



EUREKA COUNTY BOARD OF COMMISSIONERS

J.J. Goicoechea, Chairman ♦ Mike Sharkozy, Vice Chair ♦ Rich McKay, Member

PO Box 694, 10 South Main Street, Eureka, Nevada 89316

Phone: (775) 237-7211 ♦ Fax: (775) 237-6015 ♦ www.co.eureka.nv.us

October 1, 2019

USDA Forest Service

Attn: Objection Reviewing Officer – Chris French

210 14th Street, SW

EMC-PEEARS, Mailstop 1104

Washington, DC 20250

Submitted electronically via the Comment and Analysis Response Application (CARA) objection web form:

<https://cara.ecosystem-management.org/Public/CommentInput?project=52904>.

RE: Eureka County, NV objection to *Greater Sage-grouse Draft Record of Decision and Land Management Plan Amendment for National Forest System Land in Nevada on the Humboldt-Toiyabe National Forest*

Dear Objection Reviewing Officer French:

Pursuant to 36 CFR 219 Subpart B, Eureka County, through the Eureka County Board of Commissioners, files this objection to the August 2019 US Forest Service (USFS) Greater Sage-grouse Draft Record of Decision and Land Management Plan Amendment for National Forest System Land in Nevada on the Humboldt-Toiyabe National Forest (2019 LMPA or 2019 Plan). The 60-day objection period began on August 2, 2019 and expires October 1, 2019. See 84 FR 37233 (July 31, 2019).

Eureka County believes the 2019 Draft ROD and Proposed LMPA to be wrong because it does not fully comply with applicable laws, regulations, policies and planning procedures. The analyses in the EIS are flawed and not based on the best available science. The 2019 LMPA fails to be consistent with the plans, policies, programs, and controls of Eureka County. The LMPA seeks to impose overly restrictive land management actions that are unnecessary for preservation of Greater Sage-Grouse and will impair the long-term viability of our economy and way-of-life while impacting prior existing rights. The LMPA fails to strike a reasonable balance between the needs of Eureka County, the State of Nevada, and the Greater Sage-Grouse.

1. Objector's Information (36 CFR 219.54(c)(1))

Name: Eureka County Board of Commissioners

Points of Contact: J.J. Goicoechea, DVM, Chairman and Jake Tibbitts, Eureka County Natural Resources Manager

Mailing address: PO Box 694, Eureka, NV 89316

Telephone number: 775-237-7211 or 775-237-6010

Email: jgoicoechea@eurekacountynv.gov or jtibbitts@eurekacountynv.gov

2. Plan Amendment Being Objected To; Name/Title of Responsible Official (36 CFR 219.54(c)(4))

Plan Amendment: August 2019 Greater Sage-grouse Draft Record of Decision and Land Management Plan Amendment for National Forest System Land in Nevada on the Humboldt-Toiyabe National Forest.

Responsible Official: Nora Rasure, Regional Forester, Intermountain Region

3. Eureka County Authorized To File An Objection (36 CFR 219.53)

Eureka County actively and extensively participated in the planning process in numerous ways, including but not limited to:

- Provided substantive scoping comments through a letter dated January 5, 2018 on the 2017 USFS Notice of Intent to Amend Land Management Plans for Greater Sage-Grouse Conservation and Prepare Associated Environmental Impact Statement; 82 Fed. Reg. 55346 (Nov. 21, 2017).
- Provided substantive scoping comments through a letter dated August 6, 2018 on the 2018 Supplemental Notice of Intent to Prepare an Environmental Impact Statement; Notice of Updated Information Concerning the Forest Service Greater Sage-Grouse Land and Resource Management Plan Amendments; 83 Fed. Reg. 28608 and 30909.
- Requested Cooperating Agency status in August 2018.
- Signed Memorandum of Understanding (MOU) establishing County as a Cooperating Agency on September 6, 2018 and highlighted concerns with MOU in letter of same date;
- Participated in formal cooperating agency meetings;
- Provided substantive comments through our membership and engagement with the Nevada Association of Counties on the cooperating agency Preliminary Draft EIS (September 2018 PDEIS);
- Provided comment on public Proposed LMPA and DEIS on January 3, 2019; and
- Provided substantive comments through our membership and engagement with the Nevada Association of Counties on the cooperating agency Preliminary Final EIS in April 2019.

4. Participation in Objection Resolution Process Regardless Of Specific County Objections (36 CFR 219.57(a))

We hereby notice USFS that Eureka County requests participation in the resolution of objections, pursuant to 36 CFR 219.57(a), regardless of our filing of specific objections.

5. Table of Specific Objections With Each Including:

- **Statement of Issues And/or Parts To Which The Objection Applies (36 CFR 219.54(c)(5))**
- **Concise Statement Explaining the Objection and Suggestions for Improvement (36 CFR 219.54(c)(6))**
- **Statement Demonstrating the Link Between Prior Comments and the Objection (36 CFR 219.54(c)(7))**

| Objection | Statement of Issues And/or Parts To Which The Objection Applies (36 CFR 219.54(c)(5)) | Concise Statement Explaining the Objection and Suggestions for Improvement (36 CFR 219.54(c)(6)) | Statement Demonstrating the Link Between Prior Comments and the Objection (36 CFR 219.54(c)(7)) |
|-----------|--|--|---|
| 1 | <p>Parts To Which The Objection Applies:</p> <ul style="list-style-type: none"> • Interagency Coordination, p. 30 • Findings Required by Laws and Regulations, p. 33 • Compliance With The Procedural Requirements of The Planning Rule, p.35 <p>Statement of Issues:</p> | <p>USFS has the obligation to strive for consistency with State and local plans, laws, policies, and controls to the maximum extent possible and explain in the EIS any decision to override these land use plans, policies or controls for the area. USFS did not adequately address these inconsistencies. We wish to engage USFS in the dialogue necessary to ensure that USFS and Eureka County meet these obligations of various laws and regulations. USFS is obligated,</p> | <p>Eureka County provided over 40 pages of comments on the Draft EIS in a referenced attachment to our letter dated 1/3/19 specifically outlining “Inconsistencies with [Eureka County] Plans, Policies, and Programs.” Eureka County also requested changes to the Cooperating Agency MOU with USFS to address this issue that USFS did not adopt as referenced in our</p> |

| | | | |
|---|---|---|--|
| | <p>USFS has the obligation to strive for consistency with local plans, laws, policies, and controls to the maximum extent possible and explain in the EIS any decision to override these land use plans, policies or controls for the area nor describe the extent to which such inconsistencies will be reconciled. The Final EIS and the LMPA do not meet this obligation. The following USFS mandates, without limitation, were not met: National Forest Management Act, 36 CFR 219.4 (b)(1), 36 CFR 219.4(b), 40 CFR 1502.16, 40 CFR 1506.2, and March 16, 1981, <i>Memorandum for Federal NEPA Liaisons, Federal, State, and Local Official and Other Persons Involved in the NEPA Process</i>, Questions 23b and 23c.</p> | <p>when inconsistencies arise, to meet with local governments in order to work towards consistency. This did not happen on and has been very limited on this EIS process. We request that USFS adequately coordinate its efforts with Eureka County. Eureka County respectfully requests USFS comply with these obligations and resolve the continuing inconsistencies Eureka County has identified by considering the proposed language offered throughout Eureka County’s comments submitted through the process and meet with Eureka County to resolve the inconsistencies</p> | <p>letter dated September 6, 2018 (attached).</p> |
| 2 | <p>Parts To Which The Objection Applies:</p> <ul style="list-style-type: none"> Greater Sage-Grouse General, GRSG-GEN-DC-002-Desired Condition <p>Statement of Issues: GRSG-GEN-DC-002-Desired Condition does not clarify that county administrative activities, existing infrastructure, and emergency services all qualify as “authorized uses” in both priority and general habitat.</p> | <p>Through the process, USFS folks expressed verbally that anthropogenic disturbances does NOT include county administrative infrastructure and/or existing range improvements. Failure to include clarification of this under GRSG-GEN-DC-002-Desired Condition will complicate management moving forward. We request written clarification to match USFS verbal clarification during the process.</p> | <p>Eureka County specifically commented on this and made this exact request in our comment letter on the DEIS of 1/3/19.</p> |
| 3 | <p>Parts To Which The Objection Applies:</p> <ul style="list-style-type: none"> Greater Sage-grouse General, GRSG-GEB-ST-005-Standard <p>Statement of Issues: This standard has the potential to impose unjustified and arbitrary significant restrictions on routine county functions and land uses. The anthropogenic disturbance cap standard is not</p> | <p>The LMPA cites several appendices and figures to try help clarify the 3% cap (p. 51). However, none of the references offer any clarification for the methodology, sources, studies, or science used for the 3% formulation. USFS may have considered <i>some</i> available science in formulating the 3% disturbance cap, without reference to the material or methodology, it is impossible to determine whether it was the</p> | <p>Eureka County specifically commented on this and made these exact requests in our comment letter on the DEIS of 1/3/19.</p> |

| | | | |
|---|--|---|---|
| | grounded in the best available science | <p><i>best available</i> science. Furthermore, there is concern that the LMPA does not describe how the 3% cap would be adjusted if and when a BSU boundary changes (which is highly likely to occur).</p> <p>USFS must reconsider this cap to determine if this cap aligns with new policy and case law and consistency in application of such a rigid cap.</p> | |
| 4 | <p>Parts To Which The Objection Applies:</p> <ul style="list-style-type: none"> Greater Sage-grouse General, GRSG GEN-ST-009-Standard <p>Statement of Issues: Noise limitations are not based on best available science. Noise limitations on already authorized activities, or activities pending authorizations can have significant impact on the ability of a county to provide administrative or emergency functions (e.g., maintaining roads, accessing gravel pits, etc.) could result in temporary exceedance of this Standard.</p> | <p>“Noise levels at the perimeter of the lek should not exceed 10 A-weighted Decibels (dBA) above ambient noise.” This management action came out of the NTT Report which mischaracterizes the conclusion of the literature it cites (e.g. Blickley (2012)). Blickley found that sage-grouse tolerated, and even showed no signs of behavior variation, when noise levels were increased by 30 dBA. The noise levels of the studies relied on in the LMPA reached 70 dBA.</p> <p>It remains unclear the impact the 10dBA threshold will have on our ability to expand or improve infrastructure, or conduct routine administrative functions, including any functions or services not yet authorized. There is no language included to create exceptions for activities that have not been authorized but which nevertheless may be essential. Language similar to, or identical to the language of GRSG-LR-ST-15-Standard are imperative to include here. For instance, language creating an exception for public health, public safety, re-authorizations or renewals, and routine administrative functions would be appropriate.</p> | Eureka County specifically commented on this and made these exact requests in our comment letter on the DEIS of 1/3/19. |
| 5 | <p>Parts To Which The Objection Applies:</p> | Solar and wind energy developments are treated | Eureka County specifically commented on this and |

| | | | |
|---|--|--|---|
| | <ul style="list-style-type: none"> Wind and Solar, GRSG-WS-ST-022-Standard and GRSG-WS-ST-023-Standard <p>Statement of Issues: Solar and wind energy developments are treated differently and seem to preclude use of compensatory mitigation for net-conservation gain.</p> | differently where solar is not allowed in general habitat, yet wind is. Wind-energy development is arguably more impactful than solar and not all solar development is the same. It is also not stated that such developments could be allowed if they can meet the “net conservation gain” standard. | made these exact requests in our comment letter on the DEIS of 1/3/19. |
| 6 | <p>Parts To Which The Objection Applies:</p> <ul style="list-style-type: none"> Wind and Solar, GRSG-WS-ST-022-Standard and GRSG-WS-ST-023-Standard <p>Statement of Issues:</p> | | Eureka County specifically commented on this and made these exact requests in our comment letter on the DEIS of 1/3/19. |
| 7 | <p>Parts To Which The Objection Applies:</p> <ul style="list-style-type: none"> Greater Sage-grouse Habitat, GRSG-GRSGH-GL-030-Guideline <p>Statement of Issues: Unjustifiably requires use of native species in habitat restoration and enhancement efforts not considering or using best available science.</p> | Native species are expensive, often difficult to obtain, and don’t always compete well with non-desirable invasive species. As such, use of native species can often limit the size and effectiveness of a habitat enhancement or restoration project. Desirable non-native species that are more readily available, more cost effective, and more competitive with non-native annual grass species (medusahead and cheatgrass) and provide a similar ecological functionality should also be encouraged for use. The USDA Agricultural Resource Service’s Great Basin Rangeland Research Center in Reno has volumes of research that must be used to identify science and monitoring data to support this approach. | Eureka County specifically commented on this and made these exact requests in our comment letter on the DEIS of 1/3/19. |
| 8 | <p>Parts To Which The Objection Applies:</p> <ul style="list-style-type: none"> Greater Sage-grouse Habitat, GRSG-GRSGH-GL-032-Guideline <p>Statement of Issues: Does not address nexus between treatments and appurtenant</p> | Any vegetation treatments involving water (i.e. springs and seeps) must be consistent with Nevada Water law. For instance, a fencing project may be completed to benefit vegetation, but it also may change use of the water source by livestock which could conflict with an existing water right. A sentence could be | Eureka County specifically commented on this and made these exact requests in our comment letter on the DEIS of 1/3/19. |

| | | | |
|----|---|---|---|
| | water rights and State Water Law. | added to this guideline that reads, "Treatments would be consistent with State Water Law and, where appropriate, the Forest Service will work collaboratively with water right holders to implement such projects." | |
| 9 | <p>Parts To Which The Objection Applies:</p> <ul style="list-style-type: none"> Livestock Grazing, entire section <p>Statement of Issues: Does not require cooperation or collaboration with affected grazing permittees.</p> | There are many Standards and Guidelines which have actions associated with them that do not have explicit collaborative interaction requirement with the affected grazing permittee. There should be specific language added to each, or a new overarching Guideline added, that requires and memorializes a cooperative and collaborative interaction with affected grazing permittees to address livestock grazing issues. | Eureka County specifically commented on this and made these exact requests in our comment letter on the DEIS of 1/3/19. |
| 10 | <p>Parts To Which The Objection Applies:</p> <ul style="list-style-type: none"> Livestock Grazing, GRSG-LG-GL-042-Guideline <p>Statement of Issues: Use of the term "restricted" could have unintended consequences.</p> | Depending on site conditions, it might not always be possible, or necessary to stay 2.0 miles away from a lek. Eureka County suggests replacing "restricted" with "avoided unless site-specific conditions dictate otherwise." | Eureka County specifically commented on this and made these exact requests in our comment letter on the DEIS of 1/3/19. |
| 11 | <p>Parts To Which The Objection Applies:</p> <ul style="list-style-type: none"> Fuels Management, RSG-FM-GL-049-Guideline <p>Statement of Issues: Unjustifiably requires use of native species in fuel breaks not considering or using best available science.</p> | Fire and invasive species continue to pose the highest threat to Sage-grouse and its habitat. Native species are often expensive, difficult to obtain, and don't always compete well with invasive species. Especially for fuel breaks, science has borne out that beneficial non-native species work best (e.g., crested or Siberian wheatgrass, forage kochia, etc.). Desirable non-native species that are more readily available, more cost effective, and more competitive with non-native annual grass species (medusahead and cheatgrass) and provide a similar ecological functionality should also be encouraged for use. Counties bear the most immediate socioeconomic | Eureka County specifically commented on this and made these exact requests in our comment letter on the DEIS of 1/3/19. |

| | | | |
|----|--|---|---|
| | | impacts of rangeland fires in Nevada. Rangeland fires continue to profligate across the Great Basin as a result of insufficient landscape restoration, proliferation of fire-conducive invasive species, and reductions in grazing and buildup of fuel. The USDA Agricultural Resource Service’s Great Basin Rangeland Research Center in Reno has volumes of research that must be used to identify science and monitoring data to support this approach. | |
| 12 | <p>Parts To Which The Objection Applies:</p> <ul style="list-style-type: none"> Fuels Management, RSG-FM-GL-051-Guideline <p>Statement of Issues: Use of the term “restricted” could have unintended consequences and impact sage grouse indirectly.</p> | There are situations where cross-country travel may be warranted to aggressively attack wildfire or address other emergency circumstances. The term “restricted” should be reconsidered and changed to “avoided.” | Eureka County specifically commented on this and made these exact requests in our comment letter on the DEIS of 1/3/19. |
| 13 | <p>Parts To Which The Objection Applies:</p> <ul style="list-style-type: none"> Roads/Transportation, entire section <p>Statement of Issues: Travel and road restrictions and decisions are not required to be coordinated with counties, including decisions impacts county-claimed roads. This impacts local communities by interfering with county obligations to provide regular and emergency services and impacts on county roads on NFS lands that have not been adjudicated in federal court. . These impacts include interference with road maintenance, provision of public safety services, impediments to landowner access to their private property, and prohibiting the travel of ranchers, hunters, recreationists, and mineral exploration.</p> | Any road closures, seasonal or otherwise, must be coordinated with the local government. Many Forest Service roads provide access to private lands (including water rights) or are critical for administrative functions and important land uses (i.e. weed treatments, fuels reduction, grazing, etc.) USFS has no authority to impose restrictions, including closures, on pre-forest-reserve county roads. As such, Eureka County requests adding a sentence that the respective County would be consulted and coordinated with prior to any road closures or travel restrictions and that USFS does not have jurisdiction on non-USFS, pre-forest-reserve roads. Also, exceptions must be provided to allow for County emergency services and administrative functions. | Eureka County specifically commented on this and made these exact requests in our comment letter on the DEIS of 1/3/19. |

We do appreciate USFS engagement with us through this process. We acknowledge that many positive changes occurred due to USFS accepting many of our comments and suggestions. The outstanding issues outlined in this Objection are easily overcome, in our opinion, if we actively coordinate and strive for consistency in a cooperative and collaborative way. We look forward to our engagement with USFS through this objection process to find common-ground on these remaining issues.

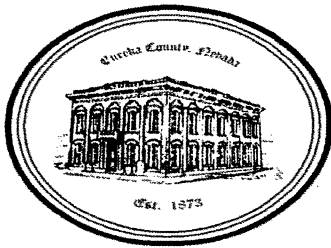
Respectfully,

A handwritten signature in blue ink, appearing to read "J.J. Goicoechea".

J.J. Goicoechea, DVM, Chairman
Eureka County Board of Commissioners

Enclosures (36 CFR 219.54(b)):

- January 5, 2018 Eureka County scoping comment letter on the 2017 USFS Notice of Intent to Amend Land Management Plans for Greater Sage-Grouse Conservation and Prepare Associated Environmental Impact Statement; 82 Fed. Reg. 55346 (Nov. 21, 2017).
- August 6, 2018 Eureka County scoping comment letter on the 2018 Supplemental Notice of Intent to Prepare an Environmental Impact Statement; Notice of Updated Information Concerning the Forest Service Greater Sage-Grouse Land and Resource Management Plan Amendments; 83 Fed. Reg. 28608 and 30909.
- Signed Memorandum of Understanding (MOU) with USFS establishing County as a Cooperating Agency
- September 6, 2018 Eureka County letter highlighting concerns with Cooperating Agency MO
- January 3, 2019 Eureka County comment letter on Greater Sage-grouse Proposed Land Management Plan Amendments (LMPA) and Draft Environmental Impact Statement (DEIS) for the Intermountain and Rocky Mountain Regions



EUREKA COUNTY BOARD OF COMMISSIONERS

J.J. Goicoechea, Chairman ♦ Mike Sharkozy, Vice Chair ♦ Fred Etchegaray, Member

PO Box 694, 10 South Main Street, Eureka, Nevada 89316

Phone: (775) 237-7211 ♦ Fax: (775) 237-6015 ♦ www.co.eureka.nv.us

January 5, 2018

Sage-Grouse Amendment Comment
Attn: John Shivik
USDA Forest Service Intermountain Region
Federal Building
324 25th Street
Ogden, UT 84401
johnashivik@fs.fed.us

Bill Dunkelberger, Forest Supervisor
Humboldt-Toiyabe National Forest
1200 Franklin Way
Sparks, NV 89431
wadunkelberger@fs.fed.us

Via email to: comments-intermtn-regional-office@fs.fed.us

RE: Scoping Comments on Notice of Intent to Amend Land Management Plans for Greater Sage-Grouse Conservation and Prepare Associated Environmental Impact Statement 82 Fed. Reg. 55346 (Nov. 21, 2017).

Dear Mr. Shivik,

Eureka County, Nevada greatly appreciates the opportunity to provide scoping comments for the US Forest Service (“USFS”) Notice of Intent to Amend Land Management Plans for Greater Sage-Grouse Conservation and Prepare Associated Environmental Impact Statement 82 Fed. Reg. 55346 (Nov. 21, 2017). This scoping letter is timely submitted, within the 45-day scoping period beginning on November 21, 2017 and ending January 5, 2018 and extended to January 19, 2018.

A plan amendment is required in the State of Nevada. The Court Order described in the Notice of Intent is a result of a lawsuit filed by nine Nevada counties, including Humboldt, Eureka, Elko, White Pine, Lincoln, Washoe, Pershing, Churchill, and Lander Counties. The Court Order from this lawsuit requires that the USFS prepare a supplemental Environmental Impact Statement (“SEIS”) for a potential Plan Amendment for the Nevada Greater Sage-Grouse (“GSG”) plan, hereinafter referred to as the 2015 Land Use Plan (“2015 LUP”).

Public lands are inextricably tied to the economy and culture in Nevada, and statutes related to the USFS such as the Multiple Use and Sustained Yield Act (MUSYA), the National Forest Management Act (NFMA), and the National Environmental Policy Act acknowledge this fact and direct that the USFS work closely with state and local governments to avoid wasteful governance and unworkable conflicts between federal land use plans and state and local plans. This engagement is crucial – especially for Eureka County, which is comprised of 81 percent federally-administered lands.

Eureka County has formally participated as a cooperating agency in the USFS amendment process, and submitted information throughout the Greater Sage-Grouse Plan Amendment Process finalized in 2015 at 80 Fed. Reg. 57633 (Sept. 24, 2015), and the recently cancelled Sagebrush Focal Area Mineral Withdrawal at 82 Fed. Reg. 47248 (Oct. 11, 2017). The information provided during those NEPA Processes are hereby incorporated by reference.

Issues to be Addressed

First, Eureka County responds to the request in the Notice for comments on whether an SEIS should be prepared and, if so, on a state-by-state basis. As noted above, the Court order requires an SEIS. Eureka County recommends that USFS retain the Nevada/Northeastern California planning area and prepare an SEIS to comply with the Court's order to correct the deficiencies in the Nevada/Northeastern California FEIS. The SEIS must evaluate the specific habitat and socioeconomic conditions in the Nevada/Northeastern California planning area, which differ from other planning areas and other states.

Second, with respect to issues that should be addressed in the SEIS, Eureka County has identified the following issues that should be addressed through this process:

1. Sagebrush Focal Area removal or adjustment.
2. Address Habitat Desired Conditions and Objectives (Tables 2-5 and 2-6 in FEIS and Tables 1a and 1b in USFS ROD) to reflect reality and true ecological potential (based on Ecological Site Descriptions and associated State and Transition Models).
3. Eliminate the net conservation gain requirement because net conservation gain is an unlawful standard and is premised on the previous administration's landscape-scale land use planning and mitigation policies, which the Trump administration has revoked, and implement site-specific mitigation requirements based on site specific data and conditions.
4. Address erroneous and inflexible use of landscape-scale mapping, require improved site-specific habitat mapping, and base management actions on field-verified habitat data. Consider eliminating the landscape-scale maps and instead require site-specific, field-verified habitat data for project level decision making and any mitigation requirements.
5. Include an actual socioeconomic analysis of proposed restrictions and management actions to be adopted – which was missing from the last LUPA EIS.
6. Rely on the best available information and data, and incorporate newly-available science regarding impacts to Eureka County into the analysis.

Impacts to Eureka County

The Nevada Court recognized Nevada's unique interests in the sage grouse planning process, which include "significant interests in the protection, propagation, restoration, transplanting, introduction and management of wildlife in [the] State." *See W. Expl., LLC v. U.S. Dep't of the Interior*, 250 F.Supp.3d 718,731 (D. Nev. 2017) (internal quotation marks omitted). The U.S. District Court for the District of Nevada recognized that the travel restrictions in the NVLMP have caused Eureka County concrete and imminent injury as a result of the NEPA violations in the Plan Amendments. *See W. Expl., LLC*, 250 F.Supp.3d at 735. The Court held that Federal law requires that "local governments' land use and economic concerns be given substantive consideration when creating national land use plans . . . as local governments and their citizens are directly impacted by the effects of any such plans...." *Id.*

As a general matter, the Plan Amendments will interfere with Eureka County's land use planning and sovereign police powers, including emergency services, and the Plan Amendments' livestock grazing restrictions already have and will continue to increase fuel loads, burdening the County and destroying GSG habitat. In fact, these increased fuel loads and the resulting fires constitute a legal nuisance and trespass

against County and privately owned lands that are adversely impacted. Additionally, the plan amendments severely and adversely impact the primary economic engines in Eureka County -- ranching, farming, and mining businesses. The decrease in tax revenue will impede the County's own conservation efforts. The USFS must consider these issues and properly analyze proposed restrictions to avoid creating these devastating adverse impacts.

Eliminate Rigid Mapping and GSG Habitat Designations to Accommodate Multiple Uses

Eureka County has previously identified the USFS erroneous and inflexible use of mapping, input which the USFS must consider and adjust using the best available data comprised of field-verified, site-specific habitat GSG habitat maps and provide for adjustment in management actions based on these maps. For example, there is a large area in southern Eureka County designated as a Priority Habitat Management Area ("PHMA") that incorrectly includes the Town of Eureka, US Highway 50, State Route 278, the Eureka County landfill, the Falcon-to-Gondor major distribution power line, multiple ancillary power lines, multiple subdivisions with homes, paved roads and gravel roads, farms with alfalfa fields and irrigation systems, and hay barns, among other infrastructure, and pinyon-juniper woodlands. The LUP includes many land use restrictions for PHMA such as disturbance caps that are nonsensical for the area's true conditions on the ground. The arbitrary and incorrect LUP habitat delineations have serious implications for Eureka County and our socioeconomic viability. The disturbance caps and landscape-scale planning and mapping in the Record of Decision ("ROD") and 2015 LUP are inconsistent with Federal law and national policy.

The USFS must replace its rigid landscape-scale mapping approach with a flexible standard based upon site-specific, field verified, and ground-truthed data in the SEIS and plan amendment. The mapping and designation of lands as priority habitat and "SFA" is infested with errors that impose significant harm and lead to absurd results that interfere with conservation efforts. The existing LUP incorrectly identified certain areas within Eureka County as GSG habitat and implemented improper travel restrictions, causing substantial interference with County operations. Among the impacts are interference with the County's use of gravel pits necessary for road repairs, which, in turn, prevents safe travel and county emergency services; interference with the County's ability to access roads to conduct its noxious and invasive weed treatment program; land use and planning restrictions associated with the plan amendments' incorrect designation of the town of Eureka, US Highway 50, State Route 278, County landfill, power lines, multiple subdivisions of homes, farms with alfalfa field and irrigations systems, and hay barns, as PHMA; and improper habitat delineations in the Plan Amendments which have compromised County water plans for a majority of residents.

