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Farming and Livestock

P.O. BOX 12
SMITH, NEVADA 89430



February 10, 2014

Public Comments Processing,
Attn: FWS–R8–ES–2013–0072;
Division of Policy and Directives Management;
U.S. Fish and Wildlife Service;
4401 N. Fairfax Drive,
MS 2042–PDM;
Arlington, VA 22203.

re: FIM Corporation comment regarding the proposed listing of Bi-State DPS of the Greater Sage Grouse in Nevada and adjoining portions of California.

INTRODUCTION

As a family owned and operated ranch we have several motives for submitting comments about proposed listing of Bi-State Sage Grouse DPS under the ESA. These include our personal interest in wildlife which means that we take pleasure in having an abundance and variety of wildlife in the areas where we graze our sheep; we support biologically sound efforts that actually benefit wildlife. Unfortunately, recent actions by federal regulatory officials means that we also must participate in public and regulatory processes in order to have fully exhausted our administrative remedies in the event of future litigation.

Our comments address various items you list as subjects of “Information Requests”. Our comments fully meet the definitions of the best available scientific and commercial data and as such are well supported by literature citations, empirical observations, historical accounts by early explorers of the Great Basin, and other factual information. Portions of our documentation are included with this letter as attachments identified as follows:

- Exhibit #1--Remarks Symposium @ CVI (10-30-12)
- Exhibit #2--Response to FS Sage Grouse Scoping (1-30-13)
- Exhibit #3--Remarks Bi-State Meeting (3-18-13)
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- Exhibit #13--Letter to Governor Sandoval and Council (1-2-14)

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As ranch owners we have been involved in Endangered Species Act (ESA) regulations for other species. Our involvement includes the fact that in accordance with ESA we are considered to be federal permit applicants which means we are to be included in any consultation between Bureau of Land Management (BLM) or US Forest Service (USFS) and US Fish and Wildlife Service. We have prepared the following based on our knowledge about the ESA and various federal policies.

Having reviewed the comments concerning Greater Sage Grouse in other portions of Nevada that were prepared by Eureka County Nevada, by the contractors serving the Elko County Sustainable Grazing Coalition, Nevada Cattlemen's Association, and Nevada Woolgrowers Association, and Joe Sicking as Chairman of the Nevada Conservation Commission we consider those documents to be fully a part of our comments by reference. Each of those comment documents are very specific about erroneous technical information, unsupported technical assumptions, and even bad spelling or bad grammar that seems to characterize federal documents.

Errors within the listing proposal include (both) failures to carefully stick to factual information and failures to carefully follow various laws. Once erroneous information is introduced it is repeated in additional sections and that makes stating every place the error occurs impractical. Common sense should indicate that having based your assessment of listing on information that is incomplete, that is no more than conjecture, and that obviously is simply fabricated then the conclusions are clearly in error and the actions will not benefit sage grouse.

Listing justifications including literature references fail to meet the Information Quality Act standards and other standards for objective and factual federal documentation under the ESA and under the Office of Management and Budget (2004) "*Final Information Quality Bulletin for Peer Review*". Please correct the following within your document and then change your conclusions to fit the revised statements:

1. You fail to clearly state that the goal of your plan is to have more sage grouse in the future. Your plan must state how many sage grouse are present and include statistically sound monitoring to determine how many more sage grouse are present at a future date. In accordance with NEPA, for all actions after listing, if your recovery plan and your regulatory activities fail to result in an increased number of sage grouse it is a bad plan that must be discarded and replaced with a plan that works.
2. You fail to include and the authors fail to base their conclusions on the historic record of sage grouse population changes as provided by eye witness accounts since the early Nineteenth Century. It is well established that sage grouse in the Great Basin of Nevada and California were infrequently observed and not at all abundant prior to 1850. Please review the Journals of the Walker Party as recorded by Zenas Leonard, and other historic records. By 1950 sage grouse were very abundant at locations throughout what is now labeled as Great Basin sage

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3. Based on professional opinions of agency biologists, agency officials have erroneously proclaimed that sage grouse were abundant prior to settlement by Americans and have declined since about 1860. That unsupported assumption is false and must be removed from reference in accordance with federal standards for objective and factual information.
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5. Your staff glibly reject personal observations as “empirical observations” that are not dependable because the empirical evidence is not found within peer reviewed articles. Authors of each federal document regarding sage grouse conclude that the direct observations of dependable witnesses are not factual --- but a statement printed in some magazine claiming to be a peer reviewed publication are factual by virtue of their existence. Every court in this nation depends on the truthful testimony of witnesses to determine facts and both the USFWS should be willing to do the same. Federal law requires that you seek facts and stick to the truth. Congress instructs agencies to use facts and not conjecture in NEPA documents and when Congress required agencies to use the best available scientific and commercial data for ESA related matters they did not limit the agency officials to peer reviewed articles.
6. We have read many of the articles that agency biologists cite as peer reviewed. Most of what your authors claim as having been subjected to rigorous peer review will not pass the standard for Peer Review as provided by the Office of Management and Budget. Federal standards for peer review must follow the OMB December 2004 Bulletin *“Final Information Quality Bulletin for Peer Review”*. Authors are being dishonest when they reject factual statements of empirical observations as being undependable and even more dishonest when they cite articles claiming the status of peer review that would not be approved under the OMB standards. Please order your employees to return to an objective search for

