Data Submitted (UTC 11): 10/1/2019 8:44:38 PM
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Organization: Western Watersheds Project
Title: Deputy Director
Comments:
USDA Forest Service
Attn: Objection Reviewing Officer
210 14th Street, SW
EMC-PEEARS, Mailstop 1104
Washington, DC 20250.

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

Re: Objection regarding the Greater Sage-grouse Draft ROD and LMPA for NFS Land in Colorado (Attached as a PDF to this text submission)

Dear Objection Reviewing Officer,

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

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

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

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

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

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

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

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

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

NOTICE OF OBJECTION

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

CONCISE STATEMENT OF OBJECTION

Objectors take issue with the U.S. Forest Service's failure to adequately protect sage-grouse on forest lands in the western United States and the draft decision's intention to create increased "flexibility" in managing sage-

grouse habitat. The sage-grouse has very specific habitat needs, and the proposed action's purported "flexibility" is really just a generalized weakening of the required mitigation and conservation measures proposed by the 2015 land use plan amendments. The draft decision violates specific provisions of the National Environmental Policy Act ("NEPA"), the National Forest Management Act ("NFMA"), the Administrative Procedure Act ("APA") and multiple regulations implementing these statutes.

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

STATEMENT OF REASONS

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

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

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

When analyzing cumulative effects, the Forest Service must analyze the effects on the environment resulting from the incremental impacts of the action, and its alternatives, when added to other past, present, and reasonably foreseeable future actions. 40 C.F.R.§ 1508.7.
To satisfy the requirements of the NEPA regulations, the Forest Service must take a "hard look" at the impacts resulting from the proposed action.

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

The proposed action weakens the existing protections for HMAs and presents false and misleading rationale for these changes. While the FS claims this will "focus protection in the PHMAs," what it is really doing is weakening protections in all other HMA types. Moreover, this is a false spin that overlooks the fact that the removal of SFA-level protections from a subset of PHMA also reduced their effectiveness at protecting sage-grouse habitat.

The FEIS contains conflicting information about whether HMA boundaries have been adjusted or not. The FEIS says, "When the maps were created for the 2019 FEIS, the ownership boundary mapping layer was used. This resulted in a reduction of acres, and a more accurate reflection of the number of acres of HMA on the ground (11,000 acres of GHMA and 1,400 acres of PHMA). No impact to greater sage-grouse is anticipated from the HMA boundary adjustment." FEIS at 4-349. But the Table ES-2, which supposedly compares summary of acres of HMAs by alternative reveals no similar changes in Colorado. FEIS at ES-10. The two maps, Map A-1 and A-2, do not reveal this information either. This is a plain violation of NEPA and makes it impossible to really understand what the agency is proposing.

Requested remedy: Extend the protections previously provided to SFA to all PHMA. Designate all lands as PHMA that were designated as Priority Areas for Conservation (PACs) by the U.S. Fish and Wildlife Service

(COT 2013). Reconcile information about acreage in the FEIS and ensure the public is able to understand the changes between the existing action (No Action) and the proposed action.

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

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

There are numerous places where changes were made between the draft and final EIS that were not identified, analyzed, or disclosed in the comparison of the plans in Section 2.5. We object to these omissions and request preparation of an SEIS in accordance with 40 C.F.R. § 1502.9(c)(i).

The agency has subverted the applicability of the management guidelines for livestock grazing by removing the requirement to apply the grazing guidelines that were previously in Table 2 of the 2015 plan. In Colorado, GRSG-LG-GL-033-Guideline used to require that habitat guidelines were applied and management was adjusted. Under Forest Service regulation, grazing management would have had to conform to the language of the Land Use Plan "as soon as practicable."

Now, GRSG-LG-GL-033-Guideline simply says, "In PHMA and GHMA, if livestock grazing is determined to be a causal factor limiting achievement of desired conditions for seasonal habitats on capable sites, adjust livestock management, as appropriate, to address species life requirements." FEIS at 2-56. This has no time specificity associated it with, no triggering action that would necessitate a causal factor analysis, and no baseline commitment to maintaining suitable habitat for GRSG on FS lands. The agency weakened this provision even further since the draft plan, and the FEIS fails to analyze the inherently vague and non-binding management it implies regarding the most pervasive land use in GRSG habitat.

