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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 Idaho

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).

As required by 36 C.F.R. § 218.8(d), Objector provides the following information:

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 Idaho." 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 Idaho.

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.

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.

For example, in Idaho, the FEIS simply drops GHMA from being covered under GRSG-LR-SUA-ST-020-Standard without discussing that upgraded transmission lines will no longer be located within existing corridors or rights-of-way within the 347,500 acres of GHMA. Similarly, GHMA gets dropped from the protection of GRSG-RT-ST-063-Standard (formerly -067), lifting any restrictions on road or trail construction. FEIS at 2-111.

The analysis of these changes fails to account for the reduced protections in GHMA and instead justifies it by saying that GHMA typically contains lower quality or marginal greater sage-grouse habitat. FEIS at 4-350. The Forest Service rationalizes the changes to GHMA by claiming that they contain less than 10 percent of all leks. Response to WWP comments, 6. This doesn't address the concern of WWP that the proposed action removes mitigation requirements, lessens restrictions and lifts protections. The extent to which GHMA contains leks does not equate to the significance of the habitat to the species, and the USFS failed to assess the full implications of these changes.

Moreover, the FS claims because the reduced protections in the GHMA would "encourage proponents to develop in GHMA or outside of GRSG habitat… this would result in greater protection for IHMA and the greatest level of protection in PHMA." FEIS at 4-350. This is wildly speculative, and wouldn't improve protection for IHMA or PHMA. Moreover, the claim overlooks the weakened protection the proposed action provides to IHMA. In Idaho, the FS simply removed IHMA from the draft proposed GRSG-LR-SUA-ST-016 Standard to the final (FEIS at 2-90) without acknowledging this change in the table. The new standard therefore doesn't apply to 416,300 acres of IHMA in Idaho; by failing to flag this change or analyze the implications, the agency has lifted a land use special-authorization screening criteria without disclosing the effects of this change.

Requested remedy: Restore applicability of protections measures to GHMA, including (bot not limited to): GRSG-LR-SUA-ST-020-Standard (transmission lines), GRSG-RT-ST-063-Standard (formerly -067; roads and trails). Restore applicability of draft proposed GRSG-LR-SUA-ST-016 Standard to IHMA in Idaho. Provide a full and detailed analysis of proposed removal or weakening of standards in GHMA and IHMA 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).

For example, the Idaho plan removes the requirement to remove guy wires and replaces it with "marking" guy wires in PHMA and IHMA. FEIS at 2-92. The "Issue/Clarification" column does not disclose this change. Ibid. In the same standard, the FS plan adds the word "appropriate" to protective stipulations, but fails to define "appropriate." Ibid. This weakens enforceability and increases the risk of subsequent site-specific lessening of habitat protections in IHMA and PHMA.

With regard to road and trail maintenance within the vicinity of active leks (GRSG-RT-ST-064-Standard, previously -068), the proposed action changes the prohibited time frame from March 1 to April 30 to March 15 to May 1. FEIS at 2-112. This is particularly significant in light of climate change, and the likely earlier lekking times that may result from earlier spring warmup and snowmelt. It is instructive to note that greater sage-grouse in the Bi-State DPS area of Nevada and California, where climate is warmer, sage grouse begin lekking mid-February (S. Abele, USFWS, pers. comm.). There is no explanation for this new, smaller window of protection. Similarly, GRSG-GEN-GL-010-Guideline (formerly -007) changes the date of surface disturbing and disrupting activities to nesting sage grouse from starting March 1 to March 15. FEIS at 2-86. The FEIS claims this is "No Change." Ibid. The proposed action includes a smaller protective time frame for noise levels as well. See GRSG-

GEN-ST-008-Standard. There is absolutely no analysis of the impacts of this change to the Idaho nesting dates.

In the Idaho plan, the agency changed GRSG-LG-ST-034-Standard from, "In PHMA and GHMA and SFA, do not approve construction of water developments unless beneficial to GRSG habitat…" to not approving construction of water developments "that would have a net negative impact to GRSG habitat." FEIS at 2-98. 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.