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truthful and factual information because anything less than this will result in analysis and conclusions that are in error.

7. Authors also mischaracterize habitats that are required by sage grouse in order for the birds to thrive and be abundant. Most of the cited authority carelessly fails to identify sagebrush in accordance with standard Botanical taxonomy and fails to adhere to standards of objectively providing the technical details of sagebrush dominated plant communities and other attributes of sage grouse habitat. As a minimum technical standard habitat attributes must be identified relative to NRCS Ecological Site concepts, the technical basis provided by Cooperative Soil Survey, Ecological Site Description, and evaluation of plant communities in terms of Seral Status and State or Transition. Please correct your documents by discarding landscape descriptions that are based on GAP and RE-GAP in favor of ecological sites.

8. Biologists now have arbitrarily declared that certain gross features are essential for sage grouse such as stubble height of more than 4 inches and sagebrush cover values that are never obtained in some sagebrush plant communities. Then the authors invent a story about the entire life history of sage grouse based on these arbitrary conclusions. The statements typically include accusations of anthropogenic fragmentation of habitat or conclusions that habitat needs restoration, with no measure of deterioration in either case.

9. Please remove these stubble height and plant cover criteria from the text on the basis that there is no proof that meeting those criteria is necessary for the sage grouse. It is a matter of record that none of the habitat characteristics that biologists imagine sage grouse require such as stubble height or cover were present during the peak sage grouse populations of roughly 1950-1970. All of the sage grouse habitat was grazed every year and much of it was heavily grazed by domestic livestock. That grazing pressure had no detrimental effect on sage grouse populations. Much greater numbers of livestock than are allowed to be present today did not harm the sage grouse and that intensity of domestic livestock grazing provided beneficial anthropogenic effects.

10. History also tells us that when sage grouse populations peaked in the mid-Twentieth Century there were nearly ten times more sheep and twice as many cattle grazing within sage grouse habitats in the Great Basin.

11. Please state in the text that sage grouse thrived in abundance in the mid-1900s at a time when occupied sage grouse habitat did not provide six inches of herbaceous cover height. All of the sage grouse habitat -- including lek locations, nesting locations, and brood rearing habitat -- in Nevada was grazed by livestock, often at levels which would be considered "heavy" use during the very time that sage grouse populations peaked. Riparian meadows which coincide with the location of water for livestock were generally heavily grazed beginning early each spring. Studies completed by Klebenow, Evans, and others at Sheldon refuge indicates that the sage grouse selected grazed meadows for foraging and avoided

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ungrazed meadows which is consistent with the observations from the 1940s through the present that early grazing of meadows is beneficial for sage hens. Grazing either has no effect on the reproduction of sage grouse or was and is a beneficial anthropogenic activity and that should be so stated.

12. Your document fails to clearly state the benefits that sage grouse receive when livestock are grazed on the rangelands that provide sage grouse habitat. If you want sage grouse numbers and abundance that was present in the mid-1900s you will have to arrange for the conditions that correlate with that abundance which was many more livestock grazing within sage grouse habitats in the presence of sage grouse, especially domestic sheep.

13. One issue that is correctly identified is characterization of the invasion of sagebrush dominated plant communities by conifers as a loss of available sage grouse habitat. In the Great Basin those conifers are mostly Singleleaf Pinyon Pine and Utah Juniper with some Western Juniper in the northwest portion of this area. Recent papers indicate that as little as 4% cover by conifers coincides with sage grouse no longer occupying an area.

14. We also concur with being concerned about the threat of catastrophic wildfires that burn very large areas and that have become common in the recent years.

15. Agency biologists have written a document with a built in contradiction in being concerned about wildfire on one hand and stating the unfounded claim that grass stubble height of 6 inches or more along with dense stands of sage brush must be in place for sage grouse. Again there is no clear evidence that the stubble height/cover standards will result in more sage grouse but it certainly will result in more susceptibility to catastrophic wildfires. That federally mandated herbaceous stubble is the fuel that feeds the wildfires.

