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Organization: Western Watersheds Project

Title: Deputy Director

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

Dear Objection Reviewing Officer,

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

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

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

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

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

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

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

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

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

NOTICE OF OBJECTION

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

CONCISE STATEMENT OF OBJECTION

Objectors take issue with the U.S. Forest Service's failure to adequately protect sage-grouse on forest lands in the western United States and the draft decision's intention to create increased "flexibility" in managing sage-grouse habitat. The sage-grouse has very specific habitat needs, and the proposed action's purported "flexibility" is really just a generalized weakening of the required mitigation and conservation measures proposed by the 2015 land use plan amendments. The draft decision violates specific provisions of the National Environmental Policy Act ("NEPA"), the National Forest Management Act ("NFMA"), the Administrative Procedures Act ("APA") and multiple regulations implementing these statutes.

The greater sage-grouse (*Centrocercus urophasianus*) is a charismatic umbrella species for the entire sagebrush ecosystem. The U.S. Forest Service is privileged to manage important sage-grouse habitat, and the current planning effort seeks to revise the 2015 land use plan amendments for over 5.2 million acres in the states of Idaho, Nevada, Utah, Wyoming, and Colorado. While the 2015 land use plan amendments didn't go far enough

or comport with the best available science regarding the habitat needs of greater sage-grouse, they were superior from a conservation perspective than the current effort.

STATEMENT OF REASONS

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

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

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

When analyzing cumulative effects, the Forest Service must analyze the effects on the environment resulting from the incremental impacts of the action, and its alternatives, when added to other past, present, and reasonably foreseeable future actions. 40 C.F.R. § 1508.7.

To satisfy the requirements of the NEPA regulations, the Forest Service must take a "hard look" at the impacts resulting from the proposed action.

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

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

For example, the Nevada plan undercuts GRSG-GEN-DC-002-Desired Conditions for anthropogenic disturbance from being "focused in non-habitat areas outside of PHMA and GHMA [and SFA]" to simply, and vaguely, "Anthropogenic disturbance is rare in PHMA and GHMA." This isn't merely a change to SFA, as the FS claims (see FEIS at 2-131), but a change from direction to locate disturbance away from important habitats to allowing it at an undefined level. Without any definition of rarity, and without any analysis of this change, the proposed action fails to conform to the requirements of NEPA. PHMA was also cut by 1/10th in acreage, reducing the area in for which the best protections occur.

There are also very few management prescriptions in the FEIS for OHMA in Nevada, begging the question as to what protections these 426,000 acres will receive. OHMA is mentioned only in the management of livestock grazing and wild horses and burros. It's very unclear how OHMA is distinguished from GHMA.

The proposed action undercuts protections for sage-grouse in Nevada that had previously been in place under GRSG-LR-SUA-ST-015-Standard, which allowed for special use authorizations for infrastructure in GHMA if they could be located within existing rights of way and with stipulations to protect grouse. FEIS at 2-142. The new plan claims to incorporate this standard into GRSG-LR-SUA-ST-015, but the new standard includes five exceptions to this standard in both PHMA and GHMA. These exceptions are also extended to GRSG-LR-SUA-ST-016, weakening the protections of PHMA and GHMA against lands special uses. FEIS at 2-142. The FEIS characterizes this change as simply being the removal of SFA. *Ibid.* In truth, this is significant change that isn't analyzed in the FEIS.

Requested remedy: Restore applicability of protections measures to GHMA and PHMA, without exception, particularly regarding Standards GRSG-LR-SUA-ST-015 and GRSG-LR-SUA-ST-016. Provide a full and detailed analysis of proposed removal or weakening of standards in GHMA and PHMA in a supplemental NEPA analysis.

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

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

There are numerous places where changes were made between the draft and final EIS that were not identified, analyzed, or disclosed in the comparison of the plans in Section 2.5. Some of these were not even flagged in accordance with the color scheme the agency was supposed to be using to make it easy on the reader to see the changes. We object to these omissions and request preparation of an SEIS in accordance with 40 C.F.R. § 1502.9(c)(i).

For example, the FEIS fails to fully disclose some of the changes it made to invasive species management since the draft plan. The FEIS says, "The Proposed Action includes the addition of desired conditions and management approaches that emphasize invasive plant treatments, with a focus on annual grasses....The addition of these plan components is to emphasize mapping and treatment of invasive species, which are one the greatest threats to greater sage-grouse." FEIS at 4-362. The FEIS does not describe the effects of the deletions in proposed invasive species management, namely GRSG-GRSGH-MA-038, GL-036, -MA-039, etc. that committed USFS to proactive invasive species management. FEIS at 2-152. The absence of these commitments in the final EIS is unexplained.

For example, the Nevada plan removes the requirement to remove guy wires and replaces it with "marking" guy wires in PHMA and GHMA. FEIS at 2-142. The "Issue/Clarification" column does not disclose this change. *Ibid.* There is also no analysis of this change.