The agency has also a removed "Management Approach" from the draft plan that would have required the agency to "Conduct greater sage-grouse habitat assessments in allotments." GRSG-LG-MA-034-Management Approach. FEIS at 2-58. The FEIS claims this is duplicative with required Forest Plan Monitoring, but then fails to disclose or acknowledge that grazing allotments are rarely monitored and there is no universal monitoring timeframe for ensuring that monitoring or plan conformance does occur.

The proposed plan for Colorado also significantly walks back conformance to habitat guidelines and claims these are simply "initial references based on range-wide habitat selection by GRSG…. Should be refined collaboratively to fit local habitats… not all areas will be capable to achieving the indicator values." GRSG-GEN-MA-004-Management Approach, FEIS at 2-46. This is a substantial change from the 2015 plan which provided "specific desired conditions for GRSG."

Thus, the FS is lowering the bar from what sage-grouse need for successful life cycles to habitat conditions where they can survive at all. We note too that GRSG-GEN-DC-003-Desired Condition no longer references a table or appendix that defines these values, and instead relies on the general statements in this section to supply management guidance, i.e. "sufficient sagebrush canopy" "diverse perennial grass and forb communities." FEIS

at 2-45. By removing the specific references to Table 2, the agency is also removing the requirement to conform with anything specific, a very significant departure from the previous plans and one which is not analyzed in the FEIS.

The proposed action also changes the percentage of acceptable conifer cover from 10 percent to 4 percent (See FEIS at 2-45) without explanation. This was a new change since the DEIS and WWP was unable to comment on it previously. There is no explanation of this revision in the FEIS and no recent science that we are aware of to support this change. The FEIS fails to cite to anything in support of this change.
Individually and collectively, these represent substantial changes made to the FS's proposed plan amendments between the DEIS and FEIS stage. The FS's failure to candidly acknowledge that it made these changes and to analyze their environmental effects violates NEPA.

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

Requested remedy: Reset PHMA boundaries to encompass all lands designated as Priority Areas for Conservation by the USFWS Conservation Objectives Team (2013). Include trigger thresholds and corrective actions required under GRSG-LG-GL-033-Guideline, and change it from a Guideline to a nondiscretionary Standard. Require habitat assessments for sage-grouse on grazing allotments as a nondiscretionary Standard. Revert GRSG-GEN-MA-004-Management Approach to its original, stronger wording. Restore original, numeric habitat objectives under Table 2. The FS must disclose all of the changes it made to the plans and describe the impacts of those changes. Restore original guidance to allow 10% conifer cover, per the original LRMPA. Prepare a Supplemental EIS.

C. The proposed action defers important analyses to future implementation-level decision-making without analyzing or disclosing the public participation opportunities of those decisions, in violation of NEPA.
The FEIS fails to admit that the Forest Service uses categorical exclusions for a wide range of relevant project-types, ensuring that no future analysis will ever occur. The blanket assertion that this will somehow come true - without requiring, for example, all projects in GRSG habitat to undergo NEPA review - is unanalyzable. Evidence for this is provided in Table 4-16, wherein a list of cumulative impacts by project are identified and a categorical exclusion is used for projects ranging from 4,552 of new powerline to 3,000 acres of vegetation treatments. FEIS at 4-375. The rationale is that these projects are not in GRSG HMA, but the reality is that they will have impacts to connectivity and corridors that are undesignated but nonetheless habitat for sage-grouse, and no public participation or environmental analysis will be completed. Moreover, the FS has recently introduced a suite of new categorical exclusions and removed the appealability and public comment on CX decision. The FEIS fails to analyze or disclose the relevant changes at this regulatory level in claiming subsequent NEPA will be conducted.

The response to comments claims that "Project-level actions necessary to execute the LMP-level decisions in the FEIS and ROD are subject to further environmental review under NEPA. This process requires public notification." Response to WWP Comments, #9. Elsewhere, the FS claims that grazing standards and guidelines of Land Resource Management Plans are included in Term Grazing Permits issued to each grazing permittee. Response to WWP Comments, #25. This overlooks the fact that most grazing permits are being rubber-stamped for renewal under FLPMA § 402 without any changes to the Terms and Conditions, or that term grazing permits

generally persist for ten years, meaning it may be up to a decade before these changes are actually terms of grazing permits.