16. This false statement of sage grouse habitat characteristics, the regulations that are already in place to maximize stubble height are just two of the federal regulations that have put many ranches out of business or at best have resulted in under-utilized rangeland forage. You must analyze the correlation of the loss of numbers of grazing livestock which in turn leaves vast quantities of vegetation available to burn and destroy sage grouse and habitat.

17. You fail to note that predation has a severely limiting effect on sage grouse populations, especially nest success and brood rearing. It is well documented that ravens, coyotes, bobcats, and other predators can greatly reduce the reproductive success and survival of sage grouse within both grazed and ungrazed rangeland habitats. Stubble height and shrub cover have no significant bearing on the rate of depredation. This plan should state that rigorous predator controls are essential if the goal is to have more sage grouse.

18. Agencies such as BLM and USFS probably don't often conduct predator control but this listing discussion is not about NEPA analysis of a predator control

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project. A NEPA analysis will be required after listing and NEPA is designed to state a problem, identify the causes of that problem, and determine the solutions that will solve the problem efficiently and effectively. Predation of Sage Grouse is well documented and that means that predator control must be identified in the document. In turn the NEPA analysis must consider if any protection or manipulation of the vegetative portion of habitat will have any effect on sage grouse numbers if predation continues unabated. There is no justification for onerous regulations to protect vegetative cover if there is no correlation between the cover and rate of predation.

19. You fail to put forth an analysis of economic effects that will be the direct result of regulatory decisions that prevent ranches such as ours from accessing and using our existing property rights within federally controlled lands. We own water rights, easements, rights-of-way, and grazing preference within our BLM and USFS grazing allotments. Numerous court decisions now support our property ownership; one recent case in Federal District Court in Reno provides an excellent example. Judge Jones ruled in the favor of rancher Wayne Hage and the Hage Estate that their water rights and easements are theirs to own and use within both BLM and USFS regulated allotment areas. Denial of those rights by regulatory actions will in turn be a denial of due process of law and will be viewed as an unlawful "Taking" under both the Fifth and Fourth Amendment to the U.S. Constitution. The liability for costs of Takings of property must be included in any economic analysis of this listing and the accompanying critical habitat designation.

20. You fail to fully recognize the lawful status of our ranch as an applicant under ESA. Status as an applicant means we will be involved in every consultation between BLM, USFS, and USFWS that pertains to our operation. This document must include discussion of the participants in ESA consultation as a future action.

21. The authors are proposing regulations that in the name of what the Endangered Species Act calls a Distinct Population Segment of Greater Sage Grouse based entirely on the conjecture of biologists who don't believe they would fly from Washoe County or Churchill County to Lyon County. As federal agencies you are both required to demonstrate that you are in compliance with ESA by documenting that you are using the best available scientific and commercial data and in accordance with the federal standards of discreteness and significance as defined by the ESA policy.. You fail to demonstrate how this Greater Sage Grouse which is arbitrarily called a DPS in one part of Nevada is in fact a discrete and significant population.

22. Historic records show that prior to 1850 there were few or no sage grouse in our portion of the Bi State area which extends from Smith Valley NV to Bridgeport Valley CA. Historic records further show that by 1950 sage grouse were abundant and commonly observed species. This increase occurred after the arrival of settlers and livestock, especially sheep. We have no record of the source of original reproducing sage grouse in the Bi-State area but we know the birds are very mobile and the distance from northern Nevada or central Nevada is not too

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great to prevent migration of birds into the area. What ever the source of sage grouse the fact remains that the numbers increased dramatically from being rare or not present to being very abundant within 100 years. This area does not meet the criteria for either discreteness or significance and your document is in error.

23. You make no effort to fulfill the lawful requirement to resolve inconsistencies between local data or plans and this federal proposal through the process of “coordination”. FLPMA and NEPA both have clear requirements for federal officials to complete coordination.

24. Listing this bird under ESA would put our entire community under the control of the US Fish and Wildlife Service and by reputation your agency people would write an ESA recovery plan with no regard to local needs. The listing and regulations that follow would be a disaster economically and environmentally to our communities. Everyone would be hurt including livestock production, mining, manufacturing, recreation such as hunting and fishing, and just about every other aspect of our custom and culture. We are facing onerous and destructive regulations which have very little possibility of resulting in more sage grouse. Please edit the document to reflect the items listed above.

DISCUSSION

I am Fred Fulstone from Smith, Nevada and I am submitting these comments on behalf of the F.I.M. Corp. of Smith Nevada. F.I.M. Corp is a family owned and operated sheep ranch with land, existing property rights, and grazing preference within adjudicated range allotments in both Nevada and adjoining areas of California.

The Fulstone family have been agricultural producers in Western Nevada for over 150 years and in that time sage grouse populations grew from none to a great abundance in about 1950 and have now declined in numbers since about 1980. Our ranch history during this time (150) years includes how our livestock, especially our sheep, have greatly benefitted sage grouse.

