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Office of the Governor

July 29, 2015

John Ruhs, Acting State Director
BLM Nevada State Office
1340 Financial Blvd
Reno, NV 89502

RE: Governor's Consistency Review of the Nevada and Northeastern California Greater Sage-Grouse Proposed Land Use Plan Amendment and Final Environmental Impact Statement

Dear Mr. Ruhs:

Pursuant to the rights afforded to me as Governor of the State of Nevada under the Federal Land Policy and Management Act 43 USC 1701 and 43 CFR 1610.3-2, please be advised of significant inconsistencies between the Nevada and Northeastern California Greater Sage-grouse Proposed Land Use Plan Amendment and Final Environmental Impact Statement (LUPA/FEIS), and Nevada's state and local plans, policies and programs. I also propose recommendations that will create a reasonable balance between the national interest and Nevada's interest, while still achieving a net conservation gain for the Greater Sage-grouse.

The LUPA/FEIS represents a significant departure from the process that was outlined in late 2011 by former Secretary of the Interior, Ken Salazar. The process was intended to be collaborative, inclusive and proactive; an unprecedented undertaking to bring federal agencies and states together to craft plans to adequately conserve the Greater Sage-grouse and preclude a listing under the Endangered Species Act. Western states and multiple agencies have participated in this effort in good faith. We have expended millions of dollars and thousands of hours to present a scientific, innovative and effective conservation plan.

The almost 2,000 page Draft Environmental Impact Statement was issued on November 22, 2013. Nevada identified hundreds of inconsistencies with state and local plans, and best available science at that time. The BLM and USFS then took approximately 18 months to revise the document and released the nearly 3,500 page LUPA/FEIS on May 28, 2015. The BLM and USFS made significant changes from draft to final, leaving the citizens of Nevada with only 30 days to review and protest the LUPA/FEIS.

Importantly, many of the identified inconsistencies were left unresolved and often ignored or dismissed without consideration. Especially troubling is that new concepts such as Sagebrush Focal Areas (SFAs) and other management actions with significant environmental and societal implications were introduced without adequate public notice or opportunity for comment in the LUPA/FEIS. Many significant methodologies were also changed with little scientific justification or explanation provided to the public.

It is also important to note that the LUPA/FEIS contains many new elements that disregard best science, Nevada's state and local plans, and federal law. It is disappointing that this process has changed from a collaborative, proactive approach, to a now heavy-handed, federal approach that uses status-quo approaches and relies primarily on information from federal officials in Washington D.C., rather than expertise from state conservation and wildlife agencies, and local input.

NEVADA'S DEMONSTRATED COMMITMENT TO CONSERVATION

Long-term Engagement

Nevada has focused on sage-grouse conservation for well over a decade. Under the leadership of previous Nevada Governors, a working partnership of state agencies including the Nevada Department of Wildlife, local area working groups, private citizens, industry and local governments have developed and implemented conservation strategies across the range since at least the year 2000.

Even with these accomplishments, we have done more. Nevada accepted Secretary Salazar's invitation in good faith and took immediate action to revitalize our efforts, and develop and implement a program for Greater Sage-grouse conservation. In response, I issued Executive Order 2012-09, which established the Governor's Greater Sage-grouse Advisory Committee, and later enacted the recommendations from that entity through Executive Order 2012-19. That Order established the Sagebrush Ecosystem Council (SEC) and a new, inter-agency and inter-disciplinary Sagebrush Ecosystem Technical Team (SETT) dedicated solely to the sagebrush ecosystem.

Legislative Initiatives

The SEC has carefully guided the development and adoption of the full Nevada 2014 Greater Sage-Grouse Conservation Plan (State Plan). The Sagebrush Ecosystem Program, including the SEC and the SETT, were codified in Nevada Statute with the passage of Assembly Bill 461 during the 2013 Legislative Session, making Nevada the first, and still the only, state to recognize a programmatic commitment to the conservation of Greater Sage-grouse in state law.

To further solidify Nevada's commitment to the State Plan and Greater Sage-grouse conservation, I worked with the Nevada Legislature during the 2015 Legislative Session to pass a major budget initiative that included continued full funding for the SEC, the SETT, the full operation and adaptive management of our innovative Conservation Credit System (including funds for an independent audit of the system), continued contract services to ensure that habitat maps are utilizing the most current scientific

information, and \$2 million for implementation of conservation projects. The Nevada Legislature further showed its support for the State Plan by passing Senate Joint Resolution 5, which urged the BLM and USFS to adopt the State Plan as the preferred alternative in the FEIS.

State Plan Developed and Supported by Nevadans and Best Science

The SEC is comprised of voting members from the conservation and environmental communities, the Nevada Board of Wildlife Commissioners, local government, the mining, ranching, energy, and agriculture industries, tribal nations, and the general public. In addition, this Council has ex-officio representation from the U.S. Fish and Wildlife Service (USFWS), Bureau of Land Management (BLM), US Forest Service (USFS), Nevada Department of Wildlife, Nevada Department of Conservation and Natural Resources, and the Nevada Department of Agriculture.

In 2014, the SEC unanimously approved and adopted the State Plan per Nevada Revised Statute 232.162. The State Plan has subsequently been adopted by most Nevada counties, and has considerable support from industry, conservation groups, and the general public.

The process we utilized to develop the State Plan is exemplary. An overwhelming body of scientific, Nobel Prize-winning research¹ shows that management of common-pool resources, such as the sagebrush ecosystem, is *consistently more successful over time* when key policy design principles are followed. Nevada's process follows these leading principles of common-pool resource management by creating appropriation rules that are developed locally and related to local conditions, allowing for flexibility when it is needed and justified, defining clear boundaries, providing arenas for conflict resolution and internal policymaking, arranging clear methods for monitoring and sanctioning nonconformance, and establishing conflict-resolution mechanisms that are rapid and low-cost, among other factors.

The State Plan is the only plan that aligns with these areas of best science. Moreover, section 202(c) of FLPMA requires that in developing land use plans, the Secretary of the Interior *shall* "use and observe the principles of multiple use and sustained yield..." and, importantly, *shall* "use a systematic interdisciplinary approach to integrate physical, biological, economic, and other sciences." The Nevada State Plan is the only plan that meets these and other high standards called for by FLPMA and BLM policy.

¹ For example, see: Ostrom, Elinor (1990). *Governing the Commons: The Evolution of Institutions for Collective Action*. Cambridge University Press.; Poteete, Janssen, and Elinor Ostrom (2010). *Working Together: Collective Action, the Commons, and Multiple Methods in Practice*. Princeton University Press.; National Academy of Science, (2013). *Using science to improve the BLM wild horse and burro program: A way forward*. National Academies Press.; Reed, M.S., et al. (2015). *Climate change and desertification: Anticipating, assessing & adapting to future change in drylands*. Impulse Report for 3rd United Nations Convention Combating Desertification Scientific Conference. Agropolis International.

State Plan Addresses All Threats

The State Plan focused on addressing the threats as identified in the Conservation Objective Team (COT) report. The COT report identifies the cycle of wildfire and invasive grasses as the primary threat to Sage-grouse in Nevada. As a result, Nevada has increased our wildland firefighting capabilities and created mobile statewide forces targeting sage-grouse as their primary resource concern. We also have boosted noxious weed, native plant, and seed programs in the state. This process was recently validated by federal action, and I applaud Secretary Jewell for her leadership and meaningful efforts related to wildland fire; I am hopeful that our collective efforts will result in significant conservation benefit for sage-grouse and the sagebrush ecosystem.

Although anthropogenic disturbances are not the primary threat in Nevada, the State Plan includes a rigorous process of “avoid, minimize and mitigate” to achieve a net conservation gain for the Greater Sage-grouse. A key component of our “avoid, minimize and mitigate” strategy was the development and adoption of the Nevada Conservation Credit System (CCS). The CCS is a rigorous, scientifically based mitigation program that achieves consistent net conservation gain and a single method for determining mitigation across the entire Sage-grouse Management Area, covering approximately 48,627,000 acres in Nevada. More importantly, the CCS strategically recognizes the importance of protecting and enhancing limiting sage-grouse habitat such as late brood rearing habitat. This is *critical* to conservation in Nevada due to our unique topography, ecology and threats. The SETT is currently implementing both credit development and credit obligation (debit) projects in important sage-grouse habitat areas to test and adaptively manage the CCS.

In summary, 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 in the COT report, was developed entirely in a public and transparent process, including significant, direct involvement from federal agencies, and is supported by a wide array of stakeholders across the State of Nevada. Therefore, our plan is more likely to succeed over the long term as compared to the federally-driven policies envisioned in the LUPA/FEIS; I recommend and request that the State Plan be fully implemented.

SUMMARY OF KEY INCONSISTENCIES

Nevada has demonstrated a clear commitment to the conservation of Greater Sage-grouse and the sagebrush ecosystem. Throughout the process, it was understood that the State’s Plan would likely comprise a majority of the preferred alternative, and thus we worked closely with BLM, USFS and USFWS staff to meet numerous deadlines and incorporate the policy decisions and methodologies requested in the COT report, USFWS’s Mitigation Framework, and national policy direction. We compromised, considered alternative approaches, incorporated feedback and tested policies based on reality and pragmatic experience. However, the LUPA/FEIS shows that national level policy replaced Nevada’s state and local planning efforts, thus minimizing the

collaborative nature of this process, and stressing relationships between state, local, and federal agencies. The result is a document that is insufficient and flawed; not based on the best available science, or state and local plans, and not well rooted in federal law.

Inconsistencies Poorly Identified and Inadequately Addressed

The Draft LUPA/FEIS process did not comply with the BLM’s requirements to be consistent with other federal, state, local, and tribal plans and policies (see 43 CFR 1610). Many Nevada agencies, counties and stakeholders worked with your staff to minimize inconsistencies with federal and state law as well as state and local plans throughout this EIS planning process for the LUPA/FEIS. Some inconsistencies have been addressed, but most have been dismissed.

Commenters specifically showed that BLM’s goals, objectives, and management actions are inconsistent with the State Plan, the Nevada Rangeland Monitoring Handbook (NCE 2006), Pershing County, Nevada Land Use Planning, specifically the Pershing County Natural Resources Land Use Plan, the Pershing County Master Plan, the 2011 Nye County Comprehensive Master Plan, the Elko County GRSG Plan, Lincoln County’s policy of “no net loss” of AUMs within the County, the Lincoln County Lands Acts, the Ely Resource Management Plan, Lander County’s GRSG strategy, the Eureka County Master Plan and other plans, policies, and controls.

Of concern, the LUPA/FEIS fails to demonstrate how these plans are or are not inconsistent, and largely dismisses any potential inconsistencies with a brief, general explanation:

The BLM and Forest Service are aware that there are specific state or local laws relevant to aspects of public land management that are discrete from, and independent of, federal law. However, BLM and Forest Service are bound by federal law. As a consequence, there may be inconsistencies that cannot be reconciled. The FLPMA requires that BLM’s land use plans be consistent with state and local plans “to the extent practical.” In a situation where state and local plans conflict with federal law, there will be an inconsistency that cannot be resolved. Thus, while state, county, and federal planning processes, under FLPMA, are required to be as integrated and consistent as practical, the federal agency planning process is not bound by or subject to county plans, planning processes, or planning stipulations.²

² United States Department of the Interior and United States Department of Agriculture (2015). *Nevada and Northeastern California Greater Sage-Grouse Proposed Land Use Plan Amendment and Final Environmental Impact Statement: Response to Comments on the Draft Land Use Plan Amendment/Environmental Impact Statement*. p C-24.

This vague and generic “response” to hundreds of identified inconsistencies is unacceptable, inconsistent with FLMPA, and could actually undermine legitimate efforts to preserve the species.

Recommendation: Reconsider the identified inconsistencies and either incorporate the State Plan, or provide legitimate responses for the inconsistencies. The State of Nevada is especially interested in specific responses regarding inconsistencies related to the issues detailed in this letter. Also, attached to this letter is correspondence and requests that I received from local jurisdictions, state agencies and other interested parties for your reconsideration and a more complete and legitimate response for the record. Please also identify, specifically, which federal laws are allegedly inconsistent with our state and local plans. Finally, please identify which federal laws preclude you from collaboration with state and local governments to resolve these inconsistencies, as opposed to simply dismissing them as the LUPA/FEIS does.

Sagebrush Focal Areas (SFA)

The creation of SFAs in the LUPA/FEIS is counterproductive and inconsistent with the State Plan and local jurisdiction plans. The concept was not properly considered through a public comment process or clearly part of the DEIS alternatives. And, it did not use data or Nevada-specific expertise relating to sage-grouse populations and habitats.

Importantly, the withdrawals and disturbance caps envisioned in the LUPA/FEIS reflect a significant misunderstanding of the true threats to, and opportunities for, sage-grouse in Nevada. Fire and invasive species have a much greater effect on sage-grouse than mineral development. To wit: over the past five years, mineral development has disturbed only 10,000 of the 57 million acres of federal land in Nevada. In comparison, wildfire has scorched approximately 1.5 million acres of federal land in the same timeframe.

Nonetheless, the State Plan provides rigorous avoidance measures and mandatory design features that will ensure that we make every effort to limit negative effects to sage-grouse.

The State Plan also takes into account indirect effects to sage-grouse, limiting habitat, ecological site descriptions, state-and transition-modeling, and resistance and resilience concepts that are scientifically *far superior* to the simplistic and outdated thinking surrounding exclusion areas. This notion is well supported in scientific literature and by experts in Nevada and abroad.

The primary issues with SFAs are:

- Methods provided for delineation of the SFAs are not scientifically defensible, or properly described. The criteria described for producing SFAs does not

incorporate the assessment of breeding bird densities (Doherty et al. 2010) or resistance and resilience mapping statewide (Chambers et al. 2014).

- Utilizing arbitrary boundaries for prioritizing management actions (e.g. vegetation management, grazing permit renewals, firefighting resource prioritization) that may unintentionally undervalue the importance of other non-SFA landscapes in greater need of assistance.
- Recommendation for mineral withdrawal and elimination of most mineral exploration within the SFA.
- Potential additional grazing management restrictions.

Recommendation: SFA designations should be eliminated as a component of the LUPA/FEIS. If SFAs must remain, BLM/USFS should work with the expertise of Nevada’s conservation and wildlife staff to identify the true “best of the best,” and must limit any moratorium, segregation or withdrawal of locatable minerals to a scientifically based time period that allows for re-entry or a lifting of any such moratorium at such time as science shows that relevant sage-grouse populations are stable or increasing.

Anthropogenic Disturbance Cap

Nevada has engaged in numerous discussions with federal representatives regarding why a disturbance cap is not necessary, given the unique basin and range topography of Nevada and the safeguards built into the State Plan, and why a disturbance cap can be counter-productive to Greater Sage-grouse conservation. The disturbance cap fails to account for the quality of habitat and seasonal habitat types, which should be considered based on best available science and to ultimately achieve a net conservation gain for greater sage-grouse. 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.

We appreciate the specific disturbance management protocol outlined in the LUPA/FEIS for Nevada. However, strong concerns remain regarding the three percent disturbance cap. Based on LUPA meetings that recently occurred with federal and state agency staff that involved test runs of the disturbance caps, a three percent cap at the level of biologically significant unit (BSU) may be a moot point as that level of disturbance will likely never occur. At the project level it appears to create serious perverse incentives to move away from co-location with other existing disturbances. Ideally, disturbances should be incentivized to co-locate in existing disturbed areas. However, based on the test case scenarios, the three percent cap at the project level will be hit routinely forcing project proponent to move to undisturbed areas in order to remain below the three percent cap at the project scale.

Recommendation: The disturbance cap concept should be removed from the preferred alternative. The State of Nevada spent considerable time, resources and funding to create the rigorous and scientifically based CCS. The CCS adequately accounts for the quality of habitat and the availability of seasonal habitat types both at the BSU level and the project level, and makes a disturbance cap unnecessary, even possibly counter-

productive to achieving net conservation gains. If a disturbance cap remains in the LUPA/FEIS, additional conditions should be inserted whereby the cap at the BSU level is 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. I also recommend that if a disturbance cap remains that the cap be calculated solely at the BSU level and not the project level.

Land Use Allocations that Create Exclusion Areas

The LUPA/FEIS includes allocations that ultimately create exclusion areas for certain land uses. This is inconsistent with state and local plans and does not address the primary habitat threats in Nevada as identified in the COT report. The specious assumption that exclusion areas provide conservation for sage-grouse is not justified by scientific literature or data, and, in fact in many cases has proven to be less than effective at creating uplift for the species or habitat. 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. Relying on one-size-fits-all actions without specific analysis of the benefit provided to the species is unproductive.

Recommendation: Land use allocations that specifically close areas regardless of mitigation should be removed, and the LUPA/FEIS should instead utilize the rigor of the State Plan’s “avoid and minimize” process. Those disturbances that cannot be avoided or completely minimized should then run through the rigor of the CCS which identifies and recognizes the highest quality habitat, as mapped and verified on the ground and provides for a system through mitigation ratios, habitat quality, distance criteria and many other factors to ensure the protection and conservation of the habitat. If large areas of land use closures remain in the LUPA/FEIS, there needs to be an exception allowing for some level of disturbance provided that a net conservation gain can be achieved.

Mineral Rights

In addition to the State of Nevada’s opposition to mineral withdrawals considered in SFAs, we have concerns around the concept of “valid existing rights” (VERs) currently in the LUPA/FEIS. The use of this term related to locatable minerals on lands other than those that may be segregated or withdrawn is confusing and creates uncertainty.

Recommendation: Work with the Nevada Division of Minerals and the SEP to clarify that sage-grouse measures will be implemented within existing surface management regulations, that questions of VERs in relation to locatable mineral rights are limited to potential withdrawal areas, and that, if implemented, the three percent anthropogenic disturbance cap does not apply to exploration and mining disturbance authorized under surface management regulations.

Habitat Objectives and Associated Management Actions

The Habitat Objectives in Tables 2-2, 2-5, and 2-6 and their associated management actions are inconsistent with existing Resource Management Plans, as well as state and local plans. The level of specificity provided in the proposed LUPA management actions as they relate to the table are better handled at the local planning level through Stewardship Plans, Allotment Management Plans, Rehabilitation Plans, and other similar plans. Actions in the proposed plan that require management to “meet, restore, reestablish, and achieve” the narrowly focused habitat objectives, such as desired sagebrush height and cover amount, may very well be beyond the ecological potential of a particular site. Understanding the ecology of these systems is critical to the appropriate management of Nevada’s rangelands, and extends to the conservation of sage-grouse. These planning efforts must be cooperative with the landowner and interested parties need time to comment.

Recommendation: The BLM and USFS should incorporate the introductory language (text of Section 4.0) and the desired habitat conditions (Table 4-1) from the State Plan for consistency of application.

The FEIS implements unduly restrictive livestock grazing actions that do not include all available tools for proper range management to address site-specific concerns. At the same time, the proposed actions for wild horse and burro populations do not achieve proper grazing. State and local plans support proper grazing management practices, applicable to all large ungulates, which incorporate a high level of flexibility through adaptive management to achieve the overall management and resource objectives as defined by the permittee and the land manager through an allotment management planning process. The LUPA/FEIS should, like state and local plans per federal policy guidelines, empower local management with stakeholder input and collaboration to work toward the desired habitat conditions and overall ecosystem health to achieve a net conservation gain for sage-grouse, and adhere to all existing state and federal laws in its management actions.

Recommendation: The LUPA/FEIS should make the management actions for both the Livestock Grazing and Wild Horses and Burros sections consistent with state and local plans, and should ensure that that the management actions are implemented according to federal law.

Mitigation for Anthropogenic Disturbances

As mentioned earlier, Nevada committed significant time, staffing, and funding to the creation of a mitigation system, the CCS, that provides a consistent, transparent and scientifically based methodology for mitigation. The preferred alternative allows for the development and use of other applicable mitigation systems in addition to the CCS, but fails to provide detail on the level of rigor and net conservation gain of these other systems, nor are there assurances that these programs incorporate the best available science. The CCS is a rigorous, scientifically based mitigation program that includes

measures for habitat suitability and availability at multiple scales 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 across jurisdictional boundaries. I understand the 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 mitigation 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. This in turn diminishes our ability to achieve and account for landscape level conservation gain.

Recommendation: The rigor of the CCS should be set as the bar that other allowed mitigation systems must meet to ensure that they are equitable, comparable and consistently provide net conservation gain for greater sage-grouse. The LUPA/FEIS should also recognize and honor pre-existing, signed sage-grouse agreements such as the Barrick Bank Enabling Agreement.

The LUPA/FEIS does not require mitigation in OHMA and, as such, is not consistent with the State Plan and the best available science (Coates et al 2014). Mitigation in OHMA provides conservation on an additional 7,620,000 acres that are spatially important to sage-grouse as they maintain connectivity throughout the range in the sub-region.

Recommendation: The LUPA/FEIS should 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 adoption will help to ensure net conservation gain throughout Nevada and provide consistency across the range.

Map Updating Process

The State of Nevada Management Categories maps were created by USGS to be used in conjunction with the State Plan to determine management areas at the landscape scale that are then paired with on the ground, site specific data to determine mitigation requirements and assist with project prioritization. It is not a habitat map; it is a management category map and should be classified and used as such. The addition of land use allocations, and noise and travel restrictions, based solely on map designations and not on-the-ground data could have implications in areas where they are or are not necessary. This map is intended to be updated every three to five years based on emerging science and state collected lek and telemetry data. Ecosystems and human communities change through time in numerous ways that are directly related to sage-grouse and multiple-use land management. Recognizing these changes and refocusing on current and emerging priorities as science and resource inventories improve is part of essential adaption in land management. The LUPA/FEIS needs to be

able to adopt the map updates to incorporate best available science and to be consistent with state and local plans.

Recommendation: The LUPA/FEIS should include a method for using site-specific data when applying SSS1-SSS4, which contains noise restrictions and travel restrictions, particularly in GHMA. The BLM/USFS should 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 LUPA/FEIS and specifically indicates that updates to the maps using these methods will be incorporated through plan maintenance not plan amendment. At the very minimum, if adopting the above process is not possible, the LUPA/FEIS should adopt the final version of the State of Nevada Management Categories map due mid-August from USGS in the signing of the ROD to ensure that the plan has the most current science and data.

Comprehensive Travel and Transportation Management

The LUPA/FEIS is unclear in the comprehensive travel and transportation management section and requires clarification in how it will be implemented, and also fails to outline procedures to address valid existing rights that have not been adjudicated in federal courts but nonetheless are valid existing rights (*i.e.* RS 2477 roads). Management of roads is under the jurisdiction of the state and local governments per NRS 405.191 (public roads include what are commonly referred to as R.S. 2477 rights-of-way) and NRS 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.

Recommendation: Provide clarification on the comprehensive travel and transportation management section that clearly outlines the intent of this section. Also include a statement that any roads that currently exist will be assumed to have underlying valid existing rights. As a starting point, BLM and USFS should use each county's provided road inventory as roads that may have a right of way under RS 2477 and cannot have restrictions imposed on them.

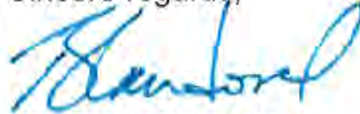
NEVADA STANDS READY

Thank you for your consideration of our comments, recommendations and concerns. I respectfully request your full consideration of these requests and recommendations. Despite our disappointment and frustration at this juncture, Nevada stands ready to discuss, consider, explain and forge a path forward with you and the Department of the Interior. I am hopeful that we can return to the collaborative relationship we once enjoyed during this process and that in doing so, we can agree on a final set of policies that will accomplish our mutual goal of conserving sage-grouse in Nevada.

Should you have any questions or wish to discuss this further, please do not hesitate to contact Tony Wasley, Director of the Nevada Department of Wildlife, Leo Drozdoff,

Director of the Nevada Department of Conservation and Natural Resources, Jim Barbee, Director of the Nevada Department of Agriculture, or Cory Hunt, a member of my staff.

Sincere regards,



BRIAN SANDOVAL
Governor

Attachments:

- Sagebrush Ecosystem Program Letter
- Elko County Commission Letter
- Eureka County Commission Letter
- Lincoln County Commission Letter
- Nevada Association of Counties Letter
- Washoe County Commission Letter
- Nevada Division of Minerals Letter

Cc:

- The Honorable Secretary of Interior Sally Jewell
- The Honorable Secretary of Agriculture Tom Vilsack
- BLM Director Neil Kornze
- USFS Chief Tom Tidwell
- Nevada Congressional Delegation
- Nevada Sagebrush Ecosystem Program
- Western Governors Association



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July 15, 2015

The Honorable Governor Brian Sandoval
101 N. Carson Street
Carson City, NV 89701

via email through Cory Hunt, Senior Policy Analyst

RE: Recommendations and requests for Governor's consistency review of the Greater Sage-Grouse Land Use Plan Amendment Final EIS

Dear Governor Sandoval,

Your vision to find common sense solutions to conservation of Greater Sage-Grouse (GSG) in Nevada while sustaining socioeconomic stability of Nevada's communities is appreciated. We share in this vision.

Unfortunately, we believe the regulatory provisions outlined in the Bureau of Land Management (BLM) and US Forest Service (USFS) Greater Sage-Grouse Land Use Plan Amendment EIS (LUPA) are inconsistent with this vision and will unduly impair the ability of rural Nevada communities, such as ours, to sustain themselves. We assert that the LUPA does not "provide for a reasonable balance between the national interest and the State's interest" (43 CFR 1610.3-2(e)). We request that you elevate the inconsistencies identified below with specific recommendations to the BLM State Director for changes in the LUPA to strike the reasonable balance required.

1. Inconsistencies With Local Plans, Policies, and Programs

As you are aware, the Federal Land Policy and Management Act (FLPMA), 43 USC 1712(c)(9), requires that "Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act." Further, the FLPMA implementing regulations, National Environmental Policy Act (NEPA) and respective implementing regulations, and other law and regulation contain many similar mandates for coordination and consistency with State and local plans, policies, controls, and programs¹. Eureka County, as well as most other Nevada counties affected by the LUPA, spent considerable time, effort, and resources providing specific and substantive examples of inconsistencies between the LUPA and local plans, policies, programs and controls. Our discussions with other counties and the Nevada Association of Counties highlights that these inordinate inconsistencies and lack of coordination are not unique to Eureka County.

¹ See BLM Regulations Implementing Planning Under FLPMA - 43 CFR 1610.3-1, Coordination of Planning Efforts, 43 CFR 1610.3-2, Consistency Requirements; NEPA - 42 USC 4331 - Congressional Declaration of National Environmental Policy, 42 USC 4332 - Cooperation of Agencies; Reports; Availability of Information; Recommendations; International and National Coordination of Efforts; NEPA Implementing Regulations, Council on Environmental Quality (CEQ), 40 CFR 1500 - 1501.2 Apply NEPA early in the process, 1501.7 Scoping, 1502.16 Environmental consequences, 1506.2 Elimination of duplication with State and local procedures, 1508.14 Human environment, 1508.20 Mitigation, 1508.27 Significantly; Memorandum to Agencies, Forty Most Asked Questions Concerning CEQ's NEPA Regulations - Questions 23b and 23c; National Forest Management Act - 16 U.S.C. 1604(a); USFS 1982 Planning Rule - 36 CFR 219.7; and USFS 2012 Planning Rule - 36 CFR 219.4(b).

We are dismayed that so many inconsistencies still exist and the egregious lack of coordination by the federal agencies with Eureka County and other counties in Nevada. This situation creates a difficult and overwhelming task for you during your consistency review. However, you do not have to address each individual inconsistency that exists with county plans, policies, controls, and programs. Focusing on recommendations that ensure the proper process if followed will address the bulk of the inconsistencies that currently exist.

BLM is required by law and regulation to inform you of known inconsistencies to facilitate your review. See 43 CFR 1610.3-2(e), “...the State Director shall submit to the Governor of the State(s) involved, the proposed plan or amendment and ***shall identify any known inconsistencies with State or local plans, policies or programs***” (emphasis added). BLM knew of these inconsistencies because counties, including Eureka County, specifically notified them². If the agencies had adequately met their required mandates, only outstanding inconsistencies would have been provided to you after they were first fully coordinated for maximum consistency with the counties and then the EIS itself highlighting “Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned”³ and “[w]here an inconsistency exists, the statement should ***describe the extent to which the agency would reconcile its proposed action with the plan or law***”⁴ (emphasis added).

In addition to local-specific inconsistencies, this situation itself is an inconsistency with State law and policy. NRS 278 provides for land-use and resource planning at the local level. NRS 321 provides direction for development of public land use plans in a coordinated matter, again focused at the local level. The programmatic and top-down process has undermined the mandates of Nevada law, primarily planning at the local level, and has facilitated creation of the inconsistencies that exist. As a specific example, counties have worked with BLM to identify lands for disposal to meet future needs. These lands were identified under the provisions of FLPMA. Now, many of these disposal lands are to be “removed” as suitable for disposal based on the EIS analyses. Now, many provisions of local plans are undermined because plans for growth and development were tied to these disposal lands.

The LUPA was developed without proper coordination and consistency review. There continues to be no analysis that can conclude or determine that our plans, policies, controls and programs will not benefit and conserve sage-grouse or how these county plans, policies, and controls are not inconsistent with federal law. If this analysis exists, the agencies made no effort to describe why or how they can defend that position. We contend that if our plans, programs and policies were incorporated and followed, sage-grouse would thrive and habitat would be improved all while maintaining a strong and vibrant economic base and community structure. BLM and USFS must step back and re-evaluate the process to this point and address the grievous shortcomings in a Supplemental EIS and coordinate with us towards the mutual goal of conserving the sagebrush ecosystem and sage-grouse while providing for sustained socioeconomic stability.

Requested recommendation to address local inconsistencies

² 43 CFR 1610.3-2(c) states that BLM “shall not be accountable for ensuring consistency if they have not been notified, in writing, by State and local governments or Indian tribes of an apparent inconsistency.” BLM being notified by the counties of inconsistencies ensures that BLM must now be held accountable for ensuring consistency.

³ 40 CFR 1502.16 Environmental consequences – “It shall include discussions of: ...(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See §1506.2(d).)”

⁴ 40 CFR 1506.2 Elimination of duplication with State and local procedures – “...(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.”

- A. Recommend that BLM and USFS address each specific inconsistency provided by each county (or other local government or tribe) in a Supplemental EIS. Coordinate with local governments to achieve consistency to the maximum extent and then highlight in Supplemental EIS the required elements including how any remaining inconsistencies are due to local plan, policy or program inconsistencies with specific federal law or regulation⁵. The Supplemental EIS "...shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law" (40 CFR 1506.2(d)). The Environmental Consequences section of the Supplemental EIA shall discuss "possible conflicts" with local "...land use plans, policies and controls for the area concerned" (40 CFR 1502.16).

2. *Inconsistencies With The Nevada Sage-Grouse Conservation Plan*

Most counties, including Eureka County, noted our general support of the Nevada Sage-Grouse Conservation Plan and asked BLM and USFS to implement the State plan as the alternative for management of GSG in Nevada.

Many if not most of the provisions related to local inconsistencies identified above apply to the Nevada Sage-Grouse Conservation Plan and will not be repeated here. We note that the Nevada Plan has elevated coordination protocols with Nevada counties to ensure consistency between the State Plan and county plans to benefit GSG, and is built on the foundation of local efforts, rather than top-down approaches and have a proven track record of resource conservation balanced with sustainable use.

FLPMA Section 202(c)(9) gives State governments a specific statutory role in the federal land use planning process:

"Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him."

In enacting this FLPMA provision, Congress recognized the unique expertise of state and local governments in land use planning and the scope of the States' long-established police powers over land use.

In December 2011, former Secretary of the Interior, Ken Salazar, complied with the FLPMA Section 202(c)(9) requirement to coordinate the land use planning process with State governments when he asked the western governors, including yourself, to develop GSG conservation plans. Secretary Salazar's December 2011 request recognized the States' authority to furnish advice during the federal land use planning process pursuant to Section 202(c)(9).

The LUPA is wildly inconsistent with the Nevada Sage-Grouse Conservation Plan and thus does not comply with FLPMA 202(c)(9). The utter failure of the Proposed LUPA to comply with the FLPMA 202(c)(9) state consistency mandate stands alone as sufficient reason to reject the FEIS/Proposed LUPA. BLM and USFS must address the inconsistencies identified by the State and its local governments with the Proposed LUPA and provide appropriate coordination to reach consistency.

⁵ 43 USC 1712(c)(9) and 43 CFR 1610.3-2(a) only provide allowance for inconsistency if local plans, policies, or programs are not consistent with federal law and regulation. This places a burden upon the agencies to specifically outline inconsistencies with federal law and regulation.

The Nevada Sage-Grouse Conservation Plan is premised upon and fully consistent with the multiple use and sustained yield purposes of FLPMA and also provides effective and comprehensive GSG conservation measures that include substantial financial mitigation requirements for impacts to GSG habitat that cannot be avoided or minimized. The foundation of the Nevada Sage-Grouse Conservation Plan is the habitat conservation hierarchy of “avoid, minimize, and mitigate,” which implements a multiple use land management objective that strives to balance a variety of land uses including protecting and enhancing GSG habitat. This hierarchy requires project proponents to avoid impacting GSG habitat to the maximum extent possible, to minimize habitat impacts where impacts cannot be avoided, and finally to mitigate those impacts that are both unavoidable and cannot be minimized. Nevada has developed a state-of-the art Conservation Credit System that establishes financial mitigation requirements based on a number of site-specific metrics to determine a valuation for the impacted habitat and the required mitigation required to offset the impacts by investing in mitigation that will achieve a net habitat gain that is measured using similar metrics.

FLPMA 202(c)(9) requires the Secretary to develop a federal LUPA that is consistent with State and local plans “to the maximum extent” the State and local plans are consistent with Federal law and the purposes of FLPMA. Because the Nevada Sage-Grouse Conservation Plan is consistent with FLPMA multiple use and sustained yield objectives, it fulfills the multiple-use requirements in FLPMA to a much greater extent than the Proposed LUPA. Consequently, the LUPA must be revised to eliminate its inconsistencies with the State Plan in compliance with FLPMA 202(c)(9) and the multiple use and sustained yield FLPMA mandates.

In addition to being far more consistent with FLPMA than the Proposed LUPA, the Nevada Sage-Grouse Conservation Plan is also more consistent with other Federal laws of significant importance to Nevada, including the General Mining Law, than the Proposed LUPA. Moreover, the Nevada Sage-Grouse Conservation Plan provides superior GSG habitat conservation because it can be applied throughout the state on public, private, and state lands. In contrast, the Proposed LUPA cannot be applied to private or state lands, and conflicts with County Master Plans that regulate use on private lands. The Proposed LUPA thus creates the adverse situation in which sage-grouse conservation measures may be different on adjacent lands in Nevada’s checkerboard or elsewhere where the land ownership pattern consists of adjacent sections of public and private lands.

BLM’s regulations at 43 CFR Section 1610.3-2 implement the FLPMA Section 202(c)(9) State Consultation and Consistency Requirement and reiterate that the Secretary must develop federal land use plans that are consistent with those State and local plans that satisfy the purposes of FLPMA and other Federal laws. Pursuant to these regulations, the agencies cannot lawfully ignore or reject the Nevada Sage-Grouse Conservation Plan (or Eureka County plans and policies), which satisfies FLPMA multiple use principles and achieves an appropriate balance between various land uses, including but not limited to agriculture, livestock grazing, mineral exploration and development, energy development, wildlife protection, and habitat conservation. Moreover, the Nevada Sage-Grouse Conservation Plan specifically focuses on reducing the key threats to GSG habitat in Nevada (e.g., wildfires and invasive species infestations). In comparison, the Proposed LUPA does not focus on reducing threats to habitat; it mainly focuses on regulating (by restricting and prohibiting) public land uses in GSG habitat areas.

Requested recommendation to address inconsistencies with Nevada Sage-Grouse Conservation Plan

- A. Recommend that BLM and USFS strike a reasonable balance and implement the State’s Plan as the mechanism for management to conserve GSG in Nevada.

3. Outstanding Inconsistencies Will Be Addressed If Above Recommendations Adopted

We believe that if BLM and USFS adopt the recommendations above regarding local inconsistencies and adopt the State Plan for management of GSG in Nevada, then nearly all remaining inconsistencies will be addressed and substantially overcome. However, we outline below some additional inconsistencies that must be elevated during your consistency review to ensure they are addressed.

4. *Impairment of Valid Existing Rights*

While the LUPA claims there will be a recognition and non-impairment of valid existing rights, the management restrictions in the LUPA for GSG could wholly or partially deny rightful usage of water rights, rights-of-way, and mineral rights. The LUPA fails to outline procedures to address valid existing rights that have not been adjudicated in federal court but are nonetheless valid existing rights (e.g., RS 2477 roads and RS 2339 water storage and conveyance structures). This proves inconsistent with local plans and policies as well as State law and policy. For example, NRS 533 and 534 have mandates to protect water rights and ensure that water rights are not impaired. Even without the added regulatory burdens imposed by the LUPA, we have seen BLM and USFS impair and impact usage of the full extent of water rights through land use decisions. The LUPA provisions will exacerbate and increase these actions. Further, NRS 405 outlines state policy regarding protection and preservation of travel and access on public roads (RS 2477) and accessory roads. The LUPA provisions to impose travel restrictions on existing roads and rights-of-way are counter to State law and policy.

The disturbance cap concept proposed in the LUPA could result in the denial of projects and impairment of valid existing rights simply because other disturbances have decreased available cap space, ultimately denying valid existing mineral rights or water resource developments required to keep water rights whole or maintenance actions on roads. The BLM and USFS has no authority to deny valid existing rights; consequently, decisions made by entities with valid existing rights would affect what the BLM and USFS can authorize for other potential users of land it administers in the management zone. In other words, by using the disturbance cap concept, valid existing rights for one user could be recognized at the expense of another. This would also be a domino effect on all users with mining claims, grazing allotments, recreational use, rights-of-way, etc. The agencies have not provided sufficient scientific data to support the disturbance cap concept or its effectiveness, and the calculation methodology is fraught with challenges that will prevent consistent and clear implementation. Further, the agencies have not adequately explained several crucial details about the application of the concept in protecting valid existing rights.

The LUPA fails to recognize grazing permits among the valid existing rights. These permits have discrete economic value and have been purchased as part of an economic ranch unit, which is highly dependent upon the permitted AUMs to remain viable.

The LUPA leaves in limbo water rights, water conveyances (RS 2339), and rights-of-way (RS 2477) as recognized valid existing rights. RS 2477 and RS 2339 rights are overlooked and not even acknowledged. The LUPA has actions to remove range improvements in certain circumstances. Many of these improvements are part of the bundle of valid existing rights, including water storage facilities and conveyances. The LUPA further seeks to impose travel restrictions but fails to acknowledge how this will be completed over RS 2477 roads in which BLM or USFS have no authority.

Requested recommendation to address inconsistencies threatening impairment of Valid Existing Rights

- A. Recommend that BLM and USFS provide language in the LUPA that:

- I. Any road that currently exists will be assumed to have an underlying valid existing right. As a starting point, BLM and USFS shall use each county's provided road inventory as roads which may have a right-of-way under RS 2477 and cannot have travel restrictions imposed by BLM or USFS under the LUPA, including provisions of the disturbance caps.
- II. Any existing water development including associated pipelines, storage devices, ditches, dams, etc. will be assumed to have an underlying valid existing right under RS 2339 and cannot have restrictions imposed by BLM or USFS under the LUPA, including provisions of the disturbance caps.
- III. Any existing mineral claims will be considered valid existing rights and development of such claims will not be held to the provisions of the disturbance caps.
- IV. Allow for streamlined adjustment of disturbance caps in areas where recognition of all valid existing rights would result in exceeding cap.

5. Other Violations of Federal Law Including But Not Limited to FLPMA, National Forest Management Act (NFMA), and Multiple Use and Sustained Yield Act (MUSYA).

In defining the term "multiple use" FLPMA Section 103(c) directs the Secretary to provide for:

"...the management of the public lands and their various resource values so that they are **utilized in the combination** that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources...to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, **range**, timber, **minerals**, watershed, wildlife and fish, and natural scenic, scientific and historical values. (43 U.S.C § 1702(c), emphasis added)."

Similarly, the NFMA directs USFS to manage public lands for multiple uses, and USFS is required to use "a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences" (16 U.S.C. § 1604(b)); and the agency must take both environmental and commercial goals into account (16 U.S.C. § 1604(g); 36 C.F.R. § 219.1(a)), while taking into account the Nation's needs for minerals (see 16 U.S.C. § 528). Section 1604(e)(1) establishes multiple use and sustained yield land management directives and requires the Secretary of Agriculture to "provide for multiple use and sustained yield of the products and services obtained therefrom in accordance with the Multiple-Use Sustained-Yield Act of 1960." In defining "multiple use" MUSYA as Section 531 directs the Secretary to ensure that "[t]he management of all the various renewable surface resources of the national forests so that they are **utilized in the combination that will best meet the needs of the American people** ..." (emphasis added). MUSYA also directs USFS to give "due consideration" to resources.

Further, the Taylor Grazing Act provides a regulatory framework to manage grazing sustainably in a way that perpetuates ranching while maintaining rangelands.

None of these acts authorizes subordination of any of these multiple uses in preference of GSG. BLM must prepare a Supplemental EIS and a revised LUPA in order to comply with these various federal laws.

Many of the FLPMA Section 202 land use planning requirements contain explicit provisions to ensure that the Secretary's land use plans achieve an appropriate balance of resource values consistent with FLPMA's multiple use and sustained yield principles. The following discusses the Section 202(c) multiple use planning directives.

FLPMA Section 202(c) states that: “In the development and revision of land use plans, the Secretary shall” – (1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law.” As described in detail in our comments on the DEIS, the Proposed LUPA fails to comply with FLPMA multiple use and sustained yield requirements. Despite the fact that the Purpose and Need and Planning Criteria established for the FEIS note a requirement to comply with FLPMA’s multiple use mandate, the Proposed LUPA utterly fails to do so. Moreover, the FEIS does not disclose the lack of compliance with FLPMA or the inconsistency with the Purpose and Need and Planning Criteria.

The Proposed LUPA unlawfully prefers conservation of GSG habitat to the exclusion of other uses including grazing, agriculture and mineral development. FLPMA’s land use planning requirements mandate the Secretary consider the relative scarcity of values, weigh long-term benefits, and use and observe principles of multiple use and other applicable laws (such as the Taylor Grazing Act, Public Rangelands Improvement Act, General Mining Law and Mining and Mineral Policy Act) rather than subordinate all other uses of public land and make GSG the dominant use of public lands. FLPMA Section 202(c)(2) continues, stating that BLM “use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences....” As described in detail elsewhere in this Protest Letter and in our comments on the DEIS, the socioeconomic and cumulative analyses in the FEIS are unlawful and inadequate. The FEIS does not adequately analyze and disclose the substantial adverse economic harms that public land users, local economies such as Eureka County’s and the State will experience if the Proposed Plan in the FEIS becomes the Final LUPA.

FLPMA Section 202(c)(6) states BLM shall “consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values.” As described in detail elsewhere in this Protest Letter and in our comments on the DEIS, the FEIS/Proposed LUPA does not give adequate consideration to alternative approaches to GSG conservation. The superficial and perfunctory consideration of the Nevada Sage-Grouse Conservation Plan (as Alternative E in the FEIS) is a glaring example of the failure to comply with this specific FLPMA Section 202 land use planning requirement. As described above, the Nevada Sage-Grouse Conservation Plan is consistent with the multiple use objectives in FLPMA (which the Proposed LUPA is not) and achieves superior GSG habitat conservation than the Proposed LUPA.

FLPMA Section 202(c)(7) requires the agency to “weigh long-term benefits to the public against short-term benefits....” The FEIS/Proposed LUPA, being GSG myopic, does not evaluate benefits or harms to other land users, to the public, or to Eureka County or the State. Curiously, the document only describes benefits to GSG habitat; it does not discuss the short- or long-term benefits (if any) to the public, or adequately consider cumulative impacts to livestock grazing, recreation, mineral development, exploration and other rights under the various laws identified above. As described in detail elsewhere in this Protest Letter and our comments on the DEIS, the failure to provide an adequate socioeconomic and cumulative impacts analyses does not satisfy NEPA requirements to take a “hard look” at the impacts associated with implementing the Proposed Plan. Socioeconomic and cumulative impact analyses that satisfy the NEPA hard look requirements would readily reveal that instead of providing any short- or long-term benefits, the FEIS/Proposed Plan will result in substantial short- and long-term harm to the public. The Proposed Plan in the FEIS does not comply with FLPMA Section 202(c)(7).

Requested recommendation to address inconsistencies with other federal law

- A. Inform BLM and USFS that it is State policy to ensure that all federal laws regarding public lands are followed including the mandates for multiple-use and sustained yield. Recommend that BLM and USFS reconcile inconsistencies LUPA and provide additional public review for substantial changes and prepare a Supplemental FEIS and a Revised LUPA in order to comply with FLPMA Sections 202(c)(1), 202(c)(2), 202(c)(6), and 202(c)(7). Accepting and implementing the Nevada Sage-Grouse

Conservation Plan as a whole will comply with these FLPMA requirements as well as other legal obligations.

6. LUPA Reliance on NTT and COT Reports Are Not Best Available Science

We still contend that by relying on these on the NTT and COT reports two reports, the LUPA is not using the “best available science” as required by NEPA (and CEQ regulations) and are inconsistent with the Data Quality Act and BLM’s internal guidelines, “Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Bureau of Land Management, February 9, 2012. Further, the two reports also fail to adhere to the U.S. Office of Management and Budget (OMB) proper peer review process instructional memorandum (OMB December 16, 2004, M-05-03; *Final Information Quality Bulletin for Peer Review*).

The use of the NTT report is extremely problematic, as it contains overly burdensome recommendations that are not based on local conditions in Nevada. The NTT report asserts that oil and natural gas and grazing “impacts are universally negative and typically severe,” but provides no scientific data to support that assertion. The report selectively presents “scientific” information to support overly burdensome conservation measures that are not based on local conditions. The LUPA relies too heavily upon a select few studies utilized by the NTT report that cannot be universally applied. An independent review of the report shows that it contains many methodological and technical errors, cherry-picks scientific information to justify the report’s recommendations, and was developed by a small group of specialist advocates with narrow focus. The NTT report does not adequately represent a comprehensive and complete review of the best scientific data available, did not go through adequate peer review, and is inappropriate for primary use. (see Megan Maxwell, *BLM’s NTT Report: Is It the Best Available Science or a Tool to Support a Pre-determined Outcome?*, <http://www.nwma.org/pdf/NWMA-NTTReview-Final-revised.pdf>; Rob Roy Ramey, *Data Quality Issues in A Report on National Greater Sage-Grouse Conservation Measures, Produced by the Sage-Grouse National Technical Team (NTT)*, September 19, 2013).

Moving to the COT Report; while the COT Report is intended to serve as a guidance document to federal agencies, states, and others, there are several issues that need to be resolved in order for the COT Report to be an adequate non-biased guide based on the best science. The COT Report contains selective, narrow review of scientific literature and unpublished reports on GSG, presents outdated information, overstates or misrepresents some threats to GSG while downplaying others, and relies on a faulty threats analysis. (see Rob Roy Ramey, *Data Quality Issues in the Greater Sage-Grouse (Centrocercus urophasianus) Conservation Objectives: Final Report*, October 16, 2013).

The LUPA uses the NTT and COT to develop “customized” goals, objectives, and actions from the reports “that strives for balance among competing interests.” Rather than using the reports to strive for balance among competing interests, the LUPA must recognize the existing statutory and regulatory mandates of multiple-use and sustained yield rather than manipulating and cherry-picking documents into GSG regulation.

The concerns about the quality of the NTT and COT Reports and their underlying studies are currently being challenged by a coalition of western land users and counties, including Eureka County, for lack of consistency with the DQA. As of the date of this Protest Letter there has been no resolution to the NTT and COT Report DQA Challenges. The Challenges can be found at <http://www.westernenergyalliance.org/knowledge-center/wildlife/greater-sage-grouse/DQA-Challenge>.

The NTT and COT Reports are severely flawed, and should be discarded and replaced with a more complete review of the body of literature on GSG. These flaws we documented previously in the process include but are not limited to:

NTT Report:

- Was developed with unsound research methods including partial and biased presentation of information;
- Ignores studies that do not support its theses;
- Jumps to conclusions that are not scientifically supported but are pure conjecture; and
- Disseminates information that is neither objective nor reliable and that lacks scientific integrity.

COT Report:

- Misused the scientific method in order to reverse-engineer the report's recommendations;
- Includes population numbers, habitat, range, threats and viability that are all acknowledged uncertainties;
- Relies upon studies with significantly flawed assumptions, questionable analytic models and questionable statistical procedures;
- Is biased by the use of policy-driven assumptions, inferences, and uncertainties that are not supported by scientific data; and
- The degree to which threats are present is based on highly questionable sources and databases.

Requested recommendation to address inconsistencies with best available science

- A. Request that BLM and USFS use best available science, including Nevada specific science and expertise through UNR, in making management actions to conserve GSG. Adoption of the Nevada Sage-Grouse Conservation Plan will ensure that the best available, Nevada specific science is used.

7. *Habitat Maps Are Inaccurate And Fail to Include Best Available Information*

We have major concerns about the adequacy and accuracy of the maps used to identify and designate GSG habitat, namely PHMA, GHMA, and SFA. While we appreciate the pairing of the LUPA habitat maps with the Nevada habitat map, even a cursory review of the maps with some local, on-the-ground knowledge, highlights the huge areas of discrepancy between actual and mapped GSG habitat.

As a specific example, there is a large area in southern Eureka County designated as PHMA and would be subsequently held to the disturbance caps. This area includes the Town of Eureka, US Highway 50, State Route 278, the Eureka County landfill, the Falcon-to-Gondor major distribution power line, multiple ancillary power lines, multiple subdivisions with homes, paved roads and gravel roads, farms with alfalfa fields and irrigation systems, and hay barns, among other infrastructure. It is beyond puzzling how this area can be not only GSG habitat, but "core" GSG habitat. This example provides a perfect example of how the lek buffers are arbitrary and not applicable in many circumstances as we note elsewhere in this Protest letter. GSG do not use the LUPA defined space around each lek uniformly, and some spaces in this buffer are used not at all. Just in Eureka County, we can point out many discrepancies between what is mapped as habitat versus what is on the ground that cannot be refuted as being non-GSG habitat.

We are aware the habitat maps being developed in concert with the Nevada Sagebrush Ecosystem Council and USGS (Dr. Pete Coates) have yet to have the “infrastructure” layers added to the modeling. Once this layer is added to the habitat modeling, substantial changes will occur in many places, such as around the Town of Eureka as we noted above. The LUPA acknowledges there are many areas with simply no good data regarding GSG use or realities of habitat in the area. No data, or lacking data, should not be used in the context of “best available.” Of the sources of data that supposedly make up the habitat map, huge acreages of “habitat” are drawn with no documented active leks, no telemetry locations, no infrastructure layers, and no Ecological Site Description (ESD) or current state of the ESD with many of these areas having ecological thresholds already crossed, in which the GSG habitat objectives simply do not and can not apply. The LUPA identified process to revise and update GSG habitat mapping is too vague, appears overly cumbersome and bureaucratic, and pushes off what should be done now into the future at the detriment of our economy and industries that need assurance at the local, project level. Thus, the likelihood of changes based in reality being implemented in a streamlined manner or at all, especially if changes are substantial, is minimal. T

Requested recommendation to address inconsistencies with habitat maps

- A. Recommend that BLM and USFS prepare a Supplemental EIS and Revised Proposed LUPA to address these issues with the habitat delineations. The Supplemental EIS and LUPA must incorporate the infrastructure layers to better refine the habitat maps and ensure a more robust “baseline” map at LUPA inception. Also, include language to be very specific, streamlining the process and outlining the exact steps to be taken for project-level planning use and habitat mapping refinement. Again, adoption of the State Plan would address much of this issue because the State Plan has a better process for habitat map refinement.

8. *Buffers And Distance Restrictions From Leks Are Flawed, Arbitrary, And Not Founded In Science*

The LUPA identifies management actions and arbitrary setbacks and buffer areas that are not based on sound science. BLM and USFS have not provided sound science with technical references supporting these criteria. Site specific factors need to be taken into consideration such as line-of-site between the lek and the project, topographical relief, quality of site-specific habitat, current bird activity, probability of GSG nesting within the entire radius area, duration of the project/use and project/use intensity. As an example, as we previously highlighted, the “core” area centered on a lek buffer near the Town of Eureka arbitrarily “pulls” in habitat that is not, in reality, GSG habitat at all. This is one of the issues and flaws identified in the above referenced reports regarding the NTT and COT reports that we shared with our comments on the DEIS to no effect.

Importantly, the reports provide no original data or quantitative analyses, fail to provide a comprehensive and unbiased review of all of the available scientific literature, and perpetuate outdated information and beliefs. In addition, the underlying studies cited reports which did not measure buffers *per se*; rather they documented use by male GSG at five miles, or distance from leks to nesting habitat at 3.1 miles. However, there is no evidence that the range of buffer distances compiled by Manier et al. 2014 as referenced by the LUPA will result in quantifiable population level benefits to GSG in terms of increased survivorship or reproduction. As with all buffer distances, they are based on the frequently repeated and erroneous dogma that avoidance or decline in male lek attendance equates to population decline. Studies often cited in support of this assumption have predicted population declines that have repeatedly failed to come true. We maintain the presumed necessity for buffers is solely based upon the subjective opinions expressed in the NTT Report and COT report and correlative studies (including the Buffer Report) regarding local lek counts, none of which identify any causal mechanism for localized effects, which are improperly characterized as negative and permanent population effects. These buffers are driven by policy

objectives rather than defensible biological criteria and do nothing to mitigate specific cause and effect threats to GSG.

To these ends, the use of buffers in the LUPA is a result of citing the named reports or their underlying studies and is not the “Best Available Science.”

Requested recommendation to address inconsistencies with lek buffers

- A. Recommend that BLM and USFS not impose the buffers contained in any of these documents because these buffers are based upon studies that used flawed methodologies and analyses, among other issues.

9. *Faulty Socioeconomic Impacts Analysis*

Users of federally managed lands generate millions of dollars of economic activity in Eureka County. The management restrictions proposed in the LUPA will undeniably have a direct negative impact on these users and the future viability of mining, energy development, and agricultural production, including ranching. The socioeconomic analysis in the EIS is biased in that it overestimates and promotes speculative non-market valuations (e.g., disperse recreations, sightseeing), while underestimating the very real economic impacts from actual productive activities that directly create jobs and wealth.

The EIS discussed the socioeconomic impacts at too broad of a scale to be of any worth to local economies and interests. During scoping and in our comments on the preliminary and DEIS, we continually noted this shortfall, and even provided very specific Eureka County data and analysis that was not included. Further, it appears that expertise in Nevada’s System of Higher Education were not used to provide Nevada specific, robust analysis.

Requested recommendation to address inconsistencies with socioeconomic analysis

- A. Recommend that BLM and USFS prepare a Supplemental EIS adequately and non-biasedly weigh the socioeconomic impacts on the proposed LUPA actions. This analysis shall be consistent with, after proper coordination with and use of, expertise located within Nevada higher education institutions.

10. *Undue and Restrictive Livestock Grazing Actions and Focus on Native Plans Are Not Based On Best Available Science*

The LUPA fails to focus on a full range of possible approaches to grazing with the end results of rangeland health, socioeconomic stability, and GSG population improvements tied strongly together and not mutually exclusive. The LUPA focuses on restriction first, rather than exhausting all other active management options first.

The DEIS analyses regarding grazing are unfounded and misplaced by perpetuating the institutionalized assumption that livestock grazing is a threat to GSG conservation in management areas. Instead, such analyses should start from the proven premise that managed livestock grazing is a benefit for GSG, and the analyses should consider how to further incorporate managed livestock grazing into the protection strategy.

While the EIS includes a large volume of wildlife science appropriately referenced, much of the current and pertinent literature regarding livestock grazing is painfully missing. We acknowledge that the EIS now does contain references to some of the literature we provided during the DEIS. However, the analyses still focuses on the

“worst” examples from the literature and fails to incorporate the best and most recent data and studies related to grazing being very conducive to GSG conservation. Specifically, the document almost completely lacks references on livestock grazing management as related to the functionality and sustainability of sagebrush/perennial herbaceous plant communities and meadows within the sagebrush ecosystem. We will not repeat each of the individual studies we provided during the DEIS but include them again by reference and our enclosed letter on the DEIS.

The language, “No grazing from May 15 to August 30 in brood rearing habitat” precludes important tools for improving brood rearing habitat. Grazing repeatedly in September is likely to damage the physical functioning of riparian areas, especially in large pastures with limited riparian waters/areas. Grazing before May 15 may cause riparian areas to not be grazed because upland forage is preferred then (Swanson et al (accepted with revisions 2014), and some late spring to early summer grazing benefits GSG by managing forb phenology, nutritional value to chicks, and availability (Evans 1986). The problem with grazing in riparian areas and wet meadows is not that GSG are directly impacted by cattle use at the time that GSG use these areas. The problem is that poor grazing management causes riparian areas to lose functionality and other resource values. To address this problem there are many tools. As described in Swanson et al. (accepted with revision 2014), the need is for more generally successful tools to be used than generally unsuccessful tools. On balance there must be more recovery than damage over the length of the grazing rotation cycle. This management must keep the plants healthy so they can have strong roots and go through succession toward more riparian stabilizers or maintain an adequate amount of riparian stabilizers.

Precluding grazing from May 15 to September 1 is also very clearly overkill as demonstrated by the diversity of successful methods applied in Nevada, and elsewhere across the nation. Managing this problem with only utilization standards is not based on science (because it is often unneeded), distracting (because it emphasizes a weaker tool while other and better approaches lose focus from lack of assurance), and ineffective (because it has proven to not be effective in practice where agencies cannot afford the personnel to monitor adequately and then lose budgets because the fights are unproductive).

The LUPA Action to remove livestock watering infrastructure in some circumstances removes tools that are essential for watering livestock in a manner that supports the more powerful tools in grazing management – season of use, duration of use, and rotation of use. Furthermore, it would cause livestock and wildlife, like elk, to concentrate use in riparian areas.

We strongly disagree with the EIS that habitat is being lost due to grazing as indicated in the list of threats. Allotments have been under prescribed grazing management for decades and experience frequent monitoring, including rangeland health assessments, which result in any necessary modifications to grazing prior to reissuance of grazing permits. In addition, extensive reduction of AUMs have occurred west wide, particularly in Nevada, over the past 4 decades, resulting in serious economic challenges for the livestock industry to remain viable. Imposing additional regulations along with AUM adjustments will heavily impact grazing as an authorized use, further pressuring an already economically stressed industry, including that industry in Eureka County.

Additionally, the Nevada specific studies and literature were given short shrift, and it appears that the rangeland professionals in Nevada through the Nevada System of Higher Education were not accessed or used in developing the Nevada specific grazing management actions.

The EIS and LUPA continue to focus on “native plant communities.” Research in Nevada has shown that long-lived perennial species are important regardless of native status (Clements among others). The LUPA fails to promote

ecosystem function by focusing on only “native species.” Native plant communities are often an indicator of function but lack of native plants in many areas with crested wheat and forage kochia (among others) are healthy, functioning, and conducive to resilience and GSG conservation. Focusing on “native” limits the ability of land managers to adaptively manage or have step-wise rangeland restoration. Further, much of the area mapped as occupied PHMA and GHMA are old crested wheatgrass seedings which highlights how using these species is conducive to preserving the longevity of sagebrush stands.

It is important to use native seeds where appropriate and conducive to success. However, it is essential that use of non-native species can be used when they support habitat objective or specific needs of certain areas (i.e. highly disturbed/fire-damaged habitats) that have a low probability of rehabilitation under sole use of native species. The use of non-native species such as forage kochia and crested wheatgrass must be included for use, where applicable, as an interim community stage that can stabilize soils, reduce cheatgrass dominance, and prevent recurring wildfires.

Requested recommendation to address inconsistencies with grazing analysis and range management

A. Request that BLM and USFS include language that:

- I. Federal agencies in coordination with grazing permittees must ensure that management decisions are based upon the best rangeland science, that flexibility is built into grazing permits to allow for adaptive management as issues and concerns arise, and that that quality and quantity of data collected can support all decisions made;
- II. Before imposing grazing restrictions or seeking changes in livestock stocking rates or seasons of permitted use, federal agencies in coordination with grazing permittees must identify and implement all economically and technically feasible livestock distribution, forage production enhancement, weed control programs, prescribed grazing systems, off-site water development by the water rights holder, shrub and pinyon/juniper control, livestock salting/supplementing plans, and establishment of riparian pastures and herding; and
- III. Federal agencies in coordination with grazing permittees must assure that all grazing management actions and strategies fully consider impact on property rights of inholders and adjacent private land owners and consider the potential impacts of such actions on grazing animal health and productivity.

Further recommend that Nevada specific studies and literature be included, through a Supplemental EIS, and that rangeland professionals through the Nevada System of Higher Education are coordinated with and used in developing the Nevada specific grazing management and vegetation guidelines, outlined in a Supplemental EIS and LUPA.

11. GSG Objectives in the LUPA Are Vague and Subjective; Blanket Proposed Habitat Objectives Too Broad Based and Undermine Local Ecological Conditions and Potential.

Objectives in the LUPA are simplified “blanket” criteria, oftentimes developed in areas outside of the Great Basin and with minimal scientific literature. The objectives are not guided by site specific ESDs and the associated State and Transition Models (or Disturbance Response Groups) developed for the appropriate Major Land Resource Area (MLRA).

There is nothing in the LUPA that lends credence to or calls for inputs from local sources, including ranchers with decades or generations of experience and knowledge with respect to GSG and their local habitat, locations of leks,

observations of predation, climatic events (i.e. wildfires), and the impacts, including vegetation changes. This leaves a huge gap in the search for sound, credible information that can assist in effective planning as the process advances. Development of resource objectives must be site-specific and involve the direct inputs of the permittee, and be done through the smallest scale possible such as Allotment Management Plans.

We strongly assert the Habitat Objectives in Table 2-2 are too rigid, not based on large variabilities that exist on the ground according to ESD and associated State and Transition Models (STM), and are not founded in the breadth of available rangeland and GSG science. The goals/objectives/management actions in the LUPA intended to maintain or enhance the GSG habitat objective in Table 2-2 are not clear, are too subjective, and are not founded in current rangeland science.

The goals/objective/management actions are separated in the LUPA, but are often not representative of their definition (i.e., objectives are often actually goals). It appears that BLM did not follow the Department of Interior and Nevada specific guidance on writing resource objectives (see Williams et al. 2009, Adaptive Management: The U.S. Department of the Interior Technical Guide; Adamcik et al. 2004, Writing Refuge Management Goals and Objectives: A Handbook. U.S. Fish and Wildlife Service; and Swanson et al. 2006. Nevada Rangeland Monitoring Handbook Second Edition.) The common thread of these references describes differentiating between vision, goals, and objectives and then setting objectives that fit the mnemonic SMART—Specific, Measurable, Achievable, Realistic/Related/Relevant, and Time-fixed.

S – Specific – They describe what will be accomplished, focusing on limiting factors, and identifying the range of acceptable change from the present to the proposed condition.

M – Measurable – The change between present and proposed conditions must be quantifiable and measurable.

A – Achievable – Are the objectives set achievable in the current setting? Consider environmental constraints, societal expectations, economic parameters, legal requirements, and technological limitations.

R – Realistic/Related/Relevant – Set objectives that can be realistically achieved given the natural and management context of the situation. They are related in all instances to the land use plan goals and relevant to current management practices. Thus, they must be worthy of the cost of the management needed to achieve them and the monitoring needed to track them.

T – Time-fixed – They must be trackable over time and must include a specific and definite timeframe and location for achievement, monitoring, and evaluation.

Very few of the objectives meet all of the SMART criteria. Most objectives in the LUPA may meet some of the SMART criteria, but as written, are actually goals, defined in the references as a “broad statement of desired outcomes, usually not quantifiable” and “apply to the entire plan and are the same for all alternatives.” For instance, the referenced Table 2-2 states there is an objective of meeting all Rangeland Health Standards (RHS). This is not an objective, but a goal. And the RHS are in many cases not true objectives, either. The objectives would be intermediary steps to make significant progress towards meeting standards or maintenance objectives to keep meeting standards. There should be one overarching goal across all alternatives and the alternatives flesh out specific and SMART objectives. This example we have discussed above is a common theme throughout all alternatives and associated tables and must be addressed. If not, the amount of subjectivity on what any objective means is left up to agency discretion and individual or user translation, which may not be compatible. This will result in continued strife in managing GSG habitat and will result in much more time in the courtroom. Defining SMART objectives will minimize personal interpretation and result in all parties being on the same page moving forward, even with conflicting interests.

As an example, Objective VEG 3 (p. 2-27) states “Manage PHMAs and GHMAs for vegetation composition and structure, consistent with ecological site potential and to achieve GRSG habitat objectives.” We commented on this objective in the DEIS and stated that it should be changed in every instance to read “...relative to Ecological Site Description and site’s potential given the current state of the ecological site and in consideration of the State and Transition Model for the site...” This imperative change was not included. Further, we also commented that a new objective needs to be included that calls for development and application of STMs for all ESDs within the planning area. This too was disregarded. This is imperative in order to adequately determine progress towards meeting objectives. We must know what any given site’s potential really is before we can set site specific resource objectives. Site potential is not the same as reference state of an ESD. There are different site potentials dependent on the current state of an ecological site.

Requested recommendation to address inconsistencies with GSG objectives

- A. Request that BLM and USFS, through a Supplemental EIS and Revised LUPA, ensure that GSG objectives meet all of the SMART criteria. Include an objective to develop and apply STMs for all ESDs within the planning area. Objectives should be developed in coordination with rangeland professionals in Nevada and be based on Nevada specific ESDs and associated STMs.