Thus, in regard to livestock grazing, rather than proactively incorporate sage-grouse habitat parameters into grazing permits, the agency will wait until there is an obvious problem, determine causality and whether livestock is a "causal factor" (not just "a factor" in the cumulative degraded conditions), and then adjust grazing, "as appropriate." This is a complete non-commitment to centering the habitat needs of sage-grouse in grazing management, and we object on this basis.

Requested remedy: Admit, analyze, and disclose the extent to which the agency will use categorical exclusions, Determinations of NEPA Adequacy, or other NEPA shortcuts on future actions in GRSG habitat. Require all grazing permits in designated sage-grouse habitats to undergo full NEPA compliance, including an EA provided for public review and comment prior to a decision. Ensure that grazing permits have terms and conditions added to protect sage-grouse habitat within two years. Require public notice and comment on all projects.

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

The FEIS fails entirely to openly disclose, or meaningfully analyze, a series of related changes to the Colorado plan that all operate, in concert, to reduce the certainty that priority and important habitats, and former sagebrush focal areas will be effectively protected from the adverse effects of oil, gas, and coal development

The proposed action would eliminate the requirement that exceptions to "No Surface Occupancy" requirements on fluid mineral leases be granted only after "unanimous concurrence from a team of agency sage-grouse experts from the U.S. Fish and Wildlife Service, the Forest Service, and the state wildlife agency." Standard GRSG-M-FMUL-ST-070, FEIS at 2-68 to 2-69. The Proposed Colorado Plan Amendment increases the likelihood that habitats will be adversely affected by uninformed waivers by replacing the requirement for unanimous concurrence among expert wildlife agencies with the discretion of "the authorized officer," FEIS 2-170, and substantially expands the substantive criteria for granting such an exception. While the 2015 Standard allowed exceptions only if there would be no impact or a "clear net conservation gain," FEIS at 2-69, the Proposed Action would now allow exceptions permitting surface occupancy within PHMA even without such a "clear net conservation gain," or even the new mitigation language, "No net loss." GRSG-M-FMUL-ST-070-Standard. The FEIS inaccurately dismisses the effect of these changes by stating only that "[t]he removal of the requirement for a unanimous finding between FS, FWS, and the State of Colorado to grant an exception for NSO in fluid minerals development would be replaced by the authorization being granted by the authorized officer. The deciding official must disclose effects of and rationale for the decision, but decision authority cannot be deferred to other agencies or the state. Coordination with an interagency team, which would include both FWS and the State of Colorado, would still be required under the adaptive management, mitigation, and HMA boundary modification processes." FEIS at 4-358. This characterization fails to acknowledge that the expanded exception process will both reduce expert wildlife input into exception decisions, and also substantively expands "authorized officer" discretion to allow previously-prohibited surface disturbance.

The effect of these reductions in mitigation certainty - a pattern that holds across both the multiple proposed Forest Service plan amendments as well as the 2019 BLM sage-grouse RMP amendments - is to increase the likelihood that new habitat-disturbing oil and gas development activity will be permitted within PHMA and former SFA. Such a reduction in habitat safeguards is neither openly disclosed in the FEIS nor supported by any citation to scientific literature supporting the Forest Service's implicit conclusion that habitat function and population viability will not be impaired.

The proposed plan would also, without explanation or analysis, eliminate protective sage-grouse stipulations for coal leasing under National Forest System lands in Colorado. FEIS at 2-75 to 2-76 (eliminating Standards

GRSG-M-CMUL-ST-087, -088, and -089). The only justification or analysis for this change is the assertion that "[n]o coal activity occurs on NFS units in this part of Colorado." FEIS at 2-75. Although there are currently no active coal mining operations on NFS sage-grouse habitat, there is no reasonable justification to encourage new coal leases within sage-grouse habitat by eliminating protective stipulations. The current Routt National Forest plan clearly allows and contemplates the possibility of coal leasing. See U.S. Forest Service, Routt National Forest Land and Resource Management Plan Final Environmental Impact Statement at 3-212 (1997). The Trump administration has encouraged new federal coal leasing by, inter alia, lifting the 2016 moratorium on new federal coal leasing and abandoning a Programmatic Environmental Impact Statement process for new federal coal leases. Although the decision to end the coal moratorium was recently found by a federal court to have violated the National Environmental Policy Act, the coal leasing program remains active for the time being. Although no specific leases have been proposed for the Routt National Forest, the absence of current proposals provides no valid justification to encourage new leasing in sage-grouse habitat by eliminating protective stipulations. We identified the need to analyze an alternative that would retain this provision in our January 2019 comments.