At this time three generations of our family owns and operates our sheep ranch with headquarters in Nevada and ranch property in both California and Nevada. Our operation includes private property along with Bureau of Land Management and Forest Service grazing allotments in both Nevada and California. Our permits on a number of BLM and Forest Service grazing allotments allow us to graze our sheep by herding them on open range throughout the year. Our range is approximately 100 miles from north to south and 75 miles from east to west.

In order to produce our lambs and wool, we have a working force of 18 people in addition to the immediate family. We have run 1000 head of cattle most of our lives along with the sheep.

The first Fulstone homesteaded in 1854 near Genoa. My grandfather bought our first ranch in Smith Valley in 1903 and my father began running a few sheep in 1910.

My mother, Dr. Mary, was one of the first woman Medical Doctors in Nevada.

My wife, Irene, was a school teacher and also made many thirty mile horse back rides with me to the Sheep Camps.

Now Marianne, my daughter, can run this ranch and we enjoy the help of her son Kris and daughter Danielle.

WHAT NEEDS TO BE DONE IS REALLY FAIRLY SIMPLE

Livestock grazing and predator control are the two most important tools we have to save and enhance the sage hen.

As business owners we have many reasons to be very skeptical about the listing of any species because the ESA has yet to save a single species while spending vast amounts of tax payers' money.

For a very good example of how the ESA works look at what happened in Klamath Falls area after the USFWS listed a sucker fish. This allowed the USFWS to implement their recovery plan and to give all the water in the Klamath Lake to the endangered species. That meant the farmers got no water for their crops even though they and the community businesses faced immediate economic destruction and citizens were forced into personal bankruptcy.

The USFWS was doing everything backwards. After the USFWS took over, about 80% of the sucker fish died. What is the worse part? The National Academy of Science would later rule that the USFWS recovery plan was based on false science.

Without irrigation water 200,000 acres of farm land and 50,000 acres of wildlife refuge habitat dried up. This destruction was the result of the science used to list the sucker fish being corrupt. False data, false assumptions built into models, errors from carelessness or ignorance, and outright fabrication of biology all came to a head when many thousands of the protected fish were killed as a direct result of the federal actions.

Can any rational person expect a different outcome from listing the sage grouse than what occurred in the Klamath Falls area?

Most of the biologists say that their main concern is for the sagebrush as one part of the sage hen habitat. We have plenty of sagebrush. We also note in the sage grouse literature that ideal sage grouse breeding and nesting habitat is sparsely vegetated with sagebrush cover less than 25%. It can also be shown that sage grouse populations were at a peak when grass cover in their nesting and brood

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rearing habitat was described as overgrazed by livestock and sage grouse populations decreased following BLM and Forest Service cuts in permitted grazing.

First we must improve sage hen habitat by controlling the predators that destroy the sage hens, their nests, and their chicks. The birds right after hatching are very vulnerable to everything and no amount of cover that occurs naturally in sage hen habitat can protect them. Some reports say that we are losing 50% of our nests today and 70% of that loss is from ravens. (Mark Jensen, Supervisor, Wildlife Services, Reno Nevada).

Wildlife Services is in charge of predator control and they have lost 45% of their work force. At one time we had three trappers here – one in Smith Valley, one in Mason Valley, and one in Carson Valley. Today we have one trapper that has to cover all three valleys plus Fallon and Austin. We also don't have a lion hunter anymore.

THINGS WE NEED TO DO IMMEDIATELY TO SAVE THE SAGE HEN:

During those years from about 1955 to 1980 we had thousands of sage hen in Smith Valley, the Pine Nut Range, and Bodie Hills. Also during those years we had trappers and the use of toxicants and we controlled the numbers of predators very well. During those years we had ten or more times the numbers of grazing animals on the Federal ranges than we now have and we had thousands of sage hen on the same areas. As soon as the grazing permits were cut by the agencies the trappers and toxicant use was cut down and the sage hens started to disappear.

No 1. We must have more trappers to control ravens, coyotes, badgers, bobcats, and other predators.

No 2. We need more open range grazing and more permitted grazing on the ranges. (and less housing development)

No 3. Where open grazing is allowed it accomplishes more than just providing feed for livestock

1. Livestock consumes the fuel that feeds wildfires.
2. Livestock owners improve the water resource and create new water sites
3. Livestock owners use water rights they own to develop irrigated meadows and fields that in turn serve as brood rearing habitat for sage hens.
4. Livestock grazing helps in the natural re-seeding, fertilizing, and cultivating of the grasses, forbs, and brush. This is necessary for the production of the sage hen and other wildlife. Sage grouse follow in the livestock footprints and into the bed grounds (especially sheep). These sage grouse feed on insects and other sources of nutrients left by the animals. It is common to see sage grouse chicks eating the pellets from the lambs which are highly nutritious because it is partially digested milk.

