion, or about $4.1 million per mile (see https://www.power-technology.com/projects/transwest-express-transmission-project-usa/). Designating all habitat as PHMA and then forcing power lines to avoid PHMA under Alternative 3 will add millions to the cost of new facilities and drive up electric bills for all Americans who have already suffered financially due to Biden Administration policies, which caused inflation to spike to the highest level in over 40 years. Despite recent moderation, consumer prices are up nearly 18% overall during Biden's time. Gasoline is up 29% (see: factcheck.org/2024/01/bidens-numbers-january-2024-update/).

Page 4-213: " The removal of wild horses and burros would decrease the potential for related impacts on cultural resources within PHMAs the most among alternatives." **Such gathers may not be possible if the Herd Management Area is within AMLs thanks to a March 30, 2024 U.S. District Court decision (see: https://friendsofanimals.org/wild-horses-in-nevada-utah-get-reprieve-thanks-to-foas-court-victory/). This may impact several of the BLM's alternatives.**

Page 4-214: "The management of fewer acres as NSO under Alternative 5 could make some cultural resources more susceptible to impacts from fluid mineral exploration and development as described in the Nature and Type of Effects.[2] **However, more fluid mineral exploration and development means more cultural resource surveys will be conducted and more discoveries made than if such development were prohibited."**

Page 4-215: "The nature and type of most effects on tribal interests are general and non-quantifiable in nature. In general, activities that result in ground disturbance to lands currently or historically occupied by GRSG could decrease opportunities for tribes to maintain traditional cultural practices and values if these activities result in decreases in GRSG populations. These include, but are not necessarily limited to, granting ROWs for road and highway construction, wind energy development, vegetation treatments in sagebrush communities, development of leasable, locatable, salable, and fluid minerals, OHV use, and SRPs." **It should be noted here that many tribes manage vast landscapes, many of which abut BLM lands and are dependent on the BLM granting ROWs for infrastructure needed to serve tribal lands and allow for the development of mineral and other resources on tribal lands. As such, many tribal interests go far beyond maintaining traditional cultural practices such as observing GRSG lekking behavior and gathering pine nuts and involve development of mineral resources.**

Page 4-216: "All alternatives allow for the appropriate tribal governments to consult on a case-by-case basis on undertakings on BLM-administered **land** that could affect Native American concerns."

Page 4-216: "These actions could also increase tribal opportunities to maintain specific traditional practices and values such as traditional plant gathering, hunting animals including GRSG, and the role played by GRSG in oral traditions and cultural practices such as observing lekking behavior as described in the Nevada and Northeastern California Greater Sage-Grouse Proposed Land Use Plan Amendment and Final Environmental Impact Statement (BLM 2015) ~~if the current leasing of nonenergy minerals has led to decreases in GRSG populations~~."

Page 4-217: "However, use of Sagebrush Focal Areas (SFAs) and sagebrush-dominated vegetation areas in HMAs ~~to the restrict development~~ has the potential to push development into other vegetation regimes where cultural resources and areas of tribal interest may also exist."

Page 4-217: "Tribes would be able to maintain traditional practices by accessing pine nutting areas and observing lekking behavior." **Tribes would also benefit from these ROWs is they provide for**

infrastructure access to tribal lands or facilitate the development of resources under tribal jurisdiction.

Page 4-217: "Allowing fluid mineral leasing would create surface disturbance that could impact cultural resources important to tribes in those areas." **However, allowing fluid mineral leasing on BLM lands could facilitate fluid mineral development on nearby tribal lands."**

Page 4-218: "The additional exception criteria for ROW and renewable energy in NV/CA could increase the potential for impacts **to** cultural resources and traditional uses from surface-disturbing activities, though the criteria would likely avoid impacts to GRSG."

Page 4-219: "However, the inability to site ROWs in PHMAs could lead to longer ROW routes in order to bypass closed areas." **This may make it more difficult to provide needed infrastructure across BLM lands to serve tribal communities and help tribes develop their mineral resources."**

Page 4-219: "Closing PHMAs to mineral leasing and development would protect cultural resources important to tribes from surface-disturbing activities as well as subsurface activities (e.g., directional drilling)." **However, closing PHMA on BLM land to mineral leasing and development may make it more difficult for tribes to facilitate mineral leasing and development on tribal lands in the area."**

Page 4-220: "Removing wild horses and burros in those PHMAs with existing herd management areas in all states would increase habitat quality for wildlife, including GRSG, as described in Section 4.2. This increase in GRSG habitat quality would increase opportunities for tribes to maintain traditional practices." **Removing wild horses and burros may not be possible if the Herd Management Area is within AMLs thanks to a March 30, 2024 U.S. District Court decision (see: https://friendsofanimals.org/wild-horses-in-nevada-utah-get-reprieve-thanks-to-foas-court-victory/). This may impact several of the BLM's alternatives.**

Page 4-221: "Under Alternative 5, impacts to tribal interests would be similar to Alternative 4 with the additional consideration of adjustments to HMAs to balance multi-use opportunities, which has the potential **to** produce impacts on tribal interests since HMAs would cover a smaller area under Alternative 5."

Page 4-221: "ACECs designated for the benefit of GRSG under Alternative 6 would have greater restrictions on mineral exploration, including fluid minerals, non-energy minerals, saleable minerals and mineral materials as well as development of major ROWs, wind and solar within the ACECs, which would lessen the potential for impacts to areas of cultural interests in these areas." **However, the restrictions within ACECs could negatively impact tribal efforts to obtain infrastructure across BLM to serve tribal communities and tribal efforts to develop mineral resources under their jurisdictions."**

Page 4-222: "In addition, range improvements reduce the overall appearance of naturalness over the long term **and** could result in short-term impacts on solitude and naturalness due to human presence, noise, and disturbance during installation."

Page 4-222: "Where areas are unavailable for livestock grazing, lands with wilderness characteristics that overlap with these areas would experience a reduction of these impacts." **However, removing livestock grazing exposes LWC to fuel build up and increased risk of wildland fire."**

Page 4-223: "Due to screening criteria, conditions for development, and required mitigation, applicants may find it easier to ~~cite~~ **site** their development outside of GRSG habitat, thereby leading to some additional protection of lands with wilderness characteristics within GRSG habitat. **Moving ROWs out of GRSG habitat and LWC could merely shift impacts to other areas and drive up costs of providing needed infrastructure. Doing this would hamper the nation's ability to site new transmission and distribution lines necessary to connect anticipated solar and wind power generation facilities to the grid and deliver power to customers. Construction of major transmission lines is very expensive. The TransWest Express power line will traverse 732 miles at a total cost of about $3 billion, or about $4.1 million per mile (see https://www.power-technology.com/projects/transwest-express-transmission-project-usa/). Forcing power lines to avoid GRSG habitat and LWC will add millions to the cost of new facilities and drive up electric bills for all Americans who have already suffered financially due to Biden Administration policies, which caused inflation to spike to the highest level in over 40 years. Despite recent moderation, consumer prices are up nearly 18% overall during Biden's time. Gasoline is up 29% (see: factcheck.org/2024/01/bidens-numbers-january-2024-update/).**

Page 4-224: "Management actions under Alternative 3 would have the overall greatest potential to maintain wilderness characteristics on lands with wilderness characteristics within PHMA when compared to all other alternatives." **However, such management actions could drive up the cost of providing needed infrastructure and increase the wildfire risk in LWC areas."**

Page 4-225: "Where lands maintained for wilderness characteristics overlap ACECs, management of these other areas could also indirectly protect wilderness characteristics due to the protective measures proposed for the other areas." **Three is no need for overlapping special designations. Lands with existing LWC designations would not need an overlapping ACEC designation as the existing designation would provide for maintaining wilderness character; which would adequately protect GRSG habitat.**

Page 4-226: "Under all alternatives, disturbance caps which restrict the construction of recreation infrastructure would decrease access for recreation experiences that depend on road and trail development and could inhibit management objectives where developments are part of the desired conditions." **Restrictions on road and trail development may be inconsistent with state and local resource management plans, transportation plans, RS 2477 rights, and trails master plans. The BLM should avoid decreasing access for recreation experiences unless agreed to by state and local authorities.**

Page 4-226: "However, these disturbance caps would also limit development in some areas, thereby increasing remoteness and naturalness in areas managed for those objectives and enhancing the recreational user experience of primitive backcountry recreation activities and experiences over the long-term (BLM 2014)." **While disturbance caps may enhance primitive recreation activities, this is done to the detriment of those who choose to participate in motorized recreation activities or whose physical condition or age does not permit participation in primitive forms of recreation.**

Page 4-227: "These exceptions would potentially add to the impacts on recreation associated with the trend of increasing energy development on BLM-administered lands over the long-term." **The analysis in all alternatives is skewed toward protecting primitive recreation and solitude while the fact is that many other forms of recreation on BLM land, such as motorized recreation, are not in conflict with mineral development. In fact, energy and mineral development has historically created many of the roads that recreationists use to access their destinations.**

Page 4-227: "Therefore, if future recreation **projects** would have the potential **to** exceed the disturbance cap in a particular area, the disturbance cap would have the potential to prohibit the construction of new recreation facilities over the largest area when compared with the other alternatives." **While Alternative 3 would do the most to protect primitive recreation and opportunities for solitude, Alternative 3 would do so at the expense of those who choose to participate in motorized recreation activities or whose physical condition or age does not permit participation in primitive forms of recreation.**

Page 4-228: "This would be less restrictive on energy development than Alternative 1, which could indirectly affect recreation by leading to the potential for greate**r** resource conflicts with energy development. Increasing resource conflicts with recreation diminishes the recreational experiences in those areas." **The analysis in all alternatives is skewed toward protecting primitive recreation and solitude while the fact is that many other forms of recreation on BLM land, such as motorized recreation, are not in conflict with energy and mineral development. In fact, energy and mineral development has historically created many of the roads that recreationists use to access their destinations.**

Page 4-229: "The past, present, and reasonably foreseeable future actions that contribute to cumulative impacts on GRSG are summarized in Appendix 14, Table 14-1." **This table mentions the land use plan being prepared for the Grand Staircase Escalante National Monument in Utah but does not mention the land use plan being prepared for the Bears Ears National Monument in Utah. Also, there appears to be no mention of the BLM's grazing policy revisions, which would be part of the cumulative impact on GRSG habitat.**

Page 4-230: "The BLM and other land management agencies authorize livestock grazing in accordance with their regulations (43 CFR Part 4100 for the BLM) and agency policies and guidance." **In 2020, the BLM initiated a revision to its livestock grazing regulations. In November of 2020, the BLM paused the rulemaking process, but reinitiated the rulemaking process in mid-2022. The effort is now being characterized as revising the BLM's grazing policy guidance. The impacts of this effort on GRSG should be summarized in this analysis.**

Page 4-231: "Removal, adoption, and fertility control of animals from the range each year will help control herd sizes and lessen impacts to GRSG." **Removal of wild horses may not be possible if the Herd Management Area is within AMLs thanks to a March 30, 2024 U.S. District Court decision (see: https://friendsofanimals.org/wild-horses-in-nevada-utah-get-reprieve-thanks-to-foas-court-victory/).**

Page 4-231: " Fuels management and fuel reduction projects have been and continue to be implemented throughout the planning area by the BLM, other federal agencies such as the Forest Service, states, local or regional partnerships, and other groups to assist in wildfire management." **It should be noted here that BLM efforts to establish fuel and fire breaks across the West have been hampered by litigation from environmental groups (see: https://apnews.com/article/business-fires-environment-and-nature-lawsuits-wildfires-b8212c8b8daa5f73319bf26fedc2eeb2).**

Page 4-232: "In general, use of existing roads and development of new roads in GRSG habitat contributes to GRSG habitat loss, alteration, and fragmentation." **It should be noted here that not all effects of roads are negative. Many have observed GRSG taking "dust baths" in dirt roads as part of their plumage preening process (see: https://www.pressconnects.com/story/life/2017/06/14/ruffed-grouses-dust-bath-stops-time/396604001/ and https://www.blm.gov/blog/2022-06-30/all-days-walk-sage-grouse-summer. Utah NE Region Division of Wildlife Resources staff have also observed GRSG strutting in roads –**

essentially using roads as a lek (personal conversation with Miles Hanberg, NE Region DWR Manager, April 10, 2024).

Page 4-232: "Travel management plans typically include seasonal and permanent closures of roads and other mitigation measures **to** reduce impacts to other resources, such as vegetation and wildlife, including GRSG." **It should be noted here that permanent closures are not an option for roads that have RS 2477 rights claimed by the states.**

Page 4-233: "However, exclusion of grazing on BLM-administered lands may intensify grazing use on private lands, which could degrade GRSG habitat in those areas. Alternately, managing PHMA as unavailable for grazing could promote rural subdivisions and thus habitat loss in areas where livestock operators are not able to continue their operations solely on private lands." **The analysis here fails to mention that Alternative 3's exclusion of livestock grazing, would make BLM lands more susceptible to wildfire, which would negatively impact GRSG habitat and the overall environment as a result.**

Page 4-234: "BLM has completed a programmatic environmental impact statement (PEIS) that evaluates creating and maintaining a system of fuel breaks, fuels reduction and rangeland restoration in the Great Basin region. This landscape scale PEIS analyzes potential effects of reducing fuel loading and restoring rangeland productivity within the Great Basin Region (Idaho, Oregon, Nevada, northern California, Utah, and eastern Washington) to protect and conserve the sagebrush-steppe ecosystem from loss or fragmentation as a result of wildfires." **Has the litigation against this PEIS been resolved? (see: https://apnews.com/article/business-fires-environment-and-nature-lawsuits-wildfires-b8212c8b8daa5f73319bf26fedc2eeb2).**

Page 4-235: "In summary, Alternative 3 would have the most protections for vegetation and habitat within GRSG management areas." **While Alternative 3 would reduce surface disturbance and protect vegetation, the exclusion of livestock grazing would increase fine fuels that would put the landscape at greater risk of wildfire, which is the number one threat to GRSG habitat.**

Page 4-236: "By making all PHMA unavailable for grazing, Alternative 3 would have the greatest contribution to cumulative effects through a potential increase in fine fuels that could influence a **more frequent and** large**r**-scale wildfire**s**."

Page 4-236: "Past, present, and reasonably foreseeable future actions and conditions within the cumulative impact analysis area that have affected and will likely continue to affect fish, wildlife, and special status species, include mining and mineral exploration and development such as fluid minerals (oil, gas and geothermal), locatable minerals, leasable minerals, and mineral materials." **Other future actions that affect fish and wildlife are the regulation of hunting and fishing by state and tribal fish and wildlife management agencies and actions to control predators by these same agencies.**

Page 4-237: "In general, resource use activities, such as energy, mineral, and other developments have cumulatively impacted fish, wildlife, and special status species by causing habitat removal, fragmentation, weed spread, and disturbance from noise and increased human presence." **While this statement is generally true, many forms of wildlife can co-exist with activities such as energy and mineral development (see photos documenting this at: https://utahpetroleum.org/wildlife-and-energy-photo-contest/).**

Page 4-237: "Climate change could cause an increase or decrease in temperatures and precipitation, as described further in Section 3.2.12, which would affect soil conditions, vegetative health, and water flows

and temperature." **This statement demonstrates that there is tremendous uncertainty associated with climate change science…it is not certain whether our changing climate will bring increased or decreased temperatures or increased or decreased precipitation.**

Page 4-238: "In summary, Alternative 3 would provide the most protection and reduce the contribution of surface disturbances, but the lack of active vegetation management would have long-term detrimental to cumulative impacts to wildlife and special status species to the greatest extent of all the alternatives. These protections would result in increased wildlife habitat connectivity and functionality **at least until the lack of grazing and active vegetation management results in wildfire that destroys such habitat and its connectivity and functionality**."

Page 4-239: "Past, present, and reasonably foreseeable future actions within the cumulative impact analysis area that have affected and will continue to affect wild horses and burros include mining and mineral exploration and development of fluid minerals, locatable minerals, leasable minerals, and mineral materials." **The reintroduction of wolves into certain areas of the West (as recently done in Colorado) is another present and reasonably foreseeable future action that would affect wild horses and burros.**

Page 4-240: "Past, present, and reasonably foreseeable future actions within the cumulative impact analysis area that have affected and will continue to affect livestock grazing operations and livestock forage include mining and mineral exploration and development of fluid minerals, locatable minerals, leasable minerals, and mineral materials." **The reintroduction of wolves into certain areas of the West (as recently done in Colorado) is another present and reasonably foreseeable future action that would affect livestock grazing operations.**

Page 4-240: "As a response to these shifts in vegetation communities, BLM has completed a PEIS that evaluates creating and maintaining a system of fuel breaks, as well as conducting fuels reduction and rangeland restoration activities in the Great Basin region. This landscape scale PEIS analyzes potential effects of reducing fuel loading and restoring rangeland productivity within Idaho, Oregon, Nevada, northern California, and Utah in order to protect and conserve the sagebrush-steppe ecosystem from loss or fragmentation as a result of wildfires." **Has the litigation against this PEIS been resolved? (see: https://apnews.com/article/business-fires-environment-and-nature-lawsuits-wildfires-b8212c8b8daa5f73319bf26fedc2eeb2).**

Pages 4-240 and 4-241: "Alternative 3 would make all PHMA unavailable to livestock grazing. The BLM would have to construct and maintain a large amount of fencing, particularly in areas with mixed surface ownership, to effectively make grazing unavailable. **Such fencing increases the risk of GRSG collisions.** Exclusion of grazing on BLM-administered lands may intensity **intensify** grazing use on private lands or cause operators to reduce the scale of their operations on private lands. This alternative would have the greatest cumulative adverse effects on livestock grazing than any of the other action alternatives **and would also result in fine fuel buildup that would put the landscape at a greater risk of wildfire**."

Page 4-241: "~~This alternative~~ **Alternative 3** would have the greatest cumulative adverse effects on lands and realty authorizations than any of the other action alternatives."

Page 4-242: "Past, present, and reasonably foreseeable future actions and conditions in the cumulative impact analysis area that have affected and will likely continue to affect fluid mineral leasing and development include, past, present, and continued mineral exploration, development, leasing, and management decisions on BLM-administered lands as well as on other federal**, state** and Tribal lands."

Page 4-243: "Closures and surface use restrictions, such as NSO stipulations, could also cause an operator to move to nearby private**, tribal** or state land if similar resources are available and recoverable with no such restrictions."

Page 4-244: "Closures and surface use restrictions could also cause an operator to move to nearby private**, tribal** or state land if similar resources are available with fewer such restrictions, however many states apply management actions to protect GRSG."

Page 4-246: "Alternative 1 recommended the withdrawal of all SFAs, from location and entry under the United States mining laws. This recommendation already occurred in the 2015 Plans and had no impact." **On what basis does the BLM conclude that the withdrawal of SFAs from mineral development had no impact?**

Page 4-247: "If demand for mineral materials could not be met by pits operated on federal lands, pits could be moved onto private**, tribal** or state lands where resources exist, this would generally increase costs associated with road construction and maintenance conducted by state, county and local governments which are able to develop federal mineral materials free of charge under free use permits."

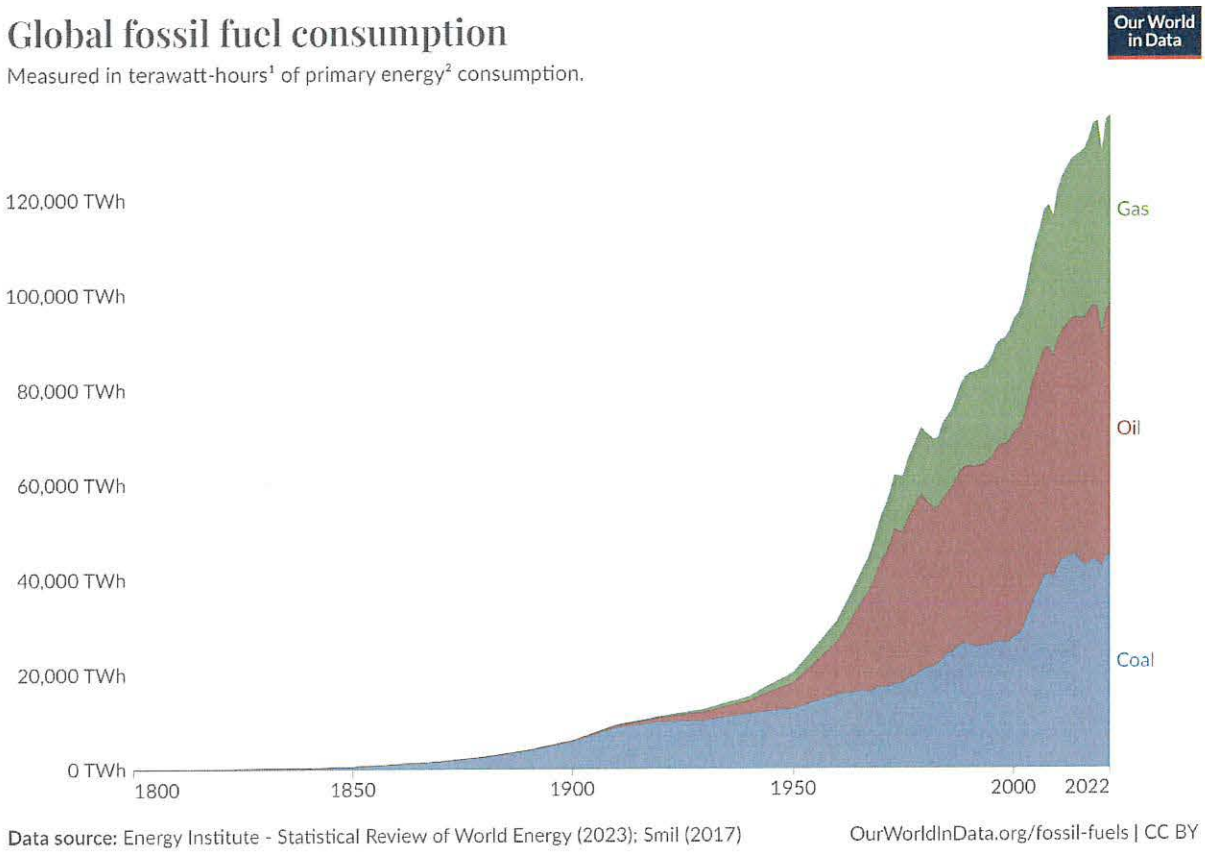
Page 4-249: "This erosion can transport soil particles **and other debris** into water bodies, potentially affecting water quality and aquatic habitats."

Page 4-250: "Alternative 5 would have similar, though slightly greater contribution to cumulative effects than Alternative 3 because ACECs would be designated but protective measures for GRSG would be less stringent, which could allow for some degradation of relevant and important values in some areas." **Should there be a sentence after this one describing the contribution of Alternative #6 to cumulative effects on ACECs?**

Page 4-252: "The predominant mining method for mineral materials is surface mining; therefore, restrictions on surface-disturbing activities would effectively close or limit mineral material mining in the subject areas ~~to~~ unless an exception is provided."

Page 4-252: "If feasible mineral materials extraction could relocate to nearby areas; however, this would likely result in increased costs associated with transportation or fees, if operations ~~is~~ **are** moved to private or state lands."

Page 4-253: "As there continues to be a transition away from fossil fuel use, there will likely be an increase in demand for renewable development on public lands." **While the current administration is pushing a transition away from fossil fuel use in the U.S., there is no indication of fossil fuel use significantly decreasing worldwide (see chart below). Other than a dip during the COVID pandemic, fossil fuel use has increased dramatically since 1900.**



1. **Watt-hour**: A watt-hour is the energy delivered by one watt of power for one hour. Since one watt is equivalent to one Joule per second, a watt-hour is equivalent to 3600 Joules of energy. Metric prefixes are used for multiples of the unit, usually: - kilowatt-hours (kWh), or a thousand watt-hours. - Megawatt-hours (MWh), or a million watt-hours. - Gigawatt-hours (GWh), or a billion watt-hours. - Terawatt-hours (TWh), or a trillion watt-hours.

2. **Primary energy**: Primary energy is the energy available as resources – such as the fuels burnt in power plants – before it has been transformed. This relates to the coal before it has been burned, the uranium, or the barrels of oil. Primary energy includes energy that the end user needs, in the form of electricity, transport and heating, plus inefficiencies and energy that is lost when raw resources are transformed into a usable form. You can read more on the different ways of measuring energy in our article.

Global coal demand grew by 0.6% in 2022, to the highest level of coal consumption since 2014. Oil demand grew by 3.1% in 2022, also well ahead of the 0.9% 10-year growth average. Global natural gas demand declined by 3% in 2022 which was attributable to record price levels in Europe and Asia (see: https://www.forbes.com/sites/rrapier/2023/08/06/global-energy-trends-insights-from-the-2023-statistical-review-of-world-energy/?sh=63c81c273502).

Page 4-253: "However, labor income for employment in industries associated with renewable energy development and operations tends to be lower than labor income for employment **in** mining industries." **In addition to lower wages, renewable energy projects generate fewer jobs than other mining industries (these low job levels are documented in the BLM's Utility Scale Solar PEIS).**

Page 4-253: "The BLM will continue to issue livestock permits on land that is available to livestock grazing." **The exception here is that livestock grazing would not be allowed in GRSG habitat under Alternative 3.**

Page 4-253: "These impacts include changes in access to **and cost of** products and resources, values from open spaces, values from wildlife species including GRSG."

Page 4-253: "Potential for severe wildfire**, particularly under Alternative 3,** could result in damage to GRSG habitat, which could result in cumulative impacts on access to nonmarket values associated with GRSG and GRSG habitat, such as values from cultural and subsistence resources and nonuse values."

Page 4-254: "These could lead to disproportionate impacts on environmental justice communities, because environmental justice communities, such as low income households, tend to live closer to mineral developments (Proville et al. 2022). **This finding is questionable as the BLM does not allow residential development on its lands and most BLM land in the West is bordered by state or tribal land as opposed to private land. Also, while restricting development may have health benefits, the detrimental impacts of higher energy and mineral prices will hit low income households the hardest.**

Page 4-254: "These impacts would likely have adverse and disproportionate impacts on environmental justice populations due to the limited resources available to mitigate impacts and because environmental justice populations are often located in areas that are vulnerable to impacts from climate change, such as areas that are prone to drought or flooding (Cho 2020)." **This finding is questionable. The entire West is vulnerable to drought; not just the environmental justice populations. Lands near water bodies are typically of higher value due to the desire to be near water; which means that wealthier individuals are much more likely to afford land that is prone to flooding.**

Pages 4-256 and 4-257: "According to the modeled ambient air pollutant concentrations from BLM's 2032 Western US Photochemical Air Quality Modeling Study (Ramboll 2023), with the exception of particulate matter, circa 2032 cumulative emissions are not expected to result in exceedances of NAAQS for the portions of the planning area ~~the~~ **that** overlap with the model's study area (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming only)."

Page 4-257: "Therefore, Alternative 3 would result in the lowest cumulative air quality impacts among the alternatives." **This may not be totally true as Alternative 3 would prohibit livestock grazing and other forms of active vegetation management, which could make GRSG habitat more prone to wildfire, which is a major source of air emissions.**

Page 4-257: "Similar to Alternative 4, development can occur in HMAs under Alternative 5. This would increase the potential for added contribution to cumulative air quality impacts in the form of increased pollutant concentrations, which when added to impacts from past, present, and reasonably foreseeable future actions would result in increased cumulative air quality impacts compared with Alternative 1. However, compared with Alternative 4, fewer restrictions on development under this alternative would result in a greater contribution to cumulative air quality impacts." **Should there be a sentence after this one describing the contribution of Alternative #6 to cumulative effects on air quality?**

Page 4-258: "Climate change trends, particularly the increasing trend in occurrence and severity of drought conditions affecting carbon sequestration, and the increasing trend **in** uncontrolled large wildfires affecting GHG emissions can further exacerbate impacts to climate change."

Page 4-258: "However, compared with Alternative 4, fewer restrictions on development under this alternative would result in a greater contribution to cumulative climate change impacts compared with Alternative 4." **Should there be a sentence after this one describing the contribution of Alternative #6 to cumulative effects on climate change?**

Page 4-259: "ROW MLB Plans can help assure surface disturbance activities are **managed appropriately** within or outside of the planning area."

Page 4-259: "This can lead to erosion, as water and wind can more easily remove the compacted **barren** soil." **This statement is questionable as water and wind can more easily remove soil that has been tilled up or otherwise disturbed rather than soil that has been compacted.**

Page 4-260: "However, **Alternative 3 prohibits** ~~the lack of~~ **active** vegetation management practices **and livestock grazing, which** can effectively reduce fuels, thereby diminishing the potential for increased wildfires**.** ~~that might otherwise~~ **Consequently, Alternative 3 would** contribute to decreased soil productivity and increased erosion."

Page 4-260: "However, the reduced protection of Alternative 5 could result in noteworthy cumulative effects on soil productivity and erosion, lacking the additional safeguards present in Alternative 1." **Should there be a sentence after this one describing the contribution of Alternative #6 to cumulative effects on soil resources?**

Page 4-260: "Vegetation and habitat management projects can help to improve the condition of water resources ~~conditions~~ by improving soil productivity and plant growth and decreasing erosion which can lead to sedimentation and contamination."

Page 4-260: "This can lead to erosion, as water and wind can more easily remove the compacted **barren** soil."

Page 4-261: "For example, this alternative could prohibit the construction of new roads or pipelines in sensitive areas. It could also require that development activities be carefully managed to minimize soil disturbance. This would help to protect water resources conditions." **However, Alternative 3 prohibits active vegetation management practices and livestock grazing, which can effectively reduce fuels, thereby diminishing the potential for increased wildfires. Consequently, Alternative 3 could also contribute to decreased soil productivity and increased erosion, which would have detrimental impacts on water resources and water quality."**

Page 4-262: "Alternative 5 could result in noteworthy cumulative effects on water resources conditions, lacking the additional safeguards present in Alternative 1." **Should there be a sentence after this one describing the contribution of Alternative #6 to cumulative effects on water resources?**

Page 4-262: "Due to the most robust disturbance cap and highest acreage of designated PHMA, Alternative 3 would offer the greatest restrictions on surface disturbing activities such as minerals development, renewable energy development, and ROW location. This alternative would result in the lowest level of cumulative impacts on cultural resources in the planning area." **However, much of the cultural resource survey work that occurs on BLM is required before surface disturbances are authorized. Restricting surface disturbance under Alternative 3 will also reduce the amount of cultural resource survey work in GRSG habitat; thereby reducing opportunities to learn more about the cultural resources in these areas. Restricting surface disturbance under Alternative 3 will also reduce the amount of cultural resource discoveries made as a result of project activities."**

Page 4-263: "While it is anticipated that impacts under Alternative 5 will be similar in magnitude to those under Alternatives 1, 2, and 4, the potential impacts on cultural resources from selection of this alternative will depend on the specific adjustments that are made." **Should there be a sentence after this one describing the contribution of Alternative #6 to cumulative effects on cultural resources?**

Page 4-263: "Surface-disturbing activities are the greatest contributor to cumulative impacts to resources and areas of tribal interest." **It should be noted here that many tribes manage vast landscapes, many**

of which abut BLM lands and are dependent on the BLM granting ROWs for infrastructure needed to serve tribal lands and allow for the development of mineral and other resources on tribal lands. As such, many tribal interests go far beyond maintaining traditional cultural practices such as observing GRSG lekking behavior and gathering pine nuts and involve development of mineral resources. Many tribes would welcome surface disturbance if it brought needed water, power and road infrastructure to their communities or allowed development and transportation of resources under tribal jurisdiction.

Page 4-263: "Residential development and associated recreation opportunities and access on adjacent public lands, both within and near the planning area, will continue to be a likely avenue for adverse effects on resources and areas of tribal interest." **This finding is questionable as the BLM does not allow residential development on its lands and most BLM land in the West is bordered by state or tribal land as opposed to private land.**

Page 4-263: "However, cumulative adverse impacts to resources and areas of tribal importance under alternative 1 are anticipated to be minor to moderate based on Section 106 compliance procedures, in addition to authorities mentioned in Section 3.16, which include appropriate tribal consultation on a case-by-case basis on undertakings on BLM-administered land that could affect Native American concerns." **Some tribes have established Tribal Historic Preservation Offices (THPOs) that give the tribes authority to determine Section 106 compliance within "Indian Country".**

Page 4-264: "Under Alternative 3, the level of surface-disturbing activities on BLM-administered public lands would greatly reduce impacts and improve protection to resources and areas of tribal interest over the other alternatives." **However, the restrictions under Alternative 3 could make it more difficult for tribes to receive water, power, pipeline and transportation improvements across BLM lands to benefit their communities. These restrictions may also make it more difficult for tribes to develop and transport energy and mineral commodities from tribal lands to processing facilities and markets."**

Page 4-264: "While it is anticipated that impacts under Alternative 5 will be similar in magnitude to those under Alternatives 1, 2, and 4, the potential impacts on resources and areas of tribal interest from selection of this alternative will depend on the specific adjustments that are made." **Should there be a sentence after this one describing the contribution of Alternative #6 to cumulative effects on resources and areas of tribal interest?**

Page 4-265: "Management actions under Alternative 3 would provide the overall greatest potential to maintain wilderness characteristics on lands with wilderness characteristics units within PHMAs when compared to all other alternatives due to the closure of fluid, salable, and non-energy mineral leasing, ROWs being managed as exclusion, and PHMAs being unavailable for livestock grazing." **However, these management actions could lead to a build up of fuels and increase the risk of wildfire in WSAs. Wildfire would make affected WSA areas less desirable for primitive recreation."**

Page 4-265: "For example, under Alternatives 4 and 5 fluid mineral leasing would be managed to minimize the potential for conflict and associated impacts from subsequent development in important GRSG habitats or connectivity areas which would indirectly protect overlapping lands with wilderness characteristics units." **Should there be a sentence after this one describing the contribution of Alternative #6 to cumulative effects on wilderness study areas?**

Page 4-266: "Alternative 3 would reduce the cumulative impacts in the planning area on recreation since Alternative 3 has the greatest restrictions on other resource uses, such as seasonal restrictions on fluid

mineral development. This would reduce the resource conflicts with recreation in PHMA, IHMA, and GHMA that occur as ~~resources~~ **resource uses** that could lead to resource conflict with recreation would otherwise continue in the project area. These restrictions would reduce the degradation of physical setting characteristics in the planning area, which would enhance the recreational user experience more than Alternative 1**.** Compared to Alternative 1, Alternative 3 would also have the greatest acres **in** PHMA. ~~Which~~ **This** would subject the greatest acreage to disturbance caps. Therefore, if future recreation would have the potential **to** exceed the disturbance cap in a particular area, the disturbance cap would have the potential to prohibit the construction of new recreation facilities over the largest area when compared with the other alternatives.~~"~~ **The restrictions of Alternative 3 would have to most adverse impacts on motorized recreation of the alternatives analyzed."**

Page 4-266: "Therefore, if future recreation projects would exceed the disturbance cap in a particular area, this would have the potential to restrict fewer acres against the construction of new recreation facilities when compared to Alternative 1." **Should there be a sentence after this one describing the contribution of Alternative #6 to cumulative effects on recreation and visitor services?**

Page 4-267: "Such past, present, and reasonably foreseeable future actions and conditions within the cumulative impact analysis area that have affected and will likely continue to affect transportation and travel include restrictions in GRSG HMAs on mining and mineral exploration and development, other planning efforts, such as those for Gunnison sage-grouse and big game in Colorado, and continued maintenance of federal and state highways **and county roads** which provide arterial connections to BLM system roads."

Page 4-267: "Increasing development and population growth have increased demand ~~and~~ **for the** construction **and maintenance** of roads."

CONSISTENCY WITH DUCHESNE COUNTY RESOURCE MANAGEMENT PLAN

The County Resource Management Plan contains the following objectives and policies associated with Greater Sage-grouse. The County expects the BLM to analyze in the proposals whether the proposed action would be consistent with these County policies and objectives to the greatest degree possible as required by FLPMA.

> ***Policy:*** *On BLM, National Forest, Utah Reclamation, Mitigation and Conservation Commission and Utah Division of Wildlife Resources lands within the Strawberry and Carbon Greater Sage Grouse Management Areas in Duchesne County, the Greater Sage-grouse shall be managed in accordance with the 2013 State of Utah Conservation Plan for Greater Sage Grouse in Utah and any subsequent amendments thereto. On private, local government and SITLA lands within the sage grouse management areas, compliance with this plan is strictly voluntary.*
>
> ***Policy:*** *Duchesne County encourages the use of predator control to maintain or increase sage grouse populations.*
>
> ***Policy:*** *Duchesne County supports the protection of sage grouse habitat from the effects of wildfire and the restoration of burned habitat with plant species that will benefit sage grouse populations.*
>
> ***Policy:*** *Duchesne County will not support the concept of buffers or setbacks from tall structures unless new science answers the following questions:*

- *Do sage-grouse avoid tall structures and in particular what are they avoiding?*
- *If sage-grouse avoid tall structures, what are the individual and population impacts, and when would the impacts be manifested?*
- *Will the effects be permanent?*
- *Will the effects be limited to the area of disturbance?*
- *What measures (BMPs) can be implemented to mitigate impacts and alleviate the negative impacts?*
- *Will these BMPs be universally effective?*

Objectives

Achieve consistency between federal, state and local efforts to manage greater sage grouse populations in Duchesne County.

CONCLUSION

As stated above, the Duchesne County Commissioners have many concerns associated with the BLM's Draft Resource Management Plan Amendments and Draft Environmental Impact Statement for greater sage-grouse. Please provide a thorough response to these comments and keep the best interests of our citizens in mind. Please revise the documents to address the above comments and demonstrate that the BLM will achieve consistency with the County Resource Management Plan to the greatest degree possible.

Sincerely,

DUCHESNE COUNTY COMMISSIONERS

Irene Hansen

Gregory Miles

Tracy Killian

Mike Hyde

Mike Hyde, AICP
Community Development Director

JOHNSON COUNTY COMMISSIONERS

William J. Novotny, III Robert Perry Jeff Shelley

June 13, 2024

Greater Sage-grouse Land Use Plan Amendments EIS Comments
ATTN: HQ GRSG RMPA
U.S. Bureau of Land Management - Utah State Office
440 West 200 South #500
Salt Lake City, UT 84101

Submitted via Federal eRulemaking Portal
Portal: https://eplanning.blm.gov/eplanning-ui/project/2016719/510

RE: Notice of Availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning (Federal Register/Vol.89, No. 52/Friday, March 15, 2024/Notices)

Dear Ms. Pat Deibert:

On behalf of the Johnson County Board of Commissioners (County), please accept this letter as comments for the Bureau of Land Management's (BLM) Greater Sage-grouse (GrSG) Draft Resource Management Plan Amendment (DRMPA) and Draft Environmental Impact Statement (DEIS). The management of GrSG continues to be of great importance to us and working with federal agencies to pursue a balance between Sage-grouse conservation, multiple use of public lands, energy development and the protection of private property is critical to the long-term health of our County and the State of Wyoming.

As a member of the Wyoming County Commissioners Association (WCCA), Johnson County has been actively engaged in the GrSG RMPA process, today and historically during the 2015 and 2019 plan amendments. In addition, we have participated in the Governor's Executive Order process including the development of Wyoming Executive Order 2015-4 and 2017-2, and most recently the updated Executive Order 2019-3. The County has demonstrated through numerous efforts that we have a vested interest in proactive management of GrSG to prevent a threatened or endangered listing under the Endangered Species Act (ESA).

In Wyoming, counties serve as a legal arm of the state entrusted with carrying out statutory and regulatory goals at the local level. Counties operate at the forefront to ensure our communities are economically vibrant, safe, and healthy places to live and work. Wyoming counties serve as partners and co-regulators of the 18.4 million acres of BLM surface lands and 42.9 million acres of federal mineral estate that fall within our jurisdictional boundaries and uniquely contain varying percentages of federal, state, and private land, which need thoughtful management. Specifically, Johnson County lands are comprised of approximately 31.3 % of federal surface with an even larger federal mineral estate.

Furthermore, as co-regulators, Johnson County has prepared a Comprehensive Land Use Plan and a Natural Resource Management Plan to serve as the basis for communicating and

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with the federal government and its agencies on land and natural resource management issues. Wyo. Stat. § 18-5-208(b). Communication, coordination, and collaboration with the BLM is vital, especially where significant BLM land and minerals exists, and management decisions can significantly impact the regulatory framework, customs, culture, and socioeconomics of our counties.

As partners, Counties work diligently to support the work of our federal land managers to overcome shared challenges and achieve mutual goals. Our counties actively participate with Wyoming BLM field offices and the Wyoming State BLM office on National Environmental Policy Act (NEPA) projects, trainings and presentations, and special initiatives. This proposed Plan Amendment is no exception, as Wyoming counties participated as cooperating agencies in BLM meetings and provided administrative draft comments, where allowed.

In response to this DEIS, Johnson County submits the following detailed comments for BLM's consideration specific to this plan amendment:

I. General

- State of Wyoming – Johnson County endorses, and incorporates by reference, comments submitted by the State of Wyoming.

- Wyoming County Commissioners Association (WCCA) – Johnson County endorses, and incorporates by reference, comments submitted by WCCA.

II. Support for the Wyoming GrSG Executive Order 2019-3 (EO) and State Alternative

Johnson County has gone on record numerous times, strongly supporting BLM's alignment with the Wyoming EO to the greatest extent possible. Johnson County believes the steps taken by the BLM in the past to align with the EO is critical to successful population and habitat management. Further, coordinating and combining resources between the state, local governments and federal agencies ensures the success of long-term management approaches that benefit the species.

The creation of the Sage-grouse Implementation Team (SGIT), an on-going process occurring between a cross section of stakeholders representing a multi-jurisdictional, cross-governmental and citizen-inclusive collaborative working group, focused on developing a satisfactory management strategy to protect GrSG and its habitat. The regulatory framework ultimately developed by SGIT and incorporated into the Wyoming EO resulted in the support of the United States Fish and Wildlife Service (USFWS) as a regulatory mechanism that would in fact protect long-term viability of Sage-grouse habitat and Sage-grouse populations; thereby, avoiding a listing under the ESA.

Wyoming has worked diligently to develop a framework that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. Many of the issues BLM is now readdressing in this latest series of NEPA analysis includes: Priority Habitat

Management Area (PHMA) mapping, habitat objectives, approaches to minimizing surface disturbance in PHMA, effects of livestock grazing, mitigation strategies including compensatory mitigation, mitigation recommendations for fluid mineral development within PHMA and General Habitat Management Area (GHMA), wild horse and burro management, adaptive management prescriptions and strategies for short-and-long term monitoring, which are all addressed in depth by the Wyoming EO.

BLM should continue to join Wyoming in supporting this EO and the regulatory framework as being the most effective for protecting the species and its habitat and allowing for a flexible strategy addressing changing conditions in a timely manner.

To this point, the State of Wyoming submitted a proposed State Alternative to be analyzed in this DEIS, which provided consistency with the EO. BLM failed to incorporate that proposed state alternative in the analysis as stating it was submitted to BLM too late in the process to be included as a stand-alone alternative. The County strongly encourages BLM to include or acknowledge the State's Alternative in the Final EIS with a sufficient explanation as to why it was not addressed in the analysis to date.

III. Cooperating Agency Process

The cooperating agency process was not without disagreement or frustration as our opportunity to engage with the federal agency, as outlined by the Counsel of Environmental Quality's (CEQ) NEPA regulations and was written into our MOUs, was ignored by the BLM. When these conflicts arose, Wyoming counties did everything in our power, and in accordance with our MOUs, to raise concerns expeditiously to resolve issues, as expressed in our candid conversations and frank letters.

While the DRMPA expresses numerous successes for cooperation throughout the process, there were certainly places that could have been improved. We also realize that the BLM is generically referred to, however, it must be clarified that this process was not run by the Wyoming state office but rather BLM Headquarters. This enlarged scale may be partly to blame for process failures during the cooperating agency process.

Unfortunately, Wyoming counties were powerless in directing how the BLM ran its cooperating agency process and meaningful opportunities for participation in the amendment process were far and few between. In an attempt to remedy this problem, Wyoming counties verbally requested improvements and sent numerous letters asking the BLM to improve the cooperating agency process and work in good faith with cooperators.

Our first letter in June of 2023 asked the BLM to develop a regular schedule of meetings (previous meetings were sprung on cooperators with minimal notice), to provide documents to review before the meetings, and to have the individuals at the BLM actually in charge of drafting the documents in the meetings. BLM did set up regular meetings and invited members of BLM HQ to participate, but documents were not shared with cooperators in advance of ,or after, the meetings.

Our second letter in August of 2023 requested the BLM follow its MOU which detailed how cooperators would be assisting in the determination of the purpose and need, development of the

alternatives and management prescriptions, along with an estimation of effects of implementing each alternative. Up to this point, cooperators had only been used as editors of small portions of the management prescription tables (never impact analysis), without having the benefit of previously discussing the management prescriptions in a cooperating agency meeting.

The Western Governors' Association (WGA) wrote a similar letter to the BLM outlining concerns that it had with the mapping process, the lack of inclusion of state plans as separate alternatives, and inconsistent information shared to members of its taskforce. This letter prompted the BLM to engage the WGA Taskforce in cooperating agency meetings. While a positive development for Taskforce members, counties serving as cooperators were not invited. Additionally, it became clear that the BLM was treating the Taskforce differently as it began to share many of the documents requested by counties with the Taskforce, albeit with a disclaimer "that these documents not be shared beyond the SG Task Force."

Our third letter in December of 2023 expressed our exasperation of being given an administrative draft, most of which we had never seen or discussed, to review over the Christmas Holiday. This was the first time that any information concerning the environmental or socio-economic impacts from the range of alternatives was provided to cooperators. Unfortunately, the BLM administrative draft was largely incomplete, inconsistent, and had several sections that were simply incorrect. Specifically, it lacked impact analysis for an entire alternative, it presented erroneous acreage figures and tables for Wyoming, and was woefully inaccurate in its description of socioeconomic impacts from fluid mineral leasing and development.

The BLM acknowledged these errors and promised Wyoming cooperating counties a second review of an updated draft of the socioeconomic sections before the release of the public draft. The BLM failed to uphold this promise and cooperators were never shown updated socioeconomic information before the draft went public.

IV. Consistency with Johnson County Natural Resource Management Plans comprehensive land use and/or zoning plans

The Federal Land Policy and Management Act (FLPMA), which governs the BLM, provides detailed requirements for "coordination" and "consistency" with local government land use plans. FLPMA states:

> To the extent practical, the BLM must stay apprised of local land use plans. The BLM must assure that local land use plans germane to the development of BLM land use plans are given consideration. To the extent practical, the BLM must assist in resolving inconsistencies between local and BLM land use plans. The BLM must provide for the meaningful involvement of local governments in the development of BLM land use programs, regulations, and decisions. 43 U.S.C. § 1712(c)(9).

There is no indication in the DEIS that BLM was apprised of local land use plans or assured that those plans were given consideration as required by FLMPA. Nowhere in the DRMPA does the BLM even quantify the local plans within the amendment area, not to mention, assure those plans

are given consideration. At a minimum, the BLM should include a list of the local land use plans that are within the amendment boundary. For further assistance, Johnson County has attached its Comprehensive Land Use Plan, dated April 19th, 2005, in its entirety for your consideration.

Further underscoring our commitment to sound natural resource policy, the Johnson County Natural Resource Management Plan was approved December 1, 2020. It is also included for your consideration.

FLPMA also requires that within the environmental consequences section of an EIS, the BLM include a discussion of all "[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned." 40 C.F.R. § 1502.16(a)(5). Further, where any inconsistency exists, the BLM is required to provide a statement describing "the extent to which the agency would reconcile its proposed action with the plan or law." 40 C.F.R. § 1506.2(d). An RMP may be inconsistent with local plans only where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and regulations applicable to public lands. *Id.*; 43 C.F.R. § 1610.3-2(a).

There is no discussion of possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned. Not only does this discussion concern local land use plans, but the BLM must also discuss the conflicts with its own mandates and laws. Specifically, it should discuss the obvious conflicts present in Alternative 3 with its multiple use and sustained yield mandate.

The BLM seems to suggest it does not need to do additional consistency review when it states on page ES-12: "Some counties identified their preference for management actions from one alternative or another. It is important to note that these preferences did not specifically cite state or county plan, program, or policy language."

This statement is false and should be removed from the DRMPA. Counties and the State of Wyoming both provided verbal and written comments and identified preferences of management actions based on the State's EO and county plans, programs, and policies. To the extent that additional citation or specificity was desired, the BLM should have asked for it and provided an opportunity for cooperators to provide it.

The DEIS rightfully acknowledges on page 1-12 that "BLM RMPs be consistent with officially approved or adopted resource-related plans of other Federal, State, local, and Tribal governments and policies and programs contained therein, to the extent that they are consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands." However, the DEIS does not address inconsistencies with local plans but instead, claims that the BLM will identify inconsistencies in the Final EIS after receiving comments from state and local government agencies.

Johnson County believes that the BLM's approach of waiting until the final stage to address inconsistencies in the EIS is flawed. This delay prevents state and local government agencies from providing input during the drafting phase, which could have led to substantive comments that might alter the project's components and subsequent analyses. A federal agency should not address

consistency solely by responding to concerns raised through comments. Instead, the BLM should have taken an active approach in identifying inconsistencies and addressing them in the DEIS. It is clear that the process by which BLM included a thorough consistency review of the Johnson County local natural resource plan fell far short of adequate and examples of specific inconsistencies will be detailed in this letter below.

IV. Disturbance Caps

The County recognizes the importance and necessity of establishing appropriate disturbance caps to ensure that disturbance to an area does not exceed tolerance levels of the GrSG. The Wyoming State Legislature, federal, state and local agencies, industries, conservation organizations, and landowners have dedicated significant time and resources to conserve GrSG populations in the State. We have shown the capacity and authority to protect and manage the species and its habitats on all lands by establishing oversight mechanisms and implementing protection measures, including developing a disturbance cap using the Density Disturbance Calculation Tool (DDCT). The DDCT establishes a disturbance cap of 5% for suitable GrSG habitat per an average of 640 acres over the entire DDCT assessment area.

To align with the State's EO for GrSG management strategies and to facilitate prompt calculations of disturbance areas, the County suggests that Wyoming be exempt from the 3% HAF fine scale disturbance cap, regardless of the chosen alternative under the EIS. While the BLM would still be able to gather and quantify whatever disturbance data it chooses, the 3% HAF fine scale disturbance cap should not be another disturbance calculator for permit authorization.

Currently, the disturbance levels in Wyoming, including those from fire and agriculture, are well below the 3% cap, making the requirement to meet this cap largely redundant and an inefficient use of time. Moreover, since the 3% HAF fine scale disturbance cap overlooks disturbances from fire and agriculture, which the DDCT includes, utilizing the DDCT for calculating the disturbance cap offers a more inclusive and simpler approach.

As stated earlier, the County supports the Wyoming EO including the utilization of the 5% surface disturbance cap along with the DDCT process, which has proven to be a sufficient management tool of surface disturbing activity within PHMA (core) habitat.

Additionally, the introduction of two disturbance caps could eventually lead to scenarios where one cap is met but the other is exceeded. The DEIS lacks clarity on how the BLM would manage such situations, potentially opening the door to disputes and outside legal challenges. Johnson County is concerned that any perceived discrepancy between the two disturbance calculations could fuel litigation from parties with the intent on halting the permit process. Clarity is key.

If the BLM proceeds with dual disturbance caps, the County would expect the agency to honor its verbal commitment made at the SGIT public meeting on May 29th, 2024, to engage with the State of Wyoming when discrepancies between disturbance caps arise.

Ultimately, by adhering to the established DDCT 5% disturbance cap, the BLM would not only effectively safeguard the habitat of the GrSG from excessive disturbance but also circumvent unnecessary project delays that could stem from additional coordination and potential litigation.

V. Grazing Management Objectives

Agriculture and livestock production in the County is necessary for the economy, its tax base, and the livelihood of the ranching/farming businesses and related industries. It is also vital to the well-being and continued health of natural resources on federal, state, and private lands. The range production of livestock and livestock grazing are management tools that are used to maintain and enhance the rangeland resource, which benefits watersheds, wildlife, water quality, and recreation, as well as providing needed forage for sustaining livestock production and wildlife habitat. Livestock grazing has been a major industry in Johnson County since early settlement and continues to be a vital part of the custom and culture of the County as well as an economic driver.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 110-115 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

7.2 LIVESTOCK AND GRAZING

History, Custom, and Culture

The vegetation in Johnson County evolved under tens of thousands of years of grazing and periodic fire. Grazing in the region began to shape the modern vegetation we see today around 18,000 years ago in the Pleistocene Epoch. Eventually these species were replaced by the wildlife we know today. Wildlife, wildfire and early humans continued to shape the vegetation of the basin. In the late 1600s to mid-1700s Native Americans obtained the horse and became pasture managers as well as wildlife managers, manipulating the vegetation and animal populations.

Permitted grazing on federal lands is a critical piece of livestock operations in Johnson County. The intermingled BLM and private lands allow ranching to continue in the County. Approximately 92% of the land managed by the BLM's Buffalo Field Office is managed for private grazing use (Johnson County Commissioners & Johnson County Planning and Zoning Commission, 2005). Access to federal lands is critical to the continued ability to maintain the ranching community and the viability of the County. For additional information regarding federal land management for grazing in Johnson County refer to the JCCLUP.

Livestock grazing has been a major industry in Johnson County since early settlement. It continues to be a vital part of the custom and culture of the County as well as an economic driver.

Resource Management Objective:

A. Livestock grazing is maintained as a viable major component of the economy, custom, and culture of the County.

Priorities:

1. Federal lands within Johnson County are managed for multiple-use and sustained yields, which includes continued grazing as intended by Congress in the passage of the Taylor Grazing Act, FLPMA, MUSY, and NFMA.
2. Livestock grazing management decisions are made based on the best available scientific information that is applicable to the rangeland resources in Johnson County. The scientific information used will be consistent with standards of the Data Quality Act.
3. Federal agencies' livestock grazing management guidelines incorporate standards and objectives that maintain the health, safety, and general welfare of the County's agricultural interests culturally and economically.
4. Work in coordination with Conservation Districts, local grazing boards and grazing permittees to develop and employ best management practices for the purpose of improving rangeland health with the goal of returning suspended AUM's to active status.
5. Work in coordination with Conservation Districts and grazing permittees to develop management practices that adhere to the 2005 Forest Plan and its instruction that the Forest Service strive to maintain or exceed the current allocation of 113,000 AUMs while meeting desired conditions.
6. Grass banks are supported as an acceptable management practice and federal agencies support maintenance of range improvements on grass banks and forage reserves.
7. Allotment retirements are not supported (An allotment retirement is the closure of a grazing permit/allotment).
8. Existing forage reserves should be phased out and retired grazing allotments should be returned to part of the actively managed grazing system. (Grass banks, or forage reserves, are areas where property owners/managers lease land to ranchers to assist with conservation-related projects or resource recovery).
9. Support management plans generated for the overall health of all natural resources. Plans specifically managing for one species are not supported.
10. Support livestock grazing on all federally owned and operated lands as an integral part of habitat management.
11. Support opening of Conservation Reserve Program lands for grazing and haying in times of drought, economic need, or other emergencies as allowed by statute.
12. Site-specific reviews conducted with the permittee/lessee should be used to determine the appropriate grazing rest or deferment period post-fire.
13. Complete full site-specific economic and resource analysis of proposed allotment closures within one-year of closure.
14. Grazing allotments in temporary non-use (the authorized withholding, on an annual basis, of all or a portion of permitted livestock use in response to a request of the permittee or lessee 43 CFR § 4100.0-5) are made readily available for use. If a resource concern exists, the grazing plan should acknowledge the concern and utilize livestock as a tool to help in recovery if feasible. If the allotment is in non-use and the range is meeting Wyoming rangeland standards or desired conditions, the grazing plan should fully utilize all adjudicated grazing AUMs.

15. Support creation of adaptive grazing management guidelines that allow permittees to respond to changes in resource conditions. These should include focused monitoring, triggers and responses, and alternative management.
16. The reduction of domestic livestock grazing AUMs to provide additional forage for another species or strictly for conservation purposes is not supported.
17. AUMs on federal lands should not be reduced unless a documented resource condition indicates a need for temporary reduction to improve condition. Any reduction should include a plan to reinstate AUMs when the resource condition has been addressed.
18. Timely processing of all term grazing permit renewals is a priority of the County.
19. Development of the grazing term permit renewal process should consider actions proposed by the permittee/lessee.
20. All federal and state land management agencies should use the most current Ecological Site Descriptions developed by the NRCS to create appropriate objectives for livestock and wildlife management.
21. Native seed mixes consistent with the Ecological Site Description and free of noxious weeds and invasive species are encouraged for all reclamation efforts and should be beneficial to both livestock and wildlife and developed collaboratively with the permittee. Seed mixes of introduced species may be utilized when they meet reclamation objectives so long as they are the best ecological match for the site and purpose of the seeding.
22. Agencies should collaboratively develop and implement rangeland monitoring programs in cooperation with the permittee. Use currently accepted scientifically based monitoring methods and return intervals and utilize properly trained rangeland personnel with an understanding of rangeland and its management to ensure proper collection and analysis of data.
23. Support the review and incorporation of legal and credible data collected by a permittee, contractors or subcontractors of a permittee, qualified team, or local government for use in management decisions.
24. Support consultation, cooperation, and collaborative efforts to ensure that overall rangeland health is maintained through monitoring and implementation of well-designed livestock grazing management plans on public land allotments.
25. Federal agencies should use range improvement and noxious weed control funds on grazing allotments in a timely manner.
26. Encourage development of additional rangeland improvements when the opportunity arises.
27. Johnson County supports improving rangeland health to accomplish the 2005 Forest Plan statements and goals.
28. Grazing rest prescriptions related to either wildfires or prescribed burns will be determined on a site-specific basis. If grazing on federal lands is temporarily suspended due to fire, recommence grazing based on monitoring and site-specific rangeland health determinations rather than predetermined timelines. Return livestock grazing to pre-fire levels when post-fire monitoring data shows established objectives have been met or have been achieved to an extent allowed by site potential. Require the use of credible data as previously defined to make these determinations. Initial post-fire monitoring data should be collected within two growing seasons of the fire and can be collected outside the

agency if the appropriate monitoring protocols are followed along with credible data criteria.

In addition, Johnson County encourages BLM to be consistent with the BLM Land Health Standards LHS) and specifically Standard 4 which addresses special status species management (SSS). Furthermore, the management prescriptions pertaining to livestock grazing identified in Chapter 2 (page 2-104, Table 2-12) of the DEIS should be made consistent in Chapter 4 and throughout the entirety of the document.

Specific to Adaptive Management (AM) and grazing in Alternatives 3-6, BLM has removed livestock grazing from the narrative and embedded it in the alternatives table in Chapter 2. The language in the alternatives table for AM is not consistent with current BLM rules and regulations, nor is it consistent with the Alternatives for Livestock Grazing in Chapter 2.

BLM should allow for grazing to be included in the AM process and be consistent with existing alternative language. BLM uses the terms "causal" and "contributing factors" incorrectly. Livestock grazing must be identified as a significant causal factor for LHS SSS before any modifications occur to a livestock grazing permits or leases. The County requests that the following language be considered in the alternatives: Specific to GrSG habitat, manage livestock grazing in a manner that 1) meets or makes progress toward meeting the Land Health Standard for special status species, and applies the guideline that addresses "restoring, maintaining, or enhancing habitats of...special status species to promote their conservation." (43 CFR Part 4180.2(e)(9))

Moreover, under Alternative 3, BLM analyzed for a "no grazing" alternative for all states stating "...Because PHMA would be unavailable for livestock grazing, no overarching livestock grazing objective would be needed." This alternative is economically and technically unfeasible to implement as it is in violation of the Taylor Grazing Act. The most appropriate action, as identified by the CEQ NEPA Regulations, would have been for BLM to consider it and eliminate it from further analysis as it does not meet the standard of alternatives that should be analyzed as "technically or economically" feasible. The County is strongly opposed to a "no grazing alternative" in any form.

Regarding fencing, the County generally supports wildlife friendly fencing; however, BLM must coordinate with the applicable grazing lessees should the removal of fencing be considered as those decisions could impact grazing allotments and management of the resource. Finally, any changes in grazing management should consider effects to the adjoining private or state lands as this could impact grazing management practices.

As demonstrated, agriculture production and livestock grazing are significant for the Counties. Not only do they provide an important tax base, the industry is a historical part of the local custom and culture. In the preferred alternative, the County supports the maximum amount of animal unit months (AUMs) being available for livestock grazing on BLM lands in PHMA and GHMA.

VI. Mitigation

Wyoming remains committed to working with its federal partners to develop a mitigation strategy that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. While BLM must adhere to its mitigation hierarchy (avoid, minimize, rectify, reduce, compensate), the County encourages the federal agency to work with the State of Wyoming by following the well-founded principles in the EO regarding adaptive management and the mitigation framework which includes steps for requiring compensatory mitigation. The adaptive management framework considers management strategies for short-and-long term monitoring that are most effective for protecting the species and its habitat while allowing for a flexible strategy addressing changing conditions in a timely manner and provides regulatory certainty for all parties involved.

VII. Private Property Rights

As stated earlier, Johnson County is rich in federal resources as our lands are comprised of approximately 31.3% *federal surface* and an estimated 40% *federal minerals*. Farming, ranching, energy development, tourism and recreation contribute heavily to the heritage of the County. Rangeland used by livestock and agricultural producers continues to be the dominant land use and federal agencies should consider the effects their decisions will have on neighboring private lands.

Furthermore, access to, or restrictions from, crossing federal, state, or county managed lands should not entail encumbrances or constraints on private property. Private property rights are the cornerstone of our County and must be protected to ensure that our continued customs and culture remain intact. When an agency decision or proposed action will have a negative impact to the current use of neighboring private lands, that federal undertaking may not be supported by the County.

Johnson County is particularly concerned about the failure of the DRMPA from analyzing the effects on neighboring state and private lands in the analysis area. Whether described as adjacency effects or cumulative effects, in a state where the BLM manages approximately 18 million surface acres and 41 million subsurface acers (66% of the state), there are substantial impacts to private and state lands across the decision area.

Management and ownership patterns lack uniformity creating a complex and interwoven mix of state, private, and federal minerals that are often "coproduced." The scale of coproduction can vary in degree and can be described in several ways. First, oil and gas can be coproduced by an individual wellbore that crosses through and produces the varying mineral estates. Second, oil and gas can be coproduced inside a drilling and spacing unit, where specific production is pro-rated to the percent of ownership in the drilling area. Finally, oil and gas can be coproduced across the entirety of a company's development play.

Oil and gas companies, like any other enterprise, must take into account risk/reward, scalability for cost saving, future development potential, infrastructure needs, and regulatory regimes. Operators prioritize areas for development where they can maximize returns and reduce risks. In the current phase of development in Wyoming's Powder River Basin, operators have large swaths of development to minimize risks, provide operational flexibility, and cost share infrastructure.

Even where a wellbore doesn't penetrate federal minerals in a particular drilling and spacing unit, gathering lines, pipelines, transmission lines, and roads to get product to the market inevitably run into federal management at some juncture. Therefore, ROW and surface occupancy restrictions have significant implications for private and state lands and minerals.

This analysis needs to be included in DRMPA. The BLM should acknowledge and analyze the cumulative effects of restrictions on the socioeconomics of our communities. The BLM's socioeconomic analysis should describe the human interests and values shaping public lands management, identifying effects of proposed actions on communities and economies, and promote the economic and social sustainability of communities near public lands.

VIII. Adaptive Management

Wyoming has worked diligently with its federal partners (BLM and USFWS) to develop a framework that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. The adaptive management framework considers management strategies for short-and-long term monitoring that are most effective for protecting the species and its habitat while allowing for a flexible strategy addressing changing conditions in a timely manner.

Under Wyoming Statute § 23-1-103, "...all wildlife in Wyoming is the property of the state..." and the Wyoming Game and Fish Department (WGFD) has the legal responsibility for carrying out the purposes of this act. Using the best available science in the Adaptive Management process is necessary to continue long-term healthy populations of GrSG. Recognizing the WGFDs expertise, the State's Adaptive Management strategy places the responsibility of conducting annual population data squarely with the state agency. It is imperative that BLM recognize the WGFDs authority and expertise in this process. The County implores BLM to defer to the WGFD regarding any data collection or management decisions that pertain to the population trend analysis of GrSG within the boundaries of Wyoming.

IX. Wild Horses

In 1971, Congress enacted the Wild Free-Roaming Horse and Burro Act (Public Law 92-195), which guides the management, protection and control of wild horses and burros on federal lands managed by the USFS and BLM. Herd Management Areas (HMAs) were established in ten Western states based on the existing populations during the passing of the Act in 1971. This Act also mandates that wild/feral horses and burros are managed in a thriving ecological balance with the land and as part of the natural landscape (USFS 2021b). To ensure wild/feral horse and burro populations remain in good condition and that federal lands are protected from degradation, the growth of wild/feral horse and burro herds must be actively managed.

Population control is necessary to protect fragile ecosystems, balance shared use of resources by wildlife, and maintain herd health and protect herds from starvation. Johnson County encourages aggressive wild horse and burro management that will not adversely impact rangeland resources, livestock or grazing, wildlife habitat or resources, soil resources, or other varied land uses.

Johnson County will not tolerate the BLM's feral horses or burros from establishing populations in our county which would be detrimental to our wildlife and our agricultural economy.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 94-96of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

The only viable alternative analyzed that appropriately addresses actual management of wild horse and burros is Alternative 3 (page 2-114, Table 2-13). Managing for "zero" Appropriate Management Levels (AMLs) within HMAs that overlap with PHMA and removing wild horses in those areas is the proper land management prescription and is the only realistic method for meeting AML at the implementation level. For the benefit of the GrSG, all available agency tools must be used to support herd management plans that prevent habitat degradation and native wildlife displacement, including the removal of all wild horses and burros from PHMA.

The State of Wyoming submitted alternative language for wild horses that based any removal of HMAs on whether wild horses were the causal factor of range degradation for a certain period of years. While substantial evidence already exists, that wild horses cause significant range damage and negatively impact GrSG, Wyoming's recommended approach would have been more economically, politically, and scientifically defensible. Unfortunately, this alternative was not properly considered in any of the other alternatives.

X. Lack of Need for ACECs

The WCCA conducted a consistency review on a statewide basis of the DEIS alternatives in relation to ACECs and county natural resource plans, which is summarized in the attached table. In addition to the consistency table, the text below details the concerns regarding the BLM's inadequate and untimely consistency review and the unnecessary designation of ACECs in areas with existing and adequate PHMA designations to manage for and protect GrSG.

An ACEC is defined as "areas within the public lands where special management attention is required ... to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards." 43 U.S.C. § 1702(a).

A potential ACEC must satisfy a three-part test before it may be designated. First, it must have "relevance," meaning it possesses "a significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard." 43 C.F.R. § 1610.7-2(a)(l). Second, it must also have "importance," meaning the relevant values identified in the first step must have "substantial significance and values." 43 C.F.R. § 1610.7-2(a)(2); see also BLM Manual 1613, Section 1 l.B. For the relevance values to meet the "importance" threshold, the area must have "more than locally significant qualities ... compared to any similar resource," have qualities that make it fragile, rare, or irreplaceable, or been recognized as warranting protection to satisfy national priority concerns. BLM Manual 1613, Section 11.B.1. Third, the nominated area must require "special management" "to protect and prevent irreparable damage to important historic,

cultural, or scenic values; fish, wildlife, and plant resources, or other natural system or processes." 43 U.S.C. § 1702(a).

Certainly, ACECs can play a role in conservation and special management of historic, cultural, scenic, fish and wildlife resources. However, the BLM has not demonstrated how the addition of the proposed ACECs under Alternative 3 of the DEIS will improve Greater Sage-grouse populations and habitat more effectively than Priority Habitat Management Areas (PHMAs). Under Alternative 3, the DEIS states that the ACECs would be managed similarly to PHMAs, without additional management prescriptions. Johnson County strongly feels that the designation of ACECs under Alternative 3 are unnecessary given that they will be managed exactly the same as PHMAs. The BLM fails to consider how GrSG populations and habitat are already protected under existing management actions and will be further protected by the proposed management actions under Alternatives 3 of the DEIS. A significant example of this failure is the BLM's attempt to layer ACEC designations on top of existing ACECs like in Fremont and Sublette Counties.

Furthermore, ACEC designations could allow for excessive regulatory authority in the future for areas that are otherwise considered appropriate for PHMA management. Unnecessary designation opens the door for further impediments to multiple use practices.

Attached to this letter, you will find a spreadsheet that provides a thorough review of inconsistencies between the above-mentioned Wyoming County NRMPs and the proposed ACEC resource management restrictions under Alternatives 3 and 6 of the DEIS.

In addition, the County has identified several inconsistencies between the DEIS and the Johnson County Natural Resource Management Plans (NRMP) directly affected by the proposed ACECs. For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 22-23 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

Johnson County strongly opposes the designation of any Sage-grouse ACECs in Wyoming. As discussed earlier in these comments, we have worked diligently as a state to develop a framework that effectively manages for GrSG populations and its habitat and no new ACEC designations are warranted nor will they provide any additional protections not already in place.

XI. Fluid Mineral Development and Leasing Objective

Likely the most substantial direct impact to local government revenue in Wyoming is the management prescription for oil and gas development. Consequently, it is vital to correctly capture existing development and the Reasonably Foreseeable Development Scenario (RFDs). The RFD is even more important to get correct when it is comparing the potential impacts from wildly inconsistent alternatives. If poor or incorrect data is utilized to develop the RFD, then the RFD and resulting socioeconomic analysis will be flawed.

Certain portions of the BLM's description and analysis of existing oil and gas could be improved. For example, on 12-38 the BLM reports 9,127 wells have been "drilled" in Wyoming between 2013 and 2023. However, this figure includes workovers and wells that were never completed, which may capture wells that were never actually "drilled." The section properly includes data from the Wyoming Oil and Gas Conservation Commission, which reflects a total of 6,455 unique well spuds in Wyoming between 2013 and 2023. However, the fact that the state's number is 30% less than the BLM's number reflects a poor attempt to gather and clean-up the data for analysis.

On page 12-39, the DRMPA states that 24% of the HMAs in Wyoming are under an existing authorized lease. Additional data that should have been reflected in the DRMPA and clarified in this section is the number of leased acreage currently under litigation in Wyoming. Without including litigated leases in Table 35, it is misleading to members of the public that equate "authorized" as available for development.

In order to understand whether the RFD is truly reasonable there should be a greater description of what was utilized for inputs and variables. Table 35 in Appendix 12 would benefit from a better description of the "source" of the data provided in the table. In addition, there needs to be additional description of the table to help clarify whether these projected wells are federal surface and minerals, private/state surface and federal minerals, or mixed minerals and surface, etc.

The "Projected Production by Alternative in the Decision Area" needs to be amended to more accurately reflect the decline curves associated with modern horizontal development in Wyoming. Without any written description or justification, the projection utilizes a record production year in Wyoming as its basis for production over the next 20 years. In other words, the current projections do not consider decline curves of existing and new wells but keep historic production levels constant. However, it must be noted that the only way to maintain that statewide production level as production declines from existing wells is to drill and produce new wells.

The problem with maintaining existing production as a constant in the RFD is that it artificially reduces the negative economic impacts associated with alternatives 3 and 4 reduced projected well development. This is because the weight given to new wells is significantly reduced by the artificial base production of the existing wells.

Under Alternative 3 only 4,284 wells are expected to be drilled in the next 20 years. This is compared to Alternative 1 that projects 14,450 wells drilled in the same period of time. Although alternative 3 projects over 10,000 less wells are drilled in 20 years it only reduces the production of oil by roughly 224,000,000 barrels and gas by 4,600,000,000 mcf of gas.

Taxes derived from oil and gas development in Wyoming constitutes a significant portion of state and county revenue used to pay for public education and essential services, including roads, fire protection, emergency medical services, courthouses, libraries, landfills, hospitals, law

enforcement, airports, recreation, and senior citizen centers. In Johnson County, oil and gas ad valorem revenues are $8.1 million making up 53% of our 2023 operational budget.

Oil and gas companies operating in Wyoming are assessed property (ad valorem) taxes by counties and severance taxes by the state. Although they are called "taxes" both are more akin to a royalty because production is taxed regardless of whether an operator makes a profit. Property taxes on oil and gas vary by county and range from 6-7.3% calculated by the gross revenue of the previous year's production and the value of tangible equipment and improvements. Severance taxes are calculated at 6% of gross revenue in the same manner as royalty taxes (gross revenue minus transportation and gas processing cost). Federal Royalties are also deducted from the gross revenue for the purpose of calculating severance taxes.

Property taxes on oil and gas account for over 40% of the total property taxes levied by counties in Wyoming. In 2020, the property taxes collected by counties exceeded $600 million. Additionally, severance taxes collected by the state in 2022 topped $275 million. When adding in federal lease revenues, federal and state royalties, sale and use taxes, and conservation taxes, the industry contributed $1.23 billion in taxes to state and local governments.

Oil and gas development is also subject to sales and use taxes. According to the Wyoming Department of Revenue, 12.6% of Johnson County's sales tax directly comes from the mineral industry. This does not count the secondary sales tax paid by those companies when they purchase goods from local businesses, making the impact well over12.6% Currently that accounts for over $1 million a month in revenue to the County.

Furthermore, ad valorum taxes associated with oil and gas production generated an average of over $8.1 million a year for $676,475 County. This represents over 51% of all property tax paid in the County. A decrease in assessed valuation will affect all County operations including essential services like road and bridge construction and maintenance, investment in IT technology and cyber security, economic diversification investment (water, sewer and streets), fire equipment and personal, and daily operations.

As noted on the Petroleum Association of Wyoming (PAW) website, Wyoming ranked 8th in production of both crude oil and natural gas in 2022 nationally. Further, Wyoming ranked the 2nd largest producer of both oil and natural gas on federal lands, making the state disproportionally affected by national policy changes. According to a 2023 study released by the American Petroleum Institute, in 2021 the oil and natural gas had the following impacts on the Wyoming economy: 58,780 total jobs and $5.7 Billion in labor income.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 50-54 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

Resource Management Objective:

A. Oil and gas extraction are managed in a responsible way that promotes the County's economic viability along with the health of ecosystems and citizens of the County.

Funding derived from mineral development constitutes a significant portion of State and County revenue used to pay for essential services, including roads, fire protection, courthouses and judicial systems, libraries, landfills, hospitals, law enforcement, airports, recreation, public health, and senior citizen centers. Any curtailment of leasing and development activity significantly impacts the socio-economics of the communities and eliminates a critical funding stream for not just our County but all counties, the State of Wyoming and its residents.

Our ability to fund organizations would be negatively affected, which includes but is not limited to, the following: WY Child and Family Development, Children's Advocacy Project (forensic interviewing of sexually assaulted and abused children), Human Resource Council, 'Youth Development Services (Youth Crisis and Intervention Center)', Humane Society, Boys and Girls Clubs, County Fair Boards, Hope Center (Domestic Violence and Sexual Assault Survivors Crisis Center and Shelter), local Libraries, Behavioral and Mental Health Crisis and Intervention Centers, Economic Development organizations and various youth and community recreation organizations. Without County support these organizations will offer fewer public services and could fail and there would be insufficient funds to provide basic services at a level needed for the protection of the county resident's health, safety, and security.

It cannot be stated enough the importance that the oil and gas industry plays in Wyoming. BLM must do all it can to find a balance between GrSG species and habitat protection with continued mineral leasing and development. This balance must be made in consideration of the interwoven land ownership patterns across Wyoming.

XII. Transportation and Transmission Objectives

Public access to routes of travel is essential to the County's transportation and public access systems and to the economic, social, political well-being, customs and culture of the communities. Many private landowners need rights-of-way across state and federal lands to access their property, to use their water rights, and to exercise their grazing rights. Rights-of-ways (ROW) and corridors provide for the development of certain types of infrastructure or facilities that are in the public interest on federal lands for a specified period of time.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 17-21 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

"There is full and open access to and through Johnson County federal lands for local purposes such as safety, health, and recreation use is maintained and expanded where possible."

Regarding approved access for transportation or transmission within PHMA, the County will support the Wyoming EO and the surface disturbance DDCT process for determining access. However, we strongly encourage BLM and the state to coordinate and consult with the affected County regarding any planning process or activity that restricts, eliminates, increases, or decreases

access to federal or state lands and allow the County the opportunity to resolve any potential conflicts with the County's objectives, principles, and policies, prior to acting.

XIII. Socioeconomics

Economic impacts do matter. Access to federally administered lands and resources are critical to ensure the socioeconomic well-being, custom, culture and stability of our communities. In Johnson County, lands under federal or state control and decisions made for public land management can directly impact the service and non-service industries, public accessibility, and the demographics of an area. Effective coordination and consultation between the County, federal and state agencies is critical to ensuring that land management agencies thoroughly consider the effects that proposed actions have on custom, culture, and economic stability; conservation and use of the environment and natural resources in the County along with multiple use. Counties receive revenue from federal lands in many ways including mineral leasing and development, agriculture, recreation, travel and tourism, etc. Any curtailment of access to public lands will directly impact the socioeconomics of the County.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 105-108 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan as we as the County's Socioeconomic Profile which is also included.

The County cannot state clearly enough the importance of our ability to access federal lands to drive vibrant economic communities. BLM significantly undervalued the mineral contributions to the counties and state in the socioeconomic section. BLM must include a robust socioeconomic analysis clearly demonstrating the differences between management prescriptions in the Alternatives, which includes impacts to the tax base (royalties, rents or bonus bids, severance taxes, ad valorum taxes, sales and use tax employment income, and direct and indirect employment.) The County can assist in providing the most up-to-date information available for BLMs analysis.

XIV. Environmental Justice

Johnson County does not have any identified populations that met the criteria for further consideration for environmental justice communities. However, no local government participating in Wyoming as a cooperating agency was asked to provide any input regarding "fair treatment and meaningful involvement" in relation to the formulation execution, and enforcement of environmental laws, regulations, and policies. In fact, the topic of environmental justice never came up in cooperating agency meetings.

The DRMPA discusses several concerns of environmental justice populations regarding economic impacts from greater resource restrictions on livestock grazing and mineral, oil and gas development. The DRMPA dismisses the concerns quickly by stating that "there is a lack of evidence that individuals employed in the sectors are most likely to be impacted by BLM

management decisions (such as farming, ranching, and mining sectors) have a higher percentage of people who identify as minority, low income, or American Indian and Alaska Native." (3-54).

In rural western America, this dismissal seems short sighted and inaccurate. Bedrock industries that employ large percentages of the workforce keep our communities alive. While a particular oil and gas job may not be held by a minority, low income, or tribal member, the impacts from those workers leaving our communities will affect the entire county. Less students in schools, less people shopping at local grocery stores, going out to eat, buying fuel, etc. Wyoming has numerous ghost towns from single industries drying up. The impacts from additional restrictions on bedrock industries should absolutely be included in the analysis for environmental justice communities.

In conclusion, Johnson County is committed to continuing our engagement as a cooperating agency along with the State of Wyoming, its state agencies and BLM to work through these important issues. We encourage BLM to align with the most recent Wyoming EO, include acknowledgement and analysis of the Wyoming State Alternative and to develop a preferred alternative that takes into consideration our comments submitted herein.

Sincerely,

William J. Novotny, III
Chairman, Johnson County Board of Commissioners
President, Wyoming County Commissioners Association

CC: The Honorable Governor Mark Gordon
The Honorable United States Senator John Barrasso
The Honorable United States Senator Cynthia Lummis
The Honorable United States Congressman Harriet Hageman

SUBLETTE COUNTY COMMISSIONERS

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June 13, 2024

Greater Sage-grouse Land Use Plan Amendments EIS Comments
ATTN: HQ GRSG RMPA
U.S. Bureau of Land Management - Utah State Office
440 West 200 South #500
Salt Lake City, UT 84101

Submitted via Federal eRulemaking Portal
Portal: https://eplanning.blm.gov/eplanning-ui/project/2016719/510

RE: Notice of Availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning **(**Federal Register/Vol.89, No. 52/Friday, March 15, 2024/Notices)

Dear Ms. Pat Deibert:

On behalf of the Sublette County Board of Commissioners (County), please accept this letter as comments for the Bureau of Land Management's (BLM) Greater Sage-grouse (GrSG) Draft Resource Management Plan Amendment (DRMPA) and Draft Environmental Impact Statement (DEIS). The management of GrSG continues to be of great importance to us and working with federal agencies to pursue a balance between Sage-grouse conservation, multiple use of public lands, energy development and the protection of private property is critical to the long-term health of our County and the State of Wyoming.

As a member of the Wyoming County Commissioners Association (WCCA), Sublette County has been actively engaged in the GrSG RMPA process, today and historically during the 2015 and 2019 plan amendments. In addition, we have participated in the Governor's Executive Order process including the development of Wyoming Executive Order 2015-4 and 2017-2, and most recently the updated Executive Order 2019-3. The County has demonstrated through numerous efforts that we have a vested interest in proactive management of GrSG to prevent a threatened or endangered listing under the Endangered Species Act (ESA).

In Wyoming, counties serve as a legal arm of the state entrusted with carrying out statutory and regulatory goals at the local level. Counties operate at the forefront to ensure our communities are economically vibrant, safe, and healthy places to live and work. Wyoming counties serve as partners and co-regulators of the 18.4 million acres of BLM surface lands and 42.9 million acres of federal mineral estate that fall within our jurisdictional boundaries and uniquely contain varying

percentages of federal, state, and private land, which need thoughtful management. Specifically, Sublette County lands are comprised of approximately 76% of *federal surface* and an estimated 86% of federal mineral estate.

Furthermore, as co-regulators, Sublette County has prepared a Federal & State Land Use Policy to serve as the basis for communicating and coordinating with the federal government and its agencies on land and natural resource management issues. Wyo. Stat. § 18-5-208(b). Communication, coordination, and collaboration with the BLM is vital, especially where significant BLM land and minerals exists, and management decisions can significantly impact the regulatory framework, customs, culture, and socioeconomics of our counties.

As partners, Counties work diligently to support the work of our federal land managers to overcome shared challenges and achieve mutual goals. Our counties actively participate with Wyoming BLM field offices and the Wyoming State BLM office on National Environmental Policy Act (NEPA) projects, trainings and presentations, and special initiatives. This proposed Plan Amendment is no exception, as Wyoming counties participated as cooperating agencies in BLM meetings and provided administrative draft comments, where allowed.

In response to this DEIS, Sublette County submits the following detailed comments for BLM's consideration specific to this plan amendment:

I. General

- State of Wyoming – Sublette County endorses, and incorporates by reference, comments submitted by the State of Wyoming.

- Wyoming County Commissioners Association (WCCA) – Sublette County endorses, and incorporates by reference, comments submitted by WCCA.

II. Support for the Wyoming GrSG Executive Order 2019-3 (EO) and State Alternative

Sublette County has gone on record numerous times, strongly supporting BLM's alignment with the Wyoming EO to the greatest extent possible. Sublette County believes the steps taken by the BLM in the past to align with the EO is critical to successful population and habitat management. Further, coordinating and combining resources between the state, local governments and federal agencies ensures the success of long-term management approaches that benefit the species.

The creation of the Sage-grouse Implementation Team (SGIT), an on-going process occurring between a cross section of stakeholders representing a multi-jurisdictional, cross-governmental and citizen-inclusive collaborative working group, is focused on developing a satisfactory management strategy to protect GrSG and its habitat. The regulatory framework ultimately developed by SGIT and incorporated into the Wyoming EO resulted in the support of the United

States Fish and Wildlife Service (USFWS) as a regulatory mechanism that would in fact protect long-term viability of Sage-grouse habitat and Sage-grouse populations; thereby, avoiding a listing under the ESA.

Wyoming has worked diligently to develop a framework that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. Many of the issues BLM is now readdressing in this latest series of NEPA analysis includes: Priority Habitat Management Area (PHMA) mapping, habitat objectives, approaches to minimizing surface disturbance in PHMA, effects of livestock grazing, mitigation strategies including compensatory mitigation, mitigation recommendations for fluid mineral development within PHMA and General Habitat Management Area (GHMA), wild horse and burro management, adaptive management prescriptions and strategies for short-and-long term monitoring, which are all addressed in depth by the Wyoming EO.

BLM should continue to join Wyoming in supporting this EO and the regulatory framework as being the most effective for protecting the species and its habitat and allowing for a flexible strategy addressing changing conditions in a timely manner.

To this point, the State of Wyoming submitted a proposed State Alternative to be analyzed in this DEIS, which provided consistency with the EO. BLM failed to incorporate that proposed state alternative in the analysis as stating it was submitted to BLM too late in the process to be included as a stand-alone alternative. The County strongly encourages BLM to include or acknowledge the State's Alternative in the Final EIS with a sufficient explanation as to why it was not addressed in the analysis to date.

III. Cooperating Agency Process

The cooperating agency process was not without disagreement or frustration as our opportunity to engage with the federal agency, as outlined by the Counsel of Environmental Quality's (CEQ) NEPA regulations and was written into our MOUs, was ignored by the BLM. When these conflicts arose, Wyoming counties did everything in our power, and in accordance with our MOUs, to raise concerns expeditiously to resolve issues, as expressed in our candid conversations and frank letters.

While the DRMPA expresses numerous successes for cooperation throughout the process, there were certainly places that could have been improved. We also realize that the BLM is generically referred to, however, it must be clarified that this process was not run by the Wyoming state office but rather BLM Headquarters. This enlarged scale may be partly to blame for process failures during the cooperating agency process.

Unfortunately, Wyoming counties were powerless in directing how the BLM ran its cooperating agency process and meaningful opportunities for participation in the amendment process were far and few between. In an attempt to remedy this problem, Wyoming counties verbally requested

improvements and sent numerous letters asking the BLM to improve the cooperating agency process and work in good faith with cooperators.

Our first letter in June of 2023 asked the BLM to develop a regular schedule of meetings (previous meetings were sprung on cooperators with minimal notice), to provide documents to review before the meetings, and to have the individuals at the BLM actually in charge of drafting the documents in the meetings. BLM did set up regular meetings and invited members of BLM HQ to participate, but documents were not shared with cooperators in advance of, or after, the meetings.

Our second letter in August of 2023 requested the BLM follow its MOU which detailed how cooperators would be assisting in the determination of the purpose and need, development of the alternatives and management prescriptions, along with an estimation of effects of implementing each alternative. Up to this point, cooperators had only been used as editors of small portions of the management prescription tables (never impact analysis), without having the benefit of previously discussing the management prescriptions in a cooperating agency meeting.

The Western Governors' Association (WGA) wrote a similar letter to the BLM outlining concerns that it had with the mapping process, the lack of inclusion of state plans as separate alternatives, and inconsistent information shared to members of its taskforce. This letter prompted the BLM to engage the WGA Taskforce in cooperating agency meetings. While a positive development for Taskforce members, counties serving as cooperators were not invited. Additionally, it became clear that the BLM was treating the Taskforce differently as it began to share many of the documents requested by counties with the Taskforce, albeit with a disclaimer "that these documents not be shared beyond the SG Task Force."

Our third letter in December of 2023 expressed our exasperation of being given an administrative draft, most of which we had never seen or discussed, to review over the Christmas Holiday. This was the first time that any information concerning the environmental or socio-economic impacts from the range of alternatives was provided to cooperators. Unfortunately, the BLM administrative draft was largely incomplete, inconsistent, and had several sections that were simply incorrect. Specifically, it lacked impact analysis for an entire alternative, it presented erroneous acreage figures and tables for Wyoming, and was woefully inaccurate in its description of socioeconomic impacts from fluid mineral leasing and development.

The BLM acknowledged these errors and promised Wyoming cooperating counties a second review of an updated draft of the socioeconomic sections before the release of the public draft. The BLM failed to uphold this promise and cooperators were never shown updated socioeconomic information before the draft went public.

IV. Consistency with Sublette County Federal & State Land Use Policy

The Federal Land Policy and Management Act (FLPMA), which governs the BLM, provides detailed requirements for "coordination" and "consistency" with local government land use plans. FLPMA states:

> To the extent practical, the BLM must stay apprised of local land use plans. The BLM must assure that local land use plans germane to the development of BLM land use plans are given consideration. To the extent practical, the BLM must assist in resolving inconsistencies between local and BLM land use plans. The BLM must provide for the meaningful involvement of local governments in the development of BLM land use programs, regulations, and decisions. 43 U.S.C. § 1712(c)(9).

There is no indication in the DEIS that BLM was apprised of local land use plans or assured that those plans were given consideration as required by FLMPA. Nowhere in the DRMPA does the BLM even quantify the local plans within the amendment area, not to mention, assure those plans are given consideration. At a minimum, the BLM should include a list of the local land use plans that are within the amendment boundary. For further assistance, Sublette County has attached its Federal & State Land Use Policy, dated September 15, 2021, in its entirety for your consideration.

FLPMA also requires that within the environmental consequences section of an EIS, the BLM include a discussion of all "[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned." 40 C.F.R. § 1502.16(a)(5). Further, where any inconsistency exists, the BLM is required to provide a statement describing "the extent to which the agency would reconcile its proposed action with the plan or law." 40 C.F.R. § 1506.2(d). An RMP may be inconsistent with local plans only where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and regulations applicable to public lands. *Id.*; 43 C.F.R. § 1610.3-2(a).

There is no discussion of possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned. Not only does this discussion concern local land use plans, but the BLM must also discuss the conflicts with its own mandates and laws. Specifically, it should discuss the obvious conflicts present in Alternative 3 with its multiple use and sustained yield mandate.

The BLM seems to suggest it does not need to do additional consistency review when it states on page ES-12: "Some counties identified their preference for management actions from one alternative or another. It is important to note that these preferences did not specifically cite state or county plan, program, or policy language."

This statement is false and should be removed from the DRMPA. Counties and the State of Wyoming both provided verbal and written comments and identified preferences of management actions based on the State's EO and county plans, programs, and policies. To the extent that additional citation or specificity was desired, the BLM should have asked for it and provided an opportunity for cooperators to provide it.

The DEIS rightfully acknowledges on page 1-12 that "BLM RMPs be consistent with officially approved or adopted resource-related plans of other Federal, State, local, and Tribal governments

and policies and programs contained therein, to the extent that they are consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands." However, the DEIS does not address inconsistencies with local plans but instead, claims that the BLM will identify inconsistencies in the Final EIS after receiving comments from state and local government agencies.

Sublette County believes that the BLM's approach of waiting until the final stage to address inconsistencies in the EIS is flawed. This delay prevents state and local government agencies from providing input during the drafting phase, which could have led to substantive comments that might alter the project's components and subsequent analyses. A federal agency should not address consistency solely by responding to concerns raised through comments. Instead, the BLM should have taken an active approach in identifying inconsistencies and addressing them in the DEIS. It is clear that the process by which BLM included a thorough consistency review of the Sublette County local natural resource plan fell far short of adequate, and examples of specific inconsistencies will be detailed in this letter below.

IV. Disturbance Caps

The County recognizes the importance and necessity of establishing appropriate disturbance caps to ensure that disturbance to an area does not exceed tolerance levels of the GrSG. The Wyoming State Legislature, federal, state and local agencies, industries, conservation organizations, and landowners have dedicated significant time and resources to conserve GrSG populations in the State. We have shown the capacity and authority to protect and manage the species and its habitats on all lands by establishing oversight mechanisms and implementing protection measures, including developing a disturbance cap using the Density Disturbance Calculation Tool (DDCT). The DDCT establishes a disturbance cap of 5% for suitable GrSG habitat per an average of 640 acres over the entire DDCT assessment area.

To align with the State's EO for GrSG management strategies and to facilitate prompt calculations of disturbance areas, the County suggests that Wyoming be exempt from the 3% HAF fine scale disturbance cap, regardless of the chosen alternative under the EIS. While the BLM would still be able to gather and quantify whatever disturbance data it chooses, the 3% HAF fine scale disturbance cap should not be another disturbance calculator for permit authorization.

Currently, the disturbance levels in Wyoming, including those from fire and agriculture, are well below the 3% cap, making the requirement to meet this cap largely redundant and an inefficient use of time. Moreover, since the 3% HAF fine scale disturbance cap overlooks disturbances from fire and agriculture, which the DDCT includes, utilizing the DDCT for calculating the disturbance cap offers a more inclusive and simpler approach.

As stated earlier, the County supports the Wyoming EO including the utilization of the 5% surface disturbance cap along with the DDCT process, which has proven to be a sufficient management tool of surface disturbing activity within PHMA (core) habitat.

Additionally, the introduction of two disturbance caps could eventually lead to scenarios where one cap is met but the other is exceeded. The DEIS lacks clarity on how the BLM would manage such situations, potentially opening the door to disputes and outside legal challenges. Sublette County is concerned that any perceived discrepancy between the two disturbance calculations could fuel litigation from parties with the intent on halting the permit process. Clarity is key!

If the BLM proceeds with dual disturbance caps, the County would expect the agency to honor its verbal commitment made at the SGIT public meeting on May 29th, 2024, to engage with the State of Wyoming when discrepancies between disturbance caps arise.

Ultimately, by adhering to the established DDCT 5% disturbance cap, the BLM would not only effectively safeguard the habitat of the GrSG from excessive disturbance but also circumvent unnecessary project delays that could stem from additional coordination and potential litigation.

V. Grazing Management Objectives

Agriculture and livestock production in the County is necessary for the economy, its tax base, and the livelihood of the ranching/farming businesses and related industries. It is also vital to the well-being and continued health of natural resources on federal, state, and private lands. The range production of livestock and livestock grazing are management tools that are used to maintain and enhance the rangeland resource, which benefits watersheds, wildlife, water quality, and recreation, as well as providing needed forage for sustaining livestock production and wildlife habitat. Livestock grazing has been a major industry in Sublette County since early settlement and continues to be a vital part of the custom and culture of the County as well as an economic driver.

For the BLMs convenience we have identified a few priority policy positions from our County's Federal & State Land Use Plan that are impacted by this DEIS. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

- Cultural, Historical, Geological, and Paleontological Resources
    - Management Objective 2: Consider the land, its people, and their heritage in all proposed actions. Preserve and perpetuate livestock grazing, the resulting lifestyles, and its imprint on landscapes as these are some of the oldest enduring and economically important cultural and heritage resources in the West. Also consider access and the preservation of these sites.
- Livestock & Grazing Resources
    - Resource Management Objective 1: Sublette County supports responsible agriculture businesses, livestock grazing and rangeland management for sustained and continued preservation of open space, habitat, working landscapes, historic customs and economic viability.

- Resource Management Objective 2: Sublette County supports the continued viability of the livestock industry on the federal and state lands using proper optimization of AUMs and management of land and forage resources in accordance with supportable science.
- Priority 4: Support the use of categorical exclusions for issuance or renewal of livestock grazing permits on federal lands, if the new grazing permit/lease is consistent with the use specified on the previous permit/lease, such that a. the same kind of livestock is grazed; b. the permit does not exceed the active use previously authorized; c. grazing does not occur more than 14 days earlier or later than as specified on the previous permit/lease; and d. the grazing allotment(s) is meeting land health standards, or not meeting standards due to factors that do not include existing livestock grazing.
- Priority 5: Oppose the placement of AUMs in a suspended use category unless there is a rational and scientific determination that the condition of the rangeland allotment or district in question will not sustain the AUMs.

- Custom & Culture
  - Priority 4: Request that federal land managers recognize valid existing rights and interests in federal land including livestock grazing permits and preference, mineral leases, mining claims, recreation permits and concessionaire contracts, and rights-of-way.
- Economics & Society
  - Resource Management Objective 1: Sublette County supports efforts to maintain or improve the overall economic base of the County through the judicious use and enjoyment of federal and state lands in the County.
  - Priority 1: Encourage federal and state agencies to evaluate, mitigate, and minimize impacts to custom and culture and the economic stability of the County when considering any proposed changes in land use. Sublette County may be forced to appeal or seek other relief if federal and state agencies do not carefully consider economic impacts in land management decisions.
  - Priority 3: Encourage federal land management agencies to work in tandem with Sublette County to accurately provide socioeconomic impact analysis and mitigation recommendations to both the agencies overseeing the development as well as county government officials. Agencies overseeing the development should make every reasonable attempt to implement the socioeconomic impact mitigation recommendations while working with local government officials.
  - Priority 7: Explore ways of retaining existing businesses, farms, and ranches as part of a diverse economy.

In addition, Sublette County encourages BLM to be consistent with the BLM Land Health Standards LHS) and specifically Standard 4 which addresses special status species management (SSS). Furthermore, the management prescriptions pertaining to livestock grazing identified in Chapter 2 (page 2-104, Table 2-12) of the DEIS should be made consistent in Chapter 4 and throughout the entirety of the document.

Specific to Adaptive Management (AM) and grazing in Alternatives 3-6, BLM has removed livestock grazing from the narrative and embedded it in the alternatives table in Chapter 2. The language in the alternatives table for AM is not consistent with current BLM rules and regulations, nor is it consistent with the Alternatives for Livestock Grazing in Chapter 2.

BLM should allow for grazing to be included in the AM process and be consistent with existing alternative language. BLM uses the terms "causal" and "contributing factors" incorrectly. Livestock grazing must be identified as a significant causal factor for LHS SSS before any modifications occur to a livestock grazing permits or leases. The County requests that the following language be considered in the alternatives: Specific to GrSG habitat, manage livestock grazing in a manner that 1) meets or makes progress toward meeting the Land Health Standard for special status species, and applies the guideline that addresses "restoring, maintaining, or enhancing habitats of...special status species to promote their conservation." (43 CFR Part 4180.2(e)(9))

Moreover, under Alternative 3, BLM analyzed for a "no grazing" alternative for all states stating "...Because PHMA would be unavailable for livestock grazing, no overarching livestock grazing objective would be needed." This alternative is economically and technically unfeasible to implement as it is in violation of the Taylor Grazing Act. The most appropriate action, as identified by the CEQ NEPA Regulations, would have been for BLM to consider it and eliminate it from further analysis as it does not meet the standard of alternatives that should be analyzed as "technically or economically" feasible. The County is strongly opposed to a "no grazing alternative" in any form.

Regarding fencing, the County generally supports wildlife friendly fencing; however, BLM must coordinate with the applicable grazing lessees should the removal of fencing be considered as those decisions could impact grazing allotments and management of the resource. Finally, any changes in grazing management should consider effects to the adjoining private or state lands as this could impact grazing management practices.

As demonstrated, agriculture production and livestock grazing are significant for the Counties. Not only do they provide an important tax base, the industry is a historical part of the local custom and culture. In the preferred alternative, the County supports the maximum amount of animal unit months (AUMs) being available for livestock grazing on BLM lands in PHMA and GHMA.

VI. Mitigation

Wyoming remains committed to working with its federal partners to develop a mitigation strategy that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. While BLM must adhere to its mitigation hierarchy (avoid, minimize, rectify, reduce, compensate), the County encourages the federal agency to work with the State of Wyoming by following the well-founded principles in the EO regarding adaptive management and the mitigation framework which includes steps for requiring compensatory mitigation. The adaptive management framework considers management strategies for short-and-long term monitoring that are most effective for protecting the species and its habitat while allowing for a flexible strategy addressing changing conditions in a timely manner and provides regulatory certainty for all parties involved.

VII. Private Property Rights

As stated earlier, Sublette County is rich in federal resources as our lands are comprised of approximately 76% *federal* surface and an estimated 86% federal minerals estate. Farming, ranching, energy development, tourism and recreation contribute heavily to the heritage of the County. Rangeland used by livestock and agricultural producers continues to be a significant land use and federal agencies should consider the effects their decisions will have on neighboring private lands.

Furthermore, access to, or restrictions from, crossing federal, state, or county managed lands should not entail encumbrances or constraints on private property. Private property rights are the cornerstone of our County and must be protected to ensure that our continued customs and culture remain intact. When an agency decision or proposed action will have a negative impact to the current use of neighboring private lands, that federal undertaking may not be supported by the County.

For the BLMs convenience we have identified a few priority policy positions from our Federal & State Land Use Plan that are impacted by this DEIS. This is not a comprehensive list of our objectives and priorities related to private property rights, and BLM is encouraged to review the entirety of the County Plan for more details:

- Land Access
    - Resource Management Objective 1: Sublette County advocates that access to or across federal and state lands shall not entail encumbrances or restrictions on private property rights or privileges.
    - Priority 1: Discourage the closure of existing roads or Revised Statute 2477 rights-of-way without scientific justification, support of the Sublette County Commission, and support of the citizens of the affected area.
    - Priority 2: Request that prior to any road closures on federal land within the County, the deciding officer conduct full consultation with the County and local citizens.
    - Priority 5: Discourage the closure, abandonment, withdrawal, or change in use of roads, trails, rights-of-way, corridors, easements, or other traditional access for the transportation of people, products, recreation, energy, or livestock without full public disclosure and analysis

Sublette County is particularly concerned about the failure of the DRMPA from analyzing the effects on neighboring state and private lands in the analysis area. Whether described as adjacency effects or cumulative effects, in a state where the BLM manages approximately 18 million surface acres and 41 million subsurface acers (66% of the state), there are substantial impacts to private and state lands across the decision area.

Management and ownership patterns lack uniformity creating a complex and interwoven mix of state, private, and federal minerals that are often "coproduced." The scale of coproduction can vary in degree and can be described in several ways. First, oil and gas can be coproduced by an individual wellbore that crosses through and produces the varying mineral estates. Second, oil and gas can be coproduced inside a drilling and spacing unit, where specific production is pro-rated to the percent of ownership in the drilling area. Finally, oil and gas can be coproduced across the entirety of a company's development play.

Oil and gas companies, like any other enterprise, must take into account risk/reward, scalability for cost saving, future development potential, infrastructure needs, and regulatory regimes. Operators prioritize areas for development where they can maximize returns and reduce risks. In some cases, operators have large swaths of development to minimize risks, provide operational flexibility, and cost share infrastructure. Even where a wellbore doesn't penetrate federal minerals in a particular drilling and spacing unit, gathering lines, pipelines, transmission lines, and roads to get product to the market inevitably run into federal management at some juncture. Therefore, ROW and surface occupancy restrictions have significant implications for private and state lands and minerals.

This analysis needs to be included in DRMPA. The BLM should acknowledge and analyze the cumulative effects of restrictions on the socioeconomics of our communities. The BLM's socioeconomic analysis should describe the human interests and values shaping public lands management, identifying effects of proposed actions on communities and economies, and promote the economic and social sustainability of communities near public lands.

VIII. Adaptive Management

Wyoming has worked diligently with its federal partners (BLM and USFWS) to develop a framework that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. The adaptive management framework considers management strategies for short-and-long term monitoring that are most effective for protecting the species and its habitat while allowing for a flexible strategy addressing changing conditions in a timely manner.

Under Wyoming Statute § 23-1-103, "…all wildlife in Wyoming is the property of the state…" and the Wyoming Game and Fish Department (WGFD) has the legal responsibility for carrying out the purposes of this act. Using the best available science in the Adaptive Management process is necessary to continue long-term healthy populations of GrSG. Recognizing the WGFDs expertise, the State's Adaptive Management strategy places the responsibility of conducting annual population data squarely with the state agency. It is imperative that BLM recognize the WGFDs authority and expertise in this process. Sublette County implores BLM to defer to the WGFD regarding any data collection or management decisions that pertain to the population trend analysis of GrSG within the boundaries of Wyoming.

IX. Wild Horses

In 1971, Congress enacted the Wild Free-Roaming Horse and Burro Act (Public Law 92-195), which guides the management, protection and control of wild horses and burros on federal lands managed by the USFS and BLM. Herd Management Areas (HMAs) were established in ten Western states based on the existing populations during the passing of the Act in 1971. This Act also mandates that wild/feral horses and burros are managed in a thriving ecological balance with

the land and as part of the natural landscape (USFS 2021b). To ensure wild/feral horse and burro populations remain in good condition and that federal lands are protected from degradation, the growth of wild/feral horse and burro herds must be actively managed.

Population control is necessary to protect fragile ecosystems, balance shared use of resources by wildlife, and maintain herd health and protect herds from starvation. Sublette County encourages aggressive wild horse and burro management that will not adversely impact rangeland resources, livestock or grazing, wildlife habitat or resources, soil resources, or other varied land uses.

For the BLMs convenience we have identified a few priority policy positions from our Federal& State Land Use Plan that are impacted by this DEIS. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

- Wild Horses and Burros
    - Resource Management Objective 1: Sublette County encourages aggressive wild horse and burro management that will not adversely impact rangeland resources, livestock or grazing, wildlife habitat or resources, soil resources, or other varied land uses
    - Priority 2: Support herd management plans that prevent habitat degradation and native wildlife displacement, using all available agency tools.
    - Priority 3: Oppose any establishment, enlargement or expansion of wild/feral horse and burro HMAs and Herd Areas and be involved in discussions regarding any proposed enlargement or expansion of such boundaries or areas.

The only viable alternative analyzed that appropriately addresses actual management of wild horse and burros is Alternative 3 (page 2-114, Table 2-13). Managing for "zero" Appropriate Management Levels (AMLs) within HMAs that overlap with PHMA and removing wild horses in those areas is the proper land management prescription and is the only realistic method for meeting AML at the implementation level. For the benefit of the GrSG, all available agency tools must be used to support herd management plans that prevent habitat degradation and native wildlife displacement, including the removal of all wild horses and burros from PHMA.

The State of Wyoming submitted alternative language for wild horses that based any removal of HMAs on whether wild horses were the causal factor of range degradation for a certain period of years. While substantial evidence already exists, that wild horses cause significant range damage and negatively impact GrSG, Wyoming's recommended approach would have been more economically, politically, and scientifically defensible. Unfortunately, this alternative was not properly considered in any of the other alternatives.

X. Lack of Need for ACECs

The WCCA conducted a consistency review on a statewide basis of the DEIS alternatives in relation to ACECs and county natural resource plans, which is summarized in the attached table. In addition to the consistency table, the text below details the concerns regarding the BLM's

inadequate and untimely consistency review and the unnecessary designation of ACECs in areas with existing and adequate PHMA designations to manage for and protect GrSG.

An ACEC is defined as "areas within the public lands where special management attention is required ... to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards." 43 U.S.C. § 1702(a).

A potential ACEC must satisfy a three-part test before it may be designated. First, it must have "relevance," meaning it possesses "a significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard." 43 C.F.R. § 1610.7-2(a)(l). Second, it must also have "importance," meaning the relevant values identified in the first step must have "substantial significance and values." 43 C.F.R. § 1610.7-2(a)(2); see also BLM Manual 1613, Section 1 l.B. For the relevance values to meet the "importance" threshold, the area must have "more than locally significant qualities ... compared to any similar resource," have qualities that make it fragile, rare, or irreplaceable, or have been recognized as warranting protection to satisfy national priority concerns. BLM Manual 1613, Section 11.B.1. Third, the nominated area must require "special management" "to protect and prevent irreparable damage to important historic, cultural, or scenic values; fish, wildlife, and plant resources, or other natural system or processes." 43 U.S.C. § 1702(a).

Certainly, ACECs can play a role in conservation and special management of historic, cultural, scenic, fish and wildlife resources. However, the BLM has not demonstrated how the addition of the proposed ACECs under Alternative 3 of the DEIS will improve Greater Sage-grouse populations and habitat more effectively than Priority Habitat Management Areas (PHMAs). Under Alternative 3, the DEIS states that the ACECs would be managed similarly to PHMAs, without additional management prescriptions. Sublette County strongly feels that the designation of ACECs under Alternative 3 are unnecessary given that they will be managed ***exactly*** the same as PHMAs. The BLM fails to consider how GrSG populations and habitat are already protected under existing management actions and will be further protected by the proposed management actions under Alternatives 3 of the DEIS. A significant example of this failure is the BLM's attempt to layer ACEC designations on top of existing ACECs like in Fremont and Sublette Counties.

Furthermore, ACEC designations could allow for excessive regulatory authority in the future for areas that are otherwise considered appropriate for PHMA management. Unnecessary designation opens the door for further impediments to multiple use practices.

Attached to this letter, you will find a spreadsheet that provides a thorough review of inconsistencies between the above-mentioned Wyoming County NRMPs and the proposed ACEC resource management restrictions under Alternatives 3 and 6 of the DEIS.
In addition, the County has identified several inconsistencies between the DEIS and the Federal & State Land Use Plan directly affected by the proposed ACECs. For the BLMs convenience we have identified a few priority policy positions from the plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

- Wilderness and Other Special Land Use Designations
    - Resource Management Objective 2: Sublette County supports special land designations that coincide (rather than conflict) with multiple use concepts, and the custom and culture of Sublette County.
    - Resource Management Objective 3: Sublette County urges that ACECs must meet relevance and importance criteria requiring special management to protect the area and prevent irreparable damage to resources or natural systems.
    - Priority 1: Withhold County support for the designation of an ACEC within federal land management plans until a. it is clearly demonstrated that the proposed area satisfies all the definitional requirements of FLPMA; b. it is clearly demonstrated that the proposed area and associated management prescriptions are limited in geographic size and scope to the minimum necessary to protect and prevent irreparable damage to the relevant values identified, or to the minimum required to protect human life or safety from natural hazards; c. it is clearly demonstrated that the proposed area is limited only to areas that are already developed or used, or to areas where no development is required; d. it is clearly demonstrated that the proposed area contains relevant and important historic, cultural, or scenic values; fish or wildlife resources; natural processes which are unique or substantially significant on a regional basis; or natural hazards which significantly threaten human life or safety; e. the federal agency has fully analyzed regional values, resources, processes, or hazards for irreparable damage and its potential causes resulting from actions which are consistent with the multiple use, sustained-yield principles. This analysis should describe the rationale for any special management attention required to protect, or prevent irreparable damage to these values, resources, processes or hazards; f. it is clearly demonstrated that the proposed designation is consistent with the plans and policies of the County where the proposed designation is located; g. it is clearly demonstrated that the proposed ACEC designation will not be applied redundantly over existing protections provided by other state and federal laws for federal lands or resources on federal lands; and h. the difference between special management attention required for an ACEC and normal multiple use management has been identified and justified, and that any determination of irreparable damage has been analyzed and justified for short- and long-term horizons.

Sublette County strongly opposes the designation of any Sage-grouse ACECs in Wyoming. As discussed earlier in these comments, we have worked diligently as a state to develop a framework that effectively manages for GrSG populations and its habitat and no new ACEC designations are warranted nor will they provide any additional protections not already in place.

XI. Fluid Mineral Development and Leasing Objective

Likely the most substantial direct impact to local government revenue in Wyoming is the management prescription for oil and gas development. Consequently, it is vital to correctly capture existing development and the Reasonably Foreseeable Development Scenario (RFDs). The RFD is even more important to get correct when it is comparing the potential impacts from wildly

inconsistent alternatives. If poor or incorrect data is utilized to develop the RFD, then the RFD and resulting socioeconomic analysis will be flawed.

Certain portions of the BLM's description and analysis of existing oil and gas could be improved. For example, on 12-38 the BLM reports 9,127 wells have been "drilled" in Wyoming between 2013 and 2023. However, this figure includes workovers and wells that were never completed, which may capture wells that were never actually "drilled." The section properly includes data from the Wyoming Oil and Gas Conservation Commission, which reflects a total of 6,455 unique well spuds in Wyoming between 2013 and 2023. However, the fact that the state's number is 30% less than the BLM's number reflects a poor attempt to gather and clean-up the data for analysis.

On page 12-39, the DRMPA states that 24% of the HMAs in Wyoming are under an existing authorized lease. Additional data that should have been reflected in the DRMPA and clarified in this section is the number of leased acreage currently under litigation in Wyoming. Without including litigated leases in Table 35, it is misleading to members of the public that equate "authorized" as available for development.

In order to understand whether the RFD is truly reasonable there should be a greater description of what was utilized for inputs and variables. Table 35 in Appendix 12 would benefit from a better description of the "source" of the data provided in the table. In addition, there needs to be additional description of the table to help clarify whether these projected wells are federal surface and minerals, private/state surface and federal minerals, or mixed minerals and surface, etc.

The "Projected Production by Alternative in the Decision Area" needs to be amended to more accurately reflect the decline curves associated with modern horizontal development in Wyoming. Without any written description or justification, the projection utilizes a record production year in Wyoming as its basis for production over the next 20 years. In other words, the current projections do not consider decline curves of existing and new wells but keep historic production levels constant. However, it must be noted that the only way to maintain that statewide production level as production declines from existing wells is to drill and produce new wells.

The problem with maintaining existing production as a constant in the RFD is that it artificially reduces the negative economic impacts associated with alternatives 3 and 4 reduced projected well development. This is because the weight given to new wells is significantly reduced by the artificial base production of the existing wells.

Under Alternative 3 only 4,284 wells are expected to be drilled in the next 20 years. This is compared to Alternative 1 that projects 14,450 wells drilled in the same period of time. Although alternative 3 projects over 10,000 less wells are drilled in 20 years it only reduces the production of oil by roughly 224,000,000 barrels and gas by 4,600,000,000 mcf of gas.

Taxes derived from oil and gas development in Wyoming constitutes a significant portion of state and county revenue used to pay for public education and essential services, including roads, fire protection, emergency medical services, courthouses, libraries, landfills, hospitals, law enforcement, airports, recreation, and senior citizen centers. Oil and gas companies operating in Wyoming are assessed property (ad valorem) taxes by counties and severance taxes by the state. Although they are called "taxes" both are more akin to a royalty because production is taxed

regardless of whether an operator makes a profit. Property taxes on oil and gas vary by county and range from 6-7.3% calculated by the gross revenue of the previous year's production and the value of tangible equipment and improvements. Severance taxes are calculated at 6% of gross revenue in the same manner as royalty taxes (gross revenue minus transportation and gas processing cost). Federal Royalties are also deducted from the gross revenue for the purpose of calculating severance taxes.

Property taxes on oil and gas account for over 40% of the total property taxes levied by counties in Wyoming. In 2020, the property taxes collected by counties exceeded $600 million. Additionally, severance taxes collected by the state in 2022 topped $275 million. When adding in federal lease revenues, federal and state royalties, sale and use taxes, and conservation taxes, the industry contributed $1.23 billion in taxes to state and local governments. According to the Sublette County Assessor's Office, the mineral and industry valuation in tax year 2023, which is primarily related to oil and gas, was 3,674,039,264, making up 93.68% of our property tax base. A decrease in assessed valuation will affect all County operations including essential services like road and bridge construction and maintenance, investment in IT technology and cyber security, economic diversification investment (water, sewer and streets), fire equipment and personal, and daily operations.

As noted on the Petroleum Association of Wyoming (PAW) website, Wyoming ranked 8th in production of both crude oil and natural gas in 2022 nationally. Further, Wyoming ranked the 2nd largest producer of both oil and natural gas on federal lands, making the state disproportionally affected by national policy changes. According to a 2023 study released by the American Petroleum Institute, in 2021 the oil and natural gas industry had the following impacts on the Wyoming economy: 58,780 total jobs and $5.7 Billion in labor income.

For the BLMs convenience we have identified a few priority policy positions from our Federal & State Land Use Policy that are impacted by this DEIS. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

- Custom and Culture
    - Priority 4: Request that federal land managers recognize valid existing rights and interests in federal land including livestock grazing permits and preference, mineral leases, mining claims, recreation permits and concessionaire contracts, and rights-of-way.
- Energy, Mining, and Mineral Resources
    - Resource Management Objective 1: Sublette County supports future mineral exploration, extraction, and development that is conducted in an environmentally responsible manner (taking into consideration land, air, and water quality and quantity, as well as other resource values) and utilizes public involvement.
    - Resource Management Objective 1: See that federal lands shown to have reasonable mineral potential be open to oil and gas leasing with stipulations and conditions that will protect the lands against undue and unnecessary degradation to other significant resource values. This should include reasonable and effective mitigation and reclamation measures and bonding for such, where necessary. Also see that public lands remain open and available for mineral exploration and development unless congressionally withdrawn

or withdrawn through other administrative actions that are clearly justified in the national interest with withdrawal procedures followed.

- Priority 1: Support federal and state agencies in considering the potential economic impact of any proposed land management changes or natural resource related plans to the minerals industry, and on the residents of the County, through in-depth economic impact descriptions in planning documents.
- Priority 3: Support that the ability of private mineral owners to access, extract, and transport their mineral resource not be limited or infringed upon by federal land managers, including in areas determined set aside for no mineral leasing on federal lands.
- Priority 6: Support federal and state agencies in the analysis and consideration of all fiscal and economic impacts to the minerals industry; the County and other local governments; and to the residents of the County from any proposed land management changes or natural resource related plans.

- Economics & Society
  - Resource Management Objective 1: Sublette County supports efforts to maintain or improve the overall economic base of the County through the judicious use and enjoyment of federal and state lands in the County.
  - Priority 1: Encourage federal and state agencies to evaluate, mitigate, and minimize impacts to custom and culture and the economic stability of the County when considering any proposed changes in land use. Sublette County may be forced to appeal or seek other relief if federal and state agencies do not carefully consider economic impacts in land management decisions.
  - Priority 3: Encourage federal land management agencies to work in tandem with Sublette County to accurately provide socioeconomic impact analysis and mitigation recommendations to both the agencies overseeing the development as well as county government officials. Agencies overseeing the development should make every reasonable attempt to implement the socioeconomic impact mitigation recommendations while working with local government officials.
  - Priority 7: Explore ways of retaining existing businesses, farms, and ranches as part of a diverse economy.

Funding derived from mineral development constitutes a significant portion of State and County revenue used to pay for essential services, including roads, fire protection, courthouses and judicial systems, libraries, landfills, hospitals, law enforcement, airports, recreation, public health, and senior citizen centers. Any curtailment of leasing and development activity significantly impacts the socio-economics of the communities and eliminates a critical funding stream for not just our County but all counties, the State of Wyoming and its residents.

Our ability to fund other service providing organizations would be negatively affected. Without County support, these organizations will offer fewer public services and could fail and there would be insufficient funds to provide basic services at a level needed for the protection of the county resident's health, safety, and security.

It cannot be stated enough the importance that the oil and gas industry plays in Wyoming. BLM must do all it can to find a balance between GrSG species and habitat protection with continued mineral leasing and development. This balance must be made in consideration of the interwoven land ownership patterns across Wyoming.

XII. Transportation and Transmission Objectives

Public access to routes of travel is essential to the County's transportation and public access systems and to the economic, social, political well-being, customs and culture of the communities. Many private landowners need rights-of-way across state and federal lands to access their property, to use their water rights, and to exercise their grazing rights. Rights-of-ways (ROW) and corridors provide for the development of certain types of infrastructure or facilities that are in the public interest on federal lands for a specified period of time.

For the BLMs convenience we have identified a few priority policy positions from our Federal & State Land Use Policy that are impacted by this DEIS. This is not a comprehensive list of our objectives and priorities related to private property rights, and BLM is encouraged to review the entirety of the County Plan for more details:

- Land Access
    - Resource Management Objective 1: Sublette County advocates that access to or across federal and state lands shall not entail encumbrances or restrictions on private property rights or privileges.
    - Priority 1: Discourage the closure of existing roads or Revised Statute 2477 rights-of-way without scientific justification, support of the Sublette County Commission, and support of the citizens of the affected area.
    - Priority 2: Request that prior to any road closures on federal land within the County, the deciding officer conduct full consultation with the County and local citizens.
    - Priority 5: Discourage the closure, abandonment, withdrawal, or change in use of roads, trails, rights-of-way, corridors, easements, or other traditional access for the transportation of people, products, recreation, energy, or livestock without full public disclosure and analysis

Regarding approved access for transportation or transmission within PHMA, the County will support the Wyoming EO and the surface disturbance DDCT process for determining access. However, we strongly encourage BLM and the state to coordinate and consult with the County regarding any planning process or activity that restricts, eliminates, increases, or decreases access to federal or state lands and allow the County the opportunity to resolve any potential conflicts with the County's objectives, principles, and policies, prior to acting.

XIII. Socioeconomics

Economic impacts do matter. Access to federally administered lands and resources are critical to ensure the socioeconomic well-being, custom, culture and stability of our communities. In Sublette County, lands under federal or state control and decisions made for public land management can directly impact the service and non-service industries, public accessibility, and the demographics of an area. Effective coordination and consultation between the County, federal and state agencies is critical to ensuring that land management agencies thoroughly consider the effects that proposed actions have on custom, culture, and economic stability; conservation and use of the environment and natural resources in the County along with multiple use. Counties receive revenue from federal lands in many ways including mineral leasing and development, agriculture, recreation, travel and tourism, etc. Any curtailment of access to public lands will directly impact the socioeconomics of the County.

For the BLMs convenience we have identified a few priority policy positions from our Federal & State Land Use Policy that are impacted by this DEIS. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

- Economics & Society
    - Resource Management Objective 1: Sublette County supports efforts to maintain or improve the overall economic base of the County through the judicious use and enjoyment of federal and state lands in the County.
    - Priority 1: Encourage federal and state agencies to evaluate, mitigate, and minimize impacts to custom and culture and the economic stability of the County when considering any proposed changes in land use. Sublette County may be forced to appeal or seek other relief if federal and state agencies do not carefully consider economic impacts in land management decisions.
    - Priority 3: Encourage federal land management agencies to work in tandem with Sublette County to accurately provide socioeconomic impact analysis and mitigation recommendations to both the agencies overseeing the development as well as county government officials. Agencies overseeing the development should make every reasonable attempt to implement the socioeconomic impact mitigation recommendations while working with local government officials.
    - Priority 7: Explore ways of retaining existing businesses, farms, and ranches as part of a diverse economy.

The County cannot state clearly enough the importance of our ability to access federal lands to drive vibrant economic communities. BLM significantly undervalued the mineral contributions to the counties and state in the socioeconomic section. BLM must include a robust socioeconomic analysis clearly demonstrating the differences between management prescriptions in the Alternatives, which includes impacts to the tax base (royalties, rents or bonus bids, severance taxes, ad valorum taxes, sales and use tax employment income, and direct and indirect employment.) The County can assist in providing the most up-to-date information available for BLMs analysis.

In conclusion, Sublette County is committed to continuing our engagement as a cooperating agency along with the State of Wyoming, its state agencies and BLM to work through these important issues. We encourage BLM to align with the most recent Wyoming EO, include

acknowledgement and analysis of the Wyoming State Alternative and to develop a preferred alternative that takes into consideration our comments submitted herein.

Respectfully submitted,

Sam White
Chairman, Sublette County Commission

CC: The Honorable Governor Mark Gordon
The Honorable United States Senator John Barrasso
The Honorable United States Senator Cynthia Lummis
The Honorable United States Congressman Harriet Hageman

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Submitted via E-Planning and E-Mail: BLM_HQ_GRSG_Planning@blm.gov

Re: Comments to U.S. Bureau of Land Management's Greater Sage-Grouse Draft Resource Management Plan Amendments and Environmental Impact Statement

Dear Sage-Grouse Planning Team:

The Nevada Mining Association ("NVMA") respectfully submits these comments to the U.S. Bureau of Land Management's ("BLM") Greater Sage-Grouse Draft Resource Management Plan Amendments and Environmental Impact Statement (hereafter, the "Draft RMPA/EIS"), as published on March 15, 2024.

As explained in detail below, the Draft RMPA/EIS is legally and substantively inadequate. The BLM's overall planning process suffers from an obvious lack of coordination with essential stakeholders, resulting in an unreadable document that ignores the primary drivers of Greater Sage-Grouse ("GRSG") population and habitat decline in Nevada. Moreover, the proposed management actions related to compensatory mitigation, disturbance caps, and adaptive management, to name a few, lack critical scientific support and their impacts are not sufficiently analyzed. The BLM must work with local stakeholders to identify region- or state-specific solutions for GRSG conservation that respect the different conservation approaches utilized by the states, and the concomitant need for flexibility in responding to regional differences in GRSG populations and habitat. To carry out this directive, BLM must produce region- or state-specific supplemental environmental impact statements that analyze the consequences of the proposed management decisions on each planning region or state.

Statement of Interest

NVMA is the leading voice of Nevada's mining industry in federal, state, and local policy matters, and community engagement, public education, and workforce development. Established in 1913, NVMA represents hundreds of member companies that are engaged across the broad spectrum of the Nevada's mining industry, from exploration and discovery to operation and reclamation, and

vendor businesses up and down the supply and service chain.

Mining is a critical part of Nevada's economy—it supports high paying jobs, generates significant local tax revenue, and provides tangible benefits to communities. As the Draft RMPA/EIS recognizes, "[t]he average labor income for [the mining industry in Nevada] (over $110,000 in [Humboldt, Pershing, and White Pine Counties]) is almost double the average state income across all employment sectors." Draft RMPA/EIS, App'x 13, 13-2-15; *id.* at p. 3-47 ("In addition to the public services supported by locatable minerals, hard-rock mining jobs tend to be some of the highest paying jobs in rural communities, especially in Nevada."). In 2023, the Nevada mining industry employed 35,649 people (14,683 direct jobs), provided $12.7 billion in total economic output ($8.4 billion in direct economic output), and paid $3.0 billion in total salaries and wages ($1.6 billion in direct salaries and wages). *See* Nevada Mining Association, The Role of Nevada's Mining Industry (Presentation by Applied Analysis, 2023), p. 96. The industry paid a total of $389 million in taxes the same year, as $142.2 million in Net Proceeds tax, $122.4 million in sales and use tax, $67.3 million in Gold and Silver Excise Tax (otherwise known as the "Mining Education Tax"), $36.2 million in property taxes, and $20.8 million in modified business tax. *Id.* at p. 103. Imprudent land use decisions that infringe on the right of access to public lands for mineral exploration and mining projects risk the continuation of these benefits, especially in rural communities.

Competition for secure mineral supply chains is global, and the ability to access and develop mineral resources also weighs heavily in the decision to mine in Nevada (and the United States, generally)—creating jobs, lifting rural communities, and supporting regional and nation-wide economic development—or elsewhere. Furthermore, minerals produced in Nevada have significant strategic importance to the United States, as Nevada produces approximately 14 percent of all domestic minerals, including metallic and industrial minerals. Without a strong domestic mining industry, the United States must import from foreign sources, subjecting the country's economy and national security to uncertain geopolitical forces. Accordingly, the viability of Nevada's mining industry is critical to the nation.

NVMA and its member companies have long been active participants in the GRSG conservation dialogue in Nevada, including development of Nevada's innovative Sagebrush Ecosystem Program. As such, NVMA understands that federal and state conservation strategies must be grounded in sound science and policy. A conservation strategy grounded in sound science and policy necessarily includes tailoring management decisions to the unique convergence of Nevada's geographic, vegetative, and biotic conditions. For example, nearly eighty-five percent of land in Nevada is managed by federal entities and, as a result, Nevada feels the impact of overly burdensome or ineffective land use policies more than any other state.

For these reasons, NVMA and its members would be deeply affected by the proposed management restrictions in the Draft RMPA/EIS. NVMA offers these comments to help BLM identify where it can improve on the Draft RMPA/EIS.

1. **The "west-wide" approach to GRSG conservation fails to adequately analyze impacts and to address regional variability in GRSG populations and habitat.**

In a notable departure from the 2015 and 2019 planning efforts, BLM is proposing to amend its GRSG conservation strategy through a sweeping, range-wide approach that will simultaneously amend 77 distinct resource management plans. This unwieldy process has resulted in a Draft RMPA/EIS that is devoid of the rigorous level of detail and analysis that satisfies the National Environmental Policy Act ("NEPA"). *See Robertson v. Methow Valley Citizens Council*, 109 S. Ct. 1835, 1845 (1989) (NEPA "ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts [and] that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast."); *Sierra Club v. FERC*, 867 F.3d 1357, 1368 (D.C. Cir. 2017) ("An EIS is deficient, and the agency action it undergirds is arbitrary and capricious, if the EIS does not contain sufficient discussion of the relevant issues and opposing viewpoints, or if it does not demonstrate reasoned decisionmaking.") (internal citations omitted). For example, the Draft RMPA/EIS does not analyze how changing the disturbance cap area of analysis from biologically significant units to the "HAF fine-scale" assessment area or how adopting a range-wide adaptive management framework could have compounding effects on resource uses. Many regions may be immediately impacted by new disturbance caps or adaptive management thresholds, and such impacts must be thoroughly analyzed and disclosed.

A glaring example of the threadbare analysis offered in the Draft RMPA/EIS is found in the section describing social and economic impacts on locatable minerals projects:

> … market and nonmarket impacts from changes in locatable minerals extractions are likely to occur over the long term. This could result in some mining companies closing or moving operations to other locations. The economic and social impacts would likely last until the displaced mining workforce is able to gain employment with other companies or in other industries; however, if the workers are required to leave the area to find employment, then the social and economic impacts in the regions that were dependent on mining could last longer.

Draft RMPA/EIS, p. 4-131. The Draft RMPA/EIS identifies some of the "potential market impacts associated with potential changes in locatable mineral extraction," as including "changes in direct and secondary jobs, income, and economic output, tax revenue, and public services and infrastructure." Draft RMPA/EIS, p. 4-130. However, the Draft

RMPA/EIS does not undertake any thoughtful evaluation of the extent of these impacts on locatable minerals projects, in terms of affected jobs or economic output, despite collecting baseline data on employment and economic output (Appendix 13). *See* Draft RMPA/EIS, App'x 18 (analyzing impacts to jobs and economic output for fluid minerals and grazing). The Draft RMPA/EIS also does not analyze how the proposed management actions could affect state compensatory mitigation systems, such as Nevada's Conservation Credit System, and the ability of mine operators to seek mitigation credits under those system, or how other proposed management actions could impact realty actions that may be necessary to support mining operations (e.g., transmission rights-of-way, renewable energy projects, etc.).

The Draft RMPA/EIS also overlooks the variability in ecological conditions and subpopulation dynamics that encouraged BLM to manage GRSG by planning subregions during prior planning efforts. *See* BLM, Protest Resolution Report Nevada-Northeastern California Sub-Regional Greater Sage-Grouse Land Use Plan Amendment/Final Environmental Impact Statement, p. 146-47 (Sept. 15, 2015) ("[E]ach subregion has varying local situations."). The BLM easily could have chosen to evaluate range-wide management provisions on a state-by-state or regional basis, as it has done previously. Instead, BLM elected to proceed with a top-down, "west-wide amendment" with inadequate local government and stakeholder input. Draft RMPA/EIS, p. 1-5. If the current planning process moves forward without significant revision, the one-size-fits-all approach to conservation will undoubtedly impact NVMA's members.

2. The Draft RMPA/EIS must comply with the Mining Law and FLPMA.

The Mining Law of 1872 permits enterprising U.S. citizens to access federal public lands that are open to location to explore, discover, and develop valuable mineral deposits. *See* 30 U.S.C. § 22. Because the Mining Law guarantees both pre- and post-discovery rights of access, use, and occupancy, with or without a mining claim or "valid existing rights," management actions that prohibit or unduly burden such rights are contrary to the Mining Law. Indeed, such rights were affirmed by Congress when it enacted the Federal Land Policy and Management Act ("FLPMA"). Congress was careful to specify that FLPMA did not "amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress," except as specifically enumerated in Section 302(b). Relevant here, BLM's limited authority to impair the rights granted by the Mining Law is found in the last sentence of Section 302(b): "In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." *Id.*; *see* 43 C.F.R. § 3809.5 (defining "unnecessary or undue degradation"). The duty to prevent "unnecessary or undue degradation" is narrowly defined as ensuring compliance with the performance standards in 43 U.S.C. § 3809.420; confirming that activities on mining claims are "reasonably incident" to prospecting, mining, or processing operations; and monitoring for compliance with state levels of protection or reclamation required by specific laws. *Id.*

The Draft RMPA/EIS relies on vague references to "valid existing rights and applicable law," and infrequent citation to the Mining Law, to characterize the scope and supremacy of rights granted by the mining laws. *See, e.g.,* Draft RMPA/EIS, p. 2-22 ("consistent with valid existing rights and applicable law"); p. 2-29 ("to the extent allowable under applicable laws (such as the Mining Law of 1872), or valid existing rights."). The Draft RMPA/EIS should be revised to include clarifying language that recognizes the full suite of rights granted under the Mining Law. For example, BLM should clarify that activities authorized under the mining laws, related surface management regulations, and caselaw—including pre-discovery, causal use, exploration under notices, and exploration and mining under plans of operations—are not subject to any disturbance cap, without regard to their status as "valid existing rights."

3. **The Draft RMPA/EIS must analyze the consequences of Sagebrush Focal Area withdrawals.**

The BLM cannot avoid analyzing the interplay between this planning process and the ongoing consideration of withdrawals of Sagebrush Focal Areas ("SFAs"). *See* Draft RMPA/EIS, p. 4-106 (claiming that "[r]ecommending areas for closure to the mining laws for locatable exploration or development" would "not have any impacts."). These processes are clearly related, but BLM chose to ignore the potential direct, indirect, and cumulative effects of SFA withdrawals in the Draft RMPA/EIS. The BLM should not have included withdrawal of lands from mineral entry as part any of the alternatives, especially where the EIS does not evaluate the potential impacts of recommending those withdrawals—BLM cannot put that analysis off until later NEPA documents.

Mining activities have only a minor impact on GRSG habitat throughout the proposed withdrawal area, and devastating economic and social impacts would result in states with significant mining exploration and operations, like Nevada. Further, BLM's decision to proceed with a proposal to withdraw the SFAs under the 2015 ARMPAs when this planning effort may result in the selection of an alternative that "removes" the SFA withdrawal recommendation raises more questions than answers. It is unclear if BLM would abandon its impacts analysis of the SFA withdrawal if an alternative with no SFAs is chosen, and if it does not, what the legal basis for proceeding with that analysis will be. The link between the Alternatives and SFA's (or different withdrawals) should be explicit so that the public can evaluate the differences among alternatives.

Recommending withdrawals of the magnitude proposed under Alternatives 1, 3, and 6 also conflicts with FLPMA's multiple use mandate. FLPMA requires BLM to manage public lands "in a manner which recognizes the Nation's need for domestic sources of minerals," (43 U.S.C. § 1701(a)(12)) and in recognition of Section 22 of the Mining Law and the Mining and Minerals Policy Act. Public land withdrawals of this magnitude can only be made by an Act of Congress or by the Secretary pursuant to the requirements

and procedures of FLPMA Section 204 for a period not to exceed twenty years. The public lands should remain open and available unless doing otherwise is clearly in the national interest and, absent such a finding, the validity of Alternatives 1, 3, and 6 are called into question to the extent they suggest a withdrawal of lands from entry for mining.

4. The Draft RMPA/EIS is unreadable and not accessible to the average reader.

The Draft RMPA/EIS, which spans 2,400+ pages, together with thousands of pages of cited studies and other resources, is a barrier to meaningful comprehension and dialogue. The document is disorganized, replete with typographical errors, and internally inconsistent. These problems make it exceptionally difficult to understand what is being proposed and the impacts associated with those decisions. "[A]n EIS must be organized and written so as to be readily understandable by governmental decisionmakers and by interested non-professional laypersons likely to be affected by actions taken under the EIS." *Or. Envtl. Council v. Kunzman*, 817 F.2d 484, 493 (9th Cir.1987). "[T]he EIS's form, content and preparation [must] foster both informed decision-making and informed public participation." *Id.* at 492; *see also Colorado Envtl. Coal. v. Dombeck*, 185 F.3d1162, 1172 (10th Cir. 1999). For instance, the charts presented in Section 2.5 of the Draft RMPA/EIS are "not presented concisely nor in one document or location," and "include[] a considerable overlay of direction from" different plan amendments. *Cal. ex rel. Lockyer v. U.S. Forest Serv.*, 465 F.Supp.2d 917, 924 (N.D.Cal. 2006) (finding that a Forest Service FEIS violated NEPA under *Kunzman*). This lack of clarity will lead to conflict between the agency and project proponents because it would "bestow[] unfettered discretion" on BLM to interpret what management decisions apply when key information is scattered throughout the Draft RMPA/EIS and prior plan amendments. *See id.*

The Draft RMPA/EIS also would amend only certain aspects of the existing Approved Resource Management Plan Amendments ("ARMPAs"). Draft RMPA/EIS, p. ES-3. At times, it is unclear what these changes are and how they would interact with the existing ARMPAs, and the Draft RMPA/EIS intentionally does not present information in a way that allows the average reader to gain this understanding. *See, e.g.,* Chapter 2 (presenting the proposed changes to management actions under Alternatives 3 through 6, while only vaguely describing existing management actions under the 2015 and 2019 ARMPAs); Appendix 2.12 (describing the existing management actions under the 2015 and 2019 ARMPAs, while stating only that "[p]otential change[s] under Alternatives 3, 4, 5, and 6," are possible). Additionally, BLM did not provide critical documents that were needed to understand the Draft RMPA/EIS until late in the comment period. Presentations and transcripts from virtual and physical public meetings were not uploaded to e-planning until the last public meeting was complete, and the published version of the USGS model for proposed changes to Nevada's Habitat Management Area ("HMA") alignments was not uploaded to e-planning until only 21 days were left in the comment period.

Beyond the obvious problems with the Draft RMPA/EIS's structure and detail, there is significant uncertainty as to what BLM's approved management approach might look like. The BLM discloses that it "has the discretion to select as a Proposed RMPA, an alternative or set of state-specific alternatives that uses an alternative in its entirety or to combine aspects of the various alternatives presented in this Draft RMPA/EIS." Draft RMPA/EIS, p. 2-7. The final decision "may also vary by state to address circumstances that vary between the states." *Id.* The potential for a "mix and match" outcome, however, frustrates the public comment process, as it forces reviewers to focus on the discrete parts of each Alternative rather than viewing the Alternatives as well-reasoned approaches to GRSG conservation.

In short, BLM cannot expect meaningful, substantive comments on a document that is so difficult to understand.

5. **The Draft RMPA/EIS does not address the primary threats to GRSG in Nevada: wildfire and invasive plant species.**

The Draft RMPA/EIS fails to address the primary drivers of GRSG population and habitat decline in Nevada: loss of sagebrush through wildfire, invasive species, drought, and loss of riparian areas. *See* Milligan, Megan C., et al., "Greater Sage-Grouse Habitat of Nevada and Northeastern California—Integrating Space Use, Habitat Selection, and Survival Indices to Guide Areas for Habitat Management." U.S Department of Interior and U.S. Geological Survey, Open File Report 2024-1018 (2024), p. 2. Scientific studies, including BLM's comprehensive range-wide monitoring study, have repeatedly identified "wildfire [as the] primary driver of sagebrush habitat loss." BLM, Greater Sage-Grouse Plan Implementation Rangewide Monitoring Report for 2015–2020 (hereafter, "BLM Monitoring Report"), p. 31. Indeed, wildfire accounted for approximately 72% of the sagebrush loss in both the Great Basin and Rocky Mountains subregions and represents the largest driver of sagebrush loss in the Great Basin Region (87% of the loss in the Great Basin was from wildfire). BLM Monitoring Report, p. vii. The Draft RMPA/EIS even concedes that "[t]he spread and prevalence of invasive plant species contributes to increasing wildfire frequency and size," and that "[w]ildfires result in the greatest direct loss of GRSG habitat and have been widely distributed in terms of frequency and severity." Draft RMPA/EIS, p. 4-231. The BLM, however, declined to update its existing wildland fire and invasive species RMP management actions for most of the range-wide planning region, highlighting the gravely misplaced priorities of this planning process. *Id.* at p. 1-10.

While the science on wildfire and invasive species impacts has not changed, the Draft RMPA/EIS proposes several new management restrictions on anthropogenic activities that only minimally impact GRSG. Indeed, by BLM's own account, range-wide

anthropogenic disturbance increased by only 0.03% between 2015 and 2020. BLM, 2015-2020 Monitoring Report, p. viii. Had BLM taken a more localized approach to this planning process, key stakeholders would have had the opportunity to convey to BLM that, in many cases, managing wildfires and invasive species proliferation comes down to funding partnerships for fuels management.

6. **The Draft RMPA/EIS does not recognize how Nevada's Conservation Credit System has enhanced GRSG conservation and does not analyze how the proposed management actions related to compensatory mitigation would impact the long-term feasibility of the system.**

The Draft RMPA/EIS does not highlight Nevada's first-of-its-kind system for balancing GRSG conservation and impacts: the Conservation Credit System ("CCS"). The Conservation Credit System is a comprehensive mitigation banking system that was created by the Nevada Sagebrush Ecosystem Council ("SEC") and is administered by the Sagebrush Ecosystem Technical Team ("SETT"). The CCS requires offsetting "debit projects" (i.e., anthropogenic disturbance projects) with consistent and durable "credit projects" (i.e., mitigation projects). Since the initiation of the CCS in 2019, project proponents have spent millions of dollars to develop and secure credits to conserve just under 30,000 acres of critical GRSG habitat. *See* State of Nevada, CCS 2023 Performance Report, p. 4. Because Nevada law requires that all anthropogenic disturbance projects, including mineral exploration and development projects, participate in the CCS, Nevada's mining industry depends on a well-functioning system that promotes accessible and affordable credit projects. *See* Nevada Administrative Code ("NAC") 232.460; *see* Draft RMPA/EIS, p. 2-24 (The Draft RMPA/EIS correctly recognizes that compensatory mitigation is not required for operations conducted under the Mining Law of 1872 under federal law).

The BLM's resource management planning regulations (43 C.F.R. § 1610.3-2) require resource management plans ("RMPs") to be consistent with officially approved or adopted resource related plans of other Federal, State, local, and Tribal governments. The BLM does not appear to have complied with this mandate as it has failed to evaluate how the Draft RMPA/EIS would impact the Nevada CCS. The BLM also did not consult with the Nevada SEC in the development of this Draft RMPA/EIS. *See* Draft RMPA/EIS, p. 5-3 to -4.

The only reference to the CCS in the Draft RMPA/EIS is in the discussion of cumulative impacts:

> Required mitigation in NV is through the Conservation Credit System (CCS) managed by the State of Nevada Sagebrush Ecosystem Program. The goal of the CCS is to generate a net benefit of greater sage-grouse habitat on

> public lands, but it may be adapted to support the ongoing preservation, enhancement, and restoration of NV sagebrush ecosystem.

Draft RMPA/EIS, p. 4-229. This threadbare recognition fails to acknowledge the time and resources Nevada has invested in developing the CCS. It is inconceivable that the Draft RMPA/EIS does not include a more complete discussion of the CCS.

The Draft RMPA/EIS also fails to seriously analyze how the proposed management restrictions in Alternatives 3 through 6 would impact the viability of the CCS. First, these Alternatives would require that "[c]ompensatory mitigation … be prioritized to occur within the same area of the impact (within the same HAF fine scale area, or if not possible, within the same neighborhood cluster or HAF mid-scale area where practicable) so that it provides habitat for GRSG populations affected by the project." Draft RMPA/EIS, p. 2-22. This requirement overlooks the fact that land available for mitigation activities may not be available near disturbance projects. Due to the large percentage of federally managed land in Nevada, paired with mixed-ownership limitations in historic checkerboard areas, the CCS already struggles to find suitable habitat for credit projects. The requirement also encourages locating disturbance activities near sensitive or intact landscapes that are more suitable for mitigation activities.

In recognition of this problem, the SETT's habitat quantification tool ("HQT")—the model that determines "credit" requirements based on a project's "debits"— uses a diverse "set of metrics, applied at multiple spatial scales, to evaluate vegetation and environmental conditions related to sage-grouse habitat quality and quantity," to identify credit potential "in the most beneficial locations for the sage-grouse." 2019 Nevada Greater Sage-Grouse Conservation Plan, p. 87. The CCS adjusts mitigation ratios (i.e., ratio of credits to debits) up or down based on several factors, including the proximity of the debit project to potential credit sites. The Draft RMPA/EIS does not discuss the HQT, its metrics, or the impact of limiting compensatory mitigation to the area of impact on the CCS.

Second, Alternatives 3 through 6 would require that compensatory mitigation is completed "prior to initiating the activity causing the need for compensation." Draft RMPA/EIS, p. 2-23. However, the Nevada CCS is a market-based solution to compensatory mitigation that requires offsetting disturbances in one of two ways. First, credits may be generated by conserving "verified 'functional acre[s]' that meet[] the durability criteria" defined by the SETT (referred to as "stewardship" projects). Nevada Greater Sage-Grouse Conservation Plan, p. 86; SEP, Credit Project Proponents FAQs, p. 4. These credits are "verified" by third-party verifiers at the start of a debit project, and periodically thereafter, to ensure that they are maintained throughout the duration of the debit project, plus ten years. 2019 Nevada Greater Sage-Grouse Conservation Plan, p. 88. Credits may also be earned "by enhancing or restoring the [mitigation] project site and committing to maintain the additional functional acres achieved over time" (referred to as "uplift'" projects). *Id.* at p. 86. The SETT uses contractual performance assurances to guarantee that uplifted habitat

"maintain[s] habitat performance and to limit risk from future impact[s] for the duration of the project." *Id.*

By allowing both stewardship and uplift projects, the CCS defends against uncertainty associated with whether mitigation projects will become durable and resilient habitat in a more nuanced and flexible manner than BLM's one-dimensional approach. The BLM should instead require periodic monitoring of mitigation activities to ensure compliance with durability standards and timely implementation of conservation actions. Monitoring will also ensure that mitigation projects proceed on the same timeline as the activity causing the need for compensation, thus reducing the risk of habitat fragmentation and reduced carrying capacity, while simultaneously avoiding unnecessary delays in project development.

7. **Designation of Areas of Critical Environmental Concern needs significantly more local input.**

NVMA is deeply concerned by BLM's inclusion of Areas of Critical Environmental Concern ("ACECs") in Alternatives 3 and 6, because the range-wide approach to designating and managing dozens of ACECs that the Draft RMPA/EIS proposes does not comply with BLM's own regulations and is ill-advised. And the proposed ACECs appear to have targeted Nevada more disparately than other states, as the over 5.5 million acres of ACECs proposed in Nevada is approximately 60% more than the next state (3,438,307 acres in Idaho). *See* Draft RMPA/EIS, App'x 5, p. 5-48. The inclusion of ACECs in Nevada, which has the most locatable minerals projects in the nation, would impact jobs, local tax revenues, the production of critical minerals needed for the clean energy transition, and other essential economic drivers.

The BLM must determine that an area is both relevant and important under the criteria outlined in its regulations before designating an area as an ACEC. *See* 43 C.F.R. § 1610.7-2(a). In the Draft RMPA/EIS, it is entirely unclear how the proposed ACECs in Nevada satisfy either of the "relevance" or "importance" criteria, as several overlap with or are adjacent to existing development, including mining facilities. *See* BLM. ACEC Manual, 1613.21-22; *see also* 43 C.F.R. § 1610.7-2(a). In fact, two of the proposed ACECs in Nevada are situated directly on top of large and active mining operations. *See* Draft RMPA/EIS, p. 5-22 & 5-24 (Owyhee West ACEC and Grass Valley/Kobeh Valley ACECs). BLM's logic here is obscure, as those areas have been disturbed for close to thirty years.

Contrary to BLM guidance, BLM also did not seek input from key stakeholders in the area that have knowledge of the on-the-ground conditions, including the Nevada Sagebrush Ecosystem Council, because they were not a "Cooperating Agency" at the time the ACEC alignments were determined. *See* Draft RMPA/EIS, App'x 5, 5-22. Further, BLM evaluated the proposed ACECs based on information not available to the public. For

instance, in the discussion of the proposed ACECs in Nevada/California in Appendix 5, BLM indicates it "will update ACEC evaluations, including potentially revising potential ACEC boundaries, based on input from the Cooperating Agencies, public, and other new information (e.g., Coates et al., 2024 – in review) and incorporating the updated areas in the Final EIS." Draft RMPA/EIS, App. 5, p. 5-22 (emphasis added). This would violate both the Administrative Procedure Act and NEPA.

8. **Using Plan Maintenance to update Nevada's Habitat Management Areas violates BLM's regulations and Nevada GRSG policy.**

Nevada is unique among the states because its delineation of Habitat Management Areas ("HMAs") is "informed by a science-based modeling process" and "can be updated as new data become available." Draft RMPA/EIS, App'x 3, p. 3-10. The model incorporates several data inputs, including telemetry data and modeled environmental factors, to generate both a "habitat suitability index" and a "space use index." 2019 Nevada Greater Sage-Grouse Conservation Plan, p. 35. The resulting indices are then intersected to determine HMA boundaries. *Id.* at p. 37. The first iteration of this model was developed in 2014. *See* Coates et al., Spatially explicit modeling of greater sage-grouse (Centrocercus urophasianus) habitat in Nevada and northeastern California: a decision support-tool for management, Open-File Report 2014-1163. The BLM recently updated Nevada's HMA maps through a "plan maintenance" action in 2022. BLM, Plan Maintenance #5 for the 2015 Nevada and Northeastern California Sub-Region Greater Sage-Grouse Record of Decision and Approved Resources Management Plan Amendment, May 12, 2022.

The BLM's RMP regulations state that plan maintenance is reserved for changes necessary "to reflect minor changes in data" and "shall not result in expansion in the scope of resource uses or restrictions, or change the terms, conditions, and decisions of the approved plan." 43 C.F.R. § 1610.5-4. Federal courts recognized early on in the GRSG planning process that "[t]he decision to designate certain lands as particular kinds of sage-grouse habitat affects subsequent management decisions on those lands." *W. Expl., LLC v. U.S. Dep't of the Interior*, 250 F. Supp. 3d 718, 749 (D. Nev. 2017). Plan maintenance also occurs without "formal public involvement and interagency coordination ... or the preparation of an environmental assessment or environmental impact statement." *Id.* While a "central strength" of Nevada's HMA mapping process is the ability "to improve over time as additional information is collected and new mapping products and techniques become available," this flexibility should not come at the expense of critical public vetting from interested stakeholders. Draft RMPA/EIS, p. 3-11. Indeed, Nevada's GRSG Conservation Plan specifies that "stakeholders [must] be encouraged to participate in the[mapping] process by submitting relevant information" to the agencies involved in the process. 2019 Nevada Greater Sage-Grouse Conservation Plan, p. 37.

9. The BLM must evaluate how the Draft RMPA/EIS and the Final Public Lands Rule will interact.

The BLM must develop and circulate a supplemental environmental impact statement that analyzes how the Public Lands Rule (i.e., the Conservation and Landscape Health Rule) would interact with the Draft RMPA/EIS, now that the final version of that rule has been published in the Federal Register. The Public Lands Rule's prioritization of ACEC designation and changes to current practices for designating ACECs have not been accounted for in the Draft RMPA/EIS. The supplemental analysis must detail how changes to ACECs in the Public Lands Rule will impact the ACECs identified in the Draft RMPA/EIS. The BLM must also analyze how mitigation leases would impact compensatory mitigation under the Draft RMPA/EIS, and how restoration leases would further disincentivize development on federal public lands.

10. Comments Specific to Each Alternatives

A. Alternative 1

NVMA's members have carried out the 2015 NV/CA ARMPA (as maintained in Nevada) since the District of Idaho enjoined implementation on the 2019 ARMPAs. Agency and project proponent familiarity with the interpretation and execution of 2015 ARMPAs improves regulatory certainty. Alternative 1 also comports with Nevada's CCS, providing consistency and clarity across both federal and state levels of compliance. However, NVMA continues to oppose any SFA withdrawal recommendation.

B. Alternative 2

Alternative 2 offers improved coordination with states and the most flexible overall management strategy to GRSG conservation. Alternative 2 is also identified as BLM's "No Action" Alternative because it would re-adopt "the applicable decisions from the 2019 Greater Sage-Grouse ROD/ARMPAs efforts." Draft RMPA/EIS, p. 2-1. But, as BLM points out, "the U.S. District Court for the District of Idaho has issued a preliminary injunction, preventing the BLM from implementing the 2019 amendments, but not vacating them or their Records of Decision." Draft RMPA/EIS, p. ES-4; *see also W. Watersheds Project v. Schneider*, 417 F.Supp.3d 1319, 1335 (D. Idaho 2019). While BLM prepared supplemental EISs in 2020 to address and clarify the issues identified in the Court's injunction, the Court has not lifted the preliminary injunction. *See* Draft RMPA/EIS, p. 1-3. Accordingly, it is unclear whether BLM could select Alternative 2, and BLM has not offered any legal justification for how it could do so.

C. Alternative 3

The Draft RMPA/EIS provides that "[a]ll of the BLM's alternatives comply with the direction in FLPMA that public lands be managed 'on the basis of multiple use and sustained yield' (FLPMA Sec. 102(a)(7))." Draft RMPA/EIS, p. 2-6. However, Alternative 3 is a blatant violation of BLM's "multiple use" mandate because it would preclude all forms of resource use and development across GRSG habitat, including mineral exploration and development through the recommendation to withdraw all Priority HMA from mineral entry and location. This would be catastrophic not only to Nevad's mining industry, but the entire domestic mineral industry and supply chain. Alternative 3 is a clear violation of the law and cannot be taken seriously.

D. Alternative 4

Alternative 4 would include "update[d] [HMA] boundaries and associated management," and "management associated with some of the major minimization measures (e.g., disturbance cap, adaptive management)." Draft RMPA/EIS, p. 2-2. Alternative 4 is most like Alternative 5 but with unnecessary technical divergences, including, but not limited to:(1) inclusion of HMAs outside of locally determined PMUs, resulting in approximately 2 million more acres of HMA range-wide; (2) more stringent limitations on siting energy project and transmission ROWs; and (3) less flexible disturbance cap exceptions. These differences appear to have been put forth arbitrarily, as BLM does not attempt to explain why they were added and how they will promote GRSG conservation.

E. Alternative 5

The stated intention of Alternative 5, BLM's Preferred Alternative, is to designate habitat in better alignment with state designations and in accordance with new science and information. Draft RMPA/EIS App'x 3, p. 3-3 through 3-4, p. 3-9. The BLM appears to drop several of the arbitrary technical divergences from Alternative 4, creating a more flexible and adaptable overall management strategy. Still, several of the management actions are more stringent than those under Alternative 2 and, in most cases, BLM fails to sufficiently justify these changes.

F. Alternative 6

Alternative 6 is Alternative 5, but with the addition of ACECs. As discussed above, NVMA vehemently disagrees with BLM's process for the designation and management of ACECs in this planning process.

Conclusion

NVMA appreciates the opportunity to provide input on the Draft RMPA/EIS. NVMA strongly recommends that BLM work with local stakeholders to produce supplemental EISs that analyze region- or state-specific impacts of the proposed management actions. Importantly, wildland fires and invasive plant species remain the primary threat to GRSG

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populations and habitat, and the BLM should concentrate its efforts on addressing these issues through targeted program funding (e.g., flammable fuel management) and federal-state partnerships.

NVMA looks forward to a productive dialogue with BLM on future GRSG conservation measures. Please reach out if you have any questions.

Sincerely,

Amanda Hilton

Amanda Hilton
President

VIA ePLANNING PORTAL

May 14, 2024

Bureau of Land Management
Utah State Office
ATTN: HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, Utah 84101

Re: 2021 Greater Sage-grouse Land Use Plan Amendments (DOI-BLM-WO-2300-2022-0001 RMP-EIS), Areas of Critical Environmental Concern

Dear Bureau of Land Management:

Oregon Natural Desert Association ("ONDA") provides these comments on the Bureau of Land Management's ("the Bureau" or "BLM") consideration of potential Areas of Environmental Concern ("ACEC") as part of the agency's Greater Sage-grouse Land Use Plan Amendment Draft Environmental Impact Statement ("DEIS").[1] The agency has proposed designating an 11-million acre network of ACECs across seven western states to conserve greater sage-grouse (*Centrocercus urophasianus*) (hereafter "sage-grouse") and their habitat on public lands—but not in Oregon, home to an indispensable portion of this imperiled specie's western stronghold in what remains of the Sagebrush Sea. The Bureau's failure to consider ACECs in Oregon is ecologically irrational and legally indefensible.

ONDA is a public interest conservation organization whose mission is to protect, defend, and restore Oregon's high desert for current and future generations. We are the only organization dedicated exclusively to conserving Oregon's desert lands, waters, and wildlife, and we have been involved in sage-grouse conservation on desert public lands for more than 35 years. ONDA represents more than 18,000 members and supporters in Oregon and across the United States who regularly use and visit BLM public lands. The management, conservation, and restoration of these lands and resources—and, especially, sage-grouse and sagebrush habitats—is of significant interest to our members, supporters, and staff for professional, personal, recreational, aesthetic, spiritual, and other reasons.

This planning process is vital to the conservation and recovery of sage-grouse populations range-wide. The DEIS is especially important in Oregon, where Bureau public lands comprise the vast majority (more than 12 million acres) of remaining sage-grouse habitat in the

[1] Notice of Availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning, 89 Fed. Reg. 18963 (Mar. 15, 2024).

state and where populations have declined *by nearly half statewide* since 2003. The Oregon Department of Fish and Wildlife estimates there are only 15,409 birds remaining in the state today.[2] The sage-grouse population in Oregon also represents the western-most extent of the species; occupies one of the six most important strongholds remaining for sage-grouse range-wide; is strongly connected both within the state, as well as to sage-grouse populations in other states; and helps to preserve genetic diversity that is essential to the species' persistence west-wide. Specially designating and managing a system of sage-grouse ACECs in Oregon, and as part of a larger network of habitat reserves, would benefit conservation of the species within Oregon, the northern Great Basin, and across the entire western range of the sage-grouse.

1. Identifying, designating and managing habitat reserves is important for conserving sensitive species.

Conservation science recommends protecting habitat reserves to conserve sensitive species (Rodrigues and Gaston 2001). A system of reserves should be large enough to achieve the goals of biological representation, and ecological redundancy and resiliency within an ecosystem (Svancara *et al.* 2005). The size of individual areas and the reserve system should be determined by the biological requirements of the species of concern (e.g., Haight *et al.* 2002). A reserve system for sage-grouse should protect centers of abundance, seasonal habitats and connectivity, and be large enough to achieve the goals of biological representation, and ecological redundancy and resiliency on the landscape (Svancara *et al.* 2005). The commonly cited goal of conserving 10 percent of a given landscape lacks basis in science (Soulé and Sanjayan 1998; Svancara *et al.* 2005). Much larger areas may be necessary to conserve biodiversity and ecosystem integrity (Soulé and Sanjayan 1998). Doherty *et al.* (2010) found that, while sage-grouse occupy large areas, their breeding distribution is aggregated in relatively small areas. Areas representing 25 percent of the known sage-grouse population were 3.9 percent of the species range, and 75 percent of sage-grouse were within 27 percent of the species range (Doherty *et al.* 2010). Sagebrush reserves should encompass centers of sage-grouse abundance on the landscape and protect a sufficiently large proportion of habitat to sustain biological processes, recover species and mitigate for the systematic effects of climate change, invasion by nonnative plants, unnatural fire and other stochastic events. The new reserves should be proactively managed for sage grouse and sagebrush conservation, rather than by conservation schemes that are merely intended to lessen and mitigate the impacts of continued land use and development on sensitive species and habitats.

Conserve Large Expanses of Sagebrush Steppe

Greater sage-grouse are a landscape species (Connelly *et al*. 2011a). Migratory populations have large annual ranges that can encompass >2,700 km^2 (1,042 mi^2/667,184 ac) (Knick and Connelly 2011, *citing* Dalke *et al*. 1963; Schroeder *et al*. 1999; Leonard *et al*. 2000) (the species may use up to 2,500 mi^2 per population (Rich and Altman 2001)). Large-bodied

[2] Vold, S. 2023. Oregon Greater Sage-Grouse Population Monitoring: 2023 Annual Report. Oregon Department of Fish and Wildlife. Hines, OR. The Oregon Department of Fish and Wildlife found that, by 2023, the statewide population had decreased to 15,409, a 47.5% decline from the 2003 baseline of 29,327 birds. The ODFW Annual Reports are available at https://www.dfw.state.or.us/wildlife/sagegrouse/population.asp.

birds are generally more strongly affected by habitat loss and fragmentation (Winter *et al*. 2006). Although conclusive data on minimum patch size is unavailable (Connelly *et al*. 2011a), conserving large expanses of sagebrush steppe is the highest priority to conserve sage-grouse (Aldridge *et al*. 2008; Connelly *et al*. 2011b). Some sagebrush-dependent species use different habitat composition, structure or succession than sage-grouse prefer. Protecting large blocks of habitat will also help preserve a mosaic of different habitats of varying successional stages used by sage-grouse and other sagebrush-dependent species.

Conserve Small Areas and Connectivity in Sagebrush Steppe

Protecting smaller habitat patches can help connect larger areas. Conservation strategies for sage-grouse should preserve networks of populations and/or habitat patches, including connecting smaller lek complexes within 18 km that could serve as intermediary islands of habitat for dispersing sage-grouse (Knick and Hanser 2011). Protecting small habitat patches is also important to conserve smaller birds and maintain avifaunal diversity (Winter *et al*. 2006).

Sage-grouse may move long distances between seasonal habitats (Connelly *et al*. 1988). Annual movements by sage-grouse as long as 40-160 km (24.8-99.4 mi) along established routes have been reported (Dalke *et al*. 1963; Connelly 1982; Leonard *et al*. 2000). Although much is still unknown about the distribution, configuration, and characteristics of sage-grouse migration corridors (Connelly *et al*. 2011a), Beck *et al*. (2006) recommended conserving habitat corridors to facilitate easier movement for migratory sage-grouse.

Conserve Peripheral and Genetically Significant Populations

A system of reserves should protect peripheral and/or genetically distinct populations of species. Peripheral populations are often located at the ecological limits of a species range, where species are exposed to environmental circumstances that may later become prevalent in central populations, such as effects from climate change. Such testing of the periphery can act to stabilize the entire species in the face of environmental change (Lesica and Allendorf 1995). Genetically distinct populations increase genetic diversity in a species and expand the genetic background against which natural selection occurs (Lesica and Allendorf 1995).

2. Appropriately located, sufficiently sized, properly managed Areas of Critical Environmental Concern can serve as a network of habitat reserves on public lands to conserve sage-grouse and sagebrush habitats.

The Bureau should establish a network of habitat reserves for conserving and restoring sagebrush habitat and sage-grouse populations range-wide. As the agency stated in the DEIS, "ACECs are special management areas that are designed to protect important values such as fish and wildlife resources and habitat through restrictions on uses and surface disturbing activities" (BLM 2024 DEIS: Vol. 1, 4-50). A network of ACECs "may be a useful tool for the BLM to effectively manage habitat not only for GRSG but for other wildlife species by restricting land use operation and disturbances in these areas" (BLM 2024 DEIS: Vol 1, 4-50 – 51).

The BLM has previously recognized the value of designating ACECs to conserve sage-grouse, including in Oregon. As part of its 2015 sage-grouse conservation planning process, the

agency studied alternatives that would "[u]tilize a network of existing [ACECs] to serve as conservation areas to manage sage grouse and sagebrush habitat within [e]astern Oregon. Maintain, improve, or increase quality and quantity of native plant communities in [sage-grouse] habitat within ACECs, including Research Natural Areas (RNAs), while maintaining or improving the all the values for which the ACECs/RNAs were designated" (BLM 2014 DEIS: I-1).

In fact, the Bureau has previously designated substantial new ACECs for species conservation. In its management plan for the Gunnison Gorge National Conservation Area, the Bureau determined that ACEC designation was important to conserve Gunnison sage-grouse—even in a Congressionally designated national conservation area. In southeastern Oregon, the Bureau designated the Borax Lake ACEC to help conserve the Borax Lake chub. Increased protections within the ACEC were a contributing factor in the U.S. Fish and Wildlife Services recommendation to downlist the species from "endangered" to "threatened" in 2012, and then to delist it in 2020 (85 Fed. Reg. 35,574 (June 11, 2020) (determining that "the Borax Lake chub is no longer at risk of extinction now nor likely to become so in the foreseeable future" based, among other factors, on "[r]emoval of threats to subsurface waters from geothermal energy exploration or development" and "[p]ermanent protection" of lands on and surrounding lake)). Finally, the Bureau's Las Vegas Field Office in Nevada established ten ACECs to protect wildlife habitat, six of which were allocated to safeguard designated critical habitat for federally listed threatened and endangered species, including the desert tortoise. ACECs designated to protect that species cover 1,097 square miles (702,160 acres) of critical habitat as "desert tortoise ACEC reserves."

In its recently adopted Public Lands Rule, the Bureau "emphasizes the role of ACECs in contributing to ecosystem resilience by clarifying that ACEC designation can be used to protect landscape intactness and habitat connectivity"(89 Fed. Reg. 40,308, 40,309 (May 9, 2024) (to be codified at 43 C.F.R. Part 6100) (rule intended to conserve "intact landscapes" as "unfragmented ecosystem[s] . . . large enough to maintain native biological diversity, including viable populations of wide-ranging species")). As the Bureau recognizes, "[a]chieving ecosystem resilience will require . . . the protection of intact landscapes" and ACECs are the agency's "principal administrative designation for protecting important natural, cultural, and scenic resources" (89 Fed. Reg. at 40,308–09, 40,325, 40,337; *see also* 89 Fed. Reg. at 40,310 (describing that "intact landscapes play a central role in maintaining the resilience of ecosystems")). Importantly, the new rule also recognizes "landscape intactness" as "the resource value that the BLM is seeking to identify and protect." 89 Fed. Reg. at 40,320 (also explaining that in the land use planning process, BLM will "use the intactness inventory, and other available information including habitat connectivity and migration corridor data, to identify intact landscapes, evaluate alternatives to manage intact landscapes, and identify which intact landscapes or portions of intact landscapes will be managed for protection"). And the new rule codifies "a *presumption* that *all areas* found to meet all three ACEC criteria *will be designated* in the resource management plan" (89 Fed. Reg. at 40,325 (emphases added)).

Ultimately, protecting intact and resilient ecosystems in ACECs, as required under the Bureau's rule, will serve important federal conservation policies by promoting ecological connectivity and wildlife corridors and protecting intact landscapes (*see, e.g.*, Mallory, B.,

Council for Environmental Quality, Guidance for Federal Departments and Agencies on Ecological Connectivity and Wildlife Corridors (Mar. 21, 2023), *available at* https://www.whitehouse.gov/wp-content/uploads/2023/03/230318-Corridors-connectivity-guidance-memo-final-draft-formatted.pdf (announcing policy for Federal agencies "to promote greater connectivity across . . . habitats . . . to sustain the tremendous biodiversity that exists in the U.S. and enable wildlife to adapt to fluctuating environmental conditions, including those caused by climate change"); BLM, *Habitat Connectivity on Public Lands*, Instruction Memorandum 2023-005, Change 1 (Nov. 18, 2022), *available at* https://www.blm.gov/policy/im-2023-005-change-1). Importantly, and as recognized in the new Public Lands Rule, ACEC designation is an administrative, public declaration of the importance of protecting certain public lands to conserve natural resources and other values. Under the new Public Lands Rule, ACECs are durable forms of protection that cannot be undone without explanation for why they are no longer needed (*see* 89 Fed. Reg. at 40,329–30).

3. The Bureau has already analyzed and recognized more than 4 million acres of Areas of Critical Environmental Concern to conserve sage-grouse in Oregon, determining them to be both relevant and important for designation.

The Bureau recognized the value of establishing ACECs to conserve sage-grouse in the 2015 National Greater Sage-grouse Planning Strategy, which proposed 4,040,201 and 4,348,340 acres for designation as *new* ACECs for the species in Oregon (BLM 2013 DEIS: 2-53, Table 2-5). The agency analyzed different, extensive networks of ACECs in the state, determining they met both relevance and importance criteria for designation (BLM 2013 DEIS, App'x J). This included a "17 ACEC" complex that the agency, itself, proposed, totalling 4,041,905 acres. As the Bureau described,

> [t]he ACEC boundaries were created by merging all active GRSG leks and occupied habitat, sage-grouse brooding, transitional and winter habitat, and high quality sagebrush habitat. Many potential ACECs included large blocks of sagebrush habitats in [preliminary priority habitat] and [preliminary general habitat] at higher elevation (> 5,000 feet) with the intent that with vegetation changes because of climate change, many sagebrush habitats will be moving upslope through time and could serve as refugia for the birds in the future (i.e., future suitable habitat). Attention was paid to connectivity between the 17 ACECs and to existing ACECs and Research Natural Areas ("RNAs") and isolated leks, with an attempt to provide for movement corridors. All ACECs were also designed to follow BLM ownership and livestock grazing allotment boundary or pasture fences, resulting in both [preliminary priority habitat] and [preliminary general habitat] being included. Using the abovementioned criteria, 17 ACECs were identified on 4,041,905 acres within the four districts. (BLM 2013 DEIS, App'x J: J-3)

The Bureau determined that the 17 ACECs in the network are relevant because the potential ACECs support "key natural processes and natural systems (high quality sagebrush plant communities) that are critical for sage-grouse" (BLM 2013 DEIS, App'x J: J-4) and that they are important because:

1. These ACECs have more than locally significant qualities that give them special worth and cause for concern. These proposed areas contain the higher-density lekking sites that are known in Oregon and that are some of the highest densities in the Great Basin. These areas serve as refugia for the bird, are spatially arrayed to connect to existing ACECs and RNAs and to other potential ACECs and priority and key sage-grouse habitats in Nevada and Idaho. They also include habitats that the birds are likely to move into in the future as temperature regimes continue to increase and push big sagebrush and sage-grouse higher in elevation.

2. The potential ACECs have qualities that make them unique and rare—areas of relatively intact sagebrush plant communities supporting sage-grouse—that are vulnerable to change. Areas in southeast Oregon have been nationally recognized as having some of the higher sage-grouse densities and more high quality intact sagebrush habitat within the Great Basin.

3. The sage-grouse has also been recognized as needing protection at a multi-state, Great Basin scale and is a national priority. These potential ACECs contain some of the best of the 'Core' habitats as designated by the state. (BLM 2013 DEIS, App'x J: J-5)

The Bureau's 17 ACEC proposal is remarkable for its recognition of the need for a system of habitat reserves, understanding of sage-grouse habitat requirements, application of the best available science and foresight in conserving large, interconnected and climate resilient habitat areas for the grouse and other fauna and flora. *See also* 89 Fed. Reg. at 40,322 (the new Public Lands Rule "sets forth a framework for the BLM to make informed management decisions *based on science and data* . . . that would help to facilitate ecosystem resilience) (emphasis added). The Bureau numbered, named, and listed acreages for all seventeen ACECs, and described the values conserved in each of them (BLM 2013 DEIS, App'x J: J-5 – J-6) (*see* Appendix 1).

In addition to the 17 ACEC proposal included in Alternative F in the 2013 draft plan, the preferred alternative (Alternative D) separately sought to prioritize sage-grouse conservation in dozens of *existing* ACECs and RNAs in Oregon.[3] Sage-grouse were already identified as a relevant and important value for seven existing ACECs and RNAs in the state (BLM 2013 DEIS: 3-126) (Table 1). The Bureau's 2015 analysis also identified eleven existing ACECs known to have active or recently occupied sage-grouse leks (BLM 2013 DEIS: 3-126) (Table 2).

[3] The Bureau's 2013 draft plan also analyzed all Preliminary Priority Habitat Area as ACECs as part of Alternative C.

TABLE 1. Seven ACECs and RNAs Identified in 2015 National Greater Sage-Grouse Planning Strategy in Oregon for which Relevant and Important Values included Greater Sage-grouse / Acres	
High Lakes ACEC	38,942
Lake Ridge RNA	3860
North Ridge Bully Creek RNA	1569
Rahilly-Gravelly RNA	18,680
Red Knoll ACEC	11,121
South Ridge Bully Creek RNA	621
Toppin Creek Butte RNA	3998
Total Acres	**79,791**

TABLE 2. Eleven ACECs and RNAs Identified in 2015 National Greater Sage-Grouse Planning Strategy in Oregon for having Active or Recently Occupied Greater Sage-Grouse Leks / Acres	
Abert Rim ACEC	18,038
Devils Garden Lava Beds ACEC	28,243
Guano Creek-Sink Lakes RNA	11,185
High Lakes ACEC	38,942
Kiger Mustang ACEC	55,589
North Ridge Bully Creek RNA	1596
Powder River ACEC	5909
Rahilly-Gravelly RNA	18,680
Red Knoll ACEC	11,121
South Ridge Bully Creek RNA	621
Toppin Creek Butte RNA	3998
Total Acres	**193,992**

In addition to these, the preferred alternative sought to elevate conservation in "priority" ACECs that were at least 50 percent in general habitat, at least 20 percent in priority habitat, and/or have active leks/sagebrush habitat (BLM 2013 DEIS: 2-105, Table 2-6, Action D-SD),[4] which amounted to 59 existing ACECs (plus 42 RNAs) on 474,657 acres, containing 197,680 acres of priority habitat (4.5 percent) and 225,731 acres of general habitat (4.0 percent) (including the seven ACECs/RNAs where sage-grouse were already a relevant/important value) (BLM 2013 DEIS: I-2 - I-4, Table I-1).

The Bureau proposed a robust and management regime to conserve sage-grouse and habitats within these ACECs and RNAs, including reducing, modifying or eliminating impacts to habitat from off-road vehicles, rights-of-way, livestock grazing, locatable and saleable mineral development, special use permits and other potential uses; excluding new rights-of-way and off-road vehicle use, closing roads and limiting travel to existing routes; working with grazing permittees to modify grazing use to support habitat conservation goals and preserve plant communities; close all RNAs to grazing, and work with permittees to voluntarily relinquish grazing permits in RNAs; removing unneeded grazing infrastructure; carefully managing passive recreation to avoid disturbance to grouse and habitat; and generally deferring to natural processes to guide management of the areas (BLM 2013 DEIS: 2-105 - 2-106, Table 2-6, Action D-SD; App'x I; *see also* 89 Fed. Reg. at 40,313 ("[t]his rule clarifies that conservation is a use on par with other uses")).

While the Bureau's selected alternative in its 2015 FEIS did not apply these management prescriptions to existing ACECs in Oregon, it is notable that the agency both recognized the relevance and importance of these areas to sage-grouse conservation—and in contrast to the agency's current planning process. If the Bureau had established a system of new and existing ACECs in Oregon in 2015, sage-grouse might be faring better on public lands in the state today.

4. The Bureau's current analysis of Areas of Critical Environmental Concern to conserve sage-grouse in Oregon is inadequate and inconsistent with its range-wide proposal.

The Bureau has proposed designating more than 11 million acres of ACECs in seven western states in Alternatives 3 and 6 in the DEIS; no new ACECs were analyzed or proposed in Oregon, nor were any existing ACECs identified for special management for conserving sage-grouse. The plan did identify two existing ACECs—High Lakes ACEC and Red Knoll ACEC—that were designated (in prior planning processes) in part to conserve sage-grouse and sagebrush plant communities, identifying sage-grouse conservation as both relevant and important to the purpose of the current plan (BLM 2024 DEIS: 3-43). Together, they cover more than 50,000 acres of sage-grouse habitat, but the Bureau declined to offer additional management prescriptions for those ACECs in the DEIS.

The Bureau's *relevance* criterion for identifying ACECs in the current planning process is simply based on the presence of sage-grouse: "[t]he presence of GRSG meets the relevance criteria across the entire range" (BLM 2024 DEIS: 2-117). The agency's *importance* evaluation "considers substantial significance to include special worth, consequence, distinctiveness, or

[4] The BLM's 2015 plan separately stated that priority ACECs were at least 50 percent general habitat or 30 percent priority habitat (BLM 2015 DEIS: I-2).

cause for concern" (BLM 2024 DEIS: 2-117). The BLM further states that "[f]or the importance criteria to be met values must be more than locally significant" (BLM 2024 DEIS: 2-117). The Bureau evaluated six criteria to determine the importance of potential ACECs to sage-grouse in the current plan (BLM 2024 DEIS: 2-117). The agency also lists eight Geographic Information System datasets that planners used to plot and assess those criteria westwide (BLM 2024 DEIS, App'x 5: 5-5 – 5-6). We list the six criteria and six of the eight data layers that appeared to best align with those criteria below, and then plotted those data in Oregon.

1. Population density (Doherty *et al.* 2016), represented on Map 3.1 in the DEIS, *Greater Sage-Grouse Breeding Population Index Model within Greater Sage-Grouse Planning Areas*, depicted in Oregon on Map 1 ("Greater Sage-Grouse Breeding Population Index Model on BLM Land within Oregon").
2. Lek and habitat persistence (Wann *et al.* 2023), represented on Map 3.10 in the DEIS, *Probability of Greater Sage-Grouse Lek Persistence within Greater Sage-Grouse Planning Areas*, depicted in Oregon on Map 2 ("Probability of Greater Sage-Grouse Lek Persistence on BLM Land within Oregon").
3. Genetic uniqueness (Oyler-McCance *et al.* 2022), represented on Map 3.4 in the DEIS, *Distinct Genetic Greater Sage-Grouse Groups within Greater Sage-Grouse Planning Areas*, depicted in Oregon on Map 3 ("Genetic Uniqueness of Greater Sage-Grouse within Oregon").
4. Genetic connectivity (Cross *et al.* 2023), represented on Map 3.5 in the DEIS, *Greater Sage-Grouse Genetic Connectivity within Greater Sage-Grouse Planning Areas*, depicted in Oregon on Map 4 ("Greater Sage-Grouse Genetic Connectivity on BLM Land within Oregon").
5. Existing habitat disturbance, represented on Map 3.16 in the DEIS, *Existing Disturbances within Greater Sage-Grouse Planning Areas*.
6. Habitat quality (Chambers *et al.* 2023), *Ecological resilience and invasion resistance to support prioritization and management in the sagebrush biome, United States*, depicted in Oregon on Map 5 ("Ecological Resilience/Resistance on BLM Land within Oregon"). ONDA used Chambers *et al.* (2023) to assess sage-grouse habitat quality—and resilience and resistance—as a more relevant and scrutinous dataset than others identified in the DEIS.[5]

As depicted on ONDA's maps, sage-grouse population density, genetic uniqueness, and genetic connectivity are worthy of the same consideration for ACEC designation as in other states. In a range-wide study of genetic structure and effective migration, Oyler-McCance *et al.* (2022) identified six subpopulations that were further classified by lek kernel density. Areas containing 25% kernel density were identified as "core areas of differentiation . . . important to

[5] The Bureau listed Chambers et al. (2023) on its "List of Publications and Data Links for New Science" on eplanning (https://eplanning.blm.gov/eplanning-ui/project/2016719/590), as presented on a chart, "Location of GIS Data Sources Used in the Greater Sage-Grouse Draft RMP Amendment/Draft EIS" (https://eplanning.blm.gov/public_projects/2016719/200609542/20105866/251005866/List%20of%20Publications%20and%20Data%20Links%20for%20New%20Science.pdf).

protect to maintain maximum genetic diversity across the range." Southeastern Oregon exclusively contains a Great Basin subpopulation center that preserves genetic uniqueness as part of a regional population grouping and supports effective migration and genetic exchange between sage-grouse in Nevada and Idaho. *See* Map 3 ("Genetic Uniqueness of Greater Sage-Grouse within Oregon").

Habitat quality, connectivity and resilience is also equivalent to other states where millions of acres of ACECs have been proposed—including Nevada, with 5,766,150 acres and Idaho, with 3,438,307 acres of proposed ACECs. Oregon comprises the majority of the Western Association of Fish and Wildlife Agencies' ("WAFWA") Management Zone V (Northern Great Basin), anchoring the western periphery of the species' range. Coates *et al.* (2020: 118-119, Fig. 4.8) further identified 47 different sage-grouse neighborhood clusters within or intersecting with Oregon, with a number of those areas extending far into Nevada, Idaho and California. Sagebrush habitats in Oregon are notably intact, especially compared to other states (*see* BLM 2024 DEIS: Map 3.16), and have avoided the devastation caused by fluid mineral development, hardrock mining, and other land use that continue to eliminate sage-grouse habitat elsewhere in the species' range.

The Bureau's lack of ACECs proposed in Oregon is both inadequate for the purpose of conserving sage-grouse westwide and inconsistent with the agency's approach in other states. It is also contrary to the Bureau's new rule, which adopts a "presumption" that "*all areas* found to meet" the ACEC criteria "*will be designated* in the resource management plan" (89 Fed. Reg. at 40,325 (emphases added)). The Bureau's inconsistent interpretation and analysis of the importance of Sagebrush Focal Areas ("SFAs") to identifying proposed ACECs, its failure to recognize sage-grouse population connectivity in the northern Great Basin, and the varying weight it places on potential future change in sagebrush biomass in considering potential ACECs are just three examples of why the the agency needs to reconsider its process for identifying and designating ACECs in Oregon.

Sagebrush Focal Areas

The Bureau explicitly stated in its preliminary analysis that its evaluation of potential ACECs "did not result in the identification of any areas that raised to more than local significance outside the 2015 SFAs" (BLM 2024 DEIS, App'x 5: 5-28). The Bureau came to a similar conclusion evaluating "smaller areas within the SFAs," determining those areas "did not contain multiple lines of evidence supporting a conclusion that the habitat was of more than local significance" (BLM 2024 DEIS, App'x 5: 5-28).

Despite this claim, SFAs identified by the U.S. Fish and Wildlife Service, refined by the Bureau, and then designated in the Bureau's 2015 sage-grouse plan amendments, appear to have informed and even prescribed the location and size of ACECs proposed in the current draft plan. *See* Map 6 ("Proposed Sage-grouse Areas of Critical Environmental Concern (ACEC) and Sagebrush Focal Areas"). For example, in Wyoming the Bureau used SFAs as the foundation for its proposed South-Central and Southwestern Wyoming Proposed ACECs. The importance of the proposed area to sage-grouse was then bolstered by additional analysis of breeding population density, genetic connectivity, and genetic mixing data, which identified the western portion of

the SFA, in particular, as "more than locally important with special worth and are distinctive" (BLM 2024 DEIS, App'x 5: 5-45). Some of the proposed ACECs in Idaho and Montana also clearly align with SFAs in those states.

The Bureau claims that it "did not use PACs or SFAs as an automatic delineation of potential ACECs, or as justification that the area met [the] importance criteria" due to the availability of "new science and research products" that may provide an updated assessment of sage-grouse habitat as relates to the ACEC importance criteria (BLM 2024 DEIS, App'x 5: 5-5). However, as the above example demonstrates, SFAs remained a relevant indicator of important sage-grouse habitat. In fact, nearly half of the proposed ACECs overlap with identified SFAs. *See* Map 6 ("Proposed Sage-grouse Areas of Critical Environmental Concern (ACEC) and Sagebrush Focal Areas").

The Bureau previously designated 1,929,580 acres of SFAs in Oregon (BLM 2015 FEIS: 2-2, 4-141). It is reasonable to assume that those public lands continue to be relevant and important to sage-grouse conservation at regional and west-wide scales, worthy of potential designation as ACECs no differently than those proposed in other states.

Sage-Grouse Lek Connectivity

Maintaining habitat connectivity and limiting fragmentation in sagebrush steppe is imperative for the long-term welfare of sagebrush-associated species (Knick and Hanser 2011; Connelly *et al*. 2004; Hagen *et al*. 2011). Protecting core regions and maintaining connectivity between sage-grouse populations may help stabilize or reverse the processes of range contraction and isolation that have resulted in long-term population declines (Knick and Hanser 2011). Maintaining connectivity by protecting habitat between separated sage-grouse populations is also a key strategy to mitigate against the impacts of climate change (McGuire *et al*. 2016; Crist *et al*. 2015; Hagen *et al*. 2011). Connectivity also promotes genetic exchange and reduces complications that may arise from inbreeding (Hagen *et al*. 2011; McGuire *et al*. 2016; Crist *et al*. 2015). Genetically diverse populations tend to be more adaptable to change, putting a premium on managing for genetic diversity through landscape connectivity (Jones 2015; Heller and Zavaleta 2009). Conversely, failure to protect habitat connectivity could contribute to the continued decline of sage-grouse (Knick *et al*. 2011; Knick and Hanser 2011; Johnson *et al*. 2011).

