

Data Submitted (UTC 11): 10/1/2019 6:00:00 AM

First name: Constance

Last name: Brooks

Organization: C.E. Brooks and Associates

Title:

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

OBJECTOR

Coalition of Local Governments

925 Sage Avenue, Suite 302

Kemmerer, WY 83101

P: (307)877-2004

Email: kconnelly@lcwy.org

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

RESPONSIBLE OFFICIALS

Nora Rasure

Regional Forester, Intermountain Region

Brian Ferebee

Regional Forester, Rocky Mountain Region

OBJECTION REVIEWING OFFICER

Chris French

210 14th Street, SW, EMC-PEEARS, Mailstop 1104, Washington, DC 20250

SUBMITTED VIA

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES. ii

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: No Surface Occupancy in
 Priority Habitat Management Areas. 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. 6

 A. Description of Objection Issue in 2019 Draft ROD: Conservation Uplift and No
 Net Loss. 6

 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. 8

 A. Description of Objection Issue in 2019 Draft ROD: Livestock Grazing Permit
 Reductions and Habitat Objectives. 9

 B. Link Between Prior Substantive Comments and Objection. 9

 C. Concise Statement of Objection: Grazing Guideline 35 Forces Grazing Permit
 Reductions When Grazing is Not a Significant Causal Factor and is Arbitrary and

Capricious. 9

D. Suggested Remedies To Resolve the Objection. 10

VI. OBJECTION ISSUE 4: FAILURE TO ADDRESS SCIENTIFIC CONTROVERSIES IN 2019 FEIS. . 10

A. Description of Objection Issue in 2019 Draft ROD: National Technical Team
Report and Monograph. 10

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

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. 11

D. Suggested Remedies To Resolve the Objection. 13

VII. CONCLUSION AND RELIEF REQUESTED. 14

~ i ~

TABLE OF AUTHORITIES

FEDERAL CASES

Center for Biological Diversity v. Forest Service, 349 F.3d 1157 (9th Cir. 2003). 11

Citizens[rsquo] Comm. to Save Our Canyons v. Krueger, 513 F.3d 1169 (10th Cir. 2008). 6

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

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

Middle Rio Grand Conservancy Dist. v. Norton, 294 F.3d 1220 (10th Cir. 2002). 11

Mountain States Legal Fndn. v. Andrus, 499 F. Supp. 383 (D. Wyo. 1980). 5

Mountain States Legal Fndn. v. Hodel, 668 F. Supp. 1466 (D. Wyo. 1987). 5

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

Utahns for Better Transp. v. U.S. Dep[rsquo]t of Transp., 305 F.3d 1152 (10th Cir. 2002) as modified
on reh[rsquo]g, 319 F.3d 1207 (10th Cir. 2003). 11, 13

W. Org. of Res. Councils v. Bureau of Land Mgmt., 591 F. Supp. 2d 1206 (D. Wyo. 2008), aff[rsquo]d

sub nom. BioDiversity Conservation All. v. Bureau of Land Mgmt., 608 F.3d 709 (10th Cir. 2010). 4

WildEarth Guardians v. Nat[rsquo]l Park Serv., 703 F.3d 1178 (10th Cir. 2013).. 4

Wyoming v. USDA, 570 F. Supp.2d 1309 (D. Wyo. 2008), rev[rsquo]d on other grounds, 661 F.3d 1209 (10th Cir. 2011). 5

FEDERAL STATUTES

5 U.S.C. [sect]706(2)(a). 6

16 U.S.C.A. [sect] 475(a). 7

16 U.S.C. [sect][sect] 528-531. 7

16 U.S.C. [sect] 1604(e). 7

~ ii ~

16 U.S.C. [sect] 1607. 7

43 U.S.C. [sect] 1714(c). 5

44 U.S.C. [sect] 3516. 11

STATE STATUTES

Wyo. Stat. [sect]11-16-103. 1

Wyo. Stat. [sect]11-16-122. 1

Wyo. Stat. [sect]18-5-102. 1

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). 9

36 C.F.R. [sect] 228(e). 8

36 C.F.R. [sect] 228.8. 7

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

40 C.F.R. [sect] 1502.24. 11

40 C.F.R. [sect] 1503.4(a)..... 11

40 C.F.R. [sect][sect] 1505.2(c)..... 8

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

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

~ iii ~

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 Utah ([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 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[rsquo]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.