No 4. The livestock generally feed off the tall meadow grasses and forbs in the spring and then as the uplands dry the sage hen come down to the new growth of forbs and short green grasses in early summer. The livestock have to graze the

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meadows before the sage hen broods arrive to provide this benefit. The meadows that have been grazed are preferred by the sage hens because the shorter meadow plants enable the sage hens to see any approaching predators. They seem to like open space.

No 5. Livestock on the range offers relief from predation because the predators prey on livestock. When livestock owners kill predators the wildlife benefit along with the sheep.

BACK TO THE SAGE HENS

Sagebrush is not a problem --- we have plenty of it.

In some areas where the sagebrush is tall (3' to 4') and very thick it should be sprayed. That gives the forbs and grasses a chance to come which is very valuable as habitat and forage for the sage hens.

We have done this in cooperation with the BLM in some areas the sage hen has flocked into the sprayed areas.

We need better management of meadow forbs or grasses so forage will be available to sage hen broods when they come off the sage brush onto the meadows in June and July.

We know how to do all of these things which are sound management and it does not require heavy handed regulation.

BY EMAIL /s/ Fred Fulstone

Fred Fulstone

For F.I.M. Corporation

Smith, Nevada

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INTRODUCTION

As a family owned and operated ranch we have several reasons for submitting comments about designation of critical habitat for the Bi-State DPS of the Greater Sage Grouse. These include our personal interest in wildlife which means that we take pleasure in having an abundance and variety of wildlife in the areas where we graze our sheep; we support biologically sound efforts that actually benefit wildlife. Unfortunately, recent actions by federal regulatory officials means that we also must participate in public and regulatory processes such as writing this comment in order to have fully exhausted our administrative remedies in the event of future litigation.

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We are not able to determine from the Federal Register exactly when you plan to complete the mandatory NEPA analysis and economic analysis. We know you must do both and we are willing to provide some detailed information about the effect of listing and critical habitat on our ranch including economic effects.

Having reviewed the comments concerning the biology and history of greater sage grouse as prepared by Eureka County Nevada, Joe Sicking Chairman of the Nevada Conservation Commission, and by the Elko County Sustainable Grazing Coalition, Nevada Cattlemen's Association, and Nevada Woolgrowers Association we consider those documents to be fully a part of our comments by reference. Each of those comment documents were submitted to BLM and Forest Service and are very specific about erroneous technical information, unsupported technical assumptions, and even bad spelling or bad grammar that seems to characterize federal documents.

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articles claiming the status of peer review that would not be approved under the OMB standards. Please order your employees to return to an objective search for truthful and factual information because anything less than this will result in analysis and conclusions that are in error.

7. Your authors mischaracterize habitats that are required by sage grouse in order for the birds to thrive and be abundant. Most of the cited authority carelessly fails to identify plants including sagebrush species in accordance with standard Botanical taxonomy and fails to adhere to standards of objectively providing the technical details of sagebrush dominated plant communities and other attributes of sage grouse habitat. Your text includes the description of habitat that then becomes the minimum acceptable when it says:

“In general, vegetation characteristics of successful nest sites include sagebrush canopy cover of greater than 15 percent, sagebrush heights of 30 to 80 centimeters (cm) (11.8 to 31.5 in), grass and forb heights of 18 cm (7.1 in), and grass and forb cover of greater than 15 percent”

As a minimum technical standard, habitat attributes must be identified relative to NRCS Ecological Site concepts, the technical basis provided by Cooperative Soil Survey, Ecological Site Description, and evaluation of plant communities in terms of Seral Status and State or Transition. Please correct your documents by discarding landscape descriptions that are based on GAP and RE-GAP in favor of ecological sites.

8. Biologists now have arbitrarily declared that certain gross features are essential for sage grouse such as grass and forb height of 7 inches (stubble height) and sagebrush cover values that may or may not be realistic due to the soils supporting some sagebrush plant communities. Then the authors invent a story about the entire life history of sage grouse based on these arbitrary conclusions. The statements typically include accusations of anthropogenic fragmentation of habitat or conclusions that habitat needs restoration, with no measure of deterioration in either case.

9. Please remove these stubble height and plant cover criteria from the text on the basis that there is no proof that meeting those criteria is necessary for the sage grouse. It is a matter of record that none of the habitat characteristics that biologists imagine sage grouse require such as stubble height or cover were present during the peak sage grouse populations of roughly 1950-1970. All of the sage grouse habitat was grazed every year and much of it was heavily grazed by domestic livestock. That grazing pressure had no detrimental effect on sage grouse populations. Much greater numbers of livestock than are allowed to be present today did not harm the sage grouse and that intensity of domestic livestock grazing provided beneficial anthropogenic effects.

