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June 29, 2015

Director (210)
Attn: Protest Coordinator
P.O. Box 71383
Washington, DC 20024-1383

Dear Director Kornze:

The Sagebrush Ecosystem Program (SEP), through the authority granted to us in NRS Chapter 232.162, is filing a protest on the Nevada and Northeastern California Greater Sage-Grouse Proposed Land Use Plan Amendment and Final Environmental Impact Statement (FEIS) as allowed by 43 CFR 1610.5-2. The SEP through the Sagebrush Ecosystem Technical Team (SETT) is a cooperating agency, filing comments on multiple drafts of the FEIS (all of which are attached hereto).

The SEP represents a unified, broad, stakeholder effort including USFS, BLM, and USFWS staff that created the State Plan and the CCS using the best available science, vetted through stakeholder, science work group, and public input all through a public process. The State of Nevada remains the first and only state to recognize our commitment to conservation of Greater Sage-grouse in statute (NRS 232), which created the SEP, representing multiple stakeholders as well as state and federal agencies. The State Plan includes a robust process for the avoidance and minimization of impacts from anthropogenic disturbances. In instances where impacts cannot be avoided or sufficiently minimized, the State created the CCS, a rigorous, scientifically based mitigation program that achieves net conservation gain for GRSG and a single method for determining mitigation across the entire Sage-grouse Management Area, covering approximately 48,627,000 acres in Nevada.

We appreciate the opportunity to participate in this process, and are encouraged by the use of parts of our 2014 Nevada Greater Sage-grouse Conservation Plan (State Plan) including mention of the Conservation Credit System (CCS). We remain troubled, however, that the State Plan was not used in its entirety and significant new federal agency actions were added that replaced important components of the State Plan. FLPMA and its implementing regulations require that BLM's land use plans be consistent with officially approved state and local plans. The State Plan is consistent with the purposes, policies, and programs of federal laws and regulations applicable to the public lands, is based on the best available data and science, addresses each of the threats identified by the Conservation Objectives Team (COT) report, was developed entirely in a public and transparent process, and is supported by a wide array of stakeholders across the State of Nevada. Therefore, the State Plan should be fully implemented as the preferred alternative in the FEIS. The full implementation of the FEIS, as currently written, will adversely impact the State due to, among other things, unnecessary land use allocations, an unnecessary disturbance cap, and unrealistic expectations to achieve certain habitat objectives solely through management actions.

The SEP is protesting the following items (not in any particular order):

Adaptive Management Triggers

Statement of issue: The SEP agrees that clearly defined, scientifically based methods to calculate program success based on both habitat and population trends are needed. However, we protest the adaptive management triggers in the FEIS as they include significant additions in comparison to the DEIS, which did not allow time for public review and comment. Not only was there inadequate opportunity to review or comment prior to the FEIS, but the incorrect citation was provided for the population trend methods, which again does not provide the public the opportunity to review or understand the scientific literature used to support the method for modeled growth rates. A large range in the rate of change proposed to reach a hard trigger for an individual lek (0.01-0.15) is quite different from the rate of change proposed to reach a hard trigger for a lek cluster or BSU (0.10). The interpretation of these numbers, the methods for setting the trigger values, and the rationale for widely different trigger values are unclear and warrant a sufficient period of time to allow an independent review of the proposed adaptive management triggers.

Consideration should also be given to the effects that predation may have on influencing population levels (Lockyer et al. 2013). Natural and man-caused effects (which may or may not be influencing predation) are being considered, but there is no mention of evaluating the potential significant effects caused by predation in the adaptive management section. Predator control should be considered as a component of population recovery or protection as warranted. While the effects of predation on sage-grouse may be an indicator of other habitat concerns (which may take decades to rehabilitate), predator control can be used as a stop-gap measure in the interim process (Coates and Delehanty 2004, Coates and Delehanty 2010).

Relevant part(s) of the plan amendment:

- Chapter 2; Section 2.7; Population Growth Rate Calculations for Triggers p. 2-80 to 2-82)

Previous comments submitted or discussed for the record: See attached.

Statement of why the State Director's decision is believed to be wrong: Adaptive management is a critical component of the LUPA/FEIS to which all future management decisions will be tied. The additional information inserted into the FEIS is based on newly developed and highly technical analyses procedures that have not been adequately reviewed or analyzed in the FEIS. The significant new information and technology has bearing on the proposed action and its effects. Because this constitutes a significant change from the draft and because the management responses tied to hitting a trigger (Table 2-9- PHMAs and Table 2-10- GHMAs) are very specific with serious economic impact potential and questionable biological benefits to sage-grouse from a limiting habitat perspective, the SEP recommends a supplemental EIS be issued in order to allow for public comment and review (40 CFR 1502.9(c)(4)).

The SEP also recommends that the correct citation be included:

Coates, PS, BJ Halstead, EJ Blomberg, B Brussee, KB Howe, L Wiechman, J Tebbenkamp, KP Reese, SC Gardner, ML Casazza. 2014. A hierarchical integrated population model for greater sage-grouse (*Centrocercus urophasianus*) in the Bi-State Distinct Population Segment, California and Nevada: U.S. Geological Survey Open-File Report 2014-1165, 34p. doi: 10.3133/ofr20141165 [Open_File_Report]

Lockyer, Z., Coates, P., Casazza, M., Espinosa, S., & Delehanty, D. (2013). Greater Sage-grouse Nest Predators in the Virginia Mountains of Northwestern Nevada. *Journal of Fish and Wildlife Management.*, 4(2):242-254.

Coates, P. S., and D. J. Delehanty. 2004. The effects of raven removal on sage-grouse nest success. *Proceedings Vertebrate Pest Conference* 21:17.

Coates, P., & Delehanty, D. (2010). Nest Predation of Greater Sage-grouse in Relation to Microhabitat Factors and Predators. *Journal of Wildlife Management*, 74:240-248.

Allowance of Other Unspecified Mitigation Systems

Statement of issue: The preferred alternative allows for the development and use of other applicable mitigation systems in addition to the Nevada Conservation Credit System (CCS). The SEP remains concerned with the lack of detail surrounding the process for creating other applicable mitigation systems and, more importantly, the lack of detail surrounding the level of rigor for these alternative systems. The SEP understands that there is a need to account for existing signed agreements (i.e. the Barrick Bank Enabling Agreement), as well as the need for flexibility in the unlikely event that the CCS is not able to fulfill mitigation requirements. However, the allowance of multiple mitigations systems, without specific detail requiring that alternative mitigation systems achieve at a minimum the same level of conservation gain, does not provide consistency or certainty for the Department of Interior, private industry, non-governmental conservation organizations, local governments, or the State, thus diminishing the ability to achieve and account for landscape level conservation gain. The USFS plan fails to mention the CCS.

Relevant part(s) of the plan amendment:

The SEP is pleased with the addition of multiple references in the BLM's plan to the use of the CCS based on CA review comments submitted. The areas still requiring stronger language are:

- Chapter 2, Section 2.6.2, Page 2-22, Action SSS 2
- Chapter 2, Section 2.6.2, Page 2-23, Action SSS 3
- Chapter 2, Section 2.6.2, Page 2-26, Action SSS 9a
- Chapter 2, Section 2.6.2, Page 2-49, Action UFM 3
- Chapter 2, Section 2.6.2, Page 2-51, Action LOC 4
- Chapter 2, Section 2.7.3, Page 2-91, Action MI 2

Similar language is completely absent from the USFS plan.