Rather than adopting one erroneous landscape-scale map that requires an amendment (that can take many months or years) to substantially modify, Eureka County requests that USFS consider using habitat zones in a manner similar to that which it has done to protect other species with absolute clarity that any such zones are just a starting point and shall not be used for decision making without site specific data. This would allow the USFS to utilize ground-truthing for increased mapping and zoning flexibility. In contrast under the existing LUP for GSG, the USFS's current mapping automatically assumes that GSG are affected for every activity in each square inch of mapped habitat. Eureka County asks that USFS reconsider this approach. The concept of landscape level planning also is inconsistent with MUSYA and NFMA and well established federal law requiring local input and expertise to make land management decisions. The mapping and restrictions in the LUP were not based on and, in fact were contrary to, best available science and commercial data which should guide the agency's decision-making.

USFS Must Apply Consistent and Lawful Standards

Eureka County requests that USFS eliminate use of the "net conservation gain" standard which is currently being implemented in some instances under the ROD and 2015 LUP even though the policy (which was unlawful) has been rescinded. Moreover, the USFS implemented the "net conservation gain" standard

at the final hour, and the standard is inconsistent with MUYSA and NFMA which recognize that some impacts associated with multiple-use are necessary. Eureka County has found the net conservation gain standard to be a moving target and not consistent. While the ROD and 2015 LUP require compensatory mitigation, that requirement was inconsistent with Federal law and supported only by an unlawful policy that now has been repealed. Further, the inflexibility of timing restrictions on use of roads within a certain distance of leks or habitat creates unnecessary harms (especially combined with the erroneous mapping). There are not even options for net conservation gain/mitigation in the LUPA for timing restrictions. Eureka County has and continues to fund and implement habitat projects to benefit sage grouse habitat conservation. Eureka County would contemplate mitigation options to offset any minimal impacts that could be argued to occur based on County actions and proposals. Yet, this option does not appear to be available to us in the LUP because of the hard-and-fast timing restrictions.

The SEIS and Plan Amendments Must Consider Alternative GSG Conservation Efforts and Adverse Impacts to Eureka County, Using the Best Available Science, Including that which is Newly Available

The LUP fails to recognize that managed livestock grazing represents an important and cost-effective tool to achieve desired GSG habitat conditions and to reduce wildfires, despite the reliable science available to it indicating as much.¹ The livestock grazing restrictions in the LUP have caused environmental harm by increasing the volume of highly flammable non-native invasive annual grasses and inevitably led to more wildfires. The increased fuels that are resulting from the economically burdensome and technically ill-advised livestock grazing restrictions in the LUP have burdened our fire district and resulted in destruction of critical GSG habitat. Eureka County has a substantial noxious and invasive weed treatment program that treats over 1,000 acres of noxious and invasive weeds per year at a cost of \$60,000 to \$100,000 per year. The travel restrictions will limit our ability to access weed-infested roads in the Spring, which is the optimal treatment time, thereby threatening the viability of Eureka County's fire reduction and habitat conservation efforts. Eureka County has already seen the impact—just during 2017, there were some substantial fires affecting Eureka County including the Rooster Comb fire (which was about 1/3 in Eureka County) at 205,000 acres, the Cottonwood fire at over 13,000 acres, and another dozen or so fires ranging from a few hundred acres to up to 3000 acres. While we believe these issues require and can be addressed in some instances immediately under applicable law and policies and recognizing existing roads, this is another issue that should be considered for clarification or revision in the SEIS, and eliminating the landscape-scale habitat maps in the NVLMP, which are the foundation for the NVLMP's land use decisions and restrictions.

In addition to considering the best available science regarding the effects of grazing which were previously available to USFS throughout the NEPA process, Eureka County requests that the USFS consider newly-available and updated best available science as outlined herein. Recent grazing-related research confirms that livestock grazing is a valuable tool to reduce hazardous fire fuels. *See, e.g., Strand EK, Lauchbaugh KL, Limb R, Torell LA, Livestock grazing effects on fuel loads for wildland fire in sagebrush-dominated ecosystem, Journal of Rangeland Applications 1 (2014), at 35–57.* This synthesis had a “focus on the sagebrush steppe and semi-desert ecosystems within the Great Basin.” Relevant “key points” of the research synthesis include the following:

- Livestock grazing can reduce the standing crop of perennial and annual grasses to levels that can reduce fuel loads, fire ignition potential, and spread.
- Livestock grazing at low/moderate severity (i.e., < 50% utilization) generally has little influence on the cover of perennial grasses and forbs.

¹ Eureka County submitted volumes of existing peer reviewed scientific papers the USFS has either omitted or ignored in the LUPA process. Our comment letter on the DEIS specifically referenced this data along with scientific sources and asked for them to be included. We ask that the USFS now consider this previously-submitted data demonstrating that the DEIS is severely flawed and not based on the best available science, incorporated herein by reference. *See Eureka County Comments on DEIS, filed January 29, 2014, at 55-62.*

- Areas grazed by livestock can have more, less, or the same density and cover of sagebrush compared to non-grazed areas. Determining factors include the season and intensity of grazing, species of livestock, ecological site, and site conditions at the time of grazing.
- A window of opportunity may exist for targeted grazing to reduce annual grasses before perennial grasses initiate bolting or during dormancy of perennial grasses.
- Targeted grazing with sheep or goats can reduce the fuel load of shrublands in the short term by reducing woody fuels.
- Grazing after perennial grasses produce seed and enter a dormant state can reduce the residual biomass left on the site, thereby decreasing the fire hazard the following spring and summer.
- Grazing can reduce the continuity of fuels, including the amount of herbaceous biomass between shrubs, in sagebrush ecosystems.
- Economic analyses reveal that fuel treatments in sagebrush ecosystems have the highest benefit/cost ratio when the perennial grasses comprise the dominant vegetation, i.e. prior to annual grass invasion and shrub dominance.

Eureka County further requests that the USFS consider recent studies that in fact undermine and disprove certain LUP conclusions. Namely, Doherty et al., *Linking conservation actions to demography: grass height explains variation in greater sage-grouse nest survival*, Wildlife Biology (2014), concludes that the results “prohibit extrapolating...to novel sagebrush systems because absolute effects likely depend upon regional conditions that influence grass and shrub composition,” and “where sagebrush rather than grass provides most hiding cover, grass height had only a weak effect on nest success, and nest fates were dominated by year and site effects.” This example of best available science therefore concludes that grass height matters in grasslands with limited sagebrush but does not greatly impact nest success in sagebrush dominated sites. The paper also demonstrates that average grass height must be compared to the site itself, not other sites. There is no “blanket” grass height that can be applied across all ecological sites. Precipitation (year and site effects) meaning favorable spring rains or detrimental snow events shaped nest success much more. More importantly, at least two more recent papers refute the conclusions of Doherty et al. and similar previous papers. See Sage Grouse Initiative, *Taking the Bias Out of Grass Height Measurements*, Science to Solutions Series Number 15, at 4 (2017), available at www.sagegrouseinitiative.com/taking-bias-out-sage-grouse-nesting-studies).² These and other important

² The two papers outlined in the SGI circular are summarized as follows:

- Gibson, D., Blomberg, E. J. and Sedinger, J. S., *Evaluating vegetation effects on animal demographics: the role of plant phenology and sampling bias*, Ecology and Evolution 6:3621–3631 (2016), doi:10.1002/ece3.2148. This paper concluded that “the correlation between grass height and nest success could instead be due to a built-in bias in timing of when vegetation is measured around hatched and failed nests. If habitat measurements are made immediately after researchers determine fate of a nest (either failure or hatch), measurements may be taken weeks later at successful nests than at failed nests, which allows grasses more time to grow. Because the nesting season occurs in the spring during green-up – when grasses can grow more than a half an inch a week – it appears that hatched nests are surrounded by taller grass. Dr. Gibson’s study suggested this timing bias is the reason that so many studies have concluded that tall grass is important for concealing nests from predators.”
- Smith, J.T., Tack, J. D., Berkeley, L. I., Szczepinski, M. and Naugle, D. E., *Effects of rotational grazing management on nesting greater sage-grouse*, Journal of Wildlife Management. doi:10.1002/jwmg.21344. This study “re-analyzed data from three independent studies that previously showed a correlation between grass height and nest success. Smith and his team reevaluated data from studies in the Powder River Basin of southeast Montana and northeast Wyoming (Doherty study), Smith’s own research in central Montana, and a site in northeast Utah. When combined with Gibson’s research in Nevada, the studies encompassed 1,204 sage grouse nests over 24 study site-years from across the range

updates³ in the best available science require the USFS to reconsider its grazing discussion and erroneous conclusions in the SEIS and plan amendment.

Additionally, newly-available reliable research exists to demonstrate a higher threat of conifer encroachment than previously recognized. While the LUPs do recognize pinyon-juniper (“PJ”) and other conifer encroachment into sagebrush habitat as a threat, the level of this threat is not recognized and less impactful measures are imposed on lower threats such as grazing. Certain key research papers are currently forthcoming but providing key insights recognizing PJ encroachment’s considerable impact.⁴ Eureka County maintains its position that PJ encroachment has much greater impact on sage grouse than other land-uses, but that the USFS has not responded with the appropriate level of action or habitat objectives to address it. For instance, the LUP calls for <3% phase I for general habitat and <5% phase I for winter habitat. Phase I is defined in the LUP as 0 to 25% cover of trees. Yet, Baruch-Mordo et al. (2013) found that grouse abandon their leks at only 4% cover. Other forthcoming or newly available research confirms Eureka County’s position.⁵

of sage grouse. In Gibson’s study, measurements of vegetation were made at the expected hatch date for all nests, regardless of their actual outcome. This minimized any difference between failed and hatched nests in when vegetation was measured. Gibson then used a linear regression to predict vegetation height at the date of nest fate, simulating the biased methods common in other sage grouse nesting studies. For his study, Smith used the data that was collected at nest fate – the biased way – and applied the reverse correction to obtain grass heights as though they had been sampled using unbiased methods. Smith found that, when uncorrected, all of the datasets revealed a strong correlation between grass height and nest success. However, following the simple correction to account for bias, there was no longer any association between grass height and nest success in two of the three studies, while the association was slightly reduced in strength but still apparent in the third Powder River Basin. At hatch date, median grass heights at hatched and failed nests were within just 0.05 inches of one another across all re-analyzed datasets. **Overall, the research strongly affirmed Gibson’s initial findings and suggests that the height of grass is not nearly as crucial to sage grouse nesting success as previously thought.”**

³ For example, Eureka County requests that the USFS consider Dahlgren, D.K., R.T. Larsen, R. Danvir, G. Wilson, E.T. Thacker, T.A. Black, D.E. Naugle, J.W. Connelly, and T.A. Messmer, *Greater sage-grouse and range management: insights from a 25-year case study in Utah and Wyoming*, *Rangeland Ecology & Management* 68:375–382 (2015), which found that active sagebrush treatments enhanced herbaceous understory for sage grouse. Where these treatments occurred, sage grouse populations increased for nearly 15 years compared to adjacent properties. Caution in too many cumulative sagebrush treatments was given as extreme winter and spring conditions (when sage grouse are utilizing sagebrush as the primary food source) made sagebrush less available and resulted in temporary population reductions. This is important because the LUPs limit the ability to complete sagebrush treatments (thinning) in “intact sagebrush” areas. But, decadent sagebrush that results in little-to-no herbaceous understory is one of the limiting factors for sage grouse. *See also* Sage Grouse Initiative, *Grazing and sagebrush treatments: A 25-year case study in Utah*, Science to Solutions Series Number 10, at 4 (2015), available at <https://www.sagegrouseinitiative.com/s2sgrazingsagebrushstreatments>.

⁴ Namely, Prochazka et al. in press; Coates et al. in press.

⁵ For example:

- Severson et al. in press, reported in Sage Grouse Initiative, *Conifer Removal Boosts Sage Grouse Success*, Science to Solutions Series Number 12, at 4 (2017), available at <http://www.sagegrouseinitiative.com/>: “Despite conventional wisdom that female grouse are strongly tied to the same nesting sites every year, sage grouse hens were quick to consider restored habitat nearby, and nested both in and near sagebrush stands cleared of juniper. Within two to four years after juniper cutting, sage grouse moved in to cut areas, and the probability of nesting in and near treated sites increased 22% each year after cutting. After four years, the number of sage grouse nesting in and near the restored areas increased 29% (relative to the control area). Additionally, birds were much more likely to nest in or near restored sites: for every 0.6 miles from a cut area, the probability of nesting decreased 43%. In short, removing junipers dramatically increased the availability of nesting habitat, and hens proved quite willing to take advantage of good habitat as it became available.”

Also at issue are Tables 2-5 and 2-6 in the FEIS and Tables 1a and 1b in the USFS ROD; the USFS must also consider significant issues Eureka County has experienced with seasonal habitats. Grazing restrictions outlined in these tables provide uncertainty with regard to seasonal livestock permits which have been active for decades and will also introduce management limitations to livestock operators (permittees). The economic impact is substantial to both livestock operators and the County as revenues are impacted when grazing is limited. The LUP only identified umbrella habitat and restrictions based on lek buffers. There are management actions in the LUP based on sub-habitats like presence of winter habitat or brood rearing habitat. While these delineations were not part of the LUP, Eureka County has experienced restrictions based on them (e.g., gravel pit renewals). Eureka County has offered many examples of on-the-ground knowledge and information that document that many areas mapped as habitat that are not high-priority habitat, or habitat at all in some cases.

Eureka County has experienced first-hand the tangible damage flowing from the USFS failure to rely on best available science thus far. As just one example, Eureka County has experienced “new” leks created in areas where we have cut habitat-encroaching pinyon-juniper trees on private land. Yet, NDOW does not show a lek in these areas and NDOW has recently represented to Eureka County via email that this is not good GSG habitat. Nevertheless, Eureka County has proven that sage grouse will occupy space created through tree removal and active land management—experience which the USFS must consider in its SEIS.

Since the Nevada Court issued its order, travel restrictions in the LUP remain problematic in Eureka County, and the USFS must consider such on-the-ground impacts of its faulty NEPA process. Existing county roads that do not have an underlying USFS authorization have caused conflict. Questions abound about proper implementation of the travel management restrictions given the erroneous mapping and also the protection of existing roads. Valid existing rights cannot be impacted but questions arise around adjudicated pre-forest reserve ROWs (RS 2477). Mines are being forced to take upon themselves seasonal travel restrictions, including them as Applicant Committed Measures. Such demands do not recognize valid existing rights as that term is defined in the ROD and 2015 LUP which purports to respect property rights including mining rights under the U.S. Mining Law which includes access to mining claims. This is an example of inconsistent and potentially unlawful implementation/use of the ROD and 2015 LUP that should be immediately addressed through guidance and considered for further clarification in the SEIS/plan amendment.

The USFS Must Consider and Analyze Socioeconomic Impacts in the SEIS

The lack of socioeconomic data for Eureka County jeopardizes all LUP decisions in the future.⁶ Despite the fact that Eureka County made critical economic impact information available to the USFS through locally sourced data and reports—which demonstrated that the adverse economic impact to the County due to ranching industry losses alone would range from \$7 million to \$15 million per year, and would increase when mining projects are taken into account—the 2015 Land Use Plan Amendment did not quantify the social or economic effects of actions that impact these industries directly,⁷ failing to rely upon

-
- Sandford et al. in press, also reported in the aforementioned Sage Grouse Initiative 2017: “[N]est success declined with every 0.6 miles farther away” from areas where trees were removed. “In one documented instance, a marked female nested within a treatment even before mechanical harvesters had completed the cut, and then successfully hatched a brood; Sandford et al. 2015” . . . “Most hens (86%) kept broods close to restored habitats and avoided areas with trees, and hens that used areas cleared of conifers were most likely to successfully fledge their broods.”

⁶ NEPA requires that an EIS contain “high-quality information and accurate scientific analysis.” 40 C.F.R. § 1500.1(b). If there is incomplete or unavailable relevant data, the EIS must disclose this fact. 40 C.F.R. § 1502.22.

⁷ For example, the USFS must consider inconsistencies with the ROD and 2015 LUP and the Nevada and local plans that interfere with county roads needed for emergency vehicles, access to ranching operations on public and private

the best available information.⁸ In contrast, Nevada local and state plans reflect site-specific environmental and socioeconomic conditions—which the USFS must consider to adequately coordinate with Eureka County’s plan, in addition to those of other Counties that have adopted local plans. Nevada counties have invested a great deal of time and effort to developing GSG conservation plans and policies that will maintain, enhance, or restore GSG populations on public lands, and to promote the same on private lands. The SFA, PHMA, and GHMA designations in the faulty landscape-scale habitat maps in the EIS and ROD will have severe impacts on each county’s economy—affecting the livelihood of residents and interfering with each county’s land use planning and management.

The SEIS and Plan Amendments Must Strive for Consistency with Eureka County’s Conservation Plan

Eureka County in particular demonstrated during the Nevada litigation that not only would the USFS restrictions directly interfere with key county planning measures, but they interfere also with Eureka County’s own Master Plan⁹ and Title 9 of the Eureka County Code,¹⁰ both of which promote GSG habitat. The LUP is inconsistent with key elements of Title 9, including Chapter 30, the framework for land-use planning on federal lands; Chapter 40, procedures to ensure that there is full disclosure and cooperation regarding decisions affecting federal lands located within the County; and Chapter 50, which declares that the County holds title in trust for the public to all public roads and public travel corridors in the County except for State and federal highways. Eureka County previously submitted detailed comments regarding the need for consistency with these County policies and codes, and explaining that the County plans better provide for GSG habitat conservation and enhancement while maintaining a strong economic base. The USFS must consider the data and efforts available to it through Eureka’s plan as well as other coordinating counties’ plans, address the blatant inconsistencies, and strive for better coordination with local governments given the Nevada Court’s recognition of Nevada’s unique interests in the sage grouse planning process. *See W. Expl., LLC*, 250 F.Supp.3d at 731 (internal quotation marks omitted).

The USFS must consider that its current restrictions would also impede Eureka County’s numerous other efforts to conserve the GSG. Since 2010, Eureka County has applied for and received three separate Clean Water Act 319(h) sub-grants that have had direct benefits to GSG. These sub-grants provide 50 percent of the costs and have reduced livestock use of riparian areas that are important GSG habitat. These coordinated efforts rely upon the continued use of public lands in combination with private lands—meaning the current restrictions will interfere with conservation strategies Eureka County has implemented. Further, Eureka County has created incentives for landowners, ranchers with BLM or USFS grazing permits, and other agencies to work with us to implement these projects in the course of our County land use planning and natural resources conservation. These incentives will vanish as a result of the LUPA, which will discourage these same partners from coming to the table to work on future on-the-ground projects because of the restrictions in the LUPA.

lands and to some of the best exploration terrain in the world; county noxious weed control programs; livestock grazing programs to conserve habitat; pinyon-juniper removal programs; and collaborative public-private GSG conservation efforts.

⁸ An agency cannot “ignore reputable scientific criticism” in its EIS. *City of Carmel-By-The-Sea v. U.S. Dept. of Transp.*, 123 F.3d 1142, 1151 (9th Cir. 1997). Here, the ROD and 2015 LUP is based largely on the recommended restrictions derived from the December 2011 National Technical Team (“NTT”) Report, and the agencies must disclose peer reviewers’ scientific criticism of the NTT recommendations that reveal questionable science behind the NTT’s recommended conservation measures.

⁹ As Eureka County explained during the litigation, in 2006, it updated the Land Use Element of the Eureka County Master Plan with substantive provisions for wildlife and wildlife habitat, which include sage grouse. This plan was again updated in 2010 to become the Natural Resources and Federal or State Land Use Element of the Master Plan (“Eureka Master Plan”). The Eureka Master Plan was adopted pursuant to and in compliance with Nevada Revised Statutes Chapter 278.

¹⁰ Title 9 of the Eureka County Code provides for conservation of natural resources and wildlife, including the GSG.

As a result of the above-mentioned harms, the Nevada Court concluded that the plan amendments injured Eureka County's proprietary interests in maintaining its roads and utility programs, as well as protecting the local environment. Eureka County continues to feel the impact of these harms following the Nevada Court's order in the litigation. Eureka County requests that the USFS prepare an SEIS that considers these severe impacts and develop a Proposed Action that recognizes Eureka County's plans, policies, and conservation measures to protect the GSG, which minimize conflicts with these plans, and eliminates the harsh socioeconomic impacts in the LUPA that are so detrimental to the County's economy.

Thank you for considering these important issues. If you have any questions, please do not hesitate to contact Eureka County's point of contact, Natural Resources Manager, Jake Tibbitts at JTibbitts@EurekaCountyNV.gov or (775) 237-6010.

Respectfully,



J.J. Goicoechea, DVM, Chairman
Eureka County Board of Commissioners



EUREKA COUNTY BOARD OF COMMISSIONERS

J.J. Goicoechea, Chairman ♦ Mike Sharkozy, Vice Chair ♦ Fred Etchegaray, Member

PO Box 694, 10 South Main Street, Eureka, Nevada 89316

Phone: (775) 237-7211 ♦ Fax: (775) 237-6015 ♦ www.co.eureka.nv.us

August 6, 2018

Sage-Grouse Amendment Comment

Attn: John Shivik

USDA Forest Service Intermountain Region

Federal Building

324 25th Street

Ogden, UT 84401

johnshivik@fs.fed.us

Bill Dunkelberger, Forest Supervisor

Humboldt-Toiyabe National Forest

1200 Franklin Way

Sparks, NV 89431

wadunkelberger@fs.fed.us

Via email to: comments-intermtn-regional-office@fs.fed.us

RE: Comments on Supplemental Notice of Intent to Prepare an Environmental Impact Statement; Notice of Updated Information Concerning the Forest Service Greater Sage-Grouse Land and Resource Management Plan Amendments; 83 Fed. Reg. 28608 and 30909

Dear Mr. Shivik,

Eureka County, Nevada provided substantive comment to US Forest Service (“USFS”) in January 2018 during the scoping period under the 2017 Notice of Intent (NOI) to Prepare an Environmental Impact Statement (NOI). We greatly appreciate the opportunity to provide additional comments under this current Supplemental NOI. We reassert our previous comments on the 2017 NOI as they are still relevant and applicable. Primarily, our previous comments were related to:

- **Impacts to Eureka County;**
- **Eliminate Rigid Mapping and GSG Habitat Designations to Accommodate Multiple Uses;**
- **USFS Must Apply Consistent and Lawful Standards;**
- **The SEIS and Plan Amendments Must Consider Alternative GSG Conservation Efforts and Adverse Impacts to Eureka County, Using the Best Available Science, Including that which is Newly Available;**
- **The USFS Must Consider and Analyze Socioeconomic Impacts in the SEIS; and**
- **The SEIS and Plan Amendments Must Strive for Consistency with Eureka County’s Conservation Plan**

In addition to these overarching comments, we specifically requested the following issues be addressed through this process:

- 1. Sagebrush Focal Area removal or adjustment;**
- 2. Address Habitat Desired Conditions and Objectives (Tables 2-5 and 2-6 in FEIS and Tables 1a and 1b in USFS ROD) to reflect reality and true ecological potential (based on Ecological Site Descriptions and associated State and Transition Models);**
- 3. Eliminate the net conservation gain requirement because net conservation gain is an unlawful standard and is premised on the previous administration's landscape-scale land use planning and mitigation policies, which the Trump administration has revoked, and implement site-specific mitigation requirements based on site specific data and conditions;**
- 4. Address erroneous and inflexible use of landscape-scale mapping, require improved site-specific habitat mapping, and base management actions on field-verified habitat data. Consider eliminating the landscape-scale maps and instead require site-specific, field-verified habitat data for project level decision making and any mitigation requirements;**
- 5. Include an actual socioeconomic analysis of proposed restrictions and management actions to be adopted – which was missing from the last LMP EIS; and**
- 6. Rely on the best available information and data, and incorporate newly-available science regarding impacts to Eureka County into the analysis.**

We request that USFS review our previous comments (enclosed) and consider them under this Supplemental NOI.

Eureka County as a Cooperating Agency

Eureka County requests involvement as a cooperating agency in the EIS process. Eureka County is currently participating and has participated in numerous NEPA processes as a Cooperating Agency. Our participation is afforded through 40 CFR 1501.6(a) (CEQ) through the "special expertise" requirement. In 40 CFR 1508.26 (CEQ), special expertise is defined as "... statutory responsibility, agency mission, or related program experience."

Eureka County has special expertise, through agency mission and related program experience, within the various departments of the County including Public Works, Eureka County Natural Resources Department, and through various established advisory committees such as Eureka County Natural Resource Advisory Commission, the Eureka County Advisory Board to Manage Wildlife, and the Eureka County Planning Commission. The specific areas of expertise that Eureka County can advise on includes, but is not limited to, socioeconomics, water resources, rangeland resources, mining, noise, visual resources, archaeological resources, recreation, wildlife, air resources, private property rights, utility rights and public consumption, land disposition and land tenure adjustments, riparian habitat and wetlands, wilderness, wilderness study areas, parks and refuges, wild horse management, wildfire, and access. Each area of special expertise listed is not claimed but has been demonstrated by Eureka County. Eureka County considers participation as a Cooperating Agency as a serious matter and we have and continue to commit ourselves to fully demonstrating our special expertise.

The State of Nevada, through NRS 278 and NRS 321, has enacted statutory responsibility upon Eureka County (and other Nevada counties) to develop and implement processes for determining land use, resource and water management, and environmental planning as necessary to serve the public health, safety, convenience, and welfare. Eureka County has exercised its local government authority and has developed a County Master Plan in 1973 with expansion of the Master Plan and the Natural

Resources and Land Use Element of the Plan in 1998, 2005 and 2010. Further, both the Eureka County Code and the Eureka County Master Plan mandate “the involvement of Eureka County in the management of federal lands and in the development of criteria that are meaningful in any decision-making process, as contemplated by 43 C.F.R. Section 1610.3-1(a), Section 1610.3-1(b), Section 1620.3-2(a); 36 C.F.R. Ch. II, Section 219.7(a), Section 219.7(c), and Section 219.7(d)” and “Failure of federal entities to afford Eureka County complete notice and opportunity for involvement beyond that afforded individuals, or to limit State or County government involvement, input to or comment at public hearings is presumed to be prejudicial to the government of Eureka County and its residents, and that the Board of Eureka County Commissioners is authorized and empowered...to seek redress for such prejudice.”

The Eureka County Code clearly defines Eureka County’s program mission related to natural resources and federal land use management. The County Code calls for County participation, through the Board of County Commissioners, “in all actions that are being taken or are being proposed to be taken regarding federal lands located within Eureka County” (Title 9 Chapter 40.030). The County Code specifically defines each area that the County shall participate in.

In order to follow its own County Code and County plans, Eureka County has a Natural Resources Department with staff including a Natural Resources Manager tasked with the mission “. . . to inventory, make plans for and manage the County’s natural resources under the direction of the Board of Eureka County Commissioners, and to advise the Board about matters involving the County’s natural resources” (Eureka County Code, Title 9, Chapter 20.020).

Therefore, Eureka County has demonstrated special expertise by following “statutory responsibility” and pursuing County “agency mission” and has demonstrated appropriate “program experience” in all of the areas highlighted above.

As a cooperating agency, we advocate for full participation including an opportunity to review a cooperating agency draft EIS (preliminary or administrative draft) and coordinate with USFS to fully address our comments before the public draft EIS is made available for public review.

A Plan Amendment Is Required

A plan amendment is required in the State of Nevada. The US District Court for Nevada found that the BLM and USFS violated NEPA by failing to prepare a supplemental EIS for various habitat designations between the Draft EIS and the Final EIS. The Court Order from this lawsuit requires that the USFS prepare a supplemental Environmental Impact Statement (“SEIS”) for a potential Plan Amendment for the Nevada Greater Sage-Grouse (“GSG”) plan, hereinafter referred to as the 2015 Land Management Plan (“LMP”). *See W. Expl., LLC v. U.S. Dep’t of the Interior*, 250 F.Supp.3d (D. Nev. 2017).

