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Working to protect and restore Western Watersheds and Wildlife

USDA Forest Service
Attn: Objection Reviewing Officer
210 14th Street, SW
EMC-PEEARS, Mailstop 1104
Washington, DC 20250.

Submitted via https://cara.ecosystem-management.org/Public/CommentInput?project=52904

Re: Objection regarding the Greater Sage-grouse Draft ROD and LMPA for NFS Land in Utah

Dear Objection Reviewing Officer,

The following objection is submitted on behalf of the members and staff of Western Watersheds Project (WWP), the Center for Biological Diversity, American Bird Conservancy, Prairie Hills Audubon Society, WildEarth Guardians, and Defenders of Wildlife who are concerned with the management of our public lands and the protection of at-risk species.

This Objection is filed pursuant to, and in compliance with, 36 C.F.R. Part 218, Subparts A and B. All parties to this objection have filed timely, specific and substantive written comments in accordance with 36 C.F.R. 218(a).

1. The name and contact information for the Objectors are listed below.

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2. This Objection was written on behalf of Objectors by Greta Anderson whose signature and contact information is listed below.

3. Western Watersheds Project is the Lead Objector for purposes of communication regarding the Objection.

4. The project that is subject to this Objection is "Greater sage-grouse draft ROD and LMPA for the NFS lands in Utah." The Responsible Official is Nora Rasure, Regional Forester, USDA Forest Service, Intermountain Region, 324 25th St., Ogden, UT 84401.

5. Objector submitted, timely, specific, and substantive comments during the Public Comment Period on January 3, 2019 and during the scoping periods. All points and issues raised in this objection refer to issues raised in that comment letter or are related to new information. Attached hereto are prior comments and we incorporate their arguments and scientific information by reference.

6. In the following Statement of Reasons, Objector provides the specific reasons why the decision is being appealed and the specific changes or suggested remedies that are sought, along with the related evidence and rationale on why the decision violates applicable laws and regulations.

NOTICE OF OBJECTION

Pursuant to 36 C.F.R. § 218, Western Watersheds Project, the Center for Biological Diversity, American Bird Conservancy, Prairie Hills Audubon Society, WildEarth Guardians, and Defenders of Wildlife are filing an Objection regarding Objection regarding the Greater Sage-grouse Draft ROD and LMPA for NFS Land in Utah.

CONCISE STATEMENT OF OBJECTION

Objectors take issue with the U.S. Forest Service's failure to adequately protect sage-grouse on forest lands in the western United States and the draft decision's intention to create increased "flexibility" in managing sage-grouse habitat. The sage-grouse has very specific habitat needs, and the proposed action's purported "flexibility" is really just a generalized weakening of the required mitigation and conservation measures proposed by the 2015 land use plan amendments. The draft decision violates specific provisions of the National Environmental Policy Act ("NEPA"), the National Forest Management Act ("NFMA"), the Administrative Procedure Act ("APA") and multiple regulations implementing these statutes.

The greater sage-grouse (*Centrocercus urophasianus*) is a charismatic umbrella species for the entire sagebrush ecosystem. The U.S. Forest Service is privileged to manage important sage-grouse habitat, and the current planning effort seeks to revise the 2015 land use plan amendments for over 5.2 million acres in the states of Idaho, Nevada, Utah, Wyoming, and Colorado. While the 2015 land use plan amendments didn't go far enough or comport with the best available science regarding the habitat needs of greater sage-grouse, they were superior from a conservation perspective than the current effort.

We note here that while GRSG-FM-GL-049-Guideline appears to contain a typo, one cannot help but wonder in context of many of the Utah plan changes if it is actually a tacit admission of agency strategy. It says, "Do not approve prescribed fire prescriptions that do not result in undesirable effects on vegetation and soils." FEIS at 2-205. We object to the many destructive things in the plan that are authorized in less obvious ways but which will have similar degrading effects on sage-grouse habitat.

STATEMENT OF REASONS

I. VIOLATIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT, 42 U.S.C. § 4321.

The regulations implementing NEPA require the Forest Service to disclose and analyze the environmental effects of the proposed action and alternatives to it. 40 C.F.R. § 1500.1(b). Specifically, the regulation explains that "NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." Id.

The Forest Service is also required to disclose and analyze the direct, indirect, and cumulative effects of the proposed action on the environment. 40 C.F.R. §§ 1502.16, 1508.7, 1508.8, 1508.25(c)(3), 1508.27(b)(7).

When analyzing cumulative effects, the Forest Service must analyze the effects on the environment resulting from the incremental impacts of the action, and its alternatives, when added to other past, present, and reasonably foreseeable future actions. 40 C.F.R.§ 1508.7.

To satisfy the requirements of the NEPA regulations, the Forest Service must take a "hard look" at the impacts resulting from the proposed action.

A. The 2019 plan weakens protections for the HMAs without discussing the implications of doing so, in violation of NEPA.

The proposed action weakens the existing protections for HMAs and presents false and misleading rationale for these changes. While the FS claims this will "focus protection in the PHMAs," what it is really doing is weakening protections in all other HMA types. Moreover, this is a false spin that overlooks the fact that the removal of SFA-level protections from a subset of PHMA also reduced their effectiveness at protecting sage-grouse habitat. The Forest Service's characterization of the changes as "prioritizing" PHMA is based on a wholly unexplained or unsubstantiated assumption that allowing additional damage to GHMA will somehow induce oil and gas and/or livestock operations to relocate from PHMA to GHMA. This assumption, however, is wholly unsupported by any factual evidence.

While nominally rejecting the State of Utah's proposed alternative to eliminate GHMA designation entirely, as has recently been done by the BLM, the proposed action in Utah removes nearly all protections for GHMA: GRSG-GEN-ST-005-Standard, GRSG-LR-SUA-ST-015-Standard, GRSG-LR-SUA-ST-017-Standard, GRSG-LR-LOA-ST-020-Standard, GRSG-WS-ST-024-Standard, GRSG-R-ST-062-Standard, and GRSG-M-NEL-GL-097-Guideline, among others. This leaves the 28,100 acres of designated GHMA with substantially weaker protections, despite the fact that this area is "likely to be occupied seasonally or year-round outside of PHMAs or other defined management areas where GHMA management would apply to sustain the greater sage-grouse population. GHMA may include active leks, seasonal habitats, and fragmented or marginal habitat." FEIS at 1-18. The extent to which mandatory protections have been removed makes GHMA almost worthless as an HMA for protecting grouse. Mitigation would only be required in PHMA in Utah as well, ensuring that impacts to GHMA wouldn't be even marginally offset. FEIS at 4-355. The FEIS fails to analyze how this would affect Utah sage-grouse and sagebrush habitat.

Requested remedy: Restore applicability of protections measures to GHMA and PHMA, without exception, including GRSG-GEN-ST-005-Standard, GRSG-LR-SUA-ST-015-Standard, GRSG-LR-SUA-ST-017-Standard, GRSG-LR-LOA-ST-020-Standard, GRSG-WS-ST-024-Standard, GRSG-R-ST-062-Standard, and GRSG-M-NEL-GL-097-Guideline. Provide a full and detailed analysis of proposed removal or weakening of standards in GHMA and PHMA in a supplemental NEPA analysis.