Conclusion

There are many more issues and inconsistencies that we have notified BLM and USFS of through our comment letters on the DEIS and EIS and our protest of the EIS and LUPA. We have not belabored these points and have only focused on the top issues of inconsistency that if addressed, should address other ancillary issues. However, we are enclosing our comment on the DEIS as well as our protest on the EIS and LUPA to ensure you are fully aware of outstanding inconsistencies and issues that we wish to be ultimately addressed. We request that you use your authority under your 60 day consistency review to elevate and address these outstanding inconsistencies, and, if necessary, to Director Kornze of the BLM.

We welcome the opportunity to discuss our request and expectations with you and your staff during your consistency review of the EIS. If you have any question, feel free to contact us via Jake Tibbitts, Eureka County Natural Resources Manager, 775-237-6010, natresmgr@eurekanv.org.

Respectfully,



J.J. Goicoechea, DVM, Chairman
Eureka County Board of Commissioners

Enclosures (2)

cc: US Congressman Mark Amodei
US Senator Dean Heller
US Senator Harry Reid
NV Senator Pete Goicoechea
NV Assemblyman John Ellison

NV Sagebrush Ecosystem Council
NV Association of Counties
NV State Land Use Planning Advisory Council
NV State Clearinghouse



EUREKA COUNTY BOARD OF COMMISSIONERS

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June 29, 2015

Director (210)

Attn: Protest Coordinator

P.O. Box 71383

Washington, D.C. 20024-1383

Also via email to: protest@blm.gov

RE: Eureka County, NV protest of *Nevada and Northeastern California Greater Sage-Grouse Proposed Land Use Plan Amendment and Final Environmental Impact Statement* (BLM/NV/NV/ES/15-09+1793)

Dear Mr. Director:

In accordance with 43 CFR 1610.5-2, this letter serves as formal protest by Eureka County, Nevada of the *Nevada and Northeastern California Greater Sage-Grouse Proposed Land Use Plan Amendment and Final Environmental Impact Statement* (BLM/NV/NV/ES/15-09+1793).

1. Participation in the Planning Process (43 CFR 1610.5-2(a))

Eureka County participated in the Greater Sage-Grouse (GSG) planning process in numerous ways, including but not limited to:

- Accepted invitation to be a Cooperating Agency and outlined County's special expertise through a letter dated December 20, 2011.
- Attended and provided input at the scoping period open-house in Ely, NV on January 10, 2012.
- Provided formal scoping comment during the scoping period in a letter dated March 22, 2012.
- Signed Memorandum of Understanding (MOU) establishing County as a Cooperating Agency in September 2012.
- Provided comment on Preliminary Chapter 3 through comment matrix on January 4, 2013.
- Provided comment on Preliminary Alternative D through cover letter dated May 6, 2013 with associated comment matrix.
- Provided comment on Draft EIS through letter dated January 29, 2014.
- Sent follow up letter regarding DEIS comments on April 7, 2014.
- Provided comment on Draft Proposed Plan Amendment on June 13, 2014.
- Provided comment on Administrative Draft Final EIS through two letters, one dated May 6, 2015 and one dated May 13, 2015.
- June 18, 2015 email to BLM asking for specific responses to County comments on DEIS.

2. Interest Adversely Affected By the Approval of Amendment (43 CFR 1610.5-2(a) and 43 CFR 1610.5-2(2)(i))

Eureka County has multiple interests which will be adversely affected and receive substantial harm by the approval of the Land Use Plan Amendment (LUPA). Eighty-one percent of Eureka County's land area is made up of federally administered land, primarily BLM and USFS, and will be under the provisions proposed in the LUPA. Eureka County is primarily socioeconomically driven by mining, farming and ranching. Nearly all of Eureka County's employment and economy is in the natural resources sector and the community's viability is largely dependent on business and recreational activities conducted on or in concert with lands affected by the LUPA. Since private land makes up only 13% of Eureka County's total land area, dependency on federally administered land limits and is often detrimental to our long-term socio-economic stability and viability. This threat to our viability is exacerbated by the layers of undue regulatory burden being proposed upon multiple uses of these lands through the LUPA. Additionally, the overwhelming lack of effort by the federal land management agencies to coordinate and find consistency with Eureka County through the LUPA subverts the local plans, policies, proposals, and controls of Eureka County and the County's ability to implement them. The proposed LUPA also builds a framework for increased adversarial relationships between the agencies, Eureka County, and proponents of projects on our federally administered land.

3. Protestant Information (43 CFR 1610.5-2(2)(i))

Name: Eureka County Board of Commissioners

Mailing address: PO Box 694, Eureka, NV 89316

Telephone number: 775-237-7211 or 775-237-6010

4. Concise Statement of Why the State Director's Decision is Believed To Be Wrong (43 CFR 1610.5-2(2)(v))

Eureka County believes the State Director's decision on the LUPA to be wrong because the LUPA does not comply with applicable laws, regulations, policies and planning procedures including but not limited to the Federal Land Management and Policy Act, National Environmental Policy Act, Data Quality Act, National Forest Management Act, and Multiple Use and Sustained Yield Act. The analyses in the EIS are flawed, not based on the best available science, and seeks to implement measures based on pre-determined outcomes. The LUPA fails to be consistent with the plans, policies, programs, and controls of Eureka County and the State of Nevada. BLM and USFS overwhelmingly disregarded and inadequately incorporated nearly all of Eureka County's input into the EIS and LUPA. The LUPA seeks to impose overly restrictive land management actions that are unnecessary for preservation of Greater Sage-Grouse and will impair the long-term viability of our economy and way-of-life while impacting prior existing rights. The LUPA fails to strike a reasonable balance between the needs of Eureka County, the State of Nevada, and the Greater Sage-Grouse.

5. Statement of Parts of the Plan Being Protested (43 CFR 1610.5-2(2)(iii))

The following are the parts of the LUPA being protested. All applicable tables and figures under each issue and part identified are included by reference. We provided comment on each part identified below in the DEIS or other planning process forum and incorporate by reference our previous comments related to each identified part.

1. Introduction

1.3 Purpose and Need

1.4 Planning Process

1.5 Development of Proposed Land Use Plan Amendment

1.6 Relationship to Other Policies, Plans, and Programs

- 1.6.2 State Plan
- 1.6.3 Local Land Use Plans
- 2. Proposed Action and Alternatives**
 - 2.1 Changes Between the Draft LUPA/EIS and the Proposed LUPA/ Final EIS
 - 2.4 Alternatives Development Process for the Nevada and Northeastern California Greater Sage-Grouse Land Use Plan Amendment/EIS
 - 2.4.1 Develop a Reasonable Range of Alternatives
 - 2.4.2 Resulting Range of Alternatives in the Draft LUPA/EIS
 - 2.4.3 GRSG Habitat in the Alternatives
 - 2.6 Proposed Plan Amendment
 - 2.6.1 Development of the Proposed LUPA
 - 2.6.2 BLM Proposed Plan Amendment
 - 2.6.3 Forest Service Proposed Plan Amendment
 - 2.7 Adaptive Management, Monitoring, and Mitigation
 - 2.7.1 Adaptive Management Plan
 - 2.7.2 Monitoring for the Greater Sage-Grouse Planning Strategy
 - 2.7.3 Regional Mitigation
 - 2.8 Draft LUPA/EIS Alternatives
 - 2.8.3 Alternative B
 - 2.8.4 Alternative C
 - 2.8.5 Alternative D
 - 2.8.7 Alternative F
 - 2.9 Summary Comparison of Proposed Plan Amendment and Draft Alternatives
 - 2.10 Detailed Description of Draft Alternatives
 - 2.12 Summary of Environmental Consequences
- 3. Affected Environment**
 - 3.2 Greater Sage-Grouse and Greater Sage-Grouse Habitat
 - 3.3 Vegetation
 - 3.4 Riparian Areas and Wetlands
 - 3.5 Fish and Wildlife and Special Status Species
 - 3.5.1 Conditions on BLM-Administered Lands
 - 3.5.2 Conditions on National Forest System Lands
 - 3.6 Wild Horses and Burros
 - 3.7 Wildland Fire and Fire Management
 - 3.8 Livestock Grazing
 - 3.9 Recreation
 - 3.10 Comprehensive Travel and Transportation Management
 - 3.11 Land Use and Realty
 - 3.12 Renewable Energy Resources
 - 3.13 Mineral Resources
 - 3.22 Climate Change
 - 3.23 Socioeconomics and Environmental Justice
- 4. Environmental Consequences**
 - 4.2 Mitigation
 - 4.3 Analytical Assumptions
 - 4.4 Greater Sage-Grouse and Greater Sage-Grouse Habitat
 - 4.5 Vegetation and Soils
 - 4.6 Riparian Areas and Wetlands
 - 4.7 Special Status Species

- 4.8 Wild Horses and Burros
- 4.9 Wildland Fire and Fire Management
- 4.10 Livestock Grazing
- 4.11 Recreation
- 4.12 Travel and Transportation Management
- 4.13 Land Use and Realty
- 4.14 Renewable Energy Resources
- 4.15 Mineral Resources
- 4.17 Areas of Environmental Concern
- 4.18 Water Resources
- 4.20 Climate Change
- 4.21 Socioeconomics and Environmental Justice
- 5. Cumulative Impacts**
 - 5.1 Greater Sage-Grouse Cumulative Effects Analysis: Nevada Northeastern California Sub-Region
 - 5.2 Cumulative Analysis Methodology
 - 5.3 Past, Present, and Reasonably Foreseeable Future Actions
 - 5.4 Vegetation
 - 5.5 Soil Resources
 - 5.6 Riparian Areas and Wetlands
 - 5.7 Wild Horses and Burros
 - 5.8 Wildland Fire and Fire Management
 - 5.9 Livestock Grazing
 - 5.10 Recreation
 - 5.11 Travel and Transportation Management
 - 5.12 Land Use and Realty
 - 5.14 Renewable Energy Resources
 - 5.15 Mineral Resources
 - 5.15 Areas of Environmental Concern
 - 5.16 Water Resources
 - 5.18 Climate Change
 - 5.19 Social and Environmental Impacts
- 6. Consultation and Coordination**
 - 6.1 Introduction
 - 6.4 Coordination and Consistency
 - 6.4.1 Inconsistencies with State Plans, Policies, and Procedures
 - 6.4.2 Inconsistencies with County Plans, Policies, and Procedures
 - 6.6 Public Involvement
 - 6.6.1 Scoping Process
 - 6.6.2 Public Comment on the Draft LUPA/EIS

Appendices

- A Greater Sage-Grouse Habitat Map for Nevada and Northeastern California Land Use Plan Amendment
- B Applying Lek Buffer-Distances When Approving Actions
- C Response to Comments on the Draft Land Use Plan Amendment/Environmental Impact Statement
- D Required Design Features
- E Greater Sage-Grouse Monitoring Framework

F Greater Sage-Grouse Disturbance Cap Guidance
 G Fire and Invasives Assessment Tool
 H Chapter 2 Figures
 I Regional Mitigation Strategy
 J Avoid, Minimize, and Apply Compensatory Mitigation Flowchart
 K Greater Sage-Grouse Noise Protocol
 M VDDT Methodology
 P Fluid Minerals Reasonably Foreseeable Development Scenario
 Q US Forest Service Biological Evaluation and Wildlife Specialists Report
 R Livestock Grazing
 S Areas of Critical Environmental Concern Evaluation Report
 T Detailed Employment and Earnings Data
 U Non-Market Valuation Methods
 V Economic Impact Analysis Methodology
 W Biological Assessment for the Nevada and Northeastern California

6. Statement of Issues Being Protested (43 CFR 1610.5-2(2)(ii))

A. Violation of NEPA; Final EIS (FEIS) Has Substantial Additions and Changes From Draft EIS (DEIS) That Require A Supplemental DEIS According to 40 CFR 1503.4.

The changes between the DEIS and FEIS are too substantial and contain too much new information not analyzed in the DEIS to move forward without a Supplemental EIS that is provided for public review. This includes but is not limited to the revised habitat delineations, the proposed Sagebrush Focal Areas, and the additional information regarding disturbance caps in Biologically Significant Units. Based on 40 CFR 1503.4, supplemental analyses is required.

B. Inconsistencies with Eureka County Plans, Policies, and Controls and Lack of Coordination.

Federal Land Policy and Management Act (FLPMA), 43 USC 1712(c)(9), requires that:

“(c) In the development and revision of land use plans, the Secretary shall--
 (9) **to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of... agencies and of the States and local governments within which the lands are located....**” In implementing this directive, **the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands....Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act”** (emphasis added).

Also, the FLPMA implementing regulations, National Environmental Policy Act (NEPA) and respective implementing regulations, and other law and regulation contain many similar mandates for coordination and consistency with State and local plans and policies. See:

- BLM Regulations Implementing Planning Under FLPMA
 - 43 CFR 1610.3-1, Coordination of Planning Efforts
 - 43 CFR 1610.3-2, Consistency Requirements
- National Environmental Policy Act (NEPA)
 - 42 USC 4331 - Congressional Declaration of National Environmental Policy
 - 42 USC 4332 – Cooperation of Agencies; Reports; Availability of Information; Recommendations; International and National Coordination of Efforts
- NEPA Implementing Regulations, Council on Environmental Quality (CEQ), 40 CFR 1500
 - Section 1501.2 Apply NEPA early in the process.
 - Section 1501.7 Scoping
 - Section 1502.16 Environmental consequences
 - Section 1506.2 Elimination of duplication with State and local procedures
 - Section 1508.14 Human environment
 - Section 1508.20 Mitigation
 - Section 1508.27 Significantly
- Memorandum to Agencies, Forty Most Asked Questions Concerning CEQ's NEPA Regulations
 - Question 23b
 - Question 23c
- National Forest Management Act
 - 16 U.S.C. 1604(a)
- USFS 1982 Planning Rule
 - 36 CFR 219.7
- USFS 2012 Planning Rule
 - 36 CFR 219.4(b)

In practically every letter, email, or conversation with BLM and USFS during the process, Eureka County has highlighted our desire and each agency's legal and regulatory mandate to properly and adequately coordinate with Eureka County and achieve consistency with our plans, policies, controls, and proposals. As early as our scoping letter in March 2012, we stated:

"Please consider the Eureka County Master Plan (Plan), specifically the Natural Resources & State and Federal Land Use Element of the Plan as Eureka County's primary input into the Land Use Plan (LUP) revisions to incorporate GSG conservation measures. Local land use management plans should provide for the framework regarding the ability for public involvement and participation in GSG conservation efforts. Eureka County's Plan outlines the goals, objectives, and guidance for the use of lands and resources located within Eureka County. Eureka County will not, and cannot, support any management option that is inconsistent with this Plan. The Plan also calls for federal agencies to fully comply with the intent of Congress as specified in various federal laws, including FLPMA and NEPA, by properly coordinating with Eureka County in incorporating the land use policies of Eureka County into agency documents and activities and resolving inconsistencies between federal proposals and County plans."

We provided 125 pages of substantive comments on the DEIS in January 2014 that had a considerable number of specific examples describing the multitude of inconsistencies between the LUPA and Eureka County's plans, laws, policies, and controls, and we cited federal law and regulation mandating coordination and consistency with Eureka County. About two months later, April 7, 2014, this Board sent BLM Nevada State Director, Ms. Amy Lueders, a letter outlining a number of related issues. We highlighted MOU provisions that BLM was failing to comply with such as:

- Keeping Eureka County "apprised of current events and timeframes in relation to this EIS;"
- Considering and using "Eureka County input and proposals to the maximum extent possible and consistent with responsibilities as lead agency;"
- Cooperating "by informing each other as far in advance as possible, of any related actions, issues or procedural problems that may affect the environmental analysis and documentation process or that may affect either party;" and
- Working "together cooperatively" to "communicate about issues of mutual concern."

We highlighted that the MOU between Eureka County and BLM calls for BLM to keep Eureka County "apprised of current events and timeframes in relation to this EIS." The MOU also outlines that "BLM will consider and may use Eureka County input and proposals to the maximum extent possible and consistent with responsibilities as lead agency...." The MOU requires Eureka County and BLM "to cooperate by informing each other as far in advance as possible, of any related actions, issues or procedural problems that may affect the environmental analysis and documentation process or that may affect either party" and "Eureka County and BLM will work together cooperatively and will communicate about issues of mutual concern."

We expressed our concern that we had "not received any contact or response from BLM regarding our input. It was apparent that when we reviewed the DEIS that BLM was not sincere about coordinating with Eureka County for consistency with our plans, policies, laws, and controls because of the voluminous amounts of inconsistent material in the DEIS. This is further evidenced by the fact that our review and comment on the preliminary drafts of the DEIS affected no change. BLM did not even correct misspellings or grammatical errors that we had previously pointed out. This shows that BLM did not even read our previous comments and input."

We acknowledged that there was still time for BLM to address our comments, concerns, and the many inconsistencies with our plans, policies, and controls but could not envision how BLM would be able to do so adequately without coordinating with Eureka County at the table defending and clarifying our position and the various inconsistencies.

The letter closed with the following:

"This letter is meant to engage BLM in the dialogue necessary to ensure that BLM meets the obligations of the MOU and the various laws and regulations. BLM is obligated, when inconsistencies arise, to meet with local governments in order to work towards consistency. This is not happening and there has been absolutely zero effort by BLM to follow-up on the status of the EIS with Eureka County. We request that BLM adequately coordinate its efforts with Eureka County to, as the MOU states, 'cooperate by informing each other as far in advance as possible, of any related actions, issues or procedural problems that may affect the environmental analysis and documentation process or that

may affect either party' and 'work together cooperatively and ... communicate about issues of mutual concern.'"

Unfortunately, even with the effort we took to engage BLM, there was no follow-up or any effort by BLM to coordinate with us to address these issues.

A couple months later, on June 13, 2014, we provided another letter to BLM, addressed to Mr. Joe Tague, on the Draft Proposed Plan Amendment. Many of the same issues and concerns of the April 7 letter were repeated. We noted that BLM was simply going through the motions to "check the box" due to the very short timeframe for review and the continued failure to address our comments and coordinate with us regarding inconsistencies with our proposals, plans, policies, and controls. We highlighted that "we expected and continue to expect BLM to reach out to us to coordinate on finding this consistency to the maximum extent rather than wasting our time pointing these issues out again when we have already previously done so."

We concluded in the June 2014 letter:

"We call for BLM/USFS to complete the analysis necessary to implement our local plans, policies, and proposals for conservation of GSG in Eureka County. If BLM/USFS analysis determines that our plans, policies, and proposals will not benefit and conserve GSG in Eureka County, then BLM/USFS needs to describe why and provide the analysis defending that position. We are certain that if our Master Plan and GSG proposals were incorporated and followed, GSG would thrive and habitat would be improved all while maintaining a strong and vibrant economic base. We again exhort BLM/USFS to take an adequate hard look at our comments on the DEIS and apply the necessary changes to incorporate our comments, plans, policies, and proposals. We look forward to coordinating and working with BLM/USFS on the Final EIS and LUP revisions."

As before, there was no follow-up or any effort by BLM to coordinate with us to address these issues or incorporate changes for consistency.

When the Administrative Draft Final EIS was circulated for our review, we provided two separate letters in May 2015 that focused primarily on the inconsistencies that still exist between the LUPA and the plans, policies, and controls of Eureka County. We asked again in the May 6 letter to:

"[E]ngage with us in the process to adequately incorporate our proposals, plans, policies, and controls for management of sage-grouse in Eureka County. We ask that you do not conclude the process is too far advanced to come to the table and "do it right." We ask you to step back and re-evaluate the process to this point and address the grievous shortcomings of BLM to coordinate with us towards the mutual goal of conserving the sagebrush ecosystem and sage-grouse while providing for sustained socioeconomic stability....please...work with us to incorporate changes for maximum consistency with our local plans, policies, and controls before the Final EIS is published."

Our May 13 letter stated that "we again ask that BLM/USFS properly and adequately coordinate with us to incorporate changes for maximum consistency with our local plans, policies, and controls before the Final EIS is published" and "We find that the predominance of our comments on the DEIS still apply to outstanding issues in the ADFEIS. We will not repeat these comments and fully expect BLM/USFS to adequately coordinate with us to reach the obligations to reach

consistency with our proposals, plans, policies, and controls. We ask BLM/USFS to read and familiarize itself with Eureka County's comments on the DEIS and adequately coordinate with us to incorporate changes in the EIS to address these comments and reach consistency with Eureka County."

We have not experienced any effort by the agencies to engage with us to address these outstanding inconsistencies.

The NEPA regulations highlight in 40 CFR 1502.16 that the environmental consequences section of any EIS "shall include discussions of: (c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See §1506.2(d).)...." We note that there is no "discussion" of these possible conflicts in the environmental consequences section of the FEIS and only a couple general, perfunctory statements about general inconsistencies. Further, 40 CFR 1506.2 states that "(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law... (d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law." The FEIS inadequately addresses inconsistencies and has no description on "the extent to which the agency would reconcile its proposed action with the [local] plan or law."

Additionally, question 23b of the Council on Environmental Quality (CEQ) Frequently Asked Questions (which BLM cites for use in the BLM NEPA Handbook) further clarifies that conflicts with "[p]roposed plans should also be addressed if they have been formally proposed...in a written form, and are actively pursued by officials of the jurisdiction" and "The term 'policies' includes formally adopted statements of land use policy as embodied in laws or regulations. It also includes proposals for action such as the initiation of a planning process, or a formally adopted policy statement of the local, regional or state executive branch, even if it has not yet been formally adopted by the local, regional or state legislative body." The FEIS focuses only on plans and does nothing to address inconsistencies with the policies we specifically referenced in our comment letters.

Question 23c of the CEQ FAQs states that, "In the Record of Decision, the decisionmaker must explain what the decision was, how it was made, and what mitigation measures are being imposed to lessen adverse environmental impacts of the proposal, among the other requirements of Section 1505.2. This provision would require the decisionmaker to explain any decision to override land use plans, policies or controls for the area." It will be impossible for BLM or USFS to meet this requirement in the ROD when there is simply no analyses or discussion to base any "decision to override land use plans, policies or controls for the area."

Also in our May 13, 2015 letter, we noted that we "never received a response to our comments on the DEIS. It is difficult to provide additional input into the ADFEIS without having an understanding on why changes were or were not made according to our previous comments. We cannot evaluate any changes in the ADFEIS in context without being able to compare with our previous comments. We ask BLM/USFS to provide us with the specific responses to our previous comments. We find that the predominance of our comments on the DEIS still apply to

outstanding issues in the ADFEIS.” We never received any response from BLM to this request and we had to follow up through email on June 18, 2015 stating that “we have still not received a response to this formal request. Now that we are in the protest period, we especially need to understand why changes were or were not made. So again, we formally request a copy of BLM responses to our previous comments.” BLM did respond through a letter dated June 22 that summarized the EIS explanation on how comments were addressed and pointed the County to Appendix C. We note that neither the matrix showing comments that were considered substantive, nor Appendix C, have any specific responses to Eureka County’s comments. Instead, the County comments are lumped into general categories that do not address our specific circumstances.

The FEIS spotlights the failure to incorporate our proposals and inconsistencies with our plans, policies, and controls are “explained away.” There are only a few short paragraphs in the EIS with perfunctory statements about inconsistencies with county plans, policies, and procedures and nothing specific to Eureka County. The FEIS states that “[t]he BLM is aware that there are specific...local plans relevant to aspects of public land management that are discrete from, and independent of, federal law. However, the BLM is bound by federal law. As a consequence, there may be inconsistencies that cannot be reconciled. The FLPMA and its implementing regulations require that BLM’s land use plans be consistent with...local plans...only if those plans are consistent with the purposes, policies, and programs of federal laws and regulations applicable to public lands” (p. 6-27). Most egregiously, the FEIS states that “...while State, County and Federal planning processes, under FLPMA, are required to be as integrated and consistent as practical, the Federal agency planning process is not bound by or subject to County plans, planning processes, or planning stipulations. **While the BLM is not obligated to seek consistency**, the agency is required to describe the inconsistencies between the proposed action and the other plans, policies, and/or controls within the EIS...” (emphasis added) (Appendix C, p. C-24). BLM is obligated to **seek** consistency but only when federal law would not be subverted. Yet, the FEIS nowhere identifies any specific inconsistencies with Eureka County’s plans, policies, or controls let alone how any of Eureka County’s plans, policies, or controls are not in accord with federal law. One statement in the EIS notes that “However, the counties’ plans may not be consistent with the BLM’s National GRSB Strategy....” but there is no discussion on how Eureka County’s plans or policies are inconsistent with this Strategy and we argue that our plans, policies, and controls are not inconsistent with the Strategy. Further, the Strategy itself was developed without proper coordination and consistency review. There continues to be no analysis that can conclude or determine that our plans, policies, and proposals will not benefit and conserve sage-grouse in Eureka County. If this analysis exists, BLM has made no effort to describe why or how BLM can defend that position.

Eureka County’s plans, policies, and controls are not inconsistent with federal law. We are certain that if our plans, proposals and policies were incorporated and followed, GSB would thrive and habitat would be improved all while maintaining a strong and vibrant economic base and community structure. BLM and USFS must step back and re-evaluate the process to this point and address the grievous shortcomings to coordinate with us towards the mutual goal of conserving the sagebrush ecosystem and sage-grouse while providing for sustained socioeconomic stability.

C. Inconsistencies with the Nevada Sage-Grouse Conservation Plan.

Eureka County's comments on the Draft EIS noted our general support of the Nevada Sage-Grouse Conservation Plan and asked BLM and USFS to implement the State plan as the alternative for management of GSG in Nevada.

Many if not most of the provisions related to consistency with local plans identified above apply to the Nevada Sage-Grouse Conservation Plan and will not be repeated here. We note that the Nevada Plan has elevated coordination protocols with Nevada counties to ensure consistency between the State Plan and county plans to benefit GSG, and is built on the foundation of local efforts, rather than top-down approaches and have a proven track record of resource conservation balanced with sustainable use.

FLPMA Section 202(c)(9) gives State governments a specific statutory role in the federal land use planning process:

“Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him.”

In enacting this FLPMA provision, Congress recognized the unique expertise of state and local governments in land use planning and the scope of the States' long-established police powers over land use.

In December 2011, former Secretary of the Interior, Ken Salazar, complied with the FLPMA Section 202(c)(9) requirement to coordinate the land use planning process with State governments when he asked the western governors to develop sage-grouse conservation plans. Secretary Salazar's December 2011 request recognized the States' authority to furnish advice during the federal land use planning process pursuant to Section 202(c)(9).

The June 2015 Northeastern California FEIS/Proposed LUPA is wildly inconsistent with the Nevada Sage-Grouse Conservation Plan and thus does not comply with FLPMA 202(c)(9). The utter failure of the Proposed LUPA to comply with the FLPMA 202(c)(9) state consistency mandate stands alone as sufficient reason to reject the FEIS/Proposed LUPA. BLM and USFS must address the inconsistencies identified by the State and its local governments with the Proposed LUPA and provide appropriate coordination to reach consistency.

The Nevada Sage-Grouse Conservation Plan is premised upon and fully consistent with the multiple use and sustained yield purposes of FLPMA and also provides effective and comprehensive GSG conservation measures that include substantial financial mitigation requirements for impacts to GSG habitat that cannot be avoided or minimized. The foundation of the Nevada Sage-Grouse Conservation Plan is the habitat conservation hierarchy of “avoid, minimize, and mitigate,” which implements a multiple use land management objective that strives to balance a variety of land uses including protecting and enhancing GSG habitat. This hierarchy requires project proponents to avoid impacting GSG habitat to the maximum extent possible, to minimize habitat impacts where impacts cannot be avoided, and finally to mitigate those impacts that are both unavoidable and cannot be minimized. Nevada has developed a state-of-the art Conservation Credit System that establishes financial mitigation requirements based on a number of site-specific metrics to determine a valuation for the impacted habitat and

the required mitigation required to offset the impacts by investing in mitigation that will achieve a net habitat gain that is measured using similar metrics.

FLPMA 202(c)(9) requires the Secretary to develop a federal LUPA that is consistent with State and local plans “to the maximum extent” the State and local plans are consistent with Federal law and the purposes of FLPMA. Because the Nevada Sage-Grouse Conservation Plan is consistent with FLPMA multiple use and sustained yield objectives, it fulfills the multiple-use requirements in FLPMA to a much greater extent than the Proposed LUPA. Consequently, the LUPA must be revised to eliminate its inconsistencies with the State Plan in compliance with FLPMA 202(c)(9) and the multiple use and sustained yield FLPMA mandates.

In addition to being far more consistent with FLPMA than the Proposed LUPA, the Nevada Sage-Grouse Conservation Plan is also more consistent with other Federal laws of significant importance to Nevada, including the General Mining Law, than the Proposed LUPA. Moreover, the Nevada Sage-Grouse Conservation Plan provides superior GSG habitat conservation because it can be applied throughout the state on public, private, and state lands. In contrast, the Proposed LUPA cannot be applied to private or state lands, and conflicts with County Master Plans that regulate use on private lands. The Proposed LUPA thus creates the adverse situation in which sage-grouse conservation measures may be different on adjacent lands in Nevada’s checkerboard or elsewhere where the land ownership pattern consists of adjacent sections of public and private lands.

BLM’s regulations at 43 CFR Section 1610.3-2 implement the FLPMA Section 202(c)(9) State Consultation and Consistency Requirement and reiterate that the Secretary must develop federal land use plans that are consistent with those State and local plans that satisfy the purposes of FLPMA and other Federal laws. Pursuant to these regulations, the agencies cannot lawfully ignore or reject the Nevada Sage-Grouse Conservation Plan (or Eureka County plans and policies), which satisfies FLPMA multiple use principles and achieves an appropriate balance between various land uses, including but not limited to agriculture, livestock grazing, mineral exploration and development, energy development, wildlife protection, and habitat conservation. Moreover, the Nevada Sage-Grouse Conservation Plan specifically focuses on reducing the key threats to GSG habitat in Nevada (e.g., wildfires and invasive species infestations). In comparison, the Proposed LUPA does not focus on reducing threats to habitat; it mainly focuses on regulating (by restricting and prohibiting) public land uses in GSG habitat areas.

The Nevada Sage-Grouse Conservation Plan does strikes a reasonable balance and, as discussed above, the State’s Plan provides considerably more balance than the Proposed LUPA, which fails to comply with the multiple use and resource balancing requirements of FLPMA. Consequently, the agencies must give substantial deference to the Nevada Sage-Grouse Conservation Plan to comply with both the statutory mandate in FLPMA and implementing regulations.

D. Other Violations of Federal Law Including But Not Limited to FLPMA, National Forest Management Act (NFMA), and Multiple Use and Sustained Yield Act (MUSYA).

In defining the term “multiple use” FLPMA Section 103(c) directs the Secretary to provide for:

“...the management of the public lands and their various resource values so that they are ***utilized in the combination*** that will best meet the present and future needs of the

American people; making the most judicious use of the land for some or all of these resources...to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, **range**, timber, **minerals**, watershed, wildlife and fish, and natural scenic, scientific and historical values. (43 U.S.C § 1702(c), emphasis added)."

Similarly, the NFMA directs USFS to manage public lands for multiple uses, and USFS is required to use "a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences" (16 U.S.C. § 1604(b)); and the agency must take both environmental and commercial goals into account (16 U.S.C. § 1604(g); 36 C.F.R. § 219.1(a)), while taking into account the Nation's needs for minerals (see 16 U.S.C. § 528). Section 1604(e)(1) establishes multiple use and sustained yield land management directives and requires the Secretary of Agriculture to "provide for multiple use and sustained yield of the products and services obtained therefrom in accordance with the Multiple-Use Sustained-Yield Act of 1960." In defining "multiple use" MUSYA as Section 531 directs the Secretary to ensure that "[t]he management of all the various renewable surface resources of the national forests so that they are **utilized in the combination that will best meet the needs of the American people** ..." (emphasis added). MUSYA also directs USFS to give "due consideration" to resources.

Further, the Taylor Grazing Act provides a regulatory framework to manage grazing sustainably in a way that perpetuates ranching while maintaining rangelands.

None of these acts authorizes subordination of any of these multiple uses in preference of GSG. BLM must prepare a Supplemental EIS and a revised LUPA in order to comply with these various federal laws.

Many of the FLPMA Section 202 land use planning requirements contain explicit provisions to ensure that the Secretary's land use plans achieve an appropriate balance of resource values consistent with FLPMA's multiple use and sustained yield principles.

The following discusses the Section 202(c) multiple use planning directives.

FLPMA Section 202(c) states that: "In the development and revision of land use plans, the Secretary shall" – (1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law." As described in detail in our comments on the DEIS, the Proposed LUPA fails to comply with FLPMA multiple use and sustained yield requirements. Despite the fact that the Purpose and Need and Planning Criteria established for the FEIS note a requirement to comply with FLPMA's multiple use mandate, the Proposed LUPA utterly fails to do so. Moreover, the FEIS does not disclose the lack of compliance with FLPMA or the inconsistency with the Purpose and Need and Planning Criteria.

The Proposed LUPA unlawfully prefers conservation of GSG habitat to the exclusion of other uses including grazing, agriculture and mineral development. FLPMA's land use planning requirements mandate the Secretary consider the relative scarcity of values, weigh long-term benefits, and use and observe principles of multiple use and other applicable laws (such as the Taylor Grazing Act, Public Rangelands Improvement Act, General Mining Law and Mining and Mineral Policy Act) rather than subordinate all other uses of public land and make GSG the dominant use of public

lands. BLM must reconcile inconsistencies in the Proposed LUPA and provide additional public review for substantial changes and prepare a Supplemental FEIS and a Revised Proposed LUPA in order to comply with FLPMA Section 202(c)(1).

FLPMA Section 202(c)(2) continues, stating that BLM “use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences....” As described in detail elsewhere in this Protest Letter and in our comments on the DEIS, the socioeconomic and cumulative analyses in the FEIS are unlawful and inadequate. The FEIS does not adequately analyze and disclose the substantial adverse economic harms that public land users, local economies such as Eureka County’s and the State will experience if the Proposed Plan in the FEIS becomes the Final LUPA. BLM must prepare a Supplemental FEIS and a Revised Proposed LUPA in order to comply with FLPMA Section 202(c)(2).

FLPMA Section 202(c)(6) states BLM shall “consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values.” As described in detail elsewhere in this Protest Letter and in our comments on the DEIS, the FEIS/Proposed LUPA does not give adequate consideration to alternative approaches to GSG conservation. The superficial and perfunctory consideration of the Nevada Sage-Grouse Conservation Plan (as Alternative E in the FEIS) is a glaring example of the failure to comply with this specific FLPMA Section 202 land use planning requirement. As described above, the Nevada Sage-Grouse Conservation Plan is consistent with the multiple use objectives in FLPMA (which the Proposed LUPA is not) and achieves superior GSG habitat conservation than the Proposed LUPA. BLM must give serious consideration to the Nevada Sage-Grouse Conservation Plan as an alternative means to realize FLPMA values as well as provide for GSG habitat conservation in order to comply with FLPMA Section 202(c)(6). BLM must prepare a Supplemental FEIS and a Revised Proposed LUPA in order to comply with FLPMA Section 202(c)(6).

FLPMA Section 202(c)(7) requires the agency to “weigh long-term benefits to the public against short-term benefits....” The FEIS/Proposed LUPA, being GSG myopic, does not evaluate benefits or harms to other land users, to the public, or to Eureka County or the State. Curiously, the document only describes benefits to GSG habitat; it does not discuss the short- or long-term benefits (if any) to the public, or adequately consider cumulative impacts to livestock grazing, recreation, mineral development, exploration and other rights under the various laws identified above. As described in detail elsewhere in this Protest Letter and our comments on the DEIS, the failure to provide an adequate socioeconomic and cumulative impacts analyses does not satisfy NEPA requirements to take a “hard look” at the impacts associated with implementing the Proposed Plan. Socioeconomic and cumulative impact analyses that satisfy the NEPA hard look requirements would readily reveal that instead of providing any short- or long-term benefits, the FEIS/Proposed Plan will result in substantial short- and long-term harm to the public. The Proposed Plan in the FEIS does not comply with FLPMA Section 202(c)(7). BLM must prepare a Supplemental FEIS and a Revised Proposed LUPA in order to comply with FLPMA Section 202(c)(7).

E. Protection and Preservation of Valid Existing Rights Not Assured

While the LUPA claims there will be a recognition of valid existing rights, the management restrictions in the LUPA for GSG could wholly or partially deny rightful usage of water rights, rights-of-way, and mineral rights. The LUPA fails to outline procedures to address valid existing

rights that have not been adjudicated in federal court but are nonetheless valid existing rights (e.g., RS 2477 roads).

The disturbance cap concept proposed in the LUPA could result in the denial of projects and impairment of valid existing rights simply because other disturbances have decreased available cap space, ultimately denying valid existing mineral rights or water resource developments required to keep water rights whole. The BLM and USFS has no authority to deny valid existing rights; consequently, decisions made by entities with valid existing rights would affect what the BLM and USFS can authorize for other potential users of land it administers in the management zone. In other words, by using the disturbance cap concept, valid existing rights for one user could be recognized at the expense of another. This would also be a domino effect on all users with mining claims, grazing allotments, recreational use, rights-of-way, etc. The agencies have not provided sufficient scientific data to support the disturbance cap concept or its effectiveness, and the calculation methodology is fraught with challenges that will prevent consistent and clear implementation. Further, the agencies have not adequately explained several crucial details about the application of the concept in protecting valid existing rights.

The LUPA fails to recognize grazing permits among the valid existing rights. These permits have discrete economic value and have been purchased as part of an economic ranch unit, which is highly dependent upon the permitted AUMs to remain viable.

The LUPA leaves in limbo water rights, water conveyances (RS 2339), and rights-of-way (RS 2477) as recognized valid existing rights. RS 2477 and RS 2339 rights are overlooked and not even acknowledged. The LUPA has actions to remove range improvements in certain circumstances. Many of these improvements are part of the bundle of valid existing rights, including water storage facilities and conveyances. The LUPA further seeks to impose travel restrictions but fails to acknowledge how this will be completed over RS 2477 roads in which BLM or USFS have no authority.

F. LUPA Reliance on NTT and COT Reports Are Not Best Available Science

We previously commented extensively on the NTT and COT reports. We still contend that by relying on these two reports, the LUPA is not using the “best available science” as required by NEPA (and CEQ regulations) and are inconsistent with the Data Quality Act and BLM’s internal guidelines, “Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Bureau of Land Management, February 9, 2012. Further, the two reports also fail to adhere to the U.S. Office of Management and Budget (OMB) proper peer review process instructional memorandum (OMB December 16, 2004, M-05-03; *Final Information Quality Bulletin for Peer Review*).

The use of the NTT report is extremely problematic, as it contains overly burdensome recommendations that are not based on local conditions in Nevada. The NTT report asserts that oil and natural gas and grazing “impacts are universally negative and typically severe,” but provides no scientific data to support that assertion. The report selectively presents “scientific” information to support overly burdensome conservation measures that are not based on local conditions. The LUPA relies too heavily upon a select few studies utilized by the NTT report that cannot be universally applied. An independent review of the report shows that it contains many methodological and technical errors, cherry-picks scientific information to justify the report’s recommendations, and was developed by a small group of specialist advocates with narrow focus.

The NTT report does not adequately represent a comprehensive and complete review of the best scientific data available, did not go through adequate peer review, and is inappropriate for primary use. (see Megan Maxwell, *BLM's NTT Report: Is It the Best Available Science or a Tool to Support a Pre-determined Outcome?*, <http://www.nwma.org/pdf/NWMA-NTTReview-Final-revised.pdf>; Rob Roy Ramey, *Data Quality Issues in A Report on National Greater Sage-Grouse Conservation Measures, Produced by the Sage-Grouse National Technical Team (NTT)*, September 19, 2013).

Moving to the COT Report; while the COT Report is intended to serve as a guidance document to federal agencies, states, and others, there are several issues that need to be resolved in order for the COT Report to be an adequate non-biased guide based on the best science. The COT Report contains selective, narrow review of scientific literature and unpublished reports on GSG, presents outdated information, overstates or misrepresents some threats to GSG while downplaying others, and relies on a faulty threats analysis. (see Rob Roy Ramey, *Data Quality Issues in the Greater Sage-Grouse (Centrocercus urophasianus) Conservation Objectives: Final Report*, October 16, 2013).

The LUPA uses the NTT and COT to develop “customized” goals, objectives, and actions from the reports “that strives for balance among competing interests.” Rather than using the reports to strive for balance among competing interests, the LUPA must recognize the existing statutory and regulatory mandates of multiple-use and sustained yield rather than manipulating and cherry-picking documents into GSG regulation.

The concerns about the quality of the NTT and COT Reports and their underlying studies are currently being challenged by a coalition of western land users and counties, including Eureka County, for lack of consistency with the DQA. As of the date of this Protest Letter there has been no resolution to the NTT and COT Report DQA Challenges. Eureka County incorporates by reference the findings presented in these Challenges. The Challenges can be found at <http://www.westernenergyalliance.org/knowledge-center/wildlife/greater-sage-grouse/DQA-Challenge>. Note that the comments Eureka County provided on the DEIS including the papers by Maxwell and Ramey highlighted the same issues as these Challenges. However, the Challenges provide further refinement of the unresolved issues raised earlier.

The NTT and COT Reports are severely flawed, and should be discarded and replaced with a more complete review of the body of literature on GSG. These flaws we documented previously in the process include but are not limited to:

NTT Report:

- Was developed with unsound research methods including partial and biased presentation of information;
- Ignores studies that do not support its theses;
- Jumps to conclusions that are not scientifically supported but are pure conjecture; and
- Disseminates information that is neither objective nor reliable and that lacks scientific integrity.

COT Report:

- Misused the scientific method in order to reverse-engineer the report's recommendations;

- Includes population numbers, habitat, range, threats and viability that are all acknowledged uncertainties;
- Relies upon studies with significantly flawed assumptions, questionable analytic models and questionable statistical procedures;
- Is biased by the use of policy-driven assumptions, inferences, and uncertainties that are not supported by scientific data; and
- The degree to which threats are present is based on highly questionable sources and databases.

G. Habitat Maps Are Inaccurate And Fail to Include Best Available Information

We have major concerns about the adequacy and accuracy of the maps used to identify and designate GSG habitat, namely PHMA, GHMA, and SFA. While we appreciate the pairing of the LUPA habitat maps with the Nevada habitat map, even a cursory review of the maps with some local, on-the-ground knowledge, highlights the huge areas of discrepancy between actual and mapped GSG habitat.

As a specific example, there is a large area in southern Eureka County designated as PHMA and would be subsequently held to the disturbance caps. This area includes the Town of Eureka, US Highway 50, State Route 278, the Eureka County landfill, the Falcon-to-Gondor major distribution power line, multiple ancillary power lines, multiple subdivisions with homes, paved roads and gravel roads, farms with alfalfa fields and irrigation systems, and hay barns, among other infrastructure. It is beyond puzzling how this area can be not only GSG habitat, but “core” GSG habitat. This example provides a perfect example of how the lek buffers are arbitrary and not applicable in many circumstances as we note elsewhere in this Protest letter. GSG do not use the LUPA defined space around each lek uniformly, and some spaces in this buffer are used not at all. Just in Eureka County, we can point out many discrepancies between what is mapped as habitat versus what is on the ground that cannot be refuted as being non-GSG habitat.

We are aware the habitat maps being developed in concert with the Nevada Sagebrush Ecosystem Council and USGS (Dr. Pete Coates) have yet to have the “infrastructure” layers added to the modeling. Once this layer is added to the habitat modeling, substantial changes will occur in many places, such as around the Town of Eureka as we noted above. The LUPA acknowledges there are many areas with simply no good data regarding GSG use or realities of habitat in the area. No data, or lacking data, should not be used in the context of “best available.” Of the sources of data that supposedly make up the habitat map, huge acreages of “habitat” are drawn with no documented active leks, no telemetry locations, no infrastructure layers, and no Ecological Site Description (ESD) or current state of the ESD with many of these areas having ecological thresholds already crossed, in which the GSG habitat objectives simply do not and can not apply. The LUPA identified process to revise and update GSG habitat mapping is too vague, appears overly cumbersome and bureaucratic, and pushes off what should be done now into the future at the detriment of our economy and industries that need assurance at the local, project level. Thus, the likelihood of changes based in reality being implemented in a streamlined manner or at all, especially if changes are substantial, is minimal. The language needs to be more specific, streamlining the process and outlining the exact steps to be taken for project-level planning use. A Supplemental EIS and Revised Proposed LUPA must be developed to address these issues with the habitat delineations.

H. Buffers And Distance Restrictions From Leks Are Flawed, Arbitrary, And Not Founded In Science

The LUPA identifies management actions and arbitrary setbacks and buffer areas that are not based on sound science. BLM and USFS have not provided sound science with technical references supporting these criteria. Site specific factors need to be taken into consideration such as line-of-site between the lek and the project, topographical relief, quality of site-specific habitat, current bird activity, probability of GSG nesting within the entire radius area, duration of the project/use and project/use intensity. As an example, as we previously highlighted, the “core” area centered on a lek buffer near the Town of Eureka arbitrarily “pulls” in habitat that is not, in reality, GSG habitat at all. This is one of the issues and flaws identified in the above referenced reports regarding the NTT and COT reports that we shared with our comments on the DEIS to no effect.

Importantly, the reports provide no original data or quantitative analyses, fail to provide a comprehensive and unbiased review of all of the available scientific literature, and perpetuate outdated information and beliefs. In addition, the underlying studies cited reports which did not measure buffers *per se*; rather they documented use by male GSG at five miles, or distance from leks to nesting habitat at 3.1 miles. However, there is no evidence that the range of buffer distances compiled by Manier et al. 2014 as referenced by the LUPA will result in quantifiable population level benefits to GSG in terms of increased survivorship or reproduction. As with all buffer distances, they are based on the frequently repeated and erroneous dogma that avoidance or decline in male lek attendance equates to population decline. Studies often cited in support of this assumption have predicted population declines that have repeatedly failed to come true. We maintain the presumed necessity for buffers is solely based upon the subjective opinions expressed in the NTT Report and COT report and correlative studies (including the Buffer Report) regarding local lek counts, none of which identify any causal mechanism for localized effects, which are improperly characterized as negative and permanent population effects. These buffers are driven by policy objectives rather than defensible biological criteria and do nothing to mitigate specific cause and effect threats to GSG.

To these ends, the use of buffers in the LUPA is a result of citing the named reports or their underlying studies and is not the “Best Available Science.” BLM and USFS must not impose the buffers contained in any of these documents because these buffers are based upon studies that used flawed methodologies and analyses, among other issues.

I. LUPA Contains No Assurances Regarding Proper Wild Horse Management

The LUPA fails to acknowledge that wild horse and burro populations (WH&B) remain on the public lands on a year round basis and are not managed for the benefit of the rangeland resource that supports their very existence. Only their numbers are attempted to be controlled, but with minimal success. There typically are no rest periods for the range in HAs or HMAs, riparian areas or wetland meadows. Numbers control is all that the BLM have available to them today to effectively manage horses, and even that is being heavily impacted through the budget process. In addition, any attempts to restore rangelands within HMAs would be most challenging due to the restrictions that would be applied when attempting to protect a new seeding or defer use from an area for a period of time to allow for natural regeneration. Fencing and other structural improvements would also become a real challenge. Given the actual performance record of BLM in Nevada and the exceedingly over-abundance and out-of-control numbers, how will the actual corrections be brought about that the DEIS proposes? Beyond excuses for not having enough resources, what confidence can there be that BLM will not continue to practice the management

process of "do as we say, not as we do"? Instead, the LUPA "targets" the uses of public land that are easy-picking without first addressing the mismanagement of the uses that are under the primary jurisdiction of the BLM itself. The Herd Management Areas in Eureka County are currently an average of 250% of AML while statewide the population numbers are 150% of AML. The BLM's failure to properly manage WH&B has created a situation, in many cases, where the burden is now on the other users of the land, primarily ranchers, to pay the price for BLM's shortfall. The LUPA fails to be frank and propose real, actionable solutions to the WH&B issue.

J. Faulty Socioeconomic Impacts Analysis

Users of federally managed lands generate millions of dollars of economic activity in Eureka County. The management restrictions proposed in the LUPA will undeniably have a direct negative impact on these users and the future viability of mining, energy development, and agricultural production, including ranching. The socioeconomic analysis in the EIS is biased in that it overestimates and promotes speculative non-market valuations (e.g., disperse recreations, sightseeing), while underestimating the very real economic impacts from actual productive activities that directly create jobs and wealth.

The EIS discussed the socioeconomic impacts at too broad of a scale to be of any worth to local economies and interests. During scoping and in our comments on the preliminary and DEIS, we continually noted this shortfall, and even provided very specific Eureka County data and analysis that was not included.

The analysis must be revised and a supplemental EIS provided to adequately and non-biasedly weigh the socioeconomic impacts on the proposed LUPA actions.

K. LUPA and EIS Fail to Adequately Address Predation and Predator Control

It is extremely disingenuous for BLM and USFS to fail to analyze hunting and predation influences and management options. It is argued that it is outside of the jurisdiction and authority of BLM/USFS; however, other issues, such as climate change, socioeconomics, travel management on non-federal roads, and water resources and water rights, are analyzed while also being out of the control and jurisdiction of BLM/USFS. It is impossible to holistically frame management without analyzing the cumulative effects and recognizing their role. Also, the agencies with jurisdiction by law and special expertise on the issue of hunting and predation are both cooperating agencies (e.g., FWS, NDOW, counties).

The various statutory and regulatory mandates require inclusion of predation and predator control into the LUPA:

- BLM NEPA Handbook speaks to "expanding the scope of a NEPA analysis to consider connected and cumulative actions of all cooperating agencies into a single document to improve overall interagency coordination" (p. 112).
- 40 CFR 1506.2(b) speaks to streamlining and eliminating duplication while satisfying NEPA. CEQ guidance are clear that even items not under full or even partial control of BLM/USFS must still be analyzed when connected and when impacting a major component.
- As highlighted in the BLM NEPA Handbook (H-1790-1) and mandated by law, the EIS must "rigorously explore and objectively evaluate all reasonable alternatives" (40 CFR 1502.14(a) and NEPA Sec. 102(2)(C)(iii)) and "study, develop, and describe appropriate

alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources” (NEPA Sec. 102(2)(E)). Of note is that “[i]n determining the alternatives to be considered, the emphasis is on what is ‘reasonable’ rather than on whether the proponent or applicant likes or is itself capable of implementing an alternative. ‘Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable...’ (Question 2a, CEQ, Forty Most Asked Questions Concerning CEQ’s NEPA Regulations, March 23, 1981)’” (BLM NEPA Handbook p. 50). Further, CEQ provides guidance on framing “relevant, reasonable mitigation measures” even if they are outside the jurisdiction of the agency. (Question 19ba, CEQ, Forty Most Asked Questions Concerning CEQ’s NEPA Regulations, March 23, 1981). Further, “while some mitigation strategies are within the BLM’s control...most mitigation strategies require action by other government entities—typically cities, counties, and State agencies....the relevant, reasonable mitigation measure are likely to include mitigation measure that would be carried out by other Federal, State or local regulatory agencies or tribes. Identifying mitigation outside of BLM jurisdiction serves to alert the other agencies that can implement the mitigation. (BLM NEPA Handbook p. 62). It is very clear in CEQ regulations (specifically 1502.14(f) and 1502.16(h)) speak to mitigation, irrespective of jurisdiction.

- CEQ FAQ 19b is very clear in presenting the CEQ guidance related to this exact issue (in which guidance has been in place since 1981): 19b. “How should an EIS treat the subject of available mitigation measures that are (1) outside the jurisdiction of the lead or cooperating agencies, or (2) unlikely to be adopted or enforced by the responsible agency? A. All relevant, reasonable mitigation measures that could improve the project are to be identified, even if they are outside the jurisdiction of the lead agency or the cooperating agencies, and thus would not be committed as part of the RODs of these agencies. Sections 1502.16(h), 1505.2(c). This will serve to [46 FR 18032] alert agencies or officials who can implement these extra measures, and will encourage them to do so. Because the EIS is the most comprehensive environmental document, it is an ideal vehicle in which to lay out not only the full range of environmental impacts but also the full spectrum of appropriate mitigation. However, to ensure that environmental effects of a proposed action are fairly assessed, the probability of the mitigation measures being implemented must also be discussed. Thus the EIS and the Record of Decision should indicate the likelihood that such measures will be adopted or enforced by the responsible agencies. Sections 1502.16(h), 1505.2. If there is a history of nonenforcement or opposition to such measures, the EIS and Record of Decision should acknowledge such opposition or nonenforcement. If the necessary mitigation measures will not be ready for a long period of time, this fact, of course, should also be recognized.”

Just because hunting and predation are outside of BLM and USFS jurisdiction does not mean that the analysis and subsequently identified mitigation are unnecessary or not required. How can BLM/USFS address all connected GSG impacts and actions without analyzing predators and hunting effects, and identifying proper mitigation? The full picture will not be answered and the analysis falls short in disclosing what can be done, holistically, to address GSG conservation.

The LUPA must be revised with a supplemental EIS to include adequate analysis on predators and hunting in coordination with the agencies that will formulate management based on the analysis, primarily FWS, NDOW, NDOA, and counties, in order to truly meet the obligations of NEPA to see the “whole” and inform on all relevant issues so that the conservation of GSG is truly met. It can be demonstrably argued that predation, previously identified as a USFWS-identified threat and

cited in the EIS, is a significant issue and that analysis of this issue is necessary to make a reasoned choice.

L. Undue and Restrictive Livestock Grazing Actions Not Based On Best Available Science

The LUPA fails to focus on a full range of possible approaches to grazing with the end results of rangeland health, socioeconomic stability, and GSG population improvements tied strongly together and not mutually exclusive. The LUPA focuses on restriction first, rather than exhausting all other active management options first.

The DEIS analyses regarding grazing are unfounded and misplaced by perpetuating the institutionalized assumption that livestock grazing is a threat to GSG conservation in management areas. Instead, such analyses should start from the proven premise that managed livestock grazing is a benefit for GSG, and the analyses should consider how to further incorporate managed livestock grazing into the protection strategy.

While the EIS includes a large volume of wildlife science appropriately referenced, much of the current and pertinent literature regarding livestock grazing is painfully missing. We acknowledge that the EIS now does contain references to some of the literature we provided during the DEIS. However, the analyses still focuses on the “worst” examples from the literature and fails to incorporate the best and most recent data and studies related to grazing being very conducive to GSG conservation. Specifically, the document almost completely lacks references on livestock grazing management as related to the functionality and sustainability of sagebrush/perennial herbaceous plant communities and meadows within the sagebrush ecosystem. We will not repeat each of the individual studies we provided during the DEIS but include them again by reference and our enclosed letter on the DEIS.

The language, “No grazing from May 15 to August 30 in brood rearing habitat” precludes important tools for improving brood rearing habitat. Grazing repeatedly in September is likely to damage the physical functioning of riparian areas, especially in large pastures with limited riparian waters/areas. Grazing before May 15 may cause riparian areas to not be grazed because upland forage is preferred then (Swanson et al (accepted with revisions 2014), and some late spring to early summer grazing benefits GSG by managing forb phenology, nutritional value to chicks, and availability (Evans 1986). The problem with grazing in riparian areas and wet meadows is not that GSG are directly impacted by cattle use at the time that GSG use these areas. The problem is that poor grazing management causes riparian areas to lose functionality and other resource values. To address this problem there are many tools. As described in Swanson et al. (accepted with revision 2014), the need is for more generally successful tools to be used than generally unsuccessful tools. On balance there must be more recovery than damage over the length of the grazing rotation cycle. This management must keep the plants healthy so they can have strong roots and go through succession toward more riparian stabilizers or maintain an adequate amount of riparian stabilizers.

Precluding grazing from May 15 to September 1 is also very clearly overkill as demonstrated by the diversity of successful methods applied in Nevada, and elsewhere across the nation. Managing this problem with only utilization standards is not based on science (because it is often unneeded), distracting (because it emphasizes a weaker tool while other and better approaches lose focus from lack of assurance), and ineffective (because it has proven to not be effective in

practice where agencies cannot afford the personnel to monitor adequately and then lose budgets because the fights are unproductive).

The LUPA Action to remove livestock watering infrastructure in some circumstances removes tools that are essential for watering livestock in a manner that supports the more powerful tools in grazing management – season of use, duration of use, and rotation of use. Furthermore, it would cause livestock and wildlife, like elk, to concentrate use in riparian areas.

We strongly disagree that habitat is being lost due to grazing as indicated in the list of threats. Allotments have been under prescribed grazing management for decades and experience frequent monitoring, including rangeland health assessments, which result in any necessary modifications to grazing prior to reissuance of grazing permits. In addition, extensive reduction of AUMs have occurred west wide, particularly in Nevada, over the past 4 decades, resulting in serious economic challenges for the livestock industry to remain viable. Imposing additional regulations along with AUM adjustments will heavily impact grazing as an authorized use, further pressuring an already economically stressed industry, including that industry in Eureka County.

Additionally, the Nevada specific studies and literature were given short shrift, and it appears that the rangeland professionals in Nevada through the Nevada System of Higher Education were not accessed or used in developing the Nevada specific grazing management actions.

M. EIS Inaccurately Downplays Impacts to Private Land.

The document states, “Lands addressed in the LUPAs will be BLM- and Forest Service-administered land in GRS habitat, including surface and split-estate lands with BLM subsurface mineral rights. Any decisions in the LUPAs will apply only to BLM- and Forest Service-administered lands.” This is not accurate. The LUPA will have major impacts and bearing upon private lands. BLM and Forest Service routinely extend federal land management policies to private lands through the connected action concept. Further, the disturbance caps will take into account activities on private lands, which has the possibility of creating additional regulatory requirement upon private land through State or local governments that want to preserve disturbance cap space in other locations. Further, the ability for private land owners to use their lands in the future according to the landowners’ needs or desires will be severely limited, especially due to the fact that nearly all of the private lands in Eureka County are adjacent to sagebrush areas that will have the LUPA criteria attached.

N. Too Much Unnecessary and Unjustified Focus on Native Plant Communities

The EIS and LUPA continue to focus on “native plant communities.” Research in Nevada has shown that long-lived perennial species are important regardless of native status (Clements among others). The LUPA fails to promote ecosystem function by focusing on only “native species.” Native plant communities are often an indicator of function but lack of native plants in many areas with crested wheat and forage kochia (among others) are healthy, functioning, and conducive to resilience and GSG conservation. Focusing on “native” limits the ability of land managers to adaptively manage or have step-wise rangeland restoration. Further, much of the area mapped as occupied PHMA and GHMA are old crested wheatgrass seedings which highlights how using these species is conducive to preserving the longevity of sagebrush stands.

It is important to use native seeds where appropriate and conducive to success. However, it is essential that use of non-native species can be used when they support habitat objective or specific needs of certain areas (i.e. highly disturbed/fire-damaged habitats) that have a low probability of rehabilitation under sole use of native species. The use of non-native species such as forage kochia and crested wheatgrass must be included for use, where applicable, as an interim community stage that can stabilize soils, reduce cheatgrass dominance, and prevent recurring wildfires.

O. LUPA Not Fully Conducive to Proper Adaptive Management

We agree with the concept of adaptive management and the commitment to monitoring the outcomes. However, the LUPA as outlined undermines true adaptive management by one-size-fits-all proposals and objectives.

The adaptive management sections are unclear as to how new field data will be utilized, and how often it will need updated. For example, multiple field studies that show no winter use of “winter habitat” over multiple years should be sufficient to remove the designation as winter habitat and any seasonal restriction. The habitats as currently mapped by state and federal agencies are best guesses in most instances and field data (habitat measurements and bird observations) are not available for many areas. The metrics that trigger the implementation of seasonal restrictions, RDFs, etc. should be periodically revisited to ensure the condition actually exists.

We strongly request that USDA ARS Great Basin Rangeland Research Unit, UC Davis and UNR Range Science Department, CCA, NVCA, NVMA, Conservation Districts, and local governments all be represented on the adaptive management working group.

P. GSG Objectives in the LUPA Are Vague and Subjective; Blanket Proposed Habitat Objectives Too Broad Based and Undermine Local Ecological Conditions and Potential.

Objectives in the LUPA are simplified “blanket” criteria, oftentimes developed in areas outside of the Great Basin and with minimal scientific literature. The objectives are not guided by site specific ESDs and the associated State and Transition Models (or Disturbance Response Groups) developed for the appropriate Major Land Resource Area (MLRA).

There is nothing in the LUPA that lends credence to or calls for inputs from local sources, including ranchers with decades or generations of experience and knowledge with respect to GSG and their local habitat, locations of leks, observations of predation, climatic events (i.e. wildfires), and the impacts, including vegetation changes. This leaves a huge gap in the search for sound, credible information that can assist in effective planning as the process advances. Development of resource objectives must be site-specific and involve the direct inputs of the permittee, and be done through the smallest scale possible such as Allotment Management Plans.

We strongly assert the Habitat Objectives in Table 2-2 are too rigid, not based on large variabilities that exist on the ground according to ESD and associated State and Transition Models (STM), and are not founded in the breadth of available rangeland and GSG science. The goals/objectives/management actions in the LUPA intended to maintain or enhance the GSG habitat objective in Table 2-2 are not clear, are too subjective, and are not founded in current rangeland science.

The goals/objective/management actions are separated in the LUPA, but are often not representative of their definition (i.e., objectives are often actually goals). It appears that BLM did not follow the Department of Interior and Nevada specific guidance on writing resource objectives (see Williams et al. 2009, Adaptive Management: The U.S. Department of the Interior Technical Guide; Adamcik et al. 2004, Writing Refuge Management Goals and Objectives: A Handbook. U.S. Fish and Wildlife Service; and Swanson et al. 2006. Nevada Rangeland Monitoring Handbook Second Edition.) The common thread of these references describes differentiating between vision, goals, and objectives and then setting objectives that fit the mnemonic SMART—Specific, Measurable, Achievable, Realistic/Related/Relevant, and Time-fixed.

S – Specific – They describe what will be accomplished, focusing on limiting factors, and identifying the range of acceptable change from the present to the proposed condition.

M – Measurable – The change between present and proposed conditions must be quantifiable and measurable.

A – Achievable – Are the objectives set achievable in the current setting? Consider environmental constraints, societal expectations, economic parameters, legal requirements, and technological limitations.

R – Realistic/Related/Relevant – Set objectives that can be realistically achieved given the natural and management context of the situation. They are related in all instances to the land use plan goals and relevant to current management practices. Thus, they must be worthy of the cost of the management needed to achieve them and the monitoring needed to track them.

T – Time-fixed – They must be trackable over time and must include a specific and definite timeframe and location for achievement, monitoring, and evaluation.

Very few of the objectives meet all of the SMART criteria. As an example, consider Objective LG 1 under Livestock Grazing (p. 2-38). This objective states, “Manage permitted livestock grazing to maintain and/or enhance PHMAs and GHMAs to meet or make progress towards meeting all GRSG life-cycle requirements and habitat objectives (Table 2-2), based on site potential.” First, this objective refers to other objectives in Table 2-2 that do not meet the SMART criteria and have no basis in the state of any ecological site. The objective is not specific (S) because there is large variability in vegetation composition and structure even at ecological site potential for any given ESD. The State and Transition Model (STM) for any given ESD defines a range of vegetation characteristics in any given state. Also, “site potential” is not defined in the context of ESD and/or STM. Is the site potential synonymous with “reference state” of the ecological site? If so, what if the current state of any given site has crossed a threshold into a degraded stable state in which there is no current restoration pathway known? We argue that the state of an ESD in some circumstances is the “site potential” even if not conducive to or acceptable GSG habitat. Without being more specific, objectives such as this open a door of subjective interpretation, contention, and more legal wrangling. The objective is partially measurable (M), but not completely. It refers to other objectives in Table 2-2 that are not measurable. Even though monitoring can take place, what is the quantifiable metric to determine if it is consistent with maintaining “all GRSG life-cycle requirements and habitat objectives?” It is the determination of what is “required” to be met that is the imperative language needed in this example objective.

Further, the achievable (A) criterion needs to be better fleshed out in the objective. As already discussed above, “site potential” needs to be defined in the context of the current state of any given ESD. Simply put, some areas may have crossed a threshold into a state that is the “site potential” given current understanding and technology. Some areas may be at “site potential” given the current ecological state but not in a state that provides every seasonal GSG habitat

need. There must be language clarifying this issue in order for all objectives to be achievable in all situations and then a follow up objective when these circumstances apply.

The example grazing objective is not entirely realistic/related/relevant (R) for many of the reasons we have already discussed related to site potential and management constraints. This must be clarified. The objective is definitely not time-fixed (T). There is nothing to determine the timeframes for monitoring this objective, nor the timeframes expected in meeting this objective. If an adaptive management approach is to be used, the temporal component is imperative. All future management adjustments must have a set time frame in which they are triggered if the objective is not or cannot be met.

Most objectives in the LUPA may meet some of the SMART criteria, but as written, are actually goals, defined in the references as a “broad statement of desired outcomes, usually not quantifiable” and “apply to the entire plan and are the same for all alternatives.” For instance, the referenced Table 2-2 states there is an objective of meeting all Rangeland Health Standards (RHS). This is not an objective, but a goal. And the RHS are in many cases not true objectives, either. The objectives would be intermediary steps to make significant progress towards meeting standards or maintenance objectives to keep meeting standards. There should be one overarching goal across all alternatives and the alternatives flesh out specific and SMART objectives. This example we have discussed above is a common theme throughout all alternatives and associated tables and must be addressed. If not, the amount of subjectivity on what any objective means is left up to agency discretion and individual or user translation, which may not be compatible. This will result in continued strife in managing GSG habitat and will result in much more time in the courtroom. Defining SMART objectives will minimize personal interpretation and result in all parties being on the same page moving forward, even with conflicting interests.