There is a remarkable amount of connectivity between sage-grouse populations in southeastern Oregon, southwestern Idaho, and northern Nevada. Knick and Hanser (2011) determined that sage-grouse leks 18 km or closer to each other may support locally connected populations of sage-grouse. A simple analysis of the distance between leks in the northern Great Basin finds extensive potential connections leks in Oregon, and between leks in Nevada and Idaho, where the Bureau has proposed extensive and expansive ACECs to conserve those sage-grouse populations and habitats Map 7 ("Sage-Grouse Lek Connectivity and Proposed Sage-Grouse Areas of Critical Environmental Concern (ACEC) on BLM Land within Oregon."). The Bureau BLM should provide the same, biologically and analytically consistent management for the species in Oregon to support vital *regional* conservation of the species.

Potential Change in Sagebrush Biomass

The BLM considered modeled potential changes in sagebrush biomass (Palmquist *et al.* 2021) in locating sage-grouse ACECs rangewide. *See, e.g.,* Map 8 ("Modeled Potential Change in Sagebrush Biomass (2030-2060) and Proposed Sage-Grouse Areas of Critical Environmental Concern"). The mapping suggests that Oregon will experience greater loss of sagebrush biomass in future decades than in other parts of sage-grouse range, which might have had undue affect on decisionmaking not to propose ACECs in Oregon. However, other analyses, such as Chambers *et al.* (2023) show high habitat resilience and resistance to climate change and invasive species, including in areas that Palmquist *et al.* (2021) show as losing biomass in coming years. *See* Map 5, ("Ecological Resilience/Resistance on BLM Land within Oregon"). The BLM must have recognized the value of areas that are otherwise forecasted to lose sagebrush biomass, as the agency proposed *extensive* sage-grouse ACECS across those areas in Idaho, Nevada and California. *See* Map 9 ("Modeled Potential Change in Sagebrush Biomass (2030-2060) and Proposed Sage-Grouse Areas of Critical Environmental Concern in Idaho, Nevada and California"). The agency should similarly reassess habitats in Oregon for potential ACECs, including for how designation would conserve sagebrush habitat resilience and resistance, and connectivity to habitats in other states.

5. The Bureau should analyze and designate Areas of Critical Environmental Concern to conserve sage-grouse and sagebrush habitats on public lands in Oregon.

A. Identifying public lands in Oregon that are relevant and important for designation and management as sage-grouse ACECs

ONDA analyzed the data associated with the Bureau's six "importance" criteria as presented above. In addition to deploying more discerning data (e.g., Chambers *et al.* 2023), we limited our analysis to high, and usually the highest, values posed in those datasets. For population density (Doherty *et al.* 2016), we used medium and high relative abundance, similar to how other states used that data. For lek and habitat persistence (Wann *et al.* 2023), we limited our analysis to only use high probability of lek persistence. For genetic uniqueness (Oyler-McCance *et al.* 2022), we limited our analysis to only use the 25% lek kernel density subpopulation. For genetic connectivity (Cross *et al.* 2023), we only considered cumulative connective ranking of 70% or higher. We duplicated the Bureau's map of existing habitat disturbance and excluded any affected areas from further consideration as an ACEC. Finally, for habitat quality (Chambers *et al.* 2023), we limited our analysis to only high and highest ecological resilience and resistance values.

Our analysis found 4,145,336 acres of BLM public lands met four or more of the Bureau's criteria for ACEC designation. *See* Map 10 ("Proposed Sage-Grouse Areas of Critical Environmental Concern (ACEC) on BLM Land within Oregon"). These lands were delineated into 17 new ACECs, tailored to encompass the highest quality habitat and bounded by Bureau landownership, established roads, state boundaries, and/or existing adjacent ACECs. Notably, these proposed ACECs largely overlap the Bureau's own 17 ACEC proposal from 2013. An analysis of each proposed ACEC is summarized below.

1. **Firestone Basin (135,171 acres).** This ACEC contains a large area of medium and high relative abundance along the western fringe of sage-grouse range in Oregon (Doherty *et al.* 2016), a substantial proportion of high lek persistence probability (Wann *et al.* 2023), low anthropogenic disturbance, and two areas of genetic connectivity of 70% or higher (Cross *et al.* 2023). Rigge *et al.* (2021) modeled future sagebrush cover at 4-25%. Firestone Basin is part of an expansive area in southcentral Oregon identified by Row *et al.* (2018) as containing the highest genetic and functional connectivity for sage-grouse. It also represents the northernmost extent of a large USGS Core Sagebrush Area in Oregon (Doherty *et al.* 2022) and a dense lek connectivity network (Knick and Hanser 2011). The area contains winter habitat, heavily used summer habitat (Henderson 2019), and is identified as a Bureau-designated Climate Change Consideration Area ("CCCA") and High Densigy Breeding Area ("HDBA") (BLM 2015).

2. **Ibex Butte (23,912 acres).** This ACEC contains medium and high relative abundance (Doherty *et al.* 2016), high probability of lek persistence (Wann *et al.* 2023), low anthropogenic disturbance, supports a subpopulation center (Oyler-McCance *et al.* 2022), contains an area of genetic connectivity of 70% percentile or higher (Cross *et al.* 2023), and is ranked as highest ecological resilience/resistance (Chambers *et al.* 2023). Rigge *et al.* (2021) modeled future sagebrush cover at 4-25% and Palmquist *et al.*'s (2023) climate change model predicts increases in and retention of sagebrush biomass. Ibex Butte is part of an expansive area in southcentral Oregon identified by Row *et al.* (2018) as containing the highest genetic and functional connectivity for sage-grouse. A large proportion of the area is identified as a USGS Core Sagebrush Area (Doherty *et al.* 2022) and is part of a dense lek connectivity network (Knick and Hanser 2011). This area contains some of the heaviest used winter habitat in the state (Henderson 2019) and is identified as a CCCA and HDBA (BLM 2015). A large proportion of the area is identified as having high resiliency with broad gene flow and recognized biodiversity value (Anderson *et al.* 2023).

3. **Packsaddle Draw-Horseshoe Ridge (260,134 acres).** This ACEC contains medium and high relative sage-grouse abundance (Doherty *et al.* 2016), high probability of lek persistence (Wann *et al.* 2023), low anthropogenic disturbance, supports a subpopulation center (Oyler-McCance *et al.* 2022), and a genetic connectivity area of 70% percentile or higher (Cross *et al.* 2023). Rigge *et al.* (2021) modeled future sagebrush cover as 4-25%. Packsaddle Draw-Horseshoe Ridge is part of an expansive area in southcentral Oregon identified by Row *et al.* (2018) as containing the highest genetic and functional connectivity for sage-grouse, and represents the northernmost extent of a dense lek connectivity network (Knick and Hanser 2011). A large proportion of the area is identified as a USGS Core Sagebrush Area (Doherty *et al.* 2022). The area contains winter habitat (Henderson 2019) and is identified as a CCCA (BLM 2015).

4. **Coyote Hills (110,203 acres).** This ACEC contains the largest concentration of high relative abundance of sage-grouse in the state (Doherty *et al.* 2016), low anthropogenic disturbance, and supports a subpopulation center (Oyler-McCance *et*

al. 2022). Coyote Hills is part of an expansive area in southcentral Oregon identified by Row *et al.* (2018) as containing the highest genetic and functional connectivity for sage-grouse, and supports a dense lek connectivity network extending into Nevada and California, including adjacent proposed ACECs in those states (Knick and Hanser 2011). The area contains winter habitat (Henderson 2019) and is identified as a CCCA and HDBA (BLM 2015).

5. **Irish Hill-Big Lake (120,375 acres).** This ACEC contains medium and high relative abundance (Doherty *et al.* 2016), low anthropogenic disturbance, and supports a subpopulation center (Oyler-McCance *et al.* 2022). Rigge *et al.* (2021) modeled future sagebrush cover as 4-25% and the area contains some of the only projected highest increases and retention in sagebrush biomass in the state (Palmquist *et al.* 2023). Irish Hill-Big Lake is part of an expansive area in southcentral Oregon identified by Row *et al.* (2018) as containing the highest genetic and functional connectivity for sage-grouse, and supports a dense lek connectivity network extending into Nevada and California, including adjacent proposed ACECs in those states (Knick and Hanser 2011). The area contains winter habitat, heavily used summer habitat (Henderson 2019), and is identified as a CCCA and HDBA (BLM 2015). A large proportion of the area is identified as high resiliency with broad gene and climate flow and recognized biodiversity value (Anderson *et al.* 2023).

6. **Catlow Valley (841,812 acres).** This ACEC contains medium and high relative sage-grouse abundance (Doherty *et al.* 2016), one the largest areas supporting high probability of lek persistence in the state (Wann *et al.* 2023), low anthropogenic disturbance, supports a subpopulation center (Oyler-McCance *et al.* 2022), genetic connectivity of 70% percentile or higher across most of its area (Cross *et al.* 2023), is ranked as highest ecological resilience/resistance (Chambers *et al.* 2023). Rigge *et al.* (2021) modeled future sagebrush cover as 4-25%. A large proportion of the area is identified as a USGS Core Sagebrush Area (Doherty *et al.* 2022). Catlow Valley is part of an expansive area in southcentral Oregon identified by Row *et al.* (2018) as containing the highest genetic and functional connectivity for sage-grouse. The area contains heavily used winter habitat, summer habitat (Henderson 2019), and is identified as a HDBA (BLM 2015). Nearly the entire area is identified as high resiliency with broad gene and climate flow and recognized biodiversity value (Anderson *et al.* 2023).

7. **Beatys Butte (595,796 acres).** This ACEC contains a concentration high and medium relative sage-grouse abundance in its western half (Doherty *et al.* 2016), high probability of lek persistence (Wann *et al.* 2023), low anthropogenic disturbance, supports a subpopulation center (Oyler-McCance *et al.* 2022), and is ranked as highest ecological resilience/resistance (Chambers *et al.* 2023). Rigge *et al.* (2021) modeled future sagebrush cover as 4-25% and Palmquist *et al.'s* (2023) climate change models predict increases in and retention of sagebrush biomass in the area. Beatys Butte is part of an expansive area in southcentral Oregon identified by Row *et al.* (2018) as containing the highest genetic and functional connectivity for sage-grouse, facilitating movement between the Hart Mountain and Sheldon national

wildlife refuges (Knick and Hanser 2011). It also represents the northern extent of a large USGS Core Sagebrush Area extending into Nevada (Doherty *et al.* 2022). The area contains heavily used winter habitat, heavily used summer habitat (Henderson 2019), and is identified as a CCCA and HDBA (BLM 2015). Nearly the entire area is identified as high resiliency with broad gene flow and recognized biodiversity value (Anderson *et al.* 2023).

8. **Riddle Creek (56,650 acres).** This ACEC almost entirely contains high probability of lek persistence (Wann *et al.* 2023), low anthropogenic disturbance, supports a subpopulation center (Oyler-McCance *et al.* 2022), and almost entirely contains genetic connectivity of 80% percentile or higher (Cross *et al.* 2023). Rigge *et al.* (2021) modeled future sagebrush cover as 4-25% and Palmquist *et al.'s* (2023) climate change model predicts increases in and retention of sagebrush biomass. Riddle Creek is part of an expansive area in southcentral Oregon identified by Row *et al.* (2018) as containing the highest genetic and functional connectivity for sage-grouse. The area also contains winter habitat (Henderson 2019). The entire area is identified as high resiliency with broad gene flow and recognized biodiversity value (Anderson *et al.* 2023).

9. **West Steens (110,860 acres).** This ACEC contains one of the largest concentrations of high relative abundance of sage-grouse in the state (Doherty *et al.* 2016), high probability of lek persistence (Wann *et al.* 2023), low anthropogenic disturbance, supports a subpopulation center (Oyler-McCance *et al.* 2022), supports genetic connectivity of 70% percentile or higher across almost the entire area (Cross *et al.* 2023), and is ranked as highest ecological resilience/resistance (Chambers *et al.* 2023). West Steens is part of an expansive area in southcentral Oregon identified by Row *et al.* (2018) as containing the highest genetic and functional connectivity for sage-grouse. The area contains summer habitat (Henderson 2019) and is identified as a CCCA and HDBA (BLM 2015). Nearly the entire area is identified as high resiliency with broad gene flow and recognized biodiversity value (Anderson *et al.* 2023).

10. **Grassy Ridge (186,623 acres).** This ACEC contains a substantial area of high probability of lek persistence (Wann *et al.* 2023), low anthropogenic disturbance, genetic connectivity of 70% percentile or higher across most of its area (Cross *et al.* 2023), and is ranked as highest and high resilience/resistance (Chambers *et al.* 2023). Palmquist *et al.'s* (2023) climate change model predicts increases in and retention of sagebrush biomass. Nearly the entire area is identified as high resiliency with broad gene flow and recognized biodiversity value (Anderson *et al.* 2023).

11. **Oregon Canyon Mountains (156,242 acres).** This ACEC contains the only high and medium relative sage-grouse abundance in the southeast corner of the state (Doherty *et al.* 2016), low anthropogenic disturbance, and is ranked as high and medium resilience/resistance (Chambers *et al.* 2023). Rigge *et al.* (2021) modeled future sagebrush cover as 4-25% and Palmquist *et al.'s* (2023) climate change model predicts increases in and retention of sagebrush biomass. Despite a large fire that

burned much of the higher elevation area in 2014, this area contains the highest density of leks in the state (ODFW 2023) and high genetic connectivity with an adjacent proposed ACEC in Nevada (Knick and Hanser 2011, Row *et al.* 2018). Oregon Canyon Mountains contains a winter concentration area in the lower elevations, summer habitat in the higher elevations (Henderson 2019), and is identified as a CCCA (BLM 2015). The area also contains a regionally significant population of Lahontan cutthroat trout. Nearly the entire area is identified as high resiliency with broad gene and climate flow and recognized biodiversity value (Anderson *et al.* 2023).

12. **Hog Creek Ridge (260,987 acres).** This ACEC contains the northernmost high and medium relative sage-grouse abundance in the state and the Great Basin (Doherty *et al.* 2016), contains a substantial proportion of high probability of lek persistence (Wann *et al.* 2023), low anthropogenic disturbance, supports genetic connectivity of 80% percentile or higher across almost the entire area (Cross *et al.* 2023), and is ranked as highest ecological resilience/resistance (Chambers *et al.* 2023). Rigge *et al.* (2021) modeled future sagebrush cover as 4-25% and Palmquist *et al.'s* (2023) climate change model predicts increases in and retention of sagebrush biomass. Hog Creek Ridge is part of an large area in northeastern Oregon identified by Row *et al.* (2018) as containing the highest genetic and functional connectivity for sage-grouse. The area also contains heavily used winter habitat and summer habitat (Henderson 2019). Nearly the entire area is identified as high resiliency with broad gene and climate flow and recognized biodiversity value (Anderson *et al.* 2023).

13. **Star Mountain (425,305 acres).** This ACEC contains medium relative sage-grouse abundance (Doherty *et al.* 2016), a substantial proportion of high probability of lek persistence (Wann *et al.* 2023), low anthropogenic disturbance, supports genetic connectivity of 80% percentile or higher across almost the entire area (Cross *et al.* 2023), and is ranked as highest ecological resilience/resistance (Chambers *et al.* 2023). Rigge *et al.* (2021) modeled future sagebrush cover as =4-25%. Star Mountain is part of an large area in northeastern Oregon identified by Row *et al.* (2018) as containing the highest genetic and functional connectivity for sage-grouse, and contains a dense lek connectivity network (Knick and Hanser 2011). The area also contains winter habitat, heavily used summer habitat (Henderson 2019), and is identified as a HDBA (BLM 2015). Nearly the entire area is identified as high resiliency with broad gene and climate flow and recognized biodiversity value (Anderson *et al.* 2023).

14. **Spring Mountain (139,859 acres).** This ACEC contains medium relative sage-grouse abundance (Doherty *et al.* 2016), low anthropogenic disturbance, supports genetic connectivity of 80% percentile or higher across almost the entire area (Cross *et al.* 2023), and is ranked as highest ecological resilience/resistance (Chambers *et al.* 2023). Rigge *et al.* (2021) modeled future sagebrush cover as 4-25%. Spring Mountain is part of an expansive area in eastern Oregon, western Idaho, and northern Nevada identified by Row *et al.* (2018) as containing the highest genetic and functional connectivity for sage-grouse. It is also located in a dense lek connectivity

network that overlaps Idaho and facilitates connectivity to northeastern Oregon (Knick and Hanser 2011). The area contains heavily used winter and summer habitat (Henderson 2019) and is identified as a HDBA (BLM 2015). Approximately half of the area is identified as high resiliency with broad gene flow and recognized biodiversity value (Anderson *et al.* 2023).

15. **Juniper Ridge (209,814 acres).** This ACEC contains medium relative sage-grouse abundance (Doherty *et al.* 2016), contains a substantial area of high probability of lek persistence (Wann *et al.* 2023), low anthropogenic disturbance, and supports almost genetic connectivity of 80% percentile or higher across almost the entire area (Cross *et al.* 2023). Rigge *et al.* (2021) modeled future sagebrush cover as 4-25%. Juniper Ridge is part of an large area in eastern Oregon, western Idaho, and northern Nevada identified by Row *et al.* (2018) as containing the highest genetic and functional connectivity for sage-grouse. It is also supports a dense connectivity network that overlaps Idaho (Knick and Hanser 2011). The area contains heavily used winter and summer habitat (Henderson 2019) and is identified as a CCCA and HDBA (BLM 2015). Approximately half of the area is identified as high resiliency with broad gene flow and recognized biodiversity value (Anderson *et al.* 2023).

16. **aa-Tiipi Flat (61,743 acres).** This ACEC almost entirely supports high probability of lek persistence (Wann *et al.* 2023), genetic connectivity of 70% percentile or higher across approximately half of the area (Cross *et al.* 2023), low anthropogenic disturbance, and is ranked as highest resiliency/resistance (Chambers *et al.* 2023). aa-Tiipi Flat is part of an large area in eastern Oregon, western Idaho, and northern Nevada identified by Row *et al.* (2018) as containing the highest genetic and functional connectivity for sage-grouse. It also supports a dense lek connectivity network that overlaps Idaho (Knick and Hanser 2011). Approximately half of the area is identified as high resiliency with broad gene flow and recognized biodiversity value (Anderson *et al.* 2023).

17. **Louse Canyon (449,854 acres).** This ACEC supports high probability of lek persistence across a substantial portion of the area (Wann *et al.* 2023), genetic connectivity of 70% percentile or higher in approximately half of the area (Cross *et al.* 2023), low anthropogenic disturbance, and is almost entirely ranked as high and highest resiliency/resistance (Chambers *et al.* 2023). Rigge *et al.* (2021) modeled future sagebrush cover as 4-25% and Palmquist *et al.'s* (2023) climate change models predict increases in and retention of sagebrush biomass in the western half of the area. Compared to adjacent proposed ACECs in Nevada and Idaho, this area contains the largest USGS Core Sagebrush Area identified by Doherty *et al.* (2022) in the tri-state corner. The Louse Canyon area is also located in the middle of dense lek connectivity networks in Idaho and Nevada and to the north and west in Oregon, facilitating connectivity across a large expanse of the northern Great Basin (Knick and Hanser 2011) and identified by Row *et al.* (2018) as containing the highest genetic and functional connectivity for the species. The area contains one of the largest areas of winter habitat in the state, summer habitat (Henderson 2019), and a large portion of the area is identified as a CCCA and HDBA (BLM 2015). Approximately half of the

area is identified as high resiliency with broad gene flow and recognized biodiversity value (Anderson *et al.* 2023).

B. Incorporating existing ACECs in Oregon into the network of sage-grouse reserves

The Bureau recognized existing ACECs and RNAs in Oregon that "include GRSG as an important value," specifically the High Lakes and Red Knoll ACECs (BLM 2024 DEIS: 4-50). The Bureau described that "[m]anagement to protect these values in these ACECs and others that overlap GRSG habitat may provide incidental protection to GRSG and their habitats by restricting land disturbances" (BLM 2024 DEIS: 4-50) and "ACEC designation may be a useful tool for the BLM to effectively manage habitat not only for GRSG but for other wildlife species by restricting land use operation and disturbances in these areas" (BLM 2024 DEIS: 4-50 – 4-51). However, the Bureau determined "[t]hese existing designations are not being considered for amendment in this process" (BLM 2024 DEIS, App'x 5: 5-28).

In addition to High Lakes and Red Knoll, ONDA's analysis identifies 21 existing ACECs and RNAs in Oregon that meet relevance and importance criteria for management as sage-grouse ACECs. *See* Map 10, ("Proposed Sage-Grouse Areas of Critical Environmental Concern (ACEC) on BLM Land within Oregon"). These ACECs and RNAs total nearly 236,000 acres and conserve intact, connective, climate resilient habitats for sage-grouse and other sagebrush-dependent wildlife in Oregon (Table 3). Those identified include all seven ACECS that the Bureau's 2015 planning process highlighted for including sage-grouse conservation as a relevant and important value (Table 1). The list also includes nine out of eleven ACECS that the agency's previous planning process identified as having active or recently occupied sage-grouse leks (Table 2).

The BLM should recognize these units as sage-grouse ACECs and apply the same management prescriptions to them as proposed for new ACECs for the species.

TABLE 3. Twenty-one ACECs and RNAs Identified in Oregon as Meeting 4 or More Criteria for Designation as Greater Sage-Grouse ACECs / Acres		
18	Juniper Mountain RNA	6,335
19	Foster Flat RNA	2,687
20	Foley Lake RNA	2,229
21	Abert Rim ACEC	18,049
22	Red Knoll ACEC	11,122
23	Fish Creek Rim RNA	8,725
24	Rahilly-Gravelly RNA	18,694
25	Spanish Lake RNA	4,699
26	High Lakes ACEC	38,995
27	Guano Creek-Sink Lakes RNA	11,199
28/29	Hawksie-Walksie RNA	17,329
30	Long Draw RNA	441
31/32	Kiger Mustang ACEC	55,287
33	Castle Rock ACEC	22,799
34	North Ridge Bully Creek RNA	1,568
35	South Ridge Bully Creek RNA	620
36	Black Canyon - V RNA	2,637
37	South Bull Canyon RNA	789
38	Lake Ridge RNA	3,857
39/40	Stockade Mountain RNA	1,767
41	Spring Mountain RNA	995
42	Coal Mine Basin RNA	755
43	Toppin Creek Butte RNA	3,995
	Total Acres	**235,574**

C. Verifying relevance of proposed sage-grouse ACECs on public lands in Oregon

The Bureau has committed to evaluate "whether relevant values contribute to landscape intactness, climate resiliency, habitat connectivity, or opportunities for conservation or restoration, or have substantial significance to Tribes" in assessing potential ACECs (BLM, "Clarification and Interim Guidance for Consideration of Areas of Critical Environmental Concern Designations in Resource Management Plans and Amendments," Instruction Memo. 2023-013 (Nov. 30, 2022)). There are a host of data, listed below, that further corroborate the

relevance—and importance—of sage-grouse ACECs that ONDA has identified. These include data that the Bureau developed in its previous sage-grouse planning process or utilized in the current DEIS; other applicable range-wide data layers; and data that are particularly significant to sage-grouse conservation in Oregon.

- ➢ Connecting pattern and process in greater sage-grouse populations (Knick and Hanser 2011), depicted in Oregon on Map 7 ("Sage-Grouse Lek Connectivity and Proposed Sage-Grouse Areas of Critical Environmental Concern (ACEC) on BLM Land within Oregon.").

- ➢ Modeled potential change in sagebrush cover (2030–2060) (Palmquist *et al.* 2021), depicted with proposed ACECs in Oregon on Map 9 ("Modeled Potential Change in Sagebrush Biomass (2030-2060) and Proposed Sage-Grouse Areas of Critical Environmental Concern (ACEC) in on BLM Land in Oregon, Idaho, Nevada, and California").

- ➢ BLM "Strategic Areas," including Climate Change Consideration Areas and High Density Breeding Areas (BLM 2015),[6] depicted with proposed ACECs in Oregon on Map 11 ("Strategic Areas and Proposed Sage-Grouse Areas of Critical Environmental Concern (ACEC) on BLM Land within Oregon").

- ➢ The Nature Conservancy's resilience, flow, and biodiversity network (Anderson *et al.* 2023), depicted with proposed ACECs in Oregon on Map 12 ("Habitat Resilience, Flow, and Biodiversity and Proposed Sage-Grouse Areas of Critical Environmental Concern (ACEC) within Oregon").

- ➢ Greater sage-grouse (late brood-rearing) summer habitat (Henderson 2019), depicted with proposed ACECs in Oregon on Map 13 ("Sage-Grouse Summer Habitat and Proposed Sage-Grouse Areas of Critical Environmental Concern (ACEC) on BLM Land within Oregon").

- ➢ Greater sage-grouse winter habitat (Henderson 2019), depicted with proposed ACECs in Oregon on Map 14 ("Sage-Grouse Winter Habitat and Proposed Sage-Grouse Areas of Critical Environmental Concern (ACEC) on BLM Land within Oregon").

- ➢ Modeled potential sagebrush cover (2011–2040) (Rigge *et al*. 2021), depicted with proposed ACECs in Oregon on Map 15 ("Modeled Potential Sagebrush Cover (2011-2040) and Proposed Sage-Grouse Areas of Critical Environmental Concern (ACEC) on BLM Land within Oregon").

- ➢ U.S. Geological Survey's Core Sagebrush Areas and Growth Opportunity Areas (Doherty *et al.* 2022), depicted with ACECs in Oregon on Map 16 ("USGS

[6] Restoration Opportunity Areas (ROAs), an additional BLM Strategic Area, often overlap with areas burned by wildfire or otherwise impacted by disturbance. For this analysis, ONDA omitted ROAs except where also identified as Climate Change Consideration Areas or High Density Breeding Areas.

Sagebrush Areas for Conservation and Proposed Sage-Grouse Areas of Environmental Concern (ACECs) on BLM Land within Oregon").

6. Proposed sage-grouse ACECs in Oregon are based on a consistent, comprehensive and strict application of the Bureau's defined criteria.

ONDA's proposed ACECs strictly adhere to the criteria the Bureau described for ACECs in the DEIS, cross-checked against numerous other datasets to further verify their relevance and importance to conserving sage-grouse and sagebrush habitats. Accordingly, they satisfy the "presumption" that they "will be designated" in this plan amendment (89 Fed. Reg. at 40,325). This is in contrast to the Bureau's analysis of potential sage-grouse ACECs in other states, where each state office used its own process to identify areas. To support a consistent, science-based approach across sage-grouse range, the Bureau should consider ONDA's analytic framework as a science-based, ecologically (and legally) defensible model.

The innovative and differing approaches each state undertook in their analyses is notable and difficult to replicate, particularly because the DEIS notes that "[e]very layer in the list below was considered but some carried more importance in some areas than others" (BLM 2024 DEIS, App'x 5: 5-5). Some ACEC proposals explicitly describe which data were most important. For example, the description of the Rich GRSG Habitat Proposed ACEC in Utah states the "[d]ata most influential justifying the consideration as an ACEC and having more than local significance…[are] high density breeding…genetic connectivity…and genetic mixing" (BLM 2024 DEIS, App'x 5: 5-36), while other ACEC descriptions decline to explain which data were most important, simply providing an analysis of the six criteria the Bureau established.

These inconsistencies continue beyond the varying importance attributed to data. For example, the Bear Lake Proposed ACEC in Idaho was eliminated from consideration due to, among other factors, a lack of "adjacency with ACEC proposals with WY or UT" (BLM 2024 DEIS, App'x 5: 5-14). Similarly, the South Mountain and Whiskey Mountain Proposed ACECs proposed in Idaho, but which presumably overlapped into Oregon, were entirely eliminated after discussions with the Oregon State Office determined there was "poor habitat on [the] O[regon] side" (BLM 2024 DEIS, App'x 5: 5-13). In comparison, the Owyhee-Shoshone Basin Proposed ACEC in Idaho ends abruptly at the Oregon border with no adjacent proposed ACEC in Oregon (BLM 2024 DEIS, App'x 5: 5-14), demonstrating that adjacency to another proposed ACEC was not always a requisite for consideration.

Nevada took a different approach, purposefully proposing more than 5 million acres of ACECs based on the "stated objective…of erring on the side of being inclusive, as opposed to removing areas, prior to public review of the DEIS" (BLM 2024 DEIS, App'x 5: 5-22). This included limited analysis of unnamed units 14-17, while in Oregon, the Soldier Creek and Upper West Little Owyhee proposed ACECs were analyzed in greater detail but eliminated from consideration in any plan alternative (BLM 2024 DEIS, App'x 5: 5-24, 5-29–33). The Bureau should apply the same standard in considering potential ACECs.

Finally, the Bureau determined the Buffalo Skedaddle Proposed ACEC in California contained qualities or circumstances that make it fragile, sensitive, rare, irreplaceable,

exemplary, unique, endangered, threatened, or vulnerable to adverse change due to "intensive restoration efforts" following a fire 10 years ago and its location on the "western fringe of [greater sage-grouse] populations in California with documented genetic exchange with populations in Nevada" (BLM 2024 DEIS, App'x 5: 5-25). The "connectivity between populations in NV, including the Sheldon Hart Refuge" in the Vya/Massacre GRSG Proposed ACEC, also in California, was found to contain similar qualities or circumstances that supported consideration as a potential ACEC in the DEIS. In contrast, the North Great Divide/Fly Creek Proposed ACEC in Colorado, despite containing "high genetic and functional genetic connectivity between the Northwest Colorado population and the Wyoming Basin (Cross et al. 2018; Row et al. 2018; Cross et al. 2023). . .[and] many genetic nodes, including an important node in Great Divide (Cross et al. 2018)" was eliminated from consideration (BLM 2024 DEIS, App'x 5: 5-12). Neither analysis of the proposed ACECs in California indicated connectivity was based on the data the Bureau identified to support evaluations nor did it provide any qualifying information about the quality of genetic exchange or connectivity, as the agency did in describing the North Great Divide/Fly Creek Proposed ACEC.

7. Failure to identify and propose sage-grouse ACECs in Oregon would violate federal law and policy.

The Bureau's land management authority is defined by the Federal Land Policy and Management Act of 1976 ("FLPMA"). FLPMA requires the Bureau to manage the public lands consistent with the "principles of multiple use and sustained yield" (43 U.S.C. § 1732(a)). To do so, the Bureau must make reasoned and informed analyses, balancing competing resource values to ensure that the public lands are managed in a manner "that will best meet the present and future needs of the American people" (43 U.S.C. § 1702(c)).

The multiple use mandate requires the Bureau to manage the public lands and resources "without permanent impairment of the productivity of the land and the quality of the environment" (43 U.S.C. § 1702(c)). To that end, Congress declared that it is the policy of the United States that the public lands shall "be managed in a manner that . . . will preserve and protect certain public lands in their natural condition" (43 U.S.C. § 1701(a)(8)). The Bureau must "take any action necessary to prevent unnecessary or undue degradation of the lands" (43 U.S.C. § 1732(b)).

FLPMA requires the Bureau to "develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands" (43 U.S.C. § 1712(a); *see also Or. Nat. Desert Ass'n v. Bureau of Land Mgmt.* ("*ONDA v. Bureau*"), 625 F.3d 1092, 1098–99 (9th Cir. 2010) (describing land use planning under FLPMA)). To inform land use planning, the Bureau must "prepare and maintain" a "current" inventory of "all public lands and their resource and other values (including . . . outdoor recreation and scenic values), giving priority to areas of critical environmental concern" (43 U.S.C. § 1711(a)).

As the Bureau recognizes, ACECs play a key role in the agency's land and resource management framework "as the principal administrative designation for public lands where special management attention is required" to "protect and prevent irreparable damage to important resources" (89 Fed. Reg. at 40,325) (to be codified at 43 C.F.R. § 1610.7-2). And

"[a]chieving ecosystem resilience will require . . . the protection of intact landscapes" (89 Fed. Reg. at 40,308). Moreover, "[e]stablishing and safeguarding resilient ecosystems has become imperative as the public lands experience adverse impacts from climate change and as the BLM works to ensure public lands and ecosystem services benefit human communities" (89 Fed. Reg. at 40,308; *see also* Tackling the Climate Crisis at Home and Abroad, 86 Fed. Reg. 7,619 (Jan. 27, 2021)).

Indeed, the Biden administration, in 2021, building on broad consensus in the scientific literature, published its report on the president's commitment to conserve 30 percent of the country's terrestrial and marine environments by 2030 (U.S. Dep't of the Interior, *Biden-Harris Administration Outlines "America the Beautiful" Initiative* (May 6, 2021), https://www.doi.gov/pressreleases/biden-harris-administration-outlines-america-beautiful-initiative). The "30x30" responds to the biodiversity crisis nationally and around the world. More than a million species globally are threatened with extinction (United Nations 2021), and climate change is confounding efforts to conserve and restore ecosystems as it afflicts habitats with warming temperatures, prolonged droughts, increasingly severe wildfires, rising sea levels, and violent storms.

Oregon's high desert is particularly vulnerable to these effects. Southeastern Oregon has already experienced among the highest increases in temperatures anywhere in the United States (Kauffman *et al*. 2022). Large areas of this landscape have seen mean increases in temperature of several degrees Centigrade over the past century. This is beyond the tipping point for significant shifts affecting ecosystem services (Kauffman *et al*. 2022). This suggests that desert biota, including sage-grouse, are experiencing unprecedented stresses.

To support its final decision for this plan amendment, the Bureau must demonstrate a rational connection between facts before it and its preferred alternative. *See Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 378 (1989); *see also Greater Yellowstone Coal., Inc. v. Servheen*, 665 F.3d 1015, 1023 (9th Cir. 2011) (to issue a non-arbitrary decision, an agency must "consider[] the relevant factors and articulate[] a rational connection between the facts found and the choices made"). Courts afford deference to agency decisions that are adequately explained, "fully informed and well-considered," and supported by the *facts* and *science* before the agency—but act as a crucial corrective for poorly reasoned or factually unsupported agency actions. *Sierra Club v. Bosworth*, 510 F.3d 1016, 1023 (9th Cir. 2007). No deference is due to agency conclusions or decisions where they are not supported by the facts in the record. *Ariz. Cattle Growers' Ass'n v. U.S. Fish & Wildlife Serv*., 273 F.3d 1229, 1236 (9th Cir. 2001); *see also Or. Nat. Desert Ass'n v. Bushue*, 644 F. Supp. 3d 813, 842 (D. Or. 2022) ("In discussing the need for scientific management of grazed lands to promote the survival of sage-grouse, the Court found that the unique scientific research to be conducted in the ungrazed portions of the key [Research Natural Area]s [in Oregon] is a significant public good") (internal quotation marks omitted).

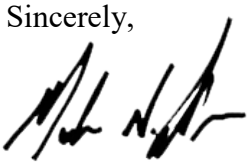
The Bureau has an opportunity—and a responsibility—to consider how ACEC designation and management in southeastern Oregon can help protect one of the last and greatest wildlife strongholds in the Sagebrush Sea—both for the preservation of sage-grouse and other sagebrush-dependant native species and ecological integrity, and for the use and enjoyment of

current and future generations. *See also Mont. Wilderness Ass'n v. Connell*, 725 F.3d 988, 1002 (9th Cir. 2013) (explaining that "a NEPA analysis should be informed by the laws driving the federal action being reviewed"—here, the Bureau's obligation, under FLPMA, to preserve at least some public lands in a natural condition and to prioritize identification and designation of ACECs on public lands) (*citing ONDA v. BLM*, 625 F.3d at 1109). Unless corrected in the final EIS, the Bureau's failure to undertake a consistent, science-based analysis and decision-making framework would leave any decision not to identify and conserve sage-grouse ACECs in Oregon legally vulnerable.

* * *

We respectfully urge the Bureau to identify and designate Oregon sage-grouse ACECs we have described here. We appreciate the Bureau's careful attention to the issues raised in this letter, and we look forward to your response.

Sincerely,



Mark Salvo
Conservation Director

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cc: Peter M. ("Mac") Lacy
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Appendix 1. Bureau of Land Management "17 ACEC" Proposal to Conserve Greater Sage-grouse in Oregon

The Bureau of Land Management proposed designating a network of seventeen ACECs to conserve sage-grouse in Oregon in the 2015 National Greater Sage-grouse Planning Strategy (BLM 2013 DEIS, App'x J: J-5 – J-7).

#1 Diablo Peak (345,250 acres)
Values: Core sage-grouse leks, nesting and brooding habitat, connectivity between proposed East Warner ACEC and existing ACECs in [preliminary priority habitat], contains suitable habitat at higher elevation.

#2 East Warner (313,182 acres)
Values: High density of sage-grouse leks in core, nesting, brooding and wintering habitat, connectivity between proposed Diablo peak and proposed ACECs in Nevada, existing ACECs and RNAs in [preliminary priority habitat], contains suitable habitat at higher elevation.

#3 Hill (74,778 acres)
Values: Core sage-grouse leks, nesting and brooding habitat, connectivity with proposed ACECs in Nevada and between existing ACECs and Hart Mountain. The ACEC contains suitable sage-grouse habitat at the higher elevations.

#4 Beaty Butte (507,050 acres)
Values: Core sage-grouse leks, nesting, brooding, and wintering habitat; connectivity with USFWS Sheldon Refuge and Hart Mountain. The ACEC contains suitable sage-grouse habitat at the higher elevations. Contains important habitat for other wildlife (pronghorn antelope).

#5 Jackass (428,057 acres)
Values: Core sage-grouse leks, nesting, brooding and wintering habitat; connectivity to the south with Hart Mountain. The ACEC contains suitable sage-grouse habitat at the higher elevations.

#6 Lone Mountain (244,797 acres)
Values: High density of sage-grouse leks in core, nesting, brooding and wintering habitat; connectivity to the south with Hart Mountain and existing ACECs. The ACEC contains suitable sage-grouse habitat at the higher elevations.

#7 Trout Creek (675,218 acres)
Values: High density of sage-grouse leks in core, nesting, brooding and wintering habitat; connectivity to proposed ACECs in Nevada, and across southeastern Oregon east to west, and existing ACECs and RNAs. The ACEC contains suitable sage-grouse habitat at the higher elevations.

#8 Corner (355,598 acres)
Values: High density of sage-grouse leks in core, nesting, brooding and wintering habitat; connectivity with key sage grouse habitat in Idaho and proposed ACECs in Nevada, existing

ACECs and RNAs, and habitat in the Fort McDermitt Shoshone Paiute Indian Reservation. The ACEC contains suitable sage-grouse habitat at the higher elevations.

#9 Antelope (117,076 acres)
Values: High density of sage-grouse leks in core, nesting, brooding and wintering habitat; connectivity with key sage grouse habitat in Idaho and to proposed ACECs to the north and south. The ACEC contains suitable sage-grouse habitat at the higher elevations.

#10 Cow Creek (42,776 acres)
Values: Core sage-grouse leks, nesting, brooding and wintering habitat; connectivity with key sage grouse habitat in Idaho and to proposed ACECs to the north and south. The ACEC contains suitable sage-grouse habitat at the higher elevations.

#11 Star Mountain (102,858 acres)
Values: High density of sage-grouse leks in core, nesting, brooding and wintering habitat; connectivity with Red Hills and Cow Creek. The ACEC contains suitable sage-grouse habitat at the higher elevations.

#12 Red Hills (83,849 acres)
Values: High density of sage-grouse leks in core, nesting, brooding and wintering habitat; connectivity with Star Mountain and Cow Creek. The ACEC contains suitable sage-grouse habitat at the higher elevations.

#13 Willow (53,803 acres)
Values: Core sage-grouse leks, nesting and brooding habitat; connectivity to virtue flat and red hills and existing ACEC and RNA. The ACEC contains suitable sage-grouse habitat at the higher elevations.

#14 Virtue Flat (21,938 acres)
Values: High density of sage-grouse leks in core, nesting, brooding habitat; ongoing long term research sites, northern most populations, connectivity across Snake River with key habitats in Idaho.

#15 Goose (4,785 acres)
Values: Sage-grouse leks in core, nesting, and brooding habitat; connectivity with adjacent proposed ACECs.

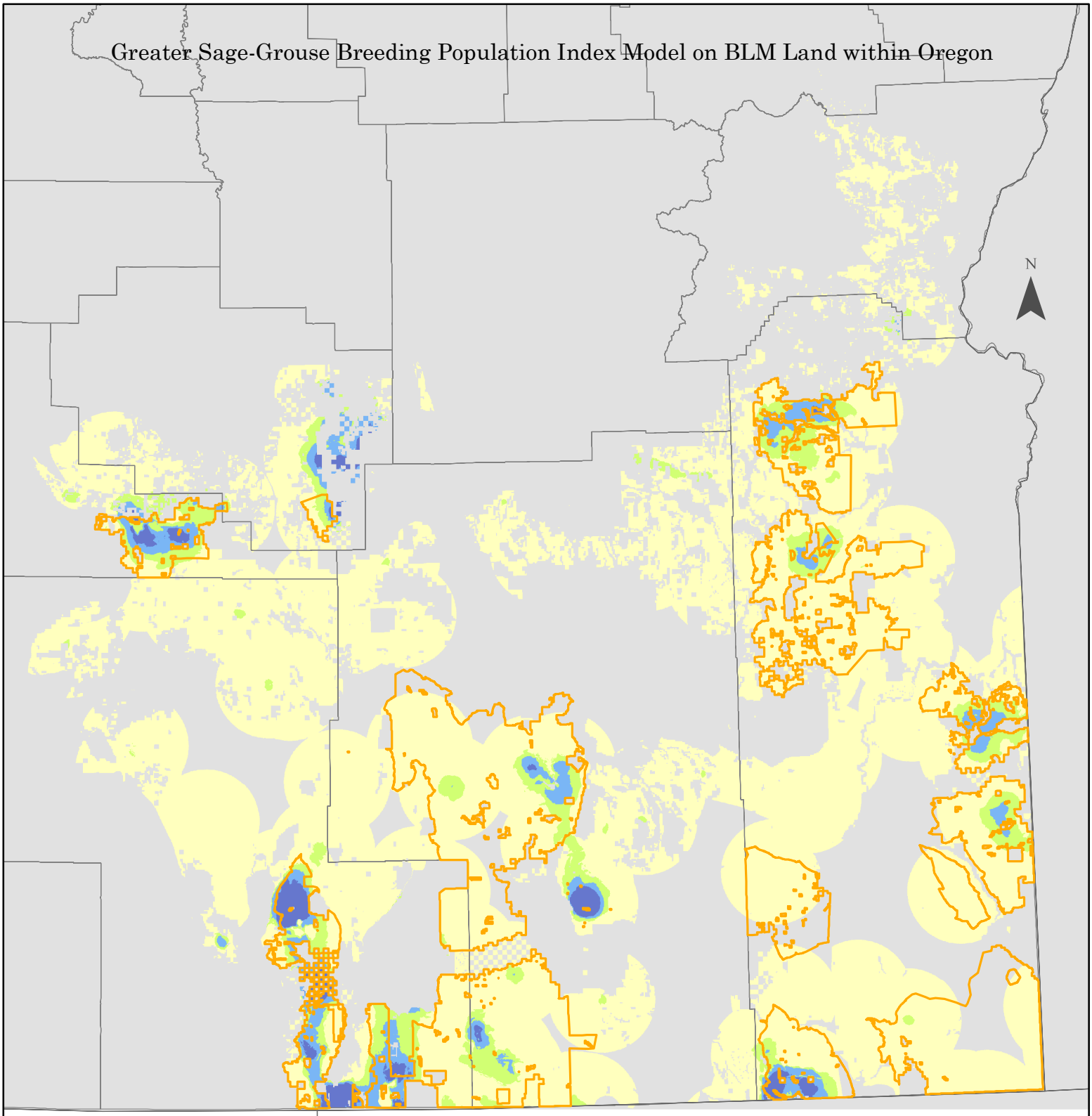
#16 Buck Creek (143,151 acres)
Values: High density of sage-grouse leks in isolated core habitat, nesting, brooding and wintering habitat; connectivity with Frederick Butte. The ACEC contains suitable sage-grouse habitat at the higher elevations.

#17 Frederick Butte (527,739 acres)
Values: High density of sage-grouse leks in isolated core habitat, nesting, brooding and wintering habitat; connectivity with Buck Creek. The most northwest population of sage-grouse in Oregon. The ACEC contains suitable sage-grouse habitat at the higher elevations.

Appendix 2. Maps

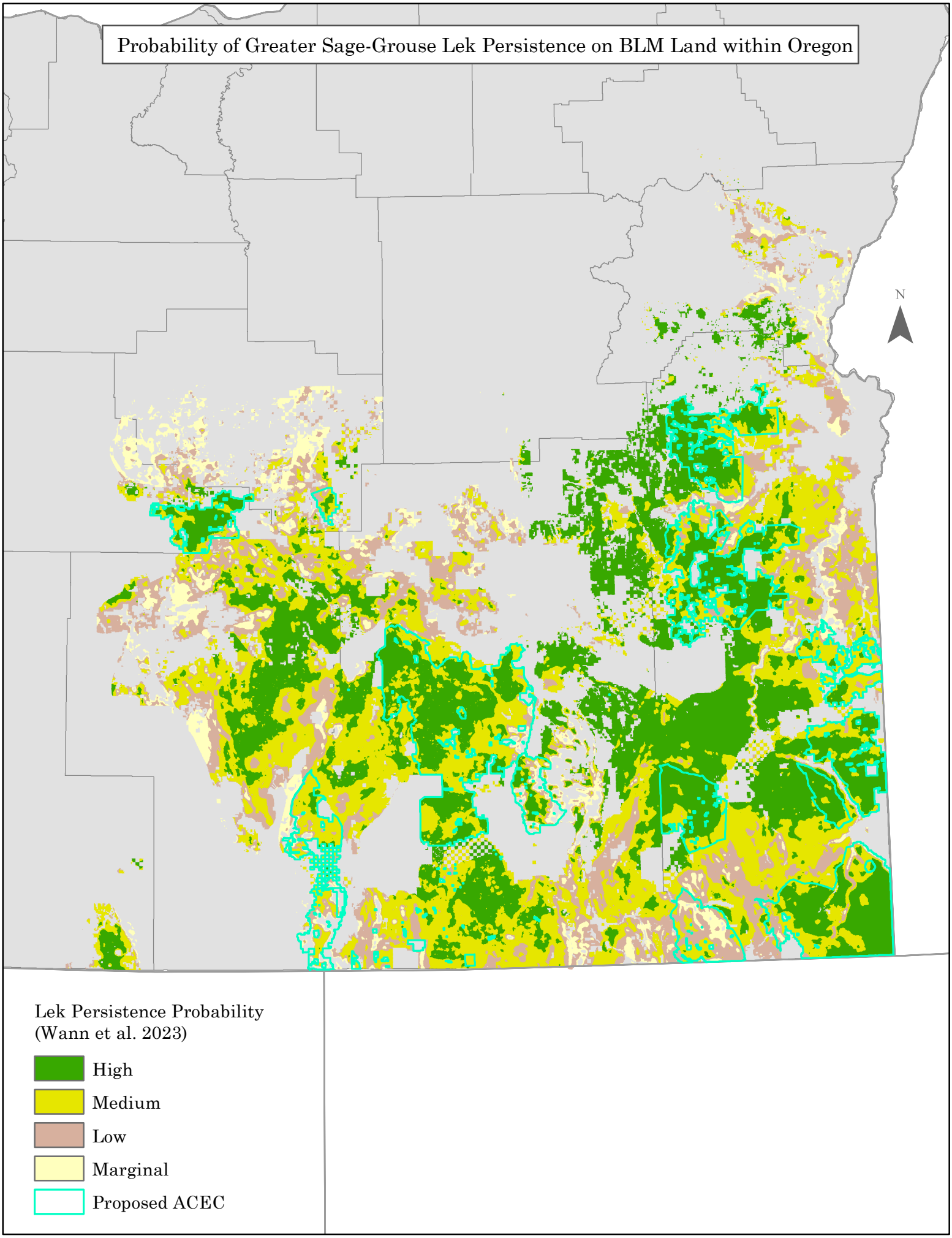
1. Greater Sage-Grouse Breeding Population Index Model on BLM Land within Oregon
2. Probability of Greater Sage-Grouse Lek Persistence on BLM Land within Oregon
3. Genetic Uniqueness of Greater Sage-Grouse within Oregon
4. Greater Sage-Grouse Genetic Connectivity on BLM Land within Oregon
5. Ecological Resilience/Resistance on BLM Land within Oregon
6. Proposed Sage-Grouse Areas of Critical Environmental Concern (ACEC) and Sagebrush Focal Areas
7. Sage-Grouse Lek Connectivity and Proposed Sage-Grouse Areas of Critical Environmental Concern (ACEC) on BLM Land within Oregon
8. Modeled Potential Change in Sagebrush Biomass (2030-2060) and Proposed Sage-Grouse Areas of Critical Environmental Concern
9. Modeled Potential Change in Sagebrush Biomass (2030-2060) and Proposed Sage-Grouse Areas of Critical Environmental Concern in Oregon, Idaho, Nevada, and California
10. Proposed Sage-Grouse Areas of Critical Environmental Concern (ACEC) on BLM Land within Oregon
11. Strategic Areas and Proposed Sage-Grouse Areas of Critical Environmental Concern (ACEC) on BLM Land within Oregon
12. Habitat Resilience, Flow, and Biodiversity and Proposed Sage-Grouse Areas of Critical Environmental Concern (ACEC) within Oregon
13. Sage-Grouse Summer Habitat and Proposed Sage-Grouse Areas of Critical Environmental Concern (ACEC) on BLM Land within Oregon
14. Sage-Grouse Winter Habitat and Proposed Sage-Grouse Areas of Critical Environmental Concern (ACEC) on BLM Land within Oregon
15. Modeled Potential Sagebrush Cover (2011-2040) and Proposed Sage-Grouse Areas of Critical Environmental Concern (ACEC) on BLM Land within Oregon
16. Sagebrush Areas for Conservation and Proposed Sage-Grouse Areas of Environmental Concern (ACECs) on BLM Land within Oregon

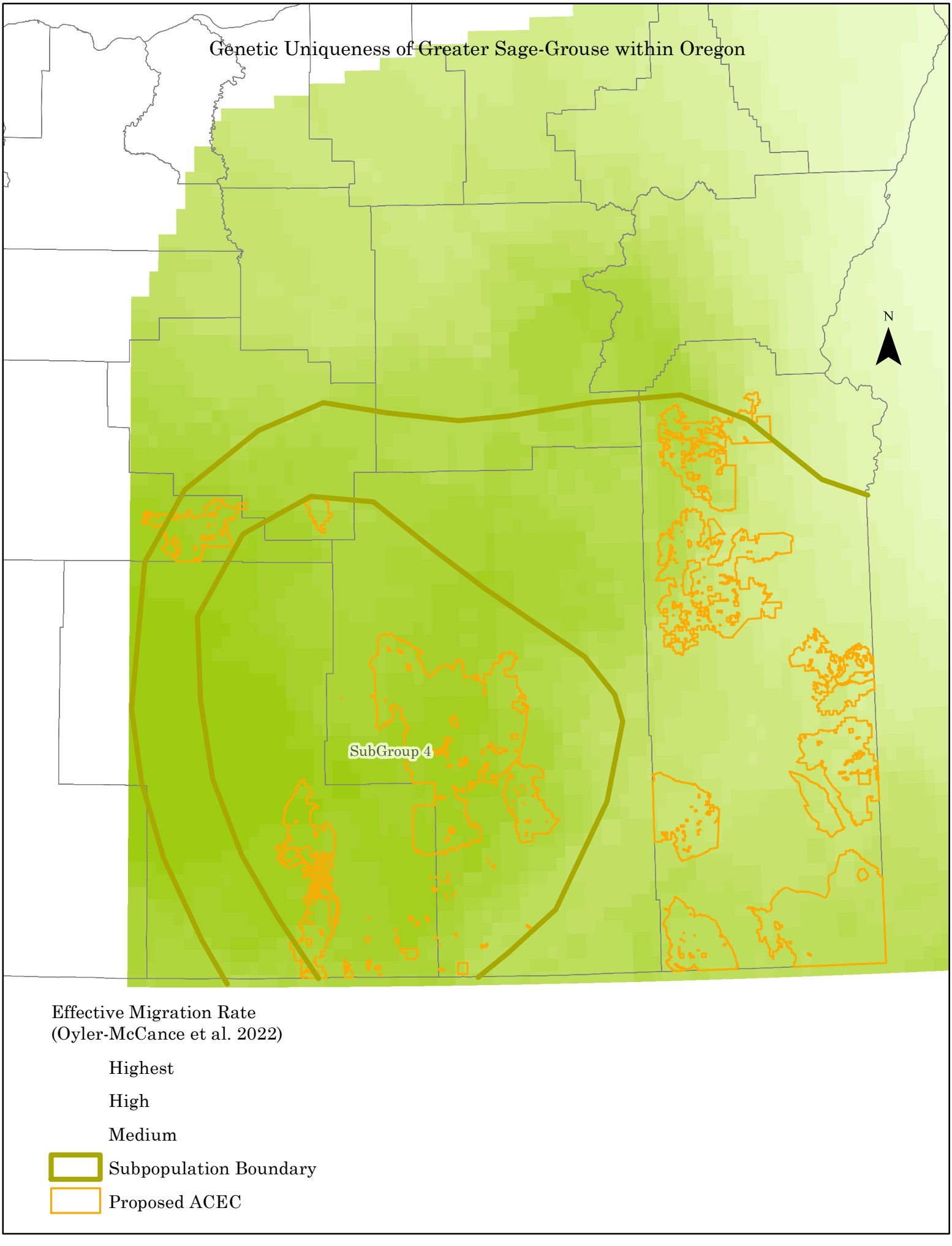
Greater Sage-Grouse Breeding Population Index Model on BLM Land within Oregon

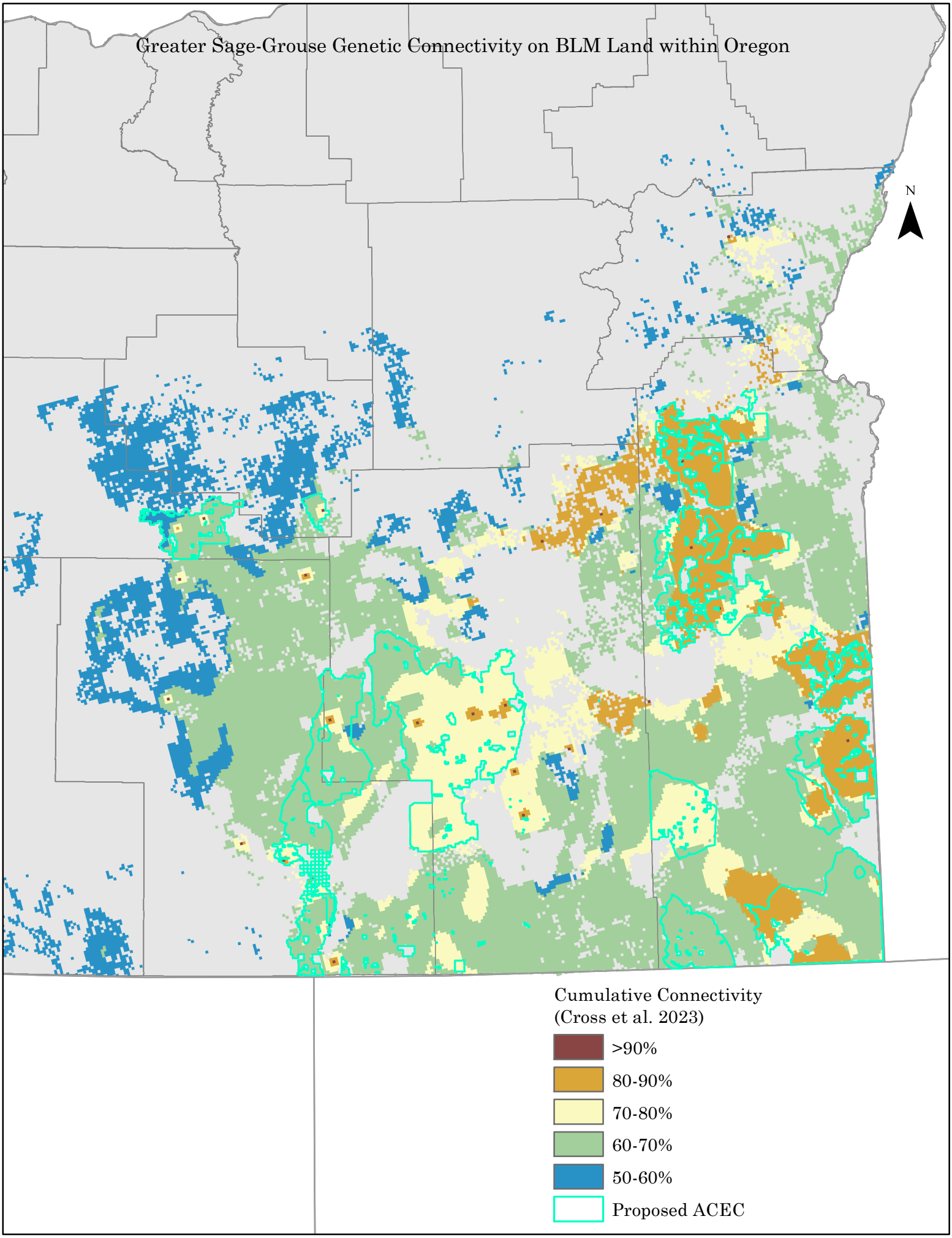


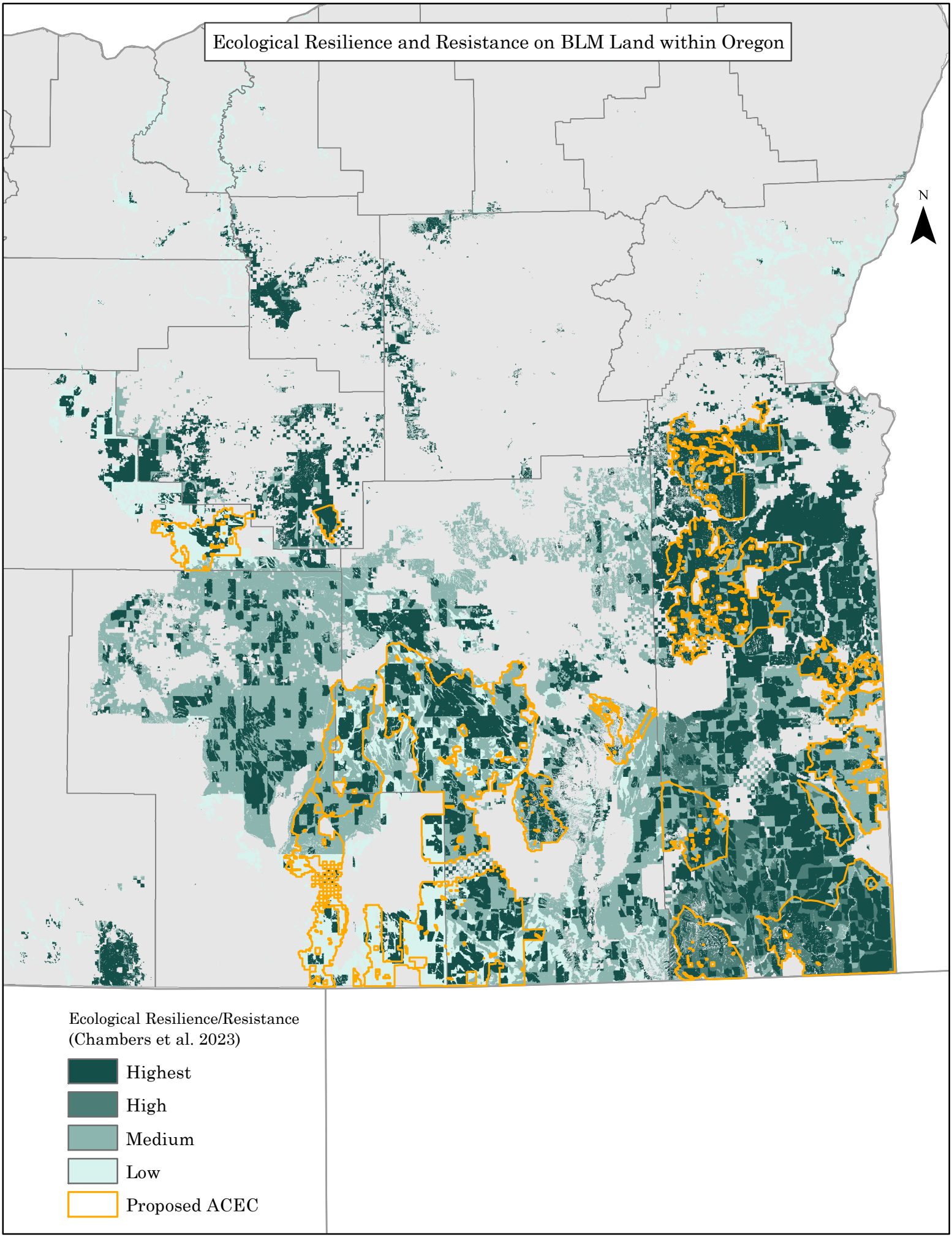
Relative Abundance
(Doherty et al. 2016)

- High
- Medium
- Low
- Very Low
- Proposed ACEC

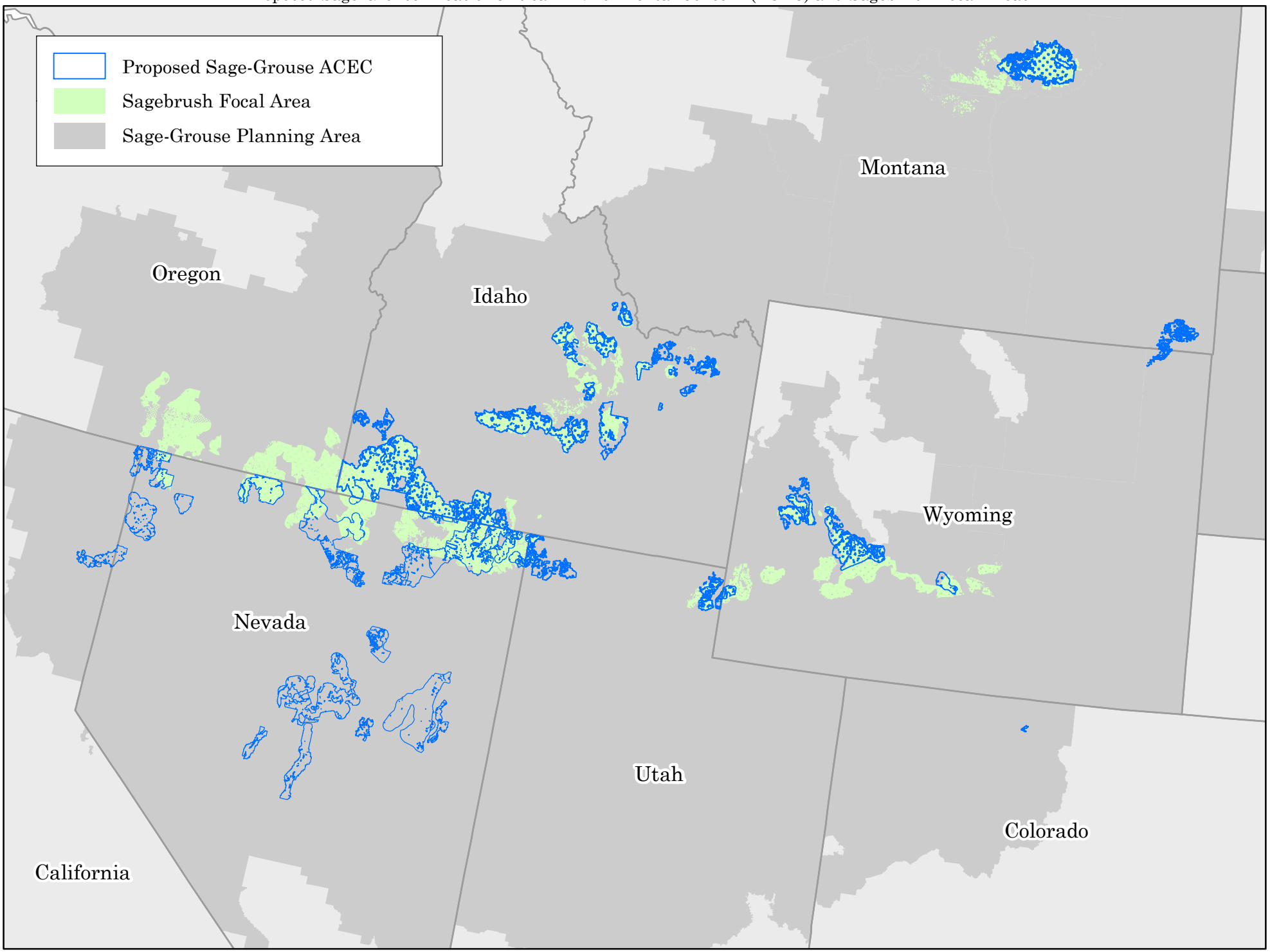

Probability of Greater Sage-Grouse Lek Persistence on BLM Land within Oregon
N
Lek Persistence Probability
(Wann et al. 2023)
High
Medium
Low
Marginal
Proposed ACEC


Genetic Uniqueness of Greater Sage-Grouse within Oregon
N
SubGroup 4
Effective Migration Rate
(Oyler-McCance et al. 2022)
Highest
High
Medium
Subpopulation Boundary
Proposed ACEC

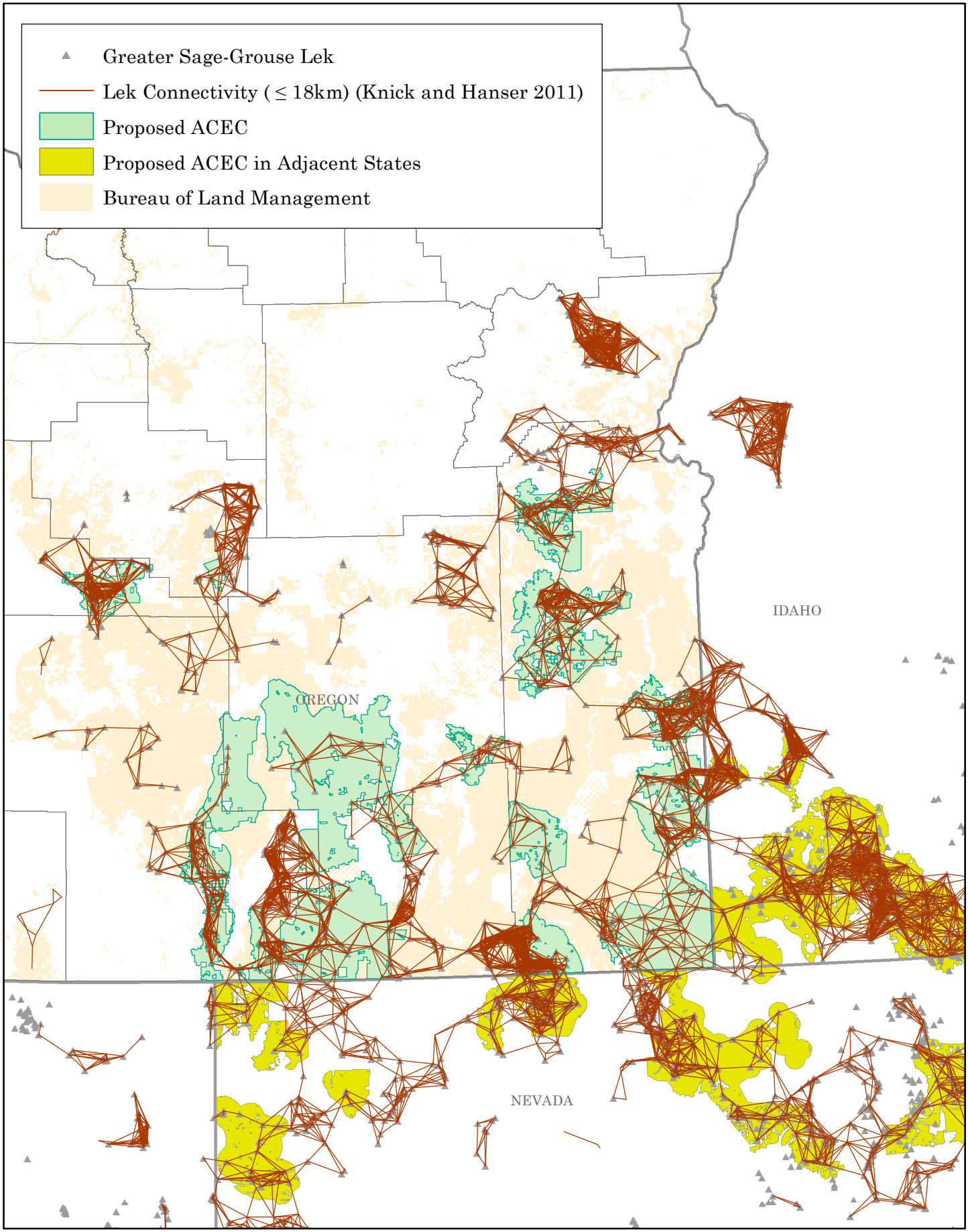

Greater Sage-Grouse Genetic Connectivity on BLM Land within Oregon
N
Cumulative Connectivity
(Cross et al. 2023)
>90%
80-90%
70-80%
60-70%
50-60%
Proposed ACEC

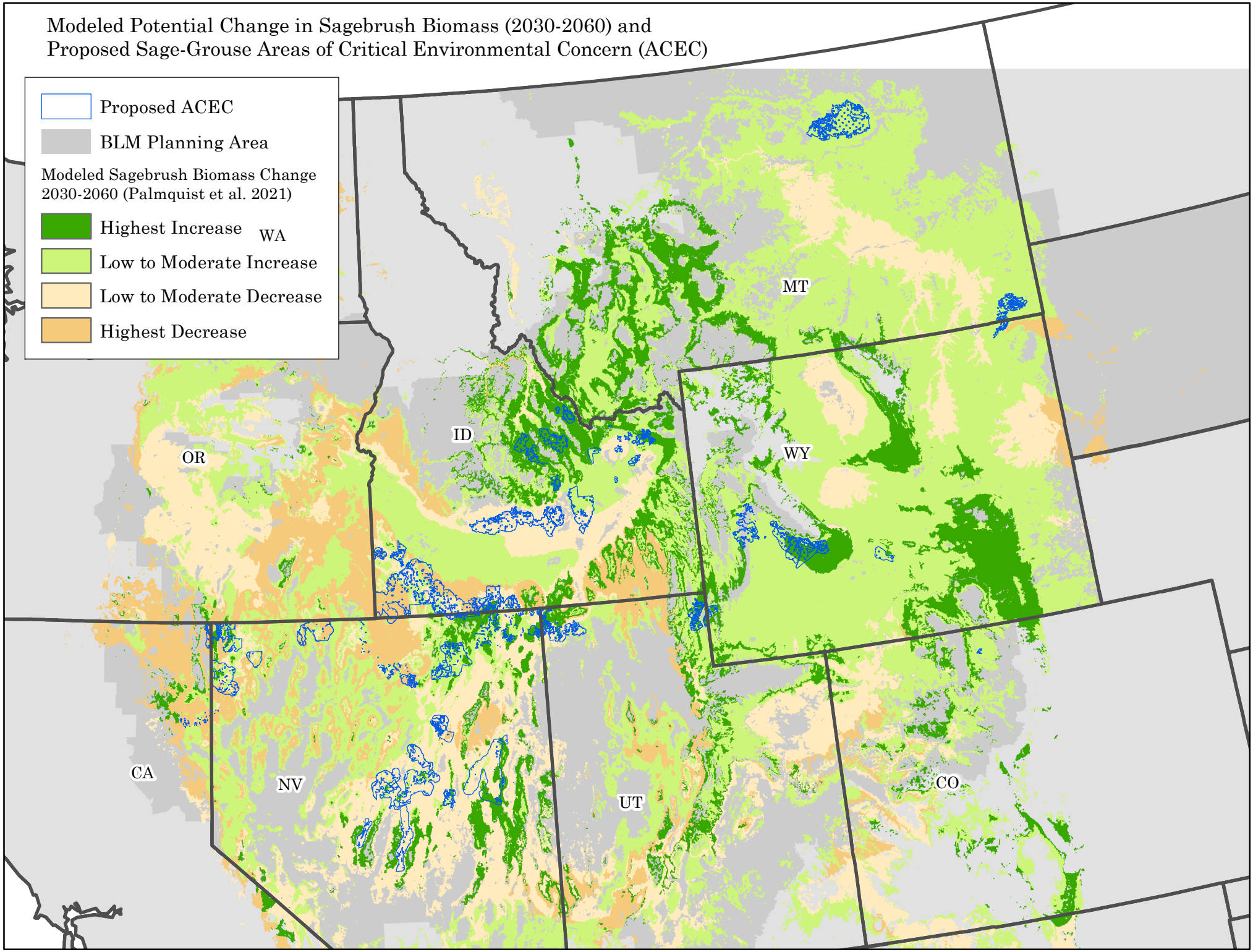

Ecological Resilience and Resistance on BLM Land within Oregon
N
Ecological Resilience/Resistance
(Chambers et al. 2023)
Highest
High
Medium
Low
Proposed ACEC

Proposed Sage-Grouse Areas of Critical Environmental Concern (ACEC) and Sagebrush Focal Areas

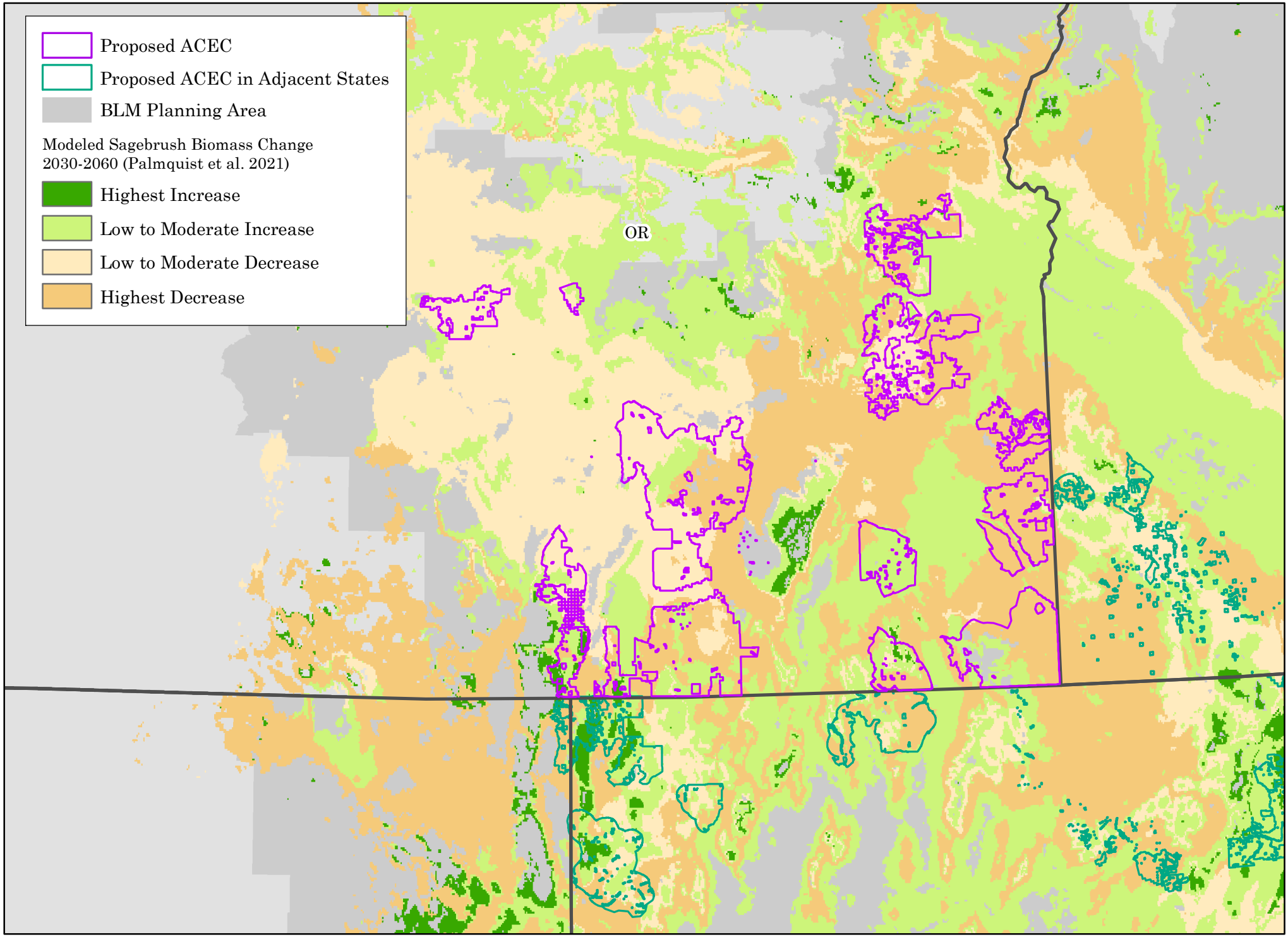


Sage-Grouse Lek Connectivity and Proposed Sage-Grouse
Areas of Critical Environmental Concern (ACEC) on BLM Land within Oregon

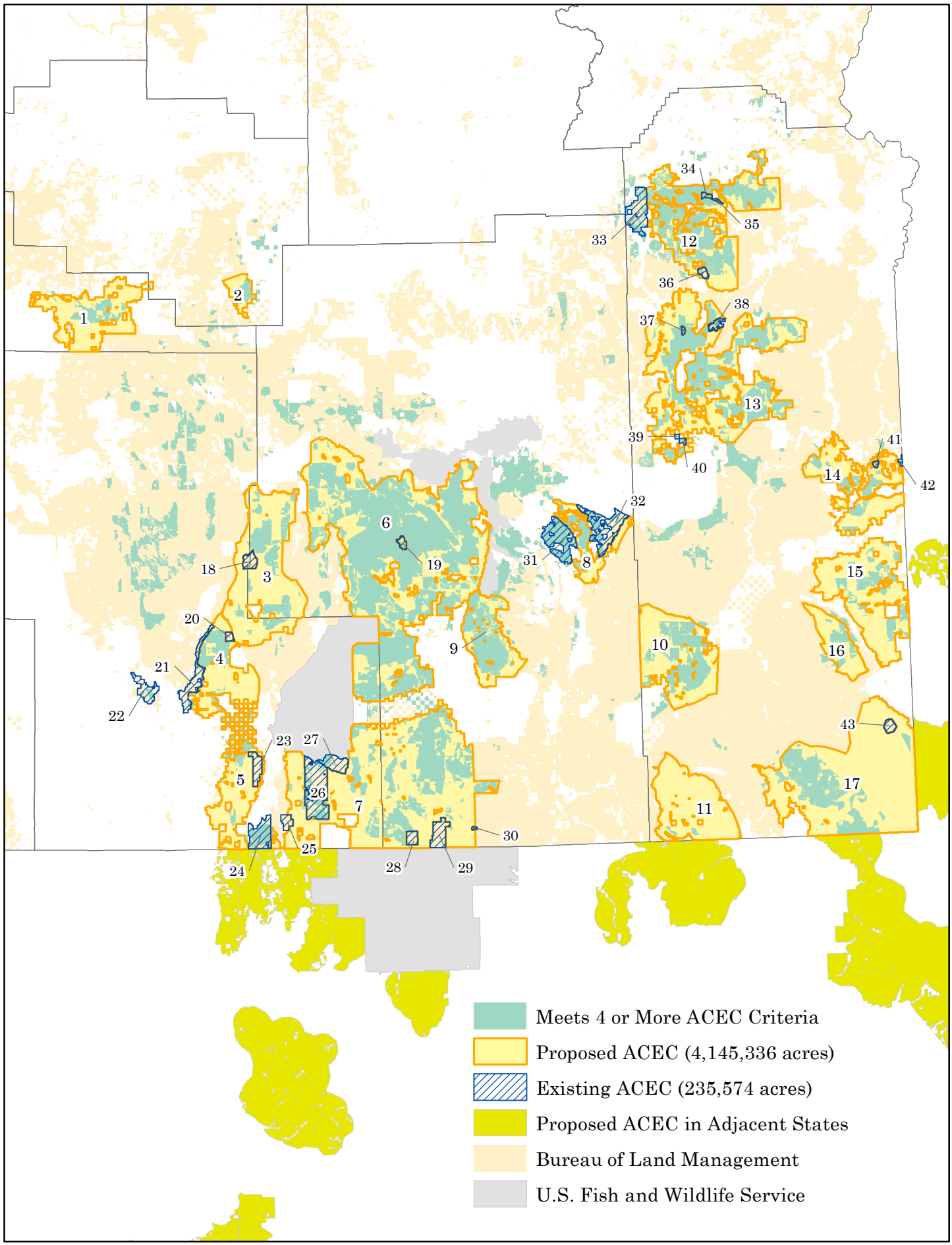



Modeled Potential Change in Sagebrush Biomass (2030-2060) and
Proposed Sage-Grouse Areas of Critical Environmental Concern (ACEC)
Proposed ACEC
BLM Planning Area
Modeled Sagebrush Biomass Change
2030-2060 (Palmquist et al. 2021)
Highest Increase
Low to Moderate Increase
Low to Moderate Decrease
Highest Decrease
WA
MT
ID
OR
WY
CA
NV
UT
CO

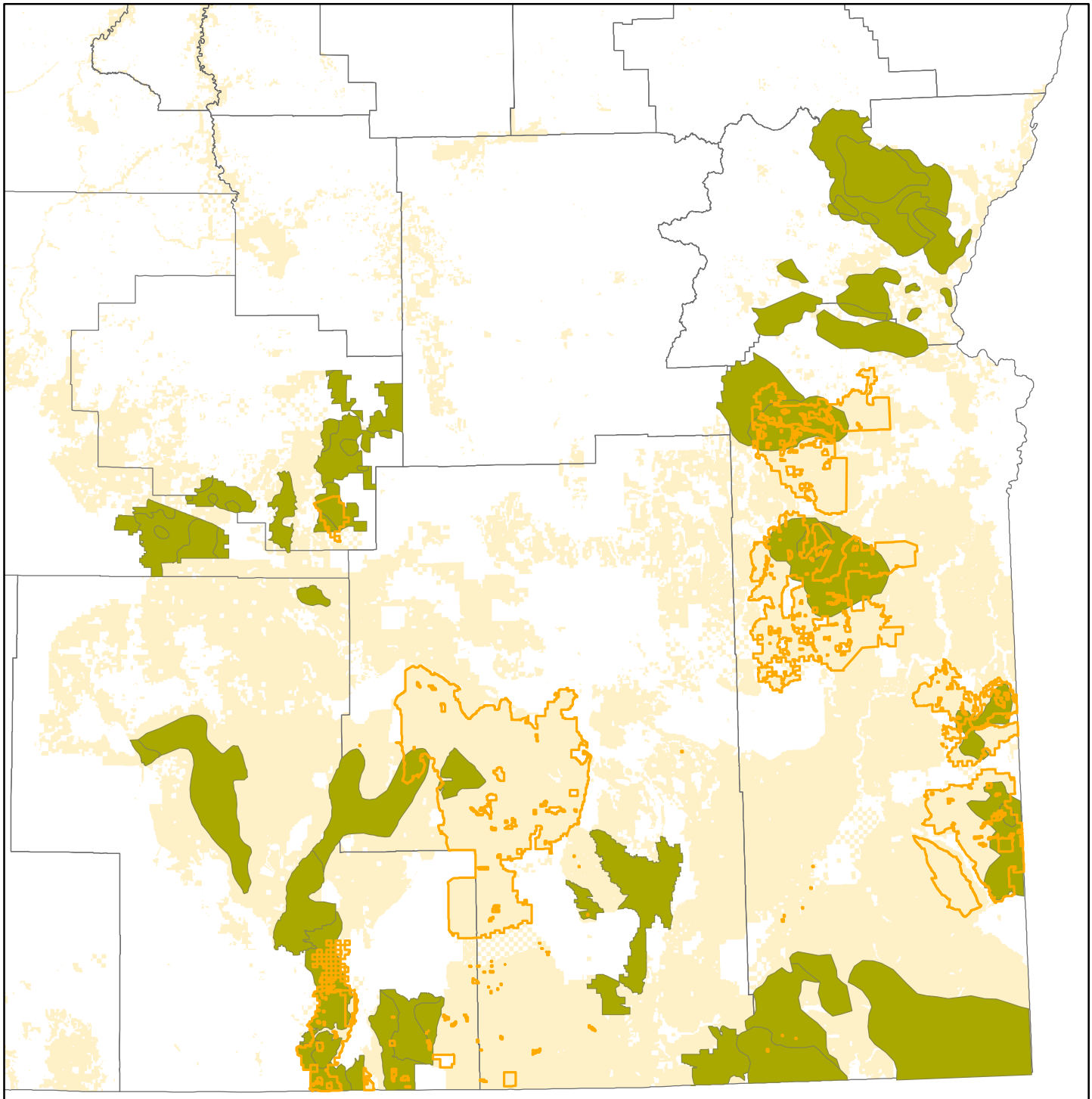
Modeled Potential Change in Sagebrush Biomass (2030-2060)
and Proposed Areas of Critical Environmental Concern (ACEC) in Oregon, Idaho, Nevada, and California



Proposed Sage-Grouse Areas of Critical Environmental Concern (ACEC) on BLM Land within Oregon



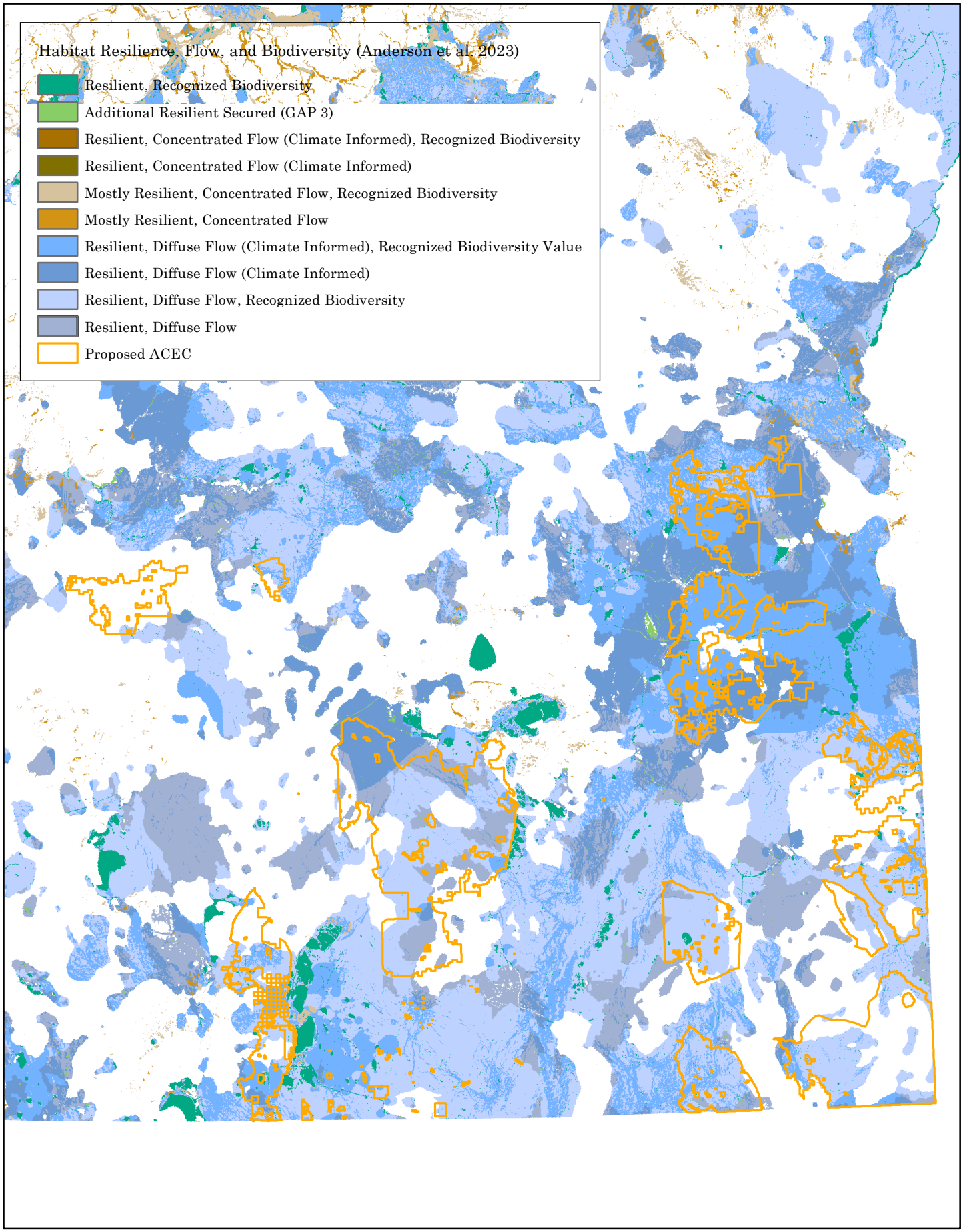
Strategic Areas and Proposed Sage-Grouse Areas of Critical Environmental Concern (ACEC) on BLM Land within Oregon



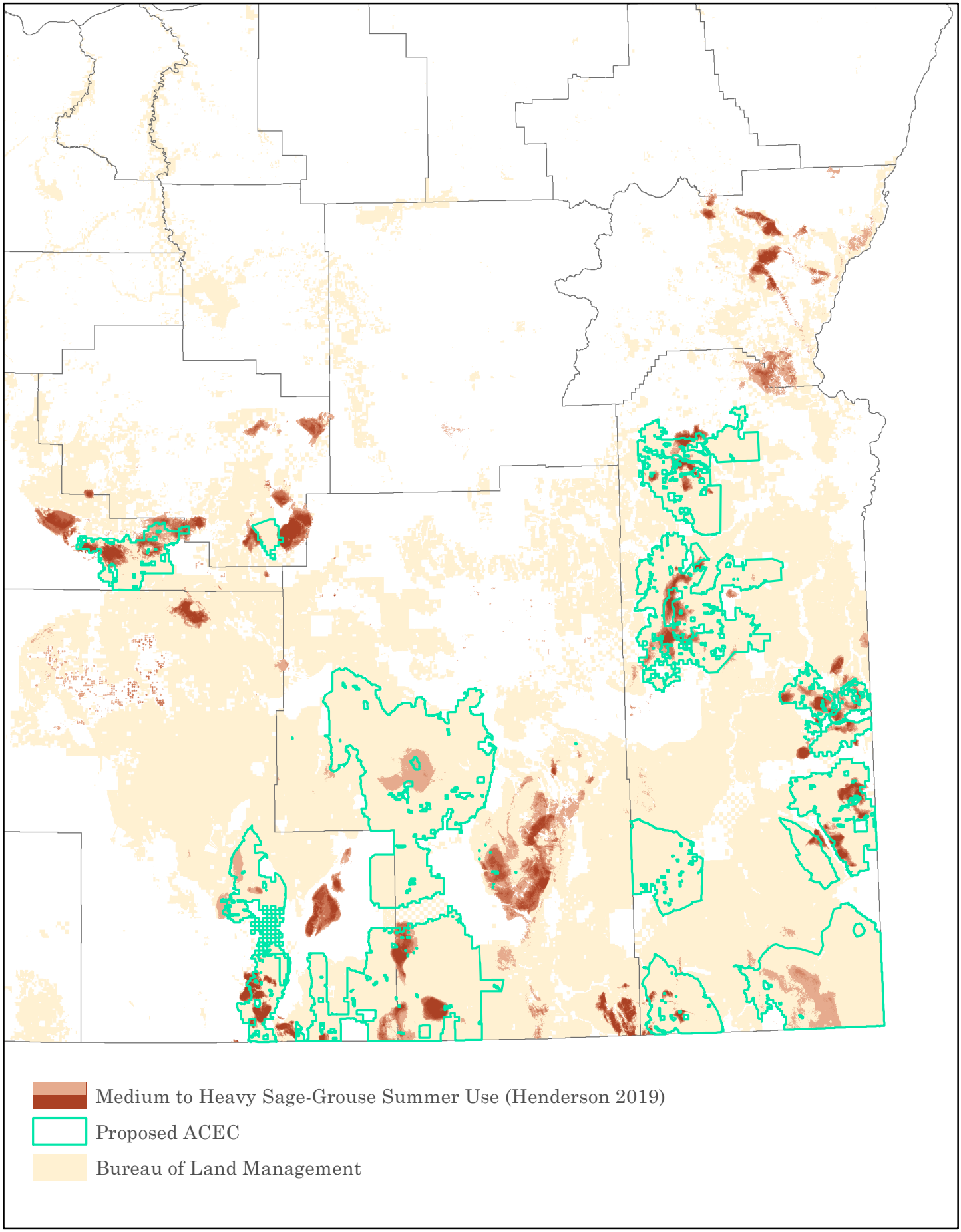
Strategic Areas (BLM 2015)

- Climate Change Consideration Area/High Density Breeding Area
- Proposed ACEC
- Bureau of Land Management

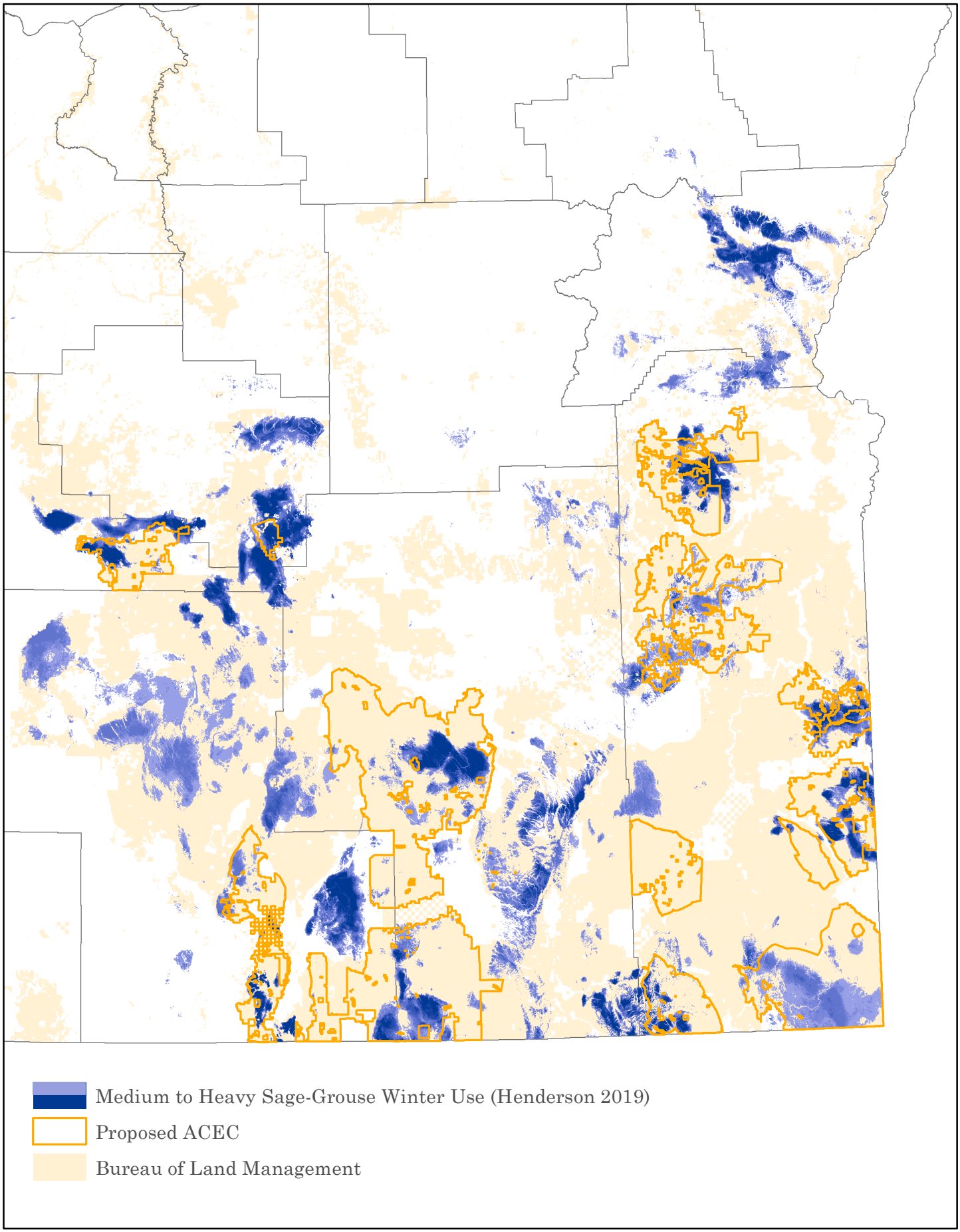
Habitat Resilience, Flow, and Biodiversity and Proposed Sage-Grouse Areas of Critical Environmental Concern (ACEC) within Oregon

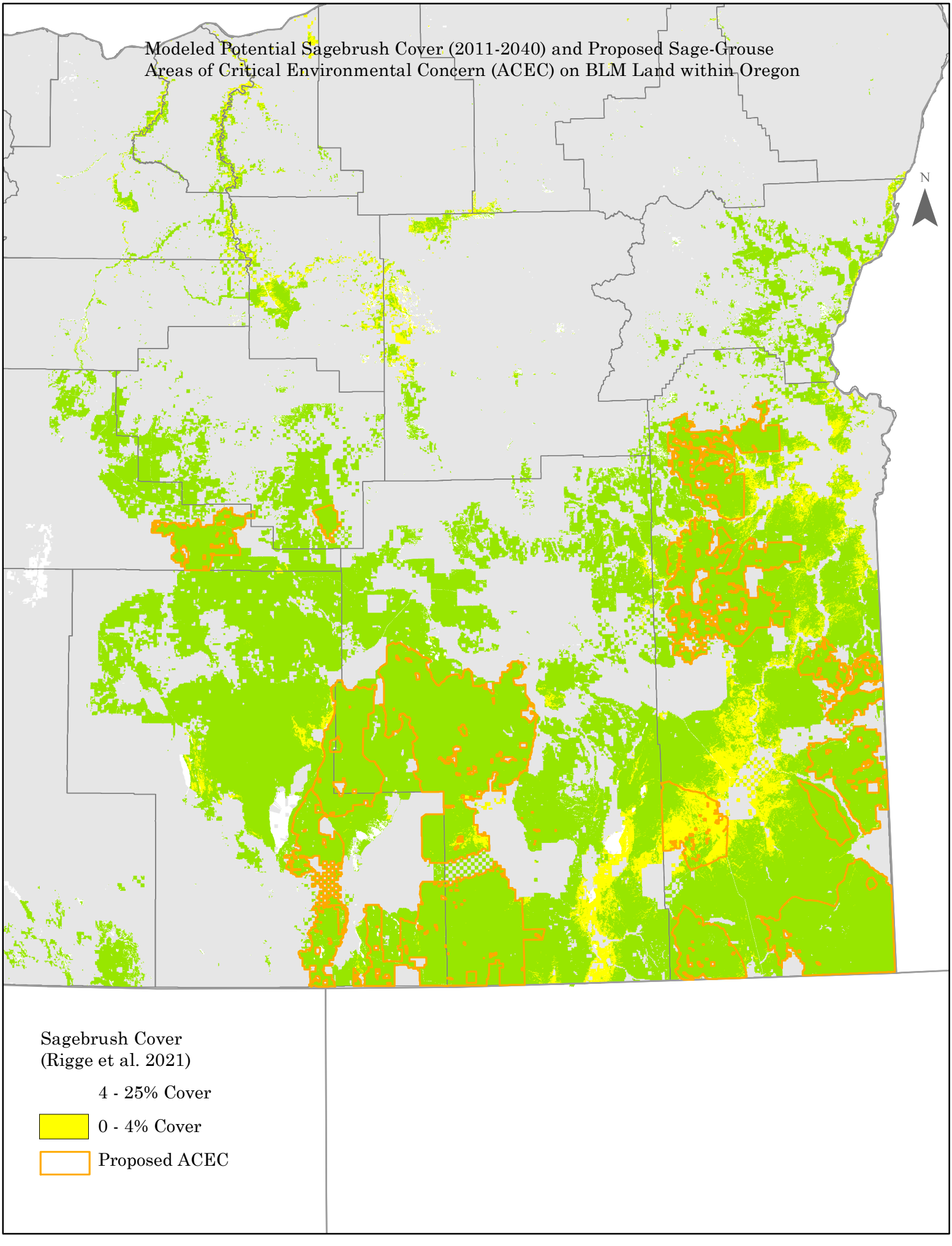


Sage-Grouse Summer Habitat and Proposed Sage-Grouse
Areas of Critical Environmental Concern (ACEC) on BLM Land within Oregon

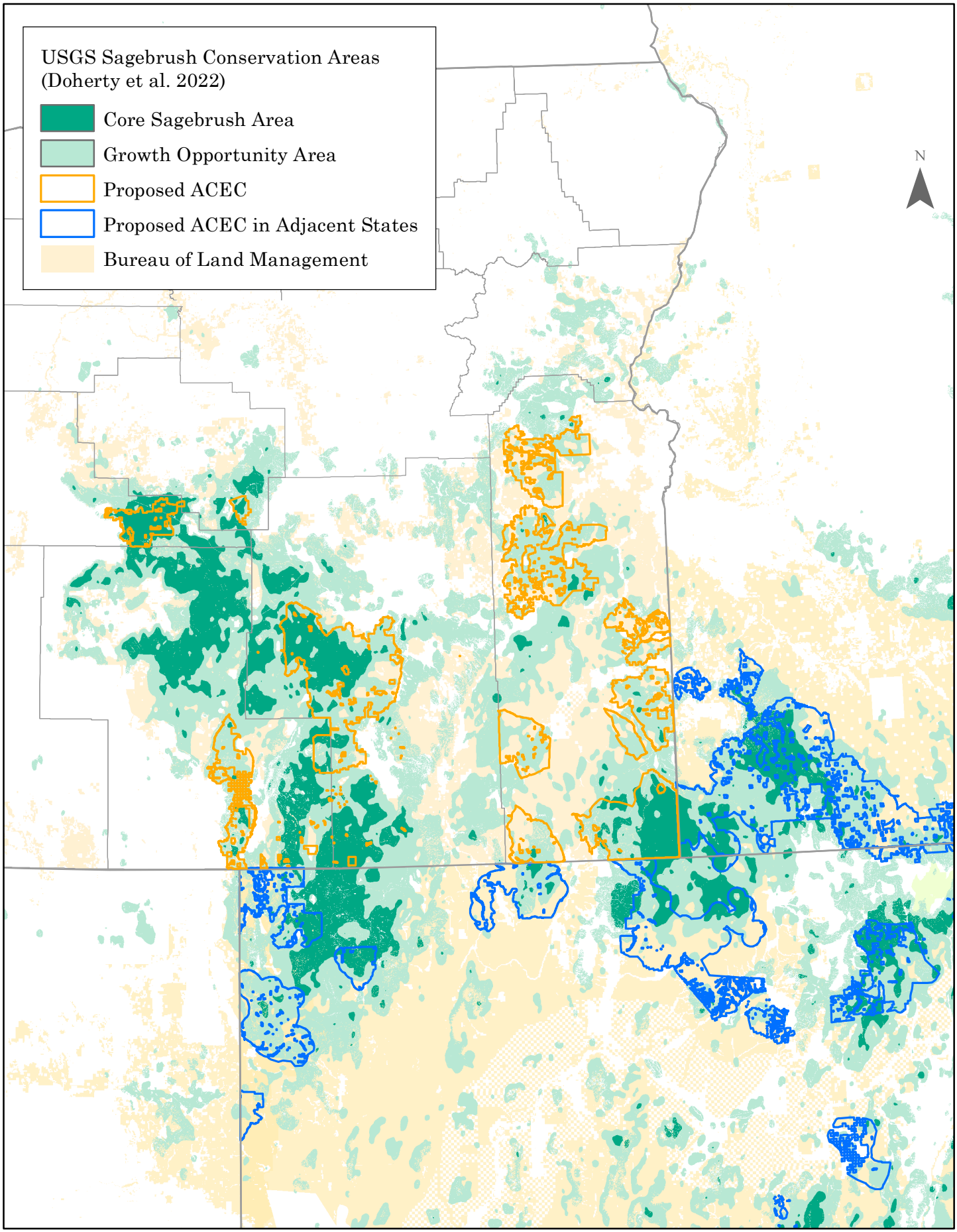


Sage-Grouse Winter Habitat and Proposed Sage-Grouse
Areas of Critical Environmental Concern (ACEC) on BLM Land within Oregon




Modeled Potential Sagebrush Cover (2011-2040) and Proposed Sage-Grouse
Areas of Critical Environmental Concern (ACEC) on BLM Land within Oregon
N
Sagebrush Cover
(Rigge et al. 2021)
4 - 25% Cover
0 - 4% Cover
Proposed ACEC

Sagebrush Areas for Conservation and Proposed Sage-Grouse
Areas of Critical Environmental Concern (ACEC) on BLM Land within Oregon



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Submitted electronically to:
https://eplanning.blm.gov/eplanning-ui/project/2016719/595/8020241/comment

June 12, 2024

Bureau of Land Management
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440 West 200 South #500
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ATTN: HQGRSG RMPA
BLM_HQ_GRSG_Planning@blm.gov

RE: Comments on BLM's Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning, Federal Register Vol. 89, No. 52

Dear BLM:

I. Introduction

Jindalee Lithium Limited and its U.S. subsidiary, HiTech Minerals Inc. (Jindalee), are providing these comments in response to the Bureau of Land Management's (BLM's) Notice of Availability published in the Federal Register on March 15, 2024 (Vol. 89, No. 52, pp. 18963 - 18967) seeking public comments on the Draft Greater Sage-Grouse (GRSG) Resource Management Plan Amendment (RMPA) and Draft Environmental Impact Statement (EIS). The Draft RMPA/EIS amends 77 BLM land use plans in 10 western states. In February 2022, Jindalee submitted extensive comments in response to BLM's November 22, 2021 Notice of Intent and request for public scoping comments on the GRSG EIS and Land Use Plans to amend the 2015 GRSG Land Use Plan Amendments. Our comments suggested an issue of national importance that needed to be evaluated in the future GRSG EIS. As explained below, BLM either ignored or dismissed our comments because this Draft RMPA/EIS is silent on the issue of how proposed mineral withdrawals would exacerbate the Nation's reliance on foreign countries for critical minerals like lithium.[1]

II. The McDermitt Lithium Project

Jindalee's McDermitt Lithium Project area lies within the Southeastern Oregon Resource Management Plan area, which is one of the 77 land use plans included in the Draft RMPA/EIS. As shown in Figure 1 on the following page, this promising lithium exploration and development target is located in southeastern Oregon in Malheur County, Oregon and in northern Nevada in

[1] The U.S. Geological Survey (USGS) designates lithium as a critical mineral.
See: https://www.energy.gov/sites/default/files/2023-07/preprint-frn-2023-critical-materials-list.pdf

Humboldt County overlapping the Oregon-Nevada border within the McDermitt caldera, which also hosts the Thacker Pass lithium deposit in Humboldt County, Nevada approximately 28 miles to the south of the McDermitt Lithium Project. The McDermitt Lithium Project is the largest lithium resource in the U.S., containing 3 billion tonnes of lithium-bearing material with an average grade of 1340 parts per million (ppm) lithium or 21.5 million tonnes of lithium carbonate equivalent (LCE).[2] The McDermitt Project lithium resource defined to date contains enough lithium to manufacture the lithium-ion batteries needed to power over 900 million electric vehicles (EVs), assuming on average, each EV requires 21.7 kilograms LCE.[3] Jindalee's discovery of the McDermitt Lithium deposit represents an important opportunity to develop a domestic source of lithium and reduce the Nation's dependence on lithium mined in Australia, Chile, China, and Argentina, and processed in China.

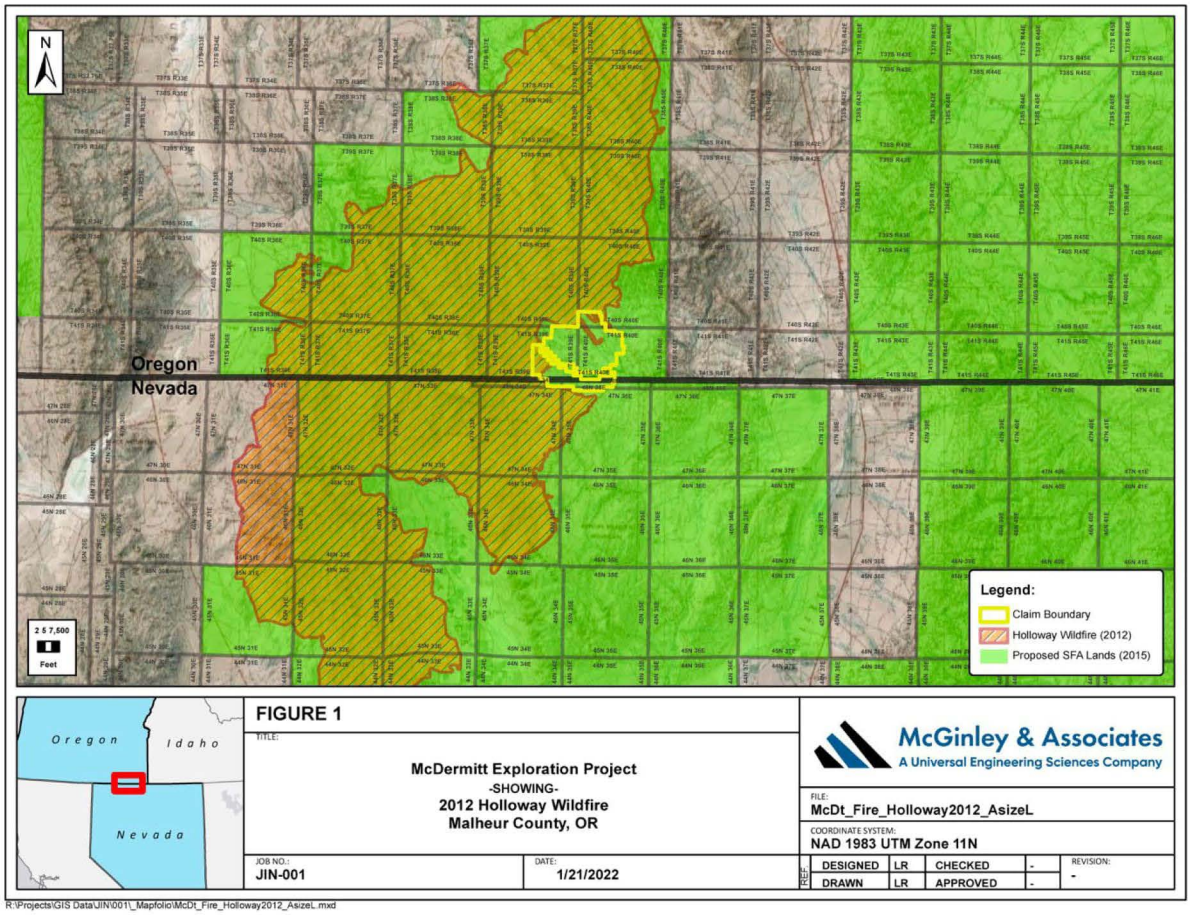

Figure 1. Plan Location Map of Jindalee's McDermitt Lithium Project Claims within the Proposed SFA Lands and the 2012 Holloway Fire Impact Zone

[2] https://s3.ap-southeast-2.amazonaws.com/assets.jindaleelithium.com/app/uploads/2024/03/28130126/240326-Corporate-Presentation_FINAL.pdf
[3] https://www.adamasintel.com/average-phev-contains-20-percent-more-lithium-than-2022/#:~:text=In%20total%2C%20the%20average%20passenger,year%20and%20lithium%20hydroxide%2041%25

The McDermitt Lithium Project is comprised of 791 unpatented mining claims covering 13,049 acres administered by BLM's Vale District Office and 97 unpatented mining claims covering 1,801 acres administered by BLM's Winnemucca District Office. Jindalee has submitted an Exploration Plan of Operations to BLM to authorize building exploration drill roads, drilling exploration holes, expanding a laydown area, and installing vibrating wire piezometers. This proposed work is necessary to upgrade the existing resource to measured and indicated status, to support development of a feasibility study, and to conduct additional exploration throughout our project area.

Jindalee has a direct and compelling interest in the Draft RMPA/EIS because the McDermitt Lithium project area is within a Sagebrush Focal Area (SFA) designated in BLM's 2015 GRSG Land Use Plan Amendments (LUPAs) as shown in Figure 1. This figure also illustrates the extent of the 2012 Holloway fire that severely damaged GSG and other habitats in significant portions of the southeastern Oregon/north-central Nevada SFA. The maps in the Draft RMPA/EIS show the McDermitt Lithium project area as a Priority Habitat Management Area (PHMA). The Draft RMPA/EIS text states that the Oregon SFA covers 1,835,800 acres.

BLM appears not to have considered our February 2022 comments describing the significant damage to GRSG habitat due to this fire. Because portions of the southeastern Oregon SFA burned in the 2012 Holloway Wildfire, Jindalee believes it should not be classified as PHMA or be included in the SFA. Clearly, burned areas are not the "best of the best" GSG habitat or a GSG habitat "stronghold," which were the criteria supposedly used in 2014 to delineate an area as an SFA. The significant fire damage should have disqualified this area for designation as an SFA. As we stated in 2022, the areal extent and boundaries of the southeastern Oregon SFA should be modified using on-the-ground data to exclude the burned areas as well as the McDermitt Lithium Project from the SFA.

Based on the 2015 LUPAs, Alternative 1 in the Draft RMPA/EIS recommends withdrawing the 10-million acre SFA from location and mineral entry. However, there is a discrepancy between the maps and the text in the Draft RMPA/EIS regarding the Oregon SFA. Map 2.32a "Locatable Minerals and Greater Sage Grouse Habitat Management Areas Alternative 1" does not show the southeastern Oregon SFA. (Map 2.1, however, does show the SFA in southeastern Oregon and five other western states.) The discussion of Alternative 1 in Section 4.10.4 of the Draft RMPA/EIS clearly states that all areas designated as SFA would be withdrawn from mineral entry. Page 4-108 describes the Oregon SFA proposed withdrawal as covering 1,835,800 acres. However, on this same page, the document grossly understates the impact of withdrawing the Oregon SFA, saying that only 117 mining claims are in the SFA. This is clearly wrong because Jindalee owns 888 claims in the SFA. Thus, at a bare minimum, the SFA withdrawal under Alternative 1 would impact all of Jindalee's 888 claims. Because there are likely to be other claim owners in the southeastern Oregon SFA. BLM needs to correct this analysis and properly report the number of claims and claim owners that would be impacted by the mineral withdrawal proposed in Alternative 1.

III. The Draft RMPA/EIS Must Disclose Impacts of the Alternatives 1 and 3 Mineral Withdrawals to Domestic Critical Minerals Supply Chains

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Our February 2022 scoping comments discussed the importance of the McDermitt Lithium Project as a domestic lithium deposit that could help the U.S. respond to the rapidly growing demand for lithium to manufacture lithium-ion batteries for EVs and battery energy storage systems. We noted in our scoping comments that our lithium discovery at the McDermitt Lithium Project validated the U.S. Geological Survey's (USGS') 2016 Mineral Potential Report (MPR) evaluated BLM's proposed withdrawal of the 10-million acre SFAs in Idaho, Montana, Nevada, Oregon, Utah, and Wyoming.[4] The USGS' MPR designates the McDermitt Caldera in southeastern Oregon and north-central Nevada as an area with high mineral development potential for lithium and other minerals. Since 2022, Jindalee's ongoing exploration work at the McDermitt Lithium Project has identified the largest lithium resource in the country, further proving the importance of this area as an important lithium deposit.

The current development work at the nearby Thacker Pass Lithium Project in the southern portion of the McDermitt Caldera in Nevada is additional confirmation that this area contains substantial lithium. The Department of Energy (DOE) recently granted a $2.26 billion Advanced Technology Vehicles Manufacturing Loan to Lithium Americas,[5] the company developing the Thacker Pass Project, attesting to the national importance of the McDermitt Caldera lithium resources.

Jindalee has submitted grant applications to DOE and to the Department of Defense (DOD) to support an accelerated Feasibility Study, drilling, other test work, and construction of a lithium processing facility at the McDermitt Lithium Project. Both DOE and DOD have accepted Jindalee's initial applications and we anticipate final grant application decisions later in 2024.

The Draft RMPA/EIS is flawed because it does not consider how withdrawing vast acreages of lands with mineral potential, like the southeastern Oregon SFA where the McDermitt Lithium Project is located, will harm the Nation by putting an important and urgently needed critical minerals project off-limits to mining. This proposed withdrawal would perpetuate and perhaps increase our reliance on China for lithium and other critical minerals that may occur in the 10-million acre SFA.

This outcome is at counter purposes to the Biden administration's oft-stated goals to strengthen domestic supply chains for critical minerals. Our February 2022 letter references several of the administration's policy documents calling for increased domestic mining of critical minerals to strengthen U.S. mineral supply chains.[6, 7]

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[4] Mineral resources of the Sagebrush Focal Areas of Idaho, Montana, Nevada, Oregon, Utah and Wyoming, Scientific Investigations Report 2016-5089, https://pubs.er.usgs.gov/publication/sir20165089

[55] https://lithiumamericas.com/news/news-details/2024/Lithium-Americas-Receives-Conditional-Commitment-for-2.26-Billion-ATVM-Loan-from-the-U.S.-DOE-for-Construction-of-Thacker-Pass/default.aspx

[6] Building resilient supply chains, revitalizing American manufacturing, and fostering broad-based growth, https://www.whitehouse.gov/wp-content/uploads/2021/06/100-day-supply-chain-review-report.pdf

[7] https://www.energy.gov/sites/default/files/2021-06/FCAB%20National%20Blueprint%20Lithium%20Batteries%200621_0.pdf

In February 2022, we emphasized that the McDermitt Lithium Project should be excluded from the southeastern Oregon SFA and that it should not be withdrawn from mineral entry. The Draft RMPA/EIS's lack of analysis of the impacts of withdrawing lands with an important *identified* critical minerals resource – or to even mention it at all – is a serious deficiency given the country's urgent need to strengthen its lithium supply chain with domestic sources of lithium.

There is widespread recognition that the clean energy transition will require mining of many minerals – including lithium – and that mining of battery minerals must substantially increase in order to achieve national and global energy transition objectives. The International Energy Agency (IEA)[8] predicts soaring demand for critical minerals, including lithium and other battery minerals, and shows that lithium production is currently concentrated in China. The IEA states: "In clean energy transitions, lithium is the mineral facing the fastest demand growth."

Because our need for domestic sources of critical minerals and our dangerous reliance on China for these minerals is an issue of national security, it must be carefully assessed in a Supplemental Draft RMPA/EIS. Given the national significance of this issue, adding it to the Final RMPA/EIS will not be sufficient. BLM must prepare a Supplemental Draft RMPA/EIS that evaluates how the six alternatives[9] would reduce U.S. mineral production, including production of critical minerals like lithium, and increase our reliance on foreign minerals. The public must be given an opportunity to review and comment on this important issue.

The Supplemental Draft RMPA/EIS needs to evaluate the tradeoffs between increasing the country's dependence on foreign minerals versus ensuring more lands designated as PHMA are not impacted by mineral exploration and development. As discussed in Section VI below, the Federal Land Policy and Management Act (FLPMA) requires BLM to balance these and other priorities. As written, BLM has not taken the balanced approach that FLPMA requires in the Draft RMPA/EIS. BLM's sole focus to protect GRSG habitat is thus inconsistent with the resource balancing and multiple use mandates in FLPMA.

BLM needs to rely on the USGS' expertise to update the mineral data considered in this Draft RMPA/EIS. BLM should ask the USGS to update its 2016 MPR for the 10-million acre SFA and to also evaluate the mineral potential in the 69.2 million acres considered for mineral withdrawal in Alternative 3.[10] BLM must consider mineral potential data in this Draft RMPA/EIS – it is pointless to consider mineral potential in an after-the-fact analysis associated with a mineral withdrawal decision. In order for BLM and the public to fully evaluate the impacts associated with both the 10-million acre withdrawal proposed in Alternative 1 and the 69.2-million acre withdrawal proposed in Alternative 3, the agency and the public need more information about the

[8] https://iea.blob.core.windows.net/assets/ee01701d-1d5c-4ba8-9df6-abeeac9de99a/GlobalCriticalMineralsOutlook2024.pdf

[9] Even the alternatives that do not propose a mineral withdrawal will reduce mineral production given the numerous proposed land use and seasonal restrictions that will make mineral exploration and development more difficult and costly.

[10] Although Jindalee's main focus is on the proposed withdrawal of SFA, especially the southeastern Oregon SFA, we are concerned with the massive, 69.9-million acre mineral withdrawal proposed in Alternative 3, where other important multiple uses like oil and gas, renewable energy, and grazing would be prohibited.

mineral potential on these lands. Consequently, the MPR must be updated[11] and expanded before BLM can proceed any further with this NEPA evaluation. Without mineral potential data for the mineral withdrawal areas proposed in Alternatives 1 and 3, BLM's decision will not be well informed and the public and officials in the 10-western state planning area will be subject to an ill-informed decision with serious adverse ramifications for each state in the planning area and for the country at large.

BLM's analysis of the impacts of the proposed mineral withdrawals in Alternatives 1 and 3 must also acknowledge that the Nation's future mineral requirements may differ from today's needs. For example, the soaring demand for lithium for the lithium-ion batteries used to power EVs and store electricity is a recent phenomenon. Twenty years ago (the initial term for most withdrawals), this demand did not exist. Thus, the statement: "...if minerals of interest are not known to occur on the lands within the withdrawal, then the withdrawal would not have an effect." (Page 4-106) completely dismisses the point that minerals cannot be discovered on lands that are withdrawn from mineral entry during the period of the withdrawal. This statement fails to acknowledge that withdrawn lands may contain important minerals that are currently unknown but that could be discovered in the future if these lands were not off-limits to mineral exploration and development. Because the country and the world will need many minerals in the future, and may need different minerals than are currently identified, withdrawing lands is likely to jeopardize the country's future ability to satisfy its long-term mineral requirements.

We find the statement: "Recommending areas for closure to the mining laws for locatable exploration or development does not restrict any activities and therefore, such recommendation does not have any impacts" (Page 4-106) erroneous because the threat of mineral withdrawals proposed in the Draft RMPA/EIS has a punitive effect on mineral investment in lands with GRSG habitat in the 10-state planning area. BLM discloses one aspect of this effect in the following excerpt from Section 4.10.4:

> "BLM will not approve a plan of operations to proceed on withdrawn lands until it verifies that each mining claim on the lands where the proposed surface disturbance will occur was valid before the date of withdrawal and continues to be valid. This BLM verification process can take several years in some cases. Additionally, operators are required by regulation to pay the cost for BLM's verification of mining claim validity. Taken together, the additional regulatory process and cost could delay or curtail mineral exploration and development on withdrawn lands during the term of the withdrawal, assuming minerals of interest occur within the withdrawn lands. Indeed, in BLM's experience, few operators have been willing to undertake the time and expense associated with verification of mining claim validity. The BLM may designate areas as ACECs as a conservation measure. Designating areas as ACECs in an RMP could impact production of locatable

[11] The updated MPR should include Jindalee's drilling results at the McDermitt Lithium Project. Jindalee would be pleased to work with the USGS to help them update their evaluation of the lithium mineral potential of the McDermitt Caldera.

> mineral resources because such designations would impose additional administrative and financial requirements...

This disclosure suggests that BLM has reached the foregone conclusion that withdrawing millions of acres from mineral entry is a necessary consequence of this planning effort and that the owners of mining claims within the SFAs who may lose their claims and forfeit the investments made in exploring and developing their claims are simply collateral damage.

BLM's decision to withdraw lands from mineral entry must be subject to the NEPA mitigation hierarchy of "avoid, minimize, rectify, reduce/eliminate and mitigate" at 40 CFR § 1508.1(s) in the current NEPA regulations and at 40 CFR § 1508.1(y) in the regulations that will become effective on July 1, 2024. NEPA requires BLM to evaluate ways to mitigate impacts to claim owners on lands proposed for withdrawal. If BLM deems withdrawing certain lands as a necessary and unavoidable impact, certain mitigation measures may be required. At the very least, the size of the mineral withdrawals should be kept to a minimum and restricted to lands with on-the-ground verification that they actually contain PHMA. The withdrawal areas should not be comprised of the sweeping 10 million-acre SFAs presented in Alternative 1 or the enormous 69.2 million acres in Alternative 3 of the Draft RMPA/EIS. In some situations, mitigation may need to include compensating claim owners under the Takings Clause of the Fifth Amendment of the U.S. Constitution.

IV. The EIS Must Consider the Minimal Impact That Mineral Activities Have on GRSG Habitat

In 2016, BLM used the findings in the USGS' 2016 MPR to prepare a Draft SFA Withdrawal EIS (2016 Draft EIS) that found that if the SFA lands were not withdrawn and remained open to mineral exploration and development, the forecast footprint of mineral activities for the next 20 years would affect a miniscule 9,554 acres within the proposed 10-million acre SFA. In other words, if mineral activities were allowed in the SFAs, mineral exploration and mining would impact less than 0.1 percent of the SFAs during the 20-year evaluation period. (See 2016 Draft EIS, Table 2-1.) Based on the findings in BLM's 2016 Draft EIS, there is no justification for BLM to propose mineral withdrawals in any of the SFAs throughout the planning area because mining in the 10-million acre proposed SFA mineral withdrawal area would have a minute impact on GRSG and GRSG habitat.

The 2016 Draft EIS projected that if the SFA lands were withdrawn, 1,084,109 acres of lands with high and moderate mineral potential would be put off-limits to mineral development. In Oregon, 66,581 acres with high mineral potential (HMP) would become unavailable for mining (2016 Draft EIS, Table 2-2). Most of the 66,581 Oregon HMP acres are located in the McDermitt Caldera.

In our February 2022 scoping comments, we recommended that the EIS should include the HMP Alternative evaluated in BLM's 2016 Draft EIS. Section 2.3.4 of BLM's 2016 Draft EIS evaluates an HMP Alternative that proposed to exclude the HMP lands identified in the USGS 2016 MPR from the SFA mineral withdrawal. Under the HMP Alternative, the SFA lands with HMP would remain open to mineral activities, subject to the land use management restrictions applicable to

PHMA. Figure 2-5 in the 2016 Draft EIS (shown below) illustrates the location of the above-mentioned 66,518-acres of Oregon HMP lands in the McDermitt Caldera as an area to be carved out of the SFA mineral withdrawal. The HMP lands include the McDermitt Caldera in Malheur County, Oregon and Humboldt County, Nevada.

SFA Withdrawal Draft EIS

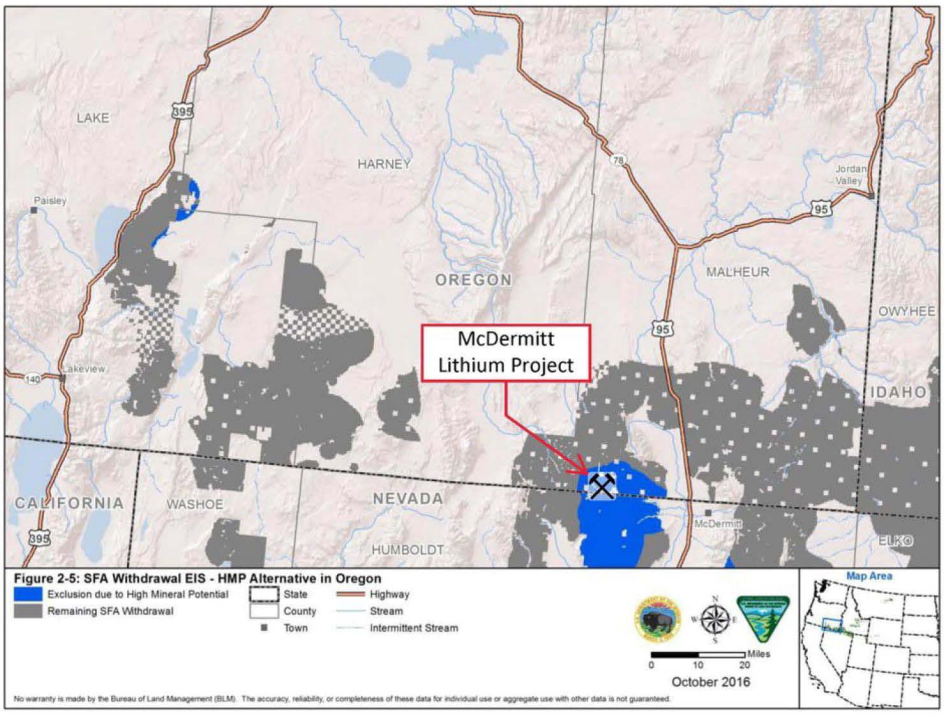

Figure 2-5. High Mineral Potential Alternative – State of Oregon Map

2-23

Jindalee strongly supports excluding the HMP lands with known lithium and other critical mineral deposits, including the McDermitt Lithium Project, and its mining claims to the south in the Nevada portion of the McDermitt Caldera, from the SFA withdrawal. BLM should prepare a Supplemental Draft RMPA/DEIS to evaluate the HMP Alternative as proposed in the 2016 Draft EIS.

V. BLM Must Not Separate the SFA Withdrawal Analysis from this NEPA Evaluation

In our February 2022 scoping comments, we strongly urged BLM to consolidate the SFA withdrawal analysis with this land use planning process and development of this Draft RMPA/EIS. Our assertion in February 2022 that separating these analyses into two documents makes no sense remains true today. Because the Draft RMPA/EIS includes two withdrawal alternatives – Alternative 1 to withdraw the 10-million acre SFA, and Alternative 3 to withdraw 69.2 million acres of PHMA – NEPA obligates BLM to perform a thorough evaluation of the impacts associated with these massive mineral withdrawals in this Draft RMPA/EIS.

BLM's statement on Page 4-106 that "Proposing and making a withdrawal is not a land use planning process" dismisses BLM's duty to comply with NEPA requirements to thoroughly evaluate the impacts associated with each alternative considered in detail in the Draft RMPA/EIS. In this Draft RMPA/EIS, BLM must provide a detailed analysis of the impacts of withdrawing between 10 million acres of land under Alternative 1 and 69.2 million acres of public lands under Alternative 3 from operation of the Mining Law and putting these huge tracts of land off limits to mineral exploration and mining for at least twenty years. This analysis must include a thorough disclosure of the jobs and local and state tax revenues that will be lost if lands are withdrawn from mining. It must also discuss how these withdrawals would make it harder to find domestic sources of the minerals we need, lead to an increase in the Nation's reliance on foreign minerals and maintain and possibly increase the vulnerability of our mineral supply chains.

The recommendation to withdraw the 10-million acre SFA in the 2015 RMPA/Final EIS is not a separate action from this Draft RMPA/EIS because Alternative 1 *is* the 2015 approved RMPAs:

> Alternative 1 includes the applicable elements of the 2015 Approved RMPAs (ARMPA) that are being analyzed for potential amendment....This alternative also includes designation of some areas of PHMA as Sagebrush Focal Areas (SFA) with a recommendation to withdraw them from mineral location and entry under the Mining Law of 1872...(Page ES-3)

BLM's scheme to separate the NEPA analysis of the 2015 SFA withdrawals from this 2024 NEPA analysis improperly splits the evaluation of the same proposed action into two different documents, which does not fulfill BLM's NEPA obligations. Similarly, the proposed withdrawal of 69.2 million acres under Alternative 3 requires a thorough analysis in this NEPA document – not in some future NEPA document prepared to implement Alternative 3 if that ends up being BLM's Preferred Alternative in the Final RMPA/EIS.[12]

Deferring the analysis of withdrawing lands from mineral development to a future, separate minerals withdrawal EIS essentially kicks the can down the road to retrospectively evaluate the impacts to minerals stemming from a decision that has already been made. This separation does not satisfy the forward-looking alternatives analysis mandates in NEPA that require federal agencies to take a hard look at the impacts of the alternatives carried forward for detailed analysis in a NEPA document.

VI. Alternative 3 Violates FLPMA's Multiple Use Mandate and the NEPA Definition of a Reasonable Alternative

[12] Based on the 11th-hour addition of the SFA to the 2015 LUPAs, our concerns that BLM's Preferred Alternative in the future Final RMPA/EIS could be significantly different than the Preferred Alternative (Alternative 5) in this Draft RMPA/EIS are warranted. BLM unexpectedly added the SFAs to its Preferred Alternative in the 2015 LUPAs. Because of this improper last-minute change, the U.S. District Court for the District of Nevada ruled that BLM violated NEPA by failing to prepare a supplemental EIS to evaluate the addition of the SFA to the 2015 Nevada and Northeastern California GRSG RMPA.

Although the Draft RMPA/EIS acknowledges that the multiple use and sustained yield mandates in FLPMA are among the planning criteria that underpin this NEPA analysis, it appears that the real driver for this document is for BLM to find ways to minimize the likelihood that the U.S. Fish and Wildlife Service (USFWS) will determine that the GRGS should be listed as a threatened or endangered species under the Endangered Species Act. BLM's sole focus on avoiding a listing determination by the USFWS has resulted in BLM's failure to achieve the appropriate resource balance that FLPMA demands. In Section 102(a)(12), FLPMA explicitly directs "that the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands;". Jindalee concurs with BLM that keeping the GRSG off of the list of federally threatened and endangered species is important. However, pursuit of this outcome cannot override BLM's FLPMA Section 102(a)(12) multiple use obligations by radically restricting and even prohibiting mining, livestock grazing and other uses because such widespread restrictions violate FLPMA.

The severe restrictions and prohibitions under Alternative 3 improperly subordinate BLM's FLPMA multiple use obligations and instead substitute land management actions designed to persuade the USFWS from putting GRSG on the list of federally threatened and endangered species. By prohibiting most multiple use activities on the 69.2 million acres of PHMA throughout the 10-state planning area, Alternative 3 would categorically close this vast area and:

- Prohibit new leases for fluid minerals, saleable minerals, mineral materials and nonenergy leasable minerals;
- Preclude development of renewable energy projects;
- Withdraw these lands from location and entry under the U.S. Mining Law;
- Eliminate livestock grazing and rights of-way (ROWs) designations; and
- Designate 11,139,372 acres of ACECs specifically for GRSG management.

Because these immense closures and prohibitions violate FLPMA's multiple use mandates, Alternative 3 cannot be considered as a viable alternative pursuant to NEPA and should not be included in the Draft RMPA/EIS.

In addition to violating FLPMA, Alternative 3 also violates the Council on Environmental Quality's (CEQ's) regulations at 40 CFR 1500 *et seq* that govern preparation of NEPA documents, including this Draft RMPA/EIS. The CEQ regulations at 40 CFR § 1502.14 require federal agencies to evaluate "reasonable alternatives," which the CEQ regulations define as "a range of alternatives that are technically and economically feasible and meet the purpose and need for the proposed action." (40 CFR § 1508.)

In the 2024 NEPA regulations that will become effective on July 1, 2024, 40 CFR 1508.1(hh) defines a "reasonable alternative" to mean: "A reasonable range of alternatives that are technically

and economically feasible and meet the purpose and need for the proposed action." Thus these new NEPA regulations still require federal agencies to identify and assess *reasonable* alternatives (40 CFR 1502(e)) and do not change the definition of "reasonable alternatives."

Section 4.12.4 of the Draft RMPA/EIS describes the severe economic impacts and socioeconomic dislocations associated with Alternative 3. The scope and intensity of these impacts are very troubling and include, but are not limited to, the following:

- 25,000 to 36,000 fewer total jobs (including 11,000 to 14,000 fewer direct jobs) would result from the precipitous drop in oil and gas production revenue and well development expenditures;

- Between $2.0 million to $2.9 billion in total labor income (including about $1.2 million to $1.6 billion less in direct labor income) would be lost;

- Economic output would be reduced by $9.2 billion to $12.8 billion compared to Alternative 1.

- Restricted oil and gas development would adversely affect fiscal revenues and could contribute to future state and local government budget shortfalls, especially in jurisdictions that rely on the taxation of minerals in place of income taxes or where taxes on mineral production currently represent the single largest source of revenue.

- The resulting budget shortfalls may affect states' and local governments' ability to maintain infrastructure and provide public services at current levels, which would adversely affect quality of life in affected communities and could further limit rural residents' access to educational opportunities, health care, and social safety net programs.

- The reduction in economic activity associated with reduced production of locatable minerals could adversely affect jobs, labor income, economic output, tax revenue, public services, and access to lifestyles and culture associated with mining.

- The impacts of withdrawing lands from mineral entry could put a lot of strain on communities, especially those that are dependent on the mining industry.

- Prohibiting grazing on PHMA is expected to result in about 2,000 fewer total jobs (about 841 fewer direct jobs), $120 million less in total labor income (about $67.6 million less in direct labor income), and about $380 million less in economic output (about $204 million less in direct economic output), compared to Alternative 1.

- The restrictions on livestock grazing in large portions of federal allotments could impact the economic resilience of ranching and farming communities.

- Making PHMA unavailable to livestock grazing could result in increases in costs to ranchers and farmers who would have to find alternative forage for their livestock. The cost increases may lead to increases in meat prices if passed on to consumers and, in the long term, decreases in availability of meat and animal products.

- Increases in prices and decreases in availability of meat and animal products could put additional strain on households, especially those with lower incomes in rural areas, where food prices tend to be higher and a larger percentage of their disposable income goes towards food purchases.

- There could be substantial impacts on social and economic conditions in some communities, including impacts to communities' well-being and social cohesion and impacts on access and quality of the ranching lifestyle, culture, and sense of place for those who rely on access to forage from federal land for their farming and ranching operations as well as for those who are part of the farming and ranching communities of interest and value livestock grazing on public lands.

Although not discussed in the Draft RMPA/EIS, the McDermitt Lithium Project is located in areas within Malheur County, Oregon and Humboldt County, Nevada that include Disadvantaged Communities census tracts (DACs) of 32013010701, 32013010600, and 41045970900.

The bulleted effects, which are examples cited directly from Section 4.12.4 of the Draft RMPA/EIS of the extremely adverse socioeconomic impacts associated with Alternative 3. do not meet the NEPA definition of an "economically feasible" alternative as defined in any version of the CEQ's NEPA regulations. Including Alternative 3 in the Draft RMPA/DEIS is a fatal flaw that BLM must remedy by preparing a Supplemental Draft RMPA/DEIS that eliminates Alternative 3 from detailed consideration on the grounds that it is economically infeasible and that it is also inconsistent with FLPMA's multiple use mandates.

BLM must comply with both the NEPA regulations and the multiple use mandate in FLPMA. The agency cannot ignore its multiple use management obligations and manage public lands with severe multiple use prohibitions and restrictions because it seeks to minimize the likelihood that the USFWS will put the GRSG on the list of federally threatened and endangered species. BLM can only consider reasonable alternatives as defined by NEPA while authorizing a balance of multiple uses that fulfill BLM's FLPMA obligations.

VII. Conclusions

Jindalee appreciates this opportunity to provide these comments on the Draft RMPA/EIS.

Because the McDermitt Lithium Project is located in an SFA proposed for mineral withdrawal in Alternative 1 and is also included in the proposed 69.2 million-acre PHMA blanket withdrawal in Alternative 3, the outcome of this planning process and BLM's final decisions are exceptionally consequential to Jindalee. In developing the Final RMPA/EIS, BLM must carefully consider the identified lithium mineral resource on Jindalee's McDermitt Lithium Project and the extremely

adverse financial, socioeconomic, and mineral security consequences to Jindalee, Malheur County, Humboldt County, the States of Oregon and Nevada, and the Nation associated with withdrawing this area from mineral location and development.

In developing the Final RMPA/EIS, BLM should acknowledge that the McDermitt Lithium Project and other mineral development projects throughout the 10-state planning area represent important opportunities for voluntary compensatory mitigation projects and funds. For projects where compensatory mitigation is consistent with valid existing rights and applicable law, project proponents could voluntarily perform remediation projects to improve damaged habitat areas or provide funding for agency-led habitat restoration efforts. Thus, damaged habitat areas, like the lands burned during the Holloway fire, could benefit from nearby mineral development projects.

As discussed above, the McDermitt Lithium Project is an exceptional opportunity for the U.S. to increase domestic production of lithium. The lithium that could potentially be produced from our mining claims would be mined and processed in compliance with stringent and comprehensive state and federal environmental protection and worker health and safety regulations. Putting Jindalee's McDermitt Lithium Project off-limits to mining would be in direct conflict with the Biden Administration's goals to increase production of domestic critical minerals including the raw materials for lithium batteries.

Finally, we point out the mixed signals that this administration is sending regarding development of the Nation's critical mineral resources. On the one hand, DOE and DOD have awarded substantial grants and loans to companies with critical mineral projects on federal lands, and are considering other grant applications like Jindalee's to support critical mineral project development. However, on the other hand, DOI through the BLM is seeking to curtail mining on public lands, including lands with important critical mineral resources like the McDermitt Lithium Project, by withdrawing vast areas of the western U.S. from operation of the U.S. Mining Law and prohibiting mineral exploration and development on these lands for at least twenty years.

We suggest that responsible development of the Nation's critical mineral resources and reversing the decline in GRSG populations are equally important and should not be viewed as mutually exclusive. The surface disturbance due to mineral exploration and mining is localized and modest when viewed on a landscape scale. Moreover, mining disturbances are mitigated when required reclamation is completed.

We therefore ask DOI and BLM to abandon the concept that mineral development and GRSG habitat protection are mutually incompatible. Instead, we suggest that BLM take a different approach and refocus this NEPA evaluation on how the country can concurrently pursue responsible development of important critical mineral deposits while also protecting, restoring, and enhancing GRSG habitats. The goal of this exercise should be to protect GRSG and at the same time supply the country with critical minerals from responsibly developed mines on federal lands. This alternative approach would fulfill BLM's obligations under FLPMA and NEPA and at the same time achieve the important goal of reducing the country's dangerous reliance on foreign minerals.

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Respectfully submitted,

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June 12,2024

Bureau of Land Management
via https://eplanning.blm.gov/eplanning-ui/project/2016719/510
via email: BLM_HQ_GRSG_Planning@blm.gov

Re: P4 Production, L.L.C. Comments on the Greater Sage-Grouse Rangewide RMPA (89 Fed. Reg. 18963 (March 15, 2024))

Dear Sir/Madam:

P4 Production, L.L.C. ("P4") or its predecessors have been mining phosphate ore and processing Elemental Phosphorous at our Soda Springs Plant since 1952. We are privileged to have been and continue to be an important economic and social contributor to our community in Southeast Idaho. We have also valued the importance of environmental stewardship and have been a leader in progressive mining and reclamation practices as well as multiple wildlife enhancement projects over the many years of operation. We appreciate the opportunity to provide suggestions that will enhance BLM's 2024 Draft RMPA. We believe that responsible mineral development can occur as well as supporting common sense conservation measures that will help preserve and maintain GRSG.

P4 Production, L.L.C. ("P4") offers the following comments on BLM's Draft Resource Management Plan Amendments and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning. This cover letter provides points of emphasis that P4 wishes to share with you. Attached to this letter is a detailed list of comments that are being submitted to the BLM for consideration.

P4 has extensive experience with BLM's previous sage-grouse conservation provisions and BLM resource management plans including the 2015 amendments to those resource management plans. P4's experience includes both implementation of the RMP provisions and BLM NEPA analysis and authorizations for P4's phosphate mining projects in southeast Idaho and in subsequent litigation.

P4 generally supports BLM's preferred alternative, Alternative 5. It is an improvement over Alternative 1 that would extend the 2015 ARMPA management requirements. While the 2019 ARMPA, Alternative 2, provides many advantages over Alternative 5, the federal district

court in Idaho has enjoined the 2019 ARMPA which could present an additional challenge to the legality of BLM's final decision on the 2024 RMPA if Alternative 2 is chosen. To the extent that BLM adopts provisions from the 2019 amendments in its Final RMPA and Final EIS, P4 encourages BLM to thoroughly explain its analysis and rationale to insulate them from future judicial challenge.

For reasons stated in P4's detailed comments, attached, P4 vigorously opposes Alternative 3 that would convert GHMA to PHMA and effectively shut down phosphate mining and processing in southeast Idaho. While Alternative 4 might be an improvement over Alternative 1, it is inferior to Alternative 5. Alternative 6 should also be rejected. It would designate 11 million acres of ACECs' severe restrictions on development that would violate FLPMA's multiple use mandate.

Other points of emphasis for BLM to consider include:

- BLM should carve out the Caldwell Canyon Mine from compliance with the conservation measures outlined in the draft RMPA, similar to the exemption of the Gateway West and Boardman to Hemingway transmission projects from the 2015 ARMPA, because conservation measures for sage-grouse are being analyzed through to the project's current NEPA review. The carve-out should allow the project proponent, in consultation with BLM, to select which RMP provisions from 2012, 2015, 2019, and 2024 will provide a reasonable suite of sage-grouse habitat conservation prescriptions to maintain or enhance the species' habitat while maintaining the technical and economic viability of the project.

- The Draft RMPA/Draft EIS glosses over the important clarification that these amendments will only apply to designated HMAs and only on BLM lands. Throughout the document, these two key factors are either glossed over or partially omitted. BLM does not have jurisdiction to enforce any RMP amendments on lands outside of BLM's jurisdiction including on HMAs that BLM has designated on non-BLM lands. Additionally, there are many parcels of BLM land for which there is no designated HMA and that would therefore be managed under the preexisting Resource Management Plans. These points must be made clear at every opportunity so that courts do not interpret vague text as either an extension of BLM's authority over non-BLM lands or BLM's intention to apply sage-grouse conservation measures to BLM lands lacking any HMA designation.

- The states' development of key habitat maps in the very early stages of sage-grouse conservation has been carried forward into the 2024 Draft RMPA/Draft EIS and will cause continuing confusion in that courts may interpret key habitat areas as subject to BLM's HMA management decisions. Key habitat can include potential habitat or previous habitat that has burned. Key habitat can also be designated on areas that BLM has specifically excluded from HMAs such as Known Phosphate Lease Areas. The key habitat concept should be stricken from BLM's Final RMPA and FEIS to avoid this confusion. If it is retained, BLM

should extensively explain that a key habitat designation does not authorize Field Offices to extend management decisions to key habitat.

- P4 strongly supports the Appendix 19 approach to lek buffers in Idaho and encourages BLM to thoroughly explain its scientific basis for this approach so that it withstands judicial scrutiny.

- At the same time, however, the BLM Draft RMPA/Draft EIS is unnecessarily vague in its proposed application of the WAFWA lek definitions and how those would be applied following a Record of Decision. For example, would BLM immediately jettison previous lek definitions and apply existing Idaho Department of Fish and Game data to redesignate leks under the new definitions or would BLM need to obtain new data after the ROD in order to implement the WAFWA definitions? Similarly, the draft documents carry forward a flaw in the 2015 ARMPA that contains a heavy bias in favor of the lek designation status of "active" ("occupied" in 2015) such that once a lek is designated as "active" it can take many years of observation to change that designation. P4 has direct experience with this bias in which both BLM and Idaho Department of Fish and Game agree that, scientifically, a lek should have been designated as inactive (unoccupied) but, because of the bias written into the lek status definitions, BLM cannot change the active/occupied status to match scientific reality.

- P4 strongly supports deletion of the concept of "net conservation gain" as contrary to FLPMA's requirement that the Secretary undertake no undue or unnecessary degradation of public land because it requires BLM and project proponents to actually improve public lands. The change (back) to the "no net loss" standard is consistent with FLPMA.

- While the concept intimated in the Draft RMPA/Draft EIS, the final documents should clarify that BLM will work with project proponents to confirm the status of any HMA designation in and around a project site so that BLM's analysis and the permitting of the project reflect the best available science. If Idaho Department of Fish and Game lacks adequate staffing, resources, or appropriations to assist BLM in assessing current habitat conditions, BLM must adjust its resources to compensate for those shortfalls and maintain the need for best available science as a bedrock requirement for its analysis and permitting of projects. In other words, BLM should not just assume that IDFG can fulfill the obligations that BLM foresees it fulfilling, for instance, supplying lek data as far back as 20 years in order to determine current lek status and ongoing, regular lek observations to determine whether a lek status should be changed.

- BLM must clarify that its ownership of federal minerals below nonfederal surface lands (split estate) results in application of the plan amendments to the surface estate only where the surface is disturbed to gain access to the federal minerals directly below the surface disturbance. This is important because federal split estate lands can be located in many portions of a project. If the clarification is not made, BLM, or the courts, may interpret BLM's ownership of the federal mineral

estate as authority for the BLM to apply sage-grouse conservation measures to all nonfederal surface lands within the project, including those that are not disturbed to mine the federal minerals below. BLM should state in the final documents that were BLM to so restrict those non-federal surface lands, it would result in an unconstitutional taking of the surface owner's property rights.

- BLM must provide the states and the public with usable maps of HMAs. The designated HMAs are the starting point and ending point for BLM's jurisdiction on BLM lands to impose the sage-grouse conservation measures. Consequently, both the states and the regulated community need clear, usable maps of the HMAs. When the maps in the DEIS are printed on 8 1/2 x 11 paper, they are so broad-scale as to be unusable.

- The Draft RMPA/Draft EIS provides a process to obtain a lek buffer variance based on best available science such as topographical conditions. This same opportunity existed in the 2015 ARMPA. Upon investigation, P4 could find no example of BLM having ever used its 2015 authority to change lek buffers based on topographical and other scientific analysis, rendering the 2015 opportunity illusory. Consequently, BLM should include language encouraging field staff to consider justifiable departures as authorized in order to make lek buffer decisions that are indeed based on local data, best available science, landscape features, and other listing protections.

P4 thanks BLM for this opportunity to comment on BLM's sage-grouse planning efforts. BLM's final RMP Amendments must maintain multiple use of federal lands for production of vital commodities for the betterment of society. Please contact Mr. Randy Vranes, Business Unit Lead Mineral Activities, at randy.vranes@bayer.com or (208) 547-1443 if you have any questions or need additional information regarding this letter or the attached comments.

Sincerely,

Randy Vranes

Attachment

June 13, 2024

Sharif Branham
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1849 C Street NW
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Sonya Germann
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Quincy Bahr and Pat Deibert
BLM Utah State Office
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RE: Draft Resource Management Plan Amendment (RMPA) and Environmental Impact Statement (EIS) for Greater Sage-Grouse Rangewide Planning

Mr. Branham, Ms. Germann, and staff:

The following comments are submitted on behalf of Montana Fish, Wildlife & Parks (FWP) and the Department of Natural Resources and Conservation (DNRC) regarding the Bureau of Land Management (BLM)'s Draft Resource Management Plan Amendment (RMPA) and Environmental Impact Statement (EIS) for Greater Sage-Grouse Rangewide Planning that covers federal lands in Montana and pertains to ongoing sage-grouse conservation efforts. Our comment further expands upon views offered by the State of Montana during the scoping period on this matter in February of 2022.

Our agencies have participated as cooperating agencies in this process. While we appreciate efforts to keep us informed and engaged, it is clear that coordinating a rangewide plan across 10

state boundaries, with multiple partners, different landscapes, different priorities, and different resource uses, is immensely challenging. It is disappointing that the recommendations our agencies provided on this very point were ignored.

Ultimately, FWP and DNRC reiterate our top priority of effective long-term sage-grouse conservation as a state-managed species. Our agencies stand by the successes of the State of Montana's Sage-Grouse Program to date.

Background

Western United States/Listing
From 2010 to 2015, sage-grouse were recognized as a candidate for federal listing under the Endangered Species Act (ESA). The U.S. Fish and Wildlife Service (USFWS) determined that the species was "not warranted" for listing in 2015, in part because of unprecedented collaborative conservation across 11 states. Continued effective conservation of the greater sage-grouse is critically important to western states and Montana.

State of Montana's Actions and Sage-Grouse Program
It is important to distinguish Montana's sage-grouse habitat circumstance from other parts of greater sage-grouse range, which may have different issues and needs. Somewhat unique to Montana, the landownership patterns associated with sage-grouse habitat are commonly an intermingled mix of private, federal, and state (DNRC Trust) lands.

After experiencing habitat losses and population declines over the past half-century or more, Montana has retained substantial blocks of productive intact sagebrush grassland habitats, which allow Montana to be a stronghold for sage-grouse.

The continued success of sage-grouse conservation is dependent upon the implementation of conservation strategies on private, state, and federal land. In Montana, land ownership exists in a checkerboard pattern between federal, state, and private land. Land use activities in a given area are often dependent on access to all lands, regardless of ownership. Montana Executive Orders (EOs) 12-2015 and 21-2015 are grounded upon the premise that working lands remain working lands and share common standards for sage-grouse conservation.

The current sage-grouse conservation strategy (2015) combines EOs and the Greater Sage Grouse Stewardship Act, (MCA §§ 87-5-901 et seq. (2017)), both of which are structured to incorporate new research findings pertinent to Montana's sage-grouse.

The goal of Montana's sage-grouse conservation strategy is to *conserve sage-grouse populations and habitats and to preclude the need to list the bird under the ESA* (Montana's Greater Sage-grouse Habitat Conservation Advisory Council 2014). The original state sage-grouse plan (Montana Sage Grouse Work Group 2005) and the current conservation strategy, EOs, and Montana Sage Grouse Stewardship Act recognize the need to reconcile land uses that are socially and economically important to the State of Montana, with effective sage-grouse conservation.

Maintaining a working landscape while successfully conserving effective native habitats is fundamental to Montana's sage-grouse conservation approach.

To help focus conservation priorities, Montana designated sage-grouse core areas, which comprise the most productive and intact habitats as well as habitats that are critical for maintaining distribution and population connectivity beyond Montana's borders, sharing conservation responsibilities with Saskatchewan, North Dakota, Wyoming, and Idaho. In addition, as a result of migration research, one connectivity zone between southern Saskatchewan and Valley County, Montana, has been recognized to date. The intent of these habitat designations is to emphasize and focus conservation measures within priority areas, while still recognizing the importance of general sage-grouse habitats which provide connectivity between core areas, habitat redundancy, and general sage-grouse distribution.

DNRC's Roles and Responsibilities
DNRC administratively hosts the Sage Grouse Habitat Conservation Program (Program) oversees activities occurring within designated sage-grouse habitat that require a state permit, technical assistance, or use state grant funds. The Program incentivizes avoidance and minimization of state-permitted activities that are likely to negatively impact sage-grouse and includes a stewardship accounting system for conducting compensatory mitigation.

The Program emphasizes a collaborative approach with stakeholders in carrying out its duties. From its start in 2015, farmers and ranchers, energy and mining companies, sporting groups, national and state industry, conservation organizations, state and federal agencies, interested individuals, legislators, and many others have been a part of these efforts. The support for the Program from this diverse array of interested parties is critical to the success of sage-grouse conservation in Montana. It is a necessary prerequisite to protecting this species across Montana's working landscapes.

FWP and DNRC remain committed to the task of conserving sage-grouse across the State of Montana. Both agencies still think it is unfortunate that despite our successes, the BLM is seeking additional changes to the Land Use Plans. In light of this reality, FWP and DNRC have identified several areas within the proposed Land Use Plans that should be adjusted, improved, or changed to better align with Montana's management and framework. They are outlined in greater detail below:

1) Align LUPs with Montana's EO:

Habitat Management Area (HMA) Alignment with Montana's Designated Habitat
We appreciate the BLM's effort to collaborate with the State of Montana to better align HMAs with state designated habitat areas. Adjustments proposed to the BLM's HMAs will provide consistency and improve efficiency in evaluating activity when implementing Montana's EO.

Seasonal Use and Buffer Distances Consistency with Montana's EO
Montana's checkerboard ownership underscores the need for a consistent conservation strategy that implements an "All Lands, All Hands" approach. With 64 percent of Montana's sage-grouse designated habitat located on private ownership, it is not uncommon to see projects occur on

mixed surface ownerships. To properly apply the mitigation hierarchy, as described in the Montana Mitigation System Policy Guidance Document for Greater Sage-Grouse, seasonal timing and buffer distances must be uniform across agencies. The mitigation hierarchy calls for avoidance first, then minimization. This strategy can be effective assuming stipulations are applied similarly. In Montana, the BLM currently applies different dates for seasonal use and differing buffers for surface occupancy stipulations between individual District Offices depending on the proposed activity type or the proposed action. Additionally, Montana's EO 12-2015 envisioned state and federal agencies would strive to maintain consistency with Montana's Conservation Strategy. The BLM's application of variations on seasonal timing stipulations and buffer distances are not consistent with Montana's EO.

Inconsistent application of seasonal requirements between the BLM and the State creates confusion and confounds application of compensatory mitigation and the adaptive management framework. Consistency with the State is particularly important when monitoring habitat objectives. A uniform approach across all land ownerships will facilitate the success of Montana's conservation strategy. We encourage the BLM to align all seasonal timing limitations, buffer distances from important sage-grouse habitats, and surface occupancy stipulations with Montana's EO 12-2015.

Fluid Mineral Leasing Waivers, Exceptions, and Modifications Consistency with Montana's EO
Under Alternative 4 on pages 2-49 to 2-50, table 2-9 outlines exceptions to a No Surface Occupancy (NSO) stipulation area under various scenarios. Justification for this exception as described is to give the Authorizing Officer the ability to grant an exception if it can be demonstrated that development and surface occupancy would have no direct impacts to or disruptions of sage-grouse or its habitat. Criteria for granting this exception also require the Authorizing Officer to determine that the habitat does not provide important connectivity between habitat areas and that the project design features would prevent indirect disturbance or disruption of adjacent seasonal habitats or impair biological function. Montana considers all NSO areas as important habitat and would consider any activity or surface disruption as a direct impact. Montana would not support exceptions, waivers, or modifications that allowed new activities or new facilities (including roads), in core areas within 0.6 miles or in general habitat within 0.25 miles of the perimeter of active sage-grouse leks as these areas are biologically significant to sage-grouse. Typically, buried features are the only exception of a new activity allowed, provided the work is conducted outside of seasonal stipulation periods.

Montana EO 12-2015 states:

> *Surface Occupancy: Within 0.6 miles of the perimeter of active sage grouse leks there will be [NSO] for new activities. NSO, as used in these recommendations, means no surface facilities including roads shall be placed within the NSO area. Other activities may be authorized with the application of appropriate seasonal stipulations, provided the resources protected by the NSO are not adversely affected.*

As such, Montana would not support an exception to any surface occupancy of project features or activity within an NSO during seasonal stipulation periods.

Montana EO 12-2015 further states that:

> *Seasonal Use: As authorized by permitting agency or agencies, activities (production, maintenance, and emergency activity exempted) will be prohibited from March 15-July 15 outside of the NSO perimeter of an active lek in Core Areas where breeding, nesting, and early brood-rearing habitat is present. OR "In areas used as winter concentration areas, exploration and development activity will be prohibited December 1-March 15".*

We do recognize the obvious exception for seasonal stipulations related to public safety concerns, such as emergency needs related to wildfire.

Energy Development – Wind, Solar, and Associated Rights-of-Way (ROWs)
We appreciate the efforts made through collaboration and cooperating agency updates to align with Montana's EO under Wind, Solar, and Associated ROWs; however, there are still several locations that do not align.

While there have been limited publications on the impacts that the development of solar and wind facilities have on sage-grouse, we do know it can be detrimental to sage-brush habitats. Those facilities can displace, destroy, and fragment sage-brush systems. Habitat loss and fragmentation, as well as known direct impacts from infrastructure (roads and transmission lines), necessary for utility-scale solar development and associated transmission, can significantly negatively impact sage-grouse and their habitats.

In section 2.6.3, table 2-27, Montana State-Specific Circumstances – Wind, Solar and Associated ROWs, all wind and solar activity (including testing, development, and all associated infrastructure) should be excluded in Priority Habitat Management Areas (PHMAs) and avoided (>4 miles of active leks) in General Habitat Management Areas (GHMAs), consistent with Montana's EO for wind development. It is important to recognize that Montana has a high proportion of leks that do not fall within state-designated Core areas, but which fall within state-designated general habitat (~30 percent of confirmed active leks are in general habitat in 2023). These areas are biologically significant and critical to maintaining the abundance and distribution of Montana's sage-grouse population and effort. As such, they should be made to avoid development within general habitat.

Under the range of alternatives, for Montana State-Specific Circumstances – Wind, Solar and Associated ROWs (2-160 - 2-161), we suggest Alternative 4 is the most consistent with Montana's EO. Specifically, under ROWs (2-161), we recommend the exclusion buffer be adjusted to account for and remain consistent with seasonal use stipulations in Montana's EO.

2) Grazing

Livestock ranching is one of the most common land uses of sage-grouse habitats in Montana. When conducted in a sustainable manner, ranching helps perpetuate private and public habitats by retaining open, undeveloped expanses that are adapted to grazing, while providing an economic return.

The DEIS states, on page 2-103, that "well-managed grazing can be compatible with Greater Sage-Grouse persistence". Well-managed grazing can be more than just compatible; in fact, it can have positive impacts, such as suppressing noxious weeds, enhancing plant community vigor, and improving forb components that benefit sage-grouse and the ecological integrity. The long-term success of ranching is also contingent on productive native vegetation, consistent with the needs of sage-grouse. As such, Montana opposes the removal of grazing from PHMAs (which includes GMHA's) as listed in Alternative 3.

We also specifically note that in table 2-112, Comparisons of Alternatives, Improper Livestock Grazing for management action RM-7, under Alternative 4 we recommend including sustainable grazing as a continued option. We request that the BLM continue grazing allotments in a sustainable manner or consider conversion of the allotment to a reserve common allotment. The BLM is well aware that grazing leases are often relied on as a part of ranching operations, so these options should be seriously evaluated.

Under Livestock Grazing Management Rangewide (page 4-24), if Alternative 3 is selected as the preferred alternative and grazing is eliminated on all PHMAs (includes GHMAs), it would likely have drastic, long-term negative impacts to sage-grouse and sagebrush ecosystems. Fences could be erected between landownerships to separate the BLM and private land for grazing management. More fences on the landscape could increase sage-grouse strike mortality, increase predation, and reduce habitat quality due to increased duration and intensity of grazing on smaller parcels. It could impact several other species (e.g. deer, elk, and pronghorn) by causing barriers to movement and migration across the sagebrush landscape.

Sustainably managed grazing is economically critical to the State of Montana's number one industry: agriculture. It is crucial in maintaining open spaces, including intact sage-brush habitats. If grazing on BLM lands is eliminated, as the BLM is looking to do, we are concerned that sagebrush conservation as a fundamental component of working landscapes will be completely upended. Montana farmers and ranchers care deeply about the land and have been committed to its wise use for generations. With the loss of reliable and sustainable grazing, ranchers would be forced to seek alternative sources of revenue, including conversion to commodity crops or subdivisions, which could result in a drastic and irreparable loss of habitat.

3) Adaptive Management – TAWS and Coordination

With 33 million acres of sage-grouse habitat on state, federal, and private land, it is imperative that the respective land managers maintain a high level of coordination and cooperation in managing this species. We certainly hope that the BLM's continued emphasis for coordination and collaboration with state agencies holds true.

Targeted Annual Warning System (TAWS)
We recognize the importance of incorporating new science as outlined in the Adaptive Management Framework and the reasoning for using the U.S. Geological Survey (USGS) Targeted Annual Warning System (TAWS). It is a tool that could allow for rangewide consistency, which would have benefits for management. We also understand the basis for using neighborhood clusters (Coates et al., 2021) as a population threshold and a proxy to habitat

conditions, since a neighborhood cluster should generally represent a sage-grouse population unit. We do, however, have concerns about using TAWS as the *exclusive* tool for the population adaptive management thresholds.

Because TAWS is a rangewide tool assessing a population, assumptions are made that may not address state-specific conditions. It is new technology that has not been thoroughly tested under varying scenarios. It should be carefully applied and assessed to measure and confirm its accuracy and utility. Neighborhood clusters do not always line up with state management zones, Montana core/general habitat designations, or with the BLM's HMA designations. They also cross international borders and state boundaries.

TAWS thresholds are determined if the rate of population trend varies at the neighborhood cluster compared to the climate cluster, suggesting the change is local or fine scale (i.e. wildfire) instead of regional or broad factors (i.e. precipitation). Climate clusters are large and may not always reflect on the ground conditions. For example, drought can be patchy and not uniform across the climate cluster. This could cause shifts from a single climate event when longer trend changes are not actually occurring. This is especially important for cross-boundary considerations, especially in states like Montana and Wyoming. A climate signal may not be useful at such a large scale. Therefore, further discussions are necessary prior to implementation.

Rather than specify TAWS as the sole tool, the BLM should use general principles and objectives for determining population management thresholds. Just as TAWS did not exist during the previous plan in 2015, new tools could be developed prior to the next plan amendments. FWP and DNRC recommend adding flexibility to allow for new tools and new relevant science to be applied. By using principles and objectives, instead of specific tools, BLM could allow for iterative improvement and adaptation. For example, if the plan stated that BLM would utilize pre-determined population thresholds at a biologically derived management unit to assess the populations at biologically meaningful scales and determine whether they are meeting the habitat objectives through a population response, then it would allow more flexibility around which tool to use. Time is also needed for the necessary discussions through collaboration and partnership efforts to determine what the best management tool is, instead of trying to fit it into a public process timeline. There needs to be far more discussion and flexibility within the adaptive management framework.

Coordination

Within the adaptive management table of comparisons of alternatives (Table 2-15) for Habitat and Population thresholds the BLM offers opportunities for coordination with the state, to verify trends when thresholds are met, or when they could be reversed.

In this framework, when a threshold is met, an assessment is initiated for a causal factor determination. This will be done by Causal Factor Analysis (CFA) teams that will include a state wildlife agency representative and occur under specific timelines to inform an adaptive management response. CFAs will issue a detailed written report for submission to multiple BLM sage-grouse leads. The timeline for completing the findings being 60 (or less) days (obvious causes) to 6 months.

As described, this effort will require significant coordination to be effective and timely. We expect it could significantly increase the workload for staff, both for the BLM and state agency representatives. It could be arduous in a state as large as Montana if multiple thresholds are to be met at one time. The appropriate state agency staff will need to be identified, coordination efforts must be outlined, and a plan needs to be developed immediately before any CFA is initiated.

Coordination will also need to occur to determine the inconsistencies between BLM HMAs and state designations both within and across boundaries. There are neighborhood clusters (and populations) that straddle state lines which will need to be coordinated. There are state priority areas that do not overlap with the neighborhood clusters. BLM HMA's do not align with state or neighborhood clusters. The areas that the state uses for our Adaptive Harvest Management framework do not align with these boundaries. A plan for these types of inconsistencies must be outlined.

If TAWS is determined as the tool used for population trend thresholds, since it is a new tool and relatively unknown, we suggest a communication plan be in place for all levels of expertise, including stakeholders, partners, and the public to provide transparency and promote shared understanding.

4) Research Opportunities

On page 2-110 in Alternative 4 and 5 under Management Action RM-5 (New Range Improvement Projects), we support the use of new technologies such as virtual fencing and would encourage exploring research opportunities around this technology.

On page 2-100 pertaining to Predator control, if programs are implemented with USFWS or Animal Plant Health Inspection Service (APHIS) to control predators and predator management plans are put in place, we would suggest adding monitoring and research as opportunities for collaboration between public and private. The precise population impacts of predators, specifically ravens, or the effectiveness of perch deterrents are relatively unknown in Montana, and this could be an opportunity for more detailed understanding.

5) Mitigation Programs – Density Disturbance Calculation Tool (DDCT)

The DNRC administers Montana's compensatory mitigation program. The Sage Grouse Habitat Conservation Program has embedded the DDCT into the Program's project application website. This tool was originally crafted to be similar to Wyoming's process using existing disturbance with a five percent threshold. Montana currently calculates the DDCT at the Project scale and includes wildfire, agricultural disturbances, and urban development.

The Montana Sage Grouse Habitat Conservation Program calculates the DDCT for the BLM for all proposed activities requiring BLM authorization. Alternatives 4 and 5 propose to add an additional three percent DDCT analysis for projects at the Fine Scale. While adding an additional analysis to the Program's processes is possible, this analysis would require additional staff commitment and close collaboration with the BLM. Regardless, if the analysis is done at

the Project Scale level or Fine Scale, the BLM's DDCT threshold should be consistent with the State thresholds.

Conclusion

FWP and DNRC appreciate the opportunity to provide comment on the Greater Sage-Grouse Draft RMPA. Our agencies reiterate the following requests:

1) The BLM should align with Montana's EO, especially in terms of development.
2) BLM should not limit or exclude managed livestock grazing whatsoever.
3) BLM should engage in intensive and immediate coordination, communication, and planning with the states.
4) BLM should reassess the use of TAWS as the tool for population adaptive management.

FWP and DNRC look forward to continued communication on this important effort.

Sincerely,

Dustin Temple
Director,
Department of
Montana Fish, Wildlife and Parks

Erin Weisgerber
Deputy Director,
Montana Department of
Natural Resources and Conservation

Laurie L. Carson, Chairman
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Nichole Stephey, Ex-officio Clerk of the Board

White Pine County
Board of County Commissioners

WPClerk@WhitePineCountyNV.Gov

June 12, 2024

Bureau of Land Management
Attn: HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, UT 84101

Via Email: *BLM_HQ_GRSG_Planning@blm.gov*

RE: White Pine County, Nevada Comments to the Greater Sage-Grouse Range-wide Planning Draft Resource Management Plan Amendment and Draft Environmental Impact Statement (DOI-BLM-WO-2300-2022-0001-RMP-EIS)

Dear BLM Greater Sage-Grouse Planning Team:

White Pine County, Nevada (County) appreciates the opportunity to provide these comments to the above-listed Draft Resource Management Plan Amendment and Draft Environmental Impact Statement (Draft Plan). The County has been an active Cooperating Agency and has significant concerns with both the process of developing the Draft Plan as well as the product itself. Many of the concerns listed below have been previously relayed during scoping and during Cooperating Agency participation.

The County has potential for significant impact from this Draft Plan as nearly the entire County contains Greater Sage-Grouse habitat. Further, maintenance of multiple use management and public land use is critical to the County's culture, customs and economy. The County supports conservation and active management of wildlife, including Greater Sage-Grouse, but such conservation must be informed by knowledgeable on-the-ground management and in balance with other resources and uses. The County's 2018 Public Lands Policy Plan contains the following underpinnings as it relates to the management of public lands:

> ***Policy 2-1****: Support the concept of Multiple Use Management as an overriding philosophy for management of the public lands based on multiple use and sustainable yield concepts, and in a way that will conserve natural resources.*

The following policies are from Section 9, Wildlife:

> *White Pine County residents support a diversity of wildlife species. Coordination of federal and state wildlife and fisheries' management and enforcement is encouraged.*
>
> *Policy 9-5: Identify habitat needs for wildlife species, such as adequate forage, water, cover, etc., and provide for those needs so as to, in time, attain appropriate population levels compatible with other multiple uses as determined by public involvement.*
>
> *Policy 9-6: Support the Wildlife Services Environmental Analysis for the Humboldt National Forest and the Animal Damage Control Plan for the Ely District BLM.*
>
> *Policy 9-7: Support habitat restoration to improve wildlife habitat when compatible with other uses.*

Policy 9-11: Support limiting raven and crow populations to levels that don't negatively affect the populations of other wildlife species.

Policy 9-12: Hunting of any wildlife species being considered for listing as threatened or endangered should be discontinued. ***The listing of any species would be detrimental to industries in White Pine County that are dependent on the multiple use of public lands. (emphasis added)***

Many of the alternatives and proposed allocations presented in the Draft Plan would also be detrimental to industries in White Pine County that are dependent on the multiple use of public lands. In fact, the County would contend that the socioeconomic analysis presented in the Draft Plan is completely inadequate, particularly given how much land within the County is managed by the federal government and Bureau of Land Management (BLM) in particular. Multiple use management is an absolute necessity to the lifestyle of the County's residents.

The below comments have been organized by major topical area as follows:

Planning Area & Complexity of the Draft Plan:

The County is extremely concerned with the "range-wide" planning area and subsequent complexity of this plan. Developing a single Draft EIS that evaluates changes across 76 BLM Resource Management Plans is nearly impossible to accomplish, particularly given the diversity of habitat types, differing threats, variable land uses and multiple state management authorities across the entire range of Sage-Grouse. The County was directly involved and engaged in development of the Ely District Resource Management Plan and is concerned as to how this Draft Plan will amend it. The County is concerned that this regionalized planning effort runs astray of Congressional Direction provided to the BLM. Please see attached, White Pine County Concern with BLM Multi-State Planning Efforts.

This Draft EIS is extremely complex, and nearly impossible to follow, even for those who have worked on it closely through the Cooperating Agency Process. The Draft Plan consists of three volumes, plus 19 Appendices, making it nearly impossible to track in a cohesive manner. This complexity was compounded by the BLM's proposing Six (6) different alternatives for evaluation.

Recommendation: The County strongly recommends that the BLM develop and publish a Supplemental Draft Plan specific to the State of Nevada, so that cooperators and the public in this state can clearly understand the range of alternatives and what is being proposed. Any final Nevada Land Use Plan Amendment must be signed by the Nevada State Director and not the BLM's Washington Office.

Mapping:

The mapping presented in the Draft Plan is incomplete, misleading, and wrong. During the Cooperating Agency process, the County pointed out where the maps were inaccurate particularly as relates to the maps presented in Alternatives 3 – 6. Existing developed communities within this County such as the Blue Diamond Estates were mapped as habitat along with other critical County infrastructure. Even the proposed Areas of Critical Environmental Concern (ACECs) include critical infrastructure such as US 93, County gravel pits, and County or public roads.

The mapping is not properly displayed or presented in the Draft Plan. It is nearly impossible for the public to review the proposed maps at a scale that allows for meaningful input or comparison across alternatives. The BLM should have developed an online map viewer and made it publicly available through ePlanning, including a demonstration at the public meetings.

The maps associated with Alternative 3 – 6 should have never been published as they were based on incomplete USGS models that had yet to be completed, reviewed, or adopted by the State of Nevada. The County notes that the BLM provided notification that the maps were likely to change and even posted a "comparison" document on ePlanning late in the review period, but that doesn't excuse the publication of incomplete and inaccurate maps. The maps directly affect BLM allocation decisions, so incomplete or inaccurate maps can have a tremendous cascading, negative impact on the County.

Recommendation: ***The BLM must publish a Supplemental Draft LUPA / EIS specific to the State of Nevada, so that cooperators and the public in this state can clearly understand the true mapping updates have been completed and accepted by the State of Nevada and impacts of the allocation decisions associated with the habitat classifications.***

Alternatives:

The County supports the 2019 Nevada Greater Sage-Grouse Conservation Plan (State Plan), and any BLM Plan must be consistent with the State Plan. The current Draft Plan considers so many alternatives that in some cases they are radically different and in others they seem to largely be designations without a differentiation. The most problematic issue is that six alternatives have made this Draft EIS nearly impossible to follow. There is a significant need for a more focused set of alternatives so future input can focus on key refinements.

- Alternative 1 (2015 Land Use Plan Amendments): This alternative is fatally flawed in that it is inconsistent with the State Plan and does not contain key exceptions for County administrative and emergency functions. The plan contains an "Adaptive Management" approach that doesn't meet the Department of Interior's own guidance on Adaptive Management and has potential to significantly limit multiple use management. **The County does not support this alternative.**

- Alternative 2 (2019 Land Use Plan Amendments): This alternative is the most consistent with the State Plan, and subsequently the County's Master Plan. It provides key provisions for County administrative and emergency functions in Greater Sage-Grouse Habitat and contains mapping that was approved by the State of Nevada. It has a more collaborative approach, at a local scale, to multiple use management. **The County supports advancing this alternative for further analysis.**

- Alternative 3 (Preservation including ACECs): This alternative is fatally flawed because it is inconsistent with the State Plan, inconsistent with the County's Public Lands Policy Plan and would have significant socioeconomic impacts on the County due to its restrictive nature. The County does not support designation of ACECs (see attached letter). Another fatal flaw includes the fact that all habitat management areas would be designated as "priority". Given that the County has documented how this map includes non-habitat, this would be

hugely problematic. Finally, the County questions how this alternative is consistent with the BLM's own multiple use mandate. **The County does not support this alternative.**

- Alternative 4 (Conservation focus with situation allowance for development): This alternative is fatally flawed as it relies on incomplete and incorrect maps. There are also inconsistencies with the State Plan and the County's Master Plan. Providing "allowances for development" does not meet the County's definition on multiple use management. **The County does not support this alternative.**

- Alternative 5 (Conservation focus with additional flexibility): This alternative is fatally flawed as it relies on incomplete and incorrect maps. There are also inconsistencies with the State Plan and the County's Master Plan, though they are less than in Alternative 4. The County appreciates that some provisions have been made for County administrative and emergency functions, but more emphasis is needed in this regard. **The County supports advancing this alternative for further analysis.**

- Alternative 6 (Alternative 5 with ACECs): This alternative is fatally flawed as it relies on incomplete and incorrect maps. There are inconsistencies with the State Plan and the County's Master Plan, and the County does not support the designation of ACECs (see attached letter). **The County does not support this alternative.**

Recommendation: ***The County recommends that the BLM classify Alternatives 3, 4 and 6 as "alternatives considered but dropped from further consideration" due to inconsistencies with the State Plan, County policy, and conflicts with multiple use management. Alternatives 1 (No Action), 2 and 5 should be carried forward and presented in a Nevada specific Supplemental Draft EIS for further analysis, input, and refinement. More focused collaborative work on these alternatives could result in a much better end product and would allow time to fix the major deficiencies in the current planning process.***

Special Designations, Allocations and Exceptions:

1. The County does NOT support special designations (ACECs or Sagebrush Focal Areas [SFA]). The County already contains 134,528 acres of BLM managed wilderness area, 350,903 acres of Forest Service managed wilderness area and extensive State of Nevada Wildlife Management Areas. Designation of ACECs would transition large swaths of public lands from multiple use management to a Sage-Grouse preservation focus. The BLM has not presented any data that shows how an ACEC designation would address the main threats to Greater Sage-Grouse: fire, invasive weeds, pinyon-juniper expansion, overpopulation of wild horses and predation.

2. The County supports the below allocation table rather than special designations with the key provision that all allocations be subject to ground truthing of mapped habitat. The BLM must understand and make clear that the USGS mapping product the Draft Plan relies upon is based on models and all models are wrong. Nearly all the habitat designated in this County has not been verified, and the County has documented its concerns with the accuracy of some of the modeled habitats. Even in verified habitat, the County must have the latitude to provide mandated administrative and emergency functions.

Table 2-1: Summary of Allocation Decisions by GRSG Habitat Management Areas[1]. (NV Counties 2023)

Resource	PHMA	GHMA	OHMA	ACEC
Land Tenure[2]	Retain	Retain / Dispose	Dispose	Nevada Counties do NOT support the designation of ACECs as part of this planning effort.
Solar, Wind and Renewable Energy Storage	Exclusion	Exclusion[2]	Avoidance[2]	
Major ROWs[2,3]	Avoidance	Avoidance	Open	
Minor ROWs[2,3]	Avoidance	Open	Open	
Fluid Mineral Development and Leasing	Closed	Open w/ Major Stipulations[2]	Open w/ Minor Stipulations[2]	
Nonenergy Leasables[2]	Closed	Open	Open	
Salable Minerals[2]	Closed	Open	Open	
Locatable Minerals[4]	Open	Open	Open	
Travel Management	Limited[5]	Limited[5]	Open	
Livestock Grazing	Open	Open	Open	

Notes: 1. All Allocation Decisions are subject to field verification and modification of modeled HMA.
2. Projects may qualify for a BLM waiver, exemption, or modification (WEM) and must meet the regulatory requirements of the State of Nevada, including the Conservation Credit System.
3. Projects located within designated corridors, co-located with existing infrastructure, or located in degraded habitat will be given WEM preference.
4. Projects must meet the regulatory requirements of the State of Nevada, including the State Conservation Credit System.
5. Not applicable to State, local or public roads. Travel is limited to existing roads and trails.

Recommendation: ***The County recommends that the BLM designate a "Preferred Alternative" within a Nevada-specific Supplemental Draft Environmental Impact Statement that contains the above allocation table, clear provisions for ground truthing of modeled habitat before final allocation decisions are made, and provisions for the County to provide administrative and emergency functions.***

Adaptive Management:

The County only supports the Adaptive Management process proposed under Alternative 2 as it is the only one that is consistent with the State of Nevada's Adaptive Management Process. The County would question if the proposed Adaptive Management approaches under the other alternatives are consistent with the Department of Interior's Handbook on Adaptive Management.

Recommendation: ***The County recommends that the BLM designate a "Preferred Alternative" within a Nevada-specific Supplemental Draft EIS that contains the Nevada-specific Adaptive Management Plan as described in Alternative 2.***

Habitat Restoration and Predator Management:

The County's Public Land Policy Plan stresses the need for both habitat restoration and predator management, particularly as relates to corvids. The County does not believe that the Draft Plan puts enough emphasis on proactive management of habitat nor predator management. The Ely BLM and Forest Service have done a tremendous job implementing habitat restoration at scale, but there is more work to do. The threat of fire, invasive weed species, conifer infill and expansion and predation are all major threats to Sage-Grouse in White Pine County, yet there is very little in the Draft Plan that emphasizes the need to directly address these threats. The Draft Plan contains a "Preservation Alternative" as defined in its own public presentation, but not an "Collaborative Management Alternative". The County finds this both troubling and ironic.

Recommendation: ***The County recommends that the BLM designate a "Preferred Alternative" within a Nevada-specific Supplemental Draft EIS that contains additional goals, objectives and management actions to encourage habitat restoration, predator management and collaboration with State and local stakeholders.***

Conclusion:

This is the third time the BLM has developed Sage-Grouse specific Resource Management Plan Amendments that impact this County. As experienced by previous Range Management Plan Amendments, these policies have the potential to greatly affect public land use as well as County functions. When the BLM's RMP is not synchronized with the State Plan, it results in confusion and ineffective management at the expense of the County, affected land users, and Sage-Grouse. The BLM needs to take the time to get this planning effort correct, and not make the same mistakes as experienced in previous planning efforts. For example, the BLM's publishing of incomplete maps also occurred in 2015 resulting in the BLM and State utilizing different habitat maps for approximately 6 years at great expense to State and County government as well as private industry. The BLM cannot repeat this same mistake, particularly given that there is adequate time to slow the process and focus on further refinements in a collaborative manner.

The County appreciates the opportunity to provide these comments and will continue to remain engaged. If there are any questions as to the comments provided, please contact myself or the County's Public Lands and Natural Resources Consultant, Jeremy Drew.

Thank you,

Laurie L. Carson

Laurie L. Carson, Chair
White Pine County Board of Commissioners

cc: Governor Joe Lombardo
County's Congressional Delegation
Jon Raby, Nevada State Director, BLM
Robbie McAboy, Ely District Manager, BLM

Attachments: White Pine County Concern with BLM Multi-State Planning Efforts
White Pine County Letter Regarding Designation of Areas of Critical Environmental Concern
White Pine County Document Specific Comments

White Pine County, Nevada
Concern with Bureau of Land Management Regionalized Planning Efforts

The Issue: White Pine County, Nevada is concerned that the BLM is currently engaged in two centralized, multi-state land use planning efforts that appear to violate both 1) the BLM's existing planning regulations, and 2) Congress's explicit prohibition of centralized, multi-state planning through its 2017 exercise of the Congressional Review Act,[1] which struck down the BLM's "Planning 2.0" regulations. These two planning efforts include:

1. The Draft Programmatic Environmental Impact Statement for Utility-Scale Solar Energy Development (DOI-BLM-HQ-3000-2023-00001-RMP-EIS); and,
2. The Greater Sage-Grouse Rangewide Planning Draft Resource Management Plan Amendment and Draft Environmental Impact Statement (DOI-BLM-WO-2300-2022-0001-RMP-EIS)

Background: In 2016, in the waning days of the Obama administration, the BLM attempted to transform how the agency conducted land use planning under the Federal Land Management Policy Act (FLPMA) by writing new regulations which they called "Planning 2.0." Among the tried-and-true planning regulations the BLM hoped to discard through this rulemaking were 1) the allocation of planning responsibilities to *local* BLM authorities; 2) the geographic restriction of land use plans, revisions, and amendments to the *local* BLM administrative boundaries of Field, District, and State Offices.

