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First name: Wayne F.

Last name: Butts

Organization: Custer County, Idaho

Title: Commissioner Chairman

Comments: Please find the attached letter. We appreciate the opportunity to comment.

CUSTER COUNTY COMMISSIONERS

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September 25, 2019

USDA Forest Service

Attn: Objection Reviewing Officer- Chris French 210 14th Street, SW, EMC-PEEARS, Mailstop 1104 Washington, DC 20250

RE: Custer County, Idaho Objections Regarding the Greater Sage-grouse Draft Record of Decision (ROD) and Land Management Plan Amendment (LMPA) for National Forest System Land in Idaho

Thank you for the opportunity to review the August 2, 2019 Greater Sage-Grouse US Forest Service's Draft Record of Decision (R.O.D.) and Land Plan Management Amendment (LMPA) for Idaho as well as other supporting information.

Custer County submitted timely comments throughout the NEPA process, starting in 2013. They also provided scoping comments and participated in meetings during the planning process. All previous comments submitted by Custer County on this subject matter are herein incorporated by reference.

Custer County herein submits objections to the referenced R.O.D. and LMPA. Custer County is an authorized local governmental entity under the law. The specific objections contained in this letter relate to previously submitted comments regarding the proposed activity per 36 C.F.R. 218.8(c)&(d). This objection letter has been submitted within the 60-day objection period as required by 36 CFR 219.52 (c)(5) and 219.56(b).

Custer County Commissioners commend the US Forest Service in relation to their use of our previous comments as well as comments of others to improve the livestock grazing portion of the documents. We also commend the agency for removing some of the more onerous conditions including sage-grouse focal areas and net conservation gain language. Though these changes were needed and are appreciated, we still object to several parts of the R.O.D and LMPA.

We believe that the agency is still not following the NEPA requirement that they include local governments in their planning processes. Instead, whether it was personalities, or the "big government knows best" attitude, US Forest Service personnel failed to use an interdisciplinary approach on each issue listed below. That failure

resulted in the exclusion of the voice of Custer County on critical NEPA issues.

Custer County also believes the US Forest Service failed to use scientific information that is consistent with the standards of the Information Quality Act (44 USC 3516) (see definitions of Quality, Objectivity, Utility, and Integrity) and failed to have the information verified by local agencies.

Custer County is unique in that agencies of the State of Idaho, USFS and BLM manage approximately 97 percent of the land in the County leaving only 3 percent of the land in private ownership. The economy of Custer County is dependent upon productive ranching, farming, mining, logging, and recreational industries.

The plan amendment and draft R.O.D., if implemented as currently written, will have significant adverse effects on the economic wellbeing of Custer County, Idaho and its constituents. These impacts were not analyzed during the NEPA process, though Custer County repeatedly, since 2013, provided the US Forest Service with detailed information about the harms.

As noted in the Custer County Sage Grouse Management Plan (2013), Attachment 1. "Since 1971, the sage grouse population has remained the same or increased steadily making the Custer County population of sage grouse one of the most stable in Idaho." The extreme measures proposed in the LMPA/DEIS are not necessary in Idaho, especially Custer County.

As required by 36 CFR 219.54(c) this Custer County, Idaho Objection Letter includes:

1. The objector's name and address along with a telephone number or email address:

Custer County, Idaho - As a Local Governmental Entity Represented by Custer County Commissioners, Wayne Butts, Chair Custer County Courthouse

801 E. Main Avenue PO Box 385

Challis, ID 83226-0385

Email Lura Baker at lbaker@co.custer.id.us Tel: (208) 879-2360

2. Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the objection)

Wayne F. Butts, Custer County Commissioner

3. Identification of the lead objector, when multiple names are listed on an objection. The Forest Service will communicate to all parties to an objection through the lead objector. Verification of the identity of the lead objector must also be provided if requested:

Custer County Commissioners, Wayne F. Butts, Chair for Custer County, Idaho

4. The name and State of the forest plan amendment being objected to, and the name and title of the Responsible Official:

Idaho

Nora Rasure Regional Forester Intermountain Region

5. A statement of the issues and/or parts of the forest plan amendment to which the objection applies and a concise statement explaining the objection and suggesting how the proposed plan decision may be improved. If the objector believes that the forest plan amendment is inconsistent with law, regulation, or policy, an explanation should be included.

#### Protest Issue A: Terrestrial Predator Control

As clearly stated, since 2013 the complete absence of a detailed analysis of terrestrial predator control and minimal coverage of avian predator control measures is inconsistent with Custer County's Sage Grouse Management Plan and policies.