As one more example, Objective VEG 3 (p. 2-27) states “Manage PHMAs and GHMAs for vegetation composition and structure, consistent with ecological site potential and to achieve GRS habitat objectives.” We commented on this objective in the DEIS and stated that it should be changed in every instance to read “...relative to Ecological Site Description and site’s potential given the current state of the ecological site and in consideration of the State and Transition Model for the site...” This imperative change was not included. Further, we also commented that a new objective needs to be included that calls for development and application of STMs for all ESDs within the planning area. This too was disregarded. This is imperative in order to adequately determine progress towards meeting objectives. We must know what any given site’s potential really is before we can set site specific resource objectives. Site potential is not the same as reference state of an ESD. There are different site potentials dependent on the current state of an ecological site.

Q. Very Few, if Any, Changes Occurred to the Goals, Objectives, And Actions Based On Eureka County’s Input.

Eureka County provided extensive and substantive comments on each Goal, Objective, and Action in the DEIS. It appears that only one or two received any changes according to our proposals. Nearly all of our proposals for change were balanced, based on common sense and science, and founded on our intent to provide clarity so that all stakeholders were fully informed about the specific and precise measures that would be implemented under the LUPA. Instead, the LUPA still contains vague and open ended goals, objectives, and actions that leaves us with more questions

than answers on how GSG habitat will be managed moving forward. We will not repeat all of these comments but direct BLM and USFS to our comments on the DEIS to see how the large majority of them were not addressed or incorporated.

R. LUPA Fails to Recognize Managed Livestock Grazing As Most Effective Tool.

We oppose and protest any efforts of the LUPA to implement unjustified and arbitrary grazing restrictions, including “hot season” grazing restrictions, on any grazing allotments within or adjacent to Eureka County.

The LUPA fails to recognize that managed livestock grazing represents an important and cost-effective tool to achieve desired sage-grouse habitat conditions and represents a significant step forward compared to restrictive grazing contained in the LUPA. AMPs should be a priority for all allotments and, where possible, complemented by conservation plans on private lands to outline the existing needs, proposed actions and desired future conditions, including the appropriate monitoring to assure that resource objectives are attained over time.

The proposal to reducing or eliminate hot season grazing on riparian areas is unjustified. Hot season grazing, when under a planned grazing system that allows for periodic growing season rest and recovery periods for the riparian areas, is not detrimental. Every effort should be made to allow for flexible and adaptive processes in developing and implementing grazing on riparian and meadow complexes.

It is not recognized that treatments that benefit livestock will also benefit GSG. This has been demonstrated again and again through fencing meadows for specific grazing treatments, fencing springs, specialized seedings, brush manipulation and other practices help to provide ideal sage-grouse habitat and also benefit livestock. Crested wheatgrass and other specialized species seedings for instance can slow or stop wildfire, keep livestock off native range during critical avoidance periods by providing alternative forage, and other benefits.

The LUPA language about retirement of grazing as an option should NEVER be a consideration, but rather livestock grazing should be utilized as an important and beneficial component of herbivory that functions in a natural manner to harvest a plant resource that occurs naturally on a renewable basis each year to achieve a desired result. In addition, absent grazing or mechanical harvest, the remaining means of harvesting annually produced biomass is through wildfire. We believe that prescribed grazing is much preferred to unplanned destructive wildfire and can benefit the resource and GSG. Furthermore it is our position that the retirement of livestock grazing within a Grazing District is not in compliance with the Taylor Grazing Act. Our long term stable economic base relies on keeping these grazing units open for use. Retirement of grazing permits is in conflict with Eureka County plans and policies.

Under no circumstances should any allotments be relinquished or AUMs retired. Our opposition includes creation of forage banks. The Taylor Grazing Act (TGA) protects grazing rights on BLM administered public land allotments for continued grazing to support ranching and production of food in this country. If an operator wants to voluntarily sell their grazing permit then options should provide a mechanism to market the permit to willing buyers in the ranching industry. Whenever an allotment is relinquished and AUMs disappear, ranching and local economies are injured in the region. In addition, water rights present and range improvements deteriorate due to lack of maintenance by agencies. Plant decadence begins to occur if not harvested and some

wildlife species are known to eventually abandon ungrazed areas for the more lush feed and increased plant vigor associated with managed livestock grazing. Buildup of excess biomass residue can present a severe wildfire hazard that, when ignited, presents a serious risk to GSG and the surrounding allotments that are grazed and managed.

The LUPA fails to ensure that grazing adjustments that result in any AUM reductions should be an option of last resort, and not applied indiscriminately across allotments. The LUPA in coordination with ranchers must ensure that management decisions are based upon the best rangeland science, that flexibility is built into grazing permits to allow for adaptive management as issues and concerns arise, and that that quality and quantity of data collected can support all decisions made. Before imposing grazing restrictions or seeking changes in livestock stocking rates or seasons of permitted use, federal agencies in coordination with grazing permittees must identify and implement all economically and technically feasible livestock distribution, forage production enhancement, weed control programs, prescribed grazing systems, off-site water development by the water rights holder, shrub and pinyon/juniper control, livestock salting/supplementing plans, and establishment of riparian pastures and herding. Federal agencies in coordination with grazing permittees must assure that all grazing management actions and strategies fully consider impact on property rights of inholders and adjacent private land owners and consider the potential impacts of such actions on grazing animal health and productivity.

S. LUPA Fails to Address Major Threats to GSG While Saddling Industries with Restrictions.

We agree with the EIS where it defines the top major threats to GSG as being wildfire and invasive species (namely cheatgrass). However, the LUPA focuses primarily on other uses of federally administered lands that do not contribute measurably to the top threats. This is unjustified and fails to put the burden where it is due – the land management agencies themselves.

Our strongest contention remains that any GRSG conservation problem must have economic solutions in order to work and be based solely on adaptive management. A more effective route would be real, actual planning and conservation actions taking place on the basis of local collaboration for economic benefit and specific needs as opposed to top-down, one-size-fits-all planning that the DEIS Alternatives are taking.

We further contend BLM and USFS have sufficient regulatory control mechanisms to address healthy rangeland conditions and GRSG conservation, and this should be fleshed out in an additional alternative.

Conclusion

As discussed above, this entire planning process and the resulting LUPA and associated FEIS are fraught with substantial procedural, legal and scientific flaws which can only be corrected in a Revised LUPA and Supplemental EIS, which the public must be allowed to review and comment upon. BLM/USFS must uphold Eureka County's protest of the LUPA because it does not comply with applicable laws, regulations, policies and planning procedures.

Eureka County does support conservation of Greater Sage-Grouse and the sagebrush ecosystem. We also value positive, working relationships with BLM/USFS and other agencies. The EIS process to this point has not worked. It has not built the necessary bridges or positive partnerships to accomplish sustainability of the rangelands and our local economies and livelihoods. A large bulk of the provisions

being proposed in the LUPA for management of GSG will not work, will not result in benefit to the bird, the resource, or the socioeconomics of Nevada. All the EIS and LUPA will accomplish if pursued on the current track, will be deferment to the courts where we may all lose close-to-home and common sense control of the management. Please take the time now to work with Nevada communities to do what is right and keep the control as close to the people affected as possible by finding maximum consistency with the State of Nevada and local government plans, policies, and controls.

Respectfully,

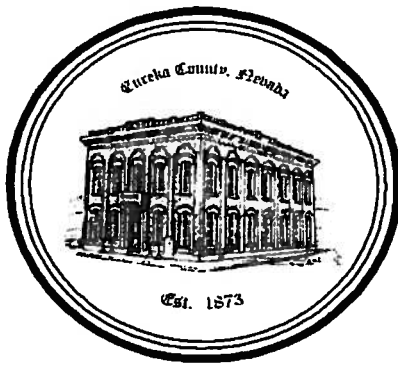
A handwritten signature in blue ink, appearing to read "J.J. Goicoechea", is written over a light blue rectangular background.

J.J. Goicoechea DVM, Chairman
Eureka County Board of Commissioners

Enclosures (43 CFR 1610.5-2(2)(iv)):

Eureka County scoping letter, March 22, 2012
September 2012 Memorandum of Understanding establishing County as a Cooperating Agency
Eureka County comment on Preliminary Draft Chapter 3 through comment matrix, January 4, 2013
Eureka County comment Preliminary Draft Alternative D, May 6, 2013
Eureka County comment on Draft EIS, January 29, 2014
Eureka County follow up letter regarding DEIS comments, April 7, 2014
Eureka County comment on Draft Proposed Plan Amendment, June 13, 2014
Eureka County preliminary comment on Administrative Draft Final EIS, May 6, 2015
Eureka County comment Administrative Draft Final EIS, May 13, 2015
Email to BLM asking for specific responses to County comments on DEIS, June 18, 2015

Eureka County Scoping Letter, March 22, 2012



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March 22, 2012

Western Region Project Manager
Bureau of Land Management, Nevada State Office
1340 Financial Blvd
Reno, NV 89502

Re: Comments for the Western Region Sage Grouse Conservation Environmental Impact Statement and Land Use Plan Amendments

To whom it may concern:

The following input is in response to the December 9, 2011 Federal Register Notice of Intent (NOI) announcing the Bureau of Land Management's (BLM) and the Forest Service's (FS) intent to prepare Environmental Impact Statements (EISs) and Supplemental Environmental Impact Statements (SEISs) for management and conservation of the greater sage-grouse (GSG).

Much like Nevada as a whole, Eureka County is composed of a large federal land holding. Eighty-one percent of Eureka County's land area is made up of federally administered land, primarily Bureau of Land Management and Forest Service. Eureka County is primarily driven by mining, farming and ranching. Nearly all of Eureka County's employment is in the natural resources sector and the community's viability is largely dependent on business and recreational activities conducted on or in concert with federal lands. Since private land makes up only 13% of Eureka County's total land area, dependency on federally administered land limits and is often detrimental to our long-term socio-economic stability and viability.

This threat to our viability is only exacerbated by the layers of regulatory burden that are placed upon multiple uses of these federal lands and a general lack of effort by the federal land management agencies to coordinate their land management decisions with the local plans, policies, and desires of affected counties. This works to undermine sound land management and creates often adversarial relationships between the agency, counties, and proponents of projects on public land.

More Regulation and Red-Tape Does Not Translate to Conservation of Sage Grouse

In the NOI, it states that, "The inadequacy of regulatory mechanisms to conserve the greater sage-grouse and its habitat was identified as a significant threat in the FWS finding on the petition to list the greater sage-grouse as a threatened or endangered species." We strongly disagree with this statement and believe that BLM already has a surplus of regulatory mechanisms, primarily through rangeland health standard and guidelines, to conserve GSG habitat. Rangeland health standard and guidelines included provisions that apply to any use of federal lands including grazing, wild horses, and other vegetation disturbances including mining and grants of rights-of-way. These standards and guidelines are in addition to many controls specific to certain uses (e.g., mining) with strong regulatory controls at both the state and federal levels. If meeting habitat needs and rangeland health through established standards and guidelines and regulations is inadequate to conserve GSG habitat, what will ever be considered adequate? Perhaps the real issue lies within the fact that federal land managers and wildlife agencies are not currently adequately managing to meet the standards and guidelines for working, healthy rangelands and habitats.

More regulation and red-tape should not be a measure considered to keep the GSG from being listed. More rules and regulations don't make progress happen on the land. The federal land management agencies should focus on what is already in place.

Process Undermines Local Conservation Efforts and Coordination But Must Focus Primarily on Local Conditions, Planning and Conservation Actions

Eureka County and many of our local advisory boards including our Natural Resources Advisory Commission and our Wildlife Advisory Board have been active participants for GSG and habitat conservation. Eureka County participated in the Nevada "Governor's Team" for GSG, when that effort started in 2000. We have committed ourselves, through our local advisory boards—consisting of ranchers, farmers, miners, sportsmen, businessmen, and recreationists—in local conservation planning and habitat enhancement activities. Because of this participation, we are concerned about the continual planning and wonder when enough planning will be done to satisfy the requirements to get to work on the ground. Of primary concern is that it seems that the BLM and other state/federal agencies have discarded the conservation work and partnerships at the local level instead focusing on development of a typical government top-down approach for another planning process. Approaching GSG conservation from a top-heavy, top-down approach undermines these local efforts and does little to build a spirit of collaboration with those local entities necessary if any planning effort is going to be successful in implementation of real conservation.

When outlining measures for GSG habitat conservation, the EIS must consider localized conditions and influences and be based on current understanding of rangeland health, primarily ecological site descriptions and states and transitions models that are targeted to local ecological drivers. It is a dangerous bureaucratic concept to focus on a programmatic, one-size-fits-all approach—dangerous for multiple uses and GSG themselves. Although there is mention made of incorporating conservation measures "based on the principles of Adaptive Management" it is clear that the management flexibility to meet local conditions and requirements is not going to be adequately incorporated with the current federal agency mindset that there needs to be a guarantee of consistent applications of regulatory controls that are inflexible.

The EIS needs to outline an Adaptive Management process to be included into the LUP revisions that focuses on and gives deference to management at the localized level. Inherent in Adaptive Management is that it recognizes progression towards ultimate resource goals through measurable objectives. Under true Adaptive Management, there is potential to actually find that the habitat is providing necessary requirements for GSG and for management to remain status quo. The bias that appears to be built in to this process through the NOI and the recent IMs is that nearly any land use or land management strategy is at odds with GSG conservation. There appears to be an underlying tone of protectionism rather than conservation through sustainable use.

Where limitations are identified, Adaptive Management and collaborative processes should be instituted to consider possible solutions, implement on-the-ground changes/enhancement activities and monitor for results. It is imperative that these actions be taken on a local basis, involving an inclusive opportunity for all locally affected stakeholders (private sector and government).

Please consider the Eureka County Master Plan (Plan), specifically the Natural Resources & State and Federal Land Use Element of the Plan as Eureka County's primary input into the Land Use Plan (LUP) revisions to incorporate GSG conservation measures. Local land use management plans should provide for the framework regarding the ability for public involvement and participation in GSG conservation efforts. Eureka County's Plan outlines the goals, objectives, and guidance for the use of lands and resources located within Eureka County. Eureka County will not, and cannot, support any management option that is inconsistent with this Plan.

The Plan also calls for federal agencies to fully comply with the intent of Congress as specified in various federal laws, including FLPMA and NEPA, by properly coordinating with Eureka County in incorporating the land use policies of Eureka County into agency documents and activities and resolving inconsistencies between federal proposals and County plans. This includes involvement in the decision making processes of the federal entity that are being taken or are being proposed to be taken regarding federal lands located within Eureka County or involve any major federal action significantly affecting the quality of the human and natural environment within the County. Coordination with local governments is mandated and guaranteed regardless of Cooperating Agency status and regardless of formal comment being submitted by a local government during the official public scoping period (see 40 CFR § 1501.6 and § 1508.5).

We have found that BLM's definition of coordination is often used synonymously with "collaboration" and "consultation." Although coordination may include collaboration and consultation, coordination by definition is not synonymous with collaboration or consultation. Only a local governmental entity, elected by the people and accountable to it, is able to incorporate and legitimize the compromises necessary for sustainable management of the lands that the community is so dependent on. Regular, principled coordination is the only way to put to rest past conflicts and allay fears about community viability threats down the road in addition to reducing the need for appeal and judicial review of federal land management decisions. In the end we believe that including and properly implementing coordination in the process will work now to build and strengthen the foundation for the long-term while making the necessary management decisions at the necessary scale—the local scale.

Livestock Management Actions for Healthy Rangelands Are Already In Place

As a county that strongly relies on ranching conducted on or in concert with federally managed land, we are confused and alarmed over the allegations of "inadequate regulatory mechanisms." Based on the terms and conditions of livestock grazing permits and wide latitude granted to BLM on administering grazing permits that make progress towards established standards and guidelines, where are the actual shortages of not having enough control over livestock grazing?

Even with many allotments meeting the standards for healthy rangelands, it appears that this does not seem to be sufficient for FWS, or an impetus for BLM to defend current protections that are or can already be put in place regardless of a LUP amendment. We have seen examples of instances within our county where it has been determined that livestock grazing is not a causal factor for not meeting standards yet we still see grazing permit changes made. We see this process as being magnified with the possibility of more restrictions being unduly placed on grazing permits.

Those special interests who actively advocate for listing of the GSG openly consider it to be their best tool to achieve their overall goal of ending many uses on federally managed lands including livestock grazing. These entities are assisted in reaching their goal by federal and state government agencies who fail (or refuse) to recognize that proper management, when it occurs, is sufficient in maintaining, and often enhancing, GSG habitat.

Given the potential for beneficial gains to enhance protection of habitat areas (especially for the management of fine fuel loads and invasive plants) properly managed livestock grazing should be the focus rather than grazing prohibition. Grazing must be evaluated in the context of a tool to assist in accomplishing rangeland health objectives and GSG habitat enhancement. These considerations need to be documented and advanced in a proactive, unapologetic manner.

Because livestock grazing, as is also the case with any number of other authorized uses, are managed with a significant set of regulatory oversight, we maintain that the impression of there being a lack of regulatory control, as a false pretense for further expansion of a regulatory regime.

We believe that the LUP amendments should be based on a full range of possible approaches with the end results of rangeland health, socioeconomic stability, **and** GSG population improvements tied strongly together and not mutually exclusive. Ongoing monitoring and adaptive management procedures need to be spelled out to ensure that actions are measured against measurable and attainable objectives and fine-tuned or completely changed within an identified range of opportunities for public involvement.

NEPA analyses should not start with the assumption that livestock grazing is a threat to GSG conservation in management areas. Instead, such analyses should start from the proven premise that managed livestock grazing are a benefit for GSG, and the analyses should consider how to further incorporate managed livestock grazing into the protection strategy.

EIS Needs To Include Strong Consideration of Connections with Private Land

While evaluating the ramifications of possible curtailment of livestock grazing use, consideration should

take into account the linkage between private ranch lands and federal land permits. Although we don't agree with the perspective that curtailment of properly-managed livestock grazing will have a beneficial result, we do want to stress the potential negative consequences for GSG habitat on private lands, if a livestock grazing permit is not allowed to be used. In order to maintain business operations, possible conversion of private land holdings may result from not being able to make use of federally-managed lands. More intensive land use of these private resources could result in a negative outcome for habitat located on private land.

In areas where private lands and federally-managed lands are found in alternating sections (i.e., "checkerboard" lands) or where private lands make up a significant portion of large tracts of habitat, this increase in fragmentation would undoubtedly be far more of a problem and impact on GSG.

Agencies Need to Subject Determination of Preliminary Priority Habitat to Public Notice and Comment

BLM Instruction Memorandum 2012-043 delineates GSG areas as Preliminary Priority Habitat areas and Preliminary General Habitat areas and provides different management criteria for each. BLM states that Preliminary Priority Habitat "comprises areas that have been identified as having the highest conservation value to maintaining sustainable greater sage-grouse populations." It says the areas were "identified by the BLM in coordination with respective state wildlife agencies."

On Friday, March 9, 2012 at approximately 4:30 p.m., there was a notification in the form of a news release that agency officials with the Nevada state office of BLM, the FS and the Nevada Department of Wildlife (NDOW) had completed a set of GSG habitat maps which would designate "Preliminary Priority Habitat" and "Preliminary General Habitat." With this so called "official" announcement, land areas in Nevada were identified for the regulatory management directives outlined by BLM's Instruction Memorandum No. 2012-043 (IM) distributed in much of the same manner on December 27, 2011. This notification on a Friday afternoon at close-of-business through a press release is evidence in itself of those involved consider themselves beyond the constraints of legitimate rulemaking and coordination imposed upon them by Congress.

The IM from December 2011 is part of a regulatory scheme that is identified in an August 22, 2011 Charter document which states the objective to "...develop new or revised regulatory mechanisms through Resource Management Plans (RMPs) to conserve and restore the greater sage-grouse and its habitat on BLM-administered lands on a range-wide basis over the long-term." The IM itself reads, "The direction in this IM is time limited: for each planning area where Greater Sage-Grouse occur, the conservation policies and procedures described in this IM will be applied until the BLM make decisions through the land use planning process." This process is expected to be completed by the end of 2014.

Through the land use planning process, the public and locally affected people, including local governments, will have the opportunity to provide input and be involved through normal NEPA processes.

The issue is that all of the opportunity for public input will take place *after* the regulatory framework of the IM has been in effect for two years. The designation of the previously mentioned habitat maps provided no opportunity for public participation or evaluation. This is extremely dangerous to uses of

federally administered land given the fact that the driving force behind the decisions to be made on public lands until the LUP revisions are complete will be based on these habitat maps.

Similarly, the NOI invites the public "to nominate or recommend areas on public lands for greater sage-grouse and their habitat to be considered as Areas of Critical Environmental Concern as part of this planning process." Public notice and opportunity for comment should be required before any such Areas are designated.

We consider these reconstituted approaches for avoiding meaningful public involvement and coordination with local governments as a distasteful and harmful abomination of the regulatory process. Government agencies huddling behind closed doors to make their intended outcomes into "command and control" should not be tolerated. This informal rule making without adherence to established formal procedures and process is outside of government agency authority.

We also find it troubling that the strategy employed for the planning process is to use a different set of classification "Core Habitat" for something that won't be used in Nevada. This offers a challenge in being able to address concerns for extremely important designations without the ability to know how these habitats will be defined in a context based on current rangeland science.

Once the designations have been established and definitions assigned, we would like to see spelled out in the land use plans the processes to be used to delineate that the habitat types actually exist in the areas identified. Further, after ground-proof validation has been conducted there needs to be process for removing those areas from the designation where the "preliminary" conditions are shown to not be actual conditions.

Land-Use Plan Revisions and Management Decisions Must be based on Current Rangeland Science

For the most part we are concerned that the designation of these habitats and the regulatory application of conservation measures will be arbitrary without actual land-based conditions or grounded with proper rangeland science—namely Ecological Site Descriptions and State and Transition Models.

The large majority of Ecological Sites in the state of Nevada do not have State and Transition Models developed and our local experience has shown that rangelands with their associated GSG habitats are too often managed based on old, outdated, and disproven Clementsian succession. The support documents attached or referenced by BLM are described as the "science" that will lay the foundation for the LUP revisions and on-the-ground management. These reports and documents magnify our concern because it is very apparent that much of the described understanding by the wildlife biologists is disconnected from current rangeland science.

Wild Horse Management

In the list of preliminary issues, identified in the Federal Register Notice of Intent to Prepare Environmental Impact Statement, it is noteworthy that "Wild Horse and Burro Management" is not included as a preliminary issue. Perhaps because the BLM fails to meet its own obligations for appropriate management levels, this is not being considered as a matter for action.

Almost as an afterthought in the Director's, December 22, 2011 Memorandum, "Wild Horse and Burro Management" is covered very briefly, stating that Ongoing Authorizations/Activities will:

- Manage wild horses and burro population levels within established Appropriate Management Levels (AML)
- Wild Horse Herd Management Areas will receive priority for removal of excess horses
- Wild horses and burros remaining in Herd Management Areas where the AML has been established as zero will receive priority for removal
- When developing overall workload priorities for the upcoming year, prioritize horse gathers except where removals are necessary in non-PPH to prevent catastrophic herd health and ecological impacts.

Given the actual performance record of BLM in Nevada and the exceedingly over-abundance and out-of-control numbers, how will the actual correction be brought about? Beyond excuses for not having enough resources, what confidence can there be that BLM will not continue to practice the management process of "do as we say, not as we do"? BLM should not "target" the uses of public land that are easy-picking without first addressing the mismanagement of the uses that are under the primary jurisdiction of the BLM itself. The Herd Management Areas in Eureka County are currently an average of 250% of AML while statewide the population numbers are 150% of AML.

Sage Grouse Are Not Truly Threatened or Endangered

It cannot be denied that with consideration of historic Great Basin population estimates for GSG indicates that pre-settlement populations were low. It can also not be refuted that these populations increased dramatically between mid-1800s through the mid-1990s. There has also been a documented decline in the population from the mid-1990s through the early-2000s. However, recent data from the early-2000s through today have shown that populations of GSG in most western states has plateaued and even increased in some areas. There are many correlative factors that have been attributed to these GSG population patterns. However, it cannot be disproven that the highest documented populations of GSG occurred when ranching operations were at their peak. We join with others in our strong request that the federal and state agencies strongly consider the link between vibrant and active ranching operations and strong GSG populations and then employ methods to support and enhance grazing, predator control, decadent sagebrush thinning, and pinyon-juniper woodland thinning. This process should focus on a federal rule that would mandate predator control including strong control of predating ravens. If BLM, FWS, and wildlife agencies wish to pursue the aggressive protectionist management scheme, then the low, pre-settlement populations of GSG are the maximum that the BLM and other agencies can expect.

Further, the FWS has determined that a minimum effective population of 5,000 will safeguard the GSG from extinction. It is estimated that the current population of GSG is between 350,000 and 535,000. Coupled with the data that shows the current populations of GSG range wide are stable, it is disingenuous to consider that GSG are in actuality endangered, let alone, threatened.

Closing Comments

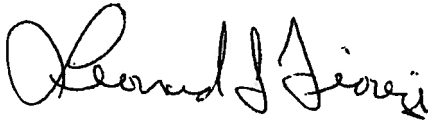
We look forward, as a Cooperating Agency, to help develop the EIS and not be merely relegated to

review and comment. We hope to play an important role in directing the products that will evolve out of this proposed planning process and strongly recommend that the proposals we've already offered be included for further pursuit. Our strongest contention remains that any GSG conservation problem must have economic solutions in order to work. A more effective route would be real, actual planning and conservation actions taking place on the basis of local collaboration for economic benefit and specific needs as opposed to top-down, one-size-fits-all planning that this proposed land use planning approach appears to be taking.

We further contend that the Bureau of Land Management has sufficient regulatory control mechanisms to address healthy rangeland conditions and that piling up more regulations for the sake of having more regulations should satisfy the U.S. Fish and Wildlife without any improvement in actual on-the-ground management.

We look forward to coordinating and working with BLM on the EIS and LUP revisions.

Respectfully,

A handwritten signature in black ink, appearing to read "Leonard J. Fiorenzi". The signature is fluid and cursive, with the first name "Leonard" being more prominent.

Leonard J. Fiorenzi, Chairman
Eureka County Board of Commissioners

September 2012 Memorandum of Understanding Establishing
County as a Cooperating Agency

MEMORANDUM OF UNDERSTANDING

BETWEEN

EUREKA COUNTY

BY AND THROUGH THE BOARD OF COUNTY COMMISSIONERS

AND

THE UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

BY AND THROUGH THE NEVADA STATE DIRECTOR- AMY LUEDERS

REGARDING

**DEVELOPMENT OF THE RESOURCE MANAGEMENT PLAN AMENDMENTS AND
ENVIRONMENTAL IMPACT STATEMENT FOR THE PROPOSED**

**GREATER SAGE-GROUSE NATIONAL PLANNING
STRATEGY, GREAT BASIN REGION
NEVADA-NORTHEAST CALIFORNIA SUBREGION**

**Memorandum of Understanding
Between Eureka County and the Bureau of Land Management, Nevada State Office**

Parties to and Purpose for this Document: This Memorandum of Understanding (MOU) is entered into between Eureka County and the United States Department of the Interior (DOI), Bureau of Land Management (BLM) by and through the Nevada State Director (BLM), for the purpose of cooperating in conducting an environmental analysis and preparing the draft and final programmatic Environmental Impact Statement (EIS) for amendment of land use plans in Nevada and Northeastern California to incorporate conservation measures for the Greater Sage-grouse.

The BLM is the lead agency assigned to complete the programmatic EISs, and the US Forest Service (FS) has joined the BLM as a Cooperating Agency to include FS lands into the programmatic EIS and amendment process. The FS will be amending their Land and Resource Management Plans (LMPs) under the same EISs that BLM will be amending their Resource Management Plans (RMPs) or Management Framework Plans (MFPs), herein collectively referred as Land Use Plans (LUPs).

The Great Basin Nevada - Northeast California Sub-Regional Effort, for which you were invited to participate as a Cooperating Agency, will produce one state-wide programmatic EIS that will amend up to eight (8) BLM, and two (2) FS LUPs.

- 1. Cooperating Agency:** This MOU establishes Eureka County as a Cooperating Agency in the environmental impact analysis and documentation process and establishes procedures through which the County will participate with the BLM (and/or the FS) to help develop the Great Basin Nevada California Sub-region EIS. The County has been identified as a Cooperating Agency because it has special expertise through its statutory responsibility, agency mission and related program experience and concerning management information within the Eureka County Master Plan or related plans as well as with the social and economic baseline information within the County that may be considered in the environmental impact statement relating to the Greater Sage-grouse habitat conservation strategy (40 CFR 1508.5). This MOU applies specifically to the Great Basin Nevada Northeast California Sub-region.
- 2. Authorities:** This MOU has been prepared under the authority of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 et seq., and federal regulations codified at 40 Code of Federal Regulations (CFR) Part 1500-1508, and 43 CFR Part 46; the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq., and BLM's planning regulations (in particular 43 CFR 1601.0-5, 1610.3-1, and 1610.4).
- 3. Background:** In March 2010, the US Fish and Wildlife Service (FWS) published its listing decision for the Greater Sage-grouse indicating that listing was "Warranted but Precluded" due to higher listing priorities under the ESA. The inadequacy of regulatory mechanisms to conserve the Greater Sage-grouse and its habitat was identified as a significant threat in the FWS finding on the petition to list the Greater Sage-grouse as a threatened or endangered species. In view of the identified threats to the Greater Sage-grouse, and the FWS timeline

for making a listing decision on this species, the BLM and the FS propose to incorporate consistent conservation measures for the protection of Greater Sage-grouse and its habitat into relevant BLM and FS LUPs by September 2014 in order to establish adequate regulatory mechanisms to conserve Greater Sage-grouse and its habitat. These measures would be considered by FWS as it makes its final determination on whether to list the Greater Sage-grouse under Section 4 of the Endangered Species Act (ESA). Therefore, these EISs will be prepared under expedited timeframes.

4. **Land Use Planning Parameters:** The BLM and the FS will consider and analyze proposed conservation measures through the plan amendment processes of the respective agencies as follows:
 - a. BLM Nevada, as lead agency will prepare an EIS to analyze proposed amendments to the agency's land use plans that are not currently undergoing amendment or revision.
 - b. For plans already undergoing amendment or revision, the BLM will amend the current approved land use plan for the revision that is in progress and integrate conservation measures developed through the plan amendment process into the ongoing revision.
 - c. The programmatic EIS will consider conservation measures only for the Greater Sage-grouse and its habitat.
 - d. The Nevada-Northeast California sub-regional programmatic EIS will consider the habitat of Greater Sage-grouse on both federal and non-federal lands in its analysis.
 - e. Implementation of any decisions that amend agency LUPs would apply only to land and mineral estate administered by the BLM and FS.
 - f. The California-Nevada "Bi-State" sage-grouse population is not included in this planning effort and is being considered in a separate planning process.
5. **Term of MOU:** This MOU will commence upon the date of the last signature made by the duly authorized representatives of the parties to this MOU, and will remain in full force and effect until terminated, as described in Section 10i below.
6. **Responsibilities of Eureka County:** In agreement with the time frames identified in Attachment A for this planning effort, Eureka County will participate in the environmental analysis and documentation process where appropriate given the County's special expertise such as local demographic, fiscal or economic data, land development trends, use of public lands and resources for the local economy and consistency with the Eureka County Master Plan, and other County plans, laws, policies, and controls. The schedule and preliminary timeframe for the respective stages of EIS development is included in Attachment A.

Eureka County will have the opportunity to provide review and input on draft documents prepared during the EIS process prior to public release of those materials and requests no less than 15 business for the review of and commenting on these draft documents. The IDT

leader may, at any time during the effective term of this MOU, request records and/or information by contacting the Eureka County point of contact identified in Section 9k 10k below.

Eureka County will provide BLM a document that describes any inconsistencies between the RMP amendments and associated EIS and Eureka County's plans, laws, policies, and controls. Any such document will also request that BLM describe in the EIS the extent to which such inconsistencies will be reconciled (according to 43 CFR 1610.3-1, 40 CFR 1502.16, and 40 CFR 1506.2) and explain in the EIS Record of Decision any decision to override these land use plans, policies or controls for the area.

- 7. Responsibilities of the BLM:** In accordance with 40 CFR 1501.5, the BLM is the lead agency. The point of contact for the preparation of this EIS is as designated in Section 10k of this MOU. The BLM will keep the Eureka County representative apprised of current events and timeframes in relation to this EIS. The BLM will consider and may use Eureka County input and proposals to the maximum extent possible and consistent with responsibilities as lead agency as described in 40 CFR 1501.5. BLM may incorporate information provided by Eureka County into the draft and final EIS, as appropriate and deemed relevant to the planning process. The BLM and FS are solely responsible for any decisions made for the planning effort. Any BLM decisions made associated with the EIS apply only to BLM-administered lands and federal mineral estate. Any FS decisions made associated with the EIS would apply only to FS land, upon adoption of the EIS under 40 CFR 1506.3.

- 8. Mutual Responsibilities of the Parties:** Eureka County and the BLM agree to cooperate by informing each other as far in advance as possible, of any related actions, issues or procedural problems that may affect the environmental analysis and documentation process or that may affect either party. The parties agree to cooperate in the development and review of any operating guidelines or agreements between Eureka County or BLM and other agencies involved in the EIS that may affect the environmental analyses and writing of the EIS.

Responsible parties identified in Section 10k of this MOU serve as the MOU primary points of contact. The purpose of these points of contact is to ensure that timely and coordinated communication and exchange of information between the parties to the MOU occurs throughout the planning process. Final decisions of Eureka County must come through a vote of the Board of Commissioners.

- 9. Payment:** No payment will be made to either party by the other as a result of this MOU. Each party is responsible for the costs of their participation. During the term of this MOU, should it become necessary for one party to purchase from or make payment or reimbursement to the other party, such arrangements will be covered in a separate cooperative agreement.

10. General Provisions:

- a. Amendments.** Either party may request changes to this MOU. Any changes,

modifications, revisions, or amendments to this MOU, that are mutually agreed upon by and between the parties to this MOU, will be incorporated by written instrument, executed and signed by both parties to this MOU, and are effective in accordance with the authorities defined herein.

b. Applicable Law. The construction, interpretation and enforcement of this MOU will be governed by the applicable laws of the United States.

c. Entirety of Agreement. This MOU, consisting of eight (8) pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements concerning the parties' environmental documents, whether written or oral, on the development of the RMP amendments and EIS for the proposed Greater Sage-Grouse National Planning Strategy.

d. Severability. Should any portion of this MOU be determined to be illegal or unenforceable, the remainder of the MOU will continue in full force and effect, and either party may renegotiate the terms affected by the severance.

e. Sovereign Immunity. Eureka County and the BLM do not waive their sovereign immunity by entering into this MOU, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

f. Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this MOU must not be construed so as to create such status. The rights, duties and obligations contained in this MOU will operate only between the parties to this MOU, and will benefit only the parties to this MOU. The provisions of this MOU are intended only to assist the parties in determining and performing their obligations under this MOU. The parties to this MOU intend and expressly agree that only parties signatory to this MOU will have any legal or equitable right to seek to enforce this MOU, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this MOU, or to bring an action for the breach of this MOU.

g. Exchange of Information/Confidentiality. All records or information requested of either party by the other will be reviewed by the releasing party prior to release. To the extent permissible under law, any recipient of proprietary and/or pre-decisional information agrees not to disclose, transmit, or otherwise divulge this information without prior approval from the releasing party. Any breach of this provision may result in termination of this MOU. The BLM and Eureka County recognize that applicable public records laws will require release of non-exempt documents.

h. Administrative Considerations. Pursuant to 204(b) of the Unfunded Mandates Reform Act of 1995, responsible Federal Agency officials may meet or enter into project level MOUs with officials of State, Tribal and local Governments or their designees. During such meetings and development, implementation and monitoring of such MOUs, views, information and advice are exchanged, or input relative to the implementation of Federal programs is obtained. Such meetings and MOUs will further the administration of

intergovernmental coordination.

The meetings or MOUs referred to include, but are not limited to, meetings called for the purpose of exchanging views, information, advice or recommendations, or for facilitating any other interaction relating to intergovernmental responsibilities or administration.

Nothing in this MOU will be construed as limiting or affecting in any way the authority or legal responsibility of Eureka County or the BLM, or as binding either Eureka County or the BLM to perform beyond the respective authority of each, or to require either to assume or expend any sum in excess of appropriations available. It is understood that all the provisions herein must be within financial, legal, and personnel limitations, as determined practical by Eureka County and the BLM for their respective responsibilities. This MOU is neither a fiscal nor a funds obligation document.

Nothing in this MOU will be construed to extend jurisdiction or decision-making authority to BLM for planning and management of land and resource uses for any non-federally administered lands or resources in the planning area. Similarly, nothing in this MOU will be construed to extend any additional jurisdiction or decision-making authority to Eureka County, other than that authority which is already retained by Eureka County, for planning and management of land or resource uses on the federally administered lands or mineral estates administered by the BLM. Both Eureka County and BLM will work together cooperatively and will communicate about issues of mutual concern.

i. Termination: Either party may terminate this MOU after 30 days written notice to the other party of their intention to do so. During this period, the parties will enter negotiations to resolve any disagreement(s). If the disagreement(s), if any, have not been resolved by the end of the 30-day period, the MOU will terminate. In the event negotiations are progressing but are not concluded by the end of the 30-day period, the party initiating the termination notice may request that termination be postponed for an additional 30-day period or longer while the negotiations continue.

j. Dispute Resolution: In the event of any disagreement between the parties regarding their obligations under this MOU that cannot be resolved between the parties in a reasonable time, either party may refer the disagreement to the BLM State Director to timely resolve said issue. The decision of the BLM State Director will be the final decision for purposes of resolving the issue.

k. Contacts: The primary point(s) of contact for carrying out the provisions of this MOU are:

EUREKA COUNTY

Jake Tibbitts, Natural Resources Manager
PO Box 682
Eureka, NV 89316

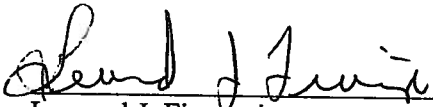
BLM

Amy Lueders, State Director
Bureau of Land Management
Nevada State Office
1340 Financial Blvd.
Reno, NV 89502

- 11. Signature:** The parties hereto have executed this Memorandum of Understanding as of the dates shown below.

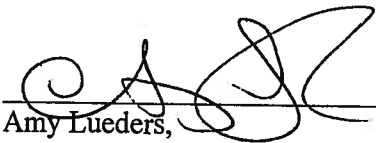
The effective date of this MOU is the latest signature date affixed to this page. This MOU may be executed in multiple originals or counterparts. A complete original of this MOU shall be maintained in the records of each of the parties.

EUREKA COUNTY by and through:


Leonard J. Fiorenzi
Chairman, Board of County Commissioners

Sept. 10 2012
Date

U. S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, by and through:


Amy Lueders,
Nevada State Director

Sept-17, 2017
Date

Attachment A

Current EIS and Planning schedule, as of MOU signature:

RMP/EIS Stage	Proposed Completion Date
Conduct scoping and identify issues	March 21, 2012
Formulate alternatives	July 30, 2012
Estimate effects of alternatives	September 30, 2012
Select the preferred alternative; issue Draft RMP/EIS	March 31, 2013
Respond to comments	July 31, 2013
Issue Proposed RMP/FEIS	November 30, 2013
Governor's Consistency Review	January 31, 2014
Resolve protests; modify Proposed RMP/FEIS if needed;	May 30, 2014
Sign ROD	September 30, 2014 (latest date acceptable)

Eureka County comment on Preliminary Draft Chapter 3
through comment matrix, January 4, 2013

Jake Tibbitts

From: Jake Tibbitts <natresmgr@eureka-nv.org>
Sent: Friday, January 04, 2013 4:27 PM
To: 'Wertz, Clinton E'; bamme@blm.gov
Subject: RE: Sage Grouse-Socio-Economic Report- Eureka County comment
Attachments: 1413 BLM SGSE EurekaCo Comment.docx

Clint and Brian,

Please find attached Eureka County's comment on the draft Socio-Economic Report in support of the Great Basin Nevada Northeast California Sub-Regional Sage-Grouse effort.

Regards,

Jake Tibbitts
Natural Resources Manager
Eureka County Department of Natural Resources
PO Box 682
Eureka, NV 89316

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From: Wertz, Clinton E [mailto:cewertz@blm.gov]
Sent: Friday, November 30, 2012 11:23 AM
To: Abdelmoez Abdalla; Bill Deist; Bill Whitney (bwhitney@washoecounty.us); Brad Schultz; bruce.petersen@nv.usda.gov; Cooke, Steve M; Cory Lytle; Crista Stewart; Denice Brown (dbrown@lincolnnv.com); Eleanor Lockwood (countymanager@churchillcounty.org); environmentaldirector@ypt-nsn.gov; Gene Etcheverry; Goshute Tribe; Jake Tibbitts; Jim Chapman (jchapman@co.lassen.ca.us); jmosley@plpt.nsn.us; Karen Bannister; Kevin Phillips (kevin@lcturbonet.com); Kasic, Arlene D; Ikryder@co.nye.nv.us; Marie Barry (marie.barry@washoetribe.us); Mike Bell (commissionermmb@hcnv.us); Ms. DeEllen Brasher (deellen.brasher@navy.mil); Mermejo, Lauren L; Pat Irwin (pirwin@health.nv.gov); Patrice Lytle- White Pine County; Randy (Scott) Brown (rbrown@elkocountynv.net); richard@enviro-fpst.org; Robert Larkin; Rose Marie Bracher; Scott Gardner; scanfield@lands.nv.gov; liz.warner@nv.usda.gov
Cc: Amme, Brian C
Subject: Sage Grouse-Socio-Economic Report
Importance: High

Cooperating Agencies,

Attached is a draft Socio-Economic Report in support of the Great Basin Nevada Northeast California Sub-Regional Sage-Grouse effort. This report was produced through contract by the consult ICF International. This report is the first in a series of documents to be released to Cooperating Agencies for review and comment. You have been identified as a Cooperating Agency and asked to review the attached report by utilizing the attached comment sheet.

The Socioeconomic Study Area is made up of counties within the Nevada-Northeast California sub-region that contain greater sage-grouse habitat and within which social and economic conditions might reasonably be expected to change based on alternative management actions. In addition, the report includes additional counties that may not contain habitat, but are closely linked from an economic and/or social perspective to counties that do contain habitat.

*BLM SGSE – Nevada-Northeast California Sub-Region, Chapter 3
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Examples of constructive and unconstructive comments.

Commenter Name	Comment Number	Page Number	Line Number	Comment
Constructive Comments				
David Jones	1	1-1	23	After “when appropriate” insert -- Emerging resource issues and changing laws necessitate preparation of this analysis.
Sarah Green	2	1-10	20	Add “annually” after “2.9 million tons of coal”.
David Jones	3	1-12	10	Revise to delete “existing utility” so it reads “ ... lie within designated ROW corridors.”
Sarah Green	4	1-20	2	Please remove “withdrawals” shading from National Forest/National Grassland
David Jones	5	1-6	27-28	Include definition of “Wildland Fire” from National Fire Plan
Sarah Green	6	1-12	6	Add the word “and” between “jobs, wages”
Unconstructive Comments				
<p>Commentary, criticism, and questions may make perfect sense to the commenter and may be appropriate in a forum that allows direct verbal communication between the writer and the commenter. However, unconstructive comments often require additional coordination to figure out what the commenter means and how/if the text should be revised. To be efficient, it is critical that comments clearly identify what is wrong and provide a specific solution for correcting the problem. Select examples of unconstructive comments follow.</p>				
David Jones	1	1-1	23	Delete: last sentence. The statement is not correct.
Sarah Green	2	1-10	20	Please rewrite.
David Jones	3	1-12	10	27-29 Same stuff
Sarah Green	4	1-20	2	Edit this sentence.
David Jones	5	1-6	27-28	Needs some serious work on this paragraph

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Commenter Name	Comment Number	Page Number	Line Number	Comment
Eureka County-Tibbitts		General		Chapter 3 could be improved by addition of some simple maps for those that are geo-spatially inclined or understand better through visualization. Examples include maps for each main topic and the locations of the existing sites (e.g., mines, geothermal, private property).
Eureka County-Tibbitts		3-2	14	The entire Existing Conditions and Trends section is outdated. In most cases, there is usage of data from 2010—we are now in 2013. Using 2010 data for “existing conditions” is not adequate. Much has changed since 2010, especially related to mining and agriculture. Please revise with most recent data available.
Eureka County-Tibbitts		3-1	1	There is a general omission of USFS information in Chapter 3. Is there going to be another revision that includes data from the forest?
Eureka County-Tibbitts		3-5	9-12	This sentence paints a picture that if you are a resource user (and specifically lists livestock grazing) that you are not an advocate of resource conservation. Conservation and resource use are not mutually exclusive. Protectionism should not be confused with conservationism. Conservation includes sustainable use while protectionism often advocates precluding resource use by humans. Please revise to read, “There is a range of interest groups...including groups at both extreme ends of the range that would advocate complete protection from resource use to resource use without conservation, respectively. “ Do not single out livestock grazing, especially as an example of separating from advocacy of conservation.
Eureka County-Tibbitts		3-5	21	Why is “livestock growers” separated from “farms/ranches”? Please revise sentence so that “farms/ranches” and “livestock growers” are both under agriculture. Consider, “...agricultural including ranching and livestock growing.”
Eureka County-Tibbitts		3-5	13-14	Please revise sentence to consider other interest groups in the area such as sporting. Revise to read “include, but is not limited to, the following:”
Eureka County-Tibbitts		3-5	20	Some business groups are left out include hunting guiding services and other associated groups that support general merchandising and business (i.e., SBA). Please include or simply revise to read “include, but is not limited to, the following:”
Eureka County-Tibbitts		3-5	23	These paragraphs are confusing and hard to follow. Most single out aspects of individual counties that apply to most, if not all, other counties. For instance, open space and retaining rural character is not only important to “urban dwellers” but is singled out for some reason. Also, a paragraph on p. 3-6 singles out that the Pershing County economy is dominated by mining but fails to make the same link to

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				Eureka , and other, counties. On page 3-7 there is substantial discussion regarding Lincoln and White Pine Counties but the same groups hold true in other counties, including Eureka. We would like to see more specific examples about Eureka County.
Eureka County-Tibbitts		3-6	30	Again, ranching is separated from agriculture. In fact, it seems that there is a theme throughout the entire document that ostracizes and diminishes ranching. Please revise sentence to read "Agriculture, including ranching..."
Eureka County-Tibbitts		3-6	31	Not just "neighboring landowners" but entire economies. Revise to read "Local governments, communities and private landowners surrounded by and/or adjacent to...for commercial and residential development or other economic or social uses."
Eureka County-Tibbitts		3-6	27	Revise to read "...is of particular interest include, but is not limited to, local government entities (including school districts), ranchers including those with livestock grazing permits, local sportsmen, mineral claims holders and mineral estate owners..."
Eureka County-Tibbitts		3-7	7-9	This statement is suspect. Please include the citation to the evidence that long-time residents believe that they are ensured "preferential consideration."
Eureka County-Tibbitts		3-7	36	Sentence says that "issue of livestock grazing...is often cited...." Please provide the source for this conclusion.
Eureka County-Tibbitts		3-10	8	Delete "One" to read "Examples of option values..." The sentence provides two, not one, examples.
Eureka County-Tibbitts		3-11 thru 3-12	23-32; 1-33	The discussions related to natural amenity scores and ranking is superfluous and subjective. Was the research at ERS peer reviewed outside of government? Basing the Natural Amenity Rank as "an initial indicator of the presence of nonmarket economic values" misses what we believe are many of the most desirable and valuable EG&Ss such as recreation opportunities, hunting, clean air, and clean water. The natural amenities scale focuses on characteristics that seem to target retiree populations. We don't even think there should be any discussion related to this subjective and biased scale. We are puzzled as to how sage grouse management will be able to be compared and analyzed against this motherhood-and-apple-pie index.

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Eureka County-Tibbitts		3-13	Tables and Appendix X	<p>Please use more local and relevant resources to tabulate the data in the tables and Appendix X. The numbers reported in these tables are at odds with work done through UNR and at a more precise and localized level. Also, there are significant departures from what was reported in the 2007 US Census of Agriculture which should be the reference related to farming and ranching. For example, Appendix X states tabulated Eureka County's farm industry employment at 163. The 2007 Census of Ag reported 86 individual farms in Eureka County. Most, if not all, of the farms in Eureka County have multiple employees including the operator/owner. Additionally, approximately 40 ranching operators are permitted to use public lands for livestock grazing (Rangeland Administration System). Given the reported number of 163 employees and dividing by 86 farms and 40 ranches results in just over 1 employee per farm. This is simply not the case. The Economic Linkages studies by UNR, and namely, Dr. Tom Harris were done for nearly all of the rural Counties in Nevada. These should be the source for the EIS.</p> <p>Further, there is no discussion about the tremendous leakage that takes place in Eureka County. The tables tabulate raw numbers with no explanation about what is taking place. A prime example is that it appears that all of the socioeconomic benefit from mining accrues to Eureka County. However, the jobs in mining in Eureka County are primarily citizens and taxpayers of neighboring counties, primarily Elko County. While tax benefits accrue to the County, social stability and general benefit to Eureka County citizens and other industries is not supported by mining as the tables allude. Further, much of the mining activity in Eureka County is in the northern portion and in areas that have not been mapped as PPH or PGH. This means that impacts related to sage grouse management will fall disproportionately on other industries more reliant on sage grouse habitat areas.</p> <p>There does not appear to be any effort to even do a perfunctory analysis of the indirect and induced effects of industries on all of the counties. Please include discussion about indirect and induced effects, economic linkages, and demand multipliers across industries. For example, the 2005 UNR reports the following for Eureka County:</p>

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				<p>Table 13. Final Demand, Employment, and Income Multipliers for Eureka County, 2002.</p> <table><tr><th>SECTOR</th><th>FINAL DEMAND MULTIPLIER</th><th>EMPLOYMENT MULTIPLIER</th><th>HOUSEHOLD INCOME MULTIPLIER</th></tr><tr><td>Timothy Hay</td><td>1.6951</td><td>1.6170</td><td>1.2793</td></tr><tr><td>Alfalfa Hay</td><td>1.6591</td><td>1.3844</td><td>1.2854</td></tr><tr><td>Cattle Ranching</td><td>2.0283</td><td>1.4439</td><td>1.6812</td></tr><tr><td>All Other Agriculture</td><td>1.7953</td><td>1.0606</td><td>1.1963</td></tr><tr><td>Gold, Silver, and Other Metal Ore Mining</td><td>1.7086</td><td>1.1350</td><td>1.1128</td></tr><tr><td>All Other Mining</td><td>1.6758</td><td>1.0670</td><td>1.1171</td></tr><tr><td>Utilities</td><td>1.7406</td><td>1.3134</td><td>1.1017</td></tr><tr><td>Construction</td><td>1.6217</td><td>1.1099</td><td>1.1523</td></tr><tr><td>Manufacturing</td><td>1.1671</td><td>1.1467</td><td>1.3538</td></tr><tr><td>Transportation</td><td>1.5392</td><td>1.1468</td><td>1.1967</td></tr><tr><td>Wholesale and Retail Trade</td><td>1.7780</td><td>1.0480</td><td>1.1362</td></tr><tr><td>Communications</td><td>1.8804</td><td>1.2777</td><td>1.1998</td></tr><tr><td>Financial Services</td><td>1.8593</td><td>1.1565</td><td>1.1616</td></tr><tr><td>Other Education and Health</td><td>1.9582</td><td>1.0726</td><td>1.1394</td></tr><tr><td>Leisure and Hospitality</td><td>1.6318</td><td>1.0409</td><td>1.2235</td></tr><tr><td>All Other Services</td><td>1.5698</td><td>1.1562</td><td>1.2722</td></tr><tr><td>Local Government</td><td>2.1477</td><td>1.0711</td><td>1.1102</td></tr></table> <p>Keep in mind that this same information is readily available for other counties in Nevada and should be included in order to measure how impacts on certain industries will create different affects based on the multipliers specific to each county and industry.</p> <p>This is an example of mining being given more weight in Eureka County than is real. The text describes that mining contributed the most to earning in Eureka County at 92.1%. This fails to acknowledge that while the employment is at mines within Eureka County (primarily the Carlin Trend) most of these people are not citizens of Eureka County, do not pay taxes in Eureka County, do not live in Eureka County, and do not contribute directly to the economy or social stability of Eureka County. The 2010 Census reported that 1,997 people live in Eureka County but there are nearly 4,000 jobs in mining in the County. Take the number of folks from the 1,997 working in Eureka County and subtract those employed in all other industries in the County and you will see that the actual resident population of the</p>	SECTOR	FINAL DEMAND MULTIPLIER	EMPLOYMENT MULTIPLIER	HOUSEHOLD INCOME MULTIPLIER	Timothy Hay	1.6951	1.6170	1.2793	Alfalfa Hay	1.6591	1.3844	1.2854	Cattle Ranching	2.0283	1.4439	1.6812	All Other Agriculture	1.7953	1.0606	1.1963	Gold, Silver, and Other Metal Ore Mining	1.7086	1.1350	1.1128	All Other Mining	1.6758	1.0670	1.1171	Utilities	1.7406	1.3134	1.1017	Construction	1.6217	1.1099	1.1523	Manufacturing	1.1671	1.1467	1.3538	Transportation	1.5392	1.1468	1.1967	Wholesale and Retail Trade	1.7780	1.0480	1.1362	Communications	1.8804	1.2777	1.1998	Financial Services	1.8593	1.1565	1.1616	Other Education and Health	1.9582	1.0726	1.1394	Leisure and Hospitality	1.6318	1.0409	1.2235	All Other Services	1.5698	1.1562	1.2722	Local Government	2.1477	1.0711	1.1102
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Eureka County-Tibbitts		3-17	1-5																																																																									

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				<p>County that is employed in mining is much less than reported. Employment impacts (people) would more likely fall on Elko or Lander counties for mining at the Carlin Trend that is within Eureka County.</p> <p>This concerns us because it skews the data towards mining and downplays everything else as being anything but minor contributors to socioeconomic stability and sustainability. With a population of less than 2000, a handful of jobs in Eureka County are of the same scale as thousands of jobs in a larger populated County such as Washoe.</p>
Eureka County-Tibbitts		3-19	Table 9	<p>Consider using the Nevada State Recreation Plan 2010, Nevada Division of State Parks and the Outdoor Recreation Participation Report 2010, Outdoor Foundation as a source of more localized and precise data and projections. In many cases, these reports are much different than that reported in Table 9.</p>
Eureka County-Tibbitts		3-20	Table 10	<p>The reported values, at least for Eureka County, are suspect in Table 10. The 2007 Census of Agriculture reported just over \$25 million in agricultural product sales in 2007 and out of 17 counties in Nevada, Eureka County was ranked fourth in the state in terms of crop sales and eighth in terms of sales of livestock, poultry, and their products. Total sales rose to \$32.5 million in 2008, declining to \$26.5 million in 2009 (U.S. BEA 2010). These numbers are all at odds with the document and in all cases, the document shows that farm receipts are less than these other sources. Please revise.</p>
Eureka County-Tibbitts		3-20	13-25	<p>The text describes Table 11. It is confusing as to how ERS "publishes annual gross receipts for cow-calf operations." Please include descriptions describing what the gross receipts entail. Further, the BLM estimate of \$50.24 per AUM in 2010 dollars is counter to research in Nevada.</p> <p>In 1999 funds were appropriated through the Nevada Legislature to create a Nevada Public Land Grazing Database and Economic Analysis. In 2000, the Nevada State Department of Agriculture asked the Nevada Association of Counties to assist in fulfilling this mandate. Resource Concepts, Inc. was contracted to help complete the database and analysis. The product of this effort is the report, <i>Nevada Grazing Statistics Report and Economic Analysis for Federal Lands in Nevada (Resource Concepts, Inc. March 26, 2001)</i>. Table 3 of the Report (p. 48) summarizes the economic impacts of 1 AUM of grazing in Nevada as follows:</p>

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				<p>Table 3. Economic Impacts of 1 AUM of Grazing in Nevada</p> <p>Value of AUMs = \$24.40 AUM Increase or Loss = 1 Value of Production per AUM (\$ yr. Avg.) = \$24.40</p> <table border="1"> <thead> <tr> <th>Impact</th> <th>Direct Impacts</th> <th>Indirect/Induced Impacts</th> <th>Total Impacts</th> </tr> </thead> <tbody> <tr> <td>Total Industry Impacts</td> <td>\$24.40</td> <td>\$16.00</td> <td>\$40.40</td> </tr> <tr> <td>Total Labor Income Impact</td> <td>\$3.40</td> <td>\$4.00</td> <td>\$7.40</td> </tr> <tr> <td>Total Value-Added Impact</td> <td>\$5.00</td> <td>\$8.00</td> <td>\$13.00</td> </tr> <tr> <td>Total Employment Impacts</td> <td>0.00</td> <td>0.00</td> <td>0.00</td> </tr> <tr> <td>Total Economic Impacts¹</td> <td>\$29.40</td> <td>\$24.00</td> <td>\$53.40</td> </tr> </tbody> </table> <p>The total economic impacts, which include the industry impacts and value added impacts, totaled to \$53.40 per AUM in 2000. Yet, the document says that one AUM in 2010 dollars is less at \$50.24. If the Consumer Price Index were applied to the Nevada specific report from 2000, the value is much greater than \$50.24 in 2010 (let alone today, in 2013). Please revise text and Table 11 accordingly.</p>	Impact	Direct Impacts	Indirect/Induced Impacts	Total Impacts	Total Industry Impacts	\$24.40	\$16.00	\$40.40	Total Labor Income Impact	\$3.40	\$4.00	\$7.40	Total Value-Added Impact	\$5.00	\$8.00	\$13.00	Total Employment Impacts	0.00	0.00	0.00	Total Economic Impacts ¹	\$29.40	\$24.00	\$53.40
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Eureka County-Tibbitts		3-22	9-20	There is no discussion about the wind project on the Diamond Range and its possibility. According to very recent Mt. Hope Project EIS, this is over 21,000 acres. Please include.																								
Eureka County-Tibbitts		3-22	20	Delete sentence that begins "Wind energy right-of-way..." This draws a conclusion that should not be included in Existing Conditions. If BLM feels strongly that this statement should remain, please consider that the largest right-of-way concern to sage grouse is not even described and should be included — predator perching and sage grouse behavioral avoidance of vertical structures.																								
Eureka County-Tibbitts		3-22	30-31	Many warm springs in and near Eureka County (Battle Mountain Planning Area) used for pools and heating too including Walti and Hot Springs Ranch among others. Please include all or none specifically, maybe more general in addition to just Ely.																								
Eureka County-Tibbitts		3-22	21-28	Omits geothermal resources in Eureka County in Crescent Valley including current and pending lease applications. See Table 12 that shows geothermal resource in Eureka County.																								

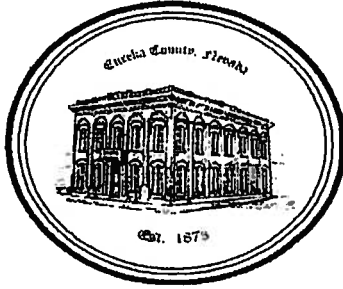
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Eureka County-Tibbitts		3-23	3-6	Include biomass utilization being discussed and aggressively pursued through the Nevada Pinyon-Juniper Partnership. Also, recent CIG work for PJ biochar utilization in Lincoln, White Pine, and Eureka counties. Further, include expansive firewood use by private individuals that can be partially quantified through reporting of firewood permits.
Eureka County-Tibbitts		3-23	18-19	Change sentence to read "The bulk of gold mining in the state is located in Eureka, Elko, and Lander Counties." The statement that it is "heavily located in the northern part of the state" is incorrect. Ruby Hill, Bald Mountain, and Round Mountain are all in central NV.
Eureka County-Tibbitts		3-23	21-23	We are not aware of any portion of Cortez or Pipeline being within Eureka County. They are both in Lander County. If not, we would like to know so that we can be assessing for net proceeds.
Eureka County-Tibbitts		3-23	26	Please also include Barrick's Ruby Hill and Bald Mountain. Ruby Hill produced 127,000 oz. in 2011. Although Ruby Hill may be relatively small, it has ~130 employees directly living in Eureka (i.e., County citizens) and the people live, are educated, work here, and directly contribute to local businesses. Alternatively, the oz. of gold and other minerals should be broke down by counties rather than company in order to capture the full baseline of mining on a county basis. This is readily available because counties receive taxed based on the amount of minerals extracted and the mines account for this according to county lines.
Eureka County-Tibbitts		3-24	9 Table 12	Please check against reported figures from Nevada Minerals. It appears that sales figures have some discrepancies with NV reported figures. May be issues against volumes too. Also, should Esmeralda be included in Table 12?
Eureka County-Tibbitts		3-24	Table 13	Another example of skewed data towards mining in Eureka County. What is this based on? Are these the mining employees that are residents of Eureka County? The figure is high if so. Less than 200 residents of southern Eureka County work in mines and even less so in the other County areas, primarily Crescent Valley portion of Eureka County. We wish the data to be accurate.
Eureka County-Tibbitts		3-25	13	If the Elko County residents that commute to mines outside of Elko County were taken into account, it would be shown that Elko actually has higher percentages of mining employment (perhaps Lander as well).
Eureka County-Tibbitts		3-25	34-42	Please include discussions of SRS funding that is calculated based on USFS lands. Also, the text reads as if though PILT is guaranteed in perpetuity and is something counties and communities can always rely on as a stable fiscal base. This is not the case. It must be reauthorized by Congress on a periodic basis and there is a push by some in Congress to discontinue PILT. Please include discussions about the tenuousness of PILT and the large fluctuations that occur during each authorized cycle.

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Commenter Name	Comment Number	Page Number	Line Number	Comment
Eureka County-Tibbitts		3-25	18	Please define "right-to-work state."
Eureka County-Tibbitts		3-26	Table 14	Include SRS payments from USFS
Eureka County-Tibbitts		3-26	7-17	The text and Table 15 go through great lengths to tie value to BLM expenditures and employment. However, the same can be said about any industry that also has direct expenditures that were not even discussed in the document. Please include discussions of direct expenditures from other industries and take the effort to include indirect and induced impacts. As our previous comment pointed out, the economic linkages (multiplier effect) of various industries are not all equal. As a general rule, industries that create new wealth (ag and mining) contribute more overall to the economy than those industries that distribute wealth already made (recreation and tax funded government). This must be driven home. Impacts on new-wealth creating industries will have a more severe and disproportionate effect on local economies and customs and cultures.

Eureka County comment Preliminary Draft Alternative D,
May 6, 2013



EUREKA COUNTY BOARD OF COMMISSIONERS

J.J. Goicoechea, Chairman

J.P. "Jim" Ithurralde, Vice Chairman

PO Box 694, 10 South Main Street, Eureka, Nevada 89316
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May 6, 2013

Bureau of Land Management
Nevada State Office
1340 Financial Boulevard
Reno, NV 89502-7147

RE: Eureka County comment on Greater Sage-Grouse CA/NV Alternative D

We appreciate the opportunity, as a Cooperating Agency, to review the Greater Sage-Grouse CA/NV Sub-regional Agency Alternative D. While we are appreciative of this opportunity, we find it disingenuous for BLM to provide such limited notice and timeframe for review and comment. We did not receive our copy of the Alternative until April 29, 2013. Due to other commitments and the constrained timeframe, we simply were not able to provide as thorough as a review as we would have preferred.

Below we address, in general terms, the three questions of specific interest to BLM and USFS.

Are the goals/objectives/management actions in Alternative D clear?

The goals/objectives/management actions in Alternative D are not entirely clear. What is confusing is that goals/objective/management actions are separated in the Alternative but are often not representative of their definition (i.e., objectives are often actually goals). The management alternatives in the EIS must be built on a common application of goals and objectives.

There are many sources of information in the resource management field that clearly define the differences between vision, goals, and objectives. In fact, many DOI and BLM references give direction on development of proper, clear and effective goals and objectives (see Williams et al. 2009, Adaptive Management: The U.S. Department of the Interior Technical Guide; Adamcik et al. 2004, Writing Refuge Management Goals and Objectives: A Handbook. U.S. Fish and Wildlife Service; and Swanson et al. 2006. Nevada Rangeland Monitoring Handbook Second Edition.) The common thread of these references describes differentiating between vision, goals, and objectives and then setting of objectives that fit the mnemonic SMART—Specific, Measurable, Achievable, Realistic/Related/Relevant, and Time-fixed.

S – Specific – They describe what will be accomplished, focusing on limiting factors, and identifying the range of acceptable change from the present to the proposed condition.

M – Measurable – The change between present and proposed condition must be quantifiable and measurable.

A – Achievable – Are the objectives set achievable in the current setting? Consider environmental constraints, societal expectations, economic parameters, legal requirements, and technological limitations.

R – Realistic/Related/Relevant – Set objectives that can be realistically achieved given the natural and management context of the situation. They are related in all instances to the land use plan goals and relevant to current management practices. Thus, they must be worthy of the cost of the management needed to achieve them and the monitoring needed to track them.

T – Time-fixed – They must be trackable over time and must include a specific and definite timeframe and location for achievement, monitoring, and evaluation.

Very few of the objectives in Alternative D meet all of these criteria. As an example, consider Objective 1 under Livestock Grazing (p. 14). This objective states “In priority and general habitat, manage for vegetation composition and structure consistent with ecological site potential to achieve sage-grouse seasonal habitat objectives (see Table 2-3).” First, this objective refers to other objectives in Table 2-3 that do not meet the SMART criteria.

The objective is not specific (S) because there is large variability in “vegetation composition and structure” even at ecological site potential. The State and Transition Model (STM) for any given Ecological Site Description (ESD) defines a range of vegetation characteristics in any given state. Also, “site potential” is not defined in the context of ESD and/or STM. Is the site potential synonymous with “reference state” of the ecological site? If so, what if the current state of any give site has crossed a threshold into a degraded *stable* state in which there is no current restoration pathway known? We argue that the state of an ESD in some circumstances is the “site potential” even if not conducive to or acceptable sage grouse habitat. Without being more specific, objectives such as this open a door of subjective interpretation, contention, and more legal wrangling.

