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

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PROPOSED PROJECT

Idaho (Boise, Caribou-Targhee, Salmon-Challis, and Sawtooth National Forests and Curlew

National Grassland); Nevada (Humboldt-Toiyabe National Forest); Utah (Ashley, Dixie,

Fishlake, Manti-La Sal, and Uinta-Wasatch-Cache National Forests); Wyoming

(Bridger-Teton National Forest); and Wyoming/Colorado (Medicine Bow-Routt National

Forest and Thunder Basin National Grassland) Amendments to Land Management Plans for

Greater Sage-Grouse Conservation

United States Department of Agriculture, U.S. Forest Service

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TABLE OF CONTENTS

TABLE OF AUTHORITIES. iii

I. STATEMENT OF INTEREST. 1

II. DESCRIPTION OF ASPECTS OF PROPOSED PROJECT ADDRESSED BY THE OBJECTION. 3

III. OBJECTION ISSUE 1: NO SURFACE OCCUPANCY STIPULATIONS. 3

 A. Description of Objection Issue in 2019 Draft ROD 3

 B. Link Between Prior Substantive Comments and Objection. 4

 C. Concise Statement of Objection: NSO Stipulations Are Arbitrary and Capricious
and Not Adequately Explained. 4

 D. Suggested Remedies To Resolve the Objection. 6

IV. OBJECTION ISSUE 2: COMPENSATORY MITIGATION STANDARD. 7

 A. Description of Objection Issue in 2019 Draft ROD. 7

 B. Link Between Prior Substantive Comments and Objection. 7

 C. Concise Statement of Objection: Forest Service Lacks Authority to Require Any
Mitigation. 7

 D. Suggested Remedies That Would Resolve the Objection. 8

V. OBJECTION ISSUE 3: GRAZING GUIDELINES. 9

 A. Description of Objection Issue in 2019 Draft ROD. 9

 B. Link Between Prior Substantive Comments and Objection. 9

 C. Concise Statement of Objection: Grazing Guideline 38 Forces Grazing Permit
Reductions When Grazing is Not a Significant Causal Factor and is Arbitrary and
Capricious. 10

 D. Suggested Remedies To Resolve the Objection. 10

VI. OBJECTION ISSUE 4: HARD AND SOFT TRIGGERS. 11

 A. Description of Objection Issue in 2019 Draft ROD. 11

B. Link Between Prior Substantive Comments and Objection... 11

C. Concise Statement of Objection: Adaptive Management Triggers are Arbitrary and Capricious. 11

D. Suggested Remedies To Resolve the Objection. 12

VII. OBJECTION ISSUE 5: FAILURE TO ADDRESS CONTROVERSY OF NATIONAL TECHNICAL TEAM REPORT. 12

A. Description of Objection Issue in 2019 Draft ROD.. . . . 12

B. Link Between Prior Substantive Comments and Objection.. . . . 13

~ i ~

C. Concise Statement of Objection: Forest Service Failed to Address Controversial and Flawed Science That Serve as Basis for Prescriptions in 2015 LUPA and 2019 Draft ROD. 13

D. Suggested Remedies To Resolve the Objection. 16

VIII. CONCLUSION AND RELIEF REQUESTED. 16

~ ii ~

TABLE OF AUTHORITIES

FEDERAL CASES

Center for Biological Diversity v. Forest Service, 349 F.3d 1157 (9th Cir. 2003). 5, 13

Citizens[rsquo] Committee to Save Our Canyons v. Krueger, 513 F.3d 1169 (10th Cir. 2008).. . . . 5

Kern v. Bureau of Land Management, 284 F.3d 1062 (9th Cir.2002). 4

Middle Rio Grand Conservancy District v. Norton, 294 F.3d 1220 (10th Cir. 2002). 5

Robertson v. Methow Valley Citizens Council, 490 U.S. 332 (1989).. . . . 8

Utah Shared Access Alliance v. U.S. Forest Serv., 288 F.3d 1205 (10th Cir. 2002). 5

Western Org. of Resources Councils v. Bureau of Land Management, 591 F. Supp. 2d 1206 (D. Wyo. 2008), aff[rsquo]d sub nom. BioDiversity Conservation All. v. Bureau of Land Management,

608 F.3d 709 (10th Cir. 2010). 4

WildEarth Guardians v. National Park Service, 703 F.3d 1178 (10th Cir. 2013). 4

FEDERAL STATUTES

5 U.S.C. [sect]706(2)(a). 5

16 U.S.C.A. [sect] 475(a). 8

16 U.S.C. [sect][sect] 528-531. 8

16 U.S.C. [sect] 1604(e). 8

16 U.S.C. [sect] 1607. 8

CODE OF FEDERAL REGULATIONS

36 C.F.R. Part 219. 1

36 C.F.R. [sect]219.54. 3

36 C.F.R. [sect] 222.4(a)(8). 10

~ iii ~

36 C.F.R. [sect] 228.8. 8

40 C.F.R. [sect][sect] 1503.4(a). 5, 13

40 C.F.R. [sect][sect] 1502.16. 4

40 C.F.R. [sect] 1505.2. 8

40 C.F.R. [sect] 1505.3. 8

40 C.F.R. [sect] 1508.8. 4

~ iv ~

Pursuant to 36 C.F.R. Part 219, the Wyoming Coalition of Local Governments ([ldquo]Objector[rdquo] or [ldquo]Coalition[rdquo]) submits this objection to the Greater Sage-grouse Draft Record of Decision and Land Management Plan Amendment for National Forest System Land in Wyoming ([ldquo]2019 Draft ROD[rdquo]). Notice was published in the Salt Lake Tribune and Denver Post on August 2, 2019 with a 60 day objection period closing on October 1, 2019.

I. STATEMENT OF INTEREST

The Coalition is a voluntary association of local governments organized under the laws of the State of Wyoming to educate, guide, and develop public land policy in the affected counties. Wyo. Stat. [sect][sect]11-16-103, 11-16-122, 18-5-201. Coalition members include Lincoln County, Sweetwater County, Uinta County, Sublette County, Lincoln Conservation District, Sweetwater County Conservation District, Uinta County Conservation District, Sublette County Conservation District, Little Snake River Conservation District, and Star Valley Conservation District. The Coalition serves its members to advocate for local government land management and planning. The plans adopted by the Coalition members provide for the protection of vested rights of individuals and industries dependent on utilizing and conserving existing resources and public lands, the promotion and support of habitat improvement, the support and funding of scientific studies addressing federal land use plans and projects, and providing comments on behalf of members for the educational benefit of those proposing federal land use plans and land use projects.