The long-standing local emphasis of BLM land use planning had ensured that land use plans were tailored to the specific needs and concerns within individual Field Offices or Districts and guaranteed meaningful coordination between the State, Field, and District BLM agency personnel and local and state governments. Specifically, the pre-Planning 2.0 regulations required land use plans to be *administratively local*, that is, carried out by Field Managers with the oversight and approval of State Directors—

§ 1601.0-4 Responsibilities.

a) National level policy and procedure guidance for planning shall be provided by the Secretary and the Director.
b) State Directors will provide quality control and supervisory review, including plan approval, for plans and related environmental impact statements and provide additional guidance, as necessary, for use by Field Managers. State Directors will file draft and final environmental impact statements associated with resource management plans and amendments.
c) Field Managers will prepare resource management plans, amendments, revisions and related environmental impact statements. State Directors must approve these documents. 43 CFR § 1601.0-4 (emphasis added.)

Second, the pre-Planning 2.0 regulations ensured that the BLM's planning efforts would also remain *geographically local*, stipulating that:

> "A resource management plan shall be prepared and maintained on a resource or field office area basis, unless the State Director authorizes a more appropriate area." 43 CFR § 1610.1(b)

By contrast, in the Planning 2.0 rulemaking, the BLM attempted to eliminate both the local administrative and geographic focus of land use planning by centralizing all planning authority in the BLM's Washington D.C. headquarters and allowing centralized land use planning efforts to have potentially unlimited geographic scope. As the BLM explained in its preamble to Planning 2.0 in the Federal Register—

> *Responsibilities and Plan Boundaries*

[1] 5 U.S.C. §§801- 808.

White Pine County, Nevada
Concern with Bureau of Land Management Regionalized Planning Efforts

> "The proposed rule would explain the responsibilities for preparing or amending a resource management plan to acknowledge that planning areas may extend beyond traditional BLM administrative boundaries such as Field Offices or States. References to the "Field Manager" would be replaced with the "responsible official," as the BLM official responsible for preparing and amending a resource management plan. References to the "State Director" would be replaced with the "deciding official," as the BLM official responsible for supervisory review, including plan approval.
>
> The proposed rule would make the BLM Director responsible for determining the deciding official and the planning area for resource management plans and for plan amendments that cross State boundaries. For plan amendments that do not cross State boundaries, the deciding official would be responsible for determining the planning area." 81 Fed. Reg. 9675 (emphasis added.)

White Pine County, in coordination with others and the Nevada Association of Counties, strongly objected to the BLM's attempt to centralize and expand the geographic scope of land use planning through Planning 2.0. Among our many concerns was that Washington-driven, multi-state planning would eliminate meaningful state and local government participation as required under FLPMA and NEPA. As part of a broad effort to halt Planning 2.0, Humboldt County, Nevada, Commissioner Jim French testified before Congress stating our collective view that BLM land use planning must remain local, as did Jeff Fontaine, then the Executive Director of the Nevada Association of Counties [and others?].

On March 27, 2017, Congress struck down the BLM's Planning 2.0 rule through the Congressional Review Act. Under a Joint Resolution, Congress forbade (among its other provisions) Planning 2.0's centralized land use planning scheme and its authorization of unbounded multi-state planning areas. Under the CRA, Congress also forbade the BLM to issue "a new rule that is substantially the same" as Planning 2.0, "unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule." 5 U.S.C. § 801(b)(2). As a result, the pre-Planning 2.0 regulations (quoted above) were reinstated and remain in full force and effect today.

The Problem: Currently, the BLM is engaged in two centralized, multi-state planning efforts that appear to violate the BLM's existing planning regulations and Congress's CRA Joint Resolution. Both plan amendment efforts and their attendant NEPA EISs are being centrally prepared by the Washington D.C. Office,[2] not by Field Managers. Further, "quality control and supervisory review, including plan approval" is being provided primarily by the BLM's Washington D.C. Office, not State Directors. Finally, these centralized planning efforts have planning areas of 10 to 11 states (effectively the BLM's entire land portfolio) as opposed to covering one or several Field Office administrative areas. For these reasons, the above-mentioned planning efforts appear to violate the below provisions of the BLM's planning regulations (and connectedly Congress's CRA prohibition on centralized, multi-state planning):

- "**Field Managers** will prepare resource management plans, amendments, revisions and related environmental impact statements;"
- "**State Directors** will provide quality control and supervisory review, including plan approval [...] for plans...;"
- "A resource management plan shall be prepared and maintained on a **resource or field office area** basis, unless the **State Director** authorizes a more appropriate area." 43 CFR § 1610.1(b)

Request: White Pine County is requesting that the BLM reconsider these planning efforts and re-direct them to a State or District level process.

---

[2] The BLM's Eplanning website states that the lead office for Utility-Scale Solar is HQ-300 and for GRSG is WO-230.

Laurie L. Carson, Chairman
Janet VanCamp, Vice Chairman
Commissioner Richard Howe
Commissioner Shane Bybee
Commissioner Hank Vogler

Nichole Stephey, Ex-officio Clerk of the Board

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White Pine County
Board of County Commissioners

May 14, 2024

Bureau of Land Management
BLM Utah State Office
Attn: HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, UT 84101

***Via Email:** BLM_HQ_GRSG_Planning*

RE: White Pine County, Nevada Comments Regarding the Draft Resource Management Plan Amendment and Draft Environmental Impact Statement for Greater Sage-Grouse Areas of Critical Environmental Concern (DOI-BLM-WO-2300-2022-0001-RMP-EIS)

To whom it may concern,

White Pine County, Nevada (County) has served as a Cooperating Agency on the above listed document, attended nearly every Cooperating Agency meeting, provided Cooperating Agency comments, provided scoping comment, and participated in several public hearings for the BLM's Draft Resource Management Plan Amendment and associated Draft Environmental Impact Statement (Draft RMPA/EIS). It is from this experience and engagement that the County offers the below comments specific to the BLM's proposed Areas of Critical Environmental Concern (ACECs). Designation of ACECs without adequate engagement has the potential to greatly and negatively impact the County's customs, culture and economy given the direct nexus between these values and the multiple use management of public lands.

The County participated in the April 16, 2024 Public Meeting in Reno, Nevada as well as the BLM's presentation to the Nevada Sagebrush Ecosystem Council on April 19, 2024. In both presentations, BLM representatives clearly stated that comments related to ACECs would be considered up until the close of the 90-day Draft RMPA comment period on June 13, 2024. Upon its review of the Federal Register Notice, the County identified the following language, "This notice also announces the opening of a 60-day comment period for ACECs. The BLM **must** receive your ACEC-related comments by May 14, 2024" (**emphasis added**). The County finds the BLM's comments and notice to be confusing and contradictory. There is simply too much integration between proposed ACEC designations and the Draft RMPA/EIS to bifurcate the comment period. **As such, the County is requesting a 60-day extension for ACEC comments and a 30-day extension for Draft RMPA/EIS comments (120-days for both). At minimum, the BLM must synchronize the ACEC and Draft RMPA/EIS comment periods through a new Federal Register Notice to eliminate any confusion and ambiguity.**

The County did want to go on record within the 60-day ACEC comment period, as noticed, to state its OPPOSITION to designation of ACEC within the County as part of the Draft RMPA/EIS. The County reserves the right to supplement this comment as part of its overall submission to the Draft RMPA / EIS given the statements made by BLM in multiple public meetings. In summary, the BLM has NOT:

- Justified the need for ACECs;
- Clearly distinguished how the proposed ACECs are more important than any other Sage-grouse habitat within White Pine County; nor,
- Met its own relevance and importance criteria for designating ACECs.

The County would call the BLM's attention to its Cooperating Agency comments on the matter if additional detail were so desired.

The County will continue reviewing the Draft RMP / EIS but is extremely concerned with both the process and the product as relates to proposed ACECs.

Sincerely,

Laurie L. Carson

Laurie L. Carson, Chair
White Pine County Board of Commissioners

CC: Nevada Congressional Delegation
Governor Joe Lombardo
Jon Raby, BLM Nevada State Director
Robbie McAboy, District Manager, Ely District Office BLM
White Pine County Natural Resources Advisory Committee

White Pine County, Nevada Document Specific Comments to the Draft Rangewide Resource Management Plan Amendment and Evironmental Impact Statement (DOI-BLM-WO-2300-2022-0001-RMP-EIS)		
Section	**Figure / Table**	**Comment**
General Comment		The County is disappointed in the BLM's decision to provide such a limited timeframe for partners and the public to review and comment on this DEIS. The document is large and cumbersome, not to mention confusing, and a 90-day comment period is not sufficient for truly informed, substantive comments to be made. The County requests a Nevada-specific Supplemental Draf EIS be developed and published by the BLM in order to allow for more robust Cooperating Agency and public input and refinement.
General Comment		**Incomplete Maps:** There is a major NEPA inadequacy with the way in which the BLM included various mapping "alternatives" in the DEIS. The State of Nevada still has management authority over Sage-grouse and the only map that has been approved by the State appears to be Alternative 1, less the Sagebrush Focal Areas. "Alternative" Maps 2 - 5 are based on incomplete USGS Modeling products. This approach is both inaccurate and misleading, particularly given the number of tables and maps that cascade from these various alternatives. A clarifying statement is buried in Appendix 3 that reads "Because the final published and state-adopted HMA map was not available for BLM's draft EIS analysis needs, an interim draft map was provided and incorporated. The final map will be will be incorporated into the final EIS when it is published." (Appendix 3, Page 3-9). This approach truncates the State's approval process, appears to be pre-decisional and is extremely similar to the fatal mapping approach taken in 2015. Recall that the 2015 effort resulted in the BLM and State of Nevada using different maps for nearly 6-years. If the BLM must publish prior to the State of Nevada approving a new HMA map, then the only map that should be included for the State of Nevada at this time is the map provided in Alternative 1. Publishing incomplete modeling updates, particularly with HMAs that extend outside of State designated Population Managent Units and in and around cities and towns, sets a very bad precedent, is misleading to the public, and will result in inconsistent and ineffective management decisions. **The BLM needs to publish a Nevada-specific Supplemental DEIS with the correct maps and also needs to clearly articulate that the maps for the State of Nevada are based on a model and final allocation decisions may be subject to change based on field verification of mapped habitat categories.**
General Comment		**Consistency with State Regulations and Plans.** Througout the document, the BLM tends to suggest that the State of Nevada's only "regulatory mechanism" is the Conservation Credit System, and in some areas suggests that this is a "voluntary" requirement. That is inaccurate give that Nevada Revised Statute (NRS 232.162) establishes the Sagebrush Ecosystem Council and Nevada Administrative Code (NAC 232) requires mitigation for anthropogenic distrubances that result in direct or indirect impacts on Sage-grouse or their habitat on public lands. In addition, the 2019 Nevada Greater Sage-grouse Conservation Plan specifically states in Policy 3.1.2 that ***The State of Nevada's overriding policy for all management actions...is to "avoid, minimize and mitigate" impacts to sage-grouse habitat.*** Per its own policies (43 CFR Part 24), the BLM must coordinate with the State on matters of wildlife management. Since 2015, the BLM and project proponents have focused "coordination" simply on compliance with the CCS. However, the CCS only applies to "mitigation" and not avoidance and minimization measures that need to occur prior to mitigating residual impacts. BLM must coordination with the State on projects in relation to avoidance and minimization measures prior to any authorizations. The Plan needs to reflect this as well. **To ensure compliance with FLPMA consistency requirements (43 U.S.C. § 1712(c)(9)) with state and local plans and policies, the BLM must coordinate with State and local government agencies to ensure that the preferred alternative is consistent with the State and local plans to the maximum extent required by, and allowable under, federal law and executive order.**
General Comment		**Proposed Areas of Critical Environmental Concern.** The County does not support the proposed ACECs. The BLM needs to focus on completing accurate mapping, clearly articulating allocation decisions based on the mapping (includinga process for field truthing the modeled map), and coordinating with the State of Nevada. If the BLM could accomplish those three things, there is absolutely no need for ACECs. The ACECs don't appear to have any clear biological difference to areas of non-ACEC, they were not developed in cooperation with the State or other Cooperating Agencies and they do nothing to address the major threats to Sage-grouse in the State of Nevada (wildfire and invasive species). However, designating ACECs could certainly have a negative socio-economic to State and local governments, an analysis which is extremely limited and inadequate in this document. **Ultimately, the prefered alternative should NOT include ACECs as such would be inconsistent with State of Nevada and County plans.**
1.2.3		The County is concerned that the BLM may have "cherry picked" the "best available science" in some case, and in other cases disregarded previous science that is still valid. For example, the mapping contained in this document is NOT the "best available science" it was an incomplete model that hadn't been peer reviewed, published by the USGS or adopted by the State of Nevada. Yet, unpublished data on grazing and Sage-grouse produced by the University of Idaho wasn't included, nor was recent US Fish and Wildlife Service estimates of Raven populations.
2.2	NA	Table 2-1 from the 2015 ARMPA should be inlcuded in the description of each alternative, so it is clear as to the general allocation decisions the BLM is considering under each alternative.
2.2.3	NA	The County believes Alterantive 3 should be dropped from further consideration as it is not consistent with State or local plans and would result in significant negative socio-economic impacts.
2.2.4 & 2.2.5	NA	It is extremely difficult to differentiate the difference between Alternatives 4 and 5 based on this description.

2.2.6	NA	The County believes alterantive 6 should be dropped from further consideration as it is not consistent with State or local plans and would result in significant negative socio-economic impacts.
2.5	NA	Alternative 2 is most consistent with State and local plans than Alternative 5 (BLM preferred alternative). The BLM's process for this Plan was inheritnely flawed from the begining as it is nearly impossible to develop an RMP that is consistent across states when every state has a different approach to conservation of Sage-grouse as well as a different threat profiles. **Specific to Nevada, the BLM needs to work with the Cooperating Agencies to develop a Preferred Alternative that is more consistent with State and County plans.**
	Table 2-2	It concerns the County that the BLM has the same stated Goal for Alternatives 3 - 6. BLM classifies Alternative 3 as a "Preservation" alternative, which is not at all consistent with the State Plan, nor the County's policy to support Multiple Use Management. It also concerns the County that "...coordination and cooperation..." is isolated to "state wildlife agencies". Nevada has multiple Cabinet-level agencies that deal with critical aspects of Sage-grouse Management: NDCNR (Sagebrush Ecosystem Council - Sage-grouse / sagebrush conservation, Nevada Division of Forestery - fire, Nevada Division of Water Resources - water), NDA (livestock and weeds), NDOM (minerals)etc. The BLM also completely neglects to mention coordination and cooperation with local agencies or authorized users of public lands. This is a major flaw and exclusion.
2.6.3		See cover letter as relates to Mapping in Nevada and California.
	Table 2-3	Figures for Alternatives 3-6 are based on an incomplete model and unadopted map.
	Table 2-4	The only map that is consistent with the Nevada State Plan is Alternative 2, and that is now outdated. Alternatives 3 - 6 are based on incomplete and unpublished data. Alternative 3, making all habitat "Priority" is completely non-sensical. It is inconsistent with both the State of Nevada Plan and the USGS Modeling processes.
	Table 2-4	The County appreciates inclusion of the ability to "field verify" habitat. However, clear direction needs to be provided to BLM staff, that final allocation decisions are subject to such field verification, and the maps contained in this RMP are simply for planning and initial allocation decisions.
2.5.3		The statement, "The Principals of HAF can be used to measure habitat sufficiency in implementing mitigation." is not consistent with the State of Nevada Sage-grouse mitigation standards. The State of Nevada has a more robust process than what BLM is proposing through HAF.
	Table 2-5	The Application of the Mitigation Hierarchy is esstential and needs to better align with the State of Nevada definitions. The County appreciates the application of the mitigation heirarchy, but there needs to be a collaborative approach to determining "avoidance" and "minimization" with State and local governments. What the County has noticed is that the BLM often doesn't notify a Project Proponent that their authorization may not be issued early in the process resulting in excess time being spent on a doomed project. This is particularly true if BLM has a mandate, for example, too many renewable energy projects have been allowed to move forward in priority habitat, sometimes as the objection of the State and local governments. There needs to be a better aligned and better defined approach for how adequate "avoidance" and "minimization" has been acheived. Perhaps there is a pre-application checklist needed for discressionary authorizations in GRSG Habitat that defines if a project is consistent with BLM, State and local policies and if the project has done enough to "avoid" and "minimize" impacts before it moves forward to a formal application.
2.6.3	2-11	This paragraph does not appear to be consistent with the State of Nevada's Mitigation laws and regulations. The Counties defer to the SETT to clarrify this language to be consistent with the State's processes.
General Comment		The way these tables are arranged is extremely difficult to understand, particularly given Alternatives 1 and 2 are merging all states into one column. The County re-itterates that this process should have been conducated on a State-by-State basis and not a range-wide basis.
	Table 2-5	The Mitigation Hierarchy needs to be applied in cooperation and coordination with the respective State, given each State's authority to managed Sage-grouse Populations. Further, the BLM needs to make clear here that in addition to BLM regulation, project proponents MUST be in compliance with all State Regulations related to mitigation. The County agrees that some authorizations should be denied; however, this decision should be completed in cooperation with the State and local governments and relayed to the project proponent early in the process. At this time, projects in Sage-grouse Habitat continue to move forward in hopes of receiving a WEM, at exceptional cost to the BLM and all involved cooperators. The Counties agree with the concept of mitigating both direct and indirect impacts through habitat enhancement and restoration, but questions who will determine "no net loss" or "increase of carrying capacity".
	Table 2-5, Row 2	Why does the BLM's Prefered Alternative (5) not include language on adaptive management and thresholds? Is the BLM suggesting that adaptive management not be considered as part of it's preferred alternative?
	Table 2-6	This entire table needs to be replaced and refined for the State of Nevada. The HAF and the State's HAS and CCS are not consistent. This is one area where a State-Specific Draft EIS would be beneficial to all parties.
	Table 2-7	Disturbance Caps are not consistent with the State of Nevada Plan. If the BLM, State and local governments could better coordinate and collaborate on the Mitigation Hierarchy, then habitat caps shouldn't be needed.
2.5.6 - 2.5.13	Table 2-8 through Table 2-15	See cover letter for the County's preferred allocation decisions.

2.5.8	Table 2-10	First, the BLM needs to add "Associated Energy Storage" to this list. Right now storage projects, such as pumped storage are being processed as Major Rights-of-Way and they should be processed the same as wind and solar given their direct linkage, given they have very similar impacts, infrastructure and function. Second, the County recommends that the BLM's Preferred Alternative be consistent with the Allocation Table (see cover letter) where Renewable Energy is excluded from Priority Habitat. There is more than enough area outside of Sage-grouse habit (non-habitat or outside of PMUs) for BLM to meet their renewable energy mandates and goals. The BLM's own analysis in its Administrative Draft Utility-Scale Solar Energy PEIS has shown this. Finally, there needs to be better alignment between this plan and the Solar PEIS. That document establishes a Greater Sage-grouse Exclusion, but defers to this document by saying "GRSG...habitat as identified for exclusion in applicable land use plans." Meaning, if this plan identifies PHMA as "avoidance" and not "exclusion" then that exclusion is removed from the Solar PEIS. This County does NOT support renewable energy development and storage within Priority Habitat, and neither should the BLM.
2.5.9	Table 2-11	The County's Public Land Policy Plan stresses the need for both habitat restoration and predator management, particularly as relates to corvids. The County does not believe that the Draft Plan puts enough emphasis on proactive management of habitat nor predator management. The threat of fire, invasive weed species, conifer infill and expansion and predation are all major threats to Sage-Grouse in this County, yet there is very little in the Draft Plan that emphasizes the need to directly address these threats. The Draft Plan contains a "Preservation Alternative" as defined in its own public presentation, but not an "Collaborative Management Alternative". The County finds this both troubling and ironic. **Recommendation: The County recommends that the BLM designate a "Preferred Alternative" within a Nevada-specific Supplemental Draft EIS that contains additional goals, objectives and management actions to encourage habitat restoration, predator management and collaboration with State and local stakeholders.**
2.5.10	Table 2-12	The Counties support continued livestock grazing in and out of Sage-grouse habitat. The language in Alternatives 4 and 5 is confusing as to whether the BLM is wanting to use HAF or Land Health Standards to potentially "adjust" grazing. The Counties support cooperating between the BLM and grazing permittees to address any Sage-grouse specific concerns, ideally through an Allotment Management Plan. The County is concerned with language regarding removal of range improvements and the potential "taking" of private property, specifically water rights. Any alterations or new improvements need to be coordinated with the BLM and permittee and consistent with State Water Law.
2.5.11	Table 2-13	The Counties support managing HMAs within all Sage-grouse habitat to low AML. The Counties are curious as to why the BLM isn't applying similar HAF and Land Heath Standards to HMAs as they are to Grazing Allotments.
2.5.12	Table 2-14	The County strongly opposes any new ACEC designations. Alternative 3 is completely inconsistent with the State's Sage-grouse Management Plan as well as County Master and Public Land Policy Plans. See comments pertinent to ACEC Appendix, but the proposed ACECs in Nevada don't meet ACEC criteria.
2.5.13	Table 2-15	Alternative 1 is inconsistent with both the DOI's Manual on Adaptive Management and the Nevada Sage-grouse Conservation Plan. Alternative 2 is the only one consistent with the Nevada Sage-grouse Conservation Plan. Any Adaptive Management approach needs to include collaboration and coordination with State and local governments.
2.6.3		The County reitterates its position that the incomplete maps should have never been published, and the only logical path forward to be true to the public process required by NEPA is to issue a Supplemental Draft EIS. Upon publication, a webmapper should be made publically available so that maps can be reviewed at a meaningful scale.
	Table 2-34	The term "cooperation" should be added to MD SSS 5 in addition to "coordination". How does this State-specific Allocation Exception Criteria interrelate to the WEMs listed previously in this ADEIS?
General Comment		The analysis in Chapters 3 and 4 is so broad and general that it is almost useless. This is a problem with trying to assess Sage-grouse at a "rangewide" scale.
3.6.1		The description of the threats to Pinyon jay don't seem to match those presented at the BLM's recent public workshop held in Sparks, NV. The greatest threats presented at the conference were wildfire and disease with minimal impact from "harvest". The County questions how using NatureServe and a Defenders of Wildlife petition is considered unbiased and "best available science" and pinyon-juniper woodland ecology.
3.7.1		The County would like to see a quantitative analysis of how many Sage-grouse PMUs have activated triggers or warnings in HMAs where horses are in excess of high AML.
3.9		Renewable Energy presents a recent and emerging major threat to Greater Sage-Grouse. Renewable Energy production, storage and transmission warrants its own section in this analysis given the above.
3.11		The County questions how an ACEC is any different than designating Priority Habitat. The biggest issue the County sees is that each ACEC would require a subsequent plan, that may differ from the RMP further confusing Sage-grouse regulations. Part of the justification of a "Rangewide" planning effort was to make management more consistent across BLM Districts, so how does designation of ACECs, each with its own unique management plan, provide consistency?
4.2.1 Renewable Energy		It seems that impacts of renewable energy would be more comparible to the Coates findings on Geothermal Development than oil and gas development. This section almost completely disregards the impact of construction of renewable facilities and doesn't even mention energy storage projects.
4.2.1 Livestock Grazing and Wild Horse and Burro Management		Why is it that the section on Livestock Grazing is nearly 2 pages long, while the analysis on Wild Horses and Burros is only 2 paragraphs?

Appendix 1 - General Comment		The scale of these maps is not condusive to a thorough review, nor educated comments. The HMAs are meaningless at this scale. The public needs to be provided with an online Map Viewer so that they can review these maps at a reasonable scale. The map viewer should be linked to the BLM's ePlanning page and include reasonable base maps so reviewers can view the HMAs in relation to key geographic features.
Appendix 1 - General Comment		If the BLM is going to offer various mapping alternatives, then it needs to provide a narrative description somewhere in this appendix that describes how the mapping for each alternative was derived.
Appendix 1 - General Comment		How does the concept of alternative maps work in relation to the fact that every state appears to have multiple maps? The BLM needs to better cooperate and coordinate on a single map for each state that is acceptable to the State. Otherwise, this approach is extremely confusing.
Appendix 1	Map 2.1	A note should be added to this map indicating that the Management Categories (NOT SFAs) in the State of Nevada were adopted by the State in 2015. At this time, this is the only complete map that has actually been approved by the State of Nevada. There also needs to be a disclosure as to the status of the SFAs, and indication that SFAs were NOT approved by the State of Nevada. These disclosures are critical from a transperancy and accuracy standpoint.
Appendix 1	Map 2.2	Something appears to be wrong with this map. First, the BLM needs to describe what this is based on. For NV, it appears that this is the 2015 version of the map, but significant holes appear to have been incorporated in this map when compared to Map 2.1. For instance, the HMAs underlying the SFAs appear to have been turned off. It also appears that HMAs on Forest Service Managed Lands were eliminated.
Appendix 1	Maps 2.3 and 2.6	The ACECs are mapped in a way that it is impossible to get a reasonable geographic handle of where the boundaries are proposed, and this map doesn't match with the descriptions or number systems used in the ACEC Appendix. A more specific full-page map should be provided for each ACEC, including the underlying State-approved HMAs. Boundaries also need to be included in a publically available web viewer.
Appendix 1	Maps 2.8 - 2.61	All of these maps, with the exception of the (a) series, are based on incomplete modeling data in Nevada and as such are extremely misleading. In addition, for sake of transparency and socio-economic analysis quantification, acreage for each managed allocation (exclusion, avoidance, open, etc.) for each use should be listed in the Legend or on a table on the map.
Appendix 1	All Maps	All of these maps lack geographic context and content context. At a minimum, County boundaries should be added to each map to provide some level of geographic context. Additionally, there needs to be some sort of narrative for each map explaining the content and signficance of the content as relates to the DEIS. A simple citation to a study isn't adequate, nor does it provide the public a linkage to the reason it is important to the DEIS analysis.
Appendix 2		This is one area where the document becomes extremely complex and confusing. A state-specific Draft RMPA and Draft EIS would greatly eliminate the confusion created by this Appendix.
Appendix 3 - Nevada and NE CA		*The unpublished results that BLM used for this Draft EIS includes more than six years of additional field data collected since the last published version (Coates et al., 2016) and advances in methodology to produce the HMA model (Milligan et al. 2024 (in review)). It represents an estimate of how HMA model results may change as the model continues to be refined. It is anticipated that the final published model, associated maps, and documentation will be available during the spring of 2024; the BLM intends to incorporate the final published version into the Final EIS. There will likely be differences in the spatial distribution of HMAs between the Draft EIS version and the final published version.* This statement is not an adequate disclosure. The updated maps should have be finished by USGS, reviewed by Cooperating Agencies and adopted by the State of Nevada before they were released by the BLM. Publishing an incomplete model doesn't meet the standard of "best available science" nor the intent of the public NEPA process.
Appendix 3 - Nevada and NE CA		This section needs to add the roll of the State of Nevada and Sagebrush Ecosystem Council in adopting the maps. Also, the section needs to add a description that in 2015 the USGS Model was trimmed to state-defined Population Management Area Boundaries. The reason for this was to eliminate modeled habtiat that was known to be incorrect (non-habitat), or modeled habitat that no longer supports Sage-grouse populations for a variety of reasons. Finally, a disclaimer needs to be added that makes clear that the Nevada maps are based on habitat modeling, and that field verification may be required before a final allocation decision is made (the same thing occurs for required mitigation).
Appendix 4		Given that the WAFWA definitions require a longer period of time for designating leks as "Active" or "Inactive" than previous Nevada planning efforts, how will leks currently considered as "Inactive" be handled going forward? Does this match the definitions used by the USGS in its HMA modeling updates? What happens for leks that have no monitoring data? There are some signficant questions as to how the changing definitions will affect future BLM management that have yet to be answered.
Appendix 5 - General Comment		The County does NOT support designation of ACECs through this process. It appears that the BLM is attempting to prioritize some areas of Sage-grouse Habitat over other by designating ACECs. However , the State of Nevada has already done this by adopting and updating its habitat map and Conservation Plan. The BLM should focus on conserving (including proactive management) priority habitat in Cooperation with the State and local governments in Nevada, and focusing other multiple uses (such as renewable energy development) in areas located outside of Population Management Units, or in areas that have crossed ecological thresholds that won't support Sage-grouse in the future.
5.2		While the proposed ACECs may be relevant because they contain Sage-grouse habitat, the BLM hasn't shown that these areas are any more "relevant" or critial to Sage-grouse Conservation that other areas of mapped Priority Habitat.

5.2		The BLM's analysis has not presented a clear nor compelling case that ACECs are any more important than other mapped PHMA in Nevada. On the contrary, some of the ACECs contain extensive existing authorized uses that make conservation efforts more difficult and result in significant negative impacts on State and local socio-economics.
5.3		It should be noted that no State or local governments nominated ACECs, despite the State's having management authority over Sage-grouse.
5.4.3		It is concerning how top-down this preliminary evaluation was and how reliant it was on desktop analysis with reviews of modeling products. This processes was flawed from the start, sharing ACEC boundaries after the fact isn't "cooperation" in any way.
Nevada GRSG ACEC Evaluation Importance Criteria	7 - Butte Long Valley	White Pine County does not support designation of this ACEC. The County would argue that there are more important areas to focus Sage-grouse Management in the County. The boundary includes County infrastructure, one of the largest active mines in the Country and a major socio-economic driver for the County. The area contains critical minerals, includes approximately 4,500 mining claims and 6 existing transmission rights-of-way (NDOM personal communication).
Nevada GRSG ACEC Evaluation Importance Criteria	8 - Little Butte Long Valley	White Pine County does not support designation of this ACEC. The County would argue that there are more important areas to focus Sage-grouse Management in the County. The boundary includes County infrastructure, US 93, a designated energy corridor, nearly 100 active mining claims and multiple geothermal and oil leases (NDOM personal communication).
Nevada GRSG ACEC Evaluation Importance Criteria	9 - Eureka North and South	White Pine County does not support designation of this ACEC. The County would argue that there are more important areas to focus Sage-grouse Management in the County. The boundary includes County infrastructure, major gravel pits, and State Route 892. The area also contains critical mineral resources and over 300 active mining claims (NDOM personal communication).
Appendix 7		Is this framework consistent with the monitoring collected by the State of Nevada through its CCS Process?
Appendix 8 - General Comment		The County noticed inconsistencies with the habitat objectives for each state. Some states like WY only have seasonal habitats (breeding, late brood rearing, and winter). Nevada also has general and riparian. The County requests the removal of the general and riparian to be consistent across the range. The County argues that these requirements are filled by seasonal habitats, and that evauluation on condition through monitoring for annual use, land health evaulations, and SSS that the additional requirements are not necessary and do not provide any additional benefit for grazing management, and does not meet the goals of having consistency across state managment.
App 8	8.2.4	Under the column Perennial grass height, for Nesting habitat, please add language about refering to the state and site's specific ESDs to the table? "Reference state as determined by current ecological site potential in consideration of annual variability?"
App 8	8.2.4	For Note 6, please change "Ecological Site potential" to "Current ecological site potential" to reflect that conditions may have changed, this could be due to many environmental factors.
App 8	8.2.4	Move all foot notes to top of each of the seasonal habitats as current ecological site potntial should be done first before moving forward with evaluation.
Appendix 9 - General Comment		The document would have been easier to read had these figures been incorporated into the text rather than buried in an Appendix. Most figures for Nevada will need to be updated given the map changes.
App 9	Fig. 3.1	This figure shows, more clearly than anything, how wildfire is by far the most impactful influence on Sage-grouse habitat. By conducting a rangewide analysis the County is concerned that a disproportionate focus has been on anthropogenic disturbances at the expense of focusing on Wildfire Prevention, Management and Restoration.
Appendix 10 - General Comment		These assumptions should have been included in Chapter 3, rather than being buried in Appendix 10.
App 10	10.4	For Nevada, there is a major missing assumption and that is that Wildfire is the #1 threat to Sage-grouse rather than "…an important functional natural disturnbance…"
App 10	10.8	Why is there no assumption that livestock grazing can be used as a tool to enhance Sage-grouse habitat and reduce fine fuel loading?
App 10	10.9	There is a complete lack of assumptions related to the exploding interest in Renewable Energy development.
App 10	10.11	"Although management actions for most resources and resource uses have rangewide application, ACEC area management prescriptions apply only to those lands within each specific ACEC." Doesn't this defeat the purpose of a "Rangewide" approach?
App 10	10.21	Again, why was this not included in Chapter 3?
Appendix 11 - General Comment		The County questions why this Appendix was included. At minimum, an introductory paragraph should be included as well as a citation as to where the BLM pulled its "preferred habitat" information. The County doesn't understand how the BLM can complete a "Reasonably Foreseeable Development Scenario without listing pending projects and applications. This seems to be a major omission and problem for cumulative effects analysis.
Appendix 12 - General Comment		Why are only 3 land uses (Fluid Minerals, Wind and Solar) analyzed in this appendix?
App 12	Table 41	The RFDS in Nevada are extremely low. There is nearly that much area under solar application in one County in Nevada at present.
Appendix 13 - General Comment		It is impossible to develop and provide a socio-economic analysis at this level. This analysis does not provide the breadth or depth of analysis that is needed for this planning effort.
Appendix 14		It is impossible to develop and provide a cumulative effects analysis at this level. This analysis does not provide the breadth or depth of analysis that is needed for this planning effort. Because the maps provided for the State of Nevada are incomplete, many of the tables are incorrect and will need to be updated.
App 14	Table 14-1	There are projects in this County that are proposed or in active permitting (NEPA) that are not included in this table.
Appendix 15		In process

App 15	15.1.2	Any changes to range improvements need to be thoroughly discussed with the affected permittees. Removal of range improvements without consent of the Permittee is not acceptable to the County. If the range improvement involves water, then any modification must also comply with State Water Law.
App 15	15.1.2	It is concerning that the BLM suggests resting areas with vegetation treatments for an undetermined amount of time. The County would suggest revising to include site specific analysis and monitoring to determine the appropriate rest period after vegetation treatments to reduce the risk of wildfire and spread of invasive annual grasses, and to additionally reduce the impacts felt by permittees by these resting periods. Permittees should be involved throughout the entire process of any management or movement requirements following "recent burns, habitat rehabilitation, or other restoration sites."
App 15	15.2	It is not acceptable to th County that "Making allotment unavailable to grazing" is included as a potential modification that could be imposed by the BLM if deemed "incompatible" with goals identified in GHMA and PHMA. The County strongly opposes making allotments unavailable to grazing. Did the BLM intend to imply that grazing will be removed in the event of vegetation treatments? Clarity is needed on this topic.
App 15	15.2	The County strongly opposes: "Considering no grazing from May 15 – Sept. 15 in riparian areas and wet meadows." The County stresses the importance of determining turn in and turn out dates on a site-specific, allotment by allotment basis. Defining exact dates for the entire state is a doomed approach that is not appropriate for these landscapes. BLM personnel should be able to determine the appropriate turn in and turn out dates in coordination with the affected permittee and in consideration of annual conditions, habitat goals, and parameters unique to the needs of that specific site. Any drastic decisions like this made on allotments should be done in close coordination with the affected permittee and with the appropriate mitigation for the loss in forage and water resources.
App 15	15.2	The County strongly opposes: "In riparian areas and wet meadows the allowable percent utilization is 35% woody species, and a minimum stubble height of 4-6 inches (10- 15 cm) for herbaceous riparian vegetation based on site… In mountain big sage habitat, the allowable percent utilization is 40 % herbaceous key species and/or 35 % shrub key species… In Wyoming Basin big sage habitat, the allowable percent utilization is 35% herbaceous key species and/or 35 % shrub key species… In black sage habitat, the allowable percent utilization is 35% herbaceous key species and/or 35 % shrub key species… To the extent that the implementation of these strategies would be in conflict with the terms and conditions of any applicable livestock grazing permit or lease, then the BLM would complete a new decision-making process before implementing the strategies." This is concerning considering the BLM is woefully behind in its decision-making processes already and it is unclear how exactly this would be in the best interest of either the landscape or the permittee. Percent utilization should be determined by site conditions, time of use, etc. rather than by species dominant habitat parameters. For example, it is a gross misjudgment to say that all Wyoming Basin big sage habitat only has an allowable percent utilization of 35% when some Wyoming Basin big stage stands pose the greatest wildfire risk and should be utilized more than 35% to mitigate that risk. These percentages do nothing to mitigate the major threats to sage grouse identified in the 2019 Nevada Greater Sage-grouse Conservation Plan and only provide a way to pigeonhole the BLM and their flexible management opportunities. Planned grazing systems focused on site specific needs are best used to address any concerns related to season of use, deferment periods, utilization and other habitat needs.
App 15	15.2	The County is strongly opposed to any voluntary grazing relinquishments resulting in the BLM considering "whether to offer the permit for re-authorization to other grazing applicants or if the public lands where that permitted use was authorized shall be used for other resource management objectives." (Section 2.5.10, Table 2-12, Alt. 4, Management Action RM-7, Page 2-112). The reallocation of a permit for any other "resource management objectives" is not acceptable. If a permit is relinquished, it should be offered to other permittees prior to any changes in authorized use. Furthermore, it is not acceptable for the BLM to consider the "whether the public lands where that permitted use was authorized should remain available for livestock grazing or be used for other resource management objectives, such as reserve common allotments." Without proper utilization, these allotments will result in increased fire risk due to the amount of decadent forage that would accumulate. Additionally, invasive annual species would have a greater chance to establish with not opportunity for grazing management to combat their spread.
Appendix 18 - General Comment		The lack of adequate socioeconomic analysis from the 2015 and 2019 RMPAs jeopardizes this process and all decisions in the future. Despite the fact that multiple Nevada Counties and others made critical economic impact information available to the BLM through locally sourced data and reports, the prior RMPAs did not quantify the social or economic effects of actions that impact these industries directly or detailed economic and fiscal impacts to counties, among other flaws, failing to rely upon the best available information. This analysis needs to be completed due to its importance. We appreciate the BLM's partnership with the University of Nevada, Reno, (UNR) the U.S. Forest Service and counties through the Nevada Economic Assessment Project (NEAP) to create socioeconomic baseline data collection for all counties in Nevada and requests that this effort be expedited. However, the Counties were extremely disappointed to see that no NEAP data appears to have been used in the Socioeconomic Analysis or Methodology. This is a major oversight and lack of use of data the BLM helped pay to compile.

Via Email to BLM_HQ_GRSG_Planning@blm.gov
& Submitted through the Participate Now Link

June 13, 2024

Tracy Stone-Manning, Director
Bureau of Land Management
U.S. Department of the Interior
1849 C St. NW, Room 5646
Washington, DC 20240

Re: The American Exploration & Production Council's Comments on the Bureau of Land Management's Proposed Greater Sage-Grouse Draft Resource Management Plan Amendment/Draft Environmental Impact Statement (DOI-BLM-WO=2300-2022-0001-RMP-EIS)

Dear Director Stone-Manning:

The American Exploration & Production Council ("AXPC") appreciates the opportunity to comment on the Bureau of Land Management's ("BLM's") Proposed Greater Sage-Grouse Draft Resource Management Plan Amendment/Draft Environmental Impact Statement ("Draft RMPA/EIS") ("DOI-BLM-WO=2300-2022-0001-RMP-EIS").[1]

AXPC is a national trade association representing 33 leading independent oil and natural gas exploration and production companies in the United States. AXPC companies support millions of Americans in high-paying jobs and invest a wealth of resources in our communities. Dedicated to safety, stewardship, and technological advancement, our members strive to deliver affordable, reliable energy to consumers while positively impacting the economy and the communities in which we live and operate.

As part of this mission, AXPC members understand and promote the importance of ensuring positive environmental and public-welfare outcomes and responsible stewardship of the nation's natural resources. AXPC's members are committed to being good stewards of federal and Indian resources and operating in compliance with all federal requirements. In particular, our members work hard every day to fulfill our obligation to prudently and responsibly develop oil and natural gas resources. AXPC member companies produce more than half of U.S. onshore production each year, including many active operations developing federal minerals.

While AXPC shares BLM's interest in protecting and conserving public lands and protecting critical habitats, we believe that the framework provided in BLM's recent Conservation and Landscape Health Rule contravenes BLM's statutory authority and AXPC members are

[1] Made available at Greater Sage-grouse Land Use Plan Amendments and EIS, Volume 1 (blm.gov), *see also* 89 Fed. Reg. 18,963 (Mar. 15, 2024); BLM_HQ_FRNMO4500174493.

concerned that portions of that rulemaking have been relied upon in the proposed Draft RMPA/EIS.

More specifically, AXPC seeks to ensure that:

- **BLM is following the intent of Federal Land Policy Management Act ("FLPMA"):** BLM's authority to manage public lands comes from FLPMA, which aimed to balance conservation with productive land uses. Unlike other environmental statutes, FLPMA does not solely focus on protection. Rather, it directs development and uses other than conservation. FLPMA's central mandate is multiple use and sustained yield, meaning managing lands for the combination of uses that best meet the needs of the American people over time. ***This does not give priority in a wide rangeland area to any single use, it specifically requires a balance***.

- **BLM understands that oil and natural gas development from federal lands is critical for the Nation:** Affordable energy is more important now than ever as Americans grapple with rising energy prices related to increasing global demand. Additionally, U.S. oil and natural gas development has proven strategic and critical to our economic and national security including the ability to support our allies. Notably, production from federal lands managed by BLM materially contributes roughly 10 percent of those volumes, and over $9 billion in federal revenue with what are arguably some of the most responsibly produced barrels on the planet. BLM needs to balance these American energy needs with its conservation goals.

- **BLM understands that oil and natural gas development does not *per se* result in unnecessary and undue degradation and is often compatible with BLM's goal of restoring and maintaining healthy Sage Grouse habitat.** For many years now, oil and natural gas operators have used reclamation practices that are intentional with the seed mixes, treatments, and associated operations. Reclamation practices utilized on oil and natural gas pads have been proven to be effective in re-establishing sagebrush habitat as well as important understory grasses, and forbs all of which are critical habitat for sage grouse. Reclamation efforts from the industry have also been shown to increase species diversity improving areas of decadent sagebrush stands.

- **BLM bases its adaptive management on collaborative process data lead decision making and not on unproven model tools relying on state data.** *See* Appendix A, attached hereto, which discusses specific technical comments on the Targeted Annual Warning System relied upon for Adaptive Management.

- **BLM bases its Final RMPA/EIS on sound science.** There are significant sampling and data questions that have been raised about the new science that BLM relies upon for its Draft RMPA/EIS.

- **BLM does not over-use No Surface Occupancy Stipulations ("NSO"); and the agency ensures that NSO stipulations do not impair valid and existing leasehold rights:**

Automatically shifting to a reliance on NSO stipulations and conditions of approval may unintentionally push development to fee and state surface areas that have greater impacts. BLM should look at a bigger picture when determining if NSO is appropriate. Additionally, BLM cannot impact the valid, pre-existing rights of oil and natural gas lessees through the imposition of unreasonably surface use restrictions.

- **BLM does not adopt new alternatives in the Final RMPA that would essentially ban development on existing leases.** BLM is required to honor existing oil and natural gas leasehold rights and should not seek to invalidate leases through these RMPAs.

- **BLM recognizes the limits of its authority to require compensatory mitigation.** FLMPA does not expressly authorize the Secretary to conduct compensatory mitigation and the requirement to pay BLM or third-parties additional, unauthorized fees, could run afoul of other federal statutes, such as the Miscellaneous Receipts Act and Antideficiency Act.

- **BLM relies on data and GIS layers that adequately disclose important information to the public.** The Targeted Annual Warning System ("TAWS") developed by the United States Geological Survey as an advisory regulatory tool, subdivides the entire range into 485 "Neighborhood Clusters" based on a clustering method that is inconsistent with all current population management designations. To AXPC's knowledge the data used as inputs to the TAWS is not readily available and stakeholders do not have access to TAWS to see how this data is then used by the software to reach its conclusions/analysis. Additionally, there appear to be errors in the GIS map layers used for the Draft RMPA/EIS.

I. AXPC

AXPC is a national trade association representing the leading independent oil and natural gas companies in the United States. Our association works with regulators and policymakers to help them understand our operations so that they will be able to create sound, fact-based public policies that result in the safe and responsible exploration and production of America's vast oil and natural gas resources. Our goal is to provide technical and regulatory expertise, making AXPC a rich repository of resources on the industry and the science behind our operations.

AXPC's members have valuable insights to contribute to the BLM's proposed Draft RMPA/EIS. As businesses heavily reliant on federal lands, they possess significant experience collaborating with the BLM and implementing the conservation and restoration practices essential for Greater Sage Grouse habitat protection.

Given our members' extensive experience with public lands, AXPC has consistently advocated for improving the efficiency and consistency of regulations governing public land use. We have supported related BLM regulatory developments aimed at streamlining processes and promoting responsible land management. In 2023, AXPC provided comment on the Council of Environmental Quality's ("CEQ's") Notice of Interim Guidance on Consideration of Greenhouse

Gas Emissions and Climate Change under the National Environmental Policy Act ("NEPA"),[2] BLM's Proposed Rule on Waste Prevention, Production Subject to Royalties, and Resource Conservation,[3] and BLM's Proposed Rule on Conservation and Landscape Health.[4] AXPC has also commented on proposed Categorical Exclusions for Geophysical and Other Operations,[5] BLM's Proposed Rule to Regulate Hydraulic Fracturing on Public and Indian Lands,[6] and BLM's Call for Streamlining and Planning in NEPA.[7] Indeed, AXPC's motivation to frequently contribute to federal permitting and public lands rulemakings is intuitive: our members are uniquely positioned provide comments on how regulations over the exploration and development of public lands impact our nation's energy supply.

AXPC consistently emphasizes its commitment to responsible and sustainable public land use in rulemaking dockets. Our members continually refine their environmental and land management practices to safely and responsibly address resource needs while minimizing impacts, protecting wildlife, and respecting communities. The positive environmental outcomes from AXPC member companies' practices demonstrate the compatibility of responsible resource development with economic growth.

Additionally, energy development on public lands provides enormous value for the nation. Energy development activities on the public lands account for about 10% of total domestic production of crude oil and natural gas,[8] revenues from oil and natural gas leases on onshore federal lands exceeded $8.6 billion in fiscal year 2022.[9] This substantial return for the taxpayer is comprised of royalty payments, bonuses, interest payments on leases, application fees, rents, and other sources.

AXPC appreciates BLM's consideration of these comments. Given our members' extensive experience operating on federal lands, we stand ready to serve as a resource for BLM. Additionally, AXPC endorses and incorporates by reference the comments submitted by the American Petroleum Institute ("API").

II. DETAILED COMMENTS

a. BLM's relevant statutory authority.

[2] *See* Comments on the Council for Environmental Quality's Notice of Interim Guidance on Consideration of Greenhouse Gas Emissions and Climate Change under the National Environmental Policy Act (88 Fed. Reg. 1,196) (CEQ-2022-0005) (2023).
[3] *See* Comments on BLM's Proposed Rulemaking on Waste Prevention, Production Subject to Royalties, and Resource Conservation (87 Fed. Reg. 73,588) (Nov. 30, 2022).
[4] See Comments on BLM's Proposed Rulemaking on Conservation and Landscape Health (88 Fed. Reg. 19,583), 2023
[5] *See* Comments on Categorical NEPA Exclusions for Geophysical and Other Operations (71 Fed. Reg. 4,159) (2006).
[6] *See* Comments on BLM's Hydraulic Fracturing on Federal and Indian Lands Proposed Rule (78 Fed. Reg. 31,636) (BLM-2013-0002-0011) (2013).
[7] *See* 2017 Response Request at https://axpc.org/wp-content/uploads/2018/03/public_policy_24jul2017.pdf.
[8] Revenues and Disbursements from Oil and Natural Gas Production on Federal Lands at Summary.
[9] https://revenuedata.doi.gov

In 1976, Congress passed FLPMA to streamline management and promote multiple uses of public lands for multiple use and a sustainable yield.[10] Prior to the enactment of FLPMA, the federal government managed public lands using a patchwork of laws and authorizations. This patchwork of laws became difficult to implement and led to disordered management of federal lands. Additionally, there were concerns that a large portion of federal lands were being conveyed to private parties or withdrawn from productive use for the benefit of the American public.

Unlike many other federal statutes like the Clean Air Act,[11] the Clean Water Act,[12] and the Endangered Species Act,[13] FLPMA was not solely designed for environmental or habitat protection. On the contrary, FLPMA was designed to both protect the public lands and to manage the public lands "in a manner which recognizes the Nation's need for domestic sources of minerals,"[14] along with other productive uses. Congress accomplished these goals by creating distinct legal protections for the most sensitive types of land, while still allowing remaining public lands to be open to development and productive uses under pre-existing statutes like the Mineral Leasing Act ("MLA"[15]).

The "multiple use and sustained yield" mandate is central to FLPMA and highly important. This "multiple use and sustained yield" directive echoes the first multiple-use mandate set forth in the Multiple Use Sustained Yield Act of 1960 ("MUSYA").[16] FLPMA Section 302 provides that "[t]he Secretary shall manage the public lands under principles of multiple use and sustained yield."[17] But as clearly indicated in FLPMA's legislative history, the definition of multiple use was drawn from the MUSYA and is intended to have the same meaning.[18] Therefore, the legislative history of MUSYA regarding multiple use principles applies with equal weight to FLPMA. In explaining MUSYA's multiple use directive, the House Report discusses the "relative values" analysis as follows:

> One of the basic concepts of multiple use is that all of these resources in general are entitled to equal consideration, but in particular or localized areas relative values of the various resources will be recognized . . . In practice, the priority of resource use will vary locality by locality and case by case. In one locality timber use might dominate; in another locality use of the range by domestic livestock; in another outdoor recreation or wildlife might dominate. Thus, in particular localities the various resource uses might be given priorities because of particular circumstances. This is the meaning of the last sentence of section

[10] *Lujan v. National Wildlife Federation*, 497 US at 877.
[11] 42 U.S.C. § 7401, *et seq*.
[12] 33 U.S.C. § 1251, *et seq*.
[13] 16 U.S.C. § 1531, *et seq*.
[14] 43 U.S.C. § 1701(a)(11)-(12).
[15] As prescribed by Congress, the purpose of the MLA is to promote the orderly development of oil and natural gas resources on the public lands through private enterprise. *Geosearch, Inc. v. Andrus*, 508 F. Supp. 839, 842 (D. Wyo. 1981) (citing *Harvey v. Udall*, 384 F.2d 883 (10th Cir. 1967)); *Mountain States Legal Found. v. Andrus*, 499 F. Supp. 383, 392 (D. Wyo. 1980) (*citing Cal. Co. v. Udall*, 296 F.2d 384, 388 (D.D.C. 1961).
[16] 16 U.S.C.§ 528.
[17] 42 U.S.C. § 1732(a).
[18] *See* Senate Report No. 95-583 ("this [multiple use] definition is very similar to that . . . which presently appears at section 4 of the Multiple-Use Sustained-Yield Act of 1960 . . .." and House Report No. 94-1163 ("the definition of multiple use preserves essentially its same meaning as used in the Forest Service Multiple Use Act of 1960.)."

> 2 of the bill. **But no resource would be given a statutory priority over the others. The bill would neither upgrade nor downgrade any resource**.[19]

This framework prohibits BLM from giving superior priority to any one resource or resource set over others particularly at a "landscape" scale. Instead, concerning the goal of "multiple use," FLPMA requires that the public lands be managed "so that they are utilized in the combination that will best meet the present and future needs of the American people."[20]

FLPMA's multiple use mandate protects existing rights and policies, including those under the Mining and Minerals Policy Act of 1970, which states:

> [T]hat it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs . . . [21]

Likewise, FLPMA also incorporates and requires compliance with the MLA. Accordingly, under FLPMA's "multiple use and sustained yield" mandate, BLM must strike an appropriate balance between potentially competing productive uses and land management objectives, but it can only do so in a manner consistent with the requirements in the MLA and other similar resource management statutes that Congress incorporated into FLPMA.

Over the course of many years, the oil and natural gas industry has engaged in numerous activities and efforts to help conserve and restore resilient habitat for the Greater Sage Grouse. However, the overly broad use of restrictions in the Draft RMPA/EIS impacts many activities, including grazing, mineral development, and renewable energy. While conservation is important, this could limit energy development on public lands, which is becoming increasingly important for the nation's energy supply. BLM should consider if these lands are being managed effectively for the American people, given growing demand for energy. BLM should also consider whether it can use its management tools to manage lands in a manner that will facilitate both conservation and productive uses that results in reasonable or minimal surface impacts – such as oil and natural gas development.

b. <u>Oil and natural gas development is critical for the Nation.</u>

Of the roughly 640 million surface acres owned by the federal government, BLM manages more than 30 percent of them (245 million acres). BLM also manages 700 million acres of subsurface mineral estates, which is more than any other government agency in the United States. In addition to oil and natural gas, BLM managed federal lands are also used for conservation and wildlife, grazing, recreation, mining and exploration of critical minerals, geothermal and renewable energy. Oil and natural gas development only occurs on a very small percentage of federal lands

[19] H.R. Rep. No. 1551, 86th Cong., 2d Sess. (1960), reprinted in 1960 U.S.C.C.A.N. 2377, 2379 (emphasis added).
[20] 43 U.S.C. § 1702(c).
[21] 84 Stat. 1876, 30 U.S.C. § 21a.

(~4 percent).[1] Yet in 2022, oil production from federal lands provided 11 percent of total US oil production and 9 percent of US natural gas production.[22] As a result, production from public lands can have an outsized impact on total oil and natural gas production when compared to the associated surface footprint of that development.

Oil and natural gas development coming from federal lands also plays an important role in providing affordable energy across the globe. In 2023, the United States produced more crude oil than any nation at any time in history.[23] American natural gas production also set a record in 2024.[24] Production is growing because demand for oil and natural gas is increasing worldwide. Global demand for oil is expected to grow by 2.25 million barrels per *day.*[25] And demand for natural gas is expected to grow by 2.5 percent.[26] As a result of increasing energy demand, energy prices remain high which impacts the middle class and lower income earners the most.[27]

The majority of oil and natural gas development on federal lands comes from New Mexico and Wyoming; and here, the Draft RMPA/EIS will have significant impacts on the potential to continue development of valuable reserves throughout the state of Wyoming. At the same time, the BLM is leasing considerably less minerals during the Biden Administration. In 2023, BLM held lease sales in nine states, only offering 293,575 acres for lease nationwide.[28] The majority of this acreage (78 percent) was in Wyoming and only offered for lease in response to a court decision directing BLM to do so. The remaining 22 percent offered was spread across 8 other states, many of which don't even have much oil and natural gas production. BLM ultimately failed to lease most of the acreage offered, **leasing a total of just 161,380 acres in all of 2023**. In contrast, the Obama Administration **leased an average of 1.35 million acres per year**.

Once a lease is issued, companies must spend significant time and resources to determine whether the lease is producible, and then more time and resources be able to apply for a permit to drill. It can easily take 5-6 years before an issued lease has its necessary approvals and its first well on production. In 2023, the BLM on average took approximately 100 more days than it did in 2022 to approve submitted APD applications and it took an average of 55 additional days to issue pending permits after an application was deemed administratively complete. Many operators report it is taking between 8–18 months to get an APD approved. This trend is especially common in regions with the most oil and natural gas activity for BLM to oversee.

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[22] *See* About the BLM Oil and natural gas Program, www.blm.gov (last visited June, 6, 2024) (*available at* About Oil and natural gas | Bureau of Land Management (blm.gov)).

[23] *See* U.S. Energy Information Administration, In-Brief Analysis, United States produced more crude oil than any country, ever, www.eia.gov (Mar. 11, 2024) (*available at* United States produces more crude oil than any country, ever - U.S. Energy Information Administration (EIA)).

[24] *See* Rapier, U.S. Oil and natural gas Production Are Ahead of Last Year's Record Pace, Forbes (Apr. 26, 2024) (available at U.S. Oil and natural gas Production Are Ahead Of Last Year's Record Pace (forbes.com)

[25] *See* Lawler, OPEC sees robust summer oil demand, economic upside potential, Reuters (Apr. 11, 2024) (available at OPEC sees robust summer oil demand, economic upside potential | Reuters)

[26] *See* Anand, Global gas demand to grow by 2.5% in 2024, despite supply and geopolitical challenges, Energyworld.com (Jan. 27, 2024) (available at Global gas demand to grow by 2.5% in 2024, despite supply and geopolitical challenges, ET EnergyWorld (indiatimes.com))

[27] *See* Guan, Burden of the global energy price crisis on households, Nature Energy (Feb. 2023) (*available at* Burden of the global energy price crisis on households | Nature Energy).

[28] *See* Taxpayers for Common Sense, Fact Sheet Oil and natural gase Lease Sales on Federal Lands (Nov. 16, 2023) (*available at* Oil and natural gas Lease Sales on Federal Lands - Taxpayers for Common Sense).

The reluctance to issue new oil and natural gas leases and delays in issuing applications for permits to drill in areas where leases already exist will undoubtedly impact domestic oil and natural gas production for years to come. Wells produce their highest volumes in their first year or so, which then decline rapidly, often by as much as 90 percent by year two. For the remainder of its life, the well may continue to produce at a lower, steadily declining rate (~10 percent a year). This means that without regularly adding new wells to the mix, to replace large volumes of production as existing wells decline, total federal production and the revenues and economic activity it generates will also fall. So, for the next 5 – 10 years, Americans will likely feel the pains of lost federal production and steep declines in the federal revenues and state disbursements that go with it.

c. Oil & natural gas development is a permissible use of public lands under FLPMA.

Notably, FLPMA does not require a "no net loss" standard to habitat. The no net loss standard (applied in several of the alternatives proposed by BLM in the Draft RMPA/EIS) appears is a concept based on a 1989, bi-partisan policy put in place by EPA and the U.S. Army Corps of Engineers establishing compensatory mitigation under a Memorandum of Agreement issued pursuant to the Clean Water Act Section 404(b)(1) guidelines. Those guidelines do not apply under FLPMA.[29]

Under FLPMA, BLM must manage federal lands for multiple use. Multiple use management is a deceptively simple term describing the complicated task of striking a balance among the many competing uses to which land can be put, including recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific, and historical values, including oil and natural gas development.

While BLM has a duty to prevent unnecessary and undue degradation ("UUD") of public lands, oil and natural gas production can and has safely occurred for years in many areas without causing UUD.[30] FLPMA does not define UUD, but the Department of Interior has determined that oil and natural gas development projects do not constitute UUD so long as development is consistent with applicable laws, policies, and prudent operating standards.[31] Indeed, in *Biodiversity Conservation Alliance,* 174 IBLA at 5-6, the Interior Board of Land Appeals found that mere surface occupancy and oil and natural gas development are not *per se* UUD. Instead, Congress clearly intended FLPMA's multiple use standard, including UUD, to coexist with mineral development.

Historically oil and natural gas development is a use that has been allowed on public lands. For decades, following the passage of FLPMA, BLM has applied an interpretation of "multiple use" that clearly contemplates allowing oil and natural gas development on public lands. It would be

[29] ELI.pdf (army.mil)
[30] 43 U.S.C. § 1732(b).
[31] *Biodiversity Conservation All. v. Bureau of Land Mgmt*., No. 09-CV-08-J, 2010 WL 3209444, at *17 (D. Wyo. June 10, 2010) (citing *Biodiversity Conservation Alliance,* 174 IBLA 1, 5-6 (2008)).

arbitrary and capricious for the agency to now, suddenly, disallow such uses without a solid scientific justification for doing so.

This is because not all degradation results in UUD.[32] As BLM similarly stated in Instructional Memorandum No. 92-67, "'[u]nnecessary and undue degradation' implies that there is also necessary and due degradation."[33] This historic interpretation of FLMPA does not comport with a no net loss requirement. The U.S. Court of Appeals for the District of Columbia Circuit has explained that the obligation to prevent UUD must be understood in the context of FLPMA's multiple use and sustained yield mandates, which clearly allow the BLM to authorize activities that result in some level of "degradation."[34] The court cited with approval IBLA decision holding that an environmental impact may rise to the level of "unnecessary or undue degradation" if it results in "something more than the usual effects anticipated from *appropriately mitigated* development."[35] Applying that standard, the D.C. Circuit upheld the BLM's determination that there would be no UUD where the BLM adopted mitigation measures that "comport with [Wyoming Game & Fish Department] recommendations and utilize reasonably available technology."[36] So, reasonable mitigation measures can and have successfully helped ensure the oil and natural gas development can continue as an allowed multiple use on public lands contained within the Sage Grouse Habitat Area. Nonetheless, these mitigation measures and requirements have not historically amounted to a no net loss standard. Instead, FLPMA requires a balance of permissible uses with conservation goals. And this will likely always entail some permissible level degradation.

d. <u>The Adaptive Management Practices requirements are based on flawed data.</u>

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[32] *See Theodore Roosevelt Conservation Partnership v. Salazar*, 661 F.3d 66, 78 (D.C. Cir. 2011) ("FLPMA prohibits only unnecessary or undue degradation, not all degradation.") (emphasis in the original); *see also* BLM, Instructional Memorandum No. 92-67 (Dec. 3, 1991) ("'Unnecessary and undue degradation' implies that there is also necessary and due degradation. For example, if there is only one route of access possible for development of an existing oil and natural gas lease, and that route presents the likelihood of some degradation of public lands or resources, such degradation may be considered necessary for the management of the oil and natural gas resource. . . . As another example, the RMP/EIS or site-specific environmental document may identify mitigation which would result in excessive expenditures of money or unusual technological requirements to achieve compliance. Otherwise there would be some degree of degradation of public lands or resources. If the mitigation would render the proposed operation uneconomic or technologically infeasible so that a prudent operator would not proceed, such degradation may also be considered necessary for the management of the oil and natural gas resource.").

[33] BLM, Instructional Memorandum No. 92-67 (Dec. 3, 1991) ("'Unnecessary and undue degradation' implies that there is also necessary and due degradation. For example, if there is only one route of access possible for development of an existing oil and natural gas lease, and that route presents the likelihood of some degradation of public lands or resources, such degradation may be considered necessary for the management of the oil and natural gas resource. . . . As another example, the RMP/EIS or site-specific environmental document may identify mitigation which would result in excessive expenditures of money or unusual technological requirements to achieve compliance. Otherwise there would be some degree of degradation of public lands or resources. If the mitigation would render the proposed operation uneconomic or technologically infeasible so that a prudent operator would not proceed, such degradation may also be considered necessary for the management of the oil and natural gas resource.").

[34] *Theodore Roosevelt Conservation P'ship*, 661 F.3d at 76.

[35] *Id*.

[36] *Theodore Roosevelt Conservation P'ship*, 661 F.3d at 78.

The adaptive management as proposed in Alternatives 3, 4, 5 and 6 is unlawful, in that it relies arbitrary and capricious data. The proposed management relies on data that the BLM does not own but rather relies on state data, along with implementing the Targeted Annual Warning System ("TAWS") to identify potential triggers for thresholds. TAWS has not been proven as accurate or robust enough compared to the data driven processes relied upon by states such as Wyoming. More important, the TAWS model is flawed, outputting false information. The BLM may want population data; however, states are not required to provide this information, and in some states, it would be unconstitutional should the data be used to negatively impact the state by leading to further restrictions to oil and natural gas projects impacting states revenue from taxes, royalties, and employment. The BLM does not have the authority to require TAWS as its tool to model adaptive management needs.

Causal factors analysis ("CFA") deadlines are also unreasonable based on BLM's current processing times. The timeframe of six months lacks explanation. The proposal states during this assessment phase the BLM will not authorize any new activity in the affected area. BLM's proposal changes the scientifically supported adaptive management system from the 2015 and then 2019 plans to add triggers from an unproven model tool of which can stop development while ongoing studies and analysis are performed in the proposed processes for CFA. Oil and natural gas industry reclamation practices associated with project work, however, have great beneficial impact. For many years now, oil and natural gas operators have used reclamation practices that are intentional with the seed mixes, treatments, and associated operations. Reclamation practices utilized on oil and natural gas pads have been proven to be effective in re-establishing sagebrush habitat as well as important understory grasses, and forbs all of which are critical habitat for sage grouse. Reclamation efforts from the industry have also been shown to increase species diversity improving areas of decadent sagebrush stands.

e. <u>It is important to base the RMPA/EIS on sound science.</u>

Additionally, AXPC supports the comments provided by API regarding the new science relied upon by BLM for the Draft RMPA/EIS. Management area identifications/boundaries and restrictions must be based on sound science. As pointed out in comments submitted by the API, research supports that there are limited impacts of modern oil and natural gas operations on the Greater Sage Grouse. In part, this is due to the fact that modern oil and natural gas operations result in limited surface impacts that are temporary in nature. Oil and natural gas operators undertake a variety of measures to minimize surface impacts, and BLM has stated in previous guidance that it intends to protect valid existing rights.[37] Additionally, many oil and natural gas leases within the Draft RMPA/EIS area are already subject to surface use stipulations that were in place at the time the lease was issued, and these stipulations, which are contractually agreed upon terms, should not change with RMP revisions.[38]

The majority of surface disturbance associated with oil and natural gas development undergoes reclamation soon after initial surface disturbance. Oil and natural gas operations have larger land

[37] Areas of Critical Environmental Concern Fact Sheet.pdf (blm.gov)

[38] U.S. BUREAU OF LAND MGMT., H–1624–1, at I-2, IV-2 (stating circumstances when RMP revisions are permitted and describing example when surface use stipulation may be revised).

needs in the implementation stage of drilling and completing wells. Once wells are producing the footprint of the well pad in most cases is reduced and put into reclamation. Reclamation practices are intentional with the seed mixes, treatments, and associated operations. Reclamation practices utilized on oil and natural gas pads assist the environment and have been proven to be effective in re-establishing sagebrush habitat as well as important understory grasses, and forbs all of which are critical habitat for sage grouse. Reclamation efforts from the oil and natural gas operator practices have increased species diversity improving areas of decadent sagebrush stands. Sage Grouse flock to easier to digest new leader growth and young vegetation which older sagebrush stands have less abundance of. The robust reclamation species diversity seed mix utilized by operators provides new growth and has assisted insect diversity and abundance as well. Both the reclamation plant species and insect abundance and diversity aid the sage grouse diet. These reclamation practices have been in use in western states for decades. As such, oil and natural gas development can successfully coexist with the healthy establishment of Sage Grouse habitat and does not need to be completely stopped in order to protect the species.

f. BLM should not overly utilize or rely on NSO conditions in the final RMPA/EIS.

BLM should not impose new NSO conditions for development on existing leases. Federal oil and natural gas leases are contracts.[39] In these contracts, the federal government is granting the lessee an exclusive right to fully develop any oil and natural gas that may be found on the leasehold and lease agreement provides that any necessary facilities that are required to extract the oil and natural gas can be constructed.[40] Older federal leases also reserved to BLM the right to dispose of the surface of the leased lands if the right "to dispose of any resource in such lands" would not "unreasonably interfere" with lease operations. More recent federal leases provide that BLM has the right "to continue existing uses and to authorize future uses upon or in the leased lands, including the approval of easements or rights-of-way. Such uses shall be conditioned so as to prevent unnecessary or unreasonable interference with rights of lessee." Additionally, under well-established law, the mineral estate under a federal oil and natural gas lease is typically considered the dominant estate and, thus, has the right to use a reasonable portion of the surface to develop its mineral rights granted under the lease.[41] As a result, most existing federal oil and natural gas leases (unless they contain an agreed upon NSO stipulation at the time of lease issuance) contain a right for the lessee to use a reasonable amount of surface for their operations.

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[39] Under well-established precedent, after the BLM accepts the bid and the lessee fully pays for the lease, a contract exists between the lessee and the BLM based solely on those identified terms and conditions. *See, e.g., Coastal States Energy Co*., 80 IBLA 274, 279 (1984).

[40] Under the terms of the Mineral Leasing Act, the Secretary of the Interior does not have the right to cancel lease rights of a bona fide purchaser. 30 U.S.C. § 184(h)(2); 43 C.F.R. § 3108.4; *Clayton W Williams, Jr*., 103 IBLA 192, 210 - 216 (1988).

[41] *2 Law of Federal Oil and natural gas Leases* § 22.10[1], Rocky Mountain Mineral Law Foundation (2008) (emphasis added, internal footnote omitted); *see also* Onshore Oil and natural gas Order No. 1, 72 Fed. Reg. 10308, 10324 (Mar. 7, 2007) ("The Federal mineral estate is the dominant estate and the BLM and its lessees may enter the lands to perform such operations as are necessary to develop the minerals."); *Susan J. Kayler*, 162 IBLA 245, 257-58 (2004).

Because leases are contracts, they cannot be unilaterally modified by the BLM.[42] The BLM may not later amend the lease with terms not identified in the sale notice and not part of the contract subject to the oral bidding process. A retroactive amendment of lease terms by the BLM would be a unilateral breach of the lease contact.[43] In addition, "[t]o hold otherwise would... violate the equal opportunity for all bidders to compete on a common basis for leases."[44]

Surface use rights are one of the land use rights contained within an oil and natural gas lease and they cannot and should not be eliminated for existing federal oil and natural gas leases that did not contain an NSO at the time of lease issuance. FLPMA provides that nothing in the Act shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act.[45] FLPMA further provides that all actions by the Secretary shall be subject to valid existing rights.[46] Leasing is the point at which BLM makes an irretrievable commitment of resources such that BLM can no longer preclude surface disturbing activities on lease parcels.[47] Thus, an NSO restriction in a Resource Management Plan that is by its terms to be applied to future oil and natural gas leases does not provide an independent basis to impose an NSO restriction on previously issued leases.[48]

While it is true that BLM may impose mitigation measures on leasehold operations, BLM's authority has limits.[49] The BLM cannot, for example, impose COAs that are inconsistent with existing, contractual lease rights and the BLM cannot restrict operations to the point that economic development on a lease is precluded. Courts have recognized that once the BLM has issued an oil and natural gas lease conveying the right to access and develop the leasehold, the BLM cannot later impose unreasonable mitigation measures that take away those rights.[50]

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[42] *Winkler v. Andrus*, 614 F.2d 707, 712 (10th Cir. 1980); *Union Oil Co. v. Morton*, 512 F.2d 743, 747 (9th Cir. 1975); *see also Mobil Oil Exploration & Producing Southeast, Inc. v. United States*, 530 U.S. 604, 620 (2000) (recognizing that federal oil and natural gas leases are contracts and that the federal government's breach of lessees the right to explore for and develop oil and natural gas entitles lessee to refund); *Oxy USA, Inc. v. Babbitt*, 268 F.3d 1001, 1006-7 (10th Cir. 2001) (noting that the Tenth Circuit has long held that federal oil and natural gas leases are contracts), *rev'd on other grounds, BP America Production Co. v. Burton*, 549 U.S. 84 (2006).

[43] For example, BLM Instruction Memorandum 92-67 explained that "[t]he lease contract conveys certain rights which must be honored through its term, regardless of the age of the lease, a change in surface management conditions, or the availability of new data or information. The contract was validly entered based upon the environmental standards and information current at the time of the lease issuance."

[44] *Anadarko Prod Co*., 66 IBLA 174, 176 (1982), *aff'd* Civ. No. 82-1278C (D. N.Mex. 1983).

[45] 43 U.S.C. § 1701, note (a) (2000).

[46] Federal courts have interpreted the phrase "valid existing rights" to mean that federal agencies cannot impose stipulations or COAs that make development on existing leases either uneconomic or unprofitable. *See Utah v. Andrus*, 486 F. Supp. 995, 1011 (D. Utah 1979); *see also Conner v. Burford*, 848 F.2d 1441, 1449-50 (9th Cir. 1988), *see also* 43 U.S.C. § 1701, note (h) (2000); *Colorado Environmental Coalition, The Wilderness Society*, 165 IBLA 221 (Apr. 8, 2005).

[47] *See, e.g.*, *Union Oil Co. of Cal et al.*, 102 IBLA at 189.

[48] *See, e.g*., *Colorado Environmental Coalition, The Wilderness Society*, 165 IBLA 221 (Apr. 8, 2005).

[49] *William P. Maycock*, 177 IBLA 1 (2009), *Yates Petroleum Corp*., 176 IBLA 144 (2008). Notably, the *Yates* decision does not stand for the proposition that BLM can impose COAs whenever it deems necessary or in broad programmatic documents. Rather, in *Yates*, the IBLA merely affirmed the imposition of an additional COA based on site-specific information including recent and directly applicable scientific research. *Yates*, 176 IBLA at 157; *William P. Maycock*, 177 IBLA 1, 16-17 (2009).

[50] *See Conner v. Burford*, 848 F.2d 1441, 1449-50 (9th Cir. 1988).

For newly issued leases, BLM could decide to offer parcels subject to an NSO stipulation. However, prior to doing so, BLM should consider whether this would result in optimal outcomes for the Greater Sage Grouse. Oil and natural gas operators have increasingly found ways to limit their use of the surface when pursuing development to help with conservation efforts. Technological advances in drilling now allow for horizontal drilling into many (but not all mineral leases). Additionally, advances in technology have resulted in temporary uses of larger amounts of surface which are then reclaimed after initial drilling and completions, while leaving a longer-term smaller footprint after drilling and completions are finalized. Many times, during this interim reclamation process operators have been able to grow additional sage-brush habitat that is heartier and which provides better nutrition to leks. In addition, automatically shifting surface use by using NSOs from federal oil and natural gas leases to private and state surface areas may not result in the best outcomes for the Sage Grouse.

AXPC recommends that BLM consider a number of factors when determining whether an NSO stipulation on a new lease is appropriate. For example, the agency should consider:

- If there are reasonable mitigations other than NSOs that can be used?
- Can the O&G operator's development result in more robust areas of sage brush habitat that are better for lek populations?
- Will drilling from State and Fee lands have a more significant impact?
- Is directional drilling from an off-lease location feasible and economic?

g. <u>The BLM must not adopt an Alternative that would deny development on existing leases</u>.

Regardless of comments received from other parties, BLM should not adopt new alternatives or additional conditions which would prevent, prohibit or essentially ban development of existing leases. It is well settled that once the BLM has issued a federal oil and natural gas lease without NSO stipulations, and in the absence of a nondiscretionary statutory prohibition against development, the BLM cannot completely deny development on the leasehold.[51] Only Congress has the right to completely prohibit development once a lease has been issued. Thus, any alternative that would void leases or deny development through modified stipulations or new conditions of approval could be found unlawful. Additionally, should the BLM adopt an alternative that denies or unreasonably delays the ability to develop existing leases, the BLM's actions in carrying out that alternative may constitute a taking in violation of the Fifth Amendment to the U.S. Constitution. Additionally, any alternative that would substantially modify lease rights could subject the BLM to rescission and restitution claims.[52]

h. <u>BLM must recognize the limits on its authority to require compensatory mitigation</u>.

[51] *See*, *e.g.*, *National Wildlife Federation, et al*., 150 IBLA 385, 403 (1999); *Western Colorado Congress*, 130 IBLA 244, 248 (1994).
[52] *Amber Resources Co. v. United States*, 538 F.3d 1358, 1377 - 78 (Fed. Cir. 2009).

AXPC recognizes that mitigation – including compensatory mitigation can play an important role in Greater Sage Grouse conservation, but compensatory mitigation should be conducted on a voluntary basis. There are different types of activities that may be considered compensatory mitigation that state and federal agencies employ. For example, some compensatory mitigation plans contemplate conducting mitigation projects located on a lease or unit or other nearby federal lands. While other types of compensatory mitigation programs contemplate purchasing credits from mitigation banks for work that may be completely unrelated to the lease or lessor. Still other proposed forms of compensatory mitigation seem to merely contemplate paying money to third parties – like Non-Governmental Organizations organized to promote general welfare projects. Not all types of compensatory mitigation are the same in a practical or legal sense.

While FLPMA vests the Secretary of the Department of Interior with broad authority to manage public lands, FLPMA's language is fairly specific as to when the Secretary is authorized to assess fees or charges. For example, Section 304 provides how and when the Secretary may assess fees, charges, and commissions related to public land uses. This section states that "the Secretary may establish reasonable filing and service fees and reasonable charges and commissions with respect to applications and other documents related to public lands." Section 401 of FLPMA specifically authorizes the charging for grazing fees. However, FLMPA contains **no** language authorizing BLM to assess or demand fees or payments for compensatory mitigation. This is important because Congress was specific in FLMPA's text as to when the Secretary could charge or impose fees and new explicit or implicit mandates that public land users pay or otherwise financially compensate for impacts could be construed as an unauthorized fee.[53] In fact, a 1995 BLM policy and legal analysis raised serious concerns that compensatory mitigation could "appear[] to be an unauthorized tax or an equally unauthorized attempt to augment BLM's existing appropriations" that would likely "strike the subjects of the 'contribution' as little more than thinly veiled blackmail."[54] As the analysis further cautioned, "the courts tend to find such matters very offensive to fundamental notions of fairness and administrative law."[55]

Likewise, nothing within the MLA or existing oil and natural gas leases specifically allows BLM the right to add additional fees or charges for surface disturbances arising from pre-existing surface use rights granted under a federal oil and natural gas lease agreement. Recently, when BLM sought to change or add fees under the onshore Federal Oil and natural gas Leasing Program the agency was required to obtain statutory amendments or new statutory authority under the Inflation Reduction Act from Congress. And members of Congress were specific in the Inflation Reduction Act that new fees could only apply prospectively to newly issued leases.

While BLM often requires mitigation operations at actual impacted federal land sites, such mitigation activities arise directly from the use on that particular parcel of federal lands. BLM has not historically sought compensatory mitigation for harm caused to a species. This is something that falls within the purview of the Endangered Species Act and the jurisdiction of the Fish & Wildlife Service or state wildlife agencies. Here, the new science cited by BLM as justification for the Draft RMPA/EIS seems to focus most heavily on protections for the birds, themselves.

[53] *See Kotab v. Bureau of Land Mgmt.*, 595 F. Supp. 3d 947, 955 (D. Nev. 2022), *appeal dismissed,* No. 22-15810, 2022 WL 17261849 (9th Cir. Aug. 3, 2022) (finding statutory limits as to when BLM can charge fees).
[54] Statement of Policy Regarding Compensation Mitigation, BLM-WY IM No. 96-21 (Dec. 14 1995).
[55] Statement of Policy Regarding Compensation Mitigation, BLM-WY IM No. 96-21 (Dec. 14 1995).

The studies primarily analyze issues like population density, lek persistence, and genetic uniqueness. As a result, it is not clear what exactly BLM intends to seek compensatory mitigation for. For example, if lek populations decline on a leasehold, does BLM intend to demand payment for the wildlife decline? Or does BLM intend to prospectively require oil and natural gas operators to pay for future forecasted impacts to the species? What if these actual or forecasted population declines are attributable to another cause, like increased predation?

As indicated in API's comments, there are significant data-related questions related to issues like genetic connectivity, where the studies relied upon by BLM are based on small sample sizes and/or contain sampling errors. The TAWS developed by the USGS as an advisory regulatory tool, subdivides the entire range into 485 "Neighborhood Clusters" based on a clustering method that is inconsistent with all current population management designations. This system is then used by USGS and BLM to track and regulate 2 to 3-year trends in neighborhood clusters relative to large-scale "climate cluster" trends. However, those climate clusters are not based on actual climate data but clustering of leks into higher levels, with special post-hoc carve outs to create other climate clusters (such as Jackson WY was not related to climate). Some neighborhood clusters contain only a single lek or a handful of leks, which contributes to sampling error and erroneous results.[56] Additionally, the last year of data collection was in 2019 when populations were at a low ebb. Moreover, the climate papers relied upon by BLM consider the worst case RCP8.5 climate models, which even the IPCC has backed away from. And the genetic diversity and genetic connectivity papers relied upon by BLM are based on a handful of "neutral" genetic markers that are not relevant to natural selection in the wild. Moreover, the sample sizes are frequently small in this research and large gaps occur in the range. As such, there are significant questions about what is actually causing the observations that BLM may ultimately want to seek compensation for. What happens if oil and natural gas operations are found to not be the cause of some or any of the above issues after compensatory payments are paid? Will operators be entitled to refunds from BLM, mitigation banks, or the third parties who receive payment?

Finally, there are questions concerning BLM's authority to require payments to third parties or mitigation banks. The Constitution gives Congress exclusive authority to determine how to spend funds deposited in the Treasury.[57] The "power of the purse" is a well-settled component of separation of powers. To protect this power against intrusion from the Executive Branch, Congress has enacted such statutes as the Miscellaneous Receipts Act and Antideficiency Act.[58] The Miscellaneous Receipts Act provides that government officials "receiving money for the Government from any source shall deposit that money with the Treasury."[59] The Antideficiency Act prohibits government officials from expending funds (or incurring financial obligations) in

[56] Search for Map 3.2 and Map 3.3 in GRSG DEIS 2024_Vol 2_App01_Maps Part6_508 to see how the range has been subdivided and the TAWS results.
[57] *See* Article I, Section 8 Clause 1 (Taxing and Spending Clause); Article I, Section 9, Clause 7 (Appropriations Clause).
[58] *See generally* Todd David Peterson, Protecting The Appropriations Power: Why Congress Should Care About Settlements at the Department of Justice, 2009 B.Y.U. L REV. 327, 332-52 (2009) (explaining how Executive attempts to evade Congress' appropriations authority led Congress to enact the Miscellaneous Receipts Act and the Antideficiency Act).
[59] 31 U.S.C. § 3302(b).

excess of appropriations.[60] The Miscellaneous Receipts Act requires any agency receiving funds on behalf of the United States to deposit them in the Treasury. Previous attempts by agencies to divert money away from the Treasury to third parties have been deemed improper and inconsistent with the Congressional intent of the Act, absent express authorization from Congress.

In situations analogous to the types of compensatory mitigation recently promulgated by BLM in the Conservation & Landscape Health Rule, the Office of Legal Counsel (OLC) has raised legal concerns, finding that it is improper for agencies like the Department of Justice to require payments to third parties for the settlement of claims related to injured waterfowl.[61] Likewise, questions could be raised if BLM similarly begins demanding payments to mitigation banks or third parties for the benefit of the Greater Sage Grouse. BLM should further clarify what types of compensatory mitigation it seeks in order to avoid the appearance of trying to circumvent Congress's clear power over the budget and appropriations.

i. <u>BLM must be transparent, making all science and data on which it bases its analysis available to the public.</u>

The Draft RMP/EIS covers a vast scope of rangeland making it challenging for stakeholders to properly identify and assess the differences between the alternatives being proposed and their respective management measures. Furthermore, these management measures may differ by state, adding another layer of complexity. The BLM's approach of consolidating 77 RMP amendments into one action also makes it difficult to identify and understand the rationale behind each of the proposed alternatives.

The TAWS developed by the USGS as an advisory regulatory tool. *See* Appendix A. To AXPC's knowledge the data used as inputs to the TAWS is not readily available and stakeholders do not have access to TAWS to see how this data is then used by the software to reach its conclusions/analysis.

Additionally, it is not clear where all of the data came from to create the GIS map layers for the Draft RMPA/EIS. When looking at the GIS map layers provided by BLM, it does not appear that Greater Sage Grouse is actually located throughout the entire range. In fact, some areas identified in the BLM's GIS maps layers appear to be completely unrelated to Greater Sage Grouse and instead focus on resources like archaeological sites or raptor's nests.

The GIS Mapping Layers for all alternatives appear to be based on additional resources beyond Sage Grouse leks and habitat. It is hard to determine if these areas were truly intended to be part of the management described within the alternatives as Sage Grouse habitat or if there is some error. When comparing GIS layers for sage grouse leks and habitat from the proposed RMP to sage grouse habitat identified by the Wyoming Game and Fish department and the Governor's

[60] 31 U.S.C. § 1341; see also 31 U.S.C. §1301(a) ("Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.").
[61] *See* Effect of 31 U.S.C. § 484 on the Settlement Authority of the Attorney General, 4B Op. O.L.C 684, 684-85 (1980) (*available at* https://www.justice.gov/olc/opinions?f%5B0%5D=field_opinion_post_date%3A1980&f%5B1%5D=field_opinion_post_date%3A1980-06).

Executive Order there is some correlation. However, there are additional habitat designations presented in the proposed RMP which do not include known Greater Sage Grouse habitat at all. For example, there are several polygon features that do not correlate with any known lek or habitat data but appear to be based on raptor nests such as golden eagles and burrowing owls. This is not appropriate for inclusion in Sage Grouse management plans. In addition, there are line features that include major stipulations in the draft RMP that correlate to historic trails – again, not appropriate for inclusion as Sage Grouse habitat. Further, a proposed no surface occupancy ("NSO") stipulation seems to have been applied randomly to the edges of Environmental Impact Statement project areas – again not correlated with known Sage Grouse habitat or lek data.

It appears that designation of NSO, major stipulation areas and minor stipulation areas considered a multitude of resources other than Greater Sage Grouse, rendering avoidance or mitigation meaningless for the preservation of the species and placing undue restrictions on public lands users. Further, inaccurately designating these areas as Sage Grouse habitat will limit the ability of BLM to appropriately site projects under its multi-use mandate, which could lead to greater impacts to sage grouse at the landscape scale.

As a result, it is difficult to tell how the different proposed alternatives will impact oil and natural gas development throughout the area.

III. CONCLUSION

AXPC appreciates the opportunity to provide these comments on the Draft RMPA/EIS. While AXPC shares BLM's interest in protecting and conserving public lands, we believe that BLM needs to provide additional analysis and justification for the proposed Draft RMPA/EIS and various alternatives.

At minimum, we believe BLM should revise the proposed Draft RMPA/EIS consistent with these comments, respond to stakeholders' need for additional details on the proposal, and allow the public a second comment opportunity on the re-proposed amendments.

Sincerely,

Wendy Kirchoff
Senior Vice President Policy
American Exploration and Production Council
www.axpc.org

To: U.S. Department of the Interior
BLM Utah State Office
ATTN: HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, UT 84101

From: Stolz Family, Wingspread West LLC, McGee Resources LLC, Tyler Mountain LLC, Casdorf Holdings LLC, Ingram Homestead LLC, Shawkemo Enterprises Inc. and Monacan Trail LLC

Date: June 11, 2024

Re: Comments on Greater Sage Grouse Draft Resource Management Plan Amendment/Draft Environmental Impact Statement (Draft RMPA/EIS) in general and with respect to Colorado in particular

This letter is to serve as comments to the Greater Sage Grouse Draft Resource Management Plan Amendment/Draft Environmental Impact Statement (Draft RMPA/EIS) in general and with respect to Colorado in particular.

We believe we represent a unique perspective on the desirability of achieving the appropriate balance between responsible energy development and the conservation of greater sage grouse (GRSG). As owners of a large Colorado ranch in Grand County with significant sage brush and sage grouse on BLM split-estate and leased acreage, we are very supportive of preserving ranching operations and conserving this unique wildlife for future generations. Over the past years, we have been very active in cooperating with federal and state agencies in major programs to conserve and enhance the sage brush habitat and sage grouse on our ranch – e.g. -

- Multi-year contract with the Natural Resources Conservation Service regarding a variety of range improvement projects over large areas of the ranch to benefit sage grouse.
- Several contracts with the U.S. Fish & Wildlife Service (USFWS) regarding sage grouse habitat improvement, including a pinion/juniper removal project that was also funded by the Colorado Parks & Wildlife
- Multi-year Conservation Program Contract with the Natural Resources Conservation Service under the Sage Grouse Initiative for the bulk of the ranch

In addition, we have engaged in numerous privately supported and funded projects to enhance the conservation of sage grouse on our ranch.

Given our unique perspective and background, we have spent considerable time reviewing the Draft RMPA/EIS and consulted with experts and state officials in compiling the following comments:

As the BLM acknowledges, GRSG are dependent on intact and functioning sage brush ecosystems and despite years of management attention by state and federal agencies GRSG habitat continues to be detrimentally impacted and lost. (ES-1) As a result and as referenced by the BLM, the most recent GRSG population nadirs are lower than prior nadirs and there have been range wide population declines of over 40% for the last two decades and 87% of areas throughout the range had declining populations since 2002. (1-3) Given these dire facts, it is imperative that the BLM institute greater protections and restrictions in hopes of avoiding the listing of GRSG as an endangered species. It is apparent that the proposed changes to the RMP undermine the basic GRSG habitat protections and restrictions currently in effect instead of strengthening and solidifying them. The Draft RMPA/EIS preferred Alternative fails to be proactive in implementing greater protections and restrictions in anticipation of detrimental impacts to GRSG habitat from global warming and prolonged drought.

Accordingly, regardless which Alternative is chosen, the GRSG habitat protections and restrictions need to be significantly enhanced due to the precipitous GRSG declines noted above. It is implausible that under the preferred Alternative 5 that the critical 1 mile buffer around a lek is not withdrawn from Fluid Mineral Development and Leasing and that there are not NSOs on PHMAs especially given the technological advancements in oil and gas development (such as fracking and horizontal drilling).

Furthermore, the proposed changes to the RMP provide too much flexibility and discretion for the local BLM Authorized Officer without providing proper guidelines/standards, oversight and review leading to a lack of continuity in management and vulnerability for GRSG habitats. There has also been significant turnover in staffing at local BLM offices and in many cases understaffing of such offices. Thus, the BLM Authorized Officer will unlikely have the experience, expertise, capacity or support to make the critical decisions regarding waivers, exceptions or modifications (WEMs) to the important protections and restrictions concerning

GRSG habitat. Even the Draft RMPA/EIS acknowledges that increased flexibility could increase potential impacts on GRSG habitat, including the potential for disturbance, degradation and loss. (ES-6) Therefore, guidelines/standards, oversight and detailed review as well as coordination with and agreement of state agencies must be required as outlined below.

In addition, the Draft RMPA/EIS does not adequately address situations involving split estates. The Draft RMPA/EIS references that "successful conservation of GRSG requires a shared vision among … landowners and federal land management agencies." Given that the surface owner of the split estate is a substantial stakeholder and can have a significant roll in impacting the GRSG habitat, there should be inclusion of and coordination with the surface owner in the process regarding energy development and leasing, especially with regards to determining WEMs.

SPECIFIC COMMENTS

Habitat Maps (Table 2-4) –

The Draft RMPA/EIS should use the GRSG habitat maps prepared by the relevant state agency. Official "maintenance checks" should be completed with appropriate state agency every 3 years to evaluate changes to habitat maps and mapping strategies, Habitat Indicators and Benchmarks, etc.

Lek and Lek Buffers –

The Draft RMPA/EIS claims that existing lek buffers will remain in place unless state specific circumstances warrant adjustment (1-9). This general statement is misleading given that the preferred Alternative does not retain the 1 mile lek buffer and further permits broad WEMs that effectively negate the lek buffers. The Draft RMPA/EIS concedes that research across species' range has identified relationships between various anthropogenic developments and GRSG avoidance behavior or lek abandonment. (2-5) Accordingly, it is of utmost importance that the 1 mile total buffer around the lek be strenuously protected and that full 1 mile area be completely withdrawn from/closed to leasing without WEMs. There should also be a 3 mile NSO around active leks regardless of habitat designation given the advancement in technology and techniques

associated with directional drilling for fluid minerals and the WEM process for special circumstances that may arise.

The Draft RMPA/EIS admits that the preferred Alternative has "fewer restrictions on resource uses and provided more opportunities for considering compensatory mitigation." (2-2) This is directly contrary to the BLM's stated objective of the need for action to conserve, enhance, restore and manage GRSG habitat to support persistent, healthy GRSG populations. The Draft RMPA/EIS must attempt to stem the precipitous population declines in hopes of avoiding a listing of the GRSG.

Throughout the Draft RMPA/EIS, the definition of a "lek", "active lek", or "occupied lek" should align with the WAFWA definition, which describes an active lek as a lek that has 2 or more males counted during two or more years within the last 10 years (Cook et al. 2022, Connelly et al. 2000).

Table 2-4 should be revised so that regarding Fluid Mineral Leasing 1 mile lek buffer should be closed.

Table 2-8 should be revised so that there are no exceptions for Fluid Mineral Leasing WEMs since the 1 mile lek buffer is closed.

PHMA –

If the BLM genuinely intends to achieve its stated goals and objectives regarding GRSG, the Draft RMPA/EIS must institute tougher restrictions and protections for PHMA that are outside the 1 mile lek buffer given that PHMA has the highest value to maintaining sustainable GRSG populations (2-11). Given the importance of this habitat to the survival of the GRSG species, it is imperative that PHMA be stabilized and improved rather than subjected to broad WEMs. The USFWS cited application of regulatory tools such as NSO stipulations as an effective conservation tool in minimizing the exposure of GRSG to fluid mineral development. (2-47) Accordingly, there should be a broad NSO for PHMA and much more narrowly defined extremely limited situations in which WEMs could be considered because mitigation as a

remedy for such destruction/disturbance is a lengthy and tedious process that can take decades, if restoration of habitat is successful at all.

Furthermore, in the rare instance that such a WEM is granted, the standard should be a net conservation gain instead of no net loss.

The mitigation for such rare instances should also include long-term well-defined assurances from the operator since it may take decades to remedy. (2-23)

Table 2-4 should be revised so that regarding Fluid Mineral Leasing of PHMA outside of the 1 mile lek buffer should be NSO.

Table 2-4 should also be revised so that regarding Saleable Minerals/Mineral Materials of PHMA should be closed.

Table 2-4 should also be revised so that regarding Fluid Mineral Leasing of PHMA outside of the 1 mile lek buffer should be NSO subject to WEMs.

Table 2-8 should also be revised so that there are narrowly defined extremely limited situations exceptions to NSO for Fluid Mineral Leasing WEMs – see also below.

The Authorized Officer subject to the following, may consider and grant an exception to the NSO for PHMA outside of the 1 mile lek if all of the items listed in the Authorized Officer & WEMs below are addressed.

GHMA

Table 2-4 should be revised so that regarding Fluid Mineral Leasing of GHMA outside of the 1 mile lek buffer should be NSO.

Table 2-8 should be revised so that there are narrowly defined extremely limited situations exceptions to NSO for Fluid Mineral Leasing WEMs – see also below.

Mitigation –

Given the abysmal GRSG population decline and loss of habitat referenced above, compensatory mitigation should be eliminated from the options when involving leks and PHMA due to their critical nature for the survival of the GRSG species. Simply paying money for the destruction and/or disturbance of leks or PHMA will not achieve the BLM goal of conserving, enhancing, restoring and managing GRSG habitat to support persistent, healthy populations. As previously stated, studies have shown that it is a lengthy and tedious process to restore habitat once it is destroyed – the Draft RMPA/EIS states that restoration can take decades. (2-23)

As stated in 2.5.3, mitigation should be durable, ensuring it will be resilient and persist as GRSG habitat (barring any natural disaster), and should be completed prior to associated actions occurring. Mitigation should also be prioritized to occur within the same area of the impact (within the same HAF fine scale area, or if not possible, within the same neighborhood cluster or HAF mid-scale area where practicable) so that it provides habitat for GRSG populations affected by the project.

Colorado should adopt a "net gain" strategy when it comes to mitigation.

Compensatory mitigation should only be considered for GHMA and not be an option for PHMA.

Disturbance Caps –

As stated in 2.5.5, calculation of disturbance caps must consider all disturbances (existing and new) since GRSG are negatively impacted by the total disturbance. Within designated spatial analysis areas, disturbance on all surface ownerships should be considered to accurately capture potential impacts of new authorizations on GRSG.

Calculation of disturbance caps must consider all disturbances (existing and new) since GRSG are negatively impacted by the total disturbance. The preferred Alternative needs to expand the definition of what is considered a disturbance to include indirect impacts. The Draft RMPA/EIS states that indirect impacts may not be fully captured and thus additional measures are necessary to reduce the full impact on GRSG. (2-28)

Furthermore, the Draft RMPA/EIS preferred Alternative should be revised to use the North Dakota and South Dakota approach of having a 5% disturbance cap including wildfires and agricultural as well as a 3% cap for anthropogenic disturbances (2-28). In furtherance of BLM's stated goals, this would aid in conserving, enhancing, restoring and managing GRSG habitat to support persistent, healthy populations and attempt to stem the precipitous population declines in hopes of avoiding a listing of the GRSG.

In addition, the total impacts of all existing residences, barns, fencing, range improvements, reservoirs, agriculture conversion, etc. should be included in both the numerator and the denominator when calculating the disturbance cap regardless of whether mapped as PHMA or GHMA.

Table 2-7 should establish a 5% disturbance cap at the project area scale including wildfire, agriculture and reservoirs and a 3% disturbance cap on specific anthropogenic activities.

Authorized Officer & WEMs –

All WEMs in Tables 2-9 and 2-10 should only be considered if, in consultation with the State of Colorado, it can be demonstrated that development and surface occupancy in the 3 mile NSO outside of the lek, there is no direct, indirect or cumulative impact on GRSG or its habitat based on all three (3) of the bullet point criteria listed in Table 2-9 and the Authorized Officer obtains the agreement, including written justification and scientific based rationale, between the BLM District Managers and the appropriate State authority (CPW in CO's case) that the proposed action satisfies all of the criteria listed above. In addition, in the case where there is a split estate surface owner, prior to granting any WEM to any NSO stipulation, CSU: Disturbance Cap, Seasonal Constraints stipulations or TL stipulation, the Authorized Officer and CPW consult and coordinate with such surface owner to evaluate the foregoing criteria and weigh alternatives that would first avoid any impact and if avoidance is not possible, to minimize any impact to the maximum extent possible. In all these instances, prior to granting WEMs to an NSO stipulation, the potential WEM shall be subject to at least a 30-day public review and comment period before implementation. These "checks and balances" are comparable to those already in existence

under Alternative 2 and will add accountability, continuity and consistency to the process as well as limiting political influence at the federal and state level.

Renewable Energy Development and Associated Transmission –

The 1 mile total buffer around the lek regardless of habitat type and all PHMA must be managed as exclusion areas for utility scale wind and solar, including testing, development and all associated infrastructure.

GHMA must be managed as avoidance areas for utility scale wind and solar, including testing, development and all associated infrastructure as outlined in Alternative 4.

Minimizing threats from predation –

Alternative 4 appears to provide the best support for the goal of conserving, enhancing, restoring and managing GRSG habitat to support persistent, healthy populations by prioritizing predator control across all habitat areas.

Livestock Grazing –

Given the positives associated with livestock grazing in the text, including without limitation, its short term, temporary and transitory nature; minimal, if any, damage to sage brush habitat; reduction in fine fuels which leads to decreased risks of wildfires; lack of physical structures and lasting impacts and existing management mechanisms are in place to ensure that land health standards are being met; Alternative 5 is the most appropriate alternative.

ACEC Management –

For the various reasons outlined above, the Draft RMPA/EIS should not prohibit the designation of new ACECs specific to management of GRSG.

Comparison of Alternatives, Adaptive Management –

Alternative 4 appears to provide the best support for the goal of conserving, enhancing, restoring and managing GRSG habitat to support persistent, healthy populations.

As part of these comments, we reference and incorporate our previous submissions and exhibits, including without limitation those dated November 27, 2013.

We appreciate your review and consideration of our comments.

We can be reached at 434-977-7671 and at PO Box 561, Kremmling, CO 80459 to discuss our comments.

We request that you withhold from public review our personal identifying information.

Sincerely,
Stolz Family
Wingspread West LLC
McGee Resources LLC
Tyler Mountain LLC
Casdorf Holdings LLC
Ingram Homestead LLC,
Shawkemo Enterprises Inc. and
Monacan Trail LLC

By: _____
Whit Stolz

June 6, 2024

Sharif Branham
U.S. Department of the Interior
Bureau of Land Management
Assistant Director of Resources and Planning
1849 C Street, N.W.
Washington, D.C. 20240
SUBMITTED VIA BLM e-Planning Website

Re: Ormat Nevada Inc.'s Comments on BLM's Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement

Dear Assistant Director Branham:

Ormat Nevada Inc. ("Ormat") provides these comments on the Bureau of Land Management's ("BLM") Greater Sage-Grouse Draft Resource Management Plan Amendment ("RMPA") and Environmental Impact Statement ("EIS"). As detailed below, Ormat supports preferred Alternative 5 as BLM's final management action, with some specific modifications as noted in Section II.D. Ormat strongly opposes Alternative 3 or Alternative 6 given those alternatives' severe effects on geothermal leasing and project development throughout the greater sage-grouse's range.

I. Ormat's Interests.

Ormat is a global leader in the geothermal energy sector, exploring for geothermal energy potential, and designing, developing, building, and operating geothermal power plants around the world. Ormat has pioneered state-of-the-art technology to harness the earth's power in places never previously thought possible, and with the least impact to the surrounding environment. Ormat's binary closed loop process produces geothermal fluid from heated reservoirs deep in the earth, passing heated fluid through the power plant to turn geothermal turbines for power production, and then reinjecting the same geothermal fluid back into the subsurface to be reheated and recycled for use again. This technology results in little to no consumptive water use and minimal surface disturbance. In the United States, Ormat owns and operates 21 power plants and has another 30 planned in western states, primarily in Nevada, but also in Oregon, California, Idaho, Utah, and New Mexico.

In the big picture, geothermal development is a key energy source for the renewable energy transition and decarbonization goals with substantial benefits and relatively fewer environmental impacts than other renewable energy sources. Geothermal energy has the benefit of providing baseload power, 24 hours per day, seven days per week, independent of the weather. Compared to intermittent renewable energy sources—wind and solar—that cannot provide consistent baseload energy, geothermal energy development also has the smallest physical footprint. Wind energy disturbs up to three times as much land as geothermal, and solar development requires five times more ground surface (without accounting for battery storage) to generate the same amount of electricity. The climate benefits of geothermal energy and its relatively minimal footprint are positives for the planet overall and sage-grouse habitat in particular, as western landscapes become more vulnerable to wildfire, invasive weeds, and other stressors as a result of climate change. Geothermal development also boosts local rural economies and creates millions of dollars in royalty revenues to the federal government.

Ormat's geothermal development, particularly in Nevada, is key to the growing geothermal energy sector. As BLM acknowledges, "Between 2015 and 2019, geothermal development growth in Nevada surpassed all other states with 5 new geothermal plants." RMPA/EIS at 3-36. As technology advances, geothermal prospects continue to emerge with strong potential for continued growth in Nevada and expansions in Oregon, Utah, and New Mexico. Geothermal development in these markets is often located on federal geothermal leases, and sometimes in areas that are also home to greater sage-grouse. Ormat has a sustained commitment to sage-grouse conservation to ensure geothermal energy production can co-exist with proper mitigation to minimize adverse effects to the species. Ormat has a vested interest in public land management policies that affect the siting and permitting of geothermal energy development in sage-grouse habitat, and asks that its comments be considered in BLM's final RMPA decision.

II. Support for Preferred Alternative 5.

Ormat supports BLM's selection of the preferred Alternative 5. Alternative 5 presents the most balanced approach for ensuring management action to protect and enhance sage-grouse habitat while simultaneously allowing for multiple-use of the public lands. Alternative 5 is also the most consistent with existing state management plans and proposes minimal changes to existing management, promoting regulatory certainty. Ormat also appreciates BLM's commitment in Alternative 5 to applying the latest science to the designation of habitat management areas and allowing for exceptions to buffer and density restrictions where supported by site-specific information.

A. Coordination and Consistency with State Plans Is Appropriate.

Alternative 5 calls for managing sage-grouse habitats "in coordination and cooperation with state wildlife agencies," and defers largely to state-specific plans. RMPA/EIS at 2-10. Ormat supports BLM's decision to defer to state agencies given the primary role of the states regarding wildlife management. In particular, BLM should defer to the well-established and considered approach of the Nevada Sagebrush Ecosystem Council and the Sagebrush Ecosystem Technical Team, including the robust Nevada Conservation Credit System ("CCS"), which is now over a decade old. The state system is designed to meet the unique challenges to sage-grouse in the Nevada, including wildfire. Mitigation obligations under the CCS ensure habitat impacts from man-made disturbances are fully compensated by long-term enhancement and habitat protections that result in an overall benefit to the species. Ormat appreciates BLM's intent to embrace these state systems to ensure consistency of regulation and honor investment backed expectations in the long-term success of the Nevada sage-grouse conservation programs.

B. Consistent with the FLPMA, Ormat Supports the "No Net Loss" Standard.

Ormat supports BLM's proposal in Alternative 5 to move away from the current standard for compensatory mitigation that requires demonstration of a "net conservation gain" to the "no net loss" standard that is more consistent with the Federal Land Policy and Management Act ("FLPMA"). *See* RMPA/EIS at 2-22, and Table 2-5 at 2-23. The "no net loss" standard has a long history of implementation under the national wetlands policy. The more recent push for a standard that would show a net positive outcome—"net benefit" or "net conservation gain"—remains controversial and substantial questions have been raised regarding BLM's authority to enforce a "net conservation gain" standard for use of the public lands. Indeed, FLPMA **mandates** multiple-use management and does not foreclose activities that may have adverse effects on public lands and natural resources. 43 U.S.C. §

1701(a)(7). As such, FLPMA contemplates some change in conditions of the public lands as part of its balanced management approach, so long as there is not "unnecessary or undue degradation of the lands." 43 U.S.C. § 1732(b). FLPMA does not support conditioning public land use on the improvement of resources, particularly where the proposed action would exercise a valid existing right—such as development of a pre-existing geothermal lease. Returning to the "no net loss" standard avoids this controversy and maintains consistency with FLPMA's directive to authorize multiple uses of the public lands while avoiding unnecessary or undue degradation.

C. Alternative 5 Should Apply the Latest Science Regarding Geothermal Energy Production and Limited Impacts on Sage-Grouse.

BLM's analysis of the impacts of geothermal lease development on sage-grouse in the RMPA/EIS is extremely limited. BLM states at 3-10:

> Geothermal power is expanding, and while little is known regarding impacts of geothermal energy on wildlife populations, recent research suggests GRSG are adversely affected. GRSG experienced decreased nest and adult survival near geothermal infrastructure. Ravens also increased in density around geothermal plants, potentially increasing predation risk to GRSG.

On page 4-6, BLM reiterates that "[r]esearch on geothermal development in Nevada reported adverse effects on GRSG populations by decreasing nest survival, adult survival, and increased density of common ravens."

These conclusions are based on citation to a single source—Coates, Peter S., et al., *Geothermal energy production adversely affects a sensitive indicator species within sagebrush ecosystems in western North America*. Biological Conservation (280) 1-10 (2023).[1] Coates' conclusions, which relied on data collection near two of Ormat's geothermal facilities in Nevada, are not properly contextualized. Independent review of Coates's article showed that the data were consistent with the changes in abundance and lek attendance estimated for other types of development impacts and "were not unique to the subject geothermal facilities." *See* UES Geothermal Sage-Grouse (Coates et al. 2023) Response (Nov. 29, 2023), attached as Exhibit A. Moreover, population declines at some leks could not be attributed to geothermal power production given similar declines in control populations during the study period. *Id.* Reviewers also questioned Coates' conclusions and attributions of impacts to geothermal development given the small sample size and limited geographic scope of the data. If anything, data actually showed sage-grouse populations in the vicinity of the geothermal power plants to be relatively stable, with some leks showing increased attendance, while others showed population declines. In sum, data does not support Coates' generalized conclusions about the negative impacts of geothermal development and should not be credited in BLM's impact analysis. With appropriate avoidance, minimization, and mitigation of project elements (e.g., perch deterrents, noise reduction,

[1] BLM refers in the text of the EIS to "Coates 2021," but the reference presumably should be to Coates, 2023.

management of external lighting, raven mitigation[2], timing restrictions, etc.), geothermal development can be compatible with sage-grouse habitat.

D. Valid Existing Rights Must Be Protected.

Federal lease interests are vested property rights, which BLM cannot take or interfere with without due process of law. *See W. Watersheds Project v. Haaland*, 22 F.4th 828, 842 (9th Cir. 2022) (oil-and-gas lease is a "legally protected interest in [a] contract right with the federal government"); *Union Oil Co. of Calif. v. Morton*, 512 F.2d 743, 747 (9th Cir. 1975) (an oil-and-gas "lease does convey a property interest enforceable against the Government"). BLM acknowledges that valid existing rights must be protected under any sage-grouse management plan. RMPA/EIS at 1-7, 4-97. Yet BLM's proposed management includes measures that have the potential to severely limit those existing rights. The most obvious example is right-of-way exclusion areas. Without the ability to build access roads, lay pipelines, or construct transmission lines, a geothermal lease is of little use. *See* RMPA/EIS at 4-86 (acknowledging potential "stranding" of geothermal resources where rights-of-way are unavailable on surrounding federal land). Preserving the lease itself as an unreachable island is meaningless without the ability to access the lease and transport the produced power. BLM must be clear in the EIS under the preferred alternative that sage-grouse management prescriptions must yield to valid existing rights, including permitting of infrastructure necessary to exercise those rights.

E. Ormat Requests Minor Modifications of Alternative 5.

Overall, Alternative 5 provides a balanced approach to managing activities in sage-grouse habitat. Ormat supports BLM's designation of Priority and General Habitat Management Areas ("PHMA" and "GHMA"), backed by site-specific habitat verification, and application of protection measures to protect sage-grouse habitat and populations concentrated in these areas. Protecting habitat and limiting activity within these areas—i.e., determining that land within PHMA should not be offered for geothermal leasing, except with no-surface-occupancy stipulations—is acceptable when balanced with BLM's focus on authorizing activity outside of designated management areas. This is reflected in management direction in the Nevada/California RMPs to prioritize and permit activity outside of PHMA and GHMA.

Unfortunately, BLM now proposes as part of Alternative 5 to apply sage-grouse mitigation actions to activity "outside of PHMA and GHMA." *See* Table 2-31 at 2-168 (MD SSS I). While the new management direction would continue to prioritize projects and activities outside of designated habitat, those projects nonetheless would be required to avoid and/or minimize direct and indirect impacts to sage-grouse and their habitat, even though they lie outside of habitat management areas. BLM also proposes that lek buffers will apply to all active or pending active leks, regardless of whether they are located in designated PHMA or GHMA. *See* RMPA/EIS at 4-22 to 4-23, 4-31. These restrictions run counter to the goal of prioritizing activity outside of designated habitat, and Ormat asks that these proposed changes be reversed and management under Alternative 1 be retained.

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[2] Besides other issues with the report, Mr. Coates himself lobbied against Ormat engaging in raven mitigation at the studied Ormat facilities, further undermining the reliability of his conclusions or any reliance on his conclusions that geothermal facilities negatively impact greater sage-grouse by virtue of raven proliferation.

Similarly, BLM should not implement the proposed stricter standards for obtaining an exception to sage-grouse density restrictions and lek buffers under Alternative 5[3], where compensatory mitigation obligations are adequate to protect the species and its habitat, particularly in Nevada under the direction of the Sagebrush Ecosystem Council. Nor should BLM add a 30-day public comment period for waiver and exception requests in sage-grouse habitat. *See* EIS at 2-51. Where federal action is proposed in sage-grouse habitat, the proposed action and contemplated mitigation will be addressed in the National Environmental Policy Act ("NEPA") process and a separate 30-day mandatory comment period is redundant and can only serve to unnecessarily complicate and delay permit approvals.

With these changes to Alternative 5, Ormat supports its implementation.

III. Alternatives 3 and 6 Should Not Be Implemented.

Ormat strongly opposes Alternative 3 and Alternative 6, each of which would apply unprecedented restrictions across millions of acres of public lands, turning sage-grouse habitat into de facto habitat conservation areas. Under Alternative 3, BLM would manage all habitat currently designated as either PHMA and GHMA as PHMA. BLM would then close PHMA to new mineral leasing and right-of-way ("ROW") permits (outside of designated corridors) and would recommend withdrawal of PHMA from location and entry under the Mining Law of 1872. Under Alternative 3, BLM would also designate over 11 million acres of lands as areas of critical environmental concern or "ACECs" specific to sage-grouse management. While management under Alternative 6 would not be quite as restrictive, BLM nevertheless would layer on top of Alternative 5 the designation of over 11 million areas of sage-grouse habitat as ACECs, introducing severe restrictions in those areas.

A. Inconsistency with FLPMA's Multiple-Use Mandate and ACEC Purpose.

Both Alternative 3 and 6 would contradict FLPMA's multiple-use mandate by putting millions of acres off limits from development for the preservation of a single resource. *See* RMPA/EIS at 1-12. Moreover, designation of landscape-scale ACECs is inconsistent with FLPMA's purpose. *See* RMPA/EIS Table 2-14 (ACEC management comparison). FLPMA's legislative history is clear that ACECs were intended as narrow designations with management prescriptions precisely tailored to protection of the specific resource requiring the designation. As one Senate Report states,

> [The ACEC] category is not designed to be a 'no growth' category. Only uncontrolled development is unwanted. The adjective 'incompatible' is present to make certain that development is to be allowed which is compatible with the basic environmental or renewable resources values or safety problems of the land in question. In short, multiple use, when planned, is clearly expected.

S. Rep. 95-734 O, at 128 (1973). This language demonstrates that Congress specifically expected compatible renewable development and never intended the designation of ACECs to override multiple-use management. *See also* S. Rep. No. 94-583, at 43 (1975) ("[U]nlike wilderness areas … [ACECs] are not necessarily areas in which no development can occur. Quite often, limited development, when wisely planned and properly managed, can take place in these areas without unduly risking life or safety or permanent damage to historic, cultural or scenic values or natural systems or processes."). Nor did

[3] *See* EIS at 4-27 (describing Alt. 4 impacts that are the same as those under Alt. 5)

Congress intend for entire landscapes to be cordoned off for special management and heavy-handed restrictions. ACECs are only appropriate where "special management is required" to protect the resource, and here, BLM has demonstrated over the past decade that sage-grouse can be managed effectively without resorting to draconian restrictions and ACEC designations.

B. BLM's Singular Purpose and Need is Unjustifiably Narrow Given BLM's Statutory Mandate.

BLM's purpose and need for the RMPA focuses exclusively on sage-grouse management without acknowledging the broader context of its multiple-use mandate in land use planning and statutory direction to authorize development of federal mineral resources. Under FLPMA, land use planning was conceptualized as an iterative process specific to the geographic area under review. 43 U.S.C. § 1712(a) (requiring planning by "tracts or areas for use of the public lands"). A plan covering a particular area should broadly consider all of the natural resources for management to allow a balanced approach to multiple uses. The sage-grouse RMPA effort flips that concept on its head by taking a singular resource and considering its management across the entire range, encompassing multiple states and dozens of resource management planning areas. The result is that the multiple-use element of FLMPA is buried and potentially lost where the focus of the purpose and need does not account for all of the various resource uses that must be balanced by the agency.

This concern is borne out by BLM's articulation of the purpose and need, which focuses exclusively on improving efficiency and effectiveness of greater sage-grouse management. RMPA/EIS at ES-1. This improperly narrow focus is directly reflected in the agency's consideration of Alternative 3 and Alternative 6, both of which would severely restrict other uses of the public lands inconsistent with FLPMA. If the purpose and need properly incorporated BLM's overarching statutory mandate and considered management of all BLM resources in a balanced way, such alternatives would be considered unreasonable for failure to meet the purpose and need. Ormat urges BLM to expand its description of the purpose and need to explicitly state that the agency will (1) consider FLPMA's multiple-use obligation to ensure that its management of sage-grouse habitat does not preclude reasonable geothermal energy development, including necessary ROWs, and (2) facilitate wise development of mineral resources, consistent with the Mineral Leasing Act ("MLA") and the Geothermal Steam Act ("GSA"). Accordingly, BLM must also acknowledge that neither Alternative 3 nor Alternative 6 meet the purpose and need.

C. BLM Discounts the Severe Impacts Upon Geothermal Development in the United States.

Beyond FLPMA's legal constraints on BLM to choose such restrictive alternatives, the socio-economic consequences of closing the public lands to other uses would be severe for local and regional communities. *See* EIS at 3-48 (brief paragraph regarding economic impacts of geothermal development); 4-132 to 4-133 (Nevada to be most affected by restrictions – under all alternatives); 4-164 (Nevada impacts of Alternative 3). Those adverse effects will extend to the geothermal industry where restriction on leasing and development in sage-grouse habitat over the next 20 years will take a significant toll on the development of geothermal energy in the United States.

In contravention to common sense and the record before it, BLM's EIS somehow concludes that putting sage-grouse habitat off limits for geothermal development would have zero effect on geothermal production capacity, and therefore, zero socioeconomic effect on the industry and its employees. RMPA/EIS at 4-164. BLM's conclusion is based on its unsupported assumption in the reasonably foreseeable development scenario, Appendix 12, at 12-19, that the existence of 476,000

acres of non-producing federal geothermal leases in Nevada will be sufficient to meet any projected growth over the next 20 years—i.e., that no new geothermal leasing will be proposed in sage-grouse habitat, so that closure of these habitats to geothermal leasing will have no effect on the industry. This assumption is not correct. In fact, such a restriction would be severely detrimental to the geothermal industry and the renewable energy goals of the United States. There is no reason to believe that geothermal development over the next 20 years will be confined to existing leases or that there will be no exploration or interest in new leases in sage-grouse habitat. In fact, as BLM is aware, Ormat continues to explore for geothermal resources on lands that are currently unleased and is actively pursuing new federal geothermal leases both inside and outside sage-grouse habitat management areas. Ormat has requested nomination of lands for geothermal leasing for numerous new and existing projects within Nevada and Utah, in which competitive leasing has been denied or deferred (with no date as to when they will be considered) due to overlapping sage-grouse habitat designations. *See* Stormy Peak Partial Rejection letter dated February 1, 2024, attached as Exhibit B.

In addition, BLM's focus on the moratorium for new leases as the sole metric of socioeconomic harm to the geothermal industry fails to consider the severe impacts that ROW restrictions in Alternatives 3 and 6 could also have on existing leases. Ormat or other developers with existing leases in sage-grouse habitats and proposed ACECs would lack the ability to construct transmission lines to move the energy to market, removing any incentive to invest in geothermal power plants under Alternatives 3 and 6. The reality is that implementing either Alternative 3 or 6 would serve as a major hindrance to development of valid existing rights in sage-grouse habitat given the increased cost or outright prohibition on developing necessary infrastructure. In sum, BLM's conclusion that there will be no adverse socioeconomic effects associated with geothermal development under Alternatives 3 and 6 is incorrect. BLM has failed, in violation of NEPA, to adequately consider the socioeconomic effects to the geothermal industry and local and regional economies of placing millions of acres off limits for leasing and rights-of-way.

In sum, BLM cannot and should not choose Alternatives 3 or 6 for sage-grouse management because they are inconsistent with FLPMA, rely on a purpose and need that is impermissibly narrow, and would cause severe and unnecessary adverse socioeconomic impacts.

IV. Conclusion.

Ormat appreciates the opportunity to provide these comments on the BLM's Greater Sage-Grouse RMPA/EIS and support for the preferred Alternative 5, with the proposed changes. If you have questions, please contact me at (775) 356-9029.

Sincerely,

Erica Freese
Digitally signed by Erica Freese
Date: 2024.06.05 12:48:24 -07'00'

Erica Freese
Director, Business Development

Exhibits
A: UES Geothermal Sage-grouse Response, November 29, 2023
B: Stormy Peak Partial Rejection, February 1, 2024

Jesse Hill, Chair
Tom Hoss, Vice Chair
Ken Tipton, Commissioner
Ron Cerri, Commissioner
Tom Hoss, Commissioner
Mark Evatz, Commissioner

Humboldt County Courthouse
50 West Fifth Street Room 205
Winnemucca, Nevada 89445

Humboldt County, Nevada

June 13, 2024

Patricia Deibert, National Sage-grouse Coordinator
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Submitted Electronically to: BLM ePlanning, https://eplanning.blm.gov/

RE: Bureau of Land Management Greater Sage-Grouse Conservation Resource Management Plan Amendment and Associated Draft Environmental Impact Statement

Dear Coordinator Deibert,

Humboldt County, Nevada (the County), appreciates the opportunity to provide comment on the Bureau of Land Management's (BLM's) greater sage-grouse (GRSG) resource management plans amendment (RMPA) and associated draft environmental impact statement (DEIS).[1] The County, a rural county in northern Nevada, has participated as a cooperating agency in BLM's current amendment process and has been deeply involved in BLM's now more than decade-long sage-grouse conservation land use planning as well as in state and local sage-grouse conservation efforts.

About Humboldt County

Humboldt County is a rural county in northern Nevada. The County depends heavily on public lands for its economic prosperity and quality of life. Indeed, 81.8% of the County's total land mass is under federal management. As we noted in our cooperating agency comments on the administrative DEIS (ADEIS), Humboldt County is a strong supporter of practical and effective GRSG conservation, and we have been and remain a willing partner in efforts to ensure the recovery of this iconic species. We are also mindful that the

[1] BLM Docket No. 223.LLHQ230000.L11700000.PI0000.LXSGCO000000.

final EIS (FEIS)/RMPA that emerges from the DEIS/RMPA has the potential to impact many critical public land uses within in the County.

Additionally, as an owner of property interests on the public lands (for communication, transportation, and other services) the County has a vested interest in ensuring that the environmental health, upkeep, and necessary expansion of its land interests and infrastructure are not threatened by this DEIS/RMPA. The County also exercises police power on the public lands through its ability to enforce permitting regulations, exercise local law enforcement and emergency services, and generally safeguard public health, safety, and welfare. Finally, the County exercises powers of revenue collection and taxation on mining and other businesses utilizing the public lands, which provide the economic base for essential local services.

Impacts of the DEIS/RMPA on Humboldt County

Certain of the restrictions included in proposed alternatives of the DEIS/RMPA could affect mineral development and livestock grazing that contribute significantly to the County's economy, custom, and culture. The County's Public Land Resource Management Policy Plan Livestock Grazing section states that "public lands-dependent ranches are vital to the economic livelihood of the County (totaling $32.8 million annual sales in recent [to 2019] years)" and notes that "[a]dministrative actions by federal land management agencies have been a primary factor in cattle production decreases" that have negatively affected the County's economy."[2] A 2019 report issued by the University of Nevada at Reno found that mining, quarrying, and oil and gas extraction brought $754.8 million in gross regional product in 2017.[3]

The DEIS/RMPA also will significantly affect the resistance and resiliency of our sagebrush-steppe landscape. Getting this right so that it is a positive effect is critical to our county because Humboldt County has the highest incidence of wildfire in Nevada: total acres burned from 2003–2022 total 1,374,499.[4] The 2018 Martin Fire destroyed about 680 miles of prime GRSG habitat in Humboldt and Elko counties. We understand GRSG habitat conservation should be entwined in an effort to reduce wildfire, which has caused 87% of GRSG habitat loss in the Great Basin.[5] Our Community Wildfire Protection Plan notes that:

> Big sagebrush is the most common plant community in Nevada with an altered fire regime, now characterized by infrequent, high-intensity fires. Sagebrush requires ten to
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> twenty or more years to reestablish on burned areas. During the interim these areas can
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> provide the conditions for establishment and spread of invasive species and in some
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> cases inhibit sagebrush reestablishment. The most common invasive species that reoccupies burned areas in northern Nevada is cheatgrass.[6]

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[2] Humboldt County Public Land Resource Management Policy Plan—Livestock Grazing at *1 (May 18, 2019) https://www.humboldtcountynv.gov/DocumentCenter/View/6201/Livestock-Grazing-FINAL-Approved-5-18-2019.

[3] University of Nevada, Reno Center for Economic Development, *Social, Economic and Fiscal Impact Assessment for New Lithium Operations in Humboldt County* at 53 (Dec. 2018, rev. Sept. 2019).

[4] *See* Humboldt County Emergency Management, Humboldt County Community Wildfire Protection Plan (May 2023) https://forestry.nv.gov/uploads/missions/2023_Humboldt_County_CWPP.pdf.

[5] BLM, *Greater Sage-Grouse Plan Implementation Rangewide Monitoring Report for 2015–2020*, at 31 (2021).

[6] *Id.* at *12.

The Plan identifies cheatgrass as a high risk for repeat wildfire ignition. Thus, our County plan provides for treatments to eliminate cheatgrass. Because BLM is "responsible for reducing fuel hazards adjacent to communities" in Humboldt County, our protection from wildfire relies in large part on BLM's land use designations.[7]

Humboldt County's Public Land Resource Management Policy Plan Sage-grouse Conservation section states that "[s]age-grouse conservation must be scientifically grounded, outcome oriented, and practical."[8] The Sage-grouse Conservation plan component includes a detailed history of GRSG in the Countycoupled with an evaluation of recent science regarding livestock grazing, as grazing can help produce healthy GRSG habitat. We have found that "locally tailored and executed conservation efforts" are "a more effective means of conserving" GRSG,[9] and thus support what the Federal Land Policy Management Act (FLPMA) requires of BLM: maximal consistency between federal RMPs, County land use plans, and State plans—most importantly, the Nevada Greater Sage-grouse Conservation Plan.[10]

Thus, the GRSG DEIS/RMPA will impact—directly or indirectly—every citizen within our County. It will significantly affect Humboldt County's ability to fulfill its statutory obligation under Nevada law to safeguard public health, safety, and welfare.[11] As a cooperating agency, we have therefore attempted to assist BLM in developing alternatives and analyzing their impacts on GRSG outcomes, local socio-economic stability, our historic agriculture-based custom and culture, and perhaps most urgently, the public's health, safety, and welfare, specifically as it relates to the various alternatives' likelihood of increasing or decreasing wildfire risk and the effectiveness of wildfire incident response. As we describe above, these matters are also addressed in the Humboldt County Public Land Resource Management Policy Plan (PLRMPP) and its various associated sections all of which BLM is required to consider in its NEPA analysis under 40 C.F.R. §§ 1502.16(5e) and 1506.2(d).

Summary of Recommended Changes in Process and Substance

BLM has now amended RMPs for ten western states three times during the past ten years: in 2015, 2019, and 2024. This pattern of conducting a west-wide amendment of RMPs involves massive and repeated expenditure of resources and time by both BLM and cooperating agencies. Additionally, those making a living on public land (through grazing, mining, etc.) and communities, like the County's, dependent on public lands for socioeconomic stability need to have certainty and a clear sense as to what can be done and where and under what circumstances. We make the following recommendations with this background in mind:

BLM should overhaul the 2024 RMPA process.

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[7] *Id.* at *17.

[8] Humboldt County Public Lands Resource Management Policy Plan—Greater Sage-grouse Conservation, at *1 (Feb. 7, 2022) https://humboldtcountynv.gov/DocumentCenter/View/6200/Greater-Sage-Grouse-APPROVED-2-7-2022.

[9] *Id.* at *2.

[10] We also note the success of voluntary GRSG conservation in Nevada: for example, Natural Resource Conservation Service (NRCS) Sage Grouse Initiative (SGI) spending in Nevada on voluntary conservation projects includes 2022: $964,280 for 62,931 acres treated in 2017; $812, 216 for 21,833 acres treated in 2018; $678,262 for 18,942 treated in 2021; and $273,639 for 3,483 acres treated in 2022. This spending/conservation has been ongoing in Nevada since 2010.

[11] NRS 244.146(1)(c); *id.* at 244.143(2)(a).

First, as in our cooperating agency comments on the administrative DEIS/RMPA, our overarching comment continues to be that the 2024 RMPA process is being conducted in a manner that is inconsistent with the BLM's own planning regulations. It is therefore our recommendation that BLM overhaul the current unauthorized multi-state, centralized planning effort. If BLM determines based on best available science that its 2019 GRSG RMPAs—which, as we explain below, remain in effect—must be amended, BLM should issue another DEIS for public comment that provides GRSG land use plan amendments at the Field Office level with State office oversight. Our comments on specific aspects of the DEIS/RMPA are not intended to imply that the current planning process is proper, but rather to record Humboldt County's concerns about the alternatives and analysis in the DEIS/RMPA irrespective of the propriety of the process.

If it does not overhaul the process, BLM should move forward only with consideration of Alternatives 1, 2, and 5.

Second, and with that caveat, we recommend that BLM omit Alternatives 3, 4, and 6 from further consideration: these alternatives are inconsistent with Nevada's Sage-grouse Conservation Plan and local plans, contravene federal law, take an unscientific and imbalanced approach to GRSG conservation, and fail to make allowances for critical County functions. BLM should carry forward into the FEIS/RMPA only Alternatives 1, 2 and 5. These should be presented in a Nevada-specific supplemental draft EIS for further analysis, input, and refinement prior to developing a proposed Nevada FEIS/RMPA.

If BLM proceeds with analyzing all six alternatives proposed in the DEIS/RMPA, BLM should make significant changes to the DEIS/RMPA, including developing a supplemental EIS, and should Select Alternative 2 with amendments.

Third, and again with the caveat that BLM should significantly modify its approach to this DEIS/RMPA, we prefer Alternative 2, which replicates the 2019 RMPAs, to all other alternatives. Because BLM has indicated that it intends to pick a newly proposed alternative, we believe that Alternative 5 is preferable to any of the other new alternatives (Alternatives 3, 4, and 6) that BLM has proposed.

However, we have deep concerns regarding aspects of all of the new alternatives. Our concerns include that (excepting Alternative 2, which BLM does not appear to treat as a viable alternative) BLM has not proposed an alternative that satisfies the its obligation under FLPMA to ensure that its RMPA is maximally consistent with the Nevada State Greater Sage-grouse Conservation Plan; that that the alternatives analysis is incomprehensible, contravening the National Environmental Policy Act (NEPA); that the plan does not reflect the best available science when it ignores the fact that wildfire is the leading cause of GRSG habitat loss; that it proposes inaccurate habitat management area (HMA) designations; that its west-wide planning scale and its proposed designation of areas of critical environmental concern (ACECs) in Alternatives 3 and 6 contravene FLPMA. We are also concerned that, perhaps because of the massive scale of BLM's analysis—ten states and 69 million acres—BLM has not properly considered the concerns the County expressed in its cooperating agency comments in the DEIS/RMPA drafting process. We believe that the new information BLM must consider is so significant that it warrants a Nevada-specific supplemental EIS.

Incorporation of Previous Comments and Correspondence

We incorporate by reference as though fully set forth herein our cooperating agency comments and prior correspondence with BLM. Additionally, because Alternative 1 would simply re-adopt BLM's 2015 land use plan amendments, we fully incorporate here our comments on that plan, especially its discussion of sagebrush focal areas. We reiterate many of our previous comments below, with the hope that all of our many comments on the DEIS/RMPA can help produce a stronger FEIS/RMPA.

I. RMPAs should provide guidance to BLM in making future decisions; the 2024 GRSG RMPA instead prescribes action that is not based on best available science.

A. RMPAs should guide BLM in making future decisions and must be based on reliable and the best available information.

The 2024 GRSG RMPA involves ten western states, 121 million acres of public land, 69 million acres of GRSG habitat, and amendments to 77 separate RMPs.[12] The Supreme Court has commented on the "immense scope of projected activity that a land use plan can embrace" where a land use plan "present[ed] a comprehensive management framework for 1.5 million acres of BLM-administered land"; this RMPA is many orders of magnitude more immense.[13]

RMPs/RMPAs, which generally operate at a larger scale than project-specific determinations, are meant to provide a platform for further action. They "are designed to guide and control future management actions and the development of subsequent, more detailed and limited scope plans for resources and uses."[14] FLPMA and BLM regulations "confirm that a land use plan is not ordinarily the medium for affirmative decisions that implement the agency's projections."[15] Though a RMPA can constitute final agency action[16] and can establish "[l]and areas for limited, restricted, or exclusive use,"[17] "a land use plan is generally a statement of priorities; it guides and constrains actions, but does not (at least in the usual case) prescribe them."[18]

This role of a RMPA—providing only a platform for further action—makes particular sense for the 2024 GRSG RMPA given its massive scale. The RMPA relies on models to designate HMAs without ground-truthing them, given BLM's proposal to designate between 21-plus million acres (Alternative 3) and 9.5-plus million acres of priority habitat management areas (PHMAs) in Nevada alone. It would be difficult for BLM to ground-truth all of this designation, though—as we note below and have previously expressed in cooperating agency comment—BLM could have better worked with local governments relying on our data and expertise in managing land within the County to help make more

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[12] *See* BLM, Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement, at *10 (Mar. 14, 2024).

[13] *Norton v. S. Utah Wilderness All.*, 542 U.S. at 70.

[14] 43 C.F.R. § 1601.0-2.

[15] *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 69–70 (2004) (brackets and internal quotation marks omitted).

[16] *See, e.g., W. Watersheds Project v. Haaland*, 850 F. App'x 14, 15 (D.C. Cir. 2021) (where a RMP ended the BLM's decisionmaking process for the wild horses by barring wild horses from a particular area of range because it did not provide sufficient habitat, the RMP constituted final agency action); *see also Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (final agency action "marks the consummation of the agency's decisionmaking process" and is action through which "rights or obligations have been determined, or from which legal consequences will flow").

[17] 43 C.F.R. § 1601.0-5(n)(1).

[18] *Id.* at 71.

accurate habitat designations. As they are proposed both in the published DEIS habitat maps and in BLM's May 2024 update to its HMA model, habitat designations in Humboldt County make several errors, including, for example, designating greasewood brush and incorporating significant burn scars as PHMA

Because of these errors, and the risk of additional errors as a result of the RMPA's west-wide scale, it is inappropriate for the RMPA to take prescriptive action that is rarely warranted in RMPAs. BLM should not adopt the prescriptive action in Alternative 3 closing all PHMA to new fluid mineral leasing, saleable minerals/mineral materials permits and nonenergy leasable minerals leasing not associated with existing permits and leases, livestock grazing, rights of way, and wild horses and burros.[19] Putting such lands off limits based on modeling without the opportunity for ground-truthing and use of the best available science and information is arbitrary and unlawful. Of course, the requirement that the DEIS/RMPA use reliable information and make accurate determinations holds not just for Alternative 3 but for all alternatives discussed in the DEIS/RMPA.

This requirement is found in statute and regulation. NEPA requires that BLM "ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents" and "make use of reliable existing data and resources."[20] Moreover, in Nevada, BLM treats GRSG as a sensitive species,[21] and "[w]hen administering the [BLM] sensitive species program, all information shall conform to the standards and guidelines established under the Information Quality Act."[22] BLM's Information Quality Guidelines state that "BLM operates on the principle of collecting or acquiring timely information that it judges to be the best available consistent with its mission requirements."[23]

The DEIS states that BLM will be able to "adapt habitat management areas over time to reflect best available science" through its regular evaluation of RMPs and the resulting maintenance, amendment, or revision to the RMP.[24] But the County has experienced the difficulty of adjusting allocations or management decisions to the reality of GRSG habitat or lack thereof. For example, in litigation regarding the 2015 GRSG LUPAs, Humboldt County showed that "land [BLM] had identified for disposal to expand its landfill was erroneously marked as PHMA in the final habitat map."[25] There and in other instances, although the parties agreed that areas like the County landfill were not GRSG habitat, BLM did not adjust its designations. In the 2024 process, as we explain below, the County has made a detailed analysis of lands BLM identifies for PHMA designations within its borders and has conveyed to BLM significant errors in that designation.

Prohibitive designations like Alternative 3, when based on unreliable and inaccurate information, create significant problems for Humboldt County, which relies on BLM's proper management of public lands to ensure public health, safety, and welfare in the County. "Proper management" could

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[19] *See* DEIS at ES-4.

[20] 40 C.F.R. § 1502.23.

[21] BLM, Nevada Special Status Species List, at 2 (Sept. 2023) https://www.blm.gov/sites/default/files/docs/2023-11/NV-IM-2024-003%20att%201%20BLM%20Nevada%20Special%20Status%20Species%20List_0.pdf

[22] BLM, Manual M-6840.2.

[23] BLM, Information Quality Guidelines, at 9 (Apr. 2, 2018).

[24] DEIS at 1-8.

[25] *W. Expl., LLC v. DOI*, 250 F. Supp. 3d 718, 736 (D. Nev. 2017).

include reasonable disposals for County expansion (e.g., industrial areas or landfill expansion). Proper management should also include necessary fuels control in the wildland-urban interface zone.

B. The 2024 RMPA habitat designations are not based on best available science: Humboldt County has identified numerous errors in BLM's habitat designations.

In cooperating agency comments, the County has repeatedly stated that BLM must engage in ground-truthing to achieve accurate habitat designations. Nonetheless, BLM has not ground-truthed its designations, and it does not include an obvious mechanism in the RMPA for achieving more accurate designations.[26] In light of this shortcoming, Humboldt County assembled a County Working Group which compared the 2015 State of Nevada Sage-grouse Management Categories against the proposed 2023 BLM Habitat Management Categories and made determinations on the basis of topographic mapping, aerial imagery, and high-quality, geo-referenced photographs of all roads on public lands within Humboldt County.[27] The Working Group was composed of seven professionals with over 200 years of combined on-the-ground experience within Humboldt County. The County provided BLM with this information in correspondence sent on August 23, 2023, which is incorporated by reference as though fully set forth herein.

Our review found areas where pristine GRSG habitat was not modeled as priority habitat and, conversely, areas where degraded habitat was modeled as priority habitat. The Humboldt County Working Group noted the following errors in BLM's 2023 habitat designation mapping based on modelling:

1. Generally, we determined that the State of Nevada's population management unit (PMU) boundaries were more accurate than the 2023 model HMAs in geographically delineating the break between actual habitat and non-habitat. We support use of the PMU boundaries.

    a. Therefore, the USGS habitat management categories model for the Massacre and Black Rock PMUs was inaccurate where BLM designations extended beyond the PMU boundaries.

2. BLM's 2023 model covering the Pine Forest and Jackson Mountains State PMUs had several flaws:

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[26] By contrast, for example, Nevada's 2019 Greater Sage-grouse Conservation Plan provides: "At the onset of a proposed project, habitat evaluations or 'ground-truthing' of the project site and its surrounding areas shall be conducted by a qualified biologist with sage-grouse experience using methods as defined in Stiver et al (2010), or other mutually agreed to scientifically valid techniques, to confirm habitat type. Evaluations can be conducted by the SETT or NDOW at the request of the project proponent." *Id.* at 3.2.1.

[27] We did not yet have BLM's most recent model update, which BLM provided to cooperating agencies in late May. The County notes that BLM has since revised its mapping. *See* BLM, Nevada and California Bureau of Land Management Greater Sage-Grouse Habitat Management Area Considerations (2024) https://eplanning.blm.gov/public_projects/2016719/200502020/20111394/251011385/Nevada-California%20New%20GRSG%20HMA%20Data%20Availability_updated_508.pdf; *see also* USGS, Greater Sage-Grouse Habitat of Nevada and Northeastern California—Integrating Space Use, Habitat Selection, and Survival Indices to Guide Areas for Habitat Management (2024) https://pubs.usgs.gov/of/2024/1018/ofr20241018.pdf. Though the total acreage of PHMA has declined in the updated maps, it is difficult to tell how that acreage has changed in Humboldt County because USGS and BLM have not published granular, county-specific maps or made available GIS data that shows the updated PHMA.

a. In the Pine Forest PMU, the County questioned why habitat in the Leonard Creek Basin was no longer designated as PHMA.

b. PHMA south and east of Windy Point extending into greasewood flats was non-sensical because greasewood flats are not GRSG habitat.

c. In the Jackson Mountains PMU, the County questioned why the BLM's 2023 model update extends GRSG habitat far south of the PMU boundary. It appeared to the Working Group that this area may contain a new lek; however, much of the area south of the Jacksons is not GRSG habitat.

3. BLM's 2023 model update covering the Lone Willow and Santa Rosa State PMUs appears to be similar to the 2015 modeling, but it does not adequately modify the 2015 model to reflect fire impacts in these two PMUs. As noted below, the County submitted two maps proposing alterations to the BLM's ACEC proposal on this basis.

4. In our message noting errors in the 2023 model update, the County asked BLM to verify whether the State of Nevada still recognizes the Slumbering Hills and Eden Valley as active PMUs. We have not received a response from BLM. These areas have been extensively affected by wildfire to the point where very little viable GRSG habitat is present and adequate seasonal habitat area likely not present; additionally, these areas do not provide habitat corridors. We ask BLM to respond to this issue in the FEIS/RMPA.

5. The County questioned the basis for modeled habitat outside of PMU boundaries near the town of Winnemucca, Grass Valley, and the US 95 and SR 140 corridors.

    a. In our August 2023 correspondence, we reserved further comment on these designations until we are able to review BLM/USGS's trimming of anthropogenic features. The County has been instructed to comment on the DEIS/RMPA habitat mapping rather than the final USGS maps released in May 2024. We note, however, that the May 2024 mapping has been trimmed. Alternatives 3 and 4 do not reflect these trims while Alternatives 5 and 6 appear to reflect them somewhat closely.

6. Finally, while—as we discuss below—Humboldt County is opposed to ACEC designation as a GRSG conservation tool, the County proposed modified boundaries to the BLM proposed ACECs in the Lone Willow and Santa Rosa Population Management Units. Part of BLM's proposed ACECs takes in core habitat, but the boundaries also encompass non-habitat or highly degraded habitat—largely from wildfire impacts—that do not meet the relevance criteria required to be included within an ACEC. BLM ignored the County's suggestions, which are informed by field observations. As we explain, the proposed ACEC designations within Humboldt County are not based on reliable information.

Of the modeling layers that BLM professes to have reviewed in the ACEC development process,[28] not a single layer considered fire history,[29] landscape intactness,[30] or Ecological Site Descriptions (ESD) and current ecological state.[31]

As regards fire and vegetation in particular, Humboldt County offered extensive corrections to BLM's proposed ACEC boundaries that BLM failed to adopt. As a result, there is much land in the interior of proposed ACECs in Humboldt County that is not GRSG habitat (according to the BLM's Habitat Assessment Framework's site, fine, or mid-scale) and therefore does not meet the "relevance" or "importance" criteria or require "special management" to prevent "irreparable damage" to GRSG.[32] A few of these non-habitat areas may provide connectivity corridors, but many do not—and in any case, as we discuss below, connectivity is not a reason to designate an ACEC. Additionally, while previously-burned areas may eventually recover, they should not be included in ACECs with rigid boundaries that are (for practical purposes) not subject to revision.

In particular, Humboldt County recommended the excluding the following areas from ACECs:

- Montana Mountains ACEC (Nevada ACEC 2):
    - Area Surrounding Maiden Butte
    - Area north of Calico Butte
- Owyhee West ACEC (Nevada ACEC 3):
    - S and E Bilk Creek Mountains
    - Hoppin Peaks/Salient Peak
    - Area Surrounding Indian Spring

Humboldt County also provided detailed comments to BLM on the inappropriateness of the ACECs based on their substantial overlap with historical fire scars, particularly the scar of the 2018 Martin Fire, which has a 142,000 acre overlap with the Owyhee West ACEC. The map below shows the overlap:

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[28] DEIS at 5-5–5-6.

[29] This information is easily accessible online: the government maintains a "Monitoring Trends in Burn Severity" map. *See* https://www.mtbs.gov/viewer/index.html.

[30] This information, too, is easily accessible. *See* N. B. Carr et al., "A Multiscale Index of Landscape Intactness for Management of Public Lands" in S. K. Carter et al. eds., *Multiscale guidance and tools for implementing a landscape approach to resource management in the Bureau of Land Management: U.S. Geological Survey Open-File Report 2016–1207*, at 55–74 (2017) https://doi.org/10.3133/ofr20161207.

[31] Ecological Site Descriptions (ESD) and their current ecological state (and restoration pathways) are outlined in the State and Transition Model (STM)/Disturbance Response Group (DRG).

[32] We discuss below BLM's inadequate justifications for finding that areas proposed for ACEC designation meet the relevance, importance, and special management criteria; here, we focus on BLM's inaccurate mapping.

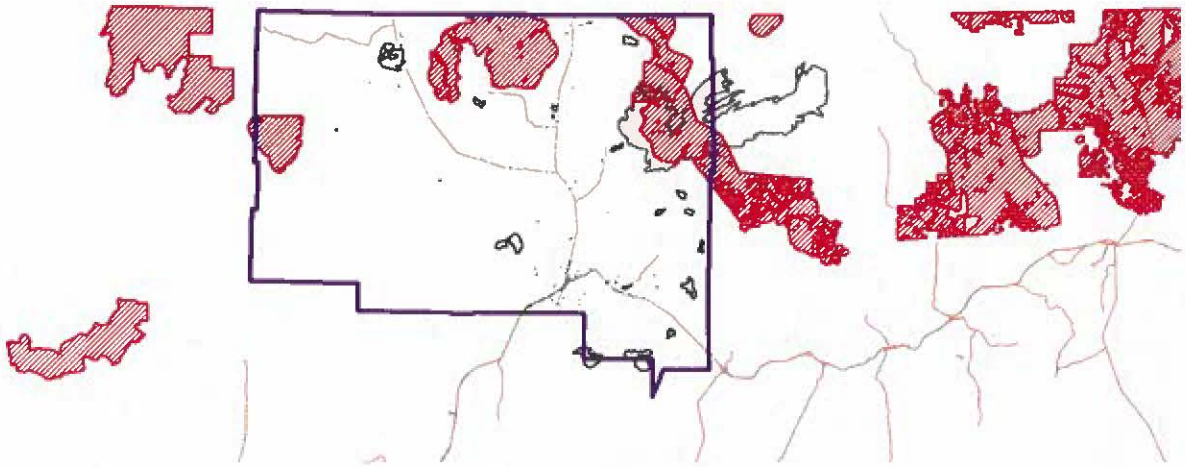

Figure 1: Humboldt County with Martin Fire scar (black outline in top right) and ACEC overlay (in red)

Humboldt County informed the BLM that in our review of ACECs using detailed photo point surveys of the Owyhee West proposed ACEC, there were numerous recent photo points (2019–2021) from within the proposed ACEC boundary that did not have a significant shrub component and lacked primary features for GRSG habitat, such as those shown below:

Fig. 2: Photo taken in 2020 within proposed ACEC/Martin Fire overlap zone.

Fig. 3: Photo taken in 2020 within proposed ACEC/Martin Fire overlap zone.

> Although Humboldt County warned BLM that significant portions of land within the ACEC did not support GRSG habitat and were therefore unsuited for the designation, the BLM did not appear interested in considering or incorporating this information. As a result, BLM's proposed ACECs contain abundant lands that do not meet the "relevance, "importance," or "special management" thresholds because they are simply not habitat.

> As we discuss further below, the BLM must (but has failed to) ground its claims of proposed ACEC GRSG habitat "importance" with "more than local significance" and its alleged need for "special management" in the best available rangeland science. To not consider the on-the-ground ecology of sites within the ACECs (amply available through the County and other local experts) represents a fatal flaw in the justification and management prescriptions put forward for ACECs.

Although we have repeatedly stated in correspondence with BLM that we oppose ACEC designation, and reiterate that opposition here, if BLM maps ACECs as we proposed in previous correspondence, and propose again, the following mapping is at least more accurate than BLM's mapping:

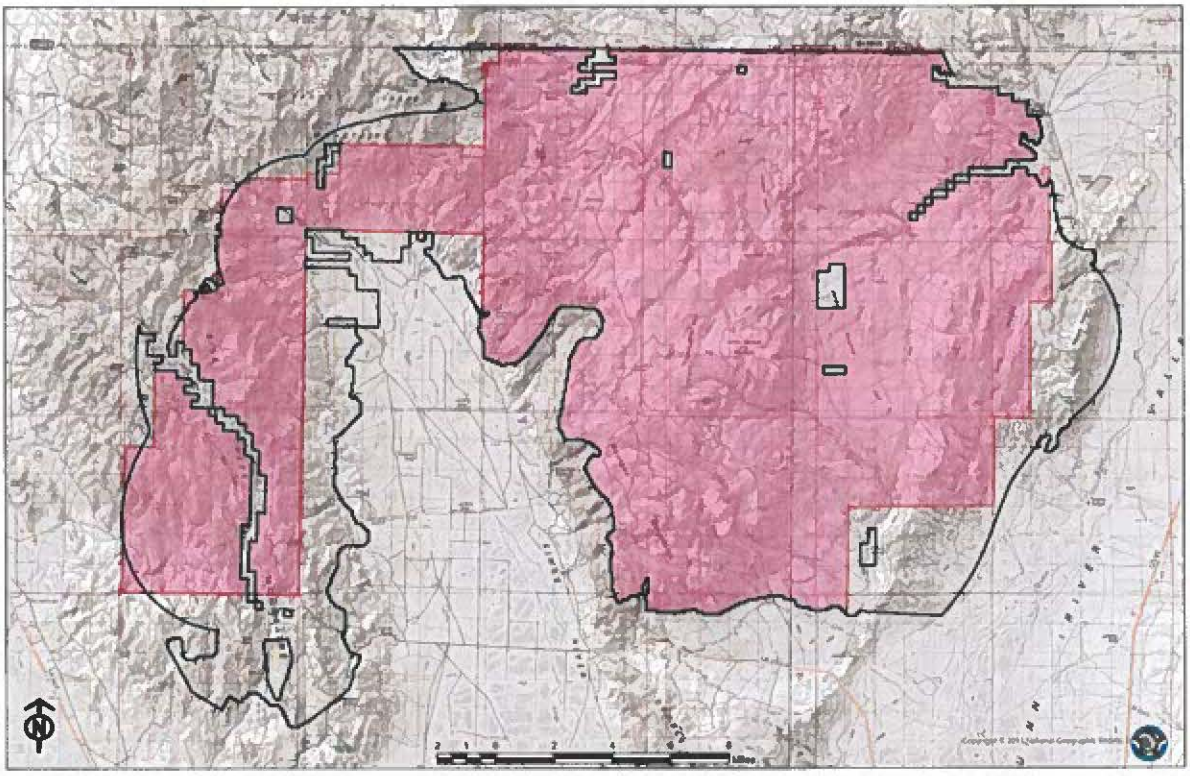

Fig. 4: Humboldt County Working Group map suggesting more accurate ACEC designations for the proposed Montana Mountains ACEC. Our proposals are in pink; BLM's are outlined in black.

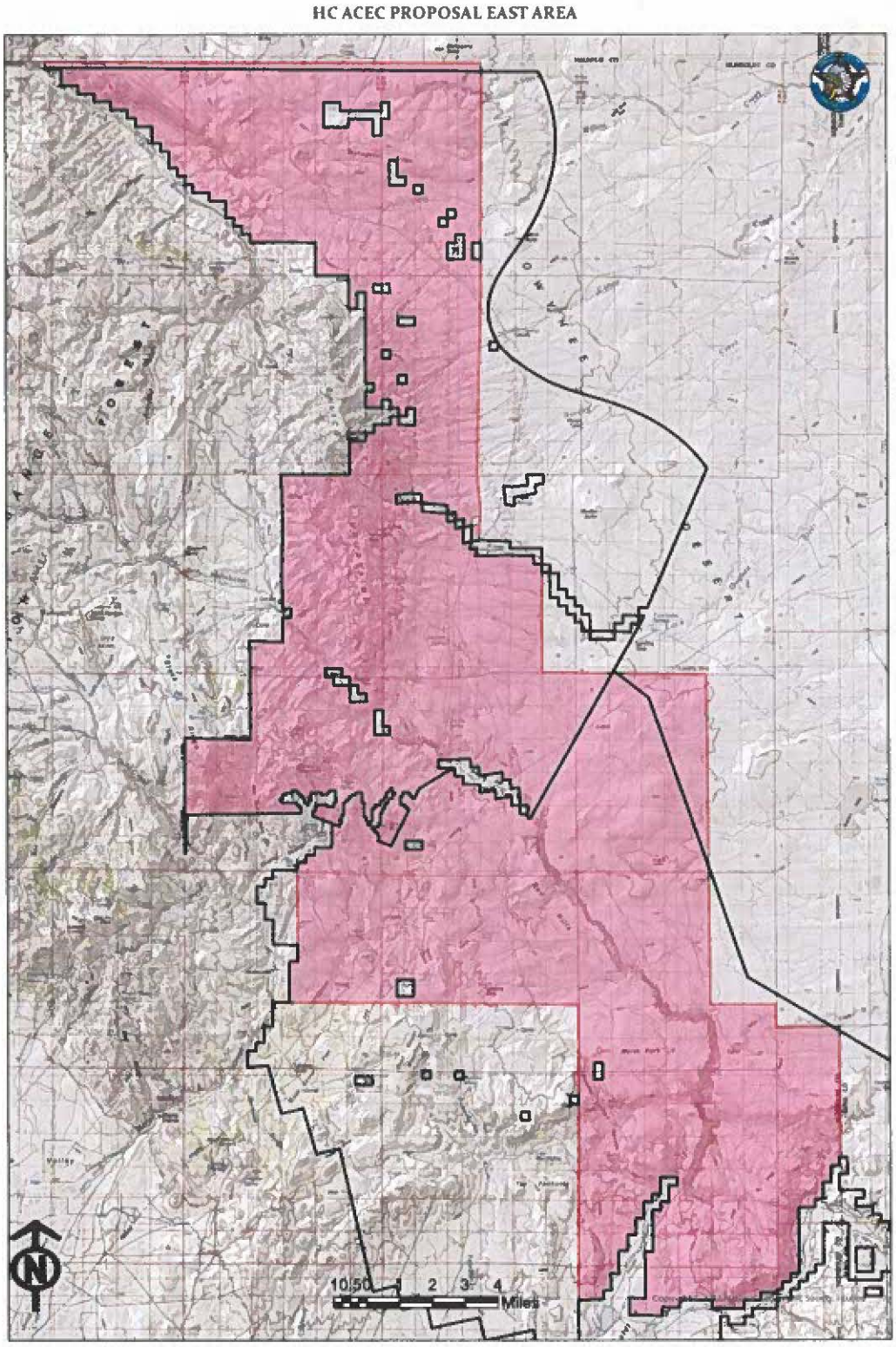

Fig. 5: Humboldt County Working Group map suggesting more accurate ACEC designations for part of the proposed Owyhee West ACEC. Our proposals are in pink; BLM's are outlined in black.

Our additional review since we submitted cooperating agency comments has revealed the following additional and fundamental flaws in BLM's DEIS maps for Alternatives 3 and 4.[33] Both alternatives designate BLM-managed GRSG habitat inside the City of Winnemucca including:[34]

1. The Humboldt Museum;
2. A mobile home park;
3. A city park;
4. An historical railroad depot (and likely the railroad right of way);
5. Residential areas in Winnemucca; and
6. Agricultural areas (e.g. in the vicinity of Golconda)

The base map for Alternatives 3 and 4 is highly inaccurate, does not accurately reflect BLM ownership, and has not been ground-truthed. It is clearly not based on reliable information.

Additionally, as currently mapped Alternative 3 (and to a lesser extent Alternative 4) would not only preclude expansion of the County landfill, but would also:

1. Prohibit a desired acquisition of the County Public Works Department's main gravel pit and access road (the acquisition area is currently BLM land);
2. Foreclose possible affordable housing projects;[35]
3. Complicate or even preclude upgrades to the City of Winnemucca's public water system and potentially interfere with County water rights.

Finally, we note that it is a poor substitute for accurate, science-based habitat designations that, as the County requested, BLM now states in the DEIS/RMPA that "habitat management area boundaries are not intended to represent a survey-grade habitat boundary, may include results of large-scale modeling, and are not to be used exclusively for habitat determinations at a project or site-level scale."[36] Though we asked that this statement be prominent in the DEIS/RMPA, it is buried in the alternatives table. We continue to ask BLM to rectify, in the FEIS/RMPA, its erroneous habitat designations.

REQUESTED CHANGE: BLM should revise the 2024 DEIS/RMPA to conform to the basic principle that an RMPA is a platform only that provides generalized guidance and permits BLM to

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[33] Alternatives 3 and 4 use the same HMA map; the difference is that Alternative 3 designates all HMA as PHMA while Alternative 4 divides HMA into PHMA, GHMA, and OHMA.

[34] Humboldt County has verified with the County Planner these overlaps of PHMA with obviously developed areas in Winnemucca.

[35] The County does not, as of the date of writing, have a slated project for affordable housing development. However, the County has recognized and discussed our clear need for affordable housing, and has explored options. In light of this discussion and exploration, we can assert that Alternatives 3 and possibly 4 would seriously restrict the possibility for such urban expansion.

[36] DEIS at 2-19.

conduct project- or field office-specific designations of habitat using best available science; in this case, field surveys that ground-truth models. Because the 2024 model's habitat designations are not based on best available science, the RMPA's designation of PHMA must not trigger prescriptive actions like those contemplated by Alternative 3. For this reason—among others that cause specific harms to the County as discussed throughout these comments and particularly in this section as well as Sections II, III, V, and VII—the County asks that BLM reject Alternative 3's prescriptions for all PHMA.

II. Alternatives 1, 3, 4, 5, and 6 would cause specific, severe harms to Humboldt County.

The above-listed alternatives would cause harm to the county in varying degrees. Primary harms include, but are not limited to: (1) curtailment of the mining and grazing industries with subsequent harms to the County including loss of special district taxes and royalties, curtailment of County and special district services, loss of community stability, crime, and job loss; (2) prohibiting or frustrating reasonable growth of County infrastructure on public lands for public health and safety purposes; and (3) severe increase of wildfire risk through lack of fuels management provided by livestock grazing, especially in the wildland-urban interface zone, and potential prohibition or curtailment of County transportation and communication infrastructure.

We review below the harms of which we are presently aware, given the information BLM has supplied in the DEIS/RMPA and given our present understanding of the DEIS/RMPA. This list is not exhaustive, and the County reserves rights, as a cooperating agency, to inform BLM as it becomes aware of further harms.

A. Alternative 1 Harms

Alternative 1 would maintain Sagebrush Focal Areas (SFAs) and seek mineral withdrawal on these areas. "This includes designation of some areas of PHMA as Sagebrush Focal Areas (SFA) with a recommendation to withdraw them from mineral location and entry under the Mining Law of 1872 and prioritization for various other activities related to vegetation treatments, livestock grazing, and wild horses and burros."[37]

Livestock grazing on all HMA would be governed by Table 2-2,[38] a list of habitat objectives which would unduly restrict livestock grazing, ignoring its benefits to GRSG habitat. For example, Table 2-2 aims for at least 30% shrub cover and at least 10% perennial grass cover if shrub cover is less than 25% in nesting habitat.[39] But "the relationship is dynamic—as cover of sagebrush increases, perennial grass cover becomes less important . . . [and] any type of shrub can be used for cover"; on this basis, Nevada's Sagebrush Ecosystem Technical Team (SETT) requires "a combined cover of 30% for total shrub cover and perennial grass cover" if a an area is to have breeding habitat function.[40] Additionally, Alternative 1 stipulates a fixed perennial grass stubble-height habitat objective of 7", which is not biologically attainable in many ecological regions and sites within Humboldt County. Further, though we do not believe the science has markedly shifted so as to require a new RMPA since the 2015 or 2019 GRSG land use planning processes, we note that if BLM continues with the 2024 RMPA its decisions must be based on best available science. The habitat objectives table does not represent the best available science. For example, it takes as the objective for pinyon/juniper (P/J) removal near leks that P/J will

[37] DEIS at 2-1.

[38] DEIS, Vol. III at 2-NVCA-56.

[39] 2015 Nevada LUPA at 2-18.

[40] Nevada SETT/Technical Review Group, Habitat Quantification Tool (HQT) Scientific Methods Document, at 33 (Jan. 2020).

consist of <3% landscape cover within .6 mile of leks.[41] Recent articles have shown that even this amount of cover degrades GRSG habitat: "even sparse [P/J] cover has been found to have a negative impact on sage-grouse" and "modeling efforts revealed potential sage-grouse benefits from P/J removal are highest where denser P/J cover is treated in close proximity to lek locations."[42] The denser canopy of Phase 2 P/J, which Table 2-2 would permit,[43] is "generally avoided" by GRSG.[44]

Two SFAs are proposed in Humboldt County (totaling approximately 633,000 acres). One of these largely overlaps the McDermitt Caldera, known to be the richest lithium deposit in the United States. The SFAs also encompass more than 30 grazing allotments.

Harms to Humboldt County caused by Alternative 1 include, but are not limited to:

- BLM's failure to take the requisite "hard look" at consequences to lost mineral potential and mining activities, rights and operations could mean an unlawful proposed mineral withdrawal with reasonably foreseeable elimination of new mineral development on SFAs, including nationally important lithium deposits, through recommended mineral withdrawal. Attendant major contraction of the Humboldt County economy through loss of mineral taxes, mineral royalties, and mining company property taxes.[45]

- Reasonably foreseeable contraction of authorized livestock grazing acre unit months (AUMs) through application of the outdated and unreasonable habitat objectives listed in Table 2-2.

- Reasonably foreseeable contraction of both County and special district services (e.g., law enforcement, search and rescue, school district, hospital district, fire district, etc.) due to loss of tax revenue.

- Reasonably foreseeable loss of living-wage jobs.

- Reasonably foreseeable out-sized impacts to underserved populations (environmental justice impacts).

- Reasonably foreseeable dissolution of community stability, increased crime, increased human and health and safety deficits.

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[41] *Id.* at 2-18.

[42] HQT Scientific Methods Document at 20 (citing studies from 2017 and 2015).

[43] *See* 2015 Nevada LUPA at 2-19 n.2 (noting that the <3% landscape cover objective is applicable to Phase I and Phase II P/J).

[44] HQT Scientific Methods Document at 20 (citing a study from 2017).

[45] See the Net Proceeds from Mineral Tax 2021–2022 County Distribution table produced below, under Alternative 6 harms.

- Potential inconsistency and interference with County development goals and requirements, including new infrastructure (communication towers and access roads, free-use pits, and roads (including RS-2477 roads)) serving public health and safety.

Regarding Alternative 1 impacts, we disagree with the BLM's statement that "the recommendation for withdrawal does not itself restrict any resource uses. As such, *there would be no effects* on locatable mineral claims or mine development."[46] This is incorrect. The impacts stated above are reasonably foreseeable, and NEPA requires that BLM take a "hard look" at such effects in an EIS.[47] Indeed, BLM considered such effects in its 2015 (though inadequately) and 2019 GRSG land use planning processes.[48] Because mineral withdrawal is a reasonably foreseeable consequence of a recommendation for mineral withdrawal, the BLM must consider the effects of this proposed action. Waiting to consider these effects until during the withdrawal process results in unlawful segmentation and immediate harms because upon publication of a proposed mineral withdrawal in the Federal Register lands are immediately segregated and, for up to a two year period, no new mineral claims can be located and exploration for and development of critical minerals may be hampered.

The hard look in this NEPA process must be "taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made," and the FEIS must include a "discussion of adverse impacts that does not improperly minimize negative side effects."[49] The Proposed LUPA/FEIS provides relatively little discussion of adverse impacts to mining operations and, in doing do, minimizes and insufficiently discusses impacts to exploration and development potential, economic losses to the state and local community from withdrawals or blanket conservation measures. In short, because the Proposed LUPA/FEIS does not address these issues, BLM did not take the required "hard look" at the environmental impact of its chosen management directives/measures. As these consequences were not considered in the RMPA/DEIS, and because these impacts are "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts," they will need to be considered in a supplemental EIS.[50]

Because we have already made extensive comments regarding SFAs and Alternative 1 more generally in our comments on the 2015 LUPAs, we refrain from repeating those comments in detail here. However, we incorporate by reference our comments on the 2015 LUPAs as if they were fully stated herein.

B. Alternative 3 Harms

Alternative 3 would eliminate grazing on all PHMA, GHMA, and OHMA; without scientific basis to recategorize all HMA as PHMA, BLM would collectively manage all HMA as PHMA.[51] All HMA would be recommended for withdrawal from mineral entry as well as closed to any new infrastructure and ROW permitting.

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[46] DEIS at ES-7 (emphasis added).

[47] 40 C.F.R. § 1508.1(g).

[48] *See, e.g.*, Nevada 2015 LUPA at 4-305; 2020 FSEIS at 4-48–4-49.

[49] *Western Watersheds Project v. Kraayenbrink*, 632 F.3d 472 (9th Cir. 2010).

[50] 40 C.F.R. § 1502.9(d)(ii) ("Agencies . . . [s]hall prepare supplements to either draft or final environmental impact statements if a major Federal action remains to occur, and . . . [t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.").

[51] This blanket recategorization is not based on best available science and itself violates NEPA and BLM policy.

Harms to Humboldt County caused by Alternative 3 include, but are not limited to:

- The immediate closure of the majority of BLM-managed lands in the County to livestock grazing, with subsequent loss of the majority of ranching businesses, tax base, employment, and local and regional cultural and historical practices.

- Due to lack of term permit grazing, significant and reasonably foreseeable increase in the risk and occurrence of catastrophic wildfires as a result of fuels accumulation, causing major risk of human harm in wildland-urban interface zones (nearly all Humboldt County communities are classified in the Humboldt County Fire Plan as "high risk" for wildland-urban interface fire incidents).

- Reasonably foreseeable withdrawal of the majority of BLM-managed lands in the County from mineral development.

- Reasonably foreseeable collapse of the natural resource-based economy as a result of mandated grazing closures and reasonably foreseeable mineral withdrawals on the majority of public lands within Humboldt County, with attendant impacts on County and special district tax revenue and services.

- Reasonably foreseeable outsized impacts to underserved populations (environmental justice impacts).

- Reasonably foreseeable dissolution of community stability, increased crime, increased human and health and safety deficits.

- Alternative 3 is inconsistent with, and interferes with, County development goals and requirements. It would preclude new and/or improved public health and safety infrastructure on all HMA; examples include communication towers for law enforcement and emergency dispatch, new or improved roads for safe travel and firefighting, new or expanded free use pits for road maintenance, and the necessary expansion of the County landfill.

Alternative 3 is also inconsistent with Humboldt County's development goals in its Master Plan—

- There is currently insufficient industrially-zoned land to support projected community growth in Humboldt County, especially as needed to support the Thacker Pass lithium mine, currently under construction. Because, under Alternative 3, PHMA would surround the city of Winnemucca (as well as the communities of Paradise Valley, Orovada, McDermitt, and others) this alternative would restrict industrial expansion to the

extremely limited parcels of private lands.[52] Measured and reasonable industrial expansion and economic development requires select disposals of public lands adjacent to the City of Winnemucca. Reasonable community growth would be impossible under Alternative 3.

- Through its complete prohibition on new disturbances in all HMA, Alternative 3 would also exclude or severely restrict new County infrastructure (e.g., communication towers, utility transmission, and access roads) on all HMA. This infrastructure is necessary to protect the health and safety of the County's expanding population.

- Alternative 3 would prohibit, or severely restrict, expansion of the regional landfill. The current landfill footprint will require expansion to meet growth predictions within the next 10 to 15 years. Under Alternative 3, the regional landfill is completely surrounded by lands classified as PHMA, and therefore not available for a public purposes disposal.

- Because of its broad prohibition on grazing, Alternative 3 is also inconsistent with the Humboldt County Fire Plan for BLM fuels management in the wildland-urban interface, which makes the following recommendation to BLM: "Permit livestock grazing prior to seed maturity to reduce cheatgrass. Balance annual stocking rates with annual cheatgrass grass productivity."

We disagree with, and recommend disclosure of the inadequacy and error in the following statements: "Alternative 3 would provide the greatest protection of nonmarket values for GRSG and sagebrush ecosystems" and "Alternative 3 includes the greatest measures to protect and preserve GRSG and its habitat."[53] Given BLM's own monitoring data which determined 87% of PHMA losses in the Great Basin were due to wildfire, BLM's statement is unsupported: because it eliminates fine fuels management provided by landscape-scale permitted grazing, Alternative 3 is not the alternative most protective of HMA. Instead, Alternative 3 would likely exacerbate HMA losses. While it may be true that Alternative 3 provides the most HMA protection against *anthropogenic disturbance*, this must be contextualized by citing BLM's own monitoring data, referred to throughout these comments, which found that <1% of PHMA losses were due to anthropogenic disturbance. This bias toward Alternative 3 as the "most protective" alternative is found throughout the DEIS/RMPA and must be corrected.

Finally, Alternative 3's proposed ACECs would significantly harm Humboldt County. We have addressed some of those harms above and address harms resulting from potential ACECs further below, in Alternative 6.

C. Alternatives 4 and 5 Harms

Alternative 4 proposes management that is more rigid and administratively prescriptive than Alternative 5. However, many of the differences between these alternatives are minor, involving trivial differences in exception criteria that will likely make little difference in implementation. While Alternative 5 sometimes

[52] We make this conclusion based on the "retain" status for PHMA carried forward from the 2015/2019 RMPAs. DEIS, Vol. III at 2-NVCA-6.

[53] We make this conclusion based on the "retain" status carried forward from the 2015/2019 RMPAs. DEIS, Vol. III at 2-NVCA-6.

incorporates a degree more flexibility than Alternative 4, because of the overwhelming complexity (and practical incomprehensibility) of many of their similar management prescriptions, the impacts of these alternatives will likely be substantially similar as well.

Harms to Humboldt County caused by Alternatives 4 and 5 include, but are not limited to:

- Uncertainty of management due to complexity of alternatives and innumerable unclarities in presentation of these alternatives (among others, as we discuss in Section XV).

- Likely uneven or unreliable implementation due to complexity of management decisions.

- Potential loss of grazing and grazing infrastructure due to overly prescriptive, non-adaptive, management.

- Potential interference with County development goals and requirements, including permitting new infrastructure on public lands serving public health and safety needs such as communication towers for law enforcement and emergency dispatch, new or improved roads for safe travel and firefighting, and new or expanded free use pits for road maintenance.

Alternative 4 incorporates HMA maps that grossly overestimate HMA in the County, are not based on best available science, and would exacerbate the above harms. Because of this, Alternative 4 is likely inconsistent with Humboldt County's development goals stated in its Master Plan and could cause harms similar to Alternative 3:

- There is currently insufficient industrially-zoned land to support projected community growth, especially as needed to support the Thacker Pass lithium mine, currently under construction. Because Alternative 4 GHMA largely surrounds the city of Winnemucca (as well as the communities of Paradise Valley, Orovada, McDermitt, and Kings River) this Alternative would restrict industrial expansion to the extremely limited areas.[54] Measured and reasonable industrial expansion and economic development requires select disposals of public lands adjacent to the City of Winnemucca. This would be frustrated and limited under Alternative 4.

- Through its exclusion/avoidance stipulations on major and minor ROWs on PHMA and GHMA, Alternative 4 would also eliminate or severely restrict new County communications infrastructure, utility transmission, and transportation on public lands which is necessary for serving a population with significant projected growth.

- Alternative 4 would likely prohibit, or severely restrict, the expansion of the regional landfill. The current landfill footprint will require expansion to meet growth predictions

[54] This is based on the "retain" status for GHMA carried forward from the 2015 / 2019 RMPAs. RMPA / DEIS Appx. 2, p. 2-NVCA-6.

within the next 10 to 15 years. Under Alternative 4, the regional landfill is surrounded by lands classified as PHMA or GHMA, and these lands therefore are not available for disposal.

Alternative 5 would make PHMA "avoidance" and GHMA "open" for solar development. These permissive allocations for solar on GRSG HMA, especially given the extremely large disturbance caused by solar installations, would harm Humboldt County by undermining the success of GRSG conservation efforts with reasonably foreseeable restrictions on multiple use activities.

D. Alternative 6/ACEC Harms

Harms to Humboldt County from Alternative 6 would be the same as those for Alternative 5 plus additional harms as a result of Alternative 6's proposed designation of ACECs. Harms to the County caused by ACEC management (in Alternatives 6 and 3) include, but are not limited to:

i. Valid existing rights-of-way held by the County are not recognized in the proposed ACECs

The ACECs proposed for Humboldt County contain many miles of County general and minor roads and public roads. Restrictive ACEC management creates an added pretext for BLM to dispute these rights; ACECs therefore threaten to impair critical access and transportation within the County. Humboldt County holds title in trust for the public to roads on public lands (excepting State and federal highways) pre-dating 1976 (i.e., Humboldt County has R.S. 2477 roads). Between 2019 and 2020, Humboldt County undertook an extensive survey and inventory of roads on the public lands to identify R.S. 2477 ROWs to ensure their continued stewardship by the County. The result of this survey and inventory can be found at: https://humboldtnv.maps.arcgis.com/apps/webappviewer/index.html?id=35e5d0c00f134048b9cddb521b0ec17a. An additional map[55] shows Humboldt County road inventory photo points within the boundaries of two of the proposed ACECs inside County lines While Humboldt County has notified the BLM of this inventory, the proposed ACECs do not recognize these important prior existing rights. At a minimum, all prior, valid existing rights must be clearly cut out of the ACEC boundaries.

Maintaining the County's possessory interest in and management of R.S. 2477 ROWs is critical for County public services, like law enforcement, search and rescue, fire prevention and attack, and utility maintenance, as well as access for recreation, mining, and livestock grazing. Even without restrictive ACEC management, BLM has routinely attempted to impose road closures on historic R.S. 2477 ROWs in Humboldt County through travel management planning. In Humboldt County and in many other Nevada Counties, valid existing R.S. 2477 rights are regularly ignored by the BLM; a restrictive ACEC designation would create an additional pretext and incentive for the BLM to close[56] or restrict, County ROWs. By failing to clearly recognize these pre-existing

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[55] Available at: https://humboldtnv.maps.arcgis.com/apps/instant/basic/index.html?appid=25d479b4639a46a2b03a3f71c485d918.

[56] *See* DEIS at 3-76–3-77 ("Many areas currently designated as open to cross-country travel will need to be changed to limited or closed designations to minimize resource impacts in the future.") BLM adds in the Affected Environment chapter of the DEIS that "changing areas from OHV open to OHV limited or closed may not be possible due to RS 2477 rights associated with existing roads." *Id.* While the County appreciates the BLM's recognition of R.S. 2477 ROWs in the Affected Environment chapter, this recognition needs to carry forward into ACEC management preseciptions; it currently does not.

rights within ACECs, the DEIS / RMPA leaves the status of valid existing R.S. 2477 rights as well as vested water rights and historic water conveyance rights-of-way (R.S. 2339 and R.S. 2340) in legal jeopardy.

Without clear provisions and procedures to address valid existing rights that have not been adjudicated in federal court but are nonetheless valid (e.g., R.S. 2477 ROWs), the proposed ACECs would force Humboldt County to litigate some (and potentially all) of its R.S. 2477 ROW claims within the ACEC boundaries to prevent reasonably foreseeable road closures and loss of possessory interest. A wholesale defense and/or litigation of the County's R.S. 2477 claims would require an extraordinary expense in legal fees but would be necessary to maintain ongoing, essential access to allotments, range improvements and water installations, provide access for fuels management, fire response and fire reclamation, provide access for County law enforcement and search and rescue, provide access to infrastructure, and allow for ongoing public recreation and enjoyment of the public lands.

ii. The "hard" (non-negotiable) disturbance cap would preclude infrastructure for public safety and could unlawfully interfere with mineral exploration and development.

An ACEC designation would impose a "hard" Disturbance Cap of maximum 3% disturbance in a project assessment area—i.e. no development would be allowed once the 3% cap in the area was met.[57] The hard disturbance cap applies—both because these surface disturbances are subject to and because they are incorporated into the disturbance cap—to roads, free-use gravel pits for road maintenance, communication towers, weather towers, utility lines, airstrips, recreation areas, mining activity,[58] and other "disturbances." If an assessment area around a proposed project becomes "full" (i.e. over 3% disturbance) on an ACEC, the project must be rejected.

By contrast, on PHMA outside ACECs, the DEIS/RMPA provides various paths to disturbance cap exceptions, most having to do with mitigating impacts to GRSG. However, PHMA disturbance cap exceptions notably also include disturbances "needed for the protection of human life and safety, as concurred by the State Director."[59] Critically, the "hard" disturbance cap on ACECs does *not* allow exceptions for any projects, *even when they are needed for the protection of human life and safety*. ACECs would therefore preclude any new infrastructure necessary for protecting human life and safety in areas surpassing the 3% disturbance cap. It is especially important, in this regard, to note that the "disturbance" calculation includes both public and private lands, and land both inside an outside the ACEC.[60] This harms the County, its citizens and the public.

- Preventing new infrastructure necessary for critical County services.

Humboldt County owns and operates a number of communication towers on public lands that provide essential communication capability for the County Sheriff's Department, Highway Patrol, emergency dispatch, and cell service. As the County experiences significant growth and influx in the area, it is clear that the County will need the ability to expand communication capacity in the future, including obtaining new ROWs for mountain-top

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[57] *See* DEIS/RMPA at 2-119 ("No exceptions to the disturbance cap [are] otherwise available in PHMA.").

[58] BLM cannot use the disturbance cap to ban mining activities outright even when they exceed the cap.

[59] *Id.* at 2-38.

[60] The disturbance cap should not include non-federal lands; BLM does not need to consider impacts on these lands as part of its cumulative effects analysis.

tower sites and access roads, and potentially utility transmission lines. In areas where the disturbance cap is met—which is particularly likely in the vicinity of mining activity—providing well-sited emergency communication and utility infrastructure will not be possible.

- Preventing new roads or road improvements.

Local firefighting agencies play a major role in fire suppression and response in the vicinity of the proposed ACECs, in addition to the law enforcement, search and rescue, and emergency services provided by the County. A network of well-maintained roads is essential for local agencies to provide these public services. When roads fall into in poor repair, or are too ill-established to provide reliable transportation, they must be improved. However, in ACEC areas where the disturbance cap is already met, critical road improvements (should they exceed the road's existing disturbance footprint) would not be permitted, regardless of the importance of the improvement to public health, safety, and welfare, including the health and safety of firefighters. The restriction on significant road improvements would also apply to County R.S. 2477 ROWs, should the County find it necessary to expand a historic two-track into a wider road to accommodate firefighting equipment, or make travel safer for recreationists. A paradoxical indirect effect of this restriction on critical road improvements is that ACECs would become ***more prone*** to wildfire (the primary threat to GRSG habitat) through lack of necessary, well maintained roads for firefighting activities.

- Preventing new or expanded free-use pits for road improvements.

As Humboldt County experiences significant growth in the area of the proposed Montana Mountains ACEC (due to two major lithium mines and extensive lithium exploration) we expect a sharp rise in back-country travel in the proposed ACEC. To maintain County roads and rights-of-way for safe transportation, free-use gravel pits are critical. However, in proposed ACEC areas where the disturbance cap is already met, new or expanded free-use gravel pits for County road maintenance use would not be allowed, severely complicating the County's ability to provide cost-effective, timely maintenance to roads, including the extensive network of County R.S. 2477 roads. An inability to expand or create new free-use pits will slow road improvements that are necessary to provide adequate access for fire prevention, response, and reclamation, law enforcement, search and rescue, and safe recreational travel.

- Potentially interfering with mining activities.

While the disturbance cap cannot lawfully interfere with mining activities (even when they exceed the cap) it is unclear how BLM would attempt to apply the disturbance cap to mining activities. The DEIS/RMPA simply states that BLM will "[a]pply the disturbance cap to the extent consistent with applicable law (such as the mining law of 1872) and valid existing rights."[61] BLM has not clarified whether it finds there is *some* extent to which application of restrictions *would* be consistent with the General Mining Law, thus leaving private parties engaged in mineral exploration and development industries unclear as to effects. Given past experience, it is reasonably foreseeable that BLM will attempt to impose additional administrative restrictions, administratively complicate the building of roads and utility lines necessary for mining, and otherwise discourage mineral activity within ACEC areas where a disturbance cap has been met. There is deficient disclosure and analysis of this and its effects in the DEIS.

These restrictions on County activity matter because:

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[61] *Id.* at 2-39.

- Due to the lithium boom in Humboldt County's McDermitt Caldera (largely co-extensive with the Montana Mountains ACEC) the County expects significant human influx and public lands use in coming years. With two major mines under construction, and 3,764 active mining claims within this extremely mineral-rich area, the County's responsibility to provide essential services for public health, safety, and welfare is already growing and must continue grow apace with influx. Through its "hard" disturbance cap, the proposed Montana Mountains ACEC (and other ACECs) would limit, and could prevent, the availability of such County services. As a consequence, ACECs will become places where essential services are sparse, communication is marginal, fires are harder to fight, and human life and safety is less protected than in other areas of the public lands.

- ACECs could cripple mineral exploration by creating uncertainty and unlawful impediments to exploration, causing loss of tax revenue and economic harm to Humboldt County and local Special Districts.

- On proposed ACECs, the BLM would require mineral claimants to submit a detailed "plan of operations" for review and approval by the BLM prior to any exploration beyond use of hand tools or hand-held tools (i.e. "causal use"). Plans of operations—typically required for more advanced (>5 acres) exploration or proposed mines—are extremely costly, time consuming, and require an environmental assessment or environmental impact statement under NEPA (typically costing a minimum of ~$100,000 and going up substantially based on numerous variables). Small-scale "notice-level" exploration activities (<5 acres) typically only require a notice to the BLM. Although federal regulations require plans of operations for mineral exploration exceeding casual use on ACECs, *the unprecedented acreage of the BLM's ACEC proposals*—especially in areas with major critical mineral deposits such as the Montana Mountains ACEC—would cripple mineral exploration and development in Humboldt County, and connectedly, impact the core of the County's tax base.

  The vast majority of mineral exploration and discovery is carried out by small companies (<5 people)[62] as opposed to large mining corporations. Developable mineral deposits are difficult to find, as concentrations of useful minerals rich enough to form ore deposits are rare; small exploration companies therefore take on major financial risks by investing in exploration.[63] Requiring a plan of operations for notice-level exploration would make preliminary exploration of mineral claims in ACECs an economic impossibility for most claimants due to the high risk of investment coupled with the onerous time and cost of developing a plan and attendant NEPA analysis and having it approved.

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[62] *See* T. Fisher, *Nevada mineral and energy resource exploration survey 2021/2022: Nevada Bureau of Mines and Geology Exploration Survey ES-2022* (2023). In 2021 and 2022, more than 50% of exploration companies surveyed had <5 employees and nearly 60% had <10 employees. *Id.* at 9.

[63] "Exploration activities are commonly known to be high risk, as investments are not guaranteed to result in success, but can have significant rewards. When companies achieve the rare success of discovering an ore deposit, considerable time and financing is required to put the deposit into production. Despite the unknowns that affect exploration, exploration is a crucial process in sustaining natural resource industries in Nevada and the growing demands of industrial society both nationally and globally." *Id.* at 3.

As a consequence, ACECs would make even preliminary, small-scale mineral exploration on 5+ million acres of ACECs (some of which cover Nevada's most mineral-rich locations, like Humboldt County's McDermitt Caldera) an unduly expensive, high-risk endeavor for small exploration businesses. The result would be a de facto (if not actual) mineral withdrawal of the proposed ACECs, since exploration companies (and their financial backers) would simply take their business where the cost and attendant risk of preliminary exploration was not prohibitive. Additionally, by making even preliminary, small-scale mineral exploration financially and administratively prohibitive to exploration companies, ACECs indirectly minimize or prevent discovery and development of valuable mineral deposits, precluding future mine operations and blocking utilization of domestic mineral resources of national importance.

Notably, two of the three ACECs proposed in Humboldt County—Montana Mountains and Owyhee West—contain nationally important mineral deposits and thousands of active mining claims (3,764 in Montana Mountains ACEC; 4,505 in Owyhee West) which indicate areas of high mineral potential. Of particular note, the proposed Montana Mountains ACEC is largely co-extensive with the McDermitt Caldera, now believed to contain one of the richest lithium deposits in the world.[64] Lithium is identified by the federal government as a "critical mineral" crucial to our nation's economic and national security.

- Humboldt County would be directly harmed by ACECs because its General Fund and special districts (i.e school, hospital, fire, library, senior citizens, museum, etc.) depend on net mineral proceeds taxes for the majority of their funding, as shown below.

Description of Payment/Deposit:		**Net Proceeds FY 2021-22 (CY 20)[65]**
Fiscal Year		
2021-2022	General Fund	2,346,622.01
2021-2022	3% Bullion Tax	432,507.52
2021-2022	Senior Citizens	199,429.63
2021-2022	Museum	99,714.81
2021-2022	Indigent	150,901.75
2021-2022	Accident Indigent	99,714.81
2021-2022	Coop Extension	66,476.54

[64] *See* https://phys.org/news/2023-08-evidence-mcdermitt-caldera-largest-lithium.html.