In the Nevada plan, the agency changed GRSG-LG-ST-038-Standard from, "In PHMA and GHMA and SFA, do not approve construction of water developments unless beneficial to GRSG habitat..." to not approving construction of water developments "that would cause net adverse effects." FEIS at 2-152. It is unclear how the agency will determine this, as the plan doesn't indicate any scientific basis for the determination. All water development facilities have a potential for serious adverse effects, because these structures offer breeding habitat for mosquitoes that carry West Nile virus, a deadly threat to sage-grouse populations. There are no specific limits on geographic distance, type of development, season of construction, etc., and it is wholly unclear what this "Standard" even means in practice.

Individually and collectively, these represent substantial changes made to the FS's proposed plan amendments between the DEIS and FEIS stage. The FS's failure to candidly acknowledge that it made these changes and to analyze their environmental effects violates NEPA.

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

Requested remedy: Fully disclose and analyze all of the changes between the draft and final plans. Restore requirement to remove guy wires and disclose the changes to invasive species management, including through an amended analysis of the effects of those changes. Prohibit new water developments in sage-grouse habitat. Prepare a Supplemental EIS.

C. The plan makes significant management changes without analyzing and disclosing the impacts of or rationale for doing so, in violation of NEPA.

The proposed plan cuts 105,200 acres from PHMA in Nevada. ES-10, Table ES-2. Nowhere does the FEIS explain why these cuts were made or how removing 1/10th of the most protected habitat type from the FS management scheme will affect the sage-grouse on FS lands. Instead, the FEIS simply states, "HMA boundaries in Nevada have been adjusted during this amendment process," based on new science regarding lek locations, sage-grouse use of habitat, and removal of areas of non-habitat. The FEIS cites to Coates et al. 2016. It is not clear, however, how the USFS integrated these data into the new mapping for USFS management categories, and the effects of these changes are unassessed. The FEIS simply avers, "No impact to greater sage-grouse is anticipated from the HMA boundary adjustment." FEIS at 4-349.

The claims regarding acreage also obscure the issue of the changes in the HMA designations. By referencing the online maps, one can see that large areas of GHMA were also removed from areas on the Humboldt-Toiyabe National Forest, but the description in the FEIS doesn't address the shifting locations of GHMA acres, only the hard numbers. This fails NEPA's requirement that an agency adequately disclose the effects of its actions.

The Response to Comment boilerplate regarding changes to livestock grazing management fails to address the substantive comments provided by the public concerning the weakened management proposed. The proposed plan significantly walks back conformance to habitat guidelines and claims these are simply "initial references based on range-wide habitat selection by GRSG.... Should be refined collaboratively to fit local habitats... not all areas will be capable to achieving the seasonal habitat preference values." GRSG-GEN-MA-004-Management Approach, FEIS at 2-133, emphasis added. This is a substantial change from the 2015 plan which provided "specific desired conditions for GRSG based on seasonal habitat requirements." Thus, the FS is lowering the bar from what sage-grouse need for successful life cycles to habitat conditions where they can survive at all.

In the Nevada plan, the insertion of the word "net" into GRSG-LG-ST-018-Standard, "In PHMA and GHMA, do not approve construction of water developments that would cause net adverse effects to GRSG habitat..." is a significant change and different metric than the previous iteration, "Do not approve construction of water developments that would cause adverse effects." FEIS at 2-152. The FS is not disclosing how it will calculate the "net" impacts, or how this change to a standard will affect the protection of sage-grouse on Nevada forests.

For example, the Nevada plan changes GRSG-LG-GL-042-Guideline (previously -044) to setting the distance between bedding sheep and camps and leks from 2.0 miles from the perimeter of all leks to restricting them within 2.0 miles from an active or pending lek. FEIS at 2-155. This is more than a semantic difference, as the

definitions of "active" and "pending" are different than simply "leks," and within 2 miles is a different metric than 2 miles from the perimeter, but the FEIS identifies these significant changes as nothing more than a "clarification" to the plan. Ibid. There is no analysis of how many previously protected leks this now reduced protections for. The FEIS also incorporates the term "generally" when talking about the lekking season dates, implying that there is some wiggle room in how these restrictions will be applied. The FEIS fails to fully explain these new parameters. In the glossary, however, the difference is stark: An occupied lek is one that has been active at least once in the last ten years, a pending lek is one that has two or more males observed only once in the last five years, and an active lek is any lek that has had two or more males observed at least twice in the last five years. Thus, the purported "clarification" actually greatly reduces the temporal scale of the protections, in a way that isn't analyzed in the FEIS. This same obfuscation applies to the protections lifted in GRSG-LG-GL-044-Guideline and -045-Guidelines pertaining to fence construction and livestock infrastructure projects. The FS is effectively abandoning leks sooner by not applying protective management, making recovery and reoccupation by birds less likely.