B. The plan makes significant management changes without analyzing and disclosing the impacts of or rationale for doing so, in violation of NEPA. In some cases, the table doesn't even reveal the differences among the DEIS and FEIS, limiting the public's ability not just to understand the impacts, but to even identify them.

NEPA requires that an EIS be written in plain language and present information so that decisionmakers and the public can readily understand them and provide informed feedback and conclusions. The EIS must, for example, be organized and written so as to be readily understandable by non-professional laypersons likely to be affected by the actions taken. *California ex rel. Lockyer v. United States Forest Serv.,* 465 F.Supp.2d 942, 946-947 (N.D. Cal.2006). The Ninth Circuit has characterized this as the "readability" or "understandability" requirement. *Id*. The EIS must also provide its readers with the information necessary to understand the EIS' statements, assertions, assumptions, and findings, as well as their ramifications. Further, NEPA requires that an EIS promote scientific integrity and contain information that allows a hard look at impacts, not just a one-sided look. NFMA of course requires that Plans promote "ecological integrity" and "diversity of plant and animal communities."

There are numerous places where changes were made between the draft and final EIS that were not identified, analyzed, or disclosed in the comparison of the plans in Section 2.5. Some of these were not even flagged in accordance with the color scheme the agency was supposed to be using to make it easy on the reader to see the changes. We object to these omissions and request preparation of an SEIS in accordance with 40 C.F.R. § 1502.9(c)(i).

Here, the FEIS and proposed plan amendments lack accountability, understandability and integrity in a number of key ways. For example, the Utah plan removes the requirement to remove guy wires and replaces it with "marking" guy wires in PHMA and GHMA. FEIS at 2-193. The "Issue/Clarification" column does not disclose this change. Ibid. There is also no analysis of this change.

One seemingly minor change in the Utah plan is actually quite a big deal: The FS has altered the requirements for authorizing new land uses "subject to existing rights" rather than "subject to valid existing rights." FEIS at 2-189, GRSG-GEN-ST-005-Standard. The 1872 Mining Law gives exclusive rights to miners who have valid unpatented mining claims. To have a valid unpatented mining claim, there must be a valuable mineral deposit underlying the claim. By removing the requirement for the rights to be validated, the agency is changing the geographic area to which the mitigation will apply. This change occurred between the DEIS and the FEIS, making it impossible for the public to previously comment on it. No analysis accompanies the change, in violation of NEPA. The FS also made this change, without noting it, in GRSG-M-FML-GL-074-Guideline, and, in this guideline, altered existing rights ("cannot be restricted due to") to potential rights ("is requested"). FEIS at 2-218.

This is a significant difference between the 2015 plan, the draft plan, and the proposed action, and the FS is unlawfully ignoring the change.

Another unassessed semantic tweak is in GRSG-GRSGH-GL-030-Guideline which changes the requirement to use native species "when possible" to "when practicable." FEIS at 2-198. This weakens the protection on PHMA and GHMA and was added without discussion or analysis between the draft and final EIS. In fact, the FEIS doesn't even identify the change in its color-coding system meant to help the reader. "Practicable" is not defined in the FEIS, and who gets to determine the practicality is not specified.

The Response to Comment boilerplate regarding changes to livestock grazing management fails to address the substantive comments provided by the public concerning the weakened management proposed. The proposed plan significantly walks back conformance to habitat guidelines and claims these are simply "initial references based on range-wide habitat selection by GRSG…. Should be refined collaboratively to fit local habitats… not all areas will be capable to achieving the seasonal *habitat preference values*." GRSG-GEN-MA-004-Management Approach, FEIS at 2-133, emphasis added. This is a substantial change from the 2015 plan which provided "specific desired conditions for GRSG based on seasonal *habitat requirements*." Thus, the FS is lowering the bar from what sage-grouse need for successful life cycles to habitat conditions where they can survive at all.

In the Utah plan, the agency changed GRSG-LG-ST-035-Standard from, "In PHMA, do not approve construction of water developments unless beneficial to GRSG habitat…" to not approving construction of water developments "that would cause adverse effects." FEIS at 2-199. It is unclear how the agency will determine this, as the plan doesn't indicate any scientific basis for the determination. All water development facilities have a potential for serious adverse effects, because these structures offer breeding habitat for mosquitoes that carry West Nile virus, a deadly threat to sage-grouse populations. There are no specific limits on geographic distance, type of development, season of construction, etc., and it is wholly unclear what this "Standard" even means in practice.

The Utah plan changes GRSG-LG-GL-038-Guideline from protecting leks from sheep bedding and camps within 1.2 miles of a lek to just 0.62 miles of a lek. FEIS at 2-201. There is no explanation in the FEIS for this change, no basis in the relevant science, and it is notably different from the distance Idaho affords its leks (2 miles). Even a 2-mile prohibition is excessively permissive, because it allows the intense habitat degradation that occurs at sheep bedgrounds and caps to be sited within areas that are nesting habitat for hens that nest within 4 miles of the lek. This is arbitrary and capricious, unsupported by science, and not even highlighted as a difference among iterations under what the plan describes as "Clarification" on 2-201. There is no analysis of how many previously protected leks this now reduces protections for. The FEIS also fails to admit that this is a change in lek buffers, claiming that only Idaho and Nevada's proposed changes affect lek buffers. FEIS at 4-356.

The proposed action references desired conditions "at the landscape scale" but fails to define "landscape scale" in the EIS. WWP raised this issue in comments, but the FS failed to address it. Because this term is undefined, the impacts of the proposed action cannot be evaluated.

The proposed action also changes the percentage of acceptable conifer cover from 10 percent to 4 percent (See FEIS at 2-187) without explanation. This was a new change since the DEIS and WWP

was unable to comment on it previously. There is no explanation of this revision in the FEIS and no recent science that we are aware of to support this change.

The proposed plan also alters without analysis the management of noise-related disturbance in sage-grouse habitat. Advances in science make it increasingly clear that noise from roads or industrial facilities is having a major negative effect on sage-grouse and their ability to make use of otherwise suitable habitats. Noise can mask the breeding vocalizations of sage-grouse (Blickley and Patricelli 2012), displaces grouse from leks (Blickley et al. 2012a), and causes stress to the birds that remain (Blickley et al. 2012b). According to Blickley et al. (2010), "The cumulative impacts of noise on individuals can manifest at the population level in various ways that can potentially range from population declines up to regional extinction. If species already threatened or endangered due to habitat loss avoid noisy areas and abandon otherwise suitable habitat because of a particular sensitivity to noise, their status becomes even more critical." As noted in out previous comments, 15 dBA represents the natural ambient noise level at sage-grouse leks, and when noise exceeds 25 dBA, lek population declines follow.

It is reasonable to suppose that if noise that mimics oil and gas truck traffic causes elevated levels of stress-related metabolites in grouse on the lek (Blickley et al. 2012b), that this physiological response would be substantially similar during other parts of this bird's life cycle. Indeed, these researchers stated, "Noise at energy development sites is less seasonal and more widespread and may thus affect birds at all life stages, with a potentially greater impact on stress levels." Patricelli et al. (2012) recognized this explicitly:

> "Second, and much more importantly, if noise levels drop down to stipulated levels at the edge of the lek, then much of the area surrounding the lek will be exposed to higher noise levels (see Figures 3 & 4). This management strategy therefore protects only a fraction of sage-grouse activities during the breeding season—mate assessment and copulation on the lek—leaving unprotected other critical activities in areas around the lek, such as foraging, roosting, nesting and brood rearing."