[65] The net mineral proceeds tax is collected on mining production on public and private lands.

2021-2022	Sixth Judicial	1,120,794.52
2021-2022	China Springs	42,544.99
2021-2022	Library	269,230.00
2021-2022	Indigent Medical	132,953.09
2021-2022	Indigent Medical St	66,476.54
2021-2022	Wmca Events Complex	265,906.18
2021-2022	Assessors Tech Fees	288,338.35
2021-2022	County Cap Proj	49,744.39
2021-2022	City Cap Proj	16,732.15
2021-2022	Bldg Reserve	66,476.54
2021-2022	Pueblo Fire	0.00
2021-2022	Orovada Fire	0.00
2021-2022	Wmca Rural Fire	129.15
2021-2022	Orovada CSD	0.00
2021-2022	Golconda Fire	190,567.79
2021-2022	Hospital	2,628,482.52
2021-2022	Hospital Debt	0.00
2021-2022	School Dist	4,985,740.75
2021-2022	School Bond & Int	897,433.34
Grand Totals:		14,416,917.37

Fig. 6: Humboldt County net mineral proceeds taxes.

Because of the "boom and bust" nature of mining, the net mineral proceeds taxes that support Humboldt County depend on the continued development and growth of County-wide mining operations. As older mines play out, new mines and in-demand minerals take their place. Curtailment of mineral exploration and development under ACECs (especially in the lithium-rich Montana Mountains) would have major economic impacts on the County and its school, hospital, fire, and other special districts which must continue to meet growing population demands. Moreover, the mining industry supports many well-paying jobs as well as innumerable small businesses (hotels, restaurants, casinos, gas stations, grocery stores) in Humboldt County. These, too, would be heavily impacted by ACEC-caused curtailment of mining activity and a general downturn in economic growth.

- ACECs have historically been subject to "mission drift," and are a target for harmful litigation affecting ranchers, mining, recreation, and transportation.

While—because of inaccurate habitat mapping, lack of consideration of wildfire as a driver of GRSG habitat loss, and counterproductive management actions—the proposed ACECs would have negligible effect on GRSG, they are likely to have an outsized effect on public land users and natural resource industries through increasingly restricting management and likely litigation. ACECs designated for one purpose are often expanded to "protect" other values, making them prone to restricting activities that were originally allowed (the Oregon RNAs on which livestock grazing was banned for GRSG "research" are a case-in-point). Moreover, some parties may see ACECs as a pretext for seeking additional and more onerous restrictions than those that were originally prescribed. For these reasons, ACECs that are not necessary (like those proposed in the 2024 DEIS/RMPA) should not be designated, as they are likely to become the focal point of future restrictions that will undermine the local economy, well-informed management, and valued customary uses of public lands.

REQUESTED CHANGE: BLM must take a "hard look" at these numerous harms through a Nevada-specific supplemental EIS. The BLM should not adopt ACECs into the proposed final Nevada RMPA.

III. The west-wide planning scale of the 2024 GRSG DEIS/RMPA violates FLPMA and BLM regulations.

The GRSG RMPA is a land use plan developed by the BLM Washington Office for a landscape scale: it stretches over nearly all BLM land in the western states. But BLM regulation and FLPMA prohibit BLM headquarters from imposing national one-size-fits-all policies through west-wide land use planning like this RMPA. Such west-wide planning is inconsistent with a fundamental purpose of FLPMA's land use planning process: "in questions of resource balance, decentralization of decisionmaking is vital. The proper balance of uses in one [area] might not be appropriate on another. Local options are desirable" because "[t]he orientation of people using the [public land]s varies."[66]

A. The County appreciates that BLM can, and often should, consider landscape-scale issues in its land use planning.

As an initial matter, the County understands that BLM can use some landscape-scale analysis and supports proper use of such analysis in land use plans. Courts have recognized that "Congress conferred broad discretion upon [BLM] to determine how best to achieve [its multiple use and sustainable yield] mandates,"[67] and beyond the land use planning context, BLM has previously used landscape scale analysis. For example, the Energy Policy and Conservation Act of 2000 directed BLM and the Forest Service to review oil and gas lease terms to ensure consistency across administrative boundaries. By contrast, in addition to specifically disapproving of landscape scale planning under the Congressional Review Act, Congress omitted any mention of landscape scale planning in the section of FLPMA setting forth standards for land use planning and has not amended FLMPA to include such language. "When Congress knows how to achieve a specific statutory effect, its failure to do so

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[66] Public Land Law Review Commission, *Study of Multiple Use Concepts and Land Use Decisions on Public Lands*, at 50-51 (Sept. 21, 1970). The Commission's work was the direct impetus for Congress's drafting of FLPMA.

[67] *Or. Nat. Desert Ass'n v. Gammon*, No. 06-523-HO, 2007 U.S. Dist. LEXIS 48083, at *7–8 (D. Or. June 28, 2007).

evinces an intent not to do so."[68] Congress did not intend that land use planning take place at a west-wide or national scale.

Additionally, the Secretary of the Interior has required that BLM offices coordinate to respond to certain broad threats. Secretarial Order 3289A1, issued in 2009, states that, "[g]iven the broad impacts of climate change, management responses to such impacts must be coordinated on a landscape-level basis." BLM launched a Rapid Ecoregional Assessments (REA) program in response to this mandate. This kind of analysis or coordination is distinct from land use planning, which must abide by BLM regulations that delegate land use planning to field managers and which must also abide by FLPMA's coordination and consistency requirements. Indeed, BLM's own information bulletin on a Landscape Approach for Managing the Public Lands acknowledges the difference between the landscape scale analysis appropriate in a REA and the more local ambit of land use planning. It describes its development of a "proposal for incorporating, or 'stepping-down' the REAs into land use planning and day-to-day management activities. This step-down process is a key aspect of [BLM's] efforts to more fully integrate broad-scale and local-scale ecological information and program direction."[69]

Nor does BLM need to develop ten- or 11-state RMPAs to assess landscape considerations in its RMPs. BLM's Land Use Planning Handbook states that regional considerations may be incorporated into a local plan: "[f]or example, if broad-scale (regional) analysis identifies issues such as invasive weeds that cross BLM field office boundaries or other jurisdictional boundaries, desired outcomes and management actions in a planning area may be described and addressed in the context of the broader landscape."[70] BLM has already accomplished this result in its GRSG planning. The 2015 GRSG LUPAs amended several western RMPs *on a state-by-state basis*; the amendments interlocked to provide for landscape-wide GRSG habitat conservation. The 2019 RMPAs did the same.

Crucially, in those planning efforts, BLM state offices created distinct land use plans for each of the states involved in the planning effort. The integration between landscape-scale analysis and local/regional scale land use plans that BLM points to in its information bulletin and Handbook—and that BLM appears to have practiced to some extent in the 2015 GRSG efforts and more obviously in the 2019 GRSG planning efforts—uses BLM's discretion to fulfill its multiple-use mandate in a manner consistent with FLPMA and BLM regulation. By contrast, in the 2024 GRSG DEIS/RMPA, BLM attempts to formulate four new planning alternatives (Alternatives 3–6) that, if adopted, would apply with minimal state-specific management directives to all ten states involved in the planning effort—an impermissible west-wide one-size-fits-all approach.

B. The RMPA violates BLM regulations, which identify the field office rather than the Washington Office as the seat of RMPA decisionmaking.

BLM is required by its own regulation to achieve resource planning through plans developed at a field office or state level. 43 C.F.R. § 1601.0-4(c) identifies field managers as the officials who "will prepare resource management plans, amendments, revisions and related environmental impact statements" on a local (i.e., field office) or regional (i.e., resource area) scale. By contrast, state directors "provide quality control and supervisory review" for RMPs, and the Secretary of the Interior and the BLM

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[68] *Fish v. Kobach*, 840 F.3d 710, 740 (10th Cir. 2016).

[69] BLM, *The Bureau of Land Management's Landscape Approach for Managing the Public Lands IB 2012-058* (Apr. 3, 2012) https://www.blm.gov/policy/ib-2012-058.

[70] BLM, *Land Use Planning Handbook* at 14.

Director provide "[n]ational level policy and procedure guidance for planning."[71] Because field managers will presumptively prepare land use plans, the "[r]esource area or field office . . . is, in most instances, the area for which resource management plans are prepared and maintained."[72] BLM's Land Use Planning Handbook encourages "planning on a variety of scales, including both local and regional"—but not national.[73]

Ignoring these presumptions and roles, BLM states on the ePlanning site for the DEIS/RMPA that the 2024 GRSG DEIS/RMPA was prepared by WO-230, BLM's Washington Office. BLM is required to follow its own regulations mandating local or regional scale land use planning or to give a reasoned explanation for its departure.[74] Preparation of the RMPA at the national level contravenes BLM's own regulations, and BLM gives no reasoned explanation for it.

If BLM seeks to change to its regulations to permit landscape scale land use planning, it must do so through notice-and-comment rulemaking.[75] BLM has not done so here because it cannot: west-wide land use planning attempted in the RMPA replicates the landscape-scale planning that Congress rejected when it used the Congressional Review Act (CRA) to overturn BLM's Planning 2.0 regulation.

In 2016, BLM issued a rule it called Planning 2.0, which, in part, provided procedures for landscape scale planning like the west-wide RMPs. In early 2017, however, Congress issued a joint resolution disapproving of Planning 2.0; the President signed that resolution, overturning Planning 2.0.[76] Under the CRA, a rule subject to such disapproval "may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted [by Congress] after the date of the joint resolution disapproving the original rule."[77] Congress has not passed a law specifically authorizing landscape scale land use planning.

The County notes at least three similarities between the GRSG RMPA and Planning 2.0:

1. Planning 2.0 removed language stating that the RMP/RMPA "shall be prepared and maintained on a resource or field office area basis," thus permitting land use planning on

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[71] 43 CFR § 1601.0-4(a), (b).

[72] *Id.* § 1601.0-5(m).

[73] BLM, Land Use Planning Handbook H-1601-1, at 1.

[74] *See New Mex. Farm & Livestock Bureau v. Dep't of Int.*, 952 F.3d 1216, 1230–31 (10th Cir. 2020) ("[A]gencies are under an obligation to follow their own regulations, procedures, and precedents, or provide a rational explanation for their departure. When an agency does not comply with its own regulations, it acts arbitrarily and capriciously." (citation, original brackets, and internal quotation marks omitted)).

[75] *See Air Transp. Ass'n of Am. v. FAA*, 291 F.3d 49, 56 (D.C. Cir. 2002) (rulemaking requires notice and comment, and "'[r]ulemaking,' as defined in the [Administrative Procedure Act], includes not only the agency's formulation, but also its modification, of a rule").

[76] P.L. 115–12 (Mar. 27, 2017).

[77] 5 U.S.C. § 801(b)(2). The CRA adopts the APA's definition of a rule, "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy." *Id.* § 804(3); *see also id.* § 551.

a landscape or national scale.[78] As Planning 2.0 contemplated, but against Congress' intent, BLM's Washington Office prepared the 2024 GRSG DEIS/RMPA.

2. Planning 2.0 axed the requirement that state directors authorize a planning area broader than the resource or field office basis. Instead, it provided that "[i]f a planning area does cross State boundaries, the BLM Director will select the appropriate deciding official, usually from among the State Directors involved, and [the Director will] determine the final planning area."[79] As Planning 2.0 contemplated, but against Congress' intent, because the Washington Office is the lead planner for the DEIS/RMPA, the Washington Office appears to have selected the planning area for the DEIS/RMPA.

3. Planning 2.0 modified the requirement that BLM consider the "[d]egree of local dependence on resources from public lands" when developing a land use plan. Instead, Planning 2.0 would have required BLM to consider "[t]he degree of local, regional, national, or international importance of these goods, services, and uses" of public land.[80] As Planning 2.0 contemplated, but against Congress' intent, economic analyses in the DEIS/RMPA includes very few details about the local situation of a county like the County, where the vast majority of land is public land.

BLM regulations situate land use planning at the local or regional rather than national level. The 2024 DEIS/RMPA violates BLM's regulation.

C. FLPMA and BLM regulations do not give BLM's Washington Office authority to prepare or approve RMPAs.

Arguments that FLPMA and other BLM regulations authorize west-wide RMPAs FLPMA fail. As for regulation, a BLM state director can authorize a planning area broader than a field office,[81] but we have found no evidence that any state director has done so for the DEIS/RMPA; instead, the planning scale has been determined by the Washington Office. Additionally, BLM regulation assumes that a single state director, not state directors plural, will authorize preparation of an RMP/RMPA spanning an area larger than a field office. The DEIS/RMPA involves ten state directors, and BLM regulations do not clarify whether, in such a case, all state directors or just one state director must authorize the expansive planning area. This lack of clarity fits with the idea that BLM regulations do not contemplate a planning area so large: a state director, whose work is with a single state and, perhaps, the areas immediately bordering that state, would find it difficult to develop the expertise necessary to authorize west-wide land use planning.

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[78] *Compare* 43 C.F.R. § 1610.1(b)(4) *with* 81 Fed. Reg. 89,580, 89,663 (Dec. 12, 2016).

[79] 81 Fed. Reg. at 89,582.

[80] *Compare* 43 C.F.R. § 1610.4-4(g) *with* 81 Fed. Reg. at 89,667.

[81] *See* 43 C.F.R. § 1610.1(b)(4) ("A resource management plan shall be prepared and maintained on a resource or field office area basis, unless the State Director authorizes a more appropriate area."); BLM, Land Use Planning Handbook H-1601-1, at 14 ("State Directors may also establish regional planning areas that encompass several field offices and/or states, as necessary.").

Further, while FLPMA provides that the Secretary of the Interior must develop land use plans,[82] the Secretary is bound by regulations that delegate land use planning to field managers: she cannot resume that power without amending the existing regulation. The Supreme Court has made repeated holdings to this effect. "[R]egulations validly prescribed by a government administrator *are binding upon him as well as the citizen.*"[83] Thus, for example, where "regulations of the Attorney General delegated certain of his discretionary powers to the Board of Immigration Appeals and required that Board to exercise its own discretion on appeals in deportation cases . . . so long as the Attorney General's regulations remained operative, he denied himself the authority to exercise the discretion delegated to the Board even though the original authority was his and he could reassert it by amending the regulations."[84] Here, the Secretary delegated land use planning authority to field managers, and because the regulation that delegated that authority remains operative, the Secretary has no authority to exercise, herself, the land use planning power.

Neither FLPMA nor BLM regulation authorizes landscape-scale planning.

D. BLM's regulatory intent is to require local or regional-scale land use planning: BLM previously revised its regulations to ensure that BLM headquarters does not develop land use plans.

As described above, BLM's regulations clearly require that land use planning take place on the local or regional scale.[85] But even if the regulations were ambiguous, BLM's regulatory intent is to situate land use planning at the local or regional level: BLM's first revision of its land use planning regulations changed its regulations to ensure that BLM headquarters does not develop land use plans.

The first version of the land use planning regulations, published in 1979, provided—consistent with the current regulations—that "[n]ational level policy and procedure guidance for planning shall be provided by the Secretary and the Director."[86] Differing from the current regulations, they added: "The Director may assume approval responsibility for a specific plan and related environmental impact statement if it is deemed necessary."[87] Just four years later, BLM removed this sentence from its regulations.[88] It explained that it made these changes to its regulations as a result of experience gained in drafting its first resource management plans and in response to comments from the public

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[82] 43 U.S.C. § 1712(a) ("The Secretary shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands.").

[83] *Service v. Dulles*, 354 U.S. 363, 372 (1957) (emphasis added).

[84] *Nixon v. United States*, 418 U.S. 683, 695–96 (1974); *see also Am. Vanguard Corp. v. Jackson*, 803 F. Supp. 2d 8, 14 (D.D.C. 2011) ("[W]here an agency official delegates authority to a subordinate, the official binds himself by such delegation and may not exercise such powers absent express retention of them.").

[85] If a regulation's language is clear, a court "must apply its plain meaning." *Qwest Corp. v. Colo. PUC*, 656 F.3d 1093, 1099 (10th Cir. 2011). "If the regulation is ambiguous, then [a court] look[s] beyond the plain language, examining regulatory intent and overall statutory construction." *Id.* (brackets and internal quotation marks omitted).

[86] 44 Fed. Reg. 46,386, 46,393 (Aug. 7, 1979).

[87] *Id.*

[88] *See* 48 Fed. Reg. 20,364, 20,368 (May 5, 1983) (providing simply that "[n]ational level policy and procedure guidance for planning shall be provided by the Secretary and the Director.").

identifying "burdensome and counter-productive" provisions of the regulations.[89] Though the revision stripped the Director of land use planning authority, BLM retained language, still extant in its regulations, providing that "[r]esource management plans, amendments, revisions and related environmental impact statements shall be prepared by District or Area Managers, and approved by State Directors."[90]

BLM has made clear its regulatory intent that the BLM Director should not develop land use plans, as she has done with the west-wide RMPAs.

REQUESTED CHANGE: BLM cannot lawfully undermine, bypass, or render impracticable FLPMA's cooperative federalism framework by designating impracticably large planning areas that exceed the local and regional scale. The authority and discretion to prepare and approve RMPs/RMPAs sits at the local and state level; this ensures that plans are developed with meaningful state and local government input and with reasonable deference to, state and local resource-related plans and policies. BLM should abandon the DEIS/RMPA's ten-state approach and revert to the state-specific planning approach used in 2019.

IV. Alternatives 1 (SFAs in particular), 3, 4, 5, and 6 are not, but must be, maximally consistent with Nevada's GRSG Conservation Plan and County land use plans.

A. FLPMA requires maximal consistency.

FLPMA requires that land use plans "be consistent with other Federal agency, state, and local plans to the maximum extent consistent with Federal law and FLPMA provisions."[91] Thus, "to the extent practical," BLM must "keep itself informed of other Federal agency and state and local land use plans, assure that consideration is given to those plans that are germane to the development of BLM land use plan decisions, and assist in resolving inconsistencies between Federal and non-Federal plans. The key is ongoing, long-term relationships where information is continually shared and updated."[92] The same requirements apply where BLM amends RMPs: "An amendment shall be made through . . . interagency coordination and consistency determination as prescribed in [43 C.F.R.] § 1610.3.[93]

The cooperative federalism that FLPMA requires means that BLM's land use planning decisions—including the 2024 GRSG RMPA—must be informed by state and local government plans and be

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[89] 46 Fed. Reg. 57,448, 57,449 (Nov. 23, 1981) (proposed rulemaking to amend land use planning regulations; this proposal culminated in the 1983 rule).

[90] 48 Fed. Reg. 20,364, 20,368–69 (1983 rule); *see* 44 Fed Reg. at 46,393 (1981 rule providing that "Resource Management plans, amendments, revisions, and related environmental impact statements shall be prepared by District Managers, and reviewed and concurred in by State Directors. Resource management plans, amendments and revisions are then approved by District Managers."); 43 C.F.R. § 1601.0-4 (Current rule stating that "Field Managers will prepare resource management plans, amendments, revisions and related environmental impact statements. State Directors must approve these documents.").

[91] BLM, H-1601-1, at 6; *see also* 43 U.S.C. § 1712(c)(9) (Land use plans "shall be consistent with State and local plans to the maximum extent [the Secretary] finds consistent with Federal law and the purposes of" FLPMA.).

[92] H-1601-1 at 6; *see also* 43 U.S.C. § 1712(c)(9) (FLPMA provides that "to the extent consistent" with federal public land law, BLM must "coordinate [its] land use inventory, planning, and management activities . . . with the land use planning and management programs . . . of the States and local governments within which the lands are located.").

[93] 43 C.F.R. § 1610.5-5. The Department of the Interior's regulations for the Fish and Wildlife Service require it to coordinate with states regarding wildlife on federal public land: "the effective stewardship of fish and wildlife requires the cooperation of the several States and the Federal Government." *Id.* § 24.1(b).

maximally consistent with such policies and plans to the extent permitted by federal law. "It is clear . . . that [FLPMA's coordination and consistency requirement] protect[] local governments from over encroachment by the federal government and aims to balance conservation with communities' sustained use of the environment. . . . The explicit language of [the requirement] provides that the local knowledge and concerns of counties be adequately considered in the land use planning process."[94] By removing GRSG planning from the local sphere of field and State offices, the 2024 GRSG RMPA deprives state and local governments, like the County, of their legally mandated role in the planning process. As we explain below, the DEIS/RMPA is not maximally consistent with the Nevada State Plan or the Humboldt County's Public Lands Resource Management Policy Plan, including policies on Greater Sage-grouse Conservation, Mining and Mineral Resources, Wildfire Prevention and Management, and Livestock Grazing.

B. The Council on Environmental Quality's (CEQ's) NEPA implementing regulations require BLM to explain where federal land use plans are inconsistent with state and local land use plans or laws.

Unlike FLPMA, which requires maximal consistency to the extent permitted by federal law, NEPA does not require reconciliation between federal and state or local land use plans. However, CEQ's NEPA implementing regulations do require that a NEPA document account for "[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned."[95] Thus, "environmental impact statements *shall* discuss any inconsistency of a proposed action with any approved State, Tribal, or local plan or law (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law."[96]

The DEIS/RMPA does not meet even this standard: we see no discussion in the DEIS/FRMPA of inconsistencies between the County's or the State's plans, policies, and programs despite the fact that we submitted our policies for Greater Sage-Grouse Conservation, Wildfire Prevention and Management, and Livestock Grazing together with our comments on the administrative draft.

C. The west-wide scale of the DEIS/RMPA makes it impossible for the RMPA to be maximally consistent with State and County land use planning.

BLM's existing regulations mandating that "Field Managers will prepare resource management plans, amendments, revisions and related environmental impact statements"[97] provides for a process allowing long-term coordination between BLM and local governments that facilitates the required maximal consistency between BLM's RMPAs and local land use planning. Any other form of planning

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[94] *See W. Expl., LLC v. Dep't of Int.*, 250 F. Supp. 3d 718, 739 (D. Nev. 2017). Additionally, BLM cannot, as the 2024 GRSG DEIS/RMPA purports, assert that its national policies, forced through landscape scale planning, are "federal public land law" and, as a result, render consistency review meaningless because state and local plans could be deemed "inconsistent" with the newly pronounced federal policy unlawfully declared in the landscape scale planning. *See Gose v. United States Postal Serv.*, 451 F.3d 831, 840 (Fed. Cir. 2006) ("An agency interpretation that effectively eviscerates regulatory language is *per se* inconsistent with the regulation and may be accorded no deference.").

[95] 40 C.F.R. § 1502.16(a)(5).

[96] *Id.* § 1506.2(d) (emphasis added); *see also* CEQ, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, at 23b, c (Mar. 16, 1981, amd. 1986) (After identifying any potential land use conflicts" between local, state, and federal plans, "the [federal] decisionmaker must weigh the significance of the conflicts.").

[97] 43 C.F.R. § 1601.0-4(c).

is necessarily less consistent. Indeed, the scale of the DEIS/RMPA—comprising hundreds of state, tribal, and local government agencies—renders the BLM's FLPMA-derived coordination and consistency obligations impossible to fulfill; there is simply no means by which a single RMPA can meet FLPMA's consistency requirements with the hundreds of state, tribal, and local resource-related plans within the planning area. Nor is it possible for BLM to meaningfully coordinate with hundreds of state and local government agencies. This underscores that planning must, practically and legally, be undertaken at the field office or state level.

We describe below our specific difficulties working with BLM as a cooperating agency on the 2024 GRSG DEIS/RMPA. First, however, we highlight several more general aspects of a west-wide planning process that render impossible the coordination and maximal consistency that statute and regulation require.

1. The west-side scale of the 2024 DEIS/RMPA makes it more difficult for counties, states, and tribes to meaningfully participate in the land use planning process. Very few counties—and especially counties like Humboldt County, with small populations and a huge percentage of federal public land—have the resources necessary to employ a full-time staff member dedicated to monitoring the county-level effects of west-wide RMPAs.[98]

2. Because it encompasses so many localities, the 2024 DEIS/RMPA dilutes or even ignores issues of local significance. For example, as we have explained, the 2015 GRSG LUPAs mis-designated as GRSG habitat land slated for expansion of the County landfill[99] and the 2024 DEIS/RMPA makes numerous mis-designations of degraded habitat as PHMA. Alternatives 3 and possibly 4 in the DEIS appear to repeat this mis-designation *that a federal court rejected as implausible* and disallow expansion of the landfill.

3. The 2024 DEIS/RMPA changes the way BLM interacts with local governments and its own field offices. "Cooperative relationships are easier to maintain at the local level, rather than at a more distant administrative level. The shift toward landscape-level planning arguably will result in a shift toward centralized, BLM. The voices of larger national and regional players may well drown out smaller, local voices."[100] This approach proposed by the BLM in Planning 2.0 was rejected by Congress.

4. It is difficult to plan across jurisdictions, and to harmonize disparate priorities, in a west-wide RMPA. As we explain below, the 2024 DEIS/RMPA is inconsistent with both Nevada's GRSG Conservation Plan and with County land use plans. Ours is not a unique experience: the Utah Division of Wildlife Resources has described how BLM's adoption of universalized sage grouse habitat guidelines in its 2015 multistate Greater Sage Grouse LUPAs has "been problematic for rangeland management in Utah, as most of Utah's sage-grouse occur in desert

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[98] *See* Jim Fontaine, Nevada Association of Counties, *Testimony Before the House Natural Resources Committee Oversight Hearing on State Perspectives on BLM's Draft Planning 2.0 Rule* (Jul. 7, 2016) https://www.congress.gov/event/114th-congress/house-event/LC44561/text.

[99] *See W. Expl., LLC v. Dep't of Int.*, 250 F. Supp. 3d at 736.

[100] Rebecca Watson and Joshua Cannon, *Toward Planning 2.0: The New Landscape of BLM Planning*, 93 Denv. L. Rev. Forum 49, 54 (2015).

shrub areas that receive less annual precipitation than those in the northern range of the species," which was the basis for the universalized guidelines.[101]

5. The DEIS/RMPA does not appropriately consider economic impacts on local jurisdictions. It states that "[t]he nature and types of social and economic impacts associated with management actions under the alternatives would be similar across [greater sage grouse] range, however, effects would not be evenly distributed and may be felt at the individual community-level to a greater degree."[102] **But it does not discuss how effects might diverge, and the appendix assessing economic conditions spends less than a page discussing economic conditions in Nevada counties.**[103] In determining the scale of the impacts analysis, BLM must "balance need for a comprehensive analysis versus considerations of practicality, while also keeping in mind that use of a larger analysis area can dilute the apparent magnitude" of impacts.[104] Here, BLM's ten-state scope of analysis necessarily dilutes the magnitude of impacts on counties: local restrictions on grazing, for example, might be economically significant to the County but at a larger scale the impact might be portrayed as less significant because grazing could be accomplished on other rangeland.[105]

Necessarily, because it is less consistent with State and local land use plans than an RMPA developed at a more local level, the west-wide, Washington Office-prepared DEIS/RMPA is not maximally consistent with more local plans. Our comments below expand on this theme.

D. Alternatives 1, 3, 4, 5 and 6 are not maximally consistent with the Nevada GRSG Conservation Plan and, contrary to CEQ's NEPA implementing regulations, the DEIS/RMPA does not discuss these inconsistencies.

As it applies to Nevada, the RMPA must be maximally consistent with the 2019 Nevada Greater Sage-grouse Conservation Plan (the State Plan). At present, none of the newly proposed action alternatives—Alternatives 3–6—are consistent with the State Plan. Among those alternatives, Alternative 5 (BLM's preferred alternative) is most consistent; however, it too would require substantive amendment to be consistent with the State Plan. In our view, Alternative 2 is the plan most consistent with the State Plan. We also note that Alternative 1—which includes sagebrush focal areas (SFAs)— has never been consistent with the State Plan. The HMA mapping for Alternatives 3, 4, 5, and 6 as presented in the public DEIS / RMPA has not been approved by the State.

The DEIS/RMPA pays little or no attention to Nevada's State GRSG conservation practices. The State Plan is not mentioned in the DEIS/RMPA. Neither is NDOW's statutory mandate to "establish and carry out programs to preserve, restore and enhance sagebrush ecosystems on public land in"

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[101] Utah Div. of Wildlife Res., *Utah Conservation Plan for Greater Sage-Grouse*, at 12 (Jan. 2019) https://wildlife.utah.gov/sage-grouse/Utah_Greater_Sage-grouse_Plan.pdf.

[102] DEIS at ES-7.

[103] *See id.* at 13-2-14–13-2-16.

[104] *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 943 (9th Cir. 2014). BLM is required to analyze economic impacts in an EIS. BLM must assess the economic impacts of a proposed action in an EIS. *See* 40 C.F.R. § 1508.8.

[105] *See Diné Citizens Against Ruining Our Env't v. Haaland*, 59 F.4th 1016, 1043–44 (10th Cir. 2023) (acknowledging that scale can be important in analysis of impact because, for example, "all agency actions causing an increase in [greenhouse gas] emissions will appear de minimis when compared to the regional, national, and global numbers" of greenhouse gas emissions").

Nevada.[106] There is no mention of the Sagebrush Ecosystem Council, created by Nevada statute to "[e]stablish and carry out strategies for: (1) The conservation of the greater sage grouse and sagebrush ecosystems in this State; and (2) Managing land which includes those sagebrush ecosystems, taking into consideration the importance of those sagebrush ecosystems and the interests of the State."[107] Nor is there mention of the SETT or its technical recommendations.

BLM's single reference to the Nevada requirements emphasizes the Conservation Credit System (CCS) for mitigation of adverse impacts to GRSG habitat without mentioning any other aspects of Nevada's statute-created GRSG conservation program.[108] While the CCS is an important component of the State Plan, recognition of the CCS does not constitute consistency with the State Plan. Indeed, like the 2024 DEIS/RMPA, the State Plan and the Nevada Administrative Code set forth requirements for avoidance and minimization in addition to mitigation.[109] BLM does not explain how or whether its avoidance, minimization, and mitigation strategy comports with the State Plan or, if federal law prevents consistency, how BLM has attempted to achieve maximal consistency. We note several potential discrepancies between the State Plan and the DEIS/RMPA:

1. The State Plan and the DEIS/RMPA make different habitat designations. For example, the Slumbering Hills and the Eden Valley are designated as GHMA in the 2024 model update; though they may remain PMUs, they are not designated as HMA of any kind in the State Plan.[110]

2. Mitigation language for alternatives 4–6 might be read to require mitigation to be conducted in the same place as the area of impact. BLM states:

> Mitigation shall be prioritized to occur within the same area of the impact (within the same HAF fine scale area), or if not possible, within the same neighborhood cluster to the extent practicable or nearest equivalent HMA designated habitat so that it provides habitat for GRSG populations affected by the project.[111]

This could significantly limit the application of mitigation measures using Nevada's Conservation Credit System, which applies statewide. Further, while it may be appropriate to direct mitigation to

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[106] *See* NRS 321.592.

[107] NRS 232.162.

[108] We note that, in response to our comments on the ADEIS/ARMPA, BLM has removed language indicating that CCS is a voluntary requirement. *See* DEIS at 4-229. However, it does not appear to treat the State Plan's "avoid" and "minimize" requirements as mandatory. *See* DEIS at 4-229 (suggesting that Nevada does not mandate conservation by noting that "the regulatory conservation actions mandated by the State plans in WY, MT, and OR, and through mitigation required by the NV plan provide the greatest degree of regulatory certainty in addressing potential threats to GRSG"). NAC 232.460–80 establish regulatory requirements for projects that may impact sagebrush ecosystem.

[109] *See* NAC 232.470 (where a project will cause anthropogenic disturbance to GRSG habitat, the proponent must "work with the [SETT] to avoid and minimize such adverse impact to the greatest extent possible"); Nevada Sagebrush Ecosystem Program, 2019 Greater Sage-grouse Conservation Plan, at 14–15 (Apr. 2019) (establishing an avoid, minimize, mitigate hierarchy); *id.* at 86 ("After all practicable economically and technically feasible possibilities to avoid and minimize impacts to sage-grouse habitat have been exhausted, residual adverse impacts are required to be offset by mitigation requirements as determined through the CCS.").

[110] *See* State Plan at 17.

[111] DEIS at 2-23.

areas affected by development, there also may be instances where mitigation is more beneficial outside of those areas. Mitigation language should be revised to allow for mitigation outside of neighborhood clusters in some instances, consistent with Nevada state agency recommendations.

Additionally, disturbance cap exceptions in Alternative 4 relying on mitigation require mitigation to go into effect before the disturbance.[112] This renders the exception largely impracticable and overly onerous. There will be significant delay if BLM requires both completion of the mitigation and a determination of the "value of the mitigation" to the habitat affected by the disturbance. Mitigation measures often take considerable time to provide measurable effects, which will unduly delay any project. Moreover, this proposed language does not specify how "value" will be measured and/or compared to habitat affected by the disturbance, causing uncertainty and confusion for BLM staff and proponents alike.

3. Severe, across-the-board restrictions on use of PHMA in Alternatives 3 and 6 is inconsistent with the State Plan's provision of an avoidance process by which a project proponent, including local government, can proceed with anthropogenic disturbance even in PHMA so long as it satisfies certain conditions. This inconsistency is heightened for the ACECs contemplated by both Alternative 3 and Alternative 6.

4. The State Plan specifically provides for ground-truthing "to confirm habitat type" at the outset of a proposed project.[113] As noted, and despite the County's recommendation, the DEIS/RMPA makes no such provision though this is required to make decisions based on the best available science and information.

5. The State Plan establishes a process by which the State determines that "avoidance cannot be reasonably accomplished."[114] It includes specific instructions as to the process where a project proponent (who bears the burden) seeks to establish that avoidance cannot reasonably be accomplished. Certain aspects of this process are consistent with the new alternatives that the DEIS/RMPA proposes. For example, both may require collocation of the project with other, prior disturbance.[115] But Nevada's avoidance process is much more detailed than BLM's, and also includes significant differences. The table below compares the two:

State Plan Avoidance Process for PHMA **A project involving anthropogenic disturbance can proceed where the proponent proves:**[116]	**BLM Plan NV/CA State-Specific Screening Criteria to Avoid Effects** **If the project/activity cannot be placed outside PHMAs and GHMAs:**[117]
The project cannot be accomplished elsewhere	

[112] *Id.* at 2-37.

[113] State Plan at 15.

[114] *Id.*

[115] *See id.* at 18; DEIS at 2-168.

[116] State Plan at 18.

[117] DEIS at 2-168.

Individual and cumulative effects of the project will not result in habitat fragmentation or population decline	Adjust the project to locate direct impacts (i.e., surface-disturbing activities) in non-habitat areas first, then in the least suitable habitat for GRSG without creating a barrier to movement or connectivity between GRSG seasonal habitats and populations
Population in the relevant PMU is increasing, on aggregate, over the preceding ten years	
The project is collocated with other disturbances to the greatest extent possible	Collocate the project
The proponent has consulted with SETT to develop specific design features that mitigate impacts	Locate the project to avoid and/or minimize indirect impacts to lekking and source area (sometimes termed PHMA+)
The proponent mitigates impacts through the CCS	

We are particularly concerned that the RMPA/DEIS does not include in its scheme consultation with the SETT: this, again, minimizes the State's role in GRSG habitat conservation and would undermine a program the State of Nevada has built over the course of more than a decade with significant investment and demonstrated success.

BLM's 2015 and 2019 GRSG land use plans were both more consistent with the State Plan than the 2024 RMPA/DEIS. The 2015 Nevada FEIS/LUPA noted BLM's "adopt[ion of] key elements" of Nevada's State Plan and mentioned the SETT in the body of the DEIS/LUPA.[118] The 2019 Nevada ROD/RMPA—which we view as the alternative most consistent with the State Plan—provides that BLM will (1) notify the SETT regarding any project resulting in anthropogenic disturbance to designated habitat, (2) incorporate any State-required or -recommended mitigation into BLM's NEPA decisionmaking process, and (3) verify that the project proponent has coordinated with the SETT to ensure compliance with the State Plan.[119]

6. The State Plan requires ground-truthing before a project begins to confirm that *habitat exists.*[120] Unlike the State Plan, Alternative 3 provides no mechanism for management of non-habitat that BLM has designated as habitat. While Alternatives 4, 5, and 6 make at least some provision for mistaken designations of habitat, they reverse the State Plan's project-specific process to

[118] *See* BLM, Nevada and Northeastern California Greater Sage-Grouse Proposed LUPA/FEIS, at ES-13 (June 2015) ("The Proposed Plan adopts key elements of the State of Nevada Greater SageGrouse Conservation Plan (State of Nevada 2014) and the State of Nevada Conservation Credit System (Nevada Natural Heritage Program and Sagebrush Ecosystem Technical Team 2014) by establishing conservation measures and focusing restoration efforts in the same key areas most valuable to the GRSG.").

[119] *See* BLM, Nevada and Northeastern California Greater Sage-Grouse Record of Decision and Approved Resource Management Plan Amendment, at 1-5 –1-6 (Mar. 2019).

[120] *Id.* at 2-19.

determine whether habitat exists, instead establishing a process to determine that *habitat does not exist*: "If during consideration of a proposed action (project level authorization) within GRSG PHMA, GHMA, . . . and OHMA (in NV/CA) potential nonhabitat is identified, a field investigation should be conducted by a BLM biologist (or reviewed and accepted for confirmation)."[121]

This reversed presumption is especially troubling because of the inaccuracies, described above, in BLM's habitat designations: BLM does not offer a clear avenue by which the County, or any other proponent of a project on public lands, can establish that designated habitat should not, in fact, be designated as PHMA, GHMA, or OHMA. Thus, the errors are relied upon to change the status of lands from open to development to, no surface occupancy, in some alternatives with no process to use the best available science for the BLM's decisionmaking.

7. The State Plan provides:

> Activities that address public health and safety concerns, specifically as they relate to federal, state, local government and national priorities, as well as routine administrative functions conducted by federal, state or local governments, including prior existing uses, authorized uses, valid existing rights, and existing infrastructure (i.e., rights-of-way for roads) that serve a public purpose and will have no adverse impacts on GRSG and its habitat, consistent with the State's current mitigation regulations, policies such as the State of Nevada's Executive Order 2018-32 and programs, shall not require mitigation through the CCS.[122]

By contrast, in some management designations the DEIS/RMPA permits actions to address public health and safety only where a catastrophe or emergency is involved.[123] On ACECs, BLM would not permit any exception to the disturbance cap, even where human life and safety are at issue.[124] This inflexibility is inconsistent with the State Plan and poses real risks to the County and its citizens.

8. For Alternatives 3–6, BLM often confusingly uses "compensate" in place of "mitigate" when noting that actions that would impact designated GRSG habitat should avoid, minimize, and mitigate impacts.[125] Under a heading titled "Compensation," the DEIS/RMPA states that "[m]itigation amounts should comply with State agency or regulatory requirements and [be] consistent with BLM mitigation policy."[126] BLM also uses the term "compensatory mitigation." This lack of clarity does not help regulated parties to understand BLM's requirements. And because the State Plan uses "mitigate" rather than "compensate" to

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[121] *Id.*

[122] State Plan at 21.

[123] *See, e.g.*, DEIS at 2-171.

[124] *Id.* at 2-38.

[125] *See, e.g.*, the mandate in Alternative 4 to "[m]anage fluid mineral leasing and development (including geothermal) in GRSG habitat management areas to avoid, minimize, and compensate for adverse impacts to GRSG habitat to the extent practical under the law and BLM jurisdiction." *Id.* at 2-41. This usage occurs throughout the DEIS/RMPA.

[126] *Id.* at 2-23.

describe actions that include those performed through the CCS, it is not clear how BLM's "compensate" requirement fits with the State Plan's "mitigate" requirement.

BLM should include in the FEIS language analogous to that included in the 2021 ROD for Nevada and Northeastern California: "With respect to any State compensatory mitigation requirements, the BLM will defer to the appropriate State authority to quantify habitat offsets, durability, and other aspects used to determine the recommended compensatory mitigation action."[127]

9. In the DEIS/RMPA, BLM uses the term "no net loss" as well as the term "net conservation gain." It is not clear how these terms relate. In one instance the DEIS/RMPA places these terms in tension.[128] In another, it appears to use them as synonymous.[129] BLM defines "no net loss" but does not define "net conservation gain," so it is unclear how BLM's vision of "net conservation gain" intersects with the State Plan's definition. This issue could have been rectified through adoption of the State Plan's definition of "no net loss."

   Further, it is unclear how BLM's definition of "no net loss" intersects with the State's definition of "net conservation gain," the State's fundamental requirement for GRSG habitat conservation. BLM states that "[e]stablishing no net loss will require full restoration of functional habitats or enhancement of habitats to minimally support the number of GRSG present prior to disturbance at the apex of the population cycle."[130] The State Plan defines "net conservation gain" as an "objective to maintain the current quantity and quality of sage-grouse habitat within the Service Area at the state-wide level by protecting existing sage-grouse habitat or by mitigating for loss due to anthropogenic disturbances. . . . This objective will be measured by the credit to debit ratio" established through the CCS.[131]

   On BLM's definition, "no net loss" appears to rely on measurement of GRSG population stability. But "net conservation gain" relies on measurement of habitat lost. BLM does not describe, explain, or attempt to rectify this inconsistency.

10. The State Plan clearly requires mitigation of all anthropogenic disturbance, no matter how authorized.[132] BLM, however, recognizes that it cannot require mitigation or use of CCS in all circumstances, particularly mining conducted under the General Mining Law.[133] BLM should explain in the FEIS/RMPA how it intends to ensure consistency with the State Plan for projects on federal land. The 2019 RMPA provides a possible solution to this issue through

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[127] BLM, Record of Decision for the Greater Sage-Grouse Supplemental Environmental Impact Statement, at 8 n.4 (Jan. 2021).

[128] *See* DEIS at ES-4 (describing "net gain vs. no net loss" mitigation strategies).

[129] *See id.* at 2-183 (Describing Utah-specific rules for "Net Conservation Gain: Apply a minimum standard of no net loss consistent with crosscutting language.").

[130] *Id.* at 2-23.

[131] State Plan at 14. We note that the State Plan refers to "no net loss" in an appendix explaining specific design features the SETT might implement. *Id.* at 141. This term is not defined in the State Plan and this use is its single appearance.

[132] State Plan at 21 ("Mitigation will be required for all anthropogenic disturbances impacting sage-grouse habitat within the Service Area.").

[133] *Id.* at 2-23–24.

its requirement that BLM notify the SETT where a project will affect designated habitat as well as its requirement that BLM verify that a project proponent has complied with state law.

11. The DEIS contemplates a disturbance cap. That is, in PHMA, if "direct disturbance from existing and proposed infrastructure developments exceeds" 3% at the "project scale" or in the Habitat Assessment Framework (HAF) Fine Scale habitat selection area, "new infrastructure projects would be deferred to the extent allowable under applicable laws . . . or valid existing rights."[134] The State Plan does not provide for a disturbance cap.

12. BLM fails to consider the voluntary land-owner and permittee GRSG conservation that has been widely practiced throughout Humboldt County, Nevada, and the ecoregion on both public and private lands, typically through the SGI, SEP, and land-owner cost shares. Voluntary conservation in the ecoregion has included conifer clearing, wetland easements, investment in water installations, troughs, wildlife ramps, fencing and fencing markers, and other projects to benefit GRSG. Notably, grazing permittees have also stepped up by working with local BLM staff to redesign livestock timing and season of use on their allotments to provide additional protections. As noted above, voluntary conservation of GRSG habitat in Nevada has amounted to millions of dollars during past years.

13. The adaptive management framework BLM describes in Alternatives 3–6 does not comport with the State Plan's adaptive management approach or DOI's own guidance on adaptive management. This is particularly true of the hard threshold response, which automatically implements a host of allocation or management decisions that may or may not be warranted based on the cause of reaching a hard trigger.[135] Once the hard threshold responses are implemented the DEIS/RMPA does not provide for any iterative implementation or path for reversing those automatic implementations, and the scale of the response is also not well defined.

    Particular aspects of the adaptive management approach not included in the DEIS/RMPA but described in DOI's guidance include:

    a. Assessment of Problem (particularly important for a hard trigger response as there is no casual factor analysis);

    b. Design (particularly for hard trigger responses as responses are "hard wired" in at the RMP level);

    c. Monitor;

    d. Evaluate; and

    e. Adjust.[136]

    Additionally, we question whether the BLM actually has the capacity to conduct increased causal factor analyses (CFA) associated with its adaptive management plan with sufficient

[134] DEIS at 2-29.

[135] *Id.* at 2-125–27.

[136] *See* Byron K. Williams et al., *Adaptive Management: The U.S. Department of the Interior Technical Guide* (2009).

thoroughness and specificity to ensure that management corrections, where necessary, target the right cause. The DEIS/RMPA also appears to apply adaptive management restrictions in the event of an inconclusive CFA. These could inappropriately result in management restrictions that last indefinitely, even though the cause of a trigger had not been positively identified. Instead, we suggest continued monitoring and periodic re-evaluation for inconclusive CFAs in collaboration with stakeholders in place of restrictions.

As we have mentioned in previous comments, a collaborative approach is indispensable to the adaptive management process. BLM should amend language in the adaptive management prescriptions to ensure it engages with stakeholders and state agencies to review its CFA findings, population metrics, and proposed responses. BLM's "population threshold" based on BLM's metrics should be used as a starting point for a larger conversation of both the accuracy of the threshold and the need for any potential management changes. This conversation must occur *before* the imposition of management restrictions.

The County asks BLM to adopt the State Plan's adaptive management framework, which better complies with DOI's own adaptive management guidance than does the DEIS/RMPA.

We ask BLM to identify these discrepancies, and any others its analysis raises, in the FEIS/RMPA. BLM should also explain its efforts to reconcile the FEIS/RMPA with state and local land use plans and, if it has not been able to achieve consistency, why.

E. Alternatives 1, 3, 4, 5, and 6 are not maximally consistent with County land use plans and, contrary to CEQ's NEPA regulations, BLM does not discuss these inconsistencies.

Inconsistencies between the draft RMPA and the Humboldt County Public Lands resource Management Policy Plan (PLRMPP) include but are not limited to:

1. Habitat

   Due to inaccurate HMA maps and inadequate ground-truthing requirements, alternatives 1, 3, 4, 5, and 6 conflict with the following PLRMPP Wildlife provision: "State and federally designated habitat protection areas should not include: (1) previously disturbed areas having little or no suitable wildlife habitat or; (2) land that is incapable of providing the long term requirements of the species in question."

2. Greater Sage-grouse Conservation

   All alternatives focus conservation efforts on anthropogenic disturbance which (1) is remediated by the State GRSG Plan and CCS program, and (2) has been demonstrated in the BLM's own monitoring report not to be a primary cause of GRSG habitat loss. The approach of the BLM's planning effort is inconsistent with the following PLRMPP provisions: "Sage-grouse conservation efforts of federal and state agencies should target primary threats: Wildfire, invasive vegetation, predation, and habitat loss through unremediated development and/or disturbance.

3. Minerals

Two alternatives (1 and 3) propose major mineral withdrawals in GRSG habitat. These alternatives are inconsistent with the following policies from the Mining and Minerals component of the County's PLRMPP:

- "No withdrawal—or recommendation for withdrawal—of any public lands within the County from mineral extraction or development should be made unless the proposed mineral withdrawal has been agreed upon through coordination with the County."

- "Any withdrawal—or recommendation for a withdrawal—should be made consistent with and in due consideration of the Domestic Minerals Program Extension Act of 1953, the Mining and Minerals Policy Act of 1970, National Materials and Minerals Policy, Research and Development Act of 1980, and Executive Orders 13817 and 13953, in addition to FLPMA (or other relevant law authorizing withdrawal). All proposed withdrawals should be clearly justified in the national interest." This requires additional substantial disclosure and analysis – the requisite "hard look" of the effects of a proposed mineral withdrawal (as discussed above) and discussion and explanation of why other options will not suffice to achieve the objective of habitat conservation.

- "As an alternative to withdrawals on sage-grouse habitat (or lands with other important natural values) mining disturbances and infrastructure should continue to be authorized by applying the 'avoid, minimize, mitigate' hierarchy articulated in the 2019 Nevada Greater Sage-grouse Conservation Plan, section 7.6 'Anthropogenic Disturbances' with a view to maintaining no net loss of sage-grouse habitat (or other similar value). Such mitigation should be carried out in coordination with the [SETT]. Application of the [CCS] should be used to offset habitat impacts as appropriate."

One alternative (6) also requires mineral claimants to submit a plan of operations to carry out notice-level activities on ACECs. This is inconsistent with the following PLRMPP policy:

- "State and Federal regulation of mining operations should enable both large- and small-scale operations. Regulatory requirements should not be so onerous or complex that they disincentivize mineral exploration and investment in the County, or otherwise undermine the purpose of the GML, the Mining and Minerals Policy Act of 1970, the National Materials and Minerals Policy, Research and Development Act of 1980, or other applicable statutes for locatable, leasable, or saleable minerals."

4. ACECs

Two alternatives (3 and 6) would designate ACECs for the ostensible protection of GRSG, conflicting with the following PLRMPP Greater Sage-grouse Conservation provision:

> The BLM should not designate any ACECs without fully coordinating with Humboldt County and its Master Plan under FLPMA. Humboldt County opposes the designation of ACECs as a means of conserving sage-grouse habitat. Conservation of sage-grouse habitat necessarily takes place at the landscape scale; ACECs are by definition not landscape-scale tools. Any ACEC proposed on the basis of conserving sage-grouse habitat will be strictly reviewed for relevance, importance, and special management attention criteria (43 CFR § 1601.0-5(a)). ACECs are not appropriate where site-specific planning under the Land Use Plan is sufficient for protecting the resource. ACECs

should not be used as a false pretext for impeding active management (e.g. livestock grazing) that improves landscape-scale wildfire resistance and resilience.

Alternatives 3 and 6 ACEC proposals also conflict with the following PLRMPP Special Designation provisions:

No ACEC designation should be approved for which:

- Relevance and importance criteria for the values present [. . .] have not been clearly and explicitly demonstrated.

- Substantial evidence has not been provided demonstrating that protection and prevention of irreparable harm to the values present [. . .] requires special management.

- The area of the proposed ACEC is larger than the minimum necessary to protect and prevent irreparable harm to the values present . . . [and]

- Proposed restrictions on land and resource uses exceed the minimum restrictions necessary to protect and prevent irreparable harm to the values present . . . .

5. Livestock Grazing

Alternatives 1 3, 4, 5, and 6 would either preclude (3) or seek non-adaptive, administrative decisions and decreases (1, 4, 5, and 6) of livestock grazing on GRSG HMA. Alternatives 4, 5, and 6 would also seek to retire or put into "reserve common allotments" voluntarily relinquished grazing allotments.[137] These management approaches are inconsistent with the following PLRMPP Livestock Grazing provisions:

- "Administrative actions to reduce or suspend grazing should only be used as solutions of last resort or in emergency situations, and then only in close coordination, consultation, and collaboration with the County and the permittee involved."

- "Any determination that a grazing allotment is failing to meet or make sufficient progress toward meeting range land health criteria—for any reason—should be addressed at the earliest opportunity in coordination, consultation, and collaboration with the County and the affected permittee."

- "Temporarily or indefinitely suspended AUMs should be returned to active grazing use, and /or allotments reopened as soon as stated objectives are met."

- "While temporary closure of grazing allotments is occasionally appropriate in cases of fire or other natural eventualities to restore range conditions prior to restocking . . . the closure of an allotment for any other reason should only occur in coordination with the County and the affected permittee, and consistent with applicable statute and regulations."

[137] DEIS at 2-112.

- "Permits voluntarily relinquished by permittees should be immediately made available to other livestock operators, unless 1) an agency determination to the contrary is consistent with County land use plans and agreed upon in coordination with the County and 2) any necessary reclassifications and subsequent requirements are executed according to applicable statute and regulations."

6. Wildfire Prevention and Management

Alternatives 1, 3, 4, 5, and 6 would either preclude (3) or seek non-adaptive, administrative management and decreases (1, 4, 5, and 6) of livestock grazing on GRSG HMA. These management approaches are inconsistent with the following PLRMPP Wildfire Prevention and Management provisions:

- "Federal LUPs/RMPs/CCPs and FMPs should include robust fuels-management programs that utilize the full complement of fuels-management treatments where appropriate."

- "Consistent with administrative guidance, all appropriate fuels management tools, including livestock grazing, should be utilized to meet joint objectives for fire resistant and resilient landscapes."

The Humboldt County Fire Plan also makes recommendations for BLM fuels management in the vicinity of communities and human habitation (wildland-urban interface) that would be unavailable in Alternative 3 and potentially frustrated in Alternatives 1, 4–6 through administrative reductions in grazing:

- "Fuels Reduction: Permit livestock grazing prior to seed maturity to reduce cheatgrass. Balance annual stocking rates with annual cheatgrass grass productivity."

7. Roads and Transportation

While no alternative explicitly calls for the closure of existing roads on HMA, the DEIS / RMPA sets a strong presumption of road closures, particularly in Alternative 3 (all areas), Alternative 1 (SFAs) and Alternative 6 (ACECs). Road closures could, for example, be one method of decreasing disturbance in an area approaching a disturbance cap, or of limiting access to valuable GRSG habitat areas. These reasonably foreseeable consequences of the alternatives are inconsistent with the following PLRMPP provisions for Roads, Accessibility, and Travel Management:

- "County roads and rights-of-way on public lands (including but not limited to R.S. 2477 rights-of-way) shall remain open unless it is determined by the County that the subject road or right-of-way is no longer needed as part of the County's transportation system."

- "The County shall hold in trust all grants of R.S. 2477 rights-of-way located on public lands within Humboldt County on behalf of the public, and shall assume primary responsibility for maintaining the public roads that exist upon such rights-of-way, with maintenance subject to County discretion."

- "Unless the County choses to abandon an R.S. 2477 right-of-way, any road established under an R.S. 2477 grant is declared to be a public road, and shall remain open for the use and enjoyment of the public."

- "Federally owned roads on public lands are vital for maintaining public health, safety, and welfare, and should remain open to facilitate equitable access, public safety, recreation, and economic activity. Therefore:

    - Any proposed closure of a federally owned road on public lands within the County should be fully coordinated with the Humboldt County Commission and be consistent with this Plan to the greatest extent allowable under governing law.
    - Proposed road closures should be minimized, site specific, and supported by scientific evidence that is current, clear, and reproducible.
    - Roads providing access for mining operations, livestock ranching and range improvements, recreational opportunities, and public services including fire fighting, search and rescue, and law enforcement, should remain open.
    - Roads servicing utility and communications installations should remain open.
    - Where a road closure is determined to be necessary, temporary or seasonal closures should be preferred to permanent closures. Temporary closures should be for the shortest amount of time necessary and accompanied by clear reopening schedules and / or criteria.
    - Where feasible, roads should be rerouted instead of closed.
    - No road, trail, right-of-way, corridor, easement, or other traditional access for the transportation of people, products, recreation, energy, or livestock should be closed, abandoned, decommissioned, or have a change of use without full public disclosure and analysis."

- "Existing roads on federal lands should remain open and be maintained as needed to enable wildfire response and management, facilitated by coordinated land use planning, travel management planning, and road inventory activities between federal agencies and the County."

F. Specific Recommendations for Greater Consistency with County Plans, Including Rejecting Alternatives 3, 4, and 6

First, Humboldt County, like other Nevada counties, recommends that BLM drop Alternatives 3, 4, and 6 from further consideration due to inconsistencies with the State Plan, local plans, inconsistencies with federal law, an unscientific and imbalanced approach to GRSG conservation, and failure to make allowances for critical County functions. Alternatives 1, 2 and 5 should be carried forward and presented in a Nevada specific supplemental Draft EIS for further analysis, input, and refinement prior to developing a proposed Nevada FEIS / RMPA.

Second, as we stated in our comments on the ADEIS/RMPA, we support the habitat designation agreed upon by Nevada Counties:

Table 2-1: Summary of Allocation Decisions by GRSG Habitat Management Areas[1]. (NV Counties 2023)

Resource	PHMA	GHMA	OHMA	ACEC
Land Tenure[2]	Retain	Retain / Dispose	Dispose	Nevada Counties do NOT support the designation of ACECs as part of this planning effort.
Solar, Wind and Renewable Energy Storage	Exclusion	Exclusion[2]	Avoidance[2]	
Major ROWs[2,3]	Avoidance	Avoidance	Open	
Minor ROWs[2,3]	Avoidance	Open	Open	
Fluid Mineral Development and Leasing	Closed	Open w/ Major Stipulations[2]	Open w/ Minor Stipulations[2]	
Nonenergy Leasables[2]	Closed	Open	Open	
Salable Minerals[2]	Closed	Open	Open	
Locatable Minerals[4]	Open	Open	Open	
Travel Management	Limited[5]	Limited[5]	Open	
Livestock Grazing	Open	Open	Open	

Notes:
1. All Allocation Decisions are subject to field verification and modification of modeled HMA.
2. Projects may qualify for a BLM waiver, exemption, or modification (WEM) and must meet the regulatory requirements of the State of Nevada, including the Conservation Credit System.
3. Projects located within designated corridors, co-located with existing infrastructure, or located in degraded habitat will be given WEM preference.
4. Projects must meet the regulatory requirements of the State of Nevada, including the State Conservation Credit System.
5. Not applicable to State, local or public roads. Travel is limited to existing roads and trails.

Fig. 7: Summary of Nevada Counties-recommended allocation decisions.

BLM should work in coordination with Humboldt County, other Nevada Counties, the Nevada Association of Counties, and the State to incorporate Nevada-specific management concepts. From our perspective, these include:

- Renewable Energy. We are concerned that in BLM's Preferred Alternative (Alternative 5) solar and wind are merely "avoidance" on PHMA, and "open" on GHMA. We find that these allocations (especially due to their unprecedented disturbance footprint and rapid proliferation in Nevada) are broadly incompatible with the BLM's Purpose and Need to "address the continued GRSG habitat losses that are contributing to declines in GRSG populations."[138] Therefore:

    - Humboldt County recommends that the FEIS/RMPA or (preferably) a SEIS for Nevada be consistent with the above NV County Allocation Table by excluding renewable energy on both PHMA and GHMA. We note that there would still be ample land outside of HMAs (especially in light of USGS's revised May 2024 HMA maps) for BLM to meet its renewable energy mandates and goals. BLM's own analysis in its Draft Utility-Scale Solar Energy PEIS has made this abundantly clear.

    - Humboldt County also recommends that the BLM add associated energy storage to its definition of renewable energy. Currently, storage projects, such as pumped storage, are being processed as major rights-of-way.

[138] DEIS at 1-5.

- Wildfire. Wildfire is the primary threat to GRSG habitat in the Great Basin, and is responsible for 87% of losses to PHMA.[139] While the BLM agreed to add several Fire and Vegetation management decisions ("MDs") to the Nevada "state-specific" alternative provisions[140] these remain insufficient. The FEIS/RMPA or (preferably) a SEIS should include Nevada-specific language that substantially mirrors and facilitates goals, objectives, and management decisions in the State PLan.[141] The BLM has also been largely unsuccessful in implementing fuels management directives. This should be remedied through specific, proactive planning language.

- Livestock Grazing. Because wildfire, by orders of magnitude, causes the greatest losses to GRSG HMA in Nevada, and because livestock grazing is the unique, landscape-scape fuels management tool, the FEIS/RMPA or (preferably) a SEIS should recognize, and utilize, livestock grazing as a front-line conservation tool for protection of the GRSG from the primary threat of wildfire caused by fine fuels accumulation. All livestock management MDs should also clearly recognize and conform to recent and emergent science, including but not limited to the University of Idaho grazing study.

- County Rights-of-Way. GRSG HMA in Humboldt County contains numerous historic roads that the County has inventoried and identified as meeting the criteria for RS-2477 rights-of-way (i.e. existing prior to 1976). Keeping these roads open is essential for accessing utility infrastructure, grazing allotments, and mining claims, as well as providing transportation for County law enforcement, search and rescue, and recreation. The FEIS/RMPA or (preferably) an SEIS should therefore recognize the presence of, and the ongoing County possessory interests in, these ROWs by stipulating they are not subject to closure by the BLM.

- Undue Restrictions/Special Designations. Alternatives reinstating SFAs with recommendation for mineral withdrawals or ACECs (Alternatives 1, 3, and 6) and alternatives with sweeping prohibitions of grazing, mining, and other uses (Alternative 3) are fundamentally inconsistent with Humboldt County planning documents, do not address primary causes of GRSG habitat loss, and would cause incalculable harm to the County by largely shutting down or otherwise interfering with the County's mining and agricultural economic base. Humboldt County is categorically opposed to any alternative (or provision in an alternative) which incorporates these management approaches.

- Ground Truthing. All Nevada mapped HMA in the DEIS/RMPA is predicated on a subjective combination of imprecise modeling products. The result is that the final HMA maps still contain large amounts of non-habitat. Any FEIS/RMPA must clearly state the provisional nature of HMA maps, and provide clear instruction to decision-makers to ground truth habitat before making project-level decisions as well as provide a process for de-designating habitat.

REQUESTED CHANGE: We recommend that BLM drops Alternatives 3, 4 and 6 from further consideration and augment its consideration of Alternatives 1, 2, and 5 in a supplemental EIS. The

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[139] We made extensive note in our cooperating agency comments of all of the literature BLM should have reviewed regarding wildfire impacts on GRSG habitat. As already stated, we incorporate those comments here and we strongly urge BLM to consider this literature.

[140] *Id.* at 2-169–2-170.

[141] *See* State Plan at 42–51.

BLM must issue a supplemental EIS with a detailed inventory of State conservation measures already in place in Nevada, as well as voluntary conservation programs and efforts, to provide an accurate baseline for current conservation planning needs. The supplemental EIS must include an impact analysis of the alternatives on these existing conservation efforts.

For each aspect of the FEIS/RMPA as it would apply in Humboldt County, BLM must ensure maximal consistency with the State Plan and with County land use plans. This is the minimum required to comply with FLPMA. In addition, to comply with NEPA, BLM must indicate in the FEIS/RMPA where the RMPA diverges from the State Plan and from County land use plans and if the inconsistency cannot be resolved, explain why (which explanation cannot simply be that Washington headquarters policy presented in the plans is preemptive).

V. The 2021 ROD establishes that BLM's most current GRSG habitat conservation plan for Nevada is the 2019 RMPA.

BLM maintains the erroneous view that the 2019 RMPAs are not effective because they were preliminarily enjoined. But the court never vacated the 2019 RMPAs. And BLM has acknowledged in court filings that a BLM "action" or "planning" other than a decision on the merits (such as a land use plan) could resolve any issues with the 2019 RMPA, mooting the injunction. BLM does not explain in the DEIS/RMPA why a 2020 supplemental EIS (SEIS) that it prepared specifically to address issues raised in the preliminary injunction order, upon a change in the administration, suddenly was ignored by the agency. It does not explain why its 2021 ROD deciding that the SEIS did not require any changes to the 2019 RMPAs is not BLM's most current, effective decision on GRSG habitat conservation. Nor does BLM explain why it has not taken any action to move forward the case—stayed since 2021—that it has unilaterally (and unlawfuly) simply decided not to implement its decision in its 2021 ROD. BLM must make these explanations in the FEIS/RMPA and demonstrate how it is not in violation with the APA and NEPA.

The DEIS/RMPA's Introduction explains that BLM is not implementing the 2019 RMPAs because they were preliminarily enjoined by the United State District Court for the District of Idaho in *Western Watersheds Project v. Schneider*, 417 F. Supp. 3d 1319, 1335 (D. Idaho 2019). Without much analysis, BLM concludes: "Until the court makes a final ruling in the case or otherwise lifts the preliminary injunction, the BLM is enjoined from implementing the decisions from the 2019 RODs, and as such the actions contained in the 2015 RODs remain in effect."[142]

A. BLM has acknowledged that an "action" or "planning" can moot the injunction. The 2021 ROD has done so.

BLM's conclusion that it must implement the 2015 LUPAs reads the court's decision superficially. Enjoining the 2019 RMPAs, the court held: "BLM is enjoined from implementing the 2019 BLM Sage-Grouse Plan Amendments for Idaho, Wyoming, Colorado, Utah, Nevada/Northeastern California, and Oregon, until such time as the Court can adjudicate the claims on the merits. The 2015 Plans remain in effect during this time."[143] In May 2021, at BLM's request, the court stayed proceedings in *Schneider*, requiring BLM to submit regular status reports updating the court on its GRSG planning efforts. Crucially, BLM noted in an early status report that it "may take actions, or initiate planning, that would obviate the need to proceed to the merits of the claims

[142] DEIS at 1-3.

[143] *W. Watersheds Project v. Schneider*, 417 F. Supp. 3d at 1335.

regarding compensatory mitigation policy and the 2019 Plans."[144] In its most recent status report, filed May 21, 2024, BLM reiterated this statement.[145] BLM apparently presumes that the 2024 DEIS/RMPA is an "action" or "planning" that renders void the court's order enjoining the 2019 plans.

BLM does not, but should, address in the DEIS/RMPA an "action" subsequent to the 2019 RMPAs and prior to the 2024 planning effort that has intervened to render the injunction moot. In 2020, BLM issued a SEIS supplementing the 2019 Nevada RMPA and directly responding to issues raised in the District of Idaho litigation and the court's preliminary injunction. That SEIS, BLM said, was prepared in order to "review BLM's previous [2019] NEPA analysis, clarify and augment it where necessary, and provide the public with additional opportunities to review and comment. The FSEIS will help the BLM determine whether its 2015 and 2019 land use planning and NEPA processes have sufficiently addressed Greater Sage-Grouse habitat conservation or whether the BLM should initiate a new land use planning process to consider additional alternatives or new information."[146] As a result of this analysis, BLM issued a ROD in 2021 which "determined that [BLM's] decade-long planning and NEPA processes have sufficiently addressed Greater Sage-Grouse habitat conservation and no new land use planning process to consider additional alternatives or new information is warranted."[147]

BLM does not explain why its conclusion has changed, requiring it to initiate the 2024 planning effort. Nor does it explain its effective and unlawful rescission of the 2019 RMPAs and the 2021 ROD. BLM does not have "inherent authority" to withdraw a land use plan revision ROD "absent compliance with the FLPMA's formal notice and comment proceedings."[148] Though BLM can amend land use plans, it must "follow[] procedures that," among other requirements, "require public participation."[149] Nor does an injunction, without vacatur, allow BLM to withdraw a land use plan without following the usual procedures. BLM cannot withdraw a land use plan, absent proper process, as a result of a "legal error" in the plan revisions.[150] The Supreme Court has held much the same: it recently rejected as arbitrary and capricious the Department of Homeland Security's reversal of policy to determine that the Deferred Action for Childhood Arrivals (DACA) "program should be terminated" because the Fifth Circuit had concluded that a similar program was unlawful.[151]

BLM acknowledges that the district court did not vacate the 2019 RMPAs: indeed, it explains that the 2019 RMPAs are "the No Action alternative because [they] reflect[] management currently in the BLM's approved RMPs."[152] Given this fact, BLM must explain why it repeats the fiction that no BLM action—except a new land use plan—can remedy the injunction. BLM's position in effect rescinds the 2019 plans, the 2020 SEIS discussing issues raised by the district court's ruling, and the 2021 ROD confirming adoption of the 2019 plans.

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[144] Defs.' Status Report, *W. Watersheds Project v. Schneider*, No. 1:16-CV-83-BLW (D. Idaho May 10, 2021), ECF 282 at 4.

[145] Defs.' Status Report, *W. Watersheds Project v. Schneider*, No. 1:16-CV-83-BLW (D. Idaho May 21, 2024), ECF 330 at 3.

[146] BLM, Nevada and Northeastern California Greater Sage-Grouse Final Supplemental Environmental Impact Statement, Abstract (Nov. 2020). BLM issued a SEIS and ROD for six states in which it conducted a 2019 planning process; we refer here only to the SEIS and ROD for Nevada and Northeastern California.

[147] 2021 ROD, *supra* n.81, at 3.

[148] *Douglas Timber Operators, Inc. v. Salazar*, 774 F. Supp. 2d 245, 257–58 (D.D.C. 2011).

[149] *Id.* at 258.

[150] *Id.*

[151] *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1910 (2020).

[152] DEIS at ES-4. But because BLM is not implementing the 2019 RMPs it is a fatal flaw to use this as the baseline or the no action alternative which must reflect current existing conditions. The current condition is that, despite its 2021 ROD, BLM is ignoring that decision and implementing the 2015 RMPA.

BLM knows this is unlawful because in the very same case, Judge Winmill held that where BLM does not provide a reasoned explanation to support its change in position (there, regarding the need for the proposed mineral withdrawal, here, regarding its 2021 ROD affirming the 2019 RMPAs), the BLM's action was arbitrary and capricious and unlawful.[153] The Court vacated the BLM's cancellation of the mineral withdrawal and remanded the decision to the BLM for further proceedings, including re-initiation of the NEPA process. Here, the BLM has not explained how it thinks it could lawfully simply ignore its last issued 2021 ROD with no reasoned explanation for this drastic change in policy that occurred with the change in administration.

The County asks BLM to explain in the FEIS what authority it relies on to ignore its last lawful ROD issued in 2021 without completing a new process, why it is pursuing a new planning effort instead of seeking legal resolution of the 2019 injunction, and how the no action alternative can be the 2019 RMPA which BLM is not currently implementing: this is a crucial aspect of the purpose and need for the DEIS/RMPA.[154]

REQUESTED CHANGE: BLM must explain in the FEIS/RMPA why it is not implementing the 2019 plans in light of the 2021 ROD, and must explain why it has not informed the court that it has unilaterally rescinded that ROD without proper process and sought dismissal of the claims or at least confirmation that the injunction issued is no longer valid in *Western Watersheds Project v. Schneider.* BLM's actions, in effect, perform an illegal rescission of the 2019 plans, the 2020 SEIS, and the 2021 ROD.

VI. ACECs, proposed in Alternatives 3 and 6, are not necessary, appropriate, or effective for GRSG habitat conservation.

The County categorically opposes designation of ACECs in Alternatives 3 and 6 of the DEIS/RMPA as well as in any GRSG land use plan. BLM acknowledges in the DEIS/RMPA that "[m]any states and counties have expressed concern with ACEC designation under Alternatives 3 and 6."[155] It is crucial that the FEIS takes into account this feedback, and that BLM not select Alternative 3 or 6, which propose designation of ACECs – especially based on erroneous modeling of habitat.

A. ACECs are not clearly defined.

To allow for considered analysis and comparison of the alternatives, BLM must provide accurate, detailed information regarding the location of proposed ACECs. As we point out above, BLM did not provide accurate, detailed information on Nevada ACECs in the DEIS/RMPA because the ACEC boundaries were based on "preliminary" "interim" (i.e. unpublished, un-peer reviewed) HMA maps at the time the BLM released the draft to the public for comment.

In short, the ACEC boundaries are based on HMA designations that were already obsolete at the time the BLM published them. Without accurate representations of the ACEC's locations, Alternatives 3 and 6 cannot be effectively analyzed by the public. Moreover, detailed ACEC maps are not provided in the Map Appendix 1 or in a Geo-Platform interactive map. The only representation the BLM has provided of Nevada ACECs is an extremely small-scale map representing ACEC locations which is too small scale to be useful to a reader; even if accurate maps had been provided, the scale does not allow for considered review by affected parties in Humboldt County. In short, the BLM currently fails

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[153] *W. Watersheds Project v. Bernhardt*, 519 F. Supp. 3d 763, 795 (D. Idaho 2021).

[154] *See* 40 CFR § 1502.13 (an EIS must include a purpose and need statement that "briefly specif[ies] the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action").

[155] *Id.* at 1-13.

to provide the public with accurate, large-scale, representations of proposed ACECs. The DEIS/RMPA will therefore need to be supplemented.

B. ACECs are not responsive to primary GRSG habitat threats.

As we have commented above at length, the primary cause—by orders of magnitude—of loss of GRSG habitat is wildfire and associated invasive annual vegetation. Effective GRSG conservation must therefore concentrate on preventing large scale ecosystem disfunction issues (wildfire, invasive vegetation), controlling fuels, and building and sustaining the partnerships necessary to address these threats across ownership boundaries and jurisdictions. ACECs do none of these things—fire and invasive vegetation do not stop for an ACEC boundary. For this reason, the proposed designation of ACECs in Alternatives 3 and 6 does not meet the purpose and need of the DEIS/RMPA, to "address the continued GRSG habitat losses that are contributing to declines in GRSG populations," or BLM's planning goal "to conserve, enhance, restore and manage GRSG habitats to support persistent, healthy populations."[156] In fact, designation of ACECs may exacerbate the primary causes of GRSG habitat loss because ACECs have frequently been used as false pretexts (e.g., RNAs in the 2015 Oregon GRSG RMPA) for elimination of activities like grazing, which have important benefits for managing fine fuels and controlling wildfire, or for road closures, which are essential for firefighting access. For this reason, ACECs should only be designated where they are demonstrably required to ensure conservation outcomes. Given the primary causes of GRSG habitat loss (wildfire and invasive vegetation), ACECs are neither necessary nor appropriate conservation tools in this instance.

C. Standard for Designating an ACEC: Relevance, Importance, Need for Special Management

Under FLPMA, BLM must "give priority to the designation and protection of areas of critical environmental concern" in developing and revising land use plans."[157] BLM's ACEC manual provides that where it is considering a potential ACEC, it must "evaluate the ACEC designation in at least one plan alternative."[158]

Designation of an ACEC involves three components: (1) The area must meet a relevance criterion. Relevance means a "significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard."[159] (2) The area must meet an importance criterion also defined in BLM regulation. Importance means that the relevant "value, resource, system, process, or hazard . . . ha[s] substantial significance and values. This generally requires qualities of more than local significance and special worth, consequence, meaning, distinctiveness, or cause for concern."[160] (3) The area must require special management to protect and prevent irreparable damage to relevant or

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[156] *Id.* at 1-5, 2-8.

[157] 43 U.S.C. § 1702(c).

[158] BLM, IM 2023-013 Clarification and Interim Guidance for Consideration of Areas of Critical Environmental Concern Designations in Resource Management Plans and Amendments (Nov. 30, 2022); *see also* BLM, ACEC Manual MS-1613.22B ("Because special management attention must be prescribed in at least one plan alternative" where BLM is considering a potential ACEC, "each potential ACEC will appear as a recommended ACEC in at least one plan alternative.").

[159] 43 CFR § 1610.7-2(a)(1).

[160] *Id.* § 1610.7-2(a)(2).

important values. A need for special management means that the management actions "would not be prescribed in the absence of the [ACEC] designation."[161]

The ACEC proposals in the DEIS/RMPA are flawed in several ways.

D. BLM's proposed designation of ACECs makes significant errors. In areas where BLM has designated ACECs on degraded habitat means that the relevance criterion cannot be met.

As noted, the County has identified to BLM errors in BLM's proposed Montana Mountains and Owyhee West ACECs: the boundaries encompass some non-habitat or highly degraded habitat—largely from wildfire impacts. In correspondence the County sent to BLM on September 14, 2023, Humboldt County reiterated these ACEC mapping errors. We have provided above photos from within the proposed ACEC boundaries showing that these areas do not have a significant shrub component, and therefore lack primary features for GRSG habitat.

These photos undermine ACEC designation. BLM states that an area satisfies the relevance criterion through "[t]he presence of GRSG."[162] This appears to be BLM's only relevance justification for its ACECs. It is elementary that GRSG are not present where an area does not possess the basic characteristics of GRSG habitat, i.e. sagebrush or sagebrush/grasslands. Additionally, these areas do not meet BLM's own Habitat Assessment Framework (HAF) criteria for site, fine, or mid-scale habitat assessment. Where GRSG habitat[163] does not exist—as is the case within some of the ACECs BLM has designated—BLM does not meet the basic relevance threshold and ACEC designation is impossible.

E. PHMA characteristics cannot by themselves establish that an ACEC is appropriate; to establish importance, BLM must prove more.

Explaining its designation of ACECs in Nevada, BLM uses characteristics of PHMA as a reason to designate ACECs. But not all PHMA qualifies as ACEC: standing alone, these characteristics are not enough to designate an ACEC. PHMA is defined as an area that has "the highest value to maintaining sustainable GRSG populations and can include breeding, late brood-rearing, winter concentration areas, and migration or connectivity corridors."[164] Thus, prime GRSG habitat with high value to GRSG population, including leks, late brood-rearing areas, winter concentration areas, and migration and connectivity corridors are not factors that show importance. This means that population density and lek and habitat persistence, two of BLM's evaluation criteria for ACEC importance,[165] do not prove importance. For example, Nevada ACEC 3, which includes two GRSG population centers,

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[161] MS-1613.12.

[162] DEIS at 2-117.

[163] The Supreme Court recently rejected an agency's designation of habitat where the species for which the habitat was designated was not present and where the area was such that it could not presently constitute habitat for the species. The Court held, regarding designation of critical habitat under the Endangered Species Act, that the Secretary of the Interior is not authorized "to designate the area as critical habitat unless it is also habitat for the species." *Weyerhaeuser Co. v. United States Fish & Wildlife Serv.*, 586 U.S. 9, 20 (2018). The same basic conclusion should hold here: BLM cannot designate HMA if GRSG is not present, and it certainly cannot find relevance for ACEC designation where no habitat actually exists.

[164] DEIS at 2-11.

[165] *Id.* at 2-117.

cannot simply because it is a population center be an ACEC.[166] Nevada ACEC 4, which has a "[c]oncentration of active leks and high lek persistence" cannot for that reason be an ACEC.[167] The same holds for Nevada ACECs 1 and 2, which boast high or medium lek persistence.

If BLM disagrees with this conclusion, it must clearly explain in the FEIS/RMPA, using best available science, why PHMA characteristics support designation of ACECs for some PHMA and not other PHMA.

F. Nevada ACECs 1–3 do not meet the importance criterion.

For the three ACECs in Humboldt County, the DEIS/RMPA does not prove importance.

BLM describes Nevada ACEC 3 as "[s]upport[ing] two separate [GRSG] population centers [and] provid[ing] regionally important genetic connectivity with eastern NV and ID to OR populations."[168] It adds ACEC includes "[s]everal genetic nodes including a Keystone node; [a l]arge area of contiguous BLM administered lands; . . . [the] North Fork Little Humboldt River and Little Humboldt River WSA [Wilderness Study Area]" and that the ACEC is a "[h]igh value area for LCT [Lahontan cutthroat trout]."[169]

BLM's importance analysis for this ACEC includes "[s]trong representation of the 25% BBD [breeding bird density] in NV; [c]onnects with OR population; [h]igh lek persistence; intersects three neighborhood clusters, primary neighborhood cluster shows population growth (lambda > 1.03), adjacent NCs [nesting colonies] nearly stable to declining (lambda = 0.99-0.95); [l]ow R&R [ecosystem resilience and resistance]; mostly [g]rowth area for sagebrush; about 10% of area includes Disaster Peak WSA."[170]

And for ACEC 3, BLM predicates importance on the area's "[s]upport[for] two separate population centers; provi[sion of] regionally important genetic connectivity with eastern NV and ID to OR populations; [s]everal genetic nodes including a Keystone node; [l]arge area of contiguous BLM administered lands; inclu[sion of] North Fork Little Humboldt River and Little Humboldt River WSA" as well as the fact that ACEC 3 is a "[h]igh value area for LCT."

None of these data support importance.

First, as we have noted, simple presence of a GRSG population center does not indicate importance because this is a characteristic of PHMA which BLM has determined is not important.

Second, though the County recognizes that genetic connectivity and habitat connectivity are of concern in species conservation, treating these characteristics as important does not find support in BLM regulation, caselaw, or BLM guidance. True, BLM Instruction Memorandum 2023-013 states that as BLM assesses relevance and importance, it should consider "whether relevant values contribute to landscape intactness, climate resiliency, habitat connectivity, or opportunities for conservation or

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[166] *See* DEIS, Vol. III at 5-22.

[167] *Id.* at 5-23.

[168] DEIS, Vol. III at 5-1.

[169] *Id.*

[170] DEIS, Vol. III at 5-22.

restoration." But this overbroad IM cannot be used as a rule of general applicability (in violation of the APA), does not state that habitat connectivity is important, and it does not mention genetic connectivity. This vague directive significantly expands the regulatory criteria for meeting importance and has the improper result of making the vast majority of BLM-managed land in Nevada eligible for ACEC designation, contrary to FLPMA's multiple use/sustained yield mandate.

Third, and in the same vein, we do not see how the presence of lands with wilderness characteristics (LWCs) or WSAs, which are common throughout GRSG range, contribute to "more than local significance." While the proposed ACECs may include high value habitat and should be managed to protect GRSG from primary threats, the sheer volume of proposed ACECs in Nevada (more than 5 million acres) clearly indicates that these areas are not rare or especially unique.[171]

Finally, because the DEIS/RMPA is meant to provide for conservation of GRSG, and BLM explains relevance in terms of GRSG presence,[172] we do not see how the presence of LCT is pertinent. The regulation makes clear that importance *supports* values identified as relevant; BLM cannot establish importance for a reason unconnected with the relevance of the area to ACEC designation.

These ACECs in Humboldt County should not be designated because they do not meet BLM's importance criterion.

G. BLM does not explain why its proposed ACECs require special management, that is, actions that would not be prescribed without ACEC designation. Instead, most of the actions contemplated by ACEC designation could be or are prescribed in the DEIS without ACEC designation.

In addition to meeting relevance and importance criteria, BLM must also demonstrate that a proposed ACEC requires "special management attention" not available under standard RMP land use designations.[173]

BLM cannot meet this criterion, initially, because it failed to provide any baseline statement or analysis of conservation already provided areas BLM proposes to designate as ACECs through the State Conservation Credit System (CCS) and public-private partnerships (e.g., through the SGI and the SEP).[174] BLM therefore has no basis for determining that the proposed ACECs are necessary, beyond other management actions, to "protect and prevent irreparable harm" to the GRSG, because they have not taken existing conservation into account.

In its 2015 LUPAs, BLM "decided not to designate PHMA as ACECs in the applicable Records of Decision because it was determined that the management actions for PHMA would be sufficient to

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[171] We note additionally that in Wyoming, which has the most GRSG habitat of any state, BLM proposes to designate only 839,000 acres of ACECs. The DEIS gives no explanation for this extreme discrepancy, which points to an unscientific unevenness in the BLM's application of its own ACEC criteria.

[172] DEIS at 2-117 ("The presence of GRSG meets the relevance criteria across the entire range.").

[173] MS-1613.02 ("ACEC designations highlight areas where special management attention is needed to protect, and prevent irreparable damage to, important historic, cultural, and scenic values, fish, or wildlife resources or other natural systems or processes; or to protect human life and safety from natural hazards.").

[174] See Comment 14.

protect GRSG habitat and, as such, ACEC designation of PHMA was not required."[175] The management actions for PHMA vary between the 2015 LUPAs (Alternative 1 in the 2024 DEIS/RMPA) but are generally more protective in Alternatives 3–6 than in Alternative 1. But BLM does not explain how nine intervening years have modified its determination. This alone should convince BLM that it cannot designate ACECs. Even disregarding this dispositive 2015 determination, BLM's attempts to prove that special management is required are unconvincing.

BLM first explains that "[i]n general, management actions that protect resources (such as surface-disturbance restrictions and management for desired habitats) would help maintain and improve the relevant and important values within ACECs."[176] It adds that "[i]dentifying ACECs as ROW exclusion or avoidance areas would protect relevant and important values by reducing (for avoidance areas) or eliminating (for exclusion areas) impacts from development requiring a ROW permit. Such developments include utilities, access roads, and renewable energy projects."[177] But such management actions do not require ACEC designation: for example, independent of ACEC designation, Alternative 3 provides for no surface occupancy of all Wyoming PHMA.[178]

Perhaps trying to salvage ACEC designations that, overall, make little sense, BLM notes that while:

> PHMA, IHMA, and GHMA allocations provide a comprehensive management framework, covering a diverse array of management actions and restrictions in Alternatives 1–6, effectively capturing GRSG habitat and most ACECs . . . ACEC designation adds a layer of specificity, enabling a more targeted approach to address unique relevant and important values that might not be fully covered by the broader allocations. ACEC designation emphasizes and prioritizes specific concerns within designated areas, offering a mechanism to address nuances that may not be sufficiently addressed by the overarching PHMA/IHMA framework.[179]

BLM does not explain how a "mechanism to address nuances" equates to a management action that would not occur absent designation of ACECs. The obvious answer is that the two are not synonymous.

Ultimately, the DEIS provides no explanation why (1) special management actions are required to "protect and prevent irreparable damage to" GRSG in light of monitoring and evaluation data, and 2) why PHMA management actions in combination with in combination with existing State and voluntary conservation are not sufficient to protect GRSG. In the case of one land use that the Alternative 3 ACECs would exclude—renewable energy—the County strongly agrees that this activity should be excluded from GRSG habitat. It is not, however, necessary to create an ACEC to make this exclusion: the exclusion could be made as part of BLM's stipulations regarding permitted activities in PHMA.

The fact that the DEIS/RMPA provides no special management justification for ACEC designation should, alone, render ACEC designation in Alternatives 3 and 6 untenable. In the FEIS/RMPA, BLM should clearly document what (if anything) has changed between 2015 and now that would make

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[175] DEIS, Vol. III at 5-3.

[176] DEIS at 4-119.

[177] *Id.*

[178] *Id.* at ES-7.

[179] *Id.* at 4-120.

"special management" necessary to protect GRSG resources. On the justification it gives in the DEIS/RMPA, designation of ACECs is not warranted.

H. ACECs are neither necessary nor appropriate tools; indeed, they may prevent habitat conservation by increasing wildfire threat.

As we have commented at length in cooperating agency comments and in these comments, the primary cause—by orders of magnitude—of loss of GRSG habitat is wildfire and subsequent growth of invasive vegetation. BLM's own analysis shows that 87% of habitat loss in the Great Basin is due to wildfire. By contrast, loss of PHMA to anthropogenic surface disturbing activities totals less than 1%.[180] Effective GRSG conservation must concentrate on preventing large scale ecosystem disfunction issues (wildfire, invasive vegetation) and building and sustaining the partnerships necessary to address these threats across ownership boundaries and jurisdictions.[181] ACECs do none of these things—fire and invasive vegetation do not stop for an ACEC boundary. For this reason, the proposed designation of ACECs in Alternatives 3 and 6 do not meet BLM's purpose and need: to "address the continued GRSG habitat losses that are contributing to declines in GRSG populations."[182]

In fact, designation of ACECs may exacerbate the primary causes of GRSG habitat loss because ACECs have frequently been used as false pretexts for elimination of activities like managed grazing, which have important benefits for managing fine fuels and controlling wildfire.[183] For this reason, ACECs should only be designated where they are required to ensure conservation outcomes. Given the primary causes of GRSG habitat loss (wildfire and invasive vegetation) ACECs are neither necessary nor appropriate conservation tools in this instance.

I. The socioeconomic impact analysis of ACECs is inadequate.

The DEIS/RMPA does not adequately analyze the extent to which ACECs would economically and socially harm rural counties, like the County, that depend on mineral exploration and development.

The Nevada Department of Minerals has found that two of the three proposed ACECs in Humboldt County contain many mining claims which are important contributors to the local economy. The restriction of mining in ACECs under Alternative 3 and the requirement, under Alternative 6, of a plan of operations for any mining activity beyond casual use would be a major financial burden on many small mining companies and would likely preclude exploration and development with downstream economic losses to Humboldt County's economy. BLM does not present an unbiased environmental effects analysis of ACECs which includes estimates of potential socioeconomic effects to mining exploration companies, on small rural businesses supporting mining

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[180] DEIS at 1-3. *See also* Greater Sage-Grouse Plan Implementation Rangewide Monitoring Report for 2015-2020 at 49 (finding "changes in estimated disturbance footprint area as well as energy and mining density within PHMAs/IHMAs at all scales (rangewide, regionally, and individual BSUs) have remained low (a 0.48% or less increase in area and 0.59 facilities per 640 acres increase in density)").

[181] *See also* Humboldt County PLRMPP Greater—Sage-grouse Conservation at *1–*2 ("Productive conservation approaches must . . . refocus on . . . 'macro-'issues: Fire resistant and resilient landscapes, control and eradication of invasive vegetation, targeted control of inflated predator populations, and maintaining and restoring intact sagebrush landscapes.").

[182] DEIS at 1-5.

[183] One example is designation of Research Natural Areas (RNAs) in Oregon under the 2015 LUPA; under that plan, portions of 13 RNAs were unavailable for grazing. *Id.* at 2-105.

exploration, on Humboldt County, on the local job market, and on special districts that are supported by the Net Mineral Proceeds tax.

First, BLM discusses likely impacts from proposed management actions at a high level of abstraction.[184] For example, BLM states: "Management of ACECs would impose greater restrictions on mineral development in some areas, which may increase costs or push development to other lands."[185] Or: "Requiring a plan of operations in ACECs would increase administrative process and cost for operators conducting exploration. This could result in a reduction in exploration in ACECs, compared with Alternative 1, which could lead to a reduction in development and production in these areas as well. If this results in a reduction development, there could be impacts on economic and social conditions in the surrounding communities."[186]

This vague and confusing summary is inadequate and incomplete. The mineral exploration industry, as well as active mines, is a major economic contributor to Humboldt County. A University of Nevada study notes that "exploration activity is primarily focused in rural areas and can have a substantial impact on the local economies."[187] According to this study, $309,103,098 was spent on exploration in Nevada in 2021 and a minimum of $350,041,568 was spent on exploration in 2022. "Employment showed similar year-over-year improvements with a minimum of 524 employees in 2021 growing to a minimum of 619 in 2022, a 15% annual increase."[188] The cost of claim fees/leases, uncertainty surrounding mining laws and regulations, and the time and/or cost of permitting were viewed as factors with negative impacts. None of this information was contemplated in the DEIS/RMPA.

Second, the DEIS/RMPA fails to give a sufficiently detailed account of how such projected losses would curtail County and other services, such as law enforcement, hospital services, school services, emergency services, fire services, and other local services that depend on sustained discovery and growth in the mining industry. Nor does it offer more than glancing consideration of how deterioration of such services would transform our communities, or affect underserved populations (environmental justice considerations). The DEIS/RMPA additionally fails to consider how the "hard" disturbance cap on ACECs could impact the development of infrastructure on ACECs necessary for the protection of human life and safety. Nevada counties requested in our cooperating agency comments that these effects be considered and that BLM include an exception where public health and safety (not just in a catastrophe or emergency) is at issue.

J. Flawed Rationale—ACEC Acreage

BLM has neither explained nor justified why Nevada has many orders of magnitude more ACECs than any other state:

- Colorado: 4,547 acres
- Idaho: 3,438,307 acres

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[184] *See* DEIS at 4-179.

[185] DEIS, Vol. III at 10-31.

[186] *Id.* at 10-34–10-35.

[187] Travis Fisher, *Nevada mineral and energy resource exploration survey 2021 / 2022—Nevada Bureau of Mines and Geology Exploration Survey ES-2022*, at 3 (2022).

[188] *Id.*

- Montana: 726,062 acres
- **Nevada/California: 5,766,150 acres**
- Oregon: 0 acres
- Utah: 365,181 acres
- Wyoming: 839,225 acres

The radical disparity between the Nevada and Wyoming ACEC proposals (Nevada has ~7x the ACEC acreage as Wyoming) when these two states have highly comparable GRSG HMA, falsely suggests either:

1) That Nevada's GRSG habitat is of overwhelming regional and national importance compared to Wyoming's; or

2) That Nevada's best habitat is unprotected and more subject to irreparable damage compared to Wyoming's, despite Nevada's protective CCS requirements and extensive collaborative conservation.

Because the above propositions are demonstrably false, BLM wisely steers clear of any justification of this enormous disparity; the RMPA/DEIS is simply silent on why Nevada is lumbered with this massive ACEC allocation. Moreover, we note that the sheer volume of proposed ACECs in Nevada (5,766,150 acres or ~30% of all Nevada HMA) is a radical departure from the BLM's historic policy-driven use of ACECs as designations to protect specific, discrete areas of unique value, not (as in this case) millions of acres of good but otherwise unremarkable habitat.

The upshot of the BLM's approach to ACECs in the RMPA/DEIS is nonsensical; if 5+ million acres of Nevada GRSG habitat are legitimately ACECs, then all areas potentially qualify as ACECs under some flimsy pretext. Not only does this "new breed" of broad-brush landscape-scale ACECs interfere with the BLM's multiple-use sustained yield mandate, it also interferes with and undermines good management. Landscape-scale ACECs are not a sound solution to habitat conservation because it is one-size-fits-all approach to managing a highly dynamic biological and physical system. ACEC management restrictions are based on what *may* be suitable habitat for GRSG, without considering other wildlife, actual habitat conditions, public services, or industry.

K. Fixed-boundary ACECs are inappropriate for managing HMA that is based on imperfect models and changing habitat.

The habitat maps used to delineate ACEC boundaries are based on modeling with known errors and inaccuracies. In fact, USGS clearly states in its report where the habitat maps were released that "habitat maps provide updated, detailed, and comprehensive information about the status of habitats and can be useful to partner agencies in their efforts to designate and rank habitats for this species of high conservation concern in Nevada and California, with full recognition that on-the-ground field data and local sources of information and expertise should be used in conjunction with inferences from these models." Similarly, the BLM states in the DEIS/RMPA: "Not every acre of habitat management areas is habitat, and [HMA maps] are not intended to reflect a site-level habitat survey.

Additional information regarding the presence or absence of habitat should be considered during implementation of specific actions."[189]

These disclaimers notwithstanding, the ACEC management in the Draft RMPA/DEIS never acknowledges the need (or desire) to make any management adjustments based on on-the-ground realities. Nor did the BLM incorporate Humboldt County's "ground level" analysis of ACECs when it was offered (see below). While the DEIS/RMPA does have some provisions to allow potential adjustments in habitat management areas (that we argue are overly bureaucratic, cumbersome, and restrictive), there is no similar process spelled out for ACECs.

L. BLM improperly conducted ACEC designation and publication at the national rather than state level and did not consider local input.

BLM regulations provide that "[*t*]*he State Director*, upon approval of a draft resource management plan, plan revision, or plan amendment involving ACECs, shall publish a notice in the Federal Register listing each ACEC proposed and specifying the resource use limitations, if any, which would occur if it were formally designated.[190] BLM takes other parts of this ACEC regulation seriously: for example, it set a 60-day comment period for the ACEC section of the 2024 DEIS/RMPA to comport with the regulation.[191] But state-specific ACEC designations were not published in the Federal Register by directors for the ten states involved in the 2024 DEIS/RMPA.

That BLM regulations locate responsibility for ACEC publication with the State Director again demonstrates, consistent with our comment above, that BLM's planning regulations require land use plans to be developed at the field office level with the oversight and approval of state directors. ACECs should only be proposed, evaluated, and designated at the state office level with local input and coordination.

Here, BLM's process for identifying and evaluating prospective ACECs did not begin (as it should have) with an open and fair assessment of the relevance and importance of resources and values with local input. Instead, BLM apparently started with their desired ACECs already selected and applied an opaque, self-serving analysis retroactively[192] to justify the areas it had selected. The process has all the hallmarks of a predecisional planning. Moreover, BLM has not explained in the NEPA document how these designations would "protect and prevent irreparable damage" to GRSG that would otherwise be caused without the ACEC designation (noting, again, that the Nevada Plan and CCS guarantees conservation through implementation of the "avoid, minimize, and mitigate" hierarchy

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[189] DEIS at 1-6.

[190] 43 CFR § 1610.7-2(b) (emphasis added).

[191] BLM explained that "NEPA regulations [at 43 CFR § 1610.7-2(b)] require [that] we consider all substantive comments . . . provided during the comment period. And so, while there is a 60-day comment period for ACECs as identified in BLM[']s regulations [if] substantive . . . comments related to ACECs [are] provided after that, but within the planning[—]within the overarching comment period, we will need to consider those as well." BLM, Transcript of Virtual Public Meeting for the Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement, at 01:12:34–01:12:45 (Apr. 9, 2024) https://eplanning.blm.gov/public_projects/2016719/200502020/20109295/251009289/2024_GRSG-DEIS%20Virtual%20Public%20Mtg1-04-09-2024_Transcript_508.pdf. We are grateful for the opportunity to provide comments on the ACECs as part of the 2024 GRSG DEIS/RMPA, and think this assessment of the DEIS/RMPA in its entirety makes sense.

[192] *See* DEIS, Vol. III at 5-3–5-6.

across all HMA in the absence of ACECs and that the BLM's Monitoring Report discloses that anthropogenic disturbance has caused a mere <1% of PHMA losses since 2015).

BLM's approach to ACEC identification was based on fallible and inherently imprecise models, which were then reviewed by BLM staff: "The evaluation for relevance and importance criteria was conducted in a two-step approach that started with rangewide scientific data and models, followed by a review by staff at the state and field office levels who are more familiar with the local habitat conditions."[193] No local input was solicited, such as the Humboldt County Road Department, the Quinn River and Paradise/Sonoma Conservation Districts, the Humboldt County Advisory Board to Manage Wildlife; nor were any local landowners and land users invited to be involved in this process. If BLM had bothered to solicit local knowledge and expertise, it would have greatly informed the process by (1) significantly correcting the boundaries on the ACEC alternatives based on the real, on-the-ground resource information and (2) informing BLM of the state and locally based conservation in these areas that obviates any need for "special management" with an ACEC designation.

ACECs should only be proposed, evaluated, and designated at the Field Office level with local input and coordination. BLM planning—including identification and evaluation of ACECs—should be an inherently local exercise. This must include the local evaluation and designation of ACECs by Field Managers and a local ID Team.[194] Because the current planning effort is being both developed and overseen by BLM's National HQ, including evaluation and (potentially) designation of ACECs, it is inconsistent with BLM's planning regulations.

REQUESTED CHANGE: BLM should not designate ACECs as part of its 2024 GRSG planning effort. They are unjustified and unnecessary for providing protections for the GRSG and will harm Humboldt County and its citizens. Intelligent PHMA management addressing primary threats, in combination with the Nevada State Plan's CCS and "avoid, minimize, mitigate" hierarchy along with public-private conservation partnerships provide far superior protections for GRSG. In any planning effort, ACECs should only be evaluated and designated at the local level—the Field Manager—with approval of the State Director consistent with 43 CFR 1600 *et. seq.* BLM's consideration of ACECs in the FEIS/RMPA must explain differences between the 2015 LUPAs, which decided that designation of ACECs was unnecessary, and the current situation. BLM must present a thorough, unbiased environmental effects analysis of both ACEC alternatives, which must include all potential socioeconomic effects to mining companies, livestock grazing, and Humboldt County.

VII. The DEIS/RMPA does not justify this new RMPA as appropriate or necessary; particularly, it does not explain how the RMPA—coming just five years after the 2019 RMPAs—is justified by new science.

A. The RMPA does not cite to new science, developed since the 2019 RMPA that renders the amendment process appropriate.

FLPMA states that BLM "shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, *when appropriate*, revise land use plans which provide by tracts or areas for the use of the public lands."[195] "An amendment shall be initiated by the need to consider monitoring and evaluation findings, new data, new or revised policy, a change in circumstances or a proposed action that may result in a

[193] *Id.* at 5-4.

[194] M-1613-21(b).

[195] 43 U.S.C. § 1712(a) (emphasis added).

change in the scope of resource uses or a change in the terms, conditions and decisions of the approved plan."[196] As relevant here, BLM's Land Use Planning Handbook states that "[p]lan amendments are most often prompted by the need to consider significant new information from resource assessments, monitoring, or scientific studies that change land use plan decisions."[197] In accord with FLPMA, the amendment must be appropriate; indeed, a State Director "may terminate an ongoing plan amendment at any point if the Field Manager provides documentation that the amendment is no longer necessary or appropriate."[198]

BLM has now amended RMPs for ten western states three times during the past ten years: in 2015, 2019, and 2024. This pattern of conducting a west-wide amendment of RMPs involves massive and repeated expenditure of resources and time by both BLM and cooperating agencies. BLM acknowledges that preparation of an amendment may be onerous: "In reaching a decision to amend a land use plan, the BLM must not only consider the resource, but also other workload priorities, budgetary constraints, and staff capabilities."[199] As the Sixth Circuit has observed of the Forest Service's analogous land use planning process, "[d]eveloping a [land use] plan is a formidable process."[200] In this case, the County has been asked to participate in GRSG RMPA nearly constantly from 2015 through 2024. In light of this expenditure of resources to prepare the 2024 RMPA/DEIS, it is shocking that the DEIS/RMPA does not make a strong showing that a new GRSG land use plan is appropriate, much less necessary.

In the scoping process, BLM repeatedly stated that the RMPA was needed to respond to litigation and new science.[201] Litigation is not a reason to amend the RMPs: as we explain above, BLM complied with a court order requiring it to conduct a supplemental analysis of its 2019 plans, and those plans should currently be operative. Rather, this planning process appears to be an effort to merely justify its change in policy from its 2021 ROD with the change in administration and without any reasoned explanation.

Nor does BLM adequately explain how new science, which has emerged since the 2019 RMPs, or the 2021 ROD makes the RMPA appropriate. BLM devotes just one paragraph in the DEIS/RMPA to "New GRSG Science."[202] It does not explain here, or elsewhere in the DEIS/RMPA, why new studies that have emerged since the 2019 planning effort—or, even, the 2015 planning effort—make the current RMPA necessary. Indeed, the Introduction to the DEIS, which explains the purpose and need for the DEIS and hence for the RMPA, BLM repeatedly refers to data developed before 2019.[203]

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[196] 43 C.F.R. § 1610.5-5.

[197] BLM, Land Use Planning Handbook H-1601-1 at 45.

[198] *Id.* at 46.

[199] *Id.* at 45.

[200] *Meister v. Dep't of Agric.*, 623 F.3d 363, 368 (6th Cir. 2010).

[201] *See, e.g.*, BLM, Transcript of Virtual Public Meeting for the Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement, at 15:48–17:36 (Apr. 9, 2024) ("So what is this new science of which I speak? There [were] a lot of publications" regarding genetic mapping, models of breeding habits, changes in abundance numbers, and climate change impacts.); BLM, Transcript of 2022 Greater Sage-grouse Planning Virtual Public Scoping Meeting, at 09:43–10:06 (Jan. 11, 2022) ("[O]ur 2022 effort is looking at [litigation challenging the 2015 and 2019 plans], but it also is recognizing . . . that we have potential inconsistencies in our 2000, in our previous efforts with the new science and also recognition of rapid changes affecting the BLM's ability to manage public lands, including the effects of climate change.").

[202] DEIS at 1-4.

[203] One notable exception is an annual USGS analyses of GRSG population. But this, by definition, changes each year, and BLM does not suggest—nor does the County—that annual RMPA development is encouraged or feasible.

Further, the DEIS includes information indicating that the 2015 plans, which BLM is currently implementing, are succeeding in ensuring that anthropogenic disturbance is not adversely affecting GRSG:[204] BLM's 2015–2020 GRSG Monitoring Report found that, during that five-year period, the percent of anthropogenic disturbance in PHMA was less than one percent, below the threshold where GRSG abandon leks.[205]

REQUESTED CHANGE: As we indicated in our cooperating agency comments, the DEIS/RMPA does not, but must, disclose (1) whether, and the extent to which, the 2015 and 2019 plan amendments are no longer consistent with the science or habitat goals; (2) what is the primary cause of the inconsistency; and (3) how the new planning effort will address those shortcomings.

VIII. BLM's socioeconomic analysis is entirely inadequate, contravening NEPA.

NEPA requires that an EIS's environmental consequences analysis address, "[w]here applicable, economic and technical considerations."[206] "[W]hen the agency determines that economic or social and natural or physical environmental effects are interrelated, the environmental impact statement shall discuss and give appropriate consideration to these effects on the human environment."[207] Here, BLM acknowledges that its RMPA will have economic impact.[208] But its discussion of social and economic conditions—seven pages in the main body of the DEIS and an approximately 90-page appendix—ranges across ten states and provides very little granular detail. BLM does not quantify the social or economic effects of the proposed actions on industries including ranching and mining, does not provide detailed information on economic and fiscal impacts to counties, and does not rely upon the best available information.

A. BLM does not accurately or adequately address impacts to industries including ranching and mining, and hence to counties that rely on these industries, rendering the PHMA designation in Alternatives 1, 3, 4, 5, and6 inconsistent with the County's land use plan.

i. Ranching

Our analysis shows that the Alternative 3 management actions will result in closure of the majority of BLM-managed lands in the County to livestock grazing, and subsequent loss of the majority of ranching businesses. The DEIS/RMPMA provides an inaccurate or inadequately explained analysis of the impact its proposals augur for ranching.

The facts on which BLM relies are either inaccurate or inadequately explained. BLM states that "[o]n annual average, livestock grazing on allotments where PHMA accounted for at least 15 percent of the acreage in the Nevada analysis area is expected to support about 236 total jobs (about 82 direct jobs in the animal production and ranching sectors)."[209] The County is unsure how BLM came to this number. The 2017 Census of

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[204] Though, as noted, as regards protecting GRSG habitat from the greatest threat to it—wildfire—the plans are a failure.

[205] GRSG Plan Implementation Rangewide Monitoring Report for 2015–2020 at 49.

[206] 40 C.F.R. § 1502.16(a)(10).

[207] *Id.* § 1502.16(b).

[208] *See, e.g.*, DEIS at ES-7 ("The nature and types of social and economic impacts associated with management actions under the alternatives would be similar across GRSG range.").

[209] DEIS at 4-146.

Agriculture reports 266 farms in Humboldt County alone, and approximately 86% of land in these farms is pastureland.[210] It counted 59,243 head of cattle in the County.[211] The Humboldt County PLRMPP Livestock Grazing component finds that approximately 154 cattle and sheep ranches, with hundreds of associated jobs, are located within the County.[212] Most of these rely on allotments for summer grazing. We count 90 BLM grazing allotments within the County, and these support 264,787 AUMs.[213] In the HAF 6 area, which includes most of Humboldt County, Alternatives 3–6 would designate between 9 and 16 million acres as PHMA.[214]

Though it includes maps displaying the impact of various alternatives on an array of other industries, from locatable minerals to wind and solar energy, the DEIS does not include any maps that provide overlays of grazing allotments and PHMA. Absent this information, the non-granular scale of the HMA maps that BLM has produced makes it difficult to tell precisely how grazing allotments overlap with PHMA. The County asks BLM to provide maps in the FEIS that remedy these defects and support its determination that the proposed alternatives will directly affect only 82 jobs. Given the information provided by the DEIS, and the statistics we discuss, above, regarding grazing in Humboldt County, we assume that livestock grazing on allotments where PHMA accounted for at least 15 percent of the acreage could affect 82 jobs in Humboldt County alone. Thus, the DEIS/RMPA is based on inaccurate and/or inadequately explained information. BLM should significantly augment this analysis, on a county level, in the FEIS/RMPA.

Finally, Alternatives 1, 3–6 of the DEIS/RMPA are inconsistent with the County's PLRMPP Livestock Grazing section. The Plan states that its objective is to "ensur[e] [that] all currently designated grazing allotments continue to be available for grazing[215] However, Alternatives 1,3–6 would reduce the available grazing acreage and AUMs within the County to differing degrees. BLM contravenes NEPA by its failure to explain this inconsistency and it contravenes FLPMA by not ensuring maximal consistency with County land use plans.

ii. Mining

The DEIS states that mining industry accounts for more than 20% of all employment in Humboldt County.[216] In light of this information, BLM's analysis of impacts to mining is remarkably cursory. For example, as noted above, BLM's impacts analysis of ACECs fails to consider key, publicly available information regarding the effect of additional administrative requirements (such as a mandated plan of operations even for small projects) or of restrictions on mining activity in certain areas.

Additionally, as noted above regarding Alternatives 1 and 3, BLM would recommend that certain areas are withdrawn from location and entry under the Mining Law. BLM adds, correctly, that the Secretary of the Interior would need to separately designate lands for withdrawal, and states that "if the Secretary ultimately decided to withdraw the land, such a withdrawal would likely result in a reduction of economic activity in mining

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[210] USDA, 2022 Census of Agriculture Humboldt County Profile, at *1 (2022) https://www.nass.usda.gov/Publications/AgCensus/2022/Online_Resources/County_Profiles/Nevada/cp32013.pdf.

[211] *Id.* at *2.

[212] Humboldt County, Livestock Grazing Plan, at *1 (May 18, 2019) https://hcnv.us/DocumentCenter/View/6201/Livestock-Grazing-FINAL-Approved-5-18-2019.

[213] *See id.* at *4–*7.

[214] DEIS, Vol. III at 14-55.

[215] Livestock Grazing Plan at *2.

[216] DEIS, Vol. III at 13-2-15.

sectors."[217] But BLM decides that it need not consider those effects in the DEIS/RMPA. This is incorrect, as we explain above in Section II. Because mineral withdrawal is a reasonably foreseeable consequence of a recommendation for mineral withdrawal, the BLM must consider the indirect effects of this proposed action. As these consequences were not considered in the RMPA / DEIS, they will need to be considered in a supplemental EIS.[218] We note (as the DEIS does) that the Secretary is currently in the process of evaluating impacts of mineral withdrawal under the 2015 LUPAs. We ask BLM to include further impact analysis regarding economic effects of the proposed management actions on mineral development.

B. BLM does not adequately address impacts to rural counties like Humboldt County, including by not incorporating data from the Nevada Economic Assessment Project into its analysis.

Several counties have made critical economic impact information available to BLM through locally sourced data and reports in prior RMPA processes. Much of this has been compiled in reports released by the Nevada Economic Assessment Project, a project in which BLM is partner with the University of Nevada, Reno, and the Forest Service. Nonetheless, BLM's assessment of economic impact to rural counties that depend for much of their revenue on use of public lands and the federal government's consistent, science-based management of those lands is grossly deficient.

BLM states that "[t]he nature and types of social and economic impacts associated with management actions under the alternatives would be similar across GRSG range, however, effects would not be evenly distributed and may be felt at the individual community-level to a greater degree."[219] But it does not assess how those impacts would be felt at the community level. In Appendix 13, the DEIS/RMPA's most detailed socioeconomic impact analysis, BLM states that "[d]ue to the size of the planning area, a narrative is not included here for all relevant communities of place," like counties, "bound together because of where they reside, work, visit, or otherwise spend a continuous portion of their time."[220] BLM refers in a footnote to more detailed information regarding Nevada counties provided in reports developed by the NEAP. The NEAP has its foundations in prior GRSG planning efforts and was intended to be a common baseline data source for Nevada's counties. But it appears to not have been employed in the 2024 RMPA/DEIS. We ask BLM to incorporate this data into the FEIS analysis.

Further, BLM acknowledges that "[s]tate and local governments collect a variety of revenues related to the use of natural resources. These revenues could be indirectly impacted by BLM management decisions on GRSG HMAs, if the decisions affect the level of use of natural resources."[221] Indeed, BLM states that income in the mining industry (including quarrying and oil and gas extraction) accounts for 37.8 percent of income for Humboldt County.[222] BLM does not provide any analysis in

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[217] DEIS at ES-7.

[218] We note that the General Mining Law, FLPMA and a slew of recent laws including the Bipartisan Infrastructure Law and the Fiscal Responsibility Act emphasize that BLM land use plans cannot restrict exploration for and development of minerals on public lands.

[219] *Id.*

[220] DEIS, Vol. III at 13-4-1.

[221] *Id.* at 13-3-29.

[222] *Id.*

the DEIS as to how additional hurdles for mineral exploration and development associated with ACECs, especially, would affect county revenues. As we note above, BLM should also address how ACEC designation would affect the County's ability to comply with its primary mandate: providing for the health, safety, and welfare of its citizens.

IX. REQUESTED CHANGE: BLM's socioeconomic impact analysis is based on inaccurate or inadequately explained information. BLM should rely on the NEAP and data produced by Nevada scholars and agencies to more accurately determine—specific to Nevada and its counties—the effect of ACECs on mining and ranching and derivative effects on employment, public services, and community stability in Humboldt County. It should also assess the effect of restrictions on public safety in rural counties that consist largely of federal public land, and should make appropriate modifications to the FEIS/RMPA on the basis of this information.

As an initial matter, the County notes that it does not support use of a disturbance cap as inconsistent with the State Plan. However, for Alternatives 3–6, BLM plans to include in its disturbance cap calculation disturbance on non-BLM lands. It states that such analysis is "consistent with the BLM's responsibility to consider cumulative impacts when making decisions for activities on public lands."[223] This misunderstands both RMPAs and the cumulative effects analysis that NEPA requires.

As noted, an RMPA is intended to set the scene for BLM's more site-specific decisions. This is evident in BLM's statement that, for the RMPA, "[t]he cumulative effects analysis area for GRSG is the same as the planning area, which encompasses the entirety of the GRSG current range."[224] This massive cumulative effects area is only possible in an RMPA where the goal is to benefit a species.

Whenever BLM permits a project, it must make a site-specific decision as to the area in which cumulative effects analysis is appropriate.[225] Indeed, courts have repeatedly held that cumulative effects analysis that does not include "site-specific information" does not constitute the hard look that NEPA requires.[226] It is inappropriate for BLM to predetermine the scope of the cumulative effects analysis at the RMPA stage. The DEIS/RMPA is required to consider cumulative effects as part of its NEPA analysis of the RMPA; it is not meant to prescribe what cumulative effects should be considered as part of BLM's NEPA analysis of other, future federal actions. Here, BLM's across-the-board approach to the cumulative effects analysis does not comport with NEPA, and opens BLM to litigation risks.

X. BLM's purpose and need statement is improperly narrow: it does not address non-anthropogenic causes of GRSG habitat loss.

The DEIS/RMPA's purpose and need statement is too narrow; it artificially limits the alternatives to amending a select set of management areas only causing minor to speculative impacts to GRSG habitat (anthropogenic

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[223] DEIS at 2-32.

[224] *Id.* at 4-229.

[225] 40 C.F.R. § 1508.1(g)(3).

[226] *Or. Nat. Res. Council v. BLM*, 470 F.3d 818, 822 (9th Cir. 2006) (EA was insufficient where BLM did not "consider *quantified and detailed information regarding the cumulative impact of the [specific] project* combined with past, present, and reasonably foreseeable logging projects. Second, the EA was tiered to other documents that did not contain *the requisite site-specific information about cumulative effects*" (emphasis added).); *see also Klamath-Siskiyou Wildlands Ctr. v. BLM*, 387 F.3d 989, 997 (9th Cir. 2004) ("What is missing in the [EA] documentation, however, is any specific information about the cumulative effects.").

uses and livestock grazing) and does not require the alternatives to address the *primary* threats to GRSG habitat (wildfire and vegetative management).

Paradoxically, the DEIS/RMPA's overly narrow purpose and need (to amend primarily anthropogenic activities and grazing) therefore precludes significant amendments to wildfire (the primary threat to GRSG habitat) and vegetative management.[227] BLM's indefensible rationale seems to be that significant amendments to wildfire and connected vegetation (fuels) management are not needed because the 2015 LUPAs are managing wildfire and vegetation well.[228] This view is profoundly misleading, and it conflicts with the BLM's own findings, repeated extensively above, that most GRSG habitat loss is due to wildfire and less than one percent of disturbance in PHMA is a result of anthropogenic disturbance.

In short, BLM's current planning decisions (2015) for wildfire and fuels management *aren't working at all*—the vast majority of damage to GRSG habitat is being driven by wildfire. BLM

is meant to "briefly specify the underlying purpose and need to which [it] is responding."[229] Most obviously, the purpose and need of the DEIS/RMPA is to protect GRSG habitat in a way that the 2015 and 2019 land use plan amendments have not. On this view, BLM's purpose and need statement falls woefully short by refusing to address the single largest driver of GRSG habitat destruction and degradation.

BLM's misguided planning direction also harms Humboldt County by failing to adequately address a serious and growing wildfire crisis which threatens human life, public health and safety, private property, and the natural environment.

REQUESTED CHANGE: BLM must issue a supplemental EIS with a revised purpose and need to address primary threats to GRSG habitat, specifically wildfire and vegetative management.

XI. Biased Analysis of Grazing

CEQ regulations require thoroughness, proportionality, and fairness in NEPA environmental analyses. An EIS "shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives."[230] Further, "[e]nvironmental impact statements shall discuss impacts in proportion to their significance. There shall be only brief discussion of other than significant issues."[231]

As we have commented at length previously, the DEIS/RMPA shows a marked anti-grazing bias that has not yet been fully corrected. Both in Section 2.5.10 and Section 3.8, BLM continues, against a body of recent scientific studies, to frame livestock as a significant factor in GRSG population declines. To this purpose, the BLM has added the below misleading statistics, but carefully omits important context:

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[227] *See, e.g.*, DEIS at 1-10 ("There were few, if any changes to these wildland fire management actions in the 2019 RMPA effort, as they were already consistent with state strategies. Similarly, reviewing existing wildland fire and invasive species RMP management actions, in context of the new literature, existing wildland fire and invasive species management action are sufficient for RMP-level decision-making, and no changes need to be considered. Any management changes necessary in wildland fire management to reduce wildland fire risk to GRSG would be made at the project/implementation level.").

[228] *See, e.g., id.* at ES-3, ES-6, 1-4.

[229] 40 C.F.R. § 1502.13.

[230] *Id.* § 1501.1.

[231] *Id.* § 1501.2(b).

> Table 3-7 shows that of the allotments with at least 15% PHMA, 5,140 allotments (53% of all allotments) are in Category A, meeting all standards or making significant progress toward meeting the standard, *while 1,887 allotments (19% of all allotments) are in Categories B through F, representing different categories of not meeting land health standards*. The remainder of the allotments do not have information on evaluations."[232]

In citing this data, the BLM does not disclose that *only .98%* of allotments with 15% PHMA not meeting RLH standards have not yet undergone management corrections. Nor do these data disclose (1) whether the allotments not meeting RLH standards are failing to meet standards on the GRSG component of the allotment, or (2) what percentage of the allotment is not meeting RLH standards. Absent full disclosure of these data and proper context, the above statistics are incomplete, misleading, and demonstrate an ongoing anti-grazing bias. These statistics should be removed.

It is also frustrating that the BLM continues to ignore, or at best downplay, the importance of permitted livestock grazing to mitigating the primary cause of GRSG habitat—wildfire—and invasive vegetation. Livestock are the only landscape-scale fuels management tool, and there is abundant research showing the positive effect of grazing in managing fine fuels and invasive vegetation, including maintenance of fuel breaks.[233] While the DEIS/RMPA gives lukewarm recognition of this fact,[234] it continues to be insufficient. BLM should instead state: "Under Alternative 3, all PHMA would be unavailable for livestock grazing. This could limit the BLM's ability to achieve resource objectives as described under the *Nature and Type of Effects*, and could ~~alter~~ significantly increase the risk of large-scale wildfires."

With a view to supporting grazing and its benefits to GRSG, BLM's grazing prescriptions should promote flexible grazing and adaptive management as frontline tools for making grazing adjustments in the event the livestock grazing is shown to be the causal factor in not meeting rangeland health standards. Changes to "active AUMs, timing, intensity, duration, and frequency of grazing"[235] should only be made in collaboration with the permittee, and always with a view to correcting the management issue as opposed to eliminating or curtailing use. So too, removal or modification of fences[236] should only be done in close coordination with the permittee. Similarly, requiring one or more alternatives "with specific thresholds and defined responses" in a permit's terms and conditions during permit renewal is counterproductive to good conservation. The best outcomes occur when permittees and the BLM are able to fine-tune grazing based on active management and monitoring. As replacement language, we recommend:

> Grazing permits will be renewed following standard permit renewal regulations (43 CFR 4180). Grazing permits within PHMA will be analyzed and approved through NEPA and have adequate flexibility to adjust grazing management within the permit to address any situation occurring on the landscape, i.e., wildfire, drought, feral horses, etc.

Finally, it is Humboldt County's position, as stated in the Humboldt County Public Lands Resource Management Policy Plan that relinquished grazing permits be made available to other permittees, and not be put into "reserve common allotments" as such allotments are frequently underutilized: "Permits voluntarily relinquished by permittees should be immediately made available to other livestock operators, unless 1) an

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[232] DEIS at 2-103.

[233] *See* https://www.climatehubs.usda.gov/hubs/northwest/topic/targeted-grazing-wildfire-fuel-breaks.

[234] DEIS at 4-47.

[235] *Id.* at 2-105.

[236] *Id.* at 2-111.

agency determination to the contrary is consistent with County land use plans and agreed upon in coordination with the County and 2) any necessary reclassifications and subsequent requirements are executed according to applicable statute and regulations."

REQUESTED CHANGE: BLM must give fair recognition and disclosure of the importance of livestock grazing for managing fine fuels and preventing wildfire, with added context that wildfire is the primary cause of GRSG habitat losses. In the FEIS/RMPA, livestock management provisions should emphasize grazing flexibility, active monitoring, and collaborative management with permittees prior to administrative actions.

XII. Predator Management

We previously commented on recent science demonstrating that the raven overpopulation problem is now endemic, i.e. high raven populations no longer depend on human subsidies and significant predation occurs on intact landscapes.[237] We are disappointed to see that the BLM has ignored this input and continues to frame predator control, according to outdated science, as primarily a development / disturbance issue:

> Where sagebrush habitats are intact nest success and adult survival rates are high (Hagen 2011), indicating that predators generally do not limit GRSG populations. However, highly fragmented sagebrush landscapes reduced protective cover and often provide subsidies for sustaining abnormally large populations of predators.[238]

This failure to incorporate recent science demonstrates inherent bias and must be corrected. The approach to predator management in the proposed FEIS/RMPA should therefore focus primarily on direct predator control, not decreasing disturbance. Moreover, requiring the development of a predator control plan—including evidence that predators are limiting sage-grouse populations in a specified area before the implementation of control actions—will result in delayed implementation of necessary predator control. In Nevada, the predation of ravens on GRSG is well established; predator control actions should not have to wait for redundant confirmation. Instead, we suggest developing a general response plan for control actions to be implemented immediately after predation is identified as a causal factor in any sage-grouse population decline. This rapid response plan should include a cooperating agreement with all involved agencies (including USDA APHIS, USFWS, Nevada Department of Agriculture, BLM, Forest Service, and NDOW) to ensure the cooperation of all interested agencies and minimize delay in implementing predator control.

REQUESTED CHANGE: In addition to recognizing current science, the FEIS/RMPA should focus predator control actions on expediting direct management of predators in cooperation with state and federal agencies under an agreement. Ancillary predator control measures, like decreasing subsidies, should continue but it should be recognized that managing subsidies will not solve the raven problem on its own.

XIII. Habitat Objectives, Indicators, and Benchmarks:

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[237] *See* https://www.usgs.gov/news/research-spotlight-human-enterprise-brings-more-ravens-great-basin-threatening-greater-sage.

[238] DEIS at 2-99.

Humboldt County commented at length in the administrative draft, and in many cooperating agency comments, about the impropriety of using the Habitat Assessment Framework (HAF) site scale metrics as a means of measuring whether livestock grazing is meeting GRSG habitat objectives. There are many problems with using the site-scale HAF for this purpose, not least of which is that there is better, more current science which refutes BLM's basic premise: that site-scale indicators (particularly bunch grass stubble heights) are key indicators of GRSG habitat needs. Given the great store BLM has placed on using "the new science" in this DEIS/RMPA, we are extremely disappointed to find their enthusiasm is selective; BLM clearly has no interest in the last ten years of science pertaining to grazing and GRSG (with which we have provided them with abundant references.) This preferential treatment shows unacceptable bias and represents a serious deficiency in the RMPA / DEIS.

REQUESTED CHANGE: The FEIS/RMPA should not use the site-scale HAF as a tool to assess livestock grazing compatibility with GRSG habitat needs. GRSG habitat assessment by the site-scale HAF should be replaced by more current landscape-scale habitat assessment tools and management prescriptions that focus on primary threats to GRSG habitat and survival: resistance and resilience to wildfire and invasive vegetation across ownership boundaries and jurisdictions. Allotment or smaller scale land health assessments are amply covered by state-specific RLH standards and guidelines (without the site-scale HAF as an ancillary SSS requirement). Subsequently, no alternative should define "improperly managed grazing" with reference to the site-scale HAF, and meeting HAF requirements should not be incorporated into grazing permits and leases. At a bare minimum, the DEIS / RMPA must (1) clearly document on the record the body of scientific work (provided in our previous comments) that has questioned the integrity and usefulness of the site-scale HAF GRSG habitat assessment tool and justify its decision to ignore these findings, and (2) note that grazing management shall be informed by the forthcoming 10-year University of Idaho grazing study.[239]

XIV. The County, as a cooperating agency, has not had a meaningful opportunity to engage in the land use planning and the NEPA process.

A. BLM did not provide adequate opportunity for the County to engage as a cooperating agency.

Throughout the development of an environmental document, BLM must:

> collaborate, to the fullest extent possible, with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise. Cooperating agencies may, by agreement with the lead bureau, help to do the following:
>
> (a) Identify issues to be addressed;
> (b) Arrange for the collection and/or assembly of necessary resource, environmental, social, economic, and institutional data;
> (c) Analyze data;
> (d) Develop alternatives;
> (e) Evaluate alternatives and estimate the effects of implementing each alternative; and
> (f) Carry out any other task necessary for the development of the environmental analysis and documentation.[240]

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[239] *See* https://www.uidaho.edu/news/feature-stories/sage-grouse-ten#:~:text=The%2010%2Dyear%20study%20led,for%20grouse%20living%20alongside%20cows.

[240] 43 C.F.R. § 46.230; *see also id.* § 46.230; *id.* § 1501.6.

For the GRSG RMPA DEIS, BLM acted contrary to regulatory command in giving the County minimal opportunity to engage with BLM regarding the DEIS through its unique role as a cooperating agency. BLM's derogation of its responsibility to engage with cooperating agencies includes the following:

1. BLM made only incomplete versions of Chapter 2 and HMA maps accessible to cooperating agencies before releasing to cooperating agencies a full version of the DEIS. That BLM did not make any other standalone draft chapters—for example, the Affected Environment or Environmental Consequences chapters—available to cooperating agencies significantly hampered the County's ability to help BLM identify issues, develop alternatives, and evaluate alternatives and their effects. This was exacerbated by the landscape-level scale of the plan.

    a. For example, the alternatives table that is the bulk of Chapter 2 is difficult to understand because they synthesize management plans for 69 million acres in ten states.

2. BLM made the full administrative DEIS (ADEIS) available for review by cooperating agencies during a two-week period that coincided with the Christmas holidays. Thus, although the County has technically been able to aid BLM in preparing the ADEIS before its release to the public, in practice the County had two weeks to read more than 2,300 pages of DEIS text and appendices. This does not evince respect for the County as a cooperating agency, and it did not permit the County to fully participate as a cooperating agency particularly given the expansive nature of the landscape-level plan.

3. Though BLM gave counties access to USGS HMA maps, these maps were incomplete at the point they were provided to the cooperating agencies. Because BLM only provided updated maps at the end of May, the County has not yet been able to reconvene its Working Group to assess any updates to habitat designations in these maps. We appreciate BLM's downward revision of acreage designated as HMA in these maps, although we note that because of the area-wide (Nevada and California) scale at which the updated maps are drawn, it is difficult to tell from them what precisely has changed for HMA in the County.

4. BLM did not incorporate studies and data the County provided into the DEIS.

5. BLM did not incorporate cooperating agency comments. We describe below BLM's response (or lack thereof) to our cooperating agency comments on the ADEIS. Of at least 62 comments, BLM made satisfactory revisions to the DEIS in response to *just four* of these comments.

B. BLM failed to address the bulk of the County's cooperating agency comments.

Alternative	Issue	Humboldt County Cooperating Agency Comments on ADEIS	DEIS
3–6	Cooperating Agency Participation;	BLM did not appropriately engage cooperating agencies in assessing new alternatives proposed by the 2024 ADEIS/ARMPA	No change. As noted here, the DEIS does not adequately incorporate

	FLPMA/NEPA Insufficiency		input from cooperating agencies.
1–6	Style; NEPA Insufficiency	Poor writing and organization	No change. As noted, the DEIS is poorly organized and, especially regarding the sprawling table presenting alternatives, does not facilitate understanding of BLM's proposed management decisions.
3, 4, 5, 6	Consistency requirements; FLPMA/NEPA Insufficiency	Consistency with state/local plans and explanation of inconsistencies	No change. See discussion above.
3, 4, 5, 6	Purpose and Need; FLPMA/NEPA Insufficiency	BLM does not justify why the 2024 GRSG planning effort is necessary	No change. See discussion above.
3, 4, 5, 6	Best Available Science; FLPMA/NEPA Insufficiency	BLM does not address information in its own 2021 Greater Sage-Grouse Plan Implementation Rangewide Monitoring Report for 2015-2020 stating that wildfire is, overwhelmingly, the greatest driver of habitat loss.	No change.
3, 4, 5, 6	Best Available Science; FLPMA/NEPA Insufficiency	Comment asking BLM to include new science discussing habitat loss due to wildfire	No meaningful change.
3, 4, 5, 6	Issues/Resource Categories; FLPMA/NEPA Insufficiency	BLM does not consider wildfire as an issue/resource category	At 3-17, the DEIS discusses "Wildland Fire Ecology and Management as an issue.
3, 6	ACECs; FLPMA Insufficiency	ACECs are not an effective or appropriate means toward GRSG conservation and should be eliminated in the DEIS/FEIS	No change.
3, 4, 5, 6	Confusion Between FLPMA and NEPA Requirements	Conflation of issues for analysis with resource categories/topics: BLM must differentiate the planning question— "What resource management categories do/do not need to be addressed in the alternatives to improve GRSG conservation outcomes?"—from the NEPA question "What are the effects on uses/resources that would be caused by the alternatives?"	BLM appears to have made changes to differentiate "resource topics" from NEPA issues, although it still refers to "Issues/Management" as synonymous on p. 1-8.
3, 4, 5, 6	Alternatives Discussion; NEPA Insufficiency	The discussion is biased and selective, especially by failing to discuss or disclose disproportionate impacts from wildfire, downplaying adverse effects of renewable energy on GRSG habitat, and failing to discuss properly conducted livestock grazing as a potential boon to GRSG habitat	No meaningful change.
3, 4, 5, 6	Best Available Science; FLPMA/NEPA Insufficiency	The ADEIS relied on the site-scale HAF, a framework based on science that is no longer current and has been called into question	No change.

3, 4, 5, 6	HMA/ACEC Maps are Inadequate; FLPMA/NEPA Insufficiency	The AEDIS relies on HMA mapping that is not properly updated or provided in resolution that makes analysis proper	BLM has provided the County with updated mapping from USGS, but the maps still display a statewide scale that is difficult to properly analyze. Though the County requested shape files, BLM did not provide more granular mapping data.
All	Alternatives Comparison Table; NEPA Insufficiency	The table is incomprehensible, largely because it tries to combine a west-wide planning approach with state-specific exceptions	No change.
3, 4, 5, 6	Landscape-scale Planning by Washington Office; FLPMA Insufficiency	BLM regulations and FLPMA do not permit the Washington Office to develop landscape-scale plans; planning is presumptively conducted at the field office level	No change.
3, 4, 5, 6	Cooperating Agency Participation; FLPMA/NEPA Insufficiency	Landscape-scale planning directed by BLM headquarters minimizes local government participation in planning, which is required by statute including FLMPA's consistency requirements	No change.
Executive Summary and Introduction	Landscape-scale Planning by Washington Office; FLPMA Insufficiency TWO COMMENTS	Landscape-scale planning violates 43 CFR § 1601.0-4; the DEIS/RMPA should disclose its departure from this regulation	No change.
Executive Summary and Introduction	Landscape-scale Planning by Washington Office; FLPMA Insufficiency	DEIS/RMPA must clarify that the 2015 and 2019 planning efforts, unlike the current effort, were developed at the State Office level	No meaningful change.
Introduction	Purpose and Need; FLPMA/NEPA Insufficiency	The DEIS/RMPA must state why it is pursuing a new planning effort instead of seeking legal resolution of the 2019 injunction imposed by the District of Idaho, and must state why it treats the 2021 ROD is not in effect	No change.
Introduction	Wildfire; FLPMA/NEPA Insufficiency	BLM must state that the significant majority of GRSG habitat loss is caused by wildfire and transition to invasive annual vegetation	No change.
All	Best Available Science; FLPMA/NEPA Insufficiency	BLM must add a forthcoming University of Idaho study, *see* https://www.uidaho.edu/news/feature-stories/sage-grouse-ten, and the 2023 Rangeland Wildlife Ecology and Conservation study into the current planning effort, or, in the case of the Idaho study as soon as a peer-reviewed	No change.

		publication is available in the form of a planning maintenance action	
Introduction	Wildfire; FLPMA/NEPA Insufficiency	Add that GRSG habitat continues to be impacted and lost overwhelmingly by large-scale ecosystem disfunction issues like wildfire and transition to invasive vegetation	No change.
Purpose and Need	Purpose and Need; NEPA Insufficiency	The Purpose and Need statement is confusing, overly complicated, vague, and inadequate for clearly defining the scope of issues and a reasonable range of alternatives; the County suggested several specific revisions	The Purpose and Need statement has improved, though it remains insufficient because it does not address why amendment of the 2015/2019 plans is required by best available science.
All	HMA Mapping; FLPMA/NEPA Insufficiency	BLM must clarify and justify different HMA maps for each alternative.	No change: on p. 2-13, BLM explains that it persists in using three different maps for HMA.
Introduction	Planning Criteria; NEPA Insufficiency	The County proposed several specific changes to BLM's explanation of its planning criteria	The County appreciates the changes BLM made in response to its suggested edits, though it notes that BLM did not make changes responsive to the County's suggestion that BLM provide that alternatives will be analyzed "non-selectively and without bias" and does not explain how existing planning decisions which remain valid will be incorporated into the 2024 RMPA.
Introduction	Purpose and Need; NEPA Insufficiency	The purpose and need statement should clearly address wildfire.	No meaningful change.
Introduction	Cooperating Agencies; FLPMA/NEPA Insufficiency	BLM must document on the record wide-spread and ongoing dissatisfaction by cooperating agencies/local governments in the planning and NEPA process, including refusal to release draft chapters, incorporate input/science/data, and unreasonable timelines	No change.
Introduction	Cooperating Agencies; FLPMA/NEPA Insufficiency	BLM's portrayal of consistency review/coordination is inaccurate	No change.
Alternatives Section	Alternatives Discussion; NEPA Insufficiency	The Alternatives Section does not adequately explain that Alternatives 1 and 2 extrapolate from 10 different,	No change.

		state specific RMPAs, while Alts. 3-5a will largely amend all district plans across all 10 states in the same way, with a few "state-specific" provisions tacked on	
Alternatives Section and Alternative 3	Alternatives Discussion; NEPA Insufficiency	BLM dismissed certain alternatives from analysis that had been dismissed by the 2015 and 2019 plans; under the reasons it used to dismiss those alternatives, it should also dismiss Alternative 3	No change.
Alternatives Section	State Review of Mapping	BLM stated that proposed changes to HMA were reviewed by the state	This language appears to have been removed from the DEIS/RMPA. The County notes that the HMA maps in the DEIS/RMPA as well as the updated released in May 2024 have not been approved by either NDOW or the SETT. BLM should put this fact on the record in the FEIS.
Alternatives Section	Lack of Survey-grade Mapping	The County underscored BLM's statement that its HMA maps are not survey grade; it suggested a revision to indicate that, consequently, major land uses may sometimes be appropriate inside PHMA or GHMA boundaries on non-habitat areas, notwithstanding an exclusion or closure	BLM did not make the suggested change
Alternatives Section	Mitigation; Style	The county suggested a wording change to clarify that BLM would strive to maintain current levels of GRSG habitat	No change.
Alternatives Section	HAF Issues	See comment above.	No change.
Alternative 4	Disturbance Cap	BLM accepted the County's suggestion to make the change displayed in the next column	No other activities or actions beyond those listed in the above list are included when calculating the cap (e.g., wildfire, agriculture, vegetation treatments, residences, barns, fencing or range improvements, etc.).
Alternative 4	Disturbance Cap	Should include exception to disturbance cap for public health and safety	The DEIS/RMPA includes an exception for public health and safety in a catastrophic or emergency situation, although this appears not to apply where in ACECs or where an adaptive management threshold is met.

Alternatives 3–6	Solar Energy; NEPA Insufficiency	Downplays role of solar energy in disturbing or degrading GRSG habitat	No meaningful change.
Alternatives 4, 5, 6	Solar Energy; NEPA Insufficiency	No renewable energy development should be allowed on PHMA or GHMA in light of the BLM's planning goals	No change.
Alternatives Section	Predation Threats	BLM's assumption that predation does not occur on intact landscapes are biased and not supported by the most recent USGS science	No change.
Alternatives Section	Livestock Grazing SEVEN COMMENTS	The County proposed a substantial rewrite of the introduction to alternatives regarding grazing as well as a rewrite of language regarding the HAF as used in grazing assessments	Though BLM made some changes to this section, they are not sufficient to address the County's detailed concerns. We discuss in Section XI, on BLM's analysis of grazing, the biased data that BLM added to this analysis.
Alternatives Section	Livestock Grazing; Taylor Grazing Act	The first sentence of Management Action RM-7 is inconsistent with the Taylor Grazing Act	No change.
Alternatives 3 and 6	ACECs	The County asked BLM to provide justification for Nevada having 6x the amount of ACEC acreage as Wyoming when Wyoming has more GRSG habitat	No justification provided.
Alternatives 3, 4, 5, 6	Adaptive Management; FLPMA/NEPA Insufficiency	The adaptive management framework should be consistent with the State Plan	No change.
Alternatives 3, 4, 5, 6	Adaptive Management	The County asked BLM to clarify that existing permitted activities can continue unless those activities are causing direct, non-incidental mortality to GRSG	No change.
Alternatives 3, 4, 5, 6	Adaptive Management	The County suggested revisions to language regarding "[g]razing permits that will expire within the same year" an alternative management threshold is met, now on p. 2-126 of the DEIS	No changes.
Alternatives 3, 4, 5, 6	Management Goals	Suggested removal of reference to conifer removal in MD Fire 25	No change.
Alternatives 3, 4, 5, 6	Management Goals	Suggested inclusion of language regarding collaborative work between BLM fire, weed, and range divisions in MD FIRE 25	No change.
Alternative 2	State-specific Management	Suggested clarification of exception where location is deemed to be unsuitable habitat, *see* DEIS at 2-20	No change.
Alternative 2	State-specific Management	Suggested that activities to protect public health and safety should be permitted regardless of catastrophe or emergency	No change.
All	Affected Environment	Suggested language indicating that declines in population abundance have coincided with a ban on systematic predator eradication across GRSG range	No change.
All	Affected Environment	Suggested deleting summary of outdated science regarding productive nesting areas	The County thanks BLM for making the requested change.
All	Affected Environment	Suggested revisions to language now included at p. 3-4 stating causes of habitat loss: losses resulting from wildfire should come first	Though BLM made some revisions, it did not include the crucial revision noting

			the extent of loss (72% of habitat across GRSG range and 87% in the Great Basin) due to wildfire.
All	Affected Environment	Suggested revisions to avoid suggesting that predation does not occur in intact habitat and suggesting that raven predation results from livestock grazing	The requested change was made in one portion of the DEIS but not in others, especially at DEIS/RMPA at 2-99. This remains an issue, as BLM appears to attempt to shoehorn predator control into an anthropogenic disturbance issue.

XV. The DEIS/RMPA makes public participation impracticable.

FLPMA requires that BLM ensure the "views of the general public" and "third-party participation" are adequately incorporated into the land planning process.[241] This means that "[t]he public shall be provided opportunities to meaningfully participate in and comment on the preparation of plans, amendments and related guidance and be given early notice of planning activities. Public involvement in the resource management planning process shall conform to the requirements of the National Environmental Policy Act and associated implementing regulations."[242]

A. The convoluted Alternatives Chapter precludes meaningful analysis of alternatives.

An EIS must "[d]iscuss each alternative considered in detail, including the proposed action, so that reviewers may evaluate their comparative merits."[243] "If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and publish a supplemental draft of the appropriate portion."[244] The GRSG RMPA DEIS precludes meaningful analysis of alternatives. We observed in our cooperating agency comments that, in our experience, the DEIS/RMPA is unique among NEPA documents. The overwhelming degree of complexity of the alternatives, the chaotic organization of the document, and the unprecedented number of appendices are confounding and overwhelming even to the most experienced reader of NEPA documents. This complaint was universally voiced among all cooperating agencies and given the expertise cooperating agencies bring to bear in reading NEPA documents, if such agencies found the DEIS difficult to read interested members of the public have no hope of understanding it, let alone making well-informed comments on it.[245] For this reason, during cooperating agency meetings with BLM, we requested that BLM extend the comment

[241] 43 U.S.C. § 1701(a)(5); *see also Klamath Siskiyou Wildlands Ctr. v. Boody*, 468 F.3d 549, 556 (9th Cir. 2006) (the views of public must be adequately incorporated in the NEPA process).

[242] 43 C.F.R. § 1610.2(a).

[243] 40 CFR § 1502.14(b).

[244] *Id.* § 1502.9(b).

[245] *Id.*

period to 120 days to allow the public sufficient time to interpret this unacceptably complex document. BLM has refused this request.

Unlike the 2015 and 2019 RMPAs, which created one RMPA for each of the 10 states, in this planning effort the BLM is attempting to formulate four new planning alternatives (3–6) that, if adopted, would apply equally to all RMPs in all 10 states—a west-wide one-size-fits-all approach. Given the extreme ecological variations across the GRSG range, however, the BLM was faced with the problem of carving out countless state-specific exceptions in the many instances where singular planning directives would have been non-sensical. In the DEIS/RMPA the BLM is trying to have it both ways, i.e. one-size-fits-all GRSG RMPA alternatives that tack on state-specific management directives. BLM does not adequately explain that Alternatives 1 and 2 extrapolate from ten different, state-specific RMPAs, while Alts. 3–6 will largely amend all district plans across all ten states in the same way, with a few "state-specific" provisions tacked on. The alternatives are (mostly) represented in a set of tables with additional state-specific provisions listed in Section 2.6.

The result is utter confusion. The 100-plus page alternative table in Section 2.5 is riddled with state-specific variations and exceptions in addition to the separate "state-specific circumstances" section in 2.6. A reviewer who wishes to know what Alternatives 1–6 look like for Nevada—a simple proposition when looking at either the 2015 or 2019 Nevada RMPAs—must cobble together (the work of hours) his own version of the alternative tables using the raw materials that are scattered across the tables in Sections 2.4, 2.6.3, and 2.7. This is entirely unacceptable and inconsistent with NEPA requirements; it is the responsibility of the lead agency to present the alternatives in a manner that is readily understandable. The fact that all relevant information may be "somewhere" in the DEIS does not satisfy this requirement. The DEIS is piecemealed to the point of being entirely unintelligible to the reviewer.

B. The DEIS does not use "plain language" or "clear prose" and is not well-edited.

CEQ's NEPA regulations ask agencies to "employ writers of clear prose or editors to write, review, or edit statements."[246] Further, the Plain Language Act provides that all government documents should be "clear, concise, well-organized, and follow[] other best practices appropriate to the subject or field and intended audience."[247] We would normally not comment on style errors at length, but we addressed grammatical errors in our cooperating agency comments the ADEIS and in our cooperating agency comments on the administrative DEIS that the writing is often unnecessarily complicated, poorly phrased, and contains innumerable grammatical and typographic errors. The number of errors remaining in the document makes the DEIS difficult to read and understand. For example, at 2-192, BLM uses "data is," [rather than "data are"] which in previous comments Eureka County has counseled is ungrammatical. Misplaced commas, quotation marks, and words are not uncommon in the text, and some sentences clearly have not been proofread. For example, the DEIS states that "[u]nder Alternative 2 Nevada would exception criteria to the mineral material disposal closure in PHMA."[248] For clarity, the FEIS should address these issues.

C. The DEIS asks the public to comment on obsolete maps.

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[246] 40 CFR § 1502.8.

[247] 5 U.S.C. § 105.

[248] DEIS at 4-114.

As we have repeatedly expressed to BLM, the mapping on which it relies in the DEIS is inaccurate. BLM only disclosed the current, peer-reviewed maps on the EPlanning site on May 24, 2024, with just 20 days of the 90 day comment period remaining. This severely frustrated the ability of the public, including the County, to formulate comments on the basis of accurate information. Nonsensically, BLM has asked the public to write comments on "preliminary" maps provided in the DEIS/RMPA which, in addition to their numerous inaccuracies and absence of ground-truthing, are already obsolete.

XVI. CONCLUSION

Humboldt County appreciates the opportunity to submit the above comments on the 2024 GRSG DEIS/RMPA. Following review, our primary concern is that the current plan amendment is an improper planning action because it is not being developed at the Field Office level with State Director oversight, as required by the BLM's planning regulations. As such, this planning action should be discontinued and GRSG conservation planning taken up by Field Offices with State Office oversight. Impropriety notwithstanding, as a NEPA document the DEIS/RMPA is profoundly insufficient and will have to be supplemented. We look forward to future discussion and collaboration with BLM. If BLM has any questions or requires clarification on the above comments, please do not hesitate to contact County Manager Don Kalkoske or County Public Lands Consultant Andy Rieber.

Sincerely,

Jesse Hill, Chairman

Humboldt County Board of Commissioners

June 12, 2024

BLM Utah State Office
Attn; HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, UT 84104

Comments submitted to: https://eplanning.blm.gov/eplanning-ui/project/2016719/510
Copy sent by email: BLM_HQ-GRSG_Planning@blm.gov

Paper copy with a thumb drive of all attachments and references sent by U.S. certified mail to address above.

Comments on the Greater sage grouse Draft Resource Management Plan Amendment/Draft Environmental Impact Statement (Draft RMPA/Draft EIS)

Dear Dr. Diebert and Mr. Bahr,

The following comments are being submitted by Advocates for the West, American Bird Conservancy, Center for Biological Diversity, Earthworks, Great Old Broads for Wilderness, Oregon Natural Desert Association, Prairie Hills Audubon Society, Public Employees for Environmental Responsibility, WildEarth Guardians, Western Shoshone Defense Project, Western Watersheds Project, and Western Wildlands Conservancy.

Many of our organizations have been engaged in this land use planning process since 2013 and have repeatedly, consistently, and clearly advocated for the Bureau of Land Management to follow the best available science and protect the greater sage grouse on the lands within the agency's purview.[1] The Bureau knows – and has known for decades now – what it needs to do to stop the declining trends of sage grouse populations and habitat on the acres it manages, but this Draft RMPA/EIS shows that, once again, the agency is willing to overlook meaningful change for the sake of political expediency. It is disappointing that, despite nearly another decade of

[1] BLM is proposing to retain and reaffirm many elements of the 2015 or 2019 RMPAs: "Management actions in the existing RMPAs that do not need to be changed to meet GRSG conservation goals will not be considered and will remain unaltered in the existing RMPs" (ES-2). We focus our comments here on plan elements BLM proposes to change. However, we hereby reiterate and incorporate by reference our prior comments concerning elements of the 2015 and 2019 plans that will remain unchanged (see Attachment A). We request that BLM consider a new or modified alternative that addresses these concerns. We also observe that BLM must adequately consider the environmental impacts of the unchanged plan elements in this DEIS, even if it is not proposing to alter them. We also reserve the right to raise any of the issues identified in earlier comments on any aspects of the plans that are retained in this planning process.

degradation in the Sagebrush Sea, the BLM's preferred alternative in the 2024 plan will not recover the sage grouse and its remaining habitat on 69 million acres of America's public lands.

The 2024 DEIS' purpose and need are not – as they were in 2015 – an effort to ensure adequate regulatory mechanisms and stave off listing under the Endangered Species Act. Because of interim legislation that prevents a listing determination for greater sage grouse, the Bureau is clearly operating in a different paradigm in 2024 than it was in 2015. Some of the undersigned groups litigated over the 2015 and 2019 plans as being insufficient, and the declining trends of sage grouse and the ongoing destruction of sagebrush habitat has demonstrated that we were correct in our assessment. However, even the 2015 plans are better than the 2019 plans and Alternatives 4, 5 and 6 that the Bureau has offered since, these all are successively weaker, with greater loopholes, exemptions, and waivers, limited enforceability, and fewer restrictions at each iteration. It is clear that the Bureau is no longer trying to prevent the listing of sage grouse under the Endangered Species Act through durable and meaningful protections; it's trying to merely do what it has to comply with court orders without wholesale abandoning grouse 'protection' of previous administrations. The current Preferred Alternative (Alternative 5) and Alternatives 1, 2, 4 and 6 do so little that they violate federal laws and policy designed to protect public lands resources.

The U.S. Geological Survey found that greater sage grouse populations have decreased significantly with an 80% rangewide decline since 1965, and 40% decline since 2002.[2] Greater sage grouse need large, unfragmented expanses of sagebrush. Yet the Sagebrush Sea continues to experience degradation, fragmentation and loss. Threats to sage grouse habitat – climate change, invasive species, and wildfires – are adding to the impacts of past and ongoing authorized uses such as oil and gas, livestock grazing, mining, habitat conversion as well as other development, that have already compromised the diversity and natural resilience of the sagebrush system. The USGS scientists recommend defendering the core and restoring the rest.[3] Yet that is the opposite of what Alternatives 1, 2, 4, 5 and 6 will do. Given the precipitous and ongoing population declines, management plans for sage grouse demand the most protective measures are required, not minimums. BLM has the responsibility and authorities to meet this demand.

Unfortunately, the new plans walk away from the Bureau's duty to save the species. The agency has changed the overarching goal of the RMPAs from,

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[2] Coates, P.S., Prochazka, B.G., Aldridge, C.L., O'Donnell, M.S., Edmunds, D.R., Monroe, A.P., Hanser, S.E., Wiechman, L.A., and Chenaille, M.P., 2023, Range-wide population trend analysis for greater sage-grouse (Centrocercus urophasianus)—Updated 1960–2022: U.S. Geological Survey Data Report 1175, 17 p., https://doi.org/ 10.3133/ dr1175. https://pubs.usgs.gov/dr/1175/dr1175.pdf

[3] Doherty, K., Theobald, D.M., Bradford, J.B., Wiechman, L.A., Bedrosian, G., Boyd, C.S., Cahill, M., Coates, P.S., Creutzburg, M.K., Crist, M.R., Finn, S.P., Kumar, A.V., Littlefield, C.E., Maestas, J.D., Prentice, K.L., Prochazka, B.G., Remington, T.E., Sparklin, W.D., Tull, J.C., Wurtzebach, Z., and Zeller, K.A., 2022, A sagebrush conservation design to proactively restore America's sagebrush biome: U.S. Geological Survey Open-File Report 2022–1081, 38 p., https://doi.org/ 10.3133/ ofr20221081. https://pubs.usgs.gov/of/2022/1081/ofr20221081.pdf

- "Maintain and *enhance populations and distribution of* GRSG by protecting and improving sagebrush habitats and ecosystems that sustain GRSG populations;
- Conserve, enhance, and restore the sagebrush ecosystem upon which GRSG populations depend in an effort to maintain and/*or increase their abundance* and distribution, in cooperation with other conservation partners;
- Maintain and enhance quality/suitable habitat to support the expansion of GRSG populations on federally-administered lands within the planning area;" (emphasis added).

to, "Conserve, enhance, restore and manage GRSG habitats to support persistent, healthy populations, consistent with BLM's Special Status Species Management Policy (BLM-M-6840) and in coordination and cooperation with state wildlife agencies. Habitat conservation and management should maintain existing connectivity between GRSG populations." (DEIS at 2-10.) Thus, it appears that the Bureau has dropped the goals of increasing abundance and distribution of GRSG populations, as well as the goal of expanding populations of GRSG within the planning area. The restatement of goals in 2024 takes the focus on the survival of the species and turns it instead to be specifically about conserving what is left of the birds' habitat, yet even that goal will not be achieved if Alternatives 1, 2, 4, 5 and 6 are adopted.

For PHMA, the Bureau's objective is to manage to minimize habitat loss and degradation. For IHMA, just to maintain habitat conditions. In GHMA, the objective is to maintain in accordance with the state agency designations. None of these objectives recognize that merely maintaining the highly fragmented, highly degraded, and largely destroyed sagebrush sea is not enough to recover sage grouse, and none of the analyses admit that use authorizations (such as oil and gas leases) are already underway that will undercut any goals of maintaining large expanses of functional habitat. The cumulative impacts of past, present, and reasonably foreseeable future actions will not meet even these modest goals of maintaining the status quo. Indeed, all alternatives with the exception perhaps of Alternative 3 will only slow the extinction of the species.

Given the ongoing declines of the species,[4] the compromises already in place, and the lack of protection on private land, the most protective alternative – Alternative 3 – is the only reasonable alternative that provides adequate regulatory mechanisms and meets the BLM's policy regarding special status species.

[4] https://www.usgs.gov/centers/werc/science/estimating-trends-greater-sage-grouse-populations-within-highly-stochastic

I. VIOLATIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

A. The DEIS Contains Inadequate Information on Baseline Conditions and Trends

The Bureau has a NEPA duty to take a "hard look" at baseline conditions across the planning area. *See, e.g.*, *N. Plains Res. Council v. Surface Transp. Bd.*, 668 F.3d 1067, 1083-86 (9th Cir. 2011); *see also* 40 C.F.R. § 1502.15 (requiring an EIS to describe the "affected environment . . . including the reasonably foreseeable environmental trends and planned actions in the area(s)"). The DEIS fails to meaningfully evaluate or disclose baseline conditions and trends at a rangewide, statewide, population, or subpopulation scale. Although BLM has provided some superficial baseline information for greater sage grouse, *see* DEIS at 3-1 et seq., it consists mostly of background information on the species, summaries of research scientific research, generic statements (e.g., "Gene flow is greater") and a few isolated statistics that lack any context (e.g., current rangewide acres of current sagebrush cover without information on its geographic distribution or any historical data for comparison).

This is an immensely important planning effort that demands far greater baseline data collection and disclosure for the public to adequately understand the impact of the proposed alternatives, particularly on greater sage grouse, and context to assess how greater sage grouse and its habitat have fared under earlier plans, Alternatives 1 and 2. To facilitate informed public comment and agency decision making, we request that BLM disclose actual baseline data as to the following:

- Acres of habitat loss from both natural (e.g., fire, invasives) and human causes.
- Extent of habitat degradation and fragmentation
- Population and genetic connectivity
- Population numbers
- Lek counts
- Number of leks and their status
- Other seasonal habitat areas, including location/availability of winter habitat
- An evaluation of land health data from grazing allotments that includes whether the results reflect recent conditions or if the assessments are outdated

BLM must provide this information at every relevant geographic scale (rangewide, statewide, population level, and subpopulation) to allow meaningful analysis of sage grouse needs, conditions, and trends in specific regions. Absent such information, it is unclear how the public or decision makers can meaningfully analyze the effects of the proposed alternatives.

BLM must also provide this baseline data over the longest time horizon possible to provide context as to current conditions and allow the public and agency decision makers to identify trends and their causes.

Such information should be within BLM's possession. To the extent it is not, BLM has a duty to collect such information under 40 CFR 1502.21 (pertaining to "Incomplete or Unavailable Information"), because it is relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives, and the overall costs of obtaining it are not unreasonable.

The Bureau's own FLPMA regulations also require collection of this and other "resource, environmental, social, economic and institutional data and information." 43 CFR § 1610.4-3; *see also* 43 CFR § 1610.4-4 (requiring an "analysis of the management situation," including inventory data and information).

B. The DEIS's Analysis of Impacts to Sage Grouse is Vague and Cursory

The sections below describe problems particular to individual sections of the DEIS. As a general matter, however, the DEIS fails to take a hard look at the impacts of the various alternatives on greater sage grouse. Section 4.2 begins with a generic discussion of the types of impacts that could occur, which tells the reader nothing about how the proposed alternatives differ in their impacts. The subsequent sections purport to describe the impacts of each alternative but largely just summarize the management measures for each resource, concluding with a perfunctory statement about impacts, such as that a plan element would "protect GRSG," would "reduce disturbance," or would "decrease the potential for impacts" or vague relative statements such as one alternative "could allow more development" than another alternative. The reader is not told what these conclusions are based on; the nature of the impacts; or the degree of increase or decrease.

This is not the hard look NEPA demands. NEPA's hard look standard requires agencies to provide "quantified or detailed information" and "[g]eneral statements about possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided.'" *See Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 993–97 (9th Cir. 2004); *Ocean Advocates v. U.S. Army Corps of Eng'rs*, 402 F.3d 846, 865 (9th Cir. 2004). BLM has not provided any justification here as to why the DEIS must be so vague. Accordingly, we request that BLM provide quantified or detailed information on the impacts of each alternative on greater sage grouse, including projections of the acres of habitat loss, degradation, and fragmentation; the ability of the species to tolerate this degree of habitat disturbance; the degree of sage grouse behavioral disturbance that may result; the impacts on bird survival or reproduction, nest success and chick survival; the impacts on lek and population persistence/viability; and the impacts on genetic connectivity. BLM must discuss the intensity of impacts using quantitative data wherever possible. BLM must also include a frank discussion of the likelihood of each alternative resulting in lek and population extirpation in particular regions; the resulting impacts on the "three r's" (resilience, redundancy and

representation); and the probability of continued rangewide population declines for the entire species. BLM must also provide far more context to its discussions, describing the area or location in which the impacts will occur, linking those discussions to baseline conditions in that area, and describing the ultimate effect on sage grouse habitat or populations in that area. Without that type of hard look, it is unclear how BLM or the public can meaningfully assess the alternatives under consideration or options to avoid them.

BLM has also improperly focused its analysis on the impacts of new implementing decisions, failing to meaningfully analyze the effects of the proposed alternatives on *existing* and ongoing projects that might be altered in ways that reduce sage grouse protections. BLM must consider and disclose how, for example, if and how the new lek definitions, HMA boundaries, lek buffers, waivers/modifications/exceptions, and other proposed plan changes might increase the impacts of projects that have been authorized but not yet completed. Anthropogenic disturbance is a strong predictor of lek extirpation (Wann et al 2023), but the DEIS fails to accurately account for the past, present, and reasonably foreseeable anthropogenic impacts of its existing management regimes.

C. The DEIS Lacks Clarity

The DEIS is exceedingly difficult to read and understand, hamstringing public participation and affecting meaningful analysis. As mentioned in the opening paragraphs of this letter, our organizations have participated in all of the sage grouse RMP amendment processes, and this iteration was by far the hardest to understand. Important information such as state compensatory mitigation programs were not even included (or at least we could not find them). This violates NEPA's letter and spirit of disclosure and public participation, along with BLM's obligation "provide for public involvement" in the land-use planning process. 43 C.F.R. § 1601.0-8; *see also* 43 CFR § 1610.2(a).

D. The DEIS fails to identify the need for change, or cite new science/information supporting the many of the proposed changes. Further, continued GRSG population declines strongly suggest that more, not less protection is needed.

BLM has failed to provide a reasoned explanation for decreasing sage grouse protections or for disregarding and contradicting factual findings which underlay its prior plans, in violation of the APA. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009) (requiring agency to acknowledge and explain the change, and if the "new policy rests upon factual findings that contradict those which underlay its prior policy," agency must include "a reasoned explanation . . . for disregarding facts and circumstances that underlay or were engendered by the prior policy."). Relatedly, BLM has failed to use and follow the best available science on greater sage grouse, violating its obligations under NEPA and FLPMA.

BLM seems to claim in an appendix to the DEIS that the NTT Report and COT Report no longer represent the best available science on sage grouse needs, or else that it did not need to apply the best available science of the NTT Report, only to consider it, and that the Plans comply with the COT Report. See DEIS at 6-1 to 6-4. These statements are incoherent and inaccurate; sage grouse habitat needs have not changed since 2011, nor has our scientific understanding of those needs, nor could the implementation of State plans alter sage grouse biology. BLM's failure to apply the science-based recommendations set forth in the NTT Report was an error in its 2015 Plans that carried over in the 2019 Plans and persists in the rationalizations set forth in the DEIS now.

It bears repeating that the purpose of undertaking the National Sage Grouse Planning strategy was not to impose a set of measures that everyone could live with. It was developed to address the US Fish and Wildlife Service's finding that the sage grouse was warranted (but precluded) for listing. The BLM and Forest Service's planning document stated, "Greater sage grouse conservation is urgent."[5] The purpose of the strategy was to ensure populations and habitats are maintained or improved and that habitat loss is minimized.. The NTT Report set forth science-based protections recommended to protect sage grouse from the effects of activities shown to be harmful to the species and its habitat. The reasons BLM gives for departing from NTT's recommendations seems to indicate that BLM's motivation in this planning effort is not to implement protections the sage grouse needs, but rather to loosen restrictions on activities known to harm the species.

Also demonstrating the political purpose of the Plan revision process, BLM seems to argue that its intention to align management of federal lands to state plans is required to comply with FLPMA. The DEIS quotes selectively (and incompletely) from FLPMA, claiming that FLPMA directs BLM to "resolve, 'to the extent practical, inconsistencies between Federal and non-Federal government plans.'" DEIS at 6-3 (quoting 43 U.S.C. § 1712(c)(9)). These partial quotes mischaracterize BLM's responsibilities under FLPMA, which directs:

> In implementing this directive, the Secretary shall, to the extent he finds practical , keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans...Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

[5] National Greater Sage Grouse PlanningStrategy, January 2012. https://eplanning.blm.gov/public_projects/lup/31652/38560/40460/Scoping_Meeting_Conservation-508_Greater_SG_Conservation_Scoping_8.pdf

43 U.S.C. § 1712(c)(9). BLM must only develop its land use plans to be consistent with State plans "to the extent...consistent with Federal law and the purposes of [FLPMA]" and must only resolve inconsistencies between Federal and non-Federal Government plans "to the extent practical." *Id.* As we have explained, repeatedly, in previous comments and Court filings, aligning BLM's approach with the States' is not "practical" or "consistent with Federal Law and the purposes of" FLPMA because it departs drastically from what the best available science shows is necessary to protect sage grouse. In 2015, both BLM and FWS determined that the alternatives favored by certain States, "did not incorporate adequate regulatory mechanisms . . . to conserve, enhance, and restore [greater sage grouse] and its habitat." BLM has provided no rational explanation for why it now believes that these weaker, inadequate plans are suddenly adequate to conserve sage grouse populations, nor has it consulted with the USFWS on this point. If the purpose of the sage grouse plan amendments is to provide adequate habitat protections on Federal lands to prevent sage grouse from needing protection under the ESA, BLM must implement the measures that science shows are required.

BLM makes much of the assertion that the NTT prescribes conservation measures that are applicable rangewide, and are not tailored to local conditions or political preferences. DEIS at 6-1 to 6-2. This is because NTT recommendations are based on the best available science, whereas politics are bound to influence local decision-making more so than science. The habitat requirements of sage grouse do not differ substantially from state to state, or from county to county. Sage grouse require large tracts of undeveloped sagebrush habitat, everywhere throughout their range. Sage grouse are sensitive to industrial activity, and are disturbed and displaced by it, everywhere throughout their range. The large majority of sage grouse nest within 4 miles of the lek site, everywhere throughout their range (and this has been shown in habitats as disparate as the cold deserts of western Wyoming (Holloran et al. 2005), the mixed-grass prairies of the High Plains in the Dakotas (Kaczor et al. 2011), and the hot deserts of Nevada (Coates et al. 2013)). Sage grouse require at least 7 inches of grass height (10.2 inches in the far eastern end of their range) for hiding cover to maximize their nest success and ability to escape predation, and this has been demonstrated definitively from the shortgrass prairies in northeastern Wyoming (Doherty et al. 2014) to the arid deserts of the Great Basin in Oregon (Gregg et al. 1994). These minimum grass height objectives need to be an enforceable standard that is applied annually as a term of use for every livestock grazing lease.

The burden of proof is on the BLM if they wish to show a scientific basis for altering protection measures from region to region, but there is no such scientific basis. Instead, BLM seeks only to defer to the desires of certain state and local governments, and industry lobbyists, to minimize sage grouse protections to levels that would be more profitable for local, politically influential industries, but detrimental to sage grouse according to the best available science. The habitat requirements of sage grouse do not differ significantly, rangewide, and it is therefore inappropriate for sage grouse habitat protection thresholds to differ rangewide.

BLM's various arguments that NTT should not apply because it does not factor in other policy considerations or BLM guidance is nothing more than a list of excuses. For instance, the existence of other BLM authorities governing designation of areas as unsuitable for coal mining does not preclude BLM from adopting NTT's suggestion that PHMAs should be designated as unsuitable, it only provides a process for doing so. Id. at 6-2; See also 43 U.S.C. § 1712(a) ("Land use plans shall be developed for the public lands regardless of whether such lands previously have been classified, withdrawn, set aside, or otherwise designated for one or more uses."). And, BLM's emphasis on applying the "least restrictive constraints" on oil and gas leasing to achieve the resource protection objective ignores that constraints in State plans like Wyoming's and others are not achieving the resource protection objective of preserving sage grouse, which is why stronger protections are necessary to prevent further population declines. *Id.* BLM's suggestion in responding to the NTT Report that policy considerations should dictate which sage grouse protections are applied – not science – is the overarching reason why BLM's land-use plans are failing to adopt adequate protections for the sage grouse. *Id.*

In addition to arbitrarily downplaying the importance of the NTT Report, the DEIS contains a misleading analysis of why the 2015 and 2019 amendments are supposedly consistent with the COT Report. DEIS at 6-5. But the COT report was primarily focused on identifying threats to the sage grouse, not on undertaking a comprehensive review of the scientific literature (as NTT did) nor recommending measurable sage grouse protections based on that science to be applied in land-use plans (as NTT did). Simply complying with the COT Report (to the extent the Plans do) is not enough – the plans must also implement the protections identified by NTT.

BLM must reconcile the long history of the best available science demonstrating sage grouse's habitat needs with the inadequacies of the proposed plans (except for Alternative 3), and the BLM must consider all of the recent science that further delineates the species' needs.

E. The DEIS Fails to Take a Hard Look at Key Issues

The DEIS fails to consider important aspects of key issues, leading to faulty and incomplete analyses of the following topics.

1. Lek definitions

The Bureau has failed to take a hard look at the impacts of its new lek definitions. Appendix 4 of the DEIS compares the new definition of a "lek" as provided by WAWFA to the existing definitions in the earlier RMP amendments. But it does not provide any analysis of how many leks are affected by this change, i.e. whether leks are included or excluded by the new definition, or the impacts to leks which will lose or gain protections as a result. This is a direct effect of this change, and it must be analyzed and disclosed in the EIS.

2. Lek buffers

There is a need to provide lek buffer distances that are adequate based on the biological needs of sage grouse to protect not just breeding activities on the lek, but also nesting and brood rearing habitats surrounding the lek and buffers for seasonal habitats including winter habitat.

In most states, BLM is proposing to retain the lek buffer distances established under the 2019 ARMPAs, which are 3.1 miles for roads, energy infrastructure, and surface disturbance; 2 miles for towers and transmission lines, 1.2 miles for fences and low structures, and 0.25 mile for noise, per the lower end of Manier et al. (2014) interpreted range. However, it is entirely unclear what function those distances will serve in implementing decisions. The 2019 ARMPAs for states like Utah, Colorado, and Nevada and California replaced language from the 2015 ARMPAs that BLM "will apply" buffers with a commitment only to "evaluate" or "assess" impacts within those distances. Those 2019 ARMPAs also stated that Appendix B from the 2015 ARMPA, pertaining to buffers, would not be carried forward. Confusing matters, Appendix 2 of the DEIS here variously suggests that Appendix B from the 2015 ARMPA will be carried forward, will be changed, or will not be changed. *See* DEIS App. 2 at 2-UT-70; 2-BILLINGS-14; 2-HILINE-13; 2-LEWISTOWN-23; 2-ND-20; 2-NVCA-91.

It is thus entirely unclear to the undersigned commenters, and presumably other members of the public, if and how Appendix B from the 2015 ARMPAs will continue to apply and whether Alternatives 1-6 here would prohibit BLM from approving actions within the applicable lek buffers or simply require analysis of impacts within those buffers. The lek buffers are an incredibly important conservation tool for this species. We therefore ask BLM, to avoid any confusion, to clarify in this planning process that Appendix B of the 2015 ARMPA would be included under every alternative considered here and that BLM must actually prohibit development within the buffers, not just analyze impacts within them.

We also request that BLM provide a clear summary of the lek buffer requirements—the distances, their applicability to BLM decisions, and the exception criteria—that would apply in each state going forward. It is unreasonable to ask the public to do archive research of disjointed plan requirements and appendices spanning three iterations of plan amendments across nine states to determine how lek buffers would apply going forward. This lack of clarity hamstrings our ability to meaningfully comment on this important issue and violates NEPA.

We also ask BLM to reconsider the exception criteria for lek buffers adopted under the 2019 ARMPAs. For example, the 2019 ARMPAs state that "Justifiable departures to decrease or increase from these distances from the lek where impacts are anticipated, based on local information and data, best available science, landscape features (i.e., topography), and other

existing protections (e.g., land use allocations, state regulations), or factors reducing visibility and audibility may be appropriate." This gives the agency unlimited discretion to apply lesser lek buffers at a whim, with no limitations. E.g., NV-CA 2019 ARMPA at B-1. In Colorado, there are no mandatory lek buffers, but the application of lek buffers (and setting distances) would be "evaluate[d]" at the project stage, NW CO 2019 ARMPA at 2-3, and the Manier et al. (2014) lek buffers would come into play only in determining whether to count surface disturbance against disturbance caps. NW CO 2019 ARMPA at Appendix H-2. This provision is echoed in the Utah ARMPA, UT 2019 ROD and ARMPA at 48, along with "justifiable departures" loopholes, UT ARMPA at Appendix B-1. The Oregon and Wyoming 2019 ARMPAs did not amend lek buffers, and as there were no 2019 ARMPAs for Montana plans or the Dakotas, lek buffers from 2015 control for these plans except as amended here.

BLM states, "There is no single buffer distance that would be appropriate for all populations and habitats across the range of GRSG (Manier et al. 2014). Lek buffers are generally used to conserve breeding and nesting habitats and are developed and applied as a uniform tool used in the lack of more accurate local information." DEIS at I-8. Manier et al. (2014) present an "interpreted range" of 3.1 to 5 miles for surface disturbing activities; the Wyoming lek buffer distance of 0.6 mile falls well below this interpreted range, meaning that this buffer distance is clearly inappropriate based on the science and clearly inadequate for sage grouse conservation. This is a major problem that should be addressed fully in the 2024 ARMPAs, but this necessary correction does not appear to be implemented, or even represented in the range of alternatives.

BLM states, "Since the prior planning efforts there has been no publication that reviews research related to buffer sizes and provides broad recommendations for buffers to be applied throughout the range. In the absence of new literature, and because local conditions and strategies drive the role of lek buffers in avoiding and minimizing disturbance, there is no rationale to reconsider use of lek buffers across the range." DEIS at I-9. To the extent that the 2015 and 2019 ARMPAs contain lek buffers for some states that were not scientifically supportable in 2015 or 2019, they remain scientifically unsupportable today and must therefore be reformed. Where there is not new literature, existing literature remains relevant and a minimum interpreted range of 3.1 to 5 miles for surface disturbing activities should be applied.

The DEIS states Wyoming and Montana/Dakota ARMPAs apply a 0.6-mile buffer around leks, or less (e.g., 0.25 mile in GHMA, DEIS at 2-16). However, our review of some of the ARMPAs and continuing population decline and habitat fragmentation and loss indicate that a more protective lek buffer of 5 miles should apply. This is the higher end of the range recommended by Manier, needed to reverse GRSG trends. E.g., North Dakota RMP revision at Appendix B-1. In Colorado, lek buffers of 1 mile are applied in several alternatives including the agency's Preferred Alternative. DEIS at 2-130. In Idaho, GHMA lek buffers would be reduced from 2.0 Miles to 0.6 miles for surface disturbance in unspecified categories. DEIS at Appendix 19-2.

Males use shrubs <1 km (0.6 mi) from a lek for foraging, loafing, and shelter (Rothenmeier 1979, Autenreith 1981, Emmons and Braun 1984); this does not make 0.6 mile the appropriate NSO buffer for preventing impacts even to breeding birds, much less nesting birds; these researchers did not test the buffer distance required for loafing males to prevent their displacement from the lek environs. There is no scientific study that has ever demonstrated that a 0.6-mile NSO buffer prevents significant impacts to sage grouse at the breeding, nesting, or brood-rearing stage. Apa et al. (2008, emphasis added) reviews the best available science by a team of state sage grouse biologists, and states,

"Yearling female greater sage grouse avoid nesting in areas within 0.6 miles of wellpads, and brood-rearing females avoid areas within 0.6 miles of producing wells. This suggests a 0.6-mile buffer around all suitable nesting and brood-rearing habitat is required to minimize impacts to females during these seasonal period." This report further clarifies, "These suggest that all areas within at least 4-miles of a lek should be considered nesting and brood-rearing habitats in the absence of mapping."

Given that most nesting activity occurs within 8.5 km (5.3 miles) of the lek (Holloran and Anderson 2005), a 5.3-mile lek buffer restricting surface-disturbing activities would be most scientifically defensible for Wyoming and other states. Greater sage grouse can no longer afford protective mechanisms at the low end of the range. BLM acknowledges the 3.1-mile minimum buffer for surface disturbance, but then applies lesser buffers regionally, stating

> "in Nevada and California, 95% of all nests are within 3.1 miles of leks (Coates et al. 2013), and in Wyoming, 64% of nests within 3.1 miles of leks (Holloran and Anderson 2005). In some populations, hens may nest further from leks and a 3.1-mile buffer would protect fewer nesting birds from a given lek. In Idaho, less than 50% of GRSG hens nest within 1.9 miles and 80% within 6 miles from leks where they were captured (Connelly et al. 2013)."

DEIS at Appendix 19-9. According to Apa et al. (2008), "Buffer sizes of 0.25 mi., 0.5 mi., 0.6 mi., and 1.0 mi. result in estimated lek persistence of 5%, 11%, 14%, and 30%." In 2013, BLM itself concluded, "Studies have shown that greater distances, anywhere from two to four miles, are required for viable Greater sage grouse populations to persist." 2013 Wyoming Greater sage grouse RMP Amendment DEIS at 4-335. For these reasons, the application of a 0.6-mile lek buffer is arbitrary and capricious, violates BLM Sensitive Species Policy, and will drive further population declines in Core Areas that will contribute to the need to protect the greater sage grouse under the Endangered Species Act.

The changes in lek definitions and buffers creates an incomprehensible crazy-quilt of habitat protections, the impact of which BLM must analyze to facilitate meaningful public comment and

agency decision making. In Idaho, for example (see DEIS at Appendix 19-10), lek buffer changes would mean lands protected from new transmission lines would increase from 12% of IHMA to 19% of IHMA. Lands protected from communication towers and meteorological towers would decrease from 25% of IHMA to 19% of IHMA. Lands protected from minor linear features (e.g., gravel roads) would decrease from 72% of PHMA to 28% of PHMA. Lek buffer decreases for surface-disturbance other than energy, transmission, linear features, and communication/met towers would decrease from 5% of GHMA to 1% of GHMA. The overall trend in habitat protections appears to be downward, even in the face of continued major decreases in sage grouse populations under the 2015 ARMPAs. The Idaho results in Appendix 19 report almost identical numbers of active leks under the original definition (males strutting 2 of last 5 years) and the new definition (males strutting 2 of last 10 years). How is this possible, with a lower bar to qualify as an "active lek"? Further explanation is warranted. In addition, under the lek definition, how is an absence of lek survey effort treated? For any year where there is no effort to survey a lek, that lek should be treated as having strutting males that year, under the precautionary principle.

In Utah, MA-SSS-1 allows managers to identify areas of non-habitat (including pinyon-juniper woodland and cheatgrass monoculture) to prioritize exceptions for industrial project siting. DEIS at 2-19. This is a deeply problematic provision, because industrial sites and their access roads have impacts that can extend 1.9 miles into surrounding habitats (Holloran 2005), depopulating these adjacent habitats of sage grouse over a 2- to 10-year period (Walker et al. 2007, Harju et al. 2010). This provision should be explicitly eliminated from the ARMPA, and foregoing provisions allowing for development in nonhabitats within lek buffers should also be explicitly removed in this ARMPA.

3. Disturbance Caps

The BLM is changing the unit at which surface disturbance is measured from Biologically Significant Units (BSU) to the Habitat Assessment Framework Fine Scale (HAF) and project scale to avoid "diluting" the analysis due to large areas that also contain non-habitat. DEIS at 2-28.

The Bureau claims to have analyzed the relative impact of the change from the BSU- to the HAF-level scale when estimating disturbance, and that the outcomes of the percentage disturbance were essentially the same in Wyoming and Idaho. They do not disclose the analysis at the HAF scale. The DEIS proposes to relax implementation of disturbance caps relative to current management, but fails to analyze the effectiveness of current disturbance caps or consider whether greater restrictions on disturbance are warranted. *See* DEIS at 2-34 to 2-39. Although the DEIS attempts to minimize the importance of surface disturbance caps, the best available science indicates that disturbance caps provide vital protections for greater sage grouse. Knick et al. (2013) found that 99% of active leks across the western half of the sage grouse's range were

surrounded by lands with 3% or less human development; with the vast majority of birds selecting habitat with much less disturbance. Accordingly, the NTT Report provides clear guidance on the necessary limit of surface disturbance in priority sage grouse habitat:

> Manage priority sage‑grouse habitats **so that discrete anthropogenic disturbances cover less than 3% of the total sage‑grouse habitat regardless of ownership**. Anthropogenic features include but are not limited to paved highways, graded gravel roads, transmission lines, substations, wind turbines, oil and gas wells, geothermal wells and associated facilities, pipelines, landfills, homes, and mines. [emphasis added]

(NTT 2011:7-8).

In priority habitat exceeding the 3% disturbance cap, the NTT Report instructed that "no further anthropogenic disturbances will be permitted by BLM until enough habitat has been restored to maintain the area under this threshold (subject to valid existing rights)" (NTT 2011: 8). Monitoring reports indicate that disturbance has not yet reached 3% in most areas. Importantly, birds do not select habitat equally across varying disturbance levels within this <3% disturbance range. A closer look at the data shows that there are few populations in areas with greater than 1.5% disturbance. Given the concerning population declines and habitat loss by fire and cheatgrass invasion – and in light of improved understanding of how climate change is affecting and may affect sage grouse habitats – we believe the disturbance caps need to be reassessed and lowered.

Existing studies demonstrate that a lower disturbance cap is warranted. According to Knick et al. (2013), about 78% of leks were in the 0 to 0.5% developed category, while less than 10% of leks were in areas with greater than 1% development. The BLM and U.S. Forest Service recently implemented a 1.5% disturbance cap for the Pine-Nut Mountains population of bi-state sage grouse based on the best available science. *See* Greater sage grouse Bi-state DPS Forest Plan Amendment, Record of Decision (2022).[6]

Kirol at al 2020, looked at sage grouse response to energy development and found similar relationships with surface disturbance for nesting and brood rearing areas. This study found 91% of nests were in areas with <3% press disturbance. Press disturbance is defined as ongoing disturbance after the initial pulse disturbance (e.g. sagebrush removal). However, the preponderance of nests—70%—were located in habitats with 0-1% press disturbance Importantly, in areas with <1% press disturbance, the frequency of nest locations was greater than available habitat. But when press disturbance exposure reached 1-2%, the frequency of available habitat exceeded the frequency of nest locations. Brood rearing locations exhibited the same trend with the frequency of available habitat surpassing the frequency of brood-rearing

[6] https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd649478.pdf

locations when press disturbance exposure reached 1-2%. These figures bring to light that grouse exhibit significantly higher preferences for surface disturbance rates in the 0-1% range with far fewer grouse selecting areas with disturbance in the 2% to 3% range.

Importantly there may be a 10-year lag time between the disturbance and the effect on grouse (Harju et al. 2020). This could be the reason populations continue to decline. Maintaining 3% and even 5% surface disturbance rates without factoring in the lag time for full effects to manifest will lead to further population declines.

Alternatives 5 and 6 allow for 5% disturbance at the project level for Wyoming and Montana that includes wildfire and agricultural disturbance. DEIS at 2-29. A level of disturbance with known deleterious effects. Yet, the DEIS provides no scientific support for allowing this high level of disturbance or presents an analysis of effects from this level even if it does include wildfire and agricultural conversions. BLM was correct to recognize that wildfire and agricultural conversion should be included in a disturbance cap, but not by raising the cap to an arbitrarily high level that birds cannot tolerate and for which there is no scientific justification. Anthropogenic disturbance caps should be reduced to 1.0-1.5%. Wildfires, agricultural conversion and residential development should be included in the <3% cap, where anthropogenic disturbance is limited to 1.0-1.5%.

The DEIS failed to include an adequate range of alternatives that analyzed lower disturbance caps.

Reassessment should have started during this NEPA process by disclosing current levels, types, and spatial distribution of surface disturbances including disturbance measurements across land jurisdiction categories (e.g., BLM, Forest Service, state, private), as well as the methodologies used to calculate disturbance. Disturbance calculations should account for areas where cheatgrass invasion and wildfire have substantially reduced sagebrush habitat, as well as areas of concentrated disturbance due to livestock grazing, such as around water sources. These disturbances should be included in the calculation for the disturbance cap. Assessing the disturbance cap at the HAF fine scale rather than the larger BSU scale is a step in the right direction. Calculating disturbance also at the neighborhood cluster scale would provide a relevant scale to assess surface disturbance and population trends. Subdivisions and urban development in Montana should be included at the HAF Fine Scale given the high level of threat these developments represent. Alts 5 and 6 would not count subdivisions or urban development in MT at the HAF Fine Scale. DEIS at 2-30.

Further, the BLM is likely underestimating the disturbances for mining and future drilling from existing oil and gas leases. That is because the BLM only counts development towards the disturbance cap when a mine or oil and gas well is developed. They do not include estimates in

the disturbance cap monitoring reports authorizations for oil and gas leases sold or mining claims filed. Since BLM cannot say no to the development of a locatable mining claim they should assume a high end scenario that mining claims will be developed and count those future mines toward the disturbance cap. Further, the Bureau admits that mine disturbances are usually larger than the estimated disturbance buffer, which suggests that the disturbance cap might actually be exceeded if the agency were to use disturbance calculations of the mines' actual footprints rather than estimates. The EIS should analyze and disclose this potential miscalculation of impacts to sage grouse and their habitat.

Similarly, the reasonable foreseeable development (RFD) scenario for oil and gas leases likely understates potential surface disturbance that BLM has already authorized. The RFD scenario for oil and gas discounts the number of not yet developed federal leases by 75% (e.g. those not held by production) citing a GAO report 21-13844. However, this discounted number could significantly understate future disturbance if a higher percent of these leases are developed. The RFD also failed to calculate and disclose the resulting disturbance percent even using the low estimate of oil and gas development from the RFD. The BLM should assume that all leases with medium and high oil and gas potential, and a percentage of low oil and gas potential will be developed at some point and incorporate those estimates into their baseline disturbance estimates. Failing to do so could result in exceeding disturbance caps with limited recourse to avoid further degradation of greater sage grouse habitat because too many use authorizations would have been approved.

In an effort to assess the effectiveness of current management, the undersigned groups used GIS data to analyze the amount of surface disturbance permitted under current management. We attempted to recreate surface disturbance monitoring done by the BLM using the methodology described in the Rangewide GRSG Monitoring Report (2014) using publicly available data layers. We conducted the analysis for Wyoming PHMAs, using the HAF Fine Scale and Targeted Annual Warning System, neighborhood cluster data layers (Coates et. al 2024). This analysis includes wildfires burned since 2016 using wildfire perimeter data, but does not include developed mines as we were not able to access mine data, or mining claims. See Attachment D for data sources.

The maps below show that at the HAF fine scale (Figures 1 and 3) and neighborhood cluster scale (Figures 2 and 4), many acres of PHMA are between 3-4.99%. Some areas exceed 5%.