Studies have found that marking fences only reduce sage-grouse collisions by as little as 57%, such that up to 43% of the collisions on unmarked fences continue to occur on marked fence sections (Van Lanen et al. 2017). The BLM's National Technical Team (2011) recommended that unused fences should be removed, and their rights-of-way withdrawn. Removal of this existing fencing would decrease potential raptor perching and subsequently the indirect impacts of raptors preying on grouse as and other prey species. The removal of fencing could also eliminate any direct mortality due to grouse colliding with problem fences. Instead of adhering to the science, the Nevada plan just limits fences near active or pending leks if mitigation measures are applied. GRSG-LG-GL-044-Guideline. This is inadequate, and the level of mitigation unspecified, as is the requisite success rate of the mitigation measures.

Additionally, the Nevada proposed action deletes the objective GRSG-LR-SUA-O-013-Objective that required retrofitting of tall structures with perch deterrents within 2 years of signing the ROD. FEIS at 2-139. The FEIS claims that this is now included in GRSG-LR-SUA-ST-017-Standard, but the new standard does not require retrofitting, simply "when issuing new authorizations or during renewal, amendment, or reissuance of existing authorizations that authorize infrastructure." FEIS at 2-142. Nor does this specify any specific time frame for compliance, a substantive change that is not analyzed or disclosed in the FEIS, and indeed, is obfuscated by the agency's explanation/rationalization for the change. A final weakening in this section is the change from "guy wire removal" to "guy wire marking," an alteration that the FEIS doesn't account for. FEIS at 2-142.

The proposed action references desired conditions "at the landscape scale" but fails to define "landscape scale" in the EIS. WWP raised this issue in comments, but the FS failed to address it. Because this term is undefined, the impacts of the proposed action cannot be evaluated. The Nevada proposed action incorporates this new language at GRSG-GEN-DC-003-Desired Condition, but the analysis of impacts doesn't consider the breadth of geographic change that the new term implies.

The proposed action also changes the percentage of acceptable conifer cover from 10 percent to 4 percent (See FEIS at 2-132) without explanation. This was a new change since the DEIS and WWP was unable to comment on it previously. There is no explanation of this revision in the FEIS and no recent science that we are aware of to support this change.

The proposed plan also alters without analysis the management of noise-related disturbance in sage-grouse habitat. Advances in science make it increasingly clear that noise from roads or industrial facilities is having a major negative effect on sage-grouse and their ability to make use of otherwise suitable habitats. Noise can mask the breeding vocalizations of sage-grouse (Blickley and Patricelli 2012), displaces grouse from leks (Blickley et al. 2012a), and causes stress to the birds that remain (Blickley et al. 2012b). According to Blickley et al. (2010), "The cumulative impacts of noise on individuals can manifest at the population level in various ways that can potentially range from population declines up to regional extinction. If species already threatened or endangered

due to habitat loss avoid noisy areas and abandon otherwise suitable habitat because of a particular sensitivity to noise, their status becomes even more critical."

It is reasonable to suppose that if noise that mimics oil and gas truck traffic causes elevated levels of stress-related metabolites in grouse on the lek (Blickley et al. 2012b), that this physiological response would be substantially similar during other parts of this bird's life cycle. Indeed, these researchers stated, "Noise at energy development sites is less seasonal and more widespread and may thus affect birds at all life stages, with a potentially greater impact on stress levels." Patricelli et al. (2012) recognized this explicitly:

"Second, and much more importantly, if noise levels drop down to stipulated levels at the edge of the lek, then much of the area surrounding the lek will be exposed to higher noise levels (see Figures 3 & 4). This management strategy therefore protects only a fraction of sage-grouse activities during the breeding season—mate assessment and copulation on the lek—leaving unprotected other critical activities in areas around the lek, such as foraging, roosting, nesting and brood rearing."

In another important change, the plans alter the adaptive management protocols considerably in ways that aren't fully analyzed or disclosed. Previously, if triggers were met in PHMA or GHMA, immediate changes were implemented. Now,

"The adaptive management response teams will identify appropriate management responses for each trigger and will document them in a report provided to the statewide technical team. Both proactive and reactive management responses may be included to address existing or anticipated threats in areas where warnings or triggers have been reached. The adaptive management response teams may also identify an emergency/contingency plan that would outline immediate management actions that would take place, in the event the trigger is exacerbated. Such a plan should include goals, objectives, management actions and monitoring requirements developed specifically for the appropriate geographic area and/or population being affected. ... Decision-makers from the appropriate land management agency may decide to implement the recommended management responses in coordination with the adaptive management response team within the affected response area or at the scale in which the trigger was reached. If a population hard trigger or a habitat trigger is reached, a much more aggressive management response may be anticipated. The federal land management agency local offices may implement the site-specific actions outlined in the emergency/contingency response plan."