The EIS must adequately describe the various legal authorities and directives that support why it is not just permissible, but necessary and good policy, for the USFS to work to achieve alignment with the state plans and to resolve various inconsistencies that impact counties’ ability to provide critical and basic public services. The USFS should include in the EIS the various legal requirements making the EIS necessary including the Multiple Use and Sustained Yield Act (MUSYA) and the National Forest Management Act (NFMA) multiple use mandates; requirements for consistency with state and local plans, policies, and controls; NEPA’s flexibility in providing for a mitigation hierarchy that does not support prohibition or preclusion-type management, etc. Additionally, USFS can rely on new science and policy that informs defensible changes that must be made to the LMP. A statement about the March

2017 District Court remand as an additional Need for this EIS would also be appropriate. Also, we believe it is important to frame the legal reasoning for alignment with the State Plan.

Below is language that Eureka County and other Nevada counties (through the Nevada Association of Counties) believe is critical to include in the EIS.

Language for Consideration:

The USFS is currently implementing the 2015 Greater Sage-Grouse plans. The plans recommended that Sagebrush Focal Areas (SFAs) be proposed for withdrawal. Given subsequent significant information obtained through the associated Environmental Impact Statement which included a Mineral Potential Report and Socioeconomic Impacts Analysis, it has been determined the withdrawal would be unreasonable in light of the data that showed that mining affected less than .1 percent of sage-grouse-occupied range. In addition, the SFAs are currently inconsistent with the management categories for GRSG habitat that are contained in the State of Nevada's GRSG Conservation Plan (2014, as amended).

A plan amendment is required where there is new data, new or revised policy, a change in circumstances or a proposed action that may result in a change in the scope of resource uses or a change in the terms, conditions and decisions of the approved plan or by court order. Since 2015, there has been new science and data, revised policy, and a court order that requires this action. On March 31, 2017, the United States District Court for the District of Nevada held that the BLM violated NEPA by failing to prepare a supplemental Environmental Impact Statement (EIS) for the Nevada and Northeastern California Greater Sage-Grouse Resource Management Plan (RMP) Amendment in Nevada. This action responds to the court's order.

MUSYA and NFMA require USFS conduct land management on the basis of multiple use and sustained yield so that their various resource values are utilized in the combination that will best meet the present and future needs of the American people providing a combination of balanced and diverse resource uses with consideration to the relative values of the resources. This effort seeks to better harmonize and coordinate management of various resources without permanent impairment of the quality of the environment or productivity of the lands with consideration being given to the relative values of the resources.

The USFS may accept the advice of State and local officials and is required under NEPA to reduce duplication and reconcile inconsistencies with State and local land use plans, policies and controls during the development and revision of land use plans, land use guidelines, rules, and regulations for the public lands. 40 CFR §§1502.16(c), 1506.2. NEPA's Regulations also require USFS to minimize the potential rapid, disruptive social change planning decisions may cause by setting forth a clear mitigation hierarchy: (1) Avoiding the impact altogether by not taking a certain action or parts of an action; (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; (5) Compensating for the impact by replacing or providing substitute resources or environments. 40 CFR §1508.20. These laws and regulations provide clear authority and direction for USFS to achieve alignment with the state plans and resolve various outstanding inconsistencies that impact counties' ability to provide critical public services.

Consistent with existing authorities, new data, revised policies, and a court order, USFS published a Notice of Intent and Supplemental Notice of Intent to Prepare an Environmental Impact Statement Concerning the Forest Service Greater Sage-Grouse Land and Resource Management Plan Amendments.

During the public scoping period, USFS sought public comments on whether all, some, or none of the 2015 Greater Sage-Grouse plans should be amended, what issues should be considered, and if plans should be completed at the state level rather than at the national level. In addition, USFS recognizes that Greater Sage-Grouse is a state managed species dependent on sagebrush steppe habitats managed in partnership between federal, state and local authorities and that input from state governors would be given significant weight when considering what management changes should be made and in ensuring consistency with the USFS's multiple-use mission during a land-use plan amendment process.

Conclusion

We fully support USFS amending the 2015 LMP including addressing the categories identified in the June 7, 2018 USFS Bulletin #5. In addition to these categories, we again ask USFS to address all of our issues we identified in our previous scoping comments and above.

As a result of the previously-mentioned harms, the Nevada Court concluded that the plan amendments injured Eureka County's proprietary interests in maintaining its roads and utility programs, as well as protecting the local environment. Eureka County continues to feel the impact of these harms following the Nevada Court's order in the litigation. Eureka County requests that the USFS prepare an EIS that considers these severe impacts and develop a Proposed Action that recognizes Eureka County's plans, policies, and conservation measures to protect the GSG, which minimize conflicts with these plans, and eliminates the harsh socioeconomic impacts in the LUPA that are so detrimental to the County's economy.

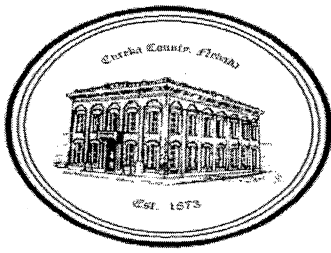
Thank you for considering these important issues. If you have any questions, please do not hesitate to contact Eureka County's point of contact, Natural Resources Manager, Jake Tibbitts at JTibbitts@EurekaCountyNV.gov or (775) 237-6010.

Respectfully,



J.J. Goicoechea, DVM, Chairman
Eureka County Board of Commissioners

Enclosure- January 5, 2018 letter



EUREKA COUNTY BOARD OF COMMISSIONERS

J.J. Goicoechea, Chairman ♦ Mike Sharkozy, Vice Chair ♦ Fred Etchegaray, Member

PO Box 694, 10 South Main Street, Eureka, Nevada 89316

Phone: (775) 237-7211 ♦ Fax: (775) 237-6015 ♦ www.co.eureka.nv.us

September 6, 2018

Sage-Grouse Amendment Comment

Attn: John Shivik

USDA Forest Service Intermountain Region

Federal Building

324 25th Street

Ogden, UT 84401

johnashivik@fs.fed.us

Bill Dunkelberger, Forest Supervisor

Humboldt-Toiyabe National Forest

1200 Franklin Way

Sparks, NV 89431

wadunkelberger@fs.fed.us

Cheva Gabor, NV State Liaison

Humboldt-Toiyabe National Forest

1200 Franklin Way

Sparks, NV 89431

chevalgabor@fs.fed.us

RE: Cooperating Agency on US Forest Service Greater Sage-Grouse Land Management Plan Amendments

Dear Mr. Shivik,

We appreciate the opportunity provided to Eureka County to participate as a cooperating agency on the US Forest Service (USFS) Greater Sage-Grouse Land Management Plan Amendment (LMPA).

As you know, a proposed cooperating agency MOU was provided to the Nevada Association of Counties (NACO) for review. This proposed MOU was meant to cover multiple state and local agencies. As a member of NACO, Eureka County reviewed the MOU and provided requested changes back to USFS. Our track-changes review of the first proposed MOU are enclosed. Based on a phone conversation with Cheva Gabor, our understanding is that USFS will not include some of our requested changes in this MOU and wishes to move forward with language in the MOU version sent to us on September 5, 2018. We do appreciate the language changes that were accepted based on our request.

Due to the time constraints imposed by USFS to complete this process, we approved signing the MOU as is at our regular meeting today. However, this approval of the MOU does not waive our assertions in which our requests were made nor USFS obligations for items not specifically included in the MOU. Most

of our requests for changes in the MOU were simply to insert citations and support language regarding regulatory requirements of USFS that we did not see being met on the previous LMPA process. Our intent was to bolster a forum for a principled working relationship with USFS. Eureka County insists that USFS properly meet the letter and spirit of these requirements on the LMPA. We step through each of the outstanding requests below.

MOU Section II, Statement of Mutual Benefits and Interests, paragraph 1 – we proposed and USFS did add the word “coordination.” Thank you for this addition. We wish to remind USFS what this term means and why it was important for us to include. The planning requirements under the National Forest Management Act (NFMA), codified in 16 USC 1604 states that “the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise...plans for units of the National Forest System, ***coordinated*** with the land and resource management planning processes of...local governments” (emphasis added). Also, USFS Planning Rule under 36 CFR 219.4(b) uses the term “coordination” not “cooperation.” “Coordination” has a specific meaning encompassing “cooperation,” “collaboration,” and “consultation” and coordination by definition is not synonymous with these terms. Coordination by definition is “of the same order or degree; equal in rank or importance” (Merriam-Webster Dictionary).

MOU Section IV, the U.S. Forest Service Shall – We proposed adding a new subsection to read “Strive for consistency with State and local plans, laws, policies, and controls to the maximum extent possible. Describe in the EIS the extent to which such inconsistencies will be reconciled (according to 36 CFR 219.4(b), 40 CFR 1502.16, 40 CFR 1506.2, and March 16, 1981, *Memorandum for Federal NEPA Liaisons, Federal, State, and Local Official and Other Persons Involved in the NEPA Process*, Questions 23b and 23c) and explain in the EIS Record of Decision any decision to override these land use plans, policies or controls for the area.”

These are mandates on USFS regardless of being in the MOU. However, we proposed putting these directly in the MOU so that it would remind all of us of the mandates and create a forum to work together towards consistency. In our experience, USFS personnel and state and local officials, elected and appointed, often do not know, understand, or apply what is required through these obligations. This results in failure to reach or even strive towards consistency creating confusion, distrust, and even hostility between USFS staff and state and local government. Our intent is to work together to address inconsistencies with state and local land use plans, policies, and controls. It is confusing to us why USFS would not want to include these mandates in the MOU as an avenue to work together by highlighting the obligations on each of us.

MOU Section IV, the U.S. Forest Service Shall, subsection C - USFS has many “escape” phrases we proposed removing such as “use best efforts” that create loopholes which we believe would result in limiting cooperating agency review and diminish consideration of cooperating agency review and input as we saw occur on the prior LMPA process.

MOU Section V, It is Mutually Understood and Agreed by and Between the Parties That - in subsection A, we proposed stating the mutual obligation on each party to work together in a reasonable way to resolve inconsistencies in addition to just disagreements. Federal regulations do not require disagreements to be resolved but instead require coordinating together to strive for consistency with

state and local plans, policies, and controls and documenting remaining inconsistencies in the EIS. It is noble for us to work on resolving disagreements but the regulatory requirements are what bind us all.

In closing, while we did sign the MOU to become a cooperating agency, we reserve our assertions that our requests for changes, that USFS did not incorporate, are still legal obligations that must be met regardless. We do note that the MOU has a subsection outlining the process for Modification, Section V.T. We are making our request now, according to this subsection, for USFS to work with us to modify the MOU to include better language for consistency and consistency review obligations under both USFS planning regulations and NEPA/CEQ regulations.

We look forward to fully participating in the process and coordinating with USFS for consistency with our local plans, policies, and controls.

Respectfully,



J.J. Goicoechea, DVM, Chairman
Eureka County Board of Commissioners

Enclosure- track-changes MOU

areas for matters related to this MOU. In witness whereof, the parties hereto have executed this MOU as of the last date written below.

W. SOVERIGN IMMUNITY. The Agencies do not waive sovereign or governmental immunity by entering into this Agreement and specifically retain all immunities and defenses available to it pursuant to Nevada Revised Statutes Chapter 41 and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.

Michael C. Courtney, Acting State Director
Affiliation

Date



9-6-18

J.J. Goicoechea, Chair
Eureka County

Date

Dave Mendiola, County Manager
Humboldt County, NV

Date

Ray Dotson, State Conservationist
Natural Resources Conservation Service

Date

Dagny Stapleton, Executive Director
Nevada Association of Counties

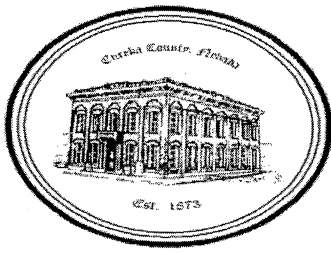
Date

Jerri Williams-Conrad, Interim Director
Nevada Department of Agriculture

Date

Brad Crowell, Director
Nevada Department of Conservation and Natural
Resources

Date



EUREKA COUNTY BOARD OF COMMISSIONERS

J.J. Goicoechea, Chairman ♦ Mike Sharkozy, Vice Chair ♦ Fred Etchegaray, Member

PO Box 694, 10 South Main Street, Eureka, Nevada 89316

Phone: (775) 237-7211 ♦ Fax: (775) 237-6015 ♦ www.co.eureka.nv.us

September 6, 2018

Sage-Grouse Amendment Comment

Attn: John Shivik

USDA Forest Service Intermountain Region

Federal Building

324 25th Street

Ogden, UT 84401

johnashivik@fs.fed.us

Bill Dunkelberger, Forest Supervisor

Humboldt-Toiyabe National Forest

1200 Franklin Way

Sparks, NV 89431

wadunkelberger@fs.fed.us

Cheva Gabor, NV State Liaison

Humboldt-Toiyabe National Forest

1200 Franklin Way

Sparks, NV 89431

chevalgabor@fs.fed.us

RE: Cooperating Agency on US Forest Service Greater Sage-Grouse Land Management Plan Amendments

Dear Mr. Shivik,

We appreciate the opportunity provided to Eureka County to participate as a cooperating agency on the US Forest Service (USFS) Greater Sage-Grouse Land Management Plan Amendment (LMPA).

As you know, a proposed cooperating agency MOU was provided to the Nevada Association of Counties (NACO) for review. This proposed MOU was meant to cover multiple state and local agencies. As a member of NACO, Eureka County reviewed the MOU and provided requested changes back to USFS. Our track-changes review of the first proposed MOU are enclosed. Based on a phone conversation with Cheva Gabor, our understanding is that USFS will not include some of our requested changes in this MOU and wishes to move forward with language in the MOU version sent to us on September 5, 2018. We do appreciate the language changes that were accepted based on our request.

Due to the time constraints imposed by USFS to complete this process, we approved signing the MOU as is at our regular meeting today. However, this approval of the MOU does not waive our assertions in which our requests were made nor USFS obligations for items not specifically included in the MOU. Most

of our requests for changes in the MOU were simply to insert citations and support language regarding regulatory requirements of USFS that we did not see being met on the previous LMPA process. Our intent was to bolster a forum for a principled working relationship with USFS. Eureka County insists that USFS properly meet the letter and spirit of these requirements on the LMPA. We step through each of the outstanding requests below.

MOU Section II, Statement of Mutual Benefits and Interests, paragraph 1 – we proposed and USFS did add the word “coordination.” Thank you for this addition. We wish to remind USFS what this term means and why it was important for us to include. The planning requirements under the National Forest Management Act (NFMA), codified in 16 USC 1604 states that “the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise...plans for units of the National Forest System, ***coordinated*** with the land and resource management planning processes of...local governments” (emphasis added). Also, USFS Planning Rule under 36 CFR 219.4(b) uses the term “coordination” not “cooperation.” “Coordination” has a specific meaning encompassing “cooperation,” “collaboration,” and “consultation” and coordination by definition is not synonymous with these terms. Coordination by definition is “of the same order or degree; equal in rank or importance” (Merriam-Webster Dictionary).

MOU Section IV, the U.S. Forest Service Shall – We proposed adding a new subsection to read “Strive for consistency with State and local plans, laws, policies, and controls to the maximum extent possible. Describe in the EIS the extent to which such inconsistencies will be reconciled (according to 36 CFR 219.4(b), 40 CFR 1502.16, 40 CFR 1506.2, and March 16, 1981, *Memorandum for Federal NEPA Liaisons, Federal, State, and Local Official and Other Persons Involved in the NEPA Process*, Questions 23b and 23c) and explain in the EIS Record of Decision any decision to override these land use plans, policies or controls for the area.”

These are mandates on USFS regardless of being in the MOU. However, we proposed putting these directly in the MOU so that it would remind all of us of the mandates and create a forum to work together towards consistency. In our experience, USFS personnel and state and local officials, elected and appointed, often do not know, understand, or apply what is required through these obligations. This results in failure to reach or even strive towards consistency creating confusion, distrust, and even hostility between USFS staff and state and local government. Our intent is to work together to address inconsistencies with state and local land use plans, policies, and controls. It is confusing to us why USFS would not want to include these mandates in the MOU as an avenue to work together by highlighting the obligations on each of us.

MOU Section IV, the U.S. Forest Service Shall, subsection C - USFS has many “escape” phrases we proposed removing such as “use best efforts” that create loopholes which we believe would result in limiting cooperating agency review and diminish consideration of cooperating agency review and input as we saw occur on the prior LMPA process.

MOU Section V, It is Mutually Understood and Agreed by and Between the Parties That - in subsection A, we proposed stating the mutual obligation on each party to work together in a reasonable way to resolve inconsistencies in addition to just disagreements. Federal regulations do not require disagreements to be resolved but instead require coordinating together to strive for consistency with

state and local plans, policies, and controls and documenting remaining inconsistencies in the EIS. It is noble for us to work on resolving disagreements but the regulatory requirements are what bind us all.

In closing, while we did sign the MOU to become a cooperating agency, we reserve our assertions that our requests for changes, that USFS did not incorporate, are still legal obligations that must be met regardless. We do note that the MOU has a subsection outlining the process for Modification, Section V.T. We are making our request now, according to this subsection, for USFS to work with us to modify the MOU to include better language for consistency and consistency review obligations under both USFS planning regulations and NEPA/CEQ regulations.

We look forward to fully participating in the process and coordinating with USFS for consistency with our local plans, policies, and controls.

Respectfully,



J.J. Goicoechea, DVM, Chairman
Eureka County Board of Commissioners

Enclosure- track-changes MOU



EUREKA COUNTY BOARD OF COMMISSIONERS

J.J. Goicoechea, Chairman ♦ Mike Sharkozy, Vice Chair ♦ Fred Etchegaray, Member

PO Box 694, 10 South Main Street, Eureka, Nevada 89316

Phone: (775) 237-7211 ♦ Fax: (775) 237-6015 ♦ www.co.eureka.nv.us

January 3, 2019

Sage-Grouse Amendment Comment

Attn: John Shivik

USDA Forest Service Intermountain Region

Federal Building

324 25th Street

Ogden, UT 84401

johnshivik@fs.fed.us

Bill Dunkelberger, Forest Supervisor

Humboldt-Toiyabe National Forest

1200 Franklin Way

Sparks, NV 89431

wadunkelberger@fs.fed.us

Cheva Gabor, NV State Liaison

Humboldt-Toiyabe National Forest

1200 Franklin Way

Sparks, NV 89431

chevalgabor@fs.fed.us

Also submitted electronically to comments-intermtn-regional-office@fs.fed.us

RE: Eureka County comment on Greater Sage-grouse Proposed Land Management Plan Amendments (LMPA) and Draft Environmental Impact Statement (DEIS) for the Intermountain and Rocky Mountain Regions

Dear Mr. Shivik, Mr. Dunkelberker, and Ms. Gabor:

Eighty-one percent of Eureka County's land area is federally administered land, primarily managed by the BLM and the U.S. Forest Service (USFS). Eureka County's economy is driven by mining, farming and ranching, which are industries harmed by the 2015 LMPA. Roughly 2,000 people live in Eureka County and are mainly employed in the natural resources and ranching sector. The welfare and viability of the community is dependent on business and recreational activities conducted on or in concert with federal lands. Since private land makes up only 13% of Eureka County's total land area, dependency on federally administered land limits is often detrimental to its long-term socioeconomic stability and viability. Any burdensome land use restrictions threaten many Eureka County jobs because these restrictions substantially reduce uses of federally administered lands and adversely affect the bulk of our economic base. The County is already at an economic threshold struggling to get by, especially through mining "bust" cycles. Any additional losses in employment and economic outputs from Eureka County will be

devastating. Because of the small population, a handful of lost jobs in Eureka County is equivalent to the loss of many jobs in larger metropolitan areas.

Previous Comments on 2015 LMPA and January 2018 Scoping for this LMPA Still Apply

Eureka County has extensively, actively, and formally participated as a cooperating agency in the process, and submitted information throughout the Greater Sage-Grouse Plan Amendment Process finalized in 2015. We also provided substantive comments during scoping and through our membership and engagement with the Nevada Association of Counties on the cooperating agency Preliminary DEIS (September 2018 PDEIS) for this current EIS process. We acknowledge that some changes occurred between the PDEIS and DEIS due comments on the PDEIS. We are appreciative of these changes. There are, however, many previous comments that made on the 2015 LMPA and the September 2018 PDEIS that were not incorporated or did not effect change. All of these previous partially addressed, unaddressed, or discounted comments still apply and should be addressed by USFS when finalizing the EIS.

Eureka County Harms and Inconsistencies with County Plans, Policies, and Controls Under 2015 LUP

Attached is a document highlighting impacts to Eureka County due to the 2015 LMPA that highlight additional reasons why the 2015 LMPA needs to be amended and remaining inconsistencies with Eureka County plans, policies, controls, and programs.

Bolstering Legal Reasons to Amend 2015 Sage Grouse Land Management Plan Amendments

We are concerned that the DEIS does not adequately describe the various legal authorities and directives that support why it is not just permissible, but necessary and good policy, for the USFS to work to achieve alignment with the state plans and to resolve various inconsistencies that impact counties' ability to provide critical and basic public services. The USFS should include in the EIS the various legal requirements making the EIS necessary including USFS's multiple use and sustained yield mandate; requirements for consistency with state and local plans, policies, and controls; NEPA's flexibility in providing for a mitigation hierarchy that does not support prohibition or preclusion-type management, etc.

Additionally, USFS can rely on new science and policy that informs defensible changes that must be made to the 2015 LMPA. A statement about the March 2017 District Court remand as an additional Need for this EIS would also be appropriate. Also, we believe it is important to frame the legal reasoning for alignment with the state sage grouse plans.

Below is language we believe needs to be included as critical justification for amending the 2015 Plans.

Language for Consideration:

The USFS is currently implementing the 2015 Greater Sage-Grouse plans. The plans recommended that Sagebrush Focal Areas (SFAS) be proposed for withdrawal; however, this proposed withdrawal was cancelled on October 11, 2017. Given subsequent significant information obtained through the associated Environmental Impact Statement which included a Mineral Potential Report and Socioeconomic Impacts Analysis, the Oct. 4, 2017 "Notice of Cancellation of Withdrawal Application and Withdrawal Proposal" explained that the BLM determined the

proposal to withdraw 10 million acres was unreasonable in light of the data that showed that mining affected less than .1 percent of sage-grouse-occupied range. In addition, the SFAs are currently inconsistent with the management categories for GRSG habitat that are contained in the State of Nevada's GRSG Conservation Plan (2014, as amended).

A plan amendment is required where there is new data, new or revised policy, a change in circumstances or a proposed action that may result in a change in the scope of resource uses or a change in the terms, conditions and decisions of the approved plan or by court order. Since 2015, there has been new science and data, revised policy, and a court order that requires this action. On March 31, 2017, the United States District Court for the District of Nevada held that USFS and BLM violated NEPA by failing to prepare a supplemental Environmental Impact Statement (EIS) for the Nevada and Northeastern California Greater Sage-Grouse Resource Management Plan (RMP) Amendment in Nevada. This action responds to the court's order.

USFS is required to conduct land management on the basis of multiple use and sustained yield. This effort seeks to better harmonize and coordinate management of various resources without permanent impairment of the quality of the environment or productivity of the lands with consideration being given to the relative values of the resources.

The USFS may accept the advice of State and local officials and is required to reduce duplication and reconcile inconsistencies with State and local land use plans, policies and controls during the development and revision of land use plans, land use guidelines, rules, and regulations for the public lands. NEPA's Regulations also require that the USFS minimize the potential rapid, disruptive social change planning decisions may cause by setting forth a clear mitigation hierarchy: (1) Avoiding the impact altogether by not taking a certain action or parts of an action; (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; (5) Compensating for the impact by replacing or providing substitute resources or environments. 40 CFR §1508.20. These laws and regulations provide clear authority and direction for the USFS to achieve alignment with the state plans and resolve various outstanding inconsistencies that impact counties' ability to provide critical public services.

In addition, the USFS recognizes that Greater Sage-Grouse is a state managed species managed in partnership between federal, state and local authorities and that input from state governors would be given significant weight when considering what management changes should be made and in ensuring consistency with the USFS's multiple-use mission during a land-use plan amendment process.

Livestock Grazing and Management

As a county that strongly relies on ranching conducted on or in concert with federally managed land, we are confused and alarmed over the allegations of "inadequate regulatory mechanisms" and misguided targets placed on livestock grazing. Based on the terms and conditions of livestock grazing permits, the rangeland health regulations, authority of USFS to administering grazing permits that make progress towards established standards and guidelines, where are the actual shortages of not having enough control over livestock grazing?

Given the potential for beneficial gains to enhance protection of habitat areas (especially for the management of fine fuel loads and invasive plants) properly managed livestock grazing should be the focus rather than grazing prohibition and restriction. Grazing must be evaluated in the context of a tool to assist in accomplishing rangeland health objectives and GSG habitat enhancement. These considerations need to be documented and advanced in a proactive, unapologetic manner. There should be measures outlined to allow for and streamline Temporary Non-Renewable (TNR) or other nonrenewable allocation of forage for fuels reduction in general and specifically including measures to allow for targeted cheatgrass control or other fine fuels control through TNR-type measures.

Because livestock grazing, as is also the case with any number of other authorized uses, are managed with a significant set of regulatory oversight, we maintain that the impression of there being a lack of regulatory control, as a false pretense for further expansion of a regulatory regime.

The 2015 LMPA, and by extension this EIS still, perpetuates the institutionalized assumption that livestock grazing is a threat to GSG conservation in management areas. Instead, such analyses should start from the proven premise that managed livestock grazing are a benefit for GSG, and the analyses should consider how to further incorporate managed livestock grazing into the protection strategy.

While the previous EIS included a large volume of wildlife science appropriately referenced, much of the current and pertinent literature regarding livestock grazing was painfully missing. The inclusion of the best available science related to livestock grazing is absolutely essential for adequate analysis to permit a reasoned choice on the options for GRS conservation in concert with livestock grazing. In our specific comments below and our comments on the 2015 DEIS, we listed important grazing related science missing.

Specific Comments

Attached directly below this letter is a table including the section-by-section, specific comments on the DEIS. We have worked closely with the Nevada Association of Counties (NACO) in developing our comments on the DEIS and adopt the comments of NACO by reference.

Request for USFS to Coordinate on Changes Based on Eureka County Comments

The intent of the Memorandum of Understanding (MOU) between Eureka County and the USFS is to “promote efficiency, coordination, cooperation and disclosure of relevant information during the [EIS] processes...to ensure successful completion of analyses in a timely, efficient and thorough manner.

We wish to remind USFS what the term “coordination” means and why it was important for us in our working relationship. The planning requirements under the National Forest Management Act (NFMA), codified in 16 USC 1604 states that “the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise...plans for units of the National Forest System, **coordinated** with the land and resource management planning processes of...local governments” (emphasis added). Also, USFS Planning Rule under 36 CFR 219.4(b) uses the term “coordination.” “Coordination” has a specific meaning encompassing “cooperation,” “collaboration,” and “consultation” and coordination by definition is not synonymous with these terms. Coordination by definition is “of the same order or degree; equal in rank or importance” (Merriam-Webster Dictionary).