10. History also tells us that when sage grouse populations peaked in the mid-Twentieth Century there were nearly ten times more sheep and twice as many cattle grazing within sage grouse habitats in the Great Basin. Livestock grazing provides desirable and beneficial anthropogenic effects on sage grouse and is critical for productive sage grouse habitat.

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11. Please state in the text that sage grouse thrived in abundance in the mid-1900s at a time when occupied sage grouse habitat did not provide six inches of herbaceous cover height. All of the sage grouse habitat -- including lek locations, nesting locations, and brood rearing habitat -- in Nevada was grazed by livestock, often at levels which would be considered "heavy" use during the very time that sage grouse populations peaked. Riparian meadows which coincide with the location of water for livestock were generally heavily grazed beginning early each spring. Studies completed by Klebenow, Evans, and others at Sheldon refuge indicates that the sage grouse selected grazed meadows for foraging and avoided ungrazed meadows which is consistent with the observations from the 1940s through the present that early grazing of meadows is beneficial for sage hens. Grazing either has no effect on the reproduction of sage grouse or was and is a beneficial anthropogenic activity and that should be so stated.

12. Your document fails to clearly state the benefits that sage grouse receive when livestock are grazed on the rangelands that provide sage grouse habitat. If you want sage grouse numbers and abundance that was present in the mid-1900s you will have to arrange for the conditions that correlate with that abundance which was many more livestock grazing within sage grouse habitats in the presence of sage grouse, especially domestic sheep.

13. One issue that is correctly identified is characterization of the invasion of sagebrush dominated plant communities by conifers as a loss of available sage grouse habitat. In the Great Basin those conifers are mostly Singleleaf Pinyon Pine and Utah Juniper with some Western Juniper in the northwest portion of this area. Recent papers indicate that as little as 4% cover by conifers coincides with sage grouse no longer occupying an area.

14. We also concur with being concerned about the threat of catastrophic wildfires that burn very large areas and that have become common in the recent years.

15. Agency biologists have written a document with a built in contradiction in being concerned about wildfire on one hand and stating the unfounded claim that grass height of 7 inches or more along with dense stands of sage brush must be in place for sage grouse. Again there is no clear evidence that the stubble height/cover standards will result in more sage grouse but it certainly will result in more susceptibility to catastrophic wildfires. That federally mandated herbaceous stubble is the fuel that feeds the wildfires.

16. This false statement of sage grouse habitat characteristics, the regulations that are already in place to maximize stubble height are just two of the federal regulations that have put many ranches out of business or at best have resulted in under-utilized rangeland forage. You must analyze the correlation of the loss of numbers of grazing livestock which in turn leaves vast quantities of vegetation available to burn and destroy sage grouse and habitat.

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17. You fail to note that predation has a severely limiting effect on sage grouse populations, especially nest success and brood rearing. It is well documented that ravens, coyotes, bobcats, and other predators can greatly reduce the reproductive success and survival of sage grouse within both grazed and ungrazed rangeland habitats. Stubble height and shrub cover have no significant bearing on the rate of depredation. This plan should state that rigorous predator controls are essential if the goal is to have more sage grouse. .

18. Predation is described in various parts of the text but is discounted as not being a serious effect if the vegetation height and cover are present. When you complete a NEPA analysis predation must be considered in more realistic terms. NEPA is designed to state a problem, identify the causes of that problem, and determine the solutions that will solve the problem efficiently and effectively. Predation of Sage Grouse is well documented and that means that predator control must be identified in the document. In turn the NEPA analysis must consider if any protection or manipulation of the vegetative portion of habitat will have any effect on sage grouse numbers if predation continues unabated. There is no justification for onerous regulations to protect vegetative cover if there is no correlation between the cover and rate of predation.

19. Critical habitat designation requires economic impact analysis for ESA and for NEPA. As you put forth an analysis of economic effects they must include statements that the direct result of regulatory decisions includes preventing ranches such as ours from accessing and using our existing property rights within federally controlled lands. We own water rights, easements, rights-of-way, and grazing preference within our BLM and USFS grazing allotments. Numerous court decisions now support our property ownership; one recent case in Federal District Court in Reno provides an excellent example. Judge Jones ruled in the favor of rancher Wayne Hage and the Hage Estate that their water rights and easements are theirs to own and use within both BLM and USFS regulated allotment areas. Denial of those rights by regulatory actions will in turn be a denial of due process of law and will be viewed as an unlawful "Taking" under both the Fifth and Fourth Amendment to the U.S. Constitution. The liability for costs of Takings of property must be included in any economic analysis of this listing and the accompanying critical habitat designation.