FEIS at D-19. This is a strictly optional response: "may decide," "may implement." This leaves the entire adaptive management scheme uncertain, even for hard triggers.

Requested remedy: Reset PHMA boundaries to encompass all lands designated as Priority Areas for Conservation by the USFWS Conservation Objectives Team (2013). The FS must disclose all of the changes it made to the plans and describe the impacts of those changes. Restore original setbacks for sheep bedgrounds under GRSG-LG-GL-038-Guideline (previously -037). Restore prohibition on new fence construction within 1.2 miles of leks, and extend this prohibition to all lands within 4.0 miles of leks, to protect nesting habitats used by sage-grouse, rather than protecting lekking habitats only. Require that 7 inches of grass height be left behind in breeding, nesting, and brood-rearing habitats, and impose a maximum of 25% forage utilization in sage-grouse designated habitats. Restore requirement to provide perch inhibitors on tall structures within 2 years under GRSG-LR-SUA-O-012-Objective (now -13). Restore original guidance to allow 10% conifer cover, per the original LRMPA. Restore original restriction of GRSG-GEN-ST-008-Standard to apply to all forms of noise, whether sustained or not, and require that noise limits be imposed as measured at the periphery of occupied seasonal habitat. Provide a full and detailed analysis of proposed changes in protection from noise and livestock-related impacts in a supplemental NEPA analysis.

The FS must also analyze and disclose the effects of the weakened adaptive management response and the lack of enforceability they now entail.

D. The proposed action defers important analyses to future implementation-level decision-making without analyzing or disclosing the public participation opportunities of those decisions, in violation of NEPA.

The FEIS analyzes the retention of "Net Conservation Gain" by merely claiming, "Environmental analysis would occur at the project level for current or future projects." FEIS at 4-355. But the FEIS fails to admit that the Forest Service uses categorical exclusions for a wide range of relevant project-types, ensuring that no future analysis will ever occur. The blanket assertion that this will somehow come true - without requiring, for example, all projects in GRSG habitat to undergo NEPA review - is unanalyzable. Moreover, the FS has recently introduced a suite of new categorical exclusions and removed the appealability and public comment on CX decision. The FEIS fails to analyze or disclose the relevant changes at this regulatory level in claiming subsequent NEPA will be conducted.

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

In more subtle ways, new language in the Nevada plan gives more discretion to the agency in determining the application of certain standards. For example, GRSG-M-FMUL-093-Standard (now -080, FEIS at 2-172) changes the standard from "only allow geophysical exploration or similar type of exploratory operations that are consistent with vegetation objections" to "include appropriate restrictions...when authorizing geophysical exploration," effectively eliminating the nondiscretionary restriction of only allowing geophysical exploration when it is consistent with vegetation objectives, and indeed eliminating explicit consideration of vegetation objectives entirely. Thus, the effect of this Standard is really more of a Guideline, and the EIS fails to fully analyze and disclose the impacts of allowing employee camps in PHMA and IHMA.

In regard to livestock grazing, the requirement to incorporate grazing guidelines in each of the seasonal habitats identified in Table 2, which under 2015 plans would be done in 2 years, the new proposed action only requires the agency to "adjust livestock management, as appropriate" after livestock grazing "is found to be a limiting factor in achievement of [unspecified] desired habitat conditions." FEIS at 2-153, GRSG-LG-GL-040-Guideline. Thus, rather than proactively incorporate sage-grouse habitat parameters into grazing permits, the agency will wait until there is an obvious problem, determine causality and whether livestock is a "limiting factor" (not just "a factor" in the cumulative degraded conditions), and then adjust grazing, "as appropriate." Later, the FS has removed the proposed Management Approach from the draft plan that had stated, "Conduct GRSG habitat assessments in allotments." GRSG-LG-MA-045-Management Approach, FEIS at 2-154. The proposed plan simply deletes this entirely, but the FEIS contains no analysis of this change. This is a complete non-commitment to centering the habitat needs of sage-grouse in grazing management, and we object on this basis.

Requested remedy: Restore non-discretionary requirements regarding employee camps under GRSG-M-FMUL-093-Standard (now -080). Require all grazing permits in designated sage-grouse habitats to undergo full NEPA compliance, including an EA provided for public review and comment prior to a decision. Ensure that grazing permits have terms and conditions added to protect sage-grouse habitat within two years. Require public notice and comment on all projects.

E. The proposed action changes lek buffers and lek management on "occupied leks" by redefining protections and applying those changes to "active or pending leks," and fails to admit this weakens protections, in violation of NEPA.

As stated above, the changes from "occupied" to "active or pending" are themselves significant reductions in the protections being provided by the Nevada plan. But so too are the actual distances being used to provide protections.