USFS has the obligation to strive for consistency with State and local plans, laws, policies, and controls to the maximum extent possible and explain in the EIS any decision to override these land use plans, policies or controls for the area. We find that the DEIS does not meet this obligation nor describe the extent to which such inconsistencies will be reconciled (according to 36 CFR 219.4(b), 40 CFR 1502.16, 40 CFR 1506.2, and March 16, 1981, Memorandum for Federal NEPA Liaisons, Federal, State, and Local Official and Other Persons Involved in the NEPA Process, Questions 23b and 23c).

Based on past experience, USFS is not be able to adequately address our comments without Eureka County at the table defending and clarifying our position and the various inconsistencies. We wish to engage USFS in the dialogue necessary to ensure that USFS and Eureka County meet these obligations of various laws and regulations. USFS is obligated, when inconsistencies arise, to meet with local governments in order to work towards consistency. This did not happen on the 2015 LMPA and has been very limited on this EIS process. We request that USFS adequately coordinate its efforts with Eureka County.

Closing Comments

We look forward, as a Cooperating Agency and locally affected government, to assist USFS in coordinating change to the EIS and LMPA based on our proposals and consistency with our local plans and policies. Our strongest contention remains that any GRSG conservation problem must have balanced, economic solutions in order to work and be based on coordinated and adaptive management. A more effective route would be real, actual planning and conservation actions taking place on the basis of local coordination and local-specific needs as opposed to top-down, one-size-fits-all planning.

Respectfully,

A handwritten signature in blue ink, appearing to read "J.J. Goicoechea", is written over a light blue rectangular background.

J.J. Goicoechea DVM, Chairman
Eureka County Board of Commissioners

**Specific Comments to:
Greater Sage-grouse Proposed Land Management Plan Amendments (LMPA) and Draft Environmental Impact Statement (DEIS) for the Intermountain and Rocky Mountain Regions.**

| Chapter | Section | Page No. | Paragraph | Line No. | Comment |
|---------|---------|-----------|-----------------|----------|---|
| 1 | 1.1 | 1-1 - 1-3 | General Comment | | <p>Currently, the EIS does not adequately describe the various legal authorities and directives that support why it is not just permissible, but necessary and good policy, for the USFS to work to achieve alignment with the state plans and to resolve various inconsistencies that impact counties' ability to provide critical and basic public services.</p> <p>The USFS should include in the EIS the various legal requirements making the EIS necessary including NFMA's multiple use mandate; requirements for consistency with state and local plans, policies, and controls; NEPA's flexibility in providing for a mitigation hierarchy that does not support prohibition or preclusion-type management, etc. Additionally, USFS can rely on new and best available science that informs defensible changes that must be made to the LMPA.</p> <p>A statement about the March 2017 District Court remand as an additional Need for this EIS would also be appropriate. It is important to frame the legal reasoning for alignment with the State Plan, rather than relying solely on a "directive" or "policy."</p> |
| 1 | 1.1 | 1-1 | 2 | 10-11 | The full description of 16 USC 1604(a) should be included. Please revise: "The Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, <i>coordinated with the land and resource management planning processes of State and local governments and other Federal agencies.</i> " (Emphasis added.) |
| 1 | 1.2 | 1-4 | Bullet #3 | | The definition of "Other Habitat Management Areas" should be more closely aligned with the Nevada Greater Sage-grouse Conservation Plan (Nevada Plan) as Nevada is the only state with this designation. These are areas of moderate habitat and low use by Sage-grouse that are typically associated more with the potential for indirect impacts than direct impacts. |
| 1 | 1.4 | 1-4 | #1 | | As discussed at the September 14 th Cooperating Agency Meeting, it should be clear that not all SFA area will be designated as PHMA as some areas may be mapped as GHMA, OHMA, or non-habitat. As such, it may make more sense to say "...will be eliminated and designated as the underlying HMA designation. " |

**Specific Comments to:
Greater Sage-grouse Proposed Land Management Plan Amendments (LMPA) and Draft Environmental Impact Statement (DEIS) for the Intermountain and Rocky Mountain Regions.**

| | | | | | |
|---|-----------|-------------|--|-----------|--|
| 1 | 1.4 | 1-4 and 1-5 | # 1, 2, 4, 5, 6, 7, 8, and 11 | | Generally, we support these proposed updates. |
| 1 | 1.4 | 1-5 | #7 | | For Nevada, it may make sense to make the link between invasive species and wildfire as they are inextricably tied. We would also urge the Forest Service to work with local government and conservation districts to maximize invasive plant management efforts. |
| 1 | 1.4 | 1-5 | #9 | | It seems awkward that by restricting activities in PHMA, the FS is saying that they would “incentivize” habitat disturbance in other HMAs where restrictions may still apply. Perhaps it would make more sense to say the FS is “disincentivizing” habitat disturbance in PHMA. |
| 1 | Table 1-2 | 1-7 & 1-8 | Habitat Management Areas Designation | | What is the difference between row 1 and row 5? Eureka County would also like to see something in regards to the ability to ground truth HMA for a given project. |
| 1 | Table 1-2 | 1-9 | Including Waivers, Exceptions, and Modifications on NSO Stipulations | | Would this section apply to any of the local-government requested exceptions for administrative functions and emergency services? That change doesn’t appear to have a description in regard to special use authorizations. Also, under row 2, why would the USFWS approve NSO waivers, exceptions or modification with GRSG still being managed by the State? |
| 1 | Table 1-2 | 1-10 | Adaptive Management Review Process | Row 2 | Eureka County appreciates the inclusion of local partners and counties as part of the causal factor analysis process. |
| 1 | Table 1-2 | 1-10 | Treatment of Invasive Species | Row 1 | Eureka County is concerned that ‘Livestock Grazing’ isn’t listed as a resource topic under the invasive plant control issue. It seems by excluding this topic area, the Forest Service isn’t recognizing the role grazing can play in accomplishing treatment goals in PHMAs. The exclusion of ‘Wildfire’ as a resource topic is also a bit confusing given the direct link between invasive species and fire. |
| 1 | 1.5.4 | 1-11 | 2 | Bullet #1 | Given that ‘restrictions on rights-of-way and infrastructure are not being carried forward for further analysis, does this exclude the consideration of exceptions for administrative and emergency actions that are carried out by local |

**Specific Comments to:
Greater Sage-grouse Proposed Land Management Plan Amendments (LMPA) and Draft Environmental Impact Statement (DEIS) for the Intermountain and Rocky Mountain Regions.**

| | | | | | |
|---|---------------------------|-------------|-----------------------------------|-----------|---|
| | | | | | governments (like what the BLM has proposed through its amendment process)? If so, that is of major concern of Eureka County. |
| 1 | 1.5.4 | 1-11 | 2 | Bullet #3 | Given that "Retention of lands as identified as PHMA or GHMA in federal ownership" is an issue that does not warrant additional analysis in the EIS, does this mean that exceptions cannot be made to such a strict definition? Eureka County would like to see an exception to this action (retention), that would allow for disposal or exchange of lands identified as PHMA or GHMA if such lands are found to contain non-suitable habitat OR mitigation can be implemented that meets the State's standard. |
| 1 | 1.5.4 | 1-11 | 3 | Bullet #2 | Eureka County has continually advocated that while the FS does not implement predator control directly, it should be coordinating with other federal and state agencies that do in order to maximize effectiveness, particularly in degraded habitats where impacts of predation are suppressing sage-grouse populations (i.e. areas recovering from wildfire, areas of conifer encroachment, etc.). As such, Eureka County appreciates the addition of GRSG-P-MA-112-Management Approach. However, does it make sense to show Predator Management as an issue that has been "dismissed"? |
| 1 | 1.5.4 | 1-11 | 1 | Bullet #6 | Roadless areas and recommended wilderness could well affect and hamper efforts to implement effective and efficient invasive species controls. As such, does it make sense to dismiss analysis of this topic? |
| 2 | Table 2-7 Proposed Action | 2-80 | GRSG-GEN-DC-002-Desired Condition | | Eureka County would appreciate a note that clarifies that county administrative activities, existing infrastructure, and emergency services all qualify as "authorized uses" in both priority and general habitat. Eureka County appreciates the addition of a definition for the term "anthropogenic disturbance" but would request clarification that, as expressed verbally by the Forest Service, anthropogenic disturbances does NOT include county administrative infrastructure and/or range improvements. |
| 2 | Table 2-7 Proposed Action | 2-80 & 2-81 | GRSG-GEN-DC-003-Desired Condition | | This desired guideline should be within the context of the landscape's potential based on current ecological state, appropriate Ecological Site Descriptions (ESDs) and/or Disturbance Response Groups (DRGs) and associated State-and-Transition Models (STMs). |

**Specific Comments to:
Greater Sage-grouse Proposed Land Management Plan Amendments (LMPA) and Draft Environmental Impact Statement (DEIS) for the Intermountain and Rocky Mountain Regions.**

| | | | | | |
|---|---------------------------------|--------------------|--|--|---|
| 2 | Table 2-7 Proposed Action | 2-81 & 2- 82 | GRSG-GEN-ST- 005-Standard | | Eureka County has previously argued against the 3% disturbance cap, and requests further information as to how this Standard was developed and the best available science that supports it. In addition, clarification is needed how such a cap would be adjusted if BSU boundaries should change. |
| 2 | Table 2-7 Proposed Action | 2-83 & 2- 84 | GRSG-GEN-ST- 010-Standard & GRSG-GEN- GL-013- Guideline | | Eureka County appreciates the inclusion of definitions for the terms “active” and “pending” leks. |
| 2 | Table 2-7 Proposed Action | 2-85 & 2- 86 | GRSG-LR-SUA- ST-016- Standard | | Eureka County strongly supports exceptions ‘iii’ for public health and safety issues as well as ‘v’ for routine administrative functions. However, there should be more clarity on who makes the determination as to when these standards are met. Eureka County would suggest that the Forest Ranger may make the most sense in these instances as they are the closest manager the local community that may be making such requests. Also, in terms of the “net conservation gain” standard for mitigation, will the Forest Service adopt the State of Nevada’s definition of this and means of determining it? The net conservation gain standard is based on landscape-scale land use planning and mitigation policies. Eureka County has argued against the net conservation gain standard in favor of implementing site-specific mitigation requirements based on site-specific data on habitat conditions. |
| 2 | Table 2-7 Proposed Action | 2-87 | GRSG-LR-SUA- ST-017- Standard and GRSG-LR-SUA- ST-018- Standard | | Will the same exceptions for public health and safety, as well as routine administrative functions, be applied to these standards? Eureka County supports these same exceptions for these two standards as there may be situations where stipulations for needed land use may be required for counties to provide needed services. One example might be placement of new communication infrastructure that may not be conducive to co-location with existing infrastructure or rights-of-way. Another (temporary) example may be repair of a washed-out road. |
| 2 | Table 2-7 Proposed Action | 2-88 | GRSG-LR-LOA- ST-022- Standard | | Does this apply whether land exchanges or disposals have been spelled out in a previous Forest Plan or Congressional Act (i.e. Lands Bill)? Eureka County requests language be added to indicate that this Standard does not apply to disposals or land exchanges that have previously been approved. |

**Specific Comments to:
Greater Sage-grouse Proposed Land Management Plan Amendments (LMPA) and Draft Environmental Impact Statement (DEIS) for the Intermountain and Rocky Mountain Regions.**

| | | | | | |
|---|---------------------------------|----------------|---|--|--|
| 2 | Table 2-7 Proposed Action | 2-89 | GRSG-WS-ST-024-Standard and GRSG-WS-ST-025-Standard | | Why are solar and wind energy developments treated differently (i.e. solar is not allowed in general habitat, yet wind is)? Are such developments allowable if they can meet the “net conservation gain” standard? |
| 2 | Table 2-7 Proposed Action | 2-90 & 2-91 | GRSG-GRSGH-GL-030-Guideline | | While Eureka County appreciates “design features” to minimize non-native plants, a weed management plan may be more effective. |
| 2 | Table 2-7 Proposed Action | 2-91 | GRSG-GRSGH-GL-032-Guideline | | Eureka County strongly objects to the preference for ‘native’ species in habitat restoration and enhancement efforts. Native species are expensive, often difficult to obtain, and don’t always compete well with non-desirable invasive species. As such, use of native species can often limit the size and effectiveness of a habitat enhancement or restoration project. Desirable non-native species that are more readily available, more cost effective, and more competitive with non-native annual grass species (medusahead and cheatgrass) and provide a similar ecological functionality should also be encourage for use. Eureka County suggests the Forest Service work with the Agricultural Resource Service’s Great Basin Rangeland Research Center in Reno to identify science and monitoring data to support this approach. |
| 2 | Table 2-7 Proposed Action | 2-91 | GRSG-GRSGH-GL-034-Guideline | | Any treatments involving water (i.e. springs and seeps) should be consistent with State Water law. For instance, a fencing project may be completed to benefit vegetation, but it also may change use of the water source by livestock which could conflict with an existing water right. Eureka County suggests adding a sentence to this guideline that reads, “Treatments should be consistent with State Water Law and, where appropriate, the Forest Service will work collaboratively with water right holders to implement such projects.” |
| 2 | Table 2-7 Proposed Action | 2-92 | GRSG-GRSGH-GL-036-Guideline | | While prescribed fire isn’t always the best tool to utilize, it shouldn’t be eliminated as a tool. |
| 2 | Table 2-7 Proposed Action | 2-92 | GRSG-GRSGH-MA-037-Management Approach | | Eureka County strongly supports the approach of prioritizing invasive species treatments in priority habitats, as well as early detection and response. Eureka County would suggest adding a sentence that provides direction to Forest Service personnel to work with local government, weed districts and |

**Specific Comments to:
Greater Sage-grouse Proposed Land Management Plan Amendments (LMPA) and Draft Environmental Impact Statement (DEIS) for the Intermountain and Rocky Mountain Regions.**

| | | | | |
|---|---------------------------|-------------|------------------------------------|---|
| | | | | conservation districts to maximize such efforts and leverage funding opportunities. |
| 2 | Table 2-7 Proposed Action | 2-94 | GRSG-LG-GL-043-Guideline | Eureka County requests the insertion of “in collaboration with the permittee” after “appropriate” and before “to address”. |
| 2 | Table 2-7 Proposed Action | 2-94 | GRSG-LG-GL-044-Guideline | Eureka County suggests inserting “in collaboration with the permittee” after the word “managed” and before “to promote” |
| 2 | Table 2-7 Proposed Action | 2-94 | GRSG-LG-MA-045-Management Approach | Eureka County requests further clarification regarding the frequency and location that habitat assessments are to be conducted. Are they to take place in every FS allotment and on what schedule? Again, Eureka County would advocate that the Forest Service utilize all available planning tools and mechanisms (Programmatic EIS, Allotment Management Plans, use of Temporary Non-renewable Grazing Authorizations, etc.) to work with individual grazing permittees to develop allotment-specific grazing systems that meets the terms and conditions of the grazing permit, results in favorable trends towards desired Sage-grouse habitat, and provides flexibility to address excess fuels when present. |
| 2 | Table 2-7 Proposed Action | 2-95 | GRSG-LG-GL-046-Guideline | Eureka County is concerned that using the term “restricted” could have unintended consequences. Depending on site conditions, it might not always be possible, or necessary to stay 2.0 miles away from a lek. Thus, Eureka County suggests replacing “restricted” with “avoided unless site-specific conditions dictate otherwise.” |
| 2 | Table 2-7 Proposed Action | 2-97 | GRSG-FM-MA-054-Management Approach | See comment for GRSG-GRSGH-GL-032-Guideline above. Eureka County strongly supports use of desirable non-native species that provide a similar functionality as native species yet are often more available, cost effective and competitive with invasive species. |
| 2 | Table 2-7 Proposed Action | 2-97 & 2-98 | GRSG-FM-GL-056-Guideline | The term “restricted” should be reconsidered as there are situations where cross country travel may be warranted to aggressively attack wildfire or address other emergency circumstances. |
| 2 | Table 2-7 Proposed Action | 2-104 | GRSG-RT-MA-082- | “Herbicide treatments” should be included in this list of potential management actions as it is often the most effective and economical means of dealing with invasive plants. |

**Specific Comments to:
Greater Sage-grouse Proposed Land Management Plan Amendments (LMPA) and Draft Environmental Impact Statement (DEIS) for the Intermountain and Rocky Mountain Regions.**

| | | | Management Approach | | |
|---|---------------------------|---------------|--------------------------|----------------------|---|
| 2 | Table 2-7 Proposed Action | 2-104 & 2-105 | GRSG-RT-GL-083-Guideline | | Any road closures, seasonal or otherwise, must be coordinated with the local government. Many Forest Service roads provide access to private lands (including water rights) or are critical for administrative functions and important land uses (i.e. weed treatments, fuels reduction, grazing, etc.) As such, Eureka County requests adding a sentence here that the respective County would be consulted and coordinated with prior to any road closures or travel restrictions. Also, exception should be provided to allow for County emergency services and administrative functions. |
| 3 | 3.1.1 | 3-190 | Diffuse Activities | Bullet #1 | Eureka County agrees with what the studies say, but the effects of grazing aren't solely related to intensity and season, as such, Eureka County suggests revising this statement to read "...will vary with grazing timing, intensity, duration and season of use as well as site-specific factors ". |
| 3 | 3.1.1 | 3-190 | Diffuse Activities | Bullet #2 | For clarification purposes Eureka County suggests the following changes: <i>Predation can be limiting to greater sage-grouse populations in areas with overabundant predator numbers and/or degraded habitats. Application of predator control has potential short-term benefits in small, declining populations; however, reducing human subsidies may be necessary to generate long-term changes in raven predator numbers. This is because raven predator control has produced only generally results in short-term declines in local-raven populations, especially with raven populations where take is limited due to Migratory Bird Treaty stipulations.</i> |
| 3 | 3.2.1 | 3-193 | Table 3-2 | Title and Footnote 2 | The title of this table is a bit misleading for Nevada in that the number of males counted on leks is NOT the "population". If NDOW publishes an estimated population by year, that may be a more appropriate number to use for Nevada. |
| 3 | 3.2.6 | 3-196 | Livestock Grazing | | Eureka County is concerned with inconsistencies throughout this section describing how residual forage is valued and measured. In paragraph four within this section multiple publications are cited determining that grass height was overestimated in relation to importance to sage-grouse habitat. The following paragraph (5) mentions that utilization rates are more important than stubble and droop heights in mesic meadows and riparian areas, however, it is unclear as to which method the FS recognizes as the proper manner to gauge |

**Specific Comments to:
Greater Sage-grouse Proposed Land Management Plan Amendments (LMPA) and Draft Environmental Impact Statement (DEIS) for the Intermountain and Rocky Mountain Regions.**

| | | | | | |
|---|-----------|-------|---|-------|--|
| | | | | | utilization rates. Within this section, references are made to stubble height, utilization by weight, and droop height. The FS needs to provide clarification as to what method(s) they will use to determine utilization and in what situation the method(s) are used. Eureka County favors utilization ranges (rather than droop or stubble height) consistent with the Nevada Rangeland Monitoring Handbook, Volume 3. |
| 3 | Table 3-7 | 3-197 | Humboldt National Forest Land and Resource Management Plan (1986) | Row 2 | In table 3-7 under the “Consistent with Greater Sage-grouse Research” Column, the box indicates that a 40-60% or moderate use level is seen in research as being recommended for sage-grouse habitat. Eureka County recommends that a footnote be added to this table disclosing that “moderate use” is a term in which its meaning changes between ecological sites and community phases within the ESDs. In other words, a 70% utilization rate in certain riparian areas may not be considered as exceeding more than moderate use. |
| 3 | 3.3 | 3-200 | Table 3-11 | | This list doesn’t seem consistent with a similar list provided in Chapter 1 (see Page 1-11). For instance, this table doesn’t include rights-of-way and infrastructure. Perhaps it is different terminology or levels of specificity, but something should be done to explain the inconsistency. |
| 3 | 3.3 | 3-200 | Table 3-11 | | The University of Nevada, Reno has begun working on a Socioeconomic Baseline Data collection process for the entire State, and as part of that process will be performing a socioeconomic as well as fiscal impacts analysis for the greater sage-grouse plans. These models and the analysis will be conducted irrespective of the Forest Service’s timeline and will not likely be completed during this process. Counties request the Forest Service to work with UNR during this analysis. |
| 4 | 4.5.5 | 4-223 | 2, “Nevada” | | Eureka County requests clarifications be made regarding how the “authorized officer” is selected for each instance of waivers, exceptions, and modifications of NSO stipulations. |
| 4 | 4.5.6 | 4-224 | 1, “Nevada” | | Eureka County appreciates the recognition of needed flexibility for seasonal use periods. |
| 4 | 4.5.7 | 4-225 | 4 | 19-20 | Eureka County finds the following statement that “...livestock grazing is not affecting the achievement or maintenance of desired conditions described in the 2015 Amendments” somewhat confusing. It may make more sense to say that grazing is not “negatively” affecting... |
| 4 | 4.5.7 | 4-226 | 1 | 20-23 | Eureka County appreciates the recognition of forest/allotment scale grazing |

**Specific Comments to:
Greater Sage-grouse Proposed Land Management Plan Amendments (LMPA) and Draft Environmental Impact Statement (DEIS) for the Intermountain and Rocky Mountain Regions.**

| | | | | | |
|--------|---------------------------------------|-------|--------------|--|--|
| | | | | | management effectiveness vs. regional scale grazing guidelines. |
| 4 | 4.7.3 | 4-248 | Table 4-13 | “Corcoran Canyon Exploration Project CE” | To increase readability in the Location and Activity column revise to read: Groundwater monitoring wells and access routes will be used for a period of five years following construction and be reclaimed after the five-year period. |
| 4 | 4.7.11 | 4-272 | | | See comments relevant to 4.5.7 |
| 4 | 4.10 | 4-274 | 2 | 32 | Eureka County requests further clarification as to why livestock grazing is listed as a “short term use resulting in the greatest impact on long-term productivity of (these) natural resources” when throughout the rest of this chapter grazing was deemed as “not affecting the achievement or maintenance of desired conditions described in the 2015 Amendments”, and when grazing has been proven to enhance resource productivity when managed correctly. Eureka County also finds it inappropriate to group the effects of grazing (which in most instances has been a long-time permitted activity) with new mineral and energy development, dispersed recreation, and infrastructure development. For all other “short term” authorizations creating an impact to habitat, a discussion of required compensatory mitigation should be included in this chapter as another means of offsetting such impacts. |
| App. D | Table D-2 | D-2 | Table D-2 | NA | The acreages included seem small over a 10-year time horizon. Is there some more information elsewhere as to how these were determined? For footnote #2, Eureka County would request considering allowance of treatments in Phase 2 PJ that may have encroached into sagebrush ecotypes, and also clarify if the 30% canopy cover is specific to sagebrush or PJ. |
| App. D | Nevada – Seasonal Habitat Preferences | D-3 | Introduction | NA | Eureka County suggests the following updates to the introductory paragraph: <i>Tables D-3 and D-4 present sage-grouse local seasonal habitat preferences in Nevada. Because habitat preferences vary, for example among ecological sites and along latitudinal, topographic, or precipitation gradients, several tables are presented with values most closely associated with local conditions. These values are not desired conditions as defined at 36 CFR 219.7, but conditions for which sage-grouse select, where available, during seasonal use periods. Tables and values should be used as a basis for comparison when completing seasonal habitat assessments, as described in Stiver et al. 2015. Tables may be added and</i> |

**Specific Comments to:
Greater Sage-grouse Proposed Land Management Plan Amendments (LMPA) and Draft Environmental Impact Statement (DEIS) for the Intermountain and Rocky Mountain Regions.**

| | | | | | |
|--------|-------------------------------------|------|-------------------------------------|------------------------------|---|
| | | | | | updated revised with administrative changes based on the best available scientific information. |
| App. D | Mitigation Strategy | D-9 | D.1 General | | Eureka County appreciates the inclusion of coordination with local government. |
| App. D | Compensatory Mitigation Options | D-10 | Bullet 1 | Options for implement-ing... | Eureka County would appreciate a note in this bullet indicating that use of the CCS meets the FS bar of “net conservation gain”. |
| App. D | Compensatory Mitigation Options | D-10 | Bullets 2 & 3 | Options for implement-ing... | Eureka County requests making it clear who will determine if the “net conservation gain” standard is met in these two scenarios and suggests consulting with the Nevada SETT to make such a determination. |
| App. D | Adaptive Management Plan for Nevada | D-11 | Adaptive Management Analysis Scales | Bullet 3 | It should be made clear how BSUs will be used for anthropogenic disturbance calculations. Is this based on the entire BSU (including non-habitat, or only HMAs within the BSU)? |
| App. D | Adaptive Management Plan for Nevada | D-12 | Figure 1 | Steps 1 and 2 | Two suggested updates to the figure: <i>Statewide Technical Team reviews population findings from USGS as well as habitat warnings: human and natural disturbances and fire risk for warnings and triggers. The STT determines which areas warrant soft and hard trigger responses to move forward to Step 2. Population triggers warrant a mandatory response, while habitat triggers are determined by the STT. The STT may also combine Adaptive Management Responses for both biological and habitat triggers and/or combine the geographical scale of a response based on needs and available resources.</i> <i>Step 2: Determine the Causal Factor(s) for areas warranting an Adaptive Management Response.</i> |
| App. D | Adaptive Management Plan for Nevada | D-13 | Figure 2 | | Please explain, in a footnote or other appropriate area, the difference between the BSU and HMA boundaries. |
| App. D | Adaptive Management | D-14 | Footnote 5 | | Please clarify that Coates et al. 2017 only applies to population warnings and triggers. |

**Specific Comments to:
Greater Sage-grouse Proposed Land Management Plan Amendments (LMPA) and Draft Environmental Impact Statement (DEIS) for the Intermountain and Rocky Mountain Regions.**

| | | | | | |
|--------|-------------------------------------|------|--|--------------|--|
| | Plan for Nevada | | | | |
| App. D | Adaptive Management Plan for Nevada | D-16 | Causal Factor Analysis and Management Response Process | Step 1 and 2 | <p>Please see above comments to Figure 1 and incorporate here as appropriate.</p> <p>Also, the “Adaptive Management Response Team” should be defined somewhere along with whom will be represented on the team. Eureka County suggests local government and stakeholders be on such a list.</p> <p>Finally, in Step 2, the causal factors should be applied at the “appropriate” analysis scale versus at “each” analysis scale.</p> |
| App. D | Adaptive Management Plan for Nevada | D-16 | Causal Factor Analysis and Management Response Process | Step 3 | Eureka County suggests adding to the beginning of the Step 3 text, “Through a collaborative process...” |

Eureka County Needs Attachment and Inconsistencies with Plans, Policies, and Programs

The 2015 LMPA imposed inflexible restrictions that pose unique challenges for counties' ability to provide critical, mandated, and often public health and safety services to their communities. However, we believe many of these challenges are easily resolved. During the cooperating agency process, several examples and request were made to better achieve consistency with county purposes as well for greater sage-grouse conservation. Counties believe these proposed changes would move toward adequately resolving many of the difficult scenarios these examples present and strike a more appropriate balance that will also allow the counties to provide these critical services to their local communities.

There must be a mechanism for counties to address these issues locally with the USFS Ranger District and not have to engage in public relations and political posturing to make common sense changes.