Previous comments submitted or discussed for the record: See attached. The SEP did not comment on this in the DEIS CA review process, as the language in the preferred alternative selected in the DEIS stated "Action D-SSS-AM 8: The BLM and Forest Service would coordinate with the Nevada Sagebrush Technical Team on the application of the Conservation Credit System (once it is established) for mitigation of activities that disturb GRSG habitat within Nevada where the application of the mitigation would occur on or the credit would be applied to disturbance on Public or National Forest Lands" (DEIS, page 100).

Statement of why the State Director's decision is believed to be wrong: The State of Nevada codified their commitment to the conservation of sagebrush ecosystems, in Nevada Revised Statutes (232.161, 232.162, 321.592, and 321.594) in 2013, with the creation of the Sagebrush Ecosystem Council (SEC), the SETT, and a mandate to create a mitigation banking system. After months of development through public meetings, technical and scientific review, and extensive consultation with Federal agencies, the SEC unanimously adopted the Nevada CCS during a two-day intensive public workshop in December 2014. The development and adoption of the CCS included extensive input from the USFWS, BLM, and USFS. The CCS is a rigorous, scientifically based mitigation program that includes measures for habitat suitability and availability to ensure net conservation gain for the greater sage-grouse. In addition, the CCS is a system that is transparent and consistently applied to credit and debit projects in each mitigation situation. Other mitigation systems considered should be equally rigorous and undergo an analysis to develop a crosswalk with the credits of the CCS to ensure net conservation gain for sage-grouse. This will provide to USFWS certainty and equitability of application per the Greater Sage-grouse Range-wide Mitigation Framework. Multiple mitigation banking systems that cannot be shown to be effective based on best available science create challenges when trying to quantify benefits across landscapes.

The FEIS fails to provide detail on the alternative mitigation systems or assurance that they incorporate the best available science. The CCS is a rigorous and vetted mitigation system created with input from the Technical Review Group comprised of leading scientific experts in Nevada. The CCS represents the best

available science, which BLM is required to use when making decisions as indicated in the BLM Land Use Planning Handbook H-1601-1 and the BLM NEPA Handbook H-1790-1.

According to 43 CFR 1610.3-1(d) and 43 CFR 1610.3-2(a) the BLM shall ensure that resource management plans are consistent with officially approved or adopted resource related plans of State governments; however the proposed action is inconsistent with the State Plan, specifically as it relates to the use of the CCS. The BLM has failed to follow 43 CFR 1610.3-1(d) by failing to identify where inconsistencies exist between the proposed action and the State Plan and “provide reasons why the inconsistencies exist and cannot be remedied.” The State has provided written comments throughout the planning process detailing this inconsistency between the State Plan and the LUPA. The BLM has failed to document how these inconsistencies were addressed and, if possible, resolved as required under 43 CFR 1610.3-1(f) and FLPMA Sec 202(c) (9) (43 USC 1712).

The SEP requests the language in the FEIS be strengthened regarding the designation to use the Nevada CCS as the primary mitigation system (excluding existing signed agreements) and that the rigor of the CCS is set as the bar that other systems must meet to ensure that they are equitable and comparable. SEP requests that the USFS include similar language in their plan to give deference for the use of the Nevada CCS. SEP requests that a member of the SETT be the State representative on the applicable WAFWA Management Zone Teams described in Appendix I.

BLM and USFS Habitat Objectives/Desired Conditions

Statement of issue: There are inconsistencies between BLM’s Habitat Objectives Table (Table 2-2) and USFS Desired Conditions Tables (Tables 2-5 and 2-6). Each table is also inconsistent with Nevada’s Desired Habitat Conditions Table (Table 4-1) in the State Plan. The proposed management actions in the preferred alternative that are tied to the tables (2-2, 2-5, 2-6) fail to use the best available science to establish management actions. This is also a significant change from the DEIS, which contained only one Habitat Objectives Table for both agencies (DEIS Table 2-6).

Within the USFS proposed plan, the Seasonal Habitat Desired Conditions identified in Tables 2-5 and 2-6 are notably different for ecoregion 341 (Intermountain semi-desert and desert) and ecoregion 342 (Intermountain semi-desert). Although the intent of having two tables is to provide more site specific information relative to different site potential, the tables are inconsistent in the habitat indicators used as well as the conditions described, thus resulting in inconsistency issues within the same agency.

The habitat objectives and desired seasonal habitat conditions were based on select biological research that described seasonal habitat needs for GRSG. However, the proposed habitat indicators do not consistently incorporate allowance for variability in ecological state and phases, i.e. site potential. Describing one set of narrow conditions as the universal standard against which all landscapes and all land uses are to be evaluated is inappropriate and inconsistent with the best available science of range ecology and management, and is inconsistent with the Nevada Range Monitoring Handbook (Swanson, et al. 2006) which the BLM and USFS have adopted in Nevada.

Relevant part(s) of the plan amendment:

- Chapter 2; Section 2.6.2; Table 2-2; pg 2-18 to 2-19
- Chapter 2; Section 2.6.2; Greater Sage-grouse; Objective SSS1; pg 2-17
- Chapter 2; Section 2.6.2; Vegetation Management; Objective VEG 3; pg 2-27
- Chapter 2; Section 2.6.2; Vegetation Management; Action VEG 2; pg 2-27
- Chapter 2; Section 2.6.2; Vegetation Management; Action VEG 6 vii, viii, ix; pg 2-28
- Chapter 2; Section 2.6.2; Vegetation Management; Action VEG 7; pg 2-28
- Chapter 2; Section 2.6.2; Vegetation Management; Objective VEG-RH 1; pg 2-31
- Chapter 2; Section 2.6.2; Vegetation Management; Objective VEG-RH 3; pg 2-32
- Chapter 2; Section 2.6.2; Wildfire Management; Action WFM-HFM 13; pg 2-37

- Chapter 2; Section 2.6.3; Table 2-5 and Table 2-6; pg 2-57 to 2-60.

Previous comments submitted or discussed for the record: See attached.

Statement of why the State Director’s decision is believed to be wrong: One of the regulatory mechanism deficiencies identified by the USFWS in their 2010 finding was a lack of consistency in the way that habitat conditions were compiled, interpreted, and established. This factor was a primary impetus for initiating the plan amendment process. Different proposed plans and associated management actions for BLM and USFS do not meet the purpose and need for the LUPA to develop consistent range-wide conservation objectives and to inform the collective conservation efforts of all partners in response to the USFWS March 2010 “warranted, but precluded” ESA finding (40 CFR 1502.13). These differences could lead to inconsistent management and conservation outcomes between BLM and USFS managed lands.

Further, the proposed new Tables 2-2, 2-5, and 2-6 add information relevant to the environmental concerns and has bearing on the proposed action and its effects (40 CFR 1502.9(c)(1)(iii) which justifies a supplemental EIS.(BLM NEPA Handbook H-1790-1).