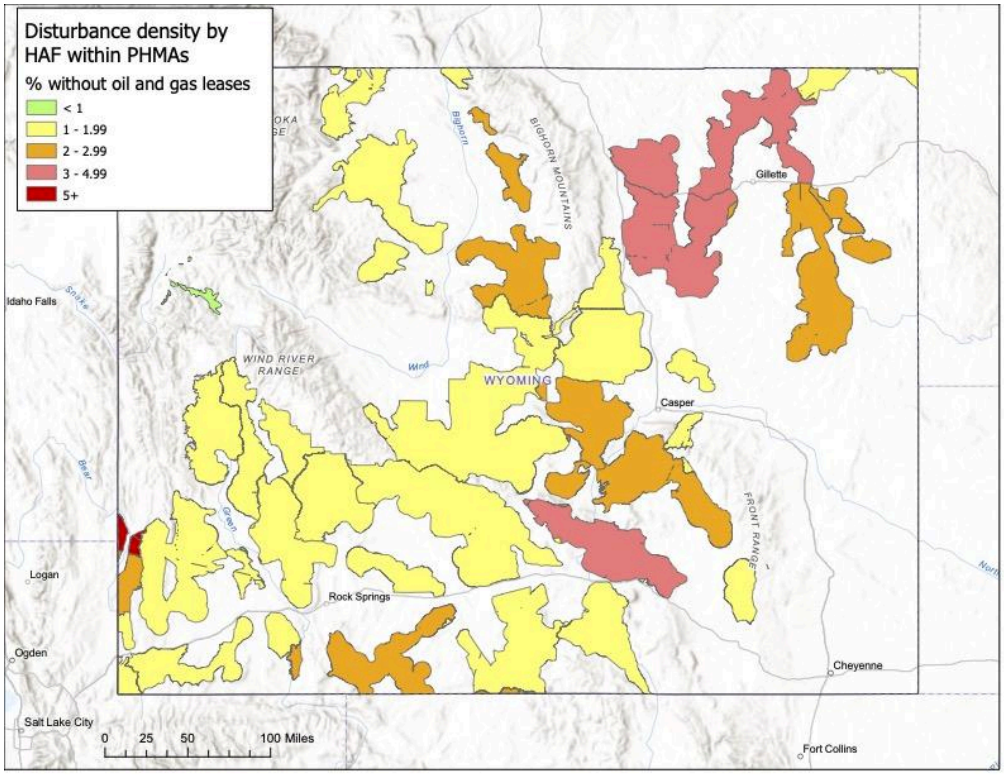

Figure 1. Disturbance density by HAF scale within Wyoming PHMAs without oil and gas leasing.

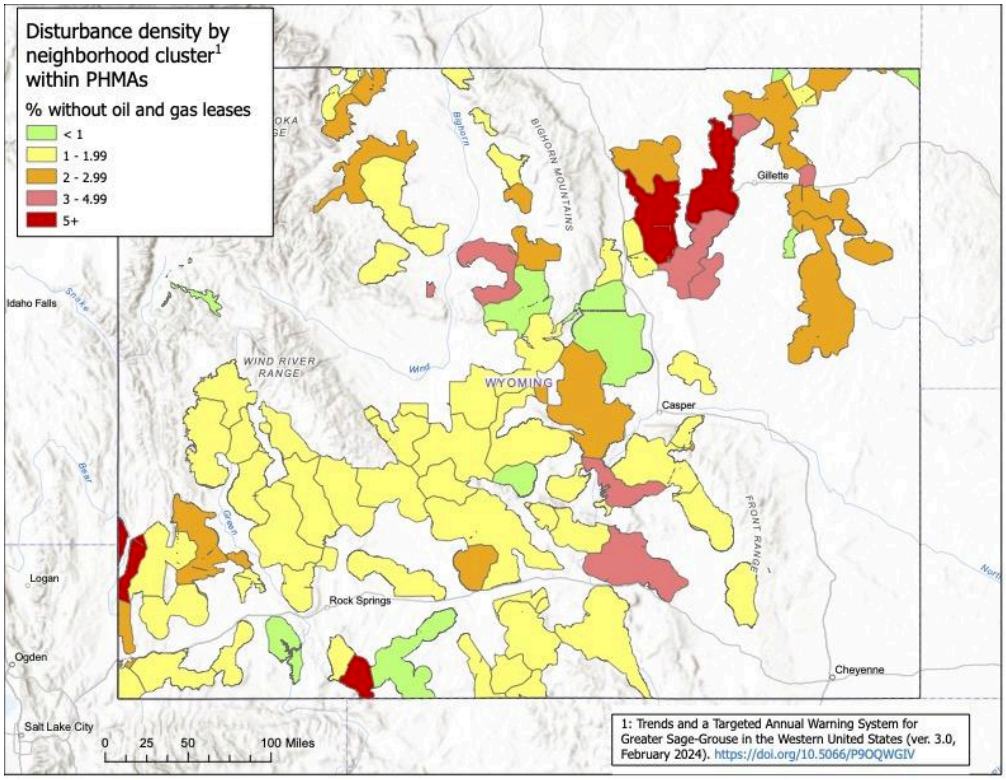

Figure 2. Disturbance density by neighborhood clusters in Wyoming PHMA without oil and gas leases.

Because we believe that disturbance cap monitoring is undercounting oil and gas leases as well as mining impacts, this analysis includes an estimate of future development for oil and gas leases sold. We assumed 25% of oil and gas leases sold since 2016 would be developed, the same percent BLM uses in the RFD. We assumed that half of the area of each lease would be developed. We did not have the data to parse out which leases sold have been developed/or have been partially developed, so we recognize that this estimate could overstate surface disturbance from oil and gas leases. We wanted to demonstrate that in addition to the need to lower the current disturbance caps, that the methodology BLM uses should be revised to include a high-end estimate (worse-case scenario) of potential disturbance from approved authorizations.

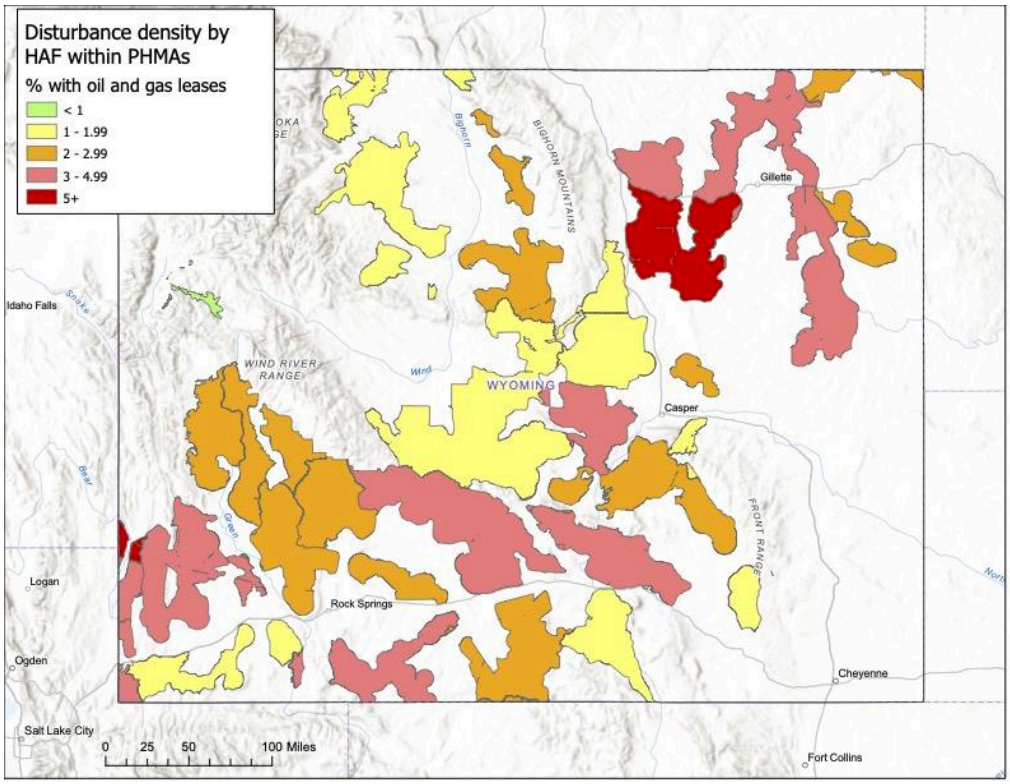

Figure 3. Disturbance density by HAF within Wyoming PHMA with oil and gas lease estimate

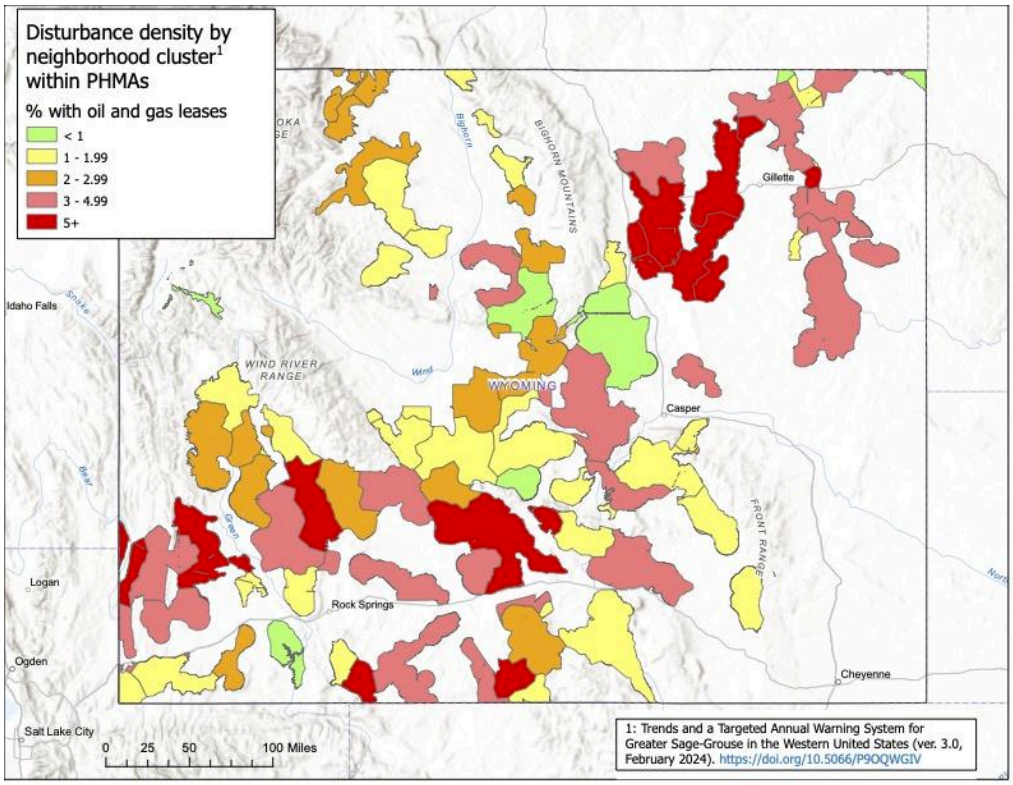

Figure 4. Disturbance density by neighborhood cluster in Wyoming PHMA with oil and gas lease estimate.

4. Grazing

The DEIS states that "well-managed public lands grazing done in accordance with the laws that guide livestock management… can be compatible with GRSG persistence." (DEIS at 2-103). Unfortunately, the Bureau has failed to demonstrate that it can manage grazing well in GRSG habitat, or that any of the current action alternatives would achieve this baseline. (We note too that "persistence" is an insufficient goal for a species that needs to be recovered.)

The DEIS has apparently jettisoned habitat objectives entirely as it pertains to livestock grazing and instead relies on Land Health Standards to evaluate the impacts of grazing on sage grouse habitat. Compare, *e.g.* Alt 1 with Alts 4-6 on pages 2-104, *et seq*. Whereas the 2015 plans required that permit terms and conditions include or be adjusted to include both land health standards and habitat objectives (2-105), the preferred alternative simply states that the Bureau should *consider adjustments to meet or make progress towards meeting Land Health Standards*. (Emphasis added.) The Land Health Standards for GRSG "would *generally* be met when vegetation conditions provide for suitable or marginal habitat for GRSG habitat at the HAF site scale based on existing ecological condition, ecological potential, and existing vegetation information." (DEIS at 2-106, emphasis added.)

This change then flips the habitat objectives – the goals for grazing management in GRSG habitat – on their head by using the state's current conditions to indicate habitat *suitability* rather than establishing management goals. Indeed, the quantitative limits in Appendix 8 are "Habitat *Indicators*" that are to be adjusted based on the site potential. These numbers are "derived from local and regional research on GRSG habitat selection," (i.e. habitat conditions where sage grouse are persisting) rather than the optimum conditions for sage grouse to thrive and recover (according to the science and biological needs of grouse). The indicators will be used to inform a part of the assessment which is a part of the LHS but will not include specific habitat objectives as a term or condition of the permit in conformance with the LUP. The Preferred Alternative (and Alts 2, 4, 5, and 6) have eliminated habitat objectives (which were included in the earlier plans) – that direct what grazing management should comply with. Instead, BLM has replaced clear science-based objectives with general indicators of what habitat that could be used by sage grouse might generally look like, whether or not those areas are, in fact, already degraded by the prevailing land uses and whether or not grouse populations are trending downward under those conditions.

The Bureau fails to explain the inconsistencies in the Habitat Indicators Tables (Appendix 8).

Stiver et al. (2015) recommended greater than 18cm (7-inches) grass height for all breeding and nesting habitats, and explicitly stated that this and other established measures should not be altered unless scientific evidence indicates that the 7-inch threshold is inappropriate. Despite the

widespread, long-standing, and consistent scientific support for standard metrics for grass height and other habitat objectives (e.g., Hagen et al. 2007, Doherty et al. 2014), the states' adjusted plans vary widely and often fall short of what has been scientifically demonstrated grouse need for nesting and brood-rearing.

The Bureau walks back from the scientific recommendations about grass height by relying instead on doubts around the methodology. DEIS at 3-2. But as we've pointed out to the Bureau multiple times in previous comments, though Smith et al. (2018) reanalyzed previous studies and found a limited effect of grass height on nest success, the study admits that concealment is important for nest success and that the height of grasses may be more important in context of surrounding vegetation communities. Where the authors attempt to diminish the significance of the grass height parameter in nest success, they also admit that vegetation structure might relate to other parameters of fitness such as insect abundance (Id.). Therefore, because grass height remains a determining factor or a proxy indicator of health, it seems premature for the BLM to dismiss the habitat objectives that require maintaining 18 cm in breeding habitat. Gibson et al. (2016) admits that conditions that are present at the time of nest failure are, in fact, important to the concealment strategies of ground-nesting birds, and while taller vegetation may be an artifact of seasonality with successful nests, the inverse relationship of shorter vegetation and failed nests cannot be dismissed.

However, rather than rely on the scientific consensus about the importance of grass height, the Bureau provides variable habitat objectives across the range of the species. For example, the DEIS fails to provide a quantitative benchmark for grass and forb height in nesting habitat in Utah, stating instead that it should simply "provide overhead and lateral concealment from predators." (DEIS at 8-18) The plan cites Stiver et al 2015 (which recommends a minimum of 7 inches), Connelly et al 2000 (which recommended a minimum of 18 cm), and Dahlgren et al 2019, which had significantly lower numbers than either of the other two studies. Dahlgren et al. (2019) recommends grass heights between 9 and 12 cm based on observations of breeding habitat in Utah but fails to discuss the success rate of the nests where this was monitored. Indeed, Dahlgren et al. admits that the most desirable process for developing habitat guidelines would "incorporate a relationship of habitat characteristics to population vital rates." The sage grouse population in Utah has been on a long-term decline. (*See* UDWR 2023) The recommendation of the DEIS is that specific height requirements will be set at the time of watershed assessments, which sounds a lot like the Bureau will be maintaining the status quo (and population declines) rather than seeking to adhere to the best science.

In the NV/CA habitat indicators, the agency cites Coates et al. (2017) to set the grass height as 12 cm (4.7 inches) in arid habitats and 18cm (7-inches) in mesic habitats in Nevada. (DEIS at 8-14). By the researchers' own admission, the findings of Coates et al. (2017) constituted a

preliminary assessment, inadequate to support grass height standard changes in the Nevada ARMPA:

> "Herein, we provide summary statistics regarding numerous microhabitat factors that influence site selection and success of nests and broods specifically to meet timely and best-available science needs for land managers and policy-makers. Current information in the literature is sparse and the summary statistics reported here are uniquely suited to fill this important information gap in a timely manner. The findings reported here are meant to provide land and resource managers with an initial understanding of the relative importance of habitat variability, and provide a foundational framework for deriving habitat quality categories. Future research will use a rigorous modeling approach to further investigate potential complex relationships between biotic and abiotic microhabitat characteristics and incorporate other environmental factors that function at larger spatial extents."

Importantly, these researchers never returned to the issue to perform the "rigorous modeling approach" necessary to underpin changes to sage grouse habitat objectives in an RMP amendment, and these interim "summary statistics" are inappropriate to rely upon to set standards for sage grouse habitat criteria. Importantly, Coates et al. (2017) measured grass heights in a manner inconsistent with the line-intercept protocol which is the basis for grass height calculations in the ARMPAs. This means that grass heights derived through the HAF are not comparable to grass heights calculated by Coates et al. (2017).

The more important problem with Coates et al. (2017) is that it focused on grass heights selected by sage grouse, NOT grass heights that optimize nest success. In those study sites in Nevada characterized as "xeric" in this study, selected habitats averaged 4.9 inches height while "available" habitats averaged 4 inches. There were apparently few to no habitats with grass heights greater than 7 inches for the grouse in these areas to select. However, Coates et al. (2017) did not examine the site potentials for grass heights by measuring vegetation in livestock grazing exclosures. In arid parts of Nevada (and other areas as well), grazing by cattle can reduce grass heights to levels detrimental to sage grouse survival and reproduction. In the absence of any available adequate nesting habitat (based on grass height criteria), sage grouse can be expected to select the best of what's left behind, which is what Coates et al. (2017) shows. That does NOT make the selected grass heights optimal—or even adequate—for long-term sage grouse population viability. BLM should be managing sage grouse habitats to a higher standard than today's usual and customary overgrazing by cattle and sheep, and apply the 7-inch grass height objective throughout Nevada (and the rest of sage grouse range).

Western Watersheds Project undertook its own analysis of sage grouse habitat's potential to support the vegetation objectives of the 2015 plans by gathering data in five western states to

determine if ungrazed sagebrush communities could meet the perennial grass and sagebrush habitat objectives for greater sage grouse nesting and brood-rearing requirements identified by the 2015 plans. See WWP 2019. Thirty-five exclosures in sage grouse PHMA were evaluated, and the majority of exclosures throughout the study area attained the 2015 objectives for perennial grass cover and height. This demonstrates that if grasses can achieve their full potential and set seed, the GRSG parameters for this functional group can be met in the absence of livestock grazing (most exclosures only excluded domestic animals, not wildlife). Despite this, the Bureau has consistently weakened the plans' requirements.

The Bureau's analysis of livestock grazing states, "Livestock have also been observed not to impact nest success of GRSG at current grazing levels (Bartholdt 2023)." (DEIS at 3-32) As cited, Bartholdt is linked to an internet website for the University of Idaho "feature story" about research that has not yet been published. *See* https://www.uidaho.edu/news/feature-stories/sage grouse-ten. The online article doesn't include information about what "current levels of cattle grazing" are, making the cite in the DEIS completely baseless nor is there evidence the study was peer-reviewed. Until there is a peer-reviewed paper with substantive data about the impacts of grazing, this alleged result cannot be credibly cited.

Figure 5. A sage grouse on the Pacific Creek allotment in Wyoming, demonstrating the importance of tall grass for hiding cover. Photo WWP, E. Molvar, 2023.

Table 3-6 (DEIS at 9-4) reports on the Land Health Standards of allotments with at least 15 percent PHMA and claims that 53.17 percent of the allotments are meeting or making significant progress towards meeting the Land Health Standards. Making significant progress towards meeting is not, in fact, any guarantee that the sage grouse habitat is in good shape, just that some aspect of the (usually entirely qualitative) monitoring is "trending upward." Without actual recent data, the Bureau should not be making claims about the rangeland health of sage grouse habitat. See Figure 6. The Bureau also cannot rely on outdated land health evaluations to determine whether grazing is a causal factor when triggers are tripped; the influence of grazing on population or habitat declines must be based on concurrent conditions, not years-old analysis of land health.

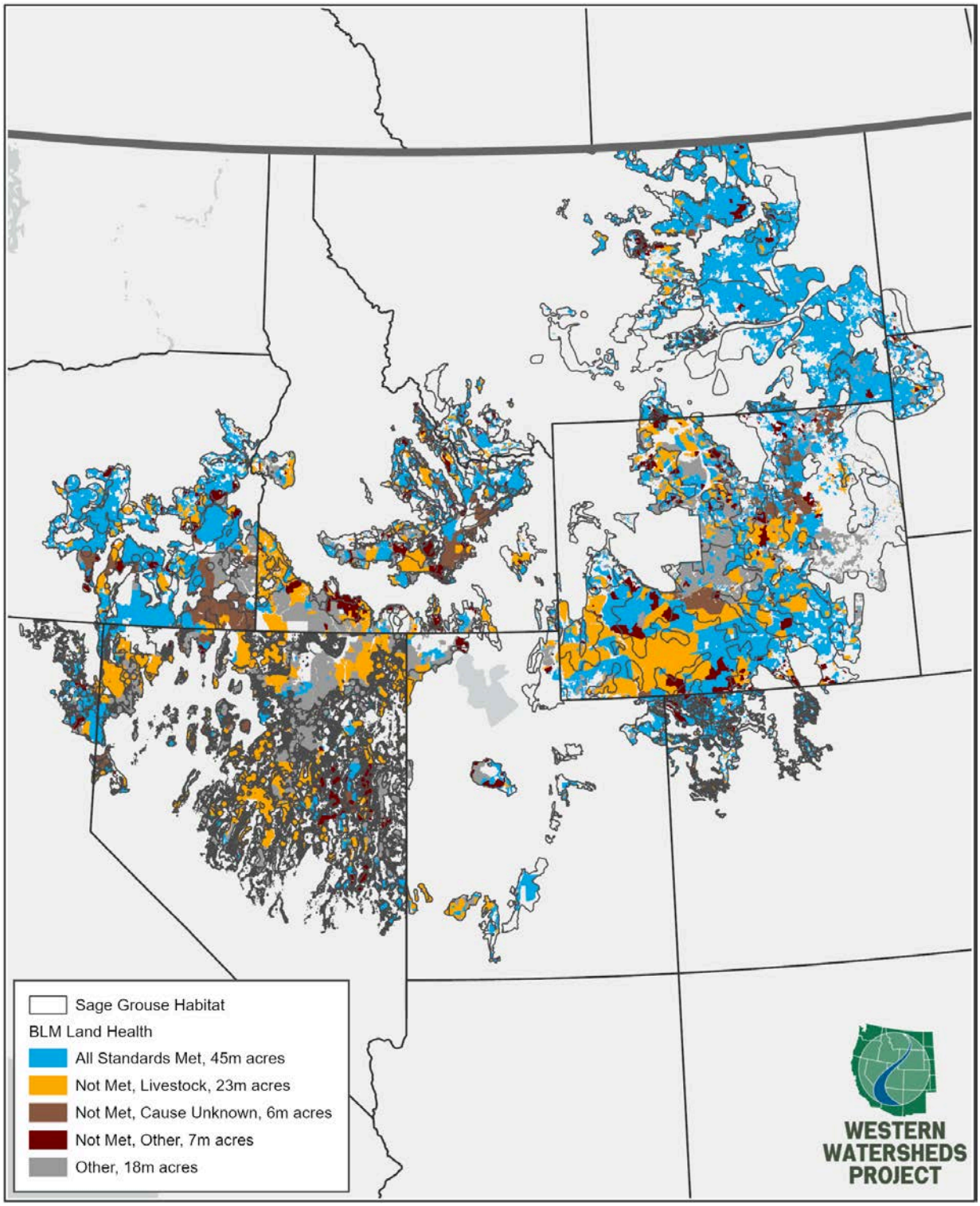

Figure 6. Map of grazing allotments by Land Health Status within sage grouse habitat. Note that this does not mean that the evaluations are current, or have even been completed in the last decade, but rather if they have *ever* been done.

The DEIS says "grazing management has been improved by a variety of actions." (DEIS at 3-31) "Improved" from when? What? This statement doesn't make any sense as it stands now. Is the Bureau claiming that the terms and conditions in grazing leases have been changed for the sake of sage grouse management, and that the habitat conditions have improved? Please provide examples. We know of very few grazing permit terms and conditions that have changed, and, in fact, most grazing permits are being renewed under FLPMA 402(c)(2) without changes to terms and conditions. Western Watersheds Project's recent analysis of grazing permit renewals suggests that 68 percent of active allotments in PHMA have been renewed using this "rubberstamp" – and without a site-specific NEPA analysis – through 2023. This is actually a 7 percent increase over the percentage being rubber-stamped in 2021. (In what was previously designated as SFA, the percentage of rubber-stamped non-NEPA permit renewals has reached 80 percent.) See Figure 7.

The analysis of the effects of Alternative 1 (and Alt 2) to livestock grazing operations (see DEIS 4-68 et seq.) fails to discuss that the prioritization scheme discussed in the 2015 RMPAs and adopted in 2016 was superseded by IM 2018-24. *See* Attachment C. It is unclear what the "No Action" alternative would be in this case, since it is unclear if the prioritization schemes identified in the 2015 RMPAs would be readopted. It is also worth evaluating whether the Coates et al (2024) models of extirpation for neighborhood clusters should be factored into new prioritization schemes (i.e. grazing should be addressed as soon as possible in places where leks are trending downward the fastest).

The Bureau's Management Action RM-1 under Alts 4-6 is premised on the completion of grazing authorization renewals, allotment management plan development, or other implementation level planning to adjust grazing regimes. The Bureau has been advised, time and time again, of this indefinitely deferred protection from unsustainable grazing in sage grouse habitat and yet, the current DEIS provides no backstop or timeline for addressing this problem.

The DEIS states that temporary adjustments to grazing use are permissible under the regulations (DEIS at 2-105), but does not mandate these adjustments pending completion of new permits.

The Bureau's preferred alternative weakens the accountability of the agency in providing a NEPA analysis that includes an alternative with a threshold and response for grazing when habitat conditions are not being met or in high priority allotments (DEIS at 2-107). Alternative 4 uses the imperative "shall include" but the preferred alternative weakens this requirement to "should consider including." By failing to require this in the range of alternatives, the Bureau is tying its own hands for a rapid response to deteriorating conditions or changed circumstances in the future.

The Bureau misrepresents the responsibility of fencing out federal range to livestock in its analysis of Alternative 3. (DEIS at 4-72). It is the responsibility of the livestock owner to ensure

against trespass on closed federal range. See, e.g., Shannon v. United States, 160 F. 870 (9th Cir. 1908), U.S. v. Shenise, 43 F.Supp.2d 1190 (D. Colorado 1999).

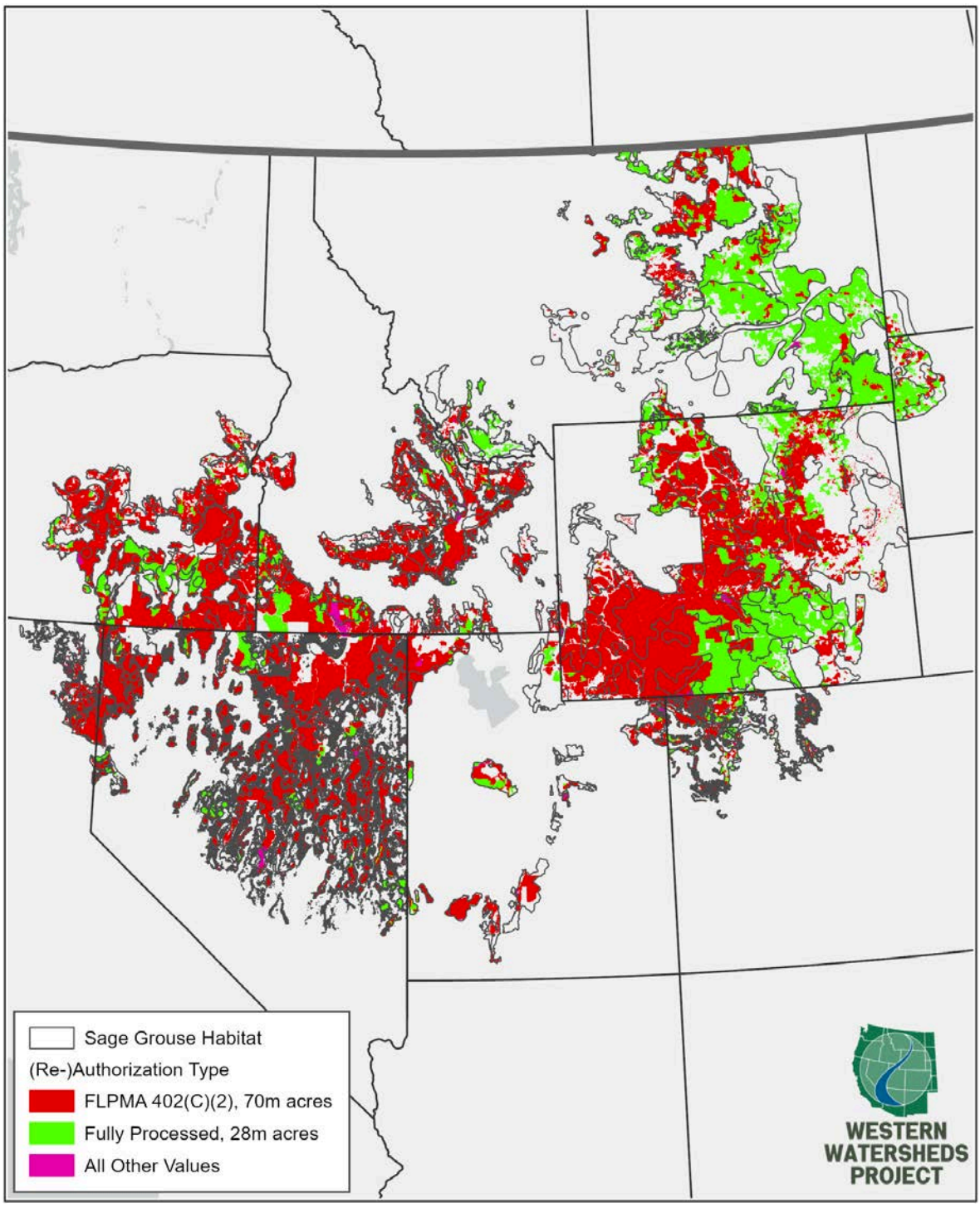

Figure 7. Map of grazing allotments in sage grouse habitat according to whether they have had NEPA done during permit renewals. Note that even DNAs count as completing NEPA, and that some of these allotments have been renewed using the renewal rider of the 402(c)(2) provisions more than once.

Finally, under all of the alternatives, the Bureau discusses using "targeted grazing" as a fuel reduction technique without a hard look at the reality of this method. See DEIS at 2-170. We offer our comments, attached as references, for the agency's consideration in evaluating this technique. *See* WWP et al 2020.[7]

5. Forbs/annual vegetation

Although sage grouse are a sagebrush-obligate species, forbs provide a greater nutritional benefit compared to sagebrush (Freese 2009; Rosentreter 2005; Barnett and Crawford 1994). In the DEIS, the Bureau states, "The availability of forbs is an essential component of a pre-laying hen's diet (Barnett and Crawford 1994; Connelly et al. 2000; Gregg et al. 2008). In Nevada, greater forb diversity and higher plant species richness were small-scale habitat factors associated with brood success (Casazza et al. 2011)." (DEIS at 4-8).

Despite the Bureau's acknowledgment of the importance of forbs, the Land Health Standards for percent forb cover are too low in some states. In North Dakota, for example (see DEIS at Appendix 8-5), the benchmark percentage forb cover for breeding and nesting habitat is greater than 5%, whereas Herman-Brunson et al. (2009) found that sage grouse nest sites in North Dakota had an average total forb cover of 15.4%. Similarly, in Utah (see DEIS at Appendix 8-18), the Bureau's benchmarks are 2-4% forb cover for breeding and nesting habitat and 2-6% for brooding-rearing habitat. These values are far below what Bunnell et al. (2004) found in Strawberry Valley, Utah, where sage grouse selected nesting sites with an average of 11% forb cover and brood-rearing habitats with 16% forb cover. The same is true in Idaho, where the DEIS forb cover benchmark for breeding and nesting habitat is only 3% and no benchmark is provided for brood-rearing (see DEIS at Appendix 8-7), while Wik (2002) found an average of 16% forb cover in these seasonal habitats in Owyhee County, Idaho.

Furthermore, in certain states the Bureau fails to provide separate benchmarks for forbs and annual grasses even though these vegetation types play distinct roles in the needs of sage grouse. For example, in Idaho (see DEIS at Appendix 8-4), the Bureau provides just one combined benchmark for "perennial grass and forb cover" at 15%. While perennial grasses and forbs both offer protective cover for chicks (Hagen et al. 2011), forbs have an additional dietary importance in their high protein contribution (Blomberg 2013), and should be managed separately.

[7] While these comments refer to a specific programmatic EA for targeted and prescribed grazing in Nevada, we believe that they provide generally relevant considerations for the Bureau here, including relevant scientific references that could inform the hard look this DEIS is lacking.

Brood success has been linked to habitat selection indices, including forbs, in brood-rearing sage grouse (Casazza et al. 2011). Forbs are an essential component of the pregravid diet due to their high levels of calcium, phosphorus, and protein, which aid in preparing hens for egg production (Innes 2016; Hagen et al. 2011; Gregg et al. 2006). sage grouse hens with access to better food resources exhibit superior body conditions, leading to significantly higher brood success rates compared to those in poorer condition (Blomberg et al. 2013). Additionally, early brood-rearing habitat selection is crucial since newly-hatched chicks have limited mobility, and chicks need a high-protein diet rich in forbs and invertebrates associated with forbs to mature rapidly (Smith et al. 2020; Blomberg 2013).

A significant contributor to sage grouse population declines has been decreased annual recruitment due to inadequate brood-rearing habitats (Smith et al., 2020; Wirth & Pyke, 2013; Atamian et al., 2010). In some landscapes, both historic and current livestock grazing have resulted in forb depletion, where grazing reduces seed production, eventually depleting the seedbank over time (Street, 2020; Gioria & Pysek, 2016; Rosentreter et al., 2004).

By providing forb cover benchmarks that are below what sage grouse have been shown to select for breeding and brood-rearing sites, and by grouping forbs and annual grasses under the same benchmark, the DEIS fails to adequately manage seasonal habitat factors that improve the success of both laying hens and chicks. The survival, breeding, and brood-rearing success of adult females are crucial for the population viability of sage grouse making the protection and restoration of their breeding and brood-rearing habitats a paramount part of halting and reversing population declines (Taylor et al. 2012; Johnson & Braun 1999). The Bureau's Land Health Standards should reflect a prioritization of the protection and restoration of breeding and brood-rearing habitats, with a particular emphasis on increasing the availability of forb and insect foods (Copeland et al. 2024; Aldridge & Boyce, 2007).

6. Cheatgrass/Fire/Livestock cycle

BLM provides an abbreviated and woefully incomplete assessment of the state of cheatgrass infestations in sage grouse habitats. DEIS at 3-4, 3-16. While the agency correctly summarizes some key impacts of cheatgrass invasion, its assessment omits the key role that chronic heavy livestock grazing – as authorized by BLM itself – has played and is still playing as a factor initiating and/or amplifying cheatgrass invasions. Heavy grazing by commercial livestock is the leading driver for cheatgrass establishment and expansion and the livestock-cheatgrass-fire cycle (Molvar et al. 2024) is driving sage grouse habitat losses through elimination of sagebrush and replacement of sagebrush-bunchgrass native ecosystems with cheatgrass-invaded shrublands or monocultures. Importantly, fire is NOT the direct cause of cheatgrass spread, as healthy sagebrush-bunchgrass communities that burn return to bunchgrasses, not cheatgrass (Wroblesky and Kauffman 2003, Chambers et al. 2007; photos in Molvar et al. 2024: 28, 31).

The Bureau also misrepresents the effect of the removal of grazing on fine fuels and offers only one side of the potential outcome. Where the DEIS says, "The elimination of livestock grazing *may* increase the potential for large and severe wildfires as fuel loads increase in the absence of managed grazing…" (emphasis added), it has forgotten to describe the reduced likelihood of cheatgrass infestations in the absence of livestock disturbance, thereby potentially reducing the threat of large and severe wildfires. DEIS at 4-73.

BLM asserts that targeted livestock grazing can reduce fine fuels, citing Diamond et al. (2009)(DEIS at 4-8), but neglects to point out that the treatment applied by these researchers was 80-90% removal of aboveground biomass. Unfortunately, due to the abundance of cheatgrass seed production, acknowledged elsewhere by the agency (and see Meyer and Leger 2010), and the buildup of cheatgrass seeds in the soil bank (Humphrey and Schupp 2001, Smith et al. 2008), grazing at this heavy level also would remove native bunchgrasses (preferentially), destroy biological soil crusts, and therefore lay the groundwork for even greater cheatgrass infestations the following year. BLM grazing permits do not authorize 80-90 forage utilization in the intermountain West, because this level of overgrazing causes severe damage to soils and vegetation (not to mention sage grouse habitat). The idea of targeted grazing for cheatgrass reduction should therefore be rejected in the EIS, a scheme with potential to reduce fire risk while eliminating native bunchgrasses and destroying sage grouse habitat effectiveness in the near term, at the expense of increased fire risk and invasive weed dominance (and therefore lowered sage grouse habitat effectiveness) in succeeding years. To its credit, BLM acknowledges the value of native bunchgrasses in preventing cheatgrass establishment, citing Reisner et al. (2013). DEIS at 4-8.

BLM concedes that sagebrush habitats with low resistance and resilience to invasion are at special risk (DEIS at 3-9), but fails to identify livestock grazing as a principal factor in causing this depression of resilience and resistance. Karl and Chambers (2019, Figure 7.2) identify livestock as an ecological switch in Wyoming big sagebrush habitats, triggering the transition between a grazing-resistant state and an eroded state primed for cheatgrass invasion as follows: "Perennial grasses and forbs are eliminated and sagebrush increases with high density/frequency grazing by cattle, resulting in altered biotic, hydrologic, and soil function. This state is at-risk to invasion by annuals such as cheatgrass, especially after a stand-replacing, sagebrush killing event." The agency correctly identifies that the number and size of annual grass infestations is increasing at present (DEIS at 3-17), an indicator that present livestock grazing stocking rates are continuing to contribute to the spread of invasive annuals.

BLM acknowledges that livestock grazing can have major impacts to biological soil crust (DEIS at 3-61), but omits the fact that biological soil crust has a preventative effect on cheatgrass germination (see Reisner et al. 2013, cited in DEIS). A large body of science demonstrates that chronic and heavy livestock grazing degrades biological soil crusts and eliminates native

perennial bunchgrasses, providing ideal conditions for cheatgrass invasion (Molvar et al. 2024). Rigge et al. (2024) document the steady increase of annual herbaceous cover (led by cheatgrass, but also including *Ventenata* and medusahead wildrye) over the past 30 years, concomitant with the steady decline of sagebrush. See Figure 8. The expansion of invasive annual grasses over recent decades demonstrates conclusively that current land-use decisions continue to drive cheatgrass expansion, rather than this expansion being an artifact of overgrazing that occurred decades ago.

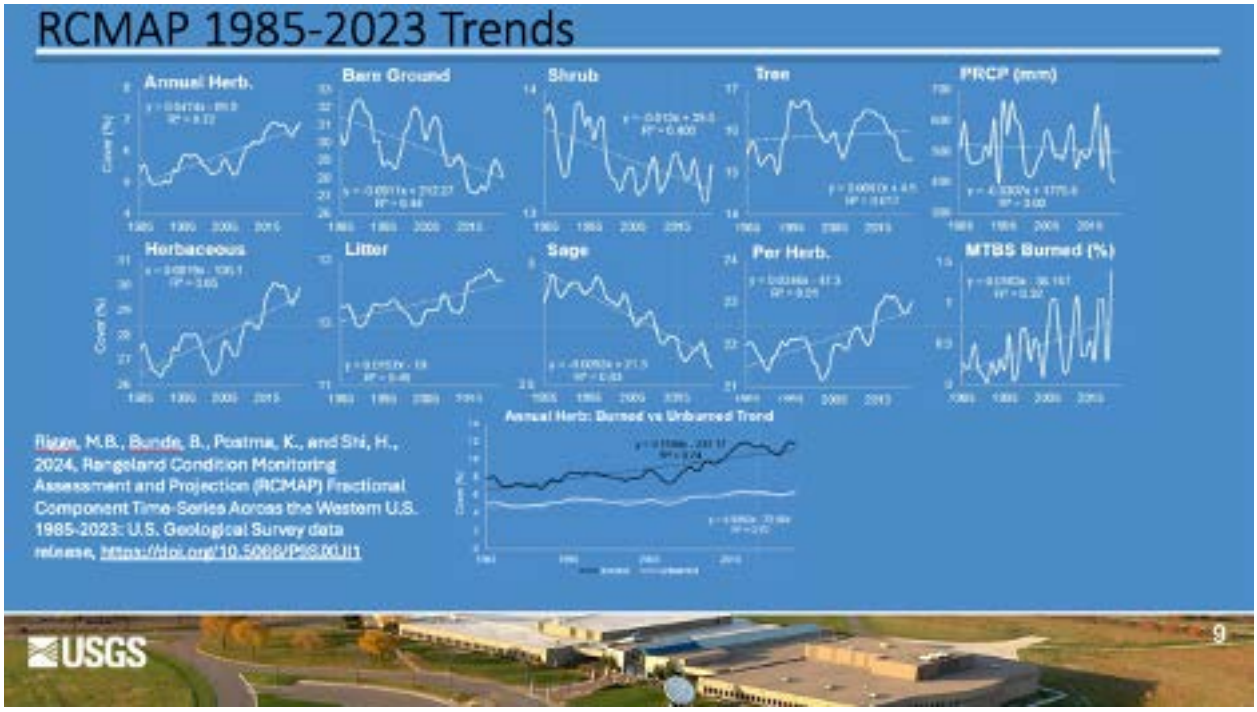

Figure 8. RCMAP results illustrating increase in cheatgrass and decline in sagebrush over recent decades (Rigge et al. 2024).

BLM mischaracterizes natural fire return intervals in sagebrush habitats as 32-70 years while characterizing cheatgrass-mediated fire as having a fire-return interval of 5 years per Pellant (1996)(DEIS at 4-200). This is far too short a fire-return interval for sagebrush steppe. Fire was an uncommon occurrence in sagebrush habitats in pre-settlement times, with natural fire return intervals in Wyoming big sagebrush average 100-240 years (Baker 2007). Indeed, the agency's earlier sage grouse 2013 ARMPA DEIS pointed out, "In the absence of cheatgrass, Wyoming big sagebrush sites can take 150 years to recover." 2013 ARMPA DEIS at 608.

7. Wild Horses and Burros

The DEIS analysis of the impacts of wild horses on sage grouse is deeply flawed. While the DEIS mentions wild horses and burros, we are unaware of any wild burro HMAs within greater sage grouse range.

BLM asserts that wild horses increase cheatgrass abundance. DEIS at 2-113. BLM cited Beever et al. (2008), which examined the effect or removing wild horses from habitats with little or no cattle grazing, and found that at high elevations, horse removal resulted in a consistent decrease in cheatgrass abundance over two years, versus an inconsistent response at low elevations, and overall the result was statistically insignificant (and therefore no valid conclusions can be drawn for this variable, although other variables yielded statistically significant results in this study).

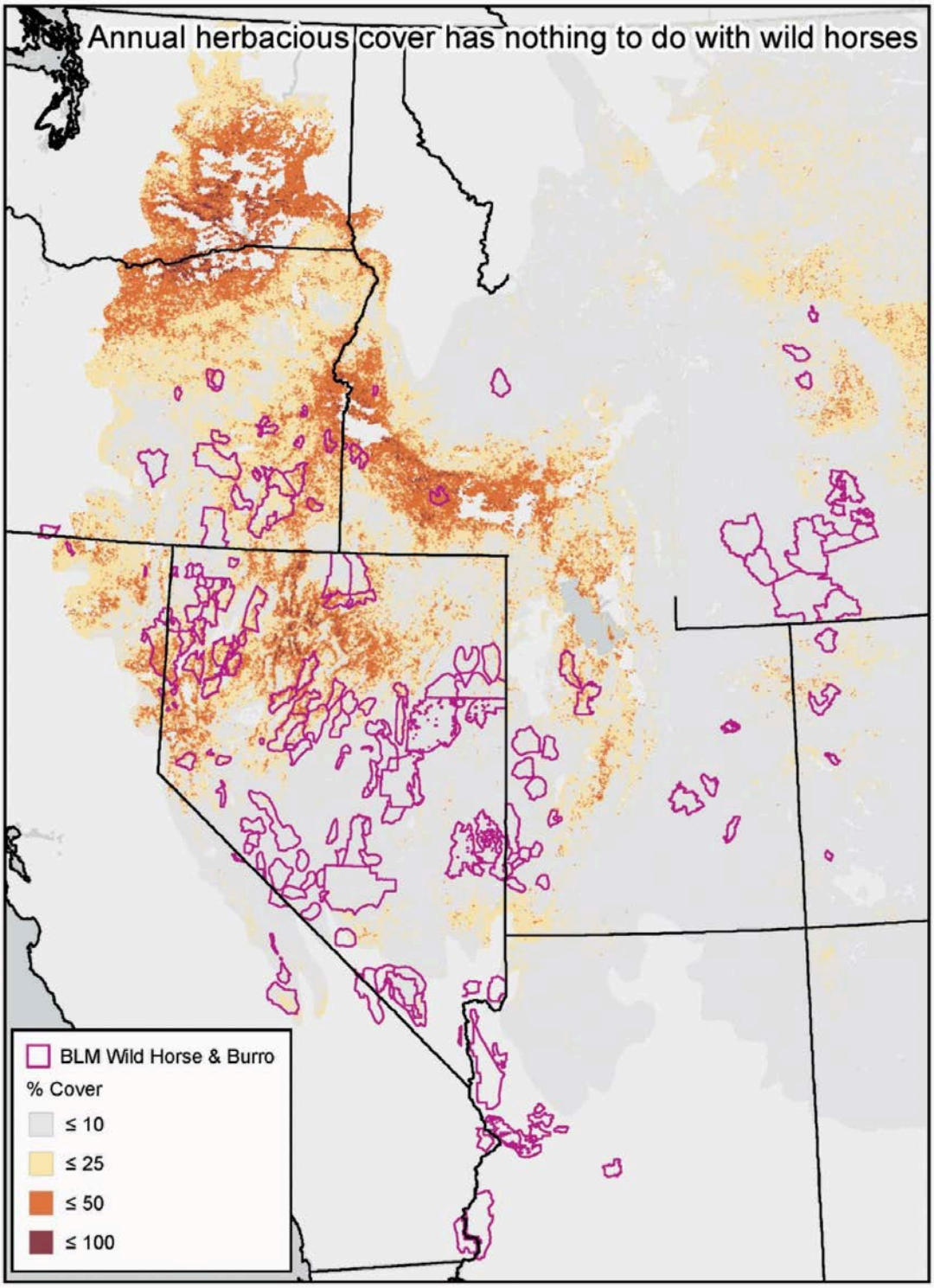

Figure 9. Map showing analysis of BLM Wild Horse and Burro areas mapped against areas of high annual herbaceous cover. WWP 2024.

Our own analysis of cheatgrass cover based on the GIS data of the Western Invasive Species Council of the Western Governors Association shows no correlation between active wild horse HMAs and increased cheatgrass prevalence. *See* Figure 9, above.

The data breaks down as follows:

Annual Herbaceous Cover	**Inside HMAs**	**Outside HMAs**
<2%	40%	21%
2 - 10%	39%	47%
10 - 25%	15%	22%
25 - 50%	6%	9%
50 - 100%	1%	1%

As shown here, only the less-than-2% category had a higher percentage of lands inside wild horse HMAs than outside wild horse HMAs. Across all annual grass cover classes, cheatgrass cover averaged 8.1% inside HMAs versus 9% outside HMAs. This is clearly indicative of a higher proportion of cheatgrass cover in areas lacking wild horses, a direct contradiction to the BLM's DEIS contention.

While Beever and Brussard (2000) address impacts of wild horses and cattle on vegetation near water sources (also known as 'piospheres') do not address cheatgrass, this study does have interesting results with regard to impacts of wild horses only versus impacts of wild horses with cattle added. Unsurprisingly, vegetation was taller under both treatments, but vegetation with wild horses was almost twice as tall as the treatment of wild horses plus cattle; species diversity in exclosures was significantly greater in the wild horses + cattle treatment, but not in the wild horses only treatment. Vegetation in the wild horse only treatment was almost twice as tall as vegetation in the wild horses + cattle treatment. These findings strongly argue for closure of wild horse HMAs to cattle.

BLM cites Coates et al. (2021) in support of the proposition that wild horses, when exceeding Appropriate Management Level (AML), have a negative correlation with sage grouse populations (DEIS at 2-113), but this study suffers from the fatal flaw of excluding domestic livestock grazing (which typically is additive to and synergistic with wild horse herbivory, and which typically is allocated – and consumes – 50-65% of the yearlong forage production) from their model.

The BLM DEIS alternatives prescribe a range of alternative management regimes for wild horses, ranging from prioritizing roundups in PHMA/SFA (and GHMA in some states) to

achieve AMLs, to complete removal of wild horses from PHMA. Table 2-13, DEIS at 2-114. No alternative considers the removal of livestock grazing pursuant to 43 CFR § 4710.5, which authorizes BLM to close wild horse Herd Management Areas (HMAs) to all or a particular class of livestock as a first measure to achieve thriving sage grouse habitats. BLM must consider this reasonable alternative, and we urge the agency to adopt this measure in its Preferred Alternative; cattle and sheep Animal Unit Months typically exceed wild horse AUMs on lands designated as HMAs, and domestic livestock are typically allocated 50-65% of the annual forage utilization for the entire year (or even more, see Kauffman et al. 2022), making domestic livestock the overwhelming grazing impact, and consigning wild herbivores, including but not limited to wild horses, elk, mule deer, pronghorns, jackrabbits and other leporids, rodents, and insects (grasshoppers and Mormon crickets can be major forage consumers during population peaks) to survive on the remaining 35-50%. This heavy allocation to domestic livestock also stresses the native perennial bunchgrasses important as sage grouse hiding cover and buffer against cheatgrass invasion (see Molvar et al. 2024), encouraging bunchgrass elimination and degrading habitat for sage grouse and other wildlife.

8. Mining

The DEIS (Vol. 3, 12-1) states that the purpose of the Reasonably Foreseeable Development (RFD) scenario in Appendix 12 is "to provide a reasonable projection of future activity associated with mineral exploration and development in the planning area under each of the proposed alternatives." However, the DEIS fails to include locatable minerals in the 20-year RFD.

In the economic analysis appendix, the DEIS (Vol. 3, p. 13-3-14) states that regions in Idaho, Oregon, and Nevada have had sharp increases in the average number of annual mining claims since 2016. Projections by federal agencies (DOE and USGS) predict that the heightened demand for certain minerals is likely to continue for many years.[8] A 20-year RFD for locatable minerals is necessary to determine the potential direct, indirect and cumulative effects of locatable mineral exploration and development on GRSG and GRSG habitat over the planning term, to analyze the various management alternatives, and to help determine whether the BLM's goals and objectives can be met.

The range of alternatives includes alternatives that recommend mineral withdrawals in a portion of the planning area. Although the DEIS states that recommending a mineral withdrawal does not itself restrict any surface use, the EIS must include an RFD for locatable minerals to provide the information necessary to compare alternatives with and without withdrawal

[8] U.S. Department of Energy, Critical Minerals Assessment, July 2023. https://www.energy.gov/sites/default/files/2023-07/doe-critical-material-assessment_07312023.pdf

recommendations. Further, an active mineral withdrawal process is underway by BLM, offering a parallel process to implement proposed and necessary withdrawals, if authorized.[9]

The RFD should include descriptions and map locations for high, medium and low mineral potential in the planning area to inform the potential range of direct, indirect and cumulative effects of mineral development to PHMAs in the next 20-years, whether there are regions/populations/leks that are particularly at risk, the potential cumulative effects of locatable mineral development in combination with other mineral development (fluid, solid, etc.), and their location with respect to proposed ACECs, and other considerations essential to this analysis. The RFD should also include the number, location and size of existing locatable mining claims, notices and plans of operations (POOs) within the planning area, along with estimates of projected new claims, notice-level and POOs for exploration and operations, and expansions.

This is comparable to the BLM's recent DEIS for the Central Yukon Resource Management Plan (CYRMP) in Alaska covering 13.1 million acres of BLM-managed lands, where the BLM considered alternatives to retain or lift mineral withdrawals in the planning area. The CYRMP included an RFD for locatable minerals, including mineral potential, current and estimated number of new locatable mining claims, current and estimated number of proposed, existing and projected exploration and mine plans.[10]

The General Mining Law of 1872, more commonly known as the 1872 Mining Law, is the fundamental statute governing hardrock mineral development on federal public lands. Under the 1872 Mining Law, individuals can stake an unlimited number of mining claims on federal lands and hold those claims for an indefinite period of time unless such land has been withdrawn from mineral entry.[11] A valid claim affords the claimant a right to mine, subject to all applicable laws. Under the General Mining Law of 1872 and related case law, the United States Forest Service and Bureau of Land Management prioritize mining over other public land uses, irrespective of its conservation value. The Nevada 2014 Sage Grouse Conservation Plan states that "Locatable mineral development and exploration is governed under the General Mining Law of 1872 and is a *nondiscretionary* activity on federal lands."[12] (emphasis added)

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[9] Federal Register, Notice to Re-Initiate Proposed Withdrawal; Sagebrush Focal Areas, August 13, 2021. https://minerals.nv.gov/uploadedFiles/mineralsnvgov/content/home/features/NWISFA_Fed_Notice_and_map_Aug_13_2021.pdf

[10] U.S. Department of Interior, Bureau of Land Management, Central Yukon Resource Management Plan Environmental Impact Statement, December 20202. Appendix N. https://eplanning.blm.gov/public_projects/35315/200040776/20031041/250037240/Volume%202_Appendices%20A-T.pdf

[11] 30 U.S.C. § 22

[12] Sagebrush Ecosystem Technical Team, 2014 Nevada Greater Sage Grouse Conservation Plan, October 1, 2014, p. 61. https://sagebrusheco.nv.gov/uploadedFiles/sagebrusheconvgov/content/home/features/2014_ConsolidatedStatePlan.pdf

The consequence of these statutory constraints for protecting GHG and GHG habitat are described in the purpose and need section of the 2015 proposed Sagebrush Focal Area (SFA) Mineral Withdrawal: "The BLM and the Forest Service may not, through their surface management regulations at 43 CFR part 3715, 43 CFR part 3809, or 36 CFR part 228, prohibit use under the mining laws that is otherwise compliant with the regulations, *which could result in loss of greater sage grouse habitat important for the persistence of the species*."[13] (emphasis added) Consequently, it states that, "only a withdrawal from location and entry under the Mining Law can prevent the establishment of new mining claims and provide certainty that lands not encumbered by mining claims will not be developed."[14] Therefore, "because certain mining operations are viewed by USFWS as a threat to the persistence of greater sage grouse and the agencies have less discretion with respect to when and where mineral exploration and mining under the Mining Law is conducted, as compared to other agency authorizations (e.g., oil and gas leasing), the collective LUP amendments and associated RODs from 2015 recommended that the agency seek to have the Secretary withdraw the SFAs from location and entry under the Mining Law under section 204 of FLPMA."[15]

Since the original purpose and need for mineral withdrawals was articulated by BLM in 2015, the need to establish mineral withdrawals to protect sage grouse habitat is even more acute. GRSG population and habitat trends are still declining[16] and mining threats to sage grouse habitat have dramatically increased.[17] Mineral withdrawals are an essential management tool to protect federal public lands, 1) *from* mineral entry (i.e., claim staking); and 2) *for* conservation ("to maintain other public values in the area or reserving the area for a particular public purpose or program").

Absent mineral withdrawals, the DEIS fails to demonstrate how the alternatives, including the preferred alternative, will meet the stated goals and objectives, including those to a) uphold disturbance caps, b) maintain and enhance habitat conditions in PHMAs, and maintain existing connectivity between sage grouse populations, and c) achieve no net habitat loss. Further, absent a withdrawal recommendation, BLM cannot preclude the likelihood of listing as required by the special status species policy or provide sufficient regulatory mechanisms to preclude a warranted finding.

a. Disturbance Caps

[13] US BLM, Sagebrush Focal Area Withdrawal Environmental Impact Statement, Idaho, Montana, Wyoming, Nevada, Oregon, Utah, Wyoming, December 2016., p. iv.
[14] Id.
[15] Id. p. v.
[16] Herren et al., 2021.
[17] Regions in Idaho, Oregon, and Nevada have had sharp increases in the average number of annual claims since 2016. Within PHMAs in Nevada and California combined, about 147,160 existing open claims exist across 21,167,000 acres of BLM-administered locatable minerals.

According to the DEIS (p. 2-28), the BLM will apply disturbance caps to PHMA "to conserve seasonal habitat requirements associated with a local GRSG population…" The DEIS (p. 2-28) states that "disturbance caps act as a "backstop" to ensure that total disturbance does not exceed the level of GRSG tolerance for anthropogenic activities." Despite this, the DEIS (Table 2-7, p. 2-34 to 2-39) includes a disturbance cap exception for locatable mineral development for every alternative. The DEIS (p. 4-107) further explains that "Where disturbance caps are applied, surface disturbance from locatable operations would be counted towards the disturbance cap, *but BLM may not prevent, unduly restrict, or require operations to perform compensatory mitigation in areas where the disturbance cap was exceeded*." (emphasis added) The DEIS (p. 4-30) states that impacts from exceeding the 3% disturbance cap for Alternative 5 (the preferred alternative) would be similar to Alternative 4, but worse because projects could move forward before compensatory mitigation is in place leaving open the question of whether the mitigation has had any offsetting effect. Therefore, the DEIS (p. 4-30) concludes that habitat and population trends *may continue to decline to a greater extent* compared to Alternative 4. The DEIS fails to analyze how the BLM will ensure that the disturbance cap will be met and total disturbance will not exceed the sage grouse tolerance levels, absent mineral withdrawals, particularly given the already declining trends in sage grouse habitat and populations.

b. Maintain and enhance habitat conditions in PHMAs and existing connectivity between GRSG populations

According to the DEIS (p. 2-11), "Priority Habitat Management Areas (PHMA) have the highest value to maintaining sustainable GRSG populations and can include breeding, late brood-rearing, winter concentration areas, and migration or connectivity corridors." The BLM objective (DEIS, p. 2-10) for these areas is to *maintain and enhance habitat conditions* that will support persistent and healthy GRSG populations through management to minimize habitat loss and degradation. It further states that "Habitat conservation and management should *maintain existing connectivity* between GRSG populations."

As noted in DEIS (Vol. 3, p. 13-3-14), regions in Idaho, Oregon, and Nevada have had sharp increases in the average number of annual claims since 2016. Within PHMAs in Nevada and California combined, about 147,160 existing open claims exist across 21,167,000 acres of BLM-administered locatable minerals. Assuming these are primarily lode claims (20 acres in size), approximately 14% of the PHMA in Nevada and California are currently covered by existing open mining claims. The DEIS failed to analyze or disclose this.

The DEIS fails to provide maps and locations of mining claims relative to GRSG populations to identify the habitat that provides essential connectivity between populations. This information is necessary to compare RMP alternatives and analyze the cumulative effects of locatable mineral

development on GRSG and GRSG habitat. More importantly, the DEIS fails to demonstrate how the BLM will achieve these objectives absent mineral withdrawals.

c. No net habitat loss

According to the DEIS (p. 2-22), the objective for Alternatives 3 through 6 is to "achieve a minimum no net habitat loss (full restoration of functional habitats or enhancement of habitats such that it offsets the loss of capacity in impacted areas)." The BLM (DEIS, p. 2-22) intends to reduce impacts to GRSG habitat via a three-pronged mitigation hierarchy (avoidance first, then mitigation, compensation last). The DEIS states that impact avoidance in GRSG habitats is the priority since restoration of most sagebrush systems can take decades. Yet, the DEIS fails to explain how BLM will avoid impacts to GRSG habitat under the 1872 Mining Law.

According to the DEIS, the BLM could use its authority under FLPMA to mitigate impacts to prevent unnecessary or undue degradation (UUD). However, we are not aware of any mining operations in which the BLM has applied UUD to protect GRSG and GRSG habitat. The DEIS should provide an example of where it has applied UUD to protect GRSG and GRSG habitat from proposed mineral development, and specify the level of direct, indirect or cumulative impact to GRSG and GRSG habitat that would trigger BLM to apply its authority under UUD.

The DEIS also fails to demonstrate how avoidance or mitigation will be achieved for notice level mining operations because NEPA analysis is not required.[18] Finally, the DEIS states that compensatory mitigation, the third mitigation strategy, is not required for Alternatives 3-6: "for alternatives 3-6 compensatory mitigation is not required by the BLM for operations conducted under the Mining Law of 1872, but operators may always voluntarily engage in compensatory mitigation." DEIS at 2-23, 2-24.

Given the BLM's inability and unwillingness to require mitigation strategies to avoid, mitigate or compensate for locatable mineral development within the planning area, the DEIS fails to demonstrate how the RMPs will achieve goals and objectives, absent mineral withdrawals, nor does it take a hard look at the consequences.

d. The direct, indirect and cumulative mining impacts are not adequately analyzed.

Chapter 4 of the DEIS (Environmental Consequences) fails to take a hard look at the potential direct, indirect and cumulative effects of mineral exploration and development within the planning area, which is necessary to compare the alternatives (with and without recommended

[18] U.S. Department of Interior, et al., "Recommendations to Improve Mining on Public Lands, Final Report, September 2023, p. 44. https://www.doi.gov/media/document/mriwg-report-final-508-pdf

mineral withdrawals), and understand the viability of the various alternatives to achieve the stated sage grouse conservation goals and objectives.

The number of active mining claims for locatable minerals on federal lands has escalated. According to the Interagency Working Group on Mining, "over 489,000 active claims were recorded at the end of Fiscal Year 2022 - *the highest number of active mining claims this century*, an indication of significantly increased interest in exploring for and developing minerals on federal lands."[19] (emphasis added) The DEIS (p. 13-3-14) states that "Regions in Idaho, Oregon, and Nevada have had sharp increases in the average number of annual claims since 2016. According to the DEIS, (p. 13-3-14) "Within GRSG priority habitat management areas (PHMAs), Nevada and California, combined, have about 147,160 existing open claims across 21,167,000 acres of BLM-administered locatable minerals." Assuming these are primarily lode claims (20 acres in size), upwards of 14% of the PHMA in Nevada and California could currently be covered by locatable mining claims.

It is reasonably foreseeable that mineral exploration and/or development may occur on a portion of these claims and new claim staking may occur within the 20-year planning period, resulting in direct, indirect and cumulative impacts that must be analyzed in order to understand the potential impacts of locatable mineral development, with and without withdrawals, on already declining population and habitat trends.

The Western Watershed Project (WWP) has mapped open locatable mining claims[20] from the BLM database with predicted sage grouse population extirpation trends by Coates et. al., (Ver. 3, 2024), which estimated estimated 2.8 percent average annual decline in sage grouse populations across their geographical range, which varied among subpopulations at the largest scale of analysis, termed climate clusters (2.1-3.1), and predicted cumulative declines of 41.1, 64.5, and 78.4 percent range-wide during Period 5 (19 years), Period 3 (35 years), and Period 1 (55 years), respectively. The WWP map of Nevada (see Figure 10) highlights the potential significant direct, indirect and cumulative effects of locatable mineral exploration and development over the next 20 years on populations that are already suffering unacceptable population declines, the need for a rigorous cumulative effects analysis, and adequate regulatory tools (i.e., proposed mineral withdrawals) to achieve conservation goals and objectives. According to WWP's analysis of the data, there are 34,172 locatable mining claims in 101 sage grouse neighborhood clusters that have an extirpation probability of more than 50% over six cycles (~55 years).[21] This is an example of a huge future risk that must be analyzed for each of the states.

[19] Id., p. 19.

[20] https://westernwater.maps.arcgis.com/apps/mapviewer/index.html?webmap=3cd0d6a14a114b27a88a4273e8049c59

[21] Id.

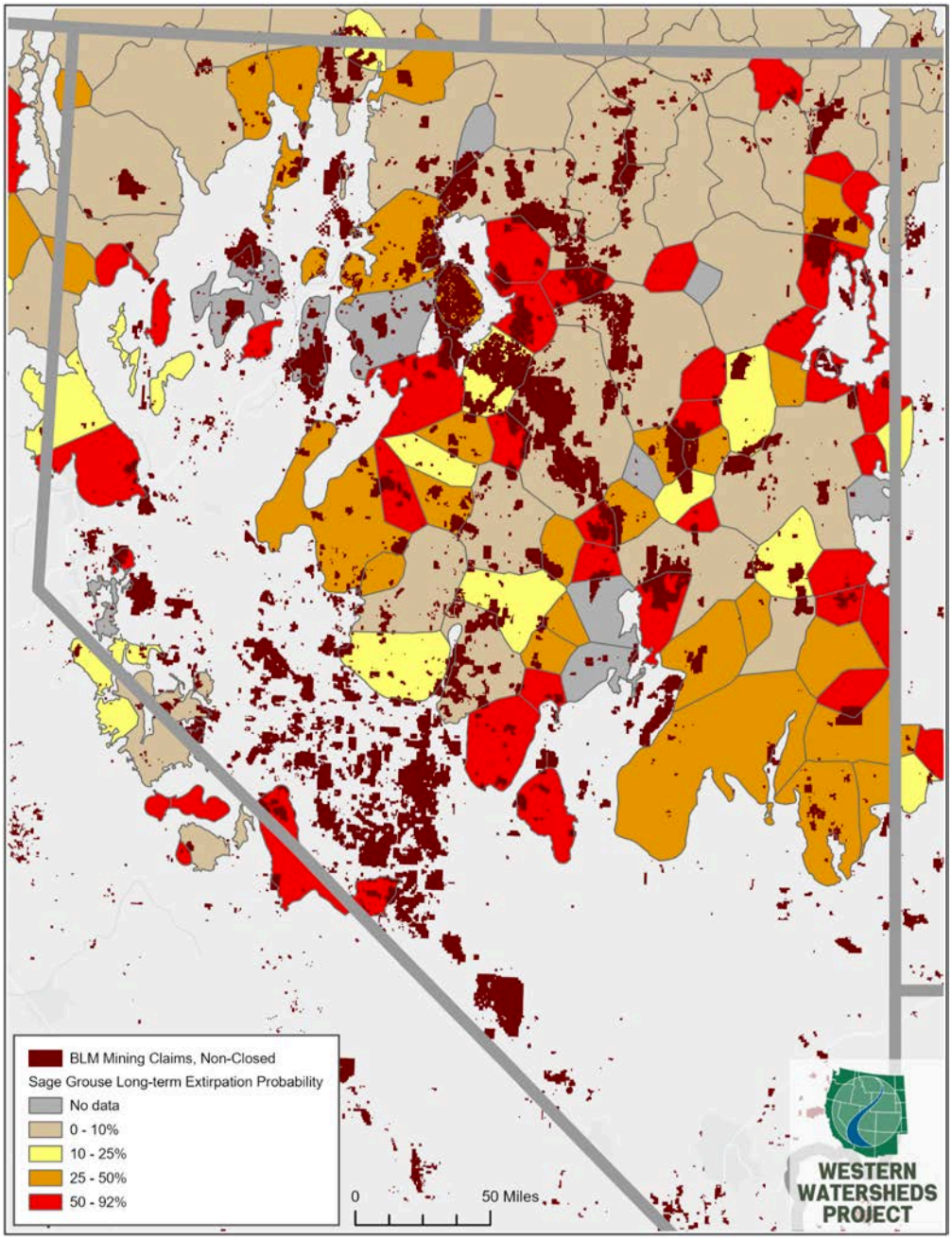

Figure 10. Map of mining claims in Nevada overlaid on extirpation risk among neighborhood clusters.

The "No Action" alternative for the 2016 Sage Grouse Focal Area Mineral Withdrawal DEIS analyzed the potential effects of locatable mineral development over a 20-year period on roughly 10 million acres of federal lands (Sagebrush Focal Areas), subject to compliance with all applicable laws.[22] It estimated direct impacts to 108 leks and 961 males and indirect impacts to

[22] U.S. BLM, SFA DEIS, Table 4-49, p. 4-90.
https://eplanning.blm.gov/public_projects/nepa/70697/94514/114120/SFA_DEIS_Main_Text_508.pdf

386 leks and 8,331 males.[23] That analysis likely underestimated the impacts of locatable mineral development within that area, given the sharp increase in claim-staking since 2016. However, this is an example of the type of quantitative analysis that is necessary to analyze impacts and compare alternatives (with and without recommended withdrawals) in this DEIS.

Section 4 (DEIS, p. 4-108) includes some information on the plans of operations, exploration projects and notices in the planning area and within SFAs, but it is incomplete. In Idaho, it states that there are 56 plans of operations and notices currently authorized within the decision area - 7 of those are within the SFA that were previously recommended for withdrawal. It also provides information for Oregon (117 mining claims, 1 plan of operation and 9 exploration notices in SFA), but it fails to provide the same information for California and Nevada.

The Cumulative Effects Supporting Information (DEIS, Table 14-1, p. 14-1) outlines some past, present and reasonably foreseeable actions, but fails to provide a complete list of major existing, proposed or recently approved mining operations, or describe the potential cumulative effects to GRSG and GRSG habitat and disturbance caps. Even when a major operation (e.g., Gold Rush, Thacker Pass, Robertson) is listed, the DEIS omits essential information, including whether it's located in PHMA, on or adjacent to leks, or its cumulative effects. For example, the DEIS fails to include the estimated direct, indirect and cumulative effects that are readily accessible from the Robertson Mine DEIS:[24]

> The Proposed Action would remove a total of 2,642 acres of the mapped GRSG habitat, as per the BLM 2015 ARMPA maintenance mapping that was released in 2022 (BLM 2022d); including 506 acres of GHMA and 2,136 acres of OHMA habitat. Approximately 597 acres of habitat (GHMA and OHMA) would be unreclaimed. In addition, approximately 300 acres of exploration disturbance, 290 acres on public land and 10 acres on private land, may occur in any GRSG habitat category within the Project Plan boundary. The Proposed Action would add to the vegetation removal and construction of mine infrastructure that has already occurred within the area of analysis from other past and present activities including mineral development and exploration activities and would result in habitat fragmentation. The Proposed Action would likely result in increased predation and decreased nesting success. Human presence and noise also occur within the area of analysis which may further stress GRSG. The construction, maintenance, and operation of mine infrastructure under the Proposed Action would add additional human presence and disturbance around the leks during the life of the mine and reclamation activities.[25]

[23] Id.
[24] U.S. BLM, Robertson Mine Project Draft Environmental Impact Statement, March 2024.
[25] Id.

Similar information about the impacts to GRSG and GRSG habitat are omitted from the DEIS for other new operations, such as the Gold Rush,[26] Thacker Pass,[27] and other proposed plans of operations, which should be aggregated and incorporated in the cumulative effects analysis, including the Baltazar Geothermal Project,[28] Jindalee Hi-Tech Lithium Project in Oregon,[29] the Hog Ranch Mineral Exploration Project,[30] and other proposed POOs. The DEIS should also specify whether and how any of the management regimes in the alternatives would apply to existing and recently approved operations.

Sage grouse habitat is also affected by ongoing pollution and habitat fragmentation as a result of abandoned mine sites. These sites, and remediation actions should be included in the analysis. Nevada alone contains approximately 200,000 abandoned mine features.[31] Some of these sites have been classified as superfund sites under CERCLA and should require specific attention and analysis in terms of cumulative impacts, such as the Abandoned Cordero/McDermitt Superfund Site and the Abandoned Rio Tinto Superfund site.[32]

The DEIS dismisses project level impacts as too detailed for the RMP planning process, yet the agency must take a hard look at the potential cumulative effects, which must include quantitative analysis of the projected loss, degradation and fragmentation of GHG habitat within the planning area from locatable mineral development, in addition to other cumulative effects.

The BLM also dismisses these project level impacts by pointing to the Conservation Credit System (CCS) to fulfill mitigation requirements for disturbances to GRSG habitat on public lands, through the CCS. However, the Nevada-led CCS does not adequately address extraction impacts to GRSG and GRSG habitat as outlined below.

The Cumulative Effects Appendix also includes tables (Table 14-3, 14-6, 14-9, 14-12, 14-15, 14-18, 14-21, 14-24), that describe the acreage of proposed withdrawals per HAF unit per alternative, but fail to include the acreage of existing mining claims within the proposed withdrawal area that may now be subject to mineral exploration and development under the 1872 Mining Law. Without that information, it is impossible to determine the amount of land (GRSG habitat), potentially subject to valid existing rights, in the various alternatives that would actually be withdrawn from mineral entry and location under the 1872 Mining Law if the proposed

[26] US BLM, Gold Rush Final Environmental Impact Statement, October 2023.
[27] US BLM and USFWS, Thacker Pass Lithium Mine Project, Final Environmental Impact Statement, December 24, 2020.
[28] https://eplanning.blm.gov/eplanning-ui/project/2000508/510
[29] https://eplanning.blm.gov/eplanning-ui/project/2025844/510
[30] https://www.blm.gov/announcement/blm-approves-mineral-exploration-project-nevada
[31] https://minerals.nv.gov/uploadedFiles/mineralsnvgov/content/Programs/AML/2017_NDOM_AML_Report_Final.pdf
[32] https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0903872; https://response.epa.gov/site/site_profile.aspx?site_id=7029

mineral withdrawals were authorized. For example, as noted above, (DEIS, p. 4-108) there are 56 plans of operations and notices currently authorized within the decision area in Idaho; 7 of those are within the SFA that were previously recommended for withdrawal. What is the size of the 7 POOs that are within the SFAs previously recommended for withdrawal, and how might the development of those POOs alter the proposed withdrawals within the two alternatives. The DEIS should also disclose and analyze the impacts from these 56 plans of operations in Idaho and all other POOs within the analysis area.

The DEIS fails to take a hard look at these impacts, and fails to provide data or analysis to support its decision to forego any recommendations for mineral withdrawals in the preferred alternative, given the BLM's stated purpose and need to meet conservation goals and objectives, the ongoing declining trends in GRSG habitat and populations, and the sharp increase in active mining claims and associated development since 2016.

BLM should recommend the lek buffer zones– 5.3 miles– across the range for mineral withdrawal; out of all the potential uses, BLM has very little ability to control mining operations and exploration once claims are established.

9. Oil and Gas Leasing and Development

With the exception of Alternative 3, the proposed plan amendments fail to follow the best available science with respect to oil and gas development. Because BLM's Preferred Alternative and Alternatives 4 and 6, would either: (1) reduce protections with respect to oil and gas leasing and development in sage grouse habitat, or (2) continue management approaches that have proven insufficient or ineffective, it fails to meet the purpose and need to "improve efficiency and effectiveness of GRSG management" in light of ongoing habitat and population losses under the 2015 plans. For similar reasons, the oil and gas components of the proposed plan amendments (with the exception of Alternative 3), are inconsistent with BLM's special status species policy (BLM Manual § 6480) and would not provide a sufficient regulatory mechanism to protect the sage grouse from extinction.

To address the myriads of known detrimental harms by allowing new fluid mineral leasing (including geothermal), in GRSG HMAs, the BLM will employ stipulations, including:

> "NSO, CSU/disturbance caps, and TL stipulations on new leases. These stipulations are intended to reduce or avoid direct disturbance, protect HMAs from surface-disturbing activities, and conserve habitat and population connectivity contributing to genetic diversity. NSO stipulations on new leases would limit impacts to HMAs from surface-disturbance, ensure connectivity between leks, and minimize habitat fragmentation." DEIS 2.5.7

NSO for Alternatives 4, 5 and 6 appear to be a 1-mile lek buffer; it is not readily discernible in the DEIS. The BLM should clarify what the NSO buffer is for these alternatives. This size buffer and other stipulations have been shown to be completely inadequate to protect leks or nesting and brood rearing areas as discussed below.

Oil and gas development has long been recognized as one of the leading threats to sage grouse, due to its pervasiveness in the sagebrush biome as well as the severity of its impacts.

The BLM recognizes the abundance of science that clearly demonstrates this activity causes significant direct harm at multiple scales to sage grouse populations through habitat loss and fragmentation, and behavioral avoidance of human activity and infrastructure. Oil and gas drilling also results in indirect impacts and cumulative impacts. In recognition of these impacts.

The DEIS states:

> Mineral development requires construction of roads, well pads, wells, and other infrastructure, and associated noise, traffic, and lights that alter, degrade, and/or entirely displace native ecosystems (Manier et al. 2013). Surface disturbance associated with mineral development often removes vegetation, reduces the condition of native vegetation communities and the connectivity of habitat, and encourages the spread of invasive species (NTT 2011). Vegetation removal results in conversion of areas to an earlier seral stage, which could change vegetation community succession and reduce desired plant communities. The remaining vegetation could have reduced vigor or productivity due to mechanical damage, soil compaction, and dust. Impacts would not occur in areas closed to mineral leasing or development. DEIS 4-35
>
> Research indicates fluid mineral development can negatively affect GRSG at multiple scales through direct impacts (habitat loss and fragmentation; Connelly et al. 2004, Lyon and Anderson 2003, Walker et al. 2007, Holloran et al. 2010, Knick et al. 2011, Green et al. 2017) and indirect impacts (increased noise and behavioral avoidance of human activity and infrastructure, including roads; Aldridge and Boyce 2007, Holloran et al. 2010, Kirol et al. 2015, Rice et al. 2016, Coates et al. 2023). Development can also contribute to cumulative impacts if it results in an increased distribution of invasive annual grasses or predator abundance. DEIS 2.5.6 Page 40

The NTT Report recognized that impacts to sage grouse from oil and gas development "are universally negative and typically severe." (NTT 2011: 19). It explained:

> There is strong evidence from the literature to support that surface-disturbing energy or mineral development within priority sage grouse habitats is not consistent with a goal to maintain or increase populations or distribution. None of the published science reports a positive influence of development on sage grouse populations or habitats. Breeding populations are severely reduced at well pad densities commonly permitted (Holloran 2005, Walker et al. 2007a). Magnitude of losses varies from one field to another, but findings suggest that impacts are universally negative and typically severe.

(NTT 2011:19). The Report took particular issue with BLM's conservation measures (some of which would be continued in the Preferred Alternative and Alternative 6):

> Impacts as measured by the number of males attending leks are most severe near the lek, *remain discernible out to >4 miles* (Holloran 2005, Walker et al. 2007, Tack 2009, Johnson et al. 2011), *and often result in lek extirpations* (Holloran 2005, Walker et al. 2007).
> . . .
> Past BLM conservation measures have focused on 0.25 mile No Surface Occupancy (NSO) buffers around leks, and timing stipulations applied to 0.6 mile buffers around leks to protect both breeding and nesting activities. Given impacts of large scale disturbances described above that occur across seasons and impact all demographic rates*, applying NSO or other buffers around leks at any distance is unlikely to be effective*.

(NTT 2011: 20) (emphasis added).

In general, the NTT Report recommended closing priority sage grouse habitats to energy development: "the conservation strategy most likely to meet the objective of maintaining or increasing sage‑grouse distribution and abundance is to **exclude energy development and other large scale disturbances from priority habitats**" (NTT 2011: 20) (emphasis added).

With respect to already issued leases, it recommended imposing certain conservation measures as terms and conditions of the approved resource management plan. These included (1) prohibiting new surface occupancy on federal leases within priority habitats during any time of the year, with limited exceptions; (2) applying a seasonal restriction on exploratory drilling that prohibits surface-disturbing activities during the nesting and early brood-rearing season in all priority sage grouse habitat during this period; (3) not applying a Categorical Exclusion (CX) in priority sage grouse habitats; (4) completing Master Development Plans in lieu of Application for Permit to Drill (APD) by APD processing for all but wildcat wells; (4) when permitting APDs on

undeveloped areas, imposing a 3% surface disturbance cap, with limited exceptions (NTT 2011: 23).

For similar reasons, the NTT Report also recommended withdrawing priority sage grouse habitats from locatable mineral entry, and recommended closing priority habitats to non-energy leasable mineral development and mineral material sales (NTT 2011: 25).

The COT Report also recognized oil and gas development as a leading threat, and one of the main drivers of the loss and fragmentation of sagebrush habitat (COT 2013: 10). For renewable and nonrenewable energy development, the COT report recommended the following:

- "**Avoid energy development in PACs** (Doherty et al. 2010). Identify areas where leasing is not acceptable, or not acceptable without stipulations for surface occupancy that maintains sage grouse habitats";
- "If avoidance is not possible within PACs due to pre-existing valid rights, adjacent development, or split estate issues, development should only occur in non-habitat areas, including all appurtenant structures, with an adequate buffer that is sufficient to preclude impacts to sage grouse habitat from noise, and other human activities";
- "If development must occur in sage grouse habitats due to existing rights and lack of reasonable alternative avoidance measures, the development should occur in the least suitable habitat for sage grouse and be designed to ensure at a minimum that there are no detectable declines in sage grouse population trends (and seek increases if possible) by implementing the following:
    - Reduce and maintain the density of energy structures below which there are no impacts to the function of the sage grouse habitats (*as measured by no declines in sage grouse use*), or do not result in declines in sage grouse populations within PACs. (emphasis added).
    - Design development outside PACs to maintain populations within adjacent PACs and allow for connectivity among PACs.
    - Consolidate structures and infrastructure associated with energy development.
    - Reclamation of disturbance resulting from a proposed project should only be considered as mitigation for those impacts, not portrayed as minimization.
    - Design development to minimize tall structures (turbines, powerlines), or other features associated with the development (e.g., noise from drilling or ongoing operations; Blickley et al. 2012)."

(COT 2013: 43-44). The COT Report also suggested avoiding new mining activities or associated facilities in sage grouse habitats, and avoiding any new energy infrastructure in sage grouse habitat (COT 2013: 49, 51)

More recent science has only confirmed that energy development is incompatible with sage grouse conservation. Green et al. (2017) examined greater sage grouse lek attendance, oil and gas well, and habitat and precipitation data from Wyoming over the period 1984 to 2008, and, consistent with numerous prior studies, found that lek attendance declines are closely associated with the density of oil and gas development, regardless of sagebrush cover and participation:

> Oil and gas development correlates well with sage grouse population declines from 1984 to 2008 in Wyoming, which is supported by other findings (Doherty et al. 2010b, Harju et al. 2010, Hess and Beck 2012, Taylor et al. 2013, Gregory and Beck 2014). As with other studies, we also found support for 4-year lag effects of oil and gas development on lek attendance (Walker et al. 2007, Doherty et al. 010a, Harju et al. 2010, Gregory and Beck 2014). This result suggests that development likely affects recruitment into the breeding population rather than avoidance of wells by adult males or adult survival. Adult sage grouse are highly philopatric to lek sites (Dalke et al. 1963, Wallestad and Schladweiler 1974, Emmons and Braun 1984, Dunn and Braun 1985, Connelly et al. 2011a), and males typically recruit to the breeding population in 2–3 years. We would expect a delayed response in lek attendance if development affects recruitment, either by reducing fecundity or avoidance of disturbance by nesting females, as adult males die and are not replaced by young males. On average, lek attendance was stable when no oil and gas development was present within 6,400m (Fig. 4). However, attendance declined as development increased.

A study analyzing sage grouse persistence under mitigation measures in Wyoming similar to those in the BLM sage grouse plans, Gamo and Beck (2017: 190), stated:

> Energy development has been shown to specifically impact male sage grouse lek attendance, lek persistence, recruitment of yearling male and female grouse to leks, nest initiation and site selection, nest survival, chick survival, brood survival, summer survival of adult females, early brood-rearing habitat selection, adult female summer habitat selection, and adult female winter habitat selection (citing literature).

Importantly, Green et al. (2017) confirmed that declines in sage grouse populations may continue even within Wyoming's core areas, where density of wells is limited to approximately one pad per square mile, indicating the need for protections beyond those provided by the 2015 plan

amendments. The USGS likewise recognized in 2018 that "[a]llowable well densities that average one well pad per 640 acres within Core Areas may only be sufficient for limiting population declines to current rates but not for reversing the trend." (Hanser et al. 2018:46).

Similarly, a recent study of greater sage grouse in Wyoming from 2008 to 2014, Kirol et al. (2020), measured the impacts to grouse from both fossil fuel energy and renewable energy and found that ongoing surface disturbance from energy development within 8 km (4.97 miles) of a greater sage grouse nest decreased the likelihood of nest success. Sage grouse broods within 1 km (0.62 miles) of ongoing surface disturbance from energy development were less likely to survive than those further away. As ongoing disturbance increased, sage grouse nests had an increasing rate of failure. Furthermore, female sage grouse avoided habitat with higher levels of disturbance in favor of habitat with lower levels of disturbance. The study demonstrates then that current BLM nest buffers are too small to conserve grouse and implementing disturbance caps of 3-5% does not eliminate the negative impacts of ongoing disturbance on nest survival.

Fedy and others (2014) found a significant negative relation between well density and probability of sage grouse habitat selection during nesting (3.2-km [2-mile radius) and winter (6.44-km [4-mile radius) seasons, depopulating these adjacent habitats of sage grouse over a 2- to 10-year period (Walker et al. 2007, Harju et al. 2010). Naugle and others found indirect influences such as habitat degradation or utilization displacement, estimated to extend out to 11.8 miles from leks.

Recent science also casts further doubt on the efficacy of seasonal timing restrictions. Smith et al. (2016: 585) found "use of winter habitats occurred over a longer period than current Core Area winter timing stipulations and a substantial amount of winter habitat outside of Core Areas was used by individuals that bred in Core Areas, particularly in smaller Core Areas." Sage grouse moved from their fall to winter habitat earlier and moved from their winter to breeding habitat later than current seasonal restrictions on disturbance.

Furthermore, while timing restrictions may avert habitat fragmentation and loss for that one season, if development is allowed to go forward, the full impacts will be realized the following season. In other words, timing limitations for oil and gas (or other proposed development) is meaningless if development will be allowed following the temporary seasonal limitation only to fragment and destroy the habitat the following year. NTT came to similar conclusions:

> We do not include timing restrictions on construction and drilling during the breeding season because they do not prevent impacts of infrastructure (e.g., avoidance, mortality) at other times of the year, during the production phase, or in other seasonal habitats that are crucial for population persistence (e.g., winter; Walker et al. 2007).

BLM should also examine the efficacy of mitigation measures. Fedy et al. (2015: 14-15), found mitigation measures related to oil and gas development to be insufficient: "mitigation efforts within the study resulted in less avoidance of wells overall. However, sage grouse still avoided areas of high-density wells. No nests were found in areas with greater than 4 wells per km^2 and most nests (62.82%) were located in areas with ≤ 1 well per km^2."

These recent studies indicate a pressing need to re-evaluate the adequacy of protections from fluid mineral development to reverse sage grouse population declines. As many of the undersigned groups have previously explained in comments, the 2015 plans fell short of the agencies' own science in several respects. The plans failed to close priority habitats to future fluid mineral extraction, instead focusing on a "no surface occupancy" (NSO) stipulation that may be modified or jettisoned in all priority habitats except for SFAs. They claimed oil and gas leasing would be "prioritized" outside of sage grouse habitats and that use restrictions like timing limitations and controlled surface use would be applied where leasing was allowed to compensate for this failure. Wyoming's plans did not even apply the NSO stipulation in priority habitats, and instead focused on the 0.6 mile lek buffer that the NTT Report specifically found to be inadequate. In addition, with the new plans in place, leases previously deferred to protect sage grouse were made available for sale. And, like the Wyoming plans, which created a loophole to allow oil and gas development to continue as usual in lands in Wyoming, the Nevada/California plan carved out an exception to the rules to allow geothermal leasing to proceed unfettered on lands with geothermal potential—with disastrous results for sage grouse. Coates et al. (2023) found that sage grouse abundance declined approximately 24% within 5 km of geothermal sites in central Nevada, while lek absence rates (e.g., local extirpation) increased by about 730% within 2 km of geothermal development. Priority sage grouse habitat should be closed to geothermal leasing, as well as all occupied leks in GHMA, including those outside of HMAs and winter habitat.

The "prioritization" component of the 2015 plans largely failed to discourage leasing in priority habitats. In 2019, a report by Gardner, et al. (2019) analyzed oil and gas development on federal lands and sage grouse habitats from the implementation of the 2015 plans through March 2019. This research demonstrated that drilling in designated sage grouse habitat increased by 2.98 times between February 2017 and March 2019 compared with the October 2015 to January 2017 time frame. This was a rate higher than drilling on all public lands across all states during the same periods. This demonstrates that oil and gas development has shifted towards PHMA in all states since January 2017, following the removal of SFA restrictions and prioritizations due to BLM's abrupt cancellation of SFA designations. From 2016 through 1st quarter 2024, BLM has approved and sold oil and gas leases on 6.8 million acres of PHMA, 4.7 million of those acres

are in Wyoming. In GHMA, 8.7 million acres of leases have been approved and sold, with 6.3 million acres of leases in Wyoming.[33]

Further, the 2015 lease stipulations on PHMA and GHMA are subject to exceptions, modifications, and waivers, which are granted frequently and with little documentation. A recent GAO study of BLM field offices found that of the 54 recorded exception decisions, from four offices that could provide data, 49 exception requests were approved and 5 were denied—that is, **exception requests were granted 90% of the time**. *See* US GAO 2017:16n.24.[34] That same study found that BLM's decisions to grant such exceptions, modifications, and waivers often takes place in the dark, without written justification, oversight, documentation of the request or field office's decision, or additional NEPA analysis. *Id.* at 11–21. The report concluded, "BLM may be unable to provide reasonable assurance that it is meeting its environmental responsibilities." *Id.* at Intro. BLM's willingness to grant modifications, waivers, and exceptions—and without transparency or public participation—creates large loopholes that render the lease stipulations ineffective and afford the sage grouse insufficient protection.

Yet in this DEIS, BLM suggests an even more permissive approach. Apart from Alternative 3, which follows the science-based recommendation to close all priority habitats to leasing, the proposed plan amendments would once again leave even PHMA open to oil and gas leasing. DEIS at 2-49, 2-58, 2-62.

Alternatives 2, 4, 5, and 6 would essentially retain the current lease stipulations, subject to various waivers, exemptions, and modifications. *Id.* at 2-17, 2-73, 2-77, 2-78, 2-88. And all alternatives except 3 would include arbitrary state-by-state variations in the application of important protection tools like lek buffers/NSO and seasonal timing restrictions. *Id.* at 2-17, 2-73, 2-77, 2-78, 2-88. Alternatives 2, 5, and 6, would completely eliminate the prioritization of leasing outside of PHMA, *id.* at 2-41, while Alternative 4 includes an ad-hoc "evaluation" process that does not ultimately require BLM to prioritize leasing outside of the highest-priority habitats, *id.* at 2-42—2-43. Such changes cannot be justified in light of the well-documented impacts from oil and gas leasing, discussed above, or the rangewide sage grouse population data showing that current management has failed to reverse, or even appreciably slow, the species' decline.

Alternatives 4, 5 and 6 would require potential exceptions to undergo public review for at least a 30-day period. While that is an improvement over current practice, granting WEMs (on top of already inadequate safeguards) will further habitat fragmentation, loss and degradation and impact sage grouse populations. In contradiction to extensive science documenting the harm to

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33 https://peer.org/wp-content/uploads/2023/03/3_7_23_Spreadsheet-Wyoming-Sage-Grouse-Consultations-2.17.23.pdf

34 https://www.gao.gov/products/gao-17-307

grouse and grouse habitat from oil and gas development, BLM offers no explanation for why it would allow reducing NSO lek buffers to within 0.6 miles and beyond 0.6 miles of an occupied lek, the same deficient buffer as Wyoming's core strategy**.** This is a marked departure from Alternative 2 that uses a (still inadequate) 3.1-mile lek buffer for oil and gas leasing.

BLM has acknowledged the deficiency of a 0.6-mile lek buffer. In 2013, BLM concluded, "Studies have shown that greater distances, anywhere from two to four miles, are required for viable Greater sage grouse populations to persist." See 2013 Wyoming Greater sage grouse RMP Amendment DEIS at 4-335.

The DEIS additionally cites the inadequacy of this buffer stating:

> "In WY, applying an NSO within 0.6 miles of occupied GRSG leks in PHMA would protect fewer areas than in other states. Buffer distances from 0.5 to two miles from oil and gas infrastructure have been shown to be inadequate to prevent declines of birds from leks (Walker et al. 2007a). Studies have shown that greater distances, anywhere from two to four miles, are required for viable GRSG populations to persist (Connelly et al. 2000b, Holloran and Anderson 2005, Walker et al. 2007a)." DEIS 4-13.
>
> "According to Apa et al. (2008), "Buffer sizes of 0.25 mi., 0.5 mi., 0.6 mi., and 1.0 mi. result in estimated lek persistence of 5%, 11%, 14%, and 30%." DEIS at Appendix 19-9.

Said another way, allowing disturbance within 0.6 miles of a lek has been shown to reduce lek persistence by 70%.

Other science studies have shown the complete inadequacies of a 0.6 miles lek buffer. Hess and Beck (2012) found that the number of oil and gas wells within 0.6 miles of a lek increased the likelihood of lek abandonment. Holloran and Anderson (2005) found that a 1-mile buffer (in Wyoming) contained only 25% of the nest sites. And Holloran et al (2010) found yearling males avoided leks near infrastructure of natural gas fields when establishing breeding territories; yearling females avoided nesting within .59 miles of natural gas infrastructure. Yearling males and females reared in areas where infrastructure was present had lower annual survival.

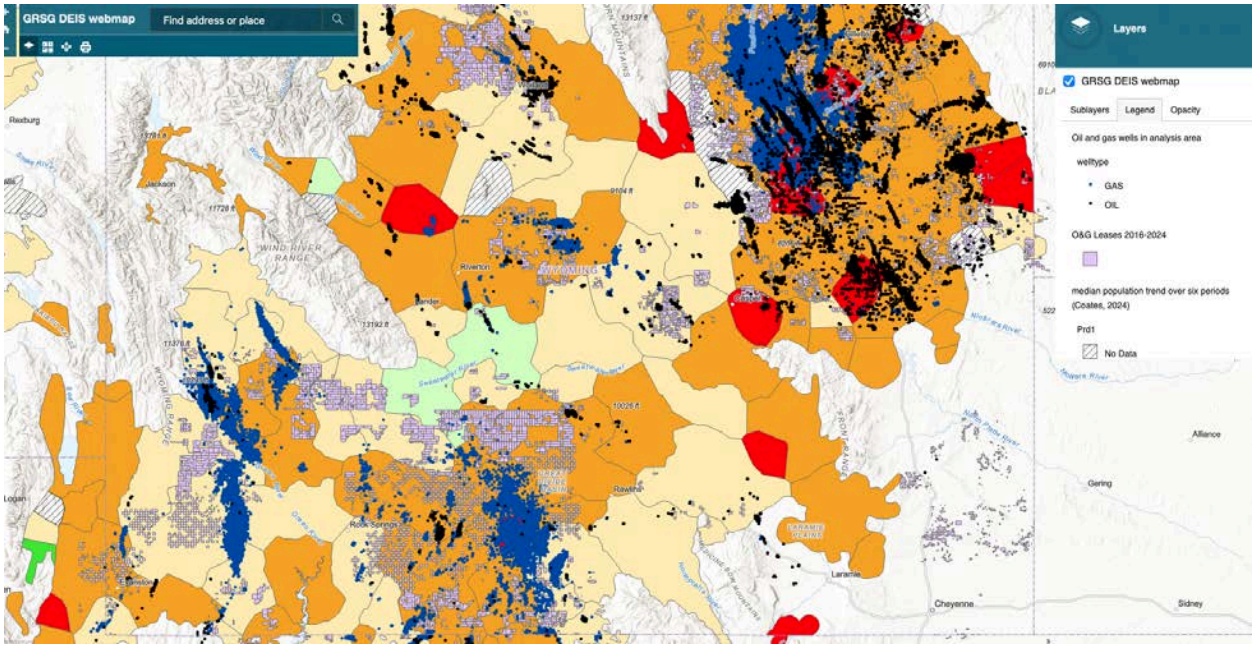


Figure 11. PHMA in Wyoming, oil and gas wells, oil and gas leases overlayed with Coates population trend data. There are 13,698 oil and gas wells (blue and black color represents individual oil or gas wells) and related infrastructure and roads have industrialized greater sage grouse habitat in Wyoming.

One of the exceptions BLM would allow is if the location of the proposed authorization is determined to be non-habitat. DEIS 2-49. Regardless of the specific rationale for allowing oil and gas development and associated infrastructure within 0.6 miles of a lek, doing so will result in further habitat fragmentation, degradation and loss, reduced nest and brood rearing success because energy development has been demonstrated to have impacts not only to breeding habitat (leks) but also impacts that can extend far into surrounding habitats, including nest sites and brood rearing areas. Habitat fragmentation and loss is one of the main threats to GRSG that is directly related to population level impacts.

We again call on BLM to impose, as terms of all the resource management plans, limitations on fluid mineral leasing and development consistent with the recommendations of the NTT Report. Specifically, all priority sage grouse habitat should be closed to fluid mineral leasing. For existing leases, BLM should impose seasonal restrictions on drilling and prohibit new surface occupancy (with exceptions for occupancy of no more than 3% outside a 5-mile lek buffer, if the entire leasehold is within such habitat) (NTT 2011: 23). No waivers, exceptions of modifications allowed except in very limited circumstances and only where benefit to grouse and its habitats can be clearly demonstrated. More generally, BLM should strive to eliminate the threats of oil and gas development by canceling leases found to be unlawfully issued and consider buying out leases in priority habitat accompanied with a broad-based mineral withdrawal (to prevent re-leasing of the same lands in the future) as discussed elsewhere in these comments. No extensions of existing leases should be allowed.

Only Alternative 3, which closes PHMA/IHMA to new oil and gas (and geothermal) leasing, provides an adequate regulatory mechanism. BLM acknowledges the benefits of closing PHMA to fluid mineral leasing.

> Closing PHMA to mineral leasing and development would protect GRSG habitat from surface-disturbing activities and associated habitat fragmentation, and maintain connectivity between leks. GRSG would not be exposed to disturbance associated with noise and human activity that accompanies construction, development, or production activities. DEIS 4-23.

BLM also states that restrictions to development on BLM lands might push development onto private land, which could result in indirect impacts as described under Nature and Types of Effects. DEIS 4-23. This line of argument, that HMA on federal lands should be developed to avoid development in important priority habitats on adjacent private lands can be misleading. That is because there is no mechanism to permanently prohibit development for fluid minerals or other surface disturbing activities on those private lands at some time in the future. Although disturbance caps are rightly calculated across all land ownerships, the caps only apply to federal lands.

The objective for fluid mineral leasing for Alternatives 4, 5 and 6 is to "manage areas to avoid, minimize, and compensate for adverse impacts to grouse habitat to the extent practical under the law and BLM jurisdiction. DEIS 2-41. It should be noted that BLM has regulatory authority to close areas to new leasing in resource management planning processes.

The objectives would give "preference to lands upon which a prudent operator would seek to expand existing operations (e.g., existing leases, leases held by production, designated units, etc.)" and would give preference to "any nominated parcel subject to immediate drainage or within five miles of existing development." Additional objectives direct BLM field officers to merely "consider" various aspects of sage grouse habitat (e.g. presence of nesting, etc.) providing significant discretion to field staff. DEIS at 2-42. Even parcels given a low preference value due to recognized impacts to important grouse habitat, could still be offered for sale after high preference parcels were offered.

These objectives and proposed stipulation measures are inadequate to protect sage grouse habitat and avert the need to protect GRSG under the ESA by stemming and reversing the decline of greater sage grouse as required under the BLM's Special Status Species policy.
The DEIS directs the application of the mitigation hierarchy, to "avoid, minimize and compensate." The problem with this hierarchy as a purported protective measure is that the BLM rarely if ever, says no to a project. The BLM should provide documentation of how often the

BLM has denied oil and gas leases to demonstrate the effectiveness of this hierarchy in protecting grouse and their habitat.

10. Failure to analyze direct, indirect cumulative effects of WEM's.

The DEIS fails to disclose and analyze the rate of and the subsequent effects of allowing waivers, modifications and exemptions. Generally, issuance of WEMs is at the discretion of BLM field staff. Documentation obtained through the Freedom of Information Act (FOIA) shows approximately **90% of 127 applicants** were granted approvals by the BLM WY Field Offices from 2020 through 2023 for their requested protection exceptions for oil and gas drilling in grouse priority habitat. The BLM did not disclose the full extent of WEMs being granted in all field offices since implementation of the 2015 plans began. This is knowable information that should have been used to analyze the impacts of allowing WEMs. PEER provided this analysis for Wyoming between 2018 and 2023, available online.[35]

11. BLM Has Failed to Consider or Disclose the Prevalence of Fee/Fee/Fed Wells

BLM has failed to meaningfully consider or disclose the prevalence of Fee/Fee/Fed oil and gas wells and how they undermine the presumed effectiveness of plan requirements like lek buffers, timing stipulations, disturbance and density caps, and compensatory mitigation. BLM Permanent Instruction Memorandum claims that BLM lacks authority to regulate the surface operations for Fee/Fee/Fed wells. This position is wrong as a matter of plain statutory interpretation, for reasons we explain below. However, the prevalence of Fee/Fee/Fed wells is also a serious issue BLM must analyze and disclose in the NEPA process. Our calculations suggest that Fee/Fee/Fed wells now account for at least 25 percent of all oil and gas wells BLM approves nationwide, and well over half of wells approved in states like Wyoming and Colorado. Given the prevalence of oil and gas development in sage grouse habitat, BLM must take a hard look at how development of Fee/Fee/Fed wells–which lack the same protections as BLM applies to split-estate and federal surface–will impact sage grouse.

12. The DEIS fails to take a hard look at drought and climate change in the planning area.

A. Drought

While drought is acknowledged as a threat to sagebrush habitat, the analysis of the severity and extent of drought in the DEIS is outdated and inadequate. The DEIS at 3-9 identifies sources from 2014 and 2015 to indicate severe and prolonged drought in California, Nevada and Utah. However, in the intervening years, severe and prolonged drought conditions have also been

35 https://peer.org/wp-content/uploads/2023/03/3_7_23_Spreadsheet-Wyoming-Sage-Grouse-Consultations-2.17.23.pdf

present in large portions of Eastern Oregon, Southern Idaho, Eastern Montana, portions of Wyoming and Colorado. For example, in August 2021, nearly 100% of the planning area experienced severe or greater drought.[36] Conditions were similar in both 2020 and 2022.[37] Even during the relatively wet year of 2023 where drought pressures eased in some of the planning area, severe drought persisted in Eastern Oregon and the Hi Line of Montana.[38]

The DEIS acknowledges that drought has significant impacts on vegetation conditions, "including lower sagebrush canopy cover, reduced perennial grass and forb production, and changes to food resource availability" and that there are feedback loops in terms of invasive species and climate change. "Sagebrush habitats with low resistance and resilience to invasion by exotic annual grasses are also more likely to be negatively affected by climate changes (Adler et al. 2018). Climate change may worsen the spread of invasive species, such as cheatgrass, medusahead, and ventenata, by increasing the severity of droughts, reducing precipitation, or altering wildfire cycles (BLM 2013a; USGCRP 2018)." (DEIS at 3-9)

However, in the discussion of livestock grazing, mention of the combined impacts of drought and commercial livestock grazing are fully omitted. The BLM currently has no national policy about how to manage grazing during drought. Decisions about reductions or suspensions of grazing to protect drought-stressed vegetation are made by local land managers and the BLM does not have a database to track such decisions nor a standard protocol for determining when grazing is appropriate during or after drought conditions are present.

Further, throughout the Cumulative Effects section there is no mention of drought in the context of livestock grazing. It is reasonably foreseeable that prolonged severe drought in a large portion of the planning area will have myriad cumulative impacts. Less forage will inevitably be available for livestock and drought reduces production of palatable species and increases the expansion of invasive species. Continued current levels of grazing during drought will lead to less resilient native plant communities and thus lead to negative impacts for greater sage grouse.

The BLM's persistent lack of analysis of grazing conditions and grazing permit decisions indicates that current grazing levels are expected to continue for the foreseeable future. The DEIS fails to acknowledge this reality and maintains a fallacy that grazing is managed responsive to conditions even when there is no evidence to suggest that this occurs on a rangewide basis.

Absent significant reductions in actual grazing use, both intensity and duration, native plant populations will suffer permanent declines, in some cases causing state changes from higher to

[36] https://www.ncei.noaa.gov/access/monitoring/monthly-report/drought/202108
[37] https://www.ncei.noaa.gov/access/monitoring/monthly-report/drought/202008 ; https://www.ncei.noaa.gov/access/monitoring/monthly-report/drought/202208
[38] https://www.ncei.noaa.gov/access/monitoring/monthly-report/drought/202308

lower value and more simplified habitat types. The loss of native plant productivity and the subsequent decline of soil health and carbon sequestration potential will also cause cascading negative impacts for greater sage=grouse and sagebrush habitat in general.

Grazing during drought creates feedback loops that tend to worsen the impacts of drought both in intensity and duration.

- Drought is stressful on native plants, decreasing vigor, and increasing mortality. This makes individual surviving plants less able to respond to increases in moisture and reduces seed source availability. Grazing defoliates plants adding to the physiological stresses already incurred due to drought.
- Drought increases the amount of bare ground, reduces canopy cover and decreases shading. This exposes more soil to direct sunlight, increasing soil temperature and decreasing soil moisture, raising near ground air temperature, thus intensifying drought conditions and retarding drought recovery. Reduced vegetation canopy cover and windbreaks make the site less able to retain snow due to both increased melting and sublimation.
- Increased bare ground is subject to greater rainfall impact, increased runoff and soil erosion by water, decreasing water retention on site, lessening soil moisture recharge. The exposed soil with reduced shading and windbreak provided by plants is more exposed to wind erosion. Disturbing the soil through hoof action adds to the wind erosion hazard. Fugitive dust from bare ground can cover great distances and deposit on snow in faraway mountains. The dust decreases the snow's albedo resulting in warming of the snowpack, premature melting and runoff and decreased stream flows.

Because grazing acts as a drought intensifier, often with effects that extend well beyond allotment boundaries, careful consideration and justification is required before authorizing grazing during drought conditions. Unfortunately, BLM policy does not currently address grazing during drought and impacts are widespread throughout the planning area. The failure of the DEIS to fully acknowledge and analyze the cumulative impacts of permitted grazing at current levels and drought on all aspects of greater sage grouse habitat must be remedied.

B. Climate Change

The DEIS fails to adequately account for the role that climate change plays in adversely impacting sage grouse habitat and specifically in terms of the cumulative impacts of authorized activities within the planning area both in terms of how they contribute to greenhouse gas emissions that drive climate change and exacerbate the impacts of climate change.
Specific to the issue of livestock grazing, numerous studies have been conducted to describe these impacts yet the DEIS only includes analysis from 2014 or earlier. Two particularly

important recent papers include Kauffman et al., 2022a and 2023. The following chart from Kauffman et al. 2022a exemplifies the impacts of livestock grazing that exacerbate climate change and associated feedback loops.

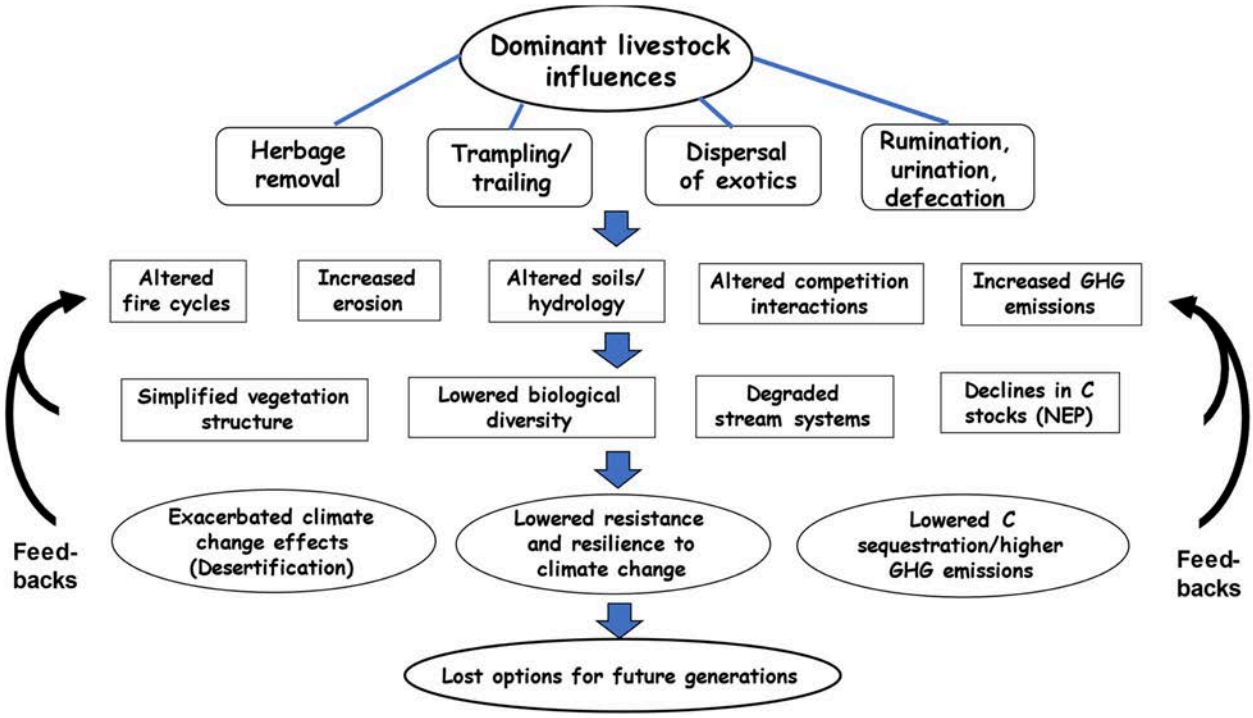


Fig. [2, Kaufmann et al.] The interacting effects of livestock grazing and climate change on western rangelands. There are four primary immediate effects of livestock: herbage removal, trailing trampling effects, dispersal of exotics, and creation of metabolic and non-metabolic waste products. Through time, these effects on native rangelands affect fire regimes, increase erosion, compact soils affecting ecosystem hydrology, and alter competitive relationships between plant species. These actions decrease the net ecosystem productivity (NEP) such that the range- lands shift from carbon sinks to net sources of greenhouse gasses. Products of animal metabolism are significant additional sources of greenhouse gasses, especially CH_4 and N_2O. Ultimately the results of grazing have led to a simplification of vegetation structure typified by increases in exotic, ruderal, and less palatable species, that are more adapted to the drier conditions created by lower water holding capacities of compacted soils. The shifts in species composition further decrease the capacity of rangeland ecosystems to function as carbon sinks. Other impacts of grazing include a decline in riparian vegetation structure, shifts to drier species dominance, and degraded stream channels which increase stream temperatures, ground surface temperatures and alter stream flows. The consequent shifts in the net ecosystem productivity of the landscape, coupled with GHG additions from livestock, results in additional contributions to the greenhouse gasses causing climate change. The effects of livestock accentuate the effects of climate change such as increased stream and air temperatures, loss in biological diversity, and an overall decline in the productivity of rangelands (desertification). There are also strong feedbacks associated with climate change. The warmer and drier temperatures, and reduced snowpack associated with climate change interacts with livestock grazing to negatively affect stream flows, water quality and biological diversity. These factors result in further degradation and a lower capacity for carbon storage, hence higher green- house gas emissions.[39]

[39] Kauffman JB, Beschta RL, Lacy PM, Liverman M (2022a) Livestock on public lands of the western USA accentuate effects of climate change: Implications for mitigation and adaptation. Environ Manag https://doi.org/10.1007/s00267-022-01633-8

Furthermore, the DEIS fails to include the latest information about the greenhouse gas emissions from livestock grazing on public lands expressed in terms of the social cost of carbon which total between $72-$166/per animal unit month and far exceed the economic value of grazing to the permittees and the economy in general.[40]

13. Renewable Energy Infrastructure

We support Alternative 3's intention to make PHMA unavailable for renewable energy development (DEIS at 2-93). Analysis should be considered for all General Habitat Management Areas, Priority Habitat Management Areas, and core intact sagebrush landscapes in the range of the sage grouse to be avoided and excluded from renewable energy development and associated transmission infrastructure.

Though it is true that there have been few studies specific to greater sage grouse (DEIS at 2-92), a recent literature review of the impacts to grouse species from wind energy facilities (Coppes et al, 2020) found nearly universally negative impacts to grouse species in 39 separate studies around the world. Thus, "avoidance" as proposed under Alts5 & 6 is not enough, and reflects a serious downgrade from the 2015 plans in most states.

In 2020, a new push by BLM started, accepting applications to build utility-scale solar projects in the Great Basin sagebrush habitats of Nevada, attracted by flat lands, sunny skies, fueled by the many long, remote, high-voltage transmission line project applications such as the proposed Greenlink North Transmission Project.

The Pantheon Solar Project was proposed to be built on 8,086 acres of public lands managed by the Bureau of Land Management about 15 miles southwest of Ely, Nevada[41]. The project has since been reduced to 2,700 acres.

We have seen applications for utility-scale solar projects that are partly in Priority Habitat Management Areas PHMAs for greater sage grouse, namely, Eagle Butte I and II, and Wildcat Solar Project near Austin, Nevada on land managed by the BLM currently zoned as Variance lands (inspection of solar project applications at the Tonopah NV Field Office of BLM). This is unacceptable.

Utility-scale solar projects typically take 2,000 to 10,000 acres and more, with associated industrial construction activities taking 1-3 years, with new roads, pylons or racks pounded or set

[40] Kauffman, J.B., Beschta, R.L., Lacy, P.M. *et al.* Forum: Climate, Ecological, and Social Costs of Livestock Grazing on Western Public Lands. *Environmental Management* **72**, 699–704 (2023). https://doi.org/10.1007/s00267-023-01853-6

[41] http://pucweb1.state.nv.us/PDF/AxImages/DOCKETS_2020_THRU_PRESENT/2020-9/4649.pdf?fbclid=IwAR1XZaV634w2TtuTks-UQigtWX8lyp8j8xIZS7VNw4uj8normoYjCccRPFY

into the ground to hold solar panels, construction lay-down areas, operation and maintenance buildings, substations, tall gen-tie lines which can be as large as 500 kiloVolt powerlines connecting the solar project to the main grid transmission line, often Lithium-ion battery banks in cooled container buildings for energy storage, 8-foot tall chain link security fences surrounding the project, night lighting, local new water wells and water truck delivery, and stormwater drainage basins, berm-walls, and channels to divert flooding away from the solar fields. During construction, solar projects require large numbers of trucks to deliver solar panels on palettes and other equipment, heavy construction machinery such as bulldozers, scraper-graders, blades, and water trucks for dust suppression, as well buses and cars for project workers commuting to the sites, which are often in remote wildlands far from towns and cities. Solar projects typically develop Traffic and Transportation Plans, and these should include impacts to sage grouse. Noise levels can be high, and 24-hour night-lighting during months of construction can impact wildlife.

Photovoltaic solar project construction methods typically include drive-and-crush methods where heavy machinery drives over native shrubs and plant communities, and allows some vegetation to grow in the solar field. Portions of the solar project are bladed flat with total soil removal, for operation and maintenance areas. Grading with 100% vegetation removal is also a method still used on solar projects, with much higher impacts to resources. Lower impact designs have been attempted, but are more costly to the solar developer. With all construction methods soils are disturbed, biological soil crusts are reduced and degraded, vegetation is broken and crushed, and invasive plants often increase at the expense of native forbs. Some solar projects in Nevada have had to apply herbicides in order to deal with invasive plants spreading across solar fields on disturbed soils, which can cause a fire hazard to electrical equipment.

Gerringer et al. (2022) during bat and bird carcass surveys in a Wyoming solar project opportunistically observed sage grouse using a solar project. Observations occurred between early June and mid-January, with 74% of observations occurring between mid-August and mid-November. Observations did not provide evidence that sage grouse necessarily selected for areas within the facility. The authors recommended that additional research on resource selection and demographic responses by sage grouse would provide more inference on how the species responds to utility-scale photovoltaic solar project development.

We do not recommend considering solar projects as functional habitat for sage grouse, however. Because of the collision hazards, disturbed vegetation, noise, and predator attractions and raven perches, these construction and operation zones degrade healthy functioning undisturbed sagebrush and meadow habitats.

The 2012 Western Solar Plan approved mitigation for solar projects proposed in sage grouse habitat outside of Solar Energy Zones and Exclusion Areas, in Variance Lands[42]:

> Variance Protocol for Greater Sage Grouse:
>
> The BLM has adopted the following protocol for variance applications in greater sage grouse habitat.
>
> Greater sage grouse habitat (i.e., currently occupied, brooding, and winter habitat) as identified by the BLM in California, Nevada, and Utah is excluded from BLM's Solar Energy Program (see Section 2.2.2.1 of the 2012 Solar PEIS).
>
> Developers that propose utility-scale solar energy projects in variance areas that overlap the range of the greater sage grouse will be required to provide documentation of the following, unless a project is otherwise determined by the BLM and U.S. Fish and Wildlife Service (USFWS) and appropriate State wildlife agencies to have acceptable impacts on greater sage grouse:
>
> - Project is at least 4 mi (6 km) from the nearest lek;
> - Project will not adversely affect Preliminary Priority Habitat; and
> - Project will be mitigated through land acquisition or habitat enhancement at a ratio of at least 1:1 for any impact on Preliminary General Habitat as determined by accepted standards of habitat analysis (e.g., habitat equivalency analysis [HEA]) and in coordination with the USFWS and the appropriate State wildlife agencies.

How will BLM coordinate the 2024 Greater Sage Grouse Planning revision with the 2024 Western Solar Plan revision which is undergoing a separate but simultaneous review? The current Western Solar Plan revision proposes to eliminate Variance Areas and Variance Protocols, in favor of designating large Exclusion Areas and large solar open areas for development. The Preferred Alternative (3) of the Solar Programmatic Environmental Impact Statement would allow at a minimum 700,000 acres of lands to be developed for utility-scale solar projects across 11 western states.

There is a push to develop sage grouse habitat for long, remote, high-voltage transmission lines and connected solar projects that would have a significant cumulative impact in the future if build-out is achieved. The current sage grouse planning revision seeks to weaken the plans in order to reduce lek buffers to new utility corridors and transmission infrastructure, and allow PHMA and GHMA to be degraded.

[42] https://blmsolar.anl.gov/non-competitive/specific/variance/factors/sage-grouse/

In the Solar Programmatic EIS at Appendix B-44, helicopter activity is proposed to be allowed at solar projects, apparently for construction purposes. No helicopter activity should be allowed near leks within at least a 4 mile buffer at all seasons and at all times of day.

> **ER-O-7sss** There shall be no helicopter installation activities within 4 miles of GRSG leks in the spring time prior to 10 am**.** (Western Solar Plan revision, Solar PEIS at Appendix B-44)

F. The DEIS lacks an analysis of previous actions, adaptive management implementation and outcomes, and the outcomes of prior mitigation efforts.

BLM has nearly a decade of experience implementing the 2015 plans yet fails to explain how (in)effective they have proven in reversing sage grouse declines. BLM has also failed to consider or disclose the number of plan elements it has failed to implement or enforce, or examine the likelihood of similar implementation failures in the future. Instead, BLM bases its analysis on unsupported and unreasonable assumptions about future implementation, such as that "[s]ufficient funding and personnel would be available for implementing the final decision" or that "[i]f monitoring reveals that mitigation is unsuccessful in reducing or eliminating impacts, measures to prevent further impacts would be implemented as appropriate to the species affected." *See* DEIS Appendix 10. Real world experience belies these assumptions.

To meet its hard look duties under NEPA, BLM must provide detail regarding the enforcement and implementation, or lack thereof, of the existing plans. This is necessary to assess how birds will be impacted by the alternatives going forward. As just one example, BLM now has a robust set of data about compensatory mitigation spending to test its assumption that off-site compensatory mitigation can achieve a net conservation gain to the species.

Although BLM must perform its own analysis, we offer the following examples of plan requirements that are not being implemented or enforced:

1. Required Design Features: RDFs are routinely overlooked and not attached to applicable agency decisions, without justification. As just one example, we submitted a FOIA request to BLM Wyoming's Casper Field Office requesting "All plans to reduce the frequency of vehicle use" submitted to that office since September 2015. Such plans are a Required Design Feature for projects in sage grouse habitat under the 2015 Sage Grouse RMP Amendments. Despite the huge numbers of oil and gas projects approved in this field office since 2015, BLM responded that it had no responsive document, confirming this plan requirement is not being implemented or enforced.
2. Compensatory Mitigation: this plan requirement is routinely overlooked, and in our experience, never required at a dollar value sufficient to address the indirect impacts to sage grouse.

3. Oil and Gas: BLM did not prioritize oil and gas leasing outside of sage grouse habitat, as promised; has never implemented the requirement to prioritize lease *development* outside sage grouse habitat; and continues to undermine the effectiveness of its lease stipulations by readily granting exceptions, modifications, and waivers.
4. Causal Factor Analyses: The RMPA's focus on Causal Factor Analysis should be tempered by the track record of inconsistency and uncertain level of success experienced under the 2015 ARMPAs and their hard- and soft-trigger process. Our examination of Causal Factor Analyses released to date indicates a spotty record of performance. Approaches seemed to vary state by state, and were subject to agency biases at the local level. For instance, the Causal Factor Analyses for the Sheeprocks PAC (UT) and Crowley PAC (OR) demonstrated that in the absence of industrial projects, managers preferred to find wild horses to be a disproportionately powerful causal factor of sage grouse declines, and domestic livestock a more minor factor or non-issue, respectively, even though in each case wild horses overlapped a very small proportion of each sage grouse PAC, while domestic livestock grazed over a large majority of the occupied sage grouse habitat. In Idaho's Mountain Valley PHMA, the Lemhi River population declines could "not identif[y] specific issues related to the decline;" although livestock grazing is the dominant human (and BLM-permitted) use in this PHMA, it apparently was given no consideration as a potential causal factor (Ellsworth et al. 2020). Wyoming Strike Team causal factor analyses (Binfet et al. 2022), by contrast, consistently considered the possibility of livestock grazing as a detrimental factor in sage grouse declines, and identified this as a principal factor in several areas with struggling sage grouse populations that tripped hard or soft triggers. Finally, it is necessary for the agency to provide a comprehensive accounting of Causal Factor Analysis and adaptive management that followed, and the extent to which it did (or did not) solve the problem identified by the trigger violation. This should be provided in the FEIS by means of taking a hard look at environmental effects of the actions proposed under various alternatives. (See also Adaptive Management, Section I, below.)

G. Inadequate Cumulative Effects Analysis

NEPA requires adequate disclosure of the cumulative impacts of the proposed action "when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions." 40 C.F.R. § 1508.7. Proper consideration of cumulative impacts requires "some quantified or detailed information," and general statements about possible effects "do not constitute a hard look absent a justification regarding why more definitive information could not be provided." *Klamath-Siskiyou Wildlands Ctr. v. U.S. Bureau of Land Mgmt.*, 387 F.3d 989, 993–94 (9th Cir. 2004); *see also Neighbors of Cuddy Mountain*, 137 F.3d 1372, 1379 (9th Cir. 1998).

The DEIS's cumulative effects discussion lacks any quantified or detailed information, resting instead on vague and cursory statements that effects would "increase" or "decrease" as compared to current management, or that impacts across alternative would be increased, decreased, or "similar." These perfunctory statements violate BLM's NEPA duty to provide quantified or detailed information. To allow for meaningful public comment and decisionmaking, the cumulative effects discussion must provide far more detail on the nature and degree of cumulative effects using quantitative data, such as: total acres of habitat loss, degradation, and fragmentation; cumulative impacts on bird fitness, survival, and reproduction; and cumulative impacts on genetic and habitat connectivity. BLM must also include a frank discussion about these cumulative impacts resulting in lek or population extirpation; the resulting effects on the "three r's" (resilience, redundancy and representation); and the probability of continued rangewide population declines for the entire species.

The cumulative effects discussion also improperly excludes other past, present, ongoing, and foreseeable future actions. As one notable example, BLM fails to consider the cumulative effects of past, present, and foreseeable future projects on lands administered by the U.S. Forest Service. The 2015 ARMPAs included lands administered by the U.S. Forest Service. The current draft plans do not. This means that any effects analysis from the early NEPA documents that included the management on Forest Service lands needs reconsideration, and any differences arising between the 2015, 2020, and 2024 alternatives needs to be evaluated alongside the management of adjacent federal lands. For example, if the Bureau is changing habitat indicators for grazing management, how does it reconcile the habitat needs of the species on adjacent FS lands where the habitat objectives were set in 2015? While Appendix 2 is helpful in comparing the Bureau's amendments, the NEPA analysis here lacks any assessment of how management/populations are trending on the Forests or how the new alternatives will correspond to the forest plans.

Appendix 14 is also incomplete as to other past, present, and foreseeable future projects approved by BLM itself. For both oil and gas development, for example, BLM only considers lease acreage and fails to include any information on oil and gas *permitting* or project approvals (e.g., number of wells; associated pads, roads, powerlines, pipelines, and facilities; total disturbed acres, etc.). Simply disclosing the number or acres of leases is inadequate to assess the actual habitat impacts of past, present, and proposed oil and gas development.

Appendix 14 also improperly generalizes projects, failing to include any details on their nature, size, or impacts. For example, BLM simply states that it has approved a certain number of mines or ROWs without naming or describing the nature of those projects, much less describing their impacts on greater sage grouse.

The analysis of PHMA, GRSG, IMHA, RHMA, SHMA, and OMHA throughout the DEIS is skewed by the fact that there are exceptions built into each of these habitat designations through the identification of "non-habitat." (DEIS at 2-19). This means that the protective designations included in the plan – and the acreages proposed under each alternative – are actually overstating the level of protection grouse habitat might actually achieve. The DEIS says, "Excepting a site-specific project from conformance with GRSG management in an area of non-habitat… would not change the GRSG habitat management boundaries as identified in the RMP." (DEIS at 2-20) But it does mean that the acreage within the habitat management area boundaries might not be protected, which leaves the true impacts of the Alternatives 4, 5 and 6 unknowable and at the discretion of the Bureau's State Directors. (We note this bad idea was limited previously to just GHMA in Utah, but would now extend to all habitat types in every state. We also note that the Bureau should have disclosed the effects of this provision in Utah, *i.e.* how many acres of HMA were chipped away at through non-habitat designations under the 2015 plans?)

It is also not clear how the RMPA will comport with the recent Conservation and Landscape Health Rule (89 FR 40308). Because the sage grouse RMPAs will be approved after the new CLHR goes into effect, the management of sage grouse habitat will be affected by changes not yet fully disclosed through guidance and manuals. For example, will mitigation leases be a piece of the compensatory mitigation scheme of this plan?

The cumulative effects analysis also improperly excludes the cumulative impact of projects approved or built prior to the year 2018.

Finally, BLM has improperly excluded the cumulative impact of adopting or withholding the SFA mineral withdrawal.

H. Improper Segmentation of SFA Mineral Withdrawal Analysis

The analysis of alternatives is hampered by a significant uncertainty: the mineral withdrawal proposed by the 2015 ARMPAs that is apparently being reviewed under a separate NEPA process with a timeline of fall 2024. But if the Sagebrush Focal Areas are to be recommended for withdrawal from mineral exploration, that is highly relevant to the decisions about HMA management in the RMPs and therefore must be analyzed as part of this RMP amendment process. The withdrawal also matters to the management of the ACECs that are proposed under several of the alternatives. It is unclear why the agency has failed to analyze the impacts of the proposed mineral withdrawal as part of this EIS, particularly where certain DEIS alternatives would retain BLM's recommendation for the SFA mineral withdrawal, and we believe doing so improperly segments analysis of connected actions. *See* 40 C.F.R. § 1501.9(e)(1) (pertaining to "connected actions").

The SFA Mineral Withdrawal and ARMPAs are connected actions for several reasons. First, it appears BLM will decide in this RMP amendment process whether to maintain or cancel its application for withdrawal. That decision, in turn, will "[a]utomatically trigger other actions that may require environmental impact statements," because the withdrawal application triggers the withdrawal evaluation process and related EIS process. Likewise, the SFA mineral withdrawal is connected because it "[c]annot or will not proceed unless," BLM retains its application for withdrawal. Finally, both the RMP amendments and the SFA mineral withdrawal are "interdependent parts of a larger action"--namely, the rangewide sage grouse conservation effort.

I. Recommendations for Adaptive Management

The Bureau relies upon its adaptive management to address down-the-road problems, but the DEIS does not include any information about how such management has worked so far.

According to the DEIS, "Implementing adaptive management can address unanticipated negative impacts to GRSG and its habitat before consequences become severe or irreversible. Adaptive management was identified by the U.S. Fish and Wildlife Service (FWS) as a key component of BLM land use plans …to help ensure that implementation of allocative decisions and limitations on disturbance are effective at conserving sage grouse and their habitats, and mitigation provisions where disturbance cannot be avoided. Like monitoring, adaptive management is a key element of complex long-term conservation strategies, particularly where there is uncertainty" (FWS, 2015). " DEIS 2-120.

1. <u>Need for Consistent Methodology and Metrics</u>

"To accurately assess any anomalies or thresholds being met, and any necessary responses, monitoring of habitat and population trend should be conducted at the same scale. The BLM will use neighborhood clusters identified by USGS (Coates et al., 2021) to track habitat conditions, the same spatial scale used by USGS for population trend analyses."

We are relieved to see that BLM is finally recognizing that arbitrary, inconsistent state-by-state monitoring metrics and adaptive management methodologies that were approved in the 2015 and 2019 plans are inappropriate. Allowing such inconsistencies calls into question the efficacy of the adaptive management strategy that has been allowed to persist for nearly a decade. This has likely been a contributing factor, along with the many other deficient management standards, to continued habitat loss, fragmentation and degradation and grouse decline. We also support the BLM's revised approach to allow for methods to separate habitat concerns from climatic conditions contributing to trends and using a consistent spatial scale of analysis, that should be of a scale fine enough to allow for effective analysis and corrective management actions.

We request the BLM clarify the following parenthetical statement: (Note: Monitoring habitat for adaptive management purposes does not preclude the need to track habitat losses for conformance with the anthropogenic disturbance caps). DEIS 2-120. It is hard for the reader to understand what the above note means. Does it mean that anthropogenic disturbance from authorized uses (as well as wildfire and agriculture conversion and residential development) is not tracked as habitat loss for adaptive management? Whatever the meaning of this note is, it is essential that disturbance under all caps be included in adaptive management tracking and management response.

2. Identifying Causal Factors

The 2023 Oregon analysis[43] finds that for most units there are multiple causal factors. There are also causal factors that appear to be consistent threats across the range such as weeds and fence collisions. In both cases we recommend broadscale management responses that can address multiple causal factors and require fence collision reduction across the range to reduce a significant and preventable source of mortality.

The five-year monitoring report notes that 16 habitat triggers and 42 population triggers were tripped across the range (Herren et al. 2021), but provides little assurance monitoring has captured the full picture of habitat loss or population declines. A review of the monitoring reports attached here (Attachment E) shows an array of different monitoring protocols and triggers, meaning population or habitat declines may trigger adaptive management thresholds in one state but not another.

The monitoring report also frequently fails to provide meaningful context that would allow the public or BLM to evaluate the efficacy of the 2015 amendments and their adaptive management plans. Specifically, the reports should disclose how many total triggers exist, the spatial distribution of units that were triggered, the causes of the triggers, a causal analysis, and importantly, disclose how land managers have implemented adaptive management under the 2015 plans. Specifically, what management changes occurred because of these triggers being met and any follow up monitoring.

Every plan should provide for specific desired outcomes, enforceable triggers, consistent monitoring, accurate reporting, and outcomes from responsive management actions. BLM should post on its website annual updates for monitoring and disturbance cap analysis.

Habitat and population triggers should operate independently, and should not be set at the low end of what science supports. Setting triggers too low–ensures harm to the species will occur before land managers can take corrective actions.

[43] https://www.blm.gov/sites/default/files/docs/2024-02/OR-IB-2024-027-att2.pdf

Plans should also be transparent and enforceable. And while adaptive management is flexible by nature, plans should follow the precautionary principle: planners and land managers need to make every effort to err on the side of caution, and incorporate wide margins of safety to guard against loss of sage grouse and their habitats, especially given the pressures exerted on sage grouse and its habitat from climate change.

3. Adaptive management triggers should also apply to GHMA.

Under the current DEIS, adaptive management is not required for GHMA. "Local responses to thresholds reached in GHMA can be considered if deemed necessary by the BLM and the appropriate state agency." DEIS 2-120. Adaptive management triggers must also apply to GHMA. The DEIS states that GHMA is "BLM-administered lands where some special management will apply to sustain GRSG populations; areas of occupied seasonal or year-round habitat outside of PHMA or IHMA." DEIS 3-4. Habitat protections for GHMA are not sufficient for grouse to persist in GHMA. Alternatives 4, 5 and 6 would weaken protections even further. GHMA cannot sustain GRSG populations when management direction for GHMA will result in local extirpation of the grouse. The BLM cannot write off greater sage grouse in GHMA. Protections need to be more restrictive.

4. No new authorizations should be considered when triggers are tripped.

Alternative 5 and 6 are the "Same as Alternatives 3 and 4 except new authorizations can be considered during the rapid assessment period. Project level NEPA will specifically evaluate if any new permitted activity could contribute to any cause identified during the rapid assessment." DEIS 2-123. It is unacceptable and contrary to any logic that new authorizations would continue to be allowed under Alternatives 5 and 6 while a rapid assessment is occurring. Further,

> Existing permitted activities can continue unless those activities are causing mortality to GRSG or direct loss or degradation of occupied GRSG habitat. DEIS 2-125.

The above management direction should include indirect and cumulative effects as well. Even if a specific authorized use may not appear to cause grouse mortality or direct loss or degradation of habitat, those uses can still be detrimental through indirect effects. For example, if the authorized use contributes to spread of invasive species, or creates noise levels harmful to grouse, or an increase in predators, then those uses should not be allowed. Additionally, if a use is categorized as "uncertain", that authorized use should be paused as well. As the DEIS notes, there can be multiple stressors at play when hard or soft triggers are met. Further, stressors can act in synergistic ways. The best course of action is to eliminate stressors that are in the control of land management agencies.

> If the neighborhood cluster cannot be restored to original sagebrush conditions and/or habitat function due to ecological or disturbance limitations (e.g., intense fire killed soil microfauna, ***dense anthropogenic activities***) restoration and/or habitat enhancement in adjacent neighborhood clusters can be considered to increase the number of GRSG supported in those areas. This will be done in coordination with appropriate state agencies. If enhancing habitats in adjacent areas does not reverse the threshold, and further assessment may be necessary to determine if the area in which the habitat threshold was met should still be considered GRSG habitat. DEIS 2-122.

We want to point out the irony that as an example of why a neighborhood cluster cannot be restored to functionality could be because of "dense anthropogenic activities." This is why Alternative 3 is the only management alternative that will meet the purpose and need. Alternatives 1, 2, 4, 5 and 6 allow all manner of discretionary activities that will allow habitat fragmentation, loss and population harm. Even mining can be addressed through mineral withdrawals.

> There are sufficient numbers of GRSG (abundance) to allow for recovery of population numbers to those present at or before the threshold was met, based on local growth rates determined by the state wildlife management agency, and BLM has the concurrence of the state wildlife management agency. DEIS 2-122.

This should apply only if the habitat can support abundant grouse and all of their life cycle needs.

5. <u>Exceptions to limitations should be eliminated</u>

In the current DEIS, Alternatives 4-6 would allow exceptions to limitations imposed for exceeding thresholds including:

> "Renewal of existing activities that require a permit if:
- The activity is scheduled within 60 days of when a threshold is met and identified, and
- The project proponent can show significant negative economic impacts (i.e., documented loss of income equivalent to the income potential of the event), and The renewal can only be considered if it does not result in known impacts to habitats or populations."

We recommend these exceptions be eliminated. If the activity is a contributing factor or labeled as "uncertain" to causing the threshold exceedance or trigger, whether an activity is scheduled within a certain time should not matter, it is the harmful activity that matters. Also, economic impacts should also not be a factor. The example provided is a break even analysis (loss of income equal to income potential), hardly a reason to risk extirpation of a grouse population. We

are also confused by the last clause. The very fact a use is being considered for a limitation (in this case an exception from a limitation) is because it is a contributing factor to the triggers. As noted above, there should also be no exceptions for causal analysis that indicate a contribution from a specific use is "unclear."

6. BLM should clarify the timing of the full adaptive management strategy.

It would be helpful for BLM to include a specific timeline for each step of the monitoring implementation strategy in a chart. The DEIS provides some timelines, but not for every step. For example, monitoring is at least biennial, but the soft trigger is for an *annual* decline in habitat. If monitoring is every two years, that means the first year of decline will not be noticed.

> The analysis shall be detailed in a written report that includes descriptions of existing land uses, land ownership patterns, history of population and habitat trends in the area, condition of the habitat, cause(s) of habitat and/or population decline, recommendations of management actions to address the potential causes of decline, and the data and expertise used to reach conclusions presented in the report.

We recommend that the above written analysis also include disturbance percentages and that these reports are made available to the public for example, the BLM can create a page on the sage grouse page.

> An annual review of habitat and population information between the BLM and associated state wildlife agency is *encouraged* even if no thresholds are identified. DEIS 2-122

Annual reviews should be required. The Bureau cannot manage sage grouse habitat without an accurate and contemporaneous understanding of the state of the population.

J. Failure to use consistent Habitat Management Area designation definitions

Page 2-12 shows the variation by alternative of PHMA and GHMA acreage allocations. Appendix 3 describes the differences by state in the allocations and mapping approaches. Most states include all occupied habitat with PHMA and GHMA while others (e.g., UT) leave some occupied habitat unprotected. Just as BLM attempted to make lek definitions consistent, BLM should strive to make habitat management area allocations consistent. Absent this consistency, it is difficult to understand the relative value of PHMA and GHMA across the range and evaluate effects. For example, it is difficult to evaluate how each alternative treats occupied habitat and suitable (unoccupied) given the variance in definitions.See Table 1.

Table 1. Summary of PHMA GHMA and other habitat management areas for each state under Alternative 5, per Appendix 3, DEIS.

State	PHMA definition -preferred alt.	GHMA definition – preferred alt.	Other habitat types
CO	PHMAs have been identified as having the highest conservation value to maintaining sustainable GRSG populations. They include breeding, late brood-rearing, and winter concentration areas.	GHMAs are areas of seasonal or year-round GRSG habitat outside of priority habitat.	
ID	In general, PHMA encompassed high and medium-high BBD (25-50%), large areas of intact, habitat (medium and high HSI, high sagebrush cover (>8%), low tree canopy cover (<30%), and low annual herbaceous cover (<20%)), important connectivity and seasonal habitat, especially winter, as evidenced by telemetry locations, and a lack of disturbance (e.g., fire, anthropogenic features).	GHMA encompassed the lowest quality habitat and BBD (100% or outside the 10km occupied lek buffers) and mesic habitats used in summer (e.g., wet meadows, alfalfa fields).	IHMA serves to connect and buffer PHMA and encompassed slightly lower quality and/or more fragmented habitat, with lower BBD (50-100%).
MT/Dakotas	Areas with limited impacts containing substantial and high quality GRSG habitat that have been identified as having the highest conservation value to maintaining both sustainable sage-grouse populations and the range of GRSG.	Areas with or without ongoing or imminent impacts containing seasonal or year-round habitat outside other habitat management areas, including for the purpose of promoting movement and genetic diversity.	CHMA: Areas that provide regions of connectivity important to facilitate the movement of GRSG and maintain ecological processes, including between priority populations, adjacent states, and across international borders.
NV/CA	Areas that have been identified as having the highest conservation value to maintaining sustainable Greater Sage Grouse populations. These areas are occupied seasonally or year-round and	An area that is likely to be occupied seasonally or year-round outside of a Priority Habitat Management Area and where management will apply to sustain	

	include breeding, late brood-rearing, and winter concentration areas.	the Greater Sage Grouse populations.	
OR	BLM-administered lands identified as having the highest value to maintaining sustainable GRSG populations. Areas of PHMA largely coincide with areas identified as Priority Areas for Conservation in the USFWS's COT report.	BLM-administered lands where some special management will apply to sustain GRSG populations; areas of occupied seasonal or year-round habitat outside of PHMA.	
UT	Hard to tell exactly. Alt. 5 is a modification of the 2015 definition: BLM-administered lands identified as having the highest value to maintaining sustainable GRSG populations. Areas of PHMA largely coincide with areas identified as Priority Areas for Conservation in the USFWS's COT Report. These areas include breeding, late brood-rearing, winter concentration areas, and migration or connectivity corridors.	Hard to tell exactly. Alt. 5 is a modification of the 2015 definition: BLM-administered lands where some special management will apply to sustain GRSG populations. Areas of occupied seasonal or year-round habitat outside of PHMA.	25 occupied leks are outside of HMAs
WY	GRSG habitats that have the highest conservation value for maintaining or increasing GRSG populations.	all occupied and potential GRSG habitats not designated as PHMA or SHMA.	SHMA: GRSG habitats that are generally characterized by large percentages of private land, existing disturbance and prior and existing rights, and fragmented landscapes but that continue to support substantial populations of GRSG, provide important connections between populations, and are important for maintaining GRSG populations. Management in SHMA is consistent with GHMA restrictions.

The DEIS shows how each alternative allocates PHMA and GHMA. Table 2, below, shows these allocations. Confusingly, the total acreages (PHMA+GHMA) vary by alternative.
Amongst the alternatives that differentiate between PHMA and GHMA, Alternative 4 appears to allocate the most acres to PHMA; the DEIS explains that this allocation reflects the most up-to-date modeling and mapping. It is good to see the BLM has identified additional PHMA in Alternative 4. Reducing PHMA acres in Alternatives 5 and 6 (compared to Alternative 4) Reducing PHMA acres in Alternatives 5 and 6 (compared to Alternative 4) will cause further habitat loss and population declines and will not meet the purpose and need of these plan amendments.

Alternative 3 has 6.5 million more acres of HMA than Alternative 4. The BLM should explain what the differences are between these alternatives.

Table 2. Habitat management area allocations under the alternatives.

	Alt 1	**Alt 2**	**Alt 3**	**Alt 4**	**Alt 5 (Preferred) & Alt 6**
Acres PHMA	32,465,000	32,535,000	69,199,000	36,701,000	34,803,000
Acres GHMA	26,383,000	25,878,000	N/A	25,946,000	23,718,000
TOTAL	58,848,000	58,413,000	69,199,000	62,647,000	58,521,000

Given the historical and anticipated declines of greater sage grouse, BLM should allocate the most acres of suitable and potential habitat to PHMA to protect habitat and reverse declining population trends.

As described at DEIS 2-11, GHMA generally are "lands that are or have the potential to become occupied seasonal or year-round habitat outside of PHMA or IHMA, managed to sustain GRSG populations." Despite this definition, GHMA are provided scant protections that are desperately inadequate for sustaining greater sage grouse populations based on the scientific studies cited in the DEIS. For instance, oil and gas leasing with few restrictions on operations is permitted throughout GHMA (with a few state by state exceptions for areas proximal to leks, see discussion on lek buffer zones above) even though it is well accepted that fluid mineral energy development has a profound negative impact on greater sage grouse persistence and the impacts are such that they are not adequately mitigated by timing restrictions and other minor surface use modifications.[44] For CO and WY, controlled surface use (CSU) stipulations are in place within 2

[44] See DEIS discussion at 4-3 to 4-4 stating that sage grouse declines in lek persistence and bird abundance resulting from energy development occur at all scales and are in part due to habitat fragmentation. ("Direct, indirect, and residual impacts from energy development accrue both locally and cumulatively at the landscape scale. GRSG populations typically decline following oil and gas development (Holloran 2005; Walker et al. 2007a; Doherty et al.

miles of a lek and otherwise open without restriction; in Idaho, MT, Dakotas, NV, CA, CSU stipulations are required; and Utah's approach differs by field office. Allowing surface disturbance from energy development without sufficient disturbance caps, density restrictions, etc. in GHMA is not a management scheme that will "sustain GRSG populations."

Similarly, GHMA is open to all other types of uses and activities (although a few states provide minimal lek buffer zone protections within GHMA). As such, it exposes greater sage grouse to disturbance that is known to reduce greater sage grouse populations.

BLM must strengthen GHMA management to meet its stated intention of sustaining GHMA populations. BLM must more aggressively limit discretionary surface disturbances within the lek buffer zone and across the GHMA minimize unnecessary fragmentation and disturbance.
We support BLM identifying and including areas of connectivity. All connectivity areas should be managed as PHMA given the importance of these areas. Further all winter habitat should be protected as PHMA with the strongest protections proposed in Alternative 3 given the crucial role winter habitat plays in grouse life cycles and the limited availability of winter habitat. It is not clear from the DEIS if all winter habitat is included in PHMA.

Alternative 3 would best meet the purpose and need and BLM's obligations under its sensitive species policy by providing strong protections for all sage grouse habitat and the bird's life cycle needs.

II. VIOLATIONS OF THE FEDERAL LANDS POLICY AND MANAGEMENT ACT (FLPMA)

A. Special-Status Species Policy

BLM's failure to revise the plan amendments toward true conservation does not follow BLM's internal policies that mandate species protection. BLM Manual 6840, also known as the "special-status species" policy, "provide[s] policy and guidance for the conservation of BLM special status species and the ecosystems upon which they depend on BLM-administered lands." Its objective for "sensitive" species that are not currently listed under the Endangered Species Act (ESA), including the sage grouse, is to "initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA." *Id.* In addition, "land use plans shall be sufficiently detailed to identify and resolve significant land use conflicts with Bureau sensitive species without deferring conflict resolution to implementation-level planning. *Id.* § 6840.2.B.

2008). Indirect effects are habitat degradation or utilization displacement and are estimated to occur out to 11.8 miles from leks (Naugle et al. 2011).")

For sage grouse, complying with the special status species policy means ensuring that existing regulatory mechanisms are adequate to protect the species. In 2010, the U.S. Fish and Wildlife Service (USFWS) found that the greater sage grouse was "warranted" for ESA listing, in part because existing regulatory mechanisms, including BLM land-use plans, did not "adequately address the conservation needs" of the species, and were "exacerbating the effects of threats to the species" from habitat loss and degradation." USFWS 2010, 75 Fed. Reg. 13979. For instance, USFWS identified significant regulatory shortcomings with respect to energy development on BLM lands:

> Stipulations commonly applied by BLM to oil and gas leases and permits do not adequately address the scope of negative influences of development on sage grouse. . . . In addition, BLM's ability to waive, modify, and allow exceptions to those stipulations without regard to sage grouse persistence further limits the adequacy of those regulatory mechanisms in alleviating the negative impacts to the species associated with energy development.

(USFWS 2010, 75 Fed. Reg. 13979) The 2015 plans promised a "paradigm shift" in sage grouse conservation, and as a result in 2015 USFWS found that listing the species was no longer warranted (USFWS 2015, 80 Fed. Reg. 59858). As described in this letter, BLM's implementation of the 2015 plans has reduced their effectiveness and called into question the ongoing validity of the 2015 "not warranted" finding. For example, BLM did not prioritize oil and gas leasing outside of sage grouse habitat, as promised, and BLM continued to undermine the effectiveness of its lease stipulations by readily granting exceptions, modifications, and waivers. Meanwhile, sage grouse populations have continued to decline, indicating that the conservation measures adopted in 2015, and as implemented by BLM, are inadequate. Nevertheless, in the 2024 DEIS for the Proposed Plan amendments, BLM includes several alternatives, including its preferred alternative, that would weaken protections compared with the 2015 plans, and thereby exacerbate threats to greater sage grouse across the West.

Adopting the Preferred Alternative or any other alternative that weakens protections in comparison to the status quo would be contrary to the special status species policy, which requires BLM to minimize the likelihood of ESA listing and thus ensure that adequate regulatory mechanisms are maintained on BLM lands. It does not matter whether the policy contains requirements or only guidelines – either way, the BLM violates FLPMA by completely disregarding its own policies on the drafting of RMPs. *See Atchinson v. Wichita Board of Trade*, 412 U.S. 800, 808 (1973) (where agency modifies or overrides its longstanding precedents or policies, it "has the duty to explain its departure from prior norms"); *W. Watersheds Project v. Salazar*, No. 4:08-CV-516-BLW, 2011 U.S. Dist. LEXIS 111728, at *48 (D. Idaho Sep. 28, 2011).

For example, rather than adopt meaningful conservation strategies for sage grouse by limiting grazing use in accordance with the best available science, the Bureau is doing exactly the opposite of what the SSP says: "Land Health Standards should be used for managing Bureau sensitive species habitats until range-wide or site-specific management plans or conservation strategies are developed." *Emphasis added.* This planning process – these RMPAs – are the plans in which conservation strategies should be developed. Punting to subsequent future land health assessments is inadequate and will lead to uneven application of the science due to local manager's discretion.

The DEIS frequently suggests that BLM is seeking to "balance" sage grouse conservation objectives with its "multiple use" mission under FLPMA. But providing for "multiple-use, sustained yield" management does not require BLM to maximize development opportunities by leaving priority habitats open to fluid mineral leasing and other harmful land uses. FLPMA defines "multiple use" as:

> [T]he management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; *the use of some land for less than all of the resources*; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment *with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output*. Emphasis added.

43 U.S.C. § 1702. "It is past doubt that the principle of multiple use does not require BLM to prioritize development over other uses." N.M. ex rel. Richardson v. BLM, 565 F.3d 683, 710 (10th Cir. 2009). Further, BLM's "multiple use" mandate does not prevent BLM from closing areas to development to further conservation objectives. *Id.* Here, BLM should follow the best available science by closing priority habitats to fluid mineral leasing and restricting development on existing leases, as discussed above. Alternative 3 would accomplish these conservation closures for livestock grazing.

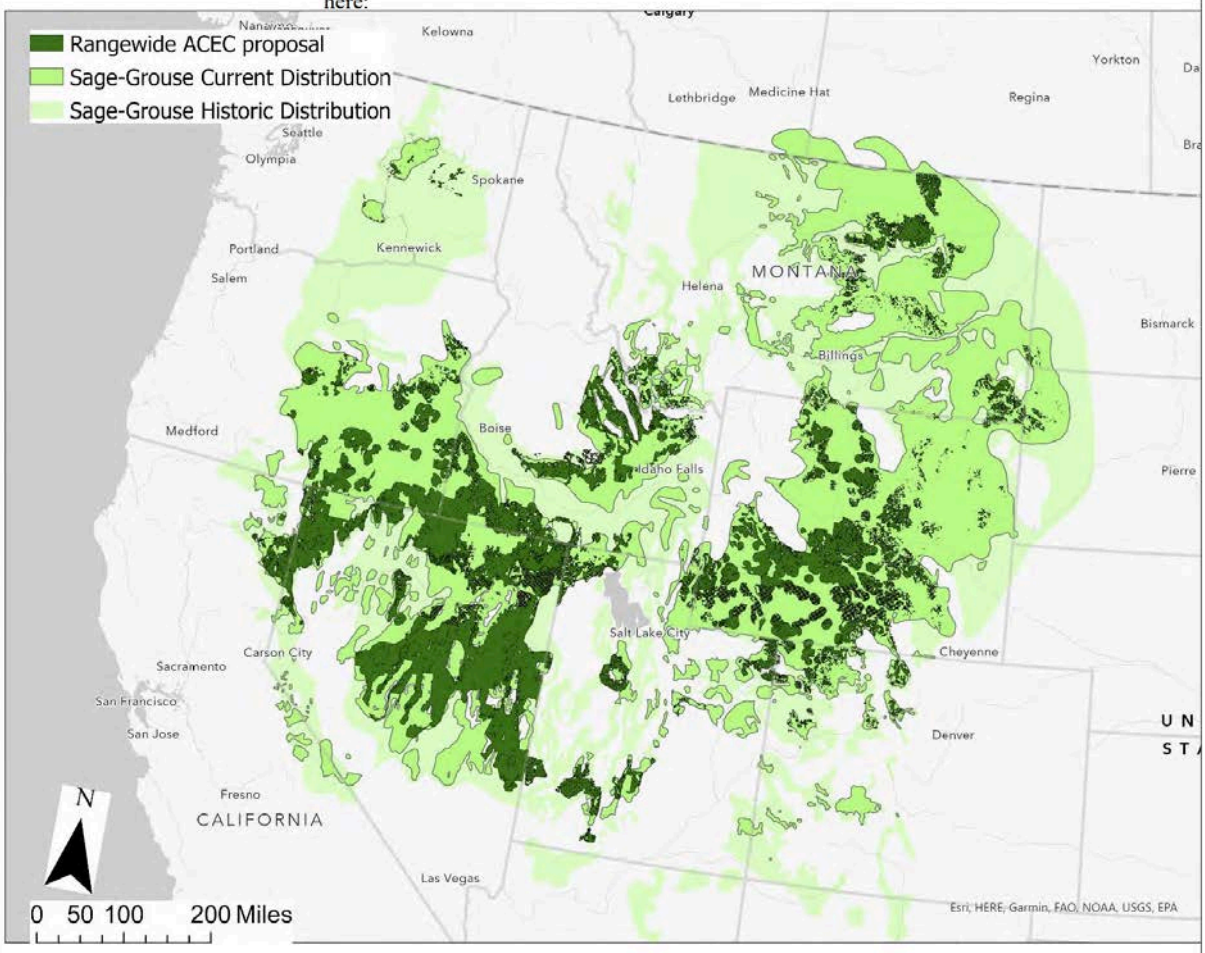
B. Sage Grouse Area of Critical Environmental Concern

Conservation groups have advanced a proposed Sagebrush Sea Reserve Area of Critical Environmental Concern (ACEC) network pursuant to the new sage grouse RMPA planning process (See Attachment B.). The ACEC nomination was submitted to Patricia Deibert, Acting National Sage Grouse Coordinator for the Bureau of Land Management in Salt Lake City, Utah, by numerous conservation organizations on February 8, 2022.

This nomination exceeds the necessary criteria for establishing an ACEC. The areas in question are both relevant and important, identified by agencies as sagebrush habitat that is necessary to sustain the imperiled sage grouse. The nomination is largely informed by the US Fish and Wildlife Service's Conservation Objectives Team Report (2013), the BLM National Technical Team Report (NTT 2011), and recent best available science. As climate change continues to take a toll on greater sage grouse habitat, it is imperative that we reduce human-induced stressors on the sage grouse's habitat.

Describe the Area to be Nominated

General location description: The Sagebrush Sea Reserve ACEC network includes much of the currently occupied priority habitats of the Greater sage-grouse (GrSG) in 10 western states. Map included here:



Acreage: 48,202,418 acres

Values considered: Biological; Ecological; Wildlife Habitat, especially for the Greater Sage-grouse (GrSG); Imperiled, Sensitive and Migratory Species Habitat; Resilient Sagebrush Habitat.

The nominated network of Sagebrush Sea Reserves ACECs contains the most important habitat for greater sage grouse across its range and includes habitat for other sensitive and threatened native species that rely on healthy sagebrush systems. The current proposed network of ACECs has already been identified by USFWS in coordination with state wildlife agencies to contain habitat that is valuable and necessary for all greater sage grouse life stages, including lekking, brood-rearing, and winter range (USFWS 2013).

More specifically, we based this map on the sage grouse Priority Areas for Conservation (PACs, *Id*.). The PACs were delineated in a joint effort of the US Fish and Wildlife Service and state fish and wildlife agencies, based on the 75% sage grouse breeding density analysis performed by

Doherty et al. (2010) which captured all the area (within a 4-mile radius) around 75% of the leks across the range. In addition, to ensure connectivity within and between the PACs, the PACs also reflect important winter and/or brood rearing habitats that were known at the time. Moreover, because the proposed network of Sagebrush Sea Reserve ACECs include, by design, a mixture of the most important breeding habitat and winter and/or brood rearing habitat, the network incorporates a diverse assemblage of different sagebrush species and associated herbaceous species, elevations, aspects and soil types.

Currently high-functioning and properly conserved sagebrush communities with adequate resiliency, redundancy, and representation critical to support GrSG and other sagebrush dependent at-risk species are rare and declining (Remington et al. 2021). As discussed in the attached Nomination Report in the section on long-term resilience of sagebrush systems in the West (and also discussed in Remington et al. 2021), many models currently indicate that sagebrush cover is vulnerable to a drying and warming climate.

ACECs should be included for consideration in every action alternative. FLPMA directs BLM to "give priority to the designation and protection of [ACECs]" during planning processes such as this.[45] The recent Conservation and Land Health Planning Rule, which should be taking effect in June of 2024, underscores the importance of ACECs as "the principal designation for public lands where special management attention is required to protect important natural, cultural, and scenic resources," and "emphasize[s] the requirement that the BLM give priority to the identification, evaluation, and designation of ACECs" as part of planning processes.[46]

ACECs provide a mechanism to protect current intact habitat, and also to restore degraded habitat as well.

The Bureau of Land Management promulgated a final rule,[47] pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, and other relevant authorities, to advance the BLM's multiple use and sustained yield mission by prioritizing the health and resilience of ecosystems across public lands. To support ecosystem health and resilience, the rule provides that the BLM will protect intact landscapes, restore degraded habitat, and make informed management decisions based on science and data. To support these activities, the rule applies land health standards to all BLM-managed public lands and uses, codifies conservation tools to be used within FLPMA's multiple-use framework, and revises existing regulations to better meet FLPMA's requirement that the BLM prioritize designating and protecting areas of critical environmental concern (ACECs).

[45] 43 U.S.C. § 1712(c)(3).
[46] 88 Fed. Reg. at 19,593 (April 3, 2023).
[47] 43 CFR Part 6000 and 1600

The rule also provides that the BLM may, at the agency's discretion, implement temporary management for potential ACECs identified outside of an ongoing planning process until the potential ACEC can be evaluated for designation through a land use planning process[48]. Agencies should use this direction to analyze impacts to the nominated ACEC.

C. The Bureau Should Retain or Expand Ungrazed Research Natural Areas

An indispensable part of the Bureau's science-based response to help reverse the sage grouse's decline in Oregon is new research to be conducted in 15 specially identified "key" Research Natural Areas ("RNA") which the 2015 ARMPA closed to livestock grazing. 2015 Oregon Approved Resource Management Plan Amendment (hereafter "2015 Oregon ARMPA") at 2-18. The Bureau determined these areas to be critical for sage grouse conservation both because of their high habitat value for the bird and their high scientific and management value as reference areas to gauge the plan's effectiveness. 2015 Oregon Greater Sage Grouse Proposed RMPA/Final EIS (hereafter "2015 Oregon FEIS") at 2-44 to -45.

RNAs are a "special type of ACEC" whose "primary purpose" is "research and education" and are "designated . . . to protect special intact representative native plant communities." 43 C.F.R. § 8223.0-5(a); 2015 Oregon ARMPA at 5-11. Through the recently approved Public Lands Rule, the Bureau has now codified RNAs "as a type of ACEC designated for the primary purpose of research and education on public lands, consistent with existing regulations (43 CFR subpart 8223) and policy." Conservation and Landscape Health, 89 Fed. Reg. 40,313 (May 9, 2024) (to be codified at 43 C.F.R. § 1610.7–2(e)).

The Bureau needs ungrazed reference areas to compare to grazed areas, evaluate how curtailing livestock grazing might benefit sage grouse, and adjust future management of the vast areas in Oregon (and beyond) where it allows grazing. *See* 2015 Oregon FEIS at 8-21 (describing reasons for identification of key RNAs). Ungrazed Key RNAs provide essential information because, as the Bureau has explained, "the lack of large representative tracks of ungrazed habitat makes it nearly impossible to determine and monitor the actual consequences of livestock grazing." 2018 Oregon Greater Sage Grouse Proposed RMPA/Final EIS (hereafter "2018 Oregon FEIS") at 4-7. These reference sites will allow the agency to understand how to better manage the 12,083,622 acres of public land that remain available for grazing in sage grouse habitat in eastern Oregon. 2015 Oregon FEIS at 2-18.

The Bureau dragged its feet on implementing the 2015 closures. The agency is currently under court order to comply with the 2015 RMPA direction. *Or. Nat. Desert Ass'n v. Bushue* ("*Bushue I*"), 644 F. Supp. 3d 813, 844 (D. Or. 2022) (holding that BLM had unlawfully withheld implementation of the closures and ordering that "BLM must make unavailable to grazing the

[48] 43 CFR Part 6000 and 1600 at 22.

portions of the key RNAs specified in the 2015 ARMPA without further delay"); *Or. Nat. Desert Ass'n v. Bushue* ("*Bushue II*"), 672 F. Supp. 3d 1101, 1107 (D. Or. 2023) (adopting stipulated remedy in which BLM agreed to "a detailed plan for immediate, intermediate, and permanent actions to carry out the key RNA closures").

Under Alternatives 5 and 6, however, the Bureau would reverse course, abandon this science-based management strategy, and partially or entirely return livestock grazing to all but one (East Fork Trout Creek) of the 13 newly closed Key RNAs.[49] The Bureau does not provide a cogent explanation for why making livestock grazing available within key RNAs is appropriate—that is, scientifically justified—in 2024 when it was not in 2015, particularly given the fact that Oregon's sage grouse population continues to decline and has plummeted by more than 20% just since the agency adopted (but has still failed to fully implement) the 2015 plan. The Bureau's Preferred Alternative also is inconsistent with the *Bushue* court's finding that "the need for scientific management of grazed lands to promote the survival of sage grouse" is "a significant public good." *Bushue I*, 644 F. Supp. 3d at 842 (internal quotation marks omitted).

As explained in more detail in the Oregon Natural Desert Association's ("ONDA") comment letter on this DEIS, we are concerned with (1) the Bureau's failure to conduct required "conservation benefit" analyses with regard to implementation of fenced-off research areas, (2) the fact that abandoning scientific research and re-allocating areas to livestock grazing is inconsistent with the Bureau's ACEC and RNA regulations, (3) and the fact that allocating portions of Wilderness Study Areas as available to livestock grazing is inconsistent with FLPMA and binding Bureau policy on the FLPMA non-impairment mandate. ONDA also persuasively explains, for each key RNA, why most of the Bureau's proposals to reduce or eliminate ungrazed research areas are objectionable and unsupported by the record before the agency. Finally, ONDA explains why, if the Bureau does elect to reduce or eliminate any of the key RNA ungrazed reference areas, the agency should identify other ACECs or RNAs to substitute for any abandoned areas—given the Bureau's finding that the 15 key RNAs identified in 2015 represent the "minimum" number of research areas needed to produce meaningful, statistically significant information. We incorporate ONDA's comments by reference.

D. Compensatory Mitigation

Alternatives 4, 5, and 6 would likely increase the use of compensatory mitigation relative to current management, with Alternatives 5 and 6 specifically formulated to provide more opportunities for considering compensatory mitigation, because these alternatives provide less protection and more development and extraction than Alternative 4 and much less than

[49] Two of the Key RNAs, Foster Flat and Guano Creek-Sink Lakes, were already closed to grazing prior to the 2015 ARMPA.

Alternative 3. However, compensatory mitigation is already conducted in some states (including Idaho and Nevada) under current management, and BLM provides no information regarding the effectiveness of these current efforts. BLM also provides no data or analysis showing that compensatory mitigation under the proposed plan amendments would be effective. This makes the DEIS legally inadequate. BLM must consider the effectiveness of any proposed compensatory mitigation measures before authorizing their use.

The "hard look" required under NEPA entails a "sufficientl[y] detail[ed]" examination of any proposed mitigation measures to "ensure that environmental consequences have been fairly evaluated." *City of Carmel-by-the-Sea v. U.S. DOT,* 123 F.3d 1142, 1154 (9th Cir. 1997) (*quoting Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 353 (1989)). An agency's NEPA analysis should focus on the effectiveness of any proposed mitigation measures. *Western Watersheds Project v. Salazar*, 993 F. Supp. 2d 1126, 1139 (C.D. Cal. 2012), aff'd, 601 Fed. Appx. 586 (9th Cir. 2015). Vague agency assurances that certain adverse environmental consequences will not occur because the agency or a third party will take unspecified future actions to avoid such results does not satisfy NEPA's requirements. *See e.g., Oregon Natural Res. Council v. Marsh*, 832 F.2d 1489, 1493 (9th Cir. 1987), *rev'd on other grounds*, 490 U.S. 360 (1989) (rejecting EIS that relied on assurances that mitigation measures "will be developed"); *High Country Conservation Advocates v. United States Forest Service*, 52 F. Supp. 3d 1174, 1197 (D. Colo. 2014) ("The agency cannot rely on unsupported assumptions that future mitigation technologies will be adopted."); *High Sierra Hikers Ass'n v. U.S. Dept. of Interior*, 848 F. Supp. 2d 1036, 1049-1051 (N.D. Cal. 2012) (stating that "the EIS cannot merely assert a perfunctory description of mitigating measures").

Here, BLM must consider whether compensatory mitigation under the 2015 plans has been effective in achieving the "net conservation gain" requirement, or whether various state-based compensatory mitigation programs would achieve "no net loss" under the proposed plan amendments. The DEIS fails to even disclose or discuss different state mitigation strategies.

Available data indicates that compensatory mitigation has failed to live up to BLM's promises thus far. For example, the State of Nevada's "Conservation Credit System" purports to achieve a "net conservation gain; however, there are numerous, documented ways in which the CCS fails to provide an adequate conservation benefit to compensate for the loss of high-quality occupied sage grouse habitat. Most notably, the effectiveness of CCS "credit" programs in conserving and restoring sage grouse habitats and populations has never been analyzed, meaning their actual conservation benefit is currently unknown. *See* Recording of Nov. 2, 2023 Meeting of the Sagebrush Ecosystem Council, available at: https://sagebrusheco.nv.gov/Meetings/2023/2023/. Critically, the CCS has entirely failed to document how participating projects apply the "mitigation hierarchy," even though this is ostensibly a mandatory component of the CCS program. CCS and BLM records do not document whether or how disturbances from

BLM-authorized projects are avoided or minimized, and neither BLM nor the State of Nevada has developed measurable criteria or guidelines for avoidance and minimization. BLM and the State often assume that the costs of mitigation (e.g., the market-based price for "credits" under the CCS system) result in avoidance and minimization; however, no evidence exists for this proposition, and BLM's permitting for specific projects suggests project proponents often select offsite compensatory mitigation in lieu of avoidance or minimization. For example, BLM authorized the use of compensatory off-site mitigation for the Goldrush mining project in central Nevada, even though the Nevada Department of Wildlife predicted that the project would likely extirpate several demographically important leks (BLM 2023).

In addition, the CCS relies almost exclusively on "stewardship" actions to protect existing areas of habitat on privately owned lands and essentially maintain the "status quo" in those locations. *See* State of Nevada, Conservation Credit System Manual, Version 1.6.21 (Jan. 2021), p. 14. While proper land stewardship can maintain areas of existing functional habitat, it cannot adequately compensate for the complete loss of habitat elsewhere, or the connectivity and population impacts that result from such losses. Over-reliance on stewardship of existing habitat on private lands (with varying degrees of functionality) to compensate for loss or degradation of functional habitat on public lands results in a net loss of functional habitat and populations over time. Further, there is evidence that certain stewardship projects have not been successful. *See* Recording of Nov. 2, 2023 Meeting of the Sagebrush Ecosystem Council, *supra*.

Restoration or "uplift" actions under the CCS likewise fail to fully compensate for the loss of functional sage grouse habitat. As discussed elsewhere in this letter, sagebrush restoration can be extremely difficult in practice, and many techniques do not consistently produce the intended results. It is also a long-term process, meaning success can only be ascertained after a considerable amount of time has passed—often decades. As such, the conservation outcomes of restoration actions taken pursuant to CCS mitigation transactions cannot be objectively measured at the time of the transaction. And, at this early stage, it is unclear whether the system is equipped to compensate for restoration failures or restoration actions that do not prove durable over time. In any case, decades-long restoration efforts cannot effectively compensate for the present loss of habitat from energy development, mining, livestock grazing or other uses—such losses are by nature sudden and severe.

The inadequacies of the CCS are most apparent when one considers the actual population-level impacts of anthropogenic disturbance on greater sage grouse in Nevada. By the State of Nevada's own admission, the CCS does not adequately account for the population impacts of anthropogenic disturbance, and cannot compensate for the permanent loss of leks. Nevada Sagebrush Ecosystem Council, Meeting Minutes, March 2, 2023. sage grouse populations across the State have continued to decline, despite the BLM's "net conservation gain" requirement, and new science has shown that anthropogenic disturbances are driving population declines. Nevada

Sagebrush Ecosystem Technical Team, Staff Report Incorporation Of Greater sage grouse Population Space Use Into CCS Version 1.8, March 2, 2023. By the State's own admission, the CCS does not currently account for or mitigate many of these impacts.

Although the State's Sagebrush Ecosystem Council recently adopted minor changes in the ways it calculates "credits" and "debits" for CCS transactions, these changes do not adequately compensate for all of the demographic or population-level impacts of anthropogenic development. *See* Recording of Nov. 2, 2023 Meeting of the Sagebrush Ecosystem Council, supra. Moreover, there is no effective mitigation under the CCS for the loss of leks, particularly the loss of critical "source leks." *See id.*; *see also* Nevada Sagebrush Ecosystem Council, Meeting Minutes, March 2, 2023.

Given that population impacts and lek loss are currently not accounted for in CCS mitigation transactions, it is difficult to envision how this system can achieve a "net conservation gain." And, because sage grouse populations and lek attendance continue to decline, it is likely that the system is failing to achieve even "no net loss." Some impacts simply cannot be mitigated through a market-based transaction, and the loss of some important habitats—such as "source leks" in the case of sage grouse—is simply not mitigable.

The 2024 sage grouse EIS has abandoned the "net conservation gain" standard for a minimum standard of "no net loss" for Alternative 4, 5 and 6. The science is clear that Greater sage grouse population declines will not reverse, much less stabilize, if widespread sagebrush habitat loss continues across the range. The BLM's current proposed minimum standard of no net habitat loss in its Preferred Alternative is insufficient to reverse trends of sagebrush loss and fragmentation and greater sage grouse population decline. Strictly adhering to the principle of "no net loss" in both PHMA's and GHMA's is a critical component for greater sage grouse management.

While Nevada appears to have the most well-developed and formalized compensatory mitigation system in place, the problems described above are by no means limited to Nevada, and would likely be exacerbated if the proposed compensatory mitigation requirements were implemented in an ad-hoc, project-by-project manner.
BLM must also consider that many State compensatory mitigation programs, including Nevada's, tend to over-rely on vegetation treatment programs of limited or questionable effectiveness. There is no scientific support for most vegetation treatment methods currently employed by BLM as a means of improving grouse habitats, and to the contrary, numerous studies highlight negative impacts to sage grouse of these practices.

Heath et al. (1997:50) stated: "Based on our results, we recommend no reduction or control of sagebrush in areas containing between 18-30% live sagebrush canopy coverage within 4.5 km of

leks." Connelly et al. (2000) recommended against habitat manipulation in sagebrush stands of 10-30% canopy cover heights of at least 25 cm to protect winter habitats. Beck and Mitchell (1997) recommended against sagebrush control projects when canopy cover is less than 20 percent, and recommended against any sagebrush control within 2 miles of leks. The Conservation Objectives Team report (COT 2013: 44) recommended the following: "Avoid sagebrush removal or manipulation in sage grouse breeding or wintering habitats." In BLM's own 2006 paper titled Review of Livestock Grazing Management of Sage Grouse Habitat BLM determined from its review of the literature that "No treatment should be considered where sagebrush cover is less than 20 percent or within 2 miles of breeding, nesting, or brood areas."

Even in areas with less than 3.5% habitat disturbance through vegetation treatments, these vegetation treatments have been found to have a significant negative effect on sage grouse populations (Holloran and Belinda 2009). According to Beck et al. (2012:444), "The preponderance of literature indicates that habitat management programs that emphasize treating Wyoming big sagebrush are not supported with respect to positive responses by sage grouse habitats or populations."

Arkle et al. (2014) made a comprehensive study of the effectiveness of restoration activities in burned sagebrush. They found that restoration actions did not increase the probability of burned areas meeting most guideline criteria. Of 313 plots seeded after fire, none met all sagebrush guidelines for breeding habitats. Less than 2% of treated plots met winter habitat guidelines. They concluded that sage grouse are relatively unlikely to use many burned areas within 20 years of fire, regardless of treatment, and that reestablishing sagebrush cover will require more than 20 years using conventional restoration methods (Arkle et al., 2014). Their findings reiterate the importance of reducing threats to sage grouse in their remaining occupied habitats and underline the need to avoid any use of prescribed fire in sage grouse habitat.

Hess and Beck (2014) also looked at the effectiveness of sage grouse habitat restoration actions. They found that neither mowing nor prescribed burning promoted statistically significant increases in sage grouse nesting or early brood-rearing habitat attributes such as cover or nutritional quality of food forbs, or counts of ants, beetles, or grasshoppers compared with reference sites.

Juniper-removal projects in sage grouse habitat may result in expansion of cheatgrass (Evans and Young 1985, Bates et al. 2005). This is particularly concerning where such projects involve mature juniper woodlands with little sagebrush understory. BLM has failed to adequately analyze the differences in impacts of invasive species resulting from juniper removal in stands of different densities and ages. Based on our review of the science, juniper removal (using hand-cutting and jackpot burning) in areas where junipers are sparse and young and sagebrush-grass understory is healthy (without a large component of cheatgrass) does not result

in severe cheatgrass expansion when the area is protected from livestock grazing for two-plus years post-treatment, whereas projects that do not meet these criteria pose major cheatgrass risks and are likely to result in the further degradation, rather than restoration, of sage grouse habitats.

Sagebrush recovery times following disturbance can be quite long. BLM's own past NEPA analysis concedes, "In the absence of cheatgrass, Wyoming big sagebrush sites can take 150 years to recover." Nevada/Northeast California Greater Sage Grouse RMP Amendment DEIS (2014) at 608. Where cheatgrass is present, it can become dominant following disturbance, forming a monoculture characterized by unnaturally frequent fire return intervals that can effectively prevent the recovery of sagebrush and perennial grasses on a long-term if not permanent basis. For Oregon, BLM states, "In Wyoming big sagebrush sites, full recovery to pre-burn sagebrush canopy cover conditions will take over 100 years (Cooper 2007); . . . ." Oregon Greater Sage Grouse RMP Amendment DEIS (2014) at 3-70. More generally, BLM states, "Sagebrush recovers slowly from fire; most species do not resprout but must be replenished by wind-dispersed seed from adjacent unburned stands or seeds in the soil. Depending on the species and the size of a burn, sagebrush can reestablish itself within five years, but a return to a full pre-burn community cover can take 50 to over 100 years (Baker 2011)." Oregon Greater Sage Grouse RMP Amendment DEIS (2014) at 4-10.

Dr. Jack Connelly provided this assessment of sagebrush and vegetation manipulation efforts in 2019:

> (1) [S]agebrush and vegetation manipulation efforts – including mechanized methods using aerator with seeding, harrow or chain with seeding, drill seeding, hand planting plugs, and aerial seeding – are generally harmful to sage grouse populations, with only weak evidence (at best) suggesting some treatments might be helpful.
>
> (2) Despite this scientific information, the 2019 Idaho and Wyoming Plan Amendments permit prescribed burns and other sagebrush treatments as acceptable vegetation management practices in sage grouse habitat. The 2019 Idaho Plan Amendments specifically allow[] these sagebrush manipulation and eradication methods, noting "[w]here desirable perennial bunchgrasses or forbs are deficient in existing sagebrush stands, use appropriate mechanical, aerial, or other techniques to reestablish them (e.g., a Lawson aerator with seeding, harrow or chain with seeding, drill seeding, hand planting plugs, aerial seeding, or other appropriate techniques)."
>
> (3) The adverse impacts flowing from BLM's vegetation treatment projects will be further exacerbated by BLM's plans for fuels management activities. According to the 2019 Idaho and Wyoming Plan Amendments, fuels management activities – including construction of firebreaks; prescribed fire; and mechanical, chemical and biological fuels management – are specifically exempted from any

> disturbance limitations in sage grouse habitat. In fact, these fuels management treatments may occur within the lek buffers in key sage grouse habitat.
>
> (4) BLM's fuels treatment activities are inconsistent with the best available scientific information on sage grouse habitat and populations, and BLM provides no sound scientific support for its actions. Instead, BLM outright misrepresents leading research on this topic . . . in an apparent effort to manufacture a scintilla of scientific evidence supporting its activities. For example, in the 2019 Wyoming Plan Amendments, BLM justifies a robust vegetation treatment regime by claiming that a desired condition for sage grouse breeding and nesting habitat includes 5-25% sagebrush canopy cover . . .
>
> (5) Absent these gross mischaracterizations, BLM lacks any scientific evidence supporting its decision allowing 5% sagebrush cover as a "desired condition," and compelling evidence indicates 5% canopy coverage is far too low for sage grouse nesting habitat. In my judgment, managing sagebrush landscapes for a 5% sagebrush cover will harm sage grouse populations and habitat, under the guise of restoring or improving both.
>
> (6) Finally, in the 2019 Idaho Plan Amendments BLM reasonably limited mechanized anthropogenic disturbance in nesting habitat during the nesting season and in wintering habitat during the winter season. But BLM then emasculates the importance of this reasonable and necessary conservation measure by exempting fuels and vegetation treatments "specifically designed to improve or protect Greater sage grouse habitat." BLM cites no scientific authority supporting this exemption, and in my experience any activity that disturbs nesting hens is likely to result in nest abandonment and/or increased nest predation. Thus, BLM must prohibit all mechanized anthropogenic disturbance in breeding and winter habitat during the breeding and winter season.

Declaration of John W. Connelly, *Western Watersheds Project v. Bernhardt*, No. 1:16-CV-83-BLW, ECF 124-5 (April 19, 2019)(Attached in references). BLM should be particularly skeptical of mitigation or restoration actions that utilize prescribed fire. Prescribed fire can result in a loss of sagebrush dominance for 25-45 years, and may also result in increased erosion (Sedgwick 2004). Cooper et al. (2007) projected the full recovery of Wyoming big sagebrush canopy cover would take 625 years based on their observed recovery rates following prescribed fire (a biologically improbable outcome), and no recovery at all was recorded following prescribed fire on 17 of 24 sites. Close proximity to seed sources and more moist conditions did not accelerate recovery in this study. These researchers concluded, "Wyoming big sagebrush recovery takes so long that managers considering prescriptive burns need to have a long-term view of the landscape before eliminating a sagebrush habitat that will not return for at least a century" (Cooper et al. 2007:12). Rhodes et al. (2010) found that fires resulted in loss of sagebrush cover and increases in perennial grasses and invasive forbs, while native forbs did not

increase in yield or nutritional quality, and ants (a significant part of the diet of sage grouse chicks) also decreased. Beck et al. (2011) stated, "In particular, prescribed burning leads to pronounced negative response in sagebrush cover that lasts for at least a few decades," and recommended against burning in Wyoming big sagebrush.

Baker (2006) and Bukowski and Baker (2013) have shown that natural fire return intervals (without livestock) are far less frequent than current fire return intervals in sagebrush systems (with livestock grazing everywhere), particularly in lowland systems dominated by Wyoming big sagebrush. Hess and Beck (2012) found that neither burned nor mowed areas produced suitable sage grouse habitats. Wamboldt et al. (2001:24) stated:

> "Natural or prescribed burning of sagebrush is seldom good for sage grouse. This assessment recommends that fires within sage grouse habitat be avoided in most cases, and should be allowed only after careful study of each local situation. The evidence also indicates that habitat loss due to fire may well be the most serious of all the factors contributing to the decline of sage grouse."

Finally, the DEIS's statements on compensatory mitigation in the hardrock mining context misconstrues the applicable laws and contradict recently issued guidance which reaffirms BLM's authority to require compensatory mitigation for hardrock mining operations. See 43 C.F.R. § 3809.420(a)(4). According to current BLM policy, "[m]itigation measures fall squarely within the actions [BLM] can direct to prevent unnecessary or undue degradation of the public lands. An impact that can be mitigated, but is not, is clearly unnecessary." 65 Fed. Reg. 69998, 70052 (Nov. 21, 2000) (preamble to rule section that remains in force); *see also* Exh. 14 (M-37039, *The Bureau of Land Management's Authority to Address Impacts of its Land Use Authorizations through Mitigation*, (Dec. 21, 2016)) at 19-20. In detailing part of BLM's duty to prevent UUD under FLPMA, the Interior Solicitor has reaffirmed that:

> [I]t is well established that the UUD provision under FLPMA provides another basis for requiring mitigation in those circumstances where impacts in the absence of mitigation would be unnecessary or undue. Although mitigation may contribute in some instances to the avoidance of UUD, in other cases, the impacts to resources may be of a nature or magnitude such that they cannot be mitigated sufficiently to prevent UUD. For example, the destruction of unique habitat in a particular place might not be adequately compensated by post-use restoration or protection of lesser habitat elsewhere. In such a case, where mitigation cannot prevent UUD, the BLM has authority to reject the application for approval of the public land use based on the proponent's inability to prevent UUD. The obligation to avoid UUD is a complementary but distinct source of authority for requiring mitigation under FLPMA.

M-37039 at 20 (reinstated by M-37075) (April 15, 2022). The DEIS fails to explain why, in light of this opinion, the proposed plan amendments would not require compensatory mitigation for hardrock mining.

For all of these reasons, BLM has failed to take a "hard look" at the proposed compensatory mitigation measures. BLM must include such an analysis in a future NEPA document before it authorizes the use of compensatory mitigation as means of preventing sage grouse habitat loss. As the discussion above illustrates, there are significant, unanswered questions regarding the efficacy of current compensatory mitigation methods in protecting and restoring sage grouse habitat. Current programs continue to result in cumulative losses of habitat and may actually harm sage grouse by encouraging scientifically unsound "restoration" projects.

We recommend that BLM restrict the use of compensatory mitigation unless all options for avoidance and minimization have been exhausted, and the proposed compensatory mitigation can be shown through reliable data and methods to be durable, timely, and in addition to that which would have resulted without the compensatory mitigation. BLM should also retain the "net conservation gain" standard for projects that utilize compensatory mitigation. Further, and as discussed throughout this letter, the plan amendments should require avoidance and minimization through restrictions on anthropogenic disturbances, livestock grazing, and vegetation removal treatments in important sage grouse habitats.

E. The Planning and Decision Area Must be Expanded.

1. The Plans Must Encompass All Leks and Other Documented Habitat on BLM-Administered Surface or Split-Estate

BLM should include a provision requiring the protection of documented sage grouse habitat on BLM surface or split-estate that is excluded from HMA designations. This should include both leks and other documented seasonal use areas located outside of designated HMAs. We suggest that the provision mirror the terms under which non-habitat may be eliminated from HMA protections. It would be arbitrary to impose a one-way ratchet on HMA boundaries that allows reductions but no expansions of boundaries based on field investigation. Protections for documented leks outside HMA should be automatically required to ensure immediate protection of breeding and nesting activities.

2. The Plans Must Cover Federal Mineral Development Activities on Private Lands, Including Fee/Fee/Fed Wells

FLPMA requires BLM to establish a land use plan to govern all federal lands and land interests, such as mineral rights. Accordingly, these plans must set the terms and conditions for development of federal minerals under BLM management in the planning area. BLM cannot, consistent with FLPMA, exclude from its land use plans any planning requirements for federal mineral development activities on private lands. We are particularly concerned with BLM's wholesale omission of requirements for Fee/Fee/Fed wells that develop federal minerals from well pads on non-federal surface overlying non-federal minerals.