Eighty-one percent of Eureka County's land area is federally administered land, primarily managed by the BLM and the U.S. Forest Service ("USFS"). Eureka County's economy is driven by mining, farming and ranching, which are industries harmed by the land use restrictions and prohibitions in the BLM's and USFS' Nevada and Northeastern California GSG Land Use Plan Amendment ("LMPA"). Roughly 2,000 people live in Eureka County and are mainly employed in the natural resources and ranching sector. The welfare and viability of the community is dependent on business and recreational activities conducted on or in concert with federal lands. Since private land makes up only 13% of Eureka County's total land area, dependency on federally administered land limits is often detrimental to its long-term socioeconomic stability and viability. The land use restrictions in the LMPA threaten many Eureka County jobs because the restrictions will substantially reduce uses of federally administered lands and adversely affect the bulk of our economic base. The County is already at an economic threshold struggling to get by, especially through mining "bust" cycles. Any additional losses in employment and economic outputs from Eureka County will be devastating. Because of the small population, a handful of lost jobs in Eureka County is equivalent to the loss of many jobs in larger metropolitan areas.

Modifying Habitat Management Area Designations and Allocation Exception Process

The 2015 habitat maps are not founded upon on-the-ground realities. For example, there is a large area in southern Eureka County designated as a Priority Habitat Management Area ("PHMA") that incorrectly includes the Town of Eureka, US Highway 50, State Route 278, the Eureka County landfill, the Falcon-to-Gondor major distribution power line, multiple ancillary power lines, multiple subdivisions with homes, paved roads and gravel roads, farms with alfalfa fields and irrigation systems, and hay barns, among other infrastructure. The 2015 LMPA includes many land use restrictions for PHMA such as disturbance caps that are nonsensical.

The arbitrary and incorrect 2015 habitat delineations have serious implications for Eureka County because BLM has substantially revised its map showing lands that are suitable for disposal on the basis of the faulty habitat map. Lands that Eureka County needs for community expansion,

economic development, and infrastructure that were formerly designated as suitable for disposal are no longer considered suitable for disposal because of the erroneous classification of these lands as GSG habitat. This is another example of how the 2015 ARMPA seriously interferes with Eureka County's community development planning efforts. This interference is especially problematic for Diamond Valley, where two-thirds of Eureka County's population resides, and where we are in an advanced stage of critically important water planning that is compromised by the inaccurate 2015 ARMPA habitat maps.

Increase Opportunities for Outcome Based Grazing; Seasonal Timing Restrictions

The LMPA fails to recognize that managed livestock grazing represents an important and cost-effective tool to achieve desired sage-grouse habitat conditions and to reduce wildfires. The livestock grazing restrictions in the LMPA will cause environmental harm because they will increase the volume of highly flammable non-native invasive annual grasses and inevitably lead to more wildfires. The livestock grazing restrictions in the LMPA conflict with Section 6.21 of the Eureka Master Plan which specifically states: "... Managed grazing is beneficial in preventing excessive damage to plants by wildfire and prohibition of grazing prior to a fire results in unnecessary damage to the plants." The increased fuels that will result from the economically burdensome and technically ill-advised livestock grazing restrictions in the LMPA will place a burden upon our fire district and very likely result in destruction of critical GSG habitat. The LMPA will also decrease the level of active management currently provided by ranchers that benefit GSG. When permitted to have livestock on the range, ranchers provide a constant presence to maintain water developments used by wildlife, provide first response to fires, keep a watchful eye, and provide a timely response to situations that may be detrimental to GSG habitat.

Eureka County has led numerous efforts to improve and conserve GSG habitat by taking proactive measures to address pinyon-juniper (P-J) encroachment, which is a known threat to GSG habitat. Eureka County approached BLM in 2011 with a proposal to hand thin P-J around selected springs on BLM-administered land. Unfortunately, Eureka County is still waiting for BLM to approve this habitat improvement project. Eureka County has proceeded with concerted actions to remove P-J from thousands of acres of private lands that have habitat characteristics that would benefit from P-J removal. The County successfully built relationships and gained approvals from private landowners and identified funding, including grants, to hire hand-crews to selectively remove P-J from over 5,000 acres on private land in GSG habitat on Roberts Mountain, the Diamond Range, the Monitor Range, and the Sulphur Springs Range in southern Eureka County at a cost over \$300,000, and have additional funds committed for continued P-J removal projects. The LMPA restrictions, including but not limited to the lek buffer zones, disturbance caps, seasonal travel restrictions, road closures, and noise limits, will interfere with these types of conservation projects, making private landowners less able and willing to work on cooperative conservation efforts, which will frustrate the goal of conserving and enhancing GSG habitat.

Eureka County has also spearheaded projects to rehabilitate and restore agricultural lands in and adjacent to GSG habitat because invasive weeds increase wildfire risks. Eureka County has a

substantial noxious and invasive weed treatment program that treats over 1,000 acres of noxious and invasive weeds per year at a cost of \$60,000 to \$100,000 per year. The 2015 ARMPA travel restrictions limits Eureka County's ability to access weed-infested roads in the spring, which is the optimal treatment time. The 2015 ARMPA threatens the viability of this important fire reduction and habitat conservation program, which is funded with taxpayer monies collected mainly from ranchers and farmers. These tax revenues from ranching and farming are expected to decline as a result of the land use restrictions. Eureka County has constructed, maintained, and repaired wildlife water guzzlers and wildlife escape ramps that benefit GSG and other wildlife species. The LMPA will impair the ability to pursue and implement wildlife water developments and habitat projects approved on USFS-managed land.

Since 2010, Eureka County has applied for and received three separate Clean Water Act 319(h) sub-grants through the Nevada Division of Environmental Protection that have had direct benefits to GSG. These sub-grants provide 50 percent of the total project costs and have reduced livestock use of riparian areas that are important GSG habitat. One subgrant worked with a rancher to develop an off-stream water development to draw livestock from riparian areas and implemented monitoring for adaptive management. Another allowed a rancher to construct a riparian grazing pasture to reduce livestock use, hire range riders to move livestock off riparian areas and implemented monitoring for adaptive management. These coordinated efforts rely upon the continued use of public lands in combination with private lands. The 2015 ARMPA interferes with what have proven to be effective conservation strategies adopted and implemented by Eureka through the course of its land use planning and general exercise of police powers to protect the public health and safety.

Recent GSG population data from the Nevada Department of Wildlife (NDOW) for the areas where the County has been implementing the conservation projects described above document that the efforts have had a measurable and beneficial effect on local GSG population numbers. The June 2015 NDOW data show high counts of males using leks in the Diamond Population Management Unit (PMU) and the 3 Bars (PMU) that cover over half of Eureka County and have the bulk of the priority and general habitat in the County. The Diamond PMU had a record high count of 159 males. The 3 Bar PMU had a high count of 348 males, the third highest count since a record count in 2006 of 460. The 3 Bar #1 lek has been monitored since 1971 and had a high count of 41 males, the highest since 1987. This lek had no birds from 1995 to 1997. The NDOW lek count data clearly show that the conservation efforts have stabilized and increased GSG numbers *without the land use restrictions*.

The LMPA undermines Eureka County's efforts to conserve GSG and consequently harm the environment and GSG. The County has created incentives for landowners, ranchers with BLM or USFS grazing permits, and other agencies to work to implement these projects in the course of County land use planning and natural resources conservation. These incentives vanish as a result of the LMPA, discouraging these same partners from coming to the table to work on future on-the-ground projects because of the restrictions in the LMPA. Rather than promoting and facilitating local conservation work and partnerships with a proven track record of success, the LMPA discourages this work and ultimately harms GSG and its habitat.

Many of the 2015 ARMPA land use restrictions such as the lek buffer zones, disturbance caps, seasonal travel restrictions, the prohibition against cross-country travel, road closures, and noise limits will hurt our economy and accomplish very little to conserve GSG habitat. Moreover, the livestock grazing restrictions that will increase fuel loads by limiting grazing will ultimately lead to more wildfires and thus cause environmental harm.

The LMPA calls for arbitrary and unnecessary grazing restrictions that will force many Eureka County ranchers out of business because the forage utilization thresholds in the LMPA are unrealistic and very similar to recent thresholds outlined in the various Nevada BLM Drought Management Environmental Assessments (“EAs”) that have already seriously adversely impacted the ranching sector.

Allocation Exception Process

USFS has severely restricted travel based on proximity of roads to GSG leks and has tried to impose sage grouse travel “stipulations” on Eureka County roads. The LMPA includes widespread travel restrictions that are inconsistent with the Eureka Master Plan. At least 1,958 miles of county roads, or roughly 46 percent of the county roads in Eureka County, are located within areas where the LMPA travel restrictions apply. The Eureka Master Plan relies on maintaining access throughout Eureka County in order to satisfy the County’s obligation to maintain its transportation system, to achieve the county’s conservation goals, for access to ranches throughout the county, as routes to adjacent counties, and to provide emergency services for ambulances and fire-fighting equipment. The LMPA obstructs Eureka County from fulfilling these obligations.

The 2015 ARMPA prohibits cross-country travel in PHMA, and GHMA, which is another source of inconsistency between the 2015 ARMPA and the Eureka Master Plan, and imposes restrictions on road use and maintenance of existing roads including prohibiting the use of certain roads during specific seasons and times of day and limiting noise. The 2015 ARMPA also recommends road closures that are inconsistent with the access requirements of FLPMA and interfere with Eureka County’s obligation to maintain its transportation systems.

While the 2015 ARMPA asserts that valid existing rights will be maintained, the land use restrictions in the 2015 ARMPA could wholly or partially deny rightful use of water rights, rights-of-way, and mineral rights in Eureka County in substantial conflict with the Eureka Master Plan. In some circumstances, the 2015 ARMPA also requires removal of range improvements and water conveyances like dams, water tanks, ditches, and pipelines that may qualify as RS 2339 rights and are part of the bundle of private property rights. The 2015 ARMPA fails to outline procedures to address valid existing rights that have not been adjudicated in federal court but are nonetheless recognizable property rights (e.g., RS 2477 roads), leaving the status of water rights, water conveyances (RS 2339), and rights-of-way (RS 2477) in limbo. The 2015 ARMPA does not evaluate the potential takings claims that could arise from this deprivation of private property rights. The 2015 ARMPA also fails to recognize grazing permits attendant rights. These permits

have discrete economic value and have been purchased as part of an economic ranch unit, which is highly dependent upon the permitted Animal Unit Months (“AUMs”) to remain viable. The erroneous identification of lands as habitat in the agencies’ maps means many of these property rights will be impaired or destroyed with no basis – because the lands are not even priority GSG habitat – or habitat at all in some instances.

The 2015 ARMPA seasonal restrictions are substantially interfering with the County’s use of a few longstanding gravel pits that are important sources of materials for essential road repairs and compromising the County’s ability keep county roads in good condition and provide for public health and safety. Eureka County may be able to find places to stockpile gravel but at great expense without certainty. It would require finding a stockpile location, and getting an agreement or easement from the landowner to use the area in an area that isn’t in mapped sage grouse habitat. The County owns no property in these areas and these gravel pits are the only source of quality material in their vicinities. The County then would have to use funding it does not have to make a guess of how much gravel it might need, sending equipment and operators to the pit to screen, load, haul and stockpile only to have to load and haul again when needed. Mobilizing equipment and men into an area for work is very expensive. Stockpiling requires mobilizing at least twice - once to process the gravel and stockpile it and then bringing in the same equipment again to load and haul the gravel. Being able to access the gravel when needed requires only one mobilization of equipment and man power. If Eureka County underestimates its volume needed during the “stipulation season,” it will still face significant road maintenance challenges.

Nevada State Plan

The Nevada State Plan is more consistent with Eureka County Planning which does not prohibit land uses in GSG habitat areas but requires that impacts be avoided if possible, minimized to the maximum extent possible, and mitigated if impacts cannot be avoided. This same premise is reflected in Eureka County’s Master Plan and Code, which recognize that multiple use of the land is essential to the County’s economy and fully compatible with habitat conservation. The Nevada State Plan protects GSG populations, conserves their habitat, and focuses on reducing the primary threats to GSG habitat – wildfire and invasive grass species. In contrast, the 2015 ARMPA focuses on restricting and prohibiting land uses, which is inconsistent with Eureka County’s policies, the Nevada State Plan, and FLPMA. The LMPA’s interference with the Nevada State Plan and the imposition of land use restrictions and prohibitions will harm both the State of Nevada and Eureka County.

Consistency with County Plans

The 2015 ARMPA is inconsistent with Eureka County’s planning efforts, and will interfere with Eureka County’s police powers, public health and safety responsibilities, road access and maintenance obligations, master plan, and economic development. The LMPA failed to adequately analyze economic impacts to Eureka County even though they provided the USFS locally sourced data and reports for their use. Based on that same information Eureka County

estimated the adverse economic impact to their economy due to the impacts to the ranching industry alone will range from \$7 million to \$15 million per year. The economic impact will be millions of dollars more when taking into account mining impairment and lack of future options for other private land agricultural producers.

Eureka County has a long history of developing land stewardship policies dealing with wildlife and other natural resources. In 2006, the County updated the Land Use Element of the Eureka County Master Plan with substantive provisions for wildlife and wildlife habitat, which include sage grouse. This plan was again updated in 2010 to become the Natural Resources and Federal or State Land Use Element of the Master Plan (“Eureka Master Plan”). The Eureka Master Plan was adopted pursuant to and in compliance with Nevada Revised Statutes Chapter 278.

Title 9 of the Eureka County Code establishes provisions that deal with natural resources, wildlife management and conservation, and public lands. The 2015 ARMPA is inconsistent with key elements of Title 9, including: Chapter 30, the framework for land-use planning on federal lands; Chapter 40, procedures to ensure that there is full disclosure and cooperation regarding decisions affecting federal lands located within the County; and Chapter 50, which declares that the County holds title in trust for the public to all public roads and public travel corridors in the County except for State and federal highways.

Eureka County was also a cooperating agency for the 2015 ARMPA and submitted detailed and extensive comments on each of the documents developed during the EIS process starting with our March 2012 public scoping comments in which they emphasized the need for to be consistent with the Eureka Master Plan and Eureka County Code Title 9. Throughout the EIS process, Eureka County provided comments that focused on the many ways in which the land use restrictions in the November 2013 Draft EIS, the May 2015 Administrative Draft of the Final EIS, and the June 2015 Final EIS/Proposed LMPA are inconsistent with Eureka County’s policies and code. For example, the comment letter on the Draft EIS included 39 pages of substantive comments pointing out specific examples of the many inconsistencies between the LMPA and Eureka County’s Master Plan and Eureka County Code Title 9.

Below are the specific inconsistencies we identified in the 2015 EIS and many remain. We hereby provide notification of the plans, policies, and programs in the Eureka County Master Plan in which the No-Action Alternative is inconsistent and the Management Alignment Alternative is still inconsistent where changes have not been made to address these inconsistencies. We ask USFS to review these and strive for consistency and document in the EIS and ROD if consistency cannot be reached and measures USFS would take to reach consistency through implementation.

We specifically request that USFS review the obligations for coordination and consistency outlined in the following laws and regulations and then follow through with these mandates.

Previous inconsistencies that remain with the No Action Alternative and, in many cases, with the Management Alignment Alternative:

Conflicts between the Objectives of Eureka County Plans and Policies (40 CFR 1502.16(h))

Largely, land-use and natural resource components of our Master Plan have not been implemented through regulation or permitting requirements but are primarily policy statements outlining policy objectives. Consistently and explicitly, since 81% of the land in Eureka County is administered by USFS, we work to shape projects and decisions on these lands based on legal requirements of the federal agencies to meet consistency and overcome conflicts with our plans and policies to the maximum extent possible through our interpretation and application of such plans and policies. USFS must recognize that this Board is empowered to interpret and apply our own Master Plan and policies and to provide this interpretation. USFS does not have the authority to independently tell us what they think our policies are or mean. Therefore, if we have stated to USFS that there is a possible conflict, then these must be included with full efforts by USFS to resolve these conflicts. These possible conflicts are to be included in their respective resource topic areas of the Environmental Consequences section of the EIS and we request so.

Conflicts with Proposed Plans

The answer to question 23b of the CEQ FAQs clarifies that conflicts with “Proposed plans should also be addressed if they have been formally proposed...in a written form, and are actively pursued by officials of the jurisdiction.”

The County Master Plan calls for the County to “Develop a Water Resources Plan that takes into account existing and current conditions, analyzes various scenarios, outlines and analyzes different management alternatives including a status-quo or no-action alternative.” Eureka County has formally proposed, approved, budgeted, and is two years in the process of an active planning effort to follow its Master Plan and develop a comprehensive water resource master plan. We believe components of the DEIS across all alternatives directly conflicts with our Water Resources Plan. Over 60% of the appropriated water rights in Diamond Valley (all on private lands) must be retired in order to reach sustainability of the agricultural community in Diamond Valley. We are in advanced discussions with various industries to target alternative, less water intensive land uses in Diamond Valley. One of the options of our plan is photovoltaic solar energy. The right-of-way (ROW) exclusions for solar energy in Diamond Valley will severely limit our ability to find a water balance and will in turn, force further subdividing and development of the private lands in Diamond Valley. Additionally, the range of water management options left available for consideration in the water planning process is limited by the DEIS alternatives. USFS must work with us to overcome these conflicts.

This also creates an inconsistency with Nevada Revised Statutes (NRS) 540.011 that recognizes “the important role of water resource planning and that such planning must be based upon identifying current and future needs for water. The Legislature determines that the purpose of ... water resource planning is to assist the State, its local governments and its citizens in developing effective plans for the use of water.” The DEIS alternatives diminish our ability to develop “effective plans for the use of water” especially related to future needs many years into the future.

Further, the proposal to remove lands designated as suitable for disposal that have already gone through the administrative process and substantive requirements of FLPMA is disingenuous and is in conflict with Eureka County proposed plans for economic development and community expansion. We strongly request that lands currently designated as suitable for disposal remain in order to provide for future needs of our communities.

The DEIS analysis that results in these solar ROW exclusions and removal of lands for disposal is unfounded in science and actual conditions on the ground and is and overly restrictive given the dozens of miles of power lines and roads in Diamond Valley and the extensive agriculture, homes, hay barns, airport, landfills, gravel pits, and other development that already exists.

We also have proposed plans to work with grazing permittees and other industries and interested stakeholders for mutually beneficial actions to keep multiple-uses intact while conserving and benefitting GRSG and other wildlife. These plans includes encroaching pinyon-juniper removal, noxious weed control, distributed water developments, riparian enhancement, grazing management, and predator work. In fact, we have formally proposed work on USFS administered land over 3 years ago and USFS has failed to move forward for successful implementation. We have pitched proposals to USFS to address resource concerns and prop-up economic stability, all which have resulted in no action or interest by USFS staff. We have the tools to address the threats to GRSG and other wildlife while keeping land uses intact. Although touted as conservation measures, the DEIS alternatives will actually hamstring this effort. If USFS were to give our plans the required full consideration and allow us to keep management decisions local, with reasonable checks in place to determine progress towards conservation goals, we would come through with significant positive results.

We require USFS to work with us to develop and select an alternative that is consistent with our proposed plans.

Conflicts with Policies

We agree with, and implore USFS to incorporate, the guidance from CEQ related to the definition of the term “policies” in 40 CFR 1502.16(h). The answer to question 23b of the CEQ FAQs clarifies that:

“The term "policies" includes **formally adopted statements** of land use policy as **embodied in laws or regulations**. It also includes proposals for action such as the initiation of a planning process, or a **formally adopted policy statement** of the local, regional or state executive branch, **even if it has not yet been formally adopted** by the local, regional or state legislative body” (emphasis added).

The land-use and natural resource policy statements and policy objectives outlined in the Master Plan have been formally adopted by Eureka County by resolution and have been codified in our County Code thereby embodying these policies in local law.

Further, we assert that every comment this Board has formally approved and provided to USFS on any GRSG EIS related report or analysis over the past few years is our formally adopted policy

statements. We formally adopted these policies through public vote and always unanimous as a Board.

Notification of Inconsistencies with Eureka County Plans, Policies, and Programs

In order to hold USFS accountable for ensuring consistency as required, we provide notification of the plans, policies, and programs in the Eureka County Master Plan. These include the following taken in context with the entire set of comment we have made on the DEIS.

Eureka County Master Plan

- “Natural Resource and Land Use Plan provides a scientifically and culturally sound framework for establishing community planning goals; and provides details of goals and actionable objectives for a number of high-priority issues (p. 6-1)...Plan is designed to: (1) protect the human and natural environment of Eureka County, (2) facilitate federal agency efforts to resolve inconsistencies between federal land use decisions and County policy, (3) enable federal and state agency officials to coordinate their efforts with Eureka County, and (4) provide strategies, procedures, and policies for progressive land and resource management” (p. 6-2).
 - DEIS does not have an alternative that includes the goals and actionable objectives or the strategies, procedures, and policies for progressive land and resource management.
- “Eureka County expects that all decisions regarding natural resource management and land-use and all goals and objectives incorporated into this plan and, by extension, into state and federal agency plans, will be realistic and attainable” (p. 6-5).
 - Many of the goals, and even more so, the objectives in the DEIS alternatives are not realistic and attainable. Many of them are not even measurable. See our specific comments below related to the goals and objectives of the DEIS alternatives primarily located in Tables 2.4, 2.5 and 2.6.
- “Analysis and interpretation of facts is an important part of the process; so important that the U.S. Office of Management and Budget (OMB) has issued an instruction (OMB December 16, 2004, M-05-03; *Final Information Quality Bulletin for Peer Review*) to all federal agencies specifying the minimum standards for acceptable peer review of data or publications. Eureka County expects every federal employee to adhere to the OMB standards for Peer Review” (p. 6-5).
 - The OMB standard was not followed in the peer review of the so called “best available science” throughout the DEIS. For example, both the Sage-Grouse National Technical Team Report (NTT Report) and the FWS Greater Sage-Grouse Conservation Objectives Final Report (COT Report) are heavily relied throughout the DEIS alternatives but these documents did not follow the OMB standard for peer review. We point out specific issues related to both reports and other science in the DEIS in more detail below. Scientific research and documentation used within the DEIS is limited in scope to repetitive authors and does not adequately incorporate recent rangeland research or current understandings of rangeland dynamics and largely

omits rangeland scientists and other rangeland professionals. Proper peer review and adoption of the full range of best and current science is necessary for consideration and adoption by USFS prior to the Final EIS and ROD.

- “Per this plan, it is the policy of Eureka County that Federal and State programs make progress towards improved resource quality, greater multiple uses of the federal lands, preservation of custom, culture and economic stability of Eureka County, and protection of the rights of its citizens. Eureka County will continue to urge state and federal employees to participate in this effort to coordinate in order to resolve inconsistencies between federal proposals and County policy. Should hesitance on the part of federal or state agencies substantially interfere with this progress, then Eureka County may seek judicial intervention to compel agencies to obey the mandates of Congress.” (p. 6-6).
 - The DEIS touts the ability of management action under various alternatives to make progress toward improved GRSG conservation. However, many of the proposed actions will greatly impact the multiple-uses and undermine custom and culture and interfere with the rights of Eureka County citizens. Our Master Plan, if implemented, would meet the goal of GRSG conservation in balance with protection of uses, rights, and custom and culture. Please incorporate our plan as the preferred alternative for management in Eureka County.
- “Primary Resources: Soil, Vegetation, and Watersheds; GOAL: To maintain or improve the soil, vegetation and watershed resources in a manner that perpetuates and sustains a diversity of uses while fully supporting the custom, culture, economic stability and viability of Eureka County and its individual citizens” (p. 6-7); “The BLM and Forest Service must comply with the multiple use goals and objectives of the Congress as stated in the various statutory laws” (p. 6-8);
 - The DEIS alternatives are not in accordance with the multiple-use and sustained yield legal requirements and will not improve these primary resources in a holistic way that address the 3-legs of sustainability—the environment, the economy, and social needs and stability.
- “Development of Allotment Management Plans (AMPs), as an objective, will include completion of technically sound inventories; ecological status inventory (ESI) is a minimum, with other techniques as appropriate such as use pattern mapping as a measure of animal distribution, actual use records, detailed weather records, stream channel morphology, woodland features including age structure and density of trees, and other studies using standardized techniques. So-called “rapid assessment” techniques are permitted and in fact encouraged in Eureka County as a way to identify specific technical studies that are needed. Rapid assessment includes such techniques as the DOI Rangeland Health approach and the Riparian Functional Condition” (p.6-8).
 - The DEIS does not propose the implementation of any of these techniques through allotment specific AMPs. While there is discussion about implementation of AMPs in the DEIS, the ability to manage according to specific AMPs is undermined by the proposal of blanket restrictions, requirements, and actions across the entire landscape. There must be a focus on individual allotments through properly developed AMPs and associated resource inventories.

- “Goals and objectives will be set relative to the ecological potential of each location and will include descriptions of future ecological status, desired plant communities, livestock productivity and health, wildlife habitat attributes, wildlife population levels, acceptable levels of soil erosion, stream channel stability, and additional items specific to various land uses” (p. 6-8).
 - Goals and objective in the DEIS fall far short of being specific enough to clearly outline what will be required or what is possible according to ecological potential based on a current understanding and application of rangeland science. While many of the objectives speak to managing for ecological site potential, the State and Transition Model (STM) for any given Ecological Site Description (ESD) defines a range of vegetation characteristics in any given state. Also, “site potential” is not defined in the context of ESD and/or STM for any of the objectives. Is the site potential definition in the DEIS synonymous with “reference state” of the ecological site? If so, what if the current state of any give site has crossed a threshold into a degraded stable state in which there is no current restoration pathway known? We argue that the state of an ESD in some circumstances is the “site potential” even if not conducive to or acceptable sage grouse habitat. Without being more specific, objectives such as this open a door of subjective interpretation, contention, and more legal wrangling. Many of the DEIS objectives are not measurable or only partially measurable. Many objectives reference the habitat objectives in Table 2-6 that are blanket objectives with no regard to any particular ecological site or state of the site. Some areas may be at “site potential” given the current ecological state but not in a state that provides every seasonal sage grouse habitat need. There must be objectives established with language clarifying this issue in order for all objectives to be achievable in all situations and then a follow up objective when these circumstances apply.
 - The objectives in the DEIS provide for unnecessary subjectivity on what any objective means and is left up to agency discretion and individual or user translation, which may not be compatible. This will result in continued strife in managing GRSg habitat and will result in much more time in the courtroom. Defining SMART objectives will minimize personal interpretation and result in all parties being on the same page moving forward, even with conflicting interests. We reiterate that the objectives and management actions really need re-worked to be clear and get all users and land managers on the same page and to be consistent with our Master Plan.
- “Rangeland Health ratings, Riparian Functional Condition ratings, stubble height, and utilization levels are not suitable for goals or objectives that measure management success. Completion of each of these limited techniques as a precursor to design of additional studies is a reasonable objective within an AMP” (p. 6-8).
 - The DEIS establishes qualitative, rapid assessments, as measures of success in conserving GRSg habitat. Primarily, utilization and stubble-height standards and Proper Functioning Condition (PFC) are mis-used as standards and objectives to be met. We support and encourage these rapid assessments as a way to identify additional, quantitative based studies. The intended use of these techniques is to inform on adaptive management and to make timely management adjustments as necessary.