The county and conservation district members of the Coalition are local governments with special expertise and jurisdiction by law as set out in the CEQ regulations in a variety of different contexts. The county and conservation district members of the Coalition enjoy the authority to protect the public health and welfare of Wyoming citizens and to promote the management and protection of federal land natural resources. Wyo. Stat. [sect][sect]18-5-102; Wyo. Stat. [sect][sect]11-16-122. Given

this statutory charge and wealth of experience in federal land matters, the Coalition members have participated as cooperating agencies on most Wyoming projects and land use plans and have coordinated efforts with BLM, U.S. Forest Service, and other federal, state, and local entities.

[bull] Sublette County supports a multiple-use policy on the lands within the county.

Sublette County Comprehensive Plan, at 19, 62 (2005). It encourages and supports "maintaining wildlife populations that are in balance with available habitat and other uses," as well as supporting "wildlife management techniques that minimize conflicts with agricultural operations and/or practices." *Id.* at 18, 57. It is also Sublette

County's goal to "balance between the conservation and the use of the County's natural resources." Id. at 44-45, 61. It is the County's policy to coordinate and cooperate with both state and federal entities to in planning efforts. Id. at 6.

[bull] Sublette County Conservation District's objective is to "ensure public lands are managed for multiple use, sustained yield, and prevention of natural resource waste."

Sublette County Conservation District Public Land Use Policies, at 5, 7-8 (2008). It

is the District's position that "[f]orests, rangelands, and watersheds, in a healthy

Page 1 Coalition of Local Government Objections to 2019 Greater Sage Grouse Plan Revision

condition, are necessary and beneficial for wildlife, livestock grazing, and other

multiple uses." Id. at 16. Sublette County Conservation District's Long Range Plan

identifies agriculture, vegetation, soils, forests, minerals and other resource areas of

concern and emphasizes coordination and cooperation with the BLM and the USFS

on planning efforts that may impact each of those areas. Sublette County

Conservation District Long Range Plan at 15.

[bull] Lincoln County also supports and depends on the multiple uses of the public lands

and supports land uses that are consistent with "orderly development and efficient use

of renewable and nonrenewable resources." Lincoln County Comprehensive Plan,

at 7 (2006). It is Lincoln County's position that if forests, rangelands, and watersheds

are maintained in a healthy condition, then it will benefit wildlife, livestock grazing,

and other multiple-uses. Lincoln County Public Lands Policy, at 3-40. Lincoln

Conservation District's objective is to "maintain a solid resource balance between

wildlife, recreation and other land uses in the District." Lincoln Conservation District

Land Use & Natural Management Long Range Plan, at 36 (2010-2015).

[bull] Uinta County supports public land development and livestock grazing as critical

economic and cultural drivers. Uinta County Comprehensive Plan at 21-23 (2011).

The County supports use of maximum Animal Unit Months and opposes any relinquishment of livestock permits. Id. at 22. The County supports public land access and opposes the any use of the Endangered Species Act, or candidate species to restrict or curtail uses in the County. Id. Uinta County Conservation District seeks to "promote and protect agriculture, to provide leadership, information, education and technical assistance for the development and improvement of our natural resources, to protect the tax base and promote the health, safety and well being of Uinta County residents." Uinta County Conservation District Long Range Plan at 1 (2010-2015).

[bull] Sweetwater County Conservation District commits to seeing that all natural resource decisions "maintain and revitalize the concept of multiple use on state and federal lands in Sweetwater County." SWCCD Land & Resource Use Plan & Policy at 8, 17, 29 (2005). It encourages the participation "in local plans for sage grouse management to ensure an effective balance between sagebrush habitat for sage grouse and grass vegetation for domestic and wild grazing animals." Id. at 55. It also looks to ensure "that wildlife management and habitat objectives reduce and/or avoid conflicts with other multiple uses," and that the "objective of maintaining healthy wildlife populations balance[] with resource carrying capacity and other land uses." Id. at 66-68.

The 2019 Draft ROD will greatly impair Coalition member interests because:

Page 2 Coalition of Local Government Objections to 2019 Greater Sage Grouse Plan Revision

[bull] The 2019 Draft ROD adopts No Surface Occupancy stipulations, noise limitations, and disturbance caps that limit energy development that decrease county revenues, injures the tax base, and destabilizes the economy of each county;

[bull] The 2019 Draft ROD adopts a mitigation standard of [ldquo]conservation uplift[rdquo] to [ldquo]improve[rdquo] sage-grouse habitat against the Forest Service[rsquo]s statutory authority which will chill energy development and other multiple uses;

[bull] The 2019 Draft ROD creates a presumption that livestock grazing will cause a negative impact to sage-grouse habitat which will merit livestock grazing permit reductions;

[bull] The 2019 Draft ROD relies on literature from the 2015 planning process that is not adequately explained or analyzed which is the subject of significant controversy and litigation and has been the basis of management actions that have directly impacted the Coalition's economy, custom, and culture.

II. DESCRIPTION OF ASPECTS OF PROPOSED PROJECT ADDRESSED BY THE OBJECTION

Pursuant to 36 C.F.R. [sect]219.54, the Objector includes the following:

1. A statement of the issues and/or the parts of the plan, plan amendment, or plan revision to which the objection applies;
2. A concise statement explaining the objection and suggesting how the proposed plan decision may be improved. If applicable, the objector should identify how the objector believes that the plan, plan amendment, or plan revision is inconsistent with law, regulation, or policy; and
3. A statement that demonstrates the link between prior substantive formal comments attributed to the objector and the content of the objection, unless the objection concerns an issue that arose after the opportunities for formal comment.

Pursuant to 36 C.F.R. 219.54(b)(4), the Coalition need not resubmit [ldquo][f]ormal comments previously provided to the Forest Service by the objector during the proposed plan, plan amendment, or plan revision comment period.[rdquo] The Coalition has not provided its formal public comments but has provided its Cooperating Agency comments as well as other documents used in the decision making process such as letters to the Forest Service.