We understand that BLM has taken the position that it lacks authority to regulate the surface operations for Fee/Fee/Fed wells. However, that position fails as a matter of plain statutory interpretation.

The key MLA provision is 30 U.S.C. § 226(g), which requires BLM to "*regulate all surface-disturbing activities conducted pursuant to any lease* issued under this chapter, and shall *determine reclamation and other actions as required in the interest of conservation of surface resources*." (Emphasis added). The plain text of both clauses of § 226(g) extends to Fee/fee/fed wells. The "regulate all surface-disturbing activities conducted pursuant to the lease" clause applies because surface operations on Fee/fee/fed wells are conducted "pursuant to" the federal lease. *See Pursuant To, Black's Law Dictionary* (11th ed. 2019) (defining "pursuant to" as, inter alia, "[as] authorized by" or "[i]n carrying out"). The surface operations for Fee/fee/fed wells are "authorized by" the lease because an operator cannot develop federal minerals, even from private or state lands, absent the lease. The surface operations for Fee/fee/fed wells are also conducted in "carrying out" the lease, as they discharge any contractual obligation the leaseholder may have to develop the leased minerals. *See* U.S. Dep't of Interior, Form 3100-11 § 4 (requiring lessee to "exercise reasonable diligence in developing . . . leased resources").

The only argument BLM has ever given for distinguishing the split estate and Fee/Fee/Fed contexts turns on the phrase "pursuant to" in § 226(g). BLM claims that surface operations for Fee/Fee/Fed wells are not conducted "pursuant to" the lease because the lease does not authorize use of surface lands beyond the lease boundaries. The obvious problem with this argument is that the federal lease is still what authorizes the extraction of federal minerals from those surface facilities. Although a surface use agreement is also required in the case of a Fee/Fee/Fed well, the federal lease is still a necessary authorization.

BLM's argument also ignores the "reclamation and other actions" clause of 30 U.S.C. § 226(g), which applies even if the "surface-disturbing activities" clause does not. This provision authorizes BLM to impose "reclamation" and other environmental mitigation measures "in the interest of conservation of surface resources," without regard for where the operations or surface resources are located. *See Hoyl v. Babbitt*, 129 F.3d 1377, 1380 (10th Cir. 1997); *Copper Valley Mach. Works, Inc. v. Andrus*, 653 F.2d 595, 601 & n.7 (D.C. Cir. 1981) (both confirming that the

term "conservation" under the MLA encompasses environmental protection). There is no textual basis for limiting this clause to surface resources on federal land or the lease surface, and BLM has never explained why this clause does not apply to Fee/Fee/Fed surface operations.

MLA implementing regulations further require that the developer "conduct operations in a manner which protects . . . other natural resources, and environmental quality," 43 C.F.R. § 3162.5-1(a), and "exercise due care and diligence to assure that leasehold operations do not result in undue damage to surface or subsurface resources. . . . Upon the conclusion of operations, the operator shall reclaim the disturbed surface in a manner approved or reasonably prescribed by the authorized officer." 43 C.F.R. § 3162.5-1(b) (emphasis added). These regulations are not limited to damage or disturbance to the federal surface.

FLPMA also broadly authorizes BLM to regulate the manner in which federal minerals are developed. 43 U.S.C. § 1732(b). It provides that the Secretary shall regulate the "use" and " "development" of the "public lands." 43 U.S.C. § 1732(b). The term "public lands" includes federal mineral interests. 43 U.S.C. § 1702(e). FLPMA further requires the Secretary to "take any action necessary to prevent unnecessary or undue degradation of the lands." 43 U.S.C. § 1732(b). In other words, BLM has authority to regulate the manner in which federal minerals are "developed," and at a minimum, must regulate development of federal minerals to avoid "unnecessary and undue degradation." There is nothing in the plain text restricting either authorization to activities on the federal surface. Thus, read naturally, these provisions also require BLM to regulate surface disturbance associated with Fee/Fee/Fed wells.

Fee/Fee/Fed wells potentially also fall under the provision allowing BLM to regulate the "use" of federal lands, as they may constructively "use" federal lands by impairing their viewsheds, air quality, water quality, and other resources. *See, e.g.*, *Allison v. Department of Transp*., 908 F.2d 1024, 1028 (D.C. Cir. 1990) (opining that the term "use" of national park lands under a similar statute includes significant adverse indirect impacts); *Adler v. Lewis*, 675 F.2d 1085, 1092 (9th Cir. 1982) (opining that even off-site activities can be 'use' if they could create serious impacts that would impair the value of the site).

Finally, in addition to these specific authorizations, both the MLA and FLPMA grant BLM sweeping authority to take any action and promulgate rules necessary to carry out their purposes. *See* 30 U.S.C. § 189 (authorizing the Secretary to "prescribe necessary and proper rules" and to "do any and all things necessary to carry out and accomplish the purposes of this chapter"); 43 U.S.C. §1740 ("The Secretary . . . shall promulgate rules and regulations to carry out the purposes of this Act and of other laws applicable to the public lands").

Our interpretation finds further support in the "general rule" that the Department of Interior's "plenary authority" over the public lands should not be impliedly constrained unless there is

"some specific provision to the contrary." *Silver State Land, LLC v. Schneider*, 843 F.3d 982, 986 (D.C. Cir. 2016) (quoting *Corp. of the Catholic Bishop of Nesqually v. Gibbon*, 158 U.S. 155, 167 (1895); *see also Best v. Humboldt Placer Min. Co.*, 371 U.S. 334, 336 (1963) (noting that Congress has delegated to the Secretary of Interior "plenary authority over the administration of public lands, including mineral lands."). The Supreme Court has thus declined to imply restrictions on the Department of Interior's "general managerial power" over public lands and minerals "unless such authority [is specifically] withdrawn." *Boesche v. Udall*, 373 U.S. 472, 476 (1963) ("True, the mineral land law does not in itself confer such authority . . . [b]ut this does not mean that the authority does not exist anywhere, for, in the absence of some direction to the contrary, the general statutory provisions before mentioned vest it in the Land Department."). Applying this general rule here, because neither the MLA nor FLPMA specifically confine BLM's authority to controlling activities or impacts on federal lands, such a restriction should not be implied.

Accordingly, we request that BLM clarify that the land use plans provisions apply equally to surface operations for Fee/Fee/Fed wells. The failure to regulate these wells the same fashion as split-estate would constitute a violation of BLM's FLPMA duty to prevent unnecessary or undue degradation.

III. VIOLATIONS OF THE ADMINISTRATIVE POLICY ACT (APA)

A. The State-by-State Variations in Sage Grouse Protections Are Arbitrary and Capricious.

BLM has failed to provide a reasoned explanation for retaining and expanding the state-by-state variations in the 2015 ARMPAs. With few exceptions, BLM has not justified these inconsistencies in any state-specific sage grouse science or ecological or topographical conditions. Neither are they justified by BLM's obligations under FLPMA to achieve consistency with state land use plans. Under Section 202(c)(9) of FLPMA, BLM land use plans may be inconsistent with state, local, and Tribal plans where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and other Federal laws and regulations applicable to public lands (43 CFR. 1610.3-2(a)).

When adopting the 2015 Plans, BLM rejected similar or identical requests by state and local governments to weaken plan requirements in the name of consistency, finding that all remaining inconsistencies were "necessary to meet the purposes, policies, and programs associated with implementing FLPMA and other Federal laws and regulations applicable to public lands (43 CFR. 1610.3-2(a))." *See, e.g.*, BLM Director Protest Resolution Report for 2015 Idaho-Southwestern Montana ARMPA at 22; *see also* 2015 ROD and ARMPAs for Great Basin

Region at 2-15 to 2-16; 2015 ROD and ARMPAs for Rocky Mountain Region at 2-26 to 2-27. BLM has reversed course now without the reasoned justification the APA demands. The same "purposes, policies, and programs" apply today and sage grouse habitat and population losses have only worsened since 2015. It is thus entirely unclear why BLM proposes to weaken federal land management protections for sage grouse in the name of "consistency" or "alignment" with state and local plans when it concluded otherwise in 2015. Weakening the protections deemed necessary in 2015 to avoid an ESA listing for greater sage grouse—particularly when those protections have proven inadequate to arrest the species' continued decline—would violate the purposes and policies underlying FLPMA, the ESA, BLM's Special Status Species Management Policy, and other applicable federal laws and regulations. Put simply, FLPMA Section 202(c)(9) is not a reasonable justification for the arbitrary state-by-state discrepancies in federal sage grouse protections.

We object to all state-by-state inconsistencies, including but not limited to these plan elements:

- Density and disturbance caps
- Lek buffers, including but not limited to drastic differences in buffer distances, exceptions, and inconsistent applications of buffers to pending leks
- Vegetation treatments
- Fluid mineral restrictions
- Waivers, exemptions and modifications for fluid mineral restrictions
- Other mining restrictions
- Infrastructure restrictions
- Renewable energy restrictions
- Livestock grazing management
- Habitat indicators
- ROW restrictions
- Adaptive management
- RDFs for grazing management/infrastructure

B. BLM Has Failed to Consider Important Reliance Interests on the 2015 Plans, Including the ESA "Not Warranted" Decision

Under the APA, an agency must provide "a more detailed explanation" when reversing a prior policy, decision, or position that "has engendered serious reliance interests." *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 106 (2015) (internal quotation marks omitted); *see also Encino Motorcars, LLC v. Navarro*, 136 S.Ct. 2117, 2126 (2016).

BLM here has failed to account for the "serious reliance interests," *Perez*, 575 U.S. at 106, the U.S. Fish and Wildlife Service placed on the 2015 Plans when declining to list the sage grouse on the ESA. In 2015, USFWS concluded that greater sage grouse no longer required protection

under the ESA because the BLM and Forest Service plan amendments "reduce and minimize threats to the species in the most important habitat." *See* 80 Fed. Reg. 59,858, 59,936 (Oct. 2, 2015) (SFA_10006–91). USFWS expressly relied on the components of the 2015 plans—including the SFA designation, the proposed mineral withdrawal, the lek buffers, and the net conservation gain standard, among other requirements—as adequately reducing various threats to the species. Where a listing is avoided based on promised conservation efforts that are not implemented, a USFWS policy requires it to "reevaluate the status of the species and consider whether initiating the listing process is necessary." *See* 68 Fed. Reg. 15,100–02 (Mar. 28, 2003). USFWS's "Not Warranted" finding was expressly dependent upon the "continued implementation of the regulatory mechanisms" in the 2015 Plans. *See id.* at 59,941. BLM's failure to acknowledge this serious reliance interest, or consider how the proposed amendments would affect the sage grouse's ESA listing status, is arbitrary and capricious.

IV CONCLUSION

For the aforementioned reasons, and for all the reasons given in prior comments, protests, and litigation up until now, we urge the Bureau to adopt Alternative 3, the most protective of the alternatives, plus our additional recommendations to further minimize impacts and to designate a robust range-wide network of Areas of Critical Environmental Concern. It is obvious that greater sage grouse don't have time for additional window-dressing to the status quo: they need real durable protection across all of their remaining habitat.

This planning process is an opportunity for the Bureau to actually save the species. Please do.

Sincerely,

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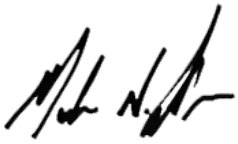

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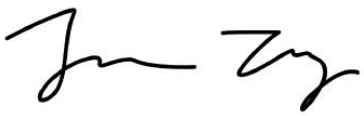

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ATTACHMENTS (These will be provided on a thumb drive sent by FedEx, as they are too large to upload to eplanning. We request they be added to the record for this DEIS.)

Attachment A. All prior comments, protests, attachments, and references provided on GRSG plans by our organizations.
Attachment B. Comments on the ACEC designation, submitted May 14, 2024.
Attachment C. Prioritization schemes for analyzing grazing, by state.
Attachment D. Source data for Oil and Gas analysis
Attachment E. Monitoring reports

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June 13, 2024

The Honorable Deb Haaland
Secretary of Interior
1849 C Street, NW
Washington, DC 20240

Re: Draft Environmental Impact Statement (EIS) for Greater Sage-grouse – Vol. 1
https://eplanning.blm.gov/eplanning-ui/project/2016719/570/8020241/comment

Dear Secretary Haaland,

Thank you for this opportunity to submit comments pertaining to the Bureau of Land Management (BLM) Draft Resource Management Plan (RMP) Amendment and Environmental Impact Statement (EIS) for Greater Sage-Grouse Rangewide Planning.

As you are well aware, the State of Wyoming has been a longtime leader in the conservation of this iconic species, beginning in the 1940s and extending to the present. Most recently, we developed a statewide conservation plan in 2001, which led to extensive conservation efforts and ultimately to the creation of the Sage-grouse Implementation Team (SGIT) in 2007, and, in due course, the first Executive Order for the protection of the species in 2008. Three Wyoming Governors have maintained this commitment to sage-grouse over the past 16 years. Governor Matt Mead was instrumental in the establishment of the national Sage-grouse Working Group, a move which led to landscape-scale conservation efforts of the Bureau of Land Management in 2015. Wyoming has been and continues to be an effective pioneer in Sage-grouse protection and management.

These efforts have been inclusive, non-partisan, and collaborative in every regard. The Wyoming Legislature has codified the SGIT into statute and has adopted a universal mitigation framework to assure continued protection of the species from negative impacts. Industry and agriculture have engaged in unprecedented conservation efforts to avoid and minimize conflicts that may impact the species, and conservation groups have been crucial partners in generating meaningful research and funding for habitat improvements. In the past two decades, the Wyoming Wildlife and Natural Resource Trust alone has allocated more than $30 million to Greater Sage-grouse conservation, with a total cash impact of more than

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$220 million on the ground, including more than $21 million in permanent protection through conservation easements. With all state resources accounted for, the investment in Greater Sage-grouse conservation has been more than $100 million, with a total cash impact of nearly $650 million.

I highlight these facts to make it quite clear: the State of Wyoming has been and remains committed to the long-term well-being and management of Greater Sage-grouse in Wyoming. It is in that spirit that we worked with the BLM to make meticulous adjustments to the 2015 Greater Sage-grouse plans in 2019. It is with that same spirit that we have approached the current effort to clarify, improve, and make the plans more effective.

PROCESS AND COMMENTS

I understand this current process has been a very different one than prior planning efforts, and wish to recognize the efforts of our BLM partners here in Wyoming. I am also pleased to see that Alternative 5 is the preferred alternative, and our comments mainly focus on that alternative. For feral horse management, Alternative 3 is the preferred alternative. However, I must note my disappointment that the Oct. 2023 alternative we provided was not analyzed in your draft document.

Our specific comments are found in the attachments, which include *Attachment A – Wyoming's Response to the Draft BLM SG Amendment (RMP), Proposed Adaptive Management* and a
Cooperating Agency Comments Spreadsheet (Spreadsheet). If the State's concerns are incorporated into the Final EIS, I am confident we can continue to conserve and enhance this iconic species.

Working with the BLM at multiple levels, the State identified ten areas where adjustments to the previous plans should be made. Two of these are new to this plan – feral horses and predation –. Mapping adjustments that will allow us to address new science and knowledge, and to respond to new conservation opportunities, will need to be more flexible than they were in 2015. In addition, BLM's creation of a new "management area" designation for private lands in northeastern Wyoming fragmented by Greater Sage-grouse habitat will impact more than 100,000 acres of land that is highly valuable to the ranchers and other private landowners in the area.

I have also reviewed the recommendations from the SGIT Mapping subcommittee and we will be adding significant acres and numbers of males on leks to our core areas.

I remain concerned that many specific corrections to the fluid minerals and grazing sections in the current draft have not been included in the document. We have worked at all levels to find common ground on both of these issues, and while we have had agreement, the correct language is still not reflected in the DEIS. I would refer you to the detailed *Spreadsheet* which represents comments from State of Wyoming agencies to ensure that these corrections are incorporated into the Final EIS. Likewise, there are specific areas within the Disturbance Cap calculations that require revision to deal with unexpected events where the two methodologies might come into conflict. Recognizing we are measuring at two different scales, with two different metrics is essential, even if it is unlikely that they will conflict.

CONCERNS

There are four areas of greatest concern to me, two of which I believe can be, or have been, resolved through our partnership with BLM.

Wyoming has a statutory standard for mitigation where impacts to Greater Sage-grouse cannot be either avoided or sufficiently minimized, moreover as you are no doubt aware, BLM has been a partner in the development of this framework. While I respect the need for BLM to protect its own decision space, the Final EIS should be clear that the BLM will consult with, and adhere to, the high standards within our mitigation program. Wyoming has crafted an extremely robust process to assess impacts and require appropriate mitigation is in place prior to permitting. Furthermore, Wyoming has the only conservation bank certified through the U.S. Fish and Wildlife Service (USFWS) to address those situations. It is important to note that the BLM and other appropriate federal agencies are full partners in the oversight of those activities at the present time. I want to be absolutely clear and certain that this program must be maintained and adhered to by all parties involved.

Second, I have grave concerns regarding Adaptive Management. Here again, I believe the issues outlined in *Attachment A* address the primary concerns of the State of Wyoming. First and foremost is the Constitutional provision that wildlife is the property of the State, and any failure on the part of the BLM to recognize and adhere to that Constitutional reality is unacceptable. We will defend our state's authority absolutely. In addition, the State of Wyoming has an established process to address anomalies in both habitat and population metrics, a Statewide Adaptive Management Group that includes all four primary federal agencies, as well as a like-number of state agencies, to immediately address any inconsistencies on an annual basis. This process works well, and works directly with the BLM. I fully expect this process will continue to provide safeguards against undue loss of either habitats or populations. Our specific concerns are outlined in *Attachment A*.

Third, I will not support any designations of Areas of Critical Environmental Concern for Greater Sage-grouse in Wyoming. One-fourth of our state is currently designated as "Core" habitat for the species, and we have imposed significant restrictions on development, and dedicated hundreds of millions of dollars to habitat improvement in those areas at great economic cost (*A Report on the Economic Impact to Wyoming's Economy from a Potential Listing of the Sage Grouse*). There is simply no need to add more designations, restrictions and possible confusion on those landscapes.

Fourth, some of the alternatives affect the State's ability to regulate wildlife and natural resources within its borders. Under federal regulations, agencies are required to discuss possible conflicts and where an inconsistency exists "the EIS 'should describe the extent to which the agency would reconcile its proposed action with the … law.'" *City of Los Angeles, California v. Federal Aviation Administration*, 63 F.4th 835, 852 (9th Cir. 2023) (citing 40 C.F.R. 1506.2(d)). For instance, Alternatives 3 and 4 affect the Wyoming Oil and Gas Commission's ability to prevent waste of minerals and protect correlative rights and Alternative 4's requirement that all PHMA be managed with no surface occupancy stipulations for fluid minerals is inconsistent with the Governor's Greater Sage-grouse executive order. The State has identified other issues in the attached *Spreadsheet* that could affect the State's land-use planning.

BLM waiting to address these inconsistencies is contrary to the purpose of NEPA. NEPA is a procedural statute that requires informed agency action (*See* 40 C.F.R. § 1500.1). BLM says during its consistency review process under FLPMA it will provide additional input on how state and local governments, and tribal plans may or may not be consistent with alternatives (page 1-13). However, the NEPA regulations require the BLM to consider possible conflicts between the proposed action and "the objectives of Federal, regional, State, Tribal, and local plans, policies, and controls for the area concerned". This requirement is located in the environmental consequences section, which forms the analytic basis for the comparison of alternatives under 1502.14. Waiting to perform a consistency analysis until the final version is contrary to the purpose of NEPA because the analysis comes too late to inform the alternatives considered and could be used to rationalize the decisions BLM already made.

CONCLUSION

It is the intent of the State of Wyoming to address these issues in a forthright and proactive manner in the hope that we can eliminate the need for a lengthy and rancorous Consistency Review process. I am optimistic about and remain committed to continuing our remarkable track record of conservation of Greater Sage-grouse for decades to come. We have done it

with careful regard for all the resources at play, and I am certain you share my dedication to this endeavor. I have never seen the people of Wyoming come together in a conservation effort as vast and impactful as we have for this species.

Rest assured, I will do everything in my power to maintain that energy and support for Greater Sage-grouse. I look forward to a continued open dialogue as we develop a Final Plan. Please contact Sara DiRienzo in my office if you have any questions: sara.dirienzo1@wyo.gov.

Sincerely,

Mark Gordon
Governor of Wyoming

MG:sd:kh

cc: Tracy Stone-Manning, Director of the Bureau of Land Management
Pat Deibert, National Sage-Grouse Conservation Coordinator

Attachments:

- *Attachment A – Wyoming's Response to the Draft BLM SG Amendment (RMP), Proposed Adaptive Management*
- *Attachment B -Proposed Changes to Appendix 12 RFD for Federal Minerals*
- *Cooperating Agency Comments Spreadsheet*

Studies referenced, attached:

- *Fire Patterns in the Range of the Greater Sage-Grouse, 1984–2013—Implications for Conservation and Management*
- *Effects of Invasive Alien Plants on Fire Regimes*
- *How Many Bison Originally Populated Western Rangelands?*
- *A Report on the Economic Impact to Wyoming's Economy from a Potential Listing of the Sage Grouse*

MESA COUNTY

BOARD OF COMMISSIONERS

District 1 – Cody Davis 970-244-1605
District 2 – Bobbie Daniel 970-244-1604
District 3 – Janet Rowland 970-244-1606

June 11, 2024

U.S. Department of the Interior
Tracy Stone-Manning, BLM Director
Director (630), Bureau of Land Management
1849 C St. NW, Room 5646
Washington, DC 20240
Attention: 1004–AE92

To be submitted electronically via BLM Eplanning website: https://eplanning.blm.gov/eplanning-ui/project/2016719/510

RE: DOI-BLM-WO-2300-2022-0001-RMP-EIS, Greater Sage-Grouse Rangewide Planning Draft Resource Management Plan Amendment and Draft Environmental Impact Statement

Dear Director Stone-Manning:

Thank you for the opportunity to participate as a Cooperating Agency during the Greater Sage-Grouse ("GRSG") Rangewide Planning Draft Resource Management Plan Amendment and Draft Environmental Impact Statement ("RMPA/EIS") process. We greatly value our collaborative relationship with the Bureau of Land Management ("BLM") as outlined in our Memorandum of Understanding ("MOU"), CO-076-97-001. Partnerships between local, state, and federal governments, as well as non-governmental stakeholders is instrumental in appropriately balancing conservation efforts with economic interests within Mesa County, and the greater Western Slope. We offer the following comments and questions on the DRMPA/EIS.

While only a limited portion of Mesa County is designated as general habitat for the GRSG, decisions surrounding land management practices in northwest Colorado significantly affect Mesa County, which serves as the economic hub for western Colorado and eastern Utah. We strongly support our neighboring counties that are most directly impacted by the Resource Management Plan Amendments ("RMPA") and echo concerns they have identified both in cooperator meetings and in formal written comments.

Chapter 2 Alternatives

Density Cap

Mesa County continues to have concerns about the inclusion of the 3% Density Cap and the potential constraints this will place on future infrastructure needs. If a local government needs to address a public safety issue on a roadway within PHMA habitat (realignment that requires ground clearing, addition of a bike lane along a road, etc.), the time and costs related to mitigating below the 3% Density Cap could be prohibitive to completing the project in a timely manner, thereby causing further safety concerns. A similar concern is that there are areas that need additional communication towers for emergency services. We request that an exemption be created for projects related to public health and safety issues.

Compensatory Mitigation

The sentence "Compensatory mitigation should be durable, ensuring it will be resilient and persist as GRSG habitat (barring any natural disaster), and **should be completed prior to associated actions occurring**

(bolded for emphasis)."[1] Rather than delaying projects indefinitely to ensure the mitigation efforts are successful, we request that, similarly to the compensatory mitigation in Alternative 5 for the Density Cap and Fluid Mineral Lease Stipulation Waivers, Exceptions, and Modification ("WEMS"), the mitigation only need to be "planned, funded, and approved by the operator, BLM, surface owner, and in coordination with the appropriate State agency."

Renewable Energy Development and Associated Transmission
It appears that renewable energy projects face less restrictive surface development regulations compared to fluid mineral development. For example, in Alternative 5 (Colorado), a No Surface Occupancy ("NSO") stipulation is applied to fluid mineral leasing within one mile of active leks in PHMA.[2] Similar setbacks should be applied to renewable energy projects.[3]

The designation of an "avoidance area," as defined in the Glossary, indicates that while a proposed activity may require relocation or redesign to mitigate potential impacts, it does not mean that it is outright prohibited. This could lead to largescale utility projects within GRSG habitat.

If an NSO is enforced for fluid mineral development within one mile of a lek in PHMA, the same restriction should be applied to renewable energy projects. Consistent restrictions should be imposed on all energy-related disturbances to ensure equitable protection of these critical habitats.

Adaptive Management
Mesa County remains uncertain about the Targeted Annual Warning System ("TAWS"), particularly regarding the management and resolution of triggering soft or hard thresholds. The current RMPA/EIS lacks a clear management response plan beyond conducting causal factor analyses or rapid assessments and considering new authorizations for potential impacts. There is a need for detailed information on the steps the BLM intends to take. Will this approach be a "wait and see" process, or will proactive habitat restoration projects commence to ensure habitat quality remains within acceptable thresholds?

Livestock Grazing
We request that Management Actions related to grazing emphasize the importance of early and consistent coordination with grazing lessees. Whether renewing a permit that requires a change to a rotation schedule or a reduction in Animal Unit Months ("AUMs"), or addressing an allotment needing a temporary rest after a wildfire, the lessee should be contacted first. This ensures both parties have a clear understanding of the necessary actions and steps required for a successful outcome.

Chapter 3 Affected Environment

Travel and Transportation
In the text regarding the need for roads currently open to cross country travel to be closed, there needs to be a clarifier that closures will only take place after a public travel management process in accordance to the National Environmental Policy Act ("NEPA").

Glossary Definitions

In the Alternatives Table 2-4 section titled *Criteria-Based Management for Non-Habitat within GRSG*

[1] Bureau of Land Management. (2024). Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement, Volume 1: Executive Summary, Chapters 1—6, Glossary, and Index (p. 2-22). Retrieved May 30, 2024, from https://eplanning.blm.gov/public_projects/2016719/200502020/20105921/251005921/GRSG_DEIS_Vol1_508.pdf

[2] Bureau of Land Management. (2024). Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement, Volume 1: Executive Summary, Chapters 1—6, Glossary, and Index (p. 2-49). Retrieved May 30, 2024, from https://eplanning.blm.gov/public_projects/2016719/200502020/20105921/251005921/GRSG_DEIS_Vol1_508.pdf

[3] Bureau of Land Management. (2024). Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement, Volume 1: Executive Summary, Chapters 1—6, Glossary, and Index (p. 2-93). Retrieved May 30, 2024, from https://eplanning.blm.gov/public_projects/2016719/200502020/20105921/251005921/GRSG_DEIS_Vol1_508.pdf

Habitat Management Areas, it is stated that "In the mapped GRSG habitat management areas, there may be areas of non-habitat… (see definitions for existing habitat, potential habitat, and non-habitat in glossary)."[4] However, the Glossary currently includes only the definitions for "habitat," Priority Habitat Management Area ("PHMA"), General Habitat Management Area ("GHMA"), and Linkage and Connectivity Habitat Management Area ("LCHMA"). To ensure clarity and completeness, the definitions for existing habitat, potential habitat, and non-habitat should be added to the Glossary.

We commend the BLM for its efforts to address inconsistencies in the various definitions of "lek." Additionally, we request that the BLM incorporate the definitions provided by the Western Association of Fish and Wildlife Agencies into the Glossary.

State Specific Circumstances
Mesa County extends its gratitude to the BLM and CPW for reaching a consensus on Management Zone numbering. Although this change may seem minor within each agency, it will significantly benefit those applying for permits or leases in these areas.

Conclusion

While the Bureau of Land Management has chosen to create a rangewide plan, we continue to believe in the importance of local, adaptable management to ensure public lands managed by the BLM meet the multiple use and sustained yield mandate. We look forward to continued engagement in this process and are committed to working closely with the BLM and our neighboring counties to ensure that the RMPA/EIS provides balance for the conservation needs of the Greater Sage-Grouse with the economic priorities of local communities.

Thank you for your consideration of the above comments.

Sincerely,

Bobbie Daniel, Chair
Mesa County Board of Commissioners

Cody Davis
Commissioner

Janet Rowland
Commissioner

CC: Peter Baier, Mesa County Administrator
Todd Starr, Mesa County Attorney
Mesa County Administration

[4] Bureau of Land Management. (2024). Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement, Volume 1: Executive Summary, Chapters 1—6, Glossary, and Index (p. 2-19). Retrieved May 30, 2024, from https://eplanning.blm.gov/public_projects/2016719/200502020/20105921/251005921/GRSG_DEIS_Vol1_508.pdf

Via Email to BLM_HQ_GRSG_Planning@blm.gov
& Submitted through the Participate Now Link

May 14, 2024

Tracy Stone-Manning, Director
Bureau of Land Management
U.S. Department of the Interior
1849 C St. NW, Room 5646
Washington, DC 20240

Re: The American Exploration & Production Council's Comments on the Bureau of Land Management's Proposed Areas of Critical Environmental Concern in the Greater Sage-Grouse Draft Resource Management Plan Amendment/Draft Environmental Impact Statement (DOI-BLM-WO=2300-2022-0001-RMP-EIS)

Dear Director Stone-Manning:

The American Exploration & Production Council ("AXPC") appreciates the opportunity to comment on the Bureau of Land Management's ("BLM's") Proposed Areas of Critical Environmental Concern ("ACECs") contained within the Greater Sage-Grouse Draft Resource Management Plan Amendment/Draft Environmental Impact Statement ("Draft RMPA/EIS") ("DOI-BLM-WO=2300-2022-0001-RMP-EIS").[1]

AXPC is a national trade association representing 33 leading independent oil and natural gas exploration and production companies in the United States. AXPC companies support millions of Americans in high-paying jobs and invest a wealth of resources in our communities. Dedicated to safety, stewardship, and technological advancement, our members strive to deliver affordable, reliable energy to consumers while positively impacting the economy and the communities in which we live and operate.

As part of this mission, AXPC members understand and promote the importance of ensuring positive environmental and public-welfare outcomes and responsible stewardship of the nation's natural resources. AXPC's members are committed to being good stewards of federal and Indian resources and operating in compliance with all federal requirements. In particular, our members work hard every day to fulfill our obligation to prudently and responsibly develop oil and gas resources. AXPC member companies produce more than half of U.S. onshore production each year, including many active operations developing federal minerals.

While AXPC shares BLM's interest in protecting and conserving public lands and protecting critical habitats, we believe that the framework provided in BLM's recent Conservation and

[1] Made available at Greater Sage-grouse Land Use Plan Amendments and EIS, Volume 1 (blm.gov), *see also* 89 Fed. Reg. 18,963 (Mar. 15, 2024); BLM_HQ_FRNMO4500174493.

Landscape Health Rule contravenes BLM's statutory authority and AXPC members are concerned that portions of that rulemaking have been relied upon in the proposed Draft RMPA/EIS. Additionally, AXPC would like to raise some general concerns observed in the sections of the Draft RMPA/EIS related to ACEC designations.

More specifically, AXPC seeks to ensure that:

- **BLM is following the intent of FLPMA:** BLM's authority to manage public lands comes from FLPMA, which aimed to balance conservation with productive land uses. Unlike other environmental statutes, FLPMA doesn't solely focus on protection. It directs development and uses other than conservation. FLPMA's central mandate is "multiple use and sustained yield," meaning managing lands for the combination of uses that best meet the needs of the American people over time. ***This doesn't give priority in a wide rangeland area to any single use but requires a balance***.

- **BLM is complying with its ACEC guidance and manuals when designating ACECs for the Draft RMPA/EIS:** ACECs are areas within public lands where special management is needed to protect important values. Congress didn't intend for ACECs to restrict large-scale uses across ecosystems, rather it created other programs to do just that. ACEC designations should be targeted and based upon special management measures that are justified by data and analysis.

- **BLM is adequately describing and justifying special management measures for proposed ACECs:** BLM's manuals and guidance point out that BLM needs to provide specification and analysis in ACEC designations which explain why special management within the ACEC designation is necessary. AXPC could not find this analysis for the Fluid Mineral special management measures proposed in Alternatives 3 and 6 in the Draft RMPA/EIS.

- **BLM adequately understands that oil & natural gas development doesn't require additional special management for the protection of the Greater Sage Grouse:** The majority of surface disturbance associated with oil and gas development undergoes reclamation soon after initial surface disturbance. Reclamation practices are intentional with the seed mixes, treatments, and associated operations and have been proven to be effective in re-establishing sagebrush habitat as well as important understory grasses, and forbs all of which are critical habitat for sage grouse. Reclamation efforts from the oil and gas operator practices have increased species diversity improving areas of decadent sagebrush stands. Sage Grouse flock to easier to digest new leader growth and young vegetation which older sagebrush stands have less abundance of. The robust reclamation species diversity seed mix utilized by operators provides new growth and has assisted insect diversity and abundance as well. Both the reclamation plant species and insect abundance and diversity aid the sage grouse diet. These reclamation practices have been in use in western states for decades and can help the Greater Sage Grouse population.

I. AXPC

AXPC is a national trade association representing the leading independent oil and natural gas companies in the United States. Our association works with regulators and policymakers to help them understand our operations so that they will be able to create sound, fact-based public policies that result in the safe and responsible exploration and production of America's vast oil and natural gas resources. Our goal is to provide technical and regulatory expertise, making AXPC a rich repository of resources on the industry and the science behind our operations.

AXPC's members have valuable insights to contribute to the BLM's proposed ACECs in the Draft RMPA/EIS. As businesses heavily reliant on federal lands, they possess significant experience collaborating with the BLM and implementing the conservation and restoration practices essential for Greater Sage Grouse habitat protection.

Given our members' extensive experience with public lands, AXPC has consistently advocated for improving the efficiency and consistency of regulations governing public land use. We have supported related BLM regulatory developments aimed at streamlining processes and promoting responsible land management. In 2023, AXPC provided comment on the Council of Environmental Quality's ("CEQ's") Notice of Interim Guidance on Consideration of Greenhouse Gas Emissions and Climate Change under the National Environmental Policy Act ("NEPA"),[2] BLM's Proposed Rulemaking on Waste Prevention, Production Subject to Royalties, and Resource Conservation,[3] and BLM's Proposed Rulemaking on Conservation and Landscape Health.[4] AXPC has also recently commented on proposed Categorical Exclusions for Geophysical and Other Operations,[5] BLM's Proposed Rule to Regulate Hydraulic Fracturing on Public and Indian Lands,[6] and BLM's Call for Streamlining and Planning in NEPA.[7] Indeed, AXPC's motivation to frequently contribute to federal permitting and public lands rulemakings is intuitive: our members are uniquely positioned provide comments on how regulations over the exploration and development of public lands impact our nation's energy supply.

AXPC consistently emphasizes its commitment to responsible and sustainable public land use in rulemaking dockets. Our members continually refine their environmental and land management practices to safely and responsibly address resource needs while minimizing impacts, protecting wildlife, and respecting communities. The positive environmental outcomes from AXPC member companies' practices demonstrate the compatibility of responsible resource development with economic growth.

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[2] *See* Comments on the Council for Environmental Quality's Notice of Interim Guidance on Consideration of Greenhouse Gas Emissions and Climate Change under the National Environmental Policy Act (88 Fed. Reg. 1,196) (CEQ-2022-0005) (2023).

[3] *See* Comments on BLM's Proposed Rulemaking on Waste Prevention, Production Subject to Royalties, and Resource Conservation (87 Fed. Reg. 73,588) (Nov. 30, 2022).

[4] See Comments on BLM's Proposed Rulemaking on Conservation and Landscape Health (88 Fed. Reg. 19,583), 2023

[5] *See* Comments on Categorical NEPA Exclusions for Geophysical and Other Operations (71 Fed. Reg. 4,159) (2006).

[6] *See* Comments on BLM's Hydraulic Fracturing on Federal and Indian Lands Proposed Rule (78 Fed. Reg. 31,636) (BLM-2013-0002-0011) (2013).

[7] *See* 2017 Response Request at https://axpc.org/wp-content/uploads/2018/03/public_policy_24jul2017.pdf.

Additionally, energy development on public lands provides enormous value for the nation. Notwithstanding that energy development activities on the public lands account for only about 10% of total domestic production of crude oil and natural gas,[8] revenues from oil and natural gas leases on onshore federal lands exceeded $8.6 billion in fiscal year 2022.[9] This substantial return for the taxpayer is comprised of royalty payments, bonuses, interest payments on leases, application fees, rents, and other sources.

AXPC appreciates BLM's consideration of these comments. Given our members' extensive experience operating on federal lands, we stand ready to serve as a resource for BLM. Additionally, AXPC endorses and incorporates by reference the comments submitted by the American Petroleum Institute ("API").

II. DETAILED COMMENTS

a. BLM's Relevant Statutory Authority.

In 1976, Congress passed the Federal Land Policy Management Act ("FLPMA") to streamline management and promote multiple uses of public lands for multiple use and a sustainable yield.[10] Prior to the enactment of FLPMA, the federal government managed public lands using a patchwork of laws and authorizations. This patchwork of laws became difficult to implement and led to disordered management of federal lands. Additionally, there were concerns that a large portion of federal lands were being conveyed to private parties or withdrawn from productive use for the benefit of the American public.

Unlike many other federal statutes like the Clean Air Act,[11] the Clean Water Act,[12] and the Endangered Species Act,[13] FLPMA was not solely designed for environmental or habitat protection. On the contrary, FLPMA was designed to both protect the public lands and to manage the public lands "in a manner which recognizes the Nation's need for domestic sources of minerals,"[14] along with other productive uses. Congress accomplished these goals by creating distinct legal protections for the most sensitive types of land, while still allowing remaining public lands to be open to development and productive uses under pre-existing statutes like the Mineral Leasing Act ("MLA").[15]

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[8] Revenues and Disbursements from Oil and Natural Gas Production on Federal Lands at Summary.

[9] https://revenuedata.doi.gov/query-data?dataType=Revenue&period=Fiscal%20Year&fiscalYear=2017%2C2018%2C2019%2C2020%2C2021%2C2022&groupBy=commodity&commodity=Oil%2COil%20shale%2COil%20%26%20gas%20(pre-production)%2CGas%2CNatural%20gas%20liquids&landType=Federal%20-%20not%20tied%20to%20a%20lease%2CFederal%20Offshore%2CFederal%20Onshore&breakoutBy=commodity

[10] *Lujan v. National Wildlife Federation*, 497 US at 877.

[11] 42 U.S.C. § 7401, *et seq*.

[12] 33 U.S.C. § 1251, *et seq*.

[13] 16 U.S.C. § 1531, *et seq*.

[14] 43 U.S.C. § 1701(a)(11)-(12).

[15] As prescribed by Congress, the purpose of the MLA is to promote the orderly development of oil and gas resources on the public lands through private enterprise. *Geosearch, Inc. v. Andrus*, 508 F. Supp. 839, 842 (D. Wyo. 1981) (citing *Harvey v. Udall*, 384 F.2d 883 (10th Cir. 1967)); *Mountain States Legal Found. v. Andrus*, 499 F. Supp. 383, 392 (D. Wyo. 1980) (*citing Cal. Co. v. Udall*, 296 F.2d 384, 388 (D.D.C. 1961).

The "multiple use and sustained yield" mandate is central to FLPMA and highly important. This "multiple use and sustained yield" directive echoes the first multiple-use mandate set forth in the Multiple Use Sustained Yield Act of 1960 ("MUSYA").[16] FLPMA Section 302 provides that "[t]he Secretary shall manage the public lands under principles of multiple use and sustained yield."[17] But as clearly indicated in FLPMA's legislative history, the definition of multiple use was drawn from the MUSYA and is intended to have the same meaning.[18] Therefore, the legislative history of MUSYA regarding multiple use principles applies with equal weight to FLPMA. In explaining MUSYA's multiple use directive, the House Report discusses the "relative values" analysis as follows:

> One of the basic concepts of multiple use is that all of these resources in general are entitled to equal consideration, but in particular or localized areas relative values of the various resources will be recognized . . . In practice, the priority of resource use will vary locality by locality and case by case. In one locality timber use might dominate; in another locality use of the range by domestic livestock; in another outdoor recreation or wildlife might dominate. Thus, in particular localities the various resource uses might be given priorities because of particular circumstances. This is the meaning of the last sentence of section 2 of the bill. **But no resource would be given a statutory priority over the others. The bill would neither upgrade nor downgrade any resource**.[19]

This framework prohibits BLM from giving superior priority to any one resource or resource set over others particularly at a "landscape" scale. Instead, concerning the goal of "multiple use," FLPMA requires that the public lands be managed "so that they are utilized in the combination that will best meet the present and future needs of the American people."[20]

FLPMA's multiple use mandate protects existing rights and policies, including those under the Mining and Minerals Policy Act of 1970, which states:

> [T]hat it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs . . . [21]

Likewise, FLPMA also incorporates and requires compliance with the MLA. Accordingly, under FLPMA's "multiple use and sustained yield" mandate, BLM must strike an appropriate balance between potentially competing productive uses and land management objectives, but it can only

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[16] 16 U.S.C.§ 528.
[17] 42 U.S.C. § 1732(a).
[18] *See* Senate Report No. 95-583 ("this [multiple use] definition is very similar to that . . . which presently appears at section 4 of the Multiple-Use Sustained-Yield Act of 1960 . . .." and House Report No. 94-1163 ("the definition of multiple use preserves essentially its same meaning as used in the Forest Service Multiple Use Act of 1960.)."
[19] H.R. Rep. No. 1551, 86th Cong., 2d Sess. (1960), reprinted in 1960 U.S.C.C.A.N. 2377, 2379.
[20] 43 U.S.C. § 1702(c).
[21] 84 Stat. 1876, 30 U.S.C. § 21a.

do so in a manner consistent with the requirements in the MLA and other similar resource management statutes that Congress incorporated into FLPMA.

The BLM's Draft RMPA/EIS clearly prioritizes the use of land for Greater Sage Grouse habitat, restricting other land uses across a large area. Over the course of many years, the oil and gas industry has engaged in numerous activities and efforts to help conserve and restore resilient habitat for the Greater Sage Grouse. However, the overly broad use of restrictions in the Draft RMPA/EIS impacts many activities, including grazing, mineral development, and renewable energy. While conservation is important, this could limit energy development on public lands, which is becoming increasingly important for the nation's energy supply. BLM should consider if these lands are being managed effectively for the American people, given growing demand for energy. BLM should also consider whether it can use its management tools to manage lands in a manner that will facilitate both conservation and productive uses that results in reasonable or minimal surface impacts – such as oil and natural gas development.

AXPC intends to prepare additional comments related to BLM's multiple-use framework when it comments on the Draft RMPA/EIS. However, it is also important to consider this framework when analyzing the designation of ACECs because BLM's manuals ask that agency to consider all its available management tools before designated an ACEC. In particular, the agency is charged with determining whether special management is required, and whether existing management provides inadequate protection of the relevant and important values. This is important in the Greater Sage Grouse Area where significant protection measures have been in place since 2015.

b. <u>The Legal Framework for ACECs.</u>

A subset of the lands included in the Draft RMPA/EIS are proposed under Alternatives 3 and 6 to be managed as ACECs. In FLPMA, Congress granted BLM authority to designate ACECs, which are areas within public lands where special management attention is required to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resource or other natural systems or processes, or to protect life and safety from natural hazards.[22] Generally speaking, ACEC designations are intended to protect small, isolated areas that need special designation and management based upon *substantial* values of national significance.[23] BLM's policies have long-determined areas designated as ACECs must be important, meaning that the lands have "substantial significance and values," requiring "more than local significance and special worth, consequence, distinctiveness, or cause for concern".[24] Congress never intended ACECs as the mechanism to restrict productive uses across entire landscapes, ecosystems, ecoregions, or watersheds.[25] Congress instead provided multiple other mechanisms for the type of large-scale withdrawals and exclusions that BLM's proposed revisions would seemingly allow,

[22] 43 U.S.C. § 1702(a).
[23] 43 C.F.R. § 1610.7(a)(2) (explaining that under ACEC importance criteria, "substantial significance and values… requires more than local significance and special worth, consequence, distinctiveness, or cause for concern").
[24] *Id*.
[25] *See* 43 U.S.C. § 1711(a) ("The preparation and maintenance of such inventory or the identification of such areas shall not, of itself, change or prevent change of the management or use of public lands.").

but those withdrawal and exclusion authorities are entirely separate and distinct from ACEC designations.

FLPMA defines ACECs as:

> areas within the public lands where *special management attention is required* (when such areas are developed or used or where no development is required) to protect and prevent *irreparable damage* to *important* historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards.[26]

Multiple aspects of this statutory definition reflect Congress's intent to reasonably constrain BLM's ACEC designation authority to those discrete and critically important segments of public lands that require special management measures in order to be protected. The list of resources and values that must be protected are expressly limited, there must be a risk of irreparable harm to those resources and values, and addressing those risks must require special management attention. Accordingly, even where a particular area has been identified as a potential ACEC, this statutory definition does not allow BLM to formally designate that area unless ***special management is required,*** and existing management is inadequate protection of the relevant and important values.[27]

Indeed, BLM's ACEC Manual 1613 explains that "special management attention" consists of management measures which would not be necessary and prescribed if the critical and important features were not present. That is, they would not be prescribed in the absence of the designation."[28] So, it is clear that ACEC designations should be targeted to address specific resource management actions and should not broadly be used for conservation goals that exist for the agency, regardless of a designation. Additionally, special management attention is not needed if the area can be adequately managed by BLM under its already existing management tools. For example, if an area can be adequately managed through existing oil and gas lease terms and conditions, additional special management measures would not be required.

ACECs are special designations.[29] Consistent with the text, structure, and history of FLPMA, BLM has not applied designations to preclude development within large swaths of rangeland or

[26] 43 U.S.C. § 1702(a) (emphasis added).
[27] *See generally*, BLM Manual 1613, Areas of Critical Environmental Concern
[28] BLM Manual 1613, Areas of Critical Environmental Concern, § 1613.12.
[29] The retained use and scale of ACEC designations is reflected in FLPMA's long and well-documented legislative history. The predecessor statutes, earlier legislative efforts to enact a public lands management statute, and pre-FLPMA regulations that informed the structure and text of FLPMA reflect a more limited role for ACECs. For example, under BLM's pre-FLPMA regulations, the areas that prioritized land protections in a manner similar to ACECs were largely limited to "recreation lands." 30 Fed. Reg. 2,384-2,385 (Feb. 20, 1965). Indeed, this limited view of the types of lands that could be designated as ACECs appears to have been carried forward into the current statute, as indicated by the parenthetical text in FLPMA's directive to inventory lands and "values (including, but not limited to outdoor recreation and scenic values), giving priority to areas of critical environmental concern." 43 U.S.C. § 1711.

entire states.[30] And AXPC supports BLM's recommended position of not creating new ACEC areas under its preferred alternative, alternative 5.

c. BLM's Designation Process for ACECs.

FLPMA requires BLM to "prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to outdoor recreation and scenic values), giving priority to [ACECs]."[31] For more than three decades, BLM regulations and policies have reasonably conformed the designation process to reflect Congress's desire to protect discrete portions of public lands, the value of which are so rare, unique, or important that they require "special management attention."[32] Indeed, historic ACEC designations highlight areas where special management attention is needed to protect and prevent irreparable damage to important historic, cultural, and scenic values, fish, or wildlife resources, or other natural systems or processes; or to protect human life and safety from natural hazards. [33] The ACEC designation indicates to the public that the BLM recognizes that an area has significant values and has established special management measures to protect those values.

In order for each proposed area to qualify as an ACEC, BLM has historically looked at the area to determine if the entire proposed area qualifies under both a "relevance" criteria and an "importance" criteria.[34] This was described by BLM as a review of the following:

1. **Relevance.** An area must meet one or more of the following criterion:

   a. A significant historic, cultural, or scenic value (including but not limited to rare or sensitive archeological resources and religious or cultural resources important to Native Americans).

   b. A fish and wildlife resource (including but not limited to habitat for endangered, sensitive, or threatened species, or habitat essential for maintain species diversity).

   c. A natural process or system (including but not limited to endangered, sensitive, or threatened plan species; rare, endemic, or relic plants or

[30] AXPC supports BLM's evaluation of ACEC's during the RMP or RMP amendment process and believes that ACEC's must be adopted in the RMP Process, and not through temporary designations. Although FLPMA ascribes to BLM the important obligation to prepare and maintain inventories of public lands that may qualify as ACECs, potentially qualifying lands cannot be designated as ACECs, nor can they be managed as ACECs, until BLM adopts or amends the relevant RMPs to include the ACEC designations. Congress structured the ACEC designation and management process in this manner for the express purpose of allowing public and private stakeholders an opportunity to provide input on proposed designations and the management measures that might apply if the candidate areas were formally designated as ACECs.

[31] 43 U.S.C. § 1711.

[32] 43 U.S.C. § 1702(a).

[33] BLM Manual 1613, Areas of Critical Environmental Concern, § 1613.11 (emphasis added). BLM's ACEC Manual 1613 also provides additional and more detailed guidance regarding the values and qualities that meet the "relevance" "importance" criteria.

[34] BLM Manual 1613, Areas of Critical Environmental Concern.

plant communities which are terrestrial, aquatic, or riparian; or rare geological features).

d. Natural hazards (including but not limited to acres of avalanche, dangerous flooding, landslides, unstable soils, seismic activity, or dangerous cliffs). A hazard caused by human action may meet the relevance criteria if it is determined through the RMP process that it has become part of a natural process.

2. **Importance.** The value, resource, system, process, or hazard described above must have substantial significance and values in order to satisfy the "importance" criteria. This generally means that the value, resource, system, process, or hazard is characterized by one or more of the following:

a. Has more than locally significant qualities which give it special worth, consequence, meaning, distinctiveness, or cause for concern, especially compared to any similar resource.

b. Has qualities or circumstances that make it fragile, sensitive, rare, irreplaceable, exemplary, unique, endangered, threatened, or vulnerable to adverse change.

c. Has been recognized as warranting protection in order to satisfy national priority concerns to carry out the mandates of FLPMA.

Additionally, BLM must look at whether special management is needed and whether existing management is inadequate protection of the relevant and important values. BLM's ACEC Manual, 1613 explains that "an area must require special management attention to protect the important and relevant values."[35] "Special management attention" consists of "management measures which would not be necessary and prescribed if the critical and important features were not present."[36] "A management prescription is considered to be special if it is unique to the area involved and includes terms and conditions specifically to protect the important and relevant value(s) occurring in that area."[37]

d. <u>ACEC's Should be Determined on Detailed Analysis That is Made Subject to Input from Stakeholders, Local Communities, and State and Local Governments.</u>

Here, the Draft RMP/EIS covers a vast scope of rangeland making it challenging for stakeholders to properly identify and assess the ACECs being proposed and their respective management measures. Furthermore, these management measures may differ by state, adding another layer of complexity. The BLM's approach of consolidating 77 RMP amendments into one action also makes it difficult to identify and understand the rationale behind each ACEC proposal, especially

[35] ACEC Manual 1613 at .12.
[36] ACEC Manual 1613 at .12.
[37] ACEC Manual 1613 at .12.

as it relates to this tenant of analysis and stakeholder input. The Draft RMPA/EIS primarily presents the analysis of a proposed ACEC's relevance and importance criteria in chart form in Appendix 5, without providing a comprehensive analysis of the special management measures. Then in Chapter 2 of the Draft RMPA/EIS, the BLM summarily lists the proposed special management measures for each alternative in a chart. BLM, however, does not discuss how or why it decided on the proposed special management measures for each proposed alternative. Likewise, BLM does not discuss how the proposed special management measures will further its goals in the proposed ACEC.

As discussed above, when determining if an ACEC designation is warranted, BLM looks at: (1) relevance, (2) importance, and (3) whether special management measures are necessary. In reviewing Appendix 5 to the Draft RMPA/EIS along with Chapter 2 of the Draft RMPA/EIS, it appears that BLM concludes generally that "the presence of GRSG meets the relevance criteria across the entire range."[38] However, when looking at the GIS map layers provided by BLM, it isn't clear from the Draft RMPA/EIS that the Greater Sage Grouse is actually located throughout the entire range. This instead appears to be a conclusory statement. In fact, some ACEC areas identified in the BLM's GIS maps layers appear to be completely unrelated to Greater Sage Grouse and instead focus on resources like archaeological sites or raptor's nests.

The GIS Mapping Layers for all alternatives appear to be based on additional resources beyond Sage Grouse leks and habitat. It is hard to determine if these areas were truly intended to be part of the management described within the alternatives as Sage Grouse habitat or if there is some error. When comparing GIS layers for sage grouse leks and habitat from the proposed RMP to sage grouse habitat identified by the Wyoming Game and Fish department and the Governor's Executive Order there is some correlation. However, there are additional habitat designations presented in the proposed RMP which do not include known Greater Sage Grouse habitat at all. For example, there are several polygon features that do not correlate with any known lek or habitat data but appear to be based on raptor nests such as golden eagles and burrowing owls. This is not appropriate for inclusion in Sage Grouse management plans. In addition, there are line features that include major stipulations in the draft RMP that correlate to historic trails – again, not appropriate for inclusion as Sage Grouse habitat. Further, a proposed no surface occupancy ("NSO") stipulation seems to have been applied randomly to the edges of Environmental Impact Statement project areas – again not correlated with known Sage Grouse habitat or lek data.

It appears that designation of NSO, major stipulation areas and minor stipulation areas considered a multitude of resources other than Greater Sage Grouse, rendering avoidance or mitigation meaningless for the preservation of the species and placing undue restrictions on public lands users. Further, inaccurately designating these areas as Sage Grouse habitat will limit the ability of BLM to appropriately site projects under its multi-use mandate, which could lead to greater impacts to sage grouse at the landscape scale.

Regarding the importance criteria, the Draft RMPA/EIS states:

[38] Draft RMPA/EIS at 2.5.12.

> An evaluation of importance for all GRSG habitats was conducted to determine if any habitat within the range of GRSG met the importance criteria. Evaluation criteria included population density (e.g., Doherty et al., 2016), lek and habitat persistence (e.g., Wann et al., 2022, Palmquist et al., 2021, Rigge et al. 2021), genetic uniqueness and connectivity (e.g., Cross et al, 2018, Row et al. 2018, Cross et al. 2023, OylerMcCance et al., 2022), amount of existing habitat disturbance and habitat quality (e.g., Doherty et al., 2022). Areas identified with the above criteria are analyzed in this EIS to determine if they meet the third FLPMA required: the need for special management to protect and prevent irreparable damage.
>
> The BLM also received multiple nominations for ACEC designations. Each of these nominations were reviewed using the criteria presented by the nominator(s) and the criteria listed above. Nominated areas that met the importance criteria based on the rangewide review listed above and subsequent local evaluations were moved forward for further consideration. Additional details associated with the ACEC evaluation process is available in **Appendix 5**. These evaluations will be updated and finalized following the public comment period.[39]

In Appendix 5, it appears that BLM then analyzed population density, lek and habitat persistence, genetic uniqueness and connectivity, and the amount of existing habitat disturbance and habitat quality for each proposed ACEC to determine if the areas presented any special worth, consequence, meaning, distinctiveness, or cause of concern to determine if these issues had more than local significance. The BLM also looked at whether the proposed ACEC areas had qualities or circumstances that made it fragile, sensitive, rare, irreplaceable, exemplary, unique, endangered, threatened, or vulnerable to adverse change. While this analysis does appear to help BLM potentially identify areas important to Sage Grouse breeding and rearing (i.e., locations where key brood-rearing takes place, areas of high-density lek/population areas, and areas of genetic connectivity); however, it isn't clear from the Draft RMPA/EIS why or how the specific areas of key brood-rearing, high-density populations, or areas of genetic connectivity rise to natters of national or regional importance to the American people. This becomes particularly important when analyzing the new science relied upon by BLM to determine these areas. As indicated in API's comments some items like genetic connectivity are based on small sample sizes and/or contain sampling errors. In fact, the Targeted Annual Warning System ("TAWS") developed by the USGS as a advisory regulatory tool, subdivides the entire range into 483 "Neighborhood Clusters" based on a clustering method that is inconsistent with all current population management designations. This system is then used by USGS and BLM to track and regulate 2 to 3-year trends in neighborhood clusters relative to large-scale "climate cluster" trends. However, those climate clusters ae not based on actual climate data but clustering of leks into higher levels, with special post-hoc carve outs to create other climate clusters (such as Jackson WY was not related to climate). Some neighborhood clusters contain only a single lek or a handful of leks, which

[39] *Id*.

contributes to sampling error and erroneous results.[40] Additionally, the last year of data collection was in 2019 when populations were at a low ebb. Moreover, the climate papers relied upon by BLM consider the worst case RCP8.5 climate models, which even the IPCC has backed away from. And the genetic diversity and genetic connectivity papers relied upon by BLM are based on a handful of "neutral" genetic markers that are not relevant to natural selection in the wild. Moreover, the sample sizes are frequently small in this research and large gaps occur in the range. As such, there are significant questions about the validity of the data being used to determine the issues analyzed by BLM when determining importance.

Chapter 2 of the Draft RMPA/EIS then outlines the proposed special management measures for ACECs under each proposed Alternative. In regard to special management for Fluid Mineral Leases, the Draft RMPA/EIS primarily proposes the following special management measures:

- Under Alternative 3 – No New Fluid Mineral Leases
- Under Alternative 6 – Open to leasing subject to major constraints (no surface occupancy stipulation). An exception could be considered to allow surface occupancy only if the criteria described under the NSO Exception #1 are met, but applicable to the entire ACEC area, not just in areas near to the lek(s) (see WEMs language).[41]

BLM, however, fails to provide an analysis of how these special management measures will help promote any of the qualities that it has identified as being important for the promotion of Sage Grouse habitat in the Draft RMPA/EIS (i.e., population density, lek and habitat persistence, genetic uniqueness and connectivity, and the amount of existing habitat disturbance and habitat quality, etc.). In fact, the issuance of new fluid mineral leases may not have any bearing on these issues if surface facilities are adequately placed within the area. Similarly, the requirement to use no surface occupancy may restrict BLM's ability to place facilities and operations in the best locations by incentivizing operators to move facilities to state or fee service without regard to considering the location of important Greater Sage Grouse factors. At a minimum, the Draft RMPA/EIS should contain an analysis of these proposed special management measures and provide some discussion, with supporting data, which show how these special management measures will help achieve the goals of the RMPA. Additionally, each land use considered compatible with the purposes of the ACEC designation, or each use considered incompatible with the purposes of the ACEC designation should be described and studied in detail. *See* BLM Manual 1613.33C.

Specifically for the special management measures proposed for Fluid Mineral Development, there is no analysis in the Draft RMPA/EIS regarding opportunities for protection and/or restoration of potential ACEC values without restricting Fluid Mineral Development. This is important because under BLM's ACEC Manual 1613.22A, BLM should be looking at issues such as:

[40] Search for Map 3.2 and Map 3.3 in GRSG DEIS 2024_Vol 2_App01_Maps Part6_508 to see how the range has been subdivided and the TAWS results.
[41] Draft RMPA/EIS, Table 2-14, Comparison of Alternatives, ACEC Management.

1. Whether the values of other resources outweigh the need for protection of the important and relevant values protected in the ACEC?
2. What measures can be taken to protect the potential ACEC values without restricting other resources uses?
3. Whether there are other agencies that could manage the Sage Grouse Habitat more efficiently?
4. How existing rights will be impacted and how those rights affect management of the resource?

Finally, BLM fails to explain why these special management measures are necessary to prevent irreparable damage. Typically, "special management attention" means management prescriptions that ***protect and prevent irreparable damage*** to the relevant and important values of the area that would not be prescribed if the relevant and important values are not necessary. BLM recently explained in its preamble to the recent BLM Conservation and Landscape Health Rule that special management attention must be necessary, not just beneficial, when designating an ACEC. Yet in this draft proposal, BLM provided no such explanation.

Furthermore, under BLM's recent Conservation and Landscape Health Rule, the special management attention needs to be focused on preventing and protecting against irreparable damage. "Irreparable damage" in this context to means: "harm to a value, resource, system, or process that substantially diminishes the relevance or importance of that value, resource, system, or process in such a way that recovery of the value, resource, system, or process to the extent necessary to restore its prior relevance or importance is impossible." BLM has failed to provide any discussion in the Draft RMPA/EIS showing that it would be impossible to restore the proposed ACEC's back to prior importance without issuing special management measures that prevent new mineral leasing or invoke no surface occupancy stipulations for oil and gas development.

e. <u>The proposed ACECs do not need special management attention in oil and gas development areas</u>.

As pointed out in comments submitted by the API, research supports that there are limited impacts of modern oil and gas operations on the Greater Sage Grouse. In part, this is due to the fact that modern oil and gas operations result in limited surface impacts that are temporary in nature. Additionally, oil and gas operators undertake a variety of measures to minimize surface impacts, and BLM has stated in previous guidance that ACEC designations always protect valid existing rights, and because they are an especially flexible and site-specific tool, they can often work alongside or together with other uses on the landscape.[42] Additionally, many oil and gas leases within the Draft RMPA/EIS area are already subject to surface use stipulations that were in place at the time the lease was issued, and these stipulations, which are contractually agreed upon terms, should not change with RMP revisions.[43]

[42] Areas of Critical Environmental Concern Fact Sheet.pdf (blm.gov)
[43] U.S. BUREAU OF LAND MGMT., H–1624–1, supra note 97, at I-2, IV-2 (stating circumstances when RMP revisions are permitted and describing example when surface use stipulation may be revised).

The majority of surface disturbance associated with oil and gas development undergoes reclamation soon after initial surface disturbance. Oil and gas operations have larger land needs in the implementation stage of drilling and completing wells. Once wells are producing the footprint of the well pad in most cases is reduced and put into reclamation. Reclamation practices are intentional with the seed mixes, treatments, and associated operations. Reclamation practices utilized on oil and gas pads assist the environment and have been proven to be effective in re-establishing sagebrush habitat as well as important understory grasses, and forbs all of which are critical habitat for sage grouse. Reclamation efforts from the oil and gas operator practices have increased species diversity improving areas of decadent sagebrush stands. Sage Grouse flock to easier to digest new leader growth and young vegetation which older sagebrush stands have less abundance of. The robust reclamation species diversity seed mix utilized by operators provides new growth and has assisted insect diversity and abundance as well. Both the reclamation plant species and insect abundance and diversity aid the sage grouse diet. These reclamation practices have been in use in western states for decades. As such, oil and gas development can successfully coexist with the healthy establishment of Sage Grouse habitat and does not need to be completely stopped in order to protect the species.

f. AXPC agrees with BLM's decision not to include areas in ACECs where the federal government does not control the surface estate.

Finally, AXPC agrees with BLM's decision not to include areas in ACECs that consist of private or state-owned surface estates. BLM does not have jurisdiction under FLMPA to regulate private or state-owned surface and AXPC appreciates BLM's acknowledgment that it does not seek to regulate fee and state-owned surface under the Draft RMPA/EIS.

III. CONCLUSION

AXPC appreciates the opportunity to provide these comments on the ACECs in the Draft RMPA/EIS. While AXPC shares BLM's interest in protecting and conserving public lands, we believe that BLM needs to provide additional analysis and justification for the proposed special management measures for the ACECs.

As such, we urge BLM to refrain from finalizing additional ACECs at this time. At minimum, we believe BLM should revise the Proposed Draft RMPA/EIS consistent with these comments, respond to stakeholders' need for additional details on the proposal, and allow the public a second comment opportunity on the re-proposed rule.

Sincerely,

Wendy Kirchoff

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Vice President, Policy and Regulatory Affairs
American Exploration & Production Council
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COUNTY OF MODOC

DEPARTMENT OF NATURAL RESOURCES

Director Resource Analyst
Sean Curtis

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10 June, 2024

Pat Deibert, BLM National Sage Grouse Conservation Coordinator
BLM Wyoming State Office
5353 Yellowstone Road
Cheyenne, WY 82009

RE: Greater Sage Grouse Rangewide Planning for the Draft Resource Management Plan Amendment and Environmental Impact Statement

To Whom It May Concern:

Modoc County, California (County) appreciates the opportunity to present our position on the Draft Resource Management Plan Amendment and Environmental Impact Statement regarding Greater Sage Grouse Rangewide Planning (DEIS). The County has citizens that depend on BLM lands in Northwestern Nevada for their livelihoods and for recreation, especially those grazing permittees that reside in the easternmost part of our county and operate on Bureau of Land Management (BLM) grazing permits across the state line in Nevada. We respond to this solicitation on their behalf as well as for local government.

Modoc County is a "planning county" in that the County adopted the *Comprehensive Land Use and Management Plan for the Federally and State Managed Lands in Modoc County* under 43 U.S.C. Section 1712, 43 C.F.R. Section 1610, 40 U.S.C. Sections 1502-1508 as well as other statutes and executive orders. Utilizing this plan, the County has worked closely for nearly three decades with the BLM, at the local, state and national office levels, to jointly plan many proposals that might impact the environment and socio-economics of Modoc County and its sphere of influence.

The County recognizes and applauds the BLM's recent increase in the gathering of wild horses and burros. We strongly support the prioritization of gathers in areas designated as key Sage Grouse areas. There absolutely must be strong language in the DEIS to this affect. We all recognize that the agency supports bringing wild horse populations to Appropriate Management Levels throughout BLM's Horse Management Areas, but this general language will not be sufficient to provide the protection that both Sage Grouse and our grazers will need. These gathers in key areas should be prioritized.

The DEIS must find a way to combine the protection/enhancement of Sage Grouse habitat that is the responsibility of the federal land management agencies with the critical control of Sage Grouse predators that fall under the jurisdiction of state governments. There should be no more

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"buck passing"! The two levels of government must find a way to combine both habitat protection and predator control for the benefit of the bird and this management tool needs to be part of the document.

The County is concerned about the BLM's continued efforts, both in this DEIS and in the Conservation Rule to remove Areas of Critical Environmental Concern (ACECs) from local discussion and development. The County has engaged productively with three Resource Management Plan (RMP) development efforts (Surprise, Alturas (now combined as Applegate) and Eagle Lake) and understands the importance of coordinating these potentially continuous issues. ACECs are starting to appear to be a new tool for restricting or eliminating BLM lands for other uses. That is why it is critical that it remain a component of locally developed RMPs, especially since more and more ACECs are without management plans. We believe the current process of using ACECs for preservation and restoration is not compatible with the language or the Congressional intent of the Federal Land Policy and Management Act (FLPMA). RMP's are the right place for this discussion to take place.

The County remains concerned about the BLM's recent drift toward centralized planning, The Conservation Rule, this DEIS and your programmatic Solar EIS seem to be examples of this. This appears to be contrary to the Congressional Review Act action promulgated by Planning 2.0. This is a concern because it makes it far more difficult for counties like ours to engage productively in your planning process.

FLPMA requires meaningful coordination by the BLM with local governments with respect to all the things this DEIS encompasses. FLPMA contains the Congressional mandate for coordination because Congress recognized that BLM decisions in areas dominated by federal land ownership can have significant impacts on local communities, their environment and their economies. Consequently, the coordination requirements gives these local governments an extra "bite of the planning apple" beyond that granted to the general public. This is reinforced in your "A Desk Guide to Cooperating Agency Relationships". The removal of ACECs from the local RMP development process is a prime example of this.

It is extremely difficult to productively engage your agency when the planning is being done at such a high level. It is almost impossible to know whether plan consistency has occurred and whether the necessary analysis has occurred.

Modoc County acknowledges the improvement of this DEIS over the previous versions. We hope that there will be more productive opportunities for local government to engage during the implementation of the final product.

Sincerely,

Sean Curtis
Director

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PUBLIC LANDS FOUNDATION
For America's Heritage

Public Lands Foundation
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June 10, 2024

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BLM_HQ_GRSG_Planning@blm.gov

These comments are submitted by the Public Lands Foundation (PLF) in response to the March 15, 2024, release of the Draft Resource Management Plan Amendment/Draft Environmental Impact Statement (DEIS) for Greater sage-grouse conservation and management. These comments have been provided during the public comment period which ends on June 13, 2024.

This DEIS would amend the goals, objectives, and management from previous planning efforts in 77 resource management plans with the intent to enhance Greater sage-grouse conservation. The draft plan amendment addresses new scientific information as well as new information identified by state partners (e.g., habitat management area boundaries) while the DEIS analyzes potential effects of six proposed alternatives.

The PLF is a national membership organization that advocates and works to ensure the retention of America's Public Lands in public hands, professionally and sustainably managed for responsible common multiple use and enjoyment. The public lands that we focus on are those that are managed by the BLM.

The PLF supports the goal of this BLM planning effort to conserve and manage habitat to support healthy populations, consistent with the BLM's sensitive species policy and in cooperation with state governments and other conservation partners. Because BLM manages the largest single share of Greater sage-grouse habitat (nearly 67 million of 145 million acres total), it's critical for BLM to have good working relationships with state partners. The PLF supports BLM's commitment to transparency and collaboration in managing habitat important to Greater sage-grouse populations.

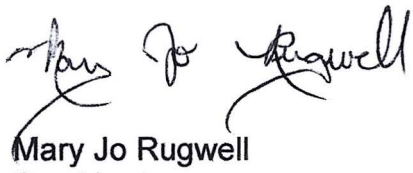
Therefore, the PLF encourages the BLM to develop the Final Management Plan Amendment/Final EIS that:

- incorporates more recent science, including climate change science
- strives for more durability than the previous efforts in 2015 and 2019

- uses a range wide approach (as opposed to state-by-state approaches) in planning and implementation because it provides a consistent structure for public land users and BLM partners
- incorporates a consistent range wide approach when using lek data, to calculate whether triggers were tripped and implementing responses using the adaptive management process (as outlined in one of the alternatives)
- commits to implementing response actions in population areas where the adaptive management triggers have tripped (as opposed to implementing management actions in other population areas)
- considers the use of off-site mitigation and cooperation with project proponents for more effective outcomes for Greater sage-grouse, including the use of restoration and mitigation leases, where appropriate, consistent with provisions in the recently finalized Conservation and Landscape Health Rule
- implements temporary management measures in proposed Areas of Critical Environmental Concern (ACEC) that may support Greater sage-grouse management objectives, consistent with provisions in the recently finalized Conservation and Landscape Health Rule
- obligates the BLM to implement the Monitoring Plan (in an appendix) with timely reporting of monitoring results and implementing management actions to address findings from monitoring reports.

The PLF applauds the BLM's efforts to develop alternatives to Greater sage-grouse habitat management using state partner input.

Sincerely,



Mary Jo Rugwell
President
Public Lands Foundation
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June 13, 2024

Quincy Bahr
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RE: Nevada Department of Agriculture, Comments to the Greater Sage-Grouse Range-wide Planning Draft Resource Management Plan Amendment (RMPA) and Draft Environmental Impact Statement (DEIS) (DOI-BLM-WO-2300-2022-0001-RMP-EIS)

Dear Mr. Bahr and the Greater Sage-Grouse Planning Team:

The Nevada Department of Agriculture appreciates the opportunity to provide these comments to the above-listed Draft Resource Management Plan Amendment and Draft Environmental Impact Statement (Draft Plan). The Department has been an active Cooperating Agency on this Draft Plan from the beginning and has significant concerns with both the process and product to this point. Concerns have been previously relayed during scoping comments and during Cooperating Agency participation. Accompanying this letter, please find a matrix containing specific comments related to the Draft Plan for your consideration.

The Department sees the potential for significant impact from this Land Use Plan Amendment on livestock operators across the state where Greater Sage-Grouse habitat is found on grazing allotments. Further, maintenance of multiple-use management and public land use is critical to the state's culture, customs and economy. The Department supports conservation and active management of wildlife, including Greater Sage-Grouse, but such actions must be informed by knowledgeable on-the-ground management and evaluation.

Alternatives 4 - 6 address livestock management in different ways and the Department's specific comments on the alternatives can be found attached. However, the overarching concern of the Department is prioritization of the GRSG habitat objectives over the Land Health Standards. The language is inconsistent throughout the chapters and alternatives. This creates confusion and disregards the regulations the BLM is currently regulated by. The Department requests several changes, removal, and addition of specific language in the attached comments.

The Department requests that the BLM develop a Supplemental Draft EIS specific to Nevada with a clearer set of Alternatives, that must include consistency with management under the Nevada State Plan (State Plan). This clarity will allow the state to evaluate the needs, threats, and state-established mitigation, that

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will support the Nevada State Plan as well as the best management applications moving forward. The Draft RMPA/EIS fails to recognize the cornerstone of Nevada's Sagebrush Ecosystem Program: The Conservation Credit System (CCS), a comprehensive mitigation banking system that was created by regulation in 2019 by the SEC as part of an integrated approach to conserving GRSG populations and habitat. It is also important to note that the CCS is just the "mitigation" aspect of the Nevada approach. There is also language included for new projects to avoid and minimize impacts before applying the CCS to offset residual impacts. Finally, the State Plan considers most minor infrastructure for grazing and ranching as "de minimus", a large difference for the BLM's call in some alternatives to try to remove certain range improvements.

The Department does not support carrying forward alternatives that contain Areas of Critical Environmental Concern (ACEC) designation. If the BLM decides to carry ACEC designations forward, the agency needs to articulate how ACECs correlate with other proposed Sage-Grouse management goals and actions. Many Nevada ranchers and grazing allotments stand to be affected by the Draft Plan and specifically the BLM's potential designation of new Areas of Critical Environmental Concern being considered as part of the Draft RMPA/EIS. The State of Nevada's Greater Sage-Grouse Conservation Plan does not suggest identifying ACECs or other "special" areas beyond Sage-Grouse habitat within designated Population Management Areas.

The BLM's analysis has not presented a clear nor compelling case that ACECs are any more important than other mapped Priority Habitat Management Areas (PHMAs) in Nevada. In fact, some of the ACECs contain extensive existing authorized uses, i.e., congressionally designated utility corridors or infrastructure, i.e., U.S. Highways, that make conservation efforts more difficult and result in significant negative impacts on agricultural and local socioeconomics.

The BLM needs to focus on completing accurate mapping that clearly articulates allocation decisions based on the mapping and coordinating with grazing permittees operating in Sage-Grouse habitat (for example, updating and implementing Allotment Management Plans to improve both grazing operations and Sage-Grouse benefits). If the BLM could accomplish those three things, the Department sees no need for ACECs. Recall that the biggest threat to Sage-Grouse in Nevada is wildfire and invasive weeds. Both of these threats can be addressed and managed by good grazing practices and collaborative stewardship. One-size fits all grazing prescriptions is not going to produce improved habitat.

The mapping presented in the Draft Plan is incomplete and creates misunderstanding of the allocation decisions and the true impact of the proposed alternatives. During the Cooperating Agency process, the Department pointed out where the maps were inaccurate, particularly as relates to the maps presented in Alternatives 3 – 6. The maps associated with Alternatives 3 – 6 should have never been published as they were based on incomplete USGS models that had yet to be completed, reviewed, or adopted by the State of Nevada.

The Department notes that the BLM provided notification that the maps were likely to change and even posted a "comparison" document late in the review period. The document provides tables and PDF maps to "show the difference" but little context was provided on the new impacts. The only way to resolve this issue is to publish a Nevada-specific Draft EIS with the newly completed USGS mapping updates that were also adopted by the State through its Sagebrush Ecosystem Council at the end of May.

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It was not until a Cooperating Agency meeting that the BLM noted that it was discussed that the new maps will be used in the final and that they were not requesting comments on the differences or the scale of impact that the change in habitat designations have on the state. The maps link directly to allocation decisions, so incomplete or inaccurate maps can have a tremendous negative impact on the Department.

The BLM must acknowledge that Raven populations have increased substantially in Nevada and across the west. This increase recently led the U.S. Fish and Wildlife Service to increase its depredation take permit in Nevada by nearly 4-fold. Information from this Environmental Assessment should be incorporated here (Depredation Permits for Common Raven Removal in Nevada, April 2024). The Coates 2022 study found that even in good habitat, raven predation can affect Sage-Grouse when raven populations elevate beyond a certain density threshold. Infrastructure and reduction of existing human subsidies is not always possible, particularly within BLM's purview. Habitat improvement is not always possible, i.e., in times of drought. As such, the BLM should not interfere with State wildlife agency efforts to remove ravens when and where deemed appropriate under its Depredation Permit. All alternatives need to acknowledge and support the State's roll in planning and implementing predator control.

In closing, the Department urges BLM to withdraw the current document and revisit planning with state-specific consideration, especially for Nevada and the Nevada State Plan, which was a pioneering effort in the management of the Greater Sage-Grouse and balancing the socioeconomic needs of the State of Nevada. The Department is committed to continuing to cooperate with the BLM to ensure the multiple uses of Nevada's public lands are managed in accordance with local, state and federal policies and procedures and are consistent with the socioeconomic needs of Nevada.

Respectfully,

Julian J (J.J.) Goicoechea, DVM

Digitally signed by Julian J (J.J.) Goicoechea, DVM
DN: cn=Julian J (J.J.) Goicoechea, DVM, o=Nevada Department of Agriculture, ou=Director, email=jgoicoechea@agri.nv.gov, c=US
Date: 2024.06.13 11:22:51 -07'00'

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GENERAL

State	Chapter	Section	PDF page	Comment
NV	ES	ES.5	ES-7	Social and economic conditions- In this section BLM does not analyze the impact of the reduction of livestock grazing in several of the alternatives and does not connect the reduction in grazing to the environmental justice impacts for rural communities .
NV	1	1.3	1-5	"Changes to RMPs may be needed to – • address the continued GRSG habitat losses that are contributing to declines in GRSG populations..." does livestock grazing meet the threshold of "continued GRSG habitat loss". The NDA does not believe that grazing is a primary threat to sage grouse habitat loss, or the "continued" loss. Including the reduction or changes in numbers of AUM across GRSG habitat does not address the need of this document.
NV	General			Remove any language recommending a reduction in AUMs. AUMs remain the same on federally grazed lands.
NV	Exec Sum.	ES.5	ES-6	"The greatest protection for GRSG habitat is under Alternative 3, which has the largest PHMA acreages. Alternative 3 allocation making public lands available to grazing." Comment: The Executive Summary for Alt. 3 eludes to public lands grazing being the primary impact to GRSG and by removing it under Alt. 3, provides the greatest protection. Livestock grazing is not one of the biggest threats identified for GRSG. Remove or reword to address a broader context for describing Alt. 3. If the BLM is going to make this statement, then the NDA requests that that an analyze is completed on how removal of livestock affects fire and invasive weeds, two actual threats to Sage-grouse
NV	2		2-100	Alt 4: "Apply minimization measures and BMPs to new authorizations and activities in PHMA..." Comment: BMPs have been developed for numerous projects, but are always a voluntary list of options to select from to improve resources. However, the BLM is inconsistent throughout the document by "requiring" BMPs, rather than keeping them voluntary. Apply "voluntary" throughout the document.
NV	General			The document needs to clarify the difference between habitat objectives and the habitat indicator table.
NV	4	4.12.1	4-135	Please change "strain on some ranches" to "strain on the majority of ranches." Based on USDAs 2017 Census of Agriculture, Ninety-six percent of U.S. farms are family owned, with over 80% of Nevada's listed as small family-owned. (https://www.nass.usda.gov/Publications/Highlights/2021/census-typology.pdf)
NV	4	4.12.3	4-155	Nevada has an updated State plan for habitat protection on State and Federal Lands. The NV State plan is not voluntary. It is mandatory and provides the greatest degree of regulatory certainty in addressing potential threats on State and Federal lands. This is through the Conservation Credit System (CCS) managed by the State of Nevada Sagebrush Ecosystem Program (NRS 232.162, NRS 232.400-480).
NV	4	4.12.4	4-166	Need to change the wording to reflect the impact. This change would be from "The restrictions on livestock grazing in large portions of federal allotments COULD impact" to "will impact". Whether that is a small or large impact, it will impact.
NV	general			The document needs to clarify the difference between habitat objectives and the habitat indidcator table.
NV	3	general		The Draft RMPA/EIS fails to recognize that many range improvements are associated with water rights owned or held by the permittee. The Final RMPA/EIS must identify that existing rights will not be impaired or taken.
NV	General			The Final LUPA/EIS should remove any reference to “thresholds and responses”, and instead refer to the established process defined in BLM’s Land health Standards.

GRAZING

State	Chapter	Section	PDF page	Comment
NV	2	Table 2-12	2-104	Management Action RM-3 for Alternative 5&6 should state "fully processing grazing authorizations" instead of "fully processed grazing authorizations"
NV	2	Table 2-12	2-105	"Alternative 4: Management Action RM-1: The presence of GRSG HMAs would not affect whether an area is available for livestock grazing; maintain existing areas designated as available or unavailable for livestock grazing. During grazing authorization renewals, Allotment Management Plan development, or other appropriate implementation-level planning, consider adjustments to ~~active AUMs~~ timing, intensity, duration, and frequency of grazing are completed at the allotment scale based on site-specific conditions to meet or make progress towards meeting Land Health Standard for special status species. Additionally, temporary adjustments of timing, intensity, duration, and frequency of grazing can be made annually to livestock numbers, ~~the number of AUMs~~ and season of use within the range of the terms and conditions and in accordance with applicable regulations."
NV	2	Table 2-12	2-106	"Alternative 4: Management Action RM-2: (PHMA/IHMA, GHMA) During the land health assessment (LHA) process, use the criteria identified in the Sage-Grouse Habitat Assessment Framework (BLMTR-6710-1 - Stiver et al. 2015 – as revised) and other BLM approved methodology to provide multiple lines of evidence (which are consistent with BLM Manual 1283) for determining whether vegetation structure, condition, and composition are meeting or making significant progress towards meeting the Land Health Standards (LHS) for BLM special status species – which includes GRSG. referencing appropriate ESD, associated State and Transition Model (STM) and existing ecological condition information. ~~,~~ For GRSG, the standard would generally be met when vegetation conditions provide for suitable or marginal GRSG habitat at the HAF site scale (see Table 8-1, Appendix 8), based on existing ecological condition, ecological potential, and existing vegetation information." NDA requests that "based on existing ecological condition, ecological potential, and existing vegetation information" be moved to the beginning of this section.
NV	2	2.5.10	2-103	"Well-managed public lands grazing done in accordance with the laws...determination on GRSG, the agency determined that meeting Land Health Standards, including proper management of livestock numbers, season of grazing and application of adaptive management strategies minimized population..." NDA would encourage BLM to consistently use "proper" and "improper" livestock grazing for the consistency of the entire document.
NV	2	2.5.10	2-103	"In some instances grazing activities may not meet or make significant progress toward meeting Land Health Standards. In such cases, improved grazing (defined as grazing at an intensity or in ways that impair ecosystem functions of the sagebrush ecosystem) can have localized adverse effects..." BLM must utilize 43 CFR 4180-1 Regulations to ensure Land Health Standards (LHS) are accurate and consistent throughout the document. First: BLM must complete a conformance review for the allotment to analyze existing livestock grazing management to determine if LHS are achieved and conform with the guidelines. Second: If existing livestock grazing is determined as the significant causal factor, modifications would occur under a new NEPA decision. Third: Then when the permit is analyzed at some point in the future, and the modifications to previous grazing are not meeting or making significant progress towards meeting the LHS, then BLM would again, modify the existing grazing management. NDA recommends the above statement be revised as stated.
NV	2	2.5.10	2-103	"Impacts from improper livestock grazing associated with not meeting Land Health Standards area analyzed in Chapter 3. Areas experiencing these effects..." Chapter 4 should only address LHS for SSS species, including GRSG, NOT for all LHS. The document is consistently inconsistent in regards to LHS. Livestock grazing management relies entirely on LHS for BLM decisions, and it is important that the document be consistent regarding LHS implementation.

GRAZING

State	Chapter	Section	PDF page	Comment
NV	2		2-105	"MA RM-1: BLM- During grazing authorization renewals, Allotment Management Plan development, or other appropriate implementation-level planning, consider adjustments to active AUMs, timing, intensity, duration, and frequency of grazing are completed at the allotment scale based on site-specific conditions to meet or make progress towards meeting Land Health Standards for special status species. Additionally, temporary adjustments of timing, intensity, duration, and frequency of grazing can be made annually to livestock numbers, the number of AUMs, and season of use within the range of the terms and conditions and in accordance with applicable regulations." BLM must must not assume that the Standard for SSS has not been met. Only after the Standard for SSS, due to livestock grazing being a significant causal factor, are any modifications to the permit appropriate. NDA suggested replacement: During grazing authorization renewals, Allotment Management Plan Development follows existing regulations 4110 and 4120. Consider and apply BMPs for Livestock Grazing Management featured in Appendix 15. Additionally, the AO has the ability to make temporary adjustments to LG management in accordance with applicable regulations and within the range of the terms and conditions of the permit.

GRAZING

State	Chapter	Section	PDF page	Comment
NV	2		2-107	MA RM-3 - Alt- 4, "...the NEPA analysis when fully processing grazing authorizations (i.e., permit or lease) shall include at least one alternative that includes specific threshold and defined responses in the terms and conditions of the grazing authorization..." Alt 5&6- "...the NEPA analysis when fully processed should consider including at least one alternative that considers specific thresholds and defined responses... Alt. 4 states "processing" grazing authorization and Alt 5 states "processed." **Change Alternative 5 to state "processing" as in Alt 4 for consistency.** The only difference between Alt 4 and Alt 5 & 6 is "shall consider" and "should consider." The BLM is incorrectly focused on the inclusion of "Thresholds and Response" to the livestock grazing section. BLM's LHS regulation 43 CFR 4180 already provides the equivalent of a threshold when the standard for SSS is not met due to livestock grazing as the significant causal factor. Followed by, again, 43 CFR 4180.2(c) "The authorized officer shall take appropriate action as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management practices or levels of grazing use on public lands..." When the authorized officer modifies the existing grazing, this is the response. The response or changes to existing grazing management, such as season of use, timing, intensity, duration, type of livestock, etc., is developed in an alternative and analyzed under NEPA, before being implemented into the permit or terms and conditions. NDA opposes the Alternative language under 4, 5, or 6 indicating an addition of Threshold and Response shall or should be considered in addition to the LHS. REPLACE LANGUAGE WITH THE FOLLOWING: ALT 4 RM-3: Remove Alternative 4 in its entirety. And replace with Alternative 4 (below) NDA Suggested Alternative 4: Replace the first paragraph with the following: "In PHMA, the NEPA analysis when fully processing grazing authorization, should follow 43 CFR part 4180.1 (Fundamentals of Rangeland Health and Standards and Guidelines of Grazing Administration), where the LHS for SSS is not achieved specific to GRSG and existing livestock grazing is determined to be the significant causal factor, as workload capacity and priorities allow." Remove the second paragraph in its entirety.

GRAZING

State	Chapter	Section	PDF page	Comment
NV	2		2-108	MA RM 3 Rationale: "One or more defined responses will allow the authorizing officer to implement adjustments to livestock grazing during the term of the authorization that have already been analyzed in a NEPA document. Thresholds specific to GRSG habitat will be developed to maintain or move PHMA/IHMA toward providing suitable GRSG habitat (Table 801, Appendix 8), designed to address the site-level HAF indicators that warranted the HAF assessment rating, and consider ecological site potential, and relevant locally specific conditions, and Land Health Standards (43 CFR 4180.2)." Comment: The regulations as stated above under 43 CFR 4180.2 (c) and (d) already require the authorized officer to modify existing livestock grazing management. It states "At a minimum, State or regional standards developed must address (4) Habitat for endangered, threatened, proposed, Candidate 1 or 2, or special status species." The authorized officer has the full authority to analyze a range of management options under NEPA, followed by their discretion to modify management on an annual basis utilizing annual indicator monitoring and ecological conditions, i.e., drought. Additionally, BLM is misapplying and incorporating key phrases such as "maintain or move towards" out of context. In this Alternative BLM cannot maintain or move PHMA, but rather existing livestock grazing would be modified to achieve or make significant progress toward achieving the Standard for SSS. NDA urges BLM to remove language duplicative or misapplied out of the original context of regulations.
NV	2		2-109	MA RM-4 Alt 4,5&6- "Consider removal or modification of projects that negatively affect GRSG or GRSG habitat. Functional projects needed for management of sensitive species habitat or other sensitive resources should be maintained but consider improving in." NDA- BLM originally analyzed the range improvement project under NEPA with a purpose and need. As stated under Alt 4, RM-4, BLM is now potentially changing the purpose and need of a range improvement project to manage for sensitive species habitat. NDA cannot support removing range improvements, which support existing livestock grazing management. Additionally, BLM should not remove infrastructure of any kind if the removal will create additional disturbance or encourage the spread of annual grasses. Remove language saying "consider removing."
NV	4		4-7	"Research shows livestock grazing in GRSG habitat may either improve or decrease habitat quality, depending on the type of habitat, spatial and temporal scale..." NDA: This statement excludes "maintain." Some grazing in a given ecological state can maintain the site. BLM regulations 43 CFR 4100 has numerous examples where livestock grazing is used to maintain, i.e., " 43 CFR 4100.0-5 Activity plan - means a plan for managing a resource use or value to achieve specific objectives. For example, an allotment management plan is an activity plan for managing livestock grazing use to improve or maintain rangeland conditions." NDA requests the removal or modification of the statement accordingly.
NV	4		4-8	"A reduction in forbs due to livestock grazing would reduce the value of nesting and early and later brood-rearing habitat for GRSG and may cause them to use less optimal habitat..." NDA: The statement is incredibly subjective and assumes there are specific measurements, indicators or some monitoring methodology to clearly distinguish livestock grazing as the significant causal factor for declining forbs relative to other potential reasons such as drought. We strongly urge BLM to remove this statement.

GRAZING

State	Chapter	Section	PDF page	Comment
NV	4		4-8	NDA: The third paragraph discusses the negative impacts of man-made water sources to GRSG. However, the analysis is inaccurate by not including the positives. Many man-made water sources such as stock tanks have overflows to create water sources benefiting wildlife. Additionally, Chapter 2, livestock grazing Alternative table includes language to consider keeping range improvement projects which directly benefit GRSG and other wildlife. Suggest modification to address the benefits of man-made water and range improvements.
NV	4		4-8	"Livestock grazing can be a management tool to aid in the management or maintenance of vegetation communities..." NDA: This is an example where the document contradicts the previous statement on page 4-7 above. NDA requests modification of 4-7.
NV	4		4-24	"Removing livestock from PHMA would reduce the potential...However, if livestock are removed on BLM fences may be erected...Additionally, removing livestock from BLM lands may concentrate grazing on private lands..." NDA: The three sentences above identify the inconsistency in language and analysis found in Ch. 4, which must be clarified and more concisely written.
NV	4		4-29	"Adjustments to existing AUMs would be made based on ..." NDA: The document is inconsistent in the language used between chapters and alternatives. Examples include: existing, actual, active, and permitted. The distinction and ultimate implementation between each of these words can negatively impact livestock grazing permittees. NDA recommends using "permitted."
NV	4		4-29	"Additionally, if land health assessment conditions are not met as indicated by an assessment specific to site capability, adjustments to grazing practices would be made to provide for suitable GRSG habitat at the HAF site scale." NDA: This statement is inaccurate and concerning with regards to how easily BLM staff could incorrectly implement regulatory processes with livestock grazing permittees bearing the burden. The BLM Handbook H-4180 defines Assessment as: "The estimation or judgement of the status of ecosystem structures, functions, or process...An assessment is conducted by gathering, synthesizing....An assessment is not a decision." In the language above..."adjustments to grazing practices would be made" is a decision. We believe there is interchanging vocabulary and misapplication between the LHS Determination process and assessments, and would encourage the BLM document follow and incorporate existing regulatory language.
NV	4		4-29	"Together, these management actions and objectives would help to minimize, reduce or correct for GRSG disturbances and habitat alterations that could otherwise lead to impacts on population persistence and viability." NDA: Livestock grazing management is not a disturbance as indicated. The BLM is incorporating 2012 US Forest Service Planning Rule language into a BLM document (persistence and viability) is not part of the BLM RMP planning process. NDA requests the removal of this reference.
NV	4		4-33	"Impacts from livestock grazing management under Alternative 5 and 6 would be the same as describes for Alternative 4." NDA: This is an incorrect analysis between the alternatives. While NDA does not support the proposed language, as written there are significant differences between Alt 5 and 6 and Alt 4 related to Thresholds and Responses, implementation of LHS, etc.
NV	4	4.3.1	4-36	BLM- "Cold season grass species that don't tolerate prolonged and heavy grazing are the dominant vegetation communities in the grass understories of sagebrush habitats across the biome." NDA- There is no reference associated with the above sentence. Cool season grasses associated with sagebrush evolved with intense herbivory from bison and other large ungulates on the landscape. Bison alone, roamed in large herds with some estimates of herds as large as 25-50 miles across (RANGELANDS 17(5), October 1995). Even with low density of bison per acre, herds were still estimated to have several million individuals. NDA requests the removal of the above statement.

GRAZING

State	Chapter	Section	PDF page	Comment
NV	2	Table 2-12	2-109	For Management Action RM-4, the language that reads "Consider removal or modification of projects that negatively affect GRSG or GRSG habitat" is too subjective. What is the metric that will be used to determine whether a project "negatively affects" GRSG or GRSG habitat?
NV	2	Table 2-12	2-111	For Management Action RM-6, the BLM should coordinate with the state wildlife agency AND the state department of agriculture and the affected livestock grazing permittee on any evaluations or modifications of fences or other range improvement structures.
NV	4	4.2.5	45411	The text incorrectly states, "The BLM would alter management objectives and actions to minimize, reduce, or correct for any impacts to GRSG and habitat, managing livestock grazing to meet or make progress towards meeting the GRSG habitat objectives." Instead the text should refer back to the alternatives in Chapter 2 and reference Land Health Standards.
NV	4	4.3.2	4-39	The text incorrectly states, "This would include or adjust permit terms and conditions needed to meet land health standards and GRSG habitat objectives." Instead the text should refer back to the alternatives in Chapter 2 and reference Land Health Standards only.
NV	4	4.8.5	4-74	The text incorrectly states, "For example, in HMAs, livestock grazing would be managed toward meeting land health standards the GRSG habitat objectives…". The text should refer back to the alternatives in Chapter 2. Remove reference to GRSG habitat objectives and reference Land Health Standards only.
NV	4		45406	"Removing livestock could lead to increases in herbaceous understories, which would increase forage availability and nesting habitat suitability for GRSG." NDA: This is a contradiction from the previous statement (4-8) of how "livestock grazing can be a management tool to aid in the management or maintenance of vegetation communities within GRSG habitat."
NV	4	4.8.4	4-72	This is misleading. PHMA is unavailable to livestock under Alt 3. It needs to be specified whether or not PHMA now includes all HMAs as stated in the ALT 3 summary. This would have detrimental economic impacts for Nevada's ranchers, which would affect the state as a whole and markets throughout the country.
NV	4	4.8.4	4-72	"Eliminating AUM's would NEGATIVELY affect.."
NV	4	4.11.2	4-119	New wording incorporated to reflect that "IMPROPER" livestock grazing can have negative affects. Wild horse and burro should not be mentioned in the same paragraph as managed livestock grazing, unless specified that this would be grazing managed by the BLM. Adding wild horse and burros into this section, along with grouping them into livestock, WILL directly affect the perception of the grazing and livestock industry further.
NV	4	4.13.2	4-186	Wildlife, Feral Horses and Burros should not be included in a section about Livestock grazing, as they are not livestock. This is necessary to include, but maybe a paragraph right under, but outside of Livestock grazing should exist to capture this.
NV	4	4.21.1	4-231	Please include the Sagebrush Ecosystem Technical Team (SETT) in this paragraph. The SETT works with private land owners to improve sage-grouse habitat. This is through the Conservation Credit System (CCS) managed by the State of Nevada Sagebrush Ecosystem Program (NRS 232.162, NRS 232.400-480). The goal of the Nevada CCS is to generate a net benefit of greater sage-grouse habitat by ensuring the impacts to sage-grouse habitat in the State of Nevada and Federal lands from human disturbances (debits) are offset with commensurate habitat conservation actions (credits). Private lands conservation and restoration is incentivized through the CCS as part of the credit side.
NV	15	15.1.1	15-1	"In GRSG habitat management areas, these communication efforts should include coordination on how livestock grazing practices could be managed across both BLM-administered lands and non-BLM-administered lands, in partnership with interested permittees and lessees, to improve GRSG habitat conditions." Please change to "In GRSG habitat management areas, these communication efforts WILL include coordination on how livestock grazing practices are to be be managed across both BLM-administered lands in coordination with permittees and lessess, to improve GRSG habitat conditions. The communications efforts will inclue coordination on how livestock grazing practices could be managed across non-BLM-administered lands, in partnership with interested permittees and lessees, to improve GRSG habitat conditions."
NV	15	15.1.2	15-2	"During the lekking season, encourage minimal vehicle use and maintenance activities associated with livestock management during lekking hours (before 9 am and after 6 pm) within 0.6 miles of a lek." Please provide a citation.

HORSE & BURRO

State	Chapter	Section	PDF page	page number	Comment
NV	2	2.5.11	2-113		"...although impacts vary with elevation, density, and season and duration of use..." Wild horses are present and unmanaged on the landscape at all times and don't have seasonal occupancy. NDA requests removal of this quote and reference.
NV	4		4-36		BLM- "Wild horse and burro impacts are similar to those from livestock grazing, as wild horses and burros also forage on and trample vegetation." NDA- requests the removal of this statement. Impacts from wild horse and burros are not similar. Livestock grazing activities are highly managed through BLM regulation and monitored. In most instances livestock grazing is a seasonal activity. Wild horse and burros are not managed, they are on the landscape year-round and are highly detremental to native habitat. Additionally, BLM must seperate management of livestock grazing and wild horse and burros from all statements. There must be clear seperation on how they are managed by BLM on the landscape.

ADAPTIVE MANAGEMENT

State	Chapter	Section	PDF page	page number	Comment
NV	2	2-15	2-126& 2-127		BLM- Alt 3-6: Livestock Grazing has been removed from the narrative for Adaptive Management (AM) and is embedded in the alternatives table. The language in the alternatives table for AM is not consistent with current BLM rules and regulations, nor is it consistent with the Alternatives for Livestock Grazing in Chapter 2. "Grazing permits that will expire within the same year the threshold is identified. A permit or lease to extend the current grazing practice for less than 10 years may be renewed until the causal factor analysis is completed. If grazing is not determined as a causal factor to an adaptive management threshold, grazing permit or lease renewal can proceed normally. If grazing is a contributing cause to an adaptive management threshold, the terms and conditions of the grazing permit or lease will need to be examined, and based on the outcome, would need to appropriately be modified to reduce or eliminate the impact. Continuing the terms and conditions for livestock grazing when a permit or lease has expired or was terminated due to a grazing preference transfer in accordance with Section 402(c)(2) of the FLPMA as amended by Public Law No. 113-291." The Nevada Department of Agriculture has provided language, throughout the development of the alternatives, that allows for grazing to be included in the AM process and still be consistent with BLM rules and regulations (pg. 2-126 thru 2-127). The BLM is inconsistent with existing alternative language. BLM uses terms like "causal" and "contributing factors" incorrectly. Livestock grazing must be identified as a significant causal factor for LHS SSS before any modifications occur to a livestock grazing permit or lease. LHS is the equivalent of thresholds and responses. NDA recommended language: Specific to GRSG habitat, manage livestock grazing in a manner that 1) meets or makes progress toward meeting the Land Health Standard for special status species, and applies the guideline that addresses “restoring, maintaining, or enhancing habitats of...special status species to promote their conservation” (43 CFR Part 4180.2(e)(9) or subsequent changes to regulations or policy.
NV	2	2.5.13			Stating that "Adaptive management thresholds are not specific to any one project…" is not true, or is at the very least, misleading. Debit projects through the CCS have to go through the adaptive management process to make sure that triggers are not being met. Population declines are associated with anthropogenic features and disturbance, as well as grazing. This needs to be updated to include that.
NV	2	2.5.13	2-123		What is the benefit of taking the "watch" or "warning" system away? This gives a good idea if there is a problem emerging, and allows us to respond in a timely manner. This is also written into Nevada's State plan for adaptive management.

HABITAT

State	Chapter	Section	PDF page	page number	Comment
NV	4		4-34		"Expansion of conifer woodlands, especially pinyon (Pinus spp.) and Juniper (juniper spp) is also associated with increased bare ground and increased erosion potentia (Manier et al. 2013). Juniper expansion presents a threat to GRSG as it doesn't provide suitable habitat, and mature trees displace shrubs, grazzes, and forbs through direct competition for resources." NDA: This language is an example of how BLM is directly conflicting in direction and management of two seperate species/administration priorities. The most recent effort to inventory old growth pinyon and juniper and manage for old growth forests, contradicts this GRSG document and analysis in order to manage for GRSG habitat.
NV	4		4-36		"Grazing may also confer competitive advantage on pinyons and junipers through the removal of native grasses andforbs, facilitation of tree regeneration by increased shrub cover, and enhanced seed dispersal (Baker 2011)." NDA: The BLM is blaming livestock grazing for expansion of pinyons and junipers into GRSG habitats, while later stating if grazing is managed to meet or make progress towards LHS, then pinyons and junipers will not expand. This statement is not only misleading, but has no direct correlation between grazing allotments meeting and not meeting LHS. Rather, fire suppression is likely more directly correlated to expansion of pinyon and juniper. NDA requests the removal of this statement.
NV	4		4-37		"Structural changes to sagebrush shrublands have caused an increase in encroachment of pinyon pine, juniper and noxious weeds that are replacing native plant communities." NDA: This paragraph lacks any peer-reviewed studies and is written subjectively. BLM is avoiding the inclusion of fire suppresion as the number one reason for expansion of pinyon and juniper. NDA requests the removal of this paragraph.
NV	4		4-37		"Under Alternative 1, all states would include language to maintain and enhance sagebrush habitats..." NDA: See page 4-34. The statement should read: ..."maintain and improve"

HABITAT

State	Chapter	Section	PDF page	page number	Comment
NV	4		4-43 & 45		"Under Alternative 3, all PHMA would be unavailable for domestic livestock grazing. As a result, livestock would be removed from PHMA and impacts to vegetation associated with livestock grazing, as described under Nature and Types of Effects would not occur. Alternative 3 would reduce the likelihood for spread of weeds, would allow for native understory perennial plant recovery, and would increase herbaceous vegetation cover (Strand and Launchbaugh 2013). Not utilizing livestock as a tool available for implementing fuels management treatments or invasive species control in sagebrush habitat areas could make PHMA more susceptible to a large-scale wildfire that would decrease native vegetation and increase the potential for noxious weed and invasive species growth in sagebrush vegetation communities within PHMA. Increased risk of wildfire would decrease protection of sagebrush habitats and may require repeated post-fire rehabilitation treatments to recover habitat function and continuity." NDA: The analysis is contradictory, especially regarding weeds, but assumes all allotments in PHMA are not providing suitable GRSG habitat. PHMA is designated due to higher lek counts, suitable habitats, etc., all of which overlaps active livestock grazing allotments. Recommend creating consistency between the analysis and between alternatives.
NV	4		4-46		"Impacts from livestock grazing management under Alternative 5 would be the same as those desribed for Alternative 4." NDA: This is simply a reiteration of our previous comments for this section. Incredibly weak anaylsis with no actual link back to Chapter 2 and the language in the range of alternatives.
NV	4		4-53		"Within SFAs prioritization of grazing permit/lease review not meeting Land Health Standards, with a focus on those containing riparian and wet meadow vegetation would improve riparian and wet meadow vegetation." NDA: BLM needs to modify the language to "Land Health Stadard for SSS" and stay consistnt with Chapter 2, in which sage-grouse habitat is considered.
NV	4	4.5.6	4-61		NDA: BLM is missing an entire Alternative 5 and 6 analysis pertaining to livestock grazing management. This needs to align with Chapter 2.
NV	4	4.7.1	4-62		"Similar to livestock grazing, wild horse and burro grazing has similar impacts in terms of their effects on soils, vegetation health..." NDA: We recomend revising the comparison between wild horses and livestock to reflect the difference in impacts between the two species. Livestock are permitted with terms and conditions and very specific timelines to grazing, while wild horses are on the range year-round. The impacts of wild horses is vastly different than that of livestock use for 2 - 3 months a year and should be reflected in the analysis.

HABITAT

State	Chapter	Section	PDF page	page number	Comment
NV	4	4.8.1	4-66		"Changes in livestock grazing management could impact grazing opportunities in a variety of ways. For example, implementing livestock grazing management requirements to benefit GRSG could affect livestock grazing by changing required management actions. Management requirements could increase short-term and long-term costs to permittees and lessees and decrease AUMs particularly when they require one of more of the following..." NDA: The use of required or requirement is found throughout the section and is an indication of BLM's intent and often misapplication of managment actions pertaining to livestock grazing management. The section is incredibly inaccurate and does not follow Chapter 2. Most importantly is that the BLM has excluded their own regulatory process for livestock grazing managmenet to follow existing regulations 43 CFR 4180, Fundamentals of Rangeland Health, and most specifically to achieve LHS for SSS.

APPENDIX

State	Appendix	Section	PDF page	page number	Comment
NV	8	8.2.4			Under the column Perennial grass height, for Nesting habitat, please add language about refering to the state's and site's specific ESDs to the table? "Reference state as determined by current ecological site potential in consideration of annual variability?"
NV	8	8.2.4			For Note 6, please change "Ecological Site potential" to "Current ecological site potential" to reflect that conditions may have changed, this could be due to many environmental factors.
NV	8	8.2.4			NDA would like to point out the inconsistencies with the habitat objectives for each state. Some states like WY only have seasonal habitats (breeding, late brood rearing, and winter). However, in Nevada we also have general and riparian. The NDA requests the removal of the general and riparian to be consistent across the range. The department believes that these requirements are filled by seasonal habitats, and that evauluation on condition through monitoring for annual use, land health evaulations, and SSS that the additional requirements are not necessary and do not provide any additional benefit for grazing management, and does not meet the goals of having consistency across state managment.
NV	8	8.2.4			Move all foot notes to top of each of the seasonal habitats as current ecological site potntial should be done first before moving forward with evaluation

Oregon
Tina Kotek, Governor

Department of Transportation
Delivery and Operations
Geotechnical Engineering, Engineering Geology
& Hazardous Materials Section
4040 Fairview Industrial Drive SE, MS 6
Salem, OR, 97302

Date: June 13, 2024

To: US Department of the Interior
Bureau of Land Management
https://eplanning.blm.gov/eplanning-ui/project/2016719/510

From: Susan C. Ortiz, P.E., G.E.
Susan Ortiz, P.E., G.E.
Oregon Department of Transportation
Material Source Program

RE: Greater Sage-Grouse Draft Resource Management Plan Amendment/
Draft Environmental Impact Statement (Draft RMPA/EIS)

Thank you for the opportunity to comment on the Greater Sage-Grouse Draft Resource Management Plan Amendment/Draft Environmental Impact Statement (Draft EIS). Oregon Department of Transportation's (ODOT) interest is related to how the transportation system and material sites located on Bureau of Land Management (BLM) lands within Greater Sage Grouse habitat, would be impacted by limitations proposed in each alternative presented under the Draft EIS. Primary focus pertains to the accessibility and utilization of existing BLM administered, ODOT controlled material sources that lay within mapped GRSG habitat. This submittal summarizes ODOT's comments and questions regarding the impact of this proposed action on existing mineral rights of way granted by the BLM to ODOT according to 23 CFR Section 317, for exclusive use on the federal aid highway system.

Review of the Draft EIS Alternatives reveals impacts to ODOT's active mining permits at 23 material source locations, encompassing approximately 2,220 acres, within the modified greater sage grouse habitat maps presented as part of the Draft EIS. These locations serve the federal aid highway routes throughout central and eastern Oregon. An additional 86 material source locations comprised of 3,300+ acres are controlled by ODOT as part of the Agency's material source network for future needs. Each of these locations (referred to as "appropriations") is on land administered by the BLM and with mineral rights controlled by ODOT through the aforementioned 23 CFR Section 317 process. Specific affected appropriation locations are included in the tables, below. A broad level scale map also is included for reference.

Given the breath of the overlap between scope of Draft EIS and ODOT's existing material source network, ODOT is seeking clarification on the classification of these appropriations as existing rights of way and not saleable minerals and how this classification relates to disturbance caps as defined by the Draft EIS. Specifically:

- Are the subject appropriations categorized as existing rights of way and managed separately from other saleable mineral rights?
- Are current and future surface disturbances within these existing rights of way subject to disturbance caps as defined in the Draft EIS?

Understanding that specificity on the basis for questions has been requested by the BLM, as part of this review process, following is a summary of citations behind ODOT request for clarification:

- Within this EIS there are several references (pages 2-181 & Appendix 2 page 2-OR-32) that state: "Federal Highway Act Materials sites are a ROW and not subject to mineral sale requirements. See ROW section for management, (MD LR 7 in 2015 OR GRSG AMPRA)".
- Chapter 2, page 2-176 & 2-177 provides an Oregon specific narrative, and Tables 2-36, 2-37 & 2-38 provide comparisons of the six alternatives outlining the

different impacts to resources under each alternative. On Page 2-181 table 2-38 outlines impacts to mineral materials under each alternative, and states Federal Highway Act material sites are a ROW and not subject to mineral sale requirements. The Chapter 2 summary narrative and tables do not address how the 2024 GRSG EIS may impact ROWs other than to reference the 2015 Oregon GRSG EIS.

- The 2015 OR GRSG AMPRA discusses ROWs as valid existing rights but *identifies limits on development of these existing rights subject to disturbance caps and project authorization scale calculations.*
- The 2024 Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement addresses “disturbance caps” on page 2-28, section 2.5.5. “Disturbance Caps identify an upper limit (maximum disturbance permitted) above which no new development is generally permitted (subject to applicable laws and regulations and valid existing rights)”.

The applicability of surface disturbance caps to ODOTs appropriated material sources could fundamentally alter ODOT’s ability to access material from these sites, for the public benefit, on the federal aid highway system. The life cycle of appropriation quarries is multigenerational and involves the slow, systematic production of aggregate materials as part of asset management and corridor planning. ODOT looks forward to discussing the critical nature of appropriation resources further. The BLM and ODOT have a century old relationship of partnering for these needs and we look forward to continuing this important work together.

ODOT MATERIAL SOURCE APPROPRIATIONS WITH ACTIVE DOGAMI PERMITS								
SAGE GROUSE HABITAT	ODOT ID #	MATERIAL SOURCE NAME	COUNTY	ODOT REGION	TOWNSHIP (SOUTH)	RANGE (EAST)	SECTION	ACRES
Core	OR-01-003-5	Cinder Butte	Baker	5	14	43	5	80
Core	OR-01-014-5	Love Bridge Quarry (aka Colvard Station)	Baker	5	8	43	33	40
Core	OR-09-039-4	Moffitt Road Borrow Source	Deschutes	4	20	16	12	40
Core	OR-09-044-4	Grassy Butte Cinder Pit	Deschutes	4	20	19	19	45
Core	OR-09-088-4	Buck Creek Cinder Pit	Deschutes	4	22	23	28	166
Core	OR-13-058-5	Folly Farm Quarry (Pollock Draw South)	Harney	5	28	36	22	40
Core	OR-19-070-4	Parsnip Creek Quarry	Lake	4	39	22	1	152
Core	OR-19-079-4	Doherty Slide Quarry	Lake	4	41	27	13	100
Core	OR-23-066-5	Jordan Valley Quarry	Malheur	5	29	46	34	40
Core	OR-23-089-5	Blue Mountain Pass	Malheur	5	38	42	4	80
Low-Density	OR-01-001-5	Pleasant Valley (Jensen) Quarry	Baker	5	10	42	29	150
Low-Density	OR-01-002-5	Rye Valley Quarry	Baker	5	13	44	15	71
Low-Density	OR-07-039-4	Lost Creek Quarry	Crook	4	17	20	4	25
Low-Density	OR-07-040-4	Schwab Quarry	Crook	4	17	21	6	29
Low-Density	OR-13-031-5	Wagontire Quarry (OR-19-006-4)	Harney	5	27	24	19	80
Low-Density	OR-13-041-5	Butler Gravel Pit	Harney	5	33	31	12	123
Low-Density	OR-13-061-5	Gap (or MP 87) Quarry	Harney	5	23	24	33	47
Low-Density	OR-19-003-4	GI Ranch Pit	Lake	4	23	22	10	34
Low-Density	OR-19-006-4	Wagontire Quarry (OR-13-031-5)	Lake	4	27	24	19	80
Low-Density	OR-19-017-4	Hogback Summit Gravel Pit	Lake	4	32	22	27	80
Low-Density	OR-23-013-5	County Line (Kingsbury) Quarry	Malheur	5	21	37	6	80
Low-Density	OR-23-019-5	Squaw Creek Quarry	Malheur	5	20	41	34	44
Low-Density	OR-19-106-4	Sand Hollow Quarry	Lake	4	32	19	13	600

ODOT MATERIAL SOURCE APPROPRIATIONS WITH PLANNED FUTURE USE								
SAGE GROUSE HABITAT	ODOT ID #	MATERIAL SOURCE NAME	COUNTY	ODOT REGION	TOWNSHIP (SOUTH)	RANGE (EAST)	SECTION	ACRES
Core	OR-01-015-5	Sparta Quarry	Baker	5	8	43	34	30
Core	OR-01-064-5	Durbin Creek Road Quarry	Baker	5	14	44	23	70
Core	OR-09-031-4	US20 MP 42	Deschutes	4	21	18	4	36
Core	OR-09-041-4	US20 MP 39.9	Deschutes	4	20	17	14	40
Core	OR-09-045-4	Fredrick Butte Road	Deschutes	4	21	19	7	45
Core	OR-13-016-5	Sandstone Quarry	Harney	5	22	34	4	30
Core	OR-13-090-5	Hat Butte Cinder Pit	Harney	5	23	24	7	80
Core	OR-19-002-4	Stoffer Road	Lake	4	23	22	7	40
Core	OR-19-004-4	Buck Creek Cinder Pit	Lake	4	22	23	28	166
Core	OR-19-005-4	Glass Butte Road	Lake	4	23	23	15	34
Core	OR-23-063-5	Thomas Creek	Malheur	5	28	46	10	40
Core	OR-23-065-5	Strode Ranch	Malheur	5	28	46	23	20
Core	OR-23-067-5	Jack Creek Road	Malheur	5	30	45	10	60
Core	OR-23-124-5	Danger Point Gravel Pit	Malheur	5	19	41	14	70
Core	OR-01-009-5	Palmer Hill Quarry	Baker	5	8	41	35	20
Core	OR-01-011-5	Ruckles Creek Quarry	Baker	5	8	42	32	40
Core	OR-01-012-5	Weigh Station Pit	Baker	5	8	42	28	20
Core	OR-01-016-5	Maiden Gulch	Baker	5	9	44	3	21
Core	OR-01-010-5	Palmer Hill Road	Baker	5	9	41	1	10
Core	OR-23-039-5	Saddle Butte Lava Field Gravel Pit	Malheur	5	31	39	7	70
Core	OR-23-040-5	Iron Mountain Road Gravel Pit	Malheur	5	31	39	8	50
Core	OR-23-088-5	ODOT East Quarry	Malheur	5	37	42	30	40
Core	OR-23-141-5	ODOT Quarry	Malheur	5	37	42	32	10
Core	OR-23-142-5	Prong Horn View Gravel Pit	Malheur	5	38	42	22	10
Core	OR-23-144-5	Hooker Creek Gravel Pit	Malheur	5	28	46	35	60
Core	OR-23-147-5	Shumway Grade	Malheur	5	21	38	22	0
Core	OR-01-092-5	Bulldozer Creek Pit	Baker	5	8	42	35	5
Core	OR-19-114-4	US20 MP 78.2 Stockpile	Lake	4	23	23	7	20
Core	OR-13-103-5	Summit Springs North	Harney	5	28	36	25	40
Core	OR-01-104-5	Elms Reservoir	Baker	5	13	37	14	20
Core	OR-13-125-5	Pine Creek Stockpile	Harney	5	22	34	7	10
Core	OR-13-126-5	COH MP 170.2 Stockpile	Harney	5	21	35	10	10
Core	OR-13-128-5	Lone Duck Res.	Harney	5	23	24	19	20
Core	OR-13-131-5	McMullen Creek Stockpile	Harney	5	21	34	34	10
Core	OR-13-132-5	COH MP 172.1	Harney	5	21	35	2	80
Core	OR-23-183-5	Jordan Craters Road Junction Gravel Pit & Stoc	Malheur	5	28	46	26	10
Core	OR-23-188-5	Gold Creek-West	Malheur	5	21	40	3	10
Core	OR-23-192-5	Sperry Creek-East	Malheur	5	20	40	32	10
Core	OR-01-162-5	Banta Road	Baker	5	8	42	29	20
Low-Density	OR-01-069-5	Pleasant Valley Road Cut	Baker	5	10	42	29	20
Low-Density	OR-09-033-4	Bear Creek Buttes	Deschutes	4	19	16	31	40
Low-Density	OR-09-048-4	Cougar Butte Quarry	Deschutes	4	21	20	26	80
Low-Density	OR-09-051-4	US20 MP 67.2 Stockpile	Deschutes	4	22	21	27	20
Low-Density	OR-09-085-4	Sage Hollow	Deschutes	4	19	16	1	30
Low-Density	OR-13-019-5	Middle Fork Pit	Harney	5	20	36	32	40
Low-Density	OR-13-060-5	Gap Ranch Cinder Pit	Harney	5	23	24	27	160
Low-Density	OR-13-067-5	Cinder Lake Pit	Harney	5	25	26	4	120
Low-Density	OR-13-069-5	Old Peterson Ranch Borrow	Harney	5	25	25	35	33
Low-Density	OR-19-078-4	Guano Valley Gravel Pit	Lake	4	40	27	27	80
Low-Density	OR-23-037-5	Turnbull	Malheur	5	29	37	22	100
Low-Density	OR-23-070-5	Rock Creek Gravel Pit	Malheur	5	31	44	6	228
Low-Density	OR-23-082-5	Bowden Gravel Pit	Malheur	5	35	39	1	20
Low-Density	OR-23-083-5	Whitehorse Road Gravel Pit	Malheur	5	35	39	26	40
Low-Density	OR-23-085-5	Big Bend West Gravel Pit	Malheur	5	36	41	23	80
Low-Density	OR-23-087-5	South Basque Quarry	Malheur	5	37	42	19	80
Low-Density	OR-23-107-5	Jackson Creek Gravel Pit	Malheur	5	39	42	3	40
Low-Density	OR-23-090-5	North McDermitt-West Gravel Pit	Malheur	5	40	42	24	40
Low-Density	OR-23-139-5	ODOT East Borrow Pit	Malheur	5	34	39	25	40
Low-Density	OR-23-140-5	ODOT Talus Borrow Pit	Malheur	5	35	39	35	10
Low-Density	OR-23-143-5	Cleto Road	Malheur	5	39	42	26	10
Low-Density	OR-23-148-5	Willow Spring Road Cut West	Malheur	5	21	37	4	40
Low-Density	OR-23-149-5	No Christmas Tree Butte	Malheur	5	21	37	9	60
Low-Density	OR-01-094-5	Weatherby Quarry	Baker	5	12	44	32	10
Low-Density	OR-19-113-4	Perry Flat Gravel Pit	Lake	4	23	22	8	20
Low-Density	OR-23-164-5	Baker Pass	Malheur	5	29	37	9	40
Low-Density	OR-01-107-5	Gold Hill Springs - Road Cut	Baker	5	12	43	12	40
Low-Density	OR-13-127-5	Drinkwater Pass	Harney	5	20	36	34	20
Low-Density	OR-13-130-5	US395 MP 7.3	Harney	5	24	26	26	40
Low-Density	OR-13-133-5	Drewsey Valley	Harney	5	20	36	32	20
Low-Density	OR-13-134-5	COH MP 178.9	Harney	5	20	36	35	20
Low-Density	OR-23-174-5	Willow Springs Road Cut East	Malheur	5	21	37	4	40
Low-Density	OR-19-135-4	Coleman Flats	Lake	4	31	23	28	40
Low-Density	OR-19-136-4	Coleman Hills Gravel Pit	Lake	4	32	22	13	40
Low-Density	OR-19-137-4	Picture Rock Pass Quarry	Lake	4	29	16	23	40
Low-Density	OR-23-177-5	South Danner Junction	Malheur	5	31	44	5	10
Low-Density	OR-23-182-5	Southside Canal-East Quarry	Malheur	5	31	43	9	20
Low-Density	OR-23-182-5	Southside Canal-East Quarry	Malheur	5	31	43	9	20
Low-Density	OR-23-187-5	Tumbleweed Springs Quarry	Malheur	5	20	41	33	30
Low-Density	OR-23-191-5	Kingsbury Gulch Stockpile	Malheur	5	21	37	7	10
Low-Density	OR-23-241-5	Rock Creek Curve Community Gravel Pit	Malheur	5	31	43	12	120

To BLM Concerning the sage grouse resource management plan amendment, I support Alternative 3 which has the best outcome for the greater Sage-grouse. We must not allow new permits for oil & gas drilling or mining in these sensitive areas. What is the sense of protecting a species without protecting it's habitat. There are other special animals that live in the sage brush sea such as pygmy rabbits, pronghorn and elk. I don't want to lose this special bird forever.

Thank you,

Janet Wyatt

Received
MAY 30 2024
Bureau of Land Mgmt UTSO

Ms. Janet Wyatt
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GRAND JUNCTION CO 815

28 MAY 2024 PM 1 T

BLM HQ GRSG-GRSG RMPA
Attn: HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, Utah
84101

June 13, 2024

Comments electronically submitted to:
BLM_HQ_GRSG_Planning@blm.gov.

Quincy Bahr and Pat Deibert
Bureau of Land Management
Utah State Office
ATTN: HW GRSG RMPA
440 West 200 South #500
Salt Lake City, UT 84101

Dear Quincy Bahr and Pat Deibert,

Thank you for the opportunity to provide comments on the Draft Resource Management Plan Amendments (RMPA) and Environmental Impact Statement (EIS) for Greater Sage-Grouse (GRSG). It is important to continually improve management of our iconic wildlife species on our public lands and we appreciate the effort from the Bureau of Land Management (BLM) in examining new ways to protect the Greater Sage-Grouse and lands that they depend on.

Over the past decades, Friends of Nevada Wilderness (FNW), working with our Congressional delegation, has been successful in protecting Wilderness or National Conservation Areas (NCA) that have vital GRSG habitat. GRSG is important to our 16,000 supporters and volunteers as both a species that contributes to overall biodiversity and is a barometer for a changing landscape. FNW members who camp, hike, backpack, horseback ride, conduct research, maintain trails, pick pine nuts, enjoy starry skies and otherwise recreate across the state value a healthy ecosystem that will support GRSG.

Friends of Nevada Wilderness is particularly interested in the impact the RMPA and EIS will have on the conservation of lands in Nevada as a protection mechanism for not only Greater Sage-Grouse but other species that are threatened or imperiled. Our mission statement is:

> "Friends of Nevada Wilderness is dedicated to preserving all qualified Nevada public lands as wilderness, protecting all present and potential wilderness from ongoing threats, educating the public about the values of and need for wilderness, and improving the management and restoration of wild lands."

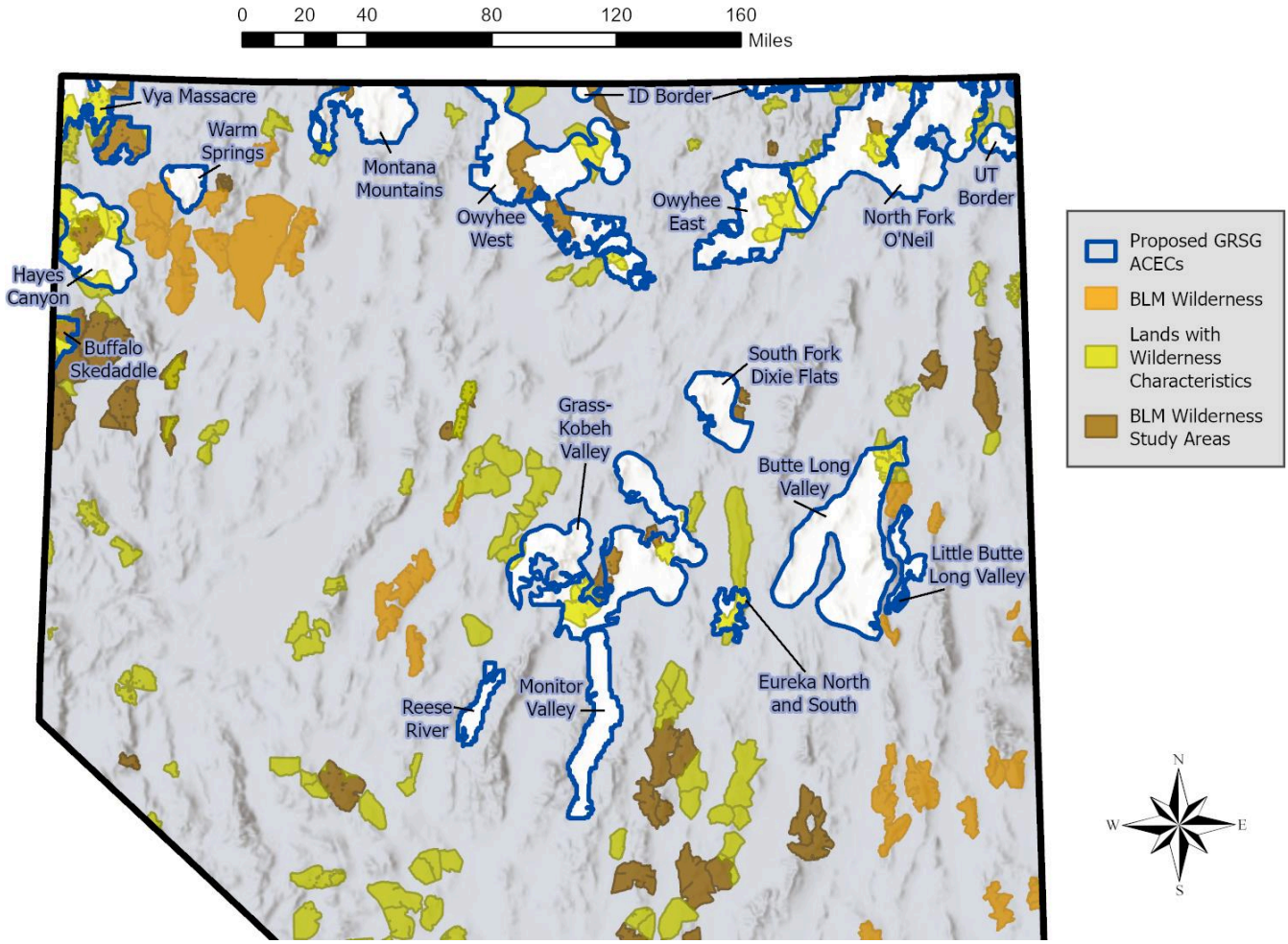
As such we have a vested interest in the proper management of GRSG by way of protecting our public lands. We are generally in support of more tools being available to land managers that will help them protect landscapes. Therefore we support the inclusion of Areas of Critical Environmental Concern (ACEC) designations as outlined in Alternative 3. It is critical to have mineral and leasing withdrawals as a mechanism for protecting GRSG habitat as outlined in Alternative 3**.** ACECs in the RMPA and EIS (vol. 2 Map 2.3) overlap with other proposed land protections and with other proposed actions on BLM land that would have negative impacts on GRSG health. Additionally, an aspect of public land management that often escapes scrutiny is the impact of grazing on rangeland health. Standards are not being met across a majority of GRSG habitat in Nevada and beyond. How will the RMPA and EIS account for this effect? How

will the effect from all of the proposed actions accumulate and what consideration has been given to the inevitable impact on GRSG habitat? We will go into greater detail below.

ACECs

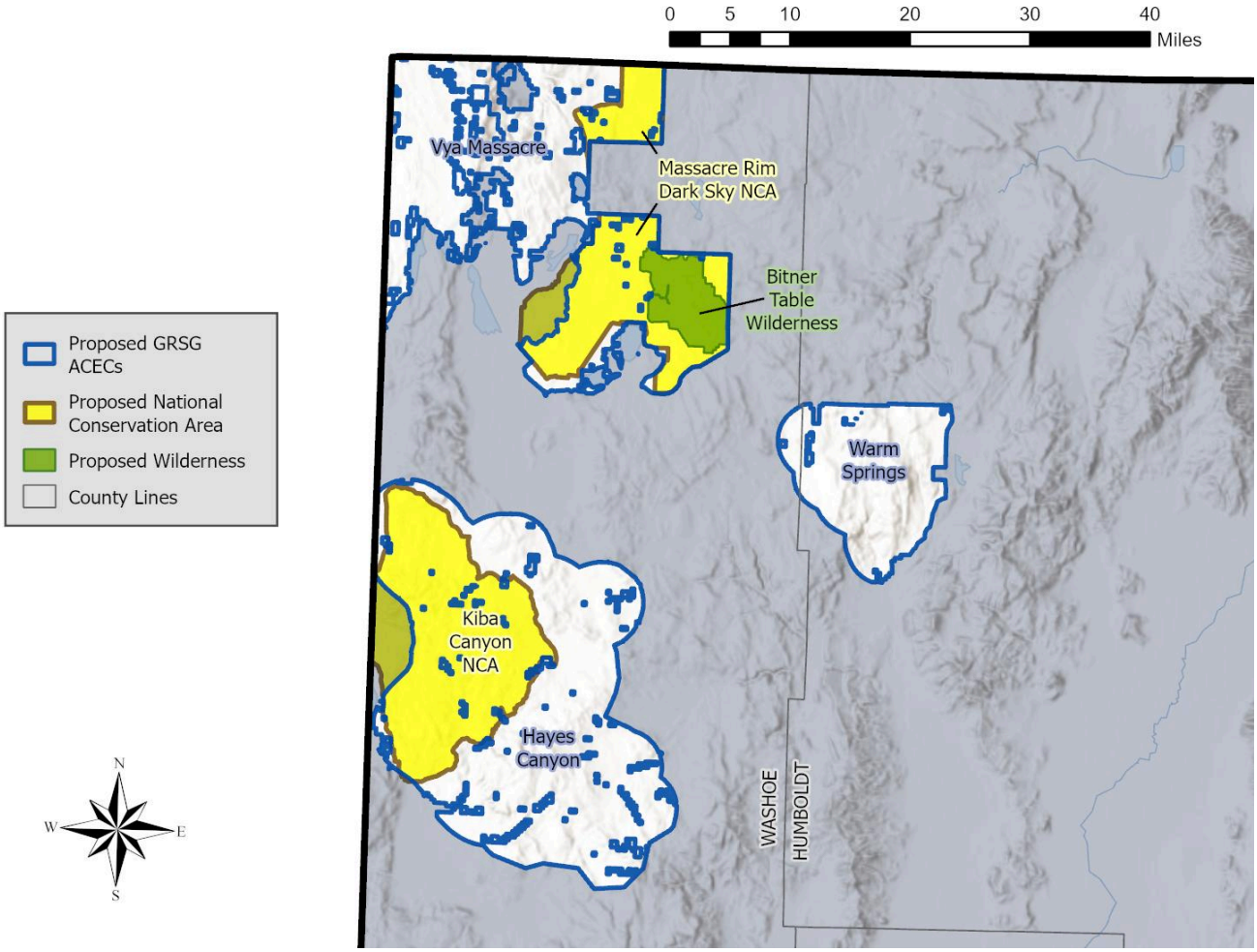
We recognize ACECs to be a powerful tool for the BLM to use in protecting important resources and unique landscapes. ACECs as were proposed in Alternative 3 should be included as part of the Final GRSG RMPA and EIS. ACECs provide a focused administrative pathway to protecting vulnerable sites and resources. While some of the key GRSG habitats identified in the EIS are in areas that may receive legislative protection at some point this isn't a sure thing. Often the gears of Congress grind too slowly to protect public lands before the values they are being protected for have been lost. It is important that we have a tool such as ACECs to provide a base for examining the need for more permanent protections. Using ACECs to elevate public lands in a conservation framework is consistent with the recently finalized BLM Public Land Rule. In many cases throughout Nevada ACEC recognition has served as a crucial stepping-stone toward long-term permanent protection of habitats and survivability of sensitive and endangered species.

Many of the ACECs in the RMPA and EIS (vol. 2 Map 2.3) coincide with land that we have proposed protections for including BLM Wilderness Study Areas (WSAs) and Lands with Wilderness Characteristics (LWC) (see Map 1).



Map 1: GRSG RMPA and EIS proposed ACECs (Alt 3) and potential conservation in Nevada. Note: *ACEC boundaries have been simplified so that they are easier to visualize at this scale.*

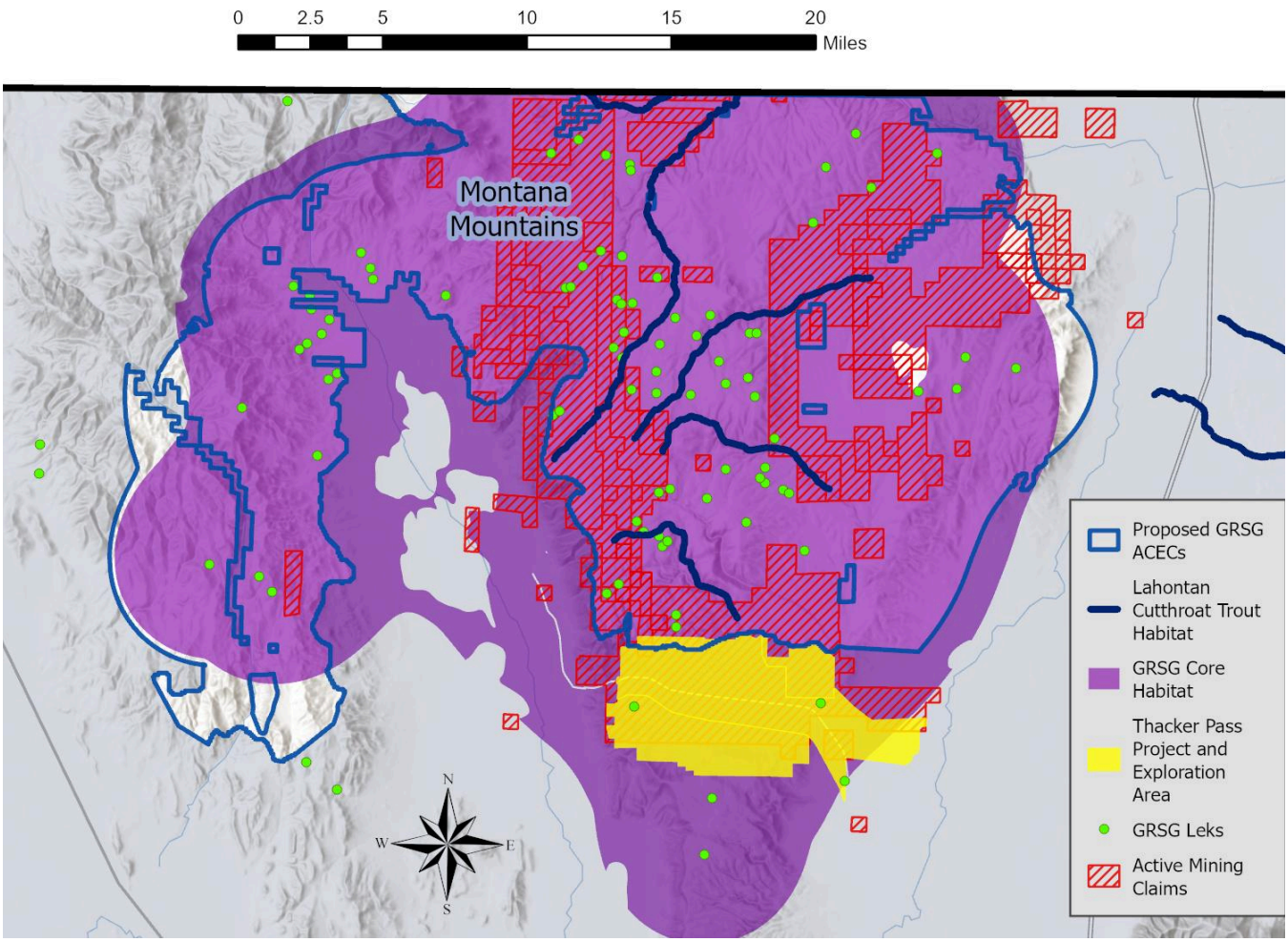
Designation of the Kiba Canyon Range NCA and Massacre Rim Dark Sky NCA as proposed in the Truckee Meadows Public Lands Management Act (TMPLMA) (S. 3593, 2024) would protect large portions of the Hayes Canyon and Vya Massacre proposed GRSG ACEC (see Map 2)



Map 2: TMPLMA proposed conservation in GRSG RMPA and EIS proposed ACECs (Alt 3)

Another important proposed ACEC in the GRSG RMPA and EIS is the Montana Mountains. This area is some of the most intact and highly productive habitat remaining in Nevada for GRSG, and for multiple other species, some of which have been observed over the past few decades to be in decline. This area of northern Nevada is considered core habitat for GRSG and is particularly significant because of the abundance of leks. This area also has important Lahontan Cutthroat Trout spawning habitat.

The need for an ACEC here is imperative because of the Thacker Pass lithium mine which is currently being developed. The entire area is threatened by additional mining projects. The use of an ACEC with a mineral withdrawal could protect the important ecological area outside of the mining project boundary as more of the impacts are realized on the landscape. An ACEC designation here is critical because the 3809 mining regulations require Plans of Operation in ACECs where they would not be required otherwise. The added requirement for mining plans of operation is an important step to not lose anymore of this critical GRSG habitat.



Map 3: Montana Mountains ACEC (Alt 3) with Thacker Pass mining project, core GRSG habitat and leks, and Lahontan Cutthroat Trout spawning habitat.

For these reasons we strongly believe the BLM should adopt Alternative 3 and recognize these important landscapes as ACECs and protect them administratively as part of this process. It is critical that the ACECs, at least in Nevada, have mineral and leasing withdrawals to protect the GRSG where appropriate or require a Plan of Operation for a mining project within an ACEC.

In addition to the aforementioned proposed legislative solutions, a multi-pronged approach is the best way to ensure these landscapes are cared for in the long and short term. Again, this would be consistent with the newly adopted BLM Public Land Rule and would place conservation of land on equal footing as other uses within the multi-use mandate. The rate of decline experienced by GRSG is a direct result of loss-of-habitat from mining, transmission lines, and declining riparian habitat from livestock and wild horse use. The option of implementing mineral and leasing withdrawals should be available to land managers to combat the rapid decline of GRSG.

Key Current Proposals or Actions in Nevada that will Negatively Impact Greater Sage-Grouse

With Greater Sage-Grouse numbers continuing to plummet, the BLM needs to do more to stop projects that will have a large impact on their population size in Nevada. There are currently many proposed actions on BLM Public Land in addition to mineral exploration and mining in the Montana Mountains. In Nevada GRSG habitat is threatened by the Mountain Home Air Force Base

(AFB) expansion and modification to the operational flight deck, the atrocious White Pine Pumpback Storage project that should be stopped immediately, and the proposed Greenlink North transmission corridor. These projects and others often work counter to each other, or conversely, directly depend on each other and their combined impacts are not well studied.

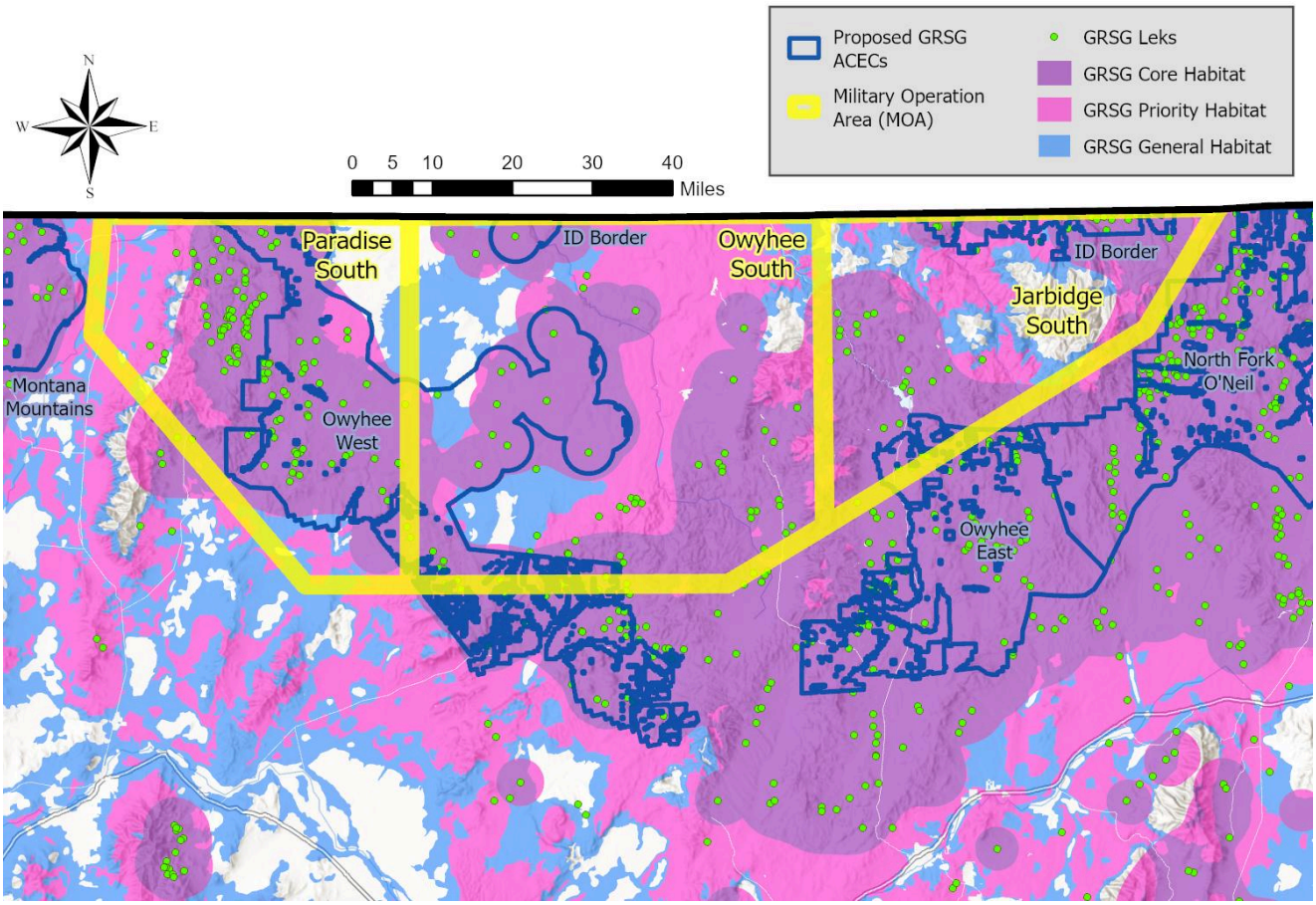
With the fast-tracking of projects that we are witnessing in Nevada right now, it is impossible that all cumulative effects of these projects have been properly examined. The scope of these projects covers the entire state and future impacts on GRSG remains undetermined. Furthermore, there is a lack of acknowledgement that some of these projects would require other actions that have not yet been proposed and may be speculative, but are also foreseeable consequences. The rate with which these projects are being approved is unsustainable and is inconsistent with the proper management of GRSG. Populations will continue to decrease as these projects exacerbate the problem. The BLM needs to examine the cumulative effects of these actions and start saying “no”.

On one hand, the BLM spends a large amount of public funds to protect GRSG numbers across the west. On the other hand they are hastily approving projects on public lands that would irreparably harm GRSG. Below are some examples of proposed actions that need improvement or should be immediately halted to protect GRSG and the interest of the American public. FNW has direct involvement in all of these issues because they affect the public lands it is our mission to protect.

Mountain Home Air Force Base:

We have great concern over the impact of the The 2021 Airspace Optimization Readiness EIS for the Idaho Mountain Home Air Force Base. The EIS states that increased training exercises will generate noise at levels that are known to harm GRSG and that the amount of core breeding habitat exposed to sonic booms will increase by 35%. Despite admitting this significant increase in harm, the EIS claims that impacts to sage grouse will be limited. FNW joined with Oregon Natural Desert Association (ONDA) to sue the BLM for failure to recognize the diverse impacts that dropping the operational floor will have.

Significant impacts to Greater Sage-Grouse from the Mountain Home Air Force Base proposal to drastically lower flight operation levels across Nevada’s needs to be clearly addressed and mitigated within the GRSG RMPA and EIS. Mountain Home Air Force Base is proposing dropping flights down to 100` above the ground in the three Military Operations Areas (MOA) within Nevada. This area is extremely productive GRSG habitat and contains 1,607,927 acres of Core Habitat, 775,415 acres of Priority Habitat, and 592,514 acres of General Habitat (see Map 4)



Map 4: GRSG Habitat in proposed Mountain Home AFB expansion and operational floor modification MOAs.

The Nevada Department of Wildlife (NDOW) has released comments regarding their concerns over the Mountain Home Air Force Base Expansion (October 14, 2021) in which GRSG was the focus. Their comments outlined multiple serious concerns including being able to continue aerial surveys of GRSG over this massive area, the increased threat of wildland fire ignition from use of flares, and the increased impacts to sensitive aquatic resources and species due to use of chaff. NDOW's concerns were further fueled by a lack of interagency coordination, when the Department of the Air Force (DAF) failed to respond to requests for collaboration in better planning the expansion in regards to impacts on wildlife. We want to echo the concerns of NDOW outlined here.

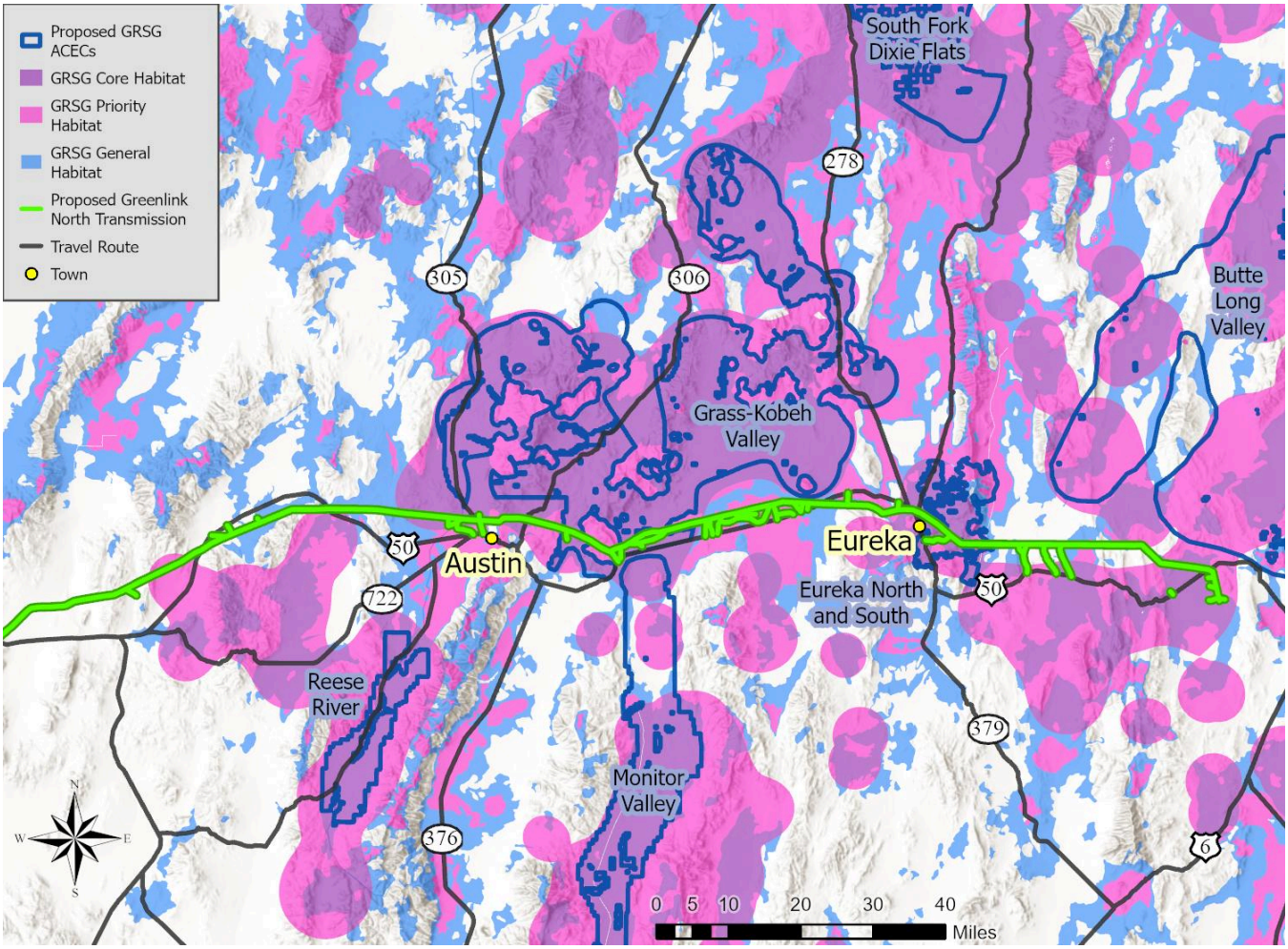
The proposed increase in military operations include use of pyrotechnic flares. Though these flares will be used in the air high above the ground, hot flares can still land on the ground and cause fire ignition. Over the past fifty years, wildland fires have both increased in frequency and severity, particularly along Nevada's northern border where the military expansion is proposed to occur. Higher temperatures and drought due to global warming have greatly increased the probability of severe or catastrophic wildland fire in the Great Basin. The hottest temperature on record came in 2023, and though the winter of 2023 brought a great amount of precipitation, this only caused a greater fuel load for future wildland fires.

The remaining GRSG population that exists within the military expansion zone will suffer severely if catastrophic fire events occur. Within the GRSG RMPA and EIS the BLM specifically outlined protections for the species and their habitat that should disqualify the DAF's expansion of the Mountain Air Force Base over much of northern Nevada. Multiple agencies have long regarded this area as core GRSG habitat due to the size and density of the species' population and the habitat quality.

Greenlink North Transmission Project:

The proposed Greenlink North Project would cross Greater Sage-Grouse habitat, including areas the BLM defines as priority and core habitat management areas. The direct and indirect impacts of a new transmission line and associated renewable energy development on GRSG are well documented. GRSG require large, intact landscapes and are vulnerable to fragmentation and predation (LeBeau et al. 2019).

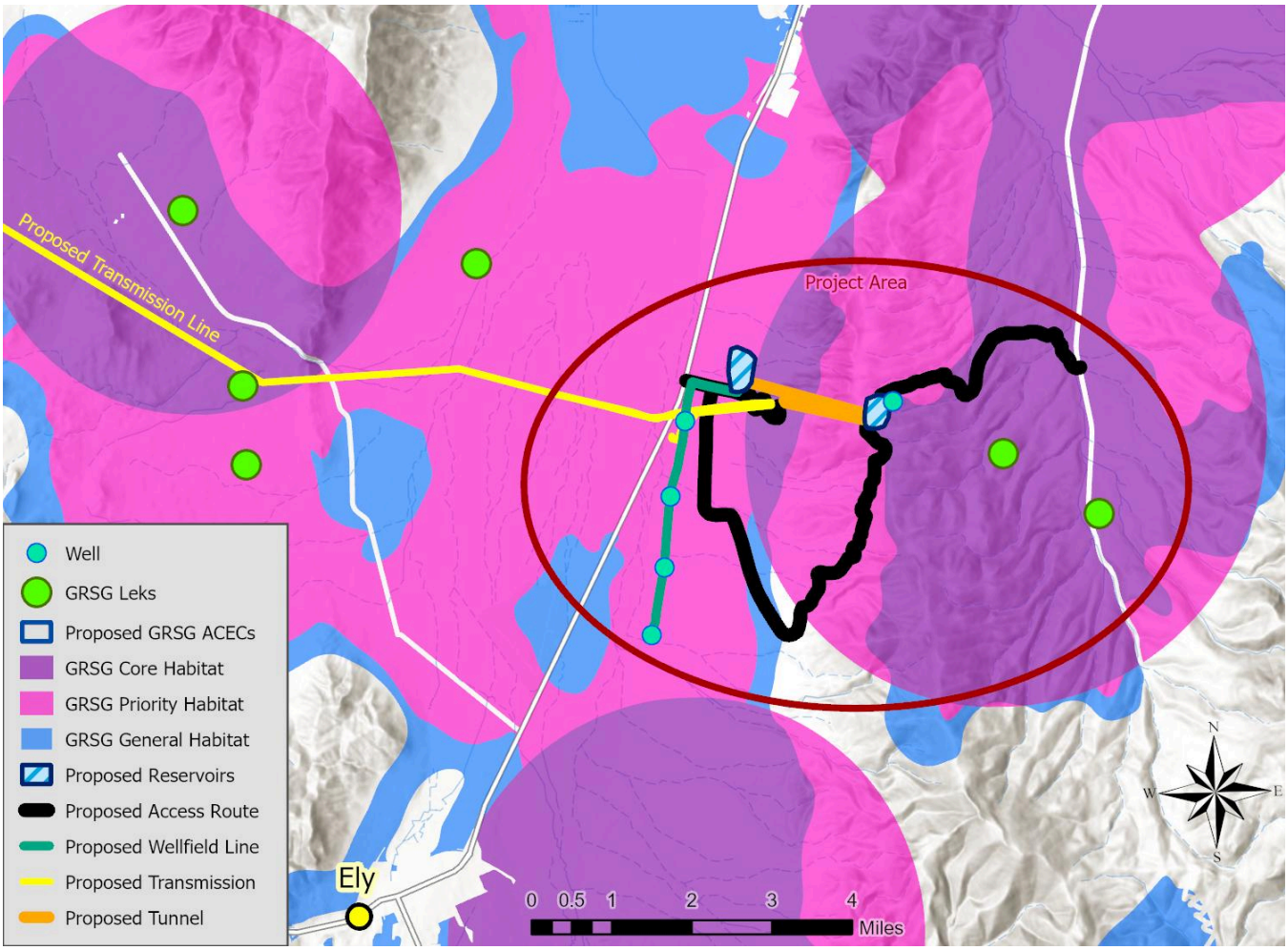
Transmission lines can negatively impact multiple parts of the greater sage grouse life cycle, notably lek occupation, nest success, chick survival, and general reduction of habitat quality (LeBeau et al. 2019; Kohl et al. 2019). LeBeau et al. (2019) observed reduced habitat suitability up to 3.1 km (1.9 miles) from transmission lines of the highest suitable habitat. Further, transmission lines negatively affected sage grouse lek trends by reducing chick survival 2.8 km (1.7 miles) away from transmission but did not affect lek persistence (Kohl et al. 2019), while nest and brood success was reduced up to 2.6 km (1.6 miles) and 1.1 km (0.7 miles), respectively. Additionally, data suggest the presence of transmission lines can reduce sage grouse nest success up to 12.5 km (7.7 miles) away during years with average to above average raven densities (Gibson et al. 2018). Transmission lines provide perches for raptors that can increase predation on adult birds and increase nest predation by ravens on GRSG (Tuma et al. 2016; O'Neil et al. 2018).



Map 5: Proposed Greenlink North Transmission project and GRSG Habitat and ACECs (Alt 3)

White Pine Pumped Storage Project:

The White Pine Pumped Storage Project is a proposed, closed-loop pumped storage facility that will require an enormous volume of water from an already over-taxed aquifer in the driest state in the nation. Up to nine GRSG lek sites and multiple nesting sites in the Duck Creek Range and within the Steptoe Valley to the west will be negatively impacted by the proposed action. Two leks exist within the basin planned for the upper reservoir. Once these sites are impacted leks are destroyed forever and cannot be restored and GRSG numbers continue to decline. Increased noise will also have a negative effect on GRSG especially during breeding periods. Although rPlus Hydro claims they plan to adhere to GRSG mitigation requirements, no amount of mitigation can restore what they plan to destroy. To allow this project to proceed to negatively impact multiple leks and nesting sites on high value winter, spring, and summer GRSG habitat where the population has been diminishing is an avoidable atrocity and is juxtaposed to the goals of the GRSG RMPA and EIS.



Map 6: White Pine Pumpback Storage Project proposals and GRSG Habitat

All of these proposed actions will have some detrimental effect on GRSG populations. The Montana Mountains is a highly productive GRSG area that is threatened by mining interests. The Mountain Home AFB proposal would have a negative impact on GRSG recruitment and breeding. Plowing through GRSG habitat to build the Greenlink North corridor will have a negative impact on the species and maintenance of transmission lines has been shown to cause pressure on GRSG populations. The White Pine Pumpback Storage project is an ill-conceived idea that will have a myriad of negative impacts on the local ecosystem and community. The direct impact on GRSG contributes to the notion that this project must be

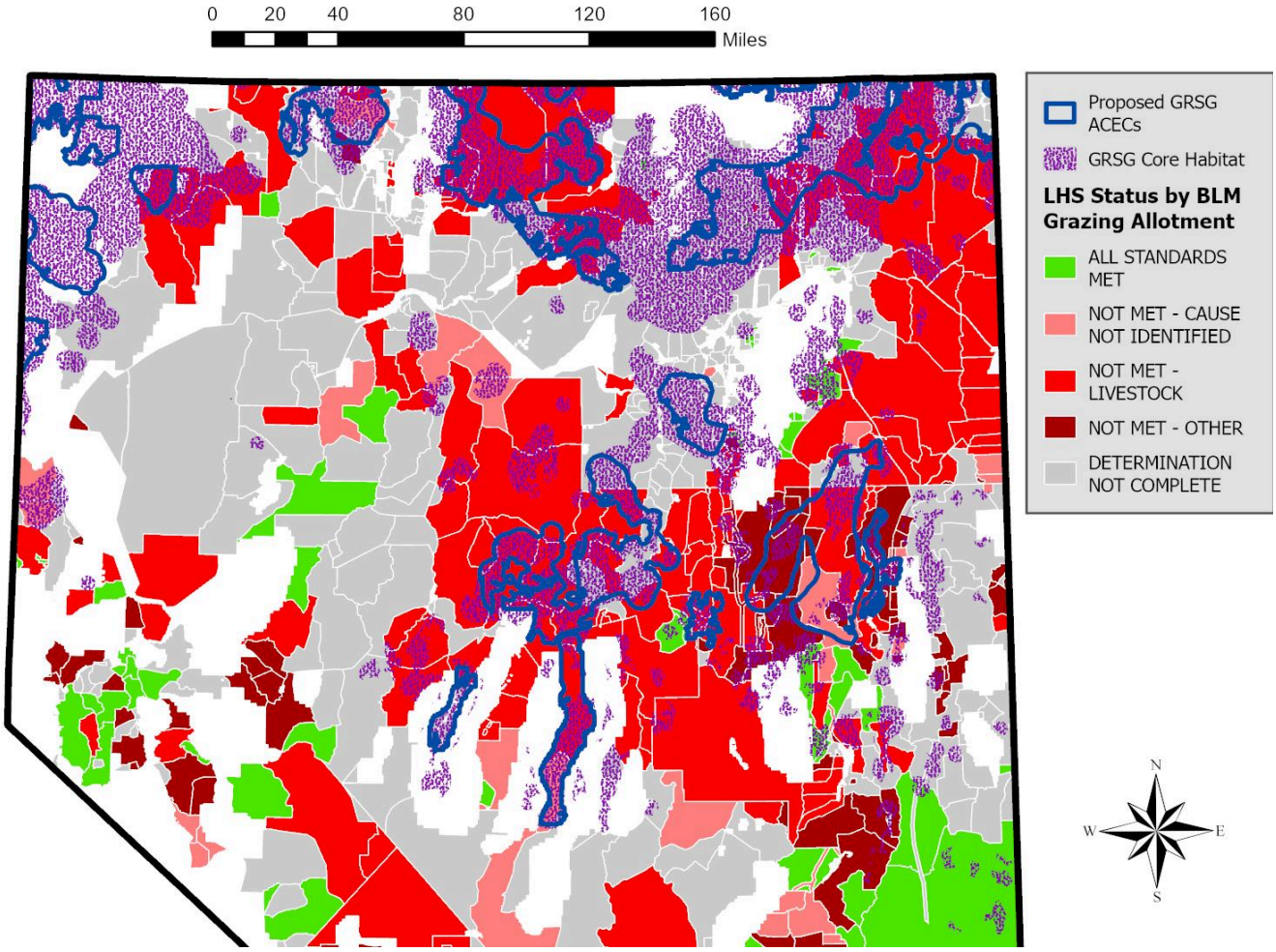
stopped immediately. The BLM needs to consider the impact on GRSG by all of these projects being proposed and potentially implemented at the same time. If the ultimate goal is to protect GRSG populations then a different approach is required when evaluating these proposals. It is especially important when considering there are many on-going practices on public lands that have a negative impact on GRSG and big changes are needed.

Additional Impacts on Greater Sage-Grouse

Rangeland Health/Grazing:

Public land livestock grazing occurs across a vast majority of GRSG habitat on BLM administered lands within Nevada. Presence of livestock negatively impacts nest success and chick survival of GRSG and recruitment is difficult (Connelly et al., 2000; Aldridge and Brigham, 2002; Frey et al., 2013). We would like the GRSG RMPA and EIS to establish land health standards (LHS) for GRSG and identify tangible benchmarks for success. If grazing is shown to have a negative impact on GRSG populations then the BLM should implement adjustments to Animal Unit Months (AUM) in order to meet goals that have been clearly defined (as described in Alternative 4).

Public Employees for Environmental Responsibility (PEER) publishes an annual assessment of Land Health Standards. A majority of the allotments in priority GRSG habitat are not meeting LHS, mostly due to grazing pressure (see Map 7). There has to be a plan to address the impact of grazing on GRSG.



Map 7: GRSG ACECs and Core Habitat with BLM Grazing Allotment Land Health Standards (developed by PEER; Public Employees for Environmental Responsibility; peer.org)

Pinyon-Juniper (PJ) Forest Treatments:

It is impossible to examine long standing practices on public lands with an impact on GRSG without mentioning PJ forest treatments. The focus of these treatments has been narrowly centered on enhancing forage for livestock, wildlife, and GRSG and as a method for reducing wildland fire fuels. However, over the past fifty years or more populations of obligate pinyon and juniper species have been in sharp, steady decline, especially the pinyon jay. Research has failed to either be conducted, published, made available, or taken seriously during land management planning regarding the impact of PJ removal on Clark's nutcracker, pinyon mouse, juniper titmouse, or a host of other insects, reptiles, flora, and biocrusts in Nevada.

PJ removal has been employed as a tool to stabilize the stubbornly declining population of GRSG in Nevada and beyond and has contributed to preventing the species from being listed as endangered. However, through the exhaustive, expensive efforts of removing PJ woodlands for the sake of spurring sagebrush ecosystems to expand back to their "historical" levels, the species has steadfastly remained on the decline.

Prior to approving PJ removal projects at or near GRSG lek and nesting sites the BLM should compile meaningful data, and follow-up after with data that quantifies impacts. There should also be control sites (other leks and nesting sites) that have not been removed from PJ and have meaningful data with which to compare a project elsewhere. PJ expansion cannot be the only impact on GRSG and should not be used as an excuse to continue the practice of removal. There are multiple other factors at play that appear to be under-studied or lacking consideration in BLM management plans at the expense of other PJ dwelling species that now are knocking on the door of the Endangered Species List.

Other Species Living in GRSG Habitat:

For at least seventy years, the pinyon jay population has declined at a rate that exceeds the decline of GRSG for unknown reasons due to a lack of research (Boone et. al., 2018). In fact, this significant, sustained decline of pinyon jays has been observed throughout all of its range, but especially, and most significantly within Nevada and west-central New Mexico. According to the Breeding Bird Survey estimation of pinyon jay population decline within the coming decades, it is reasonable to hypothesize that this species will fall below the threshold of viability and perish as a species. Meanwhile, climate change is accelerating sustained drought that is causing die-off within PJ woodlands. PJ is receding in elevation forcing pinyon jays to occupy higher elevations from what they are known to have previously occupied. Simultaneously wildland management practices focus on removal of hundreds of thousands of acres of PJ woodland throughout the state, largely at lower elevations. With a lack of knowledge regarding why pinyon jays are declining it would seem a prudent course of action to forestall, or at least reduce PJ woodland removal until research can dismiss treatments as the cause of pinyon jay decline. If PJ removal treatments are found to negatively impact pinyon jay populations a revision on how and where public land managers treat for fuels reduction should be implemented.

There are other species that have a protected status that share habitat with GRSG and should considered when making management decisions:

Marbled Godwit: Continental Concern Score of 14/20, yellow watch list (Partners in Flight)

Bald Eagle: Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act

Golden Eagle: Bald and Golden Eagle Protection Act, Migratory Bird Treaty Act, Lacey Act

Olive-Sided Flycatcher: Near-Threatened Globally (IUCN), threatened in Canada (SRA), population decline

Yellow-billed Cuckoo: Threatened

Wiliamson's Sapsucker: Endangered in Canada, US population in decline

Willow Flycatcher: Federally listed Endangered

Sage Thrasher: Population in decline due to habitat loss

Virginia's Warbler: Species of Conservation Concern, population in decline and is vulnerable to habitat loss

Willet: Population declining due to habitat loss

Clark's Grebe: Currently a candidate for endangered listing due to severe population decline

Green-tailed Towhee:

Bull Trout: Threatened species

Lahontan Cutthroat Trout: Threatened species under the Federal Endangered Species Act (1970)

Bruneau Hot Spring snail: Endangered species under the Federal Endangered Species Act (1970)

Slickspot Peppergrass: Threatened species under the Federal Endangered Species Act (1970)

White Bark Pine: Threatened species under the Federal Endangered Species Act (1970)

Bighorn Sheep: Effects of anthropogenic noise on wild ungulate species has been studied and results have included increased stress levels similar to those associated with predator encounters. This level of increased stress has often caused animals to abandon sites where they previously foraged, sought water and shelter and even birthing areas.

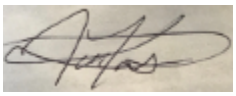
Thank you again for the opportunity to provide comments about the GRSG RMPA and EIS. FNW recommends the inclusion of ACECs from Alternative 3 and the ability to require a Plan of Operation for any mining action as well as the power to implement mineral and leasing withdrawals where appropriate. ACECs are a powerful tool for protecting our resources and should be available to BLM land managers. The ACECs from Alternative 3 coincide with many proposed conservation lands including BLM Wilderness Study Areas and Lands with Wilderness Characteristics. Protections for GRSG RMPA and EIS proposed ACECs are included as NCAs in TMPLMA. The Montana Mountains are under immediate threat from mining interests and should be protected as an ACEC because of outstanding GRSG habitat. ACECs are an important pathway for providing administrative protections that can lead to more permanent protections in the future.

The combined impact of all of the proposed projects in Nevada on GRSG populations remains unknown. This inadequate analysis should lead to reconsideration of proposed actions on public lands. The White Pine Pumpback Storage project should be halted immediately. The expansion of the Mountain Home AFB will have a negative impact on GRSG breeding and nesting that has been documented in their own EIS. Large-scale transmission projects like

Greenlink North have a directly detrimental effect on habitat and can cause further degradation and fragmentation. These projects directly conflict with protecting GRSG and the combined impacts need to be studied.

We look forward to continuing a great working relationship with the BLM. We appreciate the effort put forth to protect an iconic western species. The health of GRSG is a great litmus test for the overall well-being of the rangeland ecosystem. Efforts to protect GRSG will have a broad positive impact on the western landscape, and in particular within Nevada.

Sincerely,



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BALANCED ROCK
POWER

310 E. 100 S.
Moab, UT 84532

June 7, 2024

BLM Utah State Office

ATTN: HQ GRSG RMPA

440 West 200 South #500,

Salt Lake City, UT 84101

Re: BLM NEPA Docket No. DOI-BLM-WO-2300-2022-0001-RMP-EIS

Submitted via BLM e-planning website: https://eplanning.blm.gov/eplanning-ui/project/2016719/510

COMMENTS OF BALANCED ROCK POWER ON BLM'S DRAFT GREATER SAGE GROUSE RMPA/EIS

Dear Sir or Madam:

Balanced Rock Power (BRP) appreciates the opportunity to comment on the BLM's Draft Greater Sage Grouse (GRSG) Resource Management Plan Amendment/Environmental Impact Statement (RMPA/EIS). Led by an experienced team with over 75 years of collective experience in renewable energy development from industry-leading companies, BRP develops, invests and sells renewable energy and energy storage throughout the Western U.S. Our strategic focus is on large projects of 100 MW or greater in the WECC, CAISO and ERCOT markets. Our portfolio contains over 38,000 acres under site control and over 9.2 GW of interconnection queue positions in total, with 8.2 GW of solar and 31.8 Gwh of utility scale solar plus BESS and BESS across 36 discrete projects in the western US.

We are developing the Samantha Solar Project, an up to 600 megawatt (MW) photovoltaic solar energy generation facility with a battery energy storage system (BESS) proposed on approximately 2,891 acres of federally-owned land managed by the BLM in White Pine County, Nevada. The Samantha Project site and its associated gen-tie line route are located on land mapped as GRSG Other Habitat Management Area (OHMA) and General Habitat Management Area (GHMA), and access to the Project site would occur via an existing road crossing through areas mapped as Priority Habitat Management Area (PHMA). As a result, Project development could be affected by any amendments to the BLM's Nevada and Northeastern California Greater Sage-Grouse Approved Resource Management Plan Amendment resulting from the GRSG

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RMPA/EIS process. Our comments on the RMPA/EIS are informed by GRSG-related experience we have accumulated through our work on Samantha and other solar projects.

BRP values the work of the BLM and all cooperating agencies on this important issue and supports efforts to protect GRSG habitat and restore GRSG populations. However, as BLM works to meet these important goals, we ask it to take a pragmatic approach that recognizes the importance of renewable energy development in minimizing the impacts of climate change on sensitive species like GRSG and their habitat. In particular:

- **Fixing and Refining HMA Mapping:** The RMPA/EIS's habitat mapping data identifies numerous small "blips" of GHMA and PHMA that are quite small and therefore of questionable value to the species. We believe these areas are likely artifacts of the habitat modeling process and that their identification as GHMA and PHMA is an error. We ask that BLM ensure that HMAs are only mapped if they are of sufficient size to confer a meaningful benefit on the species. We also ask that BLM ensure that HMA mapping is continually updated as more data becomes available, including field verification data indicating that areas mapped as HMA do not actually qualify as grouse habitat.
- **Mapping RMPA/EIS Effects on Solar Development Potential:** The RPMA/EIS's solar development potential maps (Maps 2.50-2.55) include exclusion areas that appear to appear to mostly align with the exclusion areas mapped for the 2012 Solar PEIS, which will soon be out of date due to pending adoption of the 2024 Solar PEIS. These maps also appear to incorrectly apply the Nevada/California-specific OHMA habitat classification. We ask that BLM prepare revised maps focusing on management changes that would result from adoption of the RMPA/EIS and that accurately map solar development potential within OHMA.
- **Clearly Describing How RMPA/EIS Rolls Down into Nevada/California GRSG Plan:** We ask that BLM revise the RMPA/EIS to clearly explain whether GRSG plan revisions necessitated by the RMPA/EIS would be made to the existing 2015 or 2019 Nevada/California sage grouse plan. We also urge BLM to consider how land use allocations and management policies for unique HMAs like OHMA should be revised to be consistent with the BLM's intent to step back from rigid development exclusions, in favor of a more flexible approach emphasizing impact avoid, minimization, and compensation.
- **Clarifying Disturbance Cap Implementation:** The RMPA/EIS's description of the disturbance cap is confusing and difficult to follow. We ask that BLM revise the RMPA/EIS to clearly describe the process of calculating the disturbance cap for a given area, including any potential exemptions from disturbance cap application.
- **Clarifying Compensatory Mitigation Implementation:** RMPA/EIS Table 2-5 discusses compensatory mitigation implementation at a conceptual level but fails to address key questions regarding program implementation. The RMPA/EIS should be revised to clearly describe the BLM's anticipated approach to administering compensatory mitigation, with an eye toward creating a consistent, transparent, and flexible program that will avoid duplicative and/or conflicting requirements across agencies. We also ask BLM to work with state partner agencies to create concrete mitigation guidelines that could be used by BLM and state wildlife agencies to provide developers with compensatory mitigation cost estimates early in the development process.
- **Incentivizing Co-Location of Linear Facilities in PHMA:** The RMPA/EIS treats PHMA as an avoidance area for Major ROWs, including electric transmission lines 100kV or greater in size. As with transmission lines proposed within designated utility and ROW corridors, we ask that BLM create an exception from disturbance cap and compensatory mitigation requirements for transmission facilities in PHMA that are co-

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located along existing roads and/or transmission lines. With special stipulations to minimize impacts on sage grouse such as use of poles that deter raptor perching, encouraging co-location of transmission lines with other existing linear facilities will reduce overall impacts on the species.

- **Clarifying Road Management Restrictions:** We are concerned that the RMPA/EIS's restrictions on road upgrades in GRSG HMAs will severely constrain development in areas with otherwise low resource conflicts that are ideal for solar energy development. We ask that BLM take a more pragmatic approach under which a BLM authorized officer could allow road upgrades necessary to accommodate solar development, provided that seasonal restrictions on road use are imposed during important seasons of the year to avoid or minimize impacts on the species. We also ask that BLM revise the RMPA/EIS to draw a clear distinction between road upgrades and road maintenance, with the latter being allowed regardless of road location within HMAs.

These issues are discussed in more detail in our comments below, which focus on RMPA/EIS Alternative 5 (BLM's preferred alternative).

The RMPA/EIS's HMA Maps Would Require Protection of Small HMA "Blips," Significantly Complicating Solar Development without Meaningfully Contributing to GRSG Conservation.

If the RMPA/EIS is to guide development and GRSG management in a meaningful and predictable way, it must provide the BLM, industry, and the general public with a clear understanding of the location and distribution of the various GRSG habitat classifications and the rules for development within those classifications. To deliver on the purported benefits of the RMPA/EIS for the species without unnecessarily restricting development, GRSG habitat mapping must also be biologically relevant to the species.

The RMPA/EIS's mapping must be updated if it is to meet these criteria. For example, BLM's HMA GIS data shows small "blips" of GHMA and PHMA seemingly randomly scattered within larger areas of OHMA. These areas of GHMA and PHMA are often quite small —much smaller than the average home range of an individual GRSG— which significantly reduces the biological value of protecting them from development. These mapped blips are also often square or rectangular in shape, which strongly suggests they do not represent actual habitat conditions in the field. We have included a few examples of these areas in Exhibit 1 to this letter. Application of the RMPA's development restrictions in these small blips of GHMA and PHMA would significantly complicate solar energy project design in areas ripe for solar development without meaningfully contributing to GRSG conservation.

We suspect these small areas of GHMA and PHMA are artifacts of the habitat modeling process and that their identification as GHMA and PHMA is an error. We ask the BLM to vet and confirm that HMAs are clearly and accurately portrayed in the RMPA/EIS's maps, taking into account the size of PHMA and GHMA areas, and only identifying PHMA and GHMA areas that are of sufficient size to confer a meaningful benefit on the species. We also encourage BLM to ensure that HMA mapping is continually updated to take advantage of additional data as they become available. For example, if an area is proven through fieldwork not to qualify as sage grouse habitat, the RMPA/EIS should allow HMA maps to be revised through a plan maintenance action.

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The RMPA/EIS's Maps do not provide a clear understanding of the effects of the proposed plan updates on solar development potential.

The RPMA/EIS includes a series of maps (Maps 2.50-2.55) purporting to portray solar energy management on BLM land both within and outside of GRSG HMAs. Within Nevada, these maps show extensive solar exclusion and avoidance areas that do not correspond with GRSG HMAs. Our GIS specialists have closely examined the GIS data BLM made publicly available in support of the RMPA/EIS and compared that data to (1) the 2012 Solar PEIS exclusion areas, and (2) existing GRSG management requirements under the most recent Nevada-Northeastern California Greater Sage Grouse Resource Management Plan Amendment.[1] We believe the exclusion and avoidance areas mapped within Nevada are incorrect in some instances and will soon be outdated in others:

- The maps include exclusion areas that appear to mostly align with the exclusion areas mapped for the 2012 Solar PEIS. Mapping exclusions unrelated to GRSG management, and that will be irrelevant due to the BLM's near-term adoption of the 2024 Solar PEIS is misleading and makes it difficult to discern the RMPA/EIS's likely effects on potential solar development. We ask that BLM update the maps to focus on management changes that would result from adoption of the RMPA/EIS, rather than mapping the 2012 Solar PEIS's exclusion areas.
- The maps appear to incorrectly apply the Nevada/California-specific OHMA habitat classification. Though it is difficult to confirm with certainty, the maps appear to assume OHMA is a solar exclusion area when, in reality, solar development is allowed in OHMAs. We ask that BLM correct the RMPA/EIS maps accordingly.

The RMPA/EIS Does Not Clearly Explain How the Nevada and Northeastern California Greater Sage-Grouse Approved Resource Management Plan Amendment Would be Modified by RMPA/EIS Adoption.

The RMPA/EIS describes proposed changes in GRSG management actions and provides some guidance on how those changes will roll down into individual GRSG RMPs. However, there is still considerable confusion over which prior Nevada/California GRSG RMPA—2015 or 2019—would serve as the base document for RMP revisions to be made following adoption of the RMPA/EIS. For example, the No Action Alternative assumes implementation of the 2019 GRSG plans, which suggests RMPA-driven plan revisions would be made to the 2019 GRSG plans. Other alternatives analyze implementation of the 2015 plans. In many instances, Appendix 2 to the RMPA/EIS addresses potential changes to both 2015 and 2019 RMPs. In combination, these references to both 2015 and 2019 plans create confusion about what, exactly, BLM proposes to amend with the RMPA/EIS.[2]

Clarity regarding how the proposed RMPA/EIS would be implemented in RMPs with unique HMA classifications—such as the OHMA classification used in the Nevada/California plan-- is critically important because provisions related to managing unique HMA classifications might not be expected to change as a result of RMPA/EIS adoption. We ask that BLM revise the RMPA/EIS to clearly explain whether GRSG plan revisions necessitated by the RMPA/EIS would be made to the existing 2015 or 2019 sage grouse plans. (We believe the RMPA/EIS should result in revisions to the 2015 Nevada/California sage grouse plan because that version of

[1] We utilized the 2015 recent Nevada-Northeastern California Greater Sage Grouse Resource Management Plan Amendment (as revised by several plan maintenance actions), because that version of the plan is currently being implemented by the BLM in Nevada.

[2] This confusion is compounded by how GRSG management has been handled following litigation over the 2019 plans. For example, Nevada BLM is currently implementing the 2015 Nevada and Northeastern California Greater Sage-Grouse Approved Resource Management Plan Amendment, as modified by several plan maintenance actions that have been approved over time.

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the plan is currently being implemented by the BLM.)We also urge BLM to consider how land use allocations and management policies for unique HMAs like OHMA should be revised to be consistent with the overall intent of the BLM's preferred alternative analyzed in the RMPA/EIS, which is to generally back away from rigid exclusion of development in GRSG HMAs, in favor of a more flexible approach emphasizing impact avoid, minimization, and compensation.

The RMPA/EIS's Description of Disturbance Cap Application is Confusing and Requires Clarification.

As described in the RMPA/EIS, the disturbance cap would be applied at two scales— the project scale and the "Habitat Assessment Framework" (HAF) scale. The disturbance cap can be exceeded at the project scale with State Director's concurrence if certain criteria are met. The cap cannot be exceeded at the HAF scale except in very limited circumstances unlikely to apply to solar or transmission. (See RMPA/EIS, pp. 2-34 and 2-38.). The use of the two scales is not clearly explained and is confusing to both the solar power industry and the public. We ask that BLM revise the RMPA/EIS to clearly describe the process of calculating the disturbance cap for a given area. Any exemptions from this process must be clearly described.

The RMPA/EIS Does Not Clearly Describe How the Proposed Compensatory Mitigation Program Would be Implemented.

RMPA/EIS Table 2-5 provides a high level discussion of how compensatory mitigation would be implemented under the RMPA/EIS, but it does not address key questions around responsibility for overseeing compensatory mitigation. For example, Table 2-5 provides that compensatory mitigation should "comply with State agency or regulatory requirements and [be] consistent with BLM mitigation policy," but does not explain whether BLM envisions itself administering the program or whether it would instead defer to state agencies. The RMPA/EIS should be revised to clearly describe the BLM's anticipated approach to administering compensatory mitigation, with an eye toward creating a consistent, transparent, and flexible program that will avoid duplicative and/or conflicting requirements across agencies. We also ask BLM to work with state partner agencies to create concrete mitigation guidelines that would be applied consistently across projects in each state, and that could be used by BLM and state wildlife agencies to provide developers with compensatory mitigation cost estimates prior to the initiation of NEPA review. Doing so would provide developers with much needed predictability regarding likely mitigation costs early in the development process.

PHMA Avoidance Requirements Should Incentivize Colocation of Linear Facilities.

The RMPA/EIS treats PHMA as an avoidance area for Major ROWs, including electric transmission lines 100kV or greater in size. While the document recognizes an exception from disturbance cap and compensatory mitigation requirements for transmission facilities located in PHMA within designated utility/ROW corridors, it does not acknowledge the potential for impacts on GRSG to be minimized by co-locating transmission facilities alongside existing linear features such as existing roads and transmission lines.

As with transmission lines proposed within designated utility and ROW corridors, we ask that BLM create an exception from disturbance cap and compensatory mitigation requirements for transmission facilities that are co-located along existing roads and/or transmission lines. With special stipulations to minimize impacts on sage grouse such as use of poles that deter raptor perching, encouraging co-location of transmission lines co-located with other existing linear facilities will reduce overall impacts on the species. It would also facilitate the development of renewable energy facilities on lower quality GRSG habitat or non-habitat that is separated from interconnection facilities by PHMA, thereby minimizing the cumulative effects of renewable energy development on sage grouse conservation.

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The RMPA/EIS's Road Improvement Restrictions Will Unnecessarily Inhibit Solar Energy Development.

Under the RMPA/EIS, travel in PHMA would be limited to existing roads and trails under all six alternatives. The RMPA/EIS does not clearly explain how this restriction would be applied, but it would appear to prevent "upgrades to roads that would change vehicle use, vehicle type, or traffic volume during the applicable season of GRSG use, subject to valid existing rights, throughout all stages of the proposed project." (GRSG RMPA/EIS, p. 2-20.) This language is included in a section of the document explaining how projects in verified non-habitat within mapped GRSG HMAs could go forward (i.e., where field verification shows HMA mapping is wrong).

We are concerned that restrictions on road upgrades in GRSG HMAs will severely constrain development in areas with otherwise low resource conflicts that are ideal for solar energy development. Rather than imposing a blanket restriction on physical road improvements in GRSG HMAs, we ask that BLM allow for a more pragmatic approach under which a BLM authorized officer could allow road upgrades necessary to accommodate solar development, provided that seasonal restrictions on road use are imposed during important seasons of the year to minimize impacts on the species. We also ask that BLM revise the RMPA/EIS to draw a clear distinction between road upgrades and road maintenance. Actions to maintain existing roads, at their existing width and length, and with their existing surface type, should be allowed, regardless of whether they pass through designated HMAs.

Thank you for the opportunity to submit these comments.

Sincerely,

Balanced Rock Power

DocuSigned by:
Melanie Falls
8AB771F7F42841C...