- “Wild fire and the period of time for recovery from fires has become a regulatory issue in Eureka County that has caused unreasonable economic hardship to Eureka County livestock producers. Properly managed grazing provides a substantial advantage for native plant recovery following fire. Prohibition of grazing following wildfire is not necessary for the recovery of rangeland vegetation. Managed grazing is beneficial in preventing excessive damage to plants by wildfire and prohibition of grazing prior to a fire results in unnecessary damage to the plants” (p. 6-8).
 - The DEIS includes provision to defer grazing after wildfires in all cases and does not fully recognized properly managed grazing as the best and primary tool to manage fuel loads before and immediately after fires. This must be included. Specifically, there needs to be inclusion of a methodology to allow for and streamline Temporary Non-Renewable (TNR) allocation of forage for fuels reduction in general and specifically including measures to allow for targeted cheatgrass control through TNR.
- Selection of the proper inventory or monitoring techniques and interpretation of the data will only be acceptable when performed by people whose judgment is the result of successful experience and well developed skills. Technical guidance as found within peer reviewed scientific publications and various agency or interagency handbooks and manuals serves as reference material and may be incorporated into this document upon approval by the Board of Eureka County Commissioners. Suitable reference material is included as attachments to this plan or by reference within the text. Reference material includes, for example: the *Nevada Best Management Practices*, USDA Natural Resource Conservation Service *Range and Pasture Handbook*, *Nevada Rangeland Monitoring Handbook* (1984 First Edition or 2006 Second Edition), *Standards and Guidelines for Grazing Administration* as written by the Association of Rangeland Consultants, March 12, 1996, *Standards and Guidelines* as written by the Northeast Great Basin Resource Advisory Council.
 - There is limited to no mention or incorporation of these peer reviewed and technically sound references that were developed specifically for Nevada.
- “Develop and implement Allotment Management Plans (AMP's) as follows: Within five (5) years on all "I" category, high priority allotments that do not already have current AMPs; within eight (8) years on all "I" category medium priority allotments; within ten (10) years on all other allotments” (p. 6-9).
 - This has not been done. If it had been followed when we initially proposed it our 2000 Master Plan, adequate measures would be in place on every allotment in Eureka County to conserve GRSG. Please incorporate this language into the DEIS.
- “Review and adjust livestock (grazing) stocking levels only in accordance with developed AMPs and/or trend in ecological status. Monitoring data, as obtained through the use of standardized rangeland studies such as ecological status inventory and frequency/trend monitoring completed at five (5) year intervals following implementation of AMPs, will be required for stocking level adjustments. Other studies such as Rangeland Health evaluation, Riparian Functional condition, stubble height, and livestock utilization may be useful as indicators of the need for additional examination and objective monitoring technique” (p. 6-10).
 - There are proposals across the DEIS alternatives to reduce grazing levels outside of AMPs or trend studies but instead based on utilization and qualitative and subjective

triggers. Trend studies are extremely important because it provides the flexibility for less than desirable management mistakes as long as the overall trend is upward.

- “Assure that adjudicated grazing preference held by permittees is authorized according to the governing Federal statutes and that Temporary Non Renewable use is authorized in a manner that allows for use of excess forage when available” (p. 6-10).
 - The DEIS contains grazing permit retirement language that is not conducive to the grazing preference criteria that determines that when a permittee no longer wishes to graze, the grazing permit would become available for continued use (not non-use) by another appropriate party. We have already provided comment related to the need to incorporate strong methodologies for timely and responsive TNR authorizations of excess forage.
- “Develop prescribed fire and wildfire management plans to re-establish historic fire frequencies for appropriate vegetation types and include in such plans livestock grazing techniques as a tool for fire fuel management related to both wildfires and prescribed fires” (p. 6-10).
 - This is a major component missing from the DEIS. The condition of much of the Great Basin rangelands and coincident GRS habitat is degraded due to a fire regime that is not conducive to health rangelands and GRS habitats. The DEIS must develop strong measures to return fire to the landscape in a managed way, where appropriate, or use other techniques, primarily livestock grazing, to mimic fire and its positive historic influences on the diverse and varietal needs of GRS. The DEIS speaks to “limiting human influence on intact GRS habitats” especially where cheatgrass is present. Unfortunately, even in areas where cheatgrass appears to be absent, a bioassay of the soils would show that there is, in fact, a seedbank of cheatgrass almost ubiquitously (see research by USDA-ARS (Charlie Clements) in Nevada regarding this matter). Protecting these areas from livestock use or other use with the excuse that they will allow “establishment” of cheatgrass is dangerous and short-sighted. These protections will create large, catastrophic fires that will bear the evidence of cheatgrass nonetheless. Regarding wildfire management, there should instead be a focus on **increasing** man’s influence in these ecosystems to allow for active, progressive, adaptive management. The decline in GRS is coincident with the increase of regulatory schemes and bureaucratic hoops that must be overcome to do anything on the ground. This too has resulted in increases of extent and cycle of wildfires. Man’s influence has shaped where we are today and man’s influence must be focused, strategic, and targeted to keep **managing** these lands for GRS habitat and current and future generations. See great work by the USDA-ARS Research Station in Dubois, Idaho where active grazing management and prescribed burning to mimic the historic fire regime has created an increase in GRS when neighboring BLM land has continued to see a decline in GRS (“A Home on the Range”, *Agricultural Research*, November/December 2006).
- “Develop grazing management plans following wild or prescribed fire through careful and considered consultation, coordination and cooperation with all affected permittees and affected landowners to provide for use of grazing animal management to enhance recovery” (p. 6-10).

- The DEIS does not lay out a process for this. Again, blanket closures to grazing after fire are proposed.
- “Develop and implement an aggressive pinyon pine, juniper, and shrub abatement and control plan for all sites where invasion and/or senescence due to age of a stand is adversely affecting desirable vegetation and/or wildlife. Development of such plans will include technical references to Woodland or Rangeland Ecological Sites and other appropriate interpretations of specific soil series within a Soil Survey. Whenever possible, plans to reduce the density of Pinyon or Juniper will emphasize removal and use of the material for firewood, posts, or commercial products including chips for energy production. This item depends on continued access to all areas that are subject to future woodland manipulation” (p. 6-10).
 - While the DEIS acknowledges pinyon-juniper (PJ) encroachment and speaks to vegetation management of these issues, there is limited and general focus on the need to also address sagebrush and other shrub encroachment (such is rabbitbrush into meadows) and senescence (such as single age and decadent stands of sagebrush). If ESDs are followed, the areas, density, and cover of brush would be able to be targeted to approach ecological potential. Many of the vegetation/habitat objectives focus on values of sagebrush cover without consideration of site potential and conditions (state). Further, there is no effort in the DEIS to address utilization of biomass from PJ as a means to incentive treatments and return dollars to the economy. Please include.
- “Manage wildlife at levels (population numbers) that preclude adverse impacts to soil, water and vegetation until monitoring studies and allotment evaluations demonstrate that population adjustments are warranted by changing resource conditions. Seek to restore...sage grouse population numbers to the levels observed in the mid-1900s” (p. 6-10).
 - With the myopic view focused on habitat, the DEIS fails to address this policy because there will never be enough GRS. There needs to be clear indications of when management will be enough to protect the bird from extinction.
- “Manage wild horse and burro populations within Herd Management Areas (HMAs) at levels (population numbers) that preclude adverse impacts to soil, water and vegetation until monitoring studies and allotment evaluations demonstrate that population adjustments are warranted by changing resource conditions” (p. 6-10).
 - This DEIS fails to acknowledge that wild horse and burro populations (WH&B) remain on the public lands on a year round basis and are not managed for the benefit of the rangeland resource that supports their very existence. Only their numbers are attempted to be controlled, but with minimal success. There typically are no rest periods for the range in HAs or HMAs, riparian areas nor wetland meadows. Numbers control is all that the BLM and USFS have available to them today to effectively manage horses, and even that is being heavily impacted through the budget process. In addition, any attempts to restore rangelands within HMA’s would be most challenging due to the restrictions that would be applied when attempting to protect a new seeding or defer use from an area for a period of time to allow for natural regeneration. Fencing and other structural improvements would also become a real challenge. Given the actual performance record of BLM and USFS in Nevada and the exceedingly over-abundance and out-of-control numbers, how will the actual

corrections be brought about that the DEIS proposes? Beyond excuses for not having enough resources, what confidence can there be that USFS will not continue to practice the management process of "do as we say, not as we do"? USFS should not "target" the uses of public land that are easy-picking without first addressing the mismanagement of the uses that are under the primary jurisdiction of the USFS itself. The Herd Management Areas in Eureka County are currently an average of 250% of AML while statewide the population numbers are 150% of AML. The USFS's failure to properly manage WH&B has created a situation, in many cases, where the burden is now on the other users of the land, primarily ranchers, to pay the price for USFS's shortfall. The DEIS needs to be frank and propose real, actionable solutions to the WH&B issue in order to be consistent with our Plan.

- "Prevent the introduction, invasion or expansion of undesirable plants and noxious weeds into native rangelands and improve the ecological status of sites that are currently invaded by undesirable plants or noxious weeds by integrating, through consultation with the Eureka County Weed District and Eureka County Department of Natural Resources, appropriate control methods into all planning efforts. Prescriptions for control of undesirable plants and noxious weeds may include, but are not limited to burning, grazing, mechanical, manual, biological and chemical methods" (p. 6-11)
 - There has been no effort by USFS to consult with the Eureka County entities, primarily the Weed District which has legal authority, through Nevada law, over weed control in Eureka County.
- "Monitoring: Document ecological status and trend data obtained through rangeland studies supplemented with actual use, utilization (use pattern mapping), and climatic data in accordance with the *Nevada Rangeland Monitoring Handbook*; Document ecological sites or forage suitability groups, and ecological similarity index as defined by NRCS *National Range and Pasture Handbook*, with specific reference to ecological status and trend data and "State and Transition" interpretations of ecological status; Document progress in the development and implementation of Allotment Management Plans; Document the development and implementation of Pinyon pine, juniper, and shrub abatement, control, or harvest plan(s); Annually review and document wild horse herd population inventories, and conduct inventories when necessary, including reports of wild horse movement, grazing habits, numbers and other data provided by permittees, lessees and landowners" (p. 6-11)
 - These required monitoring components have not been completed as required by our Master Plan and therefore, the analysis is lacking and flawed since the data was minimal and the data quality going into the development of the DEIS was poor.
- "Forage and Livestock Grazing; GOAL: Provide for landscape vegetation maintenance and improvement that will: 1) support restoration of suspended AUMs; 2) support allocation of continuously available temporary non-renewable use as active preference; 3) support allocation of forage produced in excess of the original adjudicated amounts where greater amounts of forage are demonstrated to be present; 4) restore livestock numbers of individual ranches to at least the full levels at the time of grazing allotment adjudications; and 5) restore wildlife populations to those peak levels of the mid-1990's" (p. (6-13)).
 - The DEIS has actions directly opposed to these goals and frames livestock grazing as antithetical to wildlife habitat and wildlife populations, including GRSG. We argue

that the empirical evidence linking the highest numbers of GRSG to periods of high livestock numbers and predator control is not to be dismissed. We argue that this was the case because at the time, active management was allowed, range improvements (including water developments) were promoted, and vegetation manipulation was carried out. This needs to be acknowledged and implemented as part of the preferred alternative.

- “Congress mandates stabilization of the local livestock industry in such laws as the Taylor Grazing Act (TGA) and the Forest Service Organic Act (FSOA) by providing for the orderly use, improvement, and development of the range in a manner which adequately safeguards property rights including rights-of-way, easements, vested grazing and water rights. Regulation under these laws will not impair the value of the grazing unit of the permittee when such unit is pledged as debt security by the permittee; Public Rangeland Improvement Act (PRIA) provides that the Bureau of Land Management administered lands be managed in accordance with the Taylor Grazing Act. PRIA further provides that the range should be made "as productive as feasible" in accordance with the Congressional objective of preventing "economic disruption and harm to the western livestock industry". PRIA mandates improvement of the rangelands in order to expand the forage resource and increase the resulting benefits to livestock and wildlife production.; In the Federal Land Policy & Management Act (FLPMA) Congress directs that the BLM administered lands be managed in a manner which "recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands". The National Environmental Policy Act requires consideration of all environmental actions on the culture, heritage and custom of local government (16 U.S.C. sec. 4331 (a)(4). Current active preference and continuously available supplemental use is considered the established allowable use for livestock grazing. The Forest Service is obligated to consider and provide for "community stability" in accordance with the National Forest Management Act (NFMA) and other National Forest related legislation dating back to the 1890's" (p. 6-13).
 - The actions outlined in the DEIS will impair the valid existing rights appurtenant to ranches with grazing permits and will threaten the ranches viability. Further, the actions in the DEIS will further erode the stability of the livestock industry which is a basis for our local, long-term stable economy.
- “Essentially all rangeland use and value is dependent upon maintenance and enhancement of the primary landscape resources of soils, vegetation, and watersheds. August L. Hormay states that “...all renewable rangeland values stem directly or indirectly from vegetation. Sustained high-level production of these values therefore depends on proper management of the vegetation. The principal tool the rangeland manager has for managing vegetation is livestock grazing. It is the only force under firm control of the manager that can be applied on practically the entire range area....desirable vegetation and the overall productive capacity of rangelands can be increased more rapidly with livestock grazing than without....Livestock can be used to trample seed into the soil thereby promoting more forage and a better soil cover; to remove stifling old growth on plants, thus increasing plant vigor and production of useable herbage; to stimulate adventitious growth and higher quality forage; and to reduce fire hazard.” (emphasis added) (“Principles of Rest-Rotation and Multiple-Use Land Management” USFS Training Text No. 4(2200)). Hormay explained that grazing management

that is based on the physiological status and phenological development of the plants is the basis for keeping plants healthy and vigorous. Utilization levels have essentially no bearing on the longevity of the plants and very little value in management decisions. The principles of plant physiology as the basis for vegetation management taught by Hormay and other experts are a sound basis for grazing management in Eureka County. Eureka County natural resource strategy includes management based on the renewable nature of Eureka County's vegetation resources" (p. 6-14).

- The DEIS actions for grazing are not based on this concept and grazing is generally disregarded as probably the best tool available for USFS to manage GRSG habitat to meet resource objectives while also stabilizing local economies and the industry uses of the land.
- "Implement rangeland improvement programs, including but not limited to water developments, rangeland restoration, pinyon-juniper and shrub control, and weed control to increase forage production; improve livestock grazing management, raise stocking rates, and achieve other multiple use goals. It is the policy of Eureka County that water rights for livestock uses are to be held solely in the name of the permittee and not held jointly with a federal or state agency (see comment below)" (p. 6-14).
 - These active management actions are given short shrift in the DEIS and the underlying tone and bias is towards protectionism rather than incentivized conservation through continues sustainable use. Grazing can continue and even increase beyond what is currently permitted all while benefitting GRSG and rangeland health. It just takes a commitment by USFS for locally driven, results based, active, adaptive management. We will achieve positive results if USFS will adopt our plan and allow for active, locally led conservation.
- "Identify and develop off-stream water sources where such opportunities exist in all allotment pastures with sensitive riparian areas and in all allotments where improved livestock distribution will result from such development" (p. 6-14).
 - The primary limiting factor in cases where livestock and WH&B management is poor is the lack of distributed water and/or the only water source being located in sensitive riparian zones. Rather than focusing on an action to increase water distribution and developing off-stream water sources, the DEIS focuses on restriction of grazing in riparian zones and proposed removal of water developments in some cases. The mentality needs to be flipped with a strong bias to development of new and maintenance of existing water developments. This would increase the management options available and would allow for timely adjustments needed to head off resource degradation.
- "Identify and implement all economically and technically feasible livestock distribution, forage production enhancement, and weed control programs before seeking changes in livestock stocking rates" (p. 6-14).
 - The DEIS focuses on livestock reductions and restrictions before identification and implementation of all other management tools cited here.
- Eureka County has a long-standing policy of "no-net-loss of AUMs." This is an interpretation of our various policies already cited. What this means is that forage, if impacted, must be mitigated even if there is a gross (versus net) reduction. Eureka County has applied this policy

for many years. The Board of Commissioners passed a resolution that we supplied USFS in 2010 that outlined the County policy related to loss of grazing forage and how all mitigation measures must be first contemplated before a change in stocking rate. There were other resolutions passed by previous Boards outlining similar policy statements. This is an example of a “formally adopted policy statement” discussed in 40 CFR 1502.16(h). The resolution specifically states “Before imposing grazing restrictions or seeking changes in livestock stocking rates or seasons of permitted use, federal agencies in coordination with grazing permittees must identify and implement all economically and technically feasible livestock distribution, forage production enhancement, weed control programs, prescribed grazing systems, off-site water development by the water rights holder, shrub and pinyon/juniper control, livestock salting/supplementing plans, and establishment of riparian pastures and herding.” When our Plan (and County Code) speak to “no-net-loss policy with respect to private land and private property rights” this would include grazing forage as our Plan clearly points out in many locations. A grazing permit is considered private property and is attached (mandatorily) to private, base property through the Taylor Grazing Act. Our understanding and application of a grazing permit as private property does match the definition provided. Our Master Plan (and similarly in the County Code) in many places speaks to the nature of this private property right and there is lengthy discussion of this matter on Pages 6-16 through 6-19 of the Natural Resources & Federal or State Land Use Element as follows:

- Eureka County will evaluate each issue regarding "takings" of private property on a basis of whether it is personal and individual, or if a given incident has a potential affect on the County as a whole. Each “takings” claim will be evaluated in view of what is known of the affected business such as a ranch operation, irrigated agricultural operation, mining, or other property as set forth in this plan. Eureka County will consider that the economic value of a (ranch) base operation is dependent upon its relationship to adjacent or nearby federal or state managed lands. That relationship is often evidenced by a grazing permit. The existence of such permit causes County Assessors in many areas to appraise the taxable value of the private property which serves as the base operation at a higher rate than it would be appraised if no permit existed. Thus, for taxation purposes the grazing permit is considered a part of the realty upon which an individual must be taxed. The Internal Revenue Service also considers the permit as a taxable property interest. Financing institutions, whose support is critical to continued livestock grazing and agricultural operations in Eureka County, consider the existence of the permit, and the reasonable expectation of land use which emanates therefrom, as an indispensable factor in determining to extend and continue financial support. Grazing permits are capitalized into the value of a ranch, so that when a buyer purchases a ranch, he actually pays for livestock production stemming from the private and federally managed lands, as well as additional property in the form of water rights, rights of way, and improvements also on both private and federally managed land areas.
- The grazing permit was recognized by Congress as having the character of a property right, interest or investment backed expectation when it enacted that portion of the Taylor Grazing Act which is found in 43 U.S.C § 315 (b) guaranteeing renewal of

- permits if denial of the permit would "impair the value of the grazing unit of the permittee, when such unit is pledged as security for any bona fide loan."
- Congress also recognized the importance of the permit to the ranch operator when it enacted 43 U.S.C. § 1752 (c) [a portion of the Federal Land Policy Management Act] which afforded to the "holder of the expiring permit or lease" the "first priority for receipt of the new permit or lease." Such priority renewal recognizes the investment of time, energy and money by the ranch owner in reliance upon the land use of the federally managed lands which becomes an integral part of the ranch operation. Stewards of the Range attorney, Fred Kelly Grant quotes Marc Valens as having "succinctly analyzed the importance of the priority renewal both to the ranch operator and to all members of the American public who collectively own the federally managed lands." In *Federal Grazing Lands: Old History, New Directions* (1978), (an unpublished manuscript), cited at page 707 of *Coggins Wilkinson Leshy, Federal Public Land and Resources Law* (3rd Edition 1993), Valens states:
 - "Priority renewal does have advantages. A permittee becomes intimately familiar with the range....[H]igh turnover of federal grazers does not permit them to get to know the range nearly as well. Only long use can teach an operator where the thicket is that hides the stubborn bull late in the fall. The seasonal pattern of drying up of the range and water holes must be known to fully utilize the range resource. If the first areas to dry are not used early in the season, they will be wasted. The rancher who expects to use the same range for many years in the future will be careful not to hurt the resource. The range cattle themselves get to learn the range. An old range cow can find hidden water holes and meadows that a new cow would not. And with the first snows of fall, the old cows will lead the herd back to the home ranch."
 - Federal land ranchers in Eureka County operate within allotments originally identified and adjudicated on the basis of water ownership. Their "right to graze" is a property interest appurtenant to livestock watering rights, most of which existed long before the Forest Organic Act and the Taylor Grazing Act were passed. All property, including water rights, is founded in the power of the State, even property existing within lands controlled by federal agencies. The nature of Nevada water rights reflects the split estate concept developed on western lands under Mexican law and continued with the establishment of the United States. The interest created in and owned by each Eureka county ranchers' predecessors and interest in allotments of grazing lands or forage lands is a portion of the "surface estate" of the split estate. McIntosh (2002) further describes this right in terms of the travel by livestock to the place where a livestock watering right is used has established livestock grazing rights-of-way for access to each water source that is based on the normal travel of livestock that are grazing as they approach or leave the water location. The ranchers have the right to graze on the surface of the land, a right which they developed through settlement and development.
 - As described in the Introduction (Section 6.1), property ownership includes a "bundle-of-rights". McIntosh (2002) quotes a legal dictionary in defining the bundle-of-rights as: "...the collection of rights that constitute fee ownership in an object or realty (or

interests in real estate). The bundle-of-rights includes, but is not limited to, the right to: sell, lease, use, give away, exclude others from and to retain. The bundle-of-rights is the list of options that an owner can exercise over his property." The term "fee" refers to the quality and character of ownership in a property.

- A long series of decisions by the United States Supreme Court set forth the position that when a validating or confirming statute is passed, the legal title to the possessory right passes as completely as though a patent had been issued. Title to allotments of federal land for grazing have been validated or confirmed for over a century, and the boundaries of those allotments have been adjudicated. The Stock Raising Homestead Act of 1916 culminated development of the settlement acts regarding the lands "chiefly valuable for grazing and raising forage crops" when it completely split the surface estate from the mineral estate in order to allow for the disposal of legal surface title to ranchers, while retaining undiscovered mineral wealth to the United States. The grazing right owned by Eureka County ranchers was acknowledged and secured by passage of the Forest Organic Act in 1897 and the Taylor Grazing Act in 1934. Every subsequent Act regarding management of the federal lands has protected and preserved all "existing rights" such as the grazing right.
- Property rights related to the federal lands are split between a number of parties and users, private and governmental. The rights possessed by the various parties include water rights, grazing rights, rights-of-way or easements, mineral rights, wildlife rights, petroleum exploration rights and timber harvest rights. Each of the rights has been validated and secured by statute or court decision.
- In *Public Lands Council v. Babbitt*, supra, the United States District Court acknowledged the "right" of a permittee to his adjudicated grazing preference, and held that such "right" could not be removed by a regulation issued by the Secretary of Interior. Such recognition of a "right" forms the basis for a "taking" when that "right" is taken by regulation. It is the goal of this Plan that management activities be instituted which prevent such "taking" and which foster effective implementation of the "right" to adjudicated grazing preferences.
- The split estate is further demonstrated by the stock watering right possessed by each rancher to water existing on federal land. Each rancher who grazes livestock on federal lands has the right to use water existing on the federal lands even though he or she is not the title holder to the lands themselves. The effective date of the right to water the livestock grazing on those lands is the date of first appropriation by the rancher or any predecessor in title who conveyed the stockwater right.
- "Identify and initiate reductions in stocking levels only after monitoring data demonstrates that grazing management including range improvements and specialized grazing systems are not supporting basic soil, vegetation and watershed goals" (p. 6-14).
 - The monitoring proposals in the DEIS focus on blanket criteria, utilization standards, and indicator based approaches. These are fine only as long as they help focus where additional monitoring is needed and to make adjustments in management along the way. The DEIS proposed to reduce and restrict grazing based on these subjective monitoring techniques. Trend monitoring, over multiple years, and objective monitoring of ecosystem function is imperative before any reduction or restriction in

grazing. Snapshot monitoring at one point in time (as is often the case with the qualitative techniques) does not inform on whether progress is being made towards objectives and standards.

- “Assure that all grazing management actions and strategies fully consider impact on property rights of inholders and adjacent private land owners and consider the potential impacts of such actions on grazing animal health and productivity” (p. 6-15).
 - There is a general disregard in the DEIS of the impacts to private property, including water rights, in the DEIS. The comment we made on this issue during scoping was disregarded or not included and still applies:
 - While evaluating the ramifications of possible curtailment of livestock grazing use, consideration should take into account the linkage between private ranch lands and federal land permits. Although we don't agree with the perspective that curtailment of properly-managed livestock grazing will have a beneficial result, we do want to stress the potential negative consequences for GSG habitat on private lands, if a livestock grazing permit is not allowed to be used. In order to maintain business operations, possible conversion of private land holdings may result from not being able to make use of federally-managed lands. More intensive land use of these private resources could result in a negative outcome for habitat located on private land; In areas where private lands and federally-managed lands are found in alternating sections (i.e., “checkerboard” lands) or where private lands make up a significant portion of large tracts of habitat, this increase in fragmentation would undoubtedly be far more of a problem and impact on GSG.
- “Where monitoring history, actual use or authorization of Temporary Non-renewable grazing (TNR) demonstrates that supplemental use is continuously available, and can or should be used to improve or protect rangelands (e.g., reduction of fuel loads to prevent recurring wildfire), initiate a process to allocate such use to permittees as active grazing preference; Authorize use of supplemental forage during those years when climatic conditions result in additional availability” (p. 6-15).
 - The DEIS fails to acknowledge or implement a process for TNR or access to additional forage and conversion to active grazing preference if the criteria in our Plan is met.
- “Temporary ‘voluntary non-use’ of all or a portion of adjudicated forage is necessary on occasion due to drought, economic difficulties, animal health, etc., and is an acceptable management strategy. ‘Voluntary non-use’ for the purpose of long-term or permanent retirement of a grazing allotment is detrimental to the economic stability of Eureka County and will be opposed by the Board of Eureka County Commissioners” (p. 6-15).
 - The DEIS separates actively used AUMs from voluntary non-use AUMs. This frames the reality that permittees will likely never be able to activate the non-use AUMs under the DEIS options.
- “Monitoring: Document the amount of livestock use through review of actual use, authorized active use, suspended use and temporary nonrenewable use; document livestock production or performance when available; document all rangeland and livestock management improvement programs as to acres affected by vegetation manipulation, water development, specialized grazing systems and weed control; document grazing use in each allotment

through use pattern mapping for the purpose of recording livestock or wildlife distribution patterns and identifying additional monitoring techniques that are needed. Utilization monitoring is not a suitable measure for calculating stocking rates; document the direction of rangeland trend and seral class acreage changes that support changes in the amount of use being authorized or denied; document all decisions or agreements resulting in changes in active preference and approvals or denial of applications for supplemental use” (p. 6-15).