Actions in the proposed plan require management to “meet, restore, reestablish, and achieve” the narrowly focused habitat objectives. However, in many instances these objectives cannot be met by management actions alone. For example, desired sagebrush height and cover cannot realistically be achieved solely through management actions due to other factors such as climate, topography, and site specific conditions. Changes in livestock management will not restore herbaceous understory in brush-dominated areas if the understory is depauperate. Forb abundance and diversity are extremely variable between sites and between years and are predominantly influenced by winter and spring climatic conditions not by management practices. These tables set unachievable objectives, which may not be met without significant restoration inputs due to site specific ecological and physiological processes. Setting unachievable objectives is inconsistent with The Nevada Rangeland Monitoring Handbook (Swanson 2006) officially adopted by the BLM and USFS in Nevada, which details setting “SMART” objectives, which require them to be achievable. Management driven by unachievable objectives is inconsistent with existing policy.

The FLPMA, and its implementing regulations, require that BLM's land use plans be consistent with officially-approved state and local plans. The State Plan is consistent with the purposes, policies, and programs of federal laws and regulations applicable to public lands; therefore, Section 4 with table 4-1 should be fully incorporated into the FEIS.

The SEP recommends that BLM and USFS incorporate the introductory language (text of Section 4.0) and the desired habitat conditions (Table 4-1) from the State Plan. Language in the State Plan points out that vegetation community response to management techniques can be highly variable and may take years to reach desired conditions, if that transition pathway is even possible. Management actions must focus on maintaining or trending toward objectives based on ecological site potential and state and transition models.

Sagebrush Focal Areas (SFAs)

Issue #1 – Statement of issue: The methods provided for delineation of the SFAs are not explicit and therefore not transparent nor scientifically defensible. First, the section on page 2-2 to 2-3 describes the general characteristics considered when delineating the focal areas, but does not provide methods or the “scientific tools” used in their development. Then, the Nevada Management Categories (Coates et al. 2014) and the NDOW Habitat Categorization methods are both referenced, but prioritization in these tools do not line up with the delineation of the SFAs. Finally, the paragraph on page 2-11 refers the reader to the USFWS letter dated October 27, 2014. This letter provides more detail as to the input layers considered in the development of the SFAs; however again, an explicit method is not clearly outlined. In

reviewing the input layers in this letter (Doherty et al 2010, Knick and Hanser 2011, Chambers et al. 2014, ownership boundaries), the SEP did not come to a consistent delineation with the SFAs. Overall, the criteria described for producing SFAs does not match the State's assessment of breeding bird densities (per Doherty et al. 2010) or resistance and resilience mapping statewide (Chambers et al. 2014), and it is unclear what criteria were applied to determine which landscapes qualify as being "essential to conservation and persistence of the species."

The most recent analysis of populations at the Management Zone level (Garton and Connelly 2015) found the Southern Great Basin Management Zone (SGBMZ) to be one of the most stable populations range-wide with a zero percent likelihood of reaching a critically low level of 200 or fewer males in the next 30 years. This is Nevada's most stable population, yet this population did not make it into the SFA. Conversely, this and other Nevada specific data were not included in the delineation of SFAs for Nevada, nor were any experts in the State consulted in the creation of these boundaries.

Also, the delineation of SFAs constitutes a major change from the DEIS to the FEIS which did not allow time to review methodology or suggest changes via a comment period.

Relevant part(s) of the plan amendment:

- Chapter 2; Section 2-1; page 2-2 to 2-3
- Chapter 2; Section 2.6.2; page 2-25, Action SSS 5

Previous comments submitted or discussed for the record: See attached.

Statement of why the State Director's decision is believed to be wrong: The BLM Land Use Planning Handbook H-1601-1 and the BLM NEPA Handbook H1790-1 requires the use of best available science. The process for delineation of SFAs needs to be clearly defined and understandable to incorporate the best available science especially new science specific to populations in Nevada, and for duplication using the same tools. The delineation of SFAs also constitutes significant new information in the FEIS which justifies a supplemental EIS to provide time for meaningful public review and comment in compliance with NEPA 40 CFR 1502.9(c)4.

We request the BLM and USFS do not use the SFA delineations. If SFAs are determined to be necessary, the BLM and USFS need to revisit the methods of delineation and provide more robust quantitative methods in the FEIS via a supplemental EIS to allow for meaningful review and comment. We also request that the State be involved in this process.

Doherty, K.E., J.D. Tack, J.S. Evans, and D.E. Naugle. 2010. Mapping breeding densities of greater sage-grouse: A tool for range-wide conservation planning. BLM Completion Report. Interagency Agreement # LIOFG00911.

Chambers, J.C.; D. A. Pyke, J.D. Maestas, M. Pellant, C.S. Boyd, S.B. Campbell, S. Espinosa, D.W. Havlina, K.E. Mayer, and A. Wuenschel. 2014b. Using resistance and resilience concepts to reduce impacts of invasive annual grasses and altered fire regimes on the sagebrush ecosystem and greater sage-grouse: A strategic multi-scale approach. Gen. Tech. Rep. RMRS-GTR-326. Fort Collins, CO: U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station. 73p.

Garton, E., and J. Connelly. 2015. Greater sage-grouse population dynamics and probability of persistence. Pew Charitable Trusts.

Knick, S.T., and S.E. Hanser. 2011. Connecting pattern and process in greater sage-grouse populations and sagebrush landscapes. Pp. 383 - 405 in S.T. Knick and J.W. Connelly (editors). Greater Sage- Grouse: ecology and conservation of a landscape species and its habitats. Studies in Avian Biology (vol. 38), University of California Press, Berkeley, CA.

Issue #2 – Statement of issue: Applying the SFA concept primarily to the Northern Great Basin Management Zone (NGBMZ) may undervalue the importance of conserving habitats in the Southern Great Basin Management Zone (SGBMZ) and other non-SFA landscapes by shifting management priorities (e.g., vegetation management, grazing permit renewals) away from habitats of high importance

for Nevada and the species range-wide. This could result in unintended consequences for Nevada's GRSG populations and their habitat statewide.

Based on the work of Chambers et al. (2014), which is incorporated and referenced, throughout the FEIS, much of the SFA encompasses higher resistance and resilience areas of the planning region. This means, should disturbance occur in these areas they are more likely to recover on their own. Following the prioritization of Chamber et al. 2014, more proactive management actions (e.g., fire operations, vegetation management,) should be occurring in less resistant and resilient landscapes (See Table 4 in Chambers et al. 2014). Prioritizing management and conservation actions in some form is a very good approach for focusing conservation gains across very large landscapes; however, the delineation of the SFAs did not appropriately incorporate scientific tools such as concepts of resistance and resilience to be the main focus of prioritization for management actions. Deficient use of resistance and resilience ecology as the best available science for SFA delineation is inconsistent with other parts of the LUPA.

Relevant part(s) of the plan amendment

- Chapter 2; Section 2.6.2; pg 2-2 to 2-3
- Chapter 2; Section 2.6.2; Action SSS 5; Page 2-25
- Chapter 2; Section 2.6.2; Action WFM 2; Page 2-33
- Chapter 2; Section 2.6.2; Action LG 2, Action LG 4; Page 2-39
- Chapter 2; Section 2.6.2; Action LG 11; Page 2-42
- Chapter 2; Section 2.6.2; Action WHB 3; Page 2-43
- Chapter 2; Section 2.6.2; Action WHB 4; Page 2-44

(NOTE: The USFS did not provide actions that define prioritization for management actions in SFAs).