An interagency team of sage-grouse experts from state and federal agencies performed a comprehensive review of the scientific literature and recommended a 4-mile lek buffer for siting industrial development in sage-grouse habitat (National Technical Team 2011), a prescription in greater accord with the science. Apa et al. (2008, emphasis added) reviews the best available science by a team of sage-grouse biologists, and states,

"Yearling female greater sage-grouse avoid nesting in areas within 0.6 miles of wellpads, and brood-rearing females avoid areas within 0.6 miles of producing wells. This suggests a 0.6-mile buffer around all suitable nesting and brood-rearing habitat is required to minimize impacts to females during these seasonal periods." This report further clarifies, "These suggest that all areas within at least 4-miles of a lek should be considered nesting and brood-rearing habitats in the absence of mapping."

Thus, state experts in this report in effect recommended a 4.6-mile NSO buffer around active leks. This recommendation is buttressed by the findings of Holloran et al. (2007) that yearling sage grouse avoided otherwise suitable nesting habitat within 930m (almost 0.6 mile) of oil and gas-related infrastructure. This means that individual well sites, and their access roads and other related facilities, will be surrounded by a 0.6-mile band of habitat that has substantially lost its habitat capability for use by nesting grouse. Aldridge and Boyce (2007) suggested that even larger buffers of 10 km (6.2 miles) are warranted. Manier et al. (2014) subsequently reviewed all available science and reported an "interpreted range" of appropriate lek buffers ranging from 3.1 to 5 miles.

The proposed plan in Nevada offers a discretionary guideline of 4 miles from an active or pending lek as determined by local conditions during breeding and nesting season. GRSG-GEN-GL-011-Guideline, FEIS at 2-137. This needs to be changed to a nondiscretionary standard. We appreciate that the agency has provided a larger lek buffer in Nevada than it applies in other states, but there is no analysis of the difference between this land area and the previous guideline that would have applied to all of an HMA. FEIS at 2-137. While the FEIS frames this as a "clarification," it is not at all clear that this is not a significant management change, and nowhere is this change analyzed or disclosed elsewhere in the FEIS.

Requested remedy: Require lek buffers of at least 4 miles in PHMA, GHMA, and OHMA. Require disturbance cap of 3% to be applied per-square-mile-section, in addition to any BSU or larger-level calculations. Do not allow NSO waivers pursuant to GRSG-GEN-ST-006-Standard under any circumstance. Provide a full and detailed analysis of proposed reductions in lek buffers on sage-grouse habitats and populations in a supplemental NEPA analysis. Prevent surface disturbance within a 4.0-mile buffer around leks as a nondiscretionary Standard.

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

The FEIS fails entirely to openly disclose, or meaningfully analyze, a series of related changes to the Nevada plan that all operate, in concert, to reduce the certainty that priority and important habitats, and former sagebrush focal areas will be effectively protected from the adverse effects of oil, gas, and coal development. The Proposed Action makes the following changes to plan requirements for oil, gas, and coal leasing and operations that uniformly reduce certainty that sage-grouse habitat viability will be maintained:

(1)The proposed action would eliminate the requirement that exceptions to "No Surface Occupancy" requirements on fluid mineral leases be granted only after "unanimous concurrence from a team of agency sage-grouse experts from the U.S. Fish and Wildlife Service, the Forest Service, and the state wildlife agency."

Standard GRSG-M-FMUL-ST-089, FEIS at 2-170 to 2-171. The Proposed Nevada Plan Amendment increases the likelihood that habitats will be adversely affected by uninformed waivers by replacing the requirement for unanimous concurrence among expert wildlife agencies with the discretion of "the authorized officer," FEIS 2-170, and substantially expands the substantive criteria for granting such an exception. While the 2015 Standard allowed exceptions only if there would be no impact or a "clear net conservation gain," FEIS at 2-171, the Proposed Action would now allow exceptions permitting surface occupancy within PHMA even without such a "clear net conservation gain," GRSG-M-FMUL-ST-078-Standard. The FEIS inaccurately dismisses the effect of these changes by stating only that "[t]he removal of the requirement for a unanimous finding between FS, FWS, and the State of Nevada to grant an exception for NSO in fluid minerals development would be replaced by the authorization being granted by the authorized officer. The deciding official must disclose effects of and rationale for the decision, but decision authority cannot be deferred to other agencies or the state. Coordination with an interagency team, which would include both FWS and the State of Nevada, would still be required under the adaptive management, mitigation, and HMA boundary modification processes.." FEIS at 4-358. This characterization fails to acknowledge that the expanded exception process will both reduce expert wildlife input into exception decisions, and also substantively expands "authorized officer" discretion to allow previously-prohibited surface disturbance.