- These required monitoring components have not been completed as required by our Master Plan and therefore, the analysis is lacking and flawed since the data was minimal and the data quality going into the development of the DEIS was poor.
- “Identification of goals for riparian vegetation attributes must be realistic and attainable based on the dependability of surface or subsurface water regimes, climate as determined by elevations, soil and substrate characteristics, and the likelihood of unacceptable impacts on other uses within the riparian area and surrounding uplands” (p. 6-20).
 - Habitat objectives in the DEIS related to riparian zones are one-size-fits-all and do not take into account the drivers that shape riparian vegetation. Further, the actions proposed for riparian vegetation fail to take into account and analyze the impact and impairment of water rights and potentially increased impacts on other rangeland sites.
- “Select or develop site specific Best Management Practices (BMP's) through allotment management plans for...riparian areas and aquatic habitats” (p. 6-20).
 - BMPs and riparian zone actions are one-size-fits-all and do not give credence to development of AMPs based on site-specific conditions and drivers.
- “BMP's include but are not limited to: prescribed grazing systems, off-site water development, shrub and pinyon/juniper control, livestock salting plans, establishment of riparian pastures and herding” (p. 6-20).
 - Some of these measures are given a perfunctory nod in the DEIS, but restriction, prohibition, and protectionism are elevated above these other active management options. Active management incorporating these proposed actions should be the first action with restriction, deferment, and prohibition being the last option when all else has failed.
- “Develop management plans for multiple recreation uses in high erosion hazard watersheds, or watersheds where accelerated erosion is occurring, which assure that planning documents and/or other agreements which alter multiple recreation use are formulated through coordination with the Natural Resource Advisory Commission which includes representatives of recreational groups” (p. 6-20).
 - This is not a component of the DEIS and should be.
- “Provide for the development and maintenance of water conveyance systems (i.e. provide for livestock watering systems, irrigation diversions, and domestic or municipal uses)” (p. 6-21).
 - The primary limiting factor in cases where livestock and WH&B management is poor is the lack of distributed water and/or the only water source being located in sensitive riparian zones. Rather than focusing on an action to increase water distribution and developing off-stream water sources, the DEIS focuses on restriction of grazing in riparian zones and proposed removal of water developments in some cases. The

mentality needs to be flipped with a strong bias to development of new and maintenance of existing water developments. This would increase the management options available and would allow for timely adjustments needed to head off resource degradation.

- “Monitoring: Document progress in the development of AMP's including site specific BMP's and their implementation; document the development and implementation of multiple recreational use plans for specific high erosion areas; document impacts of wild horses, wildlife, and multiple recreation use on riparian and aquatic habitat” (p. 6-21).
 - These required monitoring components have not been completed as required by our Master Plan and therefore, the analysis is lacking and flawed since the data was minimal and the data quality going into the development of the DEIS was poor.
- “Wildlife and Wildlife Habitat; GOAL: Maintain, improve or mitigate wildlife impacts to habitat in order to sustain viable and harvestable populations of big game and upland game species as well as wetland/riparian habitat for waterfowl, fur bearers and a diversity of other game and non-game species” (p. 6-21).
 - The single species focus on the GRSG does not holistically address the other species that may be impacted by the actions proposed in the DEIS.
- “Declines in both sage grouse and mule deer population numbers have been well documented following peak populations from the 1930s to the late 1960s. Population changes are discussed in the Nevada Wildlife Action Plan, but habitat descriptions in that report do not seem to be scientifically supported. Declines in both species parallel the decline in livestock numbers and the loss of ranch families who lived and worked where their livestock grazed. There are other possible causes of the declines in both deer and sage grouse that include loss of habitat as plant species composition changes and increase in predation... Sage Grouse benefit from spring grazing on meadows prior to the arrival of sage grouse broods, the early grazing improves the sage grouse food supply because the plants that had been consumed are re-growing and very palatable when the sage grouse arrive and insects are also readily accessible for the sage grouse chicks. As livestock and ranching declined there has been an observed increase in predators of...sage grouse. Between about 1940 and 1970, several chemicals were developed and used to control coyote populations in order to protect livestock, and the mule deer and sage grouse also benefited. After the use of chemicals such as 1080 were banned, sheep ranchers returned to trapping or shooting as predator management which continued to benefit wildlife populations. However most Eureka County sheep ranches are no longer in business and the benefit of predator management by those ranchers has been lost. Adult sage grouse are believed to depend on their ability to see predators approaching in order to escape, which is one of the benefits thought to be provided by grazing meadows that are also used to raise sage grouse broods. As discussed in the Society for Range Management paper “Ecology and Management of Sage Grouse and Sage Grouse Habitat” (2006), predation of adult sage grouse has a substantial affect on populations but it has been demonstrated in recent years that depredation of sage grouse nests by common ravens can literally prevent successful reproduction of sage grouse over wide areas” (p. 6-22 and 6-23).

- The failure of the DEIS to analyze and propose actions for proactive management and predator effects is not consistent with our Plan and policies and fails to address the whole of issues at hand with decrease and conservation of GRSG.
- “Realistic and attainable wildlife population goals have as a baseline, the historical observations of wildlife populations at the time of European settlement, which indicate that wildlife populations were generally sparse with very few...sage grouse being observed by early explorers. Archeological interpretations support this scarcity of animals and birds. Wildlife populations at levels of those existing at the time of European settlement is the best that natural Eureka County habitats can provide. Wildlife populations increased in the mid-1900s, following the establishment of ranches and farms, and the continuation of the preferred wildlife populations will require positive management actions in response to local community concerns. Community economic concerns and values will be obtained from the Eureka County Wildlife Advisory Board, Eureka County Natural Resources Advisory Commission, Eureka County Economic Development Board and the Board of Eureka County Commissioners; the voice of Eureka County citizens provides the basis for wildlife and wildlife habitat management investments” (p. 6-24).
 - We find the actions being proposed in the DEIS are at odds with the conditions and population of GRSG that existed before humans actively managed their landscapes in the Great Basin. The DEIS needs to square with this inconsistency and empirical information. The DEIS needs to be based on reality, especially if the protectionist actions are implemented, that wildlife populations at levels of those existing at the time of European settlement is the best that natural Eureka County habitats can provide. Numbers of GRSG increased with active human management based on use and will only be conserved with active human management based on use.
- “Accelerate the planning, approval and completion of multiple-use water developments, rangeland treatment projects and prescribed burns that include objectives for enhancement of ... wildlife habitat. Wildlife developments must be cooperative in nature, respecting the rights and interests of existing resource users” (p. 6-25).
 - On this matter, the DEIS falls short. We have proposed to USFS proactive cooperative measures that meets this objective and respects rights and uses. Our proposals have received no action by USFS and have been completely disregarded. We request more robust inclusion on active developments and projects and a process for streamlining of project approval for projects that are proposed for uses that are designed to benefit GRSG too.
- “Assure that management agencies provide all necessary maintenance of enclosure fences not specifically placed for improved management of livestock” (p. 6-25).
 - Where the DEIS proposes to remove existing fences rather than maintain is inconsistent with our Plan. Properly maintained fences are integral to livestock management and wild horse management.
- “Initiate cooperative studies with willing private land owners, of wildlife depredation and related concerns regarding wildlife habitat on private land” (p. 6-25).
 - The DEIS has a basic omission of working holistically with private land owners to truly benefit the GRSG that use both private and federally administered lands. Instead, the

actions in the DEIS will impact private land and will likely increase pressures on privately held GRSG habitats.

- “Develop records of wildlife losses to predators and support predator control efforts designed to protect specified wildlife species” (p. 6-25).
 - The failure to account for predator control conflicts with this policy.
- “Monitoring: Document the participation of affected parties in the development and establishment of population targets and management guidelines...; document the inclusion of wildlife habitat objectives in activity plans and USFS approved Reclamation Plans; document the location and extent of water developments and vegetation manipulation projects and prescribed fires for wildlife habitat improvement and provide timely notification to all affected parties; periodically monitor range improvement projects, rights-of-way, woodcuts, mining activities, multiple recreation uses, and materials leases, to document habitat improvement or disturbance; document the incidents of wildlife depredation and extent of game animal harvest in designated management areas of both land and wildlife management agencies” (p. 6-26).
 - These required monitoring components have not been completed as required by our Master Plan and therefore, the analysis is lacking and flawed since the data was minimal and the data quality going into the development of the DEIS was poor.
- “Land Tenure; GOAL: Utilize, to the greatest extent possible, agricultural or mining entry, land exchange, and or land sale for disposal of all public lands which by virtue of their size or location render them difficult and expensive to manage and do not serve a significant public need or where disposal will serve important public objectives. Authorize as needed the use of those lands, not currently authorized, for rights-of-way, leases and permits. Fully recognize and protect existing property rights including rights-of-way, easement, water rights, forage rights, mineral rights, and other such property” (p. 6-26); “Eureka County will encourage transfer of non-patented lands to private ownership; Eureka County will discourage transfer of private land to public ownership” (p. 7-8).
 - Many actions in the DEIS are directly antithetical to this goal. Withdrawal of lands already categorized as suitable for disposal, especially in Diamond Valley, is not based on conditions on the ground and severely limits our future community expansion plans and economic development opportunities. It is the definition of arbitrary and capricious to have lands marked suitable for disposal not suddenly not meeting the FLPMA criteria and proposed to no longer be suitable for disposal.
- “Identify and give priority consideration to requests for exchanges or purchases from private land owners with fenced federal range, isolated tracts, or irregular boundary lines” (p. 6-27).
 - Only accommodation for this in the DEIS is for checkerboard lands and only for exchange. This will severely limit opportunities for all stakeholders to create win-win situations for blocking up of land that would also benefit GRSG.
- “Encourage property owners to identify and record existing property rights, particularly those that predate FLPMA. Eureka County recognizes the minimum width of rights of way to be 50 feet on either side of a water conveyance ditch, pipeline, or flume as established under the 1866 Mining Act and further recognizes that the width of rights-of-way established under R.S.2477 to be from 100 feet to several miles wide and limited only by practical conditions. All necessary actions for maintenance of ditches, pipelines, flumes, roads, trails, or other

infrastructure for water conveyance or travel within these rights-of-ways is hereby approved by Eureka County” (p. 6-27).

- The DEIS proposes actions that will severely impair and impede the valid existing rights of Eureka County and many of its citizens. RS 2477 and RS 2339 rights are overlooked and not acknowledged.
- “Seek legal administrative access only through purchase or exchange where significant administrative need exists, construct new roads around private lands where easement acquisition is not feasible, and consider significant public access needs in all land tenure adjustment transactions” (p. 6-28).
 - USFS unilaterally assert jurisdiction on County and private rights-of-way in which they have no authority or jurisdiction. This ranges from road closures and travel restrictions to removal of water conveyances (RS 2339).
- “Locatable Minerals, Fluid Minerals, and Mineral Materials; GOAL: Facilitate environmentally responsible exploration, development and reclamation of oil, gas, geothermal, locatable minerals, aggregate and similar resources on federal lands” (p. 6-28).
 - The blanket rules and actions put forward do not allow for any flexibility to allow for responsible development of these resources. This is especially true regarding the proposals to close areas to mineral entry and/or oil and gas lease. Each project and proposal should be evaluated by its own merits instead of holding every project proponent at bay with one-size-fits-all approaches.
- “The Mineral Leasing Act of 1920 as amended, Geothermal Steam Act of 1970, as amended, the Mining and Mineral Policy Act of 1970, all declare that it is the continuing policy of the federal government to foster and encourage private enterprise in the development of domestic mineral resources. The 1872 Mining Law along with the Mining and Mineral Policy Act of 1970 declares that it is the continuing policy of the United States to foster and encourage private enterprise in the development of domestic mineral resources. The Federal Land Policy & Management Act, reiterates that the Mining and Minerals Policy Act of 1970 is to be implemented and directs that the USFS administered lands are to be managed in a manner which recognizes the nation's need for domestic sources of minerals and other resources. The National Materials and Minerals Policy, Research and Development Act of 1980 restates the need to implement the 1970 Act and requires the Secretary of the Interior to improve the quality of minerals data in land use decision making. The Mining Law of 1866 guaranteed certain rights which allow for orderly and efficient use of the public lands for commerce” (p. 6-29)
 - While valid existing rights are given a nod in the DEIS, the restrictions proposed in the DEIS will indirectly impair and affect the ability of industry to meet the present and future mineral needs of our region and nation.
- In coordination with federal agencies and state and local government planning agencies and in cooperation with interested members of the public, develop a land management mineral classification plan to evaluate, classify and inventory the potential for locatable mineral, oil, gas and geothermal, and material mineral exploration or development, to insure that lands shall remain open and available unless withdrawn by Congress or federal administrative action. To the extent practicable, land with high mineral or oil and gas values shall remain open for economic use” (p. 6-29).

- This coordination and process has not occurred and was not included in the DEIS.
- “Woodland Resources; GOAL: Maintain or improve aspen and conifer tree health, vegetation diversity, wildlife and watershed values through active management of sites with the ecological potential for aspen, pinyon, or juniper woodlands and initiate thinning, removal, or other management measures; unrestricted invasion of Pinyon and Juniper into plant communities that have the ecological potential of rangeland results in loss of wildlife habitat, loss of livestock forage, reduced water flow from springs and streams, and increased soil erosion; plan and implement, where necessary and useful, programs to improve Pinion and juniper woodland health, e.g.: selective fence post and firewood harvesting, or other operations such as green-cuts; plan and implement removal of pinyon or juniper from plant communities that are identified as non-woodland (rangeland) ecological sites and restore the vegetation that is appropriate for those respective sites; document woodland product harvest activities on the BLM and FS administered lands as necessary to promote customary economic use of woodland resources (i.e. pine nuts, firewood, posts, Christmas trees, etc.); plan and implement wildlife habitat improvements and grazing management strategies designed to enhance...pinyon-juniper....; document, report to responsible agencies and ensure mitigating management actions for the occurrence of insects and diseases that threaten the health of woodland resources” (p. 6-31).
 - In large, the failure or inability of the federal agencies to proactively manage PJ according to proper fire cycles and ESD has now pushed the burden to other users of the land to pay the price and face severe regulatory restrictions. We have tried for years to work with USFS to move forward with PJ projects and have been disregarded and downplayed. The DEIS must implement the provisions of our Plan and provide the analysis necessary to achieve large scale removal of encroaching PJ and pair industry utilization of the biomass.
- “Hunting, Fishing, and Outdoor Recreation; GOALS: Provide for multiple recreation uses on Eureka County federal...lands located within its boundaries for residents and visitors to the County. Provide recreational uses including high quality recreational opportunities and experiences at developed and dispersed/undeveloped recreation sites by allowing historic uses and access while maintaining existing amenities and by providing new recreation sites for public enjoyment. Pursue increased public access opportunities in both motorized and non-motorized settings through the acquisition of rights-of-way or easements across federal administered lands.... Recognize that multiple recreation uses are mandated by the multiple use concepts and that adequate outdoor recreation resources must be provided on the federal administered areas; keeping open all existing access roads and the ability to maintain those same roads or accesses; These historically accessed areas include roads, trails, sandwashes, and waterways identified as Revised Statute 2477 rights-of-ways, including those areas where wild horses may be located”
- (p. 6-33).
 - The DEIS proposals will affect hunting, fishing, and outdoor recreation, primarily through impacts to existing rights-of-way and travel restrictions. Neither BLM nor USFS have authority or jurisdiction over RS 2477 rights-of-way.
- Provide for adequate outdoor recreation resources by revising the designated areas to decrease or eliminate limitations and restrictions where the review and evaluation shows

that the limitations and restrictions are no longer appropriate and necessary; plan and establish designated equestrian, foot, and off-road vehicle trail systems for compatible recreational, agricultural, and other multiple uses so that such uses can continue unabated; describe methods of minimizing or mitigating documented use conflicts or damage and define the manner in which each method is expected to accomplish minimization or mitigation. All recreation promotion will include explanation of the contribution of private property owners to wildlife habitat, recreation access, and recreation sites” (p. 6-34)

- These requirements were not followed in the DEIS when outlining measures for management of recreation. The DEIS proposals will affect hunting, fishing, and outdoor recreation, primarily through impacts to existing rights-of-way and travel restrictions.
- “Monitoring: Collect, review and analyze data relating to the demand for recreation use, the impact of the various recreation uses on land values, and any actual conflict or damage caused by each of the multiple recreation uses; in coordination with federal agencies and state and local planning agencies, review all data to determine whether temporary climatic conditions, wildlife activities, or range conditions require temporary or seasonal restrictions or limitations on historic and present recreation uses, and review data to determine the earliest point at which temporary restrictions or limitations can be removed; collect and maintain data obtained during meetings and discussions with recreation users; collect and maintain data obtained from community business owners concerning business contacts, sales, and future expectations from recreationists; collect and maintain records of all management actions taken specifically to meet requirements of the Americans with Disabilities Act (ADA) and maintain records of use and requests for use from ADA eligible individual; investigate, validate and document all user conflicts reported...; ederal agencies.
 - These required monitoring components have not been completed as required by our Master Plan and therefore, the analysis is lacking and flawed since the data was minimal and the data quality going into the development of the DEIS was poor.
- “Wilderness, Wilderness Study Areas (WSA), Areas of Critical Environmental Concern (ACEC), and Other Restrictive Land Use Classifications; GOAL: Seek immediate Congressional designation action on all WSAs and other restrictive land classifications based on Eureka County policy to release these areas for multiple use management and in the interim prevent, minimize or mitigate impairment or degradation of such areas to the extent that Congressional actions are not pre-empted. Provide the amenities promised by wilderness designation through multiple use management that includes dispersed recreation where appropriate and opportunities for solitude” (p. 6-35).
 - The overly-restrictive components in the classification of PPMA, PGMA, and ACECs are inconsistent with our Plan.
- “Existing land uses and pre-existing property rights are described in other sections of this Natural Resource and Land Use Plan. Every area of Eureka County includes pre-existing property rights and existing uses that are best served through multiple use management. Eureka County is committed to the protection of those existing rights” (p. 6-36).
 - The DEIS restrictive land classifications, designations, especially the ACECs, fails to acknowledge and address the impacts to existing rights, primarily water rights, rights-of-way, and mineral rights.

- “As discussed within the Eureka County Master Plan, Eureka County is committed to future development of mining, communication infrastructure, and energy production. Locations for many of the future developments cannot be identified at this time, therefore all currently available land must remain available and not included into Wilderness Areas, Roadless Areas, ACEC, or other restrictive designations” (p. 6-37).
 - The DEIS must build in management flexibility to allow for development of resources of importance and community expansion. Implementation of our plan would allow for this flexibility, reasonable and environmentally sound development, while also conserving GRSG and providing for rangeland health.
- “Provide for optimum scenic value in Eureka County through achievement of vegetation and soils watershed objectives and implementation of nondegrading, nonimpairing range improvement activities, construction, use and maintenance of livestock management facilities, and facilities for public enjoyment of the land” (p. 6-37).
 - The full suite of these de minimis activities is not allowed under the DEIS alternatives.
- “Identify measurable accomplishments or benefits that will be obtained through future designation of restricted use areas; no designation of restricted use areas such as Roadless, ACEC, or others will be completed until it is clearly demonstrated that such designations will not be detrimental to existing property rights, recreation including hunting or fishing, livestock grazing management, wildlife habitat management, County administrative needs, and future mining or energy development” (p. 6-37).
 - These criteria were not followed or met in designation of ACECs and restricted areas/uses in PPMA and PGMA.
- “Monitoring; Track the data obtained from rangeland studies and document the location, pace, and extent, of trends in rangeland vegetation and soil stability; collect data regarding the multiple recreation uses occurring in areas designated or being subjected to potentiality study for special designation such as ACEC or wilderness” (p. 6-38)
 - These required monitoring components have not been completed as required by our Master Plan and therefore, the analysis is lacking and flawed since the data was minimal and the data quality going into the development of the DEIS was poor.
- Evaluation:
- Compare current WSA acres recommendations with those remaining at the end of each decade.
- Determine the extent of change in condition class and trends for watershed uplands and riparian habitat.
- Compare management of released land for compliance with multiple use guidance provided in land use plans for adjacent land and the Federal Land Policy and Management Act.
- “Standards of Conduct; GOAL: Ensure that...federal laws, regulations and policies that affect natural resource and land use are administered in a fair, impartial and ethical manner” (p. 6-39).
 - We assert that the DEIS analysis and proposals for GRSG conservation in the DEIS are not done in a fair, impartial and ethical manner. It is evident that some very extreme environmental groups and non-biased bureaucrats have leveraged tremendous

influence over the DEIS while the State of Nevada Plan and our local plans, policies, and proposals have fallen on deaf ears and were not given much consideration.

- “Law Enforcement; GOAL: Assert the maximum extent of local authority allowed under law in the enforcement of laws limiting use of and access to natural resources on state and federal lands; Authority of the Eureka County Sheriff and his deputies is found at NRS 248. Unless explicitly preempted in authority by state or federal law, the authority of the Eureka County Sheriff shall be assumed to be controlling for any law enforcement action in Eureka County” (p. 6-43).
 - The DEIS proposes restrictions on travel on non-USFS roads and proposes restrictions to the continued use valid existing rights such as RS 2477 and RS 2339. The USFS have no authority or jurisdiction on the prescriptive rights.
- “Federal agents are to provide a clear written authorization that identifies the jurisdiction that both Congress and the U.S. Constitution has provided for the action they are about to take and how that claim of jurisdiction preempts the jurisdiction of a County Sheriff in Nevada. If such documentation is not provided or if it is inadequate, then the federal agent has indicated they do not have the jurisdiction for that proposed law enforcement action” (p. 6-43).
 - The DEIS does not provide clear written authorization and explanation for jurisdiction.
- “Federal agencies, under the authority of FLPMA 43 USC Section 303(1) are authorized to contract with local law enforcement to provide services within the federally administered area: When the Secretary determines that assistance is necessary in enforcing Federal laws and regulation relating to the public lands or their resources, he shall offer a contract to appropriate local officials having law enforcement authority within their respective jurisdictions with the view of achieving maximum feasible reliance upon local law enforcement officials in enforcing such laws and regulations. . . . (2) . . . , Such cooperation may include reimbursement to a state or its subdivisions for expenditures incurred by it in connection with activities which assist in the administration and regulation of use and occupancy of the public lands; FLPMA further states in 43 USC Section 701 (g)(6) of the Session Laws of 1976 in the Savings Provisions: Nothing in this Act shall be construed . . . as a limitation upon the police power of the respective States, or as derogating the authority of a local police officer in the performance of his duties, or as depriving any State or political subdivision thereof of any right it may have to exercise civil and criminal jurisdiction **on the national resource lands**...Similarly, Forest Service officials are directed to cooperate with local law enforcement in 16 USC Chapter 2 Section 480 and 16 USC Chapter 3 Section 551a which limit FS law enforcement and specifically protects the authority and jurisdiction of the local unit of government (again the State, County, and Sheriff)” (p. 6-44).
 - The DEIS proposes to work outside of USFS jurisdiction by implementing law enforcement type actions.
- With respect to agency access to private property or crossing private property, Eureka County requires the following: (1) oral or written permission of the owner or lessor of private property (with evidence of the permission provided to the Sheriff); (2) five day advance written notice from any federal or state agency to the Sheriff of a proposed crossing, said notice to state the following: (a) specific management purpose of the agency for the crossing, (b) the names of federal and non-federal persons to make the crossing, (c) a statement of the

specific status of any non-agency employee particularly those who may be an "interested public" to a specific grazing allotment; (3) if the crossing is by vehicle, the vehicle must be owned by the Government and operated by a government official; (4) if the crossing is on foot, agency employees "must be present and in direct supervision and control" of the persons who are not agency employees; (5) the access must involve no activity on the private property other than movement across it for access to federal land, thus prohibiting inspection, photographing or videotaping of private property.

- It appears that USFS have not been following the Eureka County requirements for access to and across private lands. This is evident in the baseline studies, maps, and analysis that has specific information related to private lands.

Notification of Inconsistencies with State and Local Plans and Laws (40 CFR 1506.2(d))

The requirements of 40 CFR 1506.2(d) are somewhat different than those under 40 CFR 1502.16(h). In 40 CFR 1506.2(d), USFS is required "discuss any inconsistency of a proposed action with any approved...local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law."

Since the discussion on conflicts (and by extension, inconsistencies) with plans and policies has already been discussed above, we focus here on inconsistencies with State and local laws.

As we already pointed out, Eureka County policies outlined in the Master Plan have been formally adopted as local law by being codified in the County Code. USFS must consider these same items conflict with plans and policies as also inconsistent with local law. Additionally, the following is from our County Code Title 9, in which the same inconsistencies and conflicts highlighted above must be reconciled in the DEIS alternatives and analyses. Areas of conflict and inconsistency or which USFS must pay particular attention are emphasized.

Eureka County Code, Title 9

.020 Purpose - The purpose of this Chapter is to (1) guide County policy with respect to natural resource issues facing Eureka County, (2) ***provide a framework to guide federal agencies in land use planning*** on federal lands as per the National Environmental Policy Act of 1969, the Federal Lands Policy and Management Act of 1976, the National Forest Management Act of 1976, the Threatened and Endangered Species Act of 1973, and other applicable laws and executive orders, and (3) ***safeguard property rights and other customary usage rights of the citizens of Eureka County***, the State of Nevada, and the United States against any and all encroachments upon those rights by individuals, groups, corporations, public agencies, non-governmental organizations, or any other entity which may attempt to take private property, trespass upon private property or infringe upon other customary rights as have been established by the constitutions, laws and customs of the United States, the State of Nevada, and Eureka County. This title is meant to complement and supplement the constitutions and laws of the United States, the State of Nevada, and Eureka County with additional means of protection and enforcement. This Chapter is not intended to create new rights nor is it intended to in any way supplant the lawful authority of individuals, groups, organizations,

corporations, governments or other entities which act pursuant to the laws of constitutions of the United States, the State of Nevada, and Eureka County.

.030 Adoption of the Eureka County Natural Resources and Land Use Plan

A. Holding that the American ***people are best served when government affairs are conducted as closely to the people as possible (i.e., at the County level)***, the citizens of Eureka County, through the Eureka County Board of Commissioners, adopt the Eureka County Natural Resources and Land Use Plan as provided in this chapter.

B. The ***Eureka County Natural Resources and Land Use Plan shall serve as the primary guide for the use and management of all natural resources and state and federal lands within Eureka County.***

.040 Custom and culture

A. Since the time that aboriginal peoples inhabited what is now Eureka County, local custom and culture has revolved around ***beneficial use of natural resources***. Aboriginal peoples harvested native plants, animals and geologic material to provide nearly all the raw material for their tools, shelter and sustenance. What was not found locally was traded with other communities in and around the Great Basin. In similar fashion, early European miners, ranchers and farmers lived largely within the bounds of what they could obtain from the natural environment.