Requested remedy: Fully disclose and analyze the direct, indirect, and cumulative impacts of multiple, related decisions reducing the certainty of implementation of mitigation measures to protect sage-grouse habitat from fluid mineral development. Disallow waivers, modifications, or exceptions to No Surface Occupancy Requirements for PHMA. Maintain binding standards and guidelines for avoiding development in habitat. Retain protective stipulations for coal leasing.

E. The FEIS fails to analyze an adequate range of alternatives to the proposed action, in violation of NEPA.

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

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

The FEIS's cumulative effects analysis is also inadequate because the cumulative impacts to sage-grouse have changed with the parallel weakening of protections on BLM lands. The BLM plans likewise weaken protections for sage-grouse habitat, remove SFA, allow more modifications, waivers, and exceptions, remove livestock habitat management guidelines, undermine adaptive management processes, and suffer from the same deficiencies as the FS is proposing here. Thus, the cumulative impacts analysis for all alternatives have changed,

and the agency can no longer rely on the 2015 EIS to adequately or accurately compare the effects of its actions.

Requested remedy: Complete a new EIS that analyzes a range of alternatives in context of all of the changes since the 2015 plans were created. Include an alternative that corrects the science-based deficiencies of the 2015 plans and the new inadequacies of the weakened prescriptions. Designate all habitats designated as Priority Areas for Conservation (PACs) by the USFWS (COT 2013) as PHMA. Allow no leasing in PHMA. Application of 4-mile No Surface Occupancy buffers around leks. Require limits of 3% surface disturbance and one site per square mile, calculated on a per-square-mile basis in addition to calculations based on any larger geographical basis. Require that any surface-disturbing activities result in a "net conservation gain." Exclude overhead transmission lines and renewable energy sites from PHMA. Require that livestock grazing be limited to 30% forage utilization, and maintain 7-inch residual grass height in breeding and nesting habitats. Prevent the siting of livestock-related structures within 1.2 miles of leks. Provide for the voluntary retirement and closure of grazing permits within designated sage-grouse habitats. Prevent vegetation treatments that potentially damage sage grouse habitats within PHMAs. Apply these conservation measures without waiver, modification, or exception. Ensure that the new alternative prohibits vegetation treatments harmful to sage-grouse, including a full and fair consideration of the science we provided regarding fuelbreaks. Consider a new alternative that strengthens protections for all GHMA, converting it to PHMA, and reinstate SFA protections to PHMA areas.

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

We object to the elimination of the "net conservation benefit" and "clear conservation gain" strategies from plan amendment, which would be changed to "no net habitat loss." See, e.g. GRSG-GEN-ST-006-Standard. Given that the greater sage-grouse is in deep trouble at present (as witnessed by the 2010 "warranted but precluded" finding for ESA listing and the troubling declines range-wide in 2019), there is a compelling need to recover sage-grouse to healthy population levels. We are concerned that this change, together with other weakened elements of the sage grouse HMAs, will result in a continued loss of populations and habitats that place the species on a trajectory toward extinction. However, the FS fails to analyze the impacts of this change or to even accurately predict the likely future effects compared to the "No Action" alternative, in violation of NEPA.

Instead, the FS describes the potential difference of this "mitigation" strategy as entailing a potential for incremental contributions to cumulative effects in Colorado, Idaho, Utah, and Wyoming. FEIS at 4-413. It then claims, without evidence, this change would encourage proponents to develop in GHMA or outside of greater sage-grouse habitat. Improving higher quality habitat in PHMAs would be expected to benefit greater sage-grouse rather than focusing efforts in the lower quality habitat that GHMA provides. Conceptually, "no net loss" would result in fewer acres being restored, improved, or protected as compared with "net conservation gain." Thus, the mitigation strategy is far weaker under the proposed action than it previously was, even for the few acres the agency is protecting.