The objective is partially measurable (M) but not completely. It refers to other objectives in Table 2-3 that are not measurable. Even though monitoring can take place to determine “vegetation composition and structure” what is the quantifiable metric to determine if it is “consistent with ecological site potential to achieve sage-grouse seasonal habitat objectives?”

The achievable (A) criterion needs to be better fleshed out in the objective. As already discussed above, “site potential” needs to be defined in the context of the current state of any given ESD. Simply put, some areas may crossed a threshold into a state that is the “site potential” given current understanding and technology. Some areas may be at “site potential” given the current ecological state but not in a state that provides every seasonal sage grouse habitat need. There must be language clarifying this issue in order for this objective to be achievable in all situations and then a follow up objective when these circumstances apply.

The objective is not entirely realistic/related/relevant (R) for many of the reasons we have already discussed related to site potential and management constraints. This must be clarified.

The objective is definitely not time-fixed (T). There is nothing to determine the timeframes for monitoring this objective nor the timeframes expected in meeting this objective. If an adaptive management approach is to be used, the temporal component is imperative. All future management adjustments must have a set time frame in which they are triggered if the objective is not or cannot be met.

Most objectives in the Alternative D may meet some of the SMART criteria, but as written are actually goals, defined in the references as “broad statement of desired outcomes, usually not quantifiable” and “apply to the entire plan and are the same for all alternatives.” There should be one overarching goal across all alternatives and the alternatives flesh out specific and SMART objectives.

This example we have discussed above is a common theme throughout the entire Alternative D and Table 2-3 and must be addressed. If not, the amount of subjectivity on what any objective means is left up to agency discretion and individual or user translation, which may not be compatible. This will result in continued strife in managing sage grouse habitat and will result in much more time in the courtroom. Defining SMART objectives will minimize personal interpretation and result in all parties being on the same page moving forward, even with conflicting interests.

Are there additional goals/objectives/management actions that should be included in Alternative D?

Most of the current goals/objectives/management actions need to be re-worked, expanded, and or clarified in order for streamlining of management moving forward and to remove bias and minimize room for interpretation. Also, while Alternative D speaks in many locations about “site potential” and describes managing according to Ecological Site Descriptions, there is no discussion about State and Transition Models and the limitations of management in areas that have crossed thresholds. Everywhere throughout the entire document, please add language in these circumstances to read “consistent with ecological site potential ***given the current state of the ecological site and in consideration of the State and Transition Model for the site.***” As an example IVM-17 on page 5 states “... manage lentic and lotic riparian systems to maintain species richness including a diverse perennial forb component (relative to Ecological Site Description)....” This could be changed to read “...(relative to Ecological Site Description ***and sites potential given the current state of the ecological site and in consideration of the State and Transition Model for the site...***”

A new objective needs to be included that calls for development of State and Transition Models for all Ecological Site Descriptions in MLRAs within the planning area. This is imperative in order to adequately determine progress towards meeting objectives. We must know what any given sites potential really is before we can set site specific resource objectives.

What Management Action can be taken to address climate change?

Incorporation of Adaptive Management is the only Management Action that will be able to address changes on the landscape, climate change related or not. We suggest incorporating a robust framework to allow for true adaptive management (i.e. quick flexibility) that will provide the necessary tools to land managers and land users to make timely adjustments based on monitoring data. Management Actions must be results driven.

We look forward to working with BLM and USFS to adequately make the changes necessary to address our comments for incorporation into the DEIS.

Respectfully,

A handwritten signature in black ink, appearing to read 'J.J. Goicoechea', with a long horizontal flourish extending to the right.

J.J. Goicoechea, Chairman
Eureka County Board of Commissioners

COMMENT MATRIX
NE CA-NEVADA SUB-REGIONAL ALTERNATIVE D

Cooperating Agency: Eureka County, NV

Date: 5/8/2013

Cmt #	Page #	Resource Program	Goal/Objective/Management Action	Comment
I.	General	All	All	We appreciate the opportunity, as a Cooperating Agency, to review the Greater Sage-Grouse CA/NV Sub-regional Agency Alternative D. While we are appreciative of this opportunity, we find it disingenuous for BLM to provide such limited notice and timeframe for review and comment. We did not receive our copy of the Alternative until April 29, 2013. Due to other commitments and the constrained timeframe, we simply were not able to provide as thorough as a review as we would have preferred.

COMMENT MATRIX
NE CA-NEVADA SUB-REGIONAL ALTERNATIVE D

Cooperating Agency: Eureka County, NV

Date: 5/8/2013

Cmt #	Page #	Resource Program	Goal/Objective/Management Action	Comment
2.	General	All	All	<p><u>Are the goals/objectives/management actions in Alternative D clear?</u></p> <p>The goals/objectives/management actions in Alternative D are not entirely clear. What is confusing is that goals/objective/management actions are separated in the Alternative but are often not representative of their definition (i.e., objectives are often actually goals). The management alternatives in the EIS must be built on a common application of goals and objectives.</p> <p>There are many sources of information in the resource management field that clearly define the differences between vision, goals, and objectives. In fact, many DOI and BLM references give direction on development of proper, clear and effective goals and objectives (see Williams et al. 2009, Adaptive Management: The U.S. Department of the Interior Technical Guide; Adamcik et al. 2004, Writing Refuge Management Goals and Objectives: A Handbook. U.S. Fish and Wildlife Service; and Swanson et al. 2006. Nevada Rangeland Monitoring Handbook Second Edition.) The common thread of these references describes differentiating between vision, goals, and objectives and then setting of objectives that fit the mnemonic SMART—Specific, Measurable, Achievable, Realistic/Related/Relevant, and Time-fixed.</p> <p>S – Specific – They describe what will be accomplished, focusing on limiting factors, and identifying the range of acceptable change from the present to the proposed condition.</p> <p>M – Measurable – The change between present and proposed condition must be quantifiable and measurable.</p> <p>A – Achievable – Are the objectives set achievable in the current setting? Consider environmental constraints, societal expectations, economic parameters, legal requirements, and technological limitations.</p> <p>R – Realistic/Related/Relevant – Set objectives that can be realistically achieved given the natural and management context of the situation. They are related in all instances to the land use plan goals and relevant to current management practices. Thus, they must be worthy of the cost of the management needed to achieve them and the monitoring needed to track them.</p> <p>T – Time-fixed – They must be trackable over time and must include a specific and definite timeframe and location for achievement, monitoring, and evaluation.</p>

COMMENT MATRIX
NE CA-NEVADA SUB-REGIONAL ALTERNATIVE D

Cooperating Agency: Eureka County, NV

Date: 5/8/2013

Cmt #	Page #	Resource Program	Goal/Objective/Management Action	Comment
3.	General	All	All	<p>Very few of the objectives in Alternative D meet all of the SMART criteria. As an example, consider Objective 1 under Livestock Grazing (p. 14). This objective states "In priority and general habitat, manage for vegetation composition and structure consistent with ecological site potential to achieve sage-grouse seasonal habitat objectives (see Table 2-3)." First, this objective refers to other objectives in Table 2-3 that do not meet the SMART criteria. The objective is not specific (S) because there is large variability in "vegetation composition and structure" even at ecological site potential. The State and Transition Model (STM) for any given Ecological Site Description (ESD) defines a range of vegetation characteristics in any given state. Also, "site potential" is not defined in the context of ESD and/or STM. Is the site potential synonymous with "reference state" of the ecological site? If so, what if the current state of any given site has crossed a threshold into a degraded <i>stable</i> state in which there is no current restoration pathway known? We argue that the state of an ESD in some circumstances is the "site potential" even if not conducive to or acceptable sage grouse habitat. Without being more specific, objectives such as this open a door of subjective interpretation, contention, and more legal wrangling.</p> <p>The objective is partially measurable (M) but not completely. It refers to other objectives in Table 2-3 that are not measurable. Even though monitoring can take place to determine "vegetation composition and structure" what is the quantifiable metric to determine if it is "consistent with ecological site potential to achieve sage-grouse seasonal habitat objectives?"</p> <p>The achievable (A) criterion needs to be better fleshed out in the objective. As already discussed above, "site potential" needs to be defined in the context of the current state of any given ESD. Simply put, some areas may crossed a threshold into a state that is the "site potential" given current understanding and technology. Some areas may be at "site potential" given the current ecological state but not in a state that provides every seasonal sage grouse habitat need. There must be language clarifying this issue in order for this objective to be achievable in all situations and then a follow up objective when these circumstances apply.</p> <p>The objective is not entirely realistic/related/relevant (R) for many of the reasons we have already discussed related to site potential and management constraints. This must be clarified.</p> <p>The objective is definitely not time-fixed (T). There is nothing to determine the timeframes for monitoring this objective nor the timeframes expected in meeting this objective. If an adaptive management approach is to be used, the temporal component is imperative. All future management adjustments must have a set time frame in which they are triggered if the objective is not or cannot be met.</p>

COMMENT MATRIX
NE CA-NEVADA SUB-REGIONAL ALTERNATIVE D

Cooperating Agency: Eureka County, NV

Date: 5/8/2013

Cmt #	Page #	Resource Program	Goal/Objective/Management Action	Comment
4.	General	All	All	<p>Most objectives in the Alternative D may meet some of the SMART criteria, but as written are actually goals, defined in the references as "broad statement of desired outcomes, usually not quantifiable" and "apply to the entire plan and are the same for all alternatives." There should be one overarching goal across all alternatives and the alternatives flesh out specific and SMART objectives.</p> <p>This example we have discussed above is a common theme throughout the entire Alternative D and Table 2-3 and must be addressed. If not, the amount of subjectivity on what any objective means is left up to agency discretion and individual or user translation, which may not be compatible. This will result in continued strife in managing sage grouse habitat and will result in much more time in the courtroom. Defining SMART objectives will minimize personal interpretation and result in all parties being on the same page moving forward, even with conflicting interests.</p>

COMMENT MATRIX
NE CA-NEVADA SUB-REGIONAL ALTERNATIVE D

Cooperating Agency: Eureka County, NV

Date: 5/8/2013

Cmt #	Page #	Resource Program	Goal/Objective/Management Action	Comment
5.	General	All	All	<p><u>Are there additional goals/objectives/management actions that should be included in Alternative D?</u></p> <p>Most of the current goals/objectives/management actions need to be re-worked, expanded, and or clarified in order for streamlining of management moving forward and to remove bias and minimize room for interpretation. Also, while Alternative D speaks in many locations about "site potential" and describes managing according to Ecological Site Descriptions, there is no discussion about State and Transition Models and the limitations of management in areas that have crossed thresholds. Everywhere throughout the entire document, please add language in these circumstances to read "consistent with ecological site potential <i>given the current state of the ecological site and in consideration of the State and Transition Model for the site.</i>" As an example IVM-17 on page 5 states "... manage lentic and lotic riparian systems to maintain species richness including a diverse perennial forb component (relative to Ecological Site Description)...." This could be changed to read "... (relative to Ecological Site Description <i>and sites potential given the current state of the ecological site and in consideration of the State and Transition Model for the site.</i>"</p> <p>A new objective needs to be included that calls for development of State and Transition Models for all Ecological Site Descriptions in MLRAs within the planning area. This is imperative in order to adequately determine progress towards meeting objectives. We must know what any given sites potential really is before we can set site specific resource objectives.</p>
6.	General	All	All	<p><u>What Management Action can be taken to address climate change?</u></p> <p>Incorporation of Adaptive Management is the only Management Action that will be able to address changes on the landscape, climate change related or not. We suggest incorporating a robust framework to allow for true adaptive management (i.e. quick flexibility) that will provide the necessary tools to land managers and land users to make timely adjustments based on monitoring data. Management Actions must be results driven.</p>

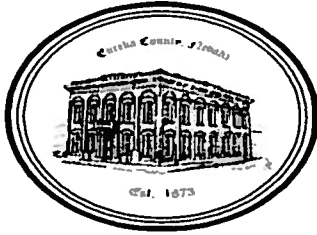
COMMENT MATRIX
NE CA-NEVADA SUB-REGIONAL ALTERNATIVE D

Cooperating Agency: Eureka County, NV

Date: 5/8/2013

Cmt #	Page #	Resource Program	Goal/Objective/Management Action	Comment
7.	14	Rangeland Management		Please call this section only "Livestock Grazing" and not "Rangeland Management" All sage grouse habitat is defined as rangeland. Rangeland management is not synonymous with grazing management. Grazing is a component of rangeland management. Consider the definition of SRM of rangeland, "Rangelands, a broad category of land comprising more than 40% of the earth's land area, are characterized by native plant communities, which are often associated with grazing, and are managed by ecological, rather than agronomic methods. The term "range" can also include forestlands that have grazing resources, or seeded lands that are managed like rangeland. Range resources are not limited to the grazable forage, but may include wildlife, water and many other benefits."
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Eureka County comment on Draft EIS, January 29, 2014



EUREKA COUNTY BOARD OF COMMISSIONERS

J.J. Goicoechea, Chairman ♦ Jim Ithurralde, Vice Chair ♦ Mike Sharkozy, Member

PO Box 694, 10 South Main Street, Eureka, Nevada 89316

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January 29, 2014

Mr. Joe Tague, Branch Chief
Renewable Resources and Planning
Bureau of Land Management
Nevada State Office
1340 Financial Blvd.
Reno, Nevada 89502

RE: Eureka County comment on Greater Sage-Grouse Draft Land Use Plan Amendment and EIS

Dear Mr. Tague:

The following comments are hereby submitted on behalf of Eureka County for the Nevada and Northeast California Greater Sage-Grouse Draft Land Use Plan Amendment and Environmental Impact Statement (DEIS).

General Comments

1. Cascading Effect of Comments

In reviewing the DEIS, we are aware that similar and related information and statements occur across all alternatives analyzed, and are connected, throughout the document. In the comments and concerns submitted by Eureka County, we focused the most on Alternative D, the preferred alternative. We did not track down all the connected statements and issues across the other alternatives, but expect that the BLM and USFS will understand that most of our comments and concerns will have a cascading effect throughout the document, apply to the other alternatives as well, and that these changes must be globally made throughout the entire document.

2. Eureka County Background

Much like Nevada as a whole, Eureka County is composed of a large federal land holding. Eighty-one percent of Eureka County's land area is made up of federally administered land, primarily Bureau of Land Management and Forest Service. Eureka County is primarily driven by mining, farming and ranching. Nearly all of Eureka County's employment is in the natural resources sector and the community's viability is largely dependent on business and recreational activities conducted on or in concert with federal lands. Since private land makes up only 13% of Eureka County's total land area, dependency on federally administered land limits and is often detrimental to our long-term socio-economic stability and viability. This threat to our viability is only exacerbated by the layers of regulatory burden that are placed upon multiple uses of these federal lands and a general lack of effort by the federal land management agencies to coordinate their land management decisions with

the local plans, policies, and desires of affected counties. This works to undermine sound land management and creates often adversarial relationships between the agency, counties, and proponents of projects on public land.

3. More Regulation and Red-Tape Will Not Translate to Conservation of Sage Grouse

The DEIS states that inadequacy of regulatory mechanisms to conserve the greater sage-grouse and its habitat was identified as a significant threat in the US Fish and Wildlife Service's (FWS) finding on the petition to list the greater sage-grouse as a threatened or endangered species (75 *Federal Register* 13910, March 23, 2010) (FWS finding). Our reading of the FWS finding highlights that regulatory mechanisms necessary to conserve GRSG already do exist but are inconsistently applied and not always embodied in Land Use Plans and Resource Management Plans. The DEIS itself acknowledges that FWS "identified the principal regulatory mechanisms for the BLM and Forest Service as conservation measures in LUPs." The FWS finding steps through many existing regulatory schemes for the different uses, including regulation, Instructional Memoranda, guidance, and RMP language. The real issues becomes very apparent in the FWS finding; (1) the extensive conservation measures related to GRSG are widespread and not succinctly included and/or committed to in LUPs and (2) federal land managers are not currently managing to meet and/or make progress towards meeting the ***already existing*** regulatory requirements, standards and guidelines, terms and conditions, etc. for working, healthy rangelands and habitats. This was highlighted in the FWS finding as follows:

"[r]egulatory mechanisms, ***if they exist***, may preclude listing if such mechanisms are judged to adequately address the threat to the species such that listing is not warranted. Conversely, threats on the landscape are exacerbated ***when not addressed by existing regulatory mechanisms***, or when the existing mechanisms are not adequate (***or not adequately implemented or enforced***)" (emphasis added)

The FWS finding explicitly noted that:

"BLM manages the majority of greater sage-grouse habitats across the range of the species. The ***BLM has broad regulatory authority to plan and manage all land use activities*** on their lands including travel management, energy development, grazing, fire management, invasive species management, and a variety of other activities.... For other threats to sage-grouse on BLM lands, the ***BLM has the regulatory authority to address them in a manner that will provide protection for sage-grouse. However, BLM's current application of those authorities in some areas falls short of meeting the conservation needs of the species***....the land use planning and activity permitting processes, as well as other regulations available to BLM give them the authority to address the needs of sage-grouse. However, the extent to which they do so varies widely from RMP area to RMP area across the range of the species. In many areas ***existing mechanisms (or their implementation)*** on BLM lands and BLM-permitted actions do not adequately address the conservation needs of greater sage-grouse, and are exacerbating the effects of threats to the species" (emphasis added).

There was very similar language for USFS managed lands in the FWS finding. The only place in the FWS finding that we could see that existing regulatory schemes were not adequate for FWS was related to wildfire and invasive plans where the finding stated that "a long-term mechanism is

necessary given the scale of the wildfire threat and its likelihood to persist on the landscape in the foreseeable future.”

We agree with the FWS finding that existing, widespread mechanisms do exist in nearly all cases but are not consistently applied by BLM and USFS. BLM and USFS already has a surplus of regulatory mechanisms to conserve GRSG habitat. For example, rangeland health standard and guidelines include provisions that apply to any use of federal lands including grazing, wild horses, and other vegetation disturbances including mining and grants of rights-of-way. These standards and guidelines are in addition to many controls specific to certain uses (e.g., mining, oil and gas) with strong regulatory controls at both the state and federal levels. Now, BLM and USFS superciliously propose increasing burdensome regulation and punishing users of the land to pay the price for the failure of these same agencies to consistently apply measures already in place.

More regulation and red-tape must not be a measure considered in the EIS to address GRSG conservation. More rules and regulations will not make progress happen on the land. The federal land management agencies must focus on what is already in place with a strong focus on adaptive management. The EIS proposed action and preferred alternative should be simple—take the plethora and surplus regulatory mechanisms in place and simply adopt them into the respective LUPs with explicit protocols for adaptive management under the current regulatory schemes. The only “new” regulatory mechanism that would need to be developed would be that lacking from the perspective of FWS for wildfire and invasive plants. This reasonable alternative must focus on a consistent approach for the agencies to implement the current schemes and monitor conditions and mitigation actions and make timely adjustments accordingly. This alternative would provide assurance to resource users and would allow for a results based, partnership approach in conserving GRSG. We strongly request that this alternative be added and analyzed.

4. Alternatives B, C, D, and F Are Inconsistent With the Plans, Policies, and Controls of Eureka County

We find the DEIS alternatives B, C, D, and F overwhelmingly inconsistent with the Eureka County Master Plan and our other plans, policies, and controls. Our Master Plan, primarily the Natural Resources & State and Federal Land Use Element of the Plan, has management goals, objectives, policies, and mandates, that if implemented, will conserve GSG in Eureka County. This is in addition to our various policies. The DEIS fails to analyze our plan and policies and is therefore inconsistent with such. We call for BLM/USFS to complete the analyses necessary to implement our plan for conservation of GSG in Eureka County.

We specifically request that BLM and USFS review the obligations for coordination and consistency outlined in the following laws and regulations and then follow through with these mandates.

- Federal Land Policy and Management Act (FLPMA)
 - 43 USC 1712(c)(9)
- BLM Regulations Implementing Planning Under FLPMA
 - 43 CFR 1610.3-1, Coordination of Planning Efforts
 - 43 CFR 1610.3-2, Consistency Requirements
- National Environmental Policy Act (NEPA)
 - 42 USC 4331 - Congressional Declaration of National Environmental Policy

- 42 USC 4332 – Cooperation of Agencies; Reports; Availability of Information; Recommendations; International and National Coordination of Efforts
- NEPA Implementing Regulations, Council on Environmental Quality (CEQ), 40 CFR 1500
 - Section 1501.2 Apply NEPA early in the process.
 - Section 1501.7 Scoping
 - Section 1502.16 Environmental consequences
 - Section 1506.2 Elimination of duplication with State and local procedures
 - Section 1508.14 Human environment
 - Section 1508.20 Mitigation
 - Section 1508.27 Significantly
- Memorandum to Agencies, Forty Most Asked Questions Concerning CEQ's NEPA Regulations
 - Question 23b
 - Question 23c
- National Forest Management Act
 - 16 U.S.C. 1604(a)
- USFS 1982 Planning Rule
 - 36 CFR 219.7
- USFS 2012 Planning Rule
 - 36 CFR 219.4(b)

In our letter to BLM and USFS during scoping for the EIS, we explicitly stated:

“Please consider the Eureka County Master Plan (Plan), specifically the Natural Resources & State and Federal Land Use Element of the Plan as Eureka County’s primary input into the Land Use Plan (LUP) revisions to incorporate GSG conservation measures. Local land use management plans should provide for the framework regarding the ability for public involvement and participation in GSG conservation efforts. Eureka County’s Plan outlines the goals, objectives, and guidance for the use of lands and resources located within Eureka County. Eureka County will not, and cannot, support any management option that is inconsistent with this Plan. The Plan also calls for federal agencies to fully comply with the intent of Congress as specified in various federal laws, including FLPMA and NEPA, by properly coordinating with Eureka County in incorporating the land use policies of Eureka County into agency documents and activities and resolving inconsistencies between federal proposals and County plans.”

BLM and USFS did not follow the requirements necessary for coordination and consistency with our plans, policies, and programs. This must be done.

Conflicts between the Objectives of Eureka County Plans and Policies (40 CFR 1502.16(h))

Largely, land-use and natural resource components of our Master Plan have not been implemented through regulation or permitting requirements but are primarily policy statements outlining policy objectives. Consistently and explicitly, since 81% of the land in Eureka County is administered by BLM and USFS, we work to shape projects and decisions on these lands based on legal requirements of the federal agencies to meet consistency and overcome conflicts with our plans and policies to the maximum extent possible through our interpretation and application of such plans and policies. BLM

and USFS must recognize that this Board is empowered to interpret and apply our own Master Plan and policies and to provide this interpretation. BLM does not have the authority to independently tell us what they think our policies are or mean. Therefore, if we have stated to BLM and USFS that there is a possible conflict, then these must be included with full efforts by BLM and USFS to resolve these conflicts. These possible conflicts are to be included in their respective resource topic areas of the Environmental Consequences section of the EIS and we request so.

Conflicts with Proposed Plans

The answer to question 23b of the CEQ FAQs clarifies that conflicts with “Proposed plans should also be addressed if they have been formally proposed...in a written form, and are actively pursued by officials of the jurisdiction.”

The County Master Plan calls for the County to “Develop a Water Resources Plan that takes into account existing and current conditions, analyzes various scenarios, outlines and analyzes different management alternatives including a status-quo or no-action alternative.” Eureka County has formally proposed, approved, budgeted, and is two years in the process of an active planning effort to follow its Master Plan and develop a comprehensive water resource master plan. We believe components of the DEIS across all alternatives directly conflicts with our Water Resources Plan. Over 60% of the appropriated water rights in Diamond Valley (all on private lands) must be retired in order to reach sustainability of the agricultural community in Diamond Valley. We are in advanced discussions with various industries to target alternative, less water intensive land uses in Diamond Valley. One of the options of our plan is photovoltaic solar energy. The right-of-way (ROW) exclusions for solar energy in Diamond Valley will severely limit our ability to find a water balance and will in turn, force further subdividing and development of the private lands in Diamond Valley. Additionally, the range of water management options left available for consideration in the water planning process is limited by the DEIS alternatives. BLM and USFS must work with us to overcome these conflicts.

This also creates an inconsistency with Nevada Revised Statutes (NRS) 540.011 that recognizes “the important role of water resource planning and that such planning must be based upon identifying current and future needs for water. The Legislature determines that the purpose of ... water resource planning is to assist the State, its local governments and its citizens in developing effective plans for the use of water.” The DEIS alternatives diminish our ability to develop “effective plans for the use of water” especially related to future needs many years into the future.

Further, the proposal to remove lands designated as suitable for disposal that have already gone through the administrative process and substantive requirements of FLPMA is disingenuous and is in conflict with Eureka County proposed plans for economic development and community expansion. We strongly request that lands currently designated as suitable for disposal remain in order to provide for future needs of our communities.

The DEIS analysis that results in these solar ROW exclusions and removal of lands for disposal is unfounded in science and actual conditions on the ground and is and overly restrictive given the dozens of miles of power lines and roads in Diamond Valley and the extensive agriculture, homes, hay barns, airport, landfills, gravel pits, and other development that already exists.

We also have proposed plans to work with grazing permittees and other industries and interested stakeholders for mutually beneficial actions to keep multiple-uses intact while conserving and benefitting GRSG and other wildlife. These plans includes encroaching pinyon-juniper removal, noxious weed control, distributed water developments, riparian enhancement, grazing management, and predator work. In fact, we have formally proposed work on BLM administered land over 3 years ago and BLM has failed to move forward for successful implementation. We have pitched may proposals to BLM to address resource concerns and prop-up economic stability, all which have resulted in no action or interest by BLM staff. We have the tools to address the threats to GRSG and other wildlife while keeping land uses intact. Although touted as conservation measures, the DEIS alternatives will actually hamstring this effort. If BLM and USFS were to give our plans the required full consideration and allow us to keep management decisions local, with reasonable checks in place to determine progress towards conservation goals, we would come through with significant positive results.

We require BLM and USFS to work with us to develop and select an alternative that is consistent with our proposed plans.

Conflicts with Policies

We agree with, and implore BLM and USFS to incorporate, the guidance from CEQ related to the definition of the term “policies” in 40 CFR 1502.16(h). The answer to question 23b of the CEQ FAQs clarifies that:

“The term “policies” includes **formally adopted statements** of land use policy as **embodied in laws or regulations**. It also includes proposals for action such as the initiation of a planning process, or a **formally adopted policy statement** of the local, regional or state executive branch, **even if it has not yet been formally adopted** by the local, regional or state legislative body” (emphasis added).

The land-use and natural resource policy statements and policy objectives outlined in the Master Plan have been formally adopted by Eureka County by resolution and have been codified in our County Code thereby embodying these policies in local law.

Further, we assert that every comment this Board has formally approved and provided to BLM and USFS on any GRSG EIS related report or analysis over the past few years is our formally adopted policy statements. We formally adopted these policies through public vote and always unanimous as a Board.

Notification of Inconsistencies with Eureka County Plans, Policies, and Programs

In order to hold BLM and USFS accountable for ensuring consistency as required, we provide notification of the plans, policies, and programs in the Eureka County Master Plan in which we assert that DEIS Alternatives B, C, D, and F conflict with (see 43 CFR 1610.3-2). These include the following taken in context with the entire set of comment we have made on the DEIS.

Eureka County Master Plan

- “Natural Resource and Land Use Plan provides a scientifically and culturally sound framework for establishing community planning goals; and provides details of goals and actionable objectives for a number of high-priority issues (p. 6-1)....Plan is designed to: (1) protect the human and natural environment of Eureka County, (2) facilitate federal agency efforts to resolve inconsistencies between federal land use decisions and County policy, (3) enable federal and state agency officials to coordinate their efforts with Eureka County, and (4) provide strategies, procedures, and policies for progressive land and resource management” (p. 6-2).
 - DEIS does not have an alternative that includes the goals and actionable objectives or the strategies, procedures, and policies for progressive land and resource management.
- “Eureka County expects that all decisions regarding natural resource management and land-use and all goals and objectives incorporated into this plan and, by extension, into state and federal agency plans, will be realistic and attainable” (p. 6-5).
 - Many of the goals, and even more so, the objectives in the DEIS alternatives are not realistic and attainable. Many of them are not even measurable. See our specific comments below related to the goals and objectives of the DEIS alternatives primarily located in Tables 2.4, 2.5 and 2.6.
- “Analysis and interpretation of facts is an important part of the process; so important that the U.S. Office of Management and Budget (OMB) has issued an instruction (OMB December 16, 2004, M-05-03; *Final Information Quality Bulletin for Peer Review*) to all federal agencies specifying the minimum standards for acceptable peer review of data or publications. Eureka County expects every federal employee to adhere to the OMB standards for Peer Review” (p. 6-5).
 - The OMB standard was not followed in the peer review of the so called “best available science” throughout the DEIS. For example, both the Sage-Grouse National Technical Team Report (NTT Report) and the FWS Greater Sage-Grouse Conservation Objectives Final Report (COT Report) are heavily relied throughout the DEIS alternatives but these documents did not follow the OMB standard for peer review. We point out specific issues related to both reports and other science in the DEIS in more detail below. Scientific research and documentation used within the DEIS is limited in scope to repetitive authors and does not adequately incorporate recent rangeland research or current understandings of rangeland dynamics and largely omits rangeland scientists and other rangeland professionals. Proper peer review and adoption of the full range of best and current science is necessary for consideration and adoption by BLM and USFS prior to the Final EIS and ROD.
- “Per this plan, it is the policy of Eureka County that Federal and State programs make progress towards improved resource quality, greater multiple uses of the federal lands, preservation of custom, culture and economic stability of Eureka County, and protection of the rights of its citizens. Eureka County will continue to urge state and federal employees to participate in this effort to coordinate in order to resolve inconsistencies between federal proposals and County policy. Should hesitance on the part of federal or state agencies substantially interfere with this progress, then Eureka County may seek judicial intervention to compel agencies to obey the mandates of Congress.” (p. 6-6).

- The DEIS touts the ability of management action under various alternatives to make progress toward improved GRSG conservation. However, many of the proposed actions will greatly impact the multiple-uses and undermine custom and culture and interfere with the rights of Eureka County citizens. Our Master Plan, if implemented, would meet the goal of GRSG conservation in balance with protection of uses, rights, and custom and culture. Please incorporate our plan as the preferred alternative for management in Eureka County.
- “Primary Resources: Soil, Vegetation, and Watersheds; GOAL: To maintain or improve the soil, vegetation and watershed resources in a manner that perpetuates and sustains a diversity of uses while fully supporting the custom, culture, economic stability and viability of Eureka County and its individual citizens” (p. 6-7); “The BLM and Forest Service must comply with the multiple use goals and objectives of the Congress as stated in the various statutory laws” (p. 6-8);
 - The DEIS alternatives are not in accordance with the multiple-use and sustained yield legal requirements and will not improve these primary resources in a holistic way that address the 3-legs of sustainability—the environment, the economy, and social needs and stability.
- “Development of Allotment Management Plans (AMPs), as an objective, will include completion of technically sound inventories; ecological status inventory (ESI) is a minimum, with other techniques as appropriate such as use pattern mapping as a measure of animal distribution, actual use records, detailed weather records, stream channel morphology, woodland features including age structure and density of trees, and other studies using standardized techniques. So-called “rapid assessment” techniques are permitted and in fact encouraged in Eureka County as a way to identify specific technical studies that are needed. Rapid assessment includes such techniques as the DOI Rangeland Health approach and the Riparian Functional Condition” (p.6-8).
 - The DEIS does not propose the implementation of any of these techniques through allotment specific AMPs. While there is discussion about implementation of AMPs in the DEIS, the ability to manage according to specific AMPs is undermined by the proposal of blanket restrictions, requirements, and actions across the entire landscape. There must be a focus on individual allotments through properly developed AMPs and associated resource inventories.
- “Goals and objectives will be set relative to the ecological potential of each location and will include descriptions of future ecological status, desired plant communities, livestock productivity and health, wildlife habitat attributes, wildlife population levels, acceptable levels of soil erosion, stream channel stability, and additional items specific to various land uses” (p. 6-8).
 - Goals and objective in the DEIS fall far short of being specific enough to clearly outline what will be required or what is possible according to ecological potential based on a current understanding and application of rangeland science. While many of the objectives speak to managing for ecological site potential, the State and Transition Model (STM) for any given Ecological Site Description (ESD) defines a range of vegetation characteristics in any given state. Also, “site potential” is not defined in the context of ESD and/or STM for any of the objectives. Is the site potential definition in the DEIS synonymous with “reference state” of the ecological site? If so, what if the current state of any give site has crossed a threshold into a degraded stable state in which there is no current restoration

pathway known? We argue that the state of an ESD in some circumstances is the “site potential” even if not conducive to or acceptable sage grouse habitat. Without being more specific, objectives such as this open a door of subjective interpretation, contention, and more legal wrangling. Many of the DEIS objectives are not measurable or only partially measurable. Many objectives reference the habitat objectives in Table 2-6 that are blanket objectives with no regard to any particular ecological site or state of the site. Some areas may be at “site potential” given the current ecological state but not in a state that provides every seasonal sage grouse habitat need. There must be objectives established with language clarifying this issue in order for all objectives to be achievable in all situations and then a follow up objective when these circumstances apply.

- The objectives in the DEIS provide for unnecessary subjectivity on what any objective means and is left up to agency discretion and individual or user translation, which may not be compatible. This will result in continued strife in managing GRSg habitat and will result in much more time in the courtroom. Defining SMART objectives will minimize personal interpretation and result in all parties being on the same page moving forward, even with conflicting interests. We reiterate that the objectives and management actions really need re-worked to be clear and get all users and land managers on the same page and to be consistent with our Master Plan.
- “Rangeland Health ratings, Riparian Functional Condition ratings, stubble height, and utilization levels are not suitable for goals or objectives that measure management success. Completion of each of these limited techniques as a precursor to design of additional studies is a reasonable objective within an AMP” (p. 6-8).
 - The DEIS establishes qualitative, rapid assessments, as measures of success in conserving GRSg habitat. Primarily, utilization and stubble-height standards and Proper Functioning Condition (PFC) are mis-used as standards and objectives to be met. We support and encourage these rapid assessments as a way to identify additional, quantitative based studies. The intended use of these techniques is to inform on adaptive management and to make timely management adjustments as necessary.
- “Wild fire and the period of time for recovery from fires has become a regulatory issue in Eureka County that has caused unreasonable economic hardship to Eureka County livestock producers. Properly managed grazing provides a substantial advantage for native plant recovery following fire. Prohibition of grazing following wildfire is not necessary for the recovery of rangeland vegetation. Managed grazing is beneficial in preventing excessive damage to plants by wildfire and prohibition of grazing prior to a fire results in unnecessary damage to the plants” (p. 6-8).
 - The DEIS includes provision to defer grazing after wildfires in all cases and does not fully recognized properly managed grazing as the best and primary tool to manage fuel loads before and immediately after fires. This must be included. Specifically, there needs to be inclusion of a methodology to allow for and streamline Temporary Non-Renewable (TNR) allocation of forage for fuels reduction in general and specifically including measures to allow for targeted cheatgrass control through TNR.
- Selection of the proper inventory or monitoring techniques and interpretation of the data will only be acceptable when performed by people whose judgment is the result of successful

experience and well developed skills. Technical guidance as found within peer reviewed scientific publications and various agency or interagency handbooks and manuals serves as reference material and may be incorporated into this document upon approval by the Board of Eureka County Commissioners. Suitable reference material is included as attachments to this plan or by reference within the text. Reference material includes, for example: the *Nevada Best Management Practices*, USDA Natural Resource Conservation Service *Range and Pasture Handbook*, *Nevada Rangeland Monitoring Handbook* (1984 First Edition or 2006 Second Edition), *Standards and Guidelines for Grazing Administration* as written by the Association of Rangeland Consultants, March 12, 1996, *Standards and Guidelines* as written by the Northeast Great Basin Resource Advisory Council.

- There is limited to no mention or incorporation of these peer reviewed and technically sound references that were developed specifically for Nevada.
- “Develop and implement Allotment Management Plans (AMP's) as follows: Within five (5) years on all "I" category, high priority allotments that do not already have current AMPs; within eight (8) years on all "I" category medium priority allotments; within ten (10) years on all other allotments” (p. 6-9).
 - This has not been done. If it had been followed when we initially proposed it our 2000 Master Plan, adequate measures would be in place on every allotment in Eureka County to conserve GRSG. Please incorporate this language into the DEIS.
- “Review and adjust livestock (grazing) stocking levels only in accordance with developed AMPs and/or trend in ecological status. Monitoring data, as obtained through the use of standardized rangeland studies such as ecological status inventory and frequency/trend monitoring completed at five (5) year intervals following implementation of AMPs, will be required for stocking level adjustments. Other studies such as Rangeland Health evaluation, Riparian Functional condition, stubble height, and livestock utilization may be useful as indicators of the need for additional examination and objective monitoring technique” (p. 6-10).
 - There are proposals across the DEIS alternatives to reduce grazing levels outside of AMPs or trend studies but instead based on utilization and qualitative and subjective triggers. Trend studies are extremely important because it provides the flexibility for less than desirable management mistakes as long as the overall trend is upward.
- “Assure that adjudicated grazing preference held by permittees is authorized according to the governing Federal statutes and that Temporary Non Renewable use is authorized in a manner that allows for use of excess forage when available” (p. 6-10).
 - The DEIS contains grazing permit retirement language that is not conducive to the grazing preference criteria that determines that when a permittee no longer wishes to graze, the grazing permit would become available for continued use (not non-use) by another appropriate party. We have already provided comment related to the need to incorporate strong methodologies for timely and responsive TNR authorizations of excess forage.
- “Develop prescribed fire and wildfire management plans to re-establish historic fire frequencies for appropriate vegetation types and include in such plans livestock grazing techniques as a tool for fire fuel management related to both wildfires and prescribed fires” (p. 6-10).

- This is a major component missing from the DEIS. The condition of much of the Great Basin rangelands and coincident GRSG habitat is degraded due to a fire regime that is not conducive to health rangelands and GRSG habitats. The DEIS must develop strong measures to return fire to the landscape in a managed way, where appropriate, or use other techniques, primarily livestock grazing, to mimic fire and its positive historic influences on the diverse and varietal needs of GRSG. The DEIS speaks to “limiting human influence on intact GRSG habitats” especially where cheatgrass is present. Unfortunately, even in areas where cheatgrass appears to be absent, a bioassay of the soils would show that there is, in fact, a seedbank of cheatgrass almost ubiquitously (see research by USDA-ARS (Charlie Clements) in Nevada regarding this matter). Protecting these areas from livestock use or other use with the excuse that they will allow “establishment” of cheatgrass is dangerous and short-sighted. These protections will create large, catastrophic fires that will bear the evidence of cheatgrass nonetheless. Regarding wildfire management, there should instead be a focus on *increasing* man’s influence in these ecosystems to allow for active, progressive, adaptive management. The decline in GRSG is coincident with the increase of regulatory schemes and bureaucratic hoops that must be overcome to do anything on the ground. This too has resulted in increases of extent and cycle of wildfires. Man’s influence has shaped where we are today and man’s influence must be focused, strategic, and targeted to keep *managing* these lands for GRSG habitat and current and future generations. See great work by the USDA-ARS Research Station in Dubois, Idaho where active grazing management and prescribed burning to mimic the historic fire regime has created an increase in GRSG when neighboring BLM and USFS land has continued to see a decline in GRSG (“A Home on the Range”, *Agricultural Research*, November/December 2006).
- “Develop grazing management plans following wild or prescribed fire through careful and considered consultation, coordination and cooperation with all affected permittees and affected landowners to provide for use of grazing animal management to enhance recovery” (p. 6-10).
 - The DEIS does not lay out a process for this. Again, blanket closures to grazing after fire are proposed.
- “Develop and implement an aggressive pinyon pine, juniper, and shrub abatement and control plan for all sites where invasion and/or senescence due to age of a stand is adversely affecting desirable vegetation and/or wildlife. Development of such plans will include technical references to Woodland or Rangeland Ecological Sites and other appropriate interpretations of specific soil series within a Soil Survey. Whenever possible, plans to reduce the density of Pinyon or Juniper will emphasize removal and use of the material for firewood, posts, or commercial products including chips for energy production. This item depends on continued access to all areas that are subject to future woodland manipulation” (p. 6-10).
 - While the DEIS acknowledges pinyon-juniper (PJ) encroachment and speaks to vegetation management of these issues, there is limited and general focus on the need to also address sagebrush and other shrub encroachment (such as rabbitbrush into meadows) and senescence (such as single age and decadent stands of sagebrush). If ESDs are followed, the areas, density, and cover of brush would be able to be targeted to approach ecological

potential. Many of the vegetation/habitat objectives focus on values of sagebrush cover without consideration of site potential and conditions (state). Further, there is no effort in the DEIS to address utilization of biomass from PJ as a means to incentive treatments and return dollars to the economy. Please include.

- “Manage wildlife at levels (population numbers) that preclude adverse impacts to soil, water and vegetation until monitoring studies and allotment evaluations demonstrate that population adjustments are warranted by changing resource conditions. Seek to restore...sage grouse population numbers to the levels observed in the mid-1900s” (p. 6-10).
 - With the myopic view focused on habitat, the DEIS fails to address this policy because there will never be enough GRSG. There needs to be clear indications of when management will be enough to protect the bird from extinction.
- “Manage wild horse and burro populations within Herd Management Areas (HMAs) at levels (population numbers) that preclude adverse impacts to soil, water and vegetation until monitoring studies and allotment evaluations demonstrate that population adjustments are warranted by changing resource conditions” (p. 6-10).
 - This DEIS fails to acknowledge that wild horse and burro populations (WH&B) remain on the public lands on a year round basis and are not managed for the benefit of the rangeland resource that supports their very existence. Only their numbers are attempted to be controlled, but with minimal success. There typically are no rest periods for the range in HAs or HMAs, riparian areas nor wetland meadows. Numbers control is all that the BLM have available to them today to effectively manage horses, and even that is being heavily impacted through the budget process. In addition, any attempts to restore rangelands within HMA’s would be most challenging due to the restrictions that would be applied when attempting to protect a new seeding or defer use from an area for a period of time to allow for natural regeneration. Fencing and other structural improvements would also become a real challenge. Given the actual performance record of BLM in Nevada and the exceedingly over-abundance and out-of-control numbers, how will the actual corrections be brought about that the DEIS proposes? Beyond excuses for not having enough resources, what confidence can there be that BLM will not continue to practice the management process of “do as we say, not as we do”? BLM should not “target” the uses of public land that are easy-picking without first addressing the mismanagement of the uses that are under the primary jurisdiction of the BLM itself. The Herd Management Areas in Eureka County are currently an average of 250% of AML while statewide the population numbers are 150% of AML. The BLM’s failure to properly manage WH&B has created a situation, in many cases, where the burden is now on the other users of the land, primarily ranchers, to pay the price for BLM’s shortfall. The DEIS needs to be frank and propose real, actionable solutions to the WH&B issue in order to be consistent with our Plan.
- “Prevent the introduction, invasion or expansion of undesirable plants and noxious weeds into native rangelands and improve the ecological status of sites that are currently invaded by undesirable plants or noxious weeds by integrating, through consultation with the Eureka County Weed District and Eureka County Department of Natural Resources, appropriate control methods

into all planning efforts. Prescriptions for control of undesirable plants and noxious weeds may include, but are not limited to burning, grazing, mechanical, manual, biological and chemical methods” (p. 6-11)

- There has been no effort by BLM or USFS to consult with the Eureka County entities, primarily the Weed District which has legal authority, through Nevada law, over weed control in Eureka County.
- “Monitoring: Document ecological status and trend data obtained through rangeland studies supplemented with actual use, utilization (use pattern mapping), and climatic data in accordance with the *Nevada Rangeland Monitoring Handbook*; Document ecological sites or forage suitability groups, and ecological similarity index as defined by NRCS *National Range and Pasture Handbook*, with specific reference to ecological status and trend data and “State and Transition” interpretations of ecological status; Document progress in the development and implementation of Allotment Management Plans; Document the development and implementation of Pinyon pine, juniper, and shrub abatement, control, or harvest plan(s); Annually review and document wild horse herd population inventories, and conduct inventories when necessary, including reports of wild horse movement, grazing habits, numbers and other data provided by permittees, lessees and landowners” (p. 6-11)
 - These required monitoring components have not been completed as required by our Master Plan and therefore, the analysis is lacking and flawed since the data was minimal and the data quality going into the development of the DEIS was poor.
- “Forage and Livestock Grazing; GOAL: Provide for landscape vegetation maintenance and improvement that will: 1) support restoration of suspended AUMs; 2) support allocation of continuously available temporary non-renewable use as active preference; 3) support allocation of forage produced in excess of the original adjudicated amounts where greater amounts of forage are demonstrated to be present; 4) restore livestock numbers of individual ranches to at least the full levels at the time of grazing allotment adjudications; and 5) restore wildlife populations to those peak levels of the mid-1990’s” (p. (6-13).
 - The DEIS has actions directly opposed to these goals and frames livestock grazing as antithetical to wildlife habitat and wildlife populations, including GRSG. We argue that the empirical evidence linking the highest numbers of GRSG to periods of high livestock numbers and predator control is not to be dismissed. We argue that this was the case because at the time, active management was allowed, range improvements (including water developments) were promoted, and vegetation manipulation was carried out. This needs to be acknowledged and implemented at part of the preferred alternative.
- “Congress mandates stabilization of the local livestock industry in such laws as the Taylor Grazing Act (TGA) and the Forest Service Organic Act (FSOA) by providing for the orderly use, improvement, and development of the range in a manner which adequately safeguards property rights including rights-of-way, easements, vested grazing and water rights. Regulation under these laws will not impair the value of the grazing unit of the permittee when such unit is pledged as debt security by the permittee; Public Rangeland Improvement Act (PRIA) provides that the Bureau of Land Management administered lands be managed in accordance with the Taylor Grazing Act. PRIA further provides that the range should be made "as productive as feasible" in

accordance with the Congressional objective of preventing "economic disruption and harm to the western livestock industry". PRIA mandates improvement of the rangelands in order to expand the forage resource and increase the resulting benefits to livestock and wildlife production.; In the Federal Land Policy & Management Act (FLPMA) Congress directs that the BLM administered lands be managed in a manner which "recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands". The National Environmental Policy Act requires consideration of all environmental actions on the culture, heritage and custom of local government (16 U.S.C. sec. 4331 (a)(4). Current active preference and continuously available supplemental use is considered the established allowable use for livestock grazing. The Forest Service is obligated to consider and provide for "community stability" in accordance with the National Forest Management Act (NFMA) and other National Forest related legislation dating back to the 1890's" (p. 6-13).

- The actions outlined in the DEIS will impair the valid existing rights appurtenant to ranches with grazing permits and will threaten the ranches viability. Further, the actions in the DEIS will further erode the stability of the livestock industry which is a basis for our local, long-term stable economy.
- "Essentially all rangeland use and value is dependent upon maintenance and enhancement of the primary landscape resources of soils, vegetation, and watersheds. August L. Hormay states that "...all renewable rangeland values stem directly or indirectly from vegetation. Sustained high-level production of these values therefore depends on proper management of the vegetation. The principal tool the rangeland manager has for managing vegetation is livestock grazing. It is the only force under firm control of the manager that can be applied on practically the entire range area....desirable vegetation and the overall productive capacity of rangelands can be increased more rapidly with livestock grazing than without....Livestock can be used to trample seed into the soil thereby promoting more forage and a better soil cover; to remove stifling old growth on plants, thus increasing plant vigor and production of useable herbage; to stimulate adventitious growth and higher quality forage; and to reduce fire hazard." (emphasis added) ("Principles of Rest-Rotation and Multiple-Use Land Management" USFS Training Text No. 4(2200)). Hormay explained that grazing management that is based on the physiological status and phenological development of the plants is the basis for keeping plants healthy and vigorous. Utilization levels have essentially no bearing on the longevity of the plants and very little value in management decisions. The principles of plant physiology as the basis for vegetation management taught by Hormay and other experts are a sound basis for grazing management in Eureka County. Eureka County natural resource strategy includes management based on the renewable nature of Eureka County's vegetation resources" (p. 6-14).
 - The DEIS actions for grazing are not based on this concept and grazing is generally disregarded as probably the best tool available for BLM and USFS to manage GRSG habitat to meet resource objectives while also stabilizing local economies and the industry uses of the land.
- "Implement rangeland improvement programs, including but not limited to water developments, rangeland restoration, pinyon-juniper and shrub control, and weed control to increase forage production; improve livestock grazing management, raise stocking rates, and achieve other

multiple use goals. It is the policy of Eureka County that water rights for livestock uses are to be held solely in the name of the permittee and not held jointly with a federal or state agency (see comment below)” (p. 6-14).

- These active management actions are given short shrift in the DEIS and the underlying tone and bias is towards protectionism rather than incentivized conservation through continues sustainable use. Grazing can continue and even increase beyond what is currently permitted all while benefitting GRSG and rangeland health. It just takes a commitment by BLM and USFS for locally driven, results based, active, adaptive management. We will achieve positive results if BLM and USFS will adopt our plan and allow for active, locally led conservation.
- “Identify and develop off-stream water sources where such opportunities exist in all allotment pastures with sensitive riparian areas and in all allotments where improved livestock distribution will result from such development” (p. 6-14).
 - The primary limiting factor in cases where livestock and WH&B management is poor is the lack of distributed water and/or the only water source being located in sensitive riparian zones. Rather than focusing on an action to increase water distribution and developing off-stream water sources, the DEIS focuses on restriction of grazing in riparian zones and proposed removal of water developments in some cases. The mentality needs to be flipped with a strong bias to development of new and maintenance of existing water developments. This would increase the management options available and would allow for timely adjustments needed to head off resource degradation.
- “Identify and implement all economically and technically feasible livestock distribution, forage production enhancement, and weed control programs before seeking changes in livestock stocking rates” (p. 6-14).
 - The DEIS focuses on livestock reductions and restrictions before identification and implementation of all other management tools cited here.
- Eureka County has a long-standing policy of “no-net-loss of AUMs.” This is an interpretation of our various policies already cited. What this means is that forage, if impacted, must be mitigated even if there is a gross (versus net) reduction. Eureka County has applied this policy for many years. The Board of Commissioners passed a resolution that we supplied BLM and USFS in 2010 that outlined the County policy related to loss of grazing forage and how all mitigation measures must be first contemplated before a change in stocking rate. There were other resolutions passed by previous Boards outlining similar policy statements. This is an example of a “formally adopted policy statement” discussed in 40 CFR 1502.16(h). The resolution specifically states “Before imposing grazing restrictions or seeking changes in livestock stocking rates or seasons of permitted use, federal agencies in coordination with grazing permittees must identify and implement all economically and technically feasible livestock distribution, forage production enhancement, weed control programs, prescribed grazing systems, off-site water development by the water rights holder, shrub and pinyon/juniper control, livestock salting/supplementing plans, and establishment of riparian pastures and herding.” When our Plan (and County Code) speak to “no-net-loss policy with respect to private land and private property rights” this would include grazing forage as our Plan clearly points out in many locations. A grazing permit is considered

private property and is attached (mandatorily) to private, base property through the Taylor Grazing Act. Our understanding and application of a grazing permit as private property does match the definition provided. Our Master Plan (and similarly in the County Code) in many places speaks to the nature of this private property right and there is lengthy discussion of this matter on Pages 6-16 through 6-19 of the Natural Resources & Federal or State Land Use Element as follows:

- Eureka County will evaluate each issue regarding "takings" of private property on a basis of whether it is personal and individual, or if a given incident has a potential affect on the County as a whole. Each "takings" claim will be evaluated in view of what is known of the affected business such as a ranch operation, irrigated agricultural operation, mining, or other property as set forth in this plan. Eureka County will consider that the economic value of a (ranch) base operation is dependent upon its relationship to adjacent or nearby federal or state managed lands. That relationship is often evidenced by a grazing permit. The existence of such permit causes County Assessors in many areas to appraise the taxable value of the private property which serves as the base operation at a higher rate than it would be appraised if no permit existed. Thus, for taxation purposes the grazing permit is considered a part of the realty upon which an individual must be taxed. The Internal Revenue Service also considers the permit as a taxable property interest. Financing institutions, whose support is critical to continued livestock grazing and agricultural operations in Eureka County, consider the existence of the permit, and the reasonable expectation of land use which emanates therefrom, as an indispensable factor in determining to extend and continue financial support. Grazing permits are capitalized into the value of a ranch, so that when a buyer purchases a ranch, he actually pays for livestock production stemming from the private and federally managed lands, as well as additional property in the form of water rights, rights of way, and improvements also on both private and federally managed land areas.
- The grazing permit was recognized by Congress as having the character of a property right, interest or investment backed expectation when it enacted that portion of the Taylor Grazing Act which is found in 43 U.S.C § 315 (b) guaranteeing renewal of permits if denial of the permit would "impair the value of the grazing unit of the permittee, when such unit is pledged as security for any bona fide loan."
- Congress also recognized the importance of the permit to the ranch operator when it enacted 43 U.S.C. § 1752 (c) [a portion of the Federal Land Policy Management Act] which afforded to the "holder of the expiring permit or lease" the "first priority for receipt of the new permit or lease." Such priority renewal recognizes the investment of time, energy and money by the ranch owner in reliance upon the land use of the federally managed lands which becomes an integral part of the ranch operation. Stewards of the Range attorney, Fred Kelly Grant quotes Marc Valens as having "succinctly analyzed the importance of the priority renewal both to the ranch operator and to all members of the American public who collectively own the federally managed lands." In Federal Grazing Lands: Old History, New Directions (1978), (an unpublished manuscript), cited at page 707 of Coggins Wilkinson Leshy, Federal Public Land and Resources Law (3rd Edition 1993), Valens states:

- “Priority renewal does have advantages. A permittee becomes intimately familiar with the range....[H]igh turnover of federal grazers does not permit them to get to know the range nearly as well. Only long use can teach an operator where the thicket is that hides the stubborn bull late in the fall. The seasonal pattern of drying up of the range and water holes must be known to fully utilize the range resource. If the first areas to dry are not used early in the season, they will be wasted. The rancher who expects to use the same range for many years in the future will be careful not to hurt the resource. The range cattle themselves get to learn the range. An old range cow can find hidden water holes and meadows that a new cow would not. And with the first snows of fall, the old cows will lead the herd back to the home ranch.”
- Federal land ranchers in Eureka County operate within allotments originally identified and adjudicated on the basis of water ownership. Their “right to graze” is a property interest appurtenant to livestock watering rights, most of which existed long before the Forest Organic Act and the Taylor Grazing Act were passed. All property, including water rights, is founded in the power of the State, even property existing within lands controlled by federal agencies. The nature of Nevada water rights reflects the split estate concept developed on western lands under Mexican law and continued with the establishment of the United States. The interest created in and owned by each Eureka county ranchers' predecessors and interest in allotments of grazing lands or forage lands is a portion of the "surface estate" of the split estate. McIntosh (2002) further describes this right in terms of the travel by livestock to the place where a livestock watering right is used has established livestock grazing rights-of-way for access to each water source that is based on the normal travel of livestock that are grazing as they approach or leave the water location. The ranchers have the right to graze on the surface of the land, a right which they developed through settlement and development.
- As described in the Introduction (Section 6.1), property ownership includes a “bundle-of-rights”. McIntosh (2002) quotes a legal dictionary in defining the bundle-of-rights as: “...the collection of rights that constitute fee ownership in an object or realty (or interests in real estate). The bundle-of-rights includes, but is not limited to, the right to: sell, lease, use, give away, exclude others from and to retain. The bundle-of-rights is the list of options that an owner can exercise over his property.” The term “fee” refers to the quality and character of ownership in a property.
- A long series of decisions by the United States Supreme Court set forth the position that when a validating or confirming statute is passed, the legal title to the possessory right passes as completely as though a patent had been issued. Title to allotments of federal land for grazing have been validated or confirmed for over a century, and the boundaries of those allotments have been adjudicated. The Stock Raising Homestead Act of 1916 culminated development of the settlement acts regarding the lands "chiefly valuable for grazing and raising forage crops" when it completely split the surface estate from the mineral estate in order to allow for the disposal of legal surface title to ranchers, while retaining undiscovered mineral wealth to the United States. The grazing right owned by

Eureka County ranchers was acknowledged and secured by passage of the Forest Organic Act in 1897 and the Taylor Grazing Act in 1934. Every subsequent Act regarding management of the federal lands has protected and preserved all "existing rights" such as the grazing right.

- Property rights related to the federal lands are split between a number of parties and users, private and governmental. The rights possessed by the various parties include water rights, grazing rights, rights-of-way or easements, mineral rights, wildlife rights, petroleum exploration rights and timber harvest rights. Each of the rights has been validated and secured by statute or court decision.
- In *Public Lands Council v. Babbitt*, supra, the United States District Court acknowledged the "right" of a permittee to his adjudicated grazing preference, and held that such "right" could not be removed by a regulation issued by the Secretary of Interior. Such recognition of a "right" forms the basis for a "taking" when that "right" is taken by regulation. It is the goal of this Plan that management activities be instituted which prevent such "taking" and which foster effective implementation of the "right" to adjudicated grazing preferences.
- The split estate is further demonstrated by the stock watering right possessed by each rancher to water existing on federal land. Each rancher who grazes livestock on federal lands has the right to use water existing on the federal lands even though he or she is not the title holder to the lands themselves. The effective date of the right to water the livestock grazing on those lands is the date of first appropriation by the rancher or any predecessor in title who conveyed the stockwater right.
- "Identify and initiate reductions in stocking levels only after monitoring data demonstrates that grazing management including range improvements and specialized grazing systems are not supporting basic soil, vegetation and watershed goals" (p. 6-14).
 - The monitoring proposals in the DEIS focus on blanket criteria, utilization standards, and indicator based approaches. These are fine only as long as they help focus where additional monitoring is needed and to make adjustments in management along the way. The DEIS proposed to reduce and restrict grazing based on these subjective monitoring techniques. Trend monitoring, over multiple years, and objective monitoring of ecosystem function is imperative before any reduction or restriction in grazing. Snapshot monitoring at one point in time (as is often the case with the qualitative techniques) does not inform on whether progress is being made towards objectives and standards.
- "Assure that all grazing management actions and strategies fully consider impact on property rights of inholders and adjacent private land owners and consider the potential impacts of such actions on grazing animal health and productivity" (p. 6-15).
 - There is a general disregard in the DEIS of the impacts to private property, including water rights, in the DEIS. The comment we made on this issue during scoping was disregarded or not included and still applies:
 - While evaluating the ramifications of possible curtailment of livestock grazing use, consideration should take into account the linkage between private ranch lands and federal land permits. Although we don't agree with the perspective that curtailment of properly-managed livestock grazing will have a beneficial result, we

do want to stress the potential negative consequences for GSG habitat on private lands, if a livestock grazing permit is not allowed to be used. In order to maintain business operations, possible conversion of private land holdings may result from not being able to make use of federally-managed lands. More intensive land use of these private resources could result in a negative outcome for habitat located on private land; In areas where private lands and federally-managed lands are found in alternating sections (i.e., “checkerboard” lands) or where private lands make up a significant portion of large tracts of habitat, this increase in fragmentation would undoubtedly be far more of a problem and impact on GSG.

- “Where monitoring history, actual use or authorization of Temporary Non-renewable grazing (TNR) demonstrates that supplemental use is continuously available, and can or should be used to improve or protect rangelands (e.g., reduction of fuel loads to prevent recurring wildfire), initiate a process to allocate such use to permittees as active grazing preference; Authorize use of supplemental forage during those years when climatic conditions result in additional availability” (p. 6-15).
 - The DEIS fails to acknowledge or implement a process for TNR or access to additional forage and conversion to active grazing preference if the criteria in our Plan is met.
- “Temporary ‘voluntary non-use’ of all or a portion of adjudicated forage is necessary on occasion due to drought, economic difficulties, animal health, etc., and is an acceptable management strategy. ‘Voluntary non-use’ for the purpose of long-term or permanent retirement of a grazing allotment is detrimental to the economic stability of Eureka County and will be opposed by the Board of Eureka County Commissioners” (p. 6-15).
 - The DEIS separates actively used AUMs from voluntary non-use AUMs. This frames the reality that permittees will likely never be able to activate the non-use AUMs under the DEIS options.
- “Monitoring: Document the amount of livestock use through review of actual use, authorized active use, suspended use and temporary nonrenewable use; document livestock production or performance when available; document all rangeland and livestock management improvement programs as to acres affected by vegetation manipulation, water development, specialized grazing systems and weed control; document grazing use in each allotment through use pattern mapping for the purpose of recording livestock or wildlife distribution patterns and identifying additional monitoring techniques that are needed. Utilization monitoring is not a suitable measure for calculating stocking rates; document the direction of rangeland trend and seral class acreage changes that support changes in the amount of use being authorized or denied; document all decisions or agreements resulting in changes in active preference and approvals or denial of applications for supplemental use” (p. 6-15).
 - These required monitoring components have not been completed as required by our Master Plan and therefore, the analysis is lacking and flawed since the data was minimal and the data quality going into the development of the DEIS was poor.
- “Identification of goals for riparian vegetation attributes must be realistic and attainable based on the dependability of surface or subsurface water regimes, climate as determined by elevations,

soil and substrate characteristics, and the likelihood of unacceptable impacts on other uses within the riparian area and surrounding uplands” (p. 6-20).

- Habitat objectives in the DEIS related to riparian zones are one-size-fits-all and do not take into account the drivers that shape riparian vegetation. Further, the actions proposed for riparian vegetation fail to take into account and analyze the impact and impairment of water rights and potentially increased impacts on other rangeland sites.
- “Select or develop site specific Best Management Practices (BMP's) through allotment management plans for...riparian areas and aquatic habitats” (p. 6-20).
 - BMPs and riparian zone actions are one-size-fits-all and do not give credence to development of AMPs based on site-specific conditions and drivers.
- “BMP’s include but are not limited to: prescribed grazing systems, off-site water development, shrub and pinyon/juniper control, livestock salting plans, establishment of riparian pastures and herding” (p. 6-20).
 - Some of these measures are given a perfunctory nod in the DEIS, but restriction, prohibition, and protectionism are elevated above these other active management options. Active management incorporating these proposed actions should be the first action with restriction, deferment, and prohibition being the last option when all else has failed.
- “Develop management plans for multiple recreation uses in high erosion hazard watersheds, or watersheds where accelerated erosion is occurring, which assure that planning documents and/or other agreements which alter multiple recreation use are formulated through coordination with the Natural Resource Advisory Commission which includes representatives of recreational groups” (p. 6-20).
 - This is not a component of the DEIS and should be.
- “Provide for the development and maintenance of water conveyance systems (i.e. provide for livestock watering systems, irrigation diversions, and domestic or municipal uses)” (p. 6-21).
 - The primary limiting factor in cases where livestock and WH&B management is poor is the lack of distributed water and/or the only water source being located in sensitive riparian zones. Rather than focusing on an action to increase water distribution and developing off-stream water sources, the DEIS focuses on restriction of grazing in riparian zones and proposed removal of water developments in some cases. The mentality needs to be flipped with a strong bias to development of new and maintenance of existing water developments. This would increase the management options available and would allow for timely adjustments needed to head off resource degradation.
- “Monitoring: Document progress in the development of AMP's including site specific BMP's and their implementation; document the development and implementation of multiple recreational use plans for specific high erosion areas; document impacts of wild horses, wildlife, and multiple recreation use on riparian and aquatic habitat” (p. 6-21).
 - These required monitoring components have not been completed as required by our Master Plan and therefore, the analysis is lacking and flawed since the data was minimal and the data quality going into the development of the DEIS was poor.

- “Wildlife and Wildlife Habitat; GOAL: Maintain, improve or mitigate wildlife impacts to habitat in order to sustain viable and harvestable populations of big game and upland game species as well as wetland/riparian habitat for waterfowl, fur bearers and a diversity of other game and non-game species” (p. 6-21).
 - The single species focus on the GRSG does not holistically address the other species that may be impacted by the actions proposed in the DEIS.
- “Declines in both sage grouse and mule deer population numbers have been well documented following peak populations from the 1930s to the late 1960s. Population changes are discussed in the Nevada Wildlife Action Plan, but habitat descriptions in that report do not seem to be scientifically supported. Declines in both species parallel the decline in livestock numbers and the loss of ranch families who lived and worked where their livestock grazed. There are other possible causes of the declines in both deer and sage grouse that include loss of habitat as plant species composition changes and increase in predation... Sage Grouse benefit from spring grazing on meadows prior to the arrival of sage grouse broods, the early grazing improves the sage grouse food supply because the plants that had been consumed are re-growing and very palatable when the sage grouse arrive and insects are also readily accessible for the sage grouse chicks. As livestock and ranching declined there has been an observed increase in predators of...sage grouse. Between about 1940 and 1970, several chemicals were developed and used to control coyote populations in order to protect livestock, and the mule deer and sage grouse also benefited. After the use of chemicals such as 1080 were banned, sheep ranchers returned to trapping or shooting as predator management which continued to benefit wildlife populations. However most Eureka County sheep ranches are no longer in business and the benefit of predator management by those ranchers has been lost. Adult sage grouse are believed to depend on their ability to see predators approaching in order to escape, which is one of the benefits thought to be provided by grazing meadows that are also used to raise sage grouse broods. As discussed in the Society for Range Management paper “Ecology and Management of Sage Grouse and Sage Grouse Habitat” (2006), predation of adult sage grouse has a substantial affect on populations but it has been demonstrated in recent years that depredation of sage grouse nests by common ravens can literally prevent successful reproduction of sage grouse over wide areas” (p. 6-22 and 6-23).
 - The failure of the DEIS to analyze and propose actions for proactive management and predator effects is not consistent with our Plan and policies and fails to address the whole of issues at hand with decrease and conservation of GRSG.
- “Realistic and attainable wildlife population goals have as a baseline, the historical observations of wildlife populations at the time of European settlement, which indicate that wildlife populations were generally sparse with very few...sage grouse being observed by early explorers. Archeological interpretations support this scarcity of animals and birds. Wildlife populations at levels of those existing at the time of European settlement is the best that natural Eureka County habitats can provide. Wildlife populations increased in the mid-1900s, following the establishment of ranches and farms, and the continuation of the preferred wildlife populations will require positive management actions in response to local community concerns. Community economic concerns and values will be obtained from the Eureka County Wildlife Advisory Board,

Eureka County Natural Resources Advisory Commission, Eureka County Economic Development Board and the Board of Eureka County Commissioners; the voice of Eureka County citizens provides the basis for wildlife and wildlife habitat management investments” (p. 6-24).