Page 3 Coalition of Local Government Objections to 2019 Greater Sage Grouse Plan Revision

III. OBJECTION ISSUE 1: NO SURFACE OCCUPANCY STIPULATIONS

A. Description of Objection Issue in 2019 Draft ROD: No Surface Occupancy in

Priority and General Habitat Management Areas

The 2019 Draft ROD retains several No Surface Occupancy ("NSO") stipulations including:

(1) on lands located in priority habitat management areas ("PHMA") or connectivity habitat management areas ("CHMA") where oil and gas development exceeds an average of one pad per 640

acres; (2) on or within a 0.6 mile radius of the perimeter of occupied leks that are located in PHMA

or CHMA; and (3) on or within a 0.25 mile radius of the perimeter of occupied leks that are located

in general habitat management areas ("GHMA"). See 2019 Draft ROD at 84-85

(GRSG-TDDD-ST-014; GRSG-TDDD-GL-016; GRSG-TDDD-GL-017). The only change to these

NSO stipulations is that now the Forest Service does not need the unanimous approval of the U.S.

Fish and Wildlife Service and the State of Wyoming to approve an Exception or Modification to the

NSO stipulation. *Id.* at 52; 2019 FEIS at 4-413 [ndash] 414.

B. Link Between Prior Substantive Comments and Objection

As to the NSO stipulation for GHMA, the Coalition commented that no literature has

substantiated the need for GHMA or limitations on surface occupancy or surface disturbing

activities. 081518 Proposed Changes Comments at 12. The Coalition cited literature used by the

Forest Service that actually disclaimed any review of, or the need for, additional protections in non-

PHMA. *Id.* (Citing Report on National Greater Sage-Grouse Conservation Measures Produced by

the BLM Sage-Grouse National Technical Team (Dec. 2011) ("NTT Report")). As to the NSO

stipulation for PHMA, the Coalition suggested changes to the proposed language that would more

accurately reflect the Forest Service's statutory authority. *Id.* at 11. The Coalition also repeatedly

disputed the literature that supports the 1 facility per 640 acre disturbance cap. *Id.* at 19-20; see also

011918 USFS NOI Sage-grouse comments at 15. Specifically, the Coalition explained that the study

used as the basis for the 1/640 acre threshold never actually tested that threshold against other

densities. 081518 Proposed Changes Comments at 19-20.

C. Concise Statement of Objection: NSO Stipulations Are Arbitrary and Capricious and

Not Adequately Explained

1. NSO Stipulations Effectively Close Tens of Thousands of Acres to Energy

Development

NEPA requires the Forest Service to [ldquo]consider the environmental impacts of their actions, disclose those impacts to the public, and then explain how their actions will address those impacts.[rdquo] *W. Org. of Res. Councils v. Bureau of Land Mgmt.*, 591 F. Supp. 2d 1206, 1228[ndash]29 (D. Wyo. 2008), *aff'd sub nom. BioDiversity Conservation All. v. Bureau of Land Mgmt.*, 608 F.3d 709 (10th Cir. 2010). An EIS must assess and disclose direct and indirect effects, 40 C.F.R. [sect][sect] 1502.16, 1508.8, and consider [ldquo]every significant aspect of the environmental impact of a proposed action. [rdquo] *Kern v.*

Page 4 Coalition of Local Government Objections to 2019 Greater Sage Grouse Plan Revision

Bureau of Land Management, 284 F.3d 1062, 1066, 1073 (9th Cir.2002). The Forest Service must [ldquo]articulate, publicly and in detail, the reasons for and likely effects of ... decisions, and to allow public comment on that articulation.[rdquo] *Id.* Failure to do so is fatal to the document. *WildEarth Guardians v. Nat'l Park Serv.*, 703 F.3d 1178, 1183 (10th Cir. 2013).

Under the 2015 Land Use Plan Amendment ([ldquo]2015 LUPA[rdquo]), Map 2-4 shows that 883,670 acres are closed to oil and gas leasing and another 441,690 acres have major (e.g. NSO) stipulations. See 2015 LUPA, Map 2-4; see also 2015 FEIS at 4-115. The 2015 LUPA map also reveals that thousands of acres applied NSO stipulations to adjacent lands that are closed to oil and gas leasing. The BLM and Forest Service admitted in 2015 that these stipulations would result in an approximate 10% decrease in oil and gas wells and that federal minerals would likely be drained. *Id.* The 2015 FEIS did not disclose, however, that the thousands of acres that were otherwise available for leasing could not be developed because of the relationship between an NSO stipulation and areas that were closed to mineral leasing. The possibility of additional lands being closed to mineral development was and remains a grave concern of the Coalition in both the 2015 and 2019 planning process. See 010319 Coalition DEIS Comments at 10-12.

The 2019 FEIS retains the restrictions but did not correct the failure in the 2015 FEIS to disclose and analyze the number of acres where an NSO stipulation made it impossible to develop.

The interrelationship between the [ldquo]closed[rdquo] acres and the [ldquo]NSO[rdquo] acres includes significant

cumulative and connected impacts and the Forest Service has not explored that relationship and documented it in the FEIS. *Utah Shared Access Alliance v. U.S. Forest Serv.*, 288 F.3d 1205, 1212 (10th Cir. 2002) (Agencies must consider synergistic interrelationship of management actions and their effects). The number of acres that cannot be developed will adversely affect the Coalition members economy, custom, and culture. The burdens on energy development also create a drag on other industries, such as well services, equipment sales, and finance.

2. One Facility Per 640 Acres is Arbitrary and Capricious

Courts will set aside agency action if it is [ldquo]arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.[rdquo] 5 U.S.C. [sect] 706(2)(a). The duty of a court under this standard is to determine whether the Forest Service has demonstrated a rational connection between the facts found and the decision made. *Citizens' Comm. to Save Our Canyons v. Krueger*, 513 F.3d 1169, 1176 (10th Cir. 2008). Moreover, CEQ rules require an FEIS to address scientific controversies. 40 C.F.R. [sect][sect] 1503.4(a); 1508.27(b)(4). An FEIS that does not will be set aside. *Middle Rio Grand Conservancy Dist. v. Norton*, 294 F.3d 1220, 1229 (10th Cir. 2002) (disagreement as to quantity of water was a scientific controversy to be addressed in the FEIS); *Center for Biological Diversity v. Forest Service*, 349 F.3d 1157, 1168-69 (9th Cir. 2003) (responding generally to a disagreement is not sufficient.).