III. OBJECTION ISSUE 1: NO SURFACE OCCUPANCY STIPULATIONS

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

Priority Habitat Management Areas

The 2019 Draft ROD includes a No Surface Occupancy ([ldquo]NSO[rdquo]) stipulation for unleased fluid minerals in priority habitat management areas ([ldquo]PHMA[rdquo]) that cannot be waived or modified.

See 2019 Draft ROD at 59 (GRSG-M-FMUL-ST-065). Exceptions can be granted if, and only if:

(1) there would be no direct, indirect, or cumulative effects to the greater sage-grouse or its habitat;

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

or (2) all impacts could be fully offset through mitigation and the exception will include appropriate

controlled surface use and timing limitation stipulations. Id.

B. Link Between Prior Substantive Comments and Objection

The Coalition commented that Standard 74 (now Standard 65) should be deleted entirely

because [ldquo]mandatory NSO in PHMA results in a de facto withdrawal of the area from mineral

development.[rdquo] 081418 Utah USFS Final Comments at 10. If no surface disturbance is allowed, tens

of thousands of acres will not [ndash] and cannot [ndash] be developed. See id. Moreover, the standard is not

contingent on the actual presence of sage-grouse or sage-grouse leks. See 010319 Coalition

Comment on FS Proposed LMPA at 9. The Forest Service never disclosed or analyzed these facts

in the DEIS or FEIS.

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. 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 2-53 shows large areas of land will not be accessible for fluid mineral development but the 2015 FEIS does not disclose the number of Forest Service acres that are subject to NSO stipulations or their location to lands closed to energy development. The 2019 FEIS does not correct this deficiency. See 2019 FEIS (incorporating 2015 FEIS at 4-288 [ndash] 313). Careful study of Map 2-53, however, reveals that thousands of acres of lands which include NSO stipulations are adjacent to lands that are closed to oil and gas leasing. The 2015 FEIS did not disclose 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.

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

The 2019 FEIS did not correct the failure in the 2015 FEIS to disclose and analyze the number of acres of Forest Service lands that include an NSO and where an NSO stipulation made it impossible to develop fluid minerals. The interrelationship between the [ldquo]closed[rdquo] acres and the

["NSO"] 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 in the Wyoming communities.

2. 2019 Draft ROD Illegally Withdraws Fluid Minerals

In order to withdraw minerals, the Secretary must notify both the House and Senate, *id.* at 1714(c)(1), provide Congress with exhaustive details on the public proceedings, need for, and cause of the withdrawal, *id.*, and upon which information the Congress may approve or reject the withdrawal.

The NSO stipulation within PHMAs is the functional equivalent of a closure to oil and gas leasing regardless of whether there are active leks or sage grouse present in these habitat areas. No leasing on an area that exceeds 5,000 acres is a de facto withdrawal of PHMA from mineral development. 43 U.S.C. [sect] 1714(c); 2015 LUPA Map 2-53. The Forest Service does not have unilateral authority to implement a de facto withdrawal of minerals in sage-grouse habitat without complying with the mandatory procedures of a withdrawal or land management decision, including full disclosure and analysis of the energy resources foregone.

Under the 2019 Draft ROD, production would be limited to the edges of PHMA because Forest Service lands designated as sage grouse habitat cannot be developed through horizontal or directional drilling. The Forest Service has not disclosed this fact nor weighed the merits of closing these lands to mineral development as required in FLPMA. 43 U.S.C. [sect] 1714(c); *Mountain States Legal Fndn. v. Andrus*, 499 F. Supp. 383, 391 (D. Wyo. 1980); *Mountain States Legal Fndn. v. Hodel*, 668 F. Supp. 1466, (D. Wyo. 1987) *Wyoming v. USDA*, 570 F. Supp.2d 1309, 1350 (D. Wyo. 2008) (lack of surface access precludes oil and gas development), *rev[rsquo]d on other grounds*, 661 F.3d

1209 (10th Cir. 2011). Thus, not only has the 2019 FEIS violated the basic procedures to complete a mineral withdrawal, but it has failed to disclose to the public in the 2019 FEIS of the impacts of the NSO stipulation.