- We find the actions being proposed in the DEIS are at odds with the conditions and population of GRSG that existed before humans actively managed their landscapes in the Great Basin. The DEIS needs to square with this inconsistency and empirical information. The DEIS needs to be based on reality, especially if the protectionist actions are implemented, that wildlife populations at levels of those existing at the time of European settlement is the best that natural Eureka County habitats can provide. Numbers of GRSG increased with active human management based on use and will only be conserved with active human management based on use.
- “Accelerate the planning, approval and completion of multiple-use water developments, rangeland treatment projects and prescribed burns that include objectives for enhancement of ... wildlife habitat. Wildlife developments must be cooperative in nature, respecting the rights and interests of existing resource users” (p. 6-25).
 - On this matter, the DEIS falls short. We have proposed to BLM proactive cooperative measures that meets this objective and respects rights and uses. Our proposals have received no action by BLM and have been completely disregarded. We request more robust inclusion on active developments and projects and a process for streamlining of project approval for projects that are proposed for uses that are designed to benefit GRSG too.
- “Assure that management agencies provide all necessary maintenance of enclosure fences not specifically placed for improved management of livestock” (p. 6-25).
 - Where the DEIS proposes to remove existing fences rather than maintain is inconsistent with our Plan. Properly maintained fences are integral to livestock management and wild horse management.
- “Initiate cooperative studies with willing private land owners, of wildlife depredation and related concerns regarding wildlife habitat on private land” (p. 6-25).
 - The DEIS has a basic omission of working holistically with private land owners to truly benefit the GRSG that use both private and federally administered lands. Instead, the actions in the DEIS will impact private land and will likely increase pressures on privately held GRSG habitats.
- “Develop records of wildlife losses to predators and support predator control efforts designed to protect specified wildlife species” (p. 6-25).
 - The failure to account for predator control conflicts with this policy.
- “Monitoring: Document the participation of affected parties in the development and establishment of population targets and management guidelines...; document the inclusion of wildlife habitat objectives in activity plans and BLM approved Reclamation Plans; document the location and extent of water developments and vegetation manipulation projects and prescribed fires for wildlife habitat improvement and provide timely notification to all affected parties; periodically monitor range improvement projects, rights-of-way, woodcuts, mining activities, multiple recreation uses, and materials leases, to document habitat improvement or disturbance;

document the incidents of wildlife depredation and extent of game animal harvest in designated management areas of both land and wildlife management agencies” (p. 6-26).

- These required monitoring components have not been completed as required by our Master Plan and therefore, the analysis is lacking and flawed since the data was minimal and the data quality going into the development of the DEIS was poor.
- “Land Tenure; GOAL: Utilize, to the greatest extent possible, agricultural or mining entry, land exchange, and or land sale for disposal of all public lands which by virtue of their size or location render them difficult and expensive to manage and do not serve a significant public need or where disposal will serve important public objectives. Authorize as needed the use of those lands, not currently authorized, for rights-of-way, leases and permits. Fully recognize and protect existing property rights including rights-of-way, easement, water rights, forage rights, mineral rights, and other such property” (p. 6-26); “Eureka County will encourage transfer of non-patented lands to private ownership; Eureka County will discourage transfer of private land to public ownership” (p. 7-8).
 - Many actions in the DEIS are directly antithetical to this goal. Withdrawal of lands already categorized as suitable for disposal, especially in Diamond Valley, is not based on conditions on the ground and severely limits our future community expansion plans and economic development opportunities. It is the definition of arbitrary and capricious to have lands marked suitable for disposal not suddenly not meeting the FLPMA criteria and proposed to no longer be suitable for disposal.
- “Identify and give priority consideration to requests for exchanges or purchases from private land owners with fenced federal range, isolated tracts, or irregular boundary lines” (p. 6-27).
 - Only accommodation for this in the DEIS is for checkerboard lands and only for exchange. This will severely limit opportunities for all stakeholders to create win-win situations for blocking up of land that would also benefit GRS.
- “Encourage property owners to identify and record existing property rights, particularly those that predate FLPMA. Eureka County recognizes the minimum width of rights of way to be 50 feet on either side of a water conveyance ditch, pipeline, or flume as established under the 1866 Mining Act and further recognizes that the width of rights-of-way established under R.S.2477 to be from 100 feet to several miles wide and limited only by practical conditions. All necessary actions for maintenance of ditches, pipelines, flumes, roads, trails, or other infrastructure for water conveyance or travel within these rights-of-ways is hereby approved by Eureka County” (p. 6-27).
 - The DEIS proposes actions that will severely impair and impede the valid existing rights of Eureka County and many of its citizens. RS 2477 and RS 2339 rights are overlooked and not acknowledged.
- “Seek legal administrative access only through purchase or exchange where significant administrative need exists, construct new roads around private lands where easement acquisition is not feasible, and consider significant public access needs in all land tenure adjustment transactions” (p. 6-28).

- BLM and USFS unilaterally assert jurisdiction on County and private rights-of-way in which they have no authority or jurisdiction. This ranges from road closures and travel restrictions to removal of water conveyances (RS 2339).
- “Locatable Minerals, Fluid Minerals, and Mineral Materials; GOAL: Facilitate environmentally responsible exploration, development and reclamation of oil, gas, geothermal, locatable minerals, aggregate and similar resources on federal lands” (p. 6-28).
 - The blanket rules and actions put forward do not allow for any flexibility to allow for responsible development of these resources. This is especially true regarding the proposals to close areas to mineral entry and/or oil and gas lease. Each project and proposal should be evaluated by its own merits instead of holding every project proponent at bay with one-size-fits-all approaches.
- “The Mineral Leasing Act of 1920 as amended, Geothermal Steam Act of 1970, as amended, the Mining and Mineral Policy Act of 1970, all declare that it is the continuing policy of the federal government to foster and encourage private enterprise in the development of domestic mineral resources. The 1872 Mining Law along with the Mining and Mineral Policy Act of 1970 declares that it is the continuing policy of the United States to foster and encourage private enterprise in the development of domestic mineral resources. The Federal Land Policy & Management Act, reiterates that the Mining and Minerals Policy Act of 1970 is to be implemented and directs that the BLM administered lands are to be managed in a manner which recognizes the nation's need for domestic sources of minerals and other resources. The National Materials and Minerals Policy, Research and Development Act of 1980 restates the need to implement the 1970 Act and requires the Secretary of the Interior to improve the quality of minerals data in land use decision making. The Mining Law of 1866 guaranteed certain rights which allow for orderly and efficient use of the public lands for commerce” (p. 6-29)
 - While valid existing rights are given a nod in the DEIS, the restrictions proposed in the DEIS will indirectly impair and affect the ability of industry to meet the present and future mineral needs of our region and nation.
- In coordination with federal agencies and state and local government planning agencies and in cooperation with interested members of the public, develop a land management mineral classification plan to evaluate, classify and inventory the potential for locatable mineral, oil, gas and geothermal, and material mineral exploration or development, to insure that lands shall remain open and available unless withdrawn by Congress or federal administrative action. To the extent practicable, land with high mineral or oil and gas values shall remain open for economic use” (p. 6-29).
 - This coordination and process has not occurred and was not included in the DEIS.
- “Woodland Resources; GOAL: Maintain or improve aspen and conifer tree health, vegetation diversity, wildlife and watershed values through active management of sites with the ecological potential for aspen, pinyon, or juniper woodlands and initiate thinning, removal, or other management measures; unrestricted invasion of Pinyon and Juniper into plant communities that have the ecological potential of rangeland results in loss of wildlife habitat, loss of livestock forage, reduced water flow from springs and streams, and increased soil erosion; plan and implement, where necessary and useful, programs to improve Pinion and juniper woodland

health, e.g.: selective fence post and firewood harvesting, or other operations such as green-cuts; plan and implement removal of pinyon or juniper from plant communities that are identified as non-woodland (rangeland) ecological sites and restore the vegetation that is appropriate for those respective sites; document woodland product harvest activities on the BLM and FS administered lands as necessary to promote customary economic use of woodland resources (i.e. pine nuts, firewood, posts, Christmas trees, etc.); plan and implement wildlife habitat improvements and grazing management strategies designed to enhance...pinyon-juniper....; document, report to responsible agencies and ensure mitigating management actions for the occurrence of insects and diseases that threaten the health of woodland resources” (p. 6-31).

- In large, the failure or inability of the federal agencies to proactively manage PJ according to proper fire cycles and ESD has now pushed the burden to other users of the land to pay the price and face severe regulatory restrictions. We have tried for years to work with BLM to move forward with PJ projects and have been disregarded and downplayed. The DEIS must implement the provisions of our Plan and provide the analysis necessary to achieve large scale removal of encroaching PJ and pair industry utilization of the biomass.
- “Hunting, Fishing, and Outdoor Recreation; GOALS: Provide for multiple recreation uses on Eureka County federal...lands located within its boundaries for residents and visitors to the County. Provide recreational uses including high quality recreational opportunities and experiences at developed and dispersed/undeveloped recreation sites by allowing historic uses and access while maintaining existing amenities and by providing new recreation sites for public enjoyment. Pursue increased public access opportunities in both motorized and non-motorized settings through the acquisition of rights-of-way or easements across federal administered lands.... Recognize that multiple recreation uses are mandated by the multiple use concepts and that adequate outdoor recreation resources must be provided on the federal administered areas; keeping open all existing access roads and the ability to maintain those same roads or accesses; These historically accessed areas include roads, trails, sandwashes, and waterways identified as Revised Statute 2477 rights-of-ways, including those areas where wild horses may be located”
- (p. 6-33).
 - The DEIS proposals will affect hunting, fishing, and outdoor recreation, primarily through impacts to existing rights-of-way and travel restrictions. Neither BLM nor USFS have authority or jurisdiction over RS 2477 rights-of-way.
- Provide for adequate outdoor recreation resources by revising the designated areas to decrease or eliminate limitations and restrictions where the review and evaluation shows that the limitations and restrictions are no longer appropriate and necessary; plan and establish designated equestrian, foot, and off-road vehicle trail systems for compatible recreational, agricultural, and other multiple uses so that such uses can continue unabated; describe methods of minimizing or mitigating documented use conflicts or damage and define the manner in which each method is expected to accomplish minimization or mitigation. All recreation promotion will include explanation of the contribution of private property owners to wildlife habitat, recreation access, and recreation sites” (p. 6-34)

- These requirements were not followed in the DEIS when outlining measures for management of recreation. The DEIS proposals will affect hunting, fishing, and outdoor recreation, primarily through impacts to existing rights-of-way and travel restrictions.
- “Monitoring: Collect, review and analyze data relating to the demand for recreation use, the impact of the various recreation uses on land values, and any actual conflict or damage caused by each of the multiple recreation uses; in coordination with federal agencies and state and local planning agencies, review all data to determine whether temporary climatic conditions, wildlife activities, or range conditions require temporary or seasonal restrictions or limitations on historic and present recreation uses, and review data to determine the earliest point at which temporary restrictions or limitations can be removed; collect and maintain data obtained during meetings and discussions with recreation users; collect and maintain data obtained from community business owners concerning business contacts, sales, and future expectations from recreationists; collect and maintain records of all management actions taken specifically to meet requirements of the Americans with Disabilities Act (ADA) and maintain records of use and requests for use from ADA eligible individual; investigate, validate and document all user conflicts reported...; federal agencies.
 - These required monitoring components have not been completed as required by our Master Plan and therefore, the analysis is lacking and flawed since the data was minimal and the data quality going into the development of the DEIS was poor.
- “Wilderness, Wilderness Study Areas (WSA), Areas of Critical Environmental Concern (ACEC), and Other Restrictive Land Use Classifications; GOAL: Seek immediate Congressional designation action on all WSAs and other restrictive land classifications based on Eureka County policy to release these areas for multiple use management and in the interim prevent, minimize or mitigate impairment or degradation of such areas to the extent that Congressional actions are not pre-empted. Provide the amenities promised by wilderness designation through multiple use management that includes dispersed recreation where appropriate and opportunities for solitude” (p. 6-35).
 - The overly-restrictive components in the classification of PPMA, PGMA, and ACECs are inconsistent with our Plan.
- “Existing land uses and pre-existing property rights are described in other sections of this Natural Resource and Land Use Plan. Every area of Eureka County includes pre-existing property rights and existing uses that are best served through multiple use management. Eureka County is committed to the protection of those existing rights” (p. 6-36).
 - The DEIS restrictive land classifications, designations, especially the ACECs, fails to acknowledge and address the impacts to existing rights, primarily water rights, rights-of-way, and mineral rights.
- “As discussed within the Eureka County Master Plan, Eureka County is committed to future development of mining, communication infrastructure, and energy production. Locations for many of the future developments cannot be identified at this time, therefore all currently available land must remain available and not included into Wilderness Areas, Roadless Areas, ACEC, or other restrictive designations” (p. 6-37).

- The DEIS must build in management flexibility to allow for development of resources of importance and community expansion. Implementation of our plan would allow for this flexibility, reasonable and environmentally sound development, while also conserving GRSG and providing for rangeland health.
- “Provide for optimum scenic value in Eureka County through achievement of vegetation and soils watershed objectives and implementation of nondegrading, nonimpairing range improvement activities, construction, use and maintenance of livestock management facilities, and facilities for public enjoyment of the land” (p. 6-37).
 - The full suite of these de minimis activities is not allowed under the DEIS alternatives.
- “Identify measurable accomplishments or benefits that will be obtained through future designation of restricted use areas; no designation of restricted use areas such as Roadless, ACEC, or others will be completed until it is clearly demonstrated that such designations will not be detrimental to existing property rights, recreation including hunting or fishing, livestock grazing management, wildlife habitat management, County administrative needs, and future mining or energy development” (p. 6-37).
 - These criteria were not followed or met in designation of ACECs and restricted areas/uses in PPMA and PGMA.
- “Monitoring; Track the data obtained from rangeland studies and document the location, pace, and extent, of trends in rangeland vegetation and soil stability; collect data regarding the multiple recreation uses occurring in areas designated or being subjected to potentiality study for special designation such as ACEC or wilderness” (p. 6-38)
 - These required monitoring components have not been completed as required by our Master Plan and therefore, the analysis is lacking and flawed since the data was minimal and the data quality going into the development of the DEIS was poor.
- Evaluation:
- Compare current WSA acres recommendations with those remaining at the end of each decade.
- Determine the extent of change in condition class and trends for watershed uplands and riparian habitat.
- Compare management of released land for compliance with multiple use guidance provided in land use plans for adjacent land and the Federal Land Policy and Management Act.
- “Standards of Conduct; GOAL: Ensure that...federal laws, regulations and policies that affect natural resource and land use are administered in a fair, impartial and ethical manner” (p. 6-39).
 - We assert that the DEIS analysis and proposals for GRSG conservation in the DEIS are not done in a fair, impartial and ethical manner. It is evident that some very extreme environmental groups and non-biased bureaucrats have leveraged tremendous influence over the DEIS while the State of Nevada Plan and our local plans, policies, and proposals have fallen on deaf ears and were not given much consideration.
- “Law Enforcement; GOAL: Assert the maximum extent of local authority allowed under law in the enforcement of laws limiting use of and access to natural resources on state and federal lands; Authority of the Eureka County Sheriff and his deputies is found at NRS 248. Unless explicitly

preempted in authority by state or federal law, the authority of the Eureka County Sheriff shall be assumed to be controlling for any law enforcement action in Eureka County” (p. 6-43).

- The DEIS proposes restrictions on travel on non-BLM and USFS roads and proposes restrictions to the continued use valid existing rights such as RS 2477 and RS 2339. The BLM and USFS have no authority or jurisdiction on the prescriptive rights.
- “Federal agents are to provide a clear written authorization that identifies the jurisdiction that both Congress and the U.S. Constitution has provided for the action they are about to take and how that claim of jurisdiction preempts the jurisdiction of a County Sheriff in Nevada. If such documentation is not provided or if it is inadequate, then the federal agent has indicated they do not have the jurisdiction for that proposed law enforcement action” (p. 6-43).
 - The DEIS does not provide clear written authorization and explanation for jurisdiction.
- “Federal agencies, under the authority of FLPMA 43 USC Section 303(1) are authorized to contract with local law enforcement to provide services within the federally administered area: When the Secretary determines that assistance is necessary in enforcing Federal laws and regulation relating to the public lands or their resources, he shall offer a contract to appropriate local officials having law enforcement authority within their respective jurisdictions with the view of achieving maximum feasible reliance upon local law enforcement officials in enforcing such laws and regulations. . . . (2) . . . Such cooperation may include reimbursement to a state or its subdivisions for expenditures incurred by it in connection with activities which assist in the administration and regulation of use and occupancy of the public lands; FLPMA further states in 43 USC Section 701 (g)(6) of the Session Laws of 1976 in the Savings Provisions: Nothing in this Act shall be construed . . . as a limitation upon the police power of the respective States, or as derogating the authority of a local police officer in the performance of his duties, or as depriving any State or political subdivision thereof of any right it may have to exercise civil and criminal jurisdiction **on the national resource lands**...Similarly, Forest Service officials are directed to cooperate with local law enforcement in 16 USC Chapter 2 Section 480 and 16 USC Chapter 3 Section 551a which limit FS law enforcement and specifically protects the authority and jurisdiction of the local unit of government (again the State, County, and Sheriff)” (p. 6-44).
 - The DEIS proposes to work outside of BLM and USFS jurisdiction by implementing law enforcement type actions.
- With respect to agency access to private property or crossing private property, Eureka County requires the following: (1) oral or written permission of the owner or lessor of private property (with evidence of the permission provided to the Sheriff); (2) five day advance written notice from any federal or state agency to the Sheriff of a proposed crossing, said notice to state the following: (a) specific management purpose of the agency for the crossing, (b) the names of federal and non-federal persons to make the crossing, (c) a statement of the specific status of any non-agency employee particularly those who may be an "interested public" to a specific grazing allotment; (3) if the crossing is by vehicle, the vehicle must be owned by the Government and operated by a government official; (4) if the crossing is on foot, agency employees "must be present and in direct supervision and control" of the persons who are not agency employees; (5) the access must involve no activity on the private property other than movement across it for

access to federal land, thus prohibiting inspection, photographing or videotaping of private property.

- It appears that BLM and USFS have not been following the Eureka County requirements for access to and across private lands. This is evident in the baseline studies, maps, and analysis that has specific information related to private lands.

Notification of Inconsistencies with State and Local Plans and Laws (40 CFR 1506.2(d))

The requirements of 40 CFR 1506.2(d) are somewhat different than those under 40 CFR 1502.16(h). In 40 CFR 1506.2(d), BLM is required “discuss any inconsistency of a proposed action with any approved...local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.”

Since the discussion on conflicts (and by extension, inconsistencies) with plans and policies has already been discussed above, we focus here on inconsistencies with State and local laws.

As we already pointed out, Eureka County policies outlined in the Master Plan have been formally adopted as local law by being codified in the County Code. BLM and USFS must consider these same items conflict with plans and policies as also inconsistent with local law. Additionally, the following is from our County Code Title 9, in which the same inconsistencies and conflicts highlighted above must be reconciled in the DEIS alternatives and analyses. Areas of conflict and inconsistency or which BLM and USFS must pay particular attention are emphasized.

Eureka County Code, Title 9

.020 Purpose

The purpose of this Chapter is to (1) guide County policy with respect to natural resource issues facing Eureka County, (2) ***provide a framework to guide federal agencies in land use planning*** on federal lands as per the National Environmental Policy Act of 1969, the Federal Lands Policy and Management Act of 1976, the National Forest Management Act of 1976, the Threatened and Endangered Species Act of 1973, and other applicable laws and executive orders, and (3) ***safeguard property rights and other customary usage rights of the citizens of Eureka County***, the State of Nevada, and the United States against any and all encroachments upon those rights by individuals, groups, corporations, public agencies, non-governmental organizations, or any other entity which may attempt to take private property, trespass upon private property or infringe upon other customary rights as have been established by the constitutions, laws and customs of the United States, the State of Nevada, and Eureka County. This title is meant to complement and supplement the constitutions and laws of the United States, the State of Nevada, and Eureka County with additional means of protection and enforcement. This Chapter is not intended to create new rights nor is it intended to in any way supplant the lawful authority of individuals, groups, organizations, corporations, governments or other entities which act pursuant to the laws of constitutions of the United States, the State of Nevada, and Eureka County.

.030 Adoption of the Eureka County Natural Resources and Land Use Plan

A. Holding that the American *people are best served when government affairs are conducted as closely to the people as possible (i.e., at the County level)*, the citizens of Eureka County, through the Eureka County Board of Commissioners, adopt the Eureka County Natural Resources and Land Use Plan as provided in this chapter.

B. The *Eureka County Natural Resources and Land Use Plan shall serve as the primary guide for the use and management of all natural resources and state and federal lands within Eureka County.*

.040 Custom and culture

A. Since the time that aboriginal peoples inhabited what is now Eureka County, local custom and culture has revolved around *beneficial use of natural resources*. Aboriginal peoples harvested native plants, animals and geologic material to provide nearly all the raw material for their tools, shelter and sustenance. What was not found locally was traded with other communities in and around the Great Basin. In similar fashion, early European miners, ranchers and farmers lived largely within the bounds of what they could obtain from the natural environment.

B. With the early gold and silver finds in the mid-1800s came Cornish and Irish miners, Italian charcoal burners (Carbonari), Germans, Swiss, French, Russians, Chinese, and others contributing to mining and support industries, and defining the early custom and culture of Eureka County. The signing of the Treaty of Guadalupe-Hidalgo in 1848 concluded the Mexican-American War and enlarged the borders of the United States to include what is now Eureka County. Upon ratification of the Treaty, the United States acquired and managed this territory as sovereign and proprietor under the Property Clause of the U.S. Constitution. *Legal traditions of property rights that existed* under Mexican law prior to the establishment of Nevada as a Territory of the United States *remain intact today as they are consistent with the U.S. Constitution and laws of the United States. Prior existing property rights including, but not limited to water rights based on the doctrine of prior appropriation, forage rights based on the ownership of water rights and land, rights-of-way, and ownership of real property, are explicitly preserved by all federal land laws. Preservation of these rights demonstrates their importance to the custom, culture and economy of Eureka County and the west.*

C. The burgeoning mining camps brought Basque sheepmen who ran sheep in most of the mountains and valleys in Eureka County. On their heels came cattlemen and other settlers who, with the help of the 1877 Desert Lands Act, the Act of 1888, the Act of 1890, the 1891 Creative Act, and the 1916 Stock Raising Homestead Act, established privately-owned base properties to support permanent range livestock operations and farms. Competition among livestock interests resulted in the passage of the 1925 Nevada Livestock Watering Law. A component of this law, locally known as the Three Mile Rule, made it a misdemeanor for a stockman to allow his animals to graze within three miles of a watering site owned by another stockman. The federal government responded to disputes among stockmen and over-use of the federal ranges by passing the 1934 Taylor Grazing Act. The Taylor Grazing Act superseded Nevada's Livestock Watering Law; however, it did not extinguish any prior existing property rights. These property rights withstanding, the Taylor Grazing Act gave the Secretary of the Interior broad discretion to manage public land through rules and regulations and provided that all future grazing on public land be allowed only via grazing permits. The system of management adopted by the Secretary of Interior under the Act provided for (1) adjudication of federal ranges, (2) issuance of revocable

licenses with preference given to existing grazers owning commensurate base property, and (3) establishment of Grazing Districts. Graziers in Eureka County and Elko County established the N-1 Grazing District in 1935. Graziers in Eureka County, Lander County, and Nye County established the N-6 Grazing District in 1951. Early efforts of the State of Nevada to preserve customary grazing rights (e.g., 1925 Nevada Livestock Watering Law) and recognition of these rights by subsequent federal laws (e.g., TGA, FLMPA, and PRIA) demonstrate the importance of livestock grazing to the region's custom and culture. ***The continued importance of livestock grazing and impacts of federal lands management decisions to citizens of contemporary Eureka County is reflected in establishment of the Eureka County Public Lands Advisory Commission in 1994 and the Eureka County Department of Natural Resources in 1995.***

D. Commensurate with development of arable land and distributed water in Eureka County, ***livestock numbers grew steadily until their peak in the 1940s and 1950s. With these changes came increased wildlife.*** Populations of mule deer increased across the state until they peaked in the 1940s and 1950s. Similar trends are observed for sage grouse. ***Downward trends in these wildlife species, beginning in the 1960s, are commensurate with declines in permitted livestock on federal ranges and continues into the present decade.***

E. ***Access to resources on federal lands and the right to pass uninhibited across federal lands are important historical components of the Eureka County's custom and culture.*** In 1859 Captain James Simpson of the U.S. Corps of Topographical Engineers surveyed the Simpson Wagon Road north of present day Eureka to supplant the earlier-established and longer Humboldt Route. In 1860 the Simpson Route was established as the Pony Express Trail. The 1866 Mining Act and the 1897 Reservoir Siting Act, protected miners, ranchers and others to whom access to federal lands was the basis of their livelihood. The portion of the 1866 Act codified as Revised Statute 2477 provided simply that "[t]he right-of-way for the construction of highways over public land, not reserved for public uses, is hereby granted." Although Revised Statute 2477 was repealed by the Federal Land Management and Policy Act of 1976, ***miners, ranchers, hunters and fishermen still use these early rights-of-way and rely on Revised Statute 2477 to protect their economic welfare and recreational opportunities.***

F. Water rights in Eureka County date back to the mid 1800s. Early miners, ranchers and farmers established surface water rights through the ***common law doctrine of prior appropriation.*** The State of Nevada codified this doctrine for surface water in 1905 and extended the law to ground water in 1939....

G. ***Farming has been an important component of Eureka County's industry since the early days of land settlement.*** Farming was limited to native sub-irrigated meadows and lands irrigated by diverted surface water until supplemental flowing wells were drilled on the Romano Ranch in 1948 and the Flynn Ranch in 1949. In 1949 two irrigation wells were drilled in Diamond Valley in an effort to develop land under Desert Land Entry. By the mid 1950s, pumped irrigation wells were being developed in southern Diamond Valley, Crescent Valley and Pine Valley. By 1965, some 200 irrigation wells had been drilled in Diamond Valley alone. Today, Eureka County's farming districts support a robust grass, alfalfa and meadow hay industry.

H. While standards of living have changed dramatically since the mid-1800s, ***miners, ranchers and farmers remain the core of the Eureka County community.*** The shift from strictly local food hunting and fishing to sport hunting and fishing and other natural resource recreation activities

has added a small, but viable, recreation and tourism component to the County's natural resource-based culture. ***Custom and culture of today's Eureka County citizens remain steeped in their mining, farming and ranching heritage. Eureka County is and will ever be dependent upon natural resources for its economic existence.***

.050 Community stability

A. Economic and social stability of Eureka County are inseparably tied to the use of natural resources. Over ninety percent (90%) of the County's employment is in the Natural Resources and Mining sector (including agriculture). Mining presently contributes the major portion of the County's personal income and tax revenue stream; however, the "boom and bust" nature of the mine activity periodically brings farming, ranching and agricultural services back to the forefront of the economy. When mining activity lulls, the community relies on its other traditional industries to maintain its viability.

B. State and federal lands make up eighty-one percent (81%) of Eureka County's land area. Given (1) that the community's viability remains largely dependent on business and recreational activities conducted on or in concert with state and federal lands and (2) that many of these activities are inseparably tied to the economic viability of private lands in Eureka County, the community remains particularly sensitive to state and federal planning decisions.

C. Community stability in Eureka County is a symbiosis between the small private land base and the much larger federal land base. Private property interests in minerals, water, forage, rights-of-way and other natural resource attributes of federal lands enhance social and economic values of Eureka County's private lands. Reductions in the private land base or erosion of private property interests in federal lands, including, but not limited to real property, personal property and mixed property; split estates, easements, rights-of-way, mineral rights, water rights and customary usage rights; fee interest, tenancy and possessory interest, adversely affect the social and economic stability of the County.

D. Certain provisions in a number of federal laws, including the Federal Land Policy and Management Act of 1976, the Public Rangelands Improvement Act of 1978, the Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act), the Threatened and Endangered Species Act of 1973 and the Wild Horse and Burro Protection Act of 1971, have spawned sweeping changes to federal land policy that have proven detrimental to economic and social stability in Eureka County.... The threat of listing sage grouse, other wildlife and plant species under the Threatened and Endangered Species Act may severely limit economic and recreational use of private, state and federal land in Eureka County, particularly where such listing occurs without adequate peer-reviewed scientific analysis.

E. As the previous observations attest, stability of the Eureka County community, its industries, commerce, schools, health care, police protection, and other services, rests squarely on (1) protection of private property rights, (2) sound and balanced management of natural resources, and (3) continued multiple-use and economic-use of state and federal lands.

.060 Primary planning guidance

A. Private property and property rights. Where the Board of Eureka County Commissioners determines that it is in public interest of the citizens of Eureka County, ***Eureka County will evaluate state or federal actions related to private property and private property interests, including investment backed expectations.*** The County will use as its primary guidance the Fifth Amendment to the United States Constitution, which prohibits the taking of private property for public use without just compensation. The County will also pursue the principles of Executive Order 12630 which requires federal agencies to prepare a Takings Implication Assessment prior to initiating any action, issuing any rule, or making any decision which would constitute a taking of private property or private property interest, including investment backed expectation.

B. Tax base. ***It is critical to the welfare of the citizens of Eureka County that the Board of Eureka County Commissioners pursue a stable source of tax revenue based on economic use of natural resources.*** In order to build a broad tax base, the County supports privatizing certain state and federal lands for commercial, residential, industrial and agricultural and mining uses. In the face of considerable reductions in Ad Valorem tax revenues caused by transfer of private land to public ownership, Eureka County maintains a policy of no net reduction in Ad Valorem taxes related to land tenure changes unless the reductions are adequately mitigated by agreement with the Board of Eureka County Commissioners after public hearing. In addition, Eureka County promotes the concept of split-estate taxation wherein the various components of an estate in real property are taxed as a function of their relative value rather than being accrued only in the surface estate.

C. Water resources.

1. Eureka County affirms ***support for the doctrine of prior appropriation*** as established by state law; that the right to appropriate water is a compensable property right available to individuals and municipalities. ***Ownership of the right to use water has, as key principals, those provisions set forth in Nevada Revised Statutes 533.0010 through 533.085, including, but not limited to, first right, first use, beneficial use, and point of diversion.***

2. Eureka County ***promotes private development of water resources on state and federal land*** for beneficial use in Eureka County, including, but not limited to geothermal reservoirs, power generation, municipal water supplies, irrigation and stock water.

5. Eureka County will work to maintain its water resources in a condition that will render it useable by future generations for the full range of beneficial uses that further a viable and stable economic and social base for its citizens....

E. Mining. ***It is critical to the welfare of the citizens of Eureka County and the nation that mining on state and federal lands remains an open and free enterprise.*** Eureka County upholds the tenet that mining claims are compensable property belonging to individuals or groups of individuals. Eureka County supports:

1. Retention of and compliance with the 1872 Mining Law as amended; 2. Mine reclamation activities as per Nevada Revised Statutes Chapter 519A; 3. Streamlining of the permitting process 4. Reasonable bonding requirements that promote small business investment in mine exploration, development, and reclamation; 5. Use of the best available science and technology to ensure adequate protection of land, air, and water resources;

F. Agriculture. Eureka County ***recognizes (1) the importance of agriculture to the stability of the local economy and (2) the historic and contemporary influence of agriculture on the community's custom and culture.*** Farms and ranches have played and continue to play a fundamental role in the social and economic well-being of our County. ***Eureka County recognizes that increasing regulatory pressures are reducing the viability of farms and ranches. In order to reverse such trends, Eureka County supports, encourages and promotes policies that will lead to the long-term economic strength of family farming and ranching.***

1. With respect to farm production, Eureka County supports:
 - a. private investment in and ownership of agriculturally productive land;
 - b. economically and scientifically sound agricultural practices;
 - c. ***coordination and consultation of state and federal conservation, wildlife and planning activities with local farm organizations and Eureka County.***
2. With respect to livestock production and federal lands, Eureka County supports:
 - a. ***private investment in and private ownership of range improvements and water developments;***
 - b. ***economically and scientifically sound grazing practices;***
 - c. ***increasing grazing capacity and other economic incentives to promote private investment in range improvements including, but not limited to, fencing, seeding, water development, improved grazing systems, brush control, pinion/juniper eradication, proper fire management and noxious weed control;***
 - d. ***restoring Voluntary Non-Use AUMs and suspended AUMs to active preference;***
 - e. a grazing fee formula that accounts for all non-fee costs of producing livestock on state and federal land;
 - f. subleasing of grazing rights;
 - g. ***multiple-use concepts;***
 - h. ***active management of range resources by permittees rather than by public agencies;***
 - i. ***limiting the role of public agencies to monitoring range condition as per the 1984 Nevada Rangeland Monitoring Handbook and determining compliance with applicable laws;***
 - j. ***coordination and consultation of state and federal conservation, wildlife, land management and planning activities with permittees, local livestock organizations and Eureka County.***

G. Wildlife. ***Management of wildlife***, including fish, game animals, non-game animals, ***predatory animals, sensitive species, Threatened and Endangered Species***, under all jurisdictions whatsoever, must be grounded in peer-reviewed science and local input. ***Wildlife management plans must identify and plan for mitigation of negative impacts to local economies, private property interests and customary usage rights.***

1. Eureka County ***supports wildlife management that:***
 - a. ***is responsive to the County Wildlife Advisory Board, the Natural Resources Advisory Commission, and the Board of County Commissioners;***
 - b. enhances populations of game and non-game species native to Eureka County;
 - c. recognizes that enhancing non-native game and non-game species may negatively impact native species and rangeland and forest ecosystems;
 - d. ***increases wildlife numbers where practicable and not in conflict with existing economic uses or ecosystem health;***

- e. ***avoids managing wildlife at population levels that exceed those reported in historical records and established by peer-reviewed scientific investigation;***
- f. recognizes that large game animals compete for forage and water with other economic uses;
- g. recognizes that federal agencies are mandated to maintain or improve conditions on federal forests and ranges;
- h. recognizes that wildlife damage mitigation may encumber existing interests and properties to future damages.

2. ***Eureka County will actively participate in wildlife management decisions that affect the welfare of its citizens via state wildlife planning efforts and county, state and federal land use planning. Eureka County will work to ensure proper implementation of wildlife plans.***

3. Eureka County is ***adamantly opposed to listing any species of wildlife under the Threatened and Endangered Species Act unless the highest level of scientific rigor (i.e., peer-reviewed research based on publicly accessible data sets and methodology) demonstrates that the species warrants listing. The County shall consider all reasonable actions to avoid listings under the Threatened and Endangered Species Act, including, but not limited to, state and local conservation planning and legal recourse.***

4. ***To maintain agriculture*** as a productive part of the local economy and to enhance the environment for ecologically and economically important wildlife, ***Eureka County supports sound predator control programs.***

5. Eureka County generally opposes the introduction, gradual encroachment and institutionalization of wildlife not native to Eureka County.

6. Eureka County recognizes that ***the Bureau of Land Management is mandated by Congress to manage all multiple-uses of federal lands, including wildlife, in a manner that maintains or improves the conditions of federal ranges.*** The County will pursue federal intervention in wildlife management situations in which range conditions are inadequately protected.

H. Recreation. ***Recreation is important to the citizens of Eureka County.*** The unique outdoor recreational opportunities found in Eureka County are many of its greatest assets. Eureka County values the opportunity and freedom these lands provide and encourages balanced management goals that include hiking, camping, wildlife viewing, and other outdoor recreation activities. ***Eureka County strongly advocates the rights of recreationists to continued lawful access to public lands.***

I. Utility rights and public consumption. As per 43 U.S.C., Sec. 315(e), Eureka County supports ***individual citizen's acquisition of rights-of-ways for roads, ditches, pipelines, canals, power lines, telephone lines and stock driveways. Eureka County adamantly supports the protection of vested rights that may limit other uses of state and federal lands. As per 43 U.S.C., Sec. 315(d) Eureka County recognizes rights of local citizens to utilize natural resources for personal consumption (e.g., firewood, posts, sand, gravel, etc.).***

J. Land disposition and land tenure adjustments.

1. Eureka County will ***respect and uphold private property interests*** in land, including, but not limited to, land patents, mining claims, easements, rights-of-way, and forage rights.

2. Eureka County ***maintains a no-net-loss policy with respect to private land and private property rights***, and is opposed to public acquisition of private property, except where the acquisition is a) clearly in the public interest of the citizens of Eureka County and b) appropriately mitigated in value and in land area by transfer of property from the public domain to private ownership. Determination that such a transaction is in the public interest of the citizens of Eureka County and that proposed mitigation is appropriate shall be determined by the Board of Eureka County Commissioners after proper public hearing.

3. Eureka County recognizes that the ***imbalance of the private/public land ownership inhibits new economic activity in Eureka County and is detrimental to Eureka County's long-term viability***. The County encourages state and federal agencies to ***aggressively pursue land disposal*** to the maximum extent allowed by law. State and federal land transfers to local governments will be given priority consideration in any disposal of state or federal land.

4. ***If any public entity intends to acquire an estate in land, water, minerals, forage or any other private property in Eureka County, the proposed acquisition shall first be presented to the Board of Eureka County Commissioners. The Board shall determine likely impacts to the County's human and natural environment and render an opinion about the suitability of the acquisition.***

K. Riparian habitat and wetlands.

1. ***Riparian areas and wetlands are critically important to well-balanced and productive rangeland ecosystems***. Eureka County encourages consultation, cooperation and coordination as provided under Section 8 of the Public Rangelands Improvement Act of 1978 for riparian areas and wetlands under the jurisdiction of a federal agency.

2. The bulk of riparian areas and wetlands in Eureka County exist on private ranches and farms. ***Eureka County supports retaining riparian areas and wetlands in private ownership*** by improving the economic environment for the ranching and farming community.

L. Wilderness, wilderness study areas, parks and refuges. To the extent that multiple-use of federal lands is vital to the economy of Eureka County, the County is opposed to the designation of any Wilderness Areas or Wilderness Study Areas within its geographic boundaries. The County calls for removal of Wilderness Study Area designations and re-introduction of active stewardship of these lands that do not meet the suitability criteria of the 1964 Wilderness Act. ***Eureka County demands local input and decision-making in the designation and management of parks, refuges, Areas of Environmental Concern, roadless areas or any other legislative action, regulatory decision or policy that limits access to or use of federal land or resources within the geographic boundaries of the County.***

M. Wild horses. Eureka County recognizes that horses, protected under the Wild Free-Roaming Horse and Burro Act of 1971, are properly classified as feral animals. The County recognizes that in passing the Wild Free Roaming Horse and Burro Act, ***Congress failed to account for prior adjudication of the nation's public ranges, thereby disenfranchising livestock grazers and wildlife of existing forage allocations without compensation.*** The County recognizes that the

Department of Interior is mandated by Congress to manage Wild and Free Roaming Horses in a manner that is consistent with legislative intent and will hold the agencies accountable under all applicable laws. ***Poor management of feral horse herds has resulted in sustained over-population of horses in Eureka County.*** Over-population has caused long-term damage to range vegetation and water sources, and has resulted in starvation of horses during periods of drought and severe winters. Eureka County encourages federal legislation and policies that promote scientifically-sound and responsible management of feral horse herds. Eureka County advocates economically beneficial uses for feral horses and advocates public sale of excess horses. The County opposes the cost-ineffective policy of long-term pasturing for excess horses where the policy conflicts with the stated intent of the 1971 Wild Free-Roaming Horse and Burro Act to manage horses "...in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands."

N. Access. ***Eureka County supports the right of public access through state and federal lands inasmuch as access does not conflict with private property rights*** (as per the Eureka County Public Roads Resolution of March 7, 1994).

O. Pinyon and juniper control. Eureka County encourages active management of pinyon/juniper woodlands and removal of woodlands where they exist at unhealthy densities and beyond their historic range. ***Eureka County supports economic use of these resources.***

P. Wildfire. Eureka County ***supports the right for local citizens to protect their property from fires originating on state and federal lands. The County advocates active fire management on federal lands,*** including, where appropriate and in consultation with grazing permit holders, adjacent landowners, local volunteer fire fighters and Eureka County, a let-burn policy. The County is ***opposed to arbitrary and inequitable restriction of post-fire land use for recreation and livestock grazing. The County insists that all post-fire land use restrictions be adequately justified and based on peer-reviewed science.***

Q. Other federal land use regulations. ***Many land use regulations have the potential to adversely impact Eureka County's economy. Eureka County mandates involvement in all federal actions that may impact the local economy according to this Title.***

Chapter 40 - COOPERATIVE PUBLIC LANDS MANAGEMENT

.010 Findings of fact

The Board of Commissioners of Eureka County, a political subdivision of the State of Nevada, finds as follows:

A. The government of the United States of America exercises ***control over 2,100,000 acres (eighty-one percent) of the land*** and the majority of natural resources within the geographic boundaries of Eureka County;

B. ***Decisions governing federal lands in Eureka County have a history of negative impact*** on the interrelated heritage of cultural, environmental and economic well-being and stability of County residents;

C. The Congress of the United States has expressed intent, codified in 42 U.S.C. §4331, to act in cooperation with County governments while using all practicable means to create and maintain conditions on federal lands allowing for productive harmony between man and nature while fulfilling the ***social, economic, environmental and cultural requirements of present and future generations***;

D. The efforts of Congress seeking to ***coordinate federal plans with County government***, maintaining a balance between population and resources, and encouraging high standards of living and a wide sharing of life's amenities, as contemplated by 42 U.S.C. §4331(b)(5), can be enhanced by:

1. ***Increasing cooperation between Eureka County, State of Nevada, and those federal officials*** involved with the administration of federal lands situated within the County; and

2. ***Full consideration by the Federal Government of the needs of Eureka County citizens*** who will be directly or indirectly impacted by federal agency decisions regarding the use of federal lands and the management of water, fish and wildlife in Nevada;

E. There now exists a substantial and ***urgent need to increase the involvement of Eureka County in the management of federal lands*** and in the development of criteria that are meaningful in any decision-making process, as contemplated by 43 C.F.R. Section 1610.3-1(a), Section 1610.3-1(b), Section 1620.3-2(a); 36 C.F.R. Ch. II, Section 219.7(a), Section 219.7(c), Section 219.7(d).

.020 Procedures adopted

Based upon consideration of the findings set forth in section .010 of this chapter, Eureka County adopts the following procedures to ensure that there is full and complete disclosure and cooperation by federal entities to the County regarding decisions affecting federal lands located within the County and, reciprocally, that federal entities be made aware of the impact of their actions and decision-making on the interrelated heritage of cultural, environmental and economic well-being and stability of the County. The adopted procedures apply to all decisions undertaken by any agency, department or other federal entity including, but not limited to, the Department of Interior, Department of Agriculture, Environmental Protection Agency, Department of Defense, or Department of Energy (hereinafter known as "federal entities") that do or will have a direct or indirect impact on federal and private lands within the geographic confines of the County.

.030 Specific procedures

A. That the County government of ***Eureka County demands, pursuant to adopted federal statutes and regulations, full and complete notice and opportunity for involvement in the decision making processes of the federal entity*** that:

1. are being taken or are being ***proposed to be taken regarding federal lands*** located within the State of Nevada,

2. involve listing, de-listing, classification or reclassification of a threatened or endangered species or any ***designated habitat within the County***, or

3. ***involve any major federal action*** significantly affecting the quality of the human and natural environment within the County;

B. That ***failure of federal entities to afford Eureka County complete notice and opportunity for involvement beyond that afforded individuals***, or to limit State and County government involvement, input to or comment at public hearings, ***is presumed to be prejudicial*** to the government of Eureka County and its residents, and that the Board of Eureka County Commissioners is authorized and empowered by this chapter to authorize and instruct the Eureka County District Attorney to seek redress for such prejudice in the federal courts and through administrative hearings;

.040 Presumption of negative impact

If implementation of a habitat designation or other federal policy or practice over federal lands located within the geographic boundaries of this County:

A. ***causes alteration of present County land use regulations without such changes having been initiated voluntarily by the County*** and

B. ***makes it unfeasible for existing, lawful businesses to continue their current operations, then the proposed federal action will be presumed by the County to create a negative impact on the interrelated environmental, cultural and economic well-being of this County and its residents, and not to be a preferred alternative acceptable to the County as it relates to resolving the environmental and other concerns of the federal entities.***

Chapter 50 - PUBLIC ROADS

.010 Declaration of policy and intent

A. Eureka County, a political subdivision of the State of Nevada, ***holds title, as trustee for the public, to all public roads, trails, pathways, traces, highways, byways, and similar public travel corridors situated in the County***, of every kind whatsoever, except for State and federal highways, however such roads may have come into being. Title to those roads commonly known as R.S. 2477 roads, irrevocably granted to the public by act of congress (Mining Law of 1866), is held in trust by the County as the unit of government closest to the people.

B. The County will:

1. ***Protect and defend against all interference the right of the public to travel and use the public roads within the County;***

2. ***Oppose closure of any public roads*** except as authorized by this chapter; and

3. ***Maintain the public roads by conventional or other appropriate*** means, as from time to time authorized by the Board of County Commissioners, or designate certain public roads as roads to be maintained only by passage and use without liability to the County, as permitted by Nevada Revised Statutes.

.020 Definitions as used in this section

Construction means the establishment of a road by mechanical or other means, including repeated use.

County road means any public road situated within Eureka County, except for designated State and federal highways; also, any road maintained by the County for County purposes which is not open to the public.

Highway - Modern usage: Any state or federally designated road, usually paved or graveled; or Traditional (R.S. 2477) usage: Any road, trace, trail, canal, navigable waterway, or other route used by humans for travel by wheeled vehicle, horseback, foot or boat, or otherwise. This definition applies to all highways established across public lands pursuant to the Mining Law of 1866 (R.S. 2477) between the enactment of the statute in 1866 and its repeal by the enactment of the Federal Lands Policy Management Act (FLPMA) in 1976.

Maintenance means construction, reconstruction and repair of a road by mechanical or other means, ***including repeated use***.

Public road means any road open to travel by the general public. The term includes, without limitation, roads (1) on land held in fee simple absolute by the County, (2) on easements across land held or claimed by others, (3) pursuant to express or implied permit or license on lands held or claimed by others, (4) canals or navigable waterways. ***Roads established pursuant to the grant of right-of-way by the Mining Law of 1866 (R.S. 2477 roads) are public roads***.

Right-of-way means the entire fee, easement or licensed or permitted area for a road; the traveled way, together with such adjoining land as may be required for construction or maintenance of a road.

Road means any highway (traditional usage), road, trail, trace, footpath, canal, navigable water, or other route, whether constructed or created by repeated use, when used by humans for transportation by wheeled vehicle, horseback, foot or boat, or otherwise.

.040 Interference with travel

It is a misdemeanor, punishable as provided for misdemeanors in the Nevada Revised Statutes, for any person to interfere with the right of the public to travel the public roads, except:

- A. Public roads may be closed temporarily by the Board of Commissioners for reasons of public safety, and the County Sheriff and/or director of emergency management may effect temporary closures for reasons of public safety pending an emergency meeting of the Board of Commissioners to ratify such closure.
- B. Public roads may be closed permanently by the Board of Commissioners only after thirty (30) days notice of intent to close and a public hearing on the proposed closure.
- C. The Board of Commissioners may grant temporary exclusive licenses to use, or place lesser restrictions on the public use of, a public road to accommodate mining activity; provided, (1) an

alternate route offering reasonable public access to the areas served by the public road is provided at the licensee's expense, (2) the licensee maintains the public road and returns it to the County at the conclusion of mining activity in as good or better condition than at the time of licensing, (3) thirty (30) days' notice is given of intent to temporarily limit use of the public road for mining activity and calling a public hearing thereafter on the proposed limitation(s).

D. The Board of Commissioners may grant temporary exclusive licenses to use a public road or highway to accommodate short-term special events such as parades, races, walkathons and similar activities.

.050 Public authorized to maintain roads

The public is authorized to maintain, by use or by mechanical means, public roads which are not regularly maintained by the County. The public is not authorized to reconstruct or reroute a public road outside its original right-of-way.

Inconsistency with NRS 540.011

As noted above and repeated here, NRS 540.011 recognizes "the important role of water resource planning and that such planning must be based upon identifying current and future needs for water. The Legislature determines that the purpose of ... water resource planning is to assist the State, its local governments and its citizens in developing effective plans for the use of water." The DEIS alternatives will diminish our ability to develop "effective plans for the use of water" especially related to future needs many years into the future but while the mine will be operating (i.e., nearly 50 years) and is therefore inconsistent with the declaration of the Nevada Legislature in NRS 540.011.

Inconsistency with NRS 278.243 and 278.246

NRS 278.243 states that a "A...county whose governing body has adopted a master plan pursuant to NRS 278.220 may represent its own interests with respect to land and appurtenant resources that are located within the...county and are affected by policies and activities involving the use of federal land."

NRS 278.246 empowers the County to "bring and maintain an action...before any federal agency, if an action or proposed action by a federal agency or instrumentality with respect to the lands, appurtenant resources or streets that are located within the...county impairs or tends to impair the traditional functions of the...county or the carrying out of the master plan."

Eureka County has adopted a master plan pursuant to NRS 278.220 and is therefore empowered to represent its own interests regarding the DEIS alternatives "involving the use of federal land."

Also, the DEIS alternatives "impairs or tends to impair the traditional functions of the...county or the carrying out of the master plan."

BLM and USFS must document in the EIS that since we have represented our own interests in the process, there has been a failure to bring the alternatives in compliance with our represented interest through honoring of the County's plans, policies, requests and proposed measures and the DEIS alternatives "impairs or tends to impair the traditional functions of the...county or the carrying out of

the master plan.” However, we believe these inconsistencies can be diminished or removed altogether by BLM and USFS coordinating with Eureka County to implement our plans and policies and reach consistency as required.

Record of Decision Must Explain BLM’s Decision to Override Plans and Policies

We request that after BLM and USFS coordinate with Eureka County to reach consistency with our plans and policies that there is an inclusion of discussion of remaining conflicts and inconsistencies in the Record of Decision as required and outlined in CEQ FAQ 23c:

“In the Record of Decision, the decisionmaker must explain what the decision was, how it was made, and what mitigation measures are being imposed to lessen adverse environmental impacts of the proposal, among the other requirements of Section 1505.2. This provision would require the decisionmaker to ***explain any decision to override land use plans, policies or controls for the area***” (emphasis added).

5. DEIS and Process to Date Undermines Local Conservation Efforts and Coordination But Must Focus Primarily on Local Conditions, Planning and Conservation Actions

Eureka County and many of our local advisory boards including our Natural Resources Advisory Commission and our Wildlife Advisory Board have been active participants for GSG and habitat conservation. Eureka County participated in the Nevada "Governor's Team" for GSG, when that effort started in 2000. We have committed ourselves, through our local advisory boards—consisting of ranchers, farmers, miners, sportsmen, businessmen, and recreationists—in local conservation planning and habitat enhancement activities. Because of this participation, we are concerned about the continual planning and wonder when enough planning will be done to satisfy the requirements to get to work on the ground. Of primary concern is that it seems that the BLM and USFS have discarded the conservation work and partnerships at the local level instead focusing on development of a typical government top-down approach for another planning process. Approaching GSG conservation from a top-heavy, top-down approach undermines these local efforts and does little to build a spirit of collaboration with those local entities necessary if any planning effort is going to be successful in implementation of real conservation.

The DEIS must be revised to consider localized conditions and influences and be based on current understanding of rangeland health, primarily ecological site descriptions and states and transitions models that are targeted to local ecological drivers. It is a dangerous bureaucratic concept to focus on a programmatic, one-size-fits-all approach—dangerous for multiple uses and GSG themselves. Although there is mention made of incorporating conservation measures "based on the principles of Adaptive Management" it is clear that the management flexibility to meet local conditions and requirements is not going to be adequately incorporated with the current federal agency mindset that there needs to be a guarantee of consistent applications of regulatory controls that are inflexible. We believe that the DEIS is merely giving lip-service to adaptive management while building hurdles and constraints in the alternatives that will actually undermine adaptive management. By definition, adaptive management provides flexibility and results-based management options that may not always fall within rigid requirements and criteria. The DEIS alternatives are not conducive to this flexibility. The DEIS currently lays out a plan to develop an adaptive management plan, but the details necessary are not proposed or included which makes it difficult to make any specific comments. The EIS needs to clearly outline an Adaptive Management

process to be included into the LUP revisions that focuses on and gives deference to management at the local and State level. This process must be clearly developed, with the State and local governments, and defined before the Record of Decision.

Inherent in Adaptive Management is that it recognizes progression towards ultimate resource goals through measurable objectives. Under true Adaptive Management, there is potential to actually find that the habitat is providing necessary requirements for GSG and for management to remain status quo. The bias that appears to be built in to this process through the NOI and the recent IMs is that nearly any land use or land management strategy is at odds with GSG conservation. There appears to be an underlying tone of protectionism rather than conservation through sustainable use.

Where limitations are identified, Adaptive Management and collaborative processes should be instituted to consider possible solutions, implement on-the-ground changes/enhancement activities and monitor for results. It is imperative that these actions be taken on a local basis, involving an inclusive opportunity for all locally affected stakeholders (private sector and government).

6. EIS Needs To Include Strong Consideration of Connections with Private Land

While evaluating the ramifications of possible curtailment of livestock grazing use, consideration should take into account the linkage between private ranch lands and federal land permits. Although we don't agree with the perspective that curtailment of properly-managed livestock grazing will have a beneficial result, we do want to stress the potential negative consequences for GSG habitat on private lands, if a livestock grazing permit is not allowed to be used. In order to maintain business operations, possible conversion of private land holdings may result from not being able to make use of federally-managed lands. More intensive land use of these private resources could result in a negative outcome for habitat located on private land.

In areas where private lands and federally-managed lands are found in alternating sections (i.e., "checkerboard" lands) or where private lands make up a significant portion of large tracts of habitat, this increase in fragmentation would undoubtedly be far more of a problem and impact on GSG.

7. Sage Grouse Are Not Truly Threatened or Endangered

It cannot be denied that with consideration of historic Great Basin population estimates for GSG indicates that pre-settlement populations were low. It can also not be refuted that these populations increased dramatically between mid-1800s through the mid-1990s. There has also been a documented decline in the population from the mid-1990s through the early-2000s. However, recent data from the early-2000s through today have shown that populations of GSG in most western states has plateaued and even increased in some areas. There are many correlative factors that have been attributed to these GSG population patterns. However, it cannot be disproven that the highest documented populations of GSG occurred when ranching operations were at their peak. We join with others in our strong request that the federal and state agencies strongly consider the link between vibrant and active ranching operations and strong GSG populations and then employ methods to support and enhance grazing, predator control, decadent sagebrush thinning, and

pinyon-juniper woodland thinning. This process should focus on a federal rule that would mandate predator control including strong control of predating ravens. If BLM, FWS, and wildlife agencies wish to pursue the aggressive protectionist management scheme, then the low, pre-settlement populations of GSG are the maximum that the BLM and other agencies can expect.

It is estimated that the current population of GSG is between 350,000 and 535,000. Coupled with the data that shows the current populations of GSG range wide are stable, it is disingenuous to consider that GSG are in actuality endangered, let alone, threatened.

8. Valid Existing Rights

While the agencies claim that there will be a recognition of valid existing mineral rights, the management restrictions for sage-grouse could wholly or partially deny rightful usage or water rights, rights-of-way, and mineral rights. For example, the disturbance cap concept proposed in Alternatives B, C, and F could result in the denial of projects simply because other disturbances have decreased available cap space, ultimately denying valid existing mineral rights or water resource developments required to keep water rights whole. A no net loss concept in PPMA is preferable to a disturbance cap.

The implementation of NSOs on PPMA would limit the ability to penetrate and extract fluid minerals from valid and existing mineral rights or maintenance of water rights facilities.

The BLM and USFS has no authority to deny valid existing rights; consequently, decisions made by entities with valid existing rights would affect what the BLM and USFS can authorize for other potential users of land it administers in the management zone. In other words, by using the disturbance cap concept, valid existing rights for one user could be recognized at the expense of another. This would also be a domino effect on all users with mining claims, grazing allotments, recreational use, rights-of-way, etc.

The agencies have not provided sufficient scientific data to support the disturbance cap concept or its effectiveness, and the calculation methodology is fraught with challenges that will prevent consistent and clear implementation. Further, the agencies have not adequately explained several crucial details about the application of the concept.

Non-anthropogenic disturbances, such as wildfire, have the potential to consume all the available cap space under any disturbance cap proposal, and would do so in an unpredictable manner. Caps could place development on public land at risk of arbitrary preclusion.

Further, the proposed inclusion of disturbances on private lands in a cap calculation further endangers future projects by a multitude of stakeholders on public lands, as projects undertaken on private lands are not subject to the same planning and permitting processes and could quickly and capriciously deplete available cap space.

Any efforts to impose a disturbance cap calculation would likely result in an overly complex and unwieldy process. Existing analysis and planning efforts under NEPA require identification of potential risks and impacts, as well as subsequent mitigation measures to be used, which makes a disturbance cap unnecessary.

9. Overreliance on the NTT and COT Reports in Framing of Alternatives

The alternatives all try to identify how each BLM or Forest Service program includes, involves, or is related to a threat to sage-grouse and then provide recommendations for modifying the program to eliminate or reduce the threat, regardless of the magnitude of the impact of the threat to sage-grouse or their habitat. As an example, there tends to be an extreme focus on livestock grazing when instead, the focus should be on wildfire and invasive species. The DEIS fails to see the forest for the trees. Consequently, there are likely to be changes made in various programs that will individually have minor benefits to sage-grouse or their habitat, and likely will cumulatively have minor benefits to sage-grouse and their habitat. As a result, efforts to address minor threats will divert resources needed to address the major threats, and continued declines in the sage-grouse populations can be expected, even though the regulatory mechanisms may be deemed adequate to warrant a non-listing.

Fire and invasive species are, without question, the greatest threat to sage grouse and its habitat in Nevada. The integrity and rationale for the Agencies' decision based on the Draft LUPA/EIS depend on funding for fire and invasive species management programs. These factors are so important to sage-grouse that, whatever decision the Agencies make, it risks being illusory, with all associated legal vulnerabilities, if not accompanied by the financial resources needed to address fire and invasive-species impacts. Every federal environmental review and accompanying decision implicitly asks the public to accept as a matter of faith that the programs proposed to be enacted will, in fact, be funded and carried out. The DEIS is, in fact, premised on the explicit assumption that "[s]ufficient funding, enforcement, and personnel would be available for implementing the final decision." Draft LUPA/EIS, Ch. 4 at 9. Here, however, it would be irresponsible not to question this normal assumption and plan for the probability that it will prove to be not true, particularly when one considers that primary fault for the failure to address fire and invasive species must rest with the federal land-management agencies entrusted with the care of over 80% of the lands in state of Nevada.

The scale and likely cost of the fire and invasive-species management challenge is so great, and the federal discretionary budget climate is so constrained, that it is at least prudent to question how the Agencies can reliably plan to implement the fire and invasive species management activities described in the DEIS without heavy reliance on private parties seeking to make use of the federal lands, primarily ranchers through grazing action and local response when fires ignite. Indeed, elsewhere in the DEIS (Chapter 3, p. 75), the Agencies acknowledge that funding for the hazardous fuels reduction program continues to fall, with an anticipated 47 to 56 percent reduction in Nevada for fiscal year 2014. Similarly, the document assumes "[i]mplementation and effectiveness of management actions on riparian areas and wetlands may be limited by funding, political constraints, workloads, enforcement, compliance, staffing levels, litigation, conflicting priorities and regulations, climate change, and other factors. Ch. 4 p. 74.

The Agencies can directly leverage their financial resources for fire and invasive species management by incentivizing private land owners to conserve GRS on private lands and by encouraging federal administered land and resource users to commit voluntarily resources and/or to take other active management actions that benefit GSG on these lands in return for the ability to continue to put the federal lands to economic use.

The use of the NTT report is extremely problematic as it contains overly burdensome recommendations that are not based on local conditions in Nevada. The NTT report asserts that oil and natural gas and grazing "impacts are universally negative and typically severe," but provides no scientific data to

support that assertion. The report selectively presents “scientific” information to support overly burdensome conservation measures that are not based on local conditions. The Amendments rely too heavily upon a select few studies utilized by the NTT report, but also ignores other data and studies that clearly demonstrate impacts from oil and natural gas are not universally negative and typically severe. BLM should refrain from directly incorporating any of the NTT report recommendations into the proposed or final EIS. The use of the NTT report is problematic as it contains overly burdensome, blanket recommendations that are not based on local conditions. An independent review of the report shows that it contains many methodological and technical errors, cherry-picks scientific information to justify the report’s recommendations, and was developed by a small group of specialist advocates with narrow focus. The NTT report does not adequately represent a comprehensive and complete review of the best scientific data available and is inappropriate for primary use. (see Megan Maxwell, *BLM’s NTT Report: Is It the Best Available Science or a Tool to Support a Pre-determined Outcome?*, <http://www.nwma.org/pdf/NWMA-NTTReview-Final-revised.pdf>; Rob Roy Ramey, *Data Quality Issues in A Report on National Greater Sage-Grouse Conservation Measures, Produced by the Sage-Grouse National Technical Team (NTT)*, September 19, 2013).

We also have concerns related to the FWS COT Report. While the COT Report is intended to serve as a **guidance document** to federal agencies, states, and others, there are several issues that need resolved in order to be an adequate non-biased guide based on the best science. The COT Report contains selective, narrow review of scientific literature and unpublished reports on GRSG, presents outdated information, overstates or misrepresents some threats to GRSG while downplaying others, and relies on a faulty threats analysis. (see Rob Roy Ramey, *Data Quality Issues in the Greater Sage-Grouse (Centrocercus urophasianus) Conservation Objectives: Final Report*, October 16, 2013).

Alternative B (based on the NTT Report) presents significant concerns. Selection of this alternative would result in appeals and litigation on many points including the Data Quality Act since the NTT Report is used as best available science by the BLM and USFS.

Alternative C is essentially Alternative B with a focus on removal of livestock grazing from the landscape, and because it relies heavily on the NTT Report, the statements regarding Alternative B apply to this alternative. The use of Areas of Critical Environmental Concern (ACECs) as a means to further demarcate and preserve sage-grouse habitat is also a means of withdrawal of areas that might otherwise be open to mineral leasing and exploration, livestock grazing, and other multiple uses. ACECs limit the opportunity for multiple use by focusing significantly on protectionism instead of a more balanced approach.

Modifications to Alternative E (based on the Nevada/California Plan) are ongoing. The Nevada Sagebrush Ecosystem Council is adjusting the Plan to ensure it meets USFWS’s requirement of increasing the regulatory mechanisms in place to protect sage grouse and their habitat. We support the State of Nevada’s efforts for self-determination.

Alternative F is essentially Alternative C (or Alternative B) with some additional restrictions. Alternative F differs from Alternative C primarily with respect to grazing, lands and realty, and minerals. Because this alternative is based on the NTT Report, statements regarding Alternative B apply to this alternative. NSOs should be removed from these habitat designations contingent on the application of no net loss mitigation of impacts to sage grouse and their habitat. This alternative also includes the establishment of ACECs to protect sage-grouse habitat. ACECs should not be implemented. ACECs limit the

opportunity for multiple use by focusing significantly on conservation instead of a more balanced approach.

Alternative D, which “customized the goals, objectives, and actions from the NTT-based alternative (Alternative B)” ... “that strives for balance among competing interests.” Rather than an alternative that strives for balance among competing interests, an alternative should be developed that recognizes the multiple-use mandate while ensuring protection of sage grouse habitat and with a heavy bias towards local action and results. These two land use objectives are not mutually exclusive and can be achieved as parallel paths.

Moreover, the DEIS has proposed measures that do not adhere to the multiple-use requirements and fail to effectively balance the conservation of greater sage grouse with continued economic activity and preservation of custom and culture.

10. Checkerboard Lands

The designation of PPMA that include the “checkerboard” lands is confusing. The railroad corridor also includes the Interstate-80 corridor as well as areas of private lands with ranchettes, rural communities, and some industrial development. These lands are already impacted by land status and use, and imposing restrictions to a PPMA with this land status configuration would be difficult at best. What is the science behind determining the habitat fragmentation of the “checkerboard” as PPMA? The “checkerboard” is typically poor quality habitat subject to numerous anthropogenic activities including noise detrimental to sage grouse success.

11. Energy Development

Section 363 of the Energy Policy Act of 2005 (EPAAct) requires federal land management agencies to ensure that lease stipulations are applied consistently. The DEIS ignores established BLM policy that states *"the least restrictive stipulation that effectively accomplished the resource objectives or uses for a given alternative should be used."* A statement that there are conflicting resource values or uses does not justify the application of restrictions. Discussion of the specific requirements of a resource to be protected, along with a discussion of the perceived conflicts between it and oil and gas activities must be provided. Clearly, an examination of less restrictive protective measures must be a fundamental element of a balanced analysis and documented accordingly in the EIS.

In April 2003, field offices were directed to comply with four planning and integration principles under Energy Policy and Conservation Act of 2000 (EPCA):

- 1) Environmental protection and energy production are both desirable and necessary objectives of sound land management and are not to be considered mutually exclusive priorities.
- 2) The BLM must ensure appropriate accessibility to energy resources necessary for the nation's security while recognizing that special and unique non-energy resources can be preserved.
- 3) Sound planning will weigh relative resource values, consistent with the FLPMA.
- 4) All resource impacts, including those associated with energy development and transmission will be mitigated to prevent unnecessary or undue degradation (BLM 2003a)."