The one facility per 640 acres prescription is found in, and derives from, the NTT Report.

The NTT Report again cites Holloran[rsquo]s 2005 study which provides [ldquo][m]aintaining well densities of #1 well per 283 ha (approximately 1 well per section) within 2 mi of a lek could reduce the negative

Page 5 Coalition of Local Government Objections to 2019 Greater Sage Grouse Plan Revision

consequences of gas field development.[rdquo] Mathew J. Holloran, Greater Sage-Grouse Population

Response to Natural Gas Field Development in Western Wyoming, at 57-58 (2005). Holloran, however, did not actually test this threshold against other well densities. According to Dr. Rob Roy Ramey's review of the NTT Report, Holloran instead [ldquo]reported on leks affected by different numbers of impacts in each of four quadrants in the cardinal directions, and predictions based upon correlations at a scale of 3 km. Data, significance tests, and scatterplots of those correlative analyses were not reported by Holloran (2005), making the scientific rationale for his one-well-per-section not reproducible.[rdquo] Ramey, et al. A Report on National Greater Sage-Grouse Conservation Measures Produced by the BLM Sage-Grouse National Technical Team, at 28 (Dec. 21, 2011). Perhaps more importantly, in 2010, Holloran found no population loss but only temporary movement of birds to other leks. Id. Thus, Holloran's report is not only methodologically flawed but it documents no adverse effect to sage-grouse.

The fact that the State of Wyoming sage-grouse plan adopted Holloran's recommendation does not absolve the Forest Service of its independent obligation to address the disputed science.

The Forest Service's 2019 FEIS does resolve the controversy of the NTT Report in general, or the one facility per 640 acres prescription in specific despite the Coalition's repeated identification of the problems of both. See e.g., 081518 Proposed Changes Comments at 19. Moreover, the Forest Service has failed to explore, and explain, how the 5% disturbance cap and the one facility per 640 acres act to conserve sage-grouse habitat. The 2019 Plan explicitly prioritizes development outside of PHMA, see 2019 Draft ROD at 18; 2019 FEIS at 4-352, and then decreases the opportunity to develop inside of PHMA by artificially limiting the number of acres that can be developed. As a result, operators are forced to find undisturbed land outside of PHMA when the better option in some circumstances may be to continue to develop the already disturbed area. Even if the full 5% is not utilized, operators have no incentive to forego a larger well pad site and greater area to work in another section under the 2019 Draft ROD. In other words, if a section has 2% disturbance, the operator may opt to locate all facilities on another section to utilize the full 5%.

As the Coalition commented at length, the one site per 640 acres is not scientifically defensible and the Forest Service has not adequately disclosed and discussed the problems with the supporting literature, the controversy surrounding the methodology, and the credibility of the NTT Report in general. The Forest Service cannot rely on its expertise when it so clearly failed to follow the National Environmental Policy Act rules.

D. Suggested Remedies To Resolve the Objection

The Coalition suggests that the following language correlates more closely with the Forest Service's statutory authority.

In priority and connectivity habitat management areas, do not authorize new surface occupancy or surface disturbing activities may be authorized on or within a 0.6 mile radius of the perimeter of occupied leks.

Page 6 Coalition of Local Government Objections to 2019 Greater Sage Grouse Plan Revision

In priority and connectivity habitat management areas, limit the density of activities related to oil and gas development or mining activities to no more than may exceed an average of one pad or mining operation per 640 acres, using the current Density Disturbance Calculation Tool process or its replacement in the Responsible Official's discretion.

In general habitat management areas, do not authorize new surface occupancy or surface disturbing activities on or within a 0.25 mile radius of the perimeter of occupied leks.

IV. OBJECTION ISSUE 2: COMPENSATORY MITIGATION STANDARD

A. Description of Objection Issue in 2019 Draft ROD: Conservation Uplift and No Net

Loss

The 2019 ROD changes the mitigation standard used in the 2015 LUPA from a "net conservation gain" threshold to a "no net loss" threshold. Compare 2015 LUPA at 18 with 2019 Draft ROD at 19 (discussing the rationale for the change). It appears, however, that the change is

purely semantic [ndash] the 2019 Draft ROD mitigation standard provides [ldquo]a clearer link to acres and equivalency or uplift for the species than the previous net conservation gain definition.[rdquo] 2019 Draft ROD at 19; 2019 FEIS at 4-354. According to the ROD, new surface disturbances will be allowed (above and beyond the density and disturbance caps) if, and only if, residual impacts are [ldquo]fully offset by mitigation that provide no net habitat loss to the species, measured at the statewide scale, subject to existing rights.[rdquo] 2019 Draft ROD at 53. The 2019 Draft ROD language is at best ambiguous and fails to provide certainty or clarity.

B. Link Between Prior Substantive Comments and Objection

The Coalition commented that Forest Service does not have authority to require the complete mitigation or [ldquo]uplift[rdquo] of any and all impacts caused by a proposed project. NEPA does not require mitigation, let alone, complete mitigation and Forest Service statutes and regulations do not either.

Thus, the Forest Service may not require an [ldquo]improvement[rdquo] or [ldquo]uplift[rdquo] standard in the 2019 Plan.

See e.g., 081518 Proposed Changes Comments at 14-15. The Coalition also commented that the Forest Service does not have authority to require any mitigation regardless of the standard. See 011918 Scoping Comments at 11. Despite these comments, the 2019 Draft ROD retains a mitigation standard that includes artifacts of the net conservation gain threshold. Needless to say the Draft ROD language on mitigation is neither defensible or durable.