However, the Utah plan changes the management of noise in ways that significantly impact the grouse. In GRSG-GEN-ST-006-Standard, the proposed action previously restricted the authorization of "new surface disturbing and disruptive activities that create noise…" FEIS at 2-189. This has been changed to apply only to "new, large scale infrastructure or facilities." Ibid. There is no analysis of this change between the draft EIS and the Final (which is obviously more than a "clarification" as the plan claims), and the standard no longer applies to a range of activities that could nonetheless highly imperil sage-grouse.

The new GRSG-GEN-ST-006-Standard also does away with the timeframe from ambient baseline that was in the prior plan. FEIS at 2-189. This means that ambient baseline can be deemed anything that the authorized officer wants, in contrast to the specific time frames delineated in other states' plans. Without an analysis of this change, the FEIS is overlooking a serious impact of the proposed action.

Finally, GRSG-GEN-ST-06-Standard adds the word, "Sustained" to prohibited types of noise between earlier drafts and the final proposed action. The addition of this modifier weakens the

protection the restriction had provided, but the FEIS fails to discuss how "sustained" is defined, how "intermittent" noise can still disturb lekking sage-grouse, and how this change from "surface disturbing activities" to "large-scale infrastructure or facilities" affects sage-grouse habitat. *Ibid*. The best available science indicates that intermittent noise, particularly that of vehicles on roadways, has a major negative impact on lekking sage grouse. Importantly, these noise restrictions also only apply "at the perimeter" of the occupied lek during lekking (again with an unexplained reduced time-frame) overnight between 6 pm and 9 am. This wouldn't protect nesting areas surrounding the lek.

The Utah plan also makes a significant but undisclosed change to GRSG-LR-SUA-O-012-Objective (defined as a concise, measurable, and time-specific statement of a desired rate of progress toward a desired condition or conditions, FEIS at 2-32) requiring tall structures to be retrofit with perch deterrents within 2 years of signing the ROD with a much weaker and very different "Guideline," that says, "In nesting habitat in PHMA, do not authorize new or reissued special use permits unless measures to mitigate negative impacts to greater sage-grouse and habitat are included." FEIS at 2-192. In addition to no longer applying to nesting habitat in GHMA, the change since the draft plan does not discuss the need for existing structures to be retrofit with anti-perching devices.

In another important change, the plan alters the adaptive management protocols considerably in ways that aren't fully analyzed or disclosed. Previously, if a hard trigger was met, immediate changes were implemented. Now, "Upon documenting that a hard trigger has been met the FS intends to review available and pertinent data, in coordination with greater sage-grouse biologists from multiple agencies including BLM, UDWR, USFWS, and/or NRCS, to determine the causal factor(s) for the declines for the area where the trigger has been met." FEIS at E-10. Appendix E, titled the "Utah Adaptive Management Approach," specifies no further actions.

GRSG-AM-ST-011-Standard (FEIS at 2-191) states, "If a hard or soft trigger is reached, and the causal factor is related to FS management, defer issuance for such projects or activities until an appropriate interagency management response strategy is implemented." Notably, this does not identify what to do if a causal project or activity is ongoing. (There also seems to be a word missing… defer issuance of what?). There is no specific hard trigger requirement, no information about who makes the final decisions for what gets implemented, what to do about ongoing activities. The efficacy of adaptive management under the proposed Utah plan is completely unsupported by this FEIS.

Individually and collectively, these represent substantial changes made to the FS's proposed plan amendments between the DEIS and FEIS stage. The FS's failure to candidly acknowledge that it made these changes and to analyze their environmental effects violates NEPA.

The failure to prepare and circulate for public comment a supplemental EIS analyzing these changes to the proposed amendments also violates NEPA. NEPA requires a supplemental EIS when the agency makes "substantial changes" to its proposed action that are "relevant to environmental concerns." 40 C.F.R. § 1502.9(c)*; see also Russell Country Sportsmen v. U.S. Forest Serv.*, 668 F.3d 1037, 1045 (9th Cir. 2011) (where an agency changes the alternatives considered in the draft EIS, supplementation can be avoided only if: (1) the new alternative is a "minor variation" and (2) "qualitatively within the spectrum of alternatives that were discussed in the draft [EIS]."). Here, the changes identified above are not "minor variations" but rather "substantial changes" to the FS plan amendments that are clearly relevant to environmental concerns. By making such changes *after* the

opportunity for public comment pursuant to NEPA passed, the Forest Service unlawfully insulated these decisions from public scrutiny.

Requested remedy: The FS must disclose all of the changes it made to the plans and describe the impacts of those changes. Restore requirement to remove guy wires and disclose the changes to invasive species management, including through an amended analysis of the effects of those changes. Restore original setbacks for sheep bedgrounds. Require that 7 inches of grass height be left behind in breeding, nesting, and brood-rearing habitats, and impose a maximum of 25% forage utilization in sage-grouse designated habitats. Prohibit sheep bedgrounds and camps within 4 miles of sage-grouse leks under GRSG-LG-GL-038-Guideline, and make it a nondiscretionary standard. Restore requirement to provide perch inhibitors on tall structures within 2 years under GRSG-LR-SUA-O-012-Objective (now -13-Guideline). Restore original guidance to allow 10% conifer cover, per the original LRMPA. Restore requirement to remove guy wires in PHMA and IHMA. Restore the original requirement to use native species under GRSG-GRSGH-GL-030-Guideline, "when possible." Restore the watertight prohibition on construction of water development facilities under GRSG-LG-ST-035-Standard . Restore original restriction of GRSG-GEN-ST-006-Standard to apply to all forms of noise, whether sustained or not, and require that noise limits not to exceed 25 dBA be imposed as measured at the periphery of occupied seasonal habitat. Reinstate measurable hard-trigger thresholds under GRSG-AM-ST-011-Standard. Provide a full and detailed analysis of proposed changes in protection from noise, development, mitigation, and livestock-related impacts in a supplemental NEPA analysis. Prepare a Supplemental EIS.

The FS must also analyze and disclose the effects of the weakened adaptive management response and the lack of enforceability they now entail.

C. The proposed action defers important analyses to future implementation-level decision-making without analyzing or disclosing the public participation opportunities of those decisions, in violation of NEPA.

The response to comments claims that "Project-level actions necessary to execute the LMP-level decisions in the FEIS and ROD are subject to further environmental review under NEPA. This process requires public notification." Response to WWP Comments, #9. Elsewhere, the FS claims that grazing standards and guidelines of Land Resource Management Plans are included in Term Grazing Permits issued to each grazing permittee. Response to WWP Comments, #25. This overlooks the fact that most grazing permits are being rubber-stamped for renewal under FLPMA § 402 without any changes to the Terms and Conditions, or that term grazing permits generally persist for ten years, meaning it may be up to a decade before these changes are actually terms of grazing permits. Additionally, the FS has recently proposed a new suite of categorical exclusions, ensuring even fewer future actions will receive a full NEPA analysis. The FEIS fails to acknowledge or discuss this.