(2)Standard GRSG-M-FML-ST-097 replaces a binding standard to locate compressor stations on non-habitat areas not used by greater sage-grouse with non-binding "management approaches," GRSG-M-FML-GL-085 and GRSG-M-FML-MA-086, stating only that compressor stations "should" be located on such areas. FEIS at 2-174 to -175. Compressor stations are particularly likely to adverse sage-grouse habitat use because of the species' well-documented sensitivity to noise levels. A non-binding "management approach" stating that USFS may "work with the operator" to reduce noise impacts is far from an equal or adequate substitute for the binding standard of GRSG-M-FML-ST-081. The FEIS's discussion of environmental consequences, see FEIS 4-363 to 4-364, fails to even acknowledge, let alone analyze, the existence of this elimination of non-discretionary limits on compressor station siting and noise.

(3)Similarly, and also without analysis the Nevada proposed alternative eliminates four key standards designed to avoid and minimize disturbance to sage-grouse habitats and replaces them with non-binding guidelines. A standard is "a mandatory constraint on project and activity decisionmaking, established to help achieve or maintain the desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements," 36 C.F.R. § 219.7(e)(1)(iii), whereas a guideline is "a constraint on project and activity decisionmaking that allows for departure from its terms, so long as the purpose of the guideline is met, 36 C.F.R. § 219.7(e)(1)(iv). "Management approaches" are not defined in the 2012 planning rule. The proposed Nevada amendment, without any disclosure or analysis in Chapter 4 of the FEIS, replaces the following mandatory fluid mineral mitigation standards with guidelines that "allow for departure":

a.GRSG-M-FML-ST-098-Standard, requiring that USFS "work with the operator to minimize impacts to greater sage-grouse and their habitat, such as locating facilities in non-habitat areas first and then in the least suitable habitat," is replaced with GRSG-M-FML-GL-087-Guideline. FEIS at 2-175.

b.GRSG-M-FML-099, replaced with GRSG-M-FML-GL-088, eliminates the requirement that "operators should be encouraged to reduce disturbance to greater sage-grouse habitat." FEIS at 2-175.

c.Mandatory GRSG-M-FMO-ST-103, requiring tanks and other raptor perches to be located outside habitat management areas or use perch deterrents, is replaced with non-binding guideline GRSG-M-FMO-GL-092. FEIS at 2-177.

(4)Similarly, specific guidelines for reducing risk of West Nile Virus transmission from oil and gas wastewater ponds and other mosquito breeding sites, GRSG-M-FMO-GL-106, would be replaced with wholly non-binding "management approaches," GRSG M-FMO-MA-101. FEIS at 2-177 to 2-180.

The collective effect of these reductions in mitigation certainty - a pattern that holds across both the multiple

proposed Forest Service plan amendments as well as the 2019 BLM sage-grouse RMP amendments - is to increase the likelihood that new habitat-disturbing oil and gas development activity will be permitted within PHMA and former SFA, without implementation of previously-mandatory mitigation measures for compressor siting, West Nile Virus mitigation, and avoidance of PHMA. Such a reduction in habitat safeguards is neither openly disclosed in the FEIS nor supported by any citation to scientific literature supporting the Forest Service's implicit conclusion that habitat function and population viability will not be impaired.

Requested remedy: Fully disclose and analyze the direct, indirect, and cumulative impacts of multiple, related decisions reducing the certainty of implementation of mitigation measures to protect sage-grouse habitat from fluid mineral development. Retain requirement for unanimous Forest Service, Fish and Wildlife Service, and state agency consent for any exceptions from No Surface Occupancy Requirements for PHMA. Maintain binding standards and guidelines for avoiding development in habitat, siting compressor stations and tanks outside sage-grouse habitat, and employing best available mitigation measures to reduce West Nile Virus transmission.

G. The FEIS Is Improperly Limited to Sage-Grouse Impacts and Fails to Address the Likely Environmental Effects to Countless Other Resources, In Violation of NEPA

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

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

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

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

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

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

I. The FEIS fails to analyze a range of alternatives to the proposed action, in violation of NEPA.

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

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

The FEIS's cumulative effects analysis is also inadequate because the cumulative impacts to sage-grouse have changed with the parallel weakening of protections on BLM lands. The BLM plans likewise weaken protections for sage-grouse habitat, remove SFA, allow more modifications, waivers, and exceptions, remove livestock habitat management guidelines, undermine adaptive management processes, and suffer from the same deficiencies as the FS is proposing here. Thus, the cumulative impacts analysis for all alternatives have changed, and the agency can no longer rely on the 2015 EIS to adequately or accurately compare the effects of its actions.

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

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

The FEIS fails to analyze the current sage-grouse population and habitat trends either in the affected states or across the sage-grouse range. The FS falsely asserted that conditions "have not appreciably changed" since 2015 without acknowledging that millions of acres of sage-grouse habitat in the West have burned in wildfires since 2015, millions more acres of sage-grouse habitat have been newly leased for oil and gas development, or that sage-grouse populations in all states have showed precipitous declines in recent years---let alone analyzing

the effect of these significant changes since 2015. This significant change in baseline conditions mean the FS can no longer rely on the 2015 EIS to adequately or accurately assess the environmental effects of the "no action" alternative. The FS's failure to evaluate these baseline conditions also makes it impossible to understand how the plans will affect conservation of sage-grouse populations locally, regionally, or range-wide.