20. Your ESA/NEPA economic analysis must include analysis of economic effects that will be the result of special treatment of sage grouse to the exclusion of other land uses. Our ranch alone employs as many as 20 people and supports three generations of our family. Our ranch operating expenses provides cash that circulates within western Nevada and adjoining parts of California. Based on statements by USFWS biologists, Forest Service and BLM both intend to prohibit grazing which will destroy jobs and local economies so you must state what that effect will be.

21. You fail to fully recognize the lawful status of our ranch as an applicant under ESA. Status as an applicant means we will be involved in every consultation

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between BLM, USFS, and USFWS that pertains to our operation. This document must include discussion of the participants in ESA consultation as a future action

22. The authors are proposing regulations that in the name of what the Endangered Species Act calls a Distinct Population Segment of Greater Sage Grouse based entirely on the conjecture of biologists who don't believe they would fly from Washoe County or Churchill County to Lyon County. As federal agencies you are both required to demonstrate that you are in compliance with ESA by documenting that you are using the best available scientific and commercial data and in accordance with the federal standards of discreteness and significance as defined by the ESA policy.. You fail to demonstrate how this Greater Sage Grouse which is arbitrarily called a DPS in one part of Nevada is in fact a discrete and significant population. Failure of the DPS designation will render this critical habitat designation unnecessary even though the critical habitat was proposed before the listing was proposed.

23. Historic records show that prior to 1850 there were few or no sage grouse in our portion of the Bi State area which extends from Smith Valley NV to Bridgeport Valley CA. Historic records further show that by 1950 sage grouse were abundant and commonly observed species. This increase occurred after the arrival of settlers and livestock, especially sheep. We have no record of the source of original reproducing sage grouse in the Bi-State area but we know the birds are very mobile and the distance from northern Nevada or central Nevada is not too great to prevent migration of birds into the area. What ever the source of sage grouse the fact remains that the numbers increased dramatically from being rare or not present to being very abundant within 100 years. This area does not meet the criteria for either discreteness or significance and your document is in error.

24. You fail to specify what if any effort has been or will be completed to fulfill the lawful requirement to resolve inconsistencies between local plans and this federal proposal through the process of "coordination". NEPA requires federal officials to complete coordination.

25. Designation of critical habitat will put our entire community under the control of the US Fish and Wildlife Service and by reputation your agency people would write an ESA recovery plan with no regard to local needs. The listing and regulations that follow would be a disaster economically and environmentally to our communities. Everyone would be hurt including livestock production, mining, manufacturing, recreation such as hunting and fishing, and just about every other aspect of our custom and culture. We are facing onerous and destructive regulations which have very little possibility of resulting in more sage grouse. Please edit the document to reflect the items listed above

DISCUSSION

I am Fred Fulstone from Smith, Nevada and I am submitting these comments on behalf of the F.I.M. Corp. of Smith Nevada. F.I.M. Corp is a family owned and

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operated sheep ranch with land, existing property rights, and grazing preference within adjudicated range allotments in both Nevada and adjoining areas of California.

The Fulstone family have been agricultural producers in Western Nevada for over 150 years and in that time sage grouse populations grew from none to a great abundance in about 1950 and have now declined in numbers since about 1980. Our ranch history during this time (150) years includes how our livestock, especially our sheep, have greatly benefitted sage grouse.

At this time three generations of our family owns and operates our sheep ranch with headquarters in Nevada and ranch property in both California and Nevada. Our operation includes private property along with Bureau of Land Management and Forest Service grazing allotments in both Nevada and California. Our permits on a number of BLM and Forest Service grazing allotments allow us to graze our sheep by herding them on open range throughout the year. Our range is approximately 100 miles from north to south and 75 miles from east to west.

In order to produce our lambs and wool, we have a working force of 18 people in addition to the immediate family. We have run 1000 head of cattle most of our lives along with the sheep.

The first Fulstone homesteaded in 1854 near Genoa. My grandfather bought our first ranch in Smith Valley in 1903 and my father began running a few sheep in 1910.

My mother, Dr. Mary, was one of the first woman Medical Doctors in Nevada.

My wife, Irene, was a school teacher and also made many thirty mile horse back rides with me to the Sheep Camps.

Now Marianne, my daughter, can run this ranch and we enjoy the help of her son Kris and daughter Danielle.

WHAT NEEDS TO BE DONE IS REALLY FAIRLY SIMPLE

Livestock grazing and predator control are the two most important tools we have to save and enhance the sage hen.

As business owners we have many reasons to be very skeptical about the listing of any species because the ESA has yet to save a single species while spending vast amounts of tax payers' money.