The FEIS defers implementing noise restrictions under GRSG-GEN-ST-006-Standard to a future date at a site-specific project level "where appropriate." FEIS at 2-190. This is framed as a management approach in the plan, but it affects the application of the noise standard, weakening the measure to a level to be determined at some later date. The new management approach says that these will be developed in coordination with the State of Utah, making it clear that the public won't have a

role in participating in, or even be advised of, the changes. This is unacceptable under NEPA and particularly for a "Standard."

Requested remedy: Require all grazing permits in designated sage-grouse habitats to undergo full NEPA compliance, including an EA provided for public review and comment prior to a decision. Ensure that grazing permits have terms and conditions added to protect sage-grouse habitat within two years. Require public notice and comment on all projects.

D. The proposed action changes lek buffers and lek management but fails to admit this weakens protections, in violation of NEPA.

An interagency team of sage-grouse experts from state and federal agencies performed a comprehensive review of the scientific literature and recommended a 4-mile lek buffer for siting industrial development in sage-grouse habitat (National Technical Team 2011), a prescription in greater accord with the science. Apa et al. (2008, emphasis added) reviews the best available science by a team of sage-grouse biologists, and states,

> "Yearling female greater sage-grouse avoid nesting in areas within 0.6 miles of well pads, 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 periods." 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."

Thus, state experts in this report in effect recommended a 4.6-mile NSO buffer around active leks. This recommendation is buttressed by the findings of Holloran et al. (2007) that yearling sage grouse avoided otherwise suitable nesting habitat within 930m (almost 0.6 mile) of oil and gas-related infrastructure, as well as Holloran (2005), which finds that siting of a road or even a single producing gas well within 1.9 miles of a lek results in significant declines in the lek population. This means that individual wellsites, and their access roads and other related facilities, will be surrounded by a 0.6-mile band of habitat that has substantially lost its habitat capability for use by nesting grouse, and a 1.9-mile band of habitat in which lekking habitat effectiveness is lost. Aldridge and Boyce (2007) suggested that even larger buffers of 10 km (6.2 miles) are warranted. Manier et al. (2014) subsequently reviewed all available science and reported an "interpreted range" of appropriate lek buffers ranging from 3.1 to 5 miles.

Requested remedy: Decline to adopt reductions in lek buffers, and consider an alternative that would instead adopt science-based No Surface Occupancy buffers of not less than 4 miles around active and suitable lek sites.

E. The FEIS fails to disclose or analyze the impacts of a series of related plan revisions reducing safeguards against fossil fuel development.

The FEIS fails entirely to openly disclose, or meaningfully analyze, a series of related changes to the Utah plans that all operate, in concert, to reduce the certainty that Priority Habitat Management Areas, the Anthro Mountain Habitat Management Area, and former Sagebrush Focal Areas will be

effectively protected from the adverse effects of oil, gas, and coal development. The Proposed Action makes the following changes to plan requirements for oil, gas, and coal leasing and operations that uniformly reduce certainty that sage-grouse habitat viability will be maintained:

(1) The proposed action would eliminate the requirement that exceptions to "No Surface Occupancy" requirements on fluid mineral leases be granted only after "unanimous concurrence from a team of agency sage-grouse experts from the U.S. Fish and Wildlife Service, the Forest Service, and the state wildlife agency." Standard GRSG-M-FMUL-ST-074, FEIS at 2-213. The Proposed Utah Plan Amendment increases the likelihood that habitats will be adversely affected by uninformed waivers by replacing the requirement for unanimous concurrence among expert wildlife agencies with the discretion of "the authorized officer," FEIS 2-213, and substantially expands the substantive criteria for granting such an exception. While the 2015 Standard allowed exceptions only if there would be no impact or a "clear net conservation gain," FEIS at 2-213, the Proposed Action would now allow exceptions permitting surface occupancy within PHMA even without such a "clear net conservation gain," GRSG-M-FMUL-ST-066-Standard. The FEIS inaccurately dismisses the effect of these changes by stating only that "[t]he removal of the requirement for a unanimous finding between FS, FWS, and the State of Nevada to grant an exception for NSO in fluid minerals development would be replaced by the authorization being granted by the authorized officer. The deciding official must disclose effects of and rationale for the decision, but decision authority cannot be deferred to other agencies or the state. Coordination with an interagency team, which would include both FWS and the State of Utah, would still be required under the adaptive management, mitigation, and HMA boundary modification processes." FEIS at 4-358. This characterization fails to acknowledge that the expanded exception process will both reduce expert wildlife input into exception decisions, and also substantively expands "authorized officer" discretion to allow previously-prohibited surface disturbance. Proposed Standard FMUL-066 allows exceptions if the authorized officer finds "impacts *could* be fully offset through mitigation," FEIS at 2-213 (emphasis added), without requiring concurrence by the Fish and Wildlife Service or state agency biologists, and without requiring any certainty that those impacts *will* be "clearly" offset, as was required by the 2015 "net conservation gain" standard.

(2) The proposed amendments eliminate entirely 2015 standard GRSG-M-FMUL-ST-075-Standard, providing that in Sagebrush Focal Areas, "there will be No Surface Occupancy and no waivers, exceptions, or modifications for fluid mineral leasing." FEIS at 2-213. The Forest Service states this is because "[m]ineral withdrawal no longer valid." FEIS at 2-213. Of course, the since-rescinded mineral withdrawal for Sagebrush Focal Areas applied only to locatable, not leasable, minerals, so this justification is irrelevant to whether effective sage-grouse conservation requires a non-waivable NSO standard for *fluid* minerals – oil and gas, rather than hard rock mining. Replacing the non-waivable NSO standard for Sagebrush Focal Areas with the possibility of exceptions, combined with the changes to Standard FMUL-ST-074 that increase individual officers' latitude to grant exceptions, substantially increases the likelihood that habitat-damaging oil and gas activities will be allowed within Sagebrush Focal Areas, the highest priority zones for sage-grouse conservation. The FEIS, deceptively, argues that the elimination of non-waivable NSO protection for SFAs will not increase habitat destruction: "There is virtually no overlap of active oil and gas well

development with the 2015 SFA designated areas, which indicates that the potential for development of oil and gas in the areas previously designated as SFAs is very low (Chambers et al. 2017)." FEIS at 4-353. This, illogically, ignores the fact that the very fact of non-waivable NSO protection for SFA areas protects those areas from "active oil and gas development," and that elimination of that standard will substantially increase the likelihood of new incursions.

(3) The proposed plan amendments, without justification or adequate disclosure, would eliminate a series of key standards requiring specific conditions of approval on development on fluid mineral leases within the Anthro Mountain Habitat Management Area. FEIS at 2-216 to 2-217. These measures were included in the 2015 plan because the Anthro Mountain area is critical for connectivity between otherwise-isolated sage-grouse populations, the Emma Park and West Tavaputs populations, in northeast Utah. *See* FEIS at 4-352. Mandatory standards in the 2015 plan for the Anthro Mountain HMA, not applicable to other PHMA, GRSG-M-FML-ST-081-Standard, included, but are not limited to:

- "Use a phased approach for development in greater sage-grouse habitat"
- "Project-related activities and vehicle access will not be allowed in or through the 0.6-mile lek buffer"
- "Within mapped greater sage-grouse habitat, disturbance will be limited to an average of one disturbance per square mile (640 acres). Disturbance should be clustered in areas of habitat most distal from leks or areas of habitat least important to the greater sage-grouse."
- "Closed-loop drilling will be used for wells within greater sage-grouse habitat."