3. Exceptions Without Waivers and Modifications is Arbitrary and Capricious

According to the 2019 Draft ROD, the NSO stipulation cannot be waived or modified. See 2019 Draft ROD at 59. Exceptions, however, can be granted if, and only if: (1) there would be no direct, indirect, or cumulative effects to the greater sage-grouse or its habitat; or (2) all impacts could be fully offset through mitigation and the exception will include appropriate controlled surface use and timing limitation stipulations. *Id.*

The Forest Service does not explain how the exact same factors supporting an exception (i.e. no direct, indirect, or cumulative impacts to sage-grouse) are not equally valid for a waiver or modification. It is clear that the purpose of the exception is to prevent impacts and the purpose of a waiver or modification could also be to prevent impacts to sage-grouse. However, despite the analogous purpose, the Forest Service expects the public to accept the absurd proposition that waivers, modifications, and exceptions are somehow substantively different. 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). The Forest Service has not demonstrated how an exception is any different in purpose or effect from a waiver or modification and, therefore, fails to connect the decision to use only exceptions to reasonable facts that justify that decision.

D. Suggested Remedies To Resolve the Objection

The Coalition suggests that the following language correlates more closely with the Forest

Service's statutory authority.

GRSG-M-FMUL-ST-065-Standard - In PHMA, any new oil and gas leases or geothermal leases must may include a No Surface Occupancy stipulation only when the deciding officer determines that energy development would adversely affect sage grouse on the site and that mitigation measures would be insufficient. There will be no waivers or modifications. An exception, after review by an interagency technical team, could be granted by the authorized officer if:

- [bull] There would be no direct, indirect, or cumulative effects to the greater sage-grouse or its habitat; or

- [bull] Impacts could be fully offset through mitigation; and

- [bull] The exception will include appropriate controlled surface use and timing limitation stipulations.

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

IV. OBJECTION ISSUE 2: COMPENSATORY MITIGATION STANDARD

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

The 2019 Draft ROD changes the mitigation standard used in the 2015 LUPA from a [ldquo]net conservation gain[rdquo] threshold to a [ldquo]no net loss[rdquo] threshold. Compare 2015 LUPA at 18 with 2019 Draft ROD at 25 (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 ROD at 20. 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 compensatory mitigation projects that result in no net loss, subject to existing rights, by applying beneficial mitigation actions.[rdquo] 2019 Draft ROD at 52. The 2019 ROD language is at best ambiguous and retains the terms used in compensatory mitigation so as to negate the alleged change in policy.

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., 081418 Utah USFS Final at 8. 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 relies heavily on artifacts of the net conservation gain threshold and negates the purported change to [ldquo]no net loss[rdquo]. Needless to say the 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 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 ROD at 20; 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 name of 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 secretarial order and presidential 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 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) ([ldquo]...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.[rdquo]).

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.[rdquo] 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.[rdquo]

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 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 [ldquo]conservation uplift[rdquo] or [ldquo]improve[rdquo]

language should be deleted to match statutory authorities and Standard GRSG-GEN-ST-005 should

Page 8 Coalition of Local Government Objections to 2019 Greater Sage-Grouse Plan Revision

be deleted entirely as inconsistent with law. 2019 Draft ROD at 20 ([ldquo]conservation uplift[rdquo]), 53 ([ldquo]beneficial mitigation actions[rdquo]).

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 PHMA, if livestock grazing is limiting achievement of seasonal desired conditions, adjust livestock management, as appropriate, to address greater sage-grouse habitat requirements.[rdquo] 2019 Draft ROD at 55 (GRSG-LG-GL-035-Guideline). 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 8% in high elevation, 5% in low elevation and 4% in Parker sites in breeding and nesting habitat; and (3) perennial grass canopy cover of

greater than 8% in high elevation, 6% in Parker, and 5% in low elevation sites in brood-rearing and summer habitat. See 2019 Draft ROD Attachment E at 90-91. 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 and repeated these objections in the revision process. 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. 081418 Proposed Changes Comments at 4-6. The Coalition emphasized that Table 1 (Habitat Objectives) should be removed entirely as unsupported and lacking demonstrated benefit to sage-grouse, and 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 5 (discussing GRSG-LG-GL-036-Guideline (requiring adjustments to livestock grazing if Table 1 objectives are not met)).

Page 9 Coalition of Local Government Objections to 2019 Greater Sage-Grouse Plan Revision

C. Concise Statement of Objection: Grazing Guideline 35 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.” 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 “[i]n PHMA, if livestock grazing is limiting achievement of seasonal desired conditions, adjust livestock management, as appropriate, to address greater sage-grouse habitat requirements. 2019 Draft ROD at 55 (emphasis added).