For a very good example of how the ESA works look at what happened in Klamath Falls area after the USFWS listed a sucker fish. This allowed the USFWS to implement their recovery plan and to give all the water in the Klamath Lake to the endangered species. That meant the farmers got no water for their crops even though they and the community businesses faced immediate economic destruction and citizens were forced into personal bankruptcy.

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The USFWS was doing everything backwards. After the USFWS took over, about 80% of the sucker fish died. What is the worse part? The National Academy of Science would later rule that the USFWS recovery plan was based on false science.

Without irrigation water 200,000 acres of farm land and 50,000 acres of wildlife refuge habitat dried up. This destruction was the result of the science used to list the sucker fish being corrupt. False data, false assumptions built into models, errors from carelessness or ignorance, and outright fabrication of biology all came to a head when many thousands of the protected fish were killed as a direct result of the federal actions.

Can any rational person expect a different outcome from listing the sage grouse and designating critical habitat than what occurred with fish in the Klamath Falls area?

Most of the biologists say that their main concern is for the sagebrush as one part of the sage hen habitat. We have plenty of sagebrush. We also note in the sage grouse literature that ideal sage grouse breeding and nesting habitat is sparsely vegetated with sagebrush cover less than 25%. It can also be shown that sage grouse populations were at a peak when grass cover in their nesting and brood rearing habitat was considered to be over-grazed by livestock and sage grouse populations decreased following BLM and Forest Service cuts in permitted grazing.

First we must improve sage hen habitat by controlling the predators that destroy the sage hens, their nests, and their chicks. The birds right after hatching are very vulnerable to everything and no amount of cover that occurs naturally in sage hen habitat can protect them. Some reports say that we are losing 50% of our nests today and 70% of that loss is from ravens. (Mark Jensen, Supervisor, Wildlife Services, Reno Nevada).

Wildlife Services is in charge of predator control and they have lost 45% of their work force. At one time we had three trappers here – one in Smith Valley, one in Mason Valley, and one in Carson Valley. Today we have one trapper that has to cover all three valleys plus Fallon and Austin. We also don't have a lion hunter anymore.

THINGS WE NEED TO DO IMMEDIATELY TO SAVE THE SAGE HEN:

During those years from about 1955 to 1980 we had thousands of sage hen in Smith Valley, the Pine Nut Range, and Bodie Hills. Also during those years we had trappers and the use of toxicants and we controlled the numbers of predators very well. During those years we had ten or more times the numbers of gazing animals on the Federal ranges than we now have and we had thousands of sage hen on the same areas. As soon as the grazing permits were cut by the agencies the trappers and toxicant use was cut down and the sage hens started to disappear.

No 1. We must have more trappers to control ravens, coyotes, badgers, bobcats, and other predators.

No 2. We need more open range grazing and more permitted grazing on the ranges.

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(and less housing development)

No 3. Where open grazing is allowed it accomplishes more than just providing feed for livestock

1. Livestock consumes the fuel that feeds wildfires.
2. Livestock owners improve the water resource and create new water sites
3. Livestock owners use water rights they own to develop irrigated meadows and fields that in turn serve as brood rearing habitat for sage hens.
4. Livestock grazing helps in the natural re-seeding, fertilizing, and cultivating of the grasses, forbs, and brush. This is necessary for the production of the sage hen and other wildlife. Sage grouse follow in the livestock footprints and into the bed grounds (especially sheep). These sage grouse feed on insects and other sources of nutrients left by the animals. It is common to see sage grouse chicks eating the pellets from the lambs which are highly nutritious because it is partially digested milk.

No 4. The livestock generally feed off the tall meadow grasses and forbs in the spring and then as the uplands dry the sage hen come down to the new growth of forbs and short green grasses in early summer. The livestock have to graze the meadows before the sage hen broods arrive to provide this benefit. The meadows that have been grazed are preferred by the sage hens because the shorter meadow plants enable the sage hens to see any approaching predators. They seem to like open space.

No 5. Livestock on the range offers relief from predation because the predators prey on livestock. When livestock owners kill predators the wildlife benefit along with the sheep.

BACK TO THE SAGE HENS

Sagebrush is not a problem --- we have plenty of it.

In some areas where the sagebrush is tall (3' to 4') and very thick it should be sprayed. That gives the forbs and grasses a chance to come which is very valuable as habitat and forage for the sage hens.

We have done this in cooperation with the BLM in some areas the sage hen has flocked into the sprayed areas.

We need better management of meadow forbs or grasses so forage will be available to sage hen broods when they come off the sage brush onto the meadows in June and July.

We know how to do all of these things which are sound management and it does not require heavy handed regulation.

BY EMAIL /s/ Fred Fulstone

Fred Fulstone

**For F.I.M. Corporation
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