These standards provided to sage-grouse habitat within the critical Anthro Mountain connectivity area, and replacing them with PHMA designation significantly reduces the effectiveness of the area of habitat, and the likelihood that it can continue to function to connect the Emma Park, Anthro Mountain, and West Tavaputs populations, reducing the redundancy and resilience of sage-grouse in northeast Utah. The FEIS states that:

"In the 2015 GRSG FEIS, all plan components that applied to the Anthro Mountain habitat designation also applied to PHMA designation. The exception was GRSG-M-FML-ST-81-Standard that outlined conditions for approval on existing fluid mineral leases on Anthro Mountain. The change in designation would have all plan components relevant to PHMA be applicable to the portion of habitat formerly known as Anthro Mountain. No impact to greater sage-grouse is anticipated from the PHMA designation."

FEIS at 4-351. Obviously, this characterization overlooks the fact that the Anthro Mountain HMA included stringent siting, density, and operational Conditions of Approval not applicable to existing fluid mineral leases in PHMA outside the Anthro Mountain HMA. However, the FEIS does acknowledge, two pages later, that:

"If Anthro Mountain is not retained as PHMA, the area could be negatively impacted by future development that could reduce the distribution of sage-grouse on the Ashley NF. Other sage-grouse habitats on the Ashley NF remain designated as PHMA under the State of Utah Alternative, so a loss of the Anthro Mountain leks impacts species

persistence, but does not necessarily result in a loss of greater sage-grouse viability on the Ashley NF."

FEIS at 4-353. This argument – that the potential loss of the Anthro Mountain leks "does not necessarily" result in a lack of viability on the entire Ashley National Forest – is a gross dereliction of USFS's duties under both NEPA and NFMA. It ignores entirely the central purpose in Anthro Mountain's designation – retaining effective connectivity habitat and a relatively robust population on the Forest. The Forest Service cannot ignore the damage to Anthro Mountain's viability in this role by simply speculating, without evidence, that its destruction might "not necessarily result in a loss of greater sage-grouse viability" on one National Forest System Unit.

(4) Standard GRSG-M-FML-ST-079, a binding standard to locate compressor stations on non-habitat areas not used by greater sage-grouse, would be replaced by with non-binding "management approaches," GRSG-M-FML-GL-071 and GRSG-M-FML-MA-072, stating only that compressor stations "should" be located on such areas. FEIS at 2-215. Compressor stations are particularly likely to adverse sage-grouse habitat use because of the species' well-documented sensitivity to noise levels. Regardless of whether compressor stations are sited in habitat or non-habitat, their noise impacts carry similarly, and therefore they must not be sited within 4 miles of leks regardless of the sage-grouse habitat or non-habitat status of the construction site. A non-binding "management approach" stating that USFS may "work with the operator" to reduce noise impacts is far from an equal or adequate substitute for the binding standard of GRSG-M-FML-ST-079. The FEIS's discussion of environmental consequences, *see* FEIS 4-363 to 4-364, fails to even acknowledge, let alone analyze, the existence of this elimination of non-discretionary limits on compressor station siting and noise.

(5) Similarly, and also without analysis the Utah proposed alternative eliminates four key standards designed to avoid and minimize disturbance to sage-grouse habitats and replaces them with non-binding guidelines. A standard is "a mandatory constraint on <u>project</u> and activity decisionmaking, established to help achieve or <u>maintain</u> the desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements," 36 C.F.R. § 219.7(e)(1)(iii), whereas a guideline is "a constraint on project and activity decisionmaking that allows for departure from its terms, so long as the purpose of the guideline is met, 36 C.F.R. § 219.7(e)(1)(iv). "Management approaches" are not defined in the 2012 planning rule. The proposed Utah amendment, without any disclosure or analysis in Chapter 4 of the FEIS, replaces specific guidelines for reducing risk of West Nile Virus transmission from oil and gas wastewater ponds and other mosquito breeding sites, GRSG-M-FMO-GL-089, would be replaced with wholly non-binding "management approaches," that "allow for departure," GRSG M-FMO-MA-081. FEIS at 2-220 to 2-221.

The collective effect of these reductions in mitigation certainty – a pattern that holds across both the multiple proposed Forest Service plan amendments as well as the 2019 BLM sage-grouse RMP amendments – is to increase the likelihood that new habitat-disturbing oil and gas development activity will be permitted within PHMA and former SFA, without implementation of previously-mandatory mitigation measures for compressor siting, West Nile Virus mitigation, and avoidance of PHMA. Such a reduction in habitat safeguards is neither openly disclosed in the FEIS nor supported by

any citation to scientific literature supporting the Forest Service's implicit conclusion that habitat function and population viability will not be impaired.

***Requested remedy*:** Fully disclose and analyze the direct, indirect, and cumulative impacts of multiple, related decisions reducing the certainty of implementation of mitigation measures to protect sage-grouse habitat from fluid mineral development. Retain non-waivable NSO standards for Sagebrush Focal Areas. Retain all original fluid mineral management standards for the Anthro Mountain Habitat Management Area. Disallow waivers, modifications, or exceptions to No Surface Occupancy Requirements for PHMA. Reinstate the requirement of "net conservation gain" under GRSG-M-FMUL-ST-066-Standard. Maintain binding standards and guidelines for avoiding development in habitat, siting compressor stations and tanks outside sage-grouse habitat and at least 4 miles away from leks, and employing best available mitigation measures to reduce West Nile virus transmission.

F. The FEIS fails to analyze a range of alternatives to the proposed action, in violation of NEPA.

WWP's January 2019 comments on the draft EIS identified the agency's failure to consider a range of alternatives, including an alternative based strictly on the scientific recommendations of the National Technical Team report and the Conservation Objectives Team 2013 report, and we also recommended that the agency consider fully protecting all of the areas previously identified as PACs. The agency did not take this recommendation, analyzing just three alternatives: the status quo, the proposed action, and the State of Utah alternative. In the Response to Comments, the agency claims that a full range of alternatives were considered in the 2015 plans, but the context in which the 2019 plans occurred – expiration of the withdrawal EO, removal of SFA – has changed sufficiently that the range of alternatives from the previous planning effort are no longer adequate.

WWP and others also requested the following conservation measures to be applied, based on NTT (2011), COT (2013), and the best available science: Designate all habitats designated as Priority Areas for Conservation (PACs) by the USFWS (COT 2013) as PHMA. Allow no leasing in PHMA. Application of 4-mile No Surface Occupancy buffers around leks. Require limits of 3% surface disturbance and one site per square mile, calculated on a per-square-mile basis in addition to calculations based on any larger geographical basis. Require that any surface-disturbing activities result in a "net conservation gain." Exclude overhead transmission lines and renewable energy sites from PHMA. Require that livestock grazing be limited to 30% forage utilization, and maintain 7-inch residual grass height in breeding and nesting habitats. Prevent the siting of livestock-related structures within 1.2 miles of leks. Provide for the voluntary retirement and closure of grazing permits within designated sage-grouse habitats. Prevent vegetation treatments that potentially damage sage grouse habitats within PHMAs. Apply these conservation measures without waiver, modification, or exception. Yet the Forest Service failed to analyze an alternative in detail that requires all of these protection measures, even though the best available science recommends these measures as the minimum required to conserve and restore sage-grouse habitats and populations.