Previous comments submitted or discussed for the record: See attached.

Statement of why the State Director's decision is believed to be wrong: The BLM Land Use Planning Handbook 1601-1 and the BLM NEPA Handbook 1790-1 require the use of best available science. Prioritizing management actions based on the SFA spatial delineation which does not incorporate science specific to GRSG populations in Nevada and the Chambers et al (2014) work on resistance and resilience, as well as other available science violates BLM policy and could be detrimental to population numbers in Nevada and across the range. The delineation of SFAs also constitutes a significant change from the DEIS to the FEIS which warrants a supplemental to provide time for meaningful review and comment.

The SEP recommends that management action priorities should be analyzed and defined using science-based tools, e.g., resistance and resilience concepts described in Chambers et al. (2014) in PHMA, then GHMA, then OHMA.

Chambers, J.C.; D. A. Pyke, J.D. Maestas, M. Pellant, C.S. Boyd, S.B. Campbell, S. Espinosa, D.W. Havlina, K.E. Mayer, and A. Wuenschel. 2014b. Using resistance and resilience concepts to reduce impacts of invasive annual grasses and altered fire regimes on the sagebrush ecosystem and greater sage-grouse: A strategic multi-scale approach. Gen. Tech. Rep. RMRS-GTR-326. Fort Collins, CO: U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station. 73p.

Exclusion Areas

Statement of issue: The SEP protests actions which restrict or exclude certain land use allocations without specific analysis of how the one-size-fits-all action accomplishes sage-grouse conservation. Our concern relates to the following actions:

- Fluid Minerals Development – Designating SFAs and PHMAs as open to fluid mineral leasing subject to No Surface Occupancy (NSO) without waiver, modification, or exception;
- Wind Energy Development – Designating ROW exclusion areas in PHMAs SFAs;
- Solar Energy Development – Designating PHMAs and GHMAs as solar energy ROW exclusion areas;

- Locatable Minerals Mining – Recommended mineral withdrawal in SFAs under the General Mining Law of 1872, as amended;
- Nonenergy Leasable Minerals Mining – Designating PHMAs as closed areas;
- Salable Minerals Mining – Designating PHMAs and SFAs as closed areas;
- Recreation – No new recreation facilities in PHMAs and SFAs on BLM lands and PHMAs, GHMAs, and SFAs on USFS lands.

Relevant part(s) of the plan amendment:

Fluid Minerals Development

- Chapter 2; Section 2.6.2; pg 2-25, Action SSS-5
- Chapter 2; Section 2.6.2; pg 2-48, Action UFM 2 and Action UFM 3
- Chapter 2; Section 2.6.3; pg 2-71 GRSG-M-FMUL-ST-091-Standard, and pg 2-72 GRSG-M-FMUL-ST-093-Standard

Wind Energy Development

- Chapter 2; Section 2.6.2; pg 2-45; Action LR-WD-1
- Chapter 2; Section 2.6.3; pg 2-63; GRSG-WS-ST-027-Standard

Solar Energy Development

- Chapter 2; Section 2.6.2; pg 2-45; Action LR-IS-1
- Chapter 2; Section 2.6.3; pg 2-63; GRSG-WS-ST-026-Standard

Locatable Minerals Mining

- Chapter 2; Section 2.6.2; pg 2-25; Action SSS-5
- Chapter 2; Section 2.6.2; pg 2-45; Action LR-LW 1
- Chapter 2; Section 2.6.2; pg 2-50; Action LOC-2

Nonenergy Leasable Minerals Mining

- Chapter 2; sec 2.6.2; pg 2-51; Action NEL 2

Salable Minerals Mining

- Chapter 2; sec 2.6.2; pg 2-51; Action SAL 2
- Chapter 2; sec 2.6.3; GRSG-M-MM-ST-115-Standard

Recreation

- Chapter 2; sec 2.6.2; pg 2-54; Action REC 3
- Chapter 2; sec 2.6.3; pg 2-70; GRSG-R-GL-078-Guideline

Previous comments submitted or discussed for the record: See attached.

Statement of why the State Director’s decision is believed to be wrong: Exclusion of these land uses over vast expanses of public lands violates the definition of “multiple use” as defined in FLPMA Sec 103 (c) (43 USC 1702) and fails to take into account “the long-term needs of future generations for renewable and non-renewable resources.” Where there are competing resource uses and values in the same area, Section 103(c) of FLPMA (43 USC 1702) requires that the BLM manage the public lands and their various resource values so that they are utilized in the combination that will best meet multiple use and sustained yield mandates. Similar provisions are provided under the National Forest Management Act (16 U.S.C. 1600) for multiple-use management of Forest Service lands.

These actions are in direct conflict and inconsistent with the Plan, inconsistent with best science, and inconsistent with the threats and objectives identified in the Conservation Objectives Team (COT) report. The State Plan does not identify exclusion zones, but instead provides an “avoid, minimize, mitigate” process to address impacts to achieve net conservation gain from anthropogenic disturbances (pages 12 – 18, 61 – 66, 69 – 70, State Plan). The State contends that the proposed land use allocations are not needed if the “avoid, minimize, mitigate” process is adhered to, including the complete adoption of the Conservation Credit System which assures a net conservation gain.

According to 43 CFR 1610.3-1 (d) and 43 CFR 1610.3-2 (a) the BLM shall ensure that resource management plans are consistent with officially approved or adopted resource related plans of State governments, however the LUPA is inconsistent with the State Plan. The BLM has failed to follow 43 CFR 1610.3-1 (d) by failing to identify where inconsistencies exist between the LUPA and State Plan and “provide reasons why the inconsistencies exist and cannot be remedied.” Furthermore, though the State has provided written comments throughout the planning process detailing the inconsistencies between the State Plan and the LUPA, the BLM has failed to document how these inconsistencies were addressed and, if possible, resolved as required under 43 CFR 1610.3-1 (f) and FLPMA Sec 202 (c) (9) (43 USC 1712).

Further, the BLM and FS have not provided scientific information that supports the assumptions in the analysis of environment consequences leading to the unsubstantiated conclusion that exclusion actions are effective for GRSG conservation. The effects analysis assumes that exclusion of surface disturbance will provide a high level of protection for sagebrush ecosystems. The extent of habitat disturbance due to anthropogenic actions, such as mineral and energy development, is minimal compared to habitat loss due to wildland fire and invasive species. However, the proposed action does not improve resiliency or other ecologic functions or reduce the threat of wildfire. The analysis of environmental consequences is flawed and does not comply with NEPA 40 CFR 1500.4 (c), 40 CFR 1500.4(g), 40 CFR 1500.5(d), 40CFR 1502.16 (BLM NEPA Handbook H-1790-1).