Melanie Falls

Vice President-Development

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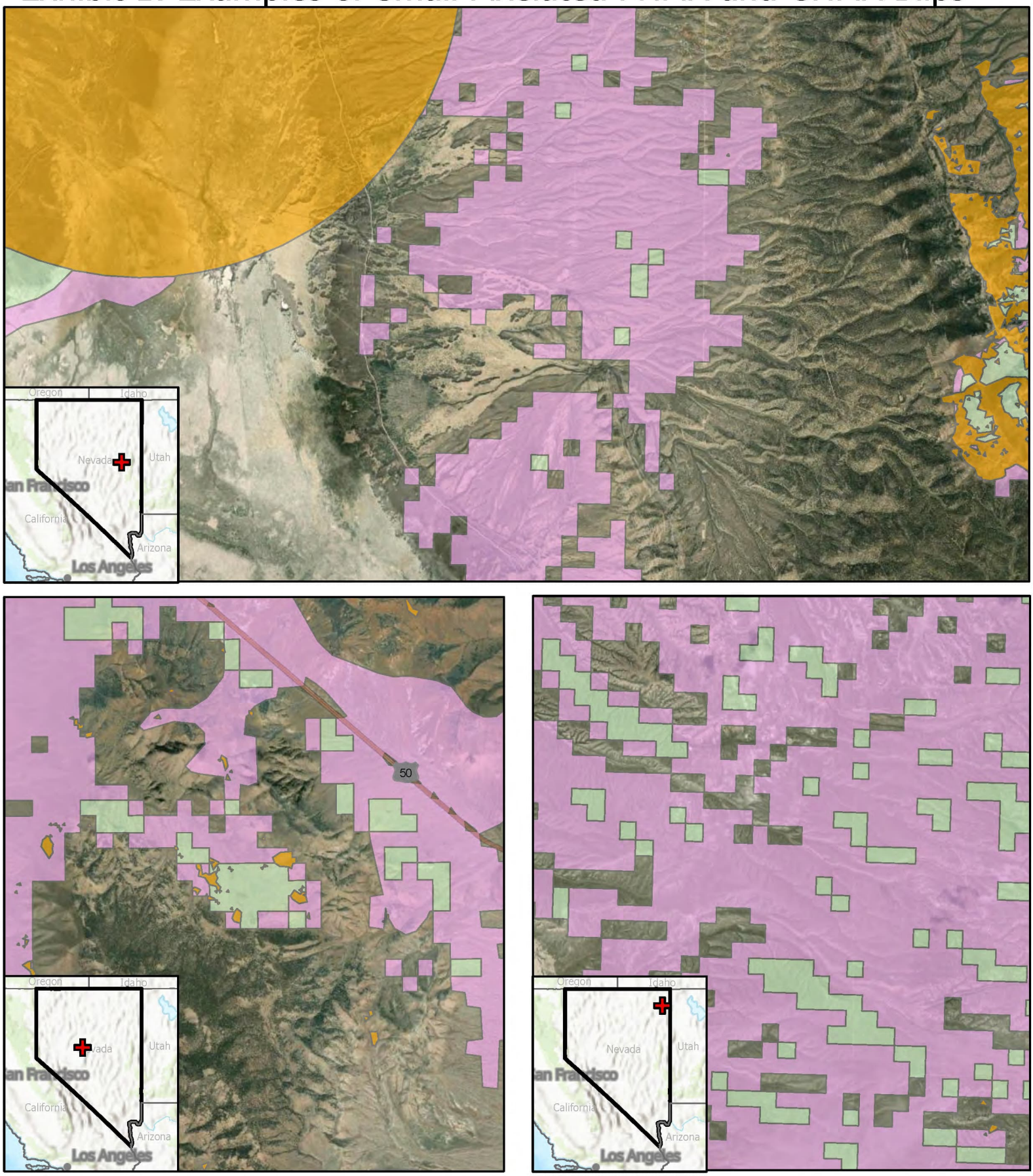
Exhibit 1: Examples of Small Pixelated PHMA and GHMA Blips



BALANCED ROCK POWER

GHMA
OHMA
PHMA

0 0.5 1 2 Miles

5/31/2024
Basemap: World Imagery

June 12, 2024

Submitted via Regulations.gov
Director Tracy Stone-Manning
Bureau of Land Management
U.S. Department of the Interior
1849 C Street NW, Room 5646
Washington DC 20240

Re: Notice of Availability: "Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning" 89 Fed. Reg. 18963 (Mar. 15, 2024)

Dear Director Stone-Manning:

The American Petroleum Institute (API), the Independent Petroleum Association of America (IPAA), the Montana Petroleum Association (MPA), the North Dakota Petroleum Council (NDPC), and the Utah Petroleum Association (UPA) (collectively "The Associations") appreciate this opportunity to provide comments in response to the Bureau of Land Management's (BLM's or Bureau's) "Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning" (Draft RMPA/EIS) Notice of Availability, published at 89 Federal Register 18,963 (March 15, 2024) (Draft RMPA/EIS Notice). The Associations and their members have historically been active participants in the development of Resource Management Plans and Plan Amendments for the greater sage-grouse (GRSG). The Associations and their members have consistently urged the Bureau to be guided by sound science in considering measures to conserve GRSG on BLM-managed lands and to ensure that any such measures are well-grounded in BLM's legal authority and respect existing commitments to leaseholders and others. As drafted, BLM's preferred alternative and other alternatives unduly minimize significant ongoing state and industry efforts benefitting GRSG and include significant legal and scientific flaws. The Associations therefore respectfully request that BLM consider these comments in addressing those flaws and formulating a lawful, scientifically-sound approach.

As always, the Associations and their members stand ready to work collaboratively with the Bureau on these important matters. Thank you for your kind attention to these comments.

Sincerely,

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Comments Submitted by the Associations

BLM's Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning

89 Fed. Reg. 18,963 (March 15, 2024);

June 12, 2024

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I. The Associations' Interests in the Draft RMPA/EIS Rulemaking

The American Petroleum Institute (API) is a national trade association representing nearly 600 member companies that operate throughout the United States and are involved in all aspects of the oil and natural gas industry, including exploration, development, production, transportation, refining, and marketing. Many of our members operate on federal lands, including onshore areas managed by the Bureau of Land Management. For many years, API has worked collaboratively with the Department of the Interior (DOI) and its agencies, including BLM, to help provide for the continued safety of industry workers, protection of the environment, and proper economic development of resources in fulfillment of federal law. API members support responsible energy development on federal lands consistent with FLPMA's multiple use mandate and other applicable laws and regulations.

The Independent Petroleum Association of America (IPAA) is a national upstream trade association representing thousands of independent oil and natural gas producers and service companies across the United States. Independent producers develop 91 percent of the nation's oil and natural gas wells. These companies account for 83 percent of America's oil production, 90 percent of its natural gas and natural gas liquids (NGL) production, and support over 4.5 million American jobs.

The Montana Petroleum Association (MPA) is a Montana-based trade association representing over 150 member-companies involved in all aspects of the oil and natural gas industry. MPA's members include producers, refiners, suppliers, pipeline operators, transporters, and mineral owners as well as service and supply companies that support all segments of the industry and employ a substantial number of hard-working Montanans.

Established in 1952, the North Dakota Petroleum Council (NDPC) is a trade association that represents more than 550 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipelines, transportation, mineral leasing, consulting, legal work, and oil field service activities in North Dakota, South Dakota, and the Rocky Mountain Region.

The Utah Petroleum Association (UPA) is a statewide oil and gas trade association established in 1958 representing companies involved in all aspects of Utah's oil and gas industry. UPA members range from independent producers to midstream and service providers, to major oil and natural gas companies widely recognized as industry leaders responsible for driving technology advancement resulting in environmental and efficiency gains. UPA members operate extensively on federal lands and have a long history of stewardship and conservation.

The Associations' member companies have a direct interest in how BLM plans to manage lands with respect to the greater sage-grouse (GRSG) and its habitat. These companies hold valid existing leases and are interested in future oil and natural gas leasing, exploration, and production activities in areas that will be directly affected by the BLM's management decisions. As such, our members are committed to federal wildlife conservation measures to protect the GRSG identified through environmental analysis performed under federal laws such as the National Environmental Policy Act of 1969 (NEPA) and other applicable state laws. For example, the Associations' members operate pursuant to well-developed state programs benefitting the GRSG, such as the

Wyoming Executive Order on Greater Sage Grouse, that demonstrate oil and gas development's successful coexistence with wildlife conservation. These efforts help protect wildlife while balancing the multiple uses of federal land in the manner in which Congress intended.

Given these significant interests, the Associations and their members have historically been active participants in the development of RMPs, including amendments to RMPs to address the greater sage grouse.[1] The Associations have consistently urged the Bureau to be guided by sound science in considering measures to conserve GRSG on BLM-managed lands and to ensure that any such measures are well-grounded in BLM's legal authority and respect existing commitments to leaseholders and others. As discussed more fully below, these concerns continue to apply to the Bureau's efforts.

II. Importance of Oil and Gas Development

A. Global Leadership in Energy Production

The U.S. is a global leader in both emission reductions[2] and energy production.[3] Oil and natural gas exploration and development on federal lands and waters provide enormous benefits to our nation and its citizens—for our economy, our environment, and our national security. Given the vital importance of energy production on public lands, overreaching land management regulations could place our domestic energy supply at risk, as do proposals that would undercut a balanced, all-of-the-above energy policy. Reduced production on public lands also harms local communities who depend upon the jobs and revenues generated by lawful energy development. To the extent the Draft RMPA/EIS reduces opportunities for energy development on public lands, the U.S. and its allies will likely import more oil and natural gas from countries with lower environmental standards and could revert to coal for power generation, resulting in higher emissions domestically and internationally—precisely the opposite of the Administration's overriding policy objectives.

The oil and natural gas industry produces and delivers nearly 70% of the energy our country uses. Our nation and the world will continue to need reliable, affordable energy for public health and economic growth, energy that will serve as the foundation for broader opportunities for decades to come. Energy production on public lands, including oil and natural gas production, is

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[1] For example, API has provided comments on BLM's December 2011 *Notice of Intent to Prepare Environmental Impact Statements and Supplemental Environmental Impact Statements to Incorporate Greater Sage Grouse Conservation Measures Into Land Use Plans and Land Management Plans*, 76 Fed. Reg. 77008 (Dec. 9, 2011); the December 27, 2011 *Report on National Greater Sage-Grouse Conservation Measures*; the October 2017 *Notice of Intent to Amend Land Use Plans Regarding Greater Sage-Grouse Conservation and Prepare Associated Environmental Impact Statements or Environmental Assessments*, 82 Fed. Reg. 47248 (Oct. 11, 2017); and the November 2021 *Notice of Intent to Amend Land Use Plans Regarding Greater Sage-Grouse Conservation and Prepare Environmental Impact Statements*, 86 Fed. Reg. 66331 (Nov. 21, 2021).

[2] According to EPA, "Between 1970 and 2020, the combined emissions of the six common pollutants (PM2.5 and PM10, SO2, NOx, VOCs, CO and Pb) dropped by 78 percent. This progress occurred while U.S. economic indicators remain strong." EPA, *Progress Cleaning the Air and Improving People's Health* (May 1, 2023), https://www.epa.gov/clean-air-act-overview/progress-cleaning-air-and-improving-peoples-health#pollution.

[3] According to the Energy Information Administration (EIA), the United States is ranked first globally in total energy production from both natural gas and from petroleum and other liquids. U.S. Energy Info. Admin., *Total Energy Production from Natural Gas* (last visited June 14, 2023), https://www.eia.gov/international/rankings/world?pa=287&u=2&f=A&v=none&y=01%2F01%2F2021.

a crucial part of the nation's program for energy security and economic strength. Likewise, the oil and natural gas industry is essential to supporting a modern standard of living by providing communities with access to affordable, reliable, and cleaner energy. The Associations' members remain focused on public health and safety and have well-established policies in place for proactive community engagement and feedback aimed at fostering a culture of trust, inclusivity, and transparency. We believe that all people should be treated fairly, regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. In this regard, it is crucial to bear in mind that energy development on federal lands promotes investment in rural areas where State and local economies depend on the industry for jobs, continued economic prosperity and revenue generated from state severance tax and other local taxes generated from these projects.

B. Support for Environmental Conservation

Our members also support the health and sustainability of public lands and resources. The oil and natural gas industry employs technology and strategies as part of its support for environmental stewardship—taking measures to prioritize protecting public health and the environment, while working to deliver plentiful energy. Measures for the protection of species, habitats and groundwater are all part of our approach to oil and natural gas development – projects are designed, managed and operated to identify and address potential environmental impacts associated with activities ranging from initial exploration to eventual closure and land reclamation. Our members strive to improve the compatibility of their operations with the environment while responsibly and economically developing energy resources and supplying high quality products and services to consumers. Indeed, across these varied operations, our members are working every day to further reduce impacts to air, water, and land resources, including to protected species and habitats.

The Associations' members are participants in federal, state, and private efforts to protect and conserve endangered and threatened species and other species of concern as well as their ecosystems. Our member companies have enrolled millions of acres in conservation plans and committed tens of millions of dollars to fund habitat conservation and restoration programs, including efforts targeted at the GRSG. They work closely with state wildlife management agencies, which have the local expertise to best manage wildlife resources as well as wildlife groups like the National Fish and Wildlife Foundation to develop plans and protocols for protecting wildlife. This collaboration has resulted in improved habitat and species health. Our industry also works with many stakeholder groups to understand migration patterns and routes in areas where we operate. Companies adapt operations to address impacts to these animal movements and habitats. We recognize the importance of protecting and maintaining these historic migrations.

This commitment to protecting wildlife extends to the greater sage-grouse. The oil and natural gas industry has long safeguarded GRSG and their habitat, implementing effective conservation measures to protect them amid ongoing energy exploration and production. As required by (and often even beyond) state regulations and existing BLM measures, companies in the oil and gas industry routinely implement measures to protect the sage grouse. These include but are not limited to training employees and contractors on sage grouse biology, activities that may affect sage grouse, and ways to avoid or reduce impacts; conducting pre-activity surveys by

trained wildlife biologists; adhering to timing restrictions on clearing, side trimming, and herbicide applications; and scheduling work in a manner that takes account of critical timeframes for nearby sage grouse (e.g., maintaining adequate distance from sage grouse buffer zones, particularly during breeding periods, in order to preserve key habitat features); improving sage grouse habitat in areas near oil and gas production; and providing substantial grants to fund sage grouse research efforts. Thus, through voluntary programs and collaboration with state and federal wildlife management agencies as well as non-profit conservation organizations, industry is committed to sage grouse protection and natural habitat conservation.

C. Ensuring Access for Oil & Natural Gas Production on Federal Lands

Energy production on BLM lands provides immense value for the nation. BLM should ensure any of the alternatives provided in the Draft RMPA/EIS do not inadvertently limit access to large swaths of public lands that would otherwise be suitable for potential energy resource development of all kinds, including oil and natural gas production.

BLM manages approximately 245 million acres of surface estate of public lands in the United States (more than any other federal agency).[4] BLM also manages the federal government's onshore subsurface mineral estate (approximately 700 million acres).[5] The Congressional Research Service (CRS) recently explained the enormous importance of energy production on federal lands to the federal government, the states, local communities, and the nation as a whole.[6] Production of oil and natural gas from onshore federal lands represents almost 10% of total domestic production of crude oil and natural gas. CRS found that total revenues from oil and natural gas leases on onshore federal lands exceeded $4.2 billion in fiscal year 2019. This substantial return for the taxpayer is comprised of royalty payments, bonuses, interest payments on leases, rents, and other sources. In turn, these funds were disbursed to states (more than $2 billion), the Reclamation Fund (more than $1.5 billion), and the U.S. Treasury ($444 million), among other things.[7]

More recent data published by the Interior Department's Office of Natural Resources Revenue (ONRR) show that, for fiscal year 2023, energy production on federal and Tribal lands and federal offshore areas generated over $18.1 billion in revenues (from royalties, bonus bids, rents, and other sources).[8] For FY 2023, ONRR disbursed over $4.7 billion in funds collected from leasing activities on federal lands and waters to 33 states.[9] As stated by CRS, "[f]ederal revenues from oil and natural gas leases provide income streams that support a range of federal and state

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[4] The White House, *Department of the Interior*, *in* THE BUDGET FOR FISCAL YEAR 2024 (2023), https://www.whitehouse.gov/wp-content/uploads/2023/03/int_fy2024.pdf.

[5] BLM, *About the BLM Oil and Gas Program* (last visited June 14, 2023), https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/about#:~:text=The%20BLM%20manages%20the%20Federal,benefit%20of%20the%20American%20public.

[6] BRANDON S. TRACY, CONG. RES. SERV., R46537, REVENUES AND DISBURSEMENTS FROM OIL AND NATURAL GAS PRODUCTION ON FEDERAL LANDS (2020), https://crsreports.congress.gov/product/pdf/R/R46537.

[7] *Id.*

[8] DOI, *Interior Department Announces $18.24 Billion in Fiscal Year 2023 Energy Revenue* (Nov. 9, 2023), https://www.doi.gov/pressreleases/interior-department-announces-1824-billion-fiscal-year-2023-energy-revenue#:~:text=Today%2C%20Interior%E2%80%99s%20Office%20of%20Natural%20Resources%20Revenue%20announced,federal%20and%20Tribal%20lands%20and%20federal%20offshore%20areas.

[9] *Id.*

policies and programs."

As stated by CRS, "[f]ederal revenues from oil and natural gas leases provide income streams that support a range of federal and state policies and programs."

III. History of BLM Efforts to Protect the GRSG

There is an extensive history of sage grouse protection and conservation efforts at both the federal and state levels. BLM and U.S. Forest Service launched their National GRSG Planning Strategy in 2011 to amend federal land use plans with sage-grouse conservation measures and have continued efforts to conserve GRSG since that time.

Recognizing that different areas have individualized needs and concerns, BLM's protection efforts have often been tailored to specific region or states. In 2015, BLM and USFS adopted amendments and revisions to 98 RMPs across 10 western states, addressing the management of 67 million acres of land through several regulatory efforts addressing different regions.[10] The 2015 Plans established new GRSG priority habitat designations with heightened management protections across the 67 million acres of federal land, including "Priority Habitat Management Areas" and "General Habitat Management Areas", in addition to other priority habitat designations in certain states. As a result of the comprehensive GRSG protections contained in the 2015 Plans, the U.S. Fish and Wildlife Service determined that listing the species under the Endangered Species Act was "not warranted."[11]

BLM again sought to amend GRSG RMPs in its 2019 Plan Amendments that aimed to improve alignment with state GRSG management strategies and strengthen cooperation with states. BLM's 2019 Plan Amendments were contained in six separate regulatory efforts that each focused on a specific state or region.[12] Each Plan Amendment was specifically designed to address the unique issues and interests of an individual state or limited region, as opposed to the current effort to address GRSG habitat in ten states in one regulatory effort.

Although the 2019 Amendments have been temporarily enjoined, they have not been vacated.[13] The District Court found that plaintiffs challenging the 2019 Amendments were likely to succeed in their claims that BLM failed to: (1) consider a reasonable range of alternatives (only two alternatives were evaluated in the EIS), (2) take a "hard look" at the environmental consequences of the regulatory changes, (3) adequately consider cumulative impacts, and (4) provide notice of the removal of mandatory compensatory mitigation prior to the final EIS.[14] BLM's proposed changes in the current Draft RMPA/EIS go far beyond the limited issues raised

[10] *See* 80 Fed. Reg. 57,633 (Plan Amendments for Great Basin Region Greater Sage-Grouse Sub-Regions of Idaho and Southwestern Montana; Nevada and Northeastern California; Oregon; and Utah); 80 Fed. Reg. 57,332 (Plan Amendments for Rocky Mountain Region Greater Sage-Grouse Sub-Regions Northwest Colorado, and Wyoming); 80 Fed. Reg. 57,639 (Plan Amendments for the Rocky Mountain Region Greater Sage-Grouse Sub-Regions of Lewistown, North Dakota, Northwest Colorado, and Wyoming; New Plans for Billings, Buffalo, Cody, HiLine, Miles City, Pompeys Pillar National Monument, South Dakota, and Worland) ("2015 Plans").
[11] *See* 80 Fed. Reg. 59,857.
[12] *See* 84 Fed. Reg. 10324 (Oregon); 84 Fed. Reg. 10,327 (Northwest Colorado); 84 Fed. Reg. 10,325 (Idaho); 84 Fed. Reg. 10,322 (Wyoming); 84 Fed. Reg. 10,323 (Nevada and Northeastern California); 84 Fed. Reg. 10,328 (Utah).
[13] *W. Watersheds Project v. Schneider*, 417 F. Supp. 3d 1319 (D. Idaho 2019)
[14] *Id.*

in the preliminary injunction.

Departing from the approaches in the 2015 and 2019 GRSG planning efforts, the current Draft RMPA/EIS would revise a total of 77 RMPs across ten Western states, amending the management of up to 69 million acres of land *in one regulatory action*. Despite the fact these planning efforts affect even more acres of land than prior Amendment efforts and are addressing a substantial number of RMPs, BLM has confined its plans to a singular regulatory effort, in stark contrast to BLM's approach to both the 2015 and 2019 Plan Amendments.

IV. In Establishing GRSG Protections, BLM Must Respect the Multiple Use Mandate of FLPMA

A. The Existing Legal & Regulatory Framework Provides Robust Conservation and Environmental Protection for BLM Lands

A bedrock principle of administrative law is that agency regulations must be based on statutory authority. Congressional statutes define the permissible bounds of a federal agency action.[15] This is especially true for federal agencies seeking to exercise authority over federal lands, as the Constitution's Property Clause expressly provides: "**The *Congress* shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States**."[16] Agency actions with significant consequences for federal land use management should be based on clear congressional authorizations.[17] Accordingly, Congress has the right and power to determine the proper balance of uses for federal lands, and against that constitutional backdrop, Congress has established the Multiple Use Framework to guide BLM's effectuation of that legislative purpose.

The Multiple Use Framework ensures that conservation and environmental protection are considered in connection with *every* use of public lands. Before adoption of this Framework, the Mineral Leasing Act (MLA) long ago established a structured process set by DOI to use public lands for resource extraction (such as oil and gas).[18] Under the MLA, federal onshore lands with possible fossil energy resources are available for exploration and production and may be leased by BLM to lessees in exchange for lease payments and royalties (except where those activities have been prohibited by law). While the MLA provides broad authority for use of federal onshore areas for energy production, Congress provided special exclusions and protections for national parks

[15] *See, e.g.*, 5 U.S.C. § 706(2)(C) (finding unlawful agency actions "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right"); *West Virginia v. EPA*, 142 S. Ct. 2587, 2609 (2022) ("Agencies have only those powers given to them by Congress, and 'enabling legislation' is generally not an 'open book to which the agency [may] add pages and change the plot line.'" (brackets in original)).

[16] U.S. CONST. ART. IV, § 3, cl. 2 (emphasis added); *see also Utah Div. of State Lands v. United States*, 482 U.S. 193, 201 (1987) ("The Property Clause grants Congress plenary power to regulate and dispose of land within the Territories . . . ."); *Kleppe v. New Mexico*, 426 U.S. 529, 536 (1976) ("[D]eterminations under the Property Clause are entrusted primarily to the judgment of Congress.").

[17] *Cf. Gundy v. United States*, 139 S. Ct. 2116, 2123 (2019) ("So the answer requires construing the challenged statute to figure out what task it delegates and what instructions it provides.").

[18] *See* 30 U.S.C. § 181.

and monuments, certain areas protected as part of the National Wilderness Preservation System, and lands in incorporated cities, towns, and villages.[19]

Under FLPMA, Congress specifically instructed that federal lands must be managed "on the basis of multiple use and sustained yield unless otherwise specified by law."[20] Key terms like "multiple use" and "sustained yield" are expressly defined in FLPMA by Congress.[21] The Multiple Use Framework, as defined in 43 U.S.C. § 1702(c), requires BLM to consider a variety of factors when managing public lands:

> *The term "**multiple use**" means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.*[22]

Likewise, the term "sustained yield" means "the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use."[23]

Conservation and environmental protection considerations do not preempt permitted use of public lands in this context. The Multiple Use Framework accounts for the fact that public land use must be multifaceted and still meet present resource needs.

A number of the alternatives do not align with this constitutional and statutory framework. For example, under Alternative 3, 69 million acres of public lands – over a quarter of all BLM-managed public lands - would be declared Priority Habitat Management Areas that would be off-limits to future oil and gas leasing activity. There would be no effort made to accommodate important uses of public lands over a vast area aside from allowing already approved activities to continue. In the absence of a sound scientific basis for such sweeping prohibitions – which is not

[19] *Id.*; *see also* 16 U.S.C. §1133(d)(3) (special provisions governing mineral leasing in designated wilderness areas); 30 U.S.C. § 226(h) (special provisions for national forest system lands).
[20] 43 U.S.C. § 1701(a)(7).
[21] *See id*. § 1702(c), (h).
[22] *Id*. § 1702(c).
[23] *Id.* § 1702(h).

apparent in the Draft RMPA/EIS – Alternative 3 would be inconsistent with BLM's statutory mandate.

B. Recent BLM Actions Unduly Limit Oil and Gas Development on Federal Lands

The Draft RMPA/EIS comes on the heels of a series of actions by BLM that seek to unduly limit oil and gas development on federal lands, including but not limited to the Bureau's recently-finalized Public Lands Rule.[24] In that rule, BLM elevates "conservation" to a "first among equals" among uses of public lands. Under the Public Lands Rule, conservation is given priority over all other productive uses in contravention of the Multiple Use requirements of FLPMA.

BLM has also recently finalized its Renewable Energy Rule, which recalibrates federal land management regulations to promote and incentivize greater deployment of wind and solar energy projects.[25] The rule provides more favorable land management provisions for renewable energy as compared to traditional energy projects like oil and natural gas development, which remain critical for U.S. energy security. These changes contrast sharply with the substantial additional burdens contained in BLM's recent revisions to its oil and natural gas leasing regulations.[26] The Associations' members support responsible energy development on federal lands consistent with FLPMA's multiple use mandate and other applicable laws and regulations. We also agree with the general imperative to adopt reforms to increase energy production on public lands consistent with an "All of the Above" energy policy. However, the Renewable Energy Rule relies on a procedurally deficient analysis to underpin changes that alter basic principles of federal land management, creates an unlevel playing field among energy sources on federal lands, and potentially restricts access for oil and natural gas development in some areas for decades to come.

These recent actions fail to comply with BLM's fundamental grant of authority from Congress. As discussed above, FLPMA and its Multiple Use Framework generally govern the use of lands administered by BLM.[27] Under FLPMA, Congress specifically instructed that federal lands must be managed "on the basis of multiple use and sustained yield unless otherwise specified by law."[28] The Multiple Use Framework accounts for the fact that public land use must be multifaceted and still meet present resource needs. The principal uses contemplated under the Multiple Use Framework are "limited to[] domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production."[29] While conservation is certainly an important element to be considered by BLM in managing public lands, it cannot be promoted in such a way as to exclude

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[24] Final rule, *Conservation and Landscape Health*, prepublication version available at Public Lands Rule | Bureau of Land Management (blm.gov).
[25] 89 Fed. Reg. 35634.
[26] Final rule, Fluid Mineral Leases and Leasing Process, prepublication version available at Fluid Mineral Leases and Leasing Process Final Rule (Unofficial Prepublication) (blm.gov).
[27] *See, e.g.*, 43 U.S.C. § 1702(c) (defining "multiple use"). While the proposed rule would apply to lands administered by BLM under RMPs implementing the multiple-use mandate of FLPMA, it would not apply to other lands administered by BLM which typically have a primary purpose designated by Congress. We encourage BLM to maintain clarity on this point so that neither BLM nor the regulated community of public land users must labor under uncertainty about the scope of application of the regulations.
[28] 43 U.S.C. § 1701(a)(7).
[29] 43 U.S.C. § 1702(*l*).

or diminish any "principal or major uses."

Therefore, in drafting and amending Resource Management Plans (RMPs), BLM must respect the multiple use mandate of FLPMA. The Associations are concerned that certain aspects of the Draft RMPA/EIS may fail to adhere to the statutory requirements designed to ensure that public lands are accessible and available for leasing for all sources of energy. BLM should reconsider its proposed alternatives and adopt approaches consistent with FLPMA and the Multiple Use Framework.

V. Management Area Identifications/Boundaries and Restrictions Must be Based on Sound Science

A key theme of BLM's Draft RMPA/EIS is the Bureau's adoption of "new science." The "new science" permeates many aspects of BLM's proposed approach. However, as discussed further below, there are a number of respects in which recent papers relied on by the Bureau are flawed in ways BLM does not acknowledge. In moving forward with RMP amendments, BLM needs to take a more open and discerning approach to the science on which it amendments are based.

A. BLM Must Recognize the Issues with its Population Assessment

A key factor in BLM's overall approach is an assessment of the status of GRSG populations. Yet certain aspects of BLM's assessment – particularly its assessment of long-term population trends – is skewed by reliance on papers such as O'Donnell, et al. (2021). This paper introduced a new software-based approach to standardizing state-collected, long-term sage grouse lek count data in order to produce range-wide population assessments. Although the authors make no mention of trends in the data, these are apparent in the figures. Notably, as data standardization and data quality increased, population fluctuations – as evidenced by male lek counts – become apparent. Standardized monitoring protocols were first introduced for the 1983 counts but were not adhered to by all states. Also, from 1995 onwards lek counts dramatically increased, as did data quality, as indicated by the smaller standard deviations associated with the more recent data. Therefore, the frequently cited dramatic population decline since the 1960s looks more like an artifact of inadequate sampling, with only large leks being sampled.[30] Additionally, large amounts of lek count data, including data from Colorado, failed to meet uniform standards. In fact, it was not until 2016 that Colorado began to collect repeated observations of the same lek, the same day and had not digitized its records gathered prior to 2006.

These and other issues documented in O'Donnell et al. (2021) underscore the fact that inferring population trends from lek count data is an evolving science and that a lack of consistent data collection, as documented by Shyvers et al. (2018)) in the Parachute-Piecance-Roan population in Colorado, raises serious questions about these and population trends estimated by Coates et al. (2021). These issues are compounded by the fact that the data relied on to assess population trends end in 2019, when many sage grouse were at a low ebb in their population cycle, thus biasing perceptions (that populations are in a consistent decline). Data from Utah and

[30] Garton 2011.

Wyoming show populations rising again in 2021, underscoring the importance of putting population estimates in proper context.

B. BLM Should Not Rely on Genetics in Seeking to Identify Habitat and Connectivity Needs

Management of GRSG habitats needs to be based up demonstrable threats, not hypothetical concerns that are theoretical in nature. Oyler-McCance et al. (2022[31]) and other recent papers by Cross et al. (2018[32] and 2023[33]) and Row et al. (2018[34]), share a common theme and aim: that genetic connectivity of sage grouse populations (via protection of and/or reestablishment of natural migration corridors) is "vital" to their conservation and needs to be incorporated into resource management plans. Oyler-McCance et al. (2022) also argue for a redrawing of current GRSG management boundaries based upon their analysis of genetic data. However, all of the analyses from these papers are based upon selectively-neutral genetic markers (microsatellites) that occupy non-transcribed sections of DNA between functional genes, and therefore have no role in survival of the organism, are not subject to natural selection, nor of adaptive importance. Unless a microsatellite locus is closely linked to a specific gene (i.e. nearby on the same chromosome) microsatellites can only provide an index of levels and patterns of genetic variation found within and among populations.

A central issue with this paper – and the others on genetic connectivity by the same authors – is the fact that none has provided any data or reference to other studies that may have identified current genetic issues in any of the sage grouse populations studied. For example, there is no evidence presented that inbreeding depression or severe paucity of genetic variation are resulting in a measurable reduction in fitness and population decline. Similarly, the authors have not made a convincing argument as to why historical patterns of genetic variation should be retained when climate change will shift the traits favored by natural selection. Their case rests wholly upon theoretical concerns and undemonstrated potential problems. Without a bona fide genetic issue having been identified, the authors are proposing a range-wide, landscape-level solution for a hypothetical problem that is not known to exist.[35]

The genetic networks and connectivity analyses are presented as if they are describing very recent gene flow, but all they actually show is the genetic similarity between their sampling sites. The authors do not present any data, or reference any radio-tracking studies, to support their

[31] Oyler-McCance SJ, Cross TB, Row JR, Schwartz MK, Naugle DE, Fike JA, Winiarski K, Fedy BC (2022) New strategies for characterizing genetic structure in wide-ranging, continuously distributed species: A Greater Sage-grouse case study. Plos one. 2022 Sep 13;17(9):e0274189.

[32] Cross TB, Schwartz MK, Naugle DE, Fedy BC, Row JR, Oyler-McCance SJ (2018) The genetic network of greater sage-grouse: range-wide identification of keystone hubs of connectivity: Ecology and Evolution, v. 8, no. 11, p. 5394-5412.

[33] Cross TB, Tack JD, Naugle DE, Schwartz MK, Doherty KE, Oyler-McCance SJ, Pritchert RD, Fedy BC (2023) The ties that bind the sagebrush biome: integrating genetic connectivity into range-wide conservation of greater sage-grouse. R. Soc. Open Sci. 10: 220437. https://doi.org/10.1098/rsos.220437

[34] Row JR, Doherty KE, Cross TB, Schwartz MK, Oyler-McCance SJ, Naugle DE, Knick ST, Fedy BC (2018) Quantifying functional connectivity: the role of breeding habitat, abundance, and landscape features on range-wide gene flow in sage-grouse. Evol. Appl. 11, 1305–1321. (doi:10.1111/eva.12627)

[35] Additionally, Oyler-McCance et al.'s (2022) own genetic data show remarkably high levels of microsatellite variation within populations sampled (i.e. average heterozygosities of 0.657 to 0.805).

assertions. While some of the genetic similarity in microsatellite allele frequencies may be due to recent gene flow, genetic similarity can also be the result of shared ancestry with little or no recent gene flow. For example, a historical population may became subdivided, and the two "new" populations retain high genetic similarity due to their large population sizes. Alternatively, genetic similarity can be the result of an extinction and recolonization event.

Similarly, the authors assume that genetic drift due to small population size and/or isolation is making some populations more genetically divergent. However, this and other patterns of genetic connectivity reported by Oyler-McCance et al. (2022), as well as Cross et al. (2018), Row et al. (2018), and Cross et al. (draft), all relied on those same data sets. However, genetic divergence can also be an artifact of translocations of thousands of GRSG that took place starting in the 1940s. Those translocations involved moving thousands of sage grouse from thriving to declining populations, as well as from agricultural areas to areas outside of agricultural production. As documented by Reese and Connelly (1997[36]), "Those included 5,881 [sage grouse] moved up to 483 km in 30 translocation attempts into 19 counties in the state [of Wyoming]," as well as later translocations in Wyoming, Utah, and Idaho (Patterson 1952[37]; Reese and Connelly 1997; Kohl et al. 2019).

Therefore, the results of Oyler-McCance et al. (2022) and other genetic connectivity papers contain genetic artifacts of artificial gene flow from thousands of translocated sage grouse that were moved within and among states decades ago. Without taking the obvious first step of excluding populations that had received translocations or accounting for the downstream effects of translocations (i.e. using diffusion models), the results and management recommendations are, at best, highly questionable. A one-sentence mention of the potential influence of translocations on their results was found in Oyler-McCance et al. (2022): that translocations in Utah "complicate the interpretation of the structure found here." However, the authors did not provide any explanation as to how or why their results and "interpretation" of those results would have been affected by translocations or are "complicated" by them. In short, Oyler-McCance et al. (2022) effectively ignored the issue of historical translocations.

The authors of Oyler-McCance et al. (2022) also make no mention of translocations as a practical management solution if any of the following three scenarios come to be:

> 1) An inbreeding issue is found or a population undergoes a severe bottleneck such that most of its genetic variation has been depleted, individual fitness has declined, and therefore, it is in need of "genetic rescue."
>
> 2) Genetic variants with high fitness (i.e. individuals possessing genes with greater survival potential or disease resistance) are discovered in other populations and the populations receiving translocations of those individuals would benefit.
>
> 3) A population has declined to a point that a population augmentation via translocation of individuals from a more abundant population is needed to prevent its extirpation.

[36] Reese, KP, and JW Connelly (1997) Translocations of sage-grouse Centrocercus urophasianus in North America. Wildlife Biology 3:235–241.
[37] Patterson, R.L. (1952) The sage grouse in Wyoming. - Sage Books, Inc. Denver, CO, 341 pp.

Translocations have been used successfully to both augment declining GRSG populations and to re-establish historical ones, thanks to refinements in methods as documented in the scientific literature by Thompson et al. (2015[38]), Apa et al. (2017[39]), Duvuvuei et al. (2017[40]), and many others.[41] However, the authors of Oyler-McCance et al. (2022), as well as Cross et al. (2018 and 2023), and Row et al. (2018), appear to be unaware of these papers or otherwise fail to acknowledge the practicality of translocations as a viable sage grouse conservation strategy. Instead, they appear to be in favor of theoretical landscape-level habitat connectivity approaches which may not be compatible with current land uses. We are concerned that the BLM, in this Draft RMPA/EIS, is likewise ignoring the practicality of translocations in favor of theoretical landscape-level habitat connectivity approaches.

The papers by Row et al. (2018) and Cross et al. (2018) also raise significant concerns. These papers utilized different data sets and analytical approaches and those microsatellite data sets and analytical approaches were combined in Cross et al. (2023). Cross et al. (2023) proposed that genetic analyses be combined with analyses of landscape characteristics. These landscape characteristics are barriers or impedances to gene flow from agriculture or conifer woodlands, termed "functional-connectivity models" and offer a new way of potentially prioritizing some landscape-level conservation efforts. While these analyses may point to areas where additional on-the-ground investigations may be useful (i.e., studies of GPS radio tagged individuals and their dispersal or seasonal migration patterns), like the genetic study by Oyler-McCance et al. (2022), they should not be viewed as prescriptive land-use action plans.

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[38] Thompson, T.R., Apa, A.D., Reese, K.P. and Tadvick, K.M. (2015), Captive rearing sage-grouse for augmentation of surrogate wild broods: Evidence for success. Jour. Wild. Mgmt., 79: 998-1013. https://doi.org/10.1002/jwmg.905

[39] Apa, A.D., Thompson, T.R. and Reese, K.P. (2017) Juvenile greater sage-grouse survival, movements, and recruitment in Colorado. Jour. Wild. Mgmt., 81: 652-668. https://doi.org/10.1002/jwmg.21230

[40] Duvuvuei, O.V., Gruber-Hadden, N.W., Messmer, T.A., Guttery, M.R. and Maxfield, B.D. (2017) Contribution of translocated greater sage-grouse to population vital rates. Jour. Wild. Mgmt., 81: 1033-1041. https://doi.org/10.1002/jwmg.21264

[41] Ebenhoch, K., Thornton, D., Shipley, L., Manning, J.A. and White, K. (2019), Effects of post-release movements on survival of translocated sage-grouse. Jour. Wild. Mgmt., 83: 1314-1325. https://doi.org/10.1002/jwmg.21720; Heinrichs, J.A., McKinnon D.T., Aldridge C.L., and Moehrenschlager, A. (2019) Optimizing the use of endangered species in multi-population collection, captive breeding and release programs: Global Ecology and Conservation, v. 17, article e00558, 12 p, https://doi.org/10.1016/j.gecco.2019.e00558; Kohl, M., Chelak, M., and Messmer, T. (2019) Greater Sage-grouse Translocations: The Science Behind Utah's Conservation Policy. Utah State University. Natural Resources Extension, NR/Wildlife/2019-01pr. January 2019; Lazenby, K.D. (2020) North Dakota Greater Sage-Grouse (Centrocercus urophasianus) Recovery Project: Using Translocation to Prevent State-Wide Extirpation and Develop Rangewide Protocols. Utah State University. Graduate Theses and Dissertations. https://digitalcommons.usu.edu/etd/7774; Lazenby KD, Coates PS, O'Neil ST, Kohl MT, Dahlgren DK. Nesting, brood rearing, and summer habitat selection by translocated greater sage-grouse in North Dakota, USA. Ecol Evol. 2021; 11: 2741–2760. https://doi.org/10.1002/ece3.7228; Stoner DC, Messmer TA, Larsen RT, et al. Using satellite-derived estimates of plant phenological rhythms to predict sage-grouse nesting chronology. Ecol Evol. 2020; 10: 11169–11182. https://doi.org/10.1002/ece3.6758; Meyerpeter, M.B., Lazenby, K.D., Coates, P.S., Ricca, M.A., Mathews, S.R., Gardner, S.C., Dahlgren, D.K. and Delehanty, D.J. (2021), Field Methods for Translocating Female Greater Sage-Grouse (Centrocercus urophasianus) with their Broods. Wildl. Soc. Bull., 45: 529-537. https://doi.org/10.1002/wsb.1199; Picardi S, Coates P, Kolar J, O'Neil S, Mathews S, Dahlgren D (2022) Behavioural state-dependent habitat selection and implications for animal translocations. Journal of Applied Ecology. 2022 Feb;59(2):624-35.

In short, the study by Oyler-McCance et al. (2022) assumes that the future of GRSG is dependent upon maintaining or re-establishing genetic connectivity. This assumption is undercut by the fact that no genetic issue has been reported (beyond theoretical concerns). Furthermore, translocations offer an efficient and effective solution in cases where a genetic or demographic problem is identified. Translocations have been used successfully in the management of GRSG and many other species.

The papers by Oyler-McCance et al. (2022), Cross et al. (2018 and 2023), and Row et al. (2018), raise an important question: should management be based on theoretical concerns and maintaining historical patterns of genetic variation from genetic markers that have no demonstrable survival value? Considering the number of demonstrable threats facing GRSG, the Associations believes that management in this RMP should instead be based upon conserving the largest number of birds with the most efficient methods to achieve that goal, as advocated by Doherty et al. (2016).

C. BLM Must Properly Assess Threats to GRSG and GRSG Habitat

i. Oil and gas development is not a primary threat to GRSG or GRSG habitat and is capable of effectively co-existing with the GRSG.

Oil and gas development activities have evolved in ways that limit their impact on species such as the GRSG. This evolution has included the adoption of technologies to make oil and gas production more efficient, which in turn results in minimization of impacts on the environment. Most notably, the industry has adopted widespread use of horizontal drilling techniques, which allow the efficient capture of oil and gas over a broad area using many fewer well pads (and correspondingly fewer roads) than historical vertical well drilling techniques. The use of a single well pad to drill multiple horizontal wells results in substantially reduced surface disturbance and much more localized drilling and well completion operations.[42] Within BLM's own Instruction Manual, the agency recognizes the benefits of directional drilling and the ability to manage operations as a Best Management Practice ("BMP"):

> "The development of directional drilling has allowed oil and gas operators to reach multiple formations and multiple leases from the same well pad, thereby reducing the amount of surface disturbance necessary to develop an oil and gas field relative to the use of traditional vertical wells. At the same time, these

[42] *See, e.g.*, Garman, *A simulation framework for assessing physical and wildlife impacts of oil and gas development scenarios in Southwestern Wyoming*, Environmental Modeling and Assessment, v. 23, no. 1, p. 39–56 (2017), https://doi.org/10.1007/s10666-017-9559-1 ("Reducing pad numbers with directional-drilling technology reduced surface disturbance area and impacts on spatially extensive habitats (48–96% of study area) such as sagebrush-obligate songbird habitat, elk winter range, and sagebrush core area."); Applegate & Owens, n. 4 supra (surface disturbance reduced 70 %); David H. Applegate & Nicholas Owens, *Oil and Gas Impacts on Wyoming's Sagegrouse: Summarizing the Past and Predicting the Foreseeable Future*, 8 HUMAN–WILDLIFE INTERACTIONS 284, 289–90 (2014), https://www.researchgate.net/publication/267765279_Oil_and_Gas_Impacts_on_Wyoming%27s_Sagegrouse_Summarizing_the_Past_and_Predicting_the_Foreseeable_Future (modern energy production methods and technologies have resulted in a 70% reduction in surface disturbance when compared to historic practices).

> drilling techniques have given rise to many questions about the BLM's obligations and authority with respect to wells and facilities producing Federal minerals from non-Federal locations. The use of directional drilling technology is increasing and considered a Best Management Practice (BMP). The BLM strongly supports this environmental BMP as a means of limiting surface disturbance and overall impacts from oil and gas development."[43]

Other technological developments that have resulted in more efficient drilling include the use of improved drill bits and downhole imaging techniques that allow adjustments in drilling direction in real time. The resulting gains in efficiency minimize the time associated with the activity-intensive phase of well development as well as associated noise.

The evolution in oil and gas operations also includes measures taken by operators specifically to minimize environmental impacts. These measures include a variety of efforts that reduce or mitigate noise, such as steps to minimize the use of diesel engines during well drilling and completion. Additional noise mitigation measures may include the use of enhanced mufflers on engines and acoustically engineered sound barrier blankets and sound walls.

Research provides evidence of the limited impacts of modern oil and gas operations on GRSG. For example, one recent paper analyzing the Parachute-Piceance-Roan GRSG population concluded that there was no "obvious pattern of greater avoidance of wells pads and facilities with more industrial activities."[44] BLM must acknowledge these evolving development approaches and techniques that minimize environmental impacts, while also acknowledging that studies based on historic development approaches (e.g., primary reliance on vertical wells) are outdated and should not be relied on to establish current policies.

Additionally, the life of an oil and gas well is finite, and research has shown that restoration of well pads is possible. For example, a study of efforts to restore sagebrush habitat in the Piceance Basin after disturbances associated with oil and gas development concluded that "Restoring oil and gas disturbances to fully functional, diverse plant communities for wildlife habitat in northwestern Colorado is possible."[45] In fact, recent research has shown that restored well pad sites can provide better GRSG habitat than pre-existing conditions. Thus, GRSG and oil and gas development can co-exist and there is no basis for the application of widespread surface use restrictions to oil and gas development.

ii. BLM must also accurately assess other threats and steps to minimize those threats.

a. Climate Change: BLM cannot base its assessment on worst-case assumptions.

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[43] BLM, *Directional Drilling into Federal Mineral Estate from Well Pads on Non-Federal Locations*; Permanent Instruction Memorandum No. 2018-014 – June 12, 2018, https://www.blm.gov/policy/pim-2018-014.

[44] Walker, BL, *Resource selection by greater sage-grouse varies by season and infrastructure type in a Colorado oil and gas field,* Ecosphere (2022 May);13(5):e4018.

[45] Johnston, *Piceance Basin Restoration For Wildlife,* Colorado Parks and Wildlife Technical Report No. 57 (2020), CPW-R-T-57-20, ISSN 0084-8883.

A key focus of the Draft RMPA/EIS is the potential impact of climate change on GRSG. The Associations support the use of the best available science when evaluating threats to GRSG. However, the Draft RMPA/EIS heavily relies on numerous studies that fail to meet that standard. Reliance on scientific papers based on extreme, worst-case climate scenarios does not constitute use of best available science by BLM. NEPA does not require a "worst case analysis."[46] Not only is a worst-case climate scenario not legally required, it is not always an appropriate research method, as it may "distort[] the decisionmaking process by overemphasizing highly speculative harms."[47]

Doherty et al. (2022[48]), Rigge et al. (2021[49]), and Palmquist et al. (2021[50]) all predict changes in sagebrush and sage grouse populations as a result of long-term climate change. BLM fails to acknowledge that all three papers rely on a scientifically discredited RCP8.5 (also referred to as SSP5-8.5) worst-case climate scenario (with no CO2 emission reductions whatsoever) and that this scenario is no longer considered likely by the International Panel on Climate Change (IPCC) in their *IPCC Sixth Assessment Report, Working Group 1: The Physical Science Basis* (IPCC 2022[51]) as well as others (Hausfather and Peters 2020[52]; Burgess et al. 2022[53]).

The significance of this error of omission in the RMP is two-fold. First, although both Rigge et al. (2021) and Palmquist et al. (2021) include the RCP4.5 scenario in their analyses, in presenting their results graphically they focus only on the RCP8.5 scenario and emphasize the dire predictions based on its unlikely worst-case scenario in their results and discussion sections. Second, the analyses and results of Doherty et al. (2022) are based entirely on the RCP8.5 scenario results of Palmquist et al. (2021), thus completely biasing their predictions on sagebrush cover that GRSG depend upon. Under NEPA, BLM cannot rely on results and presentation of information that promotes worst case scenarios in its decision making. The failure of BLM to acknowledge these biases undermines its scientific rationale for its rangewide RMP for GRSG.

b. BLM cannot ignore the influence of regional climatic variations on GRSG populations.

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[46] *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 356 (1989).
[47] *See id.* at 334; Maine Lobstermen's Ass'n v. NMFS
[48] Doherty K, Theobald DM, Bradford JB, Wiechman LA, Bedrosian G, Boyd CS, Cahill M, Coates PS, Creutzburg MK, Crist MR, Finn SP, Kumar AV, Littlefield CE, Maestas JD, Prentice KL, Prochazka BG, Remington TE, Sparklin WD, Tull JC, Wurtzebach Z, Zeller KA (2022) A sagebrush conservation design to proactively restore America's sagebrush biome: U.S. Geological Survey Open-File Report 2022–1081, 38 p., https://doi.org/10.3133/ofr20221081.
[49] Rigge M, Shi H, Postma K. (2021) Projected change in rangeland fractional component cover across the sagebrush biome under climate change through 2085. Ecosphere 12(6):e03538.10.1002/ecs2.3538
[50] Palmquist KA, Schlaepfer DR, Renne RR, Torbit SC, Doherty KE, Remington TE, Watson G, Bradford JB, Lauenroth WK. (2021) Divergent climate change effects on widespread dryland plant communities driven by climatic and ecohydrological gradients. Glob Chang Biol. 2021 Oct;27(20):5169-5185. doi: 10.1111/gcb.15776. Epub 2021 Jul 26. PMID: 34189797.
[51] IPCC (2022) IPCC Sixth Assessment Report, Working Group 1: The Physical Science Basis. https://www.ipcc.ch/report/ar6/wg1/chapter/chapter-1/.
[52] Hausfather Z, Peters GP (2020) Emissions – the 'business as usual' story is misleading. Nature 577, 618-620. doi: https://doi.org/10.1038/d41586-020-00177-3.
[53] Burgess MG, Pielke R Jr, Ritchie J. (2022) Catastrophic climate risks should be neither understated nor overstated. Proc Natl Acad Sci U S A. 2022 Oct 18;119(42):e2214347119. doi: 10.1073/pnas.2214347119.

The RMP (and the USGS science that the RMP relies upon) also ignored a substantial body of scientific literature on regional climatic variation (interannual variation in regional weather patterns) as a predictor of GRSG population fluctuations and trends. It is well documented in the scientific literature that annual fluctuations in sea surface temperatures in the North Pacific Ocean drive multi-year variations in temperature and precipitation patterns in western North America. The Pacific Decadal Oscillation (PDO, https://www.ncei.noaa.gov/access/monitoring/pdo/) is an index of the sea surface temperature variation in the North Pacific Ocean that has a significant influence on temperature and precipitation patterns. This regional climatic variation (i.e. periodic fluctuations in large-scale weather patterns) in turn affect marine and terrestrial plant and animal population cycles, and contributes to phenomena such as summer heat and fire frequency in the western United States. Large-scale climate indices, such as the PDO, often outperform local temperature and precipitation data in predicting population dynamics and ecological processes (Stenseth et al. 2002[54]; Hallett et al. 2004[55]).

Multiple authors have reported that GRSG populations experience cyclic fluctuations, and that these population dynamics are linked to patterns of temperature and precipitation (the PDO) which affect reproduction and survival. However, notably absent in the Draft RMPA/EIS is any mention of key papers such as Gibson et al. (2017[56]), Coates et al. (2018[57]), Mathews et al. (2018[58]), and more than a dozen others.[59] Likewise lacking is any discussion of the authors' findings and their significance in understanding the drivers of GRSG population fluctuations, trends, and modeling. The relationship between climatic variation on population dynamics of GRSG is not surprising as there is a long and ecologically important history of studies examining the influence of climatic variation on the cyclic population dynamics of other members of the grouse family, including black grouse, ptarmigans, and prairie chickens. BLM failed to acknowledge these papers when developing the Draft RMPA/EIS, as did USGS when developing the science that the RMP relies upon.[60]

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[54] Stenseth NC, Mysterud A, Ottersen G, Hurrell JW, Chan K-S, Lima M (2002) Ecological effects of climate fluctuations. Science 297(5585):1292–1296 DOI 10.1126/science.1071281.

[55] Hallett TB, Coulson T, Pilkington JG, Clutton-Brock TH, Pemberton JM, Grenfell BT (2004) Why large-scale climate indices seem to predict ecological processes better than local weather. Nature 430(6995):71–75 DOI 10.1038/nature02708.

[56] Gibson et al. (2017) Weather, habitat composition, and female behavior interact to modify offspring survival in greater sage-grouse: Ecological Applications, v. 27, no. 1, p. 168–181. https://pubmed.ncbi.nlm.nih.gov/28052504

[57] Coates et al. (2018) The relative importance of intrinsic and extrinsic drivers to population growth vary among local populations of greater sage-grouse: an integrated population modeling approach: AUK, v. 135, no. 2, p. 240-261.

[58] Mathews et al. (2018) An integrated population model for greater sage-grouse (Centrocercus urophasianus) in the bi-state distinct population segment, California and Nevada, 2003-17: US Geological Survey Open-File Report 2018-1177, 89 p., https://doi.org/10.3133/ofr20181177

[59] Ramey et al. (2018) Local and population-level responses of greater sage-grouse to oil and gas development and climatic variation in Wyoming: PEERJ, v. 2018, no. 6, p. e5417, https://doi.org/10.7717/peerj.5417; Lundblad CG, Hagen CA, Donnelly JP, Vold ST, Moser AM, Espinosa SP (2022) Sensitivity to weather drives Great Basin mesic resources and Greater Sage-Grouse productivity. Ecological Indicators. 2022 Sep 1;142:109231.

[60] Moran PAP (1952) The statistical analysis of game-bird records. Journal of Animal Ecology 21(1):154 DOI 10.2307/1915; Moran PAP. 1954. The statistical analysis of game-bird records. II. Journal of Animal Ecology 23(1):35 DOI 10.2307/1659; Ranta E, Lindstrom J, Linden H (1995) Synchrony in tetraonid population dynamics. Journal of Animal Ecology 64(6):767–776 DOI 10.2307/5855; Lindström J, Ranta E, Lindén H, Lindstrom J, Linden H (1996) Large-scale synchrony in the dynamics of capercaillie, black grouse and hazel grouse populations in Finland. Oikos 76(2):221 DOI 10.2307/3546193; Cattadori IM, Haydon DT, Hudson PJ. 2005. Parasites and climate synchronize red grouse populations. Nature 433(7027):737–741 DOI 10.1038/nature03276; Ludwig GX, Alatalo RV, Helle P, Linden

The significance of the aforementioned papers to the conservation of sage grouse, and to the RMP amendments in particular, are threefold:

First, state and federal agencies need to account for the predictable responses of GRSG populations[61] to regional climatic fluctuations and *their magnitude* when managing GRSG in an adaptive management framework. This is essential to understanding and accounting for the primary extrinsic factors that drive population trends, and for predicting trends in productivity, recruitment, and adult survivorship prior to the next year's lek count data. This is important in anticipating potential population management needs rather than reacting to population declines as they occur (i.e., through the "Targeted Annual Warning System" or "TAWS").

Second, adaptive management policies based on TAWS population "triggers", where additional restrictions are implemented, will be flawed unless the magnitude of effects of the PDO (and in some cases, ENSO) are taken into account so that variations in the magnitude of population responses to these natural fluctuations are not misinterpreted. Ideally, such triggers should be defined as the percent divergence from the expected carrying capacity, with the carrying capacity tracking the regional climate.

Third, the current GRSG population cycle indicates that it was at a naturally occurring low ebb/nadir when the last data were collected and used for estimating long term population trends by USGS staff (Coates et al. 2021[62]). Ending data collection during such an ebb/nadir can give a false perception of continuing decline, especially for decision makers unfamiliar with species having cyclic population trends.

The Draft RMPA/EIS also ignores a body of scientific literature on adaptation to climate change which should be incorporated into its adaptive management approach. A paper by Provencher et al. (2021[63]) properly takes into account adaptation to long-term climate change through high resolution (local) vegetation modeling and forecasting the effects of different

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H, Lindstrom J, Siitari H (2006) Short-and long-term population dynamical consequences of asymmetric climate change in black grouse. Proceedings of the Royal Society B: Biological Sciences 273(1597):2009–2016 DOI 10.1098/rspb.2006.3538; Kvasnes MAJ, Storaas T, Pedersen HC, Bjørk S, Nilsen EB (2010) Spatial dynamics of Norwegian tetraonid populations. Ecological Research 25(2):367–374. DOI 10.1007/s11284-009-0665-7; Selås V, Sonerud GA, Framstad E, Kålås JA, Kobro S, Pedersen HB, Spidsø TK, Wiig O. 2011. Climate change in Norway: warm summers limit grouse reproduction. Population Ecology 53(2):361–371 DOI 10.1007/s10144-010-0255-0; Viterbi R, Imperio S, Alpe D, Bosser-peverelli V, Provenzale A. 2015. Climatic control and population dynamics of black grouse (Tetrao tetrix) in the Western Italian Alps: population dynamics of alpine black grouse. Journal of Wildlife Management 79(1):156– 166 DOI 10.1002/jwmg.810; Ross BE, Haukos D, Hagen C, Pitman J. 2016. The relative contribution of climate to changes in lesser prairie-chicken abundance. Ecosphere 7(6):e01323 DOI 10.1002/ecs2.1323; Hagen CA, Garton EO, Beauprez G, Cooper BS, Fricke KA, Simpson B. 2017. Lesser prairie-chicken population forecasts and extinction risks: an evaluation 5 years post– catastrophic drought. Wildlife Society Bulletin 41(4):624–638. DOI: 10.1002/wsb.836.

[61] By populations, we are referring to a more biologically meaningful, higher-level grouping of sage grouse leks than the currently proposed level 2 "neighborhood clusters."

[62] Coates et al. (2021) Range-wide greater sage-grouse hierarchical monitoring framework—Implications for defining population boundaries, trend estimation, and a targeted annual warning system: U.S. Geological Survey Open-File Report 2020–1154, 243 p., https://doi.org/10.3133/ofr20201154.

[63] Provencher et al. (2021) Landscape Conservation Forecasting for Data-Poor at-Risk Species on Western Public Lands, United States. Climate 2021,9,79. https://doi.org/10.3390/ cli9050079

management scenarios. The authors utilized The Nature Conservancy's Landscape Conservation Forecasting (LCF) method, which combines vegetation layers obtained from remote sensing with STSMs to compare the effects of alternative management or climate scenarios on vegetation condition and other metrics. Based on their analyses, the authors predict that "[e]xtensive restoration is predicted to accomplish management goals for ecological systems and for GSG [GRSG] regardless of future climate." The significance of this paper is that it demonstrates that it is possible to mitigate effects of climate change on habitat, which opens substantial new opportunities for mitigation and conservation offsets. Similarly, Creutzburg et al. (2015[64]) utilized spatial data to develop a proactive strategy for management of invasive annual grasses at landscape scales across jurisdictional boundaries. The authors, "evaluated varying scenarios of future climate and management, and their implications for rangeland condition and habitat quality." The authors concluded that climate change may have both positive and negative implications for maintaining sage-grouse habitat. And finally, Adler et al. (2021[65]) present a thorough treatment of climate change adaptation strategies that can be expected to benefit sage grouse, yet there is no mention of these strategies in the Draft RMPA/EIS.

c. Predation: Mitigating the impact of raven predation on GRSG will require a comprehensive, multi-agency approach.

There is an abundance of scientific evidence that ravens are a "hyperpredator" that can negatively impact the demography of GRSG populations. The Draft RMPA/EIS admits as much but its proposed management does not begin to deal adequately with this threat. The Draft RMPA/EIS is focused almost entirely on the minimization of perching opportunities in GRSG habitat, and maintaining vegetation height (e.g. "Manage habitats to maintain, and as needed, restore healthy native vegetation conditions to minimize occurrence and effectiveness of predators, especially with respect to providing adequate sagebrush, other shrub, and herbaceous vegetation cover on the landscape.") Simply put, the BLM's attempt to include predator management in the alternatives in this RMP, does not go far enough and needs to be strengthened in terms of detail, scale, need for interagency cooperation and citing support from the recent scientific literature on the subject.

In large measure, this deficiency in the Draft RMPA/EIS appears to be due to BLM's reliance on outdated information (the NTT and COT reports) and failure to acknowledge a large body of relevant scientific literature on this threat and how to effectively manage it, including

[64] Creutzburg et al. (2015) Climate change and land management impact rangeland condition and sage-grouse habitat in southeastern Oregon: AIMS Environmental Science, v. 2, no. 2, p. 203–236. http://www.aimspress.com/article/id/50

[65] Adler et al. (2021) Climate Adaptation. in: Remington, T.E., Deibert, P.A., Hanser, S.E., Davis, D.M., Robb, L.A., and Welty, J.L., 2021, Sagebrush conservation strategy—Challenges to sagebrush conservation: U.S. Geological Survey Open-File Report 2020–1125, 327 p., https://doi.org/10.3133/ofr20201125.

papers by Harju et al. (2016[66]), O'Neil et al. (2018[67]), Brockman et al. 2(019[68]), and numerous others.[69] These papers, in addition to the papers by Coates et al. (2016[70], 2020[71]) cited in the Drat RMPA/EIS, collectively describe: the extent of the raven predation problem on GRSG eggs and chicks based on best available scientific data from contemporary research; the landscape-level extent of the problem; how ravens have learned to exploit human food subsidies as well as perching and nesting opportunities; why short-term approaches to raven population control typically fail; and science-based solutions to comprehensively mitigate raven impacts on GRSG and other sensitive species.

We also note that the Draft RMPA/EIS makes a reference to a paper by Dettenmaier et al. (2021): "Where ravens have been documented as a concern (e.g., densities greater than 0.4 ravens/km^2; Coates et al., 2022, the BLM supports implementation of the strategy outlined by Dettenmaier et al. (2021) and adopted by the U.S. Fish and Wildlife Service (2023)." However, the RMP provides no detail as to what this strategy entails, its prioritization for adaptive management by the BLM in this RMP, or how it would be implemented across the range of GRSG in this RMP. This paper, along with those cited above are critical to the BLM's development of a comprehensive, science-based strategy on the raven predation problem.

The lack of a comprehensive strategy to manage the threat of raven predation is a significant issue for the RMP because expanding raven populations (and human food subsidies to them) constitute a direct threat to productivity and recruitment of young GRSG into the adult breeding population. Therefore, the inadequacy of the BLM's response to this threat in this RMP

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[66] Harju et al. (2018) Common raven movement and space use: influence of anthropogenic subsidies within greater sage-grouse nesting habitat: Ecosphere, v. 9, no. 7, article e02348, 16 p, https://doi.org/10.1002/ecs2.2348.

[67] O'Neil et al. (2018) Broad-scale occurrence of a subsidized avian predator—reducing impacts of ravens on sage-grouse and other sensitive prey: Journal of Applied Ecology, v. 55, no. 6, p. 2641-2652., https://doi.org/10.1111/1365-2664.13249.

[68] Brockman et al. (2019) Anthropogenic subsidies affect common raven nesting, space-use, and movement. In Gallagher, G. R. & Armstrong, J. B. (Eds.), The Eighteenth Wildlife Damage Management Conference (pp. 7). Mount Berry, GA: Berry College. https://digitalcommons.usu.edu/wdmconference/2019/all2019/5/.

[69] Peebles and Spencer (2020) Common Ravens. Wildlife Damage Management Technical Series. 24. https://digitalcommons.unl.edu/nwrcwdmts/24; Harju et al. (2021) Isotopic analysis reveals landscape patterns in the diet of a subsidized predator, the common raven. Ecol Solut Evid. 2021;2:e12100. DOI: 10.1002/2688-8319.12100; Rivera-Milán FF, Coates PS, Cupples JB, Green M, Devers PK (2022) Evaluating common raven take for greater sage-grouse in Oregon's Baker County Priority Conservation Area and Great Basin Region. Human–Wildlife Interactions. 2022;15(3):24; Ocañas AR, Danoff-Burg JA, Mulroe K, Walton SR. (2022) Addressing the raven food subsidy challenge by engaging restaurants to close their dumpsters. Zoo Biology. 2022 Apr 27; Harju SM, Coates PS, Dettenmaier SJ, Dinkins JB, Jackson PJ, Chenaille MP (2022) Estimating trends of common raven populations in North America, 1966–2018. Human–Wildlife Interactions. 2022;15(3):5; Sanchez CA (2022) Oiling Common Raven Eggs as a Conservation Management Action (Doctoral dissertation, Idaho State University); Duerr AE, Bloom PH, Ross K, Miller TA, Braham MA, Fesnock AL, Katzner (2022) Influence of anthropogenic subsidies on movements of common ravens. Human–Wildlife Interactions. 2022;15(3):9; Marzluff JM, Loretto M-C, Ho CK, Coleman GW, Restani M (2021) Thinking like a raven: restoring integrity, stability, and beauty to western ecosystems. Human–Wildlife Interactions 15(3):Early Online, Winter 2021. digitalcommons.usu.edu/hwi; Delehanty DJ (2022) Raven control from a conservation biology perspective. Human–Wildlife Interactions. 2022;15(3):23.

[70] Coates et al. (2016) Landscape characteristics and livestock presence influence common ravens—Relevance to greater sage-grouse conservation: Ecosphere, v. 7, no. 2, article e01203, 20 p., https://doi.org/10.1002/ecs2.1203.

[71] Coates et al. (2020) Broad-scale impacts of an invasive native predator on a sensitive native prey species within the shifting avian community of the North American Great Basin. Biological Conservation 243 (2020) 108409

will likely lead to population dclines over substantial portions of the GRSG range, which in turn will likely result in the imposition of additional land use restrictions that will be of little to no value in mitigating this threat. For these reasons, we urge the BLM to put the mitigation of raven predation on GRSG front and center in its adaptive management in this RMP. By setting this as a priority in the RMP, BLM will also signal the need to cooperatively and comprehensively manage this issue with states, local governments, and other federal agencies. It will also provide further opportunities for industry members to undertake meaningful mitigation efforts. Such a comprehensive strategy has been resoundingly echoed in the recent scientific literature (cited above). It is also a strategy that will benefit other native species affected by raven predation on nests and/or young.

D. BLM's Proposed Approach to Adaptive Management is Not Sufficiently Developed and Should Not Be Used as a Decision-Making Tool

The Targeted Annual Warning System (TAWS) described in reports by Coates et al. appears to provide a potentially objective alternative to the use of arbitrary, population "triggers" for implementing additional conservation measures for the GRSG,[72] appearing to be a step in the right direction for monitoring and adaptive management of GRSG populations. Additional work is still needed in these areas to better understand and implement proper conservation measures. As currently proposed, TAWS is a work-in-progress that will require additional refinement in methodology and greater transparency in data, rationale, and methodologies before BLM should consider using TAWS as a basis for management decisions.

As discussed further in Appendix A, there are significant issues with TAWS that should preclude its current use as a regulatory decision-making tool. The TAWS approach ignores prevalent data, relies upon problematic assumptions and non-transparent methodologies, and lacks an effective process for addressing false alarms. As an initial matter, TAWS lacks a probabilistic assessment as to how reliable each "watch" or "warning" assignment is. Such an assessment would allow managers, decision makers, and the public to evaluate the confidence of those assignments. Second, TAWS currently has a two-year lag time between data being reduced and results being analyzed. In order to be a potentially useful adaptive management tool, TAWS instead needs annual analyses of results with the most current and complete data.

TAWS also relies upon problematic "neighborhood clusters" and "climate clusters," and improperly relies upon leks in assessing GRSG population levels. Radio tracking and genetic data show that both male and female GRSG move among leks or disperse to increase mating opportunities in response to local environmental conditions, disturbance, and density dependence. Thus, a decline at one or even a handful of leks is not necessarily an indication that the surrounding GRSG population has declined, as assumed by Coates et al. (2021, 2022). Inadequate sample sizes (*i.e.*, too few leks) inevitably lead to erroneous conclusions regarding neighborhood cluster trends. Additionally, the more subdivided the range of a species is, the more threatened these smaller

[72] Coates, P. S., Prochazka, B. G., et al. (2021) Range-wide greater sage- grouse hierarchical monitoring framework—Implications for defining population boundaries, trend estimation, and a targeted annual warning system. U.S. Geological Survey, Open-File Report 2020–1154, 243 p., https://doi.org/10.3133/ofr20201154, ("Coates et al. (2021)"); Coates, P.S., Prochazka, B.G., et al. (2022) Range-wide population trend analysis for greater sage-grouse (*Centrocercus urophasianus*) - Updated 1960–2021: Data Report 1165, 16 p., https://doi.org/10.3133/dr1165. ("Coates et al. (2022)"). (Collectively, "Coates et al. (2021, 2022)).

subunits may appear to be, even though the much larger population is stable. Ultimately, the conflation between leks and neighborhood clusters with populations leads to misleading conclusions and has problematic implications for how the GRSG could be managed in the future.[73]

Coates et al. (2021, 2022) also disregards a substantial amount of prevalent research. The neighborhood clusters and climate clusters based on desktop GIS analyses are inconsistent with recent genetic data and analyses. Because genetic data carry the signal of historic and current genetic and demographic connectivity among sage grouse, across the scale of individuals, leks, and populations range-wide, it is arguably more biologically relevant than desktop GIS analyses, which are two-dimensional abstractions based on map distances among leks, heavily reliant on assumptions, and whose results are conjectures about what GRSG population connectivity might be. Testing the conjectures (neighborhood and climate clusters in Coates et al. 2021, 2022 and O'Donnell et al. 2022b[74]) against genetic data reveals that they are lacking empirical support and that the TAWS clustering of leks need to be revised accordingly or scrapped altogether.[75]

In addition, the TAWS approach ignores movement data from nine months of the year, as well as genetic data on long-distance migration and dispersal, both of which undermine the notion that the TAWS neighborhood clusters are closed populations.[76] Such data demonstrate that movements occur among leks, subpopulations and populations, there is a consistent lack of genetic structure among local leks and clusters of leks, and the GRSG attending leks are typically genetically unrelated. TAWS also disregards a body of research identifying the shortcomings of using precipitation as a proxy for climate variation when utilizing a cluster algorithm to delineate climate clusters.[77] Although it is impossible for us to confirm this due to a lack of transparency (discussed further below), the Associations also believe it is likely that TAWS excludes data from recently discovered leks and leks that are reoccupied during population increases.[78]

Moreover, the TAWS approach fails to take account of oscillations in the population trends data. TAWS can produce different results regarding population trends based on the number of time periods (*i.e.*, oscillations) used in the analysis.[79] Neighborhood clusters may have a positive trend where 1 or 3 oscillations are used, while the same clusters may show a negative trend where 2, 4,

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[73] *See* Appendix A at 33.

[74] O'Donnell, M. S., Edmunds, D. R., Aldridge, C. L., Heinrichs, J. A., Monroe, A. P., Coates, P. S., Prochazka, B. G., Hanser, S. E., & Wiechman, L. A. (2022b) Defining biologically relevant and hierarchically nested population units to inform wildlife management. Ecology and Evolution, 12, e9565. https://doi.org/10.1002/ece3.9565.

[75] *See* Appendix A at 33-5.

[76] *See* Appendix A at 3; Bush, K. (2009) Genetic diversity and paternity analysis of endangered Canadian Greater Sage-Grouse (*Centrocercus urophasianus*). Ph.D. dissertation, University of Alberta, Edmonton, Alberta, Canada; Bush, K.L., Aldridge, C.L., Carpenter, J.E., et al. (2010) Birds of a feather do not always lek together: genetic diversity and kinship structure of greater sage-grouse (Centrocercus urophasianus) in Alberta. The Auk 127(2):343−353; Bush, K.L., Dyte, C.K., Moynahan, B.J., Aldridge, C.L., Sauls, H.S., Battazzo, A.M., Walker, B.L., Doherty, K.E., Tack, J., Carlson, J., Eslinger, D., Nicholson, J., Boyce, M.S., Naugle, D.E., Paszkowski, C.A., and Coltman, D.W. (2011) Population structure and genetic diversity of greater sage-grouse (*Centrocercus urophasianus*) in fragmented landscapes at the northern edge of their range. Conservation Genetics. 12:527–542; Tack, J.D., Naugle, D.E., Carlson, J.C., and Fargey, P.J. (2012) Greater Sage-Grouse *Centrocercus urophasianus* migration links the USA and Canada: A biological basis for international prairie conservation. Oryx 46:64–68.

[77] *See* Appendix A at 41.

[78] *See* Appendix A at 40.

[79] *See* Appendix A at 36.

5, or 6 oscillations are used to calculate population trends.[80] Such a variance highlights further methodological flaws underlying the TAWS approach.

Likewise, the TAWS approach carries a significant likelihood of false alarms, which will lead to uncertainty and delays. There are numerous examples found in Coates et al. (2021) of warnings being applied by the TAWS to neighborhood clusters that otherwise showed an increasing population trend.[81] Issues associated with false alarms will be compounded by one of the key features of TAWS, i.e., the causal factor analysis. As proposed, if a warning is triggered, further activity in the affected area may be shut down until a causal factor analysis is completed. However, BLM has failed to demonstrate that it will be able to complete causal factor analyses in response to such false alarms in a timely fashion. Furthermore, there is a low likelihood that causal factors can be determined with any degree of certainty due to the inherent complexity of ecosystems and the limited area and low number of leks in neighborhood clusters. As a result, TAWS will become a vehicle for imposing a freeze on development.

Although agencies receive a certain amount of deference for the modeling they select, such discretion is not unlimited.[82] An agency's selection of modeling should fit the circumstances to which it applies, and if there is no rational relationship between the model and the circumstances, the agency's use of the model is arbitrary and capricious.[83] Due to the lack of data availability concerning population trends and lek counts, it is impossible to confirm that BLM's reliance on the modeling underlying TAWS is not arbitrary and capricious. BLM needs to provide additional information on the data and modeling underlying its Draft RMPA/EIS because the Bureau is required to "adequately explain the reasons for its policy choice" and cannot do so without providing more information.[84]

Overall, the TAWS needs substantial overhaul, greater transparency in methods and data utilized, and a fully independent vetting prior to being considered as a basis for any land management decisions. Due to all of the issues identified above, the use of TAWS at this point should be nothing more than advisory in nature.

VI. BLM Should Defer to the States on Compensatory Mitigation

The Associations recognize that mitigation, including compensatory mitigation, can play an important role in GRSG mitigation. However, BLM must recognize the limits on its authority to require compensatory mitigation.

A number of states include compensatory mitigation as part of their programs for conserving GRSG. For example, the State of Wyoming has a detailed compensatory mitigation program for GRSG that includes a debit and credit system (including both conservation and

[80] *Id.*
[81] *See* Appendix A at 37-40.
[82] *See Chem. Mfrs. Ass'n v. E.P.A.*, 28 F.3d 1259, 1265 (D.C. Cir. 1994) ("judicial deference to the agency's modeling cannot be utterly boundless").
[83] *See id.*; *see also Edison Elec. Inst. v. U.S. E.P.A.*, 2 F.3d 438 (D.C. Cir. 1993) (speculative factual assertions are insufficient to demonstrate a rational relationship between an agency's selection of modeling and a specific application of such modeling).
[84] *See Small Refiner Lead Phase-Down Task Force v. U.S.E.P.A.*, 705 F.2d 506, 536 (D.C. Cir. 1983)

restoration credits) that tailors the compensatory mitigation required to the nature and location of the impact.[85] These state compensatory mitigation programs are founded in state authority. The Associations' members have worked with state authorities to implement these compensatory mitigation requirements.

However, BLM's authority to impose compensatory mitigation requirements does not stand on similarly solid legal ground. FLPMA does not expressly authorize BLM to impose compensatory mitigation requirements on users of public lands. FLPMA's statutory silence on compensatory measures stands in stark contrast to other environmental law provisions. For example, EPA and the U.S. Army Corps of Engineers have promulgated compensatory mitigation requirements for Clean Water Act (CWA) Section 404 permits.[86] These agencies' authority to require compensatory mitigation has effectively been ratified by Congress pursuant to Section 314 of the National Defense Authorization Act (NDAA) for Fiscal Year 2004.[87] In addition, the U.S. Fish and Wildlife Service (FWS) requires mitigation measures pursuant to permits for incidental take of endangered and threatened species under Section 10 of the ESA in accordance with the provisions of the Act.[88]

Unlike the implementing regulations of these environmental laws, BLM has not identified a source of authority in FLPMA or the MLA authorizing the Bureau to impose compensatory mitigation requirements aside from its own Mitigation Handbook. And without any express statutory basis, BLM's proposed compensatory mitigation approaches would be unlawful because the agency "literally has no power to act."[89]

In light of the above, the Associations believe that the appropriate approach is for BLM to defer to the states on compensatory mitigation and make any compensatory mitigation beyond state requirements voluntary. Such an approach would make use of state expertise regarding GRSG conservation while avoiding questions regarding the extent of BLM statutory authority.

VII. BLM Must Be Transparent and Make All Science on Which it Bases its Analysis Available to the Public

A. The Draft RMPA/EIS Lacks a Supporting Scientific Record Along with an Explanation as to How It Aligns with Existing Law

In addition to the legal flaws discussed above, the Draft RMPA/EIS lacks meaningful discussion of the scientific basis of the Bureau's proposed approach and how it harmonizes with

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[85] *See* State of Wyoming EO2019-3 (*Greater Sage Grouse Core Area Protection*), Appendix F.
[86] *See* 40 C.F.R. pt. 230 ("Compensatory Mitigation for Losses of Aquatic Resources").
[87] Pub. L. No. 108-136, § 314(b), 117 Stat. 1392, 1431 (2003) ("establishing performance standards and criteria for the use, consistent with section 404 of [the CWA], of on-site, off-site, and in-lieu fee mitigation and mitigation banking as compensation for lost wetlands functions in permits issued by the Secretary of the Army under such section").
[88] 16 U.S.C. § 1539(a)(2)(A)(ii) (permit applicant must identify steps to minimize and mitigate the impacts of a taking).
[89] *See FEC v. Cruz*, 142 S. Ct. 1638, 1649 (2022) (quoting *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986)); *see also Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208, 223 (2009) (discussing how "statutory silence, when viewed in context, is best interpreted as *limiting* agency discretion" (emphasis added)); *Buffington v. McDonough*, 143 S. Ct. 14, 19 (2022) (Gorsuch, J., dissenting from denial of certiorari) ("A rule requiring us to suppose statutory silences and ambiguities are both always intentional and always created by Congress to favor the government over its citizens . . . is neither traditional nor a reasonable way to read laws. It is a fiction through and through.").

existing law. The Administrative Procedure Act prohibits arbitrary and capricious rulemaking,[90] and requires agencies to provide a reasoned explanation and to consider important aspects of a problem.[91] In its current form, the Draft RMPA/EIS fails to provide meaningful discussion of scientific record support for its provided alternatives.

In the Draft RMPA/EIS, BLM represents that several of the Alternatives will incorporate new information and science that have become available since it previously undertook amendments to the GRSG conservation provisions of its RMPs,"[92] and use the "best available science".[93] But nothing in the Draft RMPA/EIS or the Draft RMPA/EIS notice indicates that the Bureau has grappled with identifying the "best available science" for assessing land use in this particular context, where the Multiple Use Framework governs. No part of the Draft RMPA/EIS nor the Draft RMPA/EIS notice describes in detail BLM's methodology in designing the Alternatives or why the TAWS approach is scientifically acceptable in light of legal and regulatory requirements.

The Information Quality Act directed the White House Office of Budget and Management (OMB) to issue government-wide guidelines "for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by federal agencies," and further required each agency to issue their own information quality guidelines following OMB guidance.[94] In its own information quality guidelines, BLM acknowledges the importance of data transparency, "recogniz[ing] that influential information should be subject to a high degree of transparency about data and methods to facilitate the reproducibility of such information by qualified third parties and to an acceptable degree of precision."[95] The Draft RMPA/EIS falls short of these data quality requirements.

B. Data Underlying TAWS and Genetic Data Should Be Made Public

The Draft RMPA/EIS also suffers from the fact that BLM has not made key data underlying its proposed approach publicly available. For example, the data and computer code underlying TAWS have not been made public. Government researchers and their collaborators have access to the data and code, yet independent researchers and affected parties do not. Reproducing the results in Coates et al. (2021, 2022), which details the TAWS, is not possible because the rangewide lek count data used in those papers (including O'Donnell et al. 2019) are held by the Western Association of Fish and Wildlife Agencies (WAFWA). WAFWA is a 501c3, which gathers and compiles lek location and count data from states but those data are not public and WAFWA is not subject to FOIA because it is a private charity. Therefore, independent review and analysis of those data is not possible. It is also not possible to obtain lek location and count data from certain states, such as Colorado, due to a state statute preventing such data collected on private land from being released without permission of the landowner. Repeatability and scientific integrity cannot be achieved until the lek count data are made available to other researchers. The lack of data

[90] 5 U.S.C. § 706(2)(A).
[91] *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009).
[92] 89 Fed. Reg. at 18,965.
[93] *See e.g.*, Draft RMPA/EIS at 2-26, -156, -169, -170.
[94] Public Law No. 106-554 ("Information Quality Act").
[95] BLM, Information Quality Guidelines, p.8 (https://www.blm.gov/sites/default/files/documents/files/BLM_Info_Qual_Guidelines.pdf).

availability essentially renders the results of Coates et al. (2021, 2022) as equivalent to a "black box model" (i.e. a model whose inputs and inner workings are opaque or not readily interpretable), which contravenes the principles laid out in BLM's Information Quality Guidelines.[96]

Genetic data (*i.e.*, individual microsatellite genotypes and their locations) are likewise not public, precluding any independent analysis of data used in justifying nodes of connectivity among populations/ACECs.

VIII. The Alternatives Being Considered by BLM Have Significant Flaws

BLM has identified six alternative approaches for management of GRSG habitat that it is considering incorporating into RMPs. While the Associations find merit in various aspects of some of the alternative approaches, many aspects of these alternatives are problematic and should be reconsidered and revised before the Bureau adopts any alternative.

A. Alternative 6 – BLM Has Not Established a Basis for Designating 11 Million Acres as ACECs

The principal feature of Alternative 6 is that it would include the designation of 11,139,472 acres of PHMA as ACECs. However, as discussed in API's recent comments on BLM's process for identifying areas for potential designation as ACECs, the Draft RMPA/EIS does not establish a basis for designating any of the 11 million acres as ACECs. The Bureau's existing regulations require that, to be eligible for designation as an ACEC, an area must have (i) relevance, such as a fish or wildlife resource, and (ii) importance, i.e., substantial significance.[97] Appendix 5 states that the areas considered for designation meet both of these criteria because they contain habitat that is valuable for all GRSG life stages, including lekking, brood-rearing and winter range.[98]

However, as BLM recognizes in Appendix 5, in order to qualify as an ACEC, an area of relevance and importance must also require special management.[99] This requirement – long described in BLM's ACEC Manual – has now been codified through the Bureau's recent revisions to its ACEC regulations as part of the Public Lands Rule.[100] The preamble to the Public Lands Rule emphasizes that special management attention must be necessary for the protection of the values in question, not just beneficial.[101] "Special management attention" means management prescriptions that protect and prevent irreparable damage to the relevant and important values of the area that would not be prescribed if the relevant and important values are not necessary.[102] "Irreparable damage" is defined as harm to a resource that substantially diminishes the relevance or importance of the resource in such a way that recovery of the resource to the extent necessary to restore its prior relevance or importance is *impossible*.[103]

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[96] *See* Appendix A at 40.
[97] 43 C.F.R. § 1610.7-2(a).
[98] App. 5 at 5-3.
[99] *Id*.
[100] 43 C.F.R. § 1610.7-2(d).
[101] Prepublication Public Lands Rule at 92. ("The final element of the standard for ACEC designation means more than finding special management attention will benefit the identified values; rather, it requires a finding that special management is necessary for their stewardship.")
[102] 43 C.F.R. § 1610.7-2(d)(3).
[103] 43 C.F.R. § 1610.7-2(d)(3)(ii).

Appendix 5 describes BLM's process of assessing relevance and importance range-wide, the result of which was the identification of over 11 million acres of sage grouse habitat as having relevance and importance. Nothing in the Draft RMPA/EIS explains how the proposed ACECs *need* special management attention. In fact, under Alternatives 3 and 6, all 11 million-plus acres identified would be designated as ACECs, representing a judgement by BLM that every acre determined to be relevant and important needs special management attention.

Appendix 5 does not explain the basis for this conclusion. It is certainly not the case that special management is necessary to address impacts associated with oil and gas development. As discussed above, oil and gas development has evolved in ways that limit the impact of development activities on species such as the GRSG. This evolution has included the adoption of technologies to make oil and gas production more efficient, which in turn results in minimization of impacts on the environment.

In light of this evolution, oil and gas development would not be expected to harm GRSG habitat in such a way that recovery of the resource to the extent necessary to restore its prior relevance or importance is *impossible*. The life of an oil and gas well is finite, and research has shown that restoration of well pads is possible. In fact, recent research has shown that restored well pad sites can provide better GRSG habitat than pre-existing conditions. Thus, GRSG and oil and gas development can co-exist and there is no need to exclude all oil and gas development from over 11 million acres of GRSG habitat.

In addition, the foundation established by BLM for its assessment of potential ACECs is itself flawed. As described in Appendix 5, the Bureau's process began with a range-wide preliminary analysis based on a review of a series of "spatial layers," which consists of a group of eight papers identified in the Appendix. However, several of these papers are characterized by significant limitations that call into question their suitability as a basis for a regulatory review that could result in millions of acres being placed off-limits to various forms of productive use. For example, one of the "layers" is a 2022 paper by Oyler-McCance *et al*. regarding strategies for characterizing genetic structure in wide ranging, continuously distributed species such as the GRSG.[104] Their analysis is based on selectively-neutral genetic markers (microsatellites) that occupy non-transcribed sections of DNA between functional genes, and therefore have no role in GRSG survival, are not subject to natural selection, nor are of adaptive importance. Moreover, the authors do not address the impact on their analysis of the translocation of thousands of GRSG in Wyoming, Utah and Idaho. These same concerns apply to another "layer," i.e., the 2018 paper by Cross *et al*.[105]

Another of the "layers" is a 2021 paper by Rigge *et al*. regarding projected impacts on sagebrush habitat as a result of climate change.[106] This paper modeled potential future land cover, including sagebrush, based on two CO_2 emission scenarios, i.e., RCP 4.5 and RCP 8.5. However, in presenting their results, the authors focus on the RCP 8.5 scenario, which constitutes a worst-

[104] Oyler-McCance, SJ et al., *New strategies for characterizing genetic structure in wide-ranging, continuously distributed species: A Greater Sage-grouse case study,* Plos one (2022 Sept. 13); 17(9):e0274189.
[105] Cross et al., *The genetic network of greater sage-grouse: Rangewide identification of keystone hubs of connectivity.*
[106] Rigge, M., et al., *Projected change in rangeland fractional component cover across the sagebrush biome under climate change through 2085,* Ecosphere 12(6):e03538.10.1002/ecs2.3538

case analysis. [107] This unrealistic, worst-case scenario is misleading because it "paints a dystopian future that is fossil-fuel intensive and excludes any climate mitigation policies, leading to nearly 5 °C of warming by the end of the century."[108] Moreover, if this scenario were to occur, it would be characterized by substantially increased CO_2 levels that would actually promote plant growth, a phenomenon the authors acknowledge but do not take into account in their modelling, thereby enhancing its unrealistic, "worst case" nature. Thus, many of the "layers" that serve as the basis for BLM's analysis include significant flaws, compromising the entire analysis.

In short, BLM has not established a basis for the adoption of Alternative 6. At the same time, BLM's selection of Alternative 5 as the preferred alternative reflects a judgment by the Bureau that the designation of 11 million acres of ACECs is not necessary to conserve GRSG. The Associations concur with this judgment.

B. Alternative 4 – BLM Must Address New Science in a Balanced Way

The key feature of Alternative 4 is that it would adjust GRSG management areas based on "new science." However, some of the "new science" papers on which BLM relies are subject to significant limitations while the Bureau ignores other recent papers that are not consistent with the approaches BLM advocates.

The significant limitations and drawbacks to the Bureau's approach to "new science" are discussed above in Section V. They include the following:

- Reliance on papers that use genetics to identify habitat/connectivity needs;
- Failure to acknowledge recent research that demonstrates the limited impacts of modern oil and gas development techniques on GRSG and GRSG habitat and the improvement in GRSG habitat that can result from restoration of sites of oil and gas infrastructure;
- Reliance on papers addressing the impact of climate change on GRSG that use worst-case assumptions;
- Failure to acknowledge the effect of the Pacific Decadal Oscillation on regional climate conditions and its resulting impact on GRSG population fluctuations; and

[107] Pielke Jr,, JR, *How Climate Scenarios Lost Touch With Reality: A failure of self-correction in science has compromised climate science's ability to provide plausible views of our collective future*, Issues in Science and Technology, vol. 37, no. 4, p. 74-83 (2021) ("RCP8.5—the most commonly used RCP scenario and the one said to best represent what the world would look like if no climate policies were enacted—represents not just an implausible future in 2100, but a present that already deviates significantly from reality").

[108] Hausfather Z, Peters, GP, *Emissions – the 'business as usual' story is misleading*, Nature, p. 618-620 (2020), https://doi.org/10.1038/d41586-020-00177-3; Pielke Jr, et al., *Plausible 2005–2050 emissions scenarios project between 2 °C and 3 °C of warming by 2100*, Environmental Research Letters 17 024027 (2022), https://iopscience.iop.org/article/10.1088/1748-9326/ac4ebf/meta#erlac4ebfs5 ("the likelihood of high emissions scenarios such as RCP8.5 or SSP5-8.5 is considered low" (citations omitted)).

- Failure to acknowledge the role played by raven predation GRSG eggs and chicks and the importance of addressing this threat.

The combined effect of these issues and others on the delineation of management areas has the potential to be significant. As a result, BLM must reassess the identification of management areas as described under Alternative 4 as well as the management measures applied to those areas.

C. Alternative 3 – There Is No Basis for Designating All Habitat as Priority Habitat

Alternative 3 gives rise to the same concerns as Alternative 4 with respect to the influence of BLM's approach to "new science" on the identification of GRSG management areas. These concerns would be heightened under Alternative 3, which would include even more expansive habitat management areas than Alternative 4. Moreover, Alternative 3 compounds these concerns by treating all identified management areas as priority habitat management areas in order to provide the greatest measures to protect and preserve GRSG and its habitat among the alternatives. In addition, under Alternative 3, all management areas would be closed to new fluid mineral leasing. As a result, the adoption of Alternative 3 would result in over 69 million acres being declared off-limits to new oil and gas leasing.

There is no basis for such widespread restrictions. To the extent the expansiveness of the HMAs under Alternative 3 is due to the application of a flawed approach to "new science," that identification is called into question by the issues discussed above in connection with Alternative 4.

More importantly, there is no valid basis for treating all HMAs as PHMAs and closing all areas to fluid mineral leasing. As discussed in Section V above, the manner in which oil and gas development would be pursued under any new lease – particularly the use of horizontal drilling to minimize the number of well pads and associated roads and other infrastructure needed to support well pad construction, drilling, completion and production – would minimize any impacts on GRSG and sagebrush habitat. Impacts are typically further minimized through scheduling of clearing, drilling and completion activities outside of sensitive periods for GRSG. Through the use of such measures, oil and gas development can coexist with GRSG populations and even improve GRSG habitat over time.

Moreover, the approach reflected in Alternative 3 would assume that all GRSG habitat is of high conservation value, even if it is low value habitat or previously degraded in some fashion. Such an approach would ignore on-the-ground realities. Indeed, BLM recognizes that HMAs may include areas that do not even qualify as habitat.[109] This approach would also be inconsistent with the multiple-use framework, which contemplates making accommodations among uses of public lands where such accommodations are practicable. Such coexistence is clearly possible with GRSG and oil and gas development. As a result, BLM should reject Alternative 3.

[109] Draft RMPA/EIS at 2-19.

D. Alternative 5 – The TAWS System Should Not Guide Adaptive Management

The Associations believe that there are a number of aspects of Alternative 5 that are worthy of inclusion in any alternative adopted by BLM. Among other things, under Alternative 5, an effort would be made to balance GRSG conservation with public land uses. This approach is consistent with the FLPMA multiple use framework under which BLM operates.

In addition, Alternative 5 would give a greater role to state agencies in establishing and implementing management measures for GRSG habitat. For example, if state governments updated their GRSG management area boundaries under their respective state plans, BLM would consider those boundaries in establishing its own management areas. This approach is appropriate given that the states have primary responsibility for managing GRSG populations and have amassed considerable expertise in conserving those populations within their borders in light of the conditions found in each state.

At the same time, Alternative 5 includes features that are problematic. The Associations' principal concern with Alternative 5 relates to its approach to adaptive management, which is based on the TAWS system. As discussed in Section V above and in Appendix A, TAWS is not well-developed enough and has not been sufficiently vetted to play such a prominent role in a regulatory framework. The way in which BLM has proposed to use TAWS is based on assumptions about the timely collection of new GRSG population data and the ability to conclude a causal factor analysis in a timely manner that are quite unrealistic. Moreover, the basic framework of TAWS as it currently exists is based on categorizations – neighborhood clusters and climate clusters – that need further vetting because they do not represent closed populations and are not supported by recent data. As a result, TAWS may trigger false alarms that will lead to inconclusive, drawn-out causal factor analyses, with activities in the affected areas unnecessarily shut down in the interim. Thus, while TAWS results could be used in an advisory fashion, BLM should not rely on the system to dictate adaptive management.

E. Alternative 2 Includes Elements That Remain Worthy of Consideration

While it is the subject of ongoing litigation, Alternative 2 nevertheless includes many elements that remain worthy of BLM's consideration as it decides how to manage GRSG habitat. In particular, Alternative 2 relies to a greater extent on state programs and allows for more diversity among the programs applicable to various states that reflect conditions within those states. This flexibility is entirely appropriate in light of the statutory mandates under which BLM operates.

FLPMA specifically requires that land use plans "***shall*** be consistent with State and local plans to the maximum extent consistent with Federal law." 43 U.S.C. § 1712(c)(9) (emphasis added); 43 C.F.R. § 1610.3-2.[110] As discussed above, the overarching federal law applicable to BLM land management is found in FLPMA, which directs the Bureau to manage federal land under a framework of multiple use and sustained yield. There is nothing inherent in this framework that suggests that BLM should not work with state agencies that have relevant expertise in

[110] NEPA itself requires that federal agencies responsible for preparing NEPA analyses and documentation, including BLM, do so "in cooperation with State and local governments" and "use all practical means" to do so. 42 U.S.C. §§ 4331(a) & 4332(2); 40 C.F.R. §§ 1501.6 & 1508.5.

managing resources for which the states have trust responsibilities.[111] The court in the pending litigation recognized that seeking to better align its RMPs with plans developed by the states was well within BLM's discretion.[112] The Bureau should continue its efforts to coordinate its RMPs with state plans.

IX. Conclusion

The Associations respectfully requests that BLM substantially modifies its selected Alternative to address these comments. The Associations urge BLM to focus its efforts on ensuring productive use of public lands consistent with the existing Multiple Use Framework and in a manner that places all sources of energy production on a level playing field.

[111] FWS also has expertise with respect to GRSG conservation. However, state wildlife agencies continue to play a central role in GRSG conservation.
[112] *Western Watersheds Project v. Schneider*, No. 1:16-cv-83 (D. Idaho Oct. 16, 2019), at 11.

APPENDIX A

A Detailed Assessment of the Targeted Annual Warning System

Summary:

The Targeted Annual Warning System (TAWS) described by Coates et al. (2021, 2022) and Prochazka et al. (2023), appears to provide a potentially objective alternative to the use of arbitrary, population "triggers" for implementing additional conservation measures for Greater sage-grouse (GRSG). However, as currently proposed (Coates et al. 2021, 2022), TAWS is a work-in-progress that will require additional refinement in methodology and greater transparency in data, rationale, and methodologies.

Utilizing a clustering algorithm to group leks based on 2-dimensional graph distance developed by O'Donnell et al. (2019, 2022a, 2022b[113]), the authors subdivided the range of GRSG into 485 "neighborhood clusters," and 6 "climate clusters." Then they modeled trends at three scales: lek, neighborhood cluster, and climate clusters in order to produce "watches" and "warnings" of potential population declines, or "no watch or warning." Watches and warnings were assigned based on comparisons of the rate of decrease of leks and neighborhood clusters relative to the climate clusters they are found in, as described by (Coates et al. 2021):

> …we developed two categories for multi-year signaling events referred to as 'watches' and 'warnings.' We assigned watches to populations that had slow signals [of decline compared to climate clusters] over 2 consecutive years. We assigned warnings to populations that had slow signals [of decline compared to climate clusters] in 3 out of 4 consecutive years or fast signals [of decline] in 2 out of 3 consecutive years. Watches may identify the need for intensive monitoring whereas warnings may identify the need for management intervention aimed at stabilizing populations.

The authors described the potential utility of their TAWS system as follows:

> Findings herein fill a prominent information gap to help inform current assessments of sage-grouse population trends at nested spatial and temporal scales for the Western Association of Fish and Wildlife Agencies. This study also highlights a 'targeted annual warning system' (TAWS) solution for managers that could be used to identify where and when management action is likely to benefit declining populations of sage-grouse at the appropriate spatial scale. The TAWS could potentially be modified to evaluate effectiveness of conservation efforts. Findings are also intended to provide timely scientific information for state and federal land use plans and conservation credit systems.

[113] For the rationale of Coates et al. (2021) used to define and choose cluster Level 2 for neighborhood clusters and Level 13 for climate clusters, one must refer to O'Donnell et al. 2022a and 2022b (*Defining fine-scaled population structure among continuously distributed populations* and *Defining biologically relevant and hierarchically nested population units to inform wildlife management*). Although published after Coates et al. (2021), those papers describe the method and rationale developed for and used in Coates et al. (2021). Importantly, O'Donnell et al. (2022b) presented clustering results graphically, with each of the 13 different cluster levels, from the fine-scale Level 1 (with 650 "subpopulations") to coarse-scale Level 13 (climate clusters, with 6 "populations") (see figures 4 to 6 in O'Donnell et al. 2022b).

Coates et al. (2021, Appendix 1) define neighborhood clusters as follows:

> Refers specifically to cluster scale 2 of the graph-based clustering algorithm process, the smallest scale to represent a closed population unit minimizing births, deaths, immigration, and emigration. This cluster represents local aggregations of leks and contrasts population trends at scales conducive to management action.

Coates et al. (2021, Appendix 1) define climate clusters as follows:

> Refers specifically to cluster scale 13 of the graph-based clustering algorithm process, whereby population dynamics are likely driven by larger scale variations, such as climate, that affect fluctuations in population abundance that reflect periods of oscillation of sage-grouse and are likely less manageable by direct intervention.

Issues of Significance that preclude use of TAWS as a regulatory decision-making tool:

While Coates et al. (2021, 2022) appears to be a step in the right direction for monitoring and adaptive management of GRSG populations, it is not the silver bullet that it appears to be. The reasons why are detailed below.

1) No probabilistic assessment of confidence in watches or warnings.

As an initial matter, the TAWS needs to incorporate a probabilistic assessment as to how reliable each "watch" or "warning" assignment is.

Significance: Such an assessment would allow managers, decision makers and the public to evaluate the confidence of those assignments, as opposed to assignments being made with an unknown level of confidence (i.e., like those produced from a "black box" analysis).

2) Time lag between annual census data and TAWS results: currently two years and counting.

For TAWS to be a potentially useful adaptive management tool, analyses need to be run annually with the most current and complete data. The original Coates et al. (2021) paper used data gathered through 2019, an updated version (Coates et al. 2022) was released with additional data from 2020 and 2021, and a modified methodology. However, since 2021, numerous populations in core areas have increased, consistent with a natural population cycle following a low ebb in 2019-2020. As of October 2023, there had not been an update using 2022 or 2023 lek count data.

Significance: The current one to two-year lag between data produced and analysis of results raises the question of whether results can ever be produced in a timely manner to be useful to GRSG management.

3) Leks, and so-called "neighborhood clusters" and "climate clusters" are not equivalent to closed populations, as assumed by Coates et al. (2021).

Leks are specific locations where sage grouse traditionally congregate to mate in the spring. Radio tracking and genetic data show that male and female GRSG use of leks is dynamic, and GRSG will move among leks or disperse to increase mating opportunities, in response to local environmental conditions, disturbance and density dependence. Therefore, a decline at one or a handful of leks is not necessarily an indication that the surrounding *population* has declined, as assumed by Coates et al. (2021, 2022).

The 483 local, ***Neighborhood clusters*** and 6 ***Climate Clusters*** evaluated by Coates et al. (2021, 2022) are statistical artifacts of the clustering method and simplifying assumptions used; they are not equivalent to any previously described GRSG populations or subpopulations, nor state-level sage grouse management units.

Significance: Contrary to decades of GRSG literature and basic population biology, Coates et al. (2021, 2022) conflated leks and neighborhood clusters with *populations*, which are at very different scales. This is not simply an issue of semantics; it has implications for how GRSG could be managed in the future. First, inadequate sample sizes (too few leks) will inevitably lead to erroneous conclusions regarding neighborhood cluster trends, resulting in wasted conservation effort and unnecessary regulation. Second, the more subdivided the range of a species is, the more threatened these smaller subunits may appear to be, even though the much larger population is stable. Third, Coates et al. (2021, 2022) ignore decades of data, including recent genetic data, that demonstrate long-distance movements (i.e., movements of 60 – 300 km) by GRSG during dispersal beyond natal leks and during seasonal migrations, and genetic data that reveal low levels of population structure. Those studies include but are not limited to: Patterson 1952; Connelly and Markam 1983; Lyon 2000; Bush et al. 2009, 2010, 2011; Tack et al. 2011; Smith 2012; Reinhart et al. 2013; Fedy et al. 2012; Cross et al. 2017, 2023; and Oyler-McCance et al. 2022. By ignoring this body of literature, Coates et al. (2021, 2022) and O'Donnell et al. (2022b) create a misleading impression that their neighborhood clusters are effectively "closed populations" with little or no emigration or immigration.

4) Neighborhood clusters and Climate Clusters are not congruent with recent genetic data used to define populations and subpopulations of GRSG.

The neighborhood clusters and climate clusters described by Coates et al. (2021, 2022) and O'Donnell et al. (2022b) on the basis of GIS analyses are inconsistent with recent genetic data and analyses published by Oyler-McCance et al. (2022). That study recognized no more than 8 populations of GRSG (including Washington and Bi-State DPS, Figure 3, below) and just 12 subpopulations (Figure 4, below). More specifically, the boundaries of the neighborhood and climate clusters are not congruent with the population and subpopulation groupings based on genetic data. For example,

- Coates et al.'s (2021, 2022) climate cluster "D" extends across northeastern Utah, Northwestern Colorado, the eastern half of Wyoming, western North Dakota, and the greater part of Montana (see below), whereas Oyler-McCance et al. (2022) recognized only four populations across a similar area but those ranges collectively extend well beyond climate cluster "D" and into other climate clusters.

- Similarly, climate cluster "E" in northeastern California, Oregon, Nevada, Idaho, and southwestern Montana overlaps parts of four populations recognized by Oyler-McCance et al. (2022) that also extend into climate clusters "D" and "F."
- Climate cluster "F" overlaps parts of three of Oyler-McCance (2022) populations.
- Climate cluster "C" comprises a small number of leks in the Jackson Hole, Wyoming area whose genetic affinities are equivocal, as they share characteristics of surrounding areas.
- Other, higher cluster levels (see Figures 4,5, and 6 from O'Donnell et al. 2022b), including clusters 11 and 12, show similar discontinuities with populations and subpopulations recognized by Oyler-McCance et al. (2022) on the basis of genetic data.
- Inexplicably, Coates et al.'s (2021, 2022) and O'Donnell et al. (2022b) designate the California-Nevada Bi-state population, Washington state, and Jackson Hole as separate climate clusters on the basis of previously published genetic data but make no mention of the Oyler-McCance et al. (2022) results, despite all working at the same agency (USGS) and having coauthored papers together. The fact that the research and results by Oyler-McCance et al. (2022) was ignored by Coates et al. (2021, 2022), as well as by the authors of a recently published paper on TAWS, Prochazka et al. (2023), indicates a bias to ignore other science that does not agree with their model and to treat neighborhood clusters as if they were populations.
- The ad-hoc rationale used by Coates et al. (2021, 2022) and O'Donnell et al. (2022b) to designate a group of 17 leks in the Jackson Hole area as a separate climate cluster on the basis of isolation is in error. That is because both Coates et al.'s (2021, 2022) papers erroneously cited Oyler-McCance et al. (2005) as genetic data showing isolation of the Jackson Hole population, despite the fact that Oyler-McCance et al. (2005) never sampled the Jackson Hole area (see Figure 5 of Oyler-McCance et al. 2005 for absence of sampling of Jackson Hole area).

  Furthermore, this Jackson/Gros Ventre area is separated from the Pinedale to the south by a distance of less than 15km, which is not a barrier to GRSG movement. That conclusion is borne out in population pairwise F_{ST} values in Table 2 of Schulwitz et al. (2014). Those reveal a low level of differentiation, and therefore, a high gene flow (i.e. $F_{ST} = 0.073$[114]) between Jackson Hole and North Pinedale to the south, resulting from gene flow or retention of ancestral genetic variation among populations. In fact, the genetic structuring between the Jackson and Gros Ventre areas was higher (0.083), which means there was less gene flow between them than between Jackson Hole and Pinedale, despite Jackson and Gros Ventre being in the same Level 13 climate cluster.

[114] F_{ST} values are a measure of genetic differentiation among populations which can range between zero (no isolation) to 1.0 (complete isolation).

Oyler-McCance et al. (2022) populations.

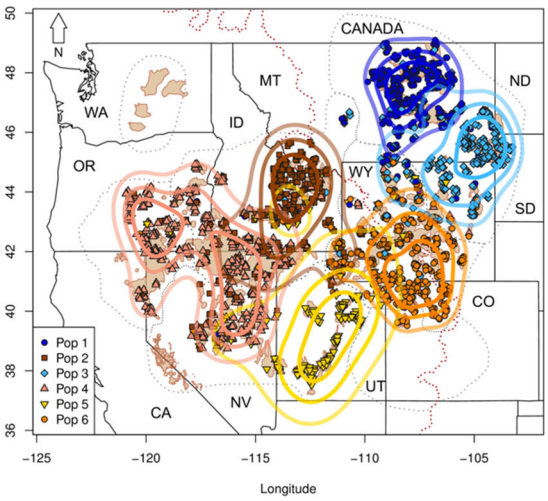

Fig 3. Boundaries of Greater Sage-grouse subpopulation centers at $K = 6$ from a STRUCTURE analysis using a 25% (darkest polygon), 50% (medium polygon), and 75% (lightest polygon) kernel density estimate to determine genetically distinct groups. The six different colors represent the six clusters identified in the STRUCTURE analysis. The dotted red line represents the Continental Divide. Tan polygons represent Priority Areas for Conservation and dotted black lines represent the seven sage-grouse management zones (MZ). State names are represented by the following abbreviations California (CA), Colorado (CO), Idaho (ID), Montana (MT), Nevada (NV), North Dakota (ND), Oregon (OR), South Dakota (SD), Utah (UT), Washington (WA), and Wyoming (WY).

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Coates et al. (2021, 2022) climate clusters.

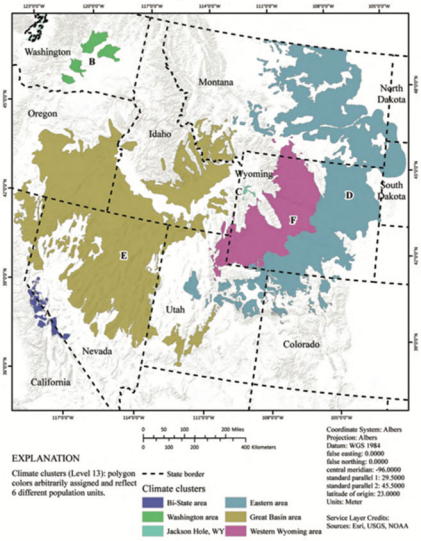

Figure 7. Greater sage-grouse (*Centrocercus urophasianus*) hierarchical population monitoring framework for climate clusters (level 13) in the western United States. A = Bi-State area, B = Washington area, C = Jackson Hole, Wyoming, area, D = eastern area, E = Great Basin area, F = western Wyoming area. Map image is the intellectual property of Esri and is used herein under license. Copyright © 2020 Esri and its licensors. All rights reserved.

Significance: This raises the question: which method is more biologically relevant for defining populations for trend analyses? Genetic data carries the signal of historic and current genetic and demographic connectivity among sage grouse, across the scale of individuals, leks, and populations range-wide. Therefore, it is arguably more biologically relevant than desktop GIS analyses, which are two-dimensional abstractions based on map distances among leks, heavily reliant on assumptions, and whose results are conjectures about what GRSG population connectivity *might* be. Testing the conjectures (neighborhood and climate clusters in Coates et al. 2021, 2022 and O'Donnell et al. 2022b) against genetic data reveals that they are lacking empirical support and that the TAWS clustering of leks need to be revised accordingly (or scrapped).

5) Movement data from nine months of the year as well as genetic data showing long-distance dispersal among leks was excluded.

The sage grouse movement data used in Coates et al. (2021, 2022) and O'Donnell et al. (2022b) only included data from VHF and GPS tracking devices from March 1–May 31. Data from the other nine months of the year were excluded from analyses, as well as long-distance migration and dispersal data from feather and blood samples (Bush et al. 2009, 2010, 2011; Tack et al. 2011).

Significance: The authors provide no proof that sage grouse only disperse from March 1 to May 31. Moreover, the genetic data demonstrate that: 1) movements occur among leks, subpopulations, and populations; 2) there is a consistent lack of genetic structure among local leks and clusters of leks; and 3) that sage grouse attending leks are, with few exceptions, genetically unrelated as per Bush et al. (2010, *Birds of a feather do not lek together*). By ignoring the above data and other research, Coates et al. (2021, 2022) and O'Donnell et al. (2022b) attempted to justify that their neighborhood clusters of GRSG are closed populations, which they are clearly not.

6) Neighborhood cluster trends can be different depending upon the time period used in the analysis.

The Coates et al. (2021, 2022) TAWS approach can produce different results regarding population trends (average annual rate of change lambda $\hat{\lambda}$) depending upon the number of oscillations (time periods) used in an analysis. For example, Figure 3 from Coates et al. (2022, below) shows neighborhood clusters in Wyoming and Montana as having generally positive rates of increase (as indicated by blue, teal, and green colors) when 1 or 3 oscillations were used to calculate trends, whereas a decreasing trend (indicated by yellow, orange, and red colors) was produced when the analysis used data from 2, 4, 5, or 6 oscillations.

Similar differences can be seen in range-wide results for neighborhood clusters and climate clusters, depending upon the number of oscillations used in the analysis. The fact that results varied depending upon the number of oscillations used is a significant problem because it underscores the arbitrary nature of the results produced by Coates et al. (2021). This same issue is also apparent in Coates et al. (2022), that used updated data from 2020 and 2021 (Figure 2 and 3 for climate cluster and neighborhood clusters respectively).

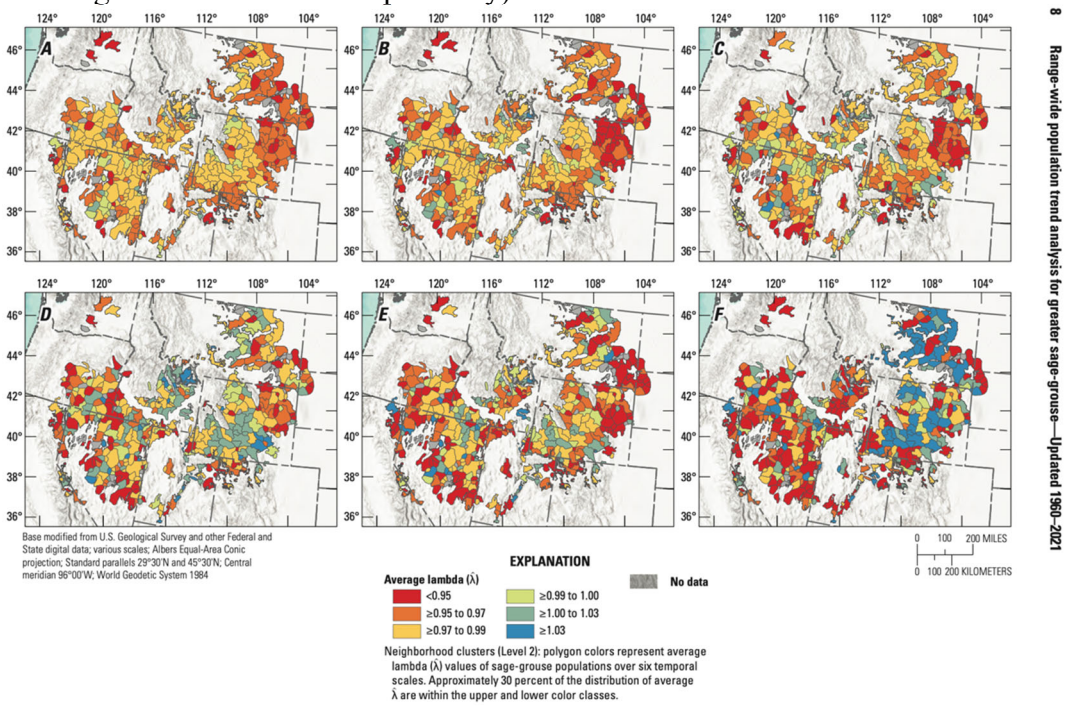

Figure 3. Range-wide spatial estimates of average annual rate of change ($\hat{\lambda}$) in abundance of greater sage-grouse (*Centrocercus urophasianus*) across six temporal scales based on periods of oscillation: *A*, Long (six periods); *B*, Medium/long (five periods); *C*, Medium (four periods); *D*, Short/medium (three periods); *E*, Short (two periods); and *F*, Recent (one period) for each neighborhood cluster. Map image is the intellectual property of Esri and is used herein under license. Copyright© 2020 Esri and its licensors. All rights reserved. Abbreviations: <, less than; ≥, greater than or equal to.

Figure 3 (above) is from Coates et al. (2022). Note that trends are different (positive or negative) depending upon the number of population oscillations used in the analysis.

7) False alarms: Warnings were assigned by the TAWS to neighborhood clusters that otherwise have shown positive recent population trends.

Numerous examples may be found in Coates et al. (2021) of warnings being applied by the TAWS to neighborhood clusters that otherwise showed an increasing population trend. An example of these can be seen by comparing warnings designated in Figure 4.50 of Coates et al. (2021) with population trend data in Table 4.14 of Coates et al. (2021) from Wyoming. (For clarity, these are

identified in the figure and table below.) Wyoming was chosen for this comparison because it contains the highest densities and number of sage grouse of any state or province.

Significance: These apparent false alarms are problematic because it means that warnings can be erroneously issued based on the short time period that is used to signal a decline, compared to a full population cycle (oscillation) between nadirs. Warnings can be triggered by as short as 2 out of 3 consecutive years for "fast signals" of decline, or watches from 3 out of 4 consecutive years for "slow signals" of decline, when populations are declining in synchrony towards the low ebb (nadir) of their natural population cycle. However, those watches and warnings will be erroneous (like false alarms) when neighborhood clusters are actually increasing over the full population cycle between nadirs (a period between nadirs is referred to as an oscillation), an average of 9.4 years according to Coates et al. (2021). Additionally, warnings largely disappear during the upward trend following a nadir. Therefore, the criteria used in designating watches and warnings is in obvious need of rethinking and revision to prevent the waste of valuable public and private conservation efforts, as well as unnecessary regulation triggered by erroneous warnings.

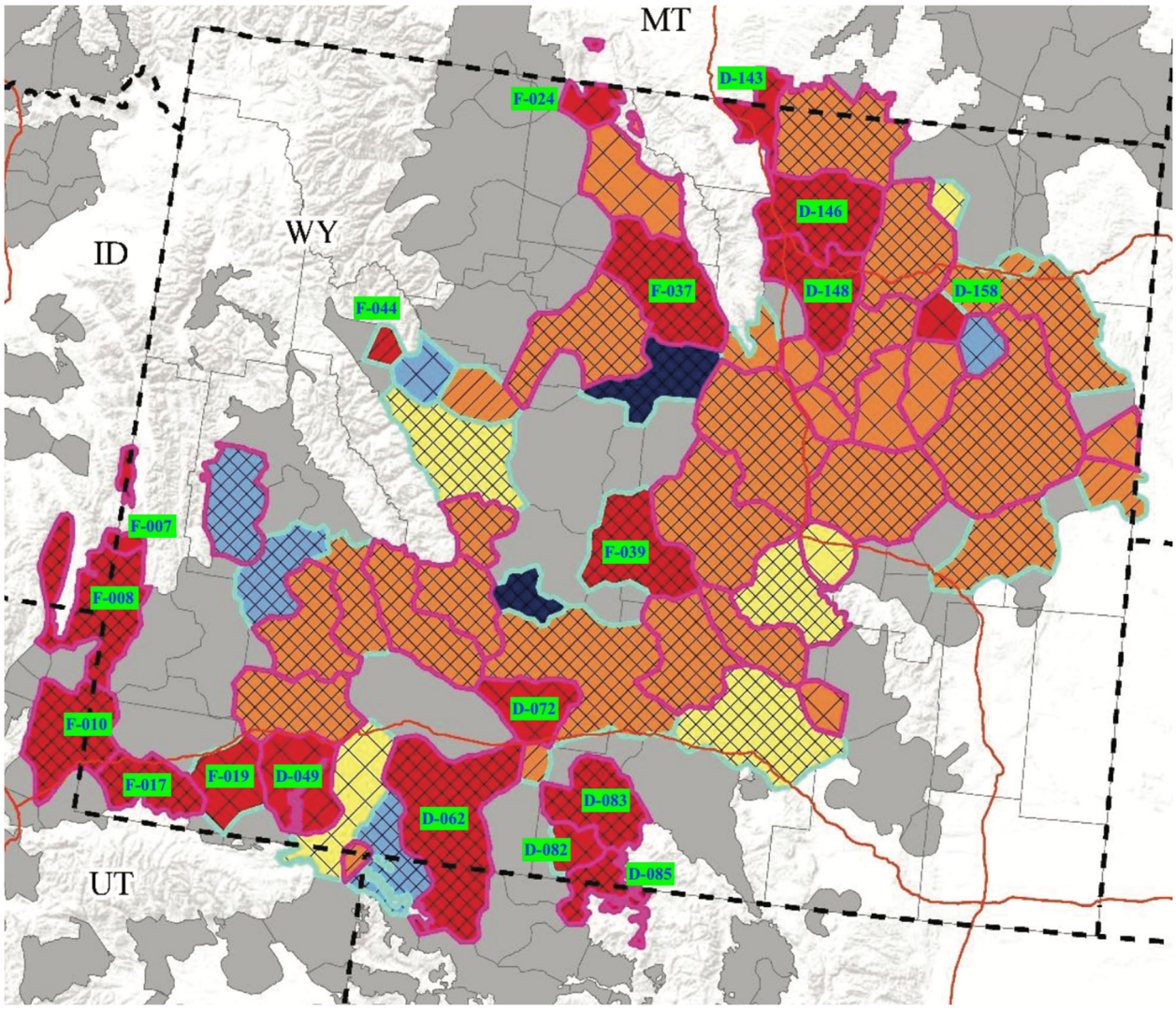

Figure 1. As shown in the figure above, watches and warnings of neighborhood clusters in Wyoming from 1990-2019 (with neighborhood cluster identifiers added to Figure 4.50 of Coates et al. 2021). Recent warnings (2015-2019, p 29) are in dark red with green labels. The numbered green labels identify neighborhood clusters listed in Table 4.14 of Coates et al. (2021).

Excerpts from Table 4.14 of Coates et al. (2021) (listed below in Table 1) provide a comparison between warnings issued for Wyoming neighborhood clusters from 2015 to 2019 and estimated population trends for each neighborhood cluster that was issued a warning during that time period. Note that five neighborhood clusters that were issued warnings actually had a positive average population growth during that same period (>1.0). Such a discrepancies raise questions of validity of TAWS warnings and the subsequent application of TAWS to GRSG adaptive management.

Additionally, we note how adding two additional years of data (2020 and 2021) resulted in all but two warnings being reversed. Such a shifting of TAWS warnings between "on" and "off," with no attempt by the TAWS proponents to determine what caused any of those changes, further underscores our concern that this method is not ready to be used in decision making (or results in the restriction of permits or activities while a causal factor analysis is being completed).

We further note that in the Coates et al. (2022) report, only neighborhood clusters D-072 and F-049 retained warnings when analyses were updated with 2020 and 2021 data by Coates et al. (2022). However, it appears from Figure 6 that nine other neighborhood clusters were assigned warnings in Wyoming. Regrettably, Tables 3 and 4 from that report provide no useful information to further evaluate how quickly or arbitrarily neighborhood cluster status can change in either direction without any change in management, especially while the population experiences post-nadir growth.

The fact that neither of the Coates et al. (2021) or (2022) reports contained any detailed annual TAWS information on which neighborhood clusters were issued a watch, warning, or no watch/warning, means that no independent vetting of the method is possible in order to uncover related methodological problems.

We have not yet explored similar issues with the issuance of watches or warnings to neighborhood clusters (or leks) in other states, but reserve the right to do so. The substantive problem with issuing watches and warnings for individual leks is that lek counts can vary both within and between years due to movements of birds among leks in response to environmental factors independent of neighborhood or population size, or land use activities (i.e., presence of predators, wildfire, or flooding).

Table 1. Average annual rate of recent population change, average trend, and TAWS warning status for Wyoming neighborhood clusters in 2019. Neighborhood clusters with positive average trends or having a positive trend value for their 95% upper confidence interval are highlighted in yellow.

Neighborhood Cluster	Average annual rate of population change from most recent population cycle (from Table 4.14 of Coates et al. 2021)	Average trend	TAWS status, from Coates et al. (2021) for years 2015 to 2019	2020-2021 TAWS status, from Coates et al. (2022)
D-062	0.994 (0.964-1.035)	-	Warning	No Watch or Warning
D-072	1.210 (1.162-1.265)	+	Warning	Warning
D-082	0.864 (0.828-0.946)	-	Warning	No Watch or Warning
D-083	0.889 (0.868-0.910)	-	Warning	No Watch or Warning
D-085	0.831 (0.797-0.871)	-	Warning	No Watch or Warning
D-143	0.966 (0.885-1.070)	-	Warning	No Watch or Warning
D-146	1.069 (1.028-1.111)	+	Warning	No Watch or Warning
D-148	0.992 (0.959-1.027)	-	Warning	No Watch or Warning
D-158	0.880 (0.774-0.978)	-	Warning	No Watch or Warning
F-007	0.898 (0.825-0.971)	-	Warning	No Watch or Warning
F-008	0.899 (0.868-0.929)	-	Warning	No Watch or Warning
F-019	1.052 (1.012-1.094)	+	Warning	No Watch or Warning
F-024	1.023 (0.938-1.116)	+	Warning	No Watch or Warning
F-037	1.025 (0.991-1.062)	+	Warning	No Watch or Warning
F-044	0.909 (0.828-0.987)	-	Warning	No Watch or Warning
F-049	0.926 (0.897-0.955)	-	Warning	Warning

8) The results of Coates et al. (2021, 2022) are not reproducible because the raw and final lek count and location data used are not public or available for independent analysis.

Reproducing the results in Coates et al. (2021, 2022) is not possible because the range-wide lek location and lek count data used in those papers (including O'Donnell et al. 2019) are not publicly available.

It is also not possible to obtain the lek location and count data from some states, such as Colorado, because a state statute prevents Colorado Parks and Wildlife (CPW) from releasing wildlife location data collected on private land without the permission of the landowner. Additionally,

CPW considers such data gathered by that agency to be proprietary and asserts that its research staff retain the "right" to publish on those data before it can be provided to the public.
Coates et al. (2021) developed open-source software for standardizing and compiling the sage-grouse lek count databases across states, to allow for "repeatable results that can better support scientific integrity." Indeed, Coates et al. (2021) considered the lek count database to be "a major step forward for studies making use of range-wide lek count data." However, repeatability and scientific integrity will not be achieved until the lek count database is made available to other, independent researchers.
Significance: Even in states where data are available for research, such as Wyoming, it is not possible to access the final data set that had been used in Coates et al. (2021, 2022). This data had been edited down using various "rules" in an attempt to produce a lek count data set that was more consistently gathered, as well as ad hoc adjustments to identifying population nadirs in individual neighborhood and climate clusters that were not documented. This lack of data availability essentially renders the results of Coates et al. (2021, 2022) as equivalent to a "black box model" (i.e., a model whose inputs and inner workings are opaque or not readily interpretable).

9) It is possible that trend estimates are biased downwards due to excluding data from recently discovered leks and leks that are reoccupied during population increases.

We strongly suspect but cannot yet confirm (due to raw and/or final data sets not being public), that the rule that excludes leks with less than five years of consecutive count data could exclude recently discovered leks and leks that are reoccupied during the uptick in population density during the increasing portion of population cycles, thus biasing trend estimates downwards.

10) Climate clusters were delineated based on the clustering algorithm and were not based on any uniform response of GRSG populations to regional climate.

Level 13 clusters being termed "climate clusters" is a misnomer because the authors provide only a weak analysis to suggest that their map distance-based clustering algorithms have produced a cluster level (Level 13) where sage grouse neighborhood clusters within would respond similarly to regional patterns of precipitation.

It also appears that precipitation was used as a proxy for climate variation by Coates et al. (2021) despite its known shortcomings and because they chose to ignore a large body of scientific research, spanning decades, involving sage grouse and many other species. As summarized succinctly by McClure et al. (2012):

> Among the best measures of changes in global climate patterns are the oceanic oscillations, which are deviations from average oceanic temperatures. In North America, oceanic oscillations that have been linked to changes in the breeding success and distribution of landbirds include the El Niño Southern Oscillation (ENSO, e.g. Sillett et al. 2000), North Atlantic Oscillation (NAO, e.g.,Nott et al. 2002; Anders and Post 2006), and the Pacific Decadal Oscillation (PDO, Mantua and Hare 2002). Oscillations in the Pacific Ocean serve as indices that summarize very large-scale climate patterns associated with sea surface temperatures over the southern and central Pacific, which often have a great impact on heat and precipitation load transfers over North America. The PDO describes a pattern of oceanic temperature variation over 20- to 30-year periods, and these long-term fluctuations

> in ocean temperature affect the climate across much of the northern portion of North America. The PDO has been shown to affect plant phenology and spring flooding in western North America (Cayan et al. 2001), as well as biomass and community structure of marine ecosystems along the Pacific coast of North America (Hare and Mantua 2000). Landbirds also are affected; Ballard et al. (2003) found that capture rates of passerines at a site in California were correlated with the PDO. Because the PDO affects both insect abundance (Kiffney et al. 2002;Vandenbosch 2003;Thomson 2009) and the timing of spring events (Cayan et al. 2001), the PDO may especially affect migratory or insectivorous bird species. Fluctuations in songbird abundances in North America may therefore best be understood within the context of the PDO (Ballard et al. 2003).

A more recent paper focusing specifically on GRSG trends in Wyoming (but also ignored by Coates et al. (2021, 2022)) identified the importance of the PDO and why it outperforms precipitation as a proxy variable for regional climatic variation (Ramey et al. 2018):

> Previous studies of the effect of climatic variation on sage-grouse have used local temperature and precipitation data with mixed results (Blomberg et al., 2012, 2014, 2017; Green, Aldridge & O'Donnell, 2016; Coates et al., 2016; Gibson et al., 2017). However, large-scale climate indices often outperform local data in predicting population dynamics and ecological process (Stenseth et al., 2002; Hallett et al., 2004). The Pacific Decadal Oscillation (PDO), which is derived from the large-scale spatial pattern of sea surface temperature in the North Pacific Ocean (Mantua et al., 1997), is potentially the most important climatic process influencing the sagebrush biome (Neilson et al., 2005). Consequently, the PDO index was chosen as the climate indicator.

Significance: Omission of this body of research, as well as others, in the development, justification, and refinement of TAWS underscores a systematic confirmation bias by the USGS to ignore data and science that does not support their products. It also underscores bias at the BLM to promote the use of biased products as a basis of land management in the current Draft RMPA/EIS.

Conclusion and recommendations regarding TAWS:

The TAWS, with its 483 different neighborhood clusters and 6 climate clusters, adds an additional and methodologically problematic land management category of unproven utility to an already crowded and overlapping field of administrative and land management designations specifically for GRSG. These include: Priority Habitat Management Areas (PHMA), General Habitat Management Areas (GHMA), Habitat Management Areas (HMAs), Core Areas, Connectivity Habitat, Priority Areas for Conservation (PACs), and so on.

The invited reviewers listed in acknowledgements, technical team members and internal USGS peer reviewers of Coates et al. (2021, 2022) did not appear to have identified many of the problems described above. These should have been identified and rectified prior to a public release and certainly before the BLM considers TAWS being used as a basis for management decisions, as the authors propose.

The TAWS is in need of substantial overhaul, greater transparency in methods and data utilized, and a fully independent vetting prior to being considered as a basis for any land management

decisions. Due to all of the issues identified above, the use of TAWS at this point should be nothing more than advisory in nature.

The BLM has not demonstrated that TAWS can be effectively implemented as part of the adaptive management in this Draft RMPA/EIS. More specifically, in the Draft RMPA/EIS:

- The BLM has not provided any specific rationale as to why the proposed TAWS is superior, or even equivalent to, approaches used by states for tracking GRSG population trends.

- The BLM provides no internal decision-making process for concluding a Causal Factor Analysis when there is disagreement among team members.

- The BLM does not provide methodologies or other proof that it can conduct Causal Factor Analysis that reaches a definite conclusion. Moreover, due to the small number of leks in many neighborhood clusters, it is doubtful that there will be sufficient statistical power to determine which factors had contributed to a warning.

- The BLM has not provided a realistic timeline: from completion of lek count data by all states to completion of Causal Factor Analysis for any single neighborhood cluster. As a practical matter, due to the fact that several climate clusters span multiple states, no TAWS analysis can be conducted until data from all states has been collected, vetted and curated by each state, and subsequently reported to the USGS for TAWS analysis.

- The BLM provides no evidence that either it or states have sufficient resources and staff to address multiple simultaneous warnings by conducting multiple Causal Factor Analyses within a reasonable time frame.

- The BLM provides no cost estimate or assurance of funding for TAWS analyses and Causal Factor Analyses.

In practical terms, BLM has failed to demonstrate that it, and the USGS, are capable of implementing TAWS.

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WESTERN LANDOWNERS ALLIANCE
STEWARDSHIP WITH VISION

The Western Landowners Alliance advances policies and practices that sustain working lands, connected landscapes and native species.

June, 13, 2024

Dear Director Stone-Manning,

Thank you for the opportunity to provide comments on the Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement. Western Landowners Alliance is a West-wide organization of landowners, natural resource managers and partners dedicated to keeping working lands whole and healthy for the benefit of people and wildlife. In this capacity WLA represents over 14 million acres of western rangelands and forests through its members. Our members and partners have worked with public, private and nonprofit interests to develop and implement plans that conserve and improve greater sage-grouse habitat across western landscapes. Healthy landscapes, vibrant rural communities and economically sustainable agricultural operations are imperative to maintaining and improving greater sage-grouse habitat.

We applaud the effort of BLM in their work on this draft RMP amendment and EIS. The consideration of the variety of stakeholders in the public, private and Non-Governmental Organization sectors as the Bureau manages the sage-grouse habitat on BLM land while fulfilling its multiple use mandate leads to a better plan and ensures participation in its success. Maintaining these lands in good ecological condition is imperative not only to sage-grouse but to all species who depend on them for survival. Additionally, it supports the livelihoods of people in the west and can advance the strength of communities.

Because landowners steward some of the West's most biologically diverse landscapes and care for critical habitat to Greater Sage-grouse, we have a vital role to play in conservation and species recovery efforts. We embrace our responsibility and encourage other landowners to join us in taking pro-active measures to ensure the survival and recovery of sage grouse populations. However, it will take all stakeholders working together in a more coordinated and collaborative manner to succeed.

WLA strongly supports the Bureau in the selection of Alternative 5 as the preferred alternative in the Draft EIS as the significant basis for moving forward to the selected Alternative.

There have been decades of work put into defining and mapping various degrees of sage-grouse habitat, not to mention plan implementation by cooperators and stakeholders. Working in concert with the BLM on public ground and going above and beyond on private and State ground in and effort to protect the Greater Sage-grouse. WLA views this local input and involvement into the process as highly informed and believes these areas have been defined most accurately, enhanced most vibrantly and benefited the Greater Sage-grouse most abundantly where the local partners have participated in the process. Therefore, these partnerships should be the basis for mapping habitats and Priority Habitat Management Areas (PHMA) for the bird moving forward and this draft plan and EIS should move forward with the success of the past 18 plus years in mind. That said please note these specific comments germane to areas of the document as they are intended to improve the plan.

Livestock Grazing

- Livestock grazing is a permitted use and when done properly does not pose a threat to the sage-grouse. Specific to Greater Sage-grouse habitat, manage livestock grazing to meet or make progress toward meeting the Land Health Standard for special status species (SSS) WLA recommends appropriate livestock grazing continue in general and to this stated standard for SSS where appropriate.
- The EIS states on page 2-103: "Of the allotments with at least 15% PHMA, 53% met all standards or are making significant progress toward meeting the Standard, 19% are in varying levels of not meeting the Standard, and the rest have no information or evaluations. That means 28% of these allotments have no or limited data. WLA recommends this 28% of allotments with at least 15% PHMA become a priority for data collection and monitoring to gain an accurate picture.

- The document talks about grazing where the focus should be improper grazing.

Wild Horse and Burro

- WLA appreciates the Draft EIS acknowledges issues with overpopulation and over grazing in areas with wild horses. The document discusses not having horse Herd Management Areas (HMAs) overlapping PHMA. That is a good strategy, however BLM must address the underlying problem which is wild horses being above Appropriate Management Level (AML). otherwise the pressure just shifts to other areas.

Adaptive Management

- Livestock grazing is not addressed in the narrative beginning on page 2-120 however it is addressed in this section within Table 2-15. Livestock grazing should be considered under adaptive management and the language should be consistent with the livestock grazing section in chapter 2.
- In general, and specific to livestock grazing under Adaptive Management BLM must follow its own rules and definitions. The document is inconsistent in its use of existing alternative language; for example, it uses "causal and contributing factors" incorrectly. Livestock grazing must be identified as a significant causal factor for Land Health Standards SSS, before a livestock grazing permit can be modified to address

- Adaptive management must include local input of all appropriate stakeholders but specifically state agencies with authority over and accountability to management of the species itself. Relying on data from local sources, specifically state wildlife agencies, which may be informed by modeling but relying on actual data from the field is more appropriate.

Habitat

- In section 4.471 the draft EIS compares impacts of wild horse and burro grazing to livestock grazing, indicating that the impact is similar. While on the surface this may seem true, there is a great deal of difference. Livestock are grazing under permit for a specific time and/or are taken off when monitoring indicates they must move. Wild horses and burros are on the range 365 days a year regardless of conditions. The impacts are not the same.

- Although not in the preferred alternative, the document links grazing with the spread of noxious weeds and juniper and conifer encroachment. This is a potentially unfair assertion of grazing. Improper grazing could possibly be a cause but this is not accurate when proper grazing takes place.

General Comment

- BLM has successfully partnered with stakeholders from the public, private and NGO sectors for almost two decades. As you consider moving forward in the process, we recommend looking to the places where the effort has been most successful as a guide to move the effort and management forward throughout the habitat.

Thank you again for the opportunity to provide comments on this pivotal Draft Resource Management Plan Amendment and Environmental Impact Statement.

Kind Regards,

Jason Fearneyhough

Jason Fearneyhough
Chief Policy Officer

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June 12, 2024

BLM Utah State Office
ATTN: HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, Utah 84101

Re: Comments Regarding the Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement, Dated March 14, 2024

Submitted via e-mail: BLM_HQ_GRSG_Planning@blm.gov

Dear Sir or Madam:

In response to the Bureau of Land Management's (BLM) release of the Greater Sage-Grouse (GRSG) Draft Resource Management Plan Amendment (DRMPA) and Environmental Impact Statement (EIS) (collectively, the Draft EIS, or "DEIS"), LS Power Development, LLC ("LS Power") provides the attached comments in relation to energy infrastructure, more specifically transmission lines and renewable energy projects sited on federal lands managed by BLM. Our more detailed comments are provided in a numbered list in the Attachment, followed by a table of brief comments addressing additional issues.

LS Power appreciates the opportunity to review and comment on the DEIS, and we are confident that BLM can implement a management framework that balances protection of GRSG and its habitat with a clean energy future.

Sincerely,

David K. Wilson

David Wilson

Vice President, Environmental Permitting

Attachment:
LS Power Public Comments on the 2024 GRSG DRMPA DEIS

LS Power Comments on the 2024 GRSG DRMPA DEIS

1) **Support for Specific DEIS Provisions**

a) Support for Alternative 5.

Of the listed Alternatives available in the DEIS, we agree with the BLM's decision to identify Alternative 5 as the Preferred Alternative. In addition, we suggest that all Alternatives, including Alternative 5, could be improved to ensure that energy infrastructure and GRSG can better co-exist. The comments below are primarily intended to improve Alternative 5 but should be applied to other applicable Alternatives to the maximum extent feasible. In particular, the designated utility corridors under Alternatives 5 are crucial to achieving state and Federal goals for grid reliability and renewable energy. *See, e.g.,* Inflation Reduction Act of 2022, Pub. L. 117-169, 136 Stat. 1818, Aug. 16, 2022; Exec. Order 14057 ("Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability"); Exec. Order 14008 ("Tackling the Climate Crisis at Home and Abroad"); Final Rule: Rights-of-Way, Leasing, and Operations for Renewable Energy, Bureau of Land Management, 89 Fed. Reg. 35634 (May 1, 2024). Of course, BLM itself recognizes that *any* restrictions on designated utility corridors and rights-of-way (ROWs) for transmission and renewable energy projects on federal lands would "decrease the acreage available to new development, which could lead to more complex designs, exclude infrastructure placement in cost effective locations, result in overall greater development cost and increased review periods. Additionally, such stipulations could limit future access, delay or increase the cost of energy supplies, or delay or restrict communications service availability." DEIS, 4-76. Accordingly, we support the inclusion of the designated utility corridor provisions in Alternative 5.

b) Support for the concept of Justifiable Departures, as presented in Section 19.4.1.

We agree with the BLM that there is not a 'one size fits all' solution for the application of buffers when looking solely at distances. As such, we support BLM's language that justifiable departures from buffer distances may be appropriate when considering a multitude of factors, including local data, landscape features, or other protections. In addition, we support the notion put forth by USGS that there are various protective measures that may be developed or introduced which may provide equal or better protections when compared to distance buffers and should therefore be available to use as a protection strategy under the ARMPA.

c) Support for the concept of Buffer Exception Criteria for IHMA and GHMA, as presented in Section 19.4.1.

There may be certain occurrences where a project has a critical component that requires an exception to the buffer criteria as described in Appendix A, and, with proper mitigation, may present the best path forward in comparison to alternatives that are unreasonable or impracticable. As such, we agree with the BLM's language that if it is "impracticable, technically or economically, to locate the project outside of the buffer area and impacts are avoided through project siting and design, to the extent reasonable, BLM may approve actions within buffers in IHMA and GHMA."

2) **Alternative 3 is not a reasonable alternative.**

Under Alternative 3, all habitat management areas (HMAs) would be managed as priority HMA (PHMA). Because not all HMAs actually have the highest value to maintaining sustainable GRSG populations, designating all HMAs as PHMA would be arbitrary and represent an unjustified application of the precautionary principle. As such, Alternative 3 is unreasonable and should not be selected in the Final EIS.

3) <u>Alternative 5 should incorporate all of the Allocation Exception Criteria in the 2019 NV/CA ARMPA.</u>

In a notable departure from the 2015 NV/CA ARMPA, the 2019 NV/CA ARMPA revised and simplified the process to allow for the consideration of projects within GRSG HMAs, provided they meet prescribed criteria: Allocation Exception Criteria. This decision recognized that "landscape level mapping may not accurately reflect on-the-ground conditions," and that authorizations for projects located in PHMA or GHMA, therefore, should be granted through ground-truthing or compensatory mitigation. 2018 FEIS, 2-7. The management strategy BLM adopts in this planning process should include these same criteria.

However, Section 2.6.3 of the DEIS proposes to amend the Allocation Exception Criteria in the 2019 Nevada/California Approved Resource Management Plan Amendment (NV/CA ARMPA). While Alternative 5 would continue to allow project proponents to demonstrate that HMA is unsuitable for GRSG (with the added requirement to analyze indirect impacts), it proposes to eliminate two crucial Allocation Exception Criteria. For example, without explanation, BLM is proposing to remove the ability of project proponents to seek allocation exceptions by offsetting impacts of the proposed activities using the mitigation hierarchy and the State's mitigation policies and programs. Alternative 5 would also eliminate the exception under which renewals, re-authorizations, or expansions of existing infrastructure that do not result in direct, indirect, or cumulative impacts on GRSG and its habitat may be excepted from HMA allocations and the applicable management restrictions.

The DEIS offers little to no explanation for these changes; however, these criteria guarantee flexibility in project approvals, while simultaneously protecting GRSG and their habitat, and recognizing the inherent limitations of large-scale modeling. *See* DEIS, pg. 2-19 ("The habitat management area boundaries are not intended to represent a survey-grade habitat boundary, may include results of large-scale modeling, and are not to be used exclusively for habitat determinations at a project or site-level scale."). We strongly recommend that BLM keep the Allocation Exception Criteria listed below from the 2019 NV/CA ARMPA in Alternative 5 and adopt them range-wide:

> *From the NV/CA ARMPA MD SSS 5 (Allocation Exception Criteria): In PHMA, GHMA, and OHMA, the State Director may grant an exception to the allocations and stipulations described in Table 2-1: Comparative Summary of Alternatives if one of the following applies (in coordination with NDOW, SETT, and/or CDFW):*
>
> *i) The location of the proposed activity is determined to be unsuitable4 (by a biologist with GRSG experience using methods such as Stiver et. al. 2015) and lacks the ecological potential to become marginal or suitable habitat; and will not result in direct, indirect, or cumulative impacts on GRSG and its habitat. Management allocation decisions will not apply to those areas determined to be unsuitable if the area has passed a threshold and lacks the ecological potential to become marginal or suitable habitat.*
>
> *ii) The proposed activities impacts will be offset to result in no adverse impacts on GRSG or its habitat, through use of the mitigation hierarchy and the State's mitigation policies and programs, such as the State of Nevada's Executive Order 2018-32 (and any future regulations adopted by the State of Nevada regarding compensatory mitigation, consistent with federal law). In cases where exceptions may be granted for projects with a residual impact, voluntary compensatory mitigation consistent with the State's mitigation policies and programs, such as the State of Nevada's Executive Order 2018-32 (and any future regulations adopted by the State of Nevada regarding compensatory mitigation, consistent with federal law) will be one mechanism by which a proponent achieves the Approved RMPA goals, objectives, and exception criteria. When a proponent volunteers compensatory mitigation as their chosen approach to address residual impacts, the BLM will incorporate those actions into the rationale*

used to grant an exception. The final decision to grant a waiver, exception, or modification will be based, in part, on criteria consistent with the State's GRSG management plans and policies.

iii) *The proposed activity will be authorized to address public health and safety concerns, specifically as they relate to federal, state, local government and national priorities.*

iv) *Renewals or re-authorizations of existing infrastructure in previously disturbed sites or expansions of existing infrastructure that do not result in direct, indirect, or cumulative impacts on GRSG and its habitat.*

v) *The proposed activity is determined to be a routine administrative function conducted by federal, state or local governments, including prior existing uses, authorized uses, valid existing rights and existing infrastructure (i.e., rights-of-way for roads) that serve a public purpose and will have no adverse impacts on GRSG and its habitat, consistent with the State's mitigation policies and programs, such as the State of Nevada's Executive Order 2018-32 (and any future regulations adopted by the State of Nevada regarding compensatory mitigation, consistent with federal law).*

vi) *Exceptions to non-disposal or exchange of lands that are identified for retention in Appendix A, Figure 2-12 could be considered if (a) they are identified for disposal through previous planning efforts or address a Congressional Act (e.g., the respective Lincoln and White Pine County Conservation, Recreation, and Development Acts), (b) the agency can demonstrate that the disposal, including land exchanges, will have no adverse direct, indirect or cumulative impacts on GRSG and its habitat, or (c) adverse impacts on GRSG or its habitat will be offset, through use of voluntary compensatory mitigation, consistent with the States' mitigation policies and programs, such as the State of Nevada's Executive Order 2018-32 (and any future regulations adopted by the State of Nevada regarding compensatory mitigation, consistent with federal law).*

Alternatively, if this remedy is not acceptable to BLM, we recommend that the EIS provide, for all alternatives range-wide, the ability for the local BLM office to adjust HMA boundaries or designations based on review of actual field conditions. The adjustment would be documented in the project-specific NEPA document for the project under review. Ensuring HMA boundaries and designations match field conditions will ensure protection of sensitive areas not detected by habitat models, while at the same time directing development toward those areas that are less sensitive.

4) <u>Minor and Major ROW definitions should be added to the DEIS glossary section.</u>

The literature regarding the effects of development on GRSG avoidance behavior typically cites the presence of tall structures on the landscape and surface disturbance on the ground as the impactful characteristics of anthropogenic development, whether that development is associated with transmission lines, gas pipelines, or other linear or non-linear infrastructure. As such, it is logical to define the terms Minor right-of-way (ROW) and Major ROW as encompassing both linear and non-linear infrastructure and to characterize the definitions of these terms to reflect that the voltage or pipeline diameter are not the determining factors in impacts to GRSG that would differentiate between Minor ROW and Major ROW. The degree of impact to GRSG associated with a given ROW is the appropriate distinguishing factor in determining whether the ROW is considered a Minor ROW or Major ROW. We therefore recommend that Minor ROW and Major ROW definitions be added to the glossary appendix as shown below:

"Major ROW means a ROW for a project that is determined during the NEPA review to have a significant impact on greater sage-grouse."

"Minor ROW means a ROW for a project that is not determined to have a significant impact on greater sage-grouse, e.g., projects that are evaluated through an Environmental Assessment or approved under a Categorical Exclusion."

5) Definition of 'non-habitat' should be added to the DEIS glossary section.

Page 2-19 indicates that the glossary appendix includes a definition of "non-habitat"; however, that definition is not present. We recommend that BLM add a definition of non-habitat consistent with the language on page 2-19, with additional clarifications as follows:

"Non-habitat means areas that lack the ecological potential to provide principal habitat components necessary to support GRSG and where conformance with the RMP would not support GRSG conservation; non-habitat areas are not subject to restrictions based on designated PHMA, IHMA, GHMA, or ACECs."

6) The hierarchical assessment areas under the Habitat Assessment Framework (HAF) should not be adopted.

The DEIS suggests that "[t]o conserve seasonal habitat requirements associated with a local GRSG," BLM would apply disturbance caps under Alternative 5 "to PHMA within the Habitat Assessment Framework (HAF) fine scale." DEIS, pg. 2-28. The DEIS proposes this change because "[p]revious application of a disturbance cap at a larger scale (e.g., biologically significant unit) did not limit the consideration to local populations and were often 'diluted' by large amounts of non-habitat." Id. However, the BLM Habitat Assessment Framework Technical Reference (TR2710-1) (2015), which BLM cites for the shift from geographically larger BSUs to HAF fine-scale areas, does not clearly delineate the areas proposed in the DEIS. *See, e.g.,* Map 3.8 (Greater Sage-Grouse Habitat Assessment Framework, Fine-Scale Areas (Level 3) and Greater-Sage Grouse Planning Areas). The DEIS offers little explanation for these delineations other than that they were performed "by the BLM State Offices, Partners, with facilitation by the National Operations Center." Id. This is not the requisite "hard look" required by NEPA. Because the manner in which these areas were delineated will have significant impacts on future development (for example, it appears that some new HAF fine-scale areas will already be above the three percent disturbance cap), further information on how the mapping has been developed in this regard would be necessary to fully understand and provide substantive comment on the selection criteria and delineation process.

Given the limited information available, we recommend removing this new assessment area and retaining the locally delineated BSU framework.

7) Utility Corridors lack holistic connectivity and completeness.

The BLM is moving in the right direction with utility corridors by expanding upon existing corridors and including new corridors where energy infrastructure now exists or is proposed. The connectivity of new energy infrastructure to these areas is necessary for increasing grid reliability and capacity and achieving renewable energy goals that align with federal and state policies. The co-location of new development near existing infrastructure in utility corridors can reduce impacts to GRSG and other wildlife, as mentioned throughout the

DEIS. However, there are instances where, when looked at holistically, the usefulness of utility corridors needs to be further enhanced through more thoughtful consideration of how the different aspects of the draft RMP will fit together.

a. Designated utility corridors should not be rendered unusable by avoidance requirements.

DEIS Table 2-10's section on Major Rights-of Way (i.e., large energy infrastructure) provides language that states the following:

> *"Micro-siting (siting based on local data) is required to avoid placement near active leks or in connectivity corridors between seasonal habitats."*

Further, the same Section later states the following:

> *"Major ROWs that are located inside RMP designated utility/ROW corridors would not need to comply with disturbance cap (at either the HAF fine scale or project level) or compensatory mitigation requirements unless required by State regulations."*

The BLM's designation of utility corridors encourages consolidation of energy infrastructure to be placed within these confined areas to minimize impacts to GRSG. However, for energy projects sited inside designated utility corridors, there will be some instances where micro-siting within a designated utility corridor is not sufficient to keep infrastructure outside of connectivity corridors or lek buffers. These concerns are applicable to both Minor and Major ROWs. To ensure that designated energy corridors remain useful in most circumstances, the BLM should restate the second quoted statement as follows:

> "Major ROWs and Minor ROWs within designated utility corridors that have been micro-sited, to the extent reasonably feasible, to avoid placement near active leks or in connectivity corridors between seasonal habitats are not subject to requirements for lek avoidance buffers, connectivity corridor avoidance, disturbance caps, or compensatory mitigations."

b. Designated utility corridors should not be rendered unusable by adaptive management requirements.

The proposed adaptive management responses provided in DEIS Section 2.5.13 are overly restrictive, up to and including a moratorium on new permitted activities and cessation of existing permitted activities in certain circumstances. By mandating that BLM "designate … corridors for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities on Federal land," Congress effectively assured that such corridors would enjoy a preference over other uses of federal lands. *See* Energy Policy Act of 2005, Sec. 368, 119 Stat. 594, Pub. L. 109-58, Aug. 8, 2005 (codified at 42 U.S.C. 15926). To ensure that such designated energy corridors remain useful and the express language of Congress is implemented, BLM should add the following language to Alternative 5 in Table 2-15 (Comparison of Alternatives, Adaptive Management):

> "Major ROWs and Minor ROWs within designated utility corridors are not subject to adaptive management requirements based on thresholds for habitat or population trends."

c. The BLM should provide better connectivity of designated utility corridors.

Transmission lines work only by connecting one end (e.g., substation, energy project) to another. There are numerous areas where utility corridors suddenly end or gaps of non-corridor areas become present when trying to connect one corridor to another. While some of this cannot be avoided, e.g., the sudden

abutment with private lands, there are other instances where BLM land is contiguous, and therefore continuity of the utility corridor could occur. It is possible that some of these areas may incorporate other right of ways (ROW) or important environmental areas, but in most cases, utility infrastructure is often part of a mixed-use plan where co-existence can occur with these ROWs or non-GRSG environmental areas (e.g., an operational transmission line infrastructure has limited impact on big game). In other instances, there is no unique management feature, but the utility corridor simply ends nonetheless. We urge BLM to, where possible, further connect the utility corridors in a more meaningful way so as to prevent corridor dead ends. Alternatively, if this remedy is not acceptable to BLM, we recommend that BLM add an Allocation Exception Criterion to Section 2.6.3 of the DEIS that would render HMA designations non-applicable for transmission lines through areas which represent gaps in otherwise connected utility corridors. This action will ensure that the disturbance associated with utility projects or corridors actually accomplishes the intended goal of building out the Western grid. Transmission lines to nowhere do not benefit the public or habitat goals.

d. The BLM should incorporate major roads as available Utility Corridors.

The BLM urges energy companies to co-locate infrastructure next to existing roads. The DEIS also states in Section 2.5.8 that "Roads account for most of the direct, permanent ground disturbance at wind facilities." This could be expanded in general to say that roads, especially highways, create the most direct, permanent ground disturbance, and therefore also have large direct and indirect impacts on GRSG habitat. As such, co-location of transmission lines next to these roads makes sense in an effort to avoid further fragmentation of GRSG habitat. BLM may want to consider adding utility corridors next to existing major roads (e.g., highways).

8) Replacement of 'like-kind' infrastructure should not be a new surface occupancy trigger.

According to Table 2-18 (and other similar State-Specific tables):

> *"Tall structures are defined as any man-made structure that provides for perching/nesting opportunities for predators (e.g., raptors, ravens) that may naturally be absent, or that decreases the use of an area. A determination as to whether something is considered a tall structure would be made based on local conditions such as existing vegetation or topography. Tall structures include but are not limited to: communication towers, meteorological towers, power lines, and transmission lines."*

The DEIS should make it clear for all alternatives that reconductoring an existing transmission line (i.e., replacing wires, arms, or hardware on existing structures) or replacing existing structures with 'like-kind' infrastructure of a similarly designated height (i.e., transmission structures with new transmission line structures or communication towers with new communication towers) within an existing ROW does not constitute new surface occupancy or trigger restrictions or new compensatory mitigation based on the presence of PHMA, IHMA, GHMA, or ACECs (as applicable in each Alternative).

9) HMA boundaries in the Nevada/California Planning Area were created using an unpublished model.

Regarding the HMA boundaries in the DEIS in California and Nevada, as explained in DEIS Appendix 3, those boundaries were determined primarily by an unpublished USGS HMA model:

> *"The final version of the USGS HMA model was not published in time for inclusion in the BLM's 2024 Draft EIS. However, USGS provided BLM with unpublished results for use in preparing the Draft EIS range of alternatives and impact analyses." (DEIS Appendix 3 at p. 3-12)*

The public, accordingly, has no opportunity to vet the unpublished model to meaningfully comment on the DEIS and the proposed HMA delineations. Moreover, the public is not able to review and comment on BLM's inputs and sensitivity calibrations in the model, or the underlying data and science used in updating the model. The BLM even admits that the HMA maps in Appendix 3 for Nevada are merely "an estimate of how HMA model results may change as the model continue to be refined," and "[t]here will likely be differences in the spatial distribution of HMAs between the Draft EIS version and the final published version." See DEIS, Appendix 3, pg. 3-12.

Prior to finalizing the EIS, BLM should allow the public an opportunity to review and comment on the USGS HMA model as the results of the model will heavily influence land management decisions in these two states.

10) <u>GRSG Mitigation should follow the Mitigation Framework found in MS-1794 and H-1794-1.</u>

The DEIS states at Section 2.5.3, "[c]ompensatory mitigation should also be prioritized to occur within the same area of the impact (within the same HAF fine scale area, or if not possible, within the same neighborhood cluster or HAF mid-scale area where practicable) so that it provides habitat for GRSG populations affected by the project."

By stipulating the locations at which mitigation efforts should occur, this DEIS language conflicts with BLM's Mitigation Manual MS-1794 (pages 7-8) that states "A landscape-scale approach also allows for identification of the most effective compensatory mitigation sites without implying a preference for siting and compensatory mitigation closer to or father away from the impacted site or implying a preference for Federal managed lands." Similarly, Handbook H-1794-1 (page 3-17) states:

> *"[t]he BLM should identify a compensatory mitigation site without implying a preference for siting it closer to or farther from the impacted site, as long as a reasonable relationship is maintained between the impacts of the public land use and the compensatory mitigation measure(s) being implemented at that site. It should also be determined without implying a preference for Federally managed lands… The maximum benefit to the impacted resource might be achieved at a compensatory mitigation site either geographically close or geographically far from the impacted site, so long as the mitigation at that site has a reasonable relationship to benefiting the public land resources where the resource impact is expected to occur or is occurring. The site that provides the maximum benefit to the public land resources does not need to be near the site where the resource impact occurred."*

Avoiding requirements for mitigation to be carried out as near as possible to the impacted site allows mitigation to focus on those areas that would provide the greatest benefit to GRSG overall, providing better protection for the species.

Moreover, imposing location requirements for compensatory mitigation discourages mitigation banking since most projects will not be sited in proximity to mitigation banks. In most instances, energy infrastructure siting practices will result in infrastructure being sited in habitat areas that are less sensitive, far away from mitigation banks. Conversely, mitigation banks are often sited in more sensitive habitat areas to provide maximum benefits

to GRSG. As such, removing the mitigation siting requirements will bring the language in the EIS into conformance with BLM's own mitigation guidelines and allow for a more robust mitigation banking credit system similar to the banks of other resources. If BLM decides not to remove the mitigation siting requirements for permittee-responsible mitigation, we recommend that BLM create an exemption from the siting requirements for projects that satisfy compensatory mitigation requirements by purchasing credits from a BLM-approved mitigation bank.[1]

11) <u>GRSG mitigation should require only financial assurance prior to starting project construction.</u>

DEIS Section 2.5.3 states "[Compensatory mitigation] *should be completed prior to associated actions occurring.*" This language does not clearly identify if it is the proponent's compensatory mitigation funding or the resulting mitigation actions that are required to be completed prior to the Project's 'associated actions occurring' (note: the DEIS does not define 'associated actions'). If the latter, this language stifles the creation of mitigation banks, as not only would the bank be needed in the same fine scale HAF as the project (as discussed in the previous comment), but banks would also need to have approval and sufficient credits generated prior to the Project's associated actions occurring. Further, habitat uplifts by either the bank or the project proponent would then very likely need to occur prior to BLM's approval of the project. BLM should restate this measure as "Compensatory mitigation should be financially assured prior to the commencement of project construction" to remove confusion and/or remove an unviable measure for mitigation banks to meet. The requirement that the compensatory mitigation be completed before the associated action occurs ignores the realities of performing the compensatory mitigation projects under existing systems like Nevada's Conservation Credit System.

12) <u>The Targeted Annual Warning System (TAWS) as described in the DEIS is not a suitable framework for triggering adaptive management responses.</u>

The DEIS states at Section 2.5.13, "[t]he BLM must consider all available information regarding population threshold status. This includes state wildlife agency population trend analyses and annual population trend results published using the Hierarchical Population Monitoring Framework (currently the Targeted Annual Warning System procedures [TAWS]; Coates et al., 2021) or subsequent updates or revisions which provides a consistent and objective range-wide tool incorporating state lek count data and is able to identify if habitat conditions, not climatic conditions, are likely influencing populations." The document then goes on to define soft and hard population trend thresholds for adaptive management based on TAWS watches and warnings, respectively.

The proposed adaptive management responses for Alternatives 3, 4, 5, and 6 based on TAWS thresholds are highly stringent, up to and including a moratorium on new permitted activities and cessation of existing permitted activities in certain circumstances. Implementing adaptive management based on TAWS watches and warnings would place restrictions on development throughout large swaths of the analysis area. As illustrated in the graphic below, over a 30-year simulation period, nearly two-thirds of all leks experienced a "watch", i.e., a soft trigger for

[1] This comment is intended to apply range-wide. However, with respect to implementing mitigation in Nevada, due to Nevada's many "checkerboard" lands, relatively few areas exist with the rare combination of privately-owned lands capable of hosting mitigation projects to benefit Greater Sage-Grouse. Further, under Nevada's Conservation Credit System, project proponents are already encouraged to site mitigation projects as close to the area of disturbance as possible by imposing a debit penalty for mitigation projects that are further away. This approach balances the importance of performing mitigation with the realities of checkerboard land ownership and distribution of suitable habitat for restoration projects. BLM's approach to mitigation banking should take a similar, more realistic approach that accounts for Nevada's already-established system.

adaptive management, and nearly one-half of all leks experienced a "warning", i.e., a hard trigger for adaptive management.[2]

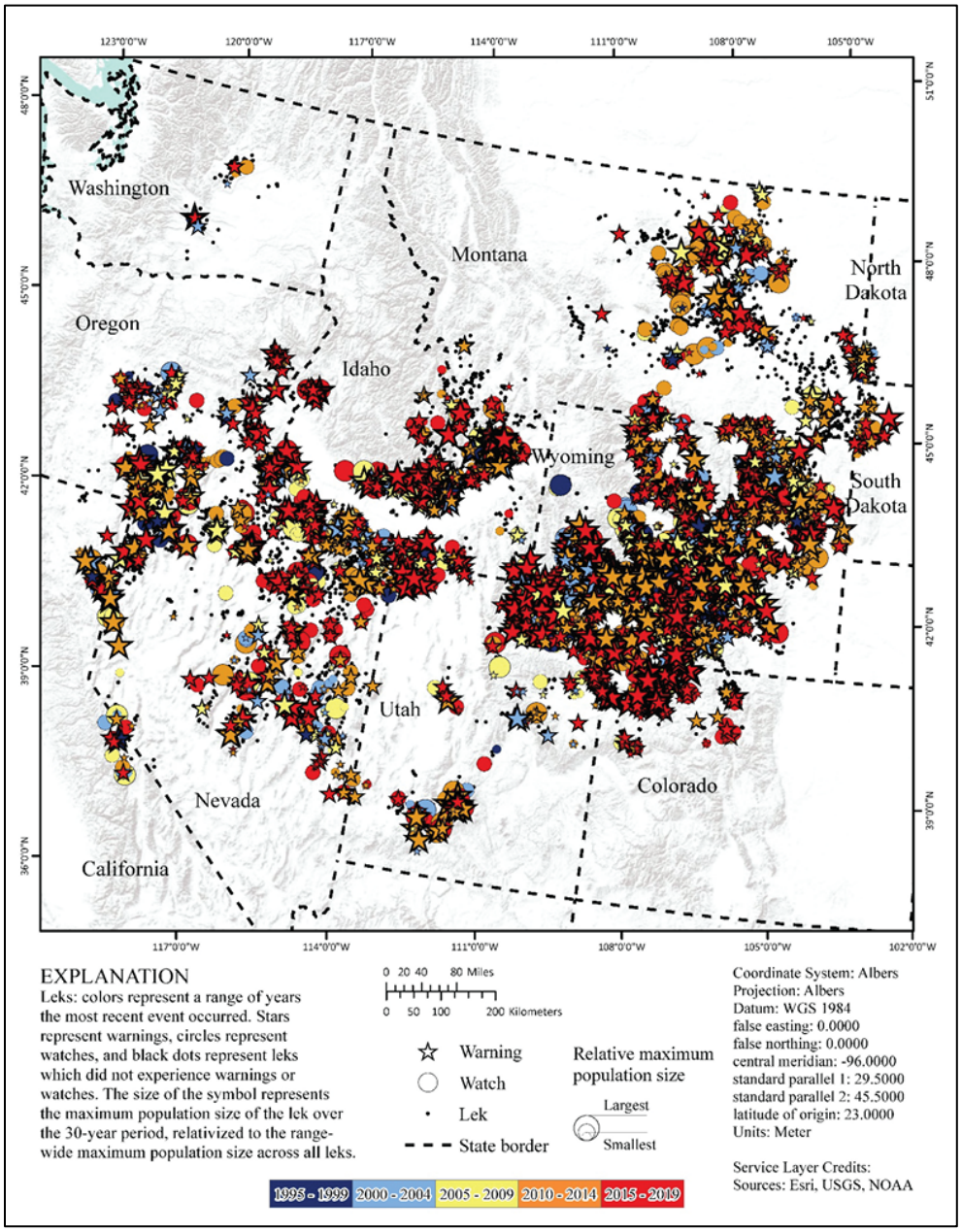

Figure 45 from Coates et al., 2021 "Spatial and temporal depiction of range-wide watches and warnings of greater sage-grouse (Centrocercus urophasianus) population declines at the lek scale within the western United States from 1990 to 2019."

As shown in the graphic above, use of the TAWS procedures to trigger adaptive management restrictions would have significant impacts on land management decisions over broad areas. This approach as described in the DEIS suffers from multiple fatal flaws:

[2] Coates, P.S., Prochazka, B.G., O'Donnell, M.S., Aldridge, C.L., Edmunds, D.R., Monroe, A.P., Ricca, M.A., Wann, G.T., Hanser, S.E., Wiechman, L.A., and Chenaille, M.P., 2021, Range-wide greater sage-grouse hierarchical monitoring framework—Implications for defining population boundaries, trend estimation, and a targeted annual warning system: U.S. Geological Survey Open-File Report 2020–1154, page 59, https://doi.org/10.3133/ofr20201154.

A) The TAWS procedures are documented in a U.S. Geological Survey (USGS) open-file report titled "*Range-wide GRSG hierarchical monitoring framework—Implications for defining population boundaries, trend estimation, and a targeted annual warning system*" (U.S. Geological Survey Open-File Report 2020–1154). This publication, a USGS open-file report, to our knowledge has not been published in a peer-reviewed scientific journal, and as such, would not have been subject to review by independent reviewers who could provide comments on possible errors and biases that would need to be resolved prior to considering use of the TARS methodology as an adaptive management trigger within significant implications for land management across the Western U.S.

B) The DEIS at Section 2.5.13 specifies that adaptive management thresholds are defined by the TAWS procedures "*or subsequent updates or revisions*". Since the TAWS procedures significantly impact land management decisions across the Western U.S. via the adaptive management framework in the DEIS, subsequent updates or revisions to the TAWS procedures would not be considered plan maintenance actions but instead would effectively constitute amendments to the ARMPA, which would be major Federal actions requiring NEPA review. Stakeholders must be able to understand the changes that will impact them and provide comment to the agency where on-the-ground conditions may not match up with model outputs. If BLM adopts the TAWS procedures for adaptive management, we recommend that BLM conduct a plan amendment prior to any subsequent updates or revisions to the TAWS procedures to avoid violating NEPA.

C) The TAWS procedures documented in Coates et al., 2021 from the DEIS are extremely technical in nature, are not explained in plain language, and therefore cannot be understood by the general public. For example, the first paragraph of the "Methods" section of the report reads as follows:

Evaluation of Posterior Probability Distributions

We used an identical SSM structure for the TAWS described previously (see Objective 3) to estimate $\hat{N}$ and derive $\hat{r}$ across nested hierarchical spatial scales. However, because the purpose of TAWS was to achieve and compare intra-annual estimates across nested spatial scales rather than estimate trends across different temporal scales, and relatively more frequent lek sampling was required, we imposed a rule that excluded data collected prior to 1990 because sampling was much less frequent (see Objective 1). The SSMs produced PD of annual $\hat{\lambda}$ for each lek, NC, and CC. These PDs formed the foundation for evaluating evidence of leks and NCs that were declining and misaligned with the CC, which provides early indication of potential need for management intervention. After estimating the PD for annual $\hat{\lambda}$ at each spatial scale, we calculated the proportional density of the PD for the lek and the NC that was (1) below the CC $\hat{\lambda}$ PD and demonstrated evidence of declining annual trend ($\hat{\lambda}$ <1.0; hereafter, "declining below CC"); (2) similar to the CC $\hat{\lambda}$ PD, decreasing, but less than the median of the CC $\hat{\lambda}$ PD; (3) similar, decreasing, and greater than the median of the CC $\hat{\lambda}$ PD; and (4) stable or increasing. This process was carried out for each lek $\hat{\lambda}$ PD compared to their respective CC $\hat{\lambda}$ PD and each NC $\hat{\lambda}$ PD compared to their respective CC $\hat{\lambda}$ PD. An example of how the four different areas under the curve can result in three scenarios is illustrated in figure 44. Using these areas calculated for every lek and NC, we developed a ratio of the area that represented decline below CC against all other outcomes. We then took the natural log of the odds ratio (hereafter, log-odds) and established thresholds for log-odds that represented significant evidence of decline below the CC based on a simulation approach that spanned the entire sage-grouse range (described in appendix 5).

From Coates, P.S., Prochazka, B.G., O'Donnell, M.S., Aldridge, C.L., Edmunds, D.R., Monroe, A.P., Ricca, M.A., Wann, G.T., Hanser, S.E., Wiechman, L.A., and Chenaille, M.P., 2021, Range-wide greater sage-grouse hierarchical monitoring framework—Implications for defining population boundaries, trend estimation, and a targeted annual warning system: U.S. Geological Survey Open-File Report 2020–1154, 243 p. 58, https://doi.org/10.3133/ofr20201154.

In light of these flaws, we recommend that use of the TAWS procedures be removed from the DEIS and replaced with a straightforward set of criteria, such as the following, which could be applied at the level of an individual lek, lek cluster, or BSU:

- Percentage decrease in sage brush cover relative to a defined baseline year due to direct anthropogenic sage brush removal; and
- Percentage decrease in lek attendance continuing over a five-year period.

13) BLM should remove the application of lek buffers for 'Pending Active' leks range wide.

DEIS Appendix 19 states that "BLM will adopt the updated WAFWA lek definitions" and goes on to state that "BLM would apply buffers to active and pending active leks under Alternatives 3, 4, 5, and 6" where a pending active lek is defined as "a lek with one observation of at least two males in the last 10 years and at least one observation of at least two males more than 10 years ago." The DEIS then applies the following lek buffers to energy development projects:

Section 19.3.1states that the following buffer distances would apply (to leks designated as active or pending active):

- *Infrastructure related to energy development [will have a buffer applied] within 3.1 miles of leks.*
- *Tall structures (e.g., communication or transmission towers, transmission lines) [will have a buffer applied] within 2 miles of leks.*

We appreciate BLM's attempt to have a single, defined set of management statuses to be used range-wide. However, we disagree with the BLM that lek buffers (e.g., 3.1-mile lek buffer applied to energy infrastructure) should apply to both active and pending active leks, as the current Idaho ARMPA states that buffers apply to active leks.

During consultation with BLM on proposed transmission line projects, lek buffers are one of the first environmental constraints to be analyzed. Attempts are made to route projects around HMAs and leks, but this is often difficult as several existing utility corridors overlap with HMAs and are therefore subject to current lek buffers and any future lek buffers applied during the NEPA process during lek survey Active leks in HMAs are easily identified considering their status is well documented at the time of route planning and their future status can be easily predicted given available historic data. Similarly, leks *currently* listed as pending active will also have buffers applied when starting NEPA, and therefore routing constraints are somewhat easily applied.

However, the numerous leks not meeting the new definitions of active or pending active (i.e., inactive, undetermined, pending historical, historical, or new) need only a single observation of 2 males displaying to update their status to pending active, and a new 3.1 mile lek avoidance buffer for energy infrastructure would then be applied. An energy developer can have a viable route for 2 years of development before an inactive lek becomes pending active following a single survey. After the lek buffer becomes mandatory, the entire route could be completely unviable because the developer can no longer re-route the project around the lek.

It is extremely difficult to route a transmission line—infrastructure this Administration has touted as crucial to the clean energy transition—when the definition of lek status can change from one year to the next. This is especially true given that energy projects, unless sited entirely on private land, require an Environmental Assessment or EIS, which can require years of pre-planning and surveys and NEPA review, and potentially years of litigation. BLM has thus created a scenario where all non-active leks must now be treated as potential 3.1-mile avoidance areas due to the lack of uncertainty around their status.

As a solution, we urge BLM to remove the application of lek buffers for pending active leks range wide. If the BLM disagrees, we urge the BLM to consider changing the application of pending active lek buffers to only be applied to "*pending active leks with one observation of at least two males in the last 10 years and at least* ***two*** *observations of at least two males between* ***11 and 20 years ago****."*[Change noted in bold font.] In doing so, lek buffers would then be applied to leks where the two or more qualifying observations are more recent (as

described in the definition in Appendix 4 page 4-9), thus making sure the lek activity is more meaningful and closer related to active.

14) BLM should remove the ability to treat IHMA buffers as PHMA buffers in areas with tripped triggers, as presented in 19.2.2.

We appreciate the BLMs efforts in setting the various buffer distances in Table ID-1, which are reflective of the supporting scientific literature, reports, and plans. However, we disagree with BLM on its statement: "*In areas with tripped triggers, i.e. neighborhood lek clusters for population triggers and fine-scale HAF for habitat triggers, IHMA would be treated as PHMA and PHMA buffers would be applied in NEPA analyses and any associated management decisions.*" Similar to the uncertainty of lek definitions contemplated in the previous comment, treating lek buffers within IHMA as lek buffers within PHMA can cause a sudden, unexpected halt to a planned area when all other factors previously being considered were pointing to a secure, safe routing or energy development location. As such, we urge BLM to keep the buffer distances in Table ID-1 but remove the ability to treat lek buffers in IHMA as PHMA based on tripped triggers.

15) Appendix 19 – Buffer Exception Criteria

a. BLM should modify the current language in the Buffer Exception Criteria in Appendix 19, Section 19.4.1.

In Appendix 19, Section 19.4.1 Buffer Exception Criteria for IHMA and GHMA, we suggest that BLM amend the sentence under this heading to read as follows:

> *"If the project proponent demonstrates to BLM that it is technically or economically impracticable to locate the project outside of the buffer area and impacts are minimized through project siting and design with residual impacts offset by compensatory mitigation to the extent necessary to achieve no net loss of habitat, BLM may approve actions within buffers in IHMA and GHMA."*

This will clarify that this is an alternative to justifiable departures such that BLM may approve actions within standard buffers either through a justifiable departure or through this buffer exception criteria for IHMA and GHMA.

b. New lek buffers should only be applied when the discovery of a new lek or reclassification of a lek occurs prior to the issuance of a ROW grant.

Under any alternative 1-6, once a project is issued a ROW grant, the discovery of a new lek or reclassification of a lek that would otherwise impose new buffers or Required Design Features on the project should not result in imposition of those buffers or Required Design Features. In other words, lek buffers and lek-related Required Design Features should not be applied retroactively to approved projects including subsequent BLM authorizations such as rights-of-way for the project.

LS Power Additional Comments on the 2024 GRSG DRMPA DEIS

No.	DEIS Section/Page	DEIS Provision	Comment
16)	§ 1.1; Introduction, p.1-1	"The BLM's land management plans . . . include . . . actions for managing GRSG habitat on BLM-administered public lands . . . ."	Here and throughout the document, BLM should expressly clarify that BLM's RMP amendments apply only to BLM-administered public lands within designated GRSG habitat. Habitat can occur on BLM land, but if it is not designated, it does not fall within the scope of the plan amendments and would be managed under previous, existing RMPs. See, e.g., 2015 Idaho/SW Montana ARMPA, p.1-1, for the statement that BLM lands not designated as habitat management areas for sage-grouse "will continue to be managed according to the existing, underlying land use plans."
17)	§ 1.4; Planning Area and Decision Area, p.1-5	"The decision area for some alternatives may also include areas new to, but outside the habitat management areas to address potential indirect impacts. . ."	Strike this provision or clarify that (1) the decision area does not extend outside of designated habitat management areas specifically designated on BLM lands and (2) it does not encompass land outside of habitat management areas off of BLM lands. HMAs cross all jurisdictions and BLM has no decision authority outside of the BLM lands nor should the RMPA impose decisions on BLM lands that are not designated HMAs. Impacts can be addressed in the EIS but the spatial scope of the NEPA analysis does not equate to BLM's decision areas where management prescriptions apply.

No.	DEIS Section/Page	DEIS Provision	Comment
18)	§ 1.4; Planning Area and Decision Area, p.1-5	"For non-federal surface lands with underlying split federal mineral estate, only decisions associated with management/development of the underlying federal minerals would be applicable."	Clarify that only decisions associated with development of the underlying federal minerals would be applicable to the immediate surface area disturbed by that development and not to any other nonfederal surface estate overlying federal minerals elsewhere within the project area. Clarify that the decision area is no larger than the HMAs on BLM surface lands and over federal minerals land in only those locations where the federal minerals are developed. By doing so, this will ensure that only the disturbances on BLM surface lands are applicable to counting towards the GRSG disturbance cap, not those disturbances on non-BLM surface areas.
19)	§ 1.5; Planning Criteria, p.1-6	"The RMPA will be limited to making RMP decisions specific to conservation of [designated] GRSG habitats [on BLM lands] . . . ."	Insert bracketed text to avoid suggesting RMP decisions will apply to undesignated sage-grouse habitat on BLM land or on designated HMAs not located on BLM land. Make this clarification throughout the RMPA.
20)	§ 1.6.2; GRSG Issues/ Management Not Considered for Rangewide Amendment, p.1-8	"This RMPA is not reconsidering all existing GRSG management actions in the 2014 and 2015 RMP Amendments and revisions or the 2019 RMP Amendments."	The 2015 ARMPA, Section 2.1, contained the provision that in the event of any discrepancies or inconsistencies with previously approved RMPs, the 2015 decisions would be followed "unless there are more restrictive decisions in the existing plans." Clarify that this "ratchet" of reference back to more restrictive provisions is specifically rejected in this plan so that where there are inconsistencies or discrepancies with previous RMPs, this plan controls or, alternatively, the more lenient decisions among the existing plan and prior plans apply.
21)	§ 2.2.2; Alternative 2, p.2-1	"Alternative 2 is the No Action Alternative . . . ."	This section is confusing. While it is technically correct that the 2019 Amendments are only preliminarily enjoined, that status renders them currently ineffective and thus they cannot be part of the current No Action Alternative because no action on the RMPA would result in application of the 2015 ARMPA and not the 2019 Amendments.

No.	DEIS Section/Page	DEIS Provision	Comment
22)	§ 2.5; Detailed Description of Draft Alternatives, p.2-9	"BLM proposes to adopt the lek definitions published by WAFWA and use them when implementing GRSG management."	Does this mean that lek definitions in place prior to the Record of Decision adopting this approach will become null and void immediately upon issuance of the ROD or will those prior definitions remain in place until leks are resurveyed? In other words, are the new WAFWA lek definitions to be applied retroactively to pre-ROD lek data or only to lek data commencing with the first lekking season following the ROD?
23)	§ 2.5.2; Habitat Management Area Alignments and Associated Major Land Use Allocations, p.2-11	"Management actions that follow are specific to BLM-administered lands."	Clarify that the management actions are specific only to BLM-administered lands that contain designated HMAs.
24)	§ 2.5.2; Habitat Management Area Alignments and Associated Major Land Use Allocations, p.2-11	"If specific language from previous plans is not included in this amendment, it has not been considered for amendment in this effort."	This creates an impossibly complex task for the public to discern whether "specific" language from previous plans is or is not included in this 2024 amendment. If the exact language from a previous plan is not included in the 2024 Plan, does this mean the exact language from previous plan remains in effect even though the general subject matter of that previous, specific language is addressed in this amendment?
25)	§ 2.5.2; Habitat Management Area Alignments and Associated Major Land Use Allocations, Table 2-4, p.2-19	"In the mapped GRSG habitat management areas there may be areas of non-habitat – areas that lack the ecological potential to provide principal habitat components necessary to support GRSG and where conformance with the RMP would not support GRSG conservation.... However indirect and direct impacts to adjacent GRSG populations and their habitats (including potential habitat) still need to be considered when planning and authorizing projects in these non-habitat areas."	In instances where projects are proposed on lands that have been found through field investigation to lack the ecological potential to provide principal habitat components necessary to support GRSG and where conformance with the RMP would not support GRSG conservation, the Project's disturbance should not count towards the BSU's disturbance cap.
26)	§ 2.5.2; Habitat Management Area Alignments and Associated Major Land Use Allocations, Table 2-4, p.2-20	"Indirect and direct impacts to adjacent GRSG populations and their habitats (including potential habitat) still need to be considered in planning and authorizing projects in these non-habitat areas."	While NEPA requires consideration of direct and indirect impacts both in and outside designated habitat, projects should be authorized even when impacts occur since NEPA is only a procedural statute and does not dictate a project level decision even though that decision may be detrimental to sage-grouse habitat.

No.	DEIS Section/Page	DEIS Provision	Comment
27)	§ 2.5.2; Habitat Management Area Alignments and Associated Major Land Use Allocations, Table 2-4, p.2-20	"All management objectives and decisions associated with each management area type can apply [if] . . . project related access through/across GRSG habitat . . . only occurs on existing routes, and the proposed action would not include new roads or upgrades to roads."	This section reads as though management decisions in GHMA on BLM lands would not be permitted if they authorize new routes as part of the proposed action including new roads and upgrades to roads. If this is a correct reading, this provision would prevent, for example, a renewable energy developer from developing an access road on undisturbed lands that would be necessary to access a turbine.
28)	§ 2.5.3; Mitigation, p.2-22	"Compensatory mitigation . . . should be durable . . . and should be completed prior to associated actions occurring."	Clarify how BLM would intend to measure durability. Is it measured at the outset of the mitigation? If so, how can that be measured when sagebrush restoration as an example of mitigation could take decades before it can be determined whether any initial restoration effort is durable? Additionally, compensatory mitigation could be in the form of in lieu fee payments that have no "durability." Only when that money is converted to a project is there a question of durability, but the payment of the fee is immediate. Also, how can compensatory mitigation be completed prior to associated actions occurring if those associated actions refer to development of a project? In other words, how could compensatory mitigation be completed on sagebrush restoration prior to issuance of a Notice To Proceed? See, for example, Table 2-5 at page 2-23 stating that "Restoration of most sagebrush systems can take decades."
29)	§ 2.5.8; Table 2-10, p.2-93		BLM should fully explain its different approach to GHMA in Idaho compared to other states in the Great Basin to withstand Administrative Procedure Act scrutiny.
30)	§ 2.5.13; Adaptive Management, p.2-121		Clarify that an "initial causal factor analysis" is not equal to a management prescription.

No.	DEIS Section/Page	DEIS Provision	Comment
31)	Table 2-15; Comparison of Alternatives, Adaptive Management, p.2-125	Under Alternatives 3 and 4, "Existing permitted activities can continue unless those activities are causing mortality to GRSG or direct loss or degradation of occupied GRSG habitat."	Once an activity has been permitted, BLM should not change the terms and conditions of that existing permitted activity if it is found to cause sage-grouse mortality or degradation of habitat. Those potential eventualities would have been analyzed in the NEPA analysis supporting the existing permits and considered in the issuance of those permits. Retroactive amendment of existing permits based on foreseeable future conditions analyzed prior to permit issuance would significantly destabilize permitted activities across all sage-grouse habitat and negatively affect a project proponent's ability to obtain financing for a project that could be retroactively changed once permitted.
32)	§ 2.5.13; Adaptive Management, Table -5, p.2-126	Alternatives 3 and 4, "Exceptions to limitations imposed for exceeding thresholds include renewal of existing activities that require a permit if . . . it does not result in known impacts to habitats or populations."	If the permit was issued with the knowledge and analysis that the project would impact habitat or populations, then renewal of that project without any changes in the project's scope or duration should not be denied. With no changes in environmental impacts and thus no additional NEPA requirements, renewal should be automatic assuming the project proponent has complied with the BLM's regulations and terms and conditions of BLM's existing authorizations. Otherwise, this provision means that no project that impacts sage-grouse habitat and populations can be renewed.
33)	§ 3.12.2; BLM Land and Resource Use Revenue, p.3-48		BLM should update the fiscal year 2021 baseline information regarding operating and pending wind projects on public lands in the analysis area (see Appx. 13, Table 3-9, p.13-3-22). The 2021 data is insufficient to establish an accurate baseline for the analysis.
34)	§ 4.2.1; Nature and Types of Effects, p.4-1	"Habitat management and designations impact GRSG by influencing the level of activities and associated disturbances that can occur in [BLM-designated] GRSG habitat [on BLM lands]."	Insert bracketed language.