The plan amendment and R.O.D are also inconsistent with Section 706(2)(A) of the Administrative Procedure Act which instructs courts reviewing regulations to invalidate any agency action found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

The proposed plan and decision are elaborate and extremely detailed in regard to measures to assure sage-grouse populations and their habitat are well managed. However, the decision does not include a discussion of how terrestrial predators that eat sage grouse and sage grouse eggs, harass sage-grouse, negatively affect sage-grouse mating and nesting behavior and otherwise adversely impact sage[shy] grouse will be managed. This is in spite of Custer County comments consistently and thoroughly addressing threats to sage-grouse from terrestrial predators.

According to Forest Service Manual 2560, the US Forest Service has a responsibility to limit damage caused by wildlife. That damage includes deaths caused by terrestrial predators. Why can the US Forest Service manage game birds (sage-grouse) and discuss measures to reduce damage from avian predators and at the same time say that terrestrial predators are "outside their jurisdiction".

An animal is an animal. A predator is a predator - whether it flies or it walks - whether avian or terrestrial.

The US Forest Service manages sage-grouse biology as well as sage-grouse habitat when it conducts or participates in population surveys, genetic research, health research etc., as described in detail in Finch et al. 2015. USDA Forest Service Sage-Grouse Conservation Science Strategy 2015-2020. USDA Forest Service. Washington, DC.

The US Forest Service decision to manage sage-grouse as well as ravens, ferruginous hawks and other birds and ignore terrestrial predators is arbitrary and capricious. The decision also ignores a significant and real threat to sage-grouse that is documented in Custer County's previously submitted comments on sage[shy] grouse and the Custer County Sage-Grouse Management Plan (March 2013) which has been provided to the US Forest Service as an attachment to Custer County comments since 2013.

The proposed plan amendment can be improved by incorporating terrestrial predator control. This should be done in coordination with other agencies including the State of Idaho as well as local expertise within Custer County. The Custer County Sage-Grouse Management Plan (March 2013) provides a tremendous amount of predator control information that has been entirely ignored by the US Forest Service.

We believe the US Forest Service buries the issue because it is "politically sensitive." This is an excuse for not wanting to deal with human emotions. The people that don't understand terrestrial predator control as an important tool in sage-grouse management need agencies including the US Forest Service to help educate them. Instead, the US Forest Service seems afraid they may offend a certain part of the public by recognizing predator control as a management tool. However, the US Forest Service seems comfortable addressing measures that will kill ravens and ferruginous hawks, which makes their decision arbitrary and capricious.

Recognizing and correcting this arbitrary and capricious distinction between sage grouse biology and terrestrial predator biology is necessary to identify and manage a significant threat to sage-grouse.

Further, the US Forest Service participates in management of wolves. Wolves are predators of sage-grouse. Though the US Forest Service states they manage wolf "habitat" they also participate in wolf research including genetic studies, population counts, and livestock management studies.

The fact that the US Forest Service participates in wolf management is proof that the agency could participate in other terrestrial predator management including controlling coyotes, badgers, foxes, and other terrestrial predators to sage-grouse.

The decision to state that predators are outside the agencies jurisdiction and to exclude them from the NEPA analysis is arbitrary and capricious.

The proposed plan amendment can be improved by including specific measurable actions the US Forest Service will take to ensure that terrestrial predators do not reduce the number of sage-grouse in Idaho. We recognize that those actions can be taken in conjunction with the State of Idaho and Custer County.

Historically the US Forest Service budgeted money for terrestrial predator control and worked with other federal and state agencies to ensure game animals were protected from excessive predation.

Humans have caused an increase in terrestrial predators. People with pets often leave pet food outside, where coyotes and other terrestrial predators can find it. Peoples pets are often easy prey for terrestrial predators. Over time, terrestrial predators increase in numbers when they intermix with humans, when predator control mechanisms are not in place.

The unnatural benefit terrestrial predators receive from humans results in unnaturally high numbers of predators.

Land managers must address terrestrial predators when they address sage-grouse population numbers and create restrictions on land use that increase if sage-grouse population numbers decrease.

#### Protest Issue B: Noise Restrictions

Custer County reiterates previous comments about the fact that the noise restrictions are too onerous and do not have science to support arguments that benefits outweigh the significant economic hardship they would cause. Noise limitations can have significant adverse effects to Custer County's ability to provide administrative and emergency functions. For example, maintaining roads or trails could result in temporary exceedance of noise restrictions. The County has been performing these activities since 1881 with no known adverse impact to sage-grouse. The noise restrictions are arbitrary and capricious. They are not based on science. They are based on extrapolations of discredited oil well drilling studies in Wyoming.

Custer County suggested a modification to the above-ambient noise threshold in its document-specific comments to the US Forest Service Greater Sage Grouse Plan in July 2018 as well as in numerous other NEPA comment documents since 2013.

Custer County acknowledges the exception for previously authorized activities. However, the impact the noise threshold will have on the County's ability to expand or improve infrastructure, or conduct administrative functions, including but not limited to any functions or services not yet authorized, is a significant concern to Custer County. We are also concerned that the US Forest Service is not forward thinking and is therein prohibiting activities that have not been authorized but which nevertheless may be essential.