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: Restore requirement to remove guy wires in PHMA and IHMA. Restore prohibited time for trail maintenance under GRSG-RT-ST-064-Standard, previously -068, and for GRSG-GEN-GL-010-Guideline (formerly -007) for surface-disturbing activities, to March 1 through April 30. Restore GRSG-GEN-ST-008-Standard for noise impacts to its original approved timeframe. Provide a full and detailed analysis of proposed changes in protection timeframes in a supplemental NEPA analysis. Prohibit the development of new water developments for livestock in sage-grouse habitat and assess existing water developments for the risk of WNV. Prepare a Supplemental EIS.

C. The plan makes significant management changes without analyzing and disclosing the impacts of or rationale for doing so, in violation of NEPA.

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. For example, the Idaho plan changes GRSG-LG-GL-038-Guideline (previously -037) to reducing the distance between bedding sheep and camps by half and also reduced by 25 percent the amount of time this guideline must be followed. FEIS at 2-100. There is no scientific

evidence to support these changes, and the FEIS identifies these significant changes as nothing more than a "clarification" to the plan. *Ibid.*

The proposed action also changed the guidelines pertaining to fences in sage-grouse habitat, without a single mention of this change in the effects analysis of Chapter 4. Between the draft and final EIS, the agency changed the proposed management from "Fences should not be constructed within 1.2 miles from the perimeter of occupied leks unless collision risk can be mitigated…" to "Fence construction or reconstructions should be avoided in areas of high or moderate collision risk (Stevens et al. 2013) or as the latest science indicates. If this is not feasible, collision risk should be mitigated through design features." FEIS at 2-101. This change fails to identify how many acres of high- and moderate-collision risk acres are on the forest, or what definition of lek the agency will be using (active, pending, occupied) in determining which fences need mitigation. Stevens et al. (2013) is a tool, but also shows that even with marking of fences, significant sage-grouse collision mortality continues. The application of this tool is up to the agency. The FEIS fails to analyze the difference between the status quo (1.2 miles) and the proposed action, limiting the public's opportunity to assess the impacts of the Idaho plan.

Studies have found that marking fences only reduce sage-grouse collisions by as little as 57%, such that up to 43% of the collisions on unmarked fences continue to occur on marked fence sections (Van Lanen et al. 2017). The BLM's National Technical Team (2011) recommended that unused fences should be removed, and their rights-of-way withdrawn. Removal of this existing fencing would decrease potential raptor perching and subsequently the indirect impacts of raptors preying on grouse as and other prey species. The removal of fencing could also eliminate any direct mortality due to grouse colliding with problem fences.

Similarly, the proposed action also shifts from science-based droop height requirements to utilization levels, without discussing how 40-60 percent utilization by weight of a grass that is only 8 inches tall to begin with could result in a grass too short to provide "adequate cover." In addition, Braun (2006) recommended a maximum 25% forage utilization standard for livestock (and see Holechek et al. 2010). Controlling forage utilization levels confers numerous benefits on sage grouse and their habitats, and the agency failed to analyze the impacts of such high levels of utilization.

Elsewhere, the agency fails to address public comment pointing out a significant change. WWP commented on the changes from GRSG-LR-SUA-O-012-Objective (now -13) that had required retrofitting existing tall structures with perch deterrent within two years of signing the ROD with GRSG-LR-SUA-ST-019-Standard which only requires that new or renewals of existing infrastructure be required to provide "appropriate protective stipulations." Instead of addressing what WWP raised as major change in policy, the USFS response to comments simply notes that the "No Action Alternative keeps the 2-year requirement." Response to WWP Comments, #31. This new standard also cuts out GHMA, not just SFA as the FEIS claims. FEIS at 2-92.

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 can not to be evaluated.

The proposed action also changes the percentage of acceptable conifer cover from 10 percent to 4 percent (See FEIS at 2-81) 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 action changes noise restrictions to being applicable only to "sustained" noise. GRSG-GEN-ST-008-Standard, FEIS at 2-86. 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.

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."

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."

The federal approach of measuring noise exceedances at the perimeter of a lek, only for six weeks during lekking, instead of at the periphery of occupied seasonal habitat, is scientifically invalid because it fails to address noise impacts to nesting habitats, wintering habitats, and brood-rearing habitats. The FEIS fails to discuss these impacts of how the changes of the proposed action will affect this species.