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

II. VIOLATIONS OF THE NATIONAL FOREST MANAGEMENT ACT.

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

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

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

A. The 2019 plan changes important aspects of management from mandatory "standards" to "guidelines" and "management approaches," and thereby weakens the enforceability of the plans themselves.

The FS EIS defines the difference between 'Standards' and 'Guidelines' and 'Management Approaches' on page 2-32.

*Standards are a mandatory constraint on project and activity decision-making

*Guidelines are a constraint on project and activity decision-making that allows for departure from its terms, so long as the purpose of the guideline is met.

The proposed action for Nevada changes GRSG-LR-SUA-ST-018-Standard to GRSG-LR-SUA-GL-018-Guideline (FEIS at 2-143) without analysis of how the optional application of the upgrades to transmission lines in PHMA and GHMA will affect this habitat. FEIS fails utterly to discuss how this changes the on-the-ground management of GHMA now that its application allows for departure from its terms.

Worse still, the new Management Approaches are not enforceable, considered "optional plan content," and can be changed administratively after the plan is published. This falls under the requirements for administrative changes (36 CFR § 219.16 (c)(6)) which requires only that the public be provided notice of such changes in any way that the responsible official deems appropriate.

We raised this issue in comments, as did the Nevada Department of Wildlife. We are concerned about the weakened enforceability of these management parameters and concerned that they are inadequate to sufficiently regulate habitat use.

For example, in Nevada, the FS can change habitat management area maps in accordance with GRSG-GEN-MA-006-Management Approach and then pledges that the appropriate NEPA and forest planning process will be

followed before updating the map. FEIS at 2-135. But if the management approach only requires the public notice that a responsible official deems appropriate, it would seem that updating the HMA maps could be done without public knowledge or involvement. This is a significant change, and one which was not disclosed in the FEIS.

Elsewhere, the Nevada proposed plan changed GRSG-RT-GL-087-Guideline to GRSG-RT-MA-076-Management Approach, weakening the protections for PHMA and GHMA from motorized travel. FEIS at 2-169. The new "management approach" now discusses the need to consider "road closures and other methods to protect sage-grouse from disturbances and mortality on motorized travel routes." These "other methods" are not disclosed, and no analysis of this change is provided.

Requested remedy: For all Standards in the original LRMPA changed to Guidelines or Management Approaches in this planning process (including but not limited to each of the protection measures listed in the above section), restore them to nondiscretionary Standards in the final plan amendment. Provide a full and detailed analysis of proposed reductions in protections from nondiscretionary Standards to discretionary Guidelines and Management Approaches to sage-grouse habitats and populations in a supplemental NEPA analysis.

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

The proposed plan for Nevada jettisons scientific understanding in favor of vague and subjective standards regarding the use of prescribed fire. Whereas the best available science recommends not using prescribed fire in areas with less than 12 inches of precipitation, and the 2015 plan and DEIS followed this, the new GRSG-FM-ST-047 Standard completely abandons this parameter. FEIS at 2-156. Idaho, Colorado, and Utah all retain this language. Cheatgrass-invaded habitats are less resilient to fire, and fire in these ecosystems may result in cheatgrass dominance (Brooks and Chambers 2011). Great Basin habitats have very low resilience to cheatgrass invasion, and once the 5% cheatgrass cover threshold has been crossed, the system tends toward cheatgrass monoculture (Garner et al. 2019). While this literature review suggests some utility in using prescribed fire during the cheatgrass seed maturation period in areas dominated by cheatgrass, it also recommends suppressing fires in low-resilience habitats with >1% cheatgrass cover. The FEIS fails to analyze or disclose the basis for this last-minute change, which does not comport with the best available science.

Similarly, the FS ignores recent science, provided by WWP and others in our earlier comments, that fuel breaks are not effective: "A new study by Shinneman et al (2018) recognizes that habitat fragmentation and degradation problems caused by fuelbreaks in sage-grouse habitat and surveyed the available science finding no evidence that fuelbreaks reduce the size or severity of fires in sagebrush habitat." WWP et al. comments at 20. Despite this, and despite having provided a weblink to the research, the FS persists in discussing fuel breaks. See GRSG-FM-GL-049-Guideline, discussing the use on non-native species in reseeding fuel breaks, and saying, "The use of fire-resistant native plant species should be a priority but not at the expensive of creating effective fuel breaks." FEIS at 2-158. This ignores the new information before the agency about effectiveness of fuel breaks generally, and allows for the introduction and spread on non-native species, contrary to the best available science.