C. Concise Statement of Objection: Forest Service Lacks Authority to Require Any

Mitigation

According to the 2019 FEIS and Draft ROD, the new mitigation standard [ndash] no net loss [ndash] provides [ldquo]a clearer link to acres and equivalency or uplift for the species than the previous net conservation gain definition.[rdquo] 2019 Draft ROD at 19; 2019 FEIS at 4-354. Thus, despite the textual change in the new plan, the Forest Service has apparently interpreted [ldquo]no net loss[rdquo] as accomplishing what the [ldquo]net conservation gain[rdquo] standard was intended to accomplish. Put another way, the Forest

Service has retained the goal to provide an [ldquo]uplift for the species[rdquo] but has changed the mechanism by which it accomplishes this uplift. The 2019 FEIS never discloses the Forest Service[rsquo]s authority to require mitigation, regardless of the standard, for projects and operations that comply with the Forest Service statutory multiple use mandate.

No statute, rule, or policy requires the Forest Service to improve, benefit, or uplift any resource. See NFMA at 16 U.S.C. [sect] 1604(e), 1607; MUSYA, 16 U.S.C. [sect][sect] 528-531; Organic Act 16 U.S.C.A. [sect] 475(a)(the purpose of the forest is to [ldquo][secure] favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States . . .[rdquo]). Indeed, the furthest extent of the Forest Service[rsquo]s mitigation authority can be found in Forest Service rules which authorize [ldquo]minimiz[ation of] adverse environmental impacts.[rdquo] 36 C.F.R. [sect] 228.8. Minimizing impacts is not the same as compensatory mitigation and the Forest Service may not conflate the two distinct terms. Compare 40 C.F.R. 1508.20(b) with id. at 1508.20(e); see also *Mercy Hosp., Inc. v. Azar*, 891 F.3d 1062, 1068 (D.C. Cir. 2018) (distinct provisions should not be read to produce surplus provisions). With regard to wildlife habitat, such as sage-grouse PHMA or GHMA, the Forest Service is only authorized to [ldquo]maintain and protect[rdquo] habitat that may be affected by operations on Forest Service lands. Id. at [sect] 228(e). Providing [ldquo]uplift for the species[rdquo] therefore, is clearly beyond the pale of the Forest Service[rsquo]s clear and unambiguous statutory grant of authority.

It is perhaps more telling that the policies upon which the [ldquo]net conservation gain[rdquo] standard were based have since been revoked. Authority for the net conservation gain standard relied on Secretary Order 3330 (Improving Mitigation Policies and Practices of the Department of the Interior) and the Presidential Memorandum issued on November 3, 2015 (Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment). Both the order and guidance have been rescinded by the Executive Order 13783 (Mar. 28, 2017) and Secretary Order 3349. Thus, the Executive has already acknowledged that the Secretary of Agriculture lacks the authority to require any improvement above the original or baseline conditions. The 2019 Draft

ROD mitigation standard clearly fails to conform to the clarification provided by the President and Interior Secretary.

Similarly, NEPA does not require mitigation of any type. Rather, NEPA only requires that mitigation be discussed in terms of evaluating environmental impacts, but does not require proponents of a proposed action to mitigate the potential impacts. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352-53 (1989) (“...it would be inconsistent with NEPA's reliance on procedural mechanisms [ndash] as opposed to substantive, result-based standards [ndash] to demand the presence of a fully developed plan that will mitigate environmental harm before an agency can act.”).

The 2019 FEIS could [ndash] and should [ndash] merely state [ldquo]whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not.” 40 C.F.R. [sect][sect] 1505.2(c); 1505.3. The FEIS must discuss potential mitigation, but, no law or rule requires that mitigation be adopted or enforced and certainly not mitigation that requires [ldquo]uplift.”

D. Suggested Remedies That Would Resolve the Objection

The Coalition has long supported a [ldquo]no net loss[rdquo] mitigation standard, largely because it conforms to wetlands mitigation affirmed in the federal courts. The "no net loss" was and is construed as acre for acre. The Coalition, however, strongly disagrees with any language that requires, implies, or otherwise opens to the door for mitigation to improve, benefit, uplift sage-grouse or its habitat. Thus, all "conservation uplift" or "improve" language should be deleted to match statutory authorities and Standard GRSG-TDDD-ST-023 should be deleted entirely as inconsistent with law.

V. OBJECTION ISSUE 3: GRAZING GUIDELINES

A. Description of Objection Issue in 2019 Draft ROD: Livestock Grazing Permit

Reductions and Habitat Objectives

The 2019 Draft ROD provides that [ldquo][i]n greater sage-grouse HMA, 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 (e.g., cover, food, shelter). 2019 Draft ROD at 55 (emphasis added). The desired conditions are listed in Attachment E and include among others: (1) perennial grass height that will [ldquo][p]rovide overhead and lateral concealment from predators[rdquo] in breeding and nesting habitat; (2) perennial grass canopy cover of greater than 10% in arid sites and 15% in breeding and nesting habitat; and (3) perennial grass canopy cover of greater than 15% in brood-rearing and summer habitat. See 2019 Draft ROD Attachment E at 93. By the language in the 2019 Draft ROD, if livestock grazing [ldquo]limits achievement[rdquo], in any way to any degree, of these thresholds, livestock grazing will be adjusted to address cover, food, or shelter for sage-grouse.

B. Link Between Prior Substantive Comments and Objection

The Coalition has identified and explained the flaws in the grazing guidelines in the 2015 LUPA in its scoping comments. See 011918 USFS NOI Comments at 4-10. The Coalition exhaustively detailed the false assumptions upon which grass height objectives were based, id. at 5, that the Forest service[rsquo]s claim that grazing permits would not be adjusted contradicted the plain language in the 2015 LUPA, id. at 4, and that the BLM, Forest Service, USFWS, and local governments do not have data to support habitat objectives across the Interior West. Id. at 7-9.