In another important change, the plans alter the adaptive management protocols considerably in ways that aren't fully analyzed or disclosed. Previously, if triggers were met, the management scheme moved to the next strongest alternative of the plans, automatically implementing a suite of management restrictions that would better protect the bird. Now, the proposed plan only moves towards protective actions if "the causal factor is related to FS management." FEIS at 2-88. The Sage-Grouse Implementation Task Force would then be convened to consider and recommend changes in management. Appendix C. The FEIS does not define who is on this Task Force, how those people are appointed, what they need to consider.

The Idaho plan says, regarding soft triggers, "The Sage-Grouse Implementation Task Force may consider and recommend to the FS and BLM possible changes in the management in the PHMA. In IHMA, the SGITF may review the causes for decline and identify potential management changes only to the extent those factors significantly impair the State's ability to meet the overall management objective." Appendix C-7. And, "Only where monitoring information indicates the cause(s) of the decline is not a primary threat would the SGITF analyze the secondary threats to the species and identify whether further management actions are needed." Ibid. "Primary threats" and "Secondary threats" are not defined in the plan, making it impossible for the reader to understand the efficacy of this adaptive management response.

For hard triggers being met, the Idaho plan applies PHMA direction to IHMA (GRSG-AM-ST-013-Standard, but does not otherwise up the management ante for PHMA or GHMA. The proposed plan is thus unclear what the agency is required to do, rather than just what is recommended for it to do, and defers management to an uncertain future time. This is inadequate as a regulatory mechanism to protect the species in Idaho and the proposed plan's analysis fails to address and disclose this shortcoming.

Requested remedy: The FS must disclose all of the changes it made to the plans and describe the impacts of those changes. Restore original setbacks for sheep bedgrounds under GRSG-LG-GL-038-Guideline (previously -037). Restore prohibition on new fence construction within 1.2 miles of leks. 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. Restore requirement to provide perch inhibitors on tall structures within 2 years under GRSG-LR-SUA-O-012-Objective (now -13). Restore original guidance to allow 10% conifer cover, per the original LRMPA. Restore original restriction of GRSG-GEN-ST-008-Standard to apply to all forms of noise, whether sustained or not, and require that noise limits be imposed as measured at the periphery of occupied seasonal habitat. Provide a full and detailed analysis of proposed changes in protection from noise and livestock-related impacts in a supplemental NEPA analysis.

The FS must also analyze and disclose the effects of the weakened adaptive management response and the lack of enforceability they now entail. The plan should define the key words like "primary threat" and indicate how these threats are determined (i.e. according to which scientists).

D. 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. The Forest Service has also recently proposed regulatory changes to how it implements NEPA, cutting scoping and public comment on categorically-excluded projects.

In more subtle ways, new language in the Idaho plan gives more discretion to the agency in determining the application of certain standards. For example, GRSG-M-FMO-086-Standard (now -078, FEIS at 2-120) adds the clause, "when feasible," to the restriction on employee camps n PHMA and IHMA. Where the plan characterizes this as only the "elimination of SFA," it is neglecting to define feasibility, or how often feasibility would be accommodated. Thus, the effect of this Standard is really more of a Guideline, and the EIS fails to fully analyze and disclose the impacts of allowing employee camps in PHMA and IHMA.

Requested remedy: Restore non-discretionary requirements regarding employee camps under GRSG-M-FMO-086-Standard (now -078). 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. Require public notice and comment on all projects.

E. The proposed action changes lek buffers and lek management on "occupied leks" by redefining protections and applying those changes to "active or pending leks," and fails to admit this weakens protections, in violation of NEPA.

In Idaho, the proposed action substantially cuts lek buffers in IHMA from 2 miles across the board to 1.2 miles for transmission lines and 0.6 miles for distribution lines. In GHMA is was cut from 2 miles to 0.6 miles. EIS at ES-12. No scientific study ever has recommended that 0.6 miles provides an adequate conservation measure. 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. This means that individual well sites, 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. 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.