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

?Gibson et al. 2016 study actually found that 50 percent of previous studies measuring grass height at predicted hatch date showed positive support for grass height affecting nest survival of greater sage-grouse, with the two

papers not supporting this hypothesis for GRSG being Gibson 2015 and Davis et al. 2014. [Gibson 2015 is Dr. Gibson's dissertation, in which he describes positive effects of nest site selection and average residual grass height and average live grass height, with a net positive effect of local selection on nest survival. Davis et al. 2014 admits that "grass height likely influenced nest success" and that the results of the study were consistent with previous studies. Though Gibson 2016 classes this as "no support" for the survival hypothesis, it shouldn't be interpreted to mean that grass height doesn't matter.]

?The Sage Grouse Initiative 2017 paper is a summary of the Gibson and Smith studies, is not a peer-reviewed science-based article that the FS should be citing in support of its management changes.

?Smith et al. 2017a reanalyzed existing datasets from three independent studies across the range of sage-grouse, including two using methods "now known to be biased."

?Smith et al 2017b isn't listed in the Appendix H and it is unclear what the agency is referring to.

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

None of the referenced studies provide the support the agency needs to undergird its decision to remove management parameters related to grass height. Instead, the best available science, and indeed, the preponderance of evidence, has established that at least 7 inches (18 cm) of residual stubble height needs to be provided in nesting and brood-rearing habitats throughout their season of use. According to Gregg et al. (1994: 165), "Land management practices that decrease tall grass and medium height shrub cover at potential nest sites may be detrimental to sage grouse populations because of increased nest predation.... Grazing of tall grasses to <18 cm would decrease their value for nest concealment.... Management activities should allow for maintenance of tall, residual grasses or, where necessary, restoration of grass cover within these stands." Hagen et al. (2007) analyzed all scientific datasets up to that time and concluded that the 7-inch threshold was the threshold below which significant impacts to sage grouse occurred (see also Herman-Brunson et al. 2009). Prather (2010) found for Gunnison sage grouse that occupied habitats averaged more than 7 inches of grass stubble height in Utah, while unoccupied habitats averaged less than the 7-inch threshold. According to Taylor et al. (2010:4),

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

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

Doherty et al. (2014) found a similar relationship between grass height and nest success in northeast Wyoming and south-central Montana but did prescribe a recommended grass height. While there are those who have attempted to cast doubt on the necessity of maintaining grass heights to provide sage-grouse hiding cover,

based on timing differences in grass height measurements between failed nests and successful nests, these concerns have been refuted for Wyoming. The significance of the Doherty et al. (2014) study was explicitly tested by Smith et al. (2018), who confirmed that grass height continued to have a significant effect on nest success for this Wyoming study after correction factors were applied to the data.

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

WWP's comments pointed out that the best available science still supports grass height minimums for nesting sage-grouse, but USFS instead continues to rely on scant and nuanced studies that don't, in fact, disprove prior findings.

In Nevada, the agency has changed its desired conditions from being defined by the best available science to setting site-specific desired conditions based on Ecological Site Descriptions and/or state and transition models where available. FEIS at 2-132. This fails to recognize that the ESDs generally reflect existing conditions rather than potential conditions and that the ESDs may or may not represent the needs of Greater sage-grouse, which have been well-documented by abundant peer-reviewed literature. Nor, we note, does the FEIS admit how many of the 2.4 million acres of sage-grouse habitat in Nevada have completed ESDs or state and transition models, or how many acres of forest service lands have ever been assessed in comparison to these models. We note that this was an addition to the proposed action that occurred between the draft and final EISs and, as such, we were unable to raise this issue earlier. The FS claims this was previously analyzed in the 2015 plans (FEIS at 4-358) but it was not.

Requested remedy: The Forest Service should retain the scientifically-derived stubble-height standard of 7 inches for Nevada as an enforceable standard until and unless it is replaced with a preponderance of evidence and a majority opinion that grass height isn't an important variable in sage-grouse nest success. Provide a full and detailed analysis of grass height standards, including an accurate and comprehensive review of the best available science, in a supplemental NEPA analysis. Apply a Standard requiring that prescribed fire may not be used in habitats with less than 12 inches annual precipitation, or where cheatgrass (*Bromus tectorum*) or red brome (*Bromus rubens*) makes up 1% or more of vegetation cover.

C. Failure to Properly Analyze and Maintain Viability of Species of Conservation Concern

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

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

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

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

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

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

III. VIOLATIONS OF THE ADMINISTRATIVE PROCEDURE ACT

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

The proposed plan for Nevada differs from the proposed plans for other states, without any rational reason for doing so. The differences between and among plans is sufficient demonstration that the management recommendations are not based in science, but in politics. The proposed actions are baldly arbitrary and capricious and should be set aside.

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

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

Thank you,

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(on behalf of all of the Objectors identified above)

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