Three Percent Disturbance Cap

Statement of issue: The SEP protests implementation of the Disturbance Management Protocol (DMP), which creates an anthropogenic disturbance cap of three percent of PHMA within a Biologically Significant Unit (BSU) and proposed project analysis area. A disturbance cap is inconsistent with the State Plan, inconsistent with best science, does not adequately address the threats identified in the Conservation Objectives Report (COT), and will interfere in the effective implementation of the Conservation Credit System. The CCS is based on best science and does adequately address all of the threats identified in the the COT report. The SEC reviewed the concepts surrounding disturbance caps at length and found them not to be beneficial for sage-grouse in Nevada.

The SEP appreciates the Nevada-specific disturbance management protocol allowing for a team of experts to determine if the cap can be exceeded in areas where a biological analysis indicates a net conservation gain to the species. The team of experts in the FEIS includes NDOW, the USFWS, and the BLM. It is unclear how the USFWS has authority to have a “veto” as considered in the current FEIS language, as Greater Sage-grouse are not a listed species and are the management responsibility of the Nevada Department of Wildlife and the State of Nevada. A member of the SETT should also be included. Moreover, the DCNR Director should be included in the process if the team does not agree, as SETT is a program within DCNR.

Relevant part(s) of the plan amendment:

- Chapter 2; Section 2.6.2; pg 2-20, Action SSS 2
- Chapter 2; Section 2.6.3; pg 2-60; GRSG-GEN-ST-004-Standard
- Appendix F

Previous comments submitted or discussed for the record: See attached.

Statement of why the State Director’s decision is believed to be wrong: These actions are in direct conflict and inconsistent with the State Plan. The State Plan does not include disturbance caps, but instead provides an “avoid, minimize, mitigate” process to address impacts from anthropogenic disturbances (pages 12 – 18, 61 – 66, 69 – 70, State Plan). The additional disturbance cap restriction is not needed due to the “avoid, minimize, mitigate” process, including the complete adoption of the Conservation Credit System.

According to 43 CFR 1610.3-1(d) and 43 CFR 1610.3-2(a) the BLM shall ensure that resource management plans are consistent with officially approved or adopted resource related plans of State governments, however the LUPAs are inconsistent with the State Plan. The BLM has failed to follow 43 CFR 1610.3-1(d) by not identifying where inconsistencies exist between the LUPA and State Plan and “provide reasons why the inconsistencies exist and cannot be remedied.” Furthermore, though the State has provided written comments throughout the planning process detailing the inconsistencies between the State Plan and the LUPAs, the BLM has failed to document how these inconsistencies were addressed and, if possible, resolved as required under 43 CFR 1610.3-1(f) and FLPMA Sec 202 (c)(9) (43 USC 1712).

The disturbance cap also violates the definition of “multiple use” as defined in FLPMA Sec 103(c) (43 USC 1702) and fails to take into account “the long-term needs of future generations for renewable and non-renewable resources.” Where there are competing resource uses and values in the same area, Section 103(c) of FLPMA (43 USC. 1702) requires that the BLM manage the public lands and resource values so that they are utilized in the combination that will best meet multiple use and sustained yield mandates. Similar provisions are provided under NFMA (16 USC 1600) for multiple-use management of Forest Service lands.

The disturbance cap fails to account for the quality of habitat and seasonal habitat types, which should be considered based on best available science. A disturbance cap is not a useful management tool given Nevada’s spatial distribution of seasonal habitats. In many instances greater than three percent disturbance in winter habitat, where winter habitat is the majority of the landscape within a BSU, would not have a negative impact on populations, whereas less than three percent disturbance on limited brood rearing habitat could have a detrimental impact. A disturbance cap does not adequately address the importance of limiting habitat types in Nevada. The Conservation Credit System (CCS) in the State Plan more adequately accounts for this by:

- consistently defining habitat quality including site, local, and landscape quality for both impacts from development (debits) and benefits from enhancement and protection (credits) using functional acres as the common unit of measure, accounting for both direct and indirect effects of anthropogenic disturbances, and
- rigorously addressing limiting habitat needs within a given project effects’ area.

The three percent limit of total discrete anthropogenic disturbances in BSAs regardless of ownership is not realistic and, again, ignores spatial distribution of habitats and private property rights. If existing disturbance is clustered in one part of the BSA, additional adjacent disturbance may have no effect on GRSG. However, relocation of disturbances to BSAs with less than three percent disturbance could have large impacts to GRSG. The one-size-fits-all approach does not assure greater conservation for sage-grouse and does not allow for adaptive management in a dynamic biological system. The environmental consequences and indirect impacts for the proposed three percent disturbance cap have not been adequately analyzed and is not compliant with NEPA, 40 CFR 1502.16, 40 CFR 1502.1 (BLM NEPA Handbook H-1790-1).

The SEP recommends using the rigor of the CCS program rather than a three percent disturbance cap. If the disturbance cap remains, despite the State’s protest, we request language in the FEIS that the cap be a temporary backstop to give time for the CCS to prove its effectiveness. When the CCS is proven to be effective the disturbance cap would no longer be required. We also request the SETT be on the technical team of experts when deciding if the cap can be exceeded and the DCNR Director should be included on the executive team if the decision is not unanimous.

In addition, while disturbance caps were included in Alternatives B and F of the DEIS, the DMP was not. The protocol is highly technical and has far reaching implications. This constitutes a significant change from the DEIS to the FEIS, which warrants a supplemental EIS in order to allow for sufficient public review and comment (40 CFR 1502.9(c)(4)).

Livestock Grazing

Issue #1 - Statement of issue: The level of specificity proposed in the livestock grazing actions LG 1, LG 3, LG 5, LG 6, and LG 18 is more appropriately addressed at the activity planning level as an Allotment Management Plan (AMP) rather than in the LUPA. An AMP should be prepared in careful and considered consultation, cooperation, and coordination with affected permittees, the resource advisory council, and the interested public (43 USC 1753(a); 43 CFR 4100 Sec 4120.2). The AMP includes terms and conditions to comply with standards and guidelines; prescribes the livestock grazing practices necessary to meet specific resource objectives; specifies the limits of flexibility to be determined and granted on the basis of the operator's demonstrated stewardship; and specifies monitoring to evaluate the effectiveness of management actions in achieving the specific resource objectives of the plan (43 CFR Sec. 4100 Part 4120.2).

The management strategies mandated in LG 1, LG 3, LG 5, and LG 6, that are used as standardized responses when conditions are not meeting or making progress toward meeting land health standards, do not incorporate cooperative planning mandated by FLPMA. FLPMA endorses permittee involvement and innovative problem solving to develop solutions that meet resource objectives. Cookbook implementation of standardized practices will, in some cases, lead to reduction or elimination of grazing use without fixing habitat or rangeland health problems or using the GRSG desired habitat conditions to identify optimum achievable resource objectives. The GRSG desired habitat objectives are not applicable to direct management actions.

Terminating grazing in the middle of the permitted grazing season, Action LG5, based on localized exceedance of utilization standards will cause substantial uncertainty for livestock producers and is inconsistent with the Taylor Grazing Act (43 USC 315), which is purposed at stabilizing the public land livestock industry. This kind of uncertainty has, in many cases, prevented investment in management infrastructure needed for effective management and has contributed to the sale and subdivision of ranches. Furthermore, triggers and end-point indicators are tools to be applied within an allotment management plan in consideration of additional actions to meet resource objectives Swanson et al. (2006). The indirect impacts of increased use of important habitats on private land meadows as a result of preempting the grazing season have not been analyzed.