No.	DEIS Section/Page	DEIS Provision	Comment
35)	§ 4.10.2; Non-Energy Saleable and Leasable Minerals—Alternative 1, p.4-97		Clarify how this draft RMPA addresses the notion of "key habitat." Under the 2015 ARMPA, key habitat was confusingly portrayed as both outside BLM's decision area, and also subject to incorporation of lek buffers and RDFs even though mapped key habitat could completely lack habitat due to, for instance, a fire. "Key habitat" is not defined in the Glossary. The draft RMPA should disavow any application of management decisions to anything other than designated HMAs on BLM land and specifically jettison the concept of key habitat as a decision area.
36)	§ 4.11.7; Alternative 5, p.4-125	"BLM would evaluate parcels identified in Expressions of Interest within GRSG habitat management areas giving preference to lands that would not result in impairing habitat suitability and proper function."	This approach creates de facto ACECs despite Alternative 5's disclaimer that no ACECs would be managed.
37)	Glossary, (no page #)		In the RMPA, the phrase "occupied habitat" is used. The word "occupied" is not defined in the Glossary. It is unclear whether this means occupied areas in the sense of an occupied lek defined in the 2015 ARMPAs or some other definition of occupied habitat.
38)	Glossary, p.Glossary-5	"Lek."	The definition of a lek contains no status definitions. Add or cross-reference Appx. 4, status definitions.
39)	Glossary, p.Glossary-5	"An important factor in lek location is proximity to and configuration and abundance of nesting habitats."	It is unclear whether a lek is defined by its proximity to and configuration and abundance of nesting habitat or vice versa. This sentence does not seem to constitute a definition of a lek. Also see *Cook, et al.* (2022), incorporating spatial limitations on a lek as not more than 200 meters wide.
40)	Glossary, p.Glossary-5	"Mitigation. Includes specific means, measures, or practices that could reduce, avoid, or eliminate adverse impacts."	Delete "reduce, avoid, or eliminate" and insert the mitigation hierarchy language from NEPA regulations to "avoid, minimize, or mitigate."

No.	DEIS Section/Page	DEIS Provision	Comment
41)	Glossary, p.Glossary-6	"Priority Habitat Management Areas. Areas prioritized for managing Greater Sage-Grouse populations (management is only applicable to actions on BLM-administered lands)."	Add to the parenthetical phrase "within designated PHMA."
42)	Glossary, p.Glossary-6	"Required Design Features."	Add the second and third sentences from the definition of "Required Design Features" found in the 2015 Idaho ARMPA. These sentences properly recognize that RDFs cannot be clearly assessed until the project begins and, because of site-specific circumstances, some RDFs may not apply to some projects.
43)	Glossary, p.Glossary-7	"Stipulation (Oil and Gas)."	The Glossary omits the definition for general stipulations as was found in the 2015 ARMPA. Insert a definition for general stipulations because stipulations can apply to projects outside the context of oil and gas.
44)	Glossary, p.Glossary-9	"Withdrawal."	Incorporate the concepts found within the definition of "Withdrawal" in the 2015 ARMPA. The proposed definition does not capture other important aspects of the term such as withdrawal from entry for settlement, sales, location, or other purposes.
45)	Glossary, (no page #)		Consider including a definition of "technically and economically feasible" as that term is used in NEPA (Pub. L. 118-5 (June 3, 2023) amending NEPA § 102(2)) and from the perspective of a project proponent who is in the best and only position to determine the technical and economic feasibility of action alternatives.
46)	Appendix 2, All Tables		Throughout these Tables, clarify whether the third column entitled "Potential for Change in 2023 Plan" or "No change proposed" references the 2019 column or the 2015 column. Without this clarification, the Tables are potentially very misleading.
47)	Appendix 2, Table 1: Changes in Management, p.2-ID-8	MD SSS 8	See comments above regarding key habitat.

No.	DEIS Section/Page	DEIS Provision	Comment
48)	Appendix 2, Table 1: Changes in Management, p.2-ID-9	MD SSS 13	Here and in MD SSS 8, BLM proposes to annually update key habitat maps and use them to maintain habitat information. If "key habitat" is not expunged from the DEIS, BLM must emphasize that these maps are not to be used for management decisions or incorporation of lek buffers or Required Design Features in the projects.
49)	Appendix 2, Table 1: Changes in Management, p.2-ID-16	MD SSS 32	LS Power supports the consideration of RDFs as BMPs in GHMA.
50)	Appendix 2, Table 11, p.2-NVCA-28	MD SSS 7: "Support the establishment of ambient baseline noise levels for leks in PHMAs and GHMAs."	No change is proposed for this 2015 provision. This invites questions as to when the noise levels will be established since it has been nine years. Second, what will those established ambient noise levels be? Wind and transmission developers cannot plan projects around leks to avoid unknown noise standards.
51)	Appendix 2, Table 11, p.2-NVCA-28	MD SSS 8: "The [right-of-way] proponent will use the services of a qualified biologist approved by BLM to conduct surveys for GRSG breeding activity during the GRSG breeding season before project activities begin."	Under Alternatives 4, 5, and 6, there will be no change to this 2015 provision. BLM should clarify how a survey before project activity begins will be used in the new WAFWA definition of an active lek that requires two active breeding seasons in the last ten years. If, as MD SSS 8 requires, a biologist locates a new lek, a single season survey will provide no meaningful information since it cannot be an "active lek" under the WAFWA definition. And, in the absence of at least two valid observations within the ten-year period prior to the activity, the location does not meet the definition of a "lek" under the WAFWA proposed definition contained in Appendix 4 at page 4-3. In addition, the BLM should clarify what constitutes "beginning project activities." We support replacing the language "before project activities begin" with "prior to the issuance of the ROW grant", which would clarify that the evaluation phase concludes with ROW grant issuance and would prevent harm to valid existing rights.

No.	DEIS Section/Page	DEIS Provision	
52)	Appendix 2, Table 11, p.2-NVCA-74	2019 BLM GRSG Approved RMP Amendments for Wind Energy Development.	LS Power encourages BLM to select the 2019 ARMPA provisions for utility-scale commercial wind facilities in PHMA and GHMA (MD RE 3; MD RE 5) except where potential changes in the 2023 Plan would be more conducive to transmission and renewable energy development.
53)	Appendix 3, § 3.2, Idaho, p.3-3	"BLM used the State of Idaho's final draft for HMA designations for Alternative 5 and 6."	Why did BLM not use the State's final draft for HMA designations for Alternatives 3 and 4? In addition, there should be a provision here and for other states requiring BLM to ground-truth mapping at the project level and incorporate habitat mapping amendments as dictated by on-the-ground habitat conditions.
54)	Appendix 4, Lek Status Definition Comparison, p.4-4	"Active, WAFWA definition: A lek that has more than two or more males counted in two or more lek counts within the last ten years."	The WAFWA active lek definition in Appendix 4, page 4-4 contains a transcription error. The correct definition of "Active" by WAFWA is "A lek that has 2 or more males counted during two or more **years** within the last 10 years." This definition is taken from page 15 of the "Greater Sage-grouse Range-wide Population Monitoring Guidelines" re-issued by WAFWA in 2023 with a note on page 2 stating "This is a revised version of this document released to correct a typographical error in the definition of an "active" lek on page 15." : https://wafwa.org/wp-content/uploads/2023/11/WAFWA-SAGR-Monitoring-Guidelines-Part-A-20230908.pdf
55)	Appendix 4, Lek Status Definition Comparison, p.4-7	"Lek complex, WAFWA definition: Considered an outmoded definition."	Clarify whether this is considered a definition under the RMPA or not. It appears that it is not since it is "outmoded," but clarify.
56)	Appendix 10, Chapter 4, Methodology, Assumptions, Indicators, and Summary of Environmental Consequences, § 10.1.3 Analytical Assumptions, p.10-2		The analytical assumptions should include a statement that BLM respects valid existing rights and that it will verify on-the-ground sage-grouse habitat in response to project applications. Reiterate that BLM does not intend to manage non-federal surface acres above federal minerals that are not developed for the project immediately below those surface acres. The assumptions at § 10.2.1 should also include application of management decisions only to mapped HMAs on BLM surface lands.

No.	DEIS Section/Page	DEIS Provision	Comment
57)	Appendix 12, § 12.10, p.12-41	"The planning area is only within HMAs."	This assumption that the planning area is only within HMAs is contradicted by the definition of the planning area presented at the beginning of the DEIS in § 1.4 at p.1-5 in which the planning area is defined as the geographic area within which the BLM will make decisions during the planning effort including all lands regardless of jurisdiction. BLM should clarify in § 1.4 that the planning area is only within HMAs, as defined here.
58)	Appendix 18, § 18.3.4, p.18-8	"Under Alternatives 1, 2, 4, 5, and 5a, actions will be taken to maintain and enhance sagebrush habitats with the intent of conserving sage-grouse populations."	There is no Alternative 5a described in the Alternatives at Chapter 2, § 2.2.
59)	Appendix 19, § 19.1.1, Lek Definitions, p.19-1		This section accurately describes the Idaho Department of Fish & Game approach to occupied and unoccupied leks. The approach was biased in favor of finding a lek to be occupied because once a lek is assigned the status of "occupied," that status remains in place for at least four more years. That status could be changed only after five consecutive years of data showing the lek to be unoccupied. Consequently, if in any of the four years after the lek was determined to be occupied, the Idaho Department of Fish & Game skipped a year by not observing that lek, the "clock" is reset requiring a new continuous five-year period before the occupied status could be changed to unoccupied. This bias could be reversed by determining that an unoccupied lek would retain that status until it is shown that the lek was occupied for the next four years and if data during a breeding season is missing then the unoccupied status would continue until such time that a full five-year continuous determination of occupancy could be documented. Having said that, any new lek definitions adopted by BLM should eliminate bias either in favor of active or inactive lek status.

60)	Appendix 19, § 19.2.1, Lek Definitions, p.19-2	"BLM will rely on the lek status determinations of the Idaho Department of Fish & Game based on their most recent lek data."	In order to prevent confusion about which set of definitions is applicable, this language should be revised to read: "BLM will rely on the data collected by the Idaho Department of Fish & Game based on their most recent lek data." This reflects that the WAFWA active and pending active definitions would govern the determination of lek status. In addition, IDFG updated lek definitions in 2023, which includes the definition of "new" and "undetermined" leks. BLM should clarify that IDFG's definition of "new" and "Undetermined" leks do not meet the definition of "active" or "pending active" and no buffer is to be applied.
61)	Appendix 19, § 19.2.1, Lek Definitions, p.19-2	"An active lek is a lek that has more than two or more males counted during two or more lek counts within the last 10 years."	The WAFWA active lek definition in Appendix 19, page 19-2 contains a transcription error. The correct definition of "Active" by WAFWA is "A lek that has 2 or more males counted during two or more **years** within the last 10 years." This definition is taken from page 15 of the "Greater Sage-grouse Range-wide Population Monitoring Guidelines" re-issued by WAFWA in 2023 with a note on page 2 stating "This is a revised version of this document released to correct a typographical error in the definition of an "active" lek on page 15." : https://wafwa.org/wp-content/uploads/2023/11/WAFWA-SAGR-Monitoring-Guidelines-Part-A-20230908.pdf
62)	Appendix 19, § 19.2.1, Lek Definitions, p.19-2	"Under Alternatives 3, 4, and 6, any *active* and *pending active* leks would be evaluated whereas under Alternative 5, lek buffers would only apply to *active* and *pending active* leks within HMA."	LS Power strongly supports this Alternative 5 approach. Explain the basis for the different approaches and justify the Alternative 5 approach of not applying lek buffers around active or pending active leks located outside an HMA. Regardless of the approach taken by Alternatives 3, 4, and 6 and that of Alternative 5, clarify that lek buffers only apply to BLM actions within HMA regardless of the lek location such that multiple BLM parcels located within a lek buffer would be differentiated so that the RMPA only applies to those parcels on which (1) designated HMA exists and (2) an action is being taken on that parcel.

No.	DEIS Section/Page	DEIS Provision	Comment
63)	Appendix 19, § 19.4.1, Applying Lek Buffer-Distances When Approving Actions, p.19-5	"Evaluate impacts on active and pending active leks (Cook, et al. 2022; Appendix 4) within HMA from actions requiring NEPA analysis."	This sentence is unnecessarily vague because it is subject to different interpretations. It is unclear whether the phrase "within HMA" modifies "impacts" or "leks." Based on language in § 19.2.1, it appears that the proper interpretation is for "within HMA" to modify "leks" such that NEPA analysis will only apply to those leks located within an HMA. However, as noted, this sentence could be read to mean that the NEPA analysis will evaluate impacts within an HMA regardless of the location of the lek as being in an HMA or outside an HMA or on or off BLM lands.
64)	Appendix 19, § 19.4.1, Applying Lek Buffer-Distances When Approving Actions, p.19-6	"Justifiable Departures—justifiable departures to decrease or increase from these distances, based on local data, best available science, landscape features, and other listing protections . . . may be appropriate for determining activity impacts."	Delete "activity impacts" and insert "whether a proposed action should be constrained by lek buffers." That is the purpose of the justifiable departure to decrease or increase the lek buffer. It is not to determine impacts under NEPA. It is to determine which activities can or cannot be authorized within an otherwise applicable lek buffer under FLPMA.
65)	Appendix 19, § 19.4.1, Buffer Exception Criteria for IHMA and GHMA, p.19-7		The BLM should add a Buffer Exception Criteria that states "BLM may approve actions within certain buffer areas in instances where such areas have been found through field investigation to lack the ecological potential to provide principal habitat components necessary to support GRSG and where conformance with the RMP would not support GRSG conservation.

COUNTY COMMISSIONERS
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June 13, 2024

Greater Sage-grouse Land Use Plan Amendments EIS Comments
ATTN: HQ GRSG RMPA
U.S. Bureau of Land Management - Utah State Office
440 West 200 South #500
Salt Lake City, UT 84101

Submitted via Federal eRulemaking Portal
Portal: https://eplanning.blm.gov/eplanning-ui/project/2016719/510

RE: Notice of Availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning
(Federal Register/Vol.89, No. 52/Friday, March 15, 2024/Notices)

Dear Ms. Pat Deibert:

On behalf of the Weston County Board of Commissioners (County), please accept this letter as comments for the Bureau of Land Management's (BLM) Greater Sage-grouse (GrSG) Draft Resource Management Plan Amendment (DRMPA) and Draft Environmental Impact Statement (DEIS). The management of GrSG continues to be of great importance to us and working with federal agencies to pursue a balance between Sage-grouse conservation, multiple use of public lands, energy development and the protection of private property is critical to the long-term health of our County and the State of Wyoming.

As a member of the Wyoming County Commissioners Association (WCCA), Weston County has been actively engaged in the GrSG RMPA process, today and historically during the 2015 and 2019 plan amendments. In addition, we have participated in the Governor's Executive Order process including the development of Wyoming Executive Order 2015-4 and 2017-2, and most recently the updated Executive Order 2019-3. The County has demonstrated through numerous efforts that we have a vested interest in proactive management of GrSG to prevent a threatened or endangered listing under the Endangered Species Act (ESA).

In Wyoming, counties serve as a legal arm of the state entrusted with carrying out statutory and regulatory goals at the local level. Counties operate at the forefront to ensure our communities are economically vibrant, safe, and healthy places to live and work. Wyoming counties serve as partners and co-regulators of the 18.4 million acres of BLM surface lands and 42.9 million acres of federal mineral estate that fall within our jurisdictional boundaries and uniquely contain varying percentages of federal, state, and private land, which need thoughtful management.

Weston County is unique in that approximately twenty percent (20%) of the land is federally owned, with the largest portions being held by the USFS at 15% followed by the BLM at 5%. The County has taken part in federal land planning decisions in the past and remains committed to engaging in this plan amendment process to ensure that any decisions made by BLM will be compatible with and protect our custom, culture, economic and community stability with our quality of life as the overarching goal.

Furthermore, as co-regulators, Weston County has prepared the Weston County Natural Resource Management Plan dated May 27, 2022 (County Plan)[1] to serve as the basis for communicating and coordinating with the federal government and its agencies on land and natural resource management issues. Wyo. Stat. § 18-5-208(b). Communication, coordination, and collaboration with the BLM is vital, especially where significant BLM land and minerals exists, and management decisions can significantly impact the regulatory framework, customs, culture, and socioeconomics of our counties.

As partners, Counties work diligently to support the work of our federal land managers to overcome shared challenges and achieve mutual goals. Our counties actively participate with Wyoming BLM field offices and the Wyoming State BLM office on National Environmental Policy Act (NEPA) projects, trainings and presentations, and special initiatives. This proposed Plan Amendment is no exception, as Wyoming counties participated as cooperating agencies in BLM meetings and provided administrative draft comments, where allowed.

In response to this DEIS, Weston County submits the following detailed comments for BLM's consideration specific to this plan amendment:

I. General

- State of Wyoming – Weston County endorses, and incorporates by reference, comments submitted by the State of Wyoming.

- Wyoming County Commissioners Association (WCCA) – Weston County endorses, and incorporates by reference, comments submitted by WCCA.

II. Support for the Wyoming GrSG Executive Order 2019-3 (EO) and State Alternative

Weston County has gone on record numerous times, strongly supporting BLM's alignment with the Wyoming EO to the greatest extent possible. Weston County believes the steps taken by the BLM in the past to align with the EO is critical to successful population and habitat management. Further, coordinating and combining resources between the state, local governments and federal agencies ensures the success of long-term management approaches that benefit the species.

The creation of the Sage-grouse Implementation Team (SGIT), an on-going process occurring between a cross section of stakeholders representing a multi-jurisdictional, cross-governmental and citizen-inclusive collaborative working group, focused on developing a satisfactory management strategy to protect GrSG and its habitat. The regulatory framework ultimately developed by SGIT and incorporated into the Wyoming EO resulted in the support of the United States Fish and Wildlife Service (USFWS) as a regulatory mechanism that would in fact protect long-term viability of Sage-grouse habitat and Sage-grouse populations; thereby, avoiding a listing under the ESA.

Wyoming has worked diligently to develop a framework that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. Many of the issues BLM is now readdressing in this latest series of NEPA analysis includes: Priority Habitat Management Area (PHMA) mapping, habitat objectives, approaches to minimizing surface disturbance in PHMA, effects of livestock grazing, mitigation strategies including compensatory mitigation, mitigation recommendations for fluid mineral development within PHMA and General Habitat Management Area (GHMA), wild horse and burro management, adaptive management prescriptions and strategies for short-and-long term monitoring, which are all addressed in depth by the Wyoming EO.

BLM should continue to join Wyoming in supporting this EO and the regulatory framework as being the most effective for protecting the species and its habitat and allowing for a flexible strategy addressing changing conditions in a timely manner.

To this point, the State of Wyoming submitted a proposed State Alternative to be analyzed in this DEIS, which provided consistency with the EO. BLM failed to incorporate that proposed state alternative in the analysis as stating it was submitted to BLM too late in the process to be included as a stand-alone alternative. The County strongly encourages BLM to include or acknowledge the State's Alternative in the Final EIS with a sufficient explanation as to why it was not addressed in the analysis to date.

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[1] Weston County Natural Resource Management Plan dated March 27, 2022. WestonCounty_NRMP_May2022_Final.pdf

III. Cooperating Agency Process

The cooperating agency process was not without disagreement or frustration as our opportunity to engage with the federal agency, as outlined by the Counsel of Environmental Quality's (CEQ) NEPA regulations and was written into our MOUs, was ignored by the BLM. When these conflicts arose, Wyoming counties did everything in our power, and in accordance with our MOUs, to raise concerns expeditiously to resolve issues, as expressed in our candid conversations and frank letters.

While the DRMPA expresses numerous successes for cooperation throughout the process, there were certainly places that could have been improved. We also realize that the BLM is generically referred to, however, it must be clarified that this process was not run by the Wyoming state office but rather BLM Headquarters. This enlarged scale may be partly to blame for process failures during the cooperating agency process.

Unfortunately, Wyoming counties were powerless in directing how the BLM ran its cooperating agency process and meaningful opportunities for participation in the amendment process were far and few between. In an attempt to remedy this problem, Wyoming counties verbally requested improvements and sent numerous letters asking the BLM to improve the cooperating agency process and work in good faith with cooperators.

Our first letter in June of 2023 asked the BLM to develop a regular schedule of meetings (previous meetings were sprung on cooperators with minimal notice), to provide documents to review before the meetings, and to have the individuals at the BLM actually in charge of drafting the documents in the meetings. BLM did set up regular meetings and invited members of BLM HQ to participate, but documents were not shared with cooperators in advance of ,or after, the meetings.

Our second letter in August of 2023 requested the BLM follow its MOU which detailed how cooperators would be assisting in the determination of the purpose and need, development of the alternatives and management prescriptions, along with an estimation of effects of implementing each alternative. Up to this point, cooperators had only been used as editors of small portions of the management prescription tables (never impact analysis), without having the benefit of previously discussing the management prescriptions in a cooperating agency meeting.

The Western Governors' Association (WGA) wrote a similar letter to the BLM outlining concerns that it had with the mapping process, the lack of inclusion of state plans as separate alternatives, and inconsistent information shared to members of its taskforce. This letter prompted the BLM to engage the WGA Taskforce in cooperating agency meetings. While a positive development for Taskforce members, counties serving as cooperators were not invited. Additionally, it became clear that the BLM was treating the Taskforce differently as it began to share many of the documents requested by counties with the Taskforce, albeit with a disclaimer "that these documents not be shared beyond the SG Task Force."

Our third letter in December of 2023 expressed our exasperation of being given an administrative draft, most of which we had never seen or discussed, to review over the Christmas Holiday. This was the first time that any information concerning the environmental or socio-economic impacts from the range of alternatives was provided to cooperators. Unfortunately, the BLM administrative draft was largely incomplete, inconsistent, and had several sections that were simply incorrect. Specifically, it lacked impact analysis for an entire alternative, it presented erroneous acreage figures and tables for Wyoming, and was woefully inaccurate in its description of socioeconomic impacts from fluid mineral leasing and development.

The BLM acknowledged these errors and promised Wyoming cooperating counties a second review of an updated draft of the socioeconomic sections before the release of the public draft. The BLM failed to uphold this promise and cooperators were never shown updated socioeconomic information before the draft went public.

IV. Consistency with the Weston County Natural Resource Management Plan

The Federal Land Policy and Management Act (FLPMA), which governs the BLM, provides detailed requirements for "coordination" and "consistency" with local government land use plans. FLPMA states:

> To the extent practical, the BLM must stay apprised of local land use plans. The BLM must assure that local land use plans germane to the development of BLM land use plans are given consideration. To the extent practical, the BLM must assist in resolving inconsistencies between local and BLM land use plans. The BLM must provide for the

meaningful involvement of local governments in the development of BLM land use programs, regulations, and decisions. 43 U.S.C. § 1712(c)(9).

There is no indication in the DEIS that BLM was apprised of local land use plans or assured that those plans were given consideration as required by FLMPA. Nowhere in the DRMPA does the BLM even quantify the local plans within the amendment area, not to mention, assure those plans are given consideration. At a minimum, the BLM should include a list of the local land use plans that are within the amendment boundary. For further assistance, Weston County has attached its Weston County Natural Resource Natural Resource Plan, dated May 27, 2022, in its entirety for your consideration.

FLPMA also requires that within the environmental consequences section of an EIS, the BLM include a discussion of all "[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned." 40 C.F.R. § 1502.16(a)(5). Further, where any inconsistency exists, the BLM is required to provide a statement describing "the extent to which the agency would reconcile its proposed action with the plan or law." 40 C.F.R. § 1506.2(d). An RMP may be inconsistent with local plans only where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and regulations applicable to public lands. *Id.*; 43 C.F.R. § 1610.3-2(a).

There is no discussion of possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned. Not only does this discussion concern local land use plans, but the BLM must also discuss the conflicts with its own mandates and laws. Specifically, it should discuss the obvious conflicts present in Alternative 3 with its multiple use and sustained yield mandate.

The BLM seems to suggest it does not need to do additional consistency review when it states on page ES-12: "Some counties identified their preference for management actions from one alternative or another. It is important to note that these preferences did not specifically cite state or county plan, program, or policy language."

This statement is false and should be removed from the DRMPA. Counties and the State of Wyoming both provided verbal and written comments and identified preferences of management actions based on the State's EO and county plans, programs, and policies. To the extent that additional citation or specificity was desired, the BLM should have asked for it and provided an opportunity for cooperators to provide it.

The DEIS rightfully acknowledges on page 1-12 that "BLM RMPs be consistent with officially approved or adopted resource-related plans of other Federal, State, local, and Tribal governments and policies and programs contained therein, to the extent that they are consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands." However, the DEIS does not address inconsistencies with local plans but instead, claims that the BLM will identify inconsistencies in the Final EIS after receiving comments from state and local government agencies.

Weston County believes that the BLM's approach of waiting until the final stage to address inconsistencies in the EIS is flawed. This delay prevents state and local government agencies from providing input during the drafting phase, which could have led to substantive comments that might alter the project's components and subsequent analyses. A federal agency should not address consistency solely by responding to concerns raised through comments. Instead, the BLM should have taken an active approach in identifying inconsistencies and addressing them in the DEIS. It is clear that the process by which BLM included a thorough consistency review of the Weston County local natural resource plan fell far short of adequate and examples of specific inconsistencies will be detailed in this letter below.

IV. Disturbance Caps

The County recognizes the importance and necessity of establishing appropriate disturbance caps to ensure that disturbance to an area does not exceed tolerance levels of the GrSG. The Wyoming State Legislature, federal, state and local agencies, industries, conservation organizations, and landowners have dedicated significant time and resources to conserve GrSG populations in the State. We have shown the capacity and authority to protect and manage the species and its habitats on all lands by establishing oversight mechanisms and implementing protection measures, including developing a disturbance cap using the Density Disturbance Calculation Tool (DDCT). The DDCT establishes a disturbance cap of 5% for suitable GrSG habitat per an average of 640 acres over the entire DDCT assessment area.

To align with the State's EO for GrSG management strategies and to facilitate prompt calculations of disturbance areas, the County suggests that Wyoming be exempt from the 3% HAF fine scale disturbance cap, regardless of the chosen alternative under the EIS.

While the BLM would still be able to gather and quantify whatever disturbance data it chooses, the 3% HAF fine scale disturbance cap should not be another disturbance calculator for permit authorization.

Currently, the disturbance levels in Wyoming, including those from fire and agriculture, are well below the 3% cap, making the requirement to meet this cap largely redundant and an inefficient use of time. Moreover, since the 3% HAF fine scale disturbance cap overlooks disturbances from fire and agriculture, which the DDCT includes, utilizing the DDCT for calculating the disturbance cap offers a more inclusive and simpler approach.

As stated earlier, the County supports the Wyoming EO including the utilization of the 5% surface disturbance cap along with the DDCT process, which has proven to be a sufficient management tool of surface disturbing activity within PHMA (core) habitat.

Additionally, the introduction of two disturbance caps could eventually lead to scenarios where one cap is met but the other is exceeded. The DEIS lacks clarity on how the BLM would manage such situations, potentially opening the door to disputes and outside legal challenges. Weston County is concerned that any perceived discrepancy between the two disturbance calculations could fuel litigation from parties with the intent on halting the permit process. Clarity is key.

If the BLM proceeds with dual disturbance caps, the County would expect the agency to honor its verbal commitment made at the SGIT public meeting on May 29th, 2024, to engage with the State of Wyoming when discrepancies between disturbance caps arise.

Ultimately, by adhering to the established DDCT 5% disturbance cap, the BLM would not only effectively safeguard the habitat of the GrSG from excessive disturbance but also circumvent unnecessary project delays that could stem from additional coordination and potential litigation.

V. Grazing Management Objectives

Agriculture and livestock production in the County is necessary for the economy, its tax base, and the livelihood of the ranching/farming businesses and related industries. It is also vital to the well-being and continued health of natural resources on federal, state, and private lands. The range production of livestock and livestock grazing are management tools that are used to maintain and enhance the rangeland resource, which benefits watersheds, wildlife, water quality, and recreation, as well as providing needed forage for sustaining livestock production and wildlife habitat. Livestock grazing has been a major industry in Weston County since early settlement and continues to be a vital part of the custom and culture of the County as well as an economic driver.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 152-153 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

8.2.3 Livestock Grazing Resource Management Objective:

A. Livestock grazing is maintained as a viable major component of the economy, custom, and culture of Weston County.

B. Weston County is consulted early in the scoping process whenever a proposed decision will impact grazing, local agriculture producers, or the economy.

C. The full amount of animal unit months on Bureau of Land Management and U.S. Forest Service Lands within Weston County are available.

8.2.4 Livestock Grazing Priority Statements:

1. Federal grazing allotments that are not officially closed or not actively being used shall be grazed.
2. Federal agencies should recognize locally led and coordinated resource management planning to resolve management conflicts and to ensure involvement of all interests.
3. Federal agencies should utilize rangeland standards and guidelines that are scientifically proven and peer reviewed.
4. Federal agency should not restrict the development of livestock water or other rangeland improvements.
5. Federal agencies should work cooperatively with the local ranchers and other interested parties to address resource concerns on a site-specific basis.
6. Federal agencies should facilitate the use of prescribed fire and other approved methods to manage sagebrush, control weeds and tree encroachment, and to enhance, maintain, or increase current grazing levels.

7. Any decision to end livestock grazing must be reported to Congress, and the Bureau of Land Management must revise its land use plan to reflect the elimination of grazing, and applicable executive orders must be modified.
8. Weston County requests cooperating agency status with respect to amendments or revisions of land use plans, activity plans, or allotment management plans.
9. Livestock grazing management decisions shall be made based on the best available scientific information that is applicable to the rangeland resources in Weston County.
10. Federal agencies should support livestock grazing where appropriate on federally owned and operated lands as an integral part of habitat management.

In addition, Weston County encourages BLM to be consistent with the BLM Land Health Standards LHS) and specifically Standard 4 which addresses special status species management (SSS). Furthermore, the management prescriptions pertaining to livestock grazing identified in Chapter 2 (page 2-104, Table 2-12) of the DEIS should be made consistent in Chapter 4 and throughout the entirety of the document.

Specific to Adaptive Management (AM) and grazing in Alternatives 3-6, BLM has removed livestock grazing from the narrative and embedded it in the alternatives table in Chapter 2. The language in the alternatives table for AM is not consistent with current BLM rules and regulations, nor is it consistent with the Alternatives for Livestock Grazing in Chapter 2.

BLM should allow for grazing to be included in the AM process and be consistent with existing alternative language. BLM uses the terms "causal" and "contributing factors" incorrectly. Livestock grazing must be identified as a significant causal factor for LHS SSS before any modifications occur to a livestock grazing permits or leases. The County requests that the following language be considered in the alternatives: Specific to GrSG habitat, manage livestock grazing in a manner that 1) meets or makes progress toward meeting the Land Health Standard for special status species, and applies the guideline that addresses "restoring, maintaining, or enhancing habitats of...special status species to promote their conservation." (43 CFR Part 4180.2(e)(9))

Moreover, under Alternative 3, BLM analyzed for a "no grazing" alternative for all states stating "...Because PHMA would be unavailable for livestock grazing, no overarching livestock grazing objective would be needed." This alternative is economically and technically unfeasible to implement as it is in violation of the Taylor Grazing Act. The most appropriate action, as identified by the CEQ NEPA Regulations, would have been for BLM to consider it and eliminate it from further analysis as it does not meet the standard of alternatives that should be analyzed as "technically or economically" feasible. The County is strongly opposed to a "no grazing alternative" in any form.

Regarding fencing, the County generally supports wildlife friendly fencing; however, BLM must coordinate with the applicable grazing lessees should the removal of fencing be considered as those decisions could impact grazing allotments and management of the resource. Finally, any changes in grazing management should consider effects to the adjoining private or state lands as this could impact grazing management practices.

As demonstrated, agriculture production and livestock grazing are significant for the Counties. Not only do they provide an important tax base, the industry is a historical part of the local custom and culture. In the preferred alternative, the County supports the maximum amount of animal unit months (AUMs) being available for livestock grazing on BLM lands in PHMA and GHMA.

VI. Mitigation

Wyoming remains committed to working with its federal partners to develop a mitigation strategy that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. While BLM must adhere to its mitigation hierarchy (avoid, minimize, rectify, reduce, compensate), the County encourages the federal agency to work with the State of Wyoming by following the well-founded principles in the EO regarding adaptive management and the mitigation framework which includes steps for requiring compensatory mitigation. The adaptive management framework considers management strategies for short-and-long term monitoring that are most effective for protecting the species and its habitat while allowing for a flexible strategy addressing changing conditions in a timely manner and provides regulatory certainty for all parties involved.

VII. Private Property Rights

As stated earlier, Weston County is rich in federal resources as our lands are comprised of approximately twenty percent (20%) of the land in Weston County is federally owned and a significant percentage of lands that are privately held. Rangeland used by livestock and agricultural producers continues to be the dominant land use and federal agencies should consider the effects their decisions will have on neighboring private lands.

Furthermore, access to, or restrictions from, crossing federal, state, or county managed lands should not entail encumbrances or constraints on private property. Private property rights are the cornerstone of our County and must be protected to ensure that our

continued customs and culture remain intact. When an agency decision or proposed action will have a negative impact to the current use of neighboring private lands, that federal undertaking may not be supported by the County.
For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Page 29, 34 and 41 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

3.1.6 Land Use Resource Management Objective:

A. The basis for management of all public lands within Weston County is multiple-use management and the management limitations identified in the land management agencies' Resource Management Plan or Land Use Plan.

3.1.7 Land Use Priority Statements:

1. Federal agencies should conduct any National Environmental Policy Act analysis using multiple-use principles that take into consideration all resources.
2. Federal agencies should consider the affects their decisions will make to neighboring private and state lands within Weston County.
3. When an agency decision or proposed alternative will have a negative impact to the current use of neighboring lands, that proposed decision or alternative is not supported by Weston County.
4. Federal agencies should coordinate with and accommodate reclamation needs of neighboring landowners whenever a project will affect adjacent lands.

3.2.3 Transportation and Access Resource Management Objective:

1. Private property rights are protected in Weston County while facilitating rights of access.

3.2.4 Transportation and Access Priority Statements:

1. Legal public access to the federal lands for all beneficial uses should be supported as long as it does not infringe on private property rights.

3.3.4 Special Management Areas Priority Statements:

1. Weston County supports the continued private ownership of land in the County, recognizing the Nation's need for domestic sources of minerals, energy, timber, food, and fiber.

Weston County is particularly concerned about the failure of the DRMPA from analyzing the effects on neighboring state and private lands in the analysis area. Whether described as adjacency effects or cumulative effects, in a state where the BLM manages approximately 18 million surface acres and 41 million subsurface acers (66% of the state), there are substantial impacts to private and state lands across the decision area.
Management and ownership patterns lack uniformity creating a complex and interwoven mix of state, private, and federal minerals that are often "coproduced." The scale of coproduction can vary in degree and can be described in several ways. First, oil and gas can be coproduced by an individual wellbore that crosses through and produces the varying mineral estates. Second, oil and gas can be coproduced inside a drilling and spacing unit, where specific production is pro-rated to the percent of ownership in the drilling area. Finally, oil and gas can be coproduced across the entirety of a company's development play.
Oil and gas companies, like any other enterprise, must take into account risk/reward, scalability for cost saving, future development potential, infrastructure needs, and regulatory regimes. Operators prioritize areas for development where they can maximize returns and reduce risks. In the current phase of development in Wyoming's Powder River Basin, operators have large swaths of development to minimize risks, provide operational flexibility, and cost share infrastructure.
Even where a wellbore doesn't penetrate federal minerals in a particular drilling and spacing unit, gathering lines, pipelines, transmission lines, and roads to get product to the market inevitably run into federal management at some juncture. Therefore, ROW and surface occupancy restrictions have significant implications for private and state lands and minerals.
This analysis needs to be included in DRMPA. The BLM should acknowledge and analyze the cumulative effects of restrictions on the socioeconomics of our communities. The BLM's socioeconomic analysis should describe the human interests and values shaping public lands management, identifying effects of proposed actions on communities and economies, and promote the economic and social sustainability of communities near public lands.

VIII. Adaptive Management

Wyoming has worked diligently with its federal partners (BLM and USFWS) to develop a framework that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. The adaptive management framework considers management strategies for short-and-long term monitoring that are most effective for protecting the species and its habitat while allowing for a flexible strategy addressing changing conditions in a timely manner.

Under Wyoming Statute § 23-1-103, "...all wildlife in Wyoming is the property of the state..." and the Wyoming Game and Fish Department (WGFD) has the legal responsibility for carrying out the purposes of this act. Using the best available science in the Adaptive Management process is necessary to continue long-term healthy populations of GrSG. Recognizing the WGFDs expertise, the State's Adaptive Management strategy places the responsibility of conducting annual population data squarely with the state agency. It is imperative that BLM recognize the WGFDs authority and expertise in this process. The County implores BLM to defer to the WGFD regarding any data collection or management decisions that pertain to the population trend analysis of GrSG within the boundaries of Wyoming.

IX. Wild Horses

In 1971, Congress enacted the Wild Free-Roaming Horse and Burro Act (Public Law 92-195), which guides the management, protection and control of wild horses and burros on federal lands managed by the USFS and BLM. Herd Management Areas (HMAs) were established in ten Western states based on the existing populations during the passing of the Act in 1971. This Act also mandates that wild/feral horses and burros are managed in a thriving ecological balance with the land and as part of the natural landscape (USFS 2021b). To ensure wild/feral horse and burro populations remain in good condition and that federal lands are protected from degradation, the growth of wild/feral horse and burro herds must be actively managed.

Population control is necessary to protect fragile ecosystems, balance shared use of resources by wildlife, and maintain herd health and protect herds from starvation. Weston County encourages aggressive wild horse and burro management that will not adversely impact rangeland resources, livestock or grazing, wildlife habitat or resources, soil resources, or other varied land uses.
For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Page 128 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

6.5.3 Wild Horses and Estray Livestock Resource Management Objectives:

A. No Herd Management Areas or Herd Areas will be designated or created in Weston County without coordination.

6.5.4 Wild Horses and Estray Livestock Priority Statements:

1. Weston County opposes any proposed creation, enlargement, or expansion of the current herd management area (HMA) or herd area (HA) boundaries and the designation of any additional new HMAs or HAs within the County.
2. Federal agencies should notify and coordinate with Weston County if there are any intentions to designate or create Herd Management Areas or Herd Areas within the County.

The only viable alternative analyzed that appropriately addresses actual management of wild horse and burros is Alternative 3 (page 2-114, Table 2-13). Managing for "zero" Appropriate Management Levels (AMLs) within HMAs that overlap with PHMA and removing wild horses in those areas is the proper land management prescription and is the only realistic method for meeting AML at the implementation level. For the benefit of the GrSG, all available agency tools must be used to support herd management plans that prevent habitat degradation and native wildlife displacement, including the removal of all wild horses and burros from PHMA.

The State of Wyoming submitted alternative language for wild horses that based any removal of HMAs on whether wild horses were the causal factor of range degradation for a certain period of years. While substantial evidence already exists, that wild horses cause significant range damage and negatively impact GrSG, Wyoming's recommended approach would have been more economically, politically, and scientifically defensible. Unfortunately, this alternative was not properly considered in any of the other alternatives.

X. Lack of Need for ACECs

The WCCA conducted a consistency review on a statewide basis of the DEIS alternatives in relation to ACECs and county natural resource plans, which is summarized in the attached table. In addition to the consistency table, the text below details the concerns regarding the BLM's inadequate and untimely consistency review and the unnecessary designation of ACECs in areas with existing and adequate PHMA designations to manage for and protect GrSG.

An ACEC is defined as "areas within the public lands where special management attention is required ... to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards." 43 U.S.C. § 1702(a).

A potential ACEC must satisfy a three-part test before it may be designated. First, it must have "relevance," meaning it possesses "a significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard." 43 C.F.R. § 1610.7-2(a)(l). Second, it must also have "importance," meaning the relevant values identified in the first step must have "substantial significance and values." 43 C.F.R. § 1610.7-2(a)(2); see also BLM Manual 1613, Section 1 l.B. For the relevance values to meet the "importance" threshold, the area must have "more than locally significant qualities ... compared to any similar resource," have qualities that make it fragile, rare, or irreplaceable, or been recognized as warranting protection to satisfy national priority concerns. BLM Manual 1613, Section 11.B.1. Third, the nominated area must require "special management" "to protect and prevent irreparable damage to important historic, cultural, or scenic values; fish, wildlife, and plant resources, or other natural system or processes." 43 U.S.C. § 1702(a).

Certainly, ACECs can play a role in conservation and special management of historic, cultural, scenic, fish and wildlife resources. However, the BLM has not demonstrated how the addition of the proposed ACECs under Alternative 3 of the DEIS will improve Greater Sage-grouse populations and habitat more effectively than Priority Habitat Management Areas (PHMAs). Under Alternative 3, the DEIS states that the ACECs would be managed similarly to PHMAs, without additional management prescriptions. Weston County strongly feels that the designation of ACECs under Alternative 3 are unnecessary given that they will be managed exactly the same as PHMAs. The BLM fails to consider how GrSG populations and habitat are already protected under existing management actions and will be further protected by the proposed management actions under Alternatives 3 of the DEIS. A significant example of this failure is the BLM's attempt to layer ACEC designations on top of existing ACECs like in Fremont and Sublette Counties.

Furthermore, ACEC designations could allow for excessive regulatory authority in the future for areas that are otherwise considered appropriate for PHMA management. Unnecessary designation opens the door for further impediments to multiple use practices.

Attached to this letter, you will find a spreadsheet that provides a thorough review of inconsistencies between the above-mentioned Wyoming County NRMPs and the proposed ACEC resource management restrictions under Alternatives 3 and 6 of the DEIS.

In addition, the County has identified several inconsistencies between the DEIS and the Weston County Natural Resource Management Plans (NRMP) directly affected by the proposed ACECs. For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 41-42 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

3.3.4 Special Management Areas Resource Management Objective:

A. Designation of new areas and management of current special designation or management lands are coordinated with Weston County and adjacent landowners and allow for multiple use.

B. No new special designation or management areas are created in Weston County without approval from the County.

3.3.4 Special Management Areas Priority Statements:

1. Weston County should be a cooperating agency on any action to designate any special management or designation areas.
2. Federal agencies shall consult and coordinate with Weston County as early as possible when considering the designation of new special designation areas and should be consistent with the Weston County Natural Resource Management Plan to the maximum extent possible.
3. Any proposed special management area designation shall undergo analysis of the economic and environmental cumulative impact to Weston County's custom, culture, and economy.
4. Weston County does not support future designations of new special management or designation areas in the County, including, Wild and Scenic Rivers, Wilderness, or Wilderness Study Areas, lands with wilderness characteristics, Areas of Critical Environmental Concern, Roadless Areas. Any proposed designation shall be coordinated with the County and undergo analysis of the impact to Weston County's economy including a pre-existing condition analysis.
5. Unless lands or waters are given a special management or designation in a respective agency's planning document, all public lands in Weston County should be managed for multiple use as outlined in the Multiple Use Sustained Yield Act and Federal Land Policy Management Act.

Weston County strongly opposes the designation of any Sage-grouse ACECs in Wyoming. As discussed earlier in these comments, we have worked diligently as a state to develop a framework that effectively manages for GrSG populations and its habitat and no new ACEC designations are warranted nor will they provide any additional protections not already in place.

XI. Fluid Mineral Development and Leasing Objective

Likely the most substantial direct impact to local government revenue in Wyoming is the management prescription for oil and gas development. Consequently, it is vital to correctly capture existing development and the Reasonably Foreseeable Development Scenario (RFDs). The RFD is even more important to get correct when it is comparing the potential impacts from wildly inconsistent alternatives. If poor or incorrect data is utilized to develop the RFD, then the RFD and resulting socioeconomic analysis will be flawed.

Certain portions of the BLM's description and analysis of existing oil and gas could be improved. For example, on 12-38 the BLM reports 9,127 wells have been "drilled" in Wyoming between 2013 and 2023. However, this figure includes workovers and wells that were never completed, which may capture wells that were never actually "drilled." The section properly includes data from the Wyoming Oil and Gas Conservation Commission, which reflects a total of 6,455 unique well spuds in Wyoming between 2013 and 2023. However, the fact that the state's number is 30% less than the BLM's number reflects a poor attempt to gather and clean-up the data for analysis.

On page 12-39, the DRMPA states that 24% of the HMAs in Wyoming are under an existing authorized lease. Additional data that should have been reflected in the DRMPA and clarified in this section is the number of leased acreage currently under litigation in Wyoming. Without including litigated leases in Table 35, it is misleading to members of the public that equate "authorized" as available for development.

In order to understand whether the RFD is truly reasonable there should be a greater description of what was utilized for inputs and variables. Table 35 in Appendix 12 would benefit from a better description of the "source" of the data provided in the table. In addition, there needs to be additional description of the table to help clarify whether these projected wells are federal surface and minerals, private/state surface and federal minerals, or mixed minerals and surface, etc.

The "Projected Production by Alternative in the Decision Area" needs to be amended to more accurately reflect the decline curves associated with modern horizontal development in Wyoming. Without any written description or justification, the projection utilizes a record production year in Wyoming as its basis for production over the next 20 years. In other words, the current projections do not consider decline curves of existing and new wells but keep historic production levels constant. However, it must be noted that the only way to maintain that statewide production level as production declines from existing wells is to drill and produce new wells.

The problem with maintaining existing production as a constant in the RFD is that it artificially reduces the negative economic impacts associated with alternatives 3 and 4 reduced projected well development. This is because the weight given to new wells is significantly reduced by the artificial base production of the existing wells.

Under Alternative 3 only 4,284 wells are expected to be drilled in the next 20 years. This is compared to Alternative 1 that projects 14,450 wells drilled in the same period of time. Although alternative 3 projects over 10,000 less wells are drilled in 20 years it only reduces the production of oil by roughly 224,000,000 barrels and gas by 4,600,000,000 mcf of gas.

Taxes derived from oil and gas development in Wyoming constitutes a significant portion of state and county revenue used to pay for public education and essential services, including roads, fire protection, emergency medical services, courthouses, libraries, landfills, hospitals, law enforcement, airports, recreation, and senior citizen centers. In Weston County alone, oil and gas ad valorem tax for FY23 was $204,270,329

Oil and gas companies operating in Wyoming are assessed property (ad valorem) taxes by counties and severance taxes by the state. Although they are called "taxes" both are more akin to a royalty because production is taxed regardless of whether an operator makes a profit. Property taxes on oil and gas vary by county and range from 6-7.3% calculated by the gross revenue of the previous year's production and the value of tangible equipment and improvements. Severance taxes are calculated at 6% of gross revenue in the same manner as royalty taxes (gross revenue minus transportation and gas processing cost). Federal Royalties are also deducted from the gross revenue for the purpose of calculating severance taxes.

Property taxes on oil and gas account for over 40% of the total property taxes levied by counties in Wyoming. In 2020, the property taxes collected by counties exceeded $600 million. Additionally, severance taxes collected by the state in 2022 topped $275 million. When adding in federal lease revenues, federal and state royalties, sale and use taxes, and conservation taxes, the industry contributed $1.23 billion in taxes to state and local governments.

A decrease in assessed valuation will affect all County operations including essential services like road and bridge construction and maintenance, investment in IT technology and cyber security, economic diversification investment (water, sewer and streets), fire equipment and personal, and daily operations.

As noted on the Petroleum Association of Wyoming (PAW) website, Wyoming ranked 8th in production of both crude oil and natural gas in 2022 nationally. Further, Wyoming ranked the 2nd largest producer of both oil and natural gas on federal lands, making the state disproportionally affected by national policy changes. According to a 2023 study released by the American Petroleum Institute, in 2021 the oil and natural gas had the following impacts on the Wyoming economy: 58,780 total jobs and $5.7 Billion in labor income.

For the BLMs convenience we have identified a few priority policy positions from our Weston County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 73-74 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

4.4.1.3 Oil and Gas Resource Management Objectives:

A. Oil and gas extraction is managed in a responsible way that promotes Weston County's economic viability along with the health of both ecosystems and the citizens of the County.

4.4.1.4 Oil and Gas Priority Statements:

1. Weston County encourages and supports the nomination of more state and federal oil and gas leases for sale.
2. Federal agencies should facilitate reclamation and mitigation of lost or decreased forage resources that occur because of surface disturbance from oil and gas, utilities, and recreation.
3. Federal agency land managers and landowners should be encouraged to seek technical assistance from the Weston County Natural Resource District and Weed and Pest District to mitigate surface disturbance to facilitate soil and water conservation and reestablishment of native or other desired vegetation.
4. The Bureau of Land Management should continue holding lease sales and awarding leases for Weston County lands on at least a quarterly basis as is required by the Mineral Leasing Act.

Funding derived from mineral development constitutes a significant portion of State and County revenue used to pay for essential services, including roads, fire protection, courthouses and judicial systems, libraries, landfills, hospitals, law enforcement, airports, recreation, public health, and senior citizen centers. Any curtailment of leasing and development activity significantly impacts the socio-economics of the communities and eliminates a critical funding stream for not just our County but all counties, the State of Wyoming and its residents.

Our ability to fund organizations would be negatively affected, which includes but is not limited to, the following: WY Child and Family Development, Children's Advocacy Project (forensic interviewing of sexually assaulted and abused children), Human Resource Council, 'Youth Development Services (Youth Crisis and Intervention Center)', Humane Society, Boys and Girls Clubs, County Fair Boards, Hope Center (Domestic Violence and Sexual Assault Survivors Crisis Center and Shelter), local Libraries, Behavioral and Mental Health Crisis and Intervention Centers, Economic Development organizations and various youth and community recreation organizations. Without County support these organizations will offer fewer public services and could fail and there would be insufficient funds to provide basic services at a level needed for the protection of the county resident's health, safety, and security.

It cannot be stated enough the importance that the oil and gas industry plays in Wyoming. BLM must do all it can to find a balance between GrSG species and habitat protection with continued mineral leasing and development. This balance must be made in consideration of the interwoven land ownership patterns across Wyoming.

XII. Transportation and Transmission Objectives

Public access to routes of travel is essential to the County's transportation and public access systems and to the economic, social, political well-being, customs and culture of the communities. Many private landowners need rights-of-way across state and federal lands to access their property, to use their water rights, and to exercise their grazing rights. Rights-of-ways (ROW) and corridors provide for the development of certain types of infrastructure or facilities that are in the public interest on federal lands for a specified period of time.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Page 34 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

3.2.3 Transportation and Access Resource Management Objective:

A. There is full and open access to and across Weston County federal lands for local purposes such as safety, health, economic use, and use of recreation is maintained and expanded where possible.
B. Access to public lands within Weston County is maintained and expanded where possible.
C. Private property rights are protected in Weston County while facilitating rights of access.

3.2.4 Transportation and Access Priority Statements:

1. Legal public access to the federal lands for all beneficial uses should be supported as long as it does not infringe on private property rights.
2. Weston County requests that any planning process or activity that restricts, eliminates, or increases access to federal lands first notify and allow the County to initiate coordination and cooperation to resolve any potential conflicts with the County's objectives, principles, and policies, prior to taking action.
3. Preserve stock trails as valid access routes for the purpose of trailing livestock between grazing areas.

Regarding approved access for transportation or transmission within PHMA, the County will support the Wyoming EO and the surface disturbance DDCT process for determining access. However, we strongly encourage BLM and the state to coordinate and consult with the affected County regarding any planning process or activity that restricts, eliminates, increases, or decreases access to federal or state lands and allow the County the opportunity to resolve any potential conflicts with the County's objectives, principles, and policies, prior to acting.

XIII. Socioeconomics

Economic impacts do matter. Access to federally administered lands and resources are critical to ensure the socioeconomic well-being, custom, culture and stability of our communities. In Weston County, lands under federal or state control and decisions made for public land management can directly impact the service and non-service industries, public accessibility, and the demographics of an area. Effective coordination and consultation between the County, federal and state agencies is critical to ensuring that land management agencies thoroughly consider the effects that proposed actions have on custom, culture, and economic stability; conservation and use of the environment and natural resources in the County along with multiple use. Counties receive revenue from federal lands in many ways including mineral leasing and development, agriculture, recreation, travel and tourism, etc. Any curtailment of access to public lands will directly impact the socioeconomics of the County.

For the BLMs convenience we have identified a few priority policy positions from our Weston County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 143-144 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

7.4.3 Economic and Socioeconomic Resource Management Objectives:

A. The socioeconomic and economic viability of Weston County is prioritized, protected, and enhanced in all federal actions or decisions.
B. Weston County is included early in the scoping process whenever an agency action or decision may impact the economic or socioeconomic viability of the County.

7.4.4 Economic and Socioeconomic Priority Statements:

1. Weston County requires consultation and coordination from federal agencies at the earliest time possible for any proposed action, change of existing activities, newly permitted activities, or changes in regulations that may affect the economic basis of the County.
2. Federal agencies should support continued access to natural resources development/use on federal lands to maintain economically viable communities in Weston County.
3. Federal agencies should support the analysis of social and economic factors at the lowest possible level, such as on a County-wide basis, in addition to consideration on a statewide or national scale.
4. Federal agencies should promote the economic and socioeconomic growth of Weston County and engage in consultation and coordination between federal agencies and the County regarding any issues and activities on public land that affect or influence the County's economic and socioeconomic viability.
5. Weston County supports the achievement of a sustainable balance between economic, recreational, and conservation use of lands for economic growth and quality of life.
6. Weston County requires a full analysis by the federal agencies of the impact each proposed decision or federal action will have on the local economy. If it is determined that the decision will have significant negative impact on the local economy, the alternative/decision is not supported.

The County cannot state clearly enough the importance of our ability to access federal lands to drive vibrant economic communities. BLM significantly undervalued the mineral contributions to the counties and state in the socioeconomic section. BLM must include a robust socioeconomic analysis clearly demonstrating the differences between management prescriptions in the Alternatives, which includes impacts to the tax base (royalties, rents or bonus bids, severance taxes, ad valorum taxes, sales and use tax employment income, and direct and indirect employment.) The County can assist in providing the most up-to-date information available for BLMs analysis.

In conclusion, Weston County is committed to continuing our engagement as a cooperating agency along with the State of Wyoming, its state agencies and BLM to work through these important issues. We encourage BLM to align with the most recent Wyoming EO, include acknowledgement and analysis of the Wyoming State Alternative and to develop a preferred alternative that takes into consideration our comments submitted herein.

Should you have questions or require additional information, do not hesitate to contact Commissioner Ed Wagoner at 307-746-2684 or (mrmrsedwyo@hotmail.com) or our natural resource policy advisor Dru Palmer at 307-388-2709 (dru@wyoming.com). Thank you for your consideration.

Sincerely,

Don Taylor, Chairman
Weston County Commissioners

CC: The Honorable Governor Mark Gordon
The Honorable United States Senator John Barrasso
The Honorable United States Senator Cynthia Lummis
The Honorable United States Congressman Harriet Hageman

Comments on

Bureau of Land Management

03/15/2024 Notice of the Availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning

Simplot

Land & Livestock

Grand View, Idaho

June 13, 2024

J.R. Simplot Company – Land & Livestock Division

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1. Introduction

Thank you for the opportunity to provide comments on the 2024 Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement (2024 Draft RMPA/EIS).

1.A. General Statement of Interest

These comments are on behalf of the J.R. Simplot Company, Land & Livestock Division (Simplot). Simplot is a privately held agribusiness corporation based in Boise, Idaho. The corporation is engaged in a number of businesses including food processing, farming, mining of phosphate and silica, fertilizer manufacturing, beef cattle feedlots, ranching and other enterprises related to agriculture. Simplot has operations throughout the world and the United States. The majority of the operations in the United States are in the upper Midwest and West.

Simplot's mission is to help feed the world through *Bringing Earth's Resources to Life.*

These comments are one of two documents being submitted by the J. R. Simplot Company. The comments provided by Simplot Corporate provide detailed comments applicable to all entities within the Company. These comments supplement the comments provided by Simplot Corporate and focus on the changes needed to the 2024 Draft RMPA/EIS in order to sustain and enhance livestock grazing upon public lands, as well as to be consistent with existing law.

While these comments are submitted on behalf of J. R. Simplot Company and JRS Properties III, LLLP, these comments are also submitted on behalf of Simplot Livestock Co., Raft River Cattle, Wickahoney Cattle, Cat Creek Cattle, Clipper Cattle, Dick Shooter Cattle, Grouse Creek Ranch, Three Creek Ranch Company, Buck Creek Ranch, Inc., as well as Cedar Creek Cattle, Wintercamp Livestock and ZX Ranch, assumed business names of the JR Simplot Company and JRS Properties III, LLLP, hereinafter "Simplot". Each of these entities is a separate ranch, dependent upon the use of public lands in order to sustain a viable year around livestock operation (all hereinafter referred to as "Simplot"). In total, Simplot holds 34 grazing permits covering 68 allotments. Of those, 52 allotments, or 76%, include some HMA as described in the DEIS. If livestock grazing remains a managed action within the Final RMPA/EIS, there will be implications for every one of our operations.

1.B. Idaho Grazing Interest

Simplot holds 29 grazing permits in Idaho, within five Bureau of Land Management (BLM) field offices and two BLM district offices, including fifty-three (53) individual grazing allotments. Of the 53 grazing allotments within Idaho in which Simplot operates, thirty-

seven (38), or 72%, contain at least some mapped habitat, based on the mapping utilized within the DEIS.

Other Significant Mitigation Partnerships
In Idaho, Simplot is a member of the Black Canyon Rangeland Fire Protection Association (RFPA), Mountain Home RFPA, Saylor Creek RFPA, Three Creek RFPA and Shoshone Basin RFPA. Simplot employees who work on each of our individual ranches are trained to suppress wildland fire, receiving the same certification as federal firefighters, and serve as first responders upon the allotments we graze, most of which contain GRSG habitat.

Simplot has partnered with U.S. Fish and Wildlife Service (USFWS) and Idaho Department of Fish and Game to implement low-tech stream enhancement projects to enhance late-brood rearing habitat on BLM, State and Simplot private lands.

Simplot has also worked closely and participated in research with the University of Idaho to study results of spring livestock grazing in GRSG nesting and brood rearing habitat, managing our livestock grazing to meet the needs of the ten-year study.

1.C. Utah Grazing Interest

In Utah, Simplot owns and operates one ranch, holding one BLM grazing permit which includes six grazing allotments, all of which, include at least some Priority Habitat Management Area (PHMA) for GRSG based on the mapping utilized within the DEIS.

1.D. Nevada Grazing Interest

In Nevada, two Simplot owned and operated ranches graze cattle on two separate grazing permits, for two separate allotments, both containing GRSG habitat based on the mapping utilized within the DEIS.

1.E. Oregon Grazing Interest

In Oregon, Simplot owns and operates one ranch, holding two BLM grazing permits including seven grazing allotments. Six of the seven, or 86% of the allotments contain some GRSG habitat based on the mapping utilized within the DEIS..

Other Significant Mitigation Partnerships
In Oregon, Simplot is a member of the High Desert RFPA. Simplot employees are trained to suppress wildland fire, receiving the same certification as federal firefighters, and serve as first responders upon the allotments we graze, most of which contain GRSG habitat.

2. Status

The status of GRSG is covered in detail within the Simplot Corporate comments and will not be repeated within.

3. General Comments

Because of the importance and significance of livestock grazing in Idaho, Utah, Nevada and Oregon, beginning in 2014, Simplot has provided a number of general and specific comments to the BLM's efforts to amend land use plans for GRSG, specific as to effects to livestock grazing. These are summarized below and incorporated by reference.

- January 28, 2014, comments on the Idaho and Southwestern Montana BLM GRSG draft Land Use Plan Amendment and Environmental Impact Statement
- December 1, 2017, comments on the Intent to Amend Land Use Plans Regarding GRSG Conservation and Prepare Associated Environmental Impact Statement or Environmental Assessments in Idaho, Oregon, Nevada and Utah
- July 31, 2018, comments to the May 4, 2018 Idaho GRSG Draft RMPA and EIS
- August 2, 2018, comments to the May 4, 2018 Oregon GRSG Draft RMPA and EIS
- August 2, 2018, comments to the May 4, 2018 Utah GRSG Draft RMPA and EIS
- August 2, 2018, comments to the May 4, 2018 Nevada GRSG Draft RMPA and EIS
- April 6, 2020, comments to the Oregon BLM GRSG draft Supplemental Environmental Impact Statement
- April 6, 2020, comments to the Idaho BLM GRSG draft Supplemental Environmental Impact Statement
- May 21, 2020, comments to the Nevada and NE California GRSG draft Supplemental Environmental Impact Statement
- February 8, 2022, comments to 2021 Notice of Intent to Amend Land Use Plans Regarding GRSG Conservation and Prepare Associated Environmental Impact Statement or Environmental Assessments in Idaho, Oregon, Nevada and Utah

As summarized in all of the above comments, there are "existing regulatory mechanisms" to regulate permitted livestock grazing upon public lands. Nothing more is required or needed in relation to permitted livestock grazing upon public lands. As previously shared, multiple times, the USFWS reviewed the status of and threats to the GRSG in relation to the five listing factors provided in Section 4(a)(1) of the Endangered Species Act ("ESA"). The USFWS purportedly determined that Factor A, "the present or threatened destruction, modification, or curtailment of the habitat or range of the GRSG," and that Factor D, "the inadequacy of existing regulatory mechanisms," posed "a significant threat to the GRSG now and in the foreseeable future". The USFWS thereafter purportedly identified the principal regulatory mechanisms for the BLM was conservation measures in resource management plans ("RMPs"). See Nevada and Northeastern California Greater Sage-Grouse Approved Resource Management Plan Amendment, dated September 15, 2015, at page 1-1.

This determination by USFWS and this predicate to the land use plan amendment (LUPA) process itself was (and continues to be) fatally flawed in relation to permitted livestock grazing upon public lands in the western United States. 43 C.F.R. Part 4100, subpart 4180[1], includes clear and explicit "regulatory mechanisms" to manage and regulate threatened or endangered, proposed, Category 1 and 2 candidate, and other special status species, under the Endangered Species Act (ESA), of which the latter was/is inclusive of GRSG. See 43 C.F.R. 4180.2(e)(8), 4180.2(e)(9); see also 43 C.F.R. 4180.2(f)(1)(viii). All states, in which livestock grazing is permitted on BLM land, include various forms of Rangeland Health Standards and Guidelines that: (1) conform to Sections 4180.2(e)(8) and 4180.2(e)(9); and (2) intend to restore, maintain, or enhance habitats for such species, including GRSG. Moreover, BLM has never stated or suggested that 43 C.F.R. 4180.2(e)(8), 4180.2(e)(9), as well as the specific Standards and Guidelines adopted across the west, are "inadequate". In fact, if such were the case, then clearly the means-to-the-ends would be to modify the existing Standards and Guidelines, not to implement any GRSG LUPA. Accordingly, any decision from this process should amend all plans to remove any elements as related to permitted livestock grazing upon public lands and to defer GRSG management to the BLM via continued implementation of 43 C.F.R. Part 4100, subpart 4180. If, however, BLM erroneously decides against this recommendation, we have provided further comments below as to livestock grazing.

Multiple scientific studies document livestock grazing and GRSG conservation can and do beneficially co-exist. Top threats to GRSG include rangeland wildfire, invasive weeds, and development pressure, not livestock grazing. Livestock grazing is not even in the top-ten list of threats. Yet, despite this, BLM has erroneously imposed landscape-wide regulatory changes on the grazing livestock industry for purposes of conserving habitat for a single species through an inflexible framework that is overly restrictive and fails to account for the site-specific conditions necessary to make informed decisions. The GRSG LUPA process elevates livestock grazing as a priority threat, even though improper livestock grazing is listed only as a secondary threat.[2]

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[1] The U.S. Department of the Interior amended its grazing regulations set forth at 43 C.F.R. Part 4100 on August 11, 2006, *see* 71 Fed. Reg. 39,402 (2006), but the U.S. District Court for the District of Idaho enjoined the regulations from taking effect. *Western Watersheds Project v. Kraayenbrink,* 538 F. Supp.2d 1302 (D. Idaho 2008), *aff'd in relevant part, vacated in part, and remanded,* 632 F.3d 472 (9th Cir.), *cert. denied,* 565 U.S. 928 (2011). Based thereon, we cite herein the version of the grazing regulations in effect as of October 1, 2005. *See Corrigan v. BLM,* 190 IBLA 371, 374, fn. 3 (2017).

[2] *See* GRSG-Conservation Objectives: Final Report dated February 2013 ("COT Report"), page 10 (wherein it is stated that "**Fire is one of the primary factors linked to loss of sagebrush-steppe habitat and corresponding population declines of greater sage-grouse** (Connelly and Braun 1997; Miller and Eddleman 2001). Loss of sagebrush habitat to wildfire has been increasing in the western portion of the

Being only a secondary threat (and at that only when done improperly), any decision from this process should amend all plans to remove any elements as related to permitted livestock grazing, and to defer GRSG management to the BLM via continued implementation of 43 C.F.R. Part 4100, subpart 4180 as to provide focus on "improper grazing" where it may or may not exist, as opposed to "proper grazing".

4. Description of Alternatives

The 2024 Draft RMPA/EIS is a complex document developed as a result of extensive public comment, ongoing since 2014. It describes six (6) different alternatives for managing federal lands for the conservation of the GRSG and its associated habitat. To provide context for these comments, a rangewide summary of the main elements of the alternatives is provided below with clarification of specific elements associated with livestock grazing. Additional comments on specific elements of the alternatives of the plan regarding livestock grazing in Idaho, Utah, Nevada and Oregon follow.

4.A. Alternative 1

Alternative 1 includes the applicable elements of the 2015 ARMPA that are being analyzed for potential amendment.

Under Alternative 1 most of the Priority Habitat Management Area (PHMA) and Important Habitat Management Area (IHMA) (Idaho only) in the planning area is open for livestock grazing.

Under Alternative 1, the BLM would re-adopt the applicable GRSG habitat management area (HMA) boundaries, goals, objectives, and actions from the 2015 RODs/ARMPAs (as updated through applicable maintenance actions). The existing language in the plans from the 2019 ARMPAs would revert to that contained in the 2015 ARMPAs (as maintained).

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greater sage-grouse range due to an increase in fire frequency. The increase in mean fire frequency in sagebrush ecosystems has been facilitated by the incursion of nonnative annual grasses, primarily *Bromus tectorum* (cheatgrass) and *Taeniatherum asperum* (medusahead) (Billings 1994; Miller and Eddleman 2001). The positive feedback loop between exotic annual grasses and fires can preclude the opportunity for sagebrush to become re-established. Exotic annual grasses and other invasive plants also alter habitat suitability for sage-grouse by reducing or eliminating native forbs and grasses essential for food and cover. **Annual grasses and noxious perennials continue to expand their range, facilitated by** ground disturbances, including wildfire (Miller and Eddleman 2001; Balch *et al.* 2013), **improper grazing** (Young *et al*. 1972, 1976), agriculture (Benvenuti 2007), and infrastructure associated with energy development (Bergquist *et al*. 2007)." Emphasis added.). *See* https://iwjv.org/sites/default/files/cot-report-with-dear-interested-reader-letter.pdf (COT Report) (last checked on 12/1/2017).

This alternative also includes designation of some areas of PHMA as Sagebrush Focal Areas (SFAs) with a recommendation to withdraw a portion of them from mineral location and entry under the Mining Law of 1872.

There are no Areas of Critical Environmental Concern (ACECs) proposed under Alternative 1.

Given litigation surrounding this version of GRSG RMP amendments, Alternative 1 is unsuitable for further consideration.

4.B. Alternative 2

Alternative 2 is the No-Action Alternative and includes the applicable decisions from the 2019 GRSG ROD/ARMPAs. This Alternative most closely resembles the plan amendments of 2019, which addressed some of the key failures of the 2015 plans, and is Simplot's preferred alternative moving forward.

SFAs would be removed from the BLM RMPs in all states except Oregon and Montana; these areas would still be managed with all the protections of PHMA but would no longer include a recommendation for withdrawal (including in the Oregon SFAs), and prioritizations would be the same as the rest of PHMA.

There are no ACEC's proposed under Alternative 2.

4.C Alternative 3

Alternative 3 includes the most restrictive measures to protect and preserve GRSG and its habitat. Alternative 3 would update the habitat management area (HMA) boundaries based on new information and science that has become available since the 2015 and 2019 efforts.

Alternative 3 would have the greatest effects on resource uses by making PHMA unavailable for livestock grazing and closing PHMA to mineral, right-of-ways, and renewable energy development.

Under Alternative 3, the BLM would designate 11,139,472 acres of ACECs specific to the management of GRSG; the ACECs would include portions of PHMA and would have the same allocations (i.e., allowable uses) as the rest of PHMA.

All PHMA under Alternative 3 would be recommended for withdrawal from location and entry under the Mining Law of 1872.

No areas would be identified as SFA because Alternative 3 considers the greatest level of restrictions on resource uses in all GRSG HMAs.

Alternative 3 is not a viable alternative, and should not be considered moving forward.

4.D. Alternative 4

Alternative 4 would update the HMA boundaries and associated management based on new information and science that has become available since the 2015 and 2019 efforts.

Under this alternative, the presence of GRSG HMAs would not affect whether an area is available for livestock grazing. BMP's would apply, as would the requirement of at least one alternative considering thresholds and responses during the grazing permit renewal process.

This alternative would include additional livestock grazing management objectives and actions to minimize or reduce impacts to GRSG and habitat, including prohibition of range improvement construction as well as adjustments to existing AUMs to meet management objectives, and could but limitations on the placement, repair, or construction of range improvements.

Areas previously identified as SFAs are managed as PHMA with removal of prioritization strategies.

Alternative 4 would require significant edits prior to being elevated as the alternative of choice.

4.E. Alternative 5

Alternative 5 is the agency's preferred alternative. It considers other potential alignments of HMAs and associated management to balance GRSG conservation with public land uses. Updated state GRSG management area boundaries are considered on public lands in this alternative. HMAs are like those in Alternative 4, but further refined.

Under this alternative, the presence of GRSG HMAs would not affect whether an area is available or livestock grazing. BMP's would apply. It is recommended to include at least one alternative considering thresholds and responses during the grazing permit renewal process as opposed to requiring it.

This alternative would include additional livestock grazing management objectives and actions to minimize or reduce impacts to GRSG and habitat, as well as adjustments to existing AUMs to meet management objectives, and could but limitations on the placement, repair, or construction of range improvements.

Areas previously identified as SFAs are managed as PHMA with removal of prioritization strategies.

There are no ACEC's proposed under Alternative 5.

Alternative 5 would require significant edits prior to being elevated as the alternative of choice.

4.F. Alternative 6

Under Alternative 6, management for all HMAs and the topics considered in the range of alternatives would be the same as under Alternative 5, but with the addition of designating ACECs. ACEC boundaries (and acres) would be the same as under Alternative 3, but management would be less restrictive within the ACECs compared to Alternative 3, though generally more restrictive than the rest of Alternative 6 PHMA.

Under this alternative, impacts would be the same as described under Alternative 5.

This alternative would include additional livestock grazing management objectives and actions to minimize or reduce impacts to GRSG and habitat, as well as adjustments to existing AUMs to meet management objectives, and could but limitations on the placement, repair, or construction of range improvements.

Alternative 6 would require significant edits prior to being elevated as the alternative of choice.

5. Sagebrush Focal Areas (SFAs) and the Re-Consideration of ACEC's

On May 10, 2024, Simplot Corporate submitted comments specific to potential designation of ACECs under Alternatives 3 and 6. Those comments are incorporated by reference.

5.A. Sagebrush Focal Areas (SFA's)

Simplot opposes the full or partial reconsideration of SFAs, under Alternative 1 which includes approximately 11,296,280 acres identified within the 2015 Great Basin and Rocky Mountain Sub-Regions ROD and ARMPA's. Complete details regarding SFA's are included within the Simplot Corporate comments and will not be repeated here.

5.B. Areas of Critical Environmental Concern (ACEC)

Simplot is unequivocally opposed to the designation of 69,199,000 acres of PHMA (including 11,139,472 acres of ACEC) to be managed as ACEC under Alternative 3 and the designation of approximately 11,139,472 acres of ACEC's specific to the management of GRSG under Alternative 6. Complete details regarding ACEC's are included within the Simplot Corporate comments and will not be repeated here.

6. Valid Existing Rights

Simplot appreciates the statement at page 1-7 of the 2024 Draft RMPA/EIS, that recognizes valid existing rights; however, the analysis needs to provide further clarification of the definition of a valid existing right. Complete details regarding Valid

Existing Rights are included within the Simplot Corporate comments and will not be repeated here.

7. Density and Disturbance Criteria

The 2024 Draft RMPA/EIS continues to incorporate disturbance and density caps under all alternatives. Simplot strongly disagrees that a 3% limit on surface disturbance at the Habitat Assessment Framework (HAF) fine scale, as well as at the project scale, are warranted range wide. Simplot supports language from 2-31 that excludes livestock grazing infrastructure from disturbance cap calculations.

Complete details regarding disturbance and density caps are included within the Simplot Corporate comments and will not be repeated here.

8. Habitat Designation and Objectives for GRSG on Public Lands

Habitat designation and objectives for GRSG should be empirically based on locally relevant GRSG locations differentiated by environmental variations, as there can be significant variability in habitat selection based on local conditions. Habitat needs to be further refined based on site specific conditions for all plans and a clear process needs to be identified for designating areas of non-habitat without having to revise land use plans.

One example is in Utah where community characteristics for desirable sage-grouse habitats as delineated in the 2018 Utah Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement were based on habitat vegetation data collected from sage-grouse nesting and brood rearing locations in Utah from 1998 to 2013 (Dahlgren and Messmer et al. 2018). These habitat guidelines are more specific to Utah than the general habitat guidelines for the entire range of sage-grouse released by Connelly et al. in 2000 and are a departure from the habitat guidelines that Connelly et al. defined, which BLM and USFS generally adopted in their 2015 LUPA's. This vegetation data from 1998 to 2013, in combination with community specific vegetation, climatic, and elevation data, show that sage-grouse in Utah, in general, select sites with lower and sparser vegetation conditions than Connelly's guidelines would recommend. Simplot supports the inclusion of these updated habitat objectives for Utah under all alternatives in the 2024 Draft RMPA/EIS.

The purported intent of Tables 8-1 A-G in Appendix 8 of the 2024 Draft RMPA/EIS is to set habitat objectives for sage-grouse habitat in various parts of the season, i.e. lek habitat, nesting/early brood rearing, late brood-rearing/summer, and winter. Appendix 8 clearly and appropriately states that assessments must consider Ecological Site Descriptions and associated state-and transition models and the sites' current ecological state, and that it is inappropriate to use a single indicator from any of the tables to determine overall habitat suitability of the plot, it is critical these statements remain within the Final RMPA/EIS and the preferred alternative.

Table 8.2.2 Idaho GRSG Habitat Indicators Table: The ≥7" stubble height for nesting/early brood rearing habitat indicator in the Idaho GRSG Habitat Indicators must be replaced with language from Alternative 2, "adequate residual nesting cover". Heavy emphasis on vegetation height without a comprehensive explanation in the documentation of the numerous reasons for variation in vegetation height will single out livestock grazing as the single impact. This is not realistic or defensible and vegetation height is not an effective measurement for long term rangeland health. Grazing is but one of many factors influencing grass height with others including ecological site potential, precipitation, soil and ambient temperature. Set, pre-determined measurement standards should not be required but rather site-specific monitoring and adaptive management to leave an appropriate amount of growth on the ground at the right point in time. Annual variations, landscape variations, the technical intricacies of measuring stubble height, and other limitations make this standard a counterproductive way to address nesting cover.

Further, the 2024 Draft RMPA/EIS, Appendix 8 correctly provides "...with data collected during the appropriate corresponding seasonal use period, as applicable to address phenological changes." Nesting/Early Brood Rearing is defined as a seasonal use period of May 1 to June 30 to be adjusted by geographic region (Appendix 8, p. 8-4). This does not identify specifically when residual cover measurements should be taken, nor does it identify that different standards apply at different times. The Connelly reference for 7 inches is to be used post hatch, not at nest-initiation. Consequently, these measurements would need to occur at the end of the growing season, allowing regrowth from fall.

9. Adaptive Management

While Simplot supports an adaptive management approach, the process as outlined in Chapter 2 causes more questions than answers and needs clarification. This lack of clarity will only serve to allow for multiple interpretations that allow the reader to apply it in accordance with personal biases as opposed to as intended for proper management.

Elsewhere in the 2024 Draft RMPA/EIS livestock grazing is appropriately addressed as a secondary threat and the need to determine causal factors of not meeting land health standards before grazing management changes are considered. The Adaptive Management sections in Chapter 2 seems to elevate livestock grazing to a primary threat level and require immediate changes to grazing management if soft or hard thresholds are met regardless of casual factors. To see a further discussion of the application of thresholds and responses please see Section 14 later in this document.

Where improper livestock grazing has been identified as a secondary threat to sage-grouse, Simplot emphasizes that the management of livestock grazing needs to be in

accordance with CFR 43. If any adaptive management language needs to be in included in this 2024 Draft ARMPA/EIS, it should follow the language in the Idaho 2019 plan at MD LG 16:

> *"Adaptive Management changes related to existing grazing permits should be undertaken only where improper grazing is determined to be the causal factor in not meeting habitat characteristics, specific to site capability, based on monitoring, with appropriate spatial variability."*

Simplot is concerned that the language concerning Causal Factor Analysis (CFA) found on page 2-125 will cause unnecessary delays in the permit renewal and National Environmental Policy Act (NEPA) processes. There is no need for additional analysis of GRSG habitat beyond that required for the Special Status Species (SSS) sections of land health standards assessments. The inclusion of an additional CFA will only serve to delay already lengthy processes, further delaying the implementation of proper management regardless of the determination of causal factors in the LHA.

Additionally, inconclusive CFAs are addressed on page 2-128 stating:

> *"If no cause for a habitat or population decline can be determined the BLM may consider implementing additional restriction on existing or new authorizations in the area, consistent with permits/surface use rights in coordination with the permit holder and the state wildlife management agency. This is to reduce disturbance until either a causal factor can be determined through additional monitoring and analyses, or the population declines cease."*

This is inappropriate as related to livestock grazing, which has been determined to be a secondary threat to GRSG, when done improperly, and should not be the default causal factor when agency personnel cannot determine a causal factor.

Additionally on page 2-128, the 2024 Draft RMPA/EIS states:

> *"If habitat assessment determines the PHMA (and IHMA) influenced by the wildfire can no longer support GRSG populations at levels prior to the wildfire, new infrastructure projects or permits may be deferred if consistent with applicable law (such as the Mining Law of 1872), and valid existing right until as assessment demonstrates the habitat can support GRSG at the levels that existed prior to the wildfire even have been restored."*

This, coupled with the language on 2-122:

"A hard or soft threshold can be reversed if restoration of sagebrush vegetation communities within the neighborhood cluster returns to the sagebrush conditions and/or habitat function prior to the events that resulted in meeting a habitat threshold."

has the potential to be interpreted to allow for the cancellation or modification of grazing permits after a wildfire event, not only the specific habitat affected, but potentially neighboring allotments as well (see also language on page 2-122). Which unjustly punishes livestock grazing, a secondary threat, for the damage caused by wildfire, a primary threat. Also, it does not allow for a realistic timeline, nor the conditions needed, to reestablish a mature sagebrush stand after a catastrophic wildfire event. This language needs removed in entirety or at the least modified so that other land uses are not punished for the damage of wildfire events.

10. Lek Buffers and Required Design Features (RDF's)

Simplot generally opposes the application of lek buffers to livestock grazing management as it is a secondary threat to GRSG, (and at that, only when done improperly), and grazing has proven to be a useful tool in control of fine fuel loading to reduce the intensity and spread of wildfire, which is a primary threat to GRSG. Much of the language in Appendix 19, specific to Idaho, regarding lek buffers, only affects livestock grazing in regard to low structures (e.g. fences, rangeland structures) (see Table ID-1, page 19-3 for a summary of lek buffers by alternative). Many of the projects that would be affected by this are necessary for proper management of the resource. RDFs exist to mitigate the effect of these projects on GRSG populations and habitat. Therefore, the application of lek buffers to livestock grazing management is unnecessary.

Simplot does not support the application of lek buffers in Idaho to pending active leks under Alternative 3,4,5 and 6.

Additional comments regarding lek buffers are included within the Simplot Corporate comments and will not be repeated here.

11. Range Improvements and Supplemental Feeding

Range improvements and supplemental feeding are critically important for achieving standards of rangeland health and for herd health. As noted in the 2024 Draft RMPA/EIS at 3-31:

"Across the planning area, grazing management has been improved by a variety of actions. One example is changing the terms and conditions in grazing permits/leases to improve riparian areas and wetlands through utilization, herding requirements, and strategic placement of salt and supplemental feed." (p.3-31).

However, the 2024 Draft RMPA/EIS applies a negative focus on range improvements, including but not limited to water developments and fencing. First, as previously discussed, the 2024 Draft RMPA/EIS elevates livestock grazing and related range improvements to a priority threat. Complete removal of this focus must occur, but at a minimum, all of the language above can modified with one management direction to ensure that range improvements remain within the suite of actions to be considered to achieve applicable standards and objectives, as is already prescribed in 43 C.F.R. 4180.2(c). Second, range improvements should not be prohibited per se in any GRSG habitat. Range improvements are a necessary range management tool. It is critical that language from Alternative 2 is adopted regarding range improvements. The 2024 Draft RMPA/EIS is fatally flawed in alternatives 4, 5 and 6 as applied to range improvements, as shown directly on 4-74, *"This could lead to prohibition of range improvement construction."* Third, the 2024 Draft RMPA/EIS fails to recognize that many range improvements are associated with water rights owned or held by the permittee. The Final RMPA/EIS must identify that existing rights will not be impaired or taken.

Specifically, the 2024 Draft RMPA/EIS includes the following management action that must be removed or revised:

> *"Management Action RM-4: During the grazing authorization renewal process, evaluate all existing livestock management range improvements with respect to their effect on GRSG and GRSG habitat. Consider removal of modifications of projects that negatively affect GRSG or GRSG habitat. Functional projects needed for management of sensitive species habitat or other sensitive resources should be maintained by consider improving in a manner less impactful to GRSG." (Draft RMPA/EIS p. 2-109)*

The Final RMPA/EIS should also require a look at historical effects from range improvements as part of the decision-making process. For example, one of the highest attended leks in southern Idaho is located at one of Simplot's stock water troughs associated with a major pipeline. The trough has been in place since 1970 and has undergone consistent routine maintenance and repairs. Lek attendance has maintained throughout history – indicating that the range improvement does not have a detrimental impact on the lek and should not require movement.

The location of many of these projects are the result of management of the landscape, providing benefits to livestock, wildlife, SSS and the resource as a whole. Locations of improvement projects are decided after careful consideration

of contributing factors such as allotment boundaries, travel management plans, watershed specific concerns, soil type, etc. All of these issues and more must be considered for proper management and improvement of management practices at a landscape scale for the benefit of all those dependent on each individual ecosystem.

The Final RMPA/EIS must take into consideration the impact and usefulness in administering management of the allotment as a whole, not just the management of sensitive status species as currently reflected in RM-4 as provided above.

> *"Management Action RM-6: Identify fences in high-risk areas – especially within 1.2 miles of an active lek – or other areas identified as important seasonal habitats or areas of GRSG concentration in coordination with the state wildlife agency. Evaluate if the fence is needed and/or up to BLM fencing standards If the fence is unnecessary, remove it. If the fence is needed to support management, mark fences in high risk or important areas. Where marking fences does not reduce fence-related GRSG mortality, modify fences..." (2024 Draft RMPA/EIS p.2-111)*

By requiring removal of projects based solely on GRSG impacts the 2024 Draft RMPA/EIS inappropriately elevates GRSG above all over ecological considerations and management concerns. No livestock improvements should be removed solely based on location within sage grouse habitat. At a minimum, during any assessment process, consideration to historic range improvement must be made and consideration of harm to GRSG must be based on field collected and verified data.

The 2024 Draft RMPA/EIS inappropriately elevates GRSG above all other ecological considerations and management concerns by implementing a BMP regarding salt and mineral location.

> Appendix 15, 15.1.2, Best Management Practices (BMP) for Livestock Grazing Management:
>
> - Locate supplements (salt, mineral, protein, etc.) away from water sources, meadows, riparian areas, swales, and GRSG leks in locations that increase livestock distribution unless effective control of livestock to avoid detrimental impairment of any riparian area or GRSG habitats can be ensured (Appendix 15, p. 15-2)

This BMP disregards historic use of salt and mineral areas serving as leks. At a minimum, during any assessment process, consideration to historic range improvement must be made and consideration of harm to GRSG must be based on field collected and verified data.

12. Best Management Practices

Appendix 15 to the 2024 Draft RMPA/EIS outlines what the BLM has termed "Best Management Practices for Livestock Grazing Management" in section 15.1.2. It states:

> *"When current livestock management practices are determined to not be meeting or making progress towards meeting the SSS land health standard … implement changes in grazing management through grazing authorization modifications, or allotment management plan implementation."* (p. 15-1 to 15-2).

It further discusses potential modifications that could be implemented as part of the existing terms and conditions or as thresholds/responses in future NEPA alternative analysis. The 2024 Draft RMPA/EIS errs here in failing to make the distinction of livestock grazing being a secondary threat to GRSG and omitting the crucial step that specific livestock grazing management practices must be shown to be the causal factor in not meeting the SSS land health standard in the RHA process. There are many other factors on the land that can contribute to a not meeting rating that are outside the purview of a grazing authorization; including grazing by wild horses, wild burros, wildlife, and insects (i.e. *Anabrus simplex*) just to name a few.

Therefore, any modification to the grazing authorization, in any form, must be preceded by a finding (backed up by quantitative monitoring data) of "not meeting, livestock grazing is a significant factor" for land health standards in an approved Rangeland Health Assessment and subsequent Determination.

13. Drought Management

Although BLM already has Instructional Memorandums available for drought management (IM 2013-094), the 2024 Draft RMPA/EIS unwarrantedly elevates the issue as it relates to GRSG. The 2024 Draft RMPA/EIS does not consider the unintended consequences of reduced or elimination of grazing, such as increased fuel loading and resulting fire intensity.

Specifically, the 2024 Draft RMPA/EIS Appendix 15, 15.1.4 includes the following BMPs, which demonstrates these flaws / consequences:

- *During drought conditions use a recognized drought indicator, such as the Drought Monitor, Vegetation Drought Response Index, or Palmer Drought Severity Index, to determine when abnormally dry or drought conditions are developing, present, or easing. When such conditions are developing or present (p. 15-3 and 15-4):*
    - *Conduct pre-season assessments prior to livestock turn out*
    - *Monitoring vegetation conditions during the authorized livestock use periods to determine need for early removal and/or other changes to meet seasonal RMP objectives.*
- *If livestock grazing is deferred due to drought, reevaluate vegetation and GRSG habitat indicators that measure GRSG habitat prior to reauthorization of grazing (p. 15-4).*

BLM already has prescriptions and direction for drought management. See 43 C.F.R. 4110.3-3(b); 43 C.F.R. 4130.3-2(f). Additional requirements through this process will simply hinder BLM's already limited staff to the point where livestock grazing is not authorized due to inability to complete assessments. In addition, the Drought Response section of Appendix 15 (15-3 to 15-4) ignores the unintended consequences of allowing fuel loading when temporary reductions in grazing occur. To this end, a valuable component of the LUPA in Alternative 1, the 2015 ARMPA, MD LG5 which states that "when modifying grazing management, analyze indirect impacts on habitat, including changes in fuel loading and wildfire behavior" should be included within the Final RMPA/EIS.

The Final RMPA/EIS must include this language or remove drought management from the Final Document Appendix for Livestock Grazing Management BMPs.

14. Creation of Thresholds and Responses

Alternatives 1, 4, 5 & 6 all contain language that calls for the inclusion of specific thresholds and defined responses in the terms and conditions of grazing permits. Simplot is opposed to the creation of this new terminology and process which is redundant, not defined in regulation, and would add to a workload that BLM staff already cannot handle. The Final RMPA/EIS should remove any reference to "thresholds and responses", and instead refer to the established process defined in BLM's Land Health Standards. The Draft RMPA/EIS includes the following language:

> *"Management Action RM-3: In PHMA (and IHMA in ID) the NEPA analysis when fully processed grazing authorizations should consider including at least one alternative that considers specific thresholds and defined responses in the terms and conditions of the grazing authorization, where the special status species standard is not being met, specific to GRSG*

habitat suitability, and current livestock grazing has been identified as a significant causal factor (43 CFR Part 4180, BLM H-4180-I or subsequent changes to regulations or policy), as workload capacity and priorities allow. One or more defined responses will allow the authorizing officer to implement adjustments to livestock grazing during the term of the authorization that have already been analyzed in a NEPA document. Thresholds specific to GRSG habitat would be developed to maintain or move PHMA/IHMA toward providing suitable GRSG habitat (Table 8-1, Appendix 8) and be designed to address the site-level HAF indicators that warranted the HAF assessment rating, and consider ecological site potential, and relevant locally specific conditions, and Land Health Standards (43 CFR Part 4180.2 or subsequent change to regulations or policy)." (p.2-107 – 108).

Any decision from this process should amend all plans to remove any elements as related to permitted livestock grazing, and to defer GRSG management to the BLM via continued implementation of 43 C.F.R. Part 4100, subpart 4180. Table 8-1 was intended to provide objectives for habitat conditions. This document continually elevate livestock grazing to a primary threat and utilize Table 8-1 as standards, not objectives. This management direction furthers that misguidance.

The processes outlined in these alternatives for incorporating thresholds and responses are unnecessary and redundant. Through its existing framework and rangeland health standards, BLM already has the adequate mechanisms in place to manage grazing in GRSG habitat. If existing grazing management is meeting standards, then GRSG habitat is being adequately managed and conserved. There should be no additional restrictions on grazing permits.

The inclusion of thresholds and responses goes outside the bounds of established regulation. The management of grazing permits is guided by 43 CFR. In these regulations, 4180.2(c)(1) outlines the steps to be taken if rangeland is failing to achieve standards. Under the existing regulatory framework, if an area is found to not be meeting standards and grazing is determined to be the causal factor, then additional terms and conditions are developed during the permit renewal process. This process gives BLM full ability to respond to and address management concerns and make management changes if a standard is not being met at a habitat relevant scale. Grazing permit requirements are established to manage the landscape as a whole over time where thresholds and responses inappropriately bring focus on small areas that are likely not representative of the health of the landscape.

Additionally, the inclusion of thresholds and responses limits the ability of BLM and permittees to properly manage GRSG habitat, no matter the current land use.

Predetermining the action and outcome is not proper management as every ecosystem and area of concern is an individual, dynamic system that must be evaluated on a case-by-case basis; taking into consideration the specific environmental factors, i.e. soil type, moisture regime, recreational and wildlife pressure, etc. Without considering all of these factors on a site specific and landscape scale the prescribed response to a canned threshold may set a desired outcome that is not achievable for that particular habitat area, thus hindering proper management of that particular landscape for years, waiting on something that will never happen, and may have the potential to decrease the quality of that habitat rather than improve it. Thresholds and responses are in fact the opposite of proper adaptive/appropriate management and set up field staff and permittees to ultimately fail in their objectives.

The inclusion of thresholds and responses in the 2024 Draft RMPA/EIS does not reflect these nine to ten year population cycles. Further demonstrating the irrational nature of applying arbitrary requirements across all habitats with resulting management actions that do not take into consideration local conditions or local GRSG population dynamics.

BLM is currently unable to keep up with monitoring needs. The addition of monitoring associated with specific thresholds and responses will further hamstring the BLM and open the doors to frivolous litigation directed at the BLM for not collecting the data they have been committed to by this plan, as currently drafted. The BLM is creating greater liability for itself by putting restrictions on paper that they cannot adequately address, where the burden will be felt directly by the permittee.

Management Action RM-3, and all reference to Thresholds and Responses should be removed from the Final RMPA/EIS.

15. Indiscriminate Retirement of Grazing Privileges

BLM utilizes the LUPA to unwarrantedly retire grazing permits and leases. Specifically, the GRSG LUPA includes the following Management Action - (MA) which demonstrate these flaws / consequences:

> *"Management Action RM-7: At the time a permittee or lessee voluntarily relinquishes grazing preference and the associated authorization, the BLM will consider whether to offer the permit for re-authorization to other grazing applicants or if the public lands where that permitted use was authorized shall be used for other resource management objectives. This does not apply to or impact grazing preference transfers, which are addressed in 43 CFR 4110.2-3." (P.2-112)*

This MA presupposes authority to relinquish or retire grazing permits within a designated grazing district. The USDI-Solicitor Memorandum dated May 13, 2003,

clarified M-37008, in relation to retiring grazing permits. See https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37008.pdf (last checked on 6/7/2024). This Memorandum speaks for itself, but confirmed that:

> *"[a]ny decision to retire livestock grazing on federal lands is not permanent, unless made permanent through congressional action. Any such decision is subject to reconsideration and reversal during subsequent land use planning."*

As applied here, it is our contention that this MA is contrary to the Solicitor's Memorandum since the MA allows the BLM to consider and decide the effectiveness of any relinquishment or retirement via some non-congressional action process or some non-land use planning process. To this end, these MDs and MAs should be deleted, or in the alternative modified to conform to the Solicitor Memorandum dated May 13, 2003.

16. Summary and Recommendations

The 2024 Draft RMPA/EIS is very difficult to read, analyze and therefore prepare comment on. Information is scattered without, with references to appendixes and old documents furthering the complications. The time provided was inadequate to fully read and comment on the entirety of the document. Additional time should be warranted to review the 2024 Draft RMPA/EIS in order to provide full comment.

Simplot generally supports Alternative 2, the State Management Alignment Alternative (No Action), for the Idaho, Nevada, Oregon and Utah ARMPs. Regardless of the Alternative, or combination of Alternatives, selected to move forward, the above noted comments must be considered and incorporated into the ROD.

Simplot L&L is a member of the Idaho Cattle Association ("ICA"), Oregon Cattle Association ("OCA"), Nevada Cattle Association ("NCA") and Public Lands Council ("PLC"), and support the comments submitted by such organizations to the extent consistent herein.

Sincerely,

Darcy A Helmick

Darcy Helmick
Land Manager
Simplot Land & Livestock

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RE: Comments on 2024 BLM Sage-grouse RMP/DEIS and Submission of Sage-grouse and Pinyon Jay/Migratory Bird ACECs proposal for all Nevada PMU Priority and General habitat.

Submitted electronically to: BLM_HQ_GRSG_Planning@blm.gov

Dear BLM,

Here are additional WildLands Defense BLM GRSG DEIS comments on significant and ever-increasing threats to the Sage-grouse habitats and forest habitats across the Nevada Monitor region PMU, and the need for ACEC designation to protect the NDOW PMU landscapes (Population Management Units) significantly threatened by ever-escalating habitat and population threats on BLM and USFS lands.

Please consider this submission to be both comments on the BLM DEIS analysis and its NEPA and FLPMA inadequacies, the lack of a reasonable range of alternatives, and the DEIS failure to take an adequate hard look under NEPA at the direct, indirect and cumulative stresses on, and threats to, the West's remaining Sage-grouse and other sensitive species habitats and populations. These stresses and threats are particularly acute and major across Nevada Sage-grouse habitats that are suffering continued high levels of livestock use; exploding hard rock mining schemes and linked infrastructure and water depletion, and now the Biden Haaland Interior Department's massive energy colonialism that seeks to make Nevada sacrifice zone for exploitation and export of industrial-scale renewable energy to California and other urban elites. This "green energy colonialism" gravely threatens Sage-grouse.

We are also dismayed at the vapid empty platitudes BLM Sage-grouse "managers" are using to cover up the failure of the DEIS alternatives to effectively address Sage-grouse habitat and population survival needs – with BLM feigning ignorance.

"*We know [that] we don't know everything. There's land users out there. There's a lot of information out there," said Quincy Bahr, BLM's sage grouse project manager".*
https://www.wyomingpublicmedia.org/natural-resources-energy/2024-05-13/blm-explains-draft-sage-grouse-plan-and-asks-for-more-public-comment?fbclid=IwZXh0bgNhZW0CMTEAAR2Ika2YwW9yLnDJY-j9TZ2OimVP7fSeNtH2AS2tBTnY4n3q7DngjFjZvgQ_aem_AftIqgAnFH44AZtJMkakFbhnRXITpgIgcZScalG5jRv2nUQutaeJ_jz8EDsjYnpwHSAjEguh0RVoMJJGd1-OJW8S

This is a quote for the ages- right up there with Donald Rumsfeld's Iraq War statement about known knowns, and unknown unknowns. Manager Bahr appears to be making excuse for BLM failing to take urgently needed necessary measures to turn back the trajectory to extinction – which is what is happening with current Interior "management for extinction --- BLM running interference and making excuses for the cattlemen, miners, and public lands green colonialism energy land destroyers.

Biologists have long known that Sage-grouse are landscape birds – and that they need big, minimally disturbed sagebrush landscapes. Huge sums poured into "research" and killing PJ are a smokescreen to pretend that BLM is trying to figure out some way to deny this basic fact of Sage-grouse biology. A later quote from BLM Pat Deibert shows BLM chasing the phantom of

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"mitigation" – which basically does not work in nearly all cases given the complexity and locations of landscape elements needed for the birds to fulfill their seasonal needs.

Further, the article continues with a quote from BLM GRSG Pat Deibert – where it is clear BLM simply will NOT stop development- and resorts instead to the use of the ruse of nearly always ineffective mitigation.

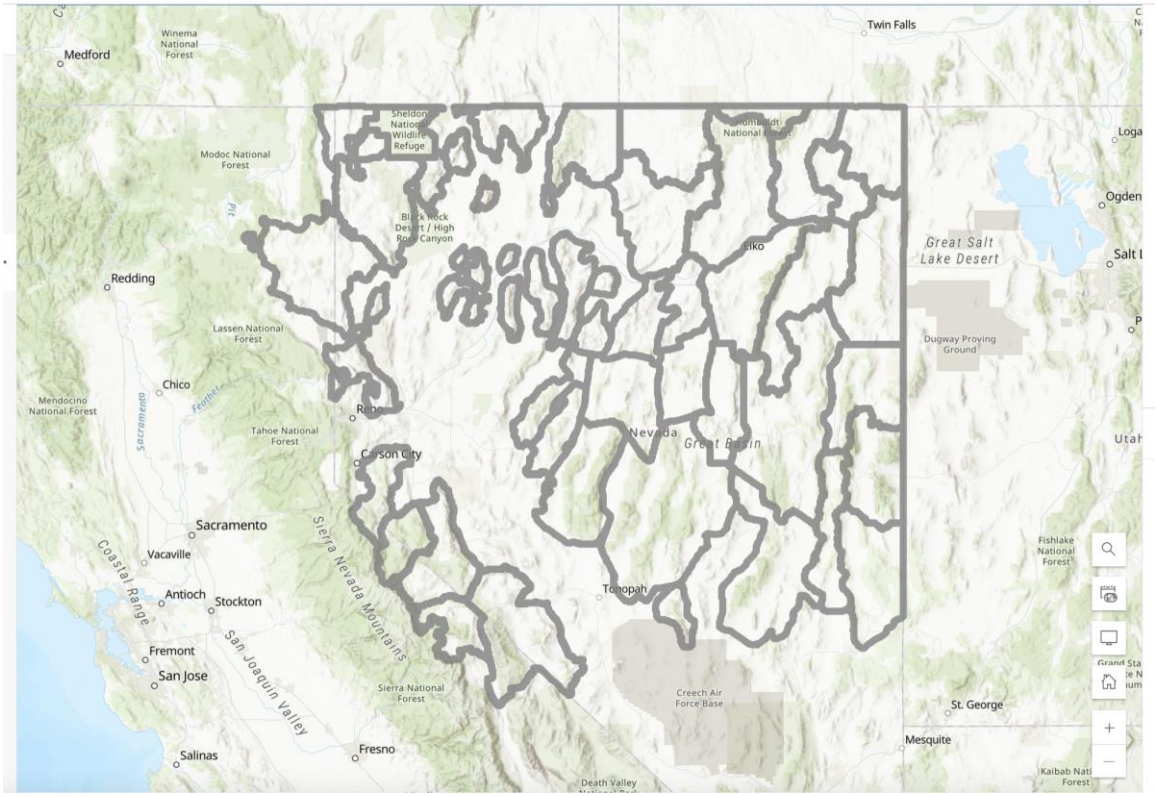
"*Deibert calmed industry fears that this plan won't stop development, but it will clarify how sage grouse can be further protected.*

"Avoidance first, and then minimization, and then going to compensatory mitigation, if necessary," she said".

Please consider the ecological and biodiversity concerns raised in the Monitor PMU proposal as comments on the 2024 GRSG DEIS and on the failure of the BLM 2015 ARMPAs and parallel USFS Forest Plan amendment processes to ensure sustainability of sagebrush habitats and Sage-grouse populations. Please also consider this submission as comments on the failure of federal agencies to comply with their own sensitive species policies. We also describe in comments here and an attached recent USFS Monitor-Toquima EA Objection (submitted on BLM DEIS webpage because of size) – the harmful proposed federal agency current management of USFS "Vacant" grazing allotments and a host of other threats that typify the situation faced by nearly ubiquitously grazed Sage-grouse PMUs across Nevada. Numerous recent BLM and HTNF proposals show significant disregard for FLPMA and NFMA sustainability mandates, and agency sensitive species policies.

Both the 2015 BLM ARMPA and USFS Forest Plan GRSG amendments failed to effectively protect both Sage-grouse and other sagebrush species – with inadequate measures and non-mandatory language. That has allowed stat6us quo – or even worse – exploitation of GRSG habitats to continue. At the same time, the plans overwhelmingly scapegoated native trees, wild horses and Ravens. The GRSG Plans are responsible for inflicting great and irreversible harm on arid forest species like Pinyon Jay that are suffering major habitat destruction, fragmentation and loss from BLM and USFS deforestation "treatments". These wildly expensive "treatments" are based on a false BLM narrative of pre-settlement vegetation communities and rigged agency models (garbage in, garbage out) with laughably abbreviated fire return intervals, and the false claim that massive deforestation will somehow "save" Sage-grouse. At the same time the 2015 amendments failed to effectively rein in a slew of damaging activities. The plan amendments perpetuated all manner of harmful weed-causing livestock grazing management actions and livestock facility expansion. BLM failed to deliver on mineral withdrawals -endlessly fragging its feet up to the present. Interior's own Sage-grouse policies scapegoat native trees rather than effectively limiting, reducing, or ending flammable weed causing and habitat disturbing and destroying livestock grazing across sagebrush habitats. Right now, Interior is manically pursuing "renewable" energy and transmission line sprawl - with all manner of new energy and other development poised to destroy massive areas of the Great Basin including portions of many Nevada PMUs, with deeply flawed "green colonialism" policies that will drive many sagebrush species to extinction.

Please refer to the map of the Nevada PMUs at:
https://www.arcgis.com/home/item.html?id=d9ba8dc05dd84faeabd8225ad08d4ab6



Please also refer to the USFS COT report population delineation and description. https://www.fws.gov/sites/default/files/documents/20130326_Final%20COT%20transmittal%20%28with%20corrected%20table%29.pdf . Please also refer to the COT report Table 2 known threats and extinction risk to all identified PACs. Regrettably, the situation has worsened in nearly all PACs and PMUs range-wide especially in Nevada.

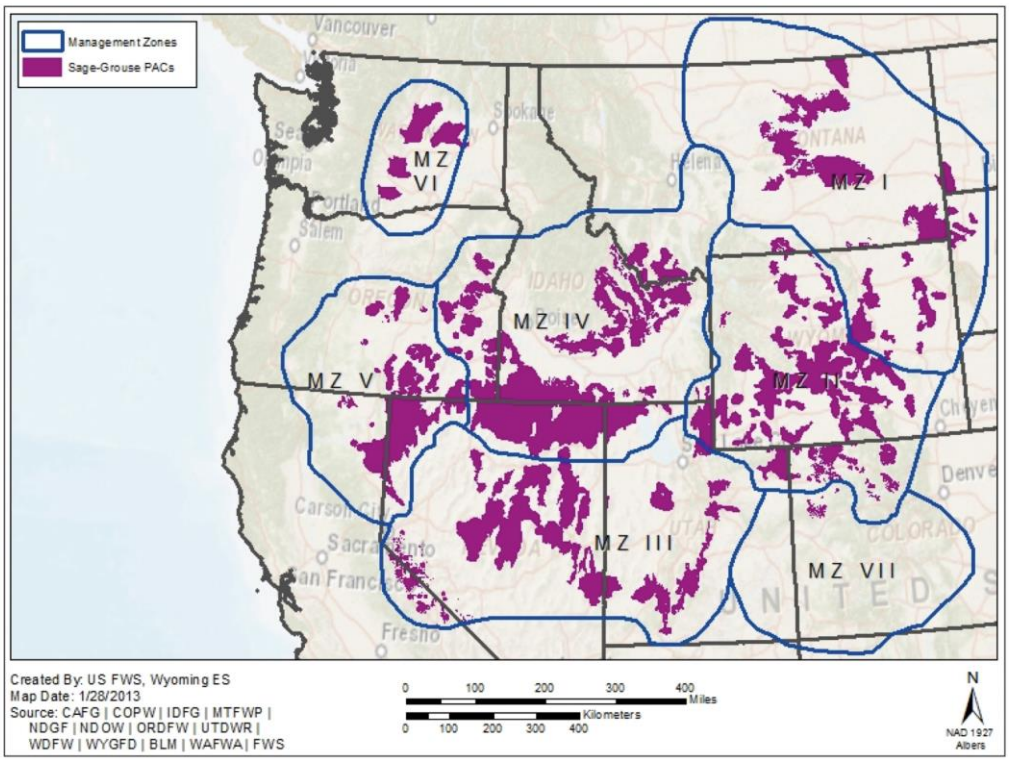
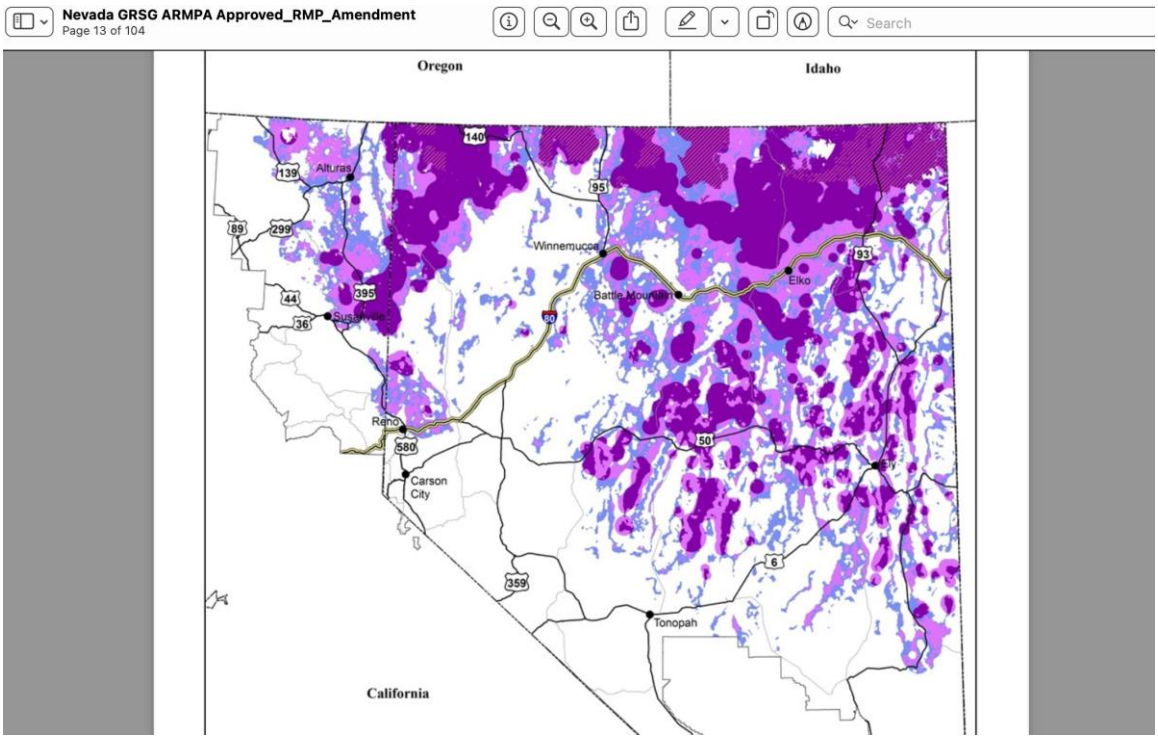


Figure 2. Sage-grouse management zones (Stiver *et al*. 2006) and Priority Areas for Conservation (PACs).

We recommend that all Nevada Priority and General habitats should be included in ACECs



Dark purple- Priority, medium purple General, pale blue – Other habitat. It is essential that, at a minimum, Priority and General habitat ALL be protected, and that "Other
" habitat be critically evaluated for inclusion in NV PMU-based ACECs. General and selected Other habitat maybe crucial for connectivity and may often be located in areas where "restoration" was stated to be a goal following wildfires or other disturbances. Relying only on Priority habitat will not be sufficient to ensure Sage-grouse survival in the naturally fragmented Great Basin Basin and Range topography in many areas of the Nevada PMUs.

Both BLM and USFS in Nevada keep trying to ram through projects that are the dead opposite of conserving, enhancing and restoring sagebrush habitats.

Threats include Greenlink North, SWIP/Online, Crosstie, a potential high voltage lines between NW Nevada and central Oregon -and many smaller transmission lines and linked massive industrial renewable energy sprawl (proposed to promote massive industrialization of remote public lands with current BLM leadership facilitating this energy neocolonialism).

BLM's Solar DEIS proposes massive industrial development of BLM lands in the region -further facilitating energy exploitation and export from the region via sprawling new transmission lines, as does loom=ing expanded Geothermal development under a new BLM CX. There are also expanded hard rock mining exploration and development threats; ever-mounting scientific information on the grave threat of cheatgrass and exotic bromes caused by public lands cattle and sheep livestock grazing and trampling disturbance to oils/native vegetation communities/biocrusts(with grazing harms exacerbated by hotter temperatures under climate change stress;) hotter temperatures under climate stress making lands less resilient and less able to withstand grazing impacts, and less resistant to weeds or recovery from grazing harm when subjected to grazing stress; the fact that climate change is exceeding predicted heating rates,

threats of new wildlife diseases decimating sensitive and important species including now avian flu threat to GRSG and diseases like RHD (very lethal to rabbits) altering predator prey bases; and also expanding livestock facilities including water developments that potentially harbor mosquitoes that may spread West Nile virus. Note that new hard rock mining claims and mega-mines especially for gold and other precious metals - where demand is increased by US warmongering creating global instability, devouring lands in the region and threatening ground and surface water, new petitions for ESA listing of species impacted by this project and inhabiting these lands, continued declines in Sage-grouse habitats and populations,

Continuing and Worsening USFS and BLM "Treatment" Attacks on Pinyon Jay and Migratory Bird Habitats and Biodiversity Values

The Boone et al. 2021 paper on Pinyon Jays states that the birds have undergone an 85% population reduction, and finds that Pinyon jays use forests over a wide range of elevations. See also : https://www.allaboutbirds.org/guide/Pinyon_Jay/lifehistory. Pinyon Jay populations declined by 85% between 1970 and 2014, according to Partners in Flight. They are a Yellow Watch List species, and have a Continental Concern Score of 14 out of 20.

In 2022, Defenders of Wildlife filed a petition seeking ESA Listing for these beautiful corvids: https://defenders.org/sites/default/files/inline-files/2022.4.25_FWS_Listing%20petition_Pinyon%20Jay.pdf .

In 2023, USFWS issued a positive finding Pinyon Jay 90-day finding: https://www.federalregister.gov/documents/2023/08/17/2023-17726/endangered-and-threatened-wildlife-and-plants-90-day-findings-for-five-species

When BLM or the FS proposes killing more PJ claimed to be "invading", the FS is very often destroying forests in areas where PJ naturally occurs and was historically present. Cattle grazing can destroy and kill young trees through trampling and breakage, and cattle grazing disturbance promotes irreversible flammable weeds choking the ground surface also preventing PJ forest regeneration.

Despite the USFWS issuing a positive 90-day finding on the Pinyon Jay petition, https://www.federalregister.gov/documents/2023/08/17/2023-17726/endangered-and-threatened-wildlife-and-plants-90-day-findings-for-five-species the HTNF recently scoped the East Humboldt-South Ruby (ESHR) EA that will include expanded new destruction of Pinyon Jay and many other avian species habitats. The HTNF SOPA shows the ecologically disastrous HTNF Prescribed Fire EA is still moving forward. The HTNF Indian valley PJ deforestation was authorized prior to the petition, but project components may still be taking place in the Austin-Tonopah landscape.
https://www.fs.usda.gov/project/htnf/?project=52200 (Indian Valley in M-T landscape) The Indian Valley project area sprawls across 22,500 acres or more, and within this site the Forest proposal is to radically deforest 17,000 acres, yet the FS conducted a mere rubber-stamp CX with no actual analysis of harmful environmental impacts.

The HTNF and BLM in Nevada (Ely Distirct BLM is a huge destroyer of native forests) promotes massive "restoration" projects target the mature and old growth native veg communities - from sagebrush to limber pine -that are sensitive and avian species and other rare species vital habitats necessary to support viable populations. This is all based on out-dated flawed models and do not reveal the specific inputs for each vegetation community and for wildlife habitats that it used.

The FS in this series of HTNF projects (the same type of flawed information that Nevada BLM uses) affecting both forest and shrubland sensitive species relies on long-disproven extremely short fire return and disturbance intervals in "range" papers by Miller 2008 and Tausch 2009, and Landfire info and modeling from 7 or more years ago in order to arrive at its astonishing forest destruction targets: in its prescribed Fire EA and East Humboldt-South Ruby project now scoped – harm GRSG and many of the same migratory bird, forest sensitive raptors and other species of concern would also be significantly impacted by this project. From the EHSR project:

"LANDFIRE data were also used to compare historic range mean fire return interval as well as approximate acres burned for each vegetation type (LANDFIRE 2014). This information provides an approximation of how many acres should be targeted for burning on an annual basis to move towards and then maintain the historic fire return interval to restore a more resilient stand composition and structure. Based on the natural fire regime, the analysis supports an annual prescribed fire objective of up to 80,000 to 100,000 acres per year on the Humboldt-Toiyabe National Forest.

https://www.fs.usda.gov/project/?project=57860

This amount of agency annual "prescribed:" fire use poses a grave threat to GRSG, Pinyon Jay and other imperiled native biota across Nevada – given the "Basin and Range" nature of the topography with Sage-grouse, Pinyon Jay and other wildlife populations on USFS lands also reliant on BLM lands. This is very much the case with Sage-grouse, long recognized as a landscape bird because of the need for a complex seasonal habitat.

The HTNF claim that Great Basin arid veg communities are "fire-dependent ecosystems" is nonsense. Climax vegetation communities of PJ have very long fire return intervals of hundreds of years. See Bauer and Weisberg 2010, for example – with 420+-year old fire return intervals vs. the ridiculously short intervals claimed by the HTNF in its projects and by Ely BLM in stacks of "watershed" EAs, current Elko BLM proposed projects, Bi-state GRSG projects, etc. Such projects make arid lands more uniform. And dominated by early successional vegetation and highly flammable cheatgrass, bulbous bluegrass, and other weedy vegetation. The projects result in hotter, drier, weedier, windier lands with greatly simplified vegetation communities and large-scale losses in biodiversity - lacking complex woody vegetation structure required by so many rare and declining species and that protects and cools the ground surface and allows slower snow melt and moisture retention on site.

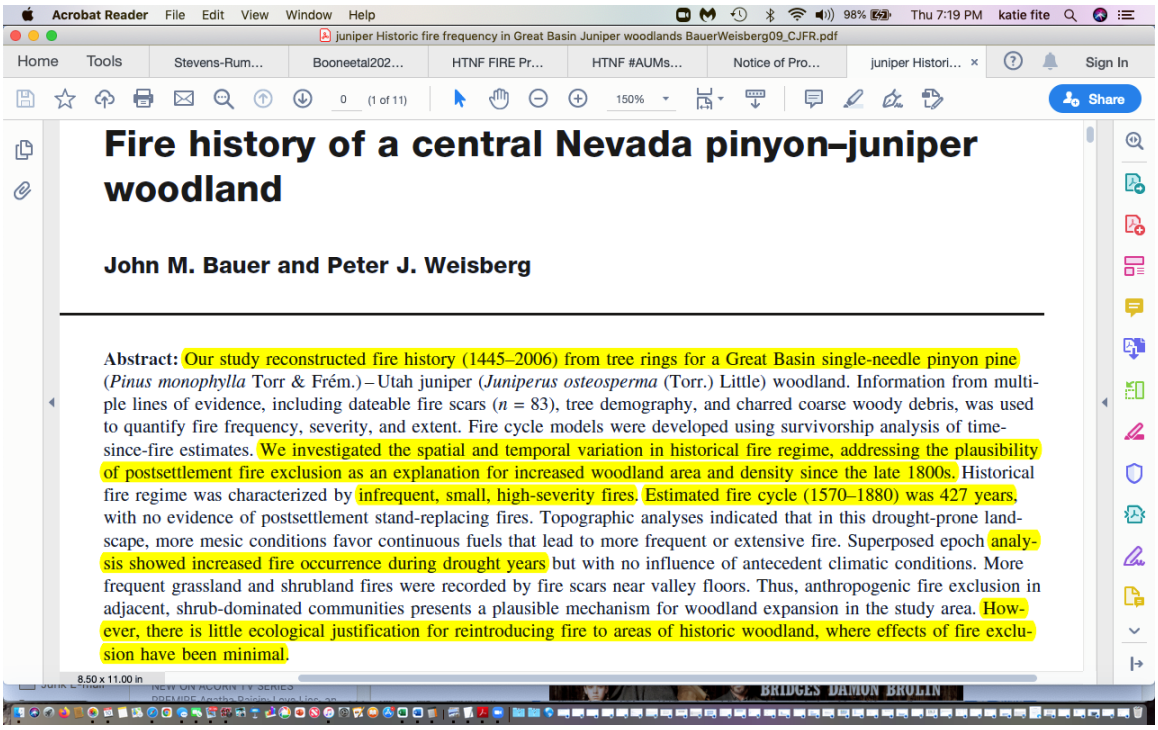
The HTNF also asserts it will alter how forests burn. But isn't this "unnatural"? Don't nearly all these forests and sage historically burn in stand replacing fires and with fire intervals of several hundred years– if one consults the ecological literature, and not "range" advocate papers the FS

relies on. Lanner and Frazier 2011 have described the historical stability of Nevada Pinyon-Juniper forests. http://www.phytologia.org/uploads/2/3/4/2/23422706/933360-387lannerpinyonjunipernevada.pdf

Fire kills sagebrush of all types – and all of these HTNF treatments will further endanger local and regional populations of Nevada's Sage-grouse, Pygmy Rabbit, Sage Thrasher and other sagebrush dependent species habitats and populations linked to adjacent BLM lands.

The HTNF (and Nevada BLM - as in Ely "Watershed" projects and others) native vegetation treatment schemes are so extreme right now that agency claims about one major project contradict the other, as in the HTNF Fire EA vs. the HTNF EHRM EA.
The HTNF Prescribed Fire EA claims these are fire-dependent ecosystems - yet in the sprawling EHRM EA that was recently scoped, the HTNF claims it is trying to stamp out fires.

These projects represent major new and long-term threats to GRSG, Pinyon Jay, and other sensitive species. Both the FS and BLM use flawed models targeting PJ and mature native vegetation communities in the Great Basin for massive alteration. These models ignore: natural arid land forest and shrubland ecological and successional processes; the importance of mid and later seral habitats to survival of nearly al sensitive species and their importance to biodiversity; the high risk of treatment-caused irreversible weed infestation that will be exacerbated by chronic grazing disturbance and hotter temperatures under climate change stress; and the great value of these maturing, mature and old growth forest and shrub habitats, and the aesthetically pleasing and natural settings they provide to the public. These major manipulation schemes will significantly harm all of these values. The HTNF large-scale treatment schemes appear to be a key part of any claimed "need" for grazing of the sacrifice/reserve or 40 other vacant allotments. There are significant adverse effects of proposed HTNF and BLM massive vegetation manipulation projects on sensitive and MIS species and migratory birds in this region In contrast to the HTNF and BLM manipulation projects -
Bauer and Weisberg research shows how flawed both HTNF FS modeling and Nevada BLM District modeling is– as fire return and disturbance intervals in PJ are extremely long (here Bauer and Weisberg found 427 years) -compared to the very short time periods used by the flawed vegetation models that agencies employ to justify massive manipulation and destruction of the very structural and complexity attributes that sensitive species require.



Fire history of a central Nevada pinyon–juniper woodland

John M. Bauer and Peter J. Weisberg

Abstract: Our study reconstructed fire history (1445–2006) from tree rings for a Great Basin single-needle pinyon pine (*Pinus monophylla* Torr & Frém.) – Utah juniper (*Juniperus osteosperma* (Torr.) Little) woodland. Information from multiple lines of evidence, including dateable fire scars (n = 83), tree demography, and charred coarse woody debris, was used to quantify fire frequency, severity, and extent. Fire cycle models were developed using survivorship analysis of time-since-fire estimates. We investigated the spatial and temporal variation in historical fire regime, addressing the plausibility of postsettlement fire exclusion as an explanation for increased woodland area and density since the late 1800s. Historical fire regime was characterized by infrequent, small, high-severity fires. Estimated fire cycle (1570–1880) was 427 years, with no evidence of postsettlement stand-replacing fires. Topographic analyses indicated that in this drought-prone landscape, more mesic conditions favor continuous fuels that lead to more frequent or extensive fire. Superposed epoch analysis showed increased fire occurrence during drought years but with no influence of antecedent climatic conditions. More frequent grassland and shrubland fires were recorded by fire scars near valley floors. Thus, anthropogenic fire exclusion in adjacent, shrub-dominated communities presents a plausible mechanism for woodland expansion in the study area. However, there is little ecological justification for reintroducing fire to areas of historic woodland, where effects of fire exclusion have been minimal.

Lanner and Frazier 2011 have described the historical stability of Nevada Pinyon-Juniper forests. http://www.phytologia.org/uploads/2/3/4/2/23422706/933360-387lannerpinyonjunipernevada.pdf .

Agencies ignore Romme et al. 2009 and the Intermountain Forester's Position Paper on the need to protect persistent Pinyon-Juniper forests.

Regarding sagebrush - BLM offices across the Great Basin continue to rely on wildlife short fire return intervals in "Ecosites" and Landfire site models to claim that sagebrush communities are unhealthy – just because of the plants present – and not because of grazing. Thus, to make lands "healthy" (i.e. fit flawed agency veg models) -sagebrush must be crushed, roller-beaten, herbicided, re-seeded with mostly forage grass including "natives" bred for large size. In contrast see Connelly et al. 2011, Studies in Avian Biology, William Baker chapter on sagebrush fire return intervals.

The BLM in the GRSG EIS process and in evaluating all ACEC proposals must fully analyze the highly significant adverse footprint of the vast and destructive agency and other vegetation treatments as a cumulative impact and threat to sensitive species (including the collateral damage resulting from such projects – such as pile burning amid sagebrush creating tens of thousands of new sites for weed invasion annually) and persistence of sustainable habitats and populations at the local and regional level.

Both USFS and BLM ignore the major role of historical mining era deforestation and settler burning and wood use in removing native forests from lands. Then the agencies use claims of "encroachment", "expansion" for areas where trees are re-occupying forests to doom these forests to clearing for livestock forage under claims of saving sage-grouse or reducing "fuels".

These radical vegetation manipulation projects make the arid forest lands bleaker, hotter, drier, windier, weedier thus changing the site micro-climate. They also make lands more likely to burn and prolong the fire season. These projects are also causing significant adverse impacts to sagebrush – including as collateral damage – including pile and other burning which produces tens of thousands of sites for cheatgrass and other flammable weeds to get a toehold to infest forest lands and then. Proliferate outward, with impacts worsened by cattle grazing disturbance and depletion and the cows are weed vectors Further, USFS and BLM PJ killing projects end up killing many more trees than are actually "treated". Agency project-caused wounded trees and masticated or piled wood pitch lures in insects that then infest "leave" tree areas and patches.

Thus, there is a great need to designate an ACEC on BLM lands in this landscape and work with the Forest Service to protect BOTH Sage-grouse and Pinyon Jay habitats. It's time to stop the senseless weed-causing "treatments" that are so ravaging the Great Basin's native forests = tragically destructive projects like this: https://nevadacurrent.com/2023/11/06/blm-plan-to-rip-up-thousands-of-trees-in-nv-can-move-forward-judge-rules/ .

Renewable Energy Transmission Line Proliferation Across Nevada Sage-grouse Habitats Including Northern Portion of Monitor PMU

Sagebrush habitats and Pinyon-Juniper communities across the region are facing large-scale fragmentation from transmission line sprawl being rammed through by the Interior Department. The proposed Greenlink North transmission line slashes through the northern portion of the PMU area. The current Greenlink proposal (with BLM re-scoping – now showing BLM using Greenlink North to designate a 3-mile wide utility corridor. This would further cut apart Sage-grouse habitats and populations across much of the central Great Basin. Transmission line construction and operation causes road and wed expansion, disturbance and line component bulldozing and disturbance in construction, as well as the visual presence of the line and also potential habitat fragmentation from UV flashes that may impact Pronghorn, Mule Deer, Elk and some birds too -including potentially Sage-grouse. These animals that can perceive UV see a series of flashes from high voltage lines. https://www.pbs.org/wgbh/nova/article/power-lines-look-like-terrifying-bursts-of-light-to-animals/ describing the potential to disrupt animal behavior.

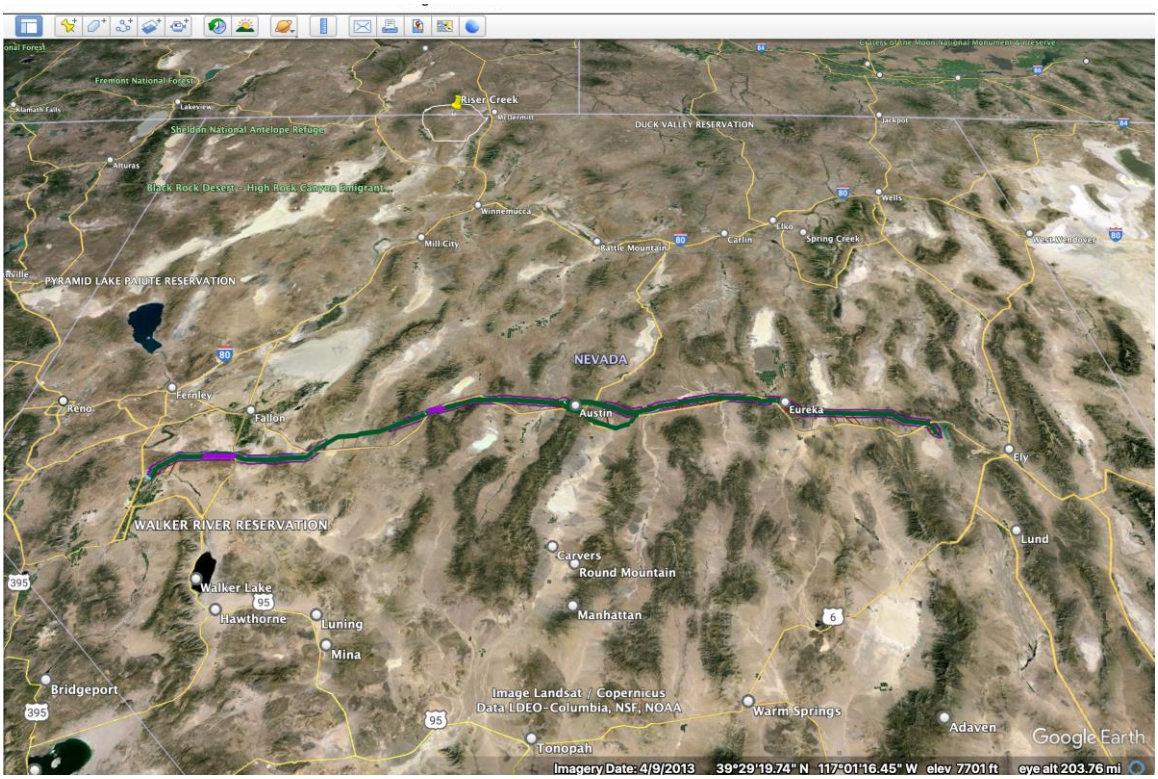
Research increasingly shows the great sensitivity of Sage-grouse to visual and noise disturbance (Coates et al. 2023). https://www.sciencedirect.com/science/article/pii/S0006320722004426

Even this Utah State study (Utah grouse research is frequently very livestock or extraction industry-friendly) found problems:
https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0209968 .Nesting and brood rearing were negatively impacted. Kohl MT, Messmer TA, Crabb BA, Guttery MR, Dahlgren DK, Larsen RT, et al. (2019) The effects of electric power lines on the breeding ecology of greater sage-grouse. PLoS ONE 14(1): e0209968.
https://doi.org/10.1371/journal.pone.0209968

So not only will Greenlink (and all the other new lines being proposed in the Great Basin including Crosstie, and SWIP/Online) result in immense new "renewable" energy sprawl of

remote-sited industrial solar projects (and industrial wind projects and industrial geothermal projects) and all the ancillary powerlines and other habitat destruction and disturbance associated with renewable energy green colonialism in the Great Basin, it will pave the way for even more powerlines, gas lines, potential water export lines, potential carbon sequestration pipelines (carbon sequestration is largely a green energy scam), and much other development.

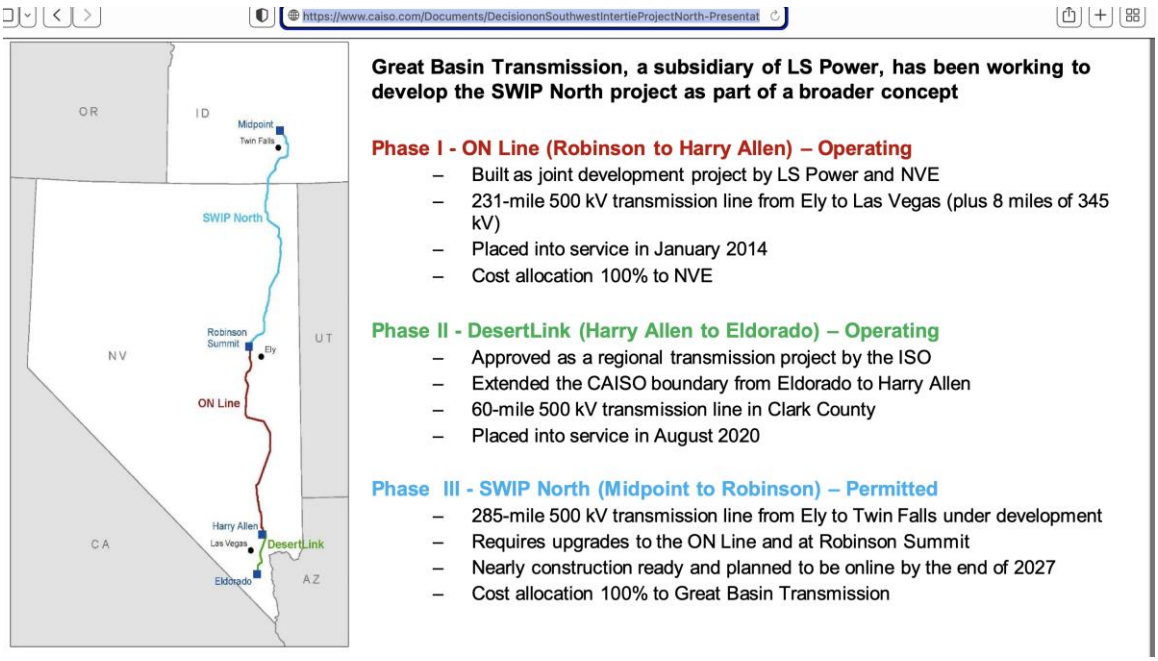
The Greenlink North proposed mega-transmission line crosses portion of HTNF land and much BLM land between Austin-Eureka-Ely. This line is being built to promote massive remote-sited solar and potentially geothermal and wind projects to be built in the surrounding landscape and power exported in a form of green colonialism. Greenlink North would rip large areas of Nevada sagebrush and PJ habitats apart. Such new transmission line sprawl projects are aimed to drastically increase remote-sited industrial renewal energy projects all over the surrounding landscape. The eastern portion of these lands currently have less cheatgrass/flammable weeds – but disturbance from this project across grazed lands threatens expanded flammable weeds in salt desert, sagebrush and PJ habitats.



Greenlink North path cutting through critical sagebrush and Pinyon-Juniper habitats on BLM and some USFS lands. See: https://www.fs.usda.gov/project/?project=64198. Map of the ecologically and scenically disastrous Greenlink North transmission line project has just been re-scoped. Now BLM is making the project worse in re-scoping, proposing a 3-mile wide "utility corridor" around the line route – likely leading to a slew of additional future utility developments that will similarly devastate the region.

The BLM Solar DEIS shows BLM intent to sprawl industrial solar projects 10 miles north and south of this line and any other high voltage transmission line (This is included in the captions with the EIS maps in reference to why lands are in different categories). BLM refuses to examine less harmful alternative of siting the project further north along I-80 in part. It will affect some FS lands and much additional BLM land in this region that is critical for wintering wildlife, and for sensitive species survival. The massive industrial solar (and foreseeably geothermal projects or wind projects too) to which it is linked will sprawl outwards under BLM's scheme - extending10 miles from the actual path of the line on either side of line. So that's basically a 20-mile wide industrial zone - devastating sagebrush and PJ habitats for Sage-grouse, Pygmy Rabbit, Pinyon Jay, migratory songbirds, and big game. BLM now intends for the path of Greenlink North to be a "utility corridor" 3 miles wide. This facilitates more powerlines, gas lines, water or other lines or who knows what future development actions in the "utility corridor" – and these may then cause further sprawl of development to the north and south of the line eating into even more habitat.

Greenlink also negatively impacts other PMUs. So will other new mega-transmission lines proposed to facilitate massive remote energy development carving up the sagebrush sea of Nevada -and destroying and fragmenting sage-grouse habitat – including Crosstie and SWIP.



https://www.caiso.com/Documents/DecisiononSouthwestIntertieProjectNorth-Presentation-Dec2023.pdf

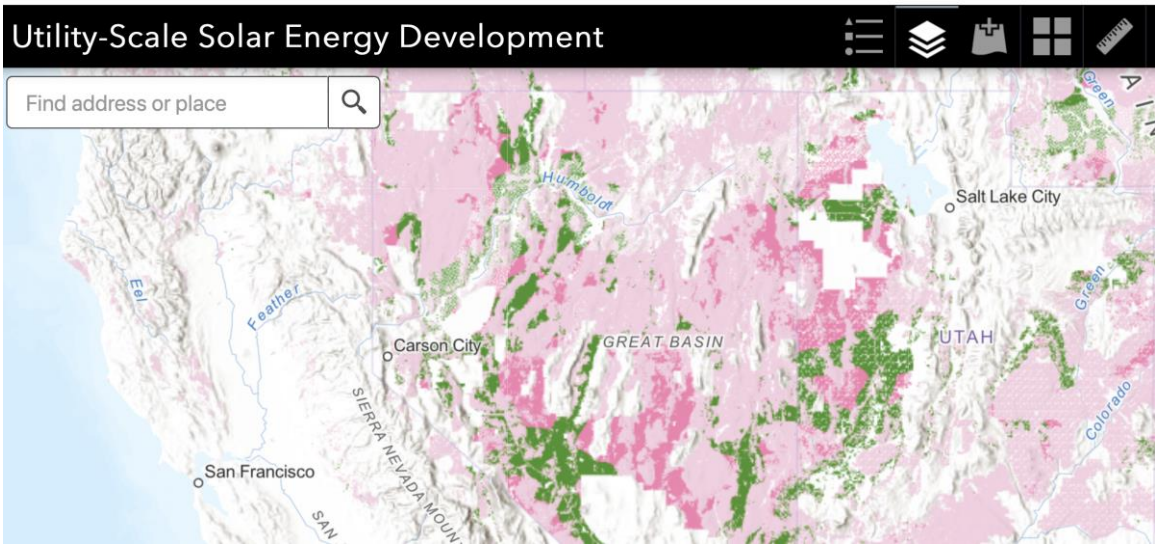
Crosstie:
https://energy.nv.gov/uploadedFiles/energynvgov/content/Programs/TaskForces/2017/9d_transcanyon.pdf .

BLM Solar DEIS Major Renewable Energy Corporation Public Land Grab.

The highly foreseeable designation of 8 million or so acres for industrial solar siting under the BLM's proposed GRSG habitat fragmenting and population isolating powerlines, will wreak havoc on most of Nevada's Sage-grouse populations. Alternative actions in the Solar DEIS are based on solar projects being located within 10 miles of large-scale transmission lines, and new transmission lines like Greenlink will radically expand such areas.

There is looming massive foreseeable habitat loss of migratory birds and other sensitive species in portions of the Great Basin landscape due to the major push for remote-sited industrial solar development, as laid out in the BLM Solar EIS - greatly expanding solar in the sagebrush and other arid lands biomes, and its potentially designation 22 million acres as potential for industrial solar, expanding geothermal destruction of Nevada wild land habitats and waters. Here is the situation under 22 million acres (Alt. 1 map checked):

https://blm-egis.maps.arcgis.com/apps/webappviewer/index.html?id=22df2b327e0c49c3a9afb67de5ca658d



Dark green is solar-targeted lands. But of transmission lines were built, dark pink colored lands may be thrown into the solar development mix – as they are only excluded because of being greater than 10 miles from high voltage lines.

And now there is news of even another destructive line in NW Nevada and central Oregon: https://www.canarymedia.com/articles/transmission/heres-where-the-biden-admin-wants-to-build-new-power-lines-asap#commento-login-box-container ripping through sagebrush habitats and western juniper forests.

BLM Recent Adoption of a Geothermal CX to Ram Projects Through

On April 15, 2024 the BLM adopted two existing categorical exclusions from the U.S. Forest Service and the Department of the Navy that will enable the agency to expedite review and approval of geothermal exploration proposals. https://www.blm.gov/press-release/blm-adopts-categorial-exclusions-expedite-geothermal-energy-permitting.
BLM's remote-sited industrial "renewable" energy projects are at sharp odds with sustaining sagebrush and Sage-grouse habitats and populations.

See: https://www.blm.gov/programs/energy-and-minerals/renewable-energy/geothermal-energy .

Hard Rock Mining

There is also greatly expanded lithium mining claims and exploration proposals and other hard rock mining claims, exploration and mining including for other critical minerals, and gold mining -with demand for the latter driven by warmongering and global insecurity. The Center for Biological Diversity (CBD) has mapped active lithium projects in the West. See CBD Lithium Claims Tracker website.

https://www.google.com/maps/d/viewer?mid=1kq8TRUSMR97kg-XQ22kdQpE4lUT0Rj49&ll=38.52747840473932%2C-111.43918045000001&z=5

There is no BLM and/or USFS protection for high value habitats, cultural locales or other values vs. degraded habitats and few values – instead western public lands face lithium claims chaos – just as they do gold, copper and other mining claims threats. The FS has not specified if there are mine claims (of any type) in these allotments or adjacent BLM lands. We stress that the Haaland Interior Department has endlessly dragged its feet on any mineral withdrawal, and the mineral withdrawal being considered appears to purposefully exclude ALL lands in central NV by having failed to consider them as Focal habitat. This appears to represent the extreme dominance of the hard rock mining industry over "conservation" of Sage-grouse in Nevada. In fact, the Obama, Trump, and Biden BLM all appear to be intent on sacrificing nearly all Nevada Sage-grouse habitats to the hard rock mining industry.

Please also refer to WLD and GBRW comments on the Cortez and Phoenix Eagle Take Permits (submitted previously in this GRSG 2024 DEIS comment period).

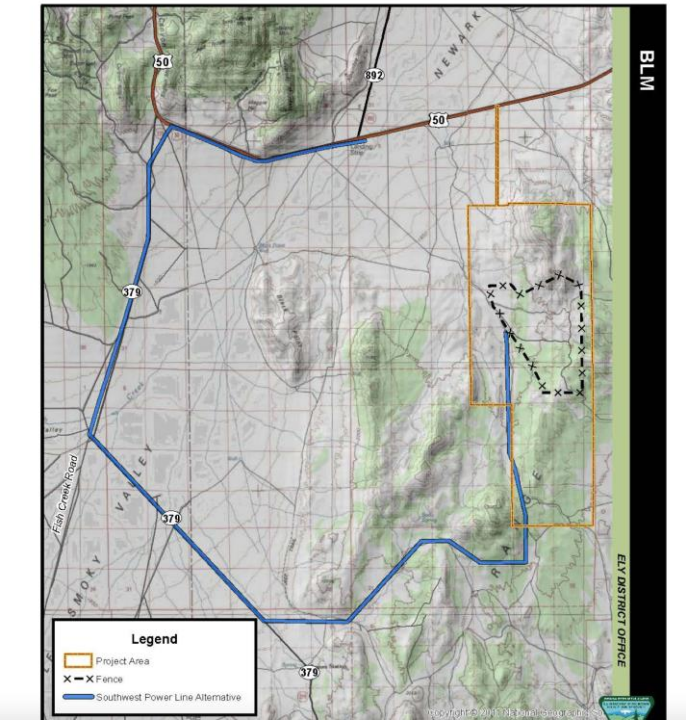
Note that the 2021 Nevada Division of Mines document only includes mines up to 2021. There have been additional mines constructed, and large amounts of exploration too. Since 2021, there has been at last one new gold mine (Easy Junior/Gold Rock) approved.

https://eplanning.blm.gov/eplanning-ui/project/37162/510

There is a new Vanadium mine (Gibellini) south of Eureka https://eplanning.blm.gov/eplanning-ui/project/2000633/510 ,

2023 signed ROD:
https://eplanning.blm.gov/public_projects/2000633/200380099/20088025/250094207/20231023_Gibellini_ROD_&_Plan_Approval_Decision_SIGNED.pdf

The Pan mine has been operating for a few years now, and there is extensive exploration in surrounding areas. https://eplanning.blm.gov/eplanning-ui/project/37162/510 .



There is also extensive exploration activity occurring in the region – affecting the Monitor PMU, and White Pine other PMUs. The massive hard rock mining gold exploitation that has had such major impacts further north in Nevada now appears to be moving south and is poised to engulf the Monitor PMU lands too.

"Here is a rough list of mines in the cumulative effects area from the Nevada Commission on Minerals, Division of Minerals 2021 report on Major Mines. Several years ago, it was reported that if Nevada was a country, it would be the world's 3rd largest gold producer. Nevada's extremely arid, fragile landscape and its biodiversity and wildlife habitats are getting wrecked by this huge ever-expanding mega-mining disturbance footprint.

See:
https://minerrals.nv.gov/uploadedFiles/mineralsnvgov/content/Programs/Mining/MiningForms/MM2021_Major_Mines_2021.pdf

Climate Change Stress-Cheatgrass/Flammable Exotic Grass Proliferation.

Climate stress, drought and other weather extremes make "recovering from aggressive scorched earth BLM and USFS livestock grazing and "treatment" disturbance much more difficult than in the past. Ubiquitous grazing disturbance works synergistically to make it all worse – due to climate stress - hotter temperatures, and more extreme weather events. See Beschta et al. 2012 and 2014, Reisner et al 2013, Carter et al. 2014, Williamson et al. 2019/.2020, Fusco et al. 2019, Kerns et al. 2020, also Molvar et al. 2024.

Record global heat in 2023 further demonstrates the significance and cumulative impacts of climate threats – and the threat to waters, wild lands, biodiversity, sensitive species – and al exacerbated by livestock grazing stresses on arid western plant communities that are did not evolve to withstand cattle and sheep grazing impacts. .

It has been particularly alarming to hear BLM's current head Stone-Manning praise livestock water developments – demonstrating how woefully out of touch BLM leadership is with the damage actually caused by livestock grazing intensification and facilities in the arid Great Basin region where lands and waters are unresilient in the face of exotic domestic animal grazing, and unresistant to being swept by flammable invasive grasses and other weeds when sagebrush uplands are intensively disturbed by cattle concentration, by BLM/USFS veg "treatments" that destroy mature and old growth communities and sensitive species habitats, and by industrial energy, mining explo, expanded roading with transmission line construction and development and other soil/biocrust/vegetation disturbance.

Cheatgrass/Flammable Weed Threats Increase and New Information

There is significant new scientific info including on cheatgrass threat and risk, since the old out-dated 2015 ARMPAs brushed aside any significant solid controls on livestock grazing degradation. grazing – and instead often made matters worse by endorsing habitat-destroying, livestock and disease-concentrating livestock facilities. That are often injurious and lethal to wildlife including Sage-grouse. Please see Williamson et al. 2019, Kauffman et al. 2022, Molvar et al. 2024 scientific literature on the role of livestock grazing in causing irreversible sagebrush habitat dooming flammable invasive weed infestation and spread. See Connelly et al. 2004 Sage-grouse Conservation Assessment, and Knick and Connelly, eds. 20100 studies in Avian Biology, Van Lanen 2016 Sage-grouse fence collision deaths still continue on marked fences, lure in nest and egg predators. discussing myriad harms fences and water developments cause to sagebrush habitats and how they threaten Sage-grouse survival.

Significant new information on the interaction of climate change stress with grazing and cheatgrass/weeds is summarized in Kauffman et al. 2022. https://link.springer.com/article/10.1007/s00267-022-01633-8 describing how livestock grazing in arid western lands exacerbates and interacts with climate change, loss of resilience and resistance in the face of arid land disturbance and grazing disturbance causing cheatgrass.

Information compiled in Molvar et al. 2024 review of extensive evidence of grazing causing cheatgrass. https://westernwatersheds.org/wp-content/uploads/2024/02/Cheatgrass-Literature-Review-final.pdf

See also:
https://www.usgs.gov/news/new-research-highlights-decline-greater-sage-grouse-american-west-provides-roadmap-aid?qt-news_science_products=1#qt-news_science_products .

https://pubs.er.usgs.gov/publication/ofr20201154 "Range-wide Greater Sage-Grouse Hierarchical Monitoring Framework: Implications for Defining Population Boundaries, Trend Estimation, and a Targeted Annual Warning System". Greater Sage-grouse populations have declined significantly over the last six decades, with an 80% range-wide decline since 1965 and a nearly 40% decline since 2002, according to a new report by the U.S. Geological Survey.

Despite the clear scientific evidence that livestock grazing is a major cause of flammable weed expansion and dominance, and biodiversity loss, current BLM officials like Director Stone-Manning have promoted harmful cheatgrass promoting habitat fragmenting and destroying grazing management practices, such as livestock water pipeline sprawl, and highly uncertain anything-goes Outcome Based Grazing that strips almost all accountability and use standards from public lands grazing, where cattle and sheep interests (increasingly corporate owned and/or hobby ranchers and/or water or other speculators and hard rock miners that bought ranches for water rights because their mines will wreck the region's aquifers) enjoy nearly free grazing and are exempt from paying to repair the damage their livestock cause. The remarks of Stone-Manning promoting known harmful developments in sagebrush habitats solely to perpetuate harmful livestock grazing represents significant scientific negligence on the part of BLM. We are very concerned that BLM officials in the latest DEIS continue pandering to the livestock industry and politicians rather than seriously addressing grazing degradation to public lands. This has long been clearly evident in the scapegoating of native PJ forest and "dense" sagebrush, and extreme focus on veg killing treatments and wild horse round ups or distraction of persecuting and killing Ravens - while failing to acknowledge the extent of public lands livestock grazing degradation to the sagebrush ecosystem and failing to require the livestock industry comply even the most minimal actions to address these issues. It's known that water pipelines and troughs in uplands attract Sage-grouse nest and egg predators – so stop building more and start rolling back and removing these facilities. Instead, the extremely weak 2015 ARMPAs, is loaded with excuses that enable endless livestock facility expansion and high levels of continued degradation of sagebrush habitats.

The current serious management failings to control damage to public lands is demonstrated by the most recent BLM whistleblower: https://peer.org/blm-veteran-decries-diminishing-range-protection/?utm_source=twitter&utm_medium=social&utm_term=&utm_content=&utm_campaign=pr-5-9-24&fbclid=IwZXh0bgNhZW0CMTEAAR3h7UqGUo_qRLUsDA2Gny6vUiifzleq0g-pyWP_LAXhOCaIq8mCHNRFEQY_aem_AW_Qpv3wjN9LC3Pk4mGbJ3QbLgkaRebE1s_DNUUoFo-Z4epdqTaOM5DGuoJhvfeDmupfM3JGpKhPuQ3WowRsJuPZ

"BLM Veteran Decries Diminishing Range Protection
Inattention to Livestock Program Drives Deteriorating Land Conditions

Washington, DC — One of the Bureau of Land Management's most senior range specialists is leaving the agency in disgust over its declining ability and willingness to protect the lands entrusted to it, according to her exit memo posted today by Public Employees for Environmental Responsibility (PEER). Her central concern is that a shrinking cadre of BLM range staff are not allowed to stem the damage caused by chronic overgrazing and rampant grazing trespass.

For more than 32 years, Melissa Shawcroft has been a BLM Range Management Specialist working in Colorado's San Luis Valley. She had been responsible for administering 70 grazing allotments and 50 grazing permits. In 2012, BLM gave her its Outstanding Rangeland Management Specialist Award. She resigned from the agency effective April 30th of this year. In her exit memo to BLM Director Tracy Stone-Manning, Shawcroft points to a combination of factors that have lessened the ability of the agency to safeguard lands, including –

- *Far fewer range staff spending far less time in the field directly observing conditions;*
- *Systemic failure to enforce landscape health standards to address the need to improve degraded lands and reduce destructive overgrazing; and*
- *Unwillingness to address ruinous grazing trespass no matter how egregious the violations.*

"The BLM I am leaving today is a sorry outfit that is far less effective than the agency I went to work for in the early 1990s," commented Shawcroft. "Unfortunately, agency managers being brought in all seem to be trained to avoid conflict rather than solving problems." Recently, BLM adopted a public lands rule that would elevate conservation to an official use along with mining, grazing, drilling, and other energy development. To fully implement this rule, BLM managers and staff would need to assess and monitor actual landscape conditions in a manner that Shawcroft sees in sharp decline.
"Melissa Shawcroft is pointing out that BLM has lost its connection to the health of the land," added Rocky Mountain PEER Director, pointing to BLM's own data showing that large portions of the West fail the agency's own minimum standards for soil conditions, vegetation, water quality, and wildlife habitat. "If BLM fails to enforce basic land health safeguards, western landscapes will continue to suffer even with these new rules in place."
PEER is also part of a coalition currently suing BLM to induce the agency to better manage its vast commercial livestock program".

Relevant and Important Values of Proposed ACEC

The NDOW PMU delineations, the USFWS COT report, the mapping of habitats in the 2015 GRSG Nevada EIS all illustrate how critical the Nevada populations are ot the survival of Sage-grouse in this often naturally Basin and Range fragmented landscape – on top of which ever-growing human-caused fragmentation and habitat loss is taking place..

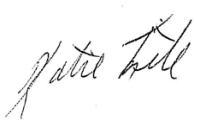
Many PMUs are suffering relentless domestie livestock grazing and facility degradation and disturbance, hard rock mining, "renewable" energy, expansion of flammable invasive weeds, depletion of very scarce ground and surface waters, and other threats. Populations on the edge of a species range are vulnerable to extirpation and range contraction.

There are still significant tracts of beautiful native Pinyon-Juniper forest not yet destroyed in federal agency "treatments" that ravage Pinyon Jay, Ferruginous Hawk, Ash-throated Flycatcher, Gray Vireo, and a host of other species that inhabit or seasonally rely on Pinyon-Juniper forests are greatly threatened by these massive deforestation schemes that serve to distract from the great need for agency management to actually protect existing sagebrush habitats – such as

removing livestock form lands not yet infested with flammable invasive species, or removing rather than expanding killer fences and weed-causing upland water developments.

Chronic livestock grazing disturbance, ever-expanding livestock facilities and biodiversity-destroying massive federal agency vegetation manipulation "treatments" – many done in p[art in the name of saving Sage-grouse pose grave dangers of expanding flammable invasive species in this region, and extirpating important native biota. Here, unlike much of eastern Oregon and southern Idaho lands which BLM had considered "Focal" habitat - while inexplicably omitting every acre of BLM land in central Nevada - there still is habitat relatively free of cheat/flammable weeds. But that all is greatly threatened by all the looming new development - new transmission lines, renewable energy proliferation, expansion of hard rock mega-mines and mining exploration, huge proposed USFS flammable weed-causing "treatments" (HTNF Fire EA relegates nearly every acre outside Wilderness to massive manipulation) and weeds will inevitably spill over onto BLM land and the treatments will take out irreplaceable and critical habitat – all resulting in massive solar and other "renewable" energy expansion and large-scale habitat loss and growing fragmentation and gulfs between occupied habitat and populations, increased development of hard rock and other mining activity – all pose a significant threat to Nevada PMUs.

Sincerely,



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OWYHEE COUNTY BOARD OF COMMISSIONERS
COURTHOUSE P.O. BOX 128 MURPHY, ID 83650-0128
TELEPHONE (208) 495-2421

District 1 – Jerry Hoagland – P.O. BOX 128 MURPHY, ID 83650-0128
District 2 – Kelly Aberasturi – P.O. BOX 128 MURPHY, ID 83650-0128
District 3 – Cindy L. Bachman – P.O. BOX 128 MURPHY, ID 83650-0128

June 12, 2024

BLM_HQ_GRSG_Planning@blm.gov
Utah State Office, ATTN: HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, UT 84101

Re: Owyhee County, Idaho Comment on Greater Sage-Grouse Rangewide Planning Draft Resource Management Plan Amendment and Draft Environmental Impact Statement DOI-BLM-WO-2300-2022-0001-RMP-EIS

This document will be delivered electronically via the "Participate Now" option found at https://eplanning.blm.gov/eplanning-ui/project/2016719/570

Dear Sir:

Owyhee County Idaho provides the following comments on the Draft RMP Amendment/Draft EIS.

Owyhee County is an Idaho County of large land mass and small population. The lands are a combination of federal, state, and private ownership with the predominance (approximately 80%) being federal owned and managed.

Owyhee County's economy depends upon ranches and farming. Livestock grazing by the ranching operators is dependent upon the use of not only the private ranch lands but also the federal and state grazing permit lands. Recreational uses on the federal lands have increased significantly in the past two decades as population in the nearby Treasure Valley have increased and that increase has had impacts on the federal lands on which the recreation occurs. Those impacts directly impact the ranching operations which are essential to the County economy. Socio-Economic Studies published, and updated by the University of Idaho, show that the ranches and farms of the county are essential to the social structure of the county.

In the 1990's Owyhee County established a Natural Resources Committee (NRC) which reports to and advises the Board of County Commissioners on land use matters. A subcommittee of the

NRC is the Owyhee County Sage Grouse Local Working Group (OCSGLWG). The OCSGLWG over the past 20 years has developed, implemented and monitored dozens of projects to protect and enhance Sage Grouse in our county. Our SGLWG is unique in the State in its' relationship to the Board of County Commissioners, through the NRC, and in regard to the hundreds of thousands of dollars of grant funds that the LWG has acquired to benefit Sage Grouse. This effort has been successful through the involvement of the ranching operators on the private lands scattered throughout the state and federal lands of the County. A former Boise District BLM Wildlife Biologist who was active in our OCSGLWG made the comment that successfully preserving the scattered ranches in the midst of the federal lands was critical to preserving Sage Grouse populations. Her logic was that preserving the low population scattered ranching communities preserved the environments needed by Sage Grouse. Our experience has been that our ranches and their livestock grazing enhances the habitat for Sage grouse in that it reduces fire risk, opens up access to healthy vegetation, and slows invasive plant expansion.

Owyhee County will vigorously oppose any attempts to place restrictions or management actions on private lands under the premise of management for Sage Grouse. We will also vigorously oppose attempts to place restrictions on valid existing rights on federal or state lands such as water rights acquired under Idaho Law.

Studies by Idaho Fish and Game and others show that our Sage Grouse populations are doing quite well. We attribute that in large part to the efforts of our ranching population.

We support the Idaho Governor's Sage Grouse Plan and, where that plan has been incorporated into BLM's Preferred Alternative (Alternative 5), we support that Alternative.

We have concerns regarding certain elements of Alternative 5 or to certain elements which are not fully defined. Failure to fully define some management proposals could easily lead to inconsistent implementation and to harm to the base economy of the county—which is critical to the preservation of healthy Sage Grouse populations.

We do not support ACEC designations on the basis that they are not necessary to obtain the desired Sage Grouse goals, are often more burdensome to other uses than is necessary or appropriate, and will be harmful to the County's livestock industry, economy, and culture. In managing its land for a variety of uses and species, the BLM needs increased management flexibility in order to be more responsive to the land's needs at the local, site-specific scale. History has proven that special land use designations such as ACECs drastically inhibit the agency's ability to nimbly manage the land. Rather, they place stringent standards and restrictions on that land that stifles creative problem solving and management flexibility. There is no reason for land to be managed even more strictly when adequate measures are already in place.

We support the Idaho Governor's Sage Grouse Plan and, by reference in this document, adopt it as part of our comment.

We have participated in meetings with the Idaho State Office of Species Conservation, have heard and discussed their proposed comments (both those in favor and those expressing concern

or need for clarification) and support and adopt them as our own. We appreciate the efforts BLM has made in incorporating much of the State Plan into Alternative 5.

We support the stated concerns of the Idaho Cattle Association as referenced in their Summary of Key Concerns list.

We provide the following additional comments:

Our county economy is based on agriculture. With livestock grazing being the use most often impacted in the Sage grouse priority and important habitats, BLM needs to look carefully at the real issues impacting Sage Grouse when decisions are to be made regarding restrictions to use.

When implementing Adaptive Management, BLM needs to carefully consider how a proposed management change will work on the ground before implementation. Proposed actions also need to be carefully matched to the site-specific issue. One size habitat description does not fit all habitats.

Owyhee County does not want and will not support renewable energy in Sage grouse habitat. The combination of the energy sites and associated buffers remove habit which adversely affects grazing activities on those lands and further reduces multiple use activities.

Livestock grazing management is already adequate to meet the needs of preserving Sage Grouse and Sage Grouse habitat.

Management decisions should be made at the local level based on site specific impacts and ecological site potential. A top-down decision as to what should be prescribed and implemented will more than likely result in changes that don't accomplish the desired result. Local BLM Managers and staff, in FLPMA-required coordination with County government must be the ones to consider, select, and implement site solutions to site specific issues.

Thresholds are not clearly defined so as to prevent misinterpretation of the language. We can't have it so vague that we don't carefully define what are the thresholds we have dropped below and what are the proposed responses expected to achieve. We also need to clearly define the "target" as when does it reach the state of telling us that our efforts were successful, and we are "back to normal management."

Rangeland improvement projects should be developed not only to manage grazing but also to benefit Sage grouse.

Unless livestock activities can clearly be documented, and agreed upon, as directly negatively impacting Sage Grouse populations in an area, BLM management actions that support reducing livestock numbers should not be considered in any form.

In Appendix 15 at 15.1.3 Design Features for Range Developments, it states that new livestock handling facilities must be located "away from active leks and outside of nesting habitat at least by 1.2 miles." Having the wording outside of nesting habitat goes beyond the lek buffer distances for Idaho in Appendix 19 for low structures by HMA and adds an unneeded level of regulation above and beyond the already established buffer. The wording outside of nesting habitat should be removed and the remaining language around 1.2 miles from active leks RDF should be accompanied by a qualifier stating, "to the extent possible." Having this as an RDF outside of the Idaho buffers removes BLMs ability to use justifiable departures and microsite facilities using topographic barriers or to co-locate with their disturbance. Also this buffer may make it impracticable to install needed facilities in the appropriate location due to allotment boundaries.

A stubble height specification in the plan proposes a stubble height requirement that, as noted in the Idaho Cattle Association comment, is inappropriate. For Idaho, our Seasonal Habitat Indicator and Benchmarks table notes that the benchmark for adequate perennial grass and forb height during nesting and early brood rearing is greater than or equal to 7 inches. Why does Idaho have a numerical value threshold when other states have less restrictive language for the same indicator like "adequate nest cover based on ecological site potential and seasonal precipitation" (Montanta/Dakotas&Billings) or "provide overhead and lateral concealment from predators" (Utah) or "Reference state as determined by ecological site potential in consideration of annual variability; robust cool-season bunchgrass understory necessary for adequate herbaceous height" (Wyoming). Idaho, Utah, and Wyoming even cite two of the same pieces of literature as evidence, so why do our benchmarks differ? Also, the 2019 plan was changed to read adequate nest cover and should have carried forward into this DEIS.

Any actions that are under consideration as the result of an area nearing a threshold trigger should be developed through the work of involved local and state agencies and should have first commenced far enough in advance to potentially prevent the tripping of the trigger.

Sincerely,

Jerry L. Hoagland
Chairman

Kelly Aberasturi
Commissioner

Cindy L. Bachman
Commissioner

Request for Modest Adjustment to the Proposed Oregon Greater Sage Grouse Mineral Entry Withdrawal Located in T35S, R23E, Lake County, OR

To the Bureau of Land Management:

La Cuesta International Inc. (LCI) is the owner of 106 unpatented lode mining claims in the Coyote Hills located in T35S, R23E (See Figure 1). The Lost Cabin (LC) claims are located about 11 miles north-northwest of Plush, OR and are accessible via paved and well-maintained gravel and dirt roads. LCI's involvement in the area dates back to 2012 when my partner, Frank (Bud) Hillemeyer, and I recognized the large alteration event in the rocks at Lost Cabin that is often associated with mineralization events. Since locating the LC claims, LCI and its partners have spent over one million dollars in BLM and County claim maintenance fees and geological, geochemical, and geophysical studies in the area. LCI, as a result, has identified several specific targets that merit drilling at depth.

LCI's targeting indicates the potential to discover high-grade silver, copper, lead, zinc, and gold ore bodies at depths of 200-400 meters below surface. Additionally, surface rock chip anomalies also show geochemical anomalies in arsenic, bismuth, barium, mercury, gallium, manganese, and antimony that may result in important by-product production.

Figure 1 shows in green the proposed Sage Grouse withdrawal boundary adjustment. The land in T35S, R23E would continue to be managed by the BLM under existing land management rules and regulations. Figure 1 also shows in blue La Cuesta International's current unpatented lode mining claim boundary. The red lines show the extent of exposed hydrothermal alteration that may be the surface expression of ore-grade mineralization at depth. The alteration system is likely larger than shown on Figure 1 and extends for an unknown distance beneath post-mineralization aged rocks.

Lost Cabin would likely be developed as an underground mine should an economic discovery be made. Underground mines have a much smaller footprint than an open pit mine, surface mine. The underground mine will be required to comply with the highest environmental, societal, and governmental standards (ESG) as required by law. Should a mine be developed quality, high-paying job opportunities would be created both in the operation and construction of the mine.

LCI recommends that the BLM remove from the proposed Sage Grouse Mineral Entry Withdrawal from the area highlighted in green shown on Figure 1. More specifically we are requesting that parts or all of sections 1, 2, 3, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 21, 22, 24, 26, and 36; T35S, R23E be removed from the proposed Mineral Entry Withdrawal. We recommend that the land remain under current BLM management using the current BLM rules and regulations for the future exploration of mineral resources. It should be noted that the proposed boundary change does NOT imply that all the land in the proposed adjustment will be impacted by exploration/mining. The typical footprint of an underground mine is roughly 400-500 acres including all roadways, tailings dams, infrastructure, etc. This is also all held to the high degree of reclamation planning at the end of the mine's life.

Of course, this is all theoretical – if a discovery is not made, any land disturbance would be reclaimed as required by law. My business partner, Bud Hillemeyer, and I have worked together since 1984. We have operated extensively in the Western USA, Mexico and Central America exploring for mineral deposits. Bud and I were honored to receive the Peer Nominated Thayer Lindsley award for International Discovery of the Year at the 2010 Prospector Developers Annual Conference in Toronto, Canada. This award was given to recognize four grassroots discoveries made in Mexico. Five of our discoveries in Mexico have been put into production using the highest ESG standards. Local communities, the state(s), and the Mexican government have all been beneficiaries of the discoveries.

Bud and I were both involved with the discovery of the Hayden Hill mine, Lassen County, California. A 1993 paper by Thomas Williams and Jeffery S. White titled "Reclamation Planning and Permitting at the Hayden Hill Project" recalls the reclamation process and subsequent successes at the Hayden Hill project including the following statement:

> *"... The wetlands mitigation was also constructed and filled the Sumer of 199. Sage Grouse and Pronghorn have been observed at the wetland in numbers far greater than expected."*

Part of the land owned by the mining company was donated to the BLM for conservation purposes. A press release by the Bureau of Land Management on July 22, 2009 stated:

> *"The donated sagebrush-grasslands are home to Sage Grouse and mule deer and include over 18 acres of constructed wetlands that mitigate the impact of mining."*

Overall, the impact of mining on the Greater Sage Grouse at the Hayden Hill project was minimal and in fact turned into one of the greatest reclamation stories regarding the Greater Sage Grouse in the western United States.

LCI feels that the Lost Cabin project has a reasonable chance for an economic discovery. Should the Lost Cabin area be put into the Sage Grouse withdrawal, it could be decades before it is ever tested and possibly never. We ask that the BLM would be cautious implementing large swaths of withdrawals and evaluating the impact that these decisions have on multiple-use federal lands as defined by the Multiple-Use Yield Sustained Act (MUYSA) of 1960 and the Federal Land Policy and Management Act (FLPMA) of 1976. Modern mining and exploration techniques take extra care and precautions when developing and testing targets. Lost Cabin will be no exception to this, but the opportunity may be stripped away if the boundaries are left as is.

Sincerely,

Perry Durning and Frank (Bud) Hillemeyer

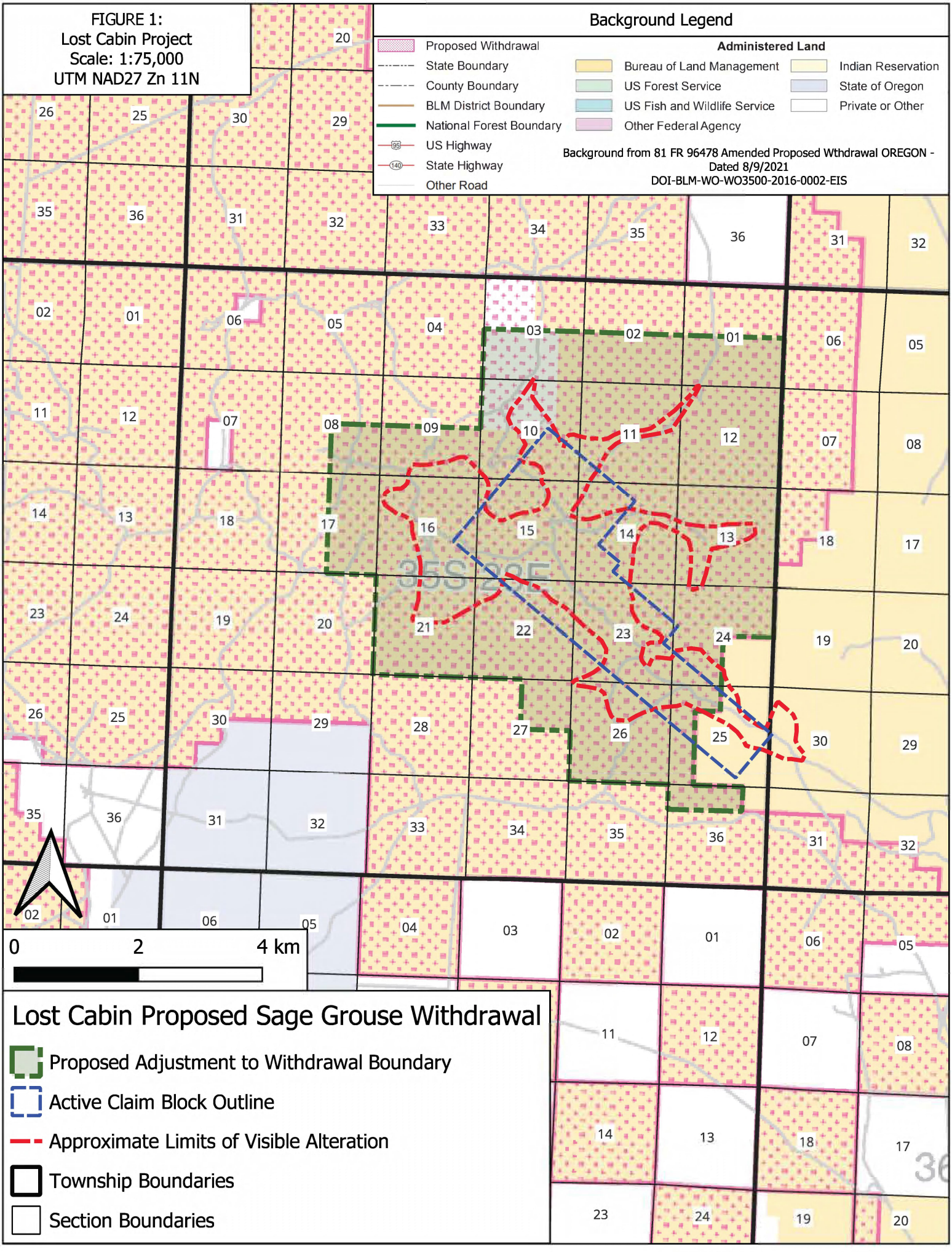
FIGURE 1:
Lost Cabin Project
Scale: 1:75,000
UTM NAD27 Zn 11N
Background Legend
Proposed Withdrawal
State Boundary
County Boundary
BLM District Boundary
National Forest Boundary
US Highway
State Highway
Other Road
Administered Land
Bureau of Land Management
US Forest Service
US Fish and Wildlife Service
Other Federal Agency
Indian Reservation
State of Oregon
Private or Other
Background from 81 FR 96478 Amended Proposed Wthdrawal OREGON - Dated 8/9/2021
DOI-BLM-WO-WO3500-2016-0002-EIS
35S 28E
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Lost Cabin Proposed Sage Grouse Withdrawal
Proposed Adjustment to Withdrawal Boundary
Active Claim Block Outline
Approximate Limits of Visible Alteration
Township Boundaries
Section Boundaries

BLM Utah State Office
ATTN: HQ GRSG RMPA
449 West 200 South #500
Salt Lake City, UT 84101

June 13, 2024

Submitted electronically via https://eplanning.blm.gov/eplanning-ui/project/2016719/530

Re: Notice of Availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning[1]

Document #DOI-BLM-2300-2022-0002-RMP-EIS

On behalf of NextEra Energy Resources, LLC ("NextEra")[2], I hereby submit the following comments on the Bureau of Land Management's ("BLM") March 15, 2024, Notice of Availability (NOA) of the Draft Resource Management Plan Amendment (Draft RMPA) and Environmental Impact Statement (EIS) for Greater Sage-Grouse Rangewide Planning.[3] The planning process involves considering amendments to 77 BLM RMPs to amend management of up to 69 million acres of Greater Sage-Grouse (GRSG) habitat management areas in portions of California, Colorado, Idaho, Montana, Nevada, North Dakota, Oregon, Utah, and Wyoming. All these areas are not only important to the GRSG conservation goals but also to the development of projects to meet the nation's renewable energy goals.[4]

NextEra appreciates the opportunity to provide comments on the Draft RMPA/EIS in an effort to assist BLM in finding the balance between protections for the habitat needs of the GRSG[5], meeting the agencies' multiple-use mandates and renewable energy deployment goals[6], and providing regional planners with the most current information available.[7] NextEra also supports BLM's emphasis on the use of current scientific data and research to assist in the decision-making process. While NextEra believes BLM's preferred alternative, Alternative 5, provides flexibility to develop renewable energy and associated transmission infrastructure while also meeting GRSG habitat conservation needs, NextEra also believes more work is required to better enable renewable energy development and transmission development on public lands.

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[1] 89 F.R. 18963 (March 15, 2024)
[2] NextEra, together with its affiliated entities, is the world's largest generator of renewable energy from the wind and sun and a world leader in battery storage.
[3] 89 F.R. 18963 (March 15, 2024)
[4] Executive Order 14008, The Energy Act of 2020
[5] *Greater Sage-Grouse Rangewide Planning Draft Resource Management Plan Amendment and Draft Environmental Impact Statement*, DOI-BLM-WO-2300-0001_RMP-EIS. (Draft RMP EIS) https://eplanning.blm.gov/public_projects/2016719/200502020/20105921/251005921/GRSG_DEIS_Vol1_508.pdf
[6] Executive Order 14008, The Energy Act of 2020
[7] Draft RMP EIS

NextEra would support an extension of the current comment period to fully analyze and better understand state-by-state impacts to renewable energy and transmission projects

As stated above, the BLM's Greater-Sage Grouse Resource Management Plan Amendment/Draft Environment Impact Statement (Draft RMPA/EIS) for greater sage-grouse habitat management proposes to amend 77 BLM RMPs in 9 Western states, with prescribed measures for up to 69 million acres of greater sage-grouse habitat. In all, the Draft RMPA/EIS Alternative 5 proposes to increase Priority Habitat Management Areas (PHMAs) from 32,465,000 acres in the 2015 GRSG RMP amendments to 34,803,000 acres, or +2,339,000 acres.[8] The BLM acknowledges in their Environmental Consequences Analysis that changes in restrictions and stipulations on renewable energy for the protection of GRSG could affect local economies by restricting the siting of new renewable energy development.[9]

The BLM notes that stipulations and restrictions contained in the Draft RMPA/EIS could also impact transmission rights-of-way, and in effect transmission projects, by categorizing them as avoidance and exclusion areas. As such, site-specific changes of PHMAs, General Habitat Management Areas (GHMAs) and associated avoidance and/or exclusion could force wind, solar, or transmission facilities to find alternative locations that might not be possible or feasible. This is especially of concern for projects in areas where BLM lands are non-contiguous, and proposed wind, solar or transmission projects are sited on both federal and non-federal lands. Exceedance of disturbance caps or lek buffers could equally impact a proposed project.

Analysis of these site-specific stipulations, avoidance or exclusion areas, disturbance caps and proposed lek buffers require significant time to assemble across the range of alternatives, including the preferred alternative. As such, NextEra would support an extension of the proposed comment period to further analyze in detail the impacts to multiple projects throughout the 9 affected Western States.

NextEra projects are impacted by BLM's preferred alternative

Of all the alternatives presented in the EIS, Alternative 5 provides the most flexibility of all the alternatives for project level decision-making. The designation of PHMAs as avoidance zones and keeping GHMAs open to potential development allows these areas to be evaluated as potential renewable energy and transmission projects. Alternatives 5 and 6 include important state-specific changes to RMPs that affect habitat zone determinations and incorporate more site-specific information.

NextEra does not support the selection of Alternatives 1 and 2, which essentially maintain the status quo that has not proven to be particularly favorable to any appreciable renewable energy or transmission project development. Also, when compared with Alternative 5, these Alternatives remove approximately an additional 24,045,000 and 23,610,000 acres, respectively, from consideration for renewable energy projects. Likewise, NextEra does not support Alternatives 3 or

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[8] Table 2-3; Comparative Summary – Acres GRSG Habitat Management Area by State by Alternative; *Greater Sage-grouse Land Use Plan Amendments and EIS*; 2-12.
[9] Draft RMP EIS; 4-132.

4, which provide the worst-case scenario for renewable energy due to the significant increases in exclusionary zones by removing an additional 34,396,000 and 1,898,000 acres, respectively, from consideration. In comparing Alternatives 5 and 6 to each other, NextEra prefers Alternative 5 because Alternative 6 unnecessarily designates 11,139,472 acres of PHMA as Areas of Critical Environmental Concern (ACECs), which would remove these areas from consideration for renewable energy or transmission rather than allowing for site specific evaluation and assessment with an opportunity to avoid, minimize and mitigate localized impacts.

BLM should rely on updated maps that incorporate best available information

There has been some research related to the impacts of renewable energy on GRSG. Despite that, the BLM assumes in the Draft RMPA/EIS that environmental consequences of renewable energy management on the GRSG uses the impacts of oil and gas development to determine the impacts of renewable energy development.[10] NextEra urges BLM to utilize recent science which demonstrates lack of harm[11] and even compatibility[12] of GRSG and renewable energy development rather than rely on an extrapolation of data from another industry. This position compliments Alternative 5 which allows site specific evaluation of impacts rather than establishing landscape level exclusionary zones. In the spirit of using the best available science to make decisions, it is important BLM include the most recent scientific and state level information in the Draft RMPA/EIS.

However, the map displaying proposed GRSG Habitat Management Areas under Alternative 5 (Map 2.5) unfortunately does not reflect the most recent ground-level, site-specific data collected in an effort to update the State of Wyoming's proposed GRSG habitat map. Failure to update this map would result in a significant misalignment between state-led and BLM sage-grouse management efforts. The map below is just one example in Wyoming where the BLM maps do not match the most current state information, placing the 600MW Jackalope Wind Project at substantial risk.

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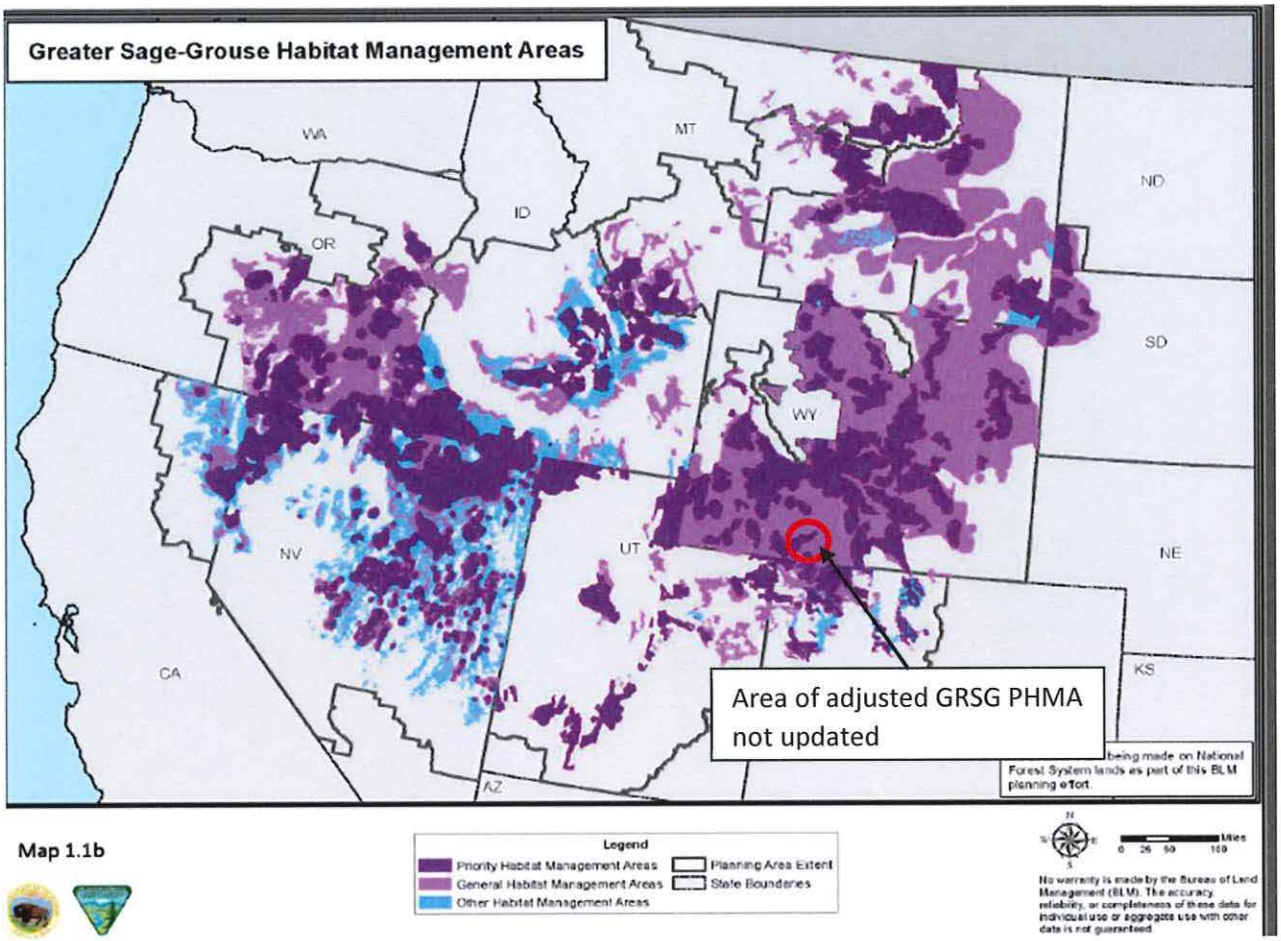
[10] Draft RMP EIS

[11] LeBeau, C. W., Johnson, G. D., Holloran, M. J., Beck, J. L., Nielson, R. M., Kauffman, M. E., Rodemaker, E. J., & McDonald, T. L. (2017). Greater sage-grouse habitat selection, survival, and wind energy infrastructure. *The Journal of Wildlife Management*, 81(4), 690–711. https://doi.org/10.1002/jwmg.21231

[12] Gerringer, M.G., K.T., Smith, and K.L. Kosciuch. In Press. Observations of Greater Sage-Grouse at a Solar Energy Facility in Wyoming. Western North American Naturalist, 2022.https://scholarsarchive.byu.edu/wnan/vol82/iss1/21/



NextEra is concerned similar oversights may have occurred in other states as well. For example, the sage-grouse habitat information currently being used in Nevada for environmental review and permitting does not match the information presented in this RMPA/EIS. NextEra has numerous projects in various stages of review with BLM staff where GRSG were not identified as a resource that warranted further evaluation or were reviewed and no GRSG habitat was identified. The Draft RMPA/EIS, however, designates some of these same areas as avoidance or exclusion areas.[13] Project developers are actively working with states and have made decisions utilizing the most recent state maps and information provided through local sources, state agencies, and BLM field offices. Many of these projects have successfully completed various stages of project review, therefore the failure to update the information in the RMPA/EIS with the most recent and accurate site-specific information related to potential GRSG habitat could have significant impacts on several projects and ultimately result in reducing the amount of planned renewable energy in

[13] BLM National NEPA Register, Esmerelda Seven Solar Project, https://eplanning.blm.gov/eplanning-ui/project/2020804/510 , *Draft Mason Valley and Pine Nut Solar Energy Centers Variance Factor Analysis*, p 9, November 2021, and *Dodge Flat II Solar Energy Center, Variance Factors Analysis,* p9-10 and Map3a, September 2021.

Nevada and other states. In support of BLM using the most current data and information to make decisions, NextEra urges BLM to verify the maps provided in the Draft RMPA/EIS match the most up to date information provided by state and regional agencies prior to its finalization.

Conclusion

NextEra again appreciates the BLM's efforts in the preparation of the current Draft RMPA/EIS and supports additional improvements to BLM's preferred alternative, Alternative 5, that would further enable renewable energy and transmission development in the West. NextEra would appreciate more time to conduct in-depth analyses on a state-by-state basis for projects impacted by the new land-use designations. Finally, NextEra urges BLM to update their information with the most recent data provided from their state and regional partners. NextEra has enjoyed a long history of collaboration with the BLM in responsibly siting solar, wind, battery storage, transmission and other projects on BLM-managed lands and looks forward to continuing that cooperation. It is our hope that the BLM may successfully balance the effective and efficient development of wind energy, solar energy, and electric transmission on public lands, while also fulfilling their mission to conserve natural resources. We ask that BLM incorporate our suggested changes as well as those proposed by our industry groups and peers.

Sincerely,

Matthew Raffenberg
Vice-President of Environmental Services
NextEra Energy Resources