The FEIS analysis of these significant cuts to lek buffers in IHMA relies on the application of mitigation, disturbance cap, and NSO with limited exception to ensure responsible development, but the EIS fails to address that these parameters were also weakened for IHMA. FEIS at 4-356. In the Idaho plan, the disturbance cap calculation removed the words "and the proposed project area" from the new GRSG-GEN-ST-005-Standard. Whereas the 2015 plans applied the 3 percent cap to the total GRSG within the Biological Significant Unit and the project area, the new plans use the much broader baseline for the cap's application, weakening the site-specific limits to disturbance within the PHMA and IHMA. The NSO language of the proposed action was weakened from requiring unanimous concurrence for exceptions to simply being granted by an authorized officer and which, in accordance with the new GRSG-GEN-ST-006-Standard, requires consideration of economics. See FEIS at 2-84. Thus, the analysis of the weakening of lek buffers in IHMA's reliance on other measures, which are themselves weakened in the proposed action, fails full disclosure.

There is no analysis of lek buffer changes to GHMA for Idaho, except to say that GHMA contains very few leks and is lower quality habitat compared to PHMA and IHMA. FEIS at 4-356. Paired with the admission that reducing leks from 2 miles would increase the risk of lek abandonment, the FS is apparently just writing off leks in IHMA and GHMA, which together compose 1/3 of the remaining known leks in the state.

Additionally, the FEIS redefines which leks receive protections by changing the application of standards from "occupied lek" to "active or pending lek." The USFS claims that the language changes regarding lek buffers were made to simply align with state plans. Response to WWP Comments, #29, FEIS at 4-357. But the glossary definitions of each term show that the agency is actually reducing the number of leks to which restrictions apply, by cutting the relevant time frame for activity to just five years from ten. A full and complete NEPA process would have revealed exactly how many leks are being abandoned under the new proposed action.

Requested remedy: Require lek buffers of at least 4 miles in PHMA, GHMA, and IHMA. Require disturbance cap of 3% to be applied per-square-mile-section, in addition to any BSU or larger-level calculations. Disallow waivers, modifications, or exceptions to No Surface Occupancy Requirements for PHMA. Provide a full and detailed analysis of proposed reductions in lek buffers on sage-grouse habitats and populations in a supplemental NEPA analysis.

F. 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 Idaho plan that all operate, in concert, to reduce the certainty that priority and important habitats, 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:

- The FEIS eliminates 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-075, FEIS at 2-114 to 2-115. The Proposed Idaho 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 2-114, 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," the Proposed Action would now allow exceptions permitting surface occupancy within PHMA and IHMA so long as there is *some* benefit (even if less than the harm) "on a nearby parcel," FEIS 2-114 and the proposal includes wholly undefined and unexamined "appropriate controlled surface use and timing limitation measures." The FEIS dismisses the effect of these changes by stating only that "[c]oordination with an interagency team, which would include both FWS and the State of Idaho, 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.

- The FEIS eliminates entirely the requirement that new fluid mineral leases within sagebrush focal areas be subject to a No Surface Occupancy stipulation without waiver, exception, or modification. Standard GRSG-M-FMUL-ST-077, FEIS at 2-116. Combined with the expanded discretion to grant exceptions under new Standard, GRSG-M-FMUL-ST-075, this replaces binding, mandatory NSO protections for approximately 248,100 acres of SFAs in the Salmon-Challis and Sawtooth National Forests Idaho with the discretionary exception processes established by the new proposed stipulation exception process. The FEIS falsely asserts that "[t]he removal of SFA designations would have no measurable effect on the conservation of greater sage-grouse because the management direction proposed for PHMA would remain in place and continue to protect greater sage-grouse habitat." FEIS at 4-353. This assertion is demonstrably incorrect for Idaho, which replaces the non-waivable NSO stipulation for approximately 250,000 acres of USFS-managed Idaho SFA with a PHMA stipulation that is not only subject to exceptions, but subject to exceptions under substantially broader agency discretion, and without the consent of the Fish and Wildlife Service and the state wildlife agency.

- Standard GRSG-M-FML-ST-081 replaces a binding standard to locate compressor stations on non-habitat areas not used by greater sage-grouse with a non-binding guideline, GRSG-M-FML-GL-073, stating only that compressor stations "should" be located on such areas. FEIS at 2-117 to 2-118. Compressor stations are particularly

likely to adverse sage-grouse habitat use because of the species' well-documented sensitivity to noise levels. 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-081. 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.