The unintended consequences of potentially ineffective management actions may result in unnecessary elimination of grazing use on public lands and the subsequent loss of important sage-grouse habitat on private lands. This has not been analyzed as required by NEPA.

Relevant part(s) of the plan amendment:

- Chapter 2; Section 2.6.2; Livestock Grazing; Action LG-1; pg 2-39
- Chapter 2; Section 2.6.2; Livestock Grazing; Action LG-3; pg 2-39
- Chapter 2; Section 2.6.2; Livestock Grazing; Action LG-5; pg 2-40
- Chapter 2; Section 2.6.2; Livestock Grazing; Action LG-6; pg 2-41
- Chapter 2; Section 2.6.2; Livestock Grazing; Action LG-18; pg 2-42.
- Chapter 2; Proposed Action and Alternatives – 2.12 Summary of Environmental Consequences Table 2-17. P. 2-466

Previous comments submitted or discussed for the record: See attached.

Statement of why the State Director's decision is believed to be wrong: Proposed actions LG 1, LG 3, LG 5, and LG 6 are inappropriate at the RMP planning level. 43 CFR Part 4100 §1601 defines the RMP as a land use plan that identifies allowable resource uses, resource condition goals and objectives to be attained, and program level constraints and *general* management practices needed to achieve them. Details of range management practices and permit terms and conditions are not intended at the RMP level. The RMP is not a final implementation decision on actions which require further specific plans or decisions under specific provision of other laws and regulations (e.g. FLPMA and Taylor Grazing Act).

Options for management responses should be applied at the appropriate planning level through development of AMPs. The list of management strategies proposed in LG 1, LG 3, LG 5 and LG 6 is far short of all solutions, or even the more useful tools, available through proper range management to address site-specific concerns. There is no evidence that the actions proposed will cure the failure to meet land health standards. These lists of management practices should be qualified as a non-exhaustive list of options to be considered at the AMP level. Proper range management citations should be provided to guide land managers to the best available science.

Neither the direct or indirect impacts of LG 1, LG 3, LG 5, or LG 6 have been adequately analyzed in compliance with NEPA and have not been shown to be consistent with the purpose and need of the LUPAs. The direct effects of the proposed actions do not implement proper livestock grazing practices to maintain ecological functions or to promote the healthy perennial grass and herbaceous vegetation component of a resilient plant community. The direct effects of the utilization levels proposed in LG 5 and LG 6 have not been shown to be effective in meeting or moving toward desired habitat objectives. [The Holechek 1988 citation is outdated and has been superseded by Holechek et al. 2011 for guidance on range management. The Platts 1990 manuscript was primarily written for riverine riparian systems that support fisheries which are generally different than the kind of meadows used by GRSG for late brood rearing. It has been superseded by TR-1737-20 (Wyman et al. 2006), which will soon be updated by Swanson, Wyman, and Evans (accepted).]

The analyses of the environmental consequences to Vegetation and Soils (Table 2-17) Proposed Action is incorrect. It states, "Limited disturbance due to restricting permitted actions would lead to improved vegetation conditions...Increased emphasis on incorporation of GRSG habitat objectives and considerations into programs such as livestock grazing, recreation, and wild horse and burro management would likely lead to improvements in overall vegetation conditions." Science does not support this conclusion and the flawed analysis violates NEPA. Current range science would incorporate management based on ecological site descriptions, existing ecological state, and apply management to target desired phases within that state to avoid pathways (such as fire) that cross thresholds to new states (Caudle, et al. 2013). The impacts of the proposed action to vegetation and soils could have adverse effects on maintaining resilient sagebrush communities, increasing rangeland fuel load, and exacerbating wildland fire behavior.

The FEIS should consider greater incorporation of the Livestock Grazing section in the State Plan.

Issue #2 - Statement of issue: The FEIS lacks pertinent citations on livestock grazing management as related to the functionality and sustainability of sagebrush/perennial herbaceous plant communities and meadows within the sagebrush ecosystem. Regarding the first point, repeated statements throughout the document infer or directly indicate that grazing can have adverse impacts on herbaceous vegetation and, by implication, sage-grouse. The use of livestock as a tool for meadow enhancement is documented in literature, but essentially ignored or mentioned without appropriate citations. Studies by Neel (1980), Klebenow (1982), and Evans (1986), and included in Beck and Mitchell (2000) demonstrated that cattle grazing can be used to stimulate forb production. These studies were all conducted in Nevada, focusing on livestock use of upland meadows frequented by sage-grouse in late brood rearing.

Davies et al. (2011, p. 2575) concluded based on literature review that "Though appropriately managed grazing is critical to protecting the sagebrush ecosystem, livestock grazing per se is not a stressor threatening the sustainability of the ecosystem. Thus, cessation of livestock grazing will not conserve the sagebrush ecosystem." Davies et al. (2009 and 2010) also found that long-term rest increases the likelihood of fire-induced mortality of perennial bunchgrasses because more fuel resides on the root crown of perennial bunchgrasses and that post-fire exotic annual grass invasion was greater in sagebrush plant communities where livestock grazing had been excluded for more than half a century compared to moderately grazed areas. Davies et al. (2015) found that winter grazing effectively reduces summer fuel moisture, amount, and continuity, and fire season length.

Knopf (1996) found that season of grazing is more important than intensity of grazing. Late-season grazing on dormant vegetation has little effect on bird communities Knopf (1996). Johnson et al. (2011) showed that moderate and low stocking rates of cattle grazing on bunchgrass communities in northeastern Oregon caused no negative impacts to ground-nesting songbirds. These stocking rates generally provided suitable habitat for all species studied and results were similar to the no grazing treatment. Whitehurst and Marlow (2013) – In mountain big sagebrush habitat, higher forb nutrient density that is critical for pre-incubating sage-grouse hens and survival of young broods can be achieved with targeted cattle grazing and selective thinning of mature mountain big sagebrush stands. Laycock (1967) found that fall grazing (with sheep) and grazing exclusion resulted in a 30 percent increase in production of perennial grasses and perennial forbs compared to spring use. In this case, a change in the timing of grazing had the same effect as the long-term exclusion of grazing.

Relevant part(s) of the plan amendment:

- Chapter 2; Section 2.6.2; Livestock Grazing; pg 2-38 to 2-43
- Chapter 2; Section 2.6.3; Livestock Grazing; pg 2-65 to 2-67
- Chapter 4 Environmental Consequences

Previous comments submitted or discussed for the record: See attached.

Statement of why the State Director’s decision is believed to be wrong: The science used in the FEIS is incomplete. The literature summarized above and additional citations were provided in detailed comments from the SEP to the DEIS. The FEIS violates the NEPA requirement for the use of best available science (40 CFR 1502.1).

The SEP is requesting that the management actions be revised to reflect best available science from multiple disciplines, specifically to include range ecology.

Issue #3 - Statement of issue: The FEIS fails to adequately analyze the socio-economic impacts from the proposed action. The economic effects analysis was not conducted in collaboration with the SETT as a cooperating agency (43 CFR Part 4100 §1610.4-6) and does not give adequate consideration to economic factors in compliance with NEPA 40 CFR 1508.14 (BLM NEPA Handbook BLM Handbook of Socio-Economic Mitigation, IV-2).