It also became clear during the 2018 planning process that the Forest Service had not fully disclosed how sage-grouse benefit from a particular range of canopy cover or grass height. 081518 Proposed Changes Comments at 3. The Coalition emphasized that Table 1 (Habitat Objectives) should be removed entirely as unsupported and lacking demonstrated benefit to sage-grouse, and Page 9 Coalition of Local Government Objections to 2019 Greater Sage Grouse Plan Revision because the [ldquo]application of Table 1 leads, invariably, to decreased utilization on the Forest by livestock permittees when monitoring data, if any are available, just do not support decreases or adjustments. Id. at 4 (discussing GRSG-LG-GL-037-Guideline (requiring adjustments to livestock

grazing if Table 1 objectives are not met)); see also Exhibit (Ex.) 1, DEIS_Chapter2_Draft_092118 Coalition Cooperating Agency Comments; Ex. 2, DEIS_Chapter3_Draft_92118_edit (1) Coalition Cooperating Agency comments; Ex. 3, DEIS_Chapter4_Draft92118 Coalition Cooperating Agency comments; Ex. 4, 071818 Cooperating Agency Follow Up. The habitat objectives and the assumptions are not tied to soil types, precipitation, or altitude all of which make the site capability conclusions hypothetical

C. Concise Statement of Objection: Grazing Guideline 38 Forces Grazing Permit Reductions When Grazing is Not a Significant Causal Factor and is Arbitrary and Capricious

Pursuant to Forest Service regulations, the Forest Service may [ldquo][m]odify the seasons of use, numbers, kind, and class of livestock allowed or the allotment to be used under the permit, because of resource condition, or permittee request.[rdquo] 36 C.F.R. [sect] 222.4(a)(8). Resource objectives are set by the governing land use plan. See FSM 2230.2. The 2019 Draft ROD provides that [ldquo][i]n greater sage-grouse HMA, 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 (e.g., cover, food, shelter). 2019 Draft ROD at 55 (emphasis added).

The 2019 Draft ROD requires changes if livestock grazing limits achievement of desired conditions to any extent whatsoever. By the very nature of livestock grazing, cattle and sheep will necessarily, limit the growth of grasses and forbs in both height and canopy cover at least on a seasonal basis. Every single cow or sheep on every single allotment is a causal factor [ldquo]limit[ing] the achievement[rdquo] of the habitat objectives in the 2019 Draft ROD. By way of example, if the Forest Service and permittees determine that 40% utilization is sufficient to provide [ldquo]overhead and lateral concealment from predators[rdquo] and big game populations constitute 30%, then even if cattle or sheep only use 10%, the 2019 Draft ROD would require grazing adjustments as opposed to requiring the state to reduce big game numbers. Similarly, if grazing reduces canopy by a total of 5% such that

total canopy cover falls below the indicator values (10% or 15%), then permittees will be punished even though their operation was not a significant causal factor in the allotment's condition. The 2019 Draft ROD sets up every grazing permittee for failure with imprecise language that the Coalition identified in its comments and the Forest Service has failed to correct.

Finally, the 2019 FEIS uses the term "[dquo]capable[rdquo]" but never documents which if any of the priority habitat is capable of the indicator values described above. The FEIS offers little if any analysis of soils, precipitation or altitude all of which will affect the habitat. However, the Forest Service, BLM, and most state entities (including Wyoming Game and Fish and Wyoming Department of Agriculture) do not have monitoring data of what sites are actually "[dquo]capable.[rdquo]" Thus, range personnel faced with the lack of any information may (e.g. will) resort to the Habitat

Page 10 Coalition of Local Government Objections to 2019 Greater Sage Grouse Plan Revision

Objectives rather than using them as references. Forest Service manuals and handbooks generally do not require the Forest Service to measure and record grass height or percent canopy cover beneath that grass height or beneath sagebrush. Indeed, the Forest Service never adopted rangeland health principles in 1995 so to the extent monitoring data exists, it will vary in quality and be more than 20 years old. The Forest Service has not performed detailed site analysis or carrying capacity studies for the past 35 years and now lack the personnel and budgets to do so.

D. Suggested Remedies To Resolve the Objection

The objection could be resolved with the following language:

In greater sage-grouse HMA, if livestock grazing is determined to be a significant causal factor limiting achievement of desired conditions for seasonal habitats on capable sites independently determined to be capable after taking into account existing uses, adjust livestock management, as appropriate, to address species life requirements (e.g., cover, food, shelter).

VI. OBJECTION ISSUE 4: HARD AND SOFT TRIGGERS

A. Description of Objection Issue in 2019 Draft ROD: Retention of Hard and Soft

Triggers from the 2015 LUPA

The 2019 Draft ROD provides two types of triggers [ndash] hard and soft [ndash] that are tripped when changes to sage-grouse populations or habitat are determined. A soft-trigger [ldquo]is hit when there is any deviation from normal trends in habitat or population in any given year. Normal population trends are calculated as the five-year running mean of annual population counts.[rdquo] 2019 Draft ROD at 51. Metrics include [ldquo]annual lek counts, wing counts, aerial surveys, habitat monitoring, and Density and Disturbance Calculation Tool evaluations.[rdquo] Id. A hard-trigger is [ldquo]a catastrophic indicator that the species is not responding to conservation actions or that a larger-scale impact or set of impacts is having a negative effect. Metrics include but are not limited to number of active leks, acres of available habitat, and population trends based upon lek counts.[rdquo] Id.

If either a hard or soft trigger is tripped, the Forest service will [ldquo]identify and implement appropriate management responses for the specific casual factor in the decline of populations and/or habitats.[rdquo] Id. at 50. Furthermore, if a [ldquo]hard trigger is hit, the Forest Service will immediately defer issuance of discretionary authorizations for new actions for a period of 90 days.[rdquo] Id. at 50.

B. Link Between Prior Substantive Comments and Objection

The Coalition objected to the use of [ldquo]hard wired[rdquo] responses in its scoping comments. 011918 NOI USFS Comments. The Coalition elaborated during the Cooperating Agency process that the problem with the new Adaptive Management triggers were the exact same as those included in the 2015 LUPA. 081518 Proposed Changes Comment at 5-6. Specifically, the Coalition described how soft-triggers will be tripped on [ldquo]any deviation[rdquo] and a soft-trigger still includes the ability to adjust uses. Id. The Coalition also identified major problems with hard-triggers including the reliance on single metrics to dictate an entire management system. Id. at 7.

C. Concise Statement of Objection: Adaptive Management Triggers are Arbitrary and

Capricious

Once the adaptive management triggers in the 2019 Draft ROD are tripped, the Forest Service will adjust discretionary uses. The triggers do not take into account, however, that various environmental factors may have caused the deviation. For example, if a severe drought occurs in years 1 through 3, and populations drop below the "five-year running mean" during year 4 and 5 but years 4 and 5 produce exceptional growth, presumably the Forest Service would cut authorized uses on years 4 and 5 without any benefit to the grouse. Thus, the 2019 Draft ROD forces a single response on every possible scenario and, moreover, that single response may not benefit sage-grouse if the trigger was tripped as the result of a fire, drought, big game species or other. The Forest Service did not attempt to resolve this arbitrary system in its FEIS despite the Coalition's repeated comments. See e.g., Ex. 5, 061218 Key Changes Comment Letter.