- The Proposed Action eliminates entirely Standard GRSG-M-FML-ST-082, FEIS at 2-118, which requires that "In priority and general habitat management areas and sagebrush focal areas, when authorizing development of fluid mineral resources, work with the operator to minimize impacts to the greater sage-grouse and its habitat, such as locating facilities in non-habitat areas first and then in the least suitable habitat." The Forest Service proposes to eliminate this standard entirely, stating baldly and without analysis that it is "Duplicative with GRSG-M-FML-ST-070-Standard, GRSG-M-FML-ST-072-Standard, and GRSG-M-FML-GL-073-Guideline." This is false. Proposed Standard FML-ST-070 only requires conditions of approval in PHMA, not GHMA (FEIS at 2-116 to 2-117), and proposed standard FML-ST-072 only applies to transmission lines, not oil and gas infrastructure (FEIS at 2-117). Chapter 4 of the FEIS, Environmental Impacts of the Proposed Action, does not even disclose, let alone analyze, this elimination of a binding standard to relocate facilities to non-habitat or least suitable habitat within GHMA.

- Proposed changes to Guideline GSRG-M-FML-GL-083, FEIS at 2-118 to 2-119, weaken a guideline encouraging reduction of habitat disturbance by adding the additional, wholly undefined qualifier "practicable." By apparently instructing the authorized officer defer to an oil and gas operator's judgment on whether proposed mitigation is "practicable," this amendment, like every other amendment to the fluid mineral provisions of the plans, reduces the certainty that mitigation measures will actually be applied.

- Similarly, for fluid mineral operations on both new and existing leases, the Proposed Action adds new qualifiers to previously-binding standards on siting of employee camps, GRSG-M-FMO-ST-086-Standard, and avoidance of perching structures use of raptor/corvid perch deterrents, GRSG-M-FMO-ST-087-Standard. FEIS at 2-120. The new proposed standards would now require siting of "man camps" outside habitat only "when feasible," and use of perch deterrents only "when effective." Proposed Standards FMO-ST-078, -079. Because the new standards provide no definition or guidance as to when such siting or structures are "feasible" or "effective," these changes, like all those discussed above, reduce the certainty that habitat protections will actually be implemented. The FEIS does not acknowledge or analyze these changes in Chapter 4, Environmental Consequences, leaving the reader to tease them out of Table 2-6 with no guidance as to the practical effects of the increased uncertainty.

- Guideline GSRG-M-FMO-GL-090, guidelines for reducing potential for transmission of West Nile Virus ("WNV"), eliminates nine specific, science-based methods,

including removal of produced water, for reducing risk of WNV transmission. FEIS 1-121. Proposed Guideline FMO-GL-082, FEIS at 1-121, eliminates these specific guidelines entirely, replacing them, under the 2012 Planning Rule, with a "Management Approach." GRSG-M-FMO-MA-083-Management Approach, FEIS at 1-122 to 1-123. Although a Guideline is less prescriptive than a Standard, the 2012 planning rule, § 36 CFR 219.7(e)(1)(iv), a Guideline nevertheless "is 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." A "management approach," unlike a guideline, is merely "optional content" in the plan, 36 CFR § 219.7(f)(2). This change, like the others discussed above, reduces the certainty WNV mitigation measures will be implemented, and is not disclosed or analyzed in the FEIS's discussion of environmental consequences.

- The Proposed Action would also eliminate entirely three significant standards and guidelines limiting new and expanded coal mining in sage-grouse habitat. Standards CMUL-ST-092 & -093, Guideline CML-GL-094, FEIS at 2-125 to 2-126. These changes are accompanied by no analysis whatsoever, just an unsubstantiated assertion that "there is no commercially available coal in ID- BLM is leasing agency," FEIS at 2-125. This conclusion also appears false; although there appear to be no active federally-leased coal mines in Idaho at this time, there are at least two closed BLM leases in Idaho, and the BLM in 2017 lifted a moratorium on new coal leasing, creating the potential for new leases. The Pocatello RMP, governing a region of southeast Idaho with potential for coal development, explicitly authorizes development of leasable minerals, including coal. BLM Pocatello Approved Resource Management Plan at 37 (2012).

The cumulative effect of each of these changes – along with similar changes to management of sage-grouse habitats on BLM land – is to reduce the certainty that protective measures, including surface occupancy limits, siting standards, and WNV mitigation measures – will in fact be implemented. The FEIS contains no acknowledgment whatsoever of several of these changes, and no analysis, either qualitative or quantitative, of how they will affect sage-grouse habitat and populations.