Custer County requests a complete elimination of the noise standard. In the alternative, they request an exception for public health, public safety, re[shy] authorizations or renewals, and routine administrative functions. We also request that if any noise limits are set, they are limited to specific actions at the time new permits are issued, upon sufficient proof that such limits are necessary to a particular project specific time, place and activity where other mitigation is not possible and that the necessary science is provided to support the restriction.

#### Issue C: Disturbance Cap

As stated in our July 2018 comments, the disturbance caps are unrealistic and unnecessarily burdensome. Having no disturbance in priority habitat except existing rights and authorized uses is too restrictive and not based on sound science.

Disturbance can benefit sage grouse habitat. Decadent sagebrush often needs considerable disturbance to obtain desired seral stage conditions. Too many valid multiple uses would be overly restricted, even though they have no impact or even a positive impact on sage grouse and their habitat.

The disturbance caps also infringe on private property, since the government is using that land in their calculation.

Custer County has not seen science supporting the US Forest Service disturbance cap restrictions and we believe they are arbitrary and capricious, based on emotional rhetoric without the necessary research.

The disturbance caps will cause Custer County and its constituents' significant adverse economic impacts that were not analyzed during the NEPA process.

Custer County respectfully requests that any and all disturbance caps be eliminated. Alternatively, the caps should be calculated without using private land and the caps should be limited to specific permits issued by the agency, when significant direct adverse effects to sage-grouse can be proven and no mitigating actions can be taken.

#### Issue D: Exclusion of Local Government During Scoping, Coordination and Cooperating Agency Interactions

Custer County objects to the plan amendment because the US Forest Service treated the County the same as the general public instead of recognizing them as a government agency, as explained in detail in the County's comments since 2013.

The plan amendment includes other Idaho County plans but disregarded the Custer County Public Land Resource Management Plan. Why?

The plan amendment restricts travel and interferes with the County' s RS 2477 rights as well as the County's obligation to provide regular and emergency services. The plan amendment interferes with road maintenance, public safety services, private property access as well as prohibiting the travel of ranchers, loggers, hunters, geologists, recreationists and others. These travel-restrictions and prohibitions exclude County agreement and are illegal.

Since 2013 Custer County has requested consultation and coordination prior to any road closures or travel restrictions. Despite Custer County's requests, the plan amendment does not require the proposed coordination or consultation.

Custer County also continues to request an exception be included to allow for County emergency services and

administrative functions on any and all necessary roads. Any other treatment of the County would undermine the County's ability to conduct routine administrative functions traditionally under the immediate control of counties, such as weed treatments, fuel reductions, grazing and more. Many US Forest Service roads provide access to private lands and water rights.

Proposed standards implicitly prohibit activities that would otherwise be permitted simply because of that activity's mere proximity to a lek. Many leks exist today despite adjacent roads, trails and other human activity, proving that sage-grouse adapt to some human disturbance. Sage-grouse have also been shown to benefit from ranching and farming activities where roads exist, per previous Custer County comments.

The County needs to maintain trails and roads for public safety. The plan amendment impedes the ability of the County to perform its basic functions of provide for the health, safety and general welfare of their constituents. The amendment also impedes otherwise sustainable farming and ranching activities as well as other economically important multiple use activities on National Forest System lands.

Custer County continues to request consultation and coordination with the US Forest Service before considering the closure of roads, seasonal or otherwise.

#### Conclusion

In summary, the plan amendment does not meet NEPA and the APA requirements as well as other laws, regulations and policies. Please incorporate our input and modify the plan amendment language to assure the flexibility necessary at the local level to meet sage-grouse needs as well as local custom, culture and economic viability goals and needs.

We will continue to object until our comments are fairly considered by the US Forest Service. The laws, regulations, policies and common decency dictate that our voice be heard and the plan amendment be modified according to local government needs as well as sage-grouse needs. The two are compatible, as evidenced by the healthy and robust sage-grouse populations in Custer County, Idaho at this time as in the past.

If you have any questions, please do not hesitate to contact me at 208-879-3305 and/or email address at lbaker@co.custer.id.us

Respectfully submitted by:

Wayne F. Butts, Chairman Custer County Commissioners

Attachments via USDA portal:

1. Custer County Sage-Grouse Management Plan (March 2103)

Attachments via hardcopy regular mail:

2. Custer County Public Land Resource Management Plan (Revised 2018)
3. Appendix R - 2015 Consistency Review
4. 2018 Custer County Comments to USPS Sage-Grouse Plan
5. 2014 Custer County Comments to BLM/USFS Idaho and Southwest Montana Greater Sage-Grouse Draft LUPA/EIS

6. 2013 Custer County Comments to BLM/USFS Admin Draft Idaho and Southwest Montana Greater Sage-Grouse Draft LUPA/EIS