The FEIS's cumulative effects analysis is also inadequate because the cumulative impacts to sage-grouse have changed with the parallel weakening of protections on BLM lands. The BLM plans likewise weaken protections for sage-grouse habitat, remove SFA, allow more modifications, waivers, and exceptions, remove livestock habitat management guidelines, undermine adaptive management

processes, and suffer from the same deficiencies as the FS is proposing here. Thus, the cumulative impacts analysis for all alternatives have changed, and the agency can no longer rely on the 2015 EIS to adequately or accurately compare the effects of its actions.

Requested remedy: Complete a new EIS that analyzes a range of alternatives in context of all of the changes since the 2015 plans were created. Include an alternative that corrects the science-based deficiencies of the 2015 plans and the new inadequacies of the weakened prescriptions. Designate all habitats designated as Priority Areas for Conservation (PACs) by the USFWS (COT 2013) as PHMA. Allow no leasing in PHMA. Application of 4-mile No Surface Occupancy buffers around leks. Require limits of 3% surface disturbance and one site per square mile, calculated on a per-square-mile basis in addition to calculations based on any larger geographical basis. Require that any surface-disturbing activities result in a "net conservation gain." Exclude overhead transmission lines and renewable energy sites from PHMA. Require that livestock grazing be limited to 30% forage utilization, and maintain 7-inch residual grass height in breeding and nesting habitats. Prevent the siting of livestock-related structures within 1.2 miles of leks. Provide for the voluntary retirement and closure of grazing permits within designated sage-grouse habitats. Prevent vegetation treatments that potentially damage sage grouse habitats within PHMAs. Ensure that the new alternative prohibits vegetation treatments harmful to sage-grouse, including a full and fair consideration of the science we provided regarding fuelbreaks. Consider a new alternative that strengthens protections for all GHMA, converting it to PHMA, and reinstate SFA protections to PHMA areas.

G. The FEIS fails to analyze and disclose the effects of the "No Net Loss" mitigation strategy.

We object to the elimination of the "net conservation benefit" and "clear conservation gain" strategies from plan amendment, which would be changed to "no net loss." Given that the greater sage-grouse is in deep trouble at present (as witnessed by the 2010 "warranted but precluded" finding for ESA listing and the troubling declines range-wide in 2019), there is a compelling need to recover sage-grouse to healthy population levels. We are concerned that this change, together with other weaken elements of the sage grouse RMPAs, will result in a continued loss of populations and habitats that place the species on a trajectory toward extinction. The FEIS admits that this new strategy will result in fewer acres being restored, improved, or protected. FEIS at 4-355. However, the FS fails to analyze the impacts of this change or to even predict the likely future effects compared to the "No Action" alternative, in violation of NEPA.

Requested remedy: Complete a new EIS that analyzes and discloses the likely impacts of the changed mitigation strategy on the long-term viability of sage-grouse habitat in Utah.

H. The FEIS is improperly limited to sage-grouse impacts and fails to address the likely environmental effects to countless other resources, in violation of NEPA.

Approximately 350 species of plants and wildlife rely on sagebrush steppe ecosystems and coexist with greater sage-grouse. The USFS wholly abdicated its responsibility to analyze the potential impacts to such species. The FEIS claims that "[i]ncreased flexibility for other uses within greater sage-grouse habitat do not necessarily increase potential impacts on other wildlife or plant species." There is absolutely no evidence provided for this conclusion, nor does it suffice for the "hard look" analysis required under NEPA. USFS also failed to analyze potential impacts to numerous other

resources that would be impacted by the plan amendments (e.g., water resources, soil resources, air quality, vegetation).

The USFS itself determined in its 2015 FEISs that the added conservation measures for greater sage-grouse would directly impact numerous other resources within the sagebrush steppe. It must likewise analyze how removing protections adopted in 2015 will affect these resources.

Requested remedy: Provide a full and detailed analysis of the effects on other resources impacted by the plan amendments, such as approximately 350 other species that share the same sagebrush habitat.

I. The FEIS insufficiently analyzes cumulative effects of the plan amendments, including a failure to consider substantial changes in BLM sage-grouse plans since 2015, in violation of NEPA.

Though titled a "Cumulative Effects Analysis," Section 4.7 of the FEIS fails to address the cumulative effect of the proposed plan amendments—themselves, or when added to other past, present, and foreseeable actions. The analysis is improperly segmented in several ways. First, rather than assess the collective effects of *all* of the plan amendments, this USFS severs the analysis by category of plan change (e.g., modifying lek buffers). The FEIS never actually analyzes the effects of implementation of the plan amendments as a whole. Second, the FEIS fails to analyze the cumulative effect of the plan amendments in combination with other activities. Simply listing these actions in a chart misses the point. Finally, the FEIS also fails to study the cumulative and synergistic impacts of the ecently-finalized BLM greater sage-grouse plan amendments. A cumulative impact analysis must separately describe related projects, their environmental effects, *and* "consider the[ir] interaction" with the proposed project. *Or. Nat. Res. Council Fund v. Brong*, 492 F.3d 1120 (9th Cir. 2007). Moreover, for many of these past or future actions, a description of potential effects on sage-grouse is either absent or unhelpful.

Requested remedy: Provide a full and detailed cumulative effects analysis of the plan amendments in a supplemental NEPA analysis.

J. The FEIS fails to evaluate or disclose baseline habitat and population conditions.

The FEIS fails to analyze the current sage-grouse population and habitat trends either in the affected states or across the sage-grouse range. The FS falsely asserted that conditions "have not appreciably changed" since 2015 without acknowledging that millions of acres of sage-grouse habitat in the West have burned in wildfires since 2015, millions more acres of sage-grouse habitat have been newly leased for oil and gas development, or that sage-grouse populations in all states have showed precipitous declines in recent years---let alone analyzing the effect of these significant changes since 2015. This significant change in baseline conditions mean the FS can no longer rely on the 2015 EIS to adequately or accurately assess the environmental effects of the "no action" alternative. The FS's failure to evaluate these baseline conditions also makes it impossible to understand how the plans will affect conservation of sage-grouse populations locally, regionally, or range-wide.

Requested Remedy: A supplemental EIS that adequately assesses the environmental effects of the "no action" and other alternatives in light of recent data on baseline sage-grouse population and habitat conditions.

II. VIOLATIONS OF THE NATIONAL FOREST MANAGEMENT ACT.

Congress enacted NFMA in 1976 to reform the Forest Service's management of the National Forest System, including by requiring greater recognition of wildlife in its multiple-use management, and to direct the agency to provide for greater public participation in forest management. NFMA directs the agency to "develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest system." 16 U.S.C. 1604(a). NFMA requires these plans to "provide for the diversity of plan and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives." *Id*. § 1604(g)(3)(b).