Under EPCA BLM is required to identify impediments to oil and gas development. It was the intent of Congress that access to energy resources be improved as indicated in EPCA and EPAct. BLM recognized the intent of the both Phases I and II of the EPCA review when it issued Instruction Memorandum 2003-233, *Integration of the Energy Policy and Conservation Act (EPCA) Inventory Results, into the Land Use Planning Process*. Consequently, BLM Field Offices are now required to review all current oil and gas lease stipulations to make sure their intent is clearly stated and that stipulations utilized are the least restrictive necessary to accomplish the desired protection goals. Moreover, the IM directs that stipulations not necessary to accomplish the desired resource protection goals be modified or dropped using the planning process.

Since the purpose of integrating the EPCA results into planning is intended to determine whether existing resource protection measures are inadequate, adequate or excessive, we recommend that BLM reevaluate its management decisions accordingly and make requisite changes.

Throughout the DEIS, there is an assumption that NSO do not have an impact on oil and gas extraction because of the use of horizontal drilling. This technology does not apply to all geologic formations for fluid extraction including unconventional resource extraction. It is incorrect to state (in numerous locations in the DEIS) that unconventional resources will utilize horizontal drilling technology.

12. Climate Change

Climate Change is certainly not within the jurisdiction of the BLM or Forest Service; therefore, the inclusion of this in the DEIS would seem “beyond the scope of this analysis” as the BLM also concluded in regards to hunting and predation. Yet, this “resource” of the affected environment is included in the analysis.

13. Cumulative Effects

The focuses management and regulatory actions based on what is perceived to benefit GRSG – a single species of a suite (90 species of birds, 88 species of mammals, and 45 species of reptiles) that rely on sagebrush communities. Of these totals, 33 species of birds and 19 species of mammals are possibly near-obligates. Some of the species are currently protected under some form of special status (threatened, endangered, sensitive, etc.). Others are candidate species under the ESA or have been petitioned in the recent past (i.e. Pygmy rabbit). The problem at hand is not wholly specific to GRSG; it is diverse array of systemic problems impacting sagebrush ecosystems. The DEIS is solely focused on GRSG. What will the BLM/FS response include when another sagebrush obligate species is petitioned for listing or listed under the ESA? What if the habitat requirements/preferences are slightly different from what GRSG require?

The sagebrush ecosystem (and the species that rely on this system) would be better served by a DEIS that emphasized management, rehabilitation, and regulatory mechanisms from a landscape scale and holistic perspective. A plan that solely focuses on GRSG may prove ineffective at managing the sagebrush ecosystem as whole. Single species management is inappropriate for a DEIS that covers millions of acres. GRSG have been identified as an umbrella species; thus, what is good for GRSG must be good for the multitude of species (and the ecological systems and processes) that depend on or serve sagebrush communities, right? What if this assumption is incorrect, or just slightly incorrect? Is the BLM/FS confident enough in the aforementioned assumption to base 100 percent of its

management goals, objectives, and actions on the perceived needs of a single species? Please consider addressing this assumption as a risk in the DEIS. This will inform and provide full disclosure to the public and the USFWS. The DEIS may not adequately consider and disclose the potential negative impacts GRSG Management could have on other species (i.e. the risk to other species from single-species management focus).

Additionally, the EIS should identify and make a comparison between implementation of the ESA and implementation of the preferred alternative. Such comparison should include an economic analysis to both industry and government, identify timeframes necessary to complete both the ESA and the selected EIS Alternative, and the environmental cumulative impacts of both.

14. Wrong Approach on Mitigation

There is too much focus on increasing regulatory mechanisms, preventing multiple-use actions, and requiring mitigation in PGMA. Additionally, there are proposed actions that create similar mitigation requirements (costs, required design features, etc.) for disturbance in PGMA as in PPMA. The mitigation “cost” and regulatory constraints should be less in PGMA, areas that are immediately adjacent to current disturbance, and in general, include lesser-quality habitat. By requiring consistent mitigation costs in the best habitat (PPMA) there is no incentive for industry or recreation interests to avoid disturbance in PPMA. This is counter-intuitive from many perspectives. Take mining for example, it “costs” the same for a mining company to create disturbance in relatively pristine habitat as it does for lower quality habitat. Arguably, the disturbance in relatively pristine habitat is more costly from a biological standpoint. GRSG may benefit if an industry is encouraged to continue developing areas that are already used for development (i.e. a mining company proposes an expansion of an existing mine). It is illogical to assume that the impacts of a mine expansion are equal to the impacts of a new project in undisturbed habitat. It should be more cost effective for a mining company to expand an existing mine in PGMA than it is to develop a green-fields site. Some proposed actions suggest that as the percent of disturbed habitat in a given area increases, the cost per acre for mitigation should increase. It is argued that GRSG will experience a greater benefit if mitigation is more expensive in undisturbed areas, thereby encouraging industry to develop areas where GRSG populations have already been lost or dramatically reduced. The DEIS should adopt a “conserve the best” mentality and encourage multiple-use practices in areas where existing disturbance is already higher.

15. Habitat Maps

We have major concerns about the adequacy and accuracy of the maps used to identify and designate SGSG habitat, PPH, PGH, Preliminary Priority Management Areas, and Preliminary General Management Areas. It would appear that the most current and state of the art mapping process is that being undertaken by the State of Nevada in Alternative E. Additionally, current users and projects proposed on public lands must have the ability to utilize a recognized a common scientific method and process for determining habitat. Furthermore, the federal agencies must abide by those determinations.

The EIS alternative should identify the specific procedures and timeframe to update and revise habitat maps. The language in the DEIS regarding map revision is vague, and therefore; the likelihood of it being implemented is minimal. The language in the EIS needs to be more specific on the exact steps to be taken and by whom to revise maps. In addition, the EIS needs to be more specific on the exact steps taken by the BLM and USFS on implementing revised habitat categorization maps for project-level planning use.

There is dangerous misuse of the Sage-grouse Habitat Maps throughout the document and building of rigid actions according to lines on a map, and not actual habitat on the ground. The PGH and PPH delineations are based on the NDOW Greater Sage-grouse Habitat Categorization Map. The Habitat Map white paper (March 2012) states that:

“The Nevada Department of Wildlife (NDOW) Greater Sage-grouse Habitat Categorization Map (Sage-grouse Map) is an analysis tool that incorporates the best available data (lek observations, telemetry locations, survey and inventory reports, vegetation cover, soils information, and aerial photography) into a statewide prioritization of Greater sage-grouse (sage-grouse) habitat. This tool provides resource managers with information to guide conservation and land-use planning efforts in the context of sage-grouse management at the landscape scale ... No land use management decisions or directives are directly attached to or implied by the map. The map is a statement of sage-grouse habitat value based upon the best available information.”

BLM misuses the habitat map in many ways. First, the proposed actions in the various alternatives and support documents acknowledge that there are many areas with simply no good data regarding Sage-grouse use or realities of habitat in the area. No data, or lacking data, should not be used in the context of “best available data.” Of the sources of data that supposedly make up the habitat map, huge acreages of “habitat” are drawn with no documented active leks and no telemetry locations in the area. Second, the vegetation cover and soils information are based on the ESDs and not on-the-ground conditions and many of these areas have ecological thresholds have been crossed. Our concern is supported by the white paper where it discusses the “Known Issues” and clearly states:

“A key component of high quality sage-grouse habitat is the understory composition of sagebrush communities (Connelly et. al. 2000). The R-value mapping effort attempted to identify understory quality using the existing vegetation cover and the ecological site potential identified in the United States Department of Agriculture soil surveys. However, over the course of this project, it was determined the accuracy of the R-0 vs. R-2 classifications was variable. Further refinement of the Sage-grouse Map should include a more robust method for determining sagebrush understory composition and quality.”

BLM uses the map to make a very specific regulatory schemes, restrictions, etc. rather than simply planning at the landscape level. Finally, the BLM habitat map differs from Nevada’s map developed through the Governor’s Sage-grouse Committee in which the map, developed with local knowledge and expertise, does not show the area concerned as prime Sage-grouse habitat. BLM’s maps are considered Preliminary Priority Habitat and Preliminary General Habitat. The operative word is “preliminary” and more recent work has modified area as important Sage-grouse habitat. The areas of PPH and PGH are not based on the best available science and there is updated ESD state and transition models and GSG mapping (by Dr. Peter Coates) completed that are now the best science. Please incorporate.

16. Distance Restrictions From Leks

Many of the proposed alternatives use arbitrary setbacks and buffer areas that are not based on sound science. Throughout the BLM Field Offices, the restricted radius from a lek has varied between no restrictions to 1-mile, 2-mile, 3.2-mile, and 4-mile distances. Sound science with technical references needs to be presented in the EIS supporting these criteria. Site specific factors need to be taken consideration such as line of site between the lek and project, topographical relief, quality of site-specific habitat, current bird activity, probability of sage-grouse nesting within the entire radius area, duration of the project/use and project/use intensity.

17. Permitting Certainty

Permitting certainty is the best incentive that the Agencies can offer to private parties to stimulate prompt, voluntary agreement by resource users to mitigation measures benefitting GRSG. The Agencies should shape their final decision to incorporate measures that would provide clear guidance to agency personnel and resource users on how voluntary commitments to conservation measures can translate into regulatory certainty.

18. Wild Horse Management

The DEIS fails to acknowledge that wild horse and burro populations (WH&B) remain on the public lands on a year round basis and are not managed for the benefit of the rangeland resource that supports their very existence. Only their numbers are attempted to be controlled, but with minimal success. There typically are no rest periods for the range in HAs or HMAs, riparian areas nor wetland meadows. Numbers control is all that the BLM have available to them today to effectively manage horses, and even that is being heavily impacted through the budget process. In addition, any attempts to restore rangelands within HMA's would be most challenging due to the restrictions that would be applied when attempting to protect a new seeding or defer use from an area for a period of time to allow for natural regeneration. Fencing and other structural improvements would also become a real challenge. Given the actual performance record of BLM in Nevada and the exceedingly over-abundance and out-of-control numbers, how will the actual corrections be brought about that the DEIS proposes? Beyond excuses for not having enough resources, what confidence can there be that BLM will not continue to practice the management process of "do as we say, not as we do"? BLM should not "target" the uses of public land that are easy-picking without first addressing the mismanagement of the uses that are under the primary jurisdiction of the BLM itself. The Herd Management Areas in Eureka County are currently an average of 250% of AML while statewide the population numbers are 150% of AML. The BLM's failure to properly manage WH&B has created a situation, in many cases, where the burden is now on the other users of the land, primarily ranchers, to pay the price for BLM's shortfall. The DEIS needs to be frank and propose real, actionable solutions to the WH&B issue.

19. Faulty Socioeconomic Impacts Analysis

Users of federally managed lands generate millions of dollars of economic activity in Eureka County. The management restrictions proposed in the DEIS will undeniably have a direct negative impact on these users and the future viability of mining, energy development, and agricultural production including ranching. Crucial tax revenue and other economic benefits from these activities will decline. Unfortunately, the agencies underestimate and downplay the negative impact of the proposed management restrictions. Particularly, the importance of ranching and agriculture as our long-term, stable economic base is minimized. The socioeconomic analysis is biased in that it overestimates and promotes speculative non-market valuations (e.g., disperse recreations, sightseeing), while underestimating the very real economic impacts from actual productive activities that directly create jobs and wealth.

The DEIS discussed the socioeconomic impacts at too broad of a scale to be of any worth to local economies and interests. During scoping and our participation as a cooperating agency, we continually noted this shortfall and even provide very specific Eureka County data and analysis that was not included.

Much like Nevada as a whole, Eureka County is composed of a large federal land holding. Eighty-one percent of Eureka County's land area is made up of federally administered land, primarily Bureau of Land Management and Forest Service. Eureka County is primarily driven by mining, farming and ranching. Nearly all of Eureka County's employment is in the natural resources sector and the community's viability is largely dependent on business and recreational activities conducted on or in concert with federal lands. Since private land makes up only 13% of Eureka County's total land area, dependency on federally administered land limits and is often detrimental to our long-term socio-economic stability and viability. This threat to our viability is only exacerbated by the layers of regulatory burden that are placed upon multiple uses of these federal lands and a general lack of effort by the federal land management agencies to coordinate their land management decisions with the local plans, policies, and desires of affected counties. This works to undermine sound land management and creates often adversarial relationships between the agency, counties, and proponents of projects on public land.

The analysis must be revised to adequately and non-biasedly weigh the socioeconomic impacts on the proposed restrictions.

20. Predation and Predator Control

It is extremely disingenuous for BLM/USFS to fail to analyze hunting and predation influences and management options. It is argued that it is outside of the jurisdiction and authority of BLM/USFS; however, other issues, such as climate change, socioeconomics, travel management on non-federal roads, and water resources and water rights, are analyzed while too being out of the control and jurisdiction of BLM/USFS. It is impossible to holistically frame management without analyzing the cumulative effects and recognizing their role. Also, the agencies with jurisdiction by law and special

expertise on the issue of hunting and predation are both cooperating agencies (e.g., FWS, NDOW, counties).

The BLM NEPA Handbook speaks to “expanding the scope of a NEPA analysis to consider connected and cumulative actions of all cooperating agencies into a single document improve overall interagency coordination” (p. 112). Also, the CEQ regulations speak to streamlining and eliminating duplication while satisfying NEPA (40 CFR 1506.2(b)). CEQ guidance is clear that even items not under full or even partial control of BLM/USFS must still be analyzed when connected and when a major component. As highlighted in the BLM NEPA Handbook (H-1790-1) and mandated by law, the EIS must “rigorously explore and objectively evaluate all reasonable alternatives” (40 CFR 1502.14(a) and NEPA Sec. 102(2)(C)(iii)) and “study develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources” (NEPA Sec. 102(2)(E)). Of note is that “[i]n determining the alternatives to be considered, the emphasis is on what is ‘reasonable’ rather than on whether the proponent or applicant likes or is itself capable of implementing an alternative. ‘Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable...’ (Question 2a, CEQ, Forty Most Asked Questions Concerning CEQ’s NEPA Regulations, March 23, 1981)” (BLM NEPA Handbook p. 50). Further, CEQ provides guidance on framing “relevant, reasonable mitigation measures” even if they are outside the jurisdiction of the agency Question 19ba, CEQ, Forty Most Asked Questions Concerning CEQ’s NEPA Regulations, March 23, 1981). Further, “while some mitigation strategies are within the BLM’s control...most mitigation strategies require action by other government entities—typically cities, counties, and State agencies....the relevant, reasonable mitigation measure are likely to include mitigation measure that would be carried out by other Federal, State or local regulatory agencies or tribes. Identifying mitigation outside of BLM jurisdiction serves to alert the other agencies that can implement the mitigation. (BLM NEPA Handbook p. 62). It is very clear in CEQ regs (specifically 1502.14(f) and 1502.16(h)) that speak to mitigation irrespective of jurisdiction. Also, the CEQ FAQ 19b is very clear in presenting the CEQ guidance related to this exact issue (in which guidance has been in place since 1981): 19b. “How should an EIS treat the subject of available mitigation measures that are (1) outside the jurisdiction of the lead or cooperating agencies, or (2) unlikely to be adopted or enforced by the responsible agency? A. All relevant, reasonable mitigation measures that could improve the project are to be identified, even if they are outside the jurisdiction of the lead agency or the cooperating agencies, and thus would not be committed as part of the RODs of these agencies. Sections 1502.16(h), 1505.2(c). This will serve to [46 FR 18032] alert agencies or officials who can implement these extra measures, and will encourage them to do so. Because the EIS is the most comprehensive environmental document, it is an ideal vehicle in which to lay out not only the full range of environmental impacts but also the full spectrum of appropriate mitigation. However, to ensure that environmental effects of a proposed action are fairly assessed, the probability of the mitigation measures being implemented must also be discussed. Thus the EIS and the Record of Decision should indicate the likelihood that such measures will be adopted or enforced by the responsible agencies. Sections 1502.16(h), 1505.2. If there is a history of nonenforcement or opposition to such measures, the EIS and Record of Decision should acknowledge such opposition or nonenforcement. If the necessary mitigation measures will not be ready for a long period of time, this fact, of course, should also be recognized.”

Just because hunting and predation are outside of BLM and USFS jurisdiction does not mean that the analysis and subsequently identified mitigation are unnecessary or not required. How can BLM/USFS address all connected GSG impacts and actions without analyzing predators and hunting effects and

identifying proper mitigation? The full picture will not be answered and the analysis falls short in disclosing what can be done, holistically, to address GSG conservation. Please revise to include adequate analysis on predators and hunting in coordination with the agencies that will formulate management based on the analysis, primarily FWS, NDOW, NDOA, and counties in order to truly meet the obligations of NEPA to see the “whole” and inform on all relevant issues so that the conservation of GSG is truly met..

It can be demonstrably argued that predation, previously identified as a USFWS-identified threat (Chapter 2, Table 2.1, p. 11) is a significant issue (see following paragraphs) and that analysis of this issue is necessary to make a reasoned choice between alternatives, especially since the State’s Alternative E includes scientifically-based predator control. Predation and predator control are arguably considered by many to be significant issues.

21. Livestock Grazing and Management

As a county that strongly relies on ranching conducted on or in concert with federally managed land, we are confused and alarmed over the allegations of "inadequate regulatory mechanisms." Based on the terms and conditions of livestock grazing permits and wide latitude granted to BLM on administering grazing permits that make progress towards established standards and guidelines, where are the actual shortages of not having enough control over livestock grazing?

Even with many allotments meeting the standards for healthy rangelands, it appears that this does not seem to be sufficient for FWS, or an impetus for BLM to defend current protections that are or can already be put in place regardless of a LUP amendment. We have seen examples of instances within our county where it has been determined that livestock grazing is not a causal factor for not meeting standards yet we still see grazing permit changes made. We see this process as being magnified with the possibility of more restrictions being unduly placed on grazing permits.

Those special interests who actively advocate for listing of the GSG openly consider it to be their best tool to achieve their overall goal of ending many uses on federally managed lands including livestock grazing. These entities are assisted in reaching their goal by federal and state government agencies who fail (or refuse) to recognize that proper management, when it occurs, is sufficient in maintaining, and often enhancing, GSG habitat.

Given the potential for beneficial gains to enhance protection of habitat areas (especially for the management of fine fuel loads and invasive plants) properly managed livestock grazing should be the focus rather than grazing prohibition. Grazing must be evaluated in the context of a tool to assist in accomplishing rangeland health objectives and GSG habitat enhancement. These considerations need to be documented and advanced in a proactive, unapologetic manner.

Because livestock grazing, as is also the case with any number of other authorized uses, are managed with a significant set of regulatory oversight, we maintain that the impression of there being a lack of regulatory control, as a false pretense for further expansion of a regulatory regime.

We believe that the LUP amendments should be based on a full range of possible approaches with the end results of rangeland health, socioeconomic stability, and GSG population improvements tied strongly together and not mutually exclusive. Ongoing monitoring and adaptive management procedures need to be spelled out to ensure that actions are measured against measurable and

attainable objectives and fine-tuned or completely changed within an identified range of opportunities for public involvement.

The DEIS analyses in unfounded and misplaced by perpetuating the institutionalized assumption that livestock grazing is a threat to GSG conservation in management areas. Instead, such analyses should start from the proven premise that managed livestock grazing are a benefit for GSG, and the analyses should consider how to further incorporate managed livestock grazing into the protection strategy.

Livestock Grazing Analysis in DEIS is Severely Flawed and Not Based on the Best Available Science

While the DEIS includes a large volume of wildlife science appropriately referenced, much of the current and pertinent literature regarding livestock grazing is painfully missing. The inclusion of the best available science related to livestock grazing is absolutely essential for adequate analysis to permit a reasoned choice on the options for GRS conservation in concert with livestock grazing.

Included below are important grazing related references missing from the DEIS. Specifically, the document almost completely lacks references on livestock grazing management as related to the functionality and sustainability of sagebrush/perennial herbaceous plant communities and meadows within the sagebrush ecosystem. Repeated statements in the DEIS continue to assert that grazing can have adverse impacts on herbaceous vegetation and, by implication, sage-grouse. It is not grazing that creates impacts, but undermanaged and/or abusive grazing that is the common thread in the references the DEIS does cherry-pick to cite. While the DEIS, almost in passing, provides perfunctory statements on managed/proper grazing, the many available scientific references are missing which creates an anti-grazing theme and undermines the case for partnerships, sustainable ranching, and proper grazing management.

Davies et al. 2009 and Davies et al. 2010, both demonstrated through field research that managed grazing can increase the resiliency of sagebrush habitats, reduce the risk and severity of wildfire, and decrease the risk of exotic weed invasion. Exclusion of livestock and implementation of moderate grazing over a >70 year period in sagebrush steppe plant communities resulted in essentially the same plant community, other than a buildup of fine fuels in the non-grazed areas (Davies et al. 2009). In the absence of fire, well-managed livestock grazing and long-term grazing exclusion produced similar plant community composition, productivity, and densities. Similarly, Courtois et al. (2006, p. 574) indicated that, for 16 Nevada sites (13 of which were sagebrush communities), "Few changes in species composition, cover, density, and production inside and outside exclosures have occurred in 65 years, indicating that recovery rates since pre-Taylor Grazing Act conditions were similar under moderate grazing and grazing exclusion..."

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.

In another paper, Davies et al. (2011, p. 2575) concluded 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.” The sustainability and conservation of the ecosystem are necessary to provide resistance to weed invasion and resilience after disturbance (McAdoo et al. 2013) that in turn provide sage-grouse habitat across landscapes and over time (Miller and Eddleman 2001). The paper by Davies et al. (2011) is cited in the DEIS, but only within Table 2.4, for Alternative B, pp. 174 and 204, with regard to strategically grazing fine fuels and grazing seedings as a component of a grazing system. Four of the paper’s six authors are prominent range scientists and the other two are prominent sage-grouse researchers.

A very recent paper by Svejcar et al. (2014) highlights that “Because grazing is a complex ecological process, synthesis of scientific literature can be a challenge.” The authors (27 prominent range scientists from 10 western states) do recognize that “Legacy effects of uncontrolled grazing during the homestead era further complicate analysis of current grazing impacts...” The authors maintain that, although there are areas on the landscape where grazing impacts can be identified, there are also vast grazed areas where impacts are minimal. Over the last 20-50 years land managers have actively sought to bring populations of native and domestic herbivores in balance with the potential of vegetation and soils (Svejcar et al. 2014)

Regarding livestock grazing of meadows and riparian areas, the use of livestock as a tool for meadow enhancement is documented in literature, but essentially ignored or mentioned without appropriate citations in the DEIS. As an example, Chapter 4, p. 83 includes the following statement without any scientific reference: “Disturbance such as that created by livestock grazing may be required to increase forb diversity (note that forb diversity on meadows can increase with grazing).” Studies in Nevada by Neel (1980), Klebenow (1982), and Evans (1986) concluded that cattle grazing can be used to stimulate forb production and that GRSB tended to prefer grazed meadows. These studies were all conducted in Nevada, focusing on livestock use of upland meadows frequented by sage-grouse. Also, in Chapter 4, p. 86, there is a statement that is incomplete and misleading:

“Long-term impacts of no grazing on riparian plant communities are less clear. Some studies show that plant productivity, especially in meadows, can decline over time in the absence of grazing (Bryant 1985). However, in a review of the literature on the subject, Belsky (1986) concluded that strong evidence for a positive relationship between herbivory and plant fitness is lacking (Belsky 1986). Thus, no livestock grazing would likely be positive to riparian areas and wetlands initially, but long-term impacts are less certain.”

What the DEIS fails to mention is that Evans (1986) and Klebenow (1985, 2001) reported that sage-grouse use of moderately grazed meadows was higher than their use of both ungrazed meadows and heavily grazed meadows. Oakleaf (1971) acknowledged that grazing should be used as a tool for meadow enhancement.

Other examples of livestock grazing literature missing from the DEIS includes, but is not limited to, the following:

- Bates et al. 2009 – Concluded that properly applied livestock grazing after low severity prescribed fire will not hinder the recovery of herbaceous plant communities in Wyoming big sagebrush steppe.
- Knopf 1996 - 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 - 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.
- West et al. 1984 - Found no significant increases in perennial grasses with long-term rest and cautioned managers that livestock exclusion will not result in a rapid improvement of native herbaceous component on sites dominated by woody vegetation.
- Sneva et al. 1984 - Noted some slight increases in perennial grasses with thirty years of livestock exclusion in the sagebrush steppe, but this increase was less than what occurred on an adjacent grazed site, and after 35 years grass frequency had become slightly higher on the area outside the enclosure. The authors concluded that direct reductions in sagebrush would be required to greatly increase perennial grasses.
- Holechek & Stephenson 1983 - Sagebrush communities in New Mexico rested for twenty-two years compared to moderately grazed areas had minimal vegetation differences and the differences that did occur included greater perennial grass cover in the grazed areas. This suggests that moderate grazing may have been beneficial. Thus, it remains unclear if long-term grazing rest will facilitate increases in the perennial herbaceous understory in communities with dense sagebrush overstories.
- Laycock 1967 - found that fall grazing (with sheep) and grazing exclusion resulted in a 30% 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.

Additionally, we have a major concern with the way the DEIS inappropriately cites grazing related literature out of context. For example, Chapter 4, p. 15 states “livestock may also trample nests and disturb GRSB behavior (NTT 2001, p.14).” Certainly livestock may trample sage-grouse nests, but the magnitude of the issue is highly questionable. Reference is apparently to Beck and Mitchell 2000, which was cited in both the NTT report (NTT 2011) and the more recent USGS/BLM report (Manier et al. 2013), which stated. “...sheep and cattle trampled nests and caused nest desertions (Beck and Mitchell, 2000).” The information in Beck and Mitchell was cited from a single article by Rasmussen and Griner, 1938. Our search of this document showed that, of 41 nests impacted by various causes, 2 (4.9%) were destroyed by livestock, 23 by carnivores, 7 by ravens, 7 by undetermined causes, and 2 by human causes. This same study found 23 deserted nests, 5 (21.7%) of which were attributed to livestock. For proper context we must also acknowledge that ravens have increased dramatically since the 1930’s, livestock numbers have decreased dramatically since the 1930’s, and livestock grazing has changed from season/year-long to managed systems that defer or rest much of the landscape from grazing during the sage-grouse nesting season. For ground nesting birds in general, Schultz (2010), concluded that there is “limited experimental science about the effect of livestock on nests and eggs and virtually none comes from sagebrush-grass plant communities. A review of published research suggests that while trampling is possible, the conditions under which it occurs probably are uncommon on the

large grazing allotments that typify the low production western rangelands, composed of shrubs and perennial grasses.”

We agree with the input from Dr. Sherm Swanson (UNR Range Ecologist) that the DEIS focus on utilization, apparently as an objective in some cases, is largely inappropriate. Specifically in regard to Table 2.7, focusing management on allowable use levels where not meeting objectives is putting the emphasis of grazing management on a weak tool. It also focuses management on grazing where grazing may or may not be the driving management problem or opportunity (If this is not intended, the caption needs to be changed). Most of the habitat objective issues identified in Table 2.6 (or its revised version) are not caused by current grazing management. Many of the habitat objectives identified in table 2.6 are caused by an inappropriate fire regime. Many that were caused by grazing will not be remedied by simply fixing grazing. As Wyman et al. (2006) and Swanson et al. (accepted with revision 2014) point out, utilization is important in places where the seasons of use are relatively long. However, utilization is much less important in riparian area management if and where grazing seasons are short and allow substantial parts of the growing season for plant recovery through growth or regrowth. Furthermore, requiring utilization levels such as these de-motivates ranchers and range management specialists to find solutions that will work much more effectively. Those solutions, taught in the interagency Nevada Range Management School (led by Cooperative Extension, and including team members from the NRCS, BLM, USFS, EPA, and the ranching industry), are founded on plant growth science and grazing management based on season and duration of use (McAdoo et al. 2010). These management principles are especially appropriate for large pastures (which were not the focus of Briske et al. 2008) that are typical in sage grouse habitats.

Table 2.7 highlights the bias that has been institutionalized based on various stubble height and utilization theories at the expense of scientific understanding of hydrology and plant physiology. Scientific studies (University of Idaho Stubble Height Study Team 2004, Smith et al. 2005 among others) have helped in clarifying the danger in using stubble height and utilization in an unjustified manner. Both studies offered similar conclusions and are summarized best by Smith et al. (2005) as follows:

1. “Utilization is a useful tool in range management decision making, but utilization guidelines should not be used as management objectives.
2. Utilization, as defined by SRM and others, is not the same thing as “seasonal utilization” measured before the end of the growing season. Utilization guidelines cannot be used for seasonal utilization.
3. Utilization of key forage species, unlike overall utilization levels in a pasture or allotment, is an indication only of livestock grazing pressure, and is not necessarily related to any other resource uses or values.
4. Key areas for livestock grazing are areas selected to indicate the general level of livestock use over a management area. Utilization in key areas does not necessarily indicate impacts on other resource values or uses.
5. Setting a different proper use level for different range condition classes is not supported by research, at least within the bounds of conservative stocking levels currently recommended on public lands. There is no known basis for establishing different utilization guidelines for different classes of “range condition.”

6. Utilization guidelines and estimation procedures applicable to grass ranges may be inapplicable or difficult to employ on ranges where much of the forage supply comes from shrubs and/or annuals.
7. Use of utilization to adjust stocking rates should be based on measurement of utilization made in the fall on ranges grazed during the growing season, and in the spring on winter or year-round ranges. Excess utilization over a considerable portion of the range over a period of several years may indicate a need to reduce stocking or make other management changes. Likewise, low levels of utilization over large areas and several years may indicate an opportunity to increase stocking.
8. Seasonal utilization should not be used as a rigid standard to trigger livestock moves or removal from grazing permits. Such actions should consider the operation of the entire management unit, including all land ownerships, for the balance of the grazing year. Coordination across land ownerships can enhance management of the landscape as a whole.
9. Some adjustment to livestock numbers and duration of use, based on seasonal utilization may be necessary, for stewardship of the resources when evaluated in conjunction with other factors

The terms and conditions column suggests that agencies will have people out monitoring in mid-season and this has repeatedly not worked. Where utilization is needed because of longer grazing seasons, a better approach is to have triggers to help ranchers see when to move animals followed up by end point indicators for quantitative monitoring. Both were described in the Nevada Rangeland Monitoring Handbook (Swanson et al. 2006) adopted by the BLM and USFS, along with other state and federal agencies in 2007. Both should be based on local considerations including season and duration of grazing, objectives, vegetation type, the amount of rest built into the system etc. If the intent of the Table 2.7 approach is to provide incentive to have grazing make progress toward objectives (if other grazing management can get to the objectives then grazing utilization can be more flexible), then the approach should be targeted at only those objectives for which grazing is relevant and where current or recent grazing management is the cause of the problem. Even then, an alternative more powerful strategy would strengthen the incentive as a tool for effecting progress. This more powerful strategy is to avoid stressing the important forage plants by short use periods with no livestock grazing during substantial parts of the growing season and use periods at different seasons in different years. These ideas are taught in Range Management School and Cooperative Permittee Monitoring workshops around Nevada, using the Grazing Response Index (USDA USFS, 1996) described in the Nevada Ranchers' Monitoring Guide (Perryman et al. 2006).

The language "No grazing from May 15 to August 30 in brood rearing habitat" precludes important tools for improving brood rearing habitat. Grazing repeatedly in September is likely to damage the physical functioning of riparian areas, especially in large pastures with limited riparian waters/areas. Grazing before May 15 may cause riparian areas to not be grazed because upland forage is preferred then (Swanson et al (accepted with revisions 2014), and some late spring to early summer grazing benefits sage-grouse by managing forb phenology, nutritional value to chicks, and availability (Evans 1986). The problem with grazing in riparian areas and wet meadows is not that sage-grouse are directly impacted by cattle use at the time that sage-grouse use these areas. The problem is that poor grazing management causes riparian areas to lose

functionality and other resource values. To address this problem there are many tools. As described in Swanson et al. (accepted with revision 2014), the need is for more generally successful tools to be used than generally unsuccessful tools. On balance there must be more recovery than damage over the length of the grazing rotation cycle. This management must keep the plants healthy so they can have strong roots and go through succession toward more riparian stabilizers or maintain an adequate amount of riparian stabilizers.

Precluding grazing from May 15 to September 1 is very clearly overkill as demonstrated by the diversity of successful methods applied in the Elko BLM District and elsewhere across the nation. Managing this problem with only utilization standards would be overkill (because it is often unneeded), distracting (because it emphasizes a weaker tool while other and better approaches lose focus from lack of assurance) and ineffective (because it has proven to not be effective in practice where agencies cannot afford the personnel to monitor adequately and then lose budgets because the fights are unproductive). The policy needs flexibility to use strong tools and certainty that strong tools will be used. So far this Table 2.7 widely misses the mark. It will likely be the subject of numerous law suits and it is contrary to what has been taught in Nevada and across the West by the BLM/FS National Riparian Service Team and by the Nevada Range Management School for almost a decade.

Livestock Grazing References That Require Incorporation or Proper Interpretation

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Specific Comments

Executive Summary

Since the Executive Summary is based on the analysis in the remaining document, we will not make comments on every single issue. However, this does not mean that we do not have concerns and issues. Rather, we understand that the comments that we provide on DEIS will apply to the same issues and concerns that exist in the Executive Summary.

Page xiii, ES.3

We strongly disagree that habitat is being lost due to grazing as indicated in the list of threats. Allotments have been under prescribed grazing management for decades and experience frequent monitoring, including rangeland health assessments that result in any necessary modifications to grazing prior to reissuance of grazing permits. In addition, extensive reduction of AUMs have occurred west wide, particularly in Nevada, over the past 4 decades resulting in serious economic challenges for the livestock industry to remain viable. Imposing additional regulations along with AUM adjustments will heavily

impact grazing as an authorized use, further pressuring an already economically stressed industry, including in Eureka County.

Page xv, ES.6, Bullet 3

Livestock Grazing - This industry is already heavily regulated and has been suffering the consequences of these excessive and unnecessary policies and regulations. Further restrictions will very likely result in loss of a number of public land dependent operations and also impact our local economy.

Page xvii, ES.6, Bullet 17

It remains a serious concern that this effort will result in additional restrictions and grazing policies that will further impact the livestock industry resulting in ranch losses. There is pressing need to address this issue at the national level of BLM and work to limit or prevent any new restrictions on public land grazing.

Page xvii, ES.7, Bullet 1

Use of WAFWA data – It is apparent that the only information being considered as credible is the WAFWA data developed by a group of wildlife biologists who are not trained in rangeland management nor the management of livestock on ranges. This leaves an enormous gap in the data when considering current rangeland science and the recommendations and the ability of livestock grazing to contribute a role in benefiting sage-grouse. Rangeland scientists must play a primary role in developing planning criteria as relates to rangeland dynamics.

Page xviii, ES.7, Bullet 9

Range scientists that are trained in the appropriate use of ESDs and State and Transition Models should guide a collaborative and multijurisdictional approach to establish DFC. Lack of experience in this area of expertise can easily result in improper selection of DFC.

Page xix, ES.7, Bullet 15

Only S&Gs that have been developed by local RACs and reviewed and approved by appropriate participants, including ranching, should be utilized.

Page xix, ES.7, Bullet 18

Vegetation management objectives should be guided by ESDs and the associated State and Transition Models developed for the appropriate Major Land Resource Area (MLRA) by NRCS.

Page xix, ES.7

There is nothing in the planning criteria that lends credence to or calls for inputs from local sources, including ranchers with decades or generations of experience and knowledge with respect to sage-grouse and their local habitat, locations of leks, observations of predation, climatic events (i.e. wildfires), and the impacts, including vegetation changes. This leaves a huge gap in the search for sound, credible information that can assist in effective planning as the process advances.

This description lacks emphasis on pre-suppression actions while emphasizing increased fire suppression. Pre-suppression activities are vital to successful protection of habitat and can most cost effectively be carried out by prescribed grazing, particularly in cheatgrass affected areas.

Local authorities have been overlooked or disregarded as locally specific experts on socioeconomic analysis. Please revise to include work by UNR and associates in socioeconomic related matters.

Revise to include not only local plans but “plans, policies, and controls” as required by NEPA, FLPMA and respective regulations. Policies are a major component of local government direction and are necessary for coordination and consistency review. After adding, please follow through with proper and genuine efforts to properly coordinate and get consistency with plans, policies, and controls.

The DEIS states a list actions that may be used to mitigate natural disturbances. Preventative measures such as mowing sagebrush to stimulate new growth and inter-seeding bunchgrasses to improve the understory are underrepresented. A key principle that appears to be lacking is the need to increase resilience and health of sagebrush communities. An additional key principle that appears to be lacking is the need to break fuel source continuities in an effort and reduce the magnitude of wildfire. Smaller scale wildfires and increased resilience of sage brush communities are essential to achieving positive post-fire vegetation response and encouraging a timely recovery. The use of non-native species such as forage kochia should be considered for use, where applicable, as an interim community stage that can stabilize soils, reduce cheatgrass dominance, and prevent recurring wildfires.

We request that the use of “conservation groups” be changed through the entire document to “environmental activist groups” or “environmental groups”. It is easily understood what environmental activist groups are but the definition of conservation groups is subjective and varied. For instance, conservation districts, CRM groups, sustainable use groups including some grazing entities are also conservation groups. We feel the term conservation has been bastardized. Conservation and resource use are not mutually exclusive. Protectionism should not be confused with conservationism. Conservation includes sustainable use while protectionism often advocates precluding resource use by humans. There should not be a confusion of conservation with protectionism and pitting of different levels of conservation against each other.

It is disingenuous for BLM and USFS to set up a tone and theme of resource conflict and “competing human interests” and pitting of uses against each other. Please cite the source that has determined the competing uses occurring within the ecosystem. Any conflicts that have occurred are because of management of the use, not the use itself. This needs to be clarified. All of the uses listed can exist

together in a sustainable way if managed in a sustainable way. Remove all references to "competing land uses" and "competing human interests"- BLM and USFS mandate is for multiple use and BLM's statements of "competing uses" highlights a bias towards protectionism rather than sustainable and managed use.

Page xxxvii, ES.9

We again reiterate our agreement with Section 9.2.7.3 of the BLM NEPA Handbook where it states "BLM must work with cooperators...to encourage consensus on a preferred alternative". BLM has never worked with us and other Cooperating Agencies to find consensus on the preferred alternative. We demand that BLM seriously take our comments into account and implement the necessary measures that Eureka County could get on board with as the preferred alternative. Our preferred alternative is the State of Nevada Plan with incorporation of changes according to our comments.

Chapter 1

Page 2, 1.1.1

States that EIS analyzes "applicable conservation measures that were submitted to BLM and Forest Service from various state governments and from citizens during the public scoping process." During scoping, Eureka County stated "consider the Eureka County Master Plan (Plan), specifically the Natural Resources & State and Federal Land Use Element of the Plan as Eureka County's primary input into the Land Use Plan (LUP) revisions to incorporate GSG conservation measures. Local land use management plans should provide for the framework regarding the ability for public involvement and participation in GSG conservation efforts. Eureka County's Plan outlines the goals, objectives, and guidance for the use of lands and resources located within Eureka County. Eureka County will not, and cannot, support any management option that is inconsistent with this Plan." We believe our plan and policies, if implemented and followed, will achieve healthy, working landscapes that conserve the sage grouse and our local social structure and economy. BLM does not even acknowledge our plans and policies and there is no effort to analyze our applicable conservation measures in our plans and policies. In fact, we see very little effort to adequately address the many issues we brought up during scoping and the inconsistencies of most of the alternatives to our plans, policies, and controls. This is inconsistent and must be rectified according to law and regulation.

Page 4, 1.1.1

There is dangerous misuse of the Sage-grouse Habitat Maps throughout the document and building of rigid actions according to lines on a map, and not actual habitat on the ground. The PGH and PPH delineations are based on the NDOW Greater Sage-grouse Habitat Categorization Map. The Habitat Map white paper (March 2012) states that:

"The Nevada Department of Wildlife (NDOW) Greater Sage-grouse Habitat Categorization Map (Sage-grouse Map) is an analysis tool that incorporates the best available data (lek observations, telemetry locations, survey and inventory reports, vegetation cover, soils information, and aerial photography) into a statewide prioritization of Greater sage-grouse (sage-grouse) habitat. This tool provides resource managers with information to guide conservation and land-use planning efforts in the context of sage-grouse management at the landscape scale ... No land use

management decisions or directives are directly attached to or implied by the map. The map is a statement of sage-grouse habitat value based upon the best available information.”.

BLM misuses the habitat map in many ways. First, the proposed actions in the various alternatives and support documents acknowledge that there are many areas with simply no good data regarding Sage-grouse use or realities of habitat in the area. No data, or lacking data, should not be used in the context of “best available data.” Of the sources of data that supposedly make up the habitat map, huge acreages of “habitat” are drawn with no documented active leks and no telemetry locations in the area. Second, the vegetation cover and soils information are based on the ESDs and not on-the-ground conditions and many of these areas have ecological thresholds have been crossed. Our concern is supported by the white paper where it discusses the “Known Issues” and clearly states:

“A key component of high quality sage-grouse habitat is the understory composition of sagebrush communities (Connelly et. al. 2000). The R-value mapping effort attempted to identify understory quality using the existing vegetation cover and the ecological site potential identified in the United States Department of Agriculture soil surveys. However, over the course of this project, it was determined the accuracy of the R-0 vs. R-2 classifications was variable. Further refinement of the Sage-grouse Map should include a more robust method for determining sagebrush understory composition and quality.”

However, there has been reluctance and refusal by the BLM and USFS to look at habitats on a project level scale and modify the gross scale mapping. Areas of non-habitat (e.g., pinyon-juniper encroachment and salt desert scrub) have been mapped as PPH and PGH and these areas provide no habitat value for sage-grouse, yet proposed disturbance in these areas must currently be mitigated at the ratio of 3 acres of mitigation for every 1 acre of disturbance in PPH habitat, regardless of whether or not the acreage is actually sage-grouse habitat. A streamlined and objective process needs to be developed for addressing these errors in the mapping, or the existing process of conducting a baseline inventory of resources (i.e., actual habitat) needs to be recognized and used by the agencies during the analysis of the individual projects.

BLM uses the map to make a very specific regulatory schemes, restrictions, etc. Finally, the BLM habitat map differs from Nevada’s map developed through the Sagebrush Ecosystem Council in which the map, developed with local knowledge and expertise, does not show the area concerned as prime Sage-grouse habitat. BLM’s maps are considered Preliminary Priority Habitat and Preliminary General Habitat. The operative word is “preliminary” and more recent work has modified area as important Sage-grouse habitat. The areas of PPH and PGH are not based on the best available science and there is updated ESD state and transition models and GSG mapping (by Dr. Peter Coates) completed that are now the best science. Please incorporate.

Page 4, USFWS Conservation Objectives Team Report:

The USFWS Greater Sage-Grouse Conservation Objectives Final Report (the “COT Report”) was intended to “produce recommendations regarding the degree to which the threats need to be reduced or ameliorated to conserve GRSG [Greater Sage-Grouse] so that it would no longer be in danger of extinction or likely to become in danger of extinction in the foreseeable future.” This is also a risk-based approach; risks are identified and then recommendations are used to eliminate or reduce the risk. This results in a very restrictive prescription for management – one of “don’t do” actions. An approach that includes management prescriptions that allow for multiple use, resource conservation (i.e., the wise use

of resources), and provides for sage-grouse is preferable (i.e., true adaptive management). While such an approach is much more complex, it allows for grazing, mineral extraction, energy development, and other land uses while providing for sage-grouse sustainability. It is a balanced approach of doing new management to improve habitat, not doing past actions that have created habitat loss or degradation, and modifying management actions to better accommodate sage-grouse needs.

The use of the COT Report has set the tone of the DEIS that focuses on restrictions, rather than issue resolution and sustainability (of local economies and sage-grouse). This is in part because the DEIS also focuses on BLM and Forest Service “programs” as separate entities and does not consider an integrated ecological approach to the sage-grouse issue.

The COT Report is not a scientific document. It provides no original data or quantitative analyses and especially fails to provide a comprehensive and unbiased review of all of the available scientific literature on the GRSG. Outdated information and assumptions are perpetuated in the COT Report.

While the COT Report says that “there is an urgent need to ‘stop the bleeding’ of continued population declines” it fails to mention hunting, which is a well-documented source of GRSG mortality. The COT Report, however, proposes that activities that have never been shown to cause a population decline should be regulated. The COT Report’s recommendation to regulate non-threatening activities combined with its disregard of a major, actual threat to GRSG demonstrates a clear lack of scientific integrity in the Report.

There is no evidence of any reproducible, quantitative methodology used in assigning rankings to threats in each population and GRSG management zone. The ranking of threats in the COT Report appears to be entirely subjective.

BLM must carefully reconsider its reliance on the COT Report in the DEIS. To do otherwise would be inconsistent with the ESA, the Data Quality Act and the presidential and Interior Department memoranda and orders.

Page 8, 1.3

Grazing- loss of habitat due to livestock and wild horse and burro use -- this threat should be separated appropriately for wild horses and livestock. Unmanaged wild horse use is creating serious damage to rangelands and BLM is not managing the range or the horse numbers properly in most instances. Livestock management can be, and is easily regulated by the agencies based on existing regulations.

Page 16, 1.5.2. Issues Identified for Consideration in the Nevada and Northeastern California Sub-region Greater Sage-Grouse LUPAs:

The list of bullets continues the theme of the COT Report – “protect”, “limitations”, “restrictions”, and “avoidance and exclusion areas;” these terms set the tone and imply emphasis of one resource at the expense of another, not the multiple-use concept that is espoused in the DEIS document. “Best Science” should be more than a list of what cannot be done on public lands. Closing large portions of the public lands or imposing seasonal restrictions cannot be effectively implemented and severely inhibits the ability to efficiently and effectively conduct agricultural, mineral, energy, recreation, and other land use activities.

There are issues which are beyond the scope of what the BLM and Forest Service have authority to regulate on public lands, but these issues are not necessarily irrelevant to the DEIS analyses. All factors that impact sage-grouse should be evaluated, or at least included, so it is clear to the public the significant factors contributing to the decline of sage-grouse populations. Only when that entire spectrum of factors is analyzed can the eventual selected alternative be deemed sufficient to halt the decline in sage-grouse populations.

Through the existing analysis in the DEIS, it cannot be determine if the potential impact of a particular land use is greater or less than the impact from other threats (not addressed in the DEIS) such as hunting or predation. There is no analysis in the DEIS that demonstrates that, even with land use restrictions, there will be a reasonable expectation that sage-grouse populations would increase in the absence of predator control, hunting restrictions, etc. The DEIS does not analyze acreage currently disturbed by certain land uses with respect to the acreage of PPH and PGH, or the acreage in PPMAs or PGMAs. Consequently, it is impossible to determine the total impact of those uses on sage-grouse or sage-grouse habitats. If the disturbance is minimal the threat is minimal. Context here is critical.

Although NDOW follows the WAFWA guidelines, the guidelines have not been subjected to peer-review. The guidelines are based on decades-old studies that concluded there is a “hunnable surplus” produced each year in small game populations. This is true in populations that are stable or increasing, but does not apply to decreasing populations. The concept of a “harvestable surplus” only occurs when other mortality factors are at normal levels. Hunting impacts needs to be greatly expanded in the DEIS. Without this analysis, the cumulative impacts analysis is inadequate.

The rationale that the hunting should be continued because NDOW obtains important data on the sage-grouse populations from the wings of harvested birds is not valid. NDOW routinely closes some areas to hunting; therefore the data on these populations where hunting is closed is not available and NDOW must find other ways to determine the status of populations in these areas (e.g., lek counts).

The DEIS should evaluate the socio-economic impacts of ongoing hunting against the many other restrictions being considered for imposition on public land users.

Page 17, 1.5.4

It is extremely disingenuous for BLM/USFS to fail to analyze hunting and predation influences and management options. It is argued that it is outside of the jurisdiction and authority of BLM/USFS; however, other issues, such as climate change, socioeconomics, travel management on non-federal roads, and water resources and water rights, are analyzed while too being out of the control and jurisdiction of BLM/USFS. It is impossible to holistically frame management without analyzing the cumulative effects and recognizing their role. Also, the agencies with jurisdiction by law and special expertise on the issue of hunting and predation are both cooperating agencies (e.g., FWS, NDOW, counties). The BLM NEPA Handbook speaks to “expanding the scope of a NEPA analysis to consider connected and cumulative actions of all cooperating agencies into a single document improve overall interagency coordination” (p. 112). Also, the CEQ regulations speak to streamlining and eliminating duplication while satisfying NEPA (40 CFR 1506.2(b)). CEQ guidance is clear that even items not under full or even partial control of BLM/USFS must still be analyzed when connected and when a major

component. As highlighted in the BLM NEPA Handbook (H-1790-1) and mandated by law, the EIS must “rigorously explore and objectively evaluate all reasonable alternatives” (40 CFR 1502.14(a) and NEPA Sec. 102(2)(C)(iii)) and “study develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources” (NEPA Sec. 102(2)(E)). Of note is that “[i]n determining the alternatives to be considered, the emphasis is on what is ‘reasonable’ rather than on whether the proponent or applicant likes or is itself capable of implementing an alternative. ‘Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable...’ (Question 2a, CEQ, Forty Most Asked Questions Concerning CEQ’s NEPA Regulations, March 23, 1981)” (BLM NEPA Handbook p. 50). Further, CEQ provides guidance on framing “relevant, reasonable mitigation measures” even if they are outside the jurisdiction of the agency Question 19ba, CEQ, Forty Most Asked Questions Concerning CEQ’s NEPA Regulations, March 23, 1981). Further, “while some mitigation strategies are within the BLM’s control...most mitigation strategies require action by other government entities—typically cities, counties, and State agencies....the relevant, reasonable mitigation measure are likely to include mitigation measure that would be carried out by other Federal, State or local regulatory agencies or tribes. Identifying mitigation outside of BLM jurisdiction serves to alert the other agencies that can implement the mitigation. (BLM NEPA Handbook p. 62). It is very clear in CEQ regs (specifically 1502.14(f) and 1502.16(h)) that speak to mitigation irrespective of jurisdiction. Also, the CEQ FAQ 19b is very clear in presenting the CEQ guidance related to this exact issue (in which guidance has been in place since 1981): 19b. “How should an EIS treat the subject of available mitigation measures that are (1) outside the jurisdiction of the lead or cooperating agencies, or (2) unlikely to be adopted or enforced by the responsible agency? A. All relevant, reasonable mitigation measures that could improve the project are to be identified, even if they are outside the jurisdiction of the lead agency or the cooperating agencies, and thus would not be committed as part of the RODs of these agencies. Sections 1502.16(h), 1505.2(c). This will serve to [46 FR 18032] alert agencies or officials who can implement these extra measures, and will encourage them to do so.

Because the EIS is the most comprehensive environmental document, it is an ideal vehicle in which to lay out not only the full range of environmental impacts but also the full spectrum of appropriate mitigation. However, to ensure that environmental effects of a proposed action are fairly assessed, the probability of the mitigation measures being implemented must also be discussed. Thus the EIS and the Record of Decision should indicate the likelihood that such measures will be adopted or enforced by the responsible agencies. Sections 1502.16(h), 1505.2. If there is a history of nonenforcement or opposition to such measures, the EIS and Record of Decision should acknowledge such opposition or nonenforcement. If the necessary mitigation measures will not be ready for a long period of time, this fact, of course, should also be recognized.” Just because hunting and predation are outside of BLM and USFS jurisdiction does not mean that the analysis and subsequently identified mitigation are unnecessary or not required. How can BLM/USFS address all connected GSG impacts and actions without analyzing predators and hunting effects and identifying proper mitigation? The full picture will not be answered and the analysis falls short in disclosing what can be done, holistically, to address GSG conservation. Please revise to include adequate analysis on predators and hunting in coordination with the agencies that will formulate management based on the analysis, primarily FWS, NDOW, NDOA, and counties in order to truly meet the obligations of NEPA to see the “whole” and inform on all relevant issues so that the conservation of GSG is truly met.

The effectiveness and efficacy of the changes that would result in the as a result of the DEIS cannot be determined if the issues of predation and predator control are not analyzed. The issue does not have to be under the purview of the BLM or the Forest Service to have relevance to the analysis...the issue only

has to be under the purview of the BLM or the Forest Service to be included in the selected alternative. The analysis of an issue and the inclusion of measures in the selected alternative to address the issue should not be confused. Predation and predator control are as much within (or beyond) the scope of BLM and Forest Service authority as is Global Warming, and should be addressed for the same reasons. It is not an issue of whether or not BLM or Forest Service will implement predator control, but it is an issue of the magnitude of predation as a factor in causing the decline in sage-grouse populations that needs to be in the analysis to provide perspective on how effective the alternatives will be in sustaining sage-grouse populations and habitats.

Page 18, 1.5.4

The warranted but precluded decision and management under ESA listing states, the listing of the GRS by the USFWS may include conservation measures identified by the USFWS... What are USFWS qualifications in Rangeland Management and livestock grazing to justify their ability to address this specific and complex science by designating conservation measures? To our knowledge there are no Range Specialists in the USFWS. Conservation measures for grazing and range management necessarily require the expertise of range qualified specialists and scientists, not biologists.

Page 19, 1.6

It is important that the BLM and USFS recognize grazing permits among the valid existing rights. These permits have discrete economic value and have been purchased as part of an economic ranch unit, which is highly dependent upon the permitted AUMs to remain viable. It is also imperative that water rights, water conveyances (RS 2339), and rights-of-way (RS 2477) are recognized as valid existing rights.

Page 19, 1.6. Development of Planning Criteria

The document states "Lands addressed in the LUPAs will be BLM- and Forest Service-administered land in GRS habitats, including surface and split-estate lands with BLM subsurface mineral rights. Any decisions in the LUPAs will apply only to BLM- and Forest Service-administered lands." This is not accurate. BLM and Forest Service routinely extend federal land management policies to private lands through the connected action concept. This should be clearly stated in this section of the document. Impacts to resources on private lands are routinely included in NEPA analyses and mitigation for impacts on private lands is required. To imply that private lands are exempt from the provisions of the selected alternative is incorrect. The clarification is needed that the decisions in the DEIS apply to public lands unless there is a connected action that occurs on both public and private lands, or, the DEIS must have language that specifically exempts private lands from the connected action policy.

Page 20, 1.6. Development of Planning Criteria, last bullet item on the page

All discussions of multiple-use seem moot when put in the context of "For Forest Service-administered lands, all activities within GRS habitat will achieve the GRS habitat objectives." It is very easy to conceive of situations where a proposed action could be denied because of potential impacts to sage-grouse or sage-grouse habitat based on this statement. This does not conform to multiple-use management.

Page 21, 1.6. Development of Planning Criteria, second to last bullet item in this section

Discussion of the PPH and PGH designation maps in the same paragraph that states the “Data will be consistent with the principles of the Information Quality Act of 2000 (Public Law [PL] 106-554, Section 515)” is not appropriate. These maps have been used without credible ground-truthing and where baseline studies have been conducted and have findings in conflict with the maps, the BLM has routinely used the mapped designations in spite of having data to the contrary. Impacts are determined based on the amount of acreage of PPH or PGH that is disturbed by an activity, and without accurate maps land users are unduly penalized.

The document fails to list wilderness plans for a number of locations within the planning area and recommendations for addressing GRSG needs within these areas. How do wilderness areas (or ACECs) provide benefits to sage-grouse and opportunity to increase and or maintain their population segments when range treatments are limited or disallowed within wilderness areas?

Page 22, 1.7.2

It is very cavalier and incorrect when the document speaks to consideration and consistency with the Eureka County Master Plan. This is a blatant misrepresentation. We find the DEIS overwhelmingly inconsistent with our Master Plan and our other plans, policies, and controls. Our Master Plan, primarily the Natural Resources & State and Federal Land Use Element of the Plan, has management goals, objectives, policies, and mandates, that if implemented, will conserve GSG in Eureka County. The EIS fails to analyze our plan and policies and is therefore inconsistent with such. We call for BLM/USFS to complete the analyses necessary to implement our plan for conservation of GSG.

Page 30, 1.8

Why are the Rangeland Monitoring Handbooks specific to Nevada not included in this listing? BLM was an active participant in developing and agreeing to use of these handbooks for statewide use. These should be the references for application in Nevada.

Chapter 2

Page 25, 2.8.1 No Action Alternative, Special Status Species/Greater Sage-Grouse Habitat; and Page 32, 2.8.1, No Action Alternative; Resource Allocation by Alternative

The DEIS incorrectly states that “There are currently no lands designated by the BLM or Forest Service as PPH or PGH within the sub-regional planning area; ...” It is correct to say that there are currently no lands designated in by the BLM or Forest Service in the existing LUPs as PPH or PGH within the sub-regional planning area. Currently, the BLM uses the PPH and PGH mapping to determine impacts and mitigation measures in projects being analyzed through NEPA, even though the existing LUPs do not include these designations.

Page 39, 2.4

Another reasonable alternative that we specifically commented on during scoping and was not included asked for an alternative to focus primarily on local conditions, planning and conservation actions. Eureka County and many of our local advisory boards including our Natural Resources Advisory Commission and our Wildlife Advisory Board have been active participants for GSG and habitat conservation. Eureka County participated in the Nevada "Governor's Team" for GSG, when that effort started in 2000. We have

committed ourselves, through our local advisory boards—consisting of ranchers, farmers, miners, sportsmen, businessmen, and recreationists—in local conservation planning and habitat enhancement activities. Of primary concern is that it seems that the BLM and other state/federal agencies have discarded the conservation work and partnerships at the local level instead focusing on development of a typical government top-down approach. Approaching GSG conservation from a top-heavy, top-down approach undermines these local efforts and does little to build a spirit of partnership with those local entities necessary if any planning effort is going to be successful in implementation of real conservation. When outlining measures for GSG habitat conservation, the EIS must better consider localized conditions and influences and be based on current understanding of rangeland health, primarily ecological site descriptions and states and transitions models that are targeted to local ecological drivers. It is a dangerous bureaucratic concept to focus on a programmatic, one-size-fits-all approach—dangerous for multiple uses and GSG themselves.

Only a plan focused on local planning and conservation actions is able to incorporate and legitimize the compromises necessary for sustainable management of the lands that the community is so dependent on. Including a plan, such as Eureka County' Natural Resources & State and Federal Land Use Element of our Master Plan and our formally adopted grazing policy for local, results driven management is the only way that GRG conservation will be successful. Failing to analyze this alternative provides no information for BLM or USFS to make a reasoned choice. We look forward to working with BLM and USFS for inclusion and coordination to work now to build and strengthen the foundation for the long-term while making the necessary management decisions at the necessary scale—the local scale.

Page 39, 2.4

See our comments regarding creation and implementation of the habitat maps.

Page 45, 2.4.3

Please remove “to alleviate threats” so sentence simply reads “...complete removal of livestock grazing.” The phrase “to alleviate threats” comes to a misplaced conclusion not founded in fact and out of place since it appears in the EIS without any robust and objective analysis on livestock grazing threats. It is mismanaged (or undermanaged) livestock grazing that is the issue, not livestock grazing itself. Again, the EIS, from the onset, sets the theme for unduly framing of the totality of livestock grazing as a threat.

Page 45, 2.4.4

It is unjustified to have a blanket allowance of 10% adjustment in PPMAs and PGMA's. This provides no consideration of actual ground based conditions and the 10% allowance for adjustment would severely limit true adaptive management.

Page 46, 2.4.4

Please add throughout the document that coordination and cooperation will be with appropriate state and local governments/agencies—not just state agencies. Many local bodies such as conservation districts and counties, have a lot to offer.

Page 47, 2.5

Include under Management Common to All Alternatives valid existing rights, including but not limited to, grazing preference, water rights, rights of way (including RS 2477 and RS 2339). The management schemes of the EIS under any or all alternatives cannot impair these rights.

Page 49, 2.5.1

Please don't focus on "native plant communities". Research has shown that long-lived perennial species are important regardless of native status (Clements). BLM and USFS should revise to promote ecosystem function and not focus on "native". Native plant communities are often an indicator of function but lack of native plants in many areas with crested wheat and forage kochia (among others) are healthy, functioning, and conducive to resilience and sage grouse conservation. Focusing on "native" limits land managers ability to adaptively manage or have step-wise rangeland restoration.

Page 55-51, 2.5.2

We do not see any reference to accepted protocols for rangeland monitoring. Also, there is no mention of rangeland science. Please revise to have a heavy emphasis on rangeland science when implementing any habitat monitoring. Understanding and applying current rangeland science is the key to adjusting to changing conditions on the ground. We believe that the wildlife biology and wildlife science components often lack a robust understanding and/or application of proper rangeland science.

Page 49, 2.5.1

Please add Society for Range Management and Rangeland Management academia to the list for coordination. There is a general lack of mention and or application of rangeland science and research in the entire EIS.

Page 54, 2.6.1

Please include that many of the roads, routes, and ways are not BLM or USFS but rather prescriptive rights of way that counties and other individuals claim and that BLM and USFS do not have authority on travel on these roads. We understand that the BLM and USFS do not acknowledge the finality of title to many of these roads due to recent decisions by the 10th Circuit but it cannot be refuted that most of these "claimed" roads did exist pre-1976 or forest reservation and when taken to federal court would be adjudicated as not being under the control of BLM or USFS. This much be acknowledged and carried through the analysis.

Page 47, 2.4.6

To establish a system of "sagebrush reserves" is to condemn many PPH and PGH areas to potential destruction by wildfire, the highest threat to sage-grouse habitat. Fire and grazing are the two primary means of harvesting (managing) an annually renewable resource (forage). To allow for buildup of residue will invite catastrophic wildfire and increase the threat to adjacent rangelands. Under wildfire conditions thermal conditions would then likely increase to the point of destroying perennial plant life and sterilizing soils.

Page 52, Page 51, 2.5.3 Adaptive Management

Because rangelands are dynamic, flexibility is vital to successful range management and the application of practices and improvements. We agree with the concept of adaptive management and the commitment to monitoring the outcomes. We are concerned that true adaptive management is undermined by the one-size-fits-all proposals in the DEIS alternatives.

The adaptive management section is unclear as to how new field data will be utilized and how often it will be needed to be updated. For example, multiple field studies that show no winter use of “winter habitat” over multiple years should be sufficient to remove the designation as winter habitat and any seasonal restriction. The habitats as currently mapped by state and federal agencies are best guesses in most instances and field data (habitat measurements and bird observations) are not available for many areas. The metrics that trigger the implementation of seasonal restrictions, RDFs, etc. should be periodically revisited to ensure that the condition actually exists.

See our general comment on adaptive management that applies here.

We strongly recommend that USDA ARS Great Basin Rangeland Research Unit, UC Davis and UNR Range Science Dept, CCA, NVCA, NVMA, Conservation Districts, and local governments all be represented on the adaptive management working group.

Table 2.4, Goals and Objectives

Resource management objectives must always be quantifiable, measurable, and have established timeframes. All of the analysis following in this section (2.8.2) is troublesome, confusing, and will not result in changes or help to GSG conservation. Please work with cooperating agencies, including us, to rework and redo all of the goal and objective setting to set real and adequate resource objectives that all users and interests of GSG habitat can be on the same page on to make real progress. The goals/objectives/management actions are not entirely clear. What is confusing is that goals/objective/management actions are separated in the Alternative but are often not representative of their definition (i.e., objectives are often actually goals). The management alternatives in the EIS must be built on a common application of goals and objectives. There are many sources of information in the resource management field that clearly define the differences between vision, goals, and objectives. In fact, many DOI and BLM references give direction on development of proper, clear and effective goals and objectives (see Williams et al. 2009, Adaptive Management: The U.S. Department of the Interior Technical Guide; Adamcik et al. 2004, Writing Refuge Management Goals and Objectives: A Handbook. U.S. Fish and Wildlife Service; and Swanson et al. 2006. Nevada Rangeland Monitoring Handbook Second Edition.) The common thread of these references describes differentiating between vision, goals, and objectives and then setting of objectives that fit the mnemonic SMART—Specific, Measurable, Achievable, Realistic/Related/Relevant, and Time-fixed.

S – Specific – They describe what will be accomplished, focusing on limiting factors, and identifying the range of acceptable change from the present to the proposed condition.

M – Measurable – The change between present and proposed condition must be quantifiable and measurable.

A – Achievable – Are the objectives set achievable in the current setting? Consider environmental constraints, societal expectations, economic parameters, legal requirements, and technological limitations.

R – Realistic/Related/Relevant – Set objectives that can be realistically achieved given the natural and management context of the situation. They are related in all instances to the land use plan goals and relevant to current management practices. Thus, they must be worthy of the cost of the management needed to achieve them and the monitoring needed to track them.

T – Time-fixed – They must be trackable over time and must include a specific and definite timeframe and location for achievement, monitoring, and evaluation.

Very few of the objectives across all alternatives meet all of the SMART criteria. As an example, consider Objective D-LG 1 under Livestock Grazing (p. 112). This objective states “In PPMAs and PGMAs, manage for vegetation composition and structure consistent with ecological site potential to achieve sage-grouse seasonal habitat objectives (see Table 2-6).” First, this objective refers to other objectives in Table 2-6 that do not meet the SMART criteria and have no basis in the state of any ecological site. The objective is not specific (S) because there is large variability in “vegetation composition and structure” even at ecological site potential. The State and Transition Model (STM) for any given Ecological Site Description (ESD) defines a range of vegetation characteristics in any given state. Also, “site potential” is not defined in the context of ESD and/or STM. Is the site potential synonymous with “reference state” of the ecological site? If so, what if the current state of any given site has crossed a threshold into a degraded stable state in which there is no current restoration pathway known? We argue that the state of an ESD in some circumstances is the “site potential” even if not conducive to or acceptable sage grouse habitat. Without being more specific, objectives such as this open a door of subjective interpretation, contention, and more legal wrangling. The objective is partially measurable (M) but not completely. It refers to other objectives in Table 2-6 that are not measurable. Even though monitoring can take place to determine “vegetation composition and structure” what is the quantifiable metric to determine if it is “consistent with ecological site potential to achieve sage-grouse seasonal habitat objectives?” The achievable (A) criterion needs to be better fleshed out in the objective. As already discussed above, “site potential” needs to be defined in the context of the current state of any given ESD. Simply put, some areas may have crossed a threshold into a state that is the “site potential” given current understanding and technology. Some areas may be at “site potential” given the current ecological state but not in a state that provides every seasonal sage grouse habitat need. There must be language clarifying this issue in order for all objectives to be achievable in all situations and then a follow up objective when these circumstances apply.