Socio-economic impacts to counties and local communities, where impacts will be most relevant, have not been disclosed. The proposed actions will require significant infrastructure and added operating expenses for livestock operators (fencing, water developments, livestock gathers, etc.). The indirect effects of the proposed action could result in a significant reduction or elimination of grazing, and the subsequent sale and subdivision of ranches. The FEIS does not provide adequate information to determine the costs and economic impacts of these actions.

Relevant part(s) of the plan amendment:

- Chapter 4; Environmental Consequences; 4.21.2 Economic Impacts from Management Actions Affecting Grazing Allotments. P.4-407 – 4-414

Previous comments submitted or discussed for the record: See attached.

Statement of why the State Director’s decision is believed to be wrong: NEPA requires the impact on local economies be analyzed. A supplemental EIS is needed to document the details of the economic analysis in a transparent manner that allows for public comment.

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Map Update Process

Statement of issue: The SEP protests that updating future sage-grouse habitat maps may have to occur through the land use plan amendment process.

Relevant part(s) of the plan amendment:

- Chapter 2; Section 2.7.1; Action AM-1; Page 2-85

Previous comments submitted or discussed for the record:

The process for updating sage-grouse habitat maps in the DEIS, Draft Proposed Plan Amendment (CA Version), and Preliminary Proposed FEIS (CA Version) was different than what was proposed in the current FEIS, therefore the SEP has not previously been provided an opportunity to comment on this item.

Statement of why the State Director's decision is believed to be wrong: The BLM and USFS are required to use the best available science when making decisions as indicated in the BLM Land Use Planning Handbook H-1601-1 and the BLM NEPA Handbook H-1790-1. The current proposal to update future maps through the land use plan amendment process violates the policy mandate of using the best available science for land use decisions. Appendix A of the LUPA/ FEIS states, "the updated map underwent peer review and is considered by the State, USGS, and the BLM as the best available science." The land use plan amendment process is lengthy and at times infrequent due to staff and monetary

resource constraints. This will result in BLM and USFS not using the best available science as the USGS habitat suitability model is updated, which will result in out of date maps that will not provide for the most appropriate management for sage-grouse. Specifically, a map update from the USGS will be available in August 2015, so by the time the ROD is signed it will not contain the most up to date information and best available science for sage-grouse habitat maps, and therefore will be in violation of NEPA and BLM policy.

The possibility for future map revisions to have to go through additional land use plan amendments is inconsistent with the policies and analyses in the LUPA/FEIS, specifically Appendix A. Appendix A outlines the BLM/USFS rationale for use of an updated map in the FEIS, that was developed using different modeling methods than those in the DEIS, without need for a Supplemental EIS and additional public input. If the BLM/USFS analysis found that a change in maps using entirely different modeling methods between Draft and Final did “not result in new decisions or environmental effects that were not considered and disclosed in the Draft LUPA/EIS,” then this logic should be extended to further refining and updating the map based on the same modeling methods as those in the FEIS, without the need to trigger a land use plan amendment. This conclusion was drawn on the assertion that “the Draft LUPA/EIS Alternative D analyzed all unmapped habitat,” so this analysis should be adequate for future map updates that occur after the FEIS. Therefore, by using the BLM/USFS’ own analysis conclusions so eloquently laid out in Appendix A, the land use plan amendment process is not necessary for future map updates.

According to 43 CFR 1610.3-1(d) and 43 CFR 1610.3-2(a) the BLM shall ensure that resource management plans are consistent with officially approved or adopted resource related plans of State governments; however the LUPA is inconsistent with the State Plan, specifically as it relates to the map updating process. The BLM has failed to follow 43 CFR 1610.3-1(d) by failing to identify where inconsistencies exist between the LUPA and State Plan and “provide reasons why the inconsistencies exist and cannot be remedied.” The State has provided written comments throughout the planning process detailing this inconsistency between the State Plan and the LUPA. The BLM has failed to document how these inconsistencies were addressed and, if possible, resolved as required under 43 CFR 1610.3-1(f) and FLPMA Sec 202 (c) (9) (43 USC 1712).

The SEP proposes that the BLM/USFS use the process that was outlined in Appendix O of the Preliminary Proposed FEIS (CA Version) for future map updates. This process provides for the same framework and methods as were used to develop the maps in the FEIS and specifically indicates that updates to the maps using these methods will be incorporated through plan maintenance.

No mitigation requirement in OHMAs or mitigation requirement for indirect impacts to PHMA and GHMA as a result of disturbances occurring in OHMAs.

Statement of issue: The FEIS does not require mitigation in Other Habitat Management Areas (OHMAs). It also does not require mitigation for indirect effects that impact PHMA or GHMA habitats due to by disturbances occurring in OHMAs. The State’s Conservation Credit System (CCS) takes both into consideration.

Relevant part(s) of the plan amendment:

- Chapter 2; Section 2.6.2; Action SSS-4; page 2-25

Previous comments submitted or discussed for the record:

This was not in the DEIS, therefore the SEP has not previously been provided an opportunity to comment on this item.

Statement of why the State Director’s decision is believed to be wrong: The State Plan requires mitigation for anthropogenic disturbances in OHMAs (the State Plan terminology for OHMAs is General Management Areas (GMAs)). This consideration requires the assessment for mitigation needs within an additional 7,620,000 acres of important sage grouse habitats that have been determined by the best available science (Coates et al. 2014) to be moderately suitable habitat for sage-grouse in areas of

estimated low space use. These areas are spatially important to sage-grouse as they maintain connectivity throughout the range in the sub-region and thus require analysis for appropriate mitigation through the CCS.

Moreover, the BLM and USFS adopted the habitat modeling methods described in Coates et al. 2014. These methods have been peer reviewed and published in a USGS open file report. These methods represent the best available scientific information. The BLM and USFS are failing to use the best available scientific information in their decisions as required by BLM Land Use Plan Handbook 1601-1 and BLM NEPA Handbook 1790-1 by arbitrarily choosing to exclude the use of portions of the modeling product.

The State Plan Conservation Credit System (CCS) takes into consideration the direct and indirect impacts that occur due to anthropogenic disturbances within all Sage Grouse Management Areas (SGMA) that affect habitats within the PHMA, GHMA, and OHMA. In administering mitigation, the CCS also considers the indirect effects outside the actual footprint of an anthropogenic disturbance that may impact habitats that are in other management areas.

According to 43 CFR 1610.3-1(d) and 43 CFR 1610.3-2(a) the BLM shall ensure that resource management plans are consistent with officially approved or adopted resource related plans of State governments, however the LUPA is inconsistent with the State Plan. The BLM has failed to follow 43 CFR 1610.3-1(d) by failing to identify where inconsistencies exist between the LUPA and State Plan and "provide reasons why the inconsistencies exist and cannot be remedied." Furthermore, though the State has provided written comments throughout the planning process detailing the inconsistencies between the State Plan and the LUPA, the BLM has failed to document how these inconsistencies were addressed and, if possible, resolved as required under 43 CFR 1610.3-1(f) and FLPMA Sec 202(c) (9) (43 USC 1712).