Under the 2012 planning rule, the agency is supposed to write land management plans that are "sustainable, integrated resource management of the resources within the plan area in the context of the broader landscape, giving due consideration to the relative values of the various resources in particular areas." 36 C.F.R. § 291.1(b).

Under § 219.3, the Forest Service is required to use the "best available scientific information to inform the planning process.

A. The 2019 plan changes important aspects of management from mandatory "standards" to "guidelines" and "management approaches," and thereby weakens the enforceability of the plans themselves.

The FS EIS defines the difference between 'Standards' and 'Guidelines' and 'Management Approaches' on page 2-32.

- Standards are a mandatory constraint on project and activity decision-making
- Guidelines are a constraint on project and activity decision-making that allows for departure from its terms, so long as the purpose of the guideline is met.

In just one example, the proposed action for Utah changes GRSG-LR-SUA-ST-014-Standard to GRSG-LR-SUA-GL-015-Guideline (FEIS at 2-193) without analysis of how the optional application of this restriction will affect sage-grouse.

Worse still, the new Management Approaches are not enforceable, considered "optional plan content" and can be changed administratively after the plan is published. This falls under the requirements for administrative changes (36 CFR § 219.16 (c)(6)) which requires only that the public be provided notice of such changes in any way that the responsible official deems appropriate. Thus it is worrisome that, in Utah, the FS can change habitat management area maps in accordance with GRSG-GEN-MA-010-Management Approach. If the management approach only requires the public notice that a responsible official deems appropriate, it would seem that updating the HMA maps could

be done without public knowledge or involvement. This is a significant change, and one which was not disclosed in the FEIS.

Requested remedy: For all Standards in the original LRMPA changed to Guidelines or Management Approaches in this planning process (including but not limited to each of the protection measures listed in the above section), restore them to nondiscretionary Standards in the final plan amendment. Provide a full and detailed analysis of proposed reductions in protections from nondiscretionary Standards to discretionary Guidelines and Management Approaches to sage-grouse habitats and populations in a supplemental NEPA analysis.

B. The proposed action fails to use the best available science, and misrepresents the science it is using to justify weakening habitat standards related to livestock grazing.

The proposed plan for Utah jettisons scientific understanding in favor or vague and subjective guidelines regarding the use of prescribed fire. Whereas the best available science recommends not using prescribed fire in areas with less than 12 inches of precipitation, and the 2015 plan and DEIS followed this, the new GRSG-FM-GL-042-Guideline greatly weakens adherence to this parameter. FEIS at 2-202. Instead, the new "guideline" is optional, instead of required as a standard. It's application then is less certain, yet the FEIS fails to analyze the difference and likely impacts of this change.

Similarly, the FS ignores recent science, provided by WWP and others in our earlier comments, that fuel breaks are not effective: "A new study by Shinneman et al (2018) recognizes that habitat fragmentation and degradation problems caused by fuelbreaks in sage-grouse habitat and surveyed the available science finding no evidence that fuelbreaks reduce the size or severity of fires in sagebrush habitat." WWP et al. comments at 20. Despite this, and despite having provided a weblink to the research, the FS persists in discussing fuel breaks. *See* GRSG-FM-GL-050-Guideline. This ignores the new information before the agency about effectiveness of fuel breaks generally, and allows for the introduction and spread on non-native species, contrary to the best available science.

Elsewhere, the FEIS claims, "Subsequent to 2015, there have been several publications that document the bias of plant phenology and timing of measurements of grass heights, which resulted in an over-estimate of the importance of grass height as a significant factor in nesting success (Gibson et al. 2016, Sage Grouse Initiative 2017, Smith et al. 2017a, Smith et al. 2017b)." FEIS at 3-326. This overstates and/or misrepresents the conclusions of those studies, and the response to public comments fails to remedy this defect. In fact, the conclusions of those studies were much more nuanced.

- Gibson et al. 2016 study actually found that 50 percent of previous studies measuring grass height at predicted hatch date showed positive support for grass height affecting nest survival of greater sage-grouse, with the two papers not supporting this hypothesis for GRSG being Gibson 2015 and Davis et al. 2014. [Gibson 2015 is Dr. Gibson's dissertation, in which he describes positive effects of nest site selection and average residual grass height and average live grass height, with a net positive effect of local selection on nest survival. Davis et al. 2014 admits that "grass height likely influenced nest success" and that the results of the study were consistent with previous studies. Though Gibson 2016 classes this as "no support" for the survival hypothesis, it shouldn't be interpreted to mean that grass height doesn't matter.]

- The Sage Grouse Initiative 2017 paper is a summary of the Gibson and Smith studies, is not a peer-reviewed science-based article that the FS should be citing in support of its management changes.
- Smith et al. (2017a) reanalyzed existing datasets from three independent studies across the range of sage-grouse, including two using methods "now known to be biased."
- Smith et al (2017b) isn't listed in the Appendix H and it is unclear what the agency is referring to.

In fact, a different Gibson, et al. 2016 paper (Gibson et al. 2016b) found that females selected for areas with taller residual grasses or live grasses, "which suggests that females also selected areas with greater vertical cover from grasses near nests." Although residual grasses did not provide an appreciable benefit to reproductive success, the study did not reach that conclusion regarding live grasses. *See* Gibson, et al. 2016b. Indeed, the local scale habitat selection was correlated with reproductive success, meaning that the immediate vegetation communities and structures do make a difference to the bird. Notably, the study did not compare grass heights throughout the season, just within 3 days of predicted or actual date of hatch, and nor did it discuss what the average live grass height was. *Ibid.*

None of the referenced studies remove management parameters related to grass height, but the Utah plan simply requires, "Provide overhead and lateral concealment from predators. Defer to local data whenever possible to help determine proper height." Appendix E. Instead, the best available science, and indeed, the preponderance of evidence, has established that at least 7 inches (18 cm) of residual stubble height needs to be provided in nesting and brood-rearing habitats throughout their season of use. According to Gregg et al. (1994: 165), "Land management practices that decrease tall grass and medium height shrub cover at potential nest sites may be detrimental to sage grouse populations because of increased nest predation.... Grazing of tall grasses to <18 cm would decrease their value for nest concealment.... Management activities should allow for maintenance of tall, residual grasses or, where necessary, restoration of grass cover within these stands." Hagen et al. (2007) analyzed all scientific datasets up to that time and concluded that the 7-inch threshold was the threshold below which significant impacts to sage grouse occurred (see also Herman-Brunson et al. 2009). Prather (2010) found for Gunnison sage grouse that occupied habitats averaged more than 7 inches of grass stubble height in Utah, while unoccupied habitats averaged less than the 7-inch threshold. According to Taylor et al. (2010:4),

> "The effects of grazing management on sage-grouse have been little studied, but correlation between grass height and nest success suggest that grazing may be one of the few tools available to managers to enhance sage-grouse populations. Our analyses predict that already healthy populations may benefit from moderate changes in grazing practices. For instance, a 2 in increase in grass height could result in a 10% increase in nest success, which translates to an 8% increase in population growth rate."