The example objective is not entirely realistic/related/relevant (R) for many of the reasons we have already discussed related to site potential and management constraints. This must be clarified. The objective is definitely not time-fixed (T). There is nothing to determine the timeframes for monitoring this objective nor the timeframes expected in meeting this objective. If an adaptive management approach is to be used, the temporal component is imperative. All future management adjustments must have a set time frame in which they are triggered if the objective is not or cannot be met. Most objectives in the alternatives may meet some of the SMART criteria, but as written are actually goals, defined in the references as “broad statement of desired outcomes, usually not quantifiable” and “apply to the entire plan and are the same for all alternatives.” For instance, the referenced Table 2-6 states that there is an “objective of meeting Rangeland Health Standards.” This is not an objective, but a goal. The objectives would be intermediary steps to make significant progress towards meeting standards or maintenance objectives to keep meeting standards. There should be one overarching goal across all alternatives and the alternatives flesh out specific and SMART objectives. This example we have

discussed above is a common theme throughout all alternatives and associated tables and must be addressed. If not, the amount of subjectivity on what any objective means is left up to agency discretion and individual or user translation, which may not be compatible. This will result in continued strife in managing sage grouse habitat and will result in much more time in the courtroom. Defining SMART objectives will minimize personal interpretation and result in all parties being on the same page moving forward, even with conflicting interests. We will not comment on this at every instance. We reiterate that the objectives and management actions really need re-worked to be clear and get all users and land managers on the same page.

Again, most of the current goals/objectives/management actions need to be re-worked, expanded, and or clarified in order for streamlining of management moving forward and to remove bias and minimize room for interpretation. Also, there are many references to “site potential” and descriptions of managing according to Ecological Site Descriptions, but there is limited to no discussion about State and Transition Models and the limitations of management in areas that have crossed thresholds. Everywhere throughout the entire document, please add language in these circumstances to read “consistent with ecological site potential given the current state of the ecological site and in consideration of the State and Transition Model for the site.” As an example Objective D-VEG 1 (p. 98) states “... manage for vegetation composition and structure consistent with ecological site potential...” This should be changed in every instance to read “...relative to Ecological Site Description and sites potential given the current state of the ecological site and in consideration of the State and Transition Model for the site...” Also, many management actions are framed as objectives when they are not. We will not comment on this at every instance. We reiterate that the objectives and management actions really need re-worked to be clear and get all users and land managers on the same page.

A new objective needs to be included that calls for development and application of State and Transition Models for all Ecological Site Descriptions in MLRAs within the planning area. This is imperative in order to adequately determine progress towards meeting objectives. We must know what any given sites potential really is before we can set site specific resource objectives. Site potential is not the same as reference state of an ESD. There are different site potentials dependent on the current state of an ecological site.

Goal D-SSS-AM 1

Instead of stating additional PPMA/PGMA be identified, this goal should focus on refining PPMA/PGMA delineations (to include additions, subtractions, or MA class changes), based upon new science, non-anthropogenic impacts such as fire, restoration potential for severely impacted habitats, and monitoring of PPMA, PGMA, and non-classified habitats. Just as currently unclassified habitat may need to be classified as PPMA/PGMA in the future, it is likely that many areas currently designated as PPMA/PGMA should be removed and classified as non-habitat. What type of process will be used to facilitate additions, subtractions, or designation changes (from PPMA to PGMA and vice versa)? Will this be at the discretion of the BLM and USFS? USFWS? Other conservation and industry partners? What criteria will be used and who will determine the criteria?

Goal D-SSS-AM 2

The DEIS should recommend and implement partnership approaches that include diverse stakeholders. However, many times these partnership processes fail at critical points because leadership roles and

decision-making processes are not well defined. Many approaches are well intentioned but fail to achieve compromise, and ultimately become dysfunctional and ineffective. Can the DEIS provide for facilitation and use of a balanced science panel? Professional consultation by facilitators/advisors would establish ground rules for meetings, determine how interest groups will be able to provide input, how/who will make final decisions, and how decisions can be appealed or modified based on new science. The DEIS should incorporate language defining a framework that improves the organization, efficiency, and decision-making ability of a collaborative approach/working group. Use of outside consultants or advisors that specialize in this field is highly recommended.

Goal-D-SSS-AM 1

Please provide quantitative definitions for "large scale disturbance" and "adjoining PGMA." It is impossible to accurately analyze impacts and provide useful comments when a potentially-significant measure such as this goes undefined. Additionally, this objective could result in more restrictive management on habitat that is of limited use to GRS. Significant use restrictions should not be imposed in areas with low potential to maintain or restore GRS populations. The magnitude of use restrictions should be relative to the importance of an area to GRS populations. Development should be encouraged to utilize less important and highly disturbed habitats instead of more pristine or high quality habitats. By classifying PGMA as PPMA in highly disturbed situations, the DEIS is removing the incentive for industry to use poor or general habitat. Who will decide what quantitative measures are used to determine what constitutes "large scale disturbance" and "adjoining PGMA?" What methods will be used to make these determinations and will they be subject to collaborative input? Are there plans to monitor the effectiveness of this objective and make changes based on monitoring?

Objective FFM 7

Add training, equipping, and use of volunteer firefighters, including local ranches, under Alternative D as first responders, particularly in remote settings that are time sensitive to muster agency resources for suppression needs.

Goal LG 1

Should add the following verbiage from Alternative E to Alternative D: utilize livestock grazing when appropriate as a management tool to improve GRS habitat quantity, quantity or to reduce wildfire threats.

Objective D-VEG 1 (also Objective D-LG 2)

Some plants that sage grouse use in riparian and other habitats are not native. "Consistent with potential" will be misconstrued to not allow management favoring those plants even if they would support PFC or rangeland health goals.

Objective: E-LG 2

Needs to provide a mix of range management tools as recommended in Wyman et al (2006) and Swanson et al. (accepted with revision 2014).

Objective D-VEG-D 1

Although drought is well recognized as a stressful time for vegetation, the important consideration for vegetation is the survival of the perennial plants through the drought and their recovery after drought.

Objective E-VEG-D (and Action E-VEG-D 2)

Must include specific wording regarding climate variability. This is too big an issue to revisit it at each occurrence.

Table 2-5, Actions

Action D-SSS-AM 2 and D-SSS-OPM 4

Add "coordination with local entities including but not limited to counties and conservation districts."

Action D-SSS-AM

Change so that the habitat maps can be updated less than five years if there is information and better science.

Action D-SSS-DIS 1

Describe how water developments would be modified according to Nevada water law and valid existing rights, including RS 2339 rights of way. It is inconsistent with Eureka County's plans and policies to interfere with water rights and conveyances without the express, non-coerced agreement of the water right holder.

Action D-SSS-CC 1

Explain the science behind designation and management of areas as PPMA's based on climate REAs or other ecological studies when GSG are not present in these areas.

Action D-VEG 1

Add language to ensure that strategic and targeted livestock grazing is an available tool for use. Also, in the 4th bullet, add to read "...in the applicable Ecological Site Description (ESD) in consideration of the current state of the ecological site." Further, don't limit the ability to use non-native species such as crested wheat and forage kochia as stabilizers for step-wise restoration.

Action D-Veg 2

Many plants that sage grouse use in riparian (Evans 1986) and other habitats are not native. Management must not favor only native plants if other species that are not native they would support GSG, PFC or rangeland health. Also, in the last bullet of this action, it should be revised to read "...have not crossed an ecological threshold in which restoration pathways are uncertain (based on the State and Transition Model for the site)." Some areas may have crossed thresholds, but certain actions are known to be "restoration pathways" and are worthwhile.

Action D-SSS 7

Land use and development restrictions on lands outside PPMA/PGMA should not be based on qualitative descriptors such as "suspected use." Additionally, mapping PPMA/PGMA was intended to capture both A). regions and habitats that may be necessary to maintain GRSG viability, and B). buffers around essential

habitats. Thus, land use restrictions above and beyond classified PPMA/PGMA are burdensome, duplicative, and are unlikely to contain GRSG habitats. Critical areas for GRSG are already captured in the PPMA/PGMA mapping process or can be added into the PPMA/PGMA maps (refinement of the PPMA/PGMA is addressed under Goal D-SSS-AM 1, Action D-SSS-AM-9, and my comments above). Industry and development practices need a defined 'road map' and predictable permitting environments. This Action Item is inconsistent with these needs. If such an Action Item is proposed in the FEIS, please ensure the DEIS can define the process of whom/how such decisions will be made and what science/criteria will be used to support such decisions.

Action D-SSS-AM 3

Off-site mitigation projects should not be limited to PGMA. Off-site mitigation measures could include fire-prevention or fire-suppression activities that would be most beneficial in protecting PPMA. Additionally, all habitats currently classified as PPMA is unlikely to be consistently functioning to its ecological potential. This action seemingly prioritizes off-site mitigation in areas that are less important to GRSG. Off-site mitigation should be encouraged to protect (i.e. fire breaks) or further improve habitats that are critically important to GRSG. Restricting mitigation efforts in general or less-critical areas is counter-productive and counter-intuitive.

TMA 21.7

A variety of efforts, such as listed in this item, should be included as acceptable forms of mitigation for land use disturbances. Mitigation projects that establish effective fire-breaks to protect PPMA have the ability to benefit GRSG in the short- and long-term. Such measures will allow developers to use ingenuity to craft quality mitigation projects.

Action E-SSS-ACDM 5, Bullet #2 & Action D-SSS-OPM 1

Such prioritization mapping is essential for effective and well-planned mitigation system. Mitigation should focus on landscape scale benefits that result from coordinated and linked mitigation projects. Poorly distributed "postage stamp" projects may ultimately go unused by GRSG if sufficient movement corridors and adjacent habitat that contains GRSG are not present or insufficient. Limited time and resources can be used effectively by designing a statewide plan to drive and coordinate large and small mitigation projects. To facilitate such an effort, application of off-site mitigation efforts should not be geographically limited or restricted to arbitrary definitions of 'populations,' 'sub-populations,' or PMUs – the boundaries of which are up for scientific challenge and in some cases are based on arbitrary geographic features and presumed population boundaries.

Action D-SSS-OPM 2 & TMA 22.12:

Use of such a database to refine PPMA/PPGA and determine priorities for mitigation and restoration/rehabilitation efforts is strongly recommended.

D-SSS-OPM 5:

Please see comments related to Action D-SSS-AM 3. Off-site mitigation should not be limited to PPMA. Many mitigation efforts, applied to PPMA, would benefit GRSG in the short- and near-term, including fire suppression, fire breaks, fuels treatment, etc. Additionally, it is unlikely that all PPMA is functioning at its

full potential. As such, mitigation efforts applied to PPMA may improve site conditions in areas that are most-critical to GRSG. Encouraging mitigation in less critical areas will dilute restoration/rehabilitation efforts. Given the cost of rangeland rehabilitation, seeding, fire breaks, etc., we cannot afford to ignore the need to improve areas classified as PPMA. If we do, they may ultimately revert to PGMA.

Action FFM-CC 1

We support cooperative climate monitoring sites being established which would also assist with drought related planning for grazing season needs and adaptive management.

Action D-VEG2

The emphasis placed on restoring PPMA in this action should be extended to the Opportunities for Protective Measures (i.e. see comments relative to D-SSS-OPM 5).

Action D-VEG3

Please include a process for modifying habitat objectives for restoration/rehabilitation projects based on new information, monitoring, alternative science, and revisions to ESD, soil surveys, etc. Many of these tools were created to use at large-scales. Use of these tools to regulate at a project-scale require the ability to modify habitat objectives based on refinements to ESD, soil surveys, site descriptions, current state, etc.

Action B-VEG 5:

It is important to use native seeds where appropriate and conducive to success. However, it is essential that use of non-native species can be used when they support habitat objective or specific needs of certain areas (i.e. highly disturbed/fire-damaged habitats) that have a low probability of rehabilitation under sole use of native species.

Action D-VEG-ISCS 2

Please provide a source or reference for blanket 35% utilization rate.

Action E-VEG-USCE 4

We commend the State of Nevada Plan for efforts to provide an objective that clearly addresses the need to allocate financial resources to address proposed actions within a defined time frame. Most of the actions in Alternative D do not provide any timelines for achieving or implementing proposed Action Items.

Action C-VEG 12

Removal of livestock watering infrastructure removes tools that are essential for watering livestock in a manner that supports the more powerful tools in grazing management, season of use, duration of use, rotation of use. Furthermore, it would cause livestock and wildlife like elk to concentrate use in riparian areas.

Action D-VEG 28

Fuels treatments for shrubs is important and useful. Also include trees (PJ) and other plants.

Action LG 1

This Alternative C action proposes to eliminate permitted livestock grazing in PPMAs for an estimated grazing reduction of about 1.3 million AUMs across the planning area. This proposal is absurd and unrealistic, as livestock grazing is a recognized use of public lands and vitally important to maintaining and improving sage-grouse habitat and reducing the threat of devastating wildfires. The economic activity associated with permitted grazing also represents important contributions to rural economies and communities. Further, this proposal is not consistent with the provisions and legal requirements in the Taylor Grazing Act, the Federal Land Management and Policy Act, the Forest Management Act. Based on these reasons, this alternative must be eliminated from further consideration in this EIS.

Action LG 2

Development of resource objectives must be site-specific and involve the direct inputs of the permittee. While limiting livestock use to attain greater plant cover, increased fuel loading can contribute to increased fire hazard. Use of AMPs and Conservation Plans should be given highest priority for allotments to address any identified problems or issues in preference to the permit renewal process.

Action LG 2

Resource objectives should be site-specific and ecologically based and not drawn from a limited cookbook listing. Rather, the development of resource and habitat objectives must allow for use of best local science and actions that resolve the concern and result in the least impact to the livestock operation.

Action LG 3

This approach is acceptable as long as the permittee is agreeable with the working arrangement and approach and private land is not threatened. AMPs are an appropriate means of approaching this concept.

Action LG 4

It is imperative that both BLM and USFS commit fully to Ecological Site Descriptions (ESDs) and the associated State and Transition Models developed by NRCS.

Action LG 4

Land Health Assessments must be supported by on the ground monitoring if these assessments are to result in changes to the grazing permit. Particularly needed is trend data to support findings of the assessment teams for both BLM and USFS. Absent this information the findings are likely highly subjective and could result in negative impacts to the ranching operation and local economy. Because of this TR 1734-6 clearly states that the rangeland health assessment method shall not be used independently to make grazing management changes (BLM 2005). Also it is imperative that the permittee be included at the onset of any assessment on his/her allotment.

Action LG 4

These S&Gs should not be altered through special designations with unrealistic and unachievable goals that can result in livestock grazing reductions, or other measures that threaten the operators' permit or overall economic operation. Monitoring for resource and habitat conditions and trends at the allotment level should first follow the field methods specified in the Nevada and California Rangeland Monitoring Handbooks (NCE 2006 & Herrick, Van Zee, Havstad, et al. 2005).

Action D-LG 4, Action B-LG-5

Land health assessments are an excellent way to triage the management area and assess needs for management. Then management objectives for specific locations should be monitored with quantitative monitoring. See Swanson et al. (2006) and Dickard et al. (2014).

Action LG-5

ESDs with associated State and Transition Models should be the rule for assessing habitat conditions and determining whether there is potential for habitat improvement. In addition, this technical information is developed in NE California and Nevada which better reflects local conditions as opposed to the range-wide habitat variables recommended by Doherty et al. 2011, and Connelly & Hagen et al. 2007. Dr. Peter Coates with the USGS has been developing localized habitat criteria for plant communities in this study area.

Action LG 6

The State approach to develop specific resource or habitat objectives has merit with respect to use of ESDs and STMs. Under no circumstance should the agencies define new criteria outside of ESDs and STM including that recommended by the local RACs and also supported by USDA-ARS Great Basin Ranchland Research Unit, including the Range Scientists at UNR.

Action LG 7

Reference state ecological potential may not be attainable, nor the best choice for desired future condition to accommodate quality sage-grouse habitat. A desired seral stage, that is attainable based on the existing site-specific plant community, should be the objective. ESDs and State and Transition Models should be used to help identify these seral stages. Unrealistic objectives will result in ultimate failure while also impacting the operator and local economy.

Action LG 7

This Alternative F action provides the direction to manage sage-grouse habitat based on its reference state. Climax or a high ecological status may not be attainable or even produce the high quality sage-grouse habitat that is desired for improved sage-grouse conservation (Davies, Boyd, Beck, et al. 2011). To reach this habitat condition the DEIS estimates that permitted livestock grazing in the study area will be reduced by 25% or by 640,000 AUMs. This DEIS further projects that the grazing reduction under Alternative F will result in an annual reduction of \$66 million in economic output, \$24 million in labor earnings, and 252 jobs across the sub-area. This economic loss is unacceptable, particularly since

ecological benefits associated with Alternative F, in terms of livestock grazing effects on sage-grouse conservation, are not shown in this DEIS to be superior to local planning efforts where current habitat conditions are assessed and updated, resource objectives are developed, and management actions that are implemented through an AMP developed in cooperation with the permittee. This preferred approach to improved grazing management represents the current management direction in the sub-area and is best represented by Alternative A or the no action alternative.

Due to the lack of resource benefits derived from Alternative F, and its excessive and unacceptable impacts to other multiple-uses including grazing, the range livestock industry strongly recommend that Alternative F be dropped from further consideration in this DEIS and its component actions not be included in the resulting FEIS/ROD.

Action LG 8

AMPs should be a priority for all allotments and, where possible, complemented by conservation plans on private lands to outline the existing needs, proposed actions and desired future conditions, including the appropriate monitoring to assure that resource objectives are attained over time.

Action LG 8

Agencies must recognize that managed livestock grazing represents an important and cost-effective tool to achieve desired sage-grouse habitat conditions and represents a significant step forward compared to restrictive grazing and S&Gs contained in the remaining DEIS action alternatives.

Action LG 8

We strongly agree with use of AMPs as the preferred means of achieving objectives for grazing on allotments. All AMPs should have initial and ongoing inputs from permittees to both assist in identifying issues and presenting appropriate alternative actions. Specific actions such as outlined in 1 through 5 should be left to the responsible Range Specialist and permittee to identify the best approaches to attain the desired outcome. Since very few wildlife biologists are trained or knowledgeable in rangeland ecology, the range improvements and livestock management elements of allotment planning should necessarily be lead by the range professionals.

Action LG 9

Drought planning should entail an allotment specific evaluation, as climatic conditions in the Great Basin can change dramatically in single storm events from one basin to the next. Climate monitoring should be encouraged on individual ranches to support local climatic condition findings regarding precipitation and plant growth wherever possible. Also due consideration should be given to carryover vegetation accumulated as a result of good stewardship by the permittee. Drought in and of itself is not a reason to exclude grazing following a single year event. Vegetation is rarely impacted over a single year of drought to the point where it requires a full season of deferment for recovery. Blanket decisions regarding drought and livestock removal should be avoided at all costs and operators allowed the opportunity to demonstrate their management practices whereby additional forage may exist to help get them through a drought effected forage shortage on rangelands.

Action LG 9

Ungrazed reference areas are established for study and comparison, and to note what past conditions might have been under protection from grazing. The resulting site potential is not typically indicative of the conditions across the allotment and should only be evaluated for specific use by experienced Range Specialists in the agencies.

Action LG 10

While we agree with PFC as a valuable measurement tool, it is also a subjective process requiring trained and experienced personnel. Care should be exercised to NOT use riparian areas to force early livestock removal from the allotment upon reaching a use standard early in the grazing season. Riparian areas are the first to be grazed by livestock before drifting to the more expansive uplands that normally support the greater part of the total available forage throughout the grazing season. Riparian areas and meadows typically exhibit free water that accelerates plant regrowth throughout the growing season. Utilization and/or herbaceous stubble height should NOT be measured prior to the end of the growing season as this measurement more accurately reflects current use as opposed to forage utilization levels.

Action LG 10

Both agencies should be consistent in the methodologies applied and monitoring in riparian areas, and those methodologies supported by the range science community.

Action LG 10

Site-specific actions should come from the toolbox of available proven range management to resolve resource issues and not be limited to the outlined components of this document, nor made a part of the decision process for this DEIS.

Action B-LG 10, Action D-LG 10, Action E-LG 10: TMA-12.2

It would be ideal for the public and the resource if the BLM and FS were on the same page and used PFC. Perhaps this is the means to do so.

Action E-LG 10: TMA-12.2: Fencing may be needed in non riparian areas in order to improve management of riparian areas (e.g. dividing an upland pasture to shorten season of use in rotation grazing).

Action LG 11

ESD use to identify the species for a site is fine, but not to focus on the reference site species as the resource or habitat objective. Any given area within an ecological site may have several reference species that are not present or even have the potential to exist within that particular location. It is imperative that STMs are used in concert with the associated ESD to inform on management and restoration pathways.

Action LG 12

There is nothing to denote that reference state is the best seral state for the benefit of sage-grouse in all cases. So the question arises why strive to attain it? Rather, using the ESDs identify the seral state that yields the best mix of species for achieving the objective and then monitor to achieve that end.

Action B-LG 12

Reference state vegetation may or may not be a useful goal or action. PFC is needed everywhere. Often PFC will move toward reference state vegetation. However PFC puts the emphasis on the physical functions as these are essential.

Action B-LG 13

Reducing hot season grazing is not needed everywhere. Managing hot season grazing is the key. In some areas it is reduced enough already and managed correctly, and in others there are other tools that are as or more useful for reducing negative impacts. Management should be site specific to meet objectives using all or any useful tools.

Action LG 13

Hot season grazing, when under a planned grazing system that allows for periodic growing season rest and recovery periods for the riparian areas, is not normally detrimental. Every effort should be made to allow for flexible and adaptive processes in developing and implementing grazing on riparian and meadow complexes. These free water environments typically have an ability to re-grow quickly when afforded periods of rest during the grazing season. An overabundance of deep breathing occurs around these wet environments while what is needed is careful site specific planning to avoid unnecessary impacts to the permittees and their permits while allowing for recovery. Avoid recommendations such as Aldridge and Brigham, Crawford, et al., and Hagen as the final word in this document. These sources all represent potential applicable tools and information; however, these cited sources are not all inclusive as there are many other unlisted studies and management tools that need to be considered during site-specific planning for grazing management.

Action LG 13

Here again, the action should only be developed on a site specific basis after the issue has been identified and the operator afforded opportunity to participate in a solution while working with the agency, to help address the problem without impacting the ranching operation. This action item may present the ideal opportunity for an AMP approach with a designed monitoring component.

Action LG 14

Water developments requiring diversion from springs and other sources are recognized as important practices to assist in distributing livestock and helping to avoid concentrations and other issues. Wildlife and wild horses also benefit significantly from many of these developments. Sage-grouse also benefit from well-planned water developments. Any actions involving these water supplies must be in concert with protection of and subject to valid existing water rights and conveyance rights-of-way.

Action LG 14

This action does not represent a reasonable solution and should not be adopted by the agencies. Water developments typically divert only a needed and permitted portion of the available water on site for stockwater development and the unused water or overflow is typically diverted back into the riparian area from the stockwater tank thereby benefiting the riparian area. Water rights and conveyance/storage rights are not recognized under this action.

Action LG 15

There is no discussion on interactions and recognition of water rights or rights of way (RS 2339). No water development should be modified or dismantled unless agreed to by the water rights holder which may or may not be the permittee. Many, or most, of these developments have been permitted and installed at permittee's expense and a number of the developments, including assigned water rights, are privately held.

Action F-LG 15

This puts continuity of riparian areas above all else which may not be optimal.

Action LG 16

Treatments that benefit livestock will most generally also benefit sage-grouse. This has been demonstrated again and again, i.e., fencing meadows for specific grazing treatments, fencing springs, specialized seedings, brush manipulation and other practices help to provide ideal sage-grouse habitat and also benefit livestock. Crested wheatgrass and other specialized species seedings for instance can slow or stop wildfire, keep livestock off native range during critical avoidance periods by providing alternative forage, and other benefits. These beneficial points need included.

Action LG 16

This action represents another strong argument for developing AMPs and drawing on permittee inputs to allow for adaptive planning to cover periods of change for treatment on allotments. Permittees would have adequate advance planning through the AMP process to adjust livestock management during the treatment period without economically impacting the ranching operation.

Action LG 16

We strongly agree with this action. It is imperative that the agencies recognize the protection and value afforded through livestock grazing to minimize the impacts of wildfires, particularly for sage-grouse habitat. Fire occurring in ungrazed and overgrown habitat areas very often can and does result in complete devastation by killing all plant life and creating hydrophobic soil conditions susceptible to invasive species.

Action LG 17

In many instances older established seedings have already begun a transition back to mixed native and introduced species as a result of being naturally reinvaded by indigenous native species. The objective should be to determine what action(s) is most appropriate for protection of key habitat from wildfire or to provide seasonal grazing options to relieve pressure on native range. Restoration of these areas is not

always the best treatment, and evaluation should be part of an AMP development effort to ascertain the most appropriate and beneficial use and treatment of these existing seedings.

Action LG 17

AMP should outline most appropriate treatment for the specific seeding.

Action LG 18

The assigned agency Range Specialist, permittee, and wildlife specialist should make site-specific determinations as to what can and cannot occur in structural range improvements and where they can or cannot be located, based on valid existing rights (water and rights-of-way).

Action LG 18

This action to remove all range improvements is absurd and should not be considered as part of this process. There is no recognition of valid existing rights (water and rights-of-way).

Action LG 18

The evaluation of existing rangeland improvements should be done in cooperation with the permittee, recognizing valid existing rights (water and rights-of-way). and costs assigned to the agency requiring any modification, as the developments were installed in accordance with agency direction and authorization at the specific site, and likely at the permittee's expense. Any changes now required as a result of this document should occur at agency expense and not adversely impact the grazing permit in any way.

Action LG 18

Not all structural range improvements need to solely benefit sage-grouse. If it can be demonstrated that a specific improvement project can benefit the range overall and not create a conservation issue for the sage-grouse, it should be given due consideration.

Action LG 19

How serious of a threat does the West Nile virus actually pose to sage-grouse in the planning area? There is no recognition of valid existing rights (water and rights-of-way). Does this threat level justify the level of adjustments potentially being called for by this alternative action? The benefits of water developments for wildlife, wild horses, and livestock management far outweigh any risks of WNV.

Action LG 19

Agency funding should be made available for any required changes that are not directly attributed to livestock grazing and represent discretionary actions to accommodate perceived sage-grouse needs.

Action LG 20

Careful salt/mineral placement does not constitute an obstruction for sage-grouse, as livestock only draw on minerals periodically, as needed. Salt is typically moved as a rule to alternate locations to help promote better livestock distribution to new foraging areas of the allotment.

Action LG 20

This alternative action does not make sense, as topography, vegetation types, location of fencing and other factors have much to do with animal movement. This should only serve as a guideline and not a mandatory policy while allowing the Range Specialist and permittee to work things out on a site-specific basis with sage-grouse as the primary consideration.

Action D-LG 20

Many times it is not feasible or desired to move salting and supplemental feeding locations, or livestock watering and handling facilities at least one half mile from a riparian area (e.g. in a riparian pasture small enough to preclude it).

Action LG 21

We agree with this approach if it can be demonstrated that the lek is in fact active and not a historic and long abandoned lek. Funding should be available to assist in any adjustments per this agency direction.

Action LG 22

In this action livestock grazing is not listed or considered as an effective or even potential tool to help control invasive species. Livestock have long been recognized and used as an effective tool to help control invasive species. This point should be recognized and included in this alternative action.

Action LG 23

Retirement of grazing as an option should NEVER be a consideration, but rather livestock grazing should be utilized as an important and beneficial component of herbivory that functions in a natural manner to harvest a plant resource that occurs naturally on a renewable basis each year to achieve a desired result. In addition, absent grazing or mechanical harvest, the remaining means of harvesting annually produced biomass is through wildfire. We believe that prescribed grazing is much preferred to unplanned destructive wildfire and can benefit the resource and sage-grouse. Furthermore it is our position that the retirement of livestock grazing within a Grazing District is not in compliance with the Taylor Grazing Act. Our long term stable economic base relies on keeping these grazing units open for use. Retirement of grazing permits is in conflict with Eureka County plans and policies.

Action LG 23

Under no circumstances should any allotments be relinquished or AUMs retired. Our opposition includes creation of forage banks. The Taylor Grazing Act (TGA) protects grazing rights on BLM administered public land allotments for continued grazing to support ranching and production of food in this country. If an operator wants to voluntarily sell their grazing permit then options should provide a mechanism to market the permit to willing buyers in the ranching industry. Whenever an allotment is relinquished and AUMs disappear, ranching and local economies are injured in the region. In addition water rights present

question, allotments and improvements deteriorate due to lack of maintenance by agencies. Plant decadence begins to occur if not harvested and some wildlife species are known to eventually abandon ungrazed areas for the more lush feed and increased plant vigor associated with managed livestock grazing. Buildup of excess biomass residue can present a severe wildfire hazard that, when ignited, presents a serious risk to sage-grouse and the surrounding allotments that are grazed and managed.

Action LG 24

This action requires close coordination with the permittee from the onset to develop a cooperative monitoring plan with a copy provided the permittee to assure that monitoring does in fact occur annually and that he/she is involved. The agencies track record on following through with monitoring is dismal at best. Absent annual monitoring, the permittee is held off the closure site for extended periods until the agency finds time to revisit the plan and monitor. This agency approach and delay is unacceptable and ends up costing the rancher.

Action LG 24

The permittee must be actively involved throughout the process.

Action LG 24

There should not be a term assigned to closure to livestock grazing. Some areas, depending on the resource condition and proposed treatment, could require only a single growing season following treatment if climate and the plant community respond as desired. Any proposed deferment should be designed as part of on site investigations and anticipated treatment(s) and response. Monitoring is an important component of the proposed treatment and its imperative that a monitoring plan be prepared for the treatment site and implemented annually. A copy of the monitoring plan should be provided to the permittee to help track progress and to plan for when grazing can again be initiated on the site.

Action LG 25

Every effort should be made to work closely with the permittee to retain the full complement of active AUMs on the allotments regardless of the terms and conditions. All actions should be thoroughly reviewed with the permittee to assure agreement before a decision is made.

Action LG 26

To postpone the transfer of a grazing permit will negatively impact a permittee's investment and potentially the ability to sell as needed. Once a transfer occurs, the agency can more appropriately address any changes they feel necessary with the new permittee. The agencies have unfortunately used sales and transfers on occasion as a convenient mechanism to initiate a reduction in AUMs by altering the permit conditions, or by changing the allowable use levels which automatically constitutes a reduction.

Action LG 27

Adjustments that result in any AUM reductions should be a last resort option and not applied indiscriminately across allotments. Permittees should be allowed time and opportunity to contest the findings of the agency. If historic livestock grazing is deemed to be the problem, then current grazing

should not be held accountable. An alternative might be to address the issue through cooperative development of an AMP for the allotment, which would assure that the problem is addressed, and initiate a more holistic approach to management needs on the allotment over a 10 year timeframe. The pathway provided through an AMP allows for both the agency and the permittee to prioritize and implement needed improvements over time as part of the agreement.

Action LG 27

We strongly agree with this action item, particularly that livestock are recognized as a tool, which they are. This statement should be noted over and over again in multiple, respective locations in the document.

Action LG 28

The agencies need to exercise flexibility and adaptability when addressing drought. As not all areas are equal due to the variable manner that precipitation occurs in the Great Basin. Heavy-handed dictates without the appropriate field assessments and coordination with permittee to identify alternatives should be avoided. Permittees should be given adequate time and notice to develop alternatives for their livestock if grazing removal is required due to extended drought.

Action LG 29

While three mile buffer may be the approximate distance from leks, it may also prove impractical or nonsensical to apply in many instances as the result of topography and other factors. This action should be a guideline to assist when planning allotments with leks. However a specific lek may require much less distance separation for grazing if separated by steep inaccessible topography, etc. Conducting site-specific assessments and planning to identify the best alternative can address this concern.

Action LG 30

It is refreshing to see this alternative recognize livestock grazing a management tool to improve GRSG habitat and to reduce wildfire threats. It would bode well for the agencies to take note of this approach as they appear to lack experience and knowledge in this subject area. We support adoption of this action.

Action LG 32

Strongly support this action as has been demonstrated time and again where practiced.

Action LG 33

Should avoid listing specific practices but rather allow for these to be included among the many tools that can be accessed, as site specific needs dictate, and where a single practice or combination of practices may be selected to address a given problem. In addition, qualified range specialists rather than wildlife biologists, botanists, etc. should be responsible for determining the best means of achieving rangeland objectives, or if they are even achievable on a given site. Range specialists are specifically trained in this area of expertise to deal with rangeland management.

Action E-LG 33

The phrase “...herbage removal within acceptable limits” puts the emphasis on leaf remaining when the more important consideration for many successful riparian strategies is the recovery time, especially within the growing season. Or a balance of the two considerations can work very effectively. (Wyman et al. 2006; Swanson et al. accepted with revision 2014). A standard utilization level is an approach bound to fail because it cannot be adequately monitored everywhere whenever needed as is not grounded in science.

Action LG 34

Nonlethal practices are not always effective for needed control. Agencies need access to all management methods to determine the appropriate choice or choices for a given treatment need.

Action LG-CC 1

It is not only conceivable but a fact that vegetation communities are beginning to change in reaction to climate change. Sage-grouse habitat will no doubt be altered and it's important that livestock grazing is not held up as the culprit that caused this change. Little can be done to stop this natural occurrence short of monitoring the vegetation and the sage-grouse reaction to the changes in its habitat.

Action LG-CC 2

A description is required on how the agencies intend to utilize data generated through this monitoring process as relates to livestock grazing.

Action LG-D 1

It appears that all management is being directed at protection of the sage-grouse, and done so largely on the backs of the livestock industry, when in fact good range management, wherever it is practiced or implemented, should and likely does provide for the habitat requirement of the sage-grouse. Good range management exists throughout the planning area and likely has proven beneficial to sage-grouse wherever they exist today. No one understands this more than the people who have lived on the land for generations and have, more than anyone else, closely observed the sage-grouse over time. Theirs is not a knee jerk reaction to a legal action to impact people's livelihoods, but rather a commitment to bettering the landscape with the understanding that improved rangelands deliver the most for all uses.

Action D-LR-LUA 2

What are the criteria for "where appropriate" and who determines this? Burying existing utility lines will come at great economic cost, not only to physically re-run the line, but also to restore new surface disturbance created by construction. The ecological benefits and costs of burying utility lines should be addressed on a case by case basis. Burying lines may result in increased surface disturbance and may increase the potential for linear disturbance features to negatively impact adjacent habitat. The surface disturbance and reclamation potential from burying lines should be reconciled with the effects of vertical structures that create less surface disturbance. Design features that can prevent perching and nesting should be considered in lieu of burying. Additionally, the proximity to a lek should be considered when determining whether burying is an appropriate strategy.

Action D-LR-LUA 16

Use of some perch deterrents can increase raptor fatalities, including other Federally-protected species such as Golden eagles. USFWS has recommended avoiding use of current perch deterrent designs for retrofitting power lines due to increased fatality rates of Golden eagles. Actions to protect GRSB do not exist in a 'bubble' and actions should acknowledge needs of other sage brush species. Efforts to develop anti-perching and anti-nesting utility structures should be encouraged.

Actions B-LOC 1, C-LOC 1, and F-LOC-1

There is insufficient information in the description of this Action Item to allow the public properly evaluate and determine the need for this Action with regards to protecting GRSB populations. Specifically, the second bullet point references "additional effective mitigation in perpetuity for conservation." This statement is unclear as to what is considered effective mitigation, including use of ratios; strategies can be applied as mitigation, success criteria, etc. I question whether this is the most current IM used to mitigate disturbance in PPMA/PGMA and thus the applicability of this Action Item in the DEIS. Most importantly, this Action Item seems to overlook or downplay opportunities for Avoidance and Minimization of impacts. What exactly does the use of "additional" imply? Is mineral exploration and development subject to mitigation requirements above and beyond other forms of disturbance? This Action Item doesn't contain enough sufficient or current information to be a realistic Action Item.

Action B-FFME 2, First Bullet

The first bullet on this page states, restriction of no new surface occupancy in PPMA's during any time of the year. This restriction is unreasonable as it assumes that all areas within PPMA's are used throughout the year. In contrast, the best science indicates that sage-grouse use different habitats at different times of the year (mosaic of lek, nesting, early brood rearing, late brood rearing, and winter habitat use), and some of these seasonal habitats can be at distance from other seasonal habitats. Therefore, there should be some allowance for the proponent to work with BLM and NDOW to do a habitat assessment in the vicinity of the proposed area of surface occupancy to determine which seasonal habitat(s) is present. If the habitat(s) occurs at many locations near and distant to the proposed surface occupancy, then disturbance activity that can be initiated before the sage-grouse season of occupancy should be allowed. As the season of occupancy arrives, the sage-grouse will have the choice of avoiding the activity associated with the surface occupancy by either leaving for another area of that seasonal habitat, or staying at distance from the surface occupancy site. The key would be to ensure that the activity is initiated well before the seasonal habitat is likely to be used through timing limitations as conditions of approval, rather than initiate the activity after sage-grouse are present.

Time restrictions related to seasonal habitats for are much more preferable than blanket no occupancy restrictions tied to the PPMA's. Such an approach is more in keeping with the agency's multiple-use mandate.

Action B-FFME 2

As noted above, the disturbance caps (3%) and buffers (four-mile) are "one-size-fits-all" regulatory prescriptions, contrary to DOI and BLM guidelines on the Data Quality Act. At best these types of regulatory prescriptions should be used as guidelines to be accompanied by on-the-ground assessments to determine

if there are areas of non-habitat within the habitat matrix, or topographic barriers that prevent noise and visual impacts. This comment applies to all of the “one-size-fits-all” elements of Alternative B.

Alternative B is a blueprint for severely limiting the opportunity for the discovery and development of mineral and oil and gas resources to protect one species. The protection of one species in the sage brush habitat can lead to decadent sage brush communities which lead to the decline of other sage brush obligates.

Entities would prefer to be able to operate in PPMA's under a “no net acreage loss” stipulation that allows for mitigation to offset impacts for each acre disturbed or temporarily removed from function and contiguous habitat. Many impacts and disturbances on the landscape will be temporary (estimated at 30 years). This is much more in keeping with the BLM multiple-use concept and allows operators the flexibility to operate while improving conditions for sage-grouse elsewhere, as in Alternatives D and E.

Action B-FFME 2

Placement of development at the most distal part of the lease from the lek, or in an area that is less harmful to sage-grouse. This term and condition shows a lack of understanding of the fluid mineral exploration process. Drill holes are not place randomly on the landscape. They are carefully located based on the geophysical data collected prior to drilling. Placement of the drill hole at some “distal part of the lease” will not allow the operator to acquire the data from which decisions regarding development of the resource can be made. The geologic target formations and unconventional nature of exploration with possible development requires vertical and directional drilling methods not horizontal methods. It is possible horizontal drilling technology will make operations uneconomic based on the geologic formations and extraction techniques. The application of horizontal drilling technology is particularly useful in areas with simple geology, stable geomechanics, and cooperative leases. In all other areas, vertical and direction drilling techniques are required to access the mineral rights. Large contiguous tracts of land with NSOs do not allow much drainage or penetration into BLM minerals even with the longest horizontal well bore being beyond 10,000 lateral feet. At most, horizontal drilling will only penetrate and drain 2 miles or less under acreage with NSO, leaving significant acreage beyond the longest horizontal well “fallow”.

Action B-FFME 3

Seasonal restrictions should be based on the presence/absence of a seasonal habitat, and not applicable to the entire PPMA. Activity in the nesting season should not be precluded if there is no nesting habitat in the area for a female to occupy. The end result of these types of blanket, one-size-fits-all stipulations is that the management of the resources can be done from the office; there is no reason for the resource specialist (i.e., agency biologist) or third party to leave the office and conduct any type of field assessment of what types, amounts, and distribution of habitats exist in the Project area. It also provides the agency biologist with “information” in the form of a map (of PPMA, PPH, etc.) and additional information from an on-the-ground baseline survey can be ignored if it conflicts with the agency’s mapped information. These mapped areas should be a starting point to determine that conflicts between mineral and oil and gas exploration or development and sage-grouse may exist and utilized in project specific final decisions relative to application of stipulations. Once the potential for conflict has been identified by using scientifically derived mapped information, then a closer look at what actually is present with respect to habitat conditions should be conducted and used to facilitate the decision-making process.

Action B-FFME 6

This action should be written without the 3% disturbance cap and include the mitigation outline in the bullets as part of the action, not as “exceptions.”

Action B-FFME 8

This action is designed to withdraw lands from consideration for mineral and oil and gas leases. Rather than acquire areas or enter into conservation easements prior to exploration and development, it is suggested that such acquisitions and easements be implemented after exploration and/or development is completed, in which case the reclamation of the exploration and/or development disturbance would be conducted to benefit sage-grouse and the acquisition or easement would conserve the habitat for the long term. Mitigation would be used to offset impacts during the time of exploration and/or development.

Action B-FM 1

This action precludes the entry into PPMAs for fluid mineral leasing, and as indicated above, there are areas of non-habitat and a variety of seasonal habitats within PPMAs. To exclude fluid mineral exploration and/or development of these non-habitat areas or within seasonal habitats during the season of non-use allows for single use only.

For the exception listed in the Action, mitigation prior to issuing the lease is required, with demonstrated long-term population increases. This amounts to mitigating prior to impacts, and perhaps prior to the determination of impacts. Such a pre-disturbance stipulation requires that the proponent initiate mitigation well in advance of any project related disturbance and prior to issuing the lease. The lease must be issued before any funds or effort can be expended on mitigation. Mitigation requirements prior to disturbance is not within BLM’s jurisdiction since BLM cannot require mitigation as terms of a lease or permit without consent of the proponent. This concept can result in making oil and gas leasing and exploration uneconomic prior to validating if the fluid resource can be extracted in economic quantities.

Action B-LOC 1

Proposed withdrawal from mineral entry based on risk to sage-grouse and its habitat is not necessary as this action does not allow for avoidance, minimization of impacts, and mitigation of impacts within the designated areas (i.e., PPH, PPMAs, etc.). The approach of avoiding, minimizing, and mitigating impacts is preferable to withdrawal from mineral entry. The approaches outlined in Alternatives D and E are preferable to withdrawal from mineral entry.

Action B-LOC

The mandatory application of BMPs from the NTT Report should not be considered. BMPs should be applied on a case-by-case basis, as relevant to the action being considered. These types of “one-size-fits-all” regulatory prescriptions are contrary to DOI and BLM guidelines on the Data Quality Act.”

Action SD

This item calls for acquisition of private lands in ACECs over easements. We do not need to acquire more land in public ownership, particularly when the lands the agencies now control are grossly

undermanaged. Our policies call for NO NET LOSS of private lands to public ownership. Permanently retiring any allotment is adamantly opposed by industry. To do so has an immediate economic impact on ranching and the local and regional economy. Also water rights and prescriptive rights-of-way will become a point of contention, fuels loading will occur which leads to extremely destructive wildfires and devastating loss of resources. In addition it places surrounding allotments in peril from wildfires.

Action SD 1

Same as preceding comment.

Action CTTM 9

BLM and USFS do not have authority and jurisdiction over most of the roads are they fall under RS 2477 to permanently close roads would cause significant concern and is not lawful. Upgrading of roads is a vital service that must be continued for the sake of public travel, fire protection, etc.

Action CTTM 10

Because of the presence of cheatgrass and medusahead the chances of successful native seedings are alarmingly low unless a selective herbicide is applied and climatic conditions conducive. Therefore it is always best to include crested wheatgrass, Siberian wheatgrass, forage kochia and other drought and fire resistant introduced species that have proven successful for competing with the invasive species. Native seedings typically require two years to establish under the best of conditions and do not compete well with annual invasive species. Transplanting sagebrush for all practical purposes is a waste of limited funding, as sagebrush readily reinvades stabilized sites over time and transplanting represents a high cost with questionable results.

Table 2.5. Description of Alternative Actions, Alternative B:

See our other comments related to the adequacy of the NTT report and the COT report.

The NTT Report failed to make use of the latest scientific and biological information available. The NTT Report is a selective incorporation of data and studies from a small number of GRSG advocates. It directly contradicts DOI Order No. 3305 on scientific integrity (DOI employees and contractors "must never suppress or alter, without new scientific or technological evidence, scientific or technological findings or conclusions.")

The NTT Report also failed to acknowledge lower impact technologies and mitigation currently in use by the oil and gas industry, including specifically those detailed in Ramey, Brown, and Blackgoat (2011) and in a presentation to the NTT by BLM staff. In addition, the NTT report asserts that impacts from oil and natural gas development are "universally negative and typically severe" but provides no scientific data to support that assertion. This evidences bias against oil and gas in the NTT Report, which is contrary to the ESA and the Data Quality Act.

There are substantial technical errors in the NTT Report including misleading use of citations and use of citations that are not provided in the "Literature Cited" section. This makes it difficult to provide scientific verification of the NTT Report's claims.

Two of the researchers, J.W. Connelly and B.L. Walker, are referenced frequently in the NTT Report, but 34% of the citations had no corresponding source available to review. This limits the ability of outside reviewers or the public to verify claims in the NTT Report and reduces the report's scientific credibility. Additionally there are articles listed in "Literature Cited" that are not used within the NTT Report itself.

The NTT Report is guilty of misleading use of authority. For example, the NTT Report stipulates that with regard to fuel management, sagebrush cover should not be reduced to less than 15%. However, Connelly et al. 2000, the source cited, does not support this proposition. Connelly et al. 2000 states that land treatments should not be based on schedules, targets, and quotas. Connelly et al. 2000 distinguished between types of habitat and provides that corresponding sagebrush canopy percentages which vary from 10 percent to 30 percent depending on habitat function and quality. These issues evidence bias and a lack of transparency and reproducibility in contravention to the Data Quality Act. They also violate Executive Order 13563, which calls for "objectivity of any scientific and technical information and processes used to support [an] agency's regulatory actions."

Errors of omission in the NTT Report include numerous scientific papers and reports on oil and gas and particularly, grazing.

The NTT Report failed to undergo an adequate peer review. The peer review of the NTT Report was conducted by Nevada Department of Wildlife Director, Ken Mayer. There is no evidence that Mr. Mayer has: (1) ever served as an editor or associate editor of a scientific journal; (2) organized a previous scientific peer review using accepted standards; (3) served as a peer reviewer at a scientific journal; or (4) ever published a peer-reviewed scientific paper in a reputable scientific journal.

In this case, the NTT Report also failed to address several comments and issues raised by peer reviewers. Some of the issues the NTT Report failed to include support for the flawed reasoning behind consolidating all GRSG seasonal habitats and the use of one-size-fits-all regulatory prescriptions such as disturbance caps and four-mile buffers. This is contrary to DOI and BLM guidelines on the Data Quality Act. It also contradicts BLM's own Data Quality Act memorandum specifically addressing peer review.

Finally, the NTT Report fails to address papers and reports on mitigation of raven predation on GRSG, the fact that GRSG disperse over greater distances than previously thought, and that, while temporary disturbance may occur in response to human activities, GRSG traverse over or around roads, agricultural areas, and mineral development.

Accordingly, BLM's reliance on the NTT Report should be carefully reconsidered and it is likely that selection of Alternative B, or individual elements of Alternative B, would be subject to the same criticisms.

Table 2.5. Description of Alternative Actions, Alternative C:

Alternative C is the same as Alternative B with some additional action elements. Therefore, all of the comments pertaining to Alternative B also apply to Alternative C and are hereby incorporated by reference. In addition, the following specific comments with respect to Alternative C are provided.

Table 2.5 (Page 263) – ACECs (And Appendix L ACECs):

This Action Item represents a disservice to the industry partners that use Federal lands. Special management considerations under Alternative C and Alternative F are presented as beneficial to GRS populations, but disregard any notion of using science to make informed decisions. The 'blanket' type statements contained in Table 2.5 and Appendix L create unnecessary restrictions on land use. Additionally, implementation of such management actions will stifle flexibility in future management and lacks a targeted and science-based approach. These Action Items assume any development to be damaging to GRS. Importantly, there is limited discussion of the ACECs with regards to GRS populations and the critical need to protect these specific areas is not discussed in detail. Further, there is no discussion relative scale at which that data used to make the ACEC determinations is useful. Marking firm lines on a map at a broad scale without knowledge of project scale details and on-the-ground information is unnecessarily limiting. Development is eliminated as a potential land use regardless of the conditions at a potential, future project site. This type of decision-making presents an unfair risk to industry and recreationists (with economic and social repercussions), and appears to be presented without any firm science backing up the boundaries.

BLM and the Forest Service should be as flexible as possible rather than very restrictive on this and other land use elements. While the focus on this DEIS is to benefit sage-grouse, it is short sided to focus all land use management efforts to the betterment of a single species.

Table 2.6, Habitat Objectives

We recommend use of exclosures (i.e. 1 acre) where appropriate (i.e. riparian areas) to determine if vegetation change is likely to occur with a proposed management change, particularly where there is disagreement regarding a management prescription being recommended by the agency.

Under Lek, revise so that there shall be no conifers in areas where the ESD calls for no trees and <3.5% when there should be a component of conifers according to ESD.

Define what is considered a "tall structure." Further, a distance from a tall structure is not as important whether the tall structure is within sight of the lek.

The focus on sagebrush cover in nesting areas is incomplete. Sagebrush height and structure is just as important. Tall, single age stands of decadent sagebrush is not desirable for GSG nesting.

In nesting sites, a blanket percentage of perennial grass cover is not founded in science. Perennial grass cover is dependent on the ecological site potential according to its current ecological state. Perennial grass cover decreases with increasing brush cover. Further, the table provides no units to inform of what "shrub cover <25^2" means.

Under all habitat categories, conifer encroachment should not be able to exist at all if not a vegetation component in the ESD. Allowing up to 5% in nesting areas is dangerous. Recent studies in Montana by NRCS have shown that when conifer gets to 4%, GSG quit using the area.

All objectives should have language building in flexibility for adaptive management. Objectives must be monitoring driven and based on results. What if certain localized GSG populations are thriving (determined through monitoring) with vegetation communities different than the black-and-white objectives? What if different vegetation percentages are shown to be better? There should be a mechanism to allow management "as is" if the GSG populations are stable.

Table 2.7, Utilization

We adamantly oppose use of this table and question its relevance to the Great Basin environment. Holechek's work was conducted in New Mexico and Arizona and its relevance is questionable as relates to the Great Basin. Applying the listed utilization rates and the 2-5 day removal order would clear most livestock from the range within a short period of time, as livestock naturally utilize the green areas initially and then move to the uplands for feed throughout the balance of the authorized grazing season. We strongly recommend use of the RAC established S&Gs for each area, or use of the State Monitoring Handbooks as appropriate to the specific state. Utilization should not be a number, but rather a range of use to achieve proper use that effectively addresses the needs of the plant community and the season of use it is applied to (i.e., 40-60%). Focusing on a single number is impractical, as grazing use is measured on average use not a specific number. A single number goal merely invites conflict and argument. The same applies to stubble height. If the existing plant community identified is not capable of 4-6 inches of growth in the absence of grazing, how would stubble height be measured and also grazing use? Utilization cages with a proper use range for adaptive management are more appropriate for riparian management.

Alternative D proposes to deviate from moderate grazing levels in areas not achieving the sage-grouse habitat standards defined in Table 2.6. It becomes readily apparent that implementation of these restrictive utilization levels, coupled with the KMA approach found in the most recent RMPs, will substantially reduce the currently permitted grazing and will potentially render ranching in the planning area as uneconomical. Contrary to NEPA requirements, this foreseeable impact was not disclosed in Section 4.9 of the DEIS. Further, since the KMA concept is included in both of the two RMPs under development in Nevada it is reasonable to conclude that this represents a growing agency trend at least in Nevada. This trend and its ramifications were not disclosed as a reasonably foreseeable action in the cumulative effects analysis in Section 5.8 or Table 5.1. This lack of disclosure is not consistent with NEPA requirements or agency handbook and manual instructions for cumulative effect analyses.

Focusing management on allowable use levels where not meeting objectives is putting the emphasis of grazing management on a weak tool. It also focuses management on grazing where grazing may or may not be the driving management problem or opportunity. Most of the habitat objective issues identified in Table 2.6 (or its revised version) are not caused by current grazing management. Many of the habitat objectives identified in table 2.6 are caused by an inappropriate fire regime. Many that were caused by grazing will not be remedied by simply fixing grazing. As Wyman et al. (2006) and Swanson et al. (accepted with revision 2014) point out, utilization is important in places where the seasons of use are relatively long. However, utilization is much less important in riparian area management where grazing seasons are short and allow substantial parts of the growing season for plant recovery through growth or regrowth. Furthermore, requiring utilization levels such as these demotivates ranchers and range management specialists to find solutions that will work much more effectively. Those solutions, taught in the interagency (including Cooperative Extension, NRCS, BLM and FS) Nevada Range Management School, focus grazing management on season of use, duration of use, and rotation of use. This is especially true in large pastures (which were not the focus of Briske et al. (2008)). The terms and conditions column suggests that agencies will have people out monitoring in mid-season and this has repeatedly not worked. Where utilization is needed because of longer grazing seasons, a better approach is to have triggers followed up by end point indicators. Both were described in the Nevada Rangeland Monitoring Handbook (Swanson et al. 2006) adopted by both BLM and FS by publicly signing the letter of

support at the 2007 SRM ceremony. Both should be based on local considerations including season and duration of grazing, objectives, vegetation type, the amount of rest built into the system etc. If the intent of this Table 2.7 approach is to provide incentives to have grazing make progress toward objectives, then the approach should be targeted at only those objectives for which grazing is relevant and where current or recent grazing management is the cause of the problem. Even then, an alternative more powerful strategy would strengthen the incentive as a tool for effecting progress. This more powerful strategy is avoid stressing the important forage plants by either A. Utilization levels such as those proposed OR B. Short use periods with no livestock grazing during substantial parts of the growing season and use periods at a different seasons in different years. Additionally, “No grazing from May 15 to August 30 in brood rearing habitat” precludes important tools for improving brood rearing habitat. Grazing repeatedly in September is likely to do damage to the physical functioning of riparian areas. Grazing before May 15 may cause riparian areas to not be grazed, and some late spring to early summer grazing benefits sage grouse by managing forb phenology, nutritional value to chicks, and availability (Evans 1986). The problem with grazing in riparian areas and wet meadows is not that sage grouse are directly impacted by cattle use at the time that sage grouse use these areas. The problem is that poor grazing management causes riparian areas to lose functionality and other resource values. To address this problem there are many tools. As described in Swanson et al. (accepted with revision 2014) the need is for more generally successful tools to be used than generally unsuccessful tools. On balance there must be more recovery than damage over the length of the grazing rotation cycle. This management must keep the plants healthy so they can have strong roots and go through succession toward more or maintain an adequate amount of riparian stabilizers. Precluding grazing from May 15 to September 1 is very clearly overkill as demonstrated by the diversity of successful methods applied in the Elko District and elsewhere across the nation. Managing this problem with only utilization standards would be overkill (because it is often unneeded), distracting (because it emphasizes a weaker tool while other and better approaches lose focus from lack of assurance) and ineffective (because it has proven to not be effective in practice where agencies cannot afford the personnel to monitor adequately and lose budgets because the fights are unproductive). The policy needs flexibility to use strong tools and certainty that strong tools will be used. So far this Table 2.7 widely misses the mark. It will likely be the subject of numerous lawsuits and it is contrary to what has been taught in Nevada and across the West by the BLM/FS National Riparian Service Team and by the Nevada Range Management School for more than a decade. Table 2.7 highlights the bias that has been institutionalized based on various stubble height and utilization theories at the expense of scientific understanding of hydrology and plant physiology. Scientific studies (University of Idaho Stubble Height Study Team 2004, Smith et al. 2005 among others) have helped in clarifying the danger in using stubble height and utilization in an unjustified manner. Both studies offered similar conclusions and are summarized best by Smith et al. (2005) as follows:

1. “Utilization is a useful tool in range management decision making, but utilization guidelines should not be used as management objectives.
2. Utilization, as defined by SRM and others, is not the same thing as “seasonal utilization” measured before the end of the growing season. Utilization guidelines cannot be used for seasonal utilization.
3. Utilization of key forage species, unlike overall utilization levels in a pasture or allotment, is an indication only of livestock grazing pressure, and is not necessarily related to any other resource uses or values.

4. Key areas for livestock grazing are areas selected to indicate the general level of livestock use over a management area. Utilization in key areas does not necessarily indicate impacts on other resource values or uses.
5. Setting a different proper use level for different range condition classes is not supported by research, at least within the bounds of conservative stocking levels currently recommended on public lands. There is no known basis for establishing different utilization guidelines for different classes of "range condition."
6. Utilization guidelines and estimation procedures applicable to grass ranges may be inapplicable or difficult to employ on ranges where much of the forage supply comes from shrubs and/or annuals.
7. Use of utilization to adjust stocking rates should be based on measurement of utilization made in the fall on ranges grazed during the growing season, and in the spring on winter or year-round ranges. Excess utilization over a considerable portion of the range over a period of several years may indicate a need to reduce stocking or make other management changes. Likewise, low levels of utilization over large areas and several years may indicate an opportunity to increase stocking.
8. Seasonal utilization should not be used as a rigid standard to trigger livestock moves or removal from grazing permits. Such actions should consider the operation of the entire management unit, including all land ownerships, for the balance of the grazing year. Coordination across land ownerships can enhance management of the landscape as a whole.
9. Some adjustment to livestock numbers and duration of use, based on seasonal utilization may be necessary, for stewardship of the resources when evaluated in conjunction with other factors.
10. Mapping of use zones and estimates of utilization to provide collateral information for long-term trend monitoring both provide information that is very useful in rangeland management planning." Please incorporate changes based on Great Basin rangelands and current rangeland science and don't focus on grazing when grazing is not the issue.

Table 2.8, Environmental Consequences

Page 327, Alternative D - Locatable Minerals:

"Impacts on GRS habitat from locatable minerals management would be the same as under Alternative A." This statement is inconsistent with Action D-LOC 1 that states "apply mitigation and GRS BMPs that minimizes the loss of PPMAs or provides for enhancement of PPMAs through off-site mitigation within the WAFWA management zone." Action D-LOC 1 will certainly enhance protections for GRS compared to existing LUPs (Alternative A); however it will come at economic cost to mineral exploration and development. The Environmental Consequences statement above is misleading to public and confuses interpretation of the alternatives and their respective action items.

Page 328, Vegetation and Soils - Alternative D:

There is no discussion relative to the potential benefit vegetation and soils resources can experience from disturbance-required mitigation efforts.

Page 352-353, Socioeconomic and Environmental Justice - Alternative D:

There is no discussion relative to the economic loss of locatable minerals exploration and development, yet in Table 2.8 Section Locatable Mineral (p. 346), the DEIS notes that additional design features can result in "reduced access to new or existing mines," and "reduced efficiency and increased operational costs that make potential locatable mineral development economically infeasible." These statements are contradictory and represent inadequate and incomplete analysis.

Page 358

Alternative D would be hard pressed to demonstrate better resource management and protection of habitat than Alternative A as presented in this case. Alternative A would likely not irresponsibly force removal of livestock after a brief entry onto the allotment, per Table 2.7, but would appropriately evaluate livestock use at the end of the growing season, as outlined in the state monitoring handbooks. This is the proper time to evaluate grazing use and determine, along with the permittee, if any changes are needed and what those actions should entail.

Page 370

In Alternatives A and D why would the wildlife habitat standards "likely reduce livestock AUMs?" If livestock grazing is already achieving rangeland health standards there is little or no change that can be accomplished through AUM reductions, except to seriously impact the economic viability of the permittee who worked hard to achieve the standards in the first place. How can low condition range meet rangeland health standards by reducing livestock grazing? The only means of achieving the health standard would be to mechanically renovate the area and reseed, as there would not be sufficient remnant desirable vegetation remaining to expect a natural response toward DFC.

Page 371

Here again, if rangeland health standards are already being met, why possibly would added restrictions apply? What are the proposed treatments to wet meadow that justify more restrictions or even temporary closures to grazing? Many range management applications including fencing, rotation grazing, range interseeding, and a myriad of other practices are available without initiating adverse actions that threaten the permittees livelihood. These are the most forgiving areas on rangelands due to free moisture and rapid regrowth following grazing during the growing season. Vegetation composition may never change with management changes in many of these areas. Hopefully the indication of temporary closures to grazing relate to a change in the grazing system to allow for periodic growing season rest as opposed to complete deferment, as decadent, ungrazed meadows typically do little for anything but rodents.

Page 381

Under the existing RMPs and permits, it is highly improbable that grazing would continue to cause decreases in water quality.... Many factors play in the dynamics of water quality including high intensity storm events and wildfires that can unravel complete stream systems, even in the complete absence of livestock grazing. All allotments are under managed systems at this time and also being monitored and adjusted for any identified adverse conditions.

Page 381

While there is strong pressure to revegetate with native species, to do so is extremely difficult if not impossible in cheatgrass affected areas due to cheatgrass adaptation to outcompete natives. A strategy to revegetate with early germinating introduced species (i.e., crested wheatgrass, forage kochia, streambank wheatgrass) that compete with cheatgrass is imperative. Once invasion by cheatgrass is curbed through this process, the range can be revegetated to native species using sound science with a much greater chance of success. Close coordination with the USDA ARS Great Basin Rangeland Research Unit at Reno is important due to their ongoing research in Great Basin revegetation.

Chapter 3

Pages 116 - 117, Tables 3.52 – 3.54:

There are several tables that discuss the magnitude of oil and gas leases in the Planning Area. None of the tables have totals (but the totals are provided in the text, except for Table 3.54). Based on the information provided in the tables and text, the Planning Area includes 1,586,200 acres of authorized oil and gas leases in PPH and PGH (Table 3.52). Of this, 4,400 acres, or 0.28% of the authorized area is held in production within PPH and PGH (Table 3.53), and the surface disturbance associated with the wells that are located in PPH and PGH is 800 acres (Table 3.54), which is approximately 0.05% of the authorized leased area. This demonstrates that the impact to sage-grouse by oil and gas leasing is currently quite low relative to the area for which activity is authorized and these authorizations already include restrictions, protective measures, and/or NSOs that afford some level of protection of sage-grouse and sage-grouse habitat.

Taking this one step further, the amount of PPH and PGH in the Planning Area is 3,716,220 acres (Table 3.5 at page 19). The acreage of authorized area held in production within PPH and PGH is 0.12% of the total PPH and PGH in the Planning Area and the surface disturbance associated with the wells that are located in PPH and PGH is 0.022% of the total PPH and PGH in the Planning Area.

Therefore, Appendix O (RFD for oil and gas) in this DEIS is inaccurate and does not include all proposed actions. The same can be stated for the Cumulative Impacts Chapter that does not include various proposed actions.

This limited amount of disturbance should not require the very restrictive action elements found in Alternative B, C, D, E, and F, especially when applied in a “one-size-fits-all” manner.

Page 120, Table 3.58

The information contained in this table is misleading. The data inflates the “impact” of locatable mineral activities. The acreage of disturbance of locatable mineral activity should be presented to provide perspective. This is the data that BLM requires in mining EIS documents and BLM should be held to the same standard of data presentation. Such information would give the public context to determine if mining disturbance is an issue that warrants the restrictions proposed in the various alternatives in Chapter 2. Data is available from BLM’s own LR2000 records and at the Nevada Division of Environmental Protection

Page 197, Values Associated with Populations of Sage-Grouse

The DEIS, Section 1.5.4. page 18 indicates that “Hunting also provides limited revenue for GRSG conservation.” However, there is no mention or disclosure of this in Section 3.23 Socioeconomics and Environmental Justice. This is an oversight and should be included in the DEIS so the public can determine what level of revenue is generated for NDOW in the analysis area. This is needed to put the loss of such revenue into perspective with the loss of revenue that will occur to various other land users with the implementation of any of the alternatives. Such an analysis will likely show that the loss to communities from the restrictions to fluid minerals, mining, livestock grazing, and other land uses will be far greater than the loss of revenue to NDOW if hunting is discontinued. Even though BLM has no jurisdiction over hunting, the socioeconomic impacts of hunting *sage-grouse* need to be included, not just the socioeconomics of hunting (i.e., deer, elk, upland game, etc.) in general. Because the DEIS uses socioeconomic benefit of hunting as a reason to exclude hunting from further detailed analysis, there is some need to disclose what that benefit is in the Socioeconomic analysis, especially in the section “Values Associated with Populations of Sage-Grouse”.

Page 467, 3.8

This section states -the BLM is improving rangeland health by controlling animal numbers and season of use and by resting severely damaged rangeland potentially caused by wildfire. This statement is highly questionable at best given the extensive loss of habitat due to wildfires each year, particularly in the Great Basin region. Clearly, animal numbers are not a contributing factor to the wildfires, but wildfires may very well be the result of not having adequate numbers of livestock on the range to manage the biomass and retard invasive species advancement as once was the case.

Page 468, 3.8

Current Condition: livestock numbers have been reduced significantly over the past several decades as outlined in the following:

- Nevada Grazing Statistics Report and Economic Analysis For Federal Lands in Nevada March 2001- Resource Concepts Inc: This report showed a 16% reduction on combined federal lands from 1980-1999 for a \$24 million impact to Nevada.
- A Review of Public Land Grazing in Central Nevada-July 1998 – Resource Concepts Inc: This report showed a 21% AUM loss from 1980 to 1998 and 34% AUM loss from adjudication to 1998.
- Analysis of the BLM Grazing Allocation Process in Nevada October 1994 – Resource Concepts Inc: This study outlined a 29 percent reduction of AUMs from adjudication to 1994.