Moreover, as to soft-triggers, the 2019 Draft ROD does not provide any untriggering language despite the fact that the soft-trigger will still trip management adjustments. As a result, the Forest Service will implement the exact same response (i.e. adjustment of uses) but only one can be reversed. The rationale for the disparate treatment of the two types of triggers is entirely absent in the FEIS. Moreover, reliance on a 5 year population average ignores long term trends and variations that extend beyond that limited scope.

D. Suggested Remedies To Resolve the Objection

The Coalition is not opposed to adaptive management as long as the response to identified triggers includes a spectrum of possible actions and includes flexibility when the causal factor for the trigger being tripped is due to no fault of any authorized use or is the result of an anomalous year. Adaptive management requires a consistent commitment to monitoring and to working with land users and an agreement on the data set. Too often monitoring is a one-time event or worse there is inconsistent protocols, such as measuring canopy in the fall or winter. Imposing triggers without the necessary criteria for adaptive management will lead to harsh and unfounded land management. The Coalition suggests that the Wyoming Forest Service plan be modified to mirror the Utah Forest

Service Plan on this aspect.

VII. OBJECTION ISSUE 5: FAILURE TO ADDRESS CONTROVERSY OF NATIONAL TECHNICAL TEAM REPORT

A. Description of Objection Issue in 2019 Draft ROD: National Technical Team Report and Monograph

Page 12 Coalition of Local Government Objections to 2019 Greater Sage Grouse Plan Revision

The 2019 Draft ROD includes several limitations, prescriptions, and management actions that are supported by the NTT, COT and other articles compiled into the USGS Comprehensive Review of Ecology and Conservation of the Greater Sage Grouse: A Landscape Species and its Habitat ([ldquo]Monograph[rdquo]). The 2019 Draft ROD provides:

[bull] GRSG-TDDD-GL-015-Guideline - In PHMA, do not authorize surface disturbing activities unless all existing discrete anthropogenic disturbances, (including wildfire after 2011), cover less than 5% of the suitable habitat in the surrounding area using the current Density Disturbance Calculation Tool process or its replacement and the new use will not cause exceedance of the 5% threshold. See 2019 Draft ROD at 52 (GRSG-TDDD-GL-015-Guideline).

[bull] In PHMA, do not authorize new projects that create noise levels, either individual or cumulative, that exceed 10 dBA (as measured by L50) above baseline noise at the perimeter of the lek (or lek center if no perimeter is yet mapped) from 6 p.m. to 8 a.m. during the breeding season (March 1 to May 15). Id. at 53 (GRSG-TDDD-GL-021-Guideline).

[bull] In greater sage-grouse HMA, 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 (e.g., cover, food, shelter). Id. at 55

(GRSG-LG-GL-038-Guideline).

[bull] The 2019 Draft ROD never discusses or analyzes the controversy surrounding the methodology, credibility, and unreliability of the Monograph as exposed by various reviewers that invalidate the suggested limitations within the Monograph.

B. Link Between Prior Substantive Comments and Objection

The Coalition provided extensive comments on each of these issues. In its scoping comments, the Coalition detailed flaws in the noise literature that is incorporated in the Monograph, credibility and methodological flaws in the 5% disturbance cap, and false assumptions regarding livestock grazing impacts on habitat. 011918 NOI USFS Comments at 5-16. The Coalition further developed these issues in its Cooperating Agency Proposed Changes comments. 081518 Proposed Changes comment at 12 [ndash] 20, 30-32, and then again in its comments to the DEIS. 010319 DEIS Comments at 3-5.

Page 13 Coalition of Local Government Objections to 2019 Greater Sage Grouse Plan Revision

C. Concise Statement of Objection: Forest Service Failed to Address Controversial and Flawed Science That Serve as Basis for Prescriptions in 2015 LUPA and 2019 Draft ROD

CEQ rules require an FEIS to address scientific controversies. 40 C.F.R. [sect][sect] 1503.4(a); 1508.27(b)(4). An FEIS that does not, will be set aside. *Middle Rio Grand Conservancy Dist. v. Norton*, 294 F.3d 1220, 1229 (10th Cir. 2002) (disagreement as to quantity of water was a scientific controversy to be addressed in the FEIS); *Center for Biological Diversity v. Forest Service*, 349 F.3d 1157, 1168-69 (9th Cir. 2003) (responding generally to a disagreement is not sufficient.). By law, Interior must [ldquo]ensure and maximize[rdquo] the quality, objectivity, utility and integrity of information disseminated. 44 U.S.C. [sect]3516. (hereinafter [ldquo]IQA[rdquo]). NEPA imposes an affirmative duty on federal agencies to [lsquo]insure the professional integrity, including scientific integrity, of the discussions and

analyses in the environmental impact statements.[rsquo][rdquo] Utahns for Better Transp. v. U.S. Dep't of Transp., 305 F.3d 1152, 1181 (10th Cir. 2002) as modified on reh'g, 319 F.3d 1207 (10th Cir. 2003) (quoting 40 C.F.R. [sect] 1502.24). The Forest Service[rsquo]s blind reliance on the NTT Report violates the basic tenant of NEPA that agencies must perform a hard look especially when comments reveal a persistent and significant scientific controversy.

1. 5% Disturbance Cap

Studies by Naugle, Doherty and Ramey, among others, do not recommend a 3% or 5% disturbance cap. The Forest Service may not selectively use literature to justify (or perhaps predetermine) a NEPA decision and the confusion in implementing such a cap and how it impairs local government land management was not addressed. Alternative D of the 2015 FEIS considered a 9% disturbance cap and found that impacts to the economy would be much ameliorated while still preserving sage-grouse core habitat. See 2015 FEIS at 4-77. The Coalition prefers the 9% disturbance cap that balances multiple uses with sage-grouse habitat.