The SEP is requesting the BLM and USFS adopt mitigation requirements in the OHMAs for both direct impacts on OHMAs and indirect impacts in PHMA and GHMA created by anthropogenic disturbances occurring in OHMAs. This inclusion will protect additional sage-grouse habitat and offer greater assurances that the concept of "net gain" to the habitats will be achieved.

Travel and Transportation Management

Issue or issues being protested: The SEP protests the proposed actions of seasonal or permanent road closures and restrictions on the construction of new roads without coordination with state and county governments who have jurisdiction and maintenance responsibility over state routes and county roads.

Relevant part(s) of the plan amendment:

- Chapter 2; Section 2.6.2; Action LR-LUA 19; pg 2-47
- Chapter 2; Section 2.6.2; Action CTTM 1 (specifically how seasonal restrictions specified in Action SSS-2 and Action SSS-3 will be applied to roads); pg 2-52
- Chapter 2; Section 2.6.2; Action CTTM 3, bullets 4, 5, 6, 7, and 9; pg 2-53
- Chapter 2; Section 2.6.2; Action CTTM 6; pg 2-54
- Chapter 2; Section 2.6.3; GRSG-RT-ST-081-Standard; pg 2-70
- Chapter 2; Section 2.6.3; GRSG-RT-ST-089-Standard; pg 2-70

Previous comments submitted or discussed for the record: See attachment

Statement of why the State Director's decision is believed to be wrong: Management of roads is under the jurisdiction of the State and local governments; therefore, the BLM and FS do not have the authority to close or restrict access to existing roads or restrict the construction of new roads. See Nevada Revised Statute (N.R.S.) 405.191 (public roads include what are commonly referred to as R.S. 2477 rights-of-way); N.R.S. 405.201 (accessory roads are roads to which public use and enjoyment may be

established). The proposed actions will restrict or eliminate access to roads which are founded upon existing and valid rights.

In addition, many of the actions listed above require clarification. It is unclear whether the actions refer to BLM and FS roads only or include State and local government roads with ROWs on federal lands. It is also unclear if these actions intend to restrict all motorized vehicles, including automobiles, or other motorized vehicles, such as OHVs and ATVs.

Wild Horse and Burro

Statement of issue: BLM acknowledges that ecosystems of public rangelands are not able to withstand the impacts from overpopulated herds of wild horses. Current herd number estimates of free-roaming wild horse populations exceeds by more than 22,500 the number that the BLM has determined can exist in balance with other public rangeland resources and uses. The 1971 Wild Free-Roaming Horses and Burros Act, as amended, Section 1333 mandates that once the Interior Secretary "determines...on the basis of all information currently available to him, that an overpopulation exists on a given area of the public lands and that action is necessary to remove excess animals, he shall immediately remove excess animals from the range so as to achieve appropriate management levels." (http://www.blm.gov/wo/st/en/prog/whbprogram/herd_management.html.)

Proposed action WHB 2 says BLM will manage herd management areas (HMA) in GRSG habitat to achieve rangeland health standards and trend toward or maintain GRSG habitat objectives in Table 2-2. BLM does not specify the kind of management needed to achieve the objective, or relate the management to the appropriate management level (AML). The BLM currently does not maintain AML across most HMAs in the sub-region. In Fiscal Year 2014 only 1.8 percent (\$1.2 million) of the Wild Horse and Burro Program appropriation was spent on gathers and removals.

Relevant part(s) of the plan amendment:

- Chapter 2; Section 2.6.2; Action WHB 2; pg 2-43

Previous comments submitted or discussed for the record: See attached.

Statement of why the State Director's decision is believed to be wrong: AML was not established with consideration of the habitat objectives in Table 2-2. The proposed action WHB 2 implies that the BLM can manage and control wild horses to meet standards for rangeland health, achieve desired habitat objectives, and manage public lands in compliance with the Wild Free-Roaming Horses and Burros Act. Based on BLM's policy and track record, proposed action WHB 2 is not plausible, does not meet the purpose and need of the RMP amendment to "reduce, eliminate, or minimize threats to GRSG habitat" and therefore is non-compliant with NEPA (BLM NEPA Handbook H-1790-1). The inability to accomplish the proposed action leaves the BLM vulnerable to litigation. Action WHB 2 should be modified to include actions on how the BLM can successfully manage to AML or otherwise manage wild horses to minimize or eliminate risks to GRSG.

In conclusion, according to 43 CFR 1610.3-1 (d) and 43 CFR 1610.3-2 (a) the BLM shall ensure that resource management plans are consistent with officially approved or adopted resource related plans of State governments, however the LUPA is inconsistent with the State Plan. The BLM has failed to follow 43 CFR 1610.3-1 (d) by not identifying where inconsistencies exist between the LUPA and State Plan and "provide reasons why the inconsistencies exist and cannot be remedied." The State has provided written comments throughout the planning process detailing these inconsistencies between the State Plan and the LUPA. The BLM has failed to document how these inconsistencies were addressed and, if possible, resolved as required under 43 CFR 1610.3-1 (f) and FLPMA Sec 202 (c) (9) (43 USC 1712).

To reiterate, the State Plan is consistent with the purposes, policies, and programs of federal laws and regulations applicable to the public lands, is based on the best available data and science, addresses each of the threats identified by the Conservation Objectives Team (COT) report, was developed entirely in a public and transparent process, and is supported by a wide array of stakeholders across the State of Nevada. The State Plan as represented in the State's Alternative (Alternative E), in its entirety, should be used as the preferred alternative.

Thank you for your consideration of this protest of the Nevada and Northeastern California Greater Sage-Grouse Proposed Land Use Plan Amendment and Final Environmental Impact Statement (FEIS) on behalf of the Sagebrush Ecosystem Program.

Sincerely,



Kacey KC, Program Manager
Sagebrush Ecosystem Technical Team

Attachments: Comments Proposed Goals/Objectives/Management Actions (Alternative D)
 Comments Administrative Draft LUPA and EIS
 Comments Draft LUPA and EIS
 Comments Proposed Plan (Alternative G)
 Comments on Preliminary Proposed LUPA/Final EIS

cc: The Honorable Brian Sandoval, Governor
 JJ Goicoechea, Chair, Local Government Representative- SEC
 Chris MacKenzie, Vice-Chair, Board of Wildlife Representative- SEC
 Allen Biaggi, Mining Representative- SEC
 Steve Boies, Ranching Representative- SEC
 Gerry Emm, Tribal Nations Representative- SEC
 Starla Lacy, Energy Representative- SEC
 Bevan Lister, Agriculture Representative- SEC
 Tina Nappe, Conservation and Environmental Representative- SEC
 Sherm Swanson, General Public Representative- SEC
 Bill Dunkelberger, Forest Supervisor USFS, Ex-officio-SEC
 Mary Grimm, Region 8 Listing Program Coordinator USFWS, Ex-Officio-SEC
 John Ruhs, Acting State Director BLM, Ex-Officio-SEC
 Jim Barbee, Director Nevada Department of Agriculture, Ex-Officio-SEC
 Leo Drozdoff, Director Nevada Department of Conservation & Natural Resources, Ex-Officio-SEC
 Tony Wasley, Director Nevada Department of Wildlife, Ex-officio-SEC