Under the Forest Service rules and guidance, 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. By way of comparison, the Wyoming Forest Service Draft ROD requires that livestock grazing be a “[causal factor]” [ndash] the Utah Draft ROD

doesn’t even require causality. As a result, in Utah, every single cow or sheep on every single allotment is a factor “[limiting] the achievement” 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 “[overhead and lateral concealment from predators]” and big game populations constitute 30%, then even if cattle or sheep only use 10%, the 2019 Draft ROD would require grazing adjustments (e.g. reductions). 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.

D. Suggested Remedies To Resolve the Objection

The objection could be resolved by the following language:

In PHMA, if livestock grazing is a significant causal factor in limiting achievement of seasonal desired conditions, adjust livestock management, as appropriate, to

address greater sage-grouse habitat requirements subject to local site capability.

VI. OBJECTION ISSUE 4: FAILURE TO ADDRESS SCIENTIFIC CONTROVERSIES IN 2019 FEIS

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

The 2019 Draft ROD includes several limitations, prescriptions, and management actions that are supported by the NTT Report, COT Report and other articles compiled into the USGS Page 10 Coalition of Local Government Objections to 2019 Greater Sage-Grouse Plan Revision Comprehensive Review of Ecology and Conservation of the Greater Sage Grouse: A Landscape Species and its Habitat ([ldquo]Monograph[rddquo]). The 2019 Draft ROD provides:

[bull] In PHMA, do not issue new discretionary written authorizations unless all existing discrete anthropogenic disturbances cover less than 3% of the total greater sage-grouse habitat within the Biologically Significant Unit and the proposed project area, regardless of ownership, and the new use will not cause exceedance of the 3% cap. See 2019 Draft ROD at 52 (GRSG-GEN-ST-004-Standard).

[bull] In PHMA, do not authorize new large scale infrastructure or facilities that create sustained noise levels of >10 dB above ambient baseline at the perimeter of an occupied lek during lekking (from March 1 to April 30) from 6 p.m. to 9 a.m. Id. at 53 GRSG-GEN-ST-006-Guideline).

[bull] In PHMA, if livestock grazing is limiting achievement of seasonal desired conditions, adjust livestock management, as appropriate, to address greater sage-grouse habitat requirements. Id. at 55 (GRSG-LG-GL-035-Guideline).

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 3% or 5% disturbance cap, and false assumptions regarding livestock grazing. 011918 NOI USFS Comments at 5-16. The Coalition further developed these issues in its Supplemental NOI Comments. Exhibit (Ex.) 1, 081418 Supplemental NOI Comments at 1-2, 9-11, and then again in its comments to the DEIS. 010319 DEIS Comments at 3-5.

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. 3% 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 impairs local government land management which was also 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.

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.

2. 10 dB Noise Limitations

This limitation 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, 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 Forest Service 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 Page 12 Coalition of Local Government Objections to 2019 Greater Sage-Grouse Plan Revision 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 in Utah

No literature has been published on grazing that shows sage-grouse or its habitat are in jeopardy or are threatened by livestock grazing in Utah. Neither the 2015 FEIS nor the 2019 FEIS document habitat in Utah that is being impacted by livestock grazing to the detriment of sage-grouse. Moreover, the 2019 FEIS does not document whether livestock grazing in Utah, 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 [squo]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 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:

In PHMA, do not issue new discretionary written authorizations unless all existing discrete anthropogenic disturbances cover less than 3% 9% of the total greater sage-grouse habitat within the Biologically Significant Unit and the proposed project

area, regardless of ownership, and the new use will not cause exceedance of the 3% 9% cap. See 2019 Draft ROD at 52 (GRSG-GEN-ST-004-Standard).

In PHMA, do not authorize new large scale infrastructure or facilities that create sustained noise levels of >10 30 dB above ambient baseline at the perimeter of an occupied lek during lekking (from March 1 to April 30) from 6 p.m. to 9 a.m. Id. at 53 GRSG-GEN-ST-006-Guideline).

In PHMA, if livestock grazing is limiting achievement of seasonal desired conditions, adjust livestock management, as appropriate, to address greater sage-grouse habitat requirements. Id. at 55 (GRSG-LG-GL-035-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.

VII. CONCLUSION AND RELIEF REQUESTED

The Coalition appreciates the improvements made to the 2019 Draft 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:

/