The 2019 FEIS also refers repeatedly to Hanser, et al. without explaining the limits of the USGS review or its inherent bias. The Coalition notes that Steve Hanser, the lead author of the 2014 USGS paper, also authored the 2018 review. Other authors for both include David Manier and Zachery Bowen. The Coalition has closely reviewed the Hanser, et al. (2018) report, which assumes that only if new literature refutes the previous literature, that the 2018 Management Actions must be revised to reflect the new literature. This is not what NEPA requires, especially because the 2015 LUPAs were based on several scientifically controversial principles that neither Interior nor the Forest Service ever addressed. The failure to address these controversies sparked litigation across the country and the Forest Service and Interior, to date, have failed to acknowledge or address the significant scientific problems with this cap.

2. 10DB Noise Limitations

This management action was based on the NTT Report. The NTT Report, however,

overstates and misrepresents the conclusion of the literature it cites (e.g. Blickley (2012)). Blickley, Page 14 Coalition of Local Government Objections to 2019 Greater Sage Grouse Plan Revision however, 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 2015 LUPA reached 70 dBA. Utah Env'tl. Cong., 479 F.3d at 1280 (Explanation for a 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" is arbitrary and capricious). 011918 USFS NOI Comments at 14.

The recommended noise levels are not based upon any standardized, repeatable data collection, or accepted methods of sound measurement. See Ramey, et al. A Report on National Greater Sage-Grouse Conservation Measures Produced by the BLM Sage-Grouse National Technical Team, at 33-39 (Dec. 21, 2011). No studies have been performed that determine which frequencies have more (if any) or less impact on sage-grouse. Therefore, the USFS must consider the noise limitations in the RMP amendments and consider all other studies and scientific information that is available. The Forest Service currently lacks the expertise, personnel or even authority to implement this standard and has not addressed the controversy surrounding its implementation in the 2019 FEIS.

3. Livestock Grazing Does Not Threaten Sage-Grouse Habitat in Wyoming

No literature has been published on grazing that shows sage-grouse or its habitat are in jeopardy or are threatened by livestock grazing in Wyoming. Neither the 2015 FEIS nor the 2019 FEIS document habitat in Wyoming that is being impacted by livestock grazing to the detriment of sage-grouse. Moreover, the 2019 FEIS does not document whether livestock grazing in Wyoming, or any state, is negatively impacting the mortality rates of sage-grouse. Rather, the Forest Service relies on outdated and controversial literature to justify the management actions that will be used to decrease livestock grazing on Utah forests without explaining the impacts these decreases will have.

4. NTT Report, COT Report and Monograph Must be Fully Considered

NEPA imposes an affirmative duty on federal agencies to [l]nsure the professional integrity, including scientific integrity, of the discussions and analyses in the environmental impact statements.[rdquo] Utahns for Better Transp. v. U.S. Dep't of Transp., 305 F.3d 1152, 1181 (10th Cir. 2002) as modified on reh'g, 319 F.3d 1207 (10th Cir. 2003) (quoting 40 C.F.R. [sect] 1502.24). The Forest Service[rsquo]s blind reliance on the Monograph violates the basic tenant of NEPA that agencies must perform a hard look especially when comments reveal a persistent and significant scientific controversy. The Forest Service[rsquo]s failure to use the ample means to address these problems (e.g. adding an appendix as the Coalition suggested) is inexcusable.

The 2019 FEIS does not discuss any of the problems that the Coalition identified in the NTT Report, the COT Report and the Monograph and, therefore, the Forest Service has committed the same error it made in 2015. As the Coalition commented, the NTT Report does not conform to the Information Quality Act. The NTT Report authors cite to authority that does not appear in the "Literature Cited" section. J.W. Connelly is cited 12 times in the Report but 25% of the time, there was no source available for review. B.L. Walker was also cited 11 times and 45% of the time there was no source available for review.

Sources often cited by the NTT Report do not directly support the assertions for which they were cited. For example, the NTT Report states that full reclamation bonds should be required to ensure full restoration in all priority GRSG habitat. However, the source cited only recommends that breeding habitat should be restored to a condition that is once again suitable for breeding. NTT authors extended the recommendation regarding breeding habitat to all habitat, a fundamentally larger area not supported by any research.

Many of the authors of the NTT Report were biased. The authors cited each others work to the exclusion of other, often contradictory, literature. Many of the authors collaborated on other work that perpetuated certain positions, while, again, excluding other reasonable and often more

reasonable positions. Three of the NTT authors are the three most cited sources throughout the NTT Report. The NTT authors pushed their own perspective to the forefront and compromised the integrity and accuracy of the NTT Report itself.

D. Suggested Remedies To Resolve the Objection

The Coalition requests that the above cited 2019 Draft ROD language be revised as follows:

GRSG-TDDD-GL-015-Guideline - In PHMA, do not authorize surface disturbing activities unless all existing discrete anthropogenic disturbances, (including wildfire after 2011), cover less than 5% 9% of the suitable habitat in the surrounding area using the current Density Disturbance Calculation Tool process or its replacement and the new use will not cause exceedance of the 5% threshold.. See 2019 Draft ROD at 52 (GRSG-TDDD-GL-015-Guideline).

In PHMA, do not authorize new projects that create noise levels, either individual or cumulative, that exceed 10 30 dBA (as measured by L50) above baseline noise at the perimeter of the lek (or lek center if no perimeter is yet mapped) from 6 p.m. to 8 a.m. during the breeding season (March 1 to May 15). Id. at 53 (GRSG-TDDD-GL-021-Guideline).

In greater sage-grouse HMA, 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 (e.g., cover, food, shelter). Id. at 55 (GRSG-LG-GL-038-Guideline).

Finally, the Forest Service should, as the Coalition suggested, add an appendix to the 2019 FEIS that fully evaluates whether the Monograph is credible, reliable, and the best available information when the Monograph has been the subject of litigation regarding the significant data quality and integrity issues identified by multiple parties.

Page 16 Coalition of Local Government Objections to 2019 Greater Sage Grouse Plan Revision

VIII. CONCLUSION AND RELIEF REQUESTED

The Coalition appreciates the improvements made to the 2019 ROD as compared to the 2015 LUPA and encourages the Forest Service to further improve the 2019 Plan with the corrections identified herein.

Respectfully submitted this 1st Day of October, 2019:

/S/ Kent Connelly

Kent Connelly, Chairman Wyoming Coalition of Local Governments