Requested remedy: Complete a new EIS that analyzes and discloses the likely impacts of the changed mitigation strategy on the long-term viability of sage-grouse habitat in Colorado. Reinstate the requirement that all projects in GRSG designated habitats result in a net conservation gain.

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

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

resources, soil resources, air quality, vegetation).

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

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

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

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

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

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

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

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

II. VIOLATIONS OF THE NATIONAL FOREST MANAGEMENT ACT.

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

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

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

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

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

?Gibson et al. 2016 study actually found that 50 percent of previous studies measuring grass height at predicted hatch date showed positive support for grass height affecting nest survival of greater sage-grouse, with the two papers not supporting this hypothesis for GRSG being Gibson 2015 and Davis et al. 2014. [Gibson 2015 is Dr. Gibson's dissertation, in which he describes positive effects of nest site selection and average residual grass height and average live grass height, with a net positive effect of local selection on nest survival. Davis et al. 2014 admits that "grass height likely influenced nest success" and that the results of the study were consistent with previous studies. Though Gibson 2016 classes this as "no support" for the survival hypothesis, it shouldn't be interpreted to mean that grass height doesn't matter.]
?The Sage Grouse Initiative 2017 paper is a summary of the Gibson and Smith studies, is not a peer-reviewed science-based article that the FS should be citing in support of its management changes.
?Smith et al. 2017a reanalyzed existing datasets from three independent studies across the range of sage-grouse, including two using methods "now known to be biased."
?Smith et al 2017b isn't listed in the Appendix H and it is unclear what the agency is referring to.

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

None of the referenced studies provide the support the agency needs to undergird its decision to remove management parameters related to grass height. Instead, the best available science, and indeed, the preponderance of evidence, has established that at least 7 inches (18 cm) of residual stubble height needs to be provided in nesting and brood-rearing habitats throughout their season of use. According to Gregg et al. (1994: 165), "Land management practices that decrease tall grass and medium height shrub cover at potential nest sites may be detrimental to sage grouse populations because of increased nest predation.... Grazing of tall grasses to <18 cm would decrease their value for nest concealment.... Management activities should allow for maintenance of tall, residual grasses or, where necessary, restoration of grass cover within these stands." Hagen et al. (2007) analyzed all scientific datasets up to that time and concluded that the 7-inch threshold was the threshold below which significant impacts to

sage grouse occurred (see also Herman-Brunson et al. 2009). Prather (2010) found for Gunnison sage grouse that occupied habitats averaged more than 7 inches of grass stubble height in Utah, while unoccupied habitats averaged less than the 7-inch threshold. According to Taylor et al. (2010:4),

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

The exception to this 7-inch rule is found in the mixed-grass prairies of the Dakotas, where sparser cover from sagebrush and greater potential for tall grass have led to a recognition that a 26-cm stubble height standard is warranted (Kaczor 2008, Kaczor et al. 2011). Foster et al. (2014) found that livestock grazing could be compatible with maintaining sage grouse populations, but notably stubble heights they observed averaged more than 18 cm during all three years of their study, and averaged more than 10.2 inches in two of the three years of the study.

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

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

WWP's comments pointed out that the best available science still supports grass height minimums for nesting sage-grouse, but USFS instead continues to rely on scant and nuanced studies that don't, in fact, disprove prior findings. Instead, the agency finds that up to 55 percent utilization in uplands and 4 to 6-inch stubble height in riparian areas is "consistent" with GRSG research. FEIS at 3-330. It hasn't explained why the general science showing less utilization and higher stubble heights is inappropriate in Colorado.

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

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

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

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

components, including standards or guidelines, must be included in the plan to provide such ecological conditions in the plan area."

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

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

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

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

III. VIOLATIONS OF THE ADMINISTRATIVE PROCEDURE ACT

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

The proposed plan for Colorado differs significantly from the proposed plans for other states. The differences between and among plans is sufficient demonstration that the management recommendations are not based in science, but in politics. The proposed actions are baldly arbitrary and capricious and should be set aside.

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

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

Thank you,

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(on behalf of all of the Objectors identified above)

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