Requested remedy: Restore the certainty of protective measures on FS lands. Ensure that there is a process of unanimous consent to exemptions, waivers and modifications, including expert scientific opinion.

G. 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 <u>all</u> of the areas previously identified as PACs. The agency did not take this recommendation, analyzing just two alternatives relevant to Idaho: the status quo and the proposed action. 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. 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. Consider a new alternative that strengthens protections for all IHMA, converting it to PHMA, and add SFA protections to PHMA areas.

H. 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. The FEIS removes even this minimal requirement for GHMA in Idaho. 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 Idaho.

I. 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 the approximate 350 other species that share the same sagebrush habitat.

J. 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.

While 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 recently-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.

K. 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.

The proposed action for Idaho changes GRSG-LR-SUA-ST-014-Standard to GRSG-LR-SUA-GL-017-Guideline (FEIS at 2-91) without analysis of how the optional application of the special-use authorizations in GHMA will affect this habitat. It also changes an important "and" to "or" in this provision, meaning that the restrictions can be lifted in more circumstances. The FEIS fails utterly to discuss how this changes the on-the-ground management of GHMA.

Worse still, 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.

We raised this issue in comments, as did the Nevada Department of Wildlife. We are concerned about the weakened enforceability of these management parameters and concerned that they are inadequate to sufficiently regulate habitat use.

For example, in Idaho, the FS removed important habitat areas from needing to comply with GRSG-LR-SUA-ST-013 Standard ("In PHMA and IHMA and SFA, restrict issuance of new lands special-use authorizations, such as high-voltage transmissions lines, major pipelines, distribution lines, and communication towers sites," with limited exceptions) to allowing authorizations for such disturbances if in compliance with GRSG-GEN-ST-006-Standard. This new standard allows for exceptions based on subjective determinations such as economic feasibility. FEIS at 2-84. The FEIS does not analyze this change or consider the implications for these habitat areas.

GHMA is also overlooked in the proposed guideline revisions to non-energy leasable minerals. The FS is only required to make recommendations of consent on PHMA and IHMA under GRSG-M-NEL-GL-088-Guideline. In Idaho, phosphate mining is within GHMA on FS lands, leaving sage-grouse unprotected from the impacts of surface mining. FEIS at 2-127. There is no admission or analysis of the impacts to the eastern Idaho population of sage-grouse in the FEIS, or any real consideration of this change elsewhere.

Habitat Management Areas can also be modified by the agencies and the state, without public input or oversight. See, e.g. ID GRSG-GEN-MA-004 "Management Approach." This contradicts what the agency said in response to comments from the Environmental Protection Agency, e.g. "Management areas can only be changed using a plan amendment." The USFS claims that that a plan amendment is required and "this process would require review by the state wildlife agencies as well as a public notification," (See Response to WWP's comments #8) fails to admit that the only public notification requirement is such as deemed necessary by the responsible official. 36 C.F.R. § 219.16(c)(6). Thus, the agency is misleading the public about future implementation of the proposed action.

In the FEIS, the Forest Service claims, "There is no effect and no reduction in protection to greater sage-grouse or its habitat as a result of identifying a plan component that had been mislabeled and identifying it as a management approach." FEIS at 4-363. The agency reached this conclusion,

apparently, about things it had labeled management approaches in the draft which have now reverted to guidelines. But nowhere does the plan analyze the changes in the other direction that weaken the application of the protection for sage-grouse.

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 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[1] 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. 2016. 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

[1] Gibson, D., E.J. Blomberg, M.T. Atamian, and J.S. Sedinger. 2016. Nesting habitat selection influences nest and early offspring survival in Greater sage-grouse. The Condor. 118: 689-702.

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 provide the support the agency needs to undergird its decision to remove management parameters related to grass height. 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.

Requested remedy: The Forest Service should retain the scientifically-derived stubble-height standard of 7 inches for Idaho until and unless it is replaced with a preponderance of evidence and a majority opinion that grass height isn't an important variable in sage-grouse nest success. Provide a full and detailed analysis of grass height standards, including an accurate and comprehensive review of the best available science, in a supplemental NEPA analysis.

C. Failure 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 and, while this example is specific to Utah, it typifies the type of inadequate analysis we're objecting to for Idaho as well.

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 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 Idaho 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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