The exception to this 7-inch rule is found in the mixed-grass prairies of the Dakotas, where sparser cover from sagebrush and greater potential for tall grass have led to a recognition that a 26-cm stubble height standard is warranted (Kaczor 2008, Kaczor et al. 2011). Foster et al. (2014) found that livestock grazing could be compatible with maintaining sage grouse populations, but notably stubble

heights they observed averaged more than 18 cm during all three years of their study, and averaged more than 10.2 inches in two of the three years of the study.

Doherty et al. (2014) found a similar relationship between grass height and nest success in northeast Wyoming and south-central Montana but did prescribe a recommended grass height. While there are those who have attempted to cast doubt on the necessity of maintaining grass heights to provide sage-grouse hiding cover, based on timing differences in grass height measurements between failed nests and successful nests, these concerns have been refuted for Wyoming. The significance of the Doherty et al. (2014) study was explicitly tested by Smith et al. (2018), who confirmed that grass height continued to have a significant effect on nest success for this Wyoming study after correction factors were applied to the data.

Connelly et al. (2000) reviewed the science of that time and recommended an 18-cm residual stubble height standard. Stiver et al. (2015) recommended 18 cm grass height for all breeding and nesting habitats, and explicitly stated that this and other established measures should not be altered unless scientific evidence definitively indicates that the 7-inch threshold is inappropriate.

WWP's comments pointed out that the best available science still supports grass height minimums for nesting sage-grouse, but USFS instead continues to rely on scant and nuanced studies that don't, in fact, disprove prior findings. Deferring to local data to determine grass height, as the Utah plan urges, fails to reconcile the fact that lack of grass cover may be driving population declines, and using what is currently on site to determine what sage-grouse habitat requirements are may not adequately consider the population trajectory and causal factors.

In Utah, the agency has changed its desired conditions from being defined by the best available science to Appendix E, Table E-1, which it describes as simply an initial reference and do not preclude the development of local desired conditions or utilizing other indicators/values based on site selection preferences of the local sage-grouse population and ecological site capability of sagebrush communities. FEIS at 2-187-88. There is no requirement that these indicators/values be based on science or otherwise not skewed by subjective input. The emphasis on local data is repeated when it comes to grass height, which is unsupportable based on the concerns raised above.

The change to the desired conditions is further weakened by Utah's proposed plan to alter GRSG-LG-GL-036-Guideline, FEIS at 2-200. In the 2015 iteration, the FS required that the scientifically derived guidelines be applied to seasonal habitats and, if they weren't being met, to adjust grazing. It specifically cautioned against using drought or degraded condition to adjust values. But now, Utah's proposed plan states simply, "If livestock grazing is limiting achievement of seasonal desired conditions, adjust livestock management, as appropriate, to address greater sage-grouse requirements." There is no requirement to apply the guidelines, which under FS policy is to occur "as soon as practicable," and no firm "seasonal desired condition" for adjusting *to*. Instead, the local conditions seem to be setting the desired conditions, creating a process of status quo land conditions that may or may not be beneficial for the grouse. In fact, the FS has removed even its proposed "management approach" from the draft plan that would have directed the agency to "conduct GRSG habitat assessments in the allotments." FEIS at 2-200. Weak though it was, this management approach at least nominally required the agency to assess grazing allotments.

Requested remedy: The Forest Service should require the scientifically-derived desired conditions of 7 inches of residual grass height in breeding and nesting habitats as an enforceable standard and a maximum of 25% forage utilization by livestock until and unless it is replaced with a preponderance of evidence that the defined conditions aren't appropriate. Apply a Standard requiring that prescribed fire may not be used in habitats with less than 12 inches annual precipitation, or where cheatgrass (*Bromus tectorum*) or red brome (*Bromus rubens*) makes up 1% or more of vegetation cover.

C. The proposed action fails to properly analyze and maintain viability of species of conservation concern.

The Forest Service has failed to comply with its obligations under the 2012 planning rule regarding viability of Species of Conservation Concern (SCC), such as greater sage-grouse.

Specifically, the 2012 Planning Rule requires the Forest Service to first "determine whether or not the plan components . . . provide the ecological conditions necessary to . . . maintain a viable population of each species of conservation concern within the plan area." 36 CFR 219.9(b)(4). If the Forest Service "determines that the plan components . . . are insufficient to provide such ecological conditions, then additional, species-specific plan components, including standards or guidelines, must be included in the plan to provide such ecological conditions in the plan area."

The Forest Service has disregarded these mandates in two key ways. First, USFS made a viability determination only with regard to the greater sage-grouse, despite the potential impacts of the proposed plan amendments on numerous other SCCs within the sagebrush ecosystem. Second, the analysis in the FEIS does not support the Forest Service's conclusion that the amended plans will maintain viable populations of greater sage-grouse in all plan areas to which the amendments would apply. There is in fact virtually no discussion of sage-grouse viability in the FEIS. Where it is discussed, the Forest Service provides no support for its conclusions about viability.

As just one example, when discussing the elimination of the Anthro Mountain PHMA, the Forest Service acknowledged that this area has nearly half of the known leks on the Ashley NF but nonetheless concluded—based only on the observation that other PHMA areas remain intact—that slashing protections for this vital area will "not necessarily result in a loss of greater sage-grouse viability on the Ashley NF." This type of speculative statement fails to meet USFS's duty under Section 219.

Finally, we observe that the USFS refers to "the BAs and BEs located in the project record" as also supporting its viability determination. Such documents either do not exist or have not been made available for public review. We hereby request a copy of any such biological evaluation/assessment and an opportunity to comment on that analysis.

Requested Remedy. We request that USFS, through a supplemental EIS or biological evaluation/assessment, determine the ability of forest service lands to maintain viable populations of greater sage-grouse under these proposed plan amendments. Such analysis must consider the current population trends of greater sage-grouse, the full impact of these weakening amendments, and the many other synergistic threats to the species.

III. VIOLATIONS OF THE ADMINISTRATIVE PROCEDURE ACT

The APA requires a reviewing court to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Id.* § 706(2)(A). An agency must "articulate[] a rational connection between the facts found and the decision made." *Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560, 1574 (10th Cir. 1994) (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). Under this standard, [a]n agency's decision is arbitrary and capricious if the agency (1) entirely failed to consider an important aspect of the problem, (2) offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise, (3) failed to base its decision on consideration of the relevant factors, or (4) made a clear error of judgment. *Superior v. U.S. Fish & Wildlife Serv.*, 913 F. Supp. 2d 1087, 1100-01 (D. Colo. 2012) (citing *New Mexico ex. rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 704 (10th Cir. 2009) (internal citations omitted)).

The proposed plan for Utah differs from the proposed plans for other states, without any rational reason for doing so. The differences between and among plans is sufficient demonstration that the management recommendations are not based in science, but in politics. The proposed actions are baldly arbitrary and capricious and should be set aside.

Requested remedy: The FS should provide management direction for sage-grouse that is universally informed by the best available science, and that recognizes the need for the federal government to mitigate and compensate for past and ongoing federal agency actions that resulted in habitat degradation and sage grouse decline.

In closing, thank you for your consideration of this Objection. If you have any questions, or wish to discuss the issues raised in this objection letter in greater detail, please do not hesitate to contact me.

Thank you,

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(on behalf of all of the Objectors identified above)

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