B. With the early gold and silver finds in the mid-1800s came Cornish and Irish miners, Italian charcoal burners (Carbonari), Germans, Swiss, French, Russians, Chinese, and others contributing to mining and support industries, and defining the early custom and culture of Eureka County. The signing of the Treaty of Guadalupe-Hidalgo in 1848 concluded the Mexican-American War and enlarged the borders of the United States to include what is now Eureka County. Upon ratification of the Treaty, the United States acquired and managed this territory as sovereign and proprietor under the Property Clause of the U.S. Constitution. ***Legal traditions of property rights that existed under Mexican law prior to the establishment of Nevada as a Territory of the United States remain intact today as they are consistent with the U.S. Constitution and laws of the United States. Prior existing property rights including, but not limited to water rights based on the doctrine of prior appropriation, forage rights based on the ownership of water rights and land, rights-of-way, and ownership of real property, are explicitly preserved by all federal land laws. Preservation of these rights demonstrates their importance to the custom, culture and economy of Eureka County and the west.***

C. The burgeoning mining camps brought Basque sheepmen who ran sheep in most of the mountains and valleys in Eureka County. On their heels came cattlemen and other settlers who, with the help of the 1877 Desert Lands Act, the Act of 1888, the Act of 1890, the 1891 Creative Act, and the 1916 Stock Raising Homestead Act, established privately-owned base properties to support permanent range livestock operations and farms. Competition among livestock interests resulted in the passage of the 1925 Nevada Livestock Watering Law. A component of this law, locally known as the Three Mile Rule, made it a misdemeanor for a stockman to allow his animals to graze within three miles of a watering site owned by another stockman. The federal government responded to disputes among stockmen and over-use of the federal ranges by passing the 1934 Taylor Grazing Act. The Taylor Grazing Act superseded Nevada's Livestock Watering Law; however, it did not extinguish any prior

existing property rights. These property rights withstanding, the Taylor Grazing Act gave the Secretary of the Interior broad discretion to manage public land through rules and regulations and provided that all future grazing on public land be allowed only via grazing permits. The system of management adopted by the Secretary of Interior under the Act provided for (1) adjudication of federal ranges, (2) issuance of revocable licenses with preference given to existing grazers owning commensurate base property, and (3) establishment of Grazing Districts. Graziers in Eureka County and Elko County established the N-1 Grazing District in 1935. Graziers in Eureka County, Lander County, and Nye County established the N-6 Grazing District in 1951. Early efforts of the State of Nevada to preserve customary grazing rights (e.g., 1925 Nevada Livestock Watering Law) and recognition of these rights by subsequent federal laws (e.g., TGA, FLMPA, and PRIA) demonstrate the importance of livestock grazing to the region's custom and culture. ***The continued importance of livestock grazing and impacts of federal lands management decisions to citizens of contemporary Eureka County is reflected in establishment of the Eureka County Public Lands Advisory Commission in 1994 and the Eureka County Department of Natural Resources in 1995.***

D. Commensurate with development of arable land and distributed water in Eureka County, ***livestock numbers grew steadily until their peak in the 1940s and 1950s. With these changes came increased wildlife.*** Populations of mule deer increased across the state until they peaked in the 1940s and 1950s. Similar trends are observed for sage grouse. ***Downward trends in these wildlife species, beginning in the 1960s, are commensurate with declines in permitted livestock on federal ranges and continues into the present decade.***

E. ***Access to resources on federal lands and the right to pass uninhibited across federal lands are important historical components of the Eureka County's custom and culture.*** In 1859 Captain James Simpson of the U.S. Corps of Topographical Engineers surveyed the Simpson Wagon Road north of present day Eureka to supplant the earlier-established and longer Humboldt Route. In 1860 the Simpson Route was established as the Pony Express Trail. The 1866 Mining Act and the 1897 Reservoir Siting Act, protected miners, ranchers and others to whom access to federal lands was the basis of their livelihood. The portion of the 1866 Act codified as Revised Statute 2477 provided simply that "[t]he right-of-way for the construction of highways over public land, not reserved for public uses, is hereby granted." Although Revised Statute 2477 was repealed by the Federal Land Management and Policy Act of 1976, ***miners, ranchers, hunters and fishermen still use these early rights-of-way and rely on Revised Statute 2477 to protect their economic welfare and recreational opportunities.***

F. Water rights in Eureka County date back to the mid 1800s. Early miners, ranchers and farmers established surface water rights through the ***common law doctrine of prior appropriation.*** The State of Nevada codified this doctrine for surface water in 1905 and extended the law to ground water in 1939....

G. ***Farming has been an important component of Eureka County's industry since the early days of land settlement.*** Farming was limited to native sub-irrigated meadows and lands irrigated by diverted surface water until supplemental flowing wells were drilled on the Romano Ranch in 1948 and the Flynn Ranch in 1949. In 1949 two irrigation wells were drilled in Diamond Valley in an effort to develop land under Desert Land Entry. By the mid 1950s, pumped irrigation wells were being developed in southern Diamond Valley, Crescent Valley and Pine Valley. By 1965, some 200 irrigation wells had been drilled in Diamond Valley alone. Today, Eureka County's farming districts support a robust grass, alfalfa and meadow hay industry.

H. While standards of living have changed dramatically since the mid-1800s, **miners, ranchers and farmers remain the core of the Eureka County community.** The shift from strictly local food hunting and fishing to sport hunting and fishing and other natural resource recreation activities has added a small, but viable, recreation and tourism component to the County's natural resource-based culture. **Custom and culture of today's Eureka County citizens remain steeped in their mining, farming and ranching heritage. Eureka County is and will ever be dependent upon natural resources for its economic existence.**

.050 Community stability

A. **Economic and social stability of Eureka County are inseparably tied to the use of natural resources. Over ninety percent (90%) of the County's employment is in the Natural Resources and Mining sector (including agriculture). Mining presently contributes the major portion of the County's personal income and tax revenue stream; however, the "boom and bust" nature of the mine activity periodically brings farming, ranching and agricultural services back to the forefront of the economy. When mining activity lulls, the community relies on its other traditional industries to maintain its viability.**

B. State and federal lands make up eighty-one percent (81%) of Eureka County's land area. Given (1) that the community's viability remains largely dependent on business and recreational activities conducted on or in concert with state and federal lands and (2) that many of these activities are inseparably tied to the economic viability of private lands in Eureka County, **the community remains particularly sensitive to state and federal planning decisions.**

C. Community stability in Eureka County is a **sympiosis between the small private land base and the much larger federal land base.** Private property interests in minerals, water, forage, rights-of-way and other natural resource attributes of federal lands enhance social and economic values of Eureka County's private lands. **Reductions in the private land base or erosion of private property interests in federal lands,** including, but not limited to real property, personal property and mixed property; split estates, easements, rights-of-way, mineral rights, water rights and customary usage rights; fee interest, tenancy and possessory interest, **adversely affect the social and economic stability of the County.**

D. **Certain provisions in a number of federal laws,** including the Federal Land Policy and Management Act of 1976, the Public Rangelands Improvement Act of 1978, the Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act), the Threatened and Endangered Species Act of 1973 and the Wild Horse and Burro Protection Act of 1971, **have spawned sweeping changes to federal land policy that have proven detrimental to economic and social stability in Eureka County.... The threat of listing sage grouse,** other wildlife and plant species under the Threatened and Endangered Species Act **may severely limit economic and recreational use of private, state and federal land in Eureka County, particularly where such listing occurs without adequate peer-reviewed scientific analysis.**

E. As the previous observations attest, **stability of the Eureka County community,** its industries, commerce, schools, health care, police protection, and other services, **rests squarely on (1) protection of private property rights, (2) sound and balanced management of natural resources, and (3) continued multiple-use and economic-use of state and federal lands.**

.060 Primary planning guidance

A. Private property and property rights. Where the Board of Eureka County Commissioners determines that it is in public interest of the citizens of Eureka County, ***Eureka County will evaluate state or federal actions related to private property and private property interests, including investment backed expectations.*** The County will use as its primary guidance the Fifth Amendment to the United States Constitution, which prohibits the taking of private property for public use without just compensation. The County will also pursue the principles of Executive Order 12630 which requires federal agencies to prepare a Takings Implication Assessment prior to initiating any action, issuing any rule, or making any decision which would constitute a taking of private property or private property interest, including investment backed expectation.

B. Tax base. ***It is critical to the welfare of the citizens of Eureka County that the Board of Eureka County Commissioners pursue a stable source of tax revenue based on economic use of natural resources.*** In order to build a broad tax base, the County supports privatizing certain state and federal lands for commercial, residential, industrial and agricultural and mining uses. In the face of considerable reductions in Ad Valorem tax revenues caused by transfer of private land to public ownership, Eureka County maintains a policy of no net reduction in Ad Valorem taxes related to land tenure changes unless the reductions are adequately mitigated by agreement with the Board of Eureka County Commissioners after public hearing. In addition, Eureka County promotes the concept of split-estate taxation wherein the various components of an estate in real property are taxed as a function of their relative value rather than being accrued only in the surface estate.

C. Water resources.

1. Eureka County affirms ***support for the doctrine of prior appropriation*** as established by state law; that the right to appropriate water is a compensable property right available to individuals and municipalities. ***Ownership of the right to use water has, as key principals, those provisions set forth in Nevada Revised Statutes 533.0010 through 533.085, including, but not limited to, first right, first use, beneficial use, and point of diversion.***

2. Eureka County ***promotes private development of water resources on state and federal land*** for beneficial use in Eureka County, including, but not limited to geothermal reservoirs, power generation, municipal water supplies, irrigation and stock water.

5. Eureka County will work to maintain its water resources in a condition that will render it useable by future generations for the full range of beneficial uses that further a viable and stable economic and social base for its citizens....

E. Mining. ***It is critical to the welfare of the citizens of Eureka County and the nation that mining on state and federal lands remains an open and free enterprise.*** Eureka County upholds the tenet that mining claims are compensable property belonging to individuals or groups of individuals. Eureka County supports: 1. Retention of and compliance with the 1872 Mining Law as amended; 2. Mine reclamation activities as per Nevada Revised Statutes Chapter 519A; 3. Streamlining of the permitting process 4. Reasonable bonding requirements that promote small business investment in mine exploration, development, and reclamation; 5. Use of the best available science and technology to ensure adequate protection of land, air, and water resources;

F. Agriculture. Eureka County **recognizes (1) the importance of agriculture to the stability of the local economy and (2) the historic and contemporary influence of agriculture on the community's custom and culture.** Farms and ranches have played and continue to play a fundamental role in the social and economic well-being of our County. **Eureka County recognizes that increasing regulatory pressures are reducing the viability of farms and ranches. In order to reverse such trends, Eureka County supports, encourages and promotes policies that will lead to the long-term economic strength of family farming and ranching.**

1. With respect to farm production, Eureka County supports:

- a. private investment in and ownership of agriculturally productive land;
- b. economically and scientifically sound agricultural practices;

c. **coordination and consultation of state and federal conservation, wildlife and planning activities with local farm organizations and Eureka County.**

2. With respect to livestock production and federal lands, Eureka County supports:

- a. **private investment in and private ownership of range improvements and water developments;**
- b. **economically and scientifically sound grazing practices;**
- c. **increasing grazing capacity and other economic incentives to promote private investment in range improvements including, but not limited to, fencing, seeding, water development, improved grazing systems, brush control, pinion/juniper eradication, proper fire management and noxious weed control;**

d. **restoring Voluntary Non-Use AUMs and suspended AUMs to active preference;**

e. a grazing fee formula that accounts for all non-fee costs of producing livestock on state and federal land;

f. subleasing of grazing rights;

g. **multiple-use concepts;**

h. **active management of range resources by permittees rather than by public agencies;**

i. **limiting the role of public agencies to monitoring range condition as per the 1984 Nevada Rangeland Monitoring Handbook and determining compliance with applicable laws;**

j. **coordination and consultation of state and federal conservation, wildlife, land management and planning activities with permittees, local livestock organizations and Eureka County.**

G. Wildlife. **Management of wildlife**, including fish, game animals, non-game animals, **predatory animals, sensitive species, Threatened and Endangered Species**, under all jurisdictions whatsoever, must be grounded in peer-reviewed science and local input. **Wildlife management plans must identify and plan for mitigation of negative impacts to local economies, private property interests and customary usage rights.**

1. Eureka County **supports wildlife management that:**

a. **is responsive to the County Wildlife Advisory Board, the Natural Resources Advisory Commission, and the Board of County Commissioners;**

b. enhances populations of game and non-game species native to Eureka County;

c. recognizes that enhancing non-native game and non-game species may negatively impact native species and rangeland and forest ecosystems;

d. **increases wildlife numbers where practicable and not in conflict with existing economic uses or ecosystem health;**

e. **avoids managing wildlife at population levels that exceed those reported in historical records and established by peer-reviewed scientific investigation;**

- f. recognizes that large game animals compete for forage and water with other economic uses;
 - g. recognizes that federal agencies are mandated to maintain or improve conditions on federal forests and ranges;
 - h. recognizes that wildlife damage mitigation may encumber existing interests and properties to future damages.
2. ***Eureka County will actively participate in wildlife management decisions that affect the welfare of its citizens via state wildlife planning efforts and county, state and federal land use planning. Eureka County will work to ensure proper implementation of wildlife plans.***
 3. Eureka County is ***adamantly opposed to listing any species of wildlife under the Threatened and Endangered Species Act unless the highest level of scientific rigor (i.e., peer-reviewed research based on publicly accessible data sets and methodology) demonstrates that the species warrants listing. The County shall consider all reasonable actions to avoid listings under the Threatened and Endangered Species Act, including, but not limited to, state and local conservation planning and legal recourse.***
 4. ***To maintain agriculture*** as a productive part of the local economy and to enhance the environment for ecologically and economically important wildlife, ***Eureka County supports sound predator control programs.***
 5. Eureka County generally opposes the introduction, gradual encroachment and institutionalization of wildlife not native to Eureka County.
 6. Eureka County recognizes that ***the Bureau of Land Management is mandated by Congress to manage all multiple-uses of federal lands, including wildlife, in a manner that maintains or improves the conditions of federal ranges.*** The County will pursue federal intervention in wildlife management situations in which range conditions are inadequately protected.

H. Recreation. ***Recreation is important to the citizens of Eureka County.*** The unique outdoor recreational opportunities found in Eureka County are many of its greatest assets. Eureka County values the opportunity and freedom these lands provide and encourages balanced management goals that include hiking, camping, wildlife viewing, and other outdoor recreation activities. ***Eureka County strongly advocates the rights of recreationists to continued lawful access to public lands.***

I. Utility rights and public consumption. As per 43 U.S.C., Sec. 315(e), Eureka County supports ***individual citizen's acquisition of rights-of-ways for roads, ditches, pipelines, canals, power lines, telephone lines and stock driveways. Eureka County adamantly supports the protection of vested rights that may limit other uses of state and federal lands. As per 43 U.S.C., Sec. 315(d) Eureka County recognizes rights of local citizens to utilize natural resources for personal consumption (e.g., firewood, posts, sand, gravel, etc.).***

J. Land disposition and land tenure adjustments.

1. Eureka County will ***respect and uphold private property interests*** in land, including, but not limited to, land patents, mining claims, easements, rights-of-way, and forage rights.
2. Eureka County ***maintains a no-net-loss policy with respect to private land and private property rights***, and is opposed to public acquisition of private property, except where the acquisition is a) clearly in the public interest of the citizens of Eureka County and b) appropriately mitigated in value and in land area by transfer of property from the public domain to private ownership. Determination

that such a transaction is in the public interest of the citizens of Eureka County and that proposed mitigation is appropriate shall be determined by the Board of Eureka County Commissioners after proper public hearing.

3. Eureka County recognizes that the ***imbalance of the private/public land ownership inhibits new economic activity in Eureka County and is detrimental to Eureka County's long-term viability***. The County encourages state and federal agencies to ***aggressively pursue land disposal*** to the maximum extent allowed by law. State and federal land transfers to local governments will be given priority consideration in any disposal of state or federal land.

4. ***If any public entity intends to acquire an estate in land, water, minerals, forage or any other private property in Eureka County, the proposed acquisition shall first be presented to the Board of Eureka County Commissioners. The Board shall determine likely impacts to the County's human and natural environment and render an opinion about the suitability of the acquisition.***

K. Riparian habitat and wetlands.

1. ***Riparian areas and wetlands are critically important to well-balanced and productive rangeland ecosystems.*** Eureka County encourages consultation, cooperation and coordination as provided under Section 8 of the Public Rangelands Improvement Act of 1978 for riparian areas and wetlands under the jurisdiction of a federal agency.

2. The bulk of riparian areas and wetlands in Eureka County exist on private ranches and farms. ***Eureka County supports retaining riparian areas and wetlands in private ownership*** by improving the economic environment for the ranching and farming community.

L. Wilderness, wilderness study areas, parks and refuges. To the extent that multiple-use of federal lands is vital to the economy of Eureka County, the County is opposed to the designation of any Wilderness Areas or Wilderness Study Areas within its geographic boundaries. The County calls for removal of Wilderness Study Area designations and re-introduction of active stewardship of these lands that do not meet the suitability criteria of the 1964 Wilderness Act. ***Eureka County demands local input and decision-making in the designation and management of parks, refuges, Areas of Environmental Concern, roadless areas or any other legislative action, regulatory decision or policy that limits access to or use of federal land or resources within the geographic boundaries of the County.***

M. Wild horses. Eureka County recognizes that horses, protected under the Wild Free-Roaming Horse and Burro Act of 1971, are properly classified as feral animals. The County recognizes that in passing the Wild Free Roaming Horse and Burro Act, ***Congress failed to account for prior adjudication of the nation's public ranges, thereby disenfranchising livestock grazers and wildlife of existing forage allocations without compensation.*** The County recognizes that the Department of Interior is mandated by Congress to manage Wild and Free Roaming Horses in a manner that is consistent with legislative intent and will hold the agencies accountable under all applicable laws. ***Poor management of feral horse herds has resulted in sustained over-population of horses in Eureka County.*** Over-population has caused long-term damage to range vegetation and water sources, and has resulted in starvation of horses during periods of drought and severe winters. Eureka County encourages federal legislation and policies that promote scientifically-sound and responsible management of feral horse herds. Eureka County advocates economically beneficial uses for feral horses and advocates public

sale of excess horses. The County opposes the cost-ineffective policy of long-term pasturing for excess horses where the policy conflicts with the stated intent of the 1971 Wild Free-Roaming Horse and Burro Act to manage horses "...in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands."

N. Access. ***Eureka County supports the right of public access through state and federal lands inasmuch as access does not conflict with private property rights*** (as per the Eureka County Public Roads Resolution of March 7, 1994).

O. Pinyon and juniper control. Eureka County encourages active management of pinyon/juniper woodlands and removal of woodlands where they exist at unhealthy densities and beyond their historic range. ***Eureka County supports economic use of these resources.***

P. Wildfire. Eureka County ***supports the right for local citizens to protect their property from fires originating on state and federal lands. The County advocates active fire management on federal lands***, including, where appropriate and in consultation with grazing permit holders, adjacent landowners, local volunteer fire fighters and Eureka County, a let-burn policy. The County is ***opposed to arbitrary and inequitable restriction of post-fire land use for recreation and livestock grazing. The County insists that all post-fire land use restrictions be adequately justified and based on peer-reviewed science.***

Q. Other federal land use regulations. ***Many land use regulations have the potential to adversely impact Eureka County's economy. Eureka County mandates involvement in all federal actions that may impact the local economy according to this Title.***

Chapter 40 - COOPERATIVE PUBLIC LANDS MANAGEMENT

.010 Findings of fact

The Board of Commissioners of Eureka County, a political subdivision of the State of Nevada, finds as follows:

A. The government of the United States of America exercises ***control over 2,100,000 acres (eighty-one percent) of the land*** and the majority of natural resources within the geographic boundaries of Eureka County;

B. ***Decisions governing federal lands in Eureka County have a history of negative impact*** on the interrelated heritage of cultural, environmental and economic well-being and stability of County residents;

C. The Congress of the United States has expressed intent, codified in 42 U.S.C. §4331, to act in cooperation with County governments while using all practicable means to create and maintain conditions on federal lands allowing for productive harmony between man and nature while fulfilling the ***social, economic, environmental and cultural requirements of present and future generations;***

D. The efforts of Congress seeking to ***coordinate federal plans with County government***, maintaining a balance between population and resources, and encouraging high standards of living and a wide sharing of life's amenities, as contemplated by 42 U.S.C. §4331(b)(5), can be enhanced by:

1. **Increasing cooperation between Eureka County, State of Nevada, and those federal officials** involved with the administration of federal lands situated within the County; and
2. **Full consideration by the Federal Government of the needs of Eureka County citizens** who will be directly or indirectly impacted by federal agency decisions regarding the use of federal lands and the management of water, fish and wildlife in Nevada;

E. There now exists a substantial and **urgent need to increase the involvement of Eureka County in the management of federal lands** and in the development of criteria that are meaningful in any decision-making process, as contemplated by 43 C.F.R. Section 1610.3-1(a), Section 1610.3-1(b), Section 1620.3-2(a); 36 C.F.R. Ch. II, Section 219.7(a), Section 219.7(c), Section 219.7(d).

.020 Procedures adopted

Based upon consideration of the findings set forth in section .010 of this chapter, Eureka County adopts the following procedures to ensure that there is full and complete disclosure and cooperation by federal entities to the County regarding decisions affecting federal lands located within the County and, reciprocally, that federal entities be made aware of the impact of their actions and decision-making on the interrelated heritage of cultural, environmental and economic well-being and stability of the County. The adopted procedures apply to all decisions undertaken by any agency, department or other federal entity including, but not limited to, the Department of Interior, Department of Agriculture, Environmental Protection Agency, Department of Defense, or Department of Energy (hereinafter known as "federal entities") that do or will have a direct or indirect impact on federal and private lands within the geographic confines of the County.

.030 Specific procedures

A. That the County government of **Eureka County demands, pursuant to adopted federal statutes and regulations, full and complete notice and opportunity for involvement in the decision making processes of the federal entity** that:

1. are being taken or are being **proposed to be taken regarding federal lands** located within the State of Nevada,
2. involve listing, de-listing, classification or reclassification of a threatened or endangered species or any **designated habitat within the County**, or
3. **involve any major federal action** significantly affecting the quality of the human and natural environment within the County;

B. That **failure of federal entities to afford Eureka County complete notice and opportunity for involvement beyond that afforded individuals**, or to limit State and County government involvement, input to or comment at public hearings, **is presumed to be prejudicial** to the government of Eureka County and its residents, and that the Board of Eureka County Commissioners

is authorized and empowered by this chapter to authorize and instruct the Eureka County District Attorney to seek redress for such prejudice in the federal courts and through administrative hearings;

.040 Presumption of negative impact

If implementation of a habitat designation or other federal policy or practice over federal lands located within the geographic boundaries of this County:

- A. ***causes alteration of present County land use regulations without such changes having been initiated voluntarily by the County*** and
- B. ***makes it unfeasible for existing, lawful businesses to continue their current operations, then the proposed federal action will be presumed by the County to create a negative impact on the interrelated environmental, cultural and economic well-being of this County and its residents, and not to be a preferred alternative acceptable to the County as it relates to resolving the environmental and other concerns of the federal entities.***

Chapter 50 - PUBLIC ROADS

.010 Declaration of policy and intent

A. Eureka County, a political subdivision of the State of Nevada, ***holds title, as trustee for the public, to all public roads, trails, pathways, traces, highways, byways, and similar public travel corridors situated in the County***, of every kind whatsoever, except for State and federal highways, however such roads may have come into being. Title to those roads commonly known as R.S. 2477 roads, irrevocably granted to the public by act of congress (Mining Law of 1866), is held in trust by the County as the unit of government closest to the people.

B. The County will:

1. ***Protect and defend against all interference the right of the public to travel and use the public roads within the County;***
2. ***Oppose closure of any public roads*** except as authorized by this chapter; and
3. ***Maintain the public roads by conventional or other appropriate*** means, as from time to time authorized by the Board of County Commissioners, or designate certain public roads as roads to be maintained only by passage and use without liability to the County, as permitted by Nevada Revised Statutes.

.020 Definitions as used in this section

Construction means the establishment of a road by mechanical or other means, including repeated use.

County road means any public road situated within Eureka County, except for designated State and federal highways; also, any road maintained by the County for County purposes which is not open to the public.

Highway - Modern usage: Any state or federally designated road, usually paved or graveled; or Traditional (R.S. 2477) usage: Any road, trace, trail, canal, navigable waterway, or other route used by humans for travel by wheeled vehicle, horseback, foot or boat, or otherwise. This definition applies to all highways established across public lands pursuant to the Mining Law of 1866 (R.S. 2477) between the enactment of the statute in 1866 and its repeal by the enactment of the Federal Lands Policy Management Act (FLPMA) in 1976.

Maintenance means construction, reconstruction and repair of a road by mechanical or other means, **including repeated use.**

Public road means any road open to travel by the general public. The term includes, without limitation, roads (1) on land held in fee simple absolute by the County, (2) on easements across land held or claimed by others, (3) pursuant to express or implied permit or license on lands held or claimed by others, (4) canals or navigable waterways. **Roads established pursuant to the grant of right-of-way by the Mining Law of 1866 (R.S. 2477 roads) are public roads.**

Right-of-way means the entire fee, easement or licensed or permitted area for a road; the traveled way, together with such adjoining land as may be required for construction or maintenance of a road.

Road means any highway (traditional usage), road, trail, trace, footpath, canal, navigable water, or other route, whether constructed or created by repeated use, when used by humans for transportation by wheeled vehicle, horseback, foot or boat, or otherwise.

.040 Interference with travel

It is a misdemeanor, punishable as provided for misdemeanors in the Nevada Revised Statutes, for any person to interfere with the right of the public to travel the public roads, except:

A. Public roads may be closed temporarily by the Board of Commissioners for reasons of public safety, and the County Sheriff and/or director of emergency management may effect temporary closures for reasons of public safety pending an emergency meeting of the Board of Commissioners to ratify such closure.

B. Public roads may be closed permanently by the Board of Commissioners only after thirty (30) days notice of intent to close and a public hearing on the proposed closure.

C. The Board of Commissioners may grant temporary exclusive licenses to use, or place lesser restrictions on the public use of, a public road to accommodate mining activity; provided, (1) an alternate route offering reasonable public access to the areas served by the public road is provided at the licensee's expense, (2) the licensee maintains the public road and returns it to the County at the conclusion of mining activity in as good or better condition than at the time of licensing, (3) thirty

(30) days' notice is given of intent to temporarily limit use of the public road for mining activity and calling a public hearing thereafter on the proposed limitation(s).

D. The Board of Commissioners may grant temporary exclusive licenses to use a public road or highway to accommodate short-term special events such as parades, races, walkathons and similar activities.

.050 Public authorized to maintain roads

The public is authorized to maintain, by use or by mechanical means, public roads which are not regularly maintained by the County. The public is not authorized to reconstruct or reroute a public road outside its original right-of-way.

Inconsistency with NRS 540.011

As noted above and repeated here, NRS 540.011 recognizes “the important role of water resource planning and that such planning must be based upon identifying current and future needs for water. The Legislature determines that the purpose of ... water resource planning is to assist the State, its local governments and its citizens in developing effective plans for the use of water.” The DEIS alternatives will diminish our ability to develop “effective plans for the use of water” especially related to future needs many years into the future but while the mine will be operating (i.e., nearly 50 years) and is therefore inconsistent with the declaration of the Nevada Legislature in NRS 540.011.

Inconsistency with NRS 278.243 and 278.246

NRS 278.243 states that a “A...county whose governing body has adopted a master plan pursuant to NRS 278.220 may represent its own interests with respect to land and appurtenant resources that are located within the...county and are affected by policies and activities involving the use of federal land.” NRS 278.246 empowers the County to “bring and maintain an action...before any federal agency, if an action or proposed action by a federal agency or instrumentality with respect to the lands, appurtenant resources or streets that are located within the...county impairs or tends to impair the traditional functions of the...county or the carrying out of the master plan.”

Eureka County has adopted a master plan pursuant to NRS 278.220 and is therefore empowered to represent its own interests regarding the DEIS alternatives “involving the use of federal land.”

Also, the DEIS alternatives “impairs or tends to impair the traditional functions of the...county or the carrying out of the master plan.”

USFS must document in the EIS that since we have represented our own interests in the process, there has been a failure to bring the alternatives in compliance with our represented interest through honoring of the County’s plans, policies, requests and proposed measures and the DEIS alternatives

“impairs or tends to impair the traditional functions of the...county or the carrying out of the master plan.” However, we believe these inconsistencies can be diminished or removed altogether by USFS coordinating with Eureka County to implement our plans and policies and reach consistency as required.

Record of Decision Must Explain USFS’s Decision to Override Plans and Policies

We request that after USFS coordinate with Eureka County to reach consistency with our plans and policies that there is an inclusion of discussion of remaining conflicts and inconsistencies in the Record of Decision as required and outlined in CEQ FAQ 23c: “In the Record of Decision, the decisionmaker must explain what the decision was, how it was made, and what mitigation measures are being imposed to lessen adverse environmental impacts of the proposal, among the other requirements of Section 1505.2. This provision would require the decisionmaker to ***explain any decision to override land use plans, policies or controls for the area***” (emphasis added).