At the same time wildfires have, as predicted by USDA ARS range scientists and the 1988 Nevada Wildfire Study, greatly accelerated due to increased invasive species (i.e., cheatgrass, medusahead). BLM reluctance to maintain and manage livestock numbers and utilize prescribed grazing as a tool to reduce invasive species biomass residue, has greatly hindered the opportunity to impede the spread of these species, including the scale and damaging consequences of the wildfire.

The document states, Droughts in particular necessitate use restrictions on annual grazing permits. This statement should indicate a need to evaluate allotments on the need for possible temporary management changes rather than outright use restrictions.

Page 469, 3.8

ESDs and associated STMs are not utilized in most cases to determine “current condition” when rangeland health assessments are carried out? ESDs with STMS should be utilized with every rangeland health assessment and the ESDs be specifically appropriate to the particular area that the assessment is carried out. BLM has misused ESDs in the past to carryout AUM reductions due to lack of personnel training on ESD use.

Page 470, Table 3.30

Who makes the determination to include allotments in Category 1 with livestock grazing being a significant factor to not meeting the standard? Range Specialists should, as a policy, be present along with the permittee when such assessments are taking place to both observe, concur with and discuss the existing condition. Wildlife specialists are qualified on wildlife habitat needs, but not livestock grazing. As an example, early season grazing use may cause concern that herbaceous vegetation does not meet desired height due to grazing. However, the early use still allows for regrowth if soil moisture is present or convectional rain events occur. At any rate, utilization becomes the determinant regarding compliance with the grazing plan. Therefore, end of season monitoring appropriately is recommended and carried out as to season long utilization and compliance.

Page 474, Table 3.33

Are those acres not meeting Land Health Standards with grazing and the causal factor due to current grazing practices, or historic? How is it determined that grazing is negatively impacting the GRSG if the birds are continuing to return to and utilize the habitat over decades of time? Grazing practices have only improved since range science came on the scene in the early to mid 1900.s. Clearly, as range management and range condition improved, the sage-grouse have subsequently benefited, and we assert that this is mostly the case today across rangeland areas. Fragmentation and loss of habitat resulting from wildfires and development, including the high degree of predation should be the primary focus here, not livestock grazing as is evidenced in this report.

Page 558, 3.23

For the livestock grazing economic analysis, the reason for aggregating counties is not adequately explained. The extent of the impacts in this analysis will depend on the size of the analysis area. If the analysis area is too small then all aspects of the impacts from sage-grouse management will not be adequately identified and disclosed. Alternatively if the analysis area is too large, the effects of proposed sage-grouse management will be masked by extraneous and unrelated economic activity. However all counties within this study area are located within the “Basin and Range” Farm Resource Regions of Cost of Production Forecasts of the USDA Economic Research Service. If this is the reason for aggregating these counties, the DEIS analysis should disclose this and add information for support of this aggregation. This analysis should state why and provide data to substantiate the decision as to why these counties were aggregated in the planning area for this DEIS.

Page 559, 3.23

The economic analysis area for livestock grazing is extensive and it has the potential to dilute the economic impacts and provide the appearance that the regions are interdependent when they might not be. The impacts of the Range Livestock Sector in the separate county have limited influence on the

economies of other counties. The study area should have been developed with journey-to-work data and other socio-economic data to verify and validate county aggregation. These types of data provide information as to employment and economic linkages as well as some form of socio-economic rationale for aggregating counties.

Page 560, 3.23

The Current Conditions sections are outdated and don't properly depict the current baseline. In most cases, there is usage of data from 2010—we are now in 2013. Using 2010 data for “existing conditions” is not adequate. Much has changed since 2010, especially related to mining and agriculture. Please revise with most recent data available. Furthermore, the best available data is not used. Please use more local and relevant resources to tabulate the data and perform the analysis.

The numbers reported in these tables are at odds with work done through UNR and at a more precise and localized level. Also, there are significant departures from what was reported in the 2007 US Census of Agriculture which should be the reference related to farming and ranching. For example, there is a reported arm industry employment in Eureka County at 163. The 2007 Census of Ag reported 86 individual farms in Eureka County. Most, if not all, of the farms in Eureka County have multiple employees including the operator/owner. Additionally, approximately 40 ranching operators are permitted to use public lands for livestock grazing (Rangeland Administration System). Given the reported number of 163 employees and dividing by 86 farms and 40 ranches results in just over 1 employee per farm. This is simply not the case. The Economic Linkages studies by UNR, and namely, Dr. Tom Harris were done for nearly all of the rural Counties in Nevada. These should be the source for the EIS.

Further, there is no discussion about the tremendous leakage that takes place in Eureka County. The tables tabulate raw numbers with no explanation about what is taking place. A prime example is that it appears that all of the socioeconomic benefit from mining accrues to Eureka County. However, the jobs in mining in Eureka County are primarily citizens and taxpayers of neighboring counties, primarily Elko County. While tax benefits accrue to the County, social stability and general benefit to Eureka County citizens and other industries is not supported by mining as the tables allude. Further, much of the mining activity in Eureka County is in the northern portion and in areas that have not been mapped as PPH or PGH. This means that impacts related to sage grouse management will fall disproportionately on other industries more reliant on sage grouse habitat areas.

There does not appear to be any effort to even do a perfunctory analysis of the indirect and induced effects of industries on all of the counties. For example, the 2005 UNR reports the following for Eureka County:

Table 13. Final Demand, Employment, and Income Multipliers for Eureka County, 2002.

SECTOR	FINAL DEMAND MULTIPLIER	EMPLOYMENT MULTIPLIER	HOUSEHOLD INCOME MULTIPLIER
Timothy Hay	1.6951	1.6170	1.2793
Alfalfa Hay	1.6591	1.3844	1.2854
Cattle Ranching	2.0283	1.4439	1.6812
All Other Agriculture	1.7953	1.0606	1.1963
Gold, Silver, and Other			
Metal Ore Mining	1.7086	1.1350	1.1128
All Other Mining	1.6758	1.0670	1.1171
Utilities	1.7406	1.3134	1.1017
Construction	1.6217	1.1099	1.1523
Manufacturing	1.1671	1.1467	1.3538
Transportation	1.5392	1.1468	1.1967
Wholesale and Retail			
Trade	1.7780	1.0480	1.1362
Communications	1.8804	1.2777	1.1998
Financial Services	1.8593	1.1565	1.1616
Other Education and			
Health	1.9582	1.0726	1.1394
Leisure and Hospitality	1.6318	1.0409	1.2235
All Other Services	1.5698	1.1562	1.2722
Local Government	2.1477	1.0711	1.1102

Keep in mind that this same information is readily available for other counties in Nevada and should be included in order to measure how impacts on certain industries will create different effects based on the multipliers specific to each county and industry.

Pages 562-566, 3.23

These paragraphs are confusing and hard to follow. Most single out aspects of individual counties that apply to most, if not all, other counties. For instance, open space and retaining rural character is not only important to “urban dwellers” but is singled out for some reason. Also, a paragraph singles out that the Pershing County economy is dominated by mining but fails to make the same link to Eureka, and other, counties. There is substantial discussion regarding Lincoln and White Pine Counties but the same groups hold true in other counties, including Eureka. We would like to see more specific examples about Eureka County in order to inform adequate analysis.

Page 564, 3.23

The use of input-output model has a long history of showing economic linkages and impacts of the local Range Cattle Sector. However another important issue for the local Range Cattle Sector is how this sector impacts economic stability in small local economies. Agricultural producers when faced with lower agricultural prices usually do not reduce production levels or production expenditures, but rather have a tendency to absorb the resulting income reductions. From a previous study on agriculture in Churchill County, Harris and Kerna (2009) found the variability of agricultural production cash expenditures were lower when compared to agricultural cash incomes. This shows that the agricultural sector has a stabilizing effect on small economies in the short run. In the long-term a reduction in range cattle production due to added restrictions for sage-grouse conservation can decrease both cash receipts and cash expenses associated with range livestock production in local economies. The agricultural sector in Modoc County California is highly dependent on public lands for livestock production. Cash livestock receipts in Modoc County averaged \$29.4 million over the last 10 years. This is a 21.9% decrease from the

\$35.9 million average from 1969 through 2011. Further reductions in public land AUMs will continue to adversely impact both cash receipts and cash expenses in the long run. These expected outcomes from the DEIS alternatives should be fully explored and disclosed.

Page 566, Tables 3.73, 3.74, 3.78

In the economic analysis for livestock grazing, a general overview of the study area is presented using decennial population, employment, and income data. Comparing data from 2000 to 2010 shows increases in population, employment, and income in the study area and may convey that the proposed sage-grouse conservation measures would have little effect on a robust and expanding economy. However this conclusion is incorrect because the way the socio-economic data is currently presented it does not disclose the effects from the "Great Recession". The "Great Recession" started in December 2007 therefore annual changes from 2008 to present should have been presented and analyzed. From the State of Nevada Department of Employment, Training, and Rehabilitation and the State of California Employment Development Department, the employment for the study area counties in 2008 was 359,996 with 2012 annual employment in the study area being 328,887. From 2008 to 2012, employment in the study area has declined by 31,109 employees or there has been an 8.64% decline in employment growth in the study area from 2008 to 2012. As can be seen, these counties have been impacted by the "Great Recession" and by not disclosing these employment figures give an incorrect picture of the current study area employment situation. Additionally, the recovery from the "Great Recession" has been weak and changes in local economic activity caused by sage-grouse conservation could retard the recovery and even lead some counties in the study area into another recession.

The 2007 Census of Ag reported just over \$25 million in agricultural product sales in 2007 and out of 17 counties in Nevada, Eureka County was ranked fourth in the state in terms of crop sales and eighth in terms of sales of livestock, poultry, and their products. Total sales rose to \$32.5 million in 2008, declining to \$26.5 million in 2009 (U.S. BEA 2010). Hay and beef prices have been at record levels over the past few years and these values are much higher today. These numbers are all at odds with the document and in all cases, the document shows that farm receipts are less than these other sources. Please revise.

Page 577, Table 3-79 and supporting text

It is confusing as to how ERS "publishes annual gross receipts for cow-calf operations." Please include descriptions describing what the gross receipts entail. Further, the BLM estimate of \$50.24 per AUM in 2010 dollars is counter to research in Nevada.

The total economic impacts, which include the industry impacts and value added impacts, totaled to \$53.40 per AUM in 2000 according to the RCI report. Yet, the document says that one AUM in 2010 dollars is less at \$50.24. If the Consumer Price Index were applied to the Nevada specific report from 2000, the value is much greater than \$50.24 in 2010 (let alone today, in 2013). Additionally, high beef prices and drought conditions have increased the value of AUMs in recent years. We argue that the value of AUMs to the producer and local economy combined are today, closer to \$100/AUM when applying robust analysis and building in inflation and current conditions. Revise accordingly.

Page 579 and Appendix O-5, Table 3.79, Appendix O Table O-3

The economic analysis for livestock grazing discusses actual and active permitted use of AUMs. This analysis concludes that the 12-year average of actual use is 62% of permitted use. However the DEIS

analysis does not address the reason for differences in actual and active grazing use. This difference can be caused by numerous factors such as current regulations, including existing grazing restrictions, fire and drought closures, vacant allotments, economic market conditions, etc. Many of these contributing factors do not represent items controlled by the permittee, nor should the difference between actual and active livestock use be viewed as a voluntary or discretionary action by the permittee. This economic analysis does not disclose why there is difference in actual and active use and implies that this relationship may be voluntary or a discretionary of choice for the affected permittees. This second conclusion is not accurate and misleading. Both items need be clarified and fully disclosed in this DEIS.

Page 582, 3.23

There is no discussion about the wind project on the Diamond Range and its possibility. According the very recent Mt. Hope Project EIS published by the BLM, this is over 21,000 acres. Please include to consider the impacts on and from this project.

Page 583, 3.23

There is an omission of geothermal resources in Eureka County in Crescent Valley including current and pending lease applications.

Page 585, Table 3.82 and supporting text

This is an example of mining being given more weight in Eureka County than is real. The text describes that mining contributed the most to earning in Eureka County at 92.1%. This fails to acknowledge that while the employment is at mines within Eureka County (primarily the Carlin Trend) most of these people are not citizens of Eureka County, do not pay taxes in Eureka County, do not live in Eureka County, and do not contribute directly to the economy or social stability of Eureka County. The 2010 Census reported that 1,997 people live in Eureka County but there are nearly 4,000 jobs in mining in the County. Take the number of folks from the 1,997 working in Eureka County and subtract those employed in all other industries in the County and you will see that the actual resident population of the County that is employed in mining is much less than reported. Employment impacts (people) would more likely fall on Elko or Lander counties for mining at the Carlin Trend that is within Eureka County.

This concerns us because it skews the data towards mining and downplays everything else as being anything but minor contributors to socioeconomic stability and sustainability. With a population of less than 2000, a handful of jobs in Eureka County are of the same scale as thousands of jobs in a larger populated County such as Washoe.

What are the figures in Table 3.82 is this based on? They are simply wrong, at least for Eureka County. Are these the mining employees that are residents of Eureka County? The figure is high if so. Less than 200 residents of southern Eureka County work in mines and even less so in the other County areas, primarily Crescent Valley portion of Eureka County. We wish the data to be accurate.

Also, if the Elko County residents that commute to mines outside of Elko County were taken into account, it would be shown that Elko actually has higher percentages of mining employment (perhaps Lander as well).

Chapter 4

General Comment Regarding Chapter 4:

The qualitative treatment of impacts as “more than,” “less than,” “increase,” “decrease,” and etc. is not sufficient to allow the public (or the authorized officer) to determine real impacts and the magnitude of the impacts. The only quantitative data presented are acres of sage-grouse habitats open to various land uses among the alternatives, or acreages of allotments within sage-grouse habitat, etc. There must be some quantification to create meaning and to allow the public to discern differences between alternatives.

Page 604, Table 4.2

While Livestock grazing, wildfire, and other are listed as threats in this table, it is inexcusable that BLM does not include predators among the threats, or even to footnote the chart to explain that predators are not the responsibility of the land management agencies but rather the State and USFWS. Not showing predators among the threats leaves a critical void in the information that the public deserves and need to be fully apprised of. We strongly recommend addressing this concern in the final document.

Page 605, 4.3.1

There is serious concern that the agencies will over react to the 4 mile and 5.2 mile buffers for the PPH and PGH areas as desired by the biologists, and severely restrict grazing to the point of deeming it uneconomical. If livestock grazing is adjusted to the degree that it becomes unfeasible to turn out, there is a high probability that the wildfire risk will increase dramatically in many instances. Even with greenstrips and other protective measures wildfires can and will destroy habitat, whereas managed grazing does not destroy, but rather helps to maintain and manage habitat. However, instances of mismanaged grazing can have negative impacts over time. The benefits of managing the biomass production through prescribed grazing includes reducing the threat of habitat loss from wildfire and helping to insure long term intact habitat areas.

Page 606, 4.3.2

“Passive restoration efforts such as adjustments in management practices, such as grazing seasons and seasonal restriction or closures, seasonal-use areas,...etc. (Manier et al 2013)”. Is this biologist trained and experienced in the art and science of managing grazing on rangelands? While referring to the potential for grazing to degrade habitat, he apparently fails to recognize that wildfire completely destroys habitat and sets range conditions back so severely they may never be fully restored. Range specialists should be required to be actively involved with establishing any grazing solution, using the full range of tools available in range management. Wildlife biologists should be limited to outlining the specific issue(s) or habitat needs for an allotment while allowing for specific grazing or range improvement alternatives to be developed by the range specialist and permittee. Close monitoring of the selected management or practice(s) should then occur with adequate time to determine results and make adjustments if necessary. This section also suggests seeding native species is the means of successful restoration. This has not been the case where cheatgrass and medusahead are present to affectively outcompete natives. Introduced species capable of competing with the invasive weeds should be included in all seedmixes in sufficient

amounts to insure establishment of at least some perennial plants capable of competing with invasive species.

Page 606, 4.3.2.

This general treatment of effects is misleading. The lack of quantification in this section allows the BLM and Forest Service to imply minerals management is incompatible with sage-grouse and sage-grouse habitat. The DEIS needs to provide context so that the public can clearly determine the magnitude of an impact relative to others.

As discussed previously, the current surface disturbance association with oil and gas wells in PPH and PGH is only 0.022% of the total PPH and PGH in the Planning Area. Even tripling this amount to account for noise, infrastructure along with other associated disturbances is still less than 0.1% of the PPH and PGH in the Planning Area. The BLM and Forest Service need to provide this context so that the reader can clearly determine the magnitude of one impact relative to other impacts identified in the DEIS. Only with this information put in context of other impacts can the reader know if certain action elements of the various alternatives are necessary to provide for the conservation of sage-grouse.

Page 607, 4.3.2

Connelly is quoted in this section as though being the expert on livestock grazing, while others with expertise on rangelands that have published on sagebrush habitat and restoration such as (Davies et al) who represent new science and approaches to sagebrush restoration are absent this section and. The NTT (2011) report, p. 14 rightly states properly managed grazing, however, may protect GRSG by reducing fuel loads. It is imperative that the agencies recognize this important nexus with grazing when looking to adjust, limit or restrict grazing on any permitted and managed allotment.

Page 607, 4.3.2

This section states, grazing restrictions that protect sagebrush ecosystem health would enhance habitat for GRSG populations. We do not agree with statements that encourage restrictions, but rather with approaches that support grazing management solutions that do not place an economic unit at risk. The grazing program is already heavily overregulated and does not need additional restrictions to attain ecosystem health, but rather land management agencies who will advocate and stand up for good grazing practices and range management when they see it.

Page 607, 4.3.2

The DEIS states that fire is the primary threat to GRSG populations and habitat ... in the western half etc..... (Baker2011), and later in that section states that fire is a primary threat to GRSG populations and habitat...etc. (USFWS 2010a). We agree with the first statement regarding fire as stated by Baker. Fire is a primary threat in most all cases in the DEIS area where habitat exists, with few exceptions. Is "the" or "a" primary threat, as stated above, correct? It is interesting to note that James A. Young and Charles Clements, USDA ARS Range Scientists, are not cited in this section as relates to cheatgrass, as they are widely recognized by many as possibly the most knowledgeable and experienced authorities on this issue as relates to cheatgrass and other invasive species in Nevada and the Great Basin, and have recently published a book entitled Cheatgrass. We strongly recommend citing their work as part of this DEIS effort. Given the findings of Hubert, Pyke, Mack, Pellant and others regarding fires and their impacts, it seems only prudent

and advisable to strongly support grazing as a means of reducing this threat and helping to protect sage-grouse habitat and biodiversity. The choices as outlined appears to be 1) allow cheatgrass, wildfires, and draconian and unnecessary grazing restrictions to dominate the public lands going forward, or 2) enlist a strong commitment to AMP development to help to maintain and/or improve the sagebrush ecosystem and critical sage-grouse habitat without impacting or eliminating grazing as a tool. Industry can commit to work with the later approach in so far as it does not threaten the economic viability of ranching or the local economy.

Page 608, 4.3.2

The DEIS states, Currently due to the extent of the threat, there are no management actions that can effectively alter this trend, meaning loss of habitat due to wildfire on an annual basis. This statement is blatantly incorrect and should be corrected. Industry has consistently recommended prescribed grazing as a primary tool to help ward off both wildfire and the invasion of cheatgrass into new areas. However, BLM has failed to move on this cost effective and non-threatening approach to address the problem at scale, despite the growing loss of resources. Instead, it seems more emphasis is directed at fire suppression with need for more apparatus and larger fire teams for a longer fire season. UNR Range Scientists have promoted dormant season grazing of cheatgrass to reduce residue and influence positive vegetation changes based on studies at the UNR Gund Ranch Experiment Station. The BLM unfortunately has not, to our knowledge, engaged UNR to expand on, or to demonstrate this work on BLM allotments in Nevada to further assess its value.

Page 608, 4.3.2

This section fails to report that WH&B remain on the public lands on a year round basis and are not managed for the benefit of the rangeland resource that supports their very existence. Only their numbers are attempted to be controlled, but with minimal success. There typically are no rest periods for the range in HAs or HMAs, riparian areas nor wetland meadows. WH&B are territorial and tend to remain within their HMA, even when forage and water supplies are exhausted, while all the time continuing to reproduce at a greater than 20% rate. Livestock on the other hand are regulated for numbers, season of use, utilization and trend of range condition and other. Numbers control is all that the BLM have available to them today to effectively manage horses, and even that is being heavily impacted through the budget process. In addition, any attempts to restore rangelands within HMA's would be most challenging due to the restrictions that would be applied when attempting to protect a new seeding or defer use from an area for a period of time to allow for natural regeneration. Fencing and other structural improvements would also become a real challenge.

Page 609, 4.3.2.

The last paragraph on page 609, which continues onto page 610, includes a discussion of noise impacts. The DEIS states that the "authors found that the low-frequency mining noise in the study area was continuous across days and seasons and *did not diminish as it traveled from its source.*" Two points need to be made. First, the noise may be continuous at an operating mine or oil and gas well, but the level of noise is variable during the day depending on the level of activity, wind, weather, and topography. The sentence as written implies a continuous level as well as continuous noise production. This needs to be corrected or clarified.

The second point refers to the italicized text (added in this comment for emphasis). This statement is incorrect and scientifically impossible. Noise attenuates with distance; this is a law of physics. While it is correct to state that low frequency tones attenuate at a lower rate than high frequency tones, they do attenuate. Noise studies routinely include “contours” that indicate how noise from a source diminishes with distance from the source. If the statement in the DEIS were true, then the distance of these disturbance from a lek or other seasonal habitat would not matter because the statement indicates the noise level would be the same no matter what distance the lek or habitat is from the source. In addition, the work done by Patricelli and others indicates that the higher frequency noise is more likely to interfere with sage-grouse activities than low frequency noise. Therefore, the implications of the text in question are misleading.

In the DEIS, the agencies propose to limit noise to less than 10 decibels above ambient (20-24 db(A)) at sunrise at the perimeter of a lek during active lek season, a restriction that was pulled directly from the BLM’s National Technical Team (NTT) report. This requirement is based on questionable studies, is overly restrictive, and would be difficult, if not impossible, to achieve.

We recognize the dynamics of GSG response to noise from industrial activities are not well understood. There is little concrete evidence on how GSG respond to noise at various levels and different types of sound. As such, we recommend that the state submit a request for proposals to incentivize research into the potential effects of specific sources and types of noise from industrial activities on GSG. A competitive proposal process such as that used by many agencies would best ensure that studies are conducted in a scientifically credible manner, and their findings could inform state and federal agencies on future mitigation of sound impacts. Any studies should strictly commit to a policy of transparency in which the methodology and data are made available for review.

Page 613, 4.3.3

Impacts from Climate Change – We recognize that climate change is already having an impact on vegetation in some areas, which will only accelerate if the trend continues. It is important that BLM and USFS coordinate with USDA ARS Great Basin Rangeland Research Unit and UNR Range Scientists, Soil scientists, hydrologists, economists and others to work on approaches to address change as it is documented. There is a need to explore alternative management scenarios, which allow for smooth transitioning over time, including appropriate grazing practices that avoid the abrupt agency decision process experienced in some areas. Efforts should also focus on the serious water source issues that will only grow if the trend continues in this driest area of the nation. What then are appropriate water conservation measures to assure adequate supplies of quality water for livestock, wildlife, etc.? What measures are needed to benefit sage-grouse during these dry periods while maintaining viable economic use?

Page 614, 4.3.4

P-J treatment – these areas of identified woodland encroachment lend themselves to immediate treatment throughout the region in sage-grouse habitat. Because they typically exist in higher precipitation zones, more favorable response from treatment is generally anticipated and documented. These areas of more immediate recovery can then be identified as areas of scale for restoration and meriting priority treatment. State and Transition models coupled with ESDs are important tools when evaluating these resources to determine the best approach and expected results.

PFC is extensively adapted as an appropriate assessment for determining stream and riparian condition. The livestock industry in this planning area has generally become educated on this process and supports its use. The National Riparian Team also employs this process and conducts workshops on its application. It would be most beneficial if the USFS would also adopt PFC as the preferred methodology for consistency across all public lands in the assessment process.

This section states in some cases this management would require livestock removal or restrictions in riparian areas to reduce impacts caused by livestock....etc. Under no circumstance will industry accept forced removal (2-5 days) of livestock from the allotment on the basis of hitting a utilization standard for riparian areas applied early in the grazing season and based on imposed draconian key management area (KMA) standards that are appearing in recent RMP updates. This approach will be vehemently opposed.

Range improvements should be altered only if they are proven to impair habitat conditions or degrading rangeland ecological condition as supported by sound monitoring data and respecting water rights and rights-of-way. To impose unrealistic and costly changes on permittees who have worked hard to improve range management and range conditions over time is not reasonable and may not be necessary.

This section fails to recognize the value of prescribed grazing as a major tool to reduce fuels thereby limiting the spread and severity of wildfires as is being experienced over recent times. In addition, the BLM is fixated with the idea of using native species for restoration, when it is well recognized that native species are very limited in their ability to compete with invasives such as cheatgrass and medusahead. It is critical to include adapted introduced species in seed mixes, particularly where invasive species are present, if any degree of success is to be expected. We disagree with the assessment of Alt A as presented in paragraph 5. This alternative would allow the flexibility to do the proper treatments based on site assessments and good planning.

The analysis incorrectly assumes that all acreage in a minerals lease will be disturbed. Closure of 12,693,500 acres of PPMA's to leasing is not necessary. As discussed above, under the current level of authorized leases, the acreage of authorized area that is held in production within PPH and PGH is 0.12% of the total PPH and PGH in the Planning Area. The surface disturbance associated with the wells that are located in PPH and PGH is 0.022% of the total PPH and PGH in the Planning Area. Closure of 12,693,500 acres to provide protection from disturbance of about 0.12% (approximately 15,232 acres of PPH and PGH) of the closed area is unreasonable, arbitrary, and capricious.

The beneficial impacts of this closure on sage-grouse and sage-grouse habitats is not quantified; the "Closure to leasable minerals would result in long-term beneficial impacts on GRSR habitats associated with all seasonal life history requirements." This is inadequate in terms of providing analysis of impacts. Without some indication of the magnitude of the benefit of this closure, the reader cannot determine how

this compares to other elements of this Alternative; and therefore, comparison of elements cannot be made.

The analysis of “Impacts from Leasable Minerals Management” for alternative B consists of one paragraph and one table. However, there are several elements of Alternative B that are included in Table 2.5., Description of Alternative Actions. If the only benefit to sage-grouse through closure of 12,693,500 acres of PPMAs to leasing is some unknown level of long-term benefit to sage-grouse habitats, why are all of the other action elements of this Alternative included in the Alternative?

The analysis of “Impacts from Leasable Minerals Management” for alternative B consists of one paragraph and one table. However, there are several elements of Alternative B that are included in Table 2.5., Description of Alternative Actions. If the only benefit to sage-grouse through closure of 12,693,500 acres of PPMAs to leasing is some unknown level of long-term benefit to sage-grouse habitats, why are all of the other action elements of this Alternative included in the Alternative?

Section 4.3.5. Alternative B, Impacts from Leasable Minerals Management; Section 4.3.6. Alternative C, Impacts from Leasable Minerals Management; Section 4.3.7. Alternative D, Impacts from Leasable Minerals Management; Section 4.3.8. Alternative E, Impacts from Leasable Minerals Management; Section 4.3.9. Alternative B, Impacts from Leasable Minerals Management:

The analysis of Alternatives B, C, D, E, and F are all quite similar. A comparison of the Tables in each section (i.e., Tables 4.10 (Alternative B), Table 4.71 (Alternative C), Table 4.21 (Alternative D), and Table 4.26 (Alternative E) [there is no table for Alternative F, it is the same as Alternative B for this analysis]) shows very minor changes in benefits to sage-grouse, and in each section the text has no quantitative information. The “long-term benefit” to sage-grouse is quite vague and the tables only address the percent of GRSG Sub-Populations Affected by Closure to Leasable Minerals. This does not relate back to the indicators that were listed in Section 4.3.1 (at Page 11). A change in acres or percentage of the GRSG sub-population affected by closure must be related to how it will benefit one or more of the indicators, and in a quantitative manner to allow for comparison of alternatives.

The analysis currently shows that more acres are closed under Alternatives B, C, D, E, and F than under Alternative A, but there is nothing to indicate how the increased closure will translate into benefits for sage-grouse. If the areas were not closed and mitigation for disturbance was an option, then there may actually be an improvement in habitat and benefit to sage-grouse by replacing degraded habitats or decadent sage brush with healthier suitable habitats. There is no comparison of this loss of potential for increased habitat quantity or quality in this analysis.

The analysis of acreage closed for mineral leasing basically concludes that for most resources there would be “little or no impact” from Leasable Minerals Management because there would be no new leases or reduced acreage of leases. However, there is no mention of how without closure, mitigation can be used to address habitat quality or quantity issues in the vicinity of the leases. The analysis is very biased and focused on reaching a desired decision, not on an objective analysis of the alternatives. There is recognition that with closure, “there may not be a resultant change in vegetation or soil conditions” (at Page 68 and elsewhere).

Page 654, 4.4.5 Alternative B

This section states, "Under Alternative B, no closures of PPMAs would be authorized." What does this mean? This sentence is unclear. Alternative B presents an option for significant proposals for minerals withdrawals, yet this section doesn't present those figures.

Page 660, 4.4.7 Alternative D

The first sentence states, "Under Alternative D, no new surface occupancy would be authorized." This seems incorrect, as minerals development is permitted under Alternative D, but may require mitigation. A better version of the sentence may resemble, "...new surface occupancy may be subject to mitigation prior to being authorized."

Page 663, 4.4.8 Alternative E

This section does not present the opportunities for "minimize" or "mitigate" stated in the Nevada Plan. When avoidance is not feasible, then actions can be taken to minimize and then mitigate impacts from minerals exploration and development.

Page 676, 4.5.5. Alternative B

The conclusion that "Management under Alternative B would result in fewer impacts on riparian habitats than Alternative A" is not supported in the analysis. Nowhere in the document is there disclosure of the acres of riparian habitat that are to be impacted under any of the alternatives. The conclusion is based on the different acreages of land open to mineral leasing under the alternatives, and therefore; the impacts to riparian areas must correspond to total acres open to leasing. The analysis assumes that if acreage is leased or available for mineral leasing, riparian areas will be disturbed or negatively impacted. This is extremely subjective. For information, the Elko District has two LUPs that were approved in 1985 and 1986. These LUPs require all disturbance to be 400 feet or more from any riparian zone or named water way. Therefore, under Alternative A, riparian habitats are already adequately protected.

Page 679, 4.5.6. Alternative C

The total analysis consists of one sentence: "Impacts on riparian areas and wetlands from leasable minerals management would be reduced under Alternative C in comparison to Alternative A." There are no basis or tables for comparison of impacted acres under each alternative or discussion of how mitigation would be used to offset impacts in the DEIS.

Page 682, 4.5.7. Alternative D

There is no quantification of impacts, no discussion of acres of riparian areas that would be impacted under each alternative, and no quantification of "fewer impacts". The reader cannot compare alternatives based on terms such as "more", "fewer", "less", etc. The document should quantify impacts so the reader can discern how much more or how much less the impacts are between alternatives.

Page 704, 4.8.3

This section does not acknowledge the potential for mine and ranch operations and facilities to assist with active suppression of wildland fires (equipment readiness, contribution, and proximity) or passive suppression by creating fire breaks with roads and/or mining facilities. Many mines and ranches have large equipment readily available that could be useful for active suppression.

All permitted AUMs should be shown on the comparison chart. Only active AUMs are illustrated for comparison. Permittees turn out in accordance with rangeland growing conditions, present livestock market, hay availability and other factors including on farm costs at the time. The active use represents multiple years of varying adjustments, which could have occurred as a result of agency actions, permittee decisions, wildfire deferments, etc. Alternative F would propose to reduce this active use by 37.5% which is wrong and would represent an injustice to the permittees and their economic well-being. The same is true of allotment acreage proposed for closure in Alternative F. Reducing the use area by 25% would render those affected ranch operations out of business. In a business environment, who can sustain a 37.5 % or 25% cut in their business or income stream and expect to continue operation?

We agree that “adequate monitoring of grazing strategies and their results, with necessary changes in strategies, is essential to ensuring that desired ecological conditions and GRSG response are achieved (USFWS 2013a).” To move too quickly with landscape level adjustments in strategies without realizing the likely results, as supported by monitoring, would be improper and costly to operations and possibly the resource also.

The DEIS states, grazing allotments containing sagebrush habitat would be managed to maximize cover and forage for GRSG, not to maximize livestock forage, which could necessitate change in livestock management. This statement is a formula for disaster as presented. If the DFC is set through ESDs then livestock are the best means of achieving the DFC in most instances. What’s good for the livestock can generally also be good for the sage-grouse. To separate this out as shown above is wrong and shows a strong bias against livestock grazing. This approach is the product of wildlife specialists who have little or no understanding of livestock grazing or range management principles and are attempting to use historic grazing, prior to evolved range science, as a crutch to condemn grazing and force changes to grazing management presently achieving or trending toward DFC, as supported by agency monitoring.

Monitoring data should be used to determine if problems do in fact exist on riparian areas and if livestock are the cause, or a contributor. To suggest an array of changes, including reductions, exclosures, etc, is of little value to this document and its purpose, and represents a threat to viable ranch operations.

Recreation issues as outlined in this section are generally overstated. While problems can and do occur occasionally between recreationists and grazing, these uses are mostly found to be compatible and able to work through any identified issues with the help of the responsible agency.

Any proposals to close or limit maintenance on allotment roads must first be closely coordinated with the permittees and fire suppression resources. Access to range improvements is critical for ranching and also for wildfire suppression needs in many instances.

Energy and minerals development could in fact impact grazing, however, to date industry has, as with recreation, been able to coordinate and work through these issues in a compatible manner to minimize the impacts for the period of time that they exist.

Page 726, 4.9.2

We fully agree with (Torell et al 2005) regarding impacts as a result of changes to the allotment grazing program.

This section states, in instances where a permit/lease was retired from grazing, the BLM would have to compensate the permittees/lessees for range improvement projectsetc. We stand in strong opposition to any allotments being retired from grazing unless it can be unquestionably demonstrated that grazing is an inappropriate use of the identified allotment. To also state that, retirement of privileges would likely result in a reduction in conflicts between grazing and other land uses and may improve range health...etc. is a negative comment and reflects badly on grazing in the eyes of an uninformed public. Loss of any grazing allotment will generally mean that a ranch has gone out of business, thus the local economy is also impacted. In addition, fuel loading will create elevated fire hazards, which threaten all resources on the subject allotment and also the surrounding allotments. Water rights on a potentially retired allotment also become an issue to deal with.

Page 727, 4.9.4

Impacts from GRSG – States “management changes designed to address non-attainment of wildlife habitat standards would likely reduce permitted AUMs” This action should never be considered until all potential alternatives, such as changes in grazing system, range improvements and other have been exhausted in cooperation with the permittee. To reduce AUMs is to place an economic unit at risk, create reluctance at financial institutions to provide operating loans, and basically does nothing for the resource in most instances. Livestock AUMs could be reduced by 50% or more and the same concern would persist unless addressed in the proper manner.

Range improvements should be designed to improve the ecological condition of rangelands for all appropriate uses as guided by the ESDs and not as stated in this section would be designed to maintain or improve GRSG habitats. Who would pay for said improvements? Would agency range improvement funds be directed at GRSG habitat instead of for livestock grazing improvements?

Impacts from Livestock Grazing – do the 39,782,900 acres accurately reflect those acres presently authorized, and also do the 2,210,500 AUMs reflect active, or fully permitted AUMs for all allotments in the study area?

As stated above, reductions in AUMs do little or nothing to improve habitat or range conditions. The issue might be, and generally is found to be distribution, that can be solved with identified range improvement(s). Utilization is the key here along with sound monitoring and determining how to solve the problem without impacting AUMs. If fully authorized numbers are turned out and utilization standards are reached early in the season, allotment wide, due to drought or other, then they warrant being removed within a reasonable time due to the resource being fully harvested. This does not mean that a reduction is warranted, but rather that adaptive management and flexibility are required to achieve the objective.

Page 731, 4.9.5

Impacts from Livestock Grazing – We support portions of the language as relates to AMPs that are developed cooperatively with the agency and feel that preparing this document is a resourceful way of identifying objectives, outlining and recording allotment needs, and setting a schedule for implementation of actions over an agreed to timeframe. Industry would like to further explore this approach with the agencies. Conservation plans developed with NRCS assistance are also a good option for those operators comfortable with this approach.

Page 732, 4.9.5

Retirement of allotments – See comment above under Alternative A. We do not support retirement of grazing permits and believe it is unlawful.

Impacts from Wild Horses and Burro Management – We agree that WH&B management “be categorized as a higher priority for gathers” but also feel that this approach should apply to all HMAs.

Page 737, 4.9.7

Impacts from Livestock Grazing – See 4.9.4 Alt A listed above for comment to “changes to permitted AUMs could occur on up to all PPMAs and PGMA habitat acres”

Page 738, 4.9.7

Impacts from WH&B Management – We support full removal to AML and maintaining those levels as outlined in agency plans. Also, all HMAs should be affectively monitored to support any proposed actions, including separating out livestock use from WH&B use so as to attain fairness in decisions outlining issues cause and effect.

Page 740, 4.9.8

Alternative E rightly embraces livestock grazing to reduce fuels and when appropriate to improve GRSG habitat quantity, and quality. Riparian areas would be managed for PFC that would bring consistency to field assessment methods used by both the BLM and USFS.

Page 741, 4.9.8

A preferred approach to adjusting grazing, if warranted, would be to work cooperatively with the permittee to develop an AMP that incorporates objectives and proposed changes in the grazing operation incorporated. This provides a direction for the future with assurances and allows for monitoring and adaptive management to assess whether the implemented practices or treatments are achieving the desired results.

Page 780, 4.14.2:

The analysis of impacts to locatable minerals is predicated on how many acres of public land will be withdrawn from mineral entry. The alternatives have various restrictions placed on mineral activity and these are not analyzed or compared.

The “Indicators” provided on page 188 are related to actions that will increase or decrease the acreage of mineral withdrawal, and the “actions placing restrictions or requirements that reduce efficiency and increase operational costs that could make development infeasible.” Yet in the analysis, these restrictions are generally dismissed. The analysis is inadequate.

As indicated on page 189, “Mineral resources are not evenly distributed across the landscape.” This alone should be sufficient reason for not withdrawing lands from mineral entry. Until the mineral potential is known, closing areas to exploration and development is inappropriate. Alternative D, which allows for mitigation of impacts, is the only approach that can be implemented and still maintain a viable minerals industry and ensure consistency with federal law.

Page 780, 4.14.2

Please provide a citation for the DEIS Assumptions, especially regarding the establishment of grass/forb and sagebrush vegetation on reclaimed lands. Otherwise, the information can be assumed to be inaccurate.

Page 782, 4.14.2.2 Alternative B:

The first paragraph assumes that all mineral exploration and development is entirely incompatible with GRSG on a landscape scale and offers no flexibility to develop multiple-use strategies. Collaborative approaches allow mineral development to occur with minimal impacts to GRSG. This offers no potential for compromise and prevents implementation of avoid, minimize, mitigate strategy, which is highly preferred.

The third paragraph states, "Like Alternative A, under Alternative B, 12,693,500 acres of PPMA would be recommended for withdrawal from location under the Mining Law of 1872." This statement and action is not proposed under Alternative A, or it not clearly stated in Alternative A.

Page 783, 4.14.2.3

This assumes that all mineral exploration and development is entirely incompatible with GRSG on a landscape scale and offers no flexibility to develop multiple-use strategies. Collaborative approaches allow mineral development to occur with minimal impacts to GRSG. This offers no potential for compromise and prevents implementation of avoid, minimize, mitigate strategy, which is highly preferred and contained in the State Plan (Alternative E).

Page 783, 4.14.2.4 Alternative D

This alternative allows for creative design and is well-aligned with multiple use mandates compared with the other Alternatives. However, this section grossly understates the potential impacts on Locatable Minerals from use of "additional restrictions and design features." The DEIS provides the assumption that mineral development is cost sensitive and restrictions can quickly make a project uneconomical, yet there is no discussion of this impact. In order to properly disclose impacts to the public/reader, the DEIS should include statements relative to the impact restrictions/design features can have on locatable minerals.

Page 783, 4.14.2.5 Alternative E

The ability to avoid, minimize, and mitigate are essential tools to facilitate economic development, create regulatory mechanisms that provide for GRSG protection, and most importantly, encourage collaborative conservation efforts. Similar to the summary of Alternative D, the potential impacts to locatable mineral development are grossly understated given the prospect for additional restrictions and design features. These types of restrictions can test the economics of a project and will likely have dramatic impacts of what deposits can economically be developed.

Page 795, 4.16.3

This text and assessment of impacts from minerals management/development does not give credit the multitude of *existing* environmental regulations, permits, inspections, operating standards, and best management practices inherent in mine operation. Mines operate under a variety of state, federal, and local environmental permits including water pollution control, national pollution discharge elimination, storm water, spill prevention, etc. that serve to prevent and reduce risks to surface- and ground- water resources by addressing storm water runoff, erosion, chemical management, etc. There is a severe lack of citations and proof of scientific credibility throughout this entire section, especially for the minerals management/development section.

Page 801, 4.16.6 Alternative C

This description is not consistent with the format used to describe Alternative B. The description for Alternative C includes no discrete or quantitative measurement of acres withdrawn from mineral entry. Simply stating "fewer impacts" is qualitative, lacks sufficient detailed information, and presents an incomplete analysis to the public.

Page 805, 4.16.8 Alternative E

This description is not consistent with the format used to describe any of the previous alternatives, thus comparing the impacts is impossible. Further the last two sentences state, "Alternative E could result in fewer impacts on water resources than Alternative A. Impacts would be the same as Alternative A." These statements are overly qualitative in nature (thus preventing full disclosure to the public and, most importantly, contradict one another). Please clarify the impacts. Are there fewer impacts or the same as in Alternative A?

Page 807, 4.16.9 Alternative F

This description is not consistent and does not provide quantitative values (i.e. acreage) to facilitate understanding of the impacts by the reader. There is no discussion on the impacts of how reducing AMLs would be beneficial or detrimental to GRSG habitat. This statement implies there are "fewer mining activities." Please include quantitative values (i.e. acreage).

Page 815, 4.17.7

Why does it state 6.1 million acres of land located within PPMA/PGMA would be withdrawn? The remainder of the document does not show 6.1 million acres withdrawn under Alt D.

Page 816, 4.17.8

Stating that "permitting mineral developments could be leading to decreases in GRSG populations" is a biased statement when other known threats (i.e. livestock grazing, climate change, travel/roads) also impact GRSG. These types of general statements, and a lack of scientific basis, appear on several alternatives within this section.

4.19.2, Table 4.31

The economic impacts of Alternatives C, D, and E are exactly the same and appear to not differ from Alternative A (No Action) which is not factual. A review of Table 2.5., Description of Alternative Actions, reveals that there are substantial differences in the Alternatives with respect to Fluid Minerals. For example, these alternatives differ with respect to mineral leasing and winter habitat NSOs, especially in the checkerboard area. This will result in different economic impacts. This demonstrates that the qualitative analysis done in this DEIS is not adequate to allow the public to discern the real difference among alternatives.

Page 837, 4.19.2

This discussion assumes that geological formation targets where mineral leasing or winter habitat NSOs apply can be reached by horizontal drilling from adjacent private lands (i.e., in the checkerboard area). The geologic target formations and unconventional nature of our exploration with possible development requires vertical and directional drilling methods not horizontal methods. It is possible horizontal drilling technology will make certain operations uneconomic based on the geologic formations and extraction techniques. Large contiguous tracts of land with NSOs do not allow much drainage or penetration into BLM minerals even with the longest horizontal well bore being beyond 10,000 lateral feet. At most, horizontal drilling will only penetrate and drain 2 miles or less under acreage with NSO, leaving significant acreage beyond the longest horizontal well "fallow". The application of horizontal drilling technology is particularly useful in areas with simple geology, stable geomechanics, and cooperative leases. In all other areas, vertical and direction drilling techniques are required to access the mineral rights.

Page 838, 4.19.2

The analysis presented here is simplistic and an overly optimistic analysis. This analysis is woefully incomplete and inadequate. The economic impacts of Alternatives C, D, and E are exactly the same and not different than Alternative A (No Action). A review of Table 2.5., Description of Alternative Actions, reveals that there are substantial differences in the Alternatives with respect to Locatable Minerals, and therefore, impacts should be different. This demonstrates that the qualitative analysis done in this DEIS is not adequate to allow the public to discern the real difference among alternatives.

Page 838, 4.19.2

It is presumptuous to assume that mineral production would remain consistent when it is acknowledged elsewhere in the DEIS that development is sensitive to costs and many of the alternatives include additional restrictions and design features that are likely to increase mining costs. This assumption is presented throughout the economic analysis and the potential reductions are not adequately disclosed relative to loss of output, employment and earnings. Each action alternative proposes measures ranging from complete withdrawal of mineral access to application of BMPs/Design Features for locatable mineral projects. These proposals will create economic consequences that are not adequately disclosed to the public. Further, implementation of even basic GRSG regulations will increase permitting requirements for

exploration and development of minerals. These economic impacts are also ignored. I recommend the DEIS incorporate the expected economic consequences relative to locatable minerals in these analyses.

Page 844 and 845, 4.19.3

This analysis ignores the social impact that will result from large scale withdrawal of locatable mineral entry. Eureka County is dependent on locatable mineral exploration and development. To ignore the potential for extensive mineral withdrawals is a disservice to the public and constitutes incomplete presentation of information and analysis.

Page 846, 4.19.3

There is a statement about Eureka County that states “However, no particular impacts were identified that would affect that nearly 80% of employment and over 90% of earnings in Eureka County are due to mining, including oil and gas (see Appendix M). BLM does not expect mineral production to differ among the alternatives at least in the first three to five years following implementation; longer term impacts are uncertain, and depend on site-specific and operator-specific characteristics.” 4-254

This excerpt shows that BLM is dismissing valid local concerns based on a flawed impact analysis and faulty unsupported assumptions that lead to a “no impact” conclusion. We demand that these shortcomings be addressed. The faulty and deficient socioeconomic analysis appears to be structured with the purpose of justifying added restrictions because of limited, or no, major economic impact. This is disingenuous, arbitrary, and capricious and not based on usage of the best available, and locally sourced, information.

Page 851, 4.20

Please detail why "development of mineral resources" is singled out as introducing additional ignition sources into the planning area. Please review comments above and provide citations/information detailing how this represents factual information.

Chapter 5

General Comments Regarding Chapter 5:

This very qualitative discussion of impacts is inadequate. The treatment of impacts is not sufficient to allow the public (or the authorized officer) to determine real impacts and the magnitude of the impacts.

The cumulative impacts section does not include the NSO on PPMA and PGMA, which certainly would change the cumulative impacts. Similarly the NSO for winter habitat is not included nor is the inclusion of the checkerboard area as PPMA. The analysis needs to be consistent once clear direction and final decisions are made in the FEIS.

The cumulative effects analysis for Climate Change is quite general and subjective. Is this based on best available science (no references are included)? Is it a complete analysis? Did the Climate Change analysis use a peer reviewed and established protocol? Will the Climate Change analysis be defensive if challenged?

Cumulative Impact Chapter states oil and gas is not a factor; however; existing proposed actions and RFDs should be considered in the FEIS since the RFD in Appendix H is not accurate.

The Cumulative Impacts analysis assumes that geological formation targets where mineral leasing or winter habitat NSOs apply can be reached by horizontal drilling from adjacent private lands (i.e., in the checkerboard area). The geologic target formations and unconventional nature of our exploration with possible development requires vertical and directional drilling methods not horizontal methods. It is possible horizontal drilling technology will make our operation uneconomic based on the geologic formations and extraction techniques we plan to implement. Large contiguous tracts of land with NSOs do not allow much drainage or penetration into BLM minerals even with the longest horizontal well bore being beyond 10,000 lateral feet. At most, horizontal drilling will only penetrate and drain 2 miles or less under acreage with NSO, leaving significant acreage beyond the longest horizontal well “fallow”. The application of horizontal drilling technology is particularly useful in areas with simple geology, stable geomechanics, and cooperative leases. In all other areas, vertical and direction drilling techniques are required to access the mineral rights.

Appendix A

Concerns exit with the Required Design Features (RDFs) in Appendix A. The BLM proposes a number of RDFs addressing roads, operations, and reclamation. While some of these design features prove effective in many instances, they should rather be incorporated as “preferred” or “suggested”, and not “required.” Site-specific circumstances may dictate that certain design features are not technically feasible, economic, or appropriate, and should not be assumed to be universally effective or applicable. Exceptions are allowed for in the Amendments but the burden is on the operator to prove that the RDF is unnecessary, rather than the agency demonstrating that the design feature is necessary. The BLM should retain a list of practical best management practices (BMP) that are effective and can be applied based on site-specific circumstances, rather than required design features that may not be universally applicable. Alternative E (State alternative) will include modified Design Features that address many of these concerns.

Appendix E

Item I.C. Habitat (Disturbance Monitoring):

The 18 threats identified by the USFWS were combined into three categories: sagebrush, non-habitat (human footprint), and energy and mining. Non-habitat only includes human impacts, but within the Planning Area and the areas designated as PPMAs, PGMA, PPH, and PGH there are multiple ecological sites that would be considered as non-habitat (e.g., an ecological site that supports a salt desert shrub community with no sagebrush). These areas need to be included in the initial baseline or monitoring of acreages to ensure that disturbance in these areas is accounted for and not counted as habitat disturbance. Non-habitat cannot be categorized as only where there is human footprint, this is not scientifically defensible on any level.

Item I.E. Effectiveness Monitoring:

There does not appear to be any effectiveness monitoring for mitigation implementation. There is no credit in the DEIS for habitat enhancement or mitigation. These measures would add to the amount of seasonal habitats. How enhancements and mitigation successes will be considered in relation to disturbance caps like 3 percent. There is a concern that a disturbance cap will only be tracked for impacts to habitat but not have any tracking system to put habitat back into the cap for mitigation and enhancements which is normally how caps work for other wildlife species. There is also concern regarding what methods and

protocols BLM will use to track habitat data that will go into enforcing a disturbance cap. If a disturbance cap is utilized, then the FEIS must have a transparent and defensible methodology. Historically, the BLM has not a methodology or a tracking system for disturbance, mitigation, and enhancement analysis that is accurate and consistent.

Appendix G:

In some cases, there are data sets that have been collected over a period of five years that refute the need for restrictions. Stipulations, NSOs, and timing limitations are not necessary. In many cases the NSOs, stipulations, and timing limitations are based on no data, best guesses, or outdated data.

There should be allowance in all restrictions (i.e., NSOs, COAs, CSUs, and TLs) to be waived, modified, or accepted based on project-specific data. It is recommended that there be allowance for baseline studies or habitat assessments to be conducted and that any seasonal restrictions or disturbance restrictions be developed based on the project-specific data. This same concept will apply to determining exactly where winter, nesting, and brood rearing habitat occur based on field survey data not general GIS map shape files as a subset of PPH. At this time, NDOW and BLM cannot put into a decision record or a condition of approval exactly where timing limitations should be for these seasonal habitats due to the lack of understanding where they exactly occur. Prior to any project NEPA analysis, the proponent is required to conduct baseline studies and this may occur over one or more years. Such data should be taken into account and the restrictions reviewed in light of the collected data. This would conform to the BLM's mandate to use "best available science".

Appendix H

Appendix H specifically references oil and gas activities in the Assumptions for the Reasonably Foreseeable Development Scenario; however, the assumptions are not in agreement with the information industry has submitted to the BLM as part of two proposed actions and the public record. This should be corrected in the FEIS.

Appendix O

As indicated above, the assumptions used on Appendix H are incorrect and gas economic value is not accurate and significantly undervalued. This analysis should utilize the information in the public record in order to accurately analysis the positive economic value of development in the State of Nevada.

Rather than imposing a one-size-fits-all prescription, we urge the BLM to consider local conditions before, during and after any tools are deployed. In habitat locations with health and thriving sage grouse populations, restrictions should be more flexible; where sage grouse populations and habitat are struggling, restrictions should be tighter. Collaborative adaptive management would result in this kind of habitat management strategy. Evolving science and field data will guide us to what the species needs to succeed. Our improved understanding and best available science will inform future regulatory mechanisms, and the collaborative adaptive management procedures will allow land managers and land users to be responsive and proactive

Closing Comments

We look forward, as a Cooperating Agency and locally affected government, to assist BLM and USFS in coordinating change to the EIS and LUP amendments based on our proposals and consistency with our local plans and policies. Our strongest contention remains that any GRSG conservation problem must have economic solutions in order to work and be based solely on adaptive management. A more effective route would be real, actual planning and conservation actions taking place on the basis of local collaboration for economic benefit and specific needs as opposed to top-down, one-size-fits-all planning that the DEIS Alternatives are taking.

We further contend that that the BLM and USFS has sufficient regulatory control mechanisms to address healthy rangeland conditions and GRSG conservation and should be fleshed out in an additional alternative.

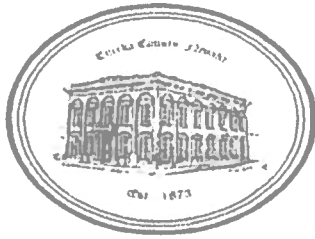
We look forward to coordinating and working with BLM on the Final EIS and LUP revisions.

Respectfully,



J.J. Goicoechea DVM, Chairman
Eureka County Board of Commissioners

Eureka County follow up letter regarding DEIS comments,
April 7, 2014



EUREKA COUNTY BOARD OF COMMISSIONERS

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April 7, 2014

Ms. Amy Lueders, State Director
Nevada Bureau of Land Management
1340 Financial Blvd.
Reno, Nevada 89502

RE: Eureka County follow-up on Greater Sage-Grouse Draft Land Use Plan Amendment and EIS

Dear Ms. Lueders:

Eureka County timely provided 125 pages of substantive comment on the Nevada and Northeast California Greater Sage-Grouse Draft Land Use Plan Amendment and Environmental Impact Statement (DEIS). We provided input on the DEIS not only as a cooperating agency in the NEPA process, but as local government with the responsibilities of protecting our citizen's welfare.

The Memorandum of Understanding (MOU) between Eureka County and the Bureau of Land Management (BLM) calls for BLM to keep Eureka County "apprised of current events and timeframes in relation to this EIS." The MOU also outlines that "BLM will consider and may use Eureka County input and proposals to the maximum extent possible and consistent with responsibilities as lead agency...." The MOU requires Eureka County and BLM "to cooperate by informing each other as far in advance as possible, of any related actions, issues or procedural problems that may affect the environmental analysis and documentation process or that may affect either party" and "Eureka County and BLM will work together cooperatively and will communicate about issues of mutual concern."

The MOU requires Eureka County to "provide BLM a document that describes any inconsistencies between the RMP amendments and associated EIS and Eureka County's plans, laws, policies, and controls. Any such document will also request that BLM describe in the EIS the extent to which such inconsistencies will be reconciled (according to 43 CFR 1610.3-1, 40 CFR 1502.16, and 40 CFR 1506.2)...." The comment letter from Eureka County on the DEIS was the document that met this responsibility.

We are concerned that we have not received any contact or response from BLM regarding our input. It was apparent that when we reviewed the DEIS that BLM was not sincere about coordinating with Eureka County for consistency with our plans, policies, laws, and controls because of the voluminous amounts of inconsistent material in the DEIS. This is further evidenced by the fact that our review and comment on the preliminary drafts of the DEIS affected no change. BLM did not even correct misspellings or grammatical errors that we had previously pointed out. This shows that BLM did not even read our previous comments and input.

We acknowledge that the FEIS is being completed and may address our comments, concerns, and the many inconsistencies with our plans, policies, and controls. However, we do not see how BLM will be

able to do so adequately without Eureka County at the table defending and clarifying our position and the various inconsistencies.

This letter is meant to engage BLM in the dialogue necessary to ensure that BLM meets the obligations of the MOU and the various laws and regulations. BLM is obligated, when inconsistencies arise, to meet with local governments in order to work towards consistency. This is not happening and there has been absolutely zero effort by BLM to follow-up on the status of the EIS with Eureka County. We request that BLM adequately coordinate its efforts with Eureka County to, as the MOU states, "cooperate by informing each other as far in advance as possible, of any related actions, issues or procedural problems that may affect the environmental analysis and documentation process or that may affect either party" and "work together cooperatively and ... communicate about issues of mutual concern."

Respectfully,



J.J. Goicoechea DVM, Chairman
Eureka County Board of Commissioners

cc: BLM Director Neil Kornze
US Congressman Mark Amodei
US Senator Dean Heller
US Senator Harry Reid
NV Senator Pete Goicoechea
NV Assemblyman John Ellison
NV Governor Brian Sandoval

Eureka County comment on Draft Proposed Plan Amendment,
June 13, 2014



EUREKA COUNTY BOARD OF COMMISSIONERS

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June 13, 2014

Mr. Joe Tague, Branch Chief
Renewable Resources and Planning
Bureau of Land Management
Nevada State Office
1340 Financial Blvd.
Reno, Nevada 89502

RE: Eureka County comment on Greater Sage-Grouse Draft Proposed Plan Amendment

Dear Mr. Tague:

While we are appreciative of the opportunity to review the Draft Proposed Plan Amendment (DPPA), we find it disingenuous for BLM/USFS to provide such limited notice and timeframe for review and comment. It was impossible to plan for the review period because it became a moving target. We kept anticipating receipt of the DPPA based on BLM/USFS letters and statements but the date for delivery kept being pushed further out in conflict with other pressing items we are involved in. BLM/USFS has had months to construct the document but then provided less than two weeks for review. We received the DPPA in afternoon of Monday June 2 and two weeks for review as promised would have through June 16, not June 13. Due to other commitments and the constrained timeframe, we simply were not able to provide a thorough review. This underscores the cavalier attitude toward and lack of coordination with Eureka County.

The Memorandum of Understanding (MOU) between Eureka County and the Bureau of Land Management (BLM) calls for BLM to keep Eureka County "apprised of current events and timeframes in relation to this EIS." The MOU also outlines that "BLM will consider and may use Eureka County input and proposals to the maximum extent possible and consistent with responsibilities as lead agency...." The MOU requires Eureka County and BLM "to cooperate by informing each other as far in advance as possible, of any related actions, issues or procedural problems that may affect the environmental analysis and documentation process or that may affect either party" and "Eureka County and BLM will work together cooperatively and will communicate about issues of mutual concern."

The MOU requires Eureka County to "provide BLM a document that describes any inconsistencies between the RMP amendments and associated EIS and Eureka County's plans, laws, policies, and controls. Any such document will also request that BLM describe in the EIS the extent to which such inconsistencies will be reconciled (according to 43 CFR 1610.3-1, 40 CFR 1502.16, and 40 CFR 1506.2)...." The cover letter for the DPPA, citing a prior letter, requested comments on the consistency with our local plans. The comment letter from Eureka County on the DEIS was the document that met the responsibilities under the MOU and request from BLM. We request that BLM adequately seek consistency with not only our plans, but our policies and proposals as required by law and regulation.

We will not take the time to belabor the substantive effort we took on the DEIS to highlight these inconsistencies. We expected and continue to expect BLM to reach out to us to coordinate on finding this consistency to the maximum extent rather than wasting our time pointing these issues out again when we have already previously done so. As we previously pointed out, we do not see how BLM will be able to adequately address our comments, concerns, and the many inconsistencies with our plans, policies, and controls without us at the table defending and clarifying our position and the various inconsistencies.

BLM is obligated, when inconsistencies arise, to meet with local governments in order to work towards consistency. This is not happening and there has been absolutely zero effort by BLM to follow-up on the status of these inconsistencies. We request that BLM adequately coordinate its efforts with Eureka County to, as the MOU states, "cooperate by informing each other as far in advance as possible, of any related actions, issues or procedural problems that may affect the environmental analysis and documentation process or that may affect either party" and "work together cooperatively and ... communicate about issues of mutual concern."

It is apparent that BLM is not sincere about coordinating with Eureka County for consistency with our plans, policies, laws, and controls because of the voluminous amounts of inconsistent material remaining in the DPPA. This is further evidenced by the fact that our review and comment on the preliminary drafts of the DEIS affected no change.

We do acknowledge some changes in the DPPA with language that appears to increase management flexibility and empower adaptive management. However, these changes are simply rhetoric that will result in no positive effect or true adaptive management on the ground because the rigid, inflexible habitat objectives, disturbance restrictions, and habitat delineations still have no flexibility under the proposed action regardless of the status of Greater Sage-Grouse populations on the ground.

We call for BLM/USFS to complete the analysis necessary to implement our local plans, policies, and proposals for conservation of GSG in Eureka County. If BLM/USFS analysis determines that our plans, policies, and proposals will not benefit and conserve GSG in Eureka County, then BLM/USFS needs to describe why and provide the analysis defending that position. We are certain that if our Master Plan and GSG proposals were incorporated and followed, GSG would thrive and habitat would be improved all while maintaining a strong and vibrant economic base.

We again exhort BLM/USFS to take an adequate hard look at our comments on the DEIS and apply the necessary changes to incorporate our comments, plans, policies, and proposals.

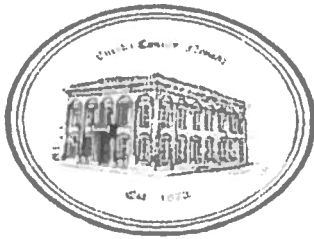
We look forward to coordinating and working with BLM/USFS on the Final EIS and LUP revisions.

Respectfully,



J.J. Goicoechea DVM, Chairman
Eureka County Board of Commissioners

**Eureka County preliminary comment on Administrative Draft
Final EIS, May 6, 2015**



EUREKA COUNTY BOARD OF COMMISSIONERS

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May 6, 2015

Mr. John Ruhs, Acting State Director
Nevada Bureau of Land Management
1340 Financial Blvd.
Reno, Nevada 89502

RE: 1610 (NV930); Review extension request and preliminary input on Sage-Grouse LUPA ADFEIS

Dear Mr. Ruhs:

We submit this letter to you as Eureka County's preliminary input on the Greater Sage-Grouse Land Use Plan Amendment Administrative Draft Final EIS (ADFEIS).

First, we request an extension of time to review the ADFEIS. We did not receive our copy until April 30 and the cover letter states that the input must be submitted no later than May 13, 2015. This provides us less than two weeks and only 9 business days to try to review, digest, and construct meaningful comment on the voluminous material and any changes that were made from the DEIS. We note that our MOU with BLM outlines the intent of providing us with "no less than 15 business days for the review of and commenting on these draft documents." Further, we provided 125 pages of comments on the DEIS. We are finding it extremely difficult to track down any changes based on our comments. The responses to comments section of the ADFEIS lumps comment responses together and does not provide enough specificity to allow a streamlined review. Essentially, we have to review the entire document as if it were the first time. Please grant an extension until May 29th or at least May 21st which would allow the 15 business day review as requested in the MOU.

Below, we provide background into Eureka County's involvement in the process and what we believe is an overwhelming failure of BLM to adequately coordinate with Eureka County to include our proposals to the maximum extent possible and strive for consistency with our local plans, policies, and controls. We hope you will be able to provide the leadership necessary to correct and address outstanding issues.

About two months after the close of the comment period on the Greater Sage-Grouse Land Use Plan Amendment Draft EIS (DEIS), April 7, 2014, the Eureka County Board of Commissioners sent then BLM Nevada State Director, Ms. Amy Lueders, a letter (enclosed) outlining a number of issues. We highlighted MOU provisions that BLM was failing to comply with such as:

- Keeping Eureka County "apprised of current events and timeframes in relation to this EIS;"
- Considering and using "Eureka County input and proposals to the maximum extent possible and consistent with responsibilities as lead agency;"
- Cooperating "by informing each other as far in advance as possible, of any related actions, issues or procedural problems that may affect the environmental analysis and documentation process or that may affect either party;" and

- Working “together cooperatively” to “communicate about issues of mutual concern.”

We also noted that the 125 pages of substantive comment by Eureka County on the DEIS had considerable specific examples that met the responsibility of the County as outlined in the MOU to “provide BLM a document that describes any inconsistencies between the RMP amendments and associated EIS and Eureka County’s plans, laws, policies, and controls. Any such document will also request that BLM describe in the EIS the extent to which such inconsistencies will be reconciled (according to 43 CFR 1610.3-1, 40 CFR 1502.16, and 40 CFR 1506.2)...”

We expressed our concern that we had “not received any contact or response from BLM regarding our input. It was apparent that when we reviewed the DEIS that BLM was not sincere about coordinating with Eureka County for consistency with our plans, policies, laws, and controls because of the voluminous amounts of inconsistent material in the DEIS. This is further evidenced by the fact that our review and comment on the preliminary drafts of the DEIS affected no change. BLM did not even correct misspellings or grammatical errors that we had previously pointed out. This shows that BLM did not even read our previous comments and input.”

We acknowledged that there was still time for BLM to address our comments, concerns, and the many inconsistencies with our plans, policies, and controls but could not envision how BLM would be able to do so adequately without Eureka County at the table defending and clarifying our position and the various inconsistencies.

The letter closed with the following:

“This letter is meant to engage BLM in the dialogue necessary to ensure that BLM meets the obligations of the MOU and the various laws and regulations. BLM is obligated, when inconsistencies arise, to meet with local governments in order to work towards consistency. This is not happening and there has been absolutely zero effort by BLM to follow-up on the status of the EIS with Eureka County. We request that BLM adequately coordinate its efforts with Eureka County to, as the MOU states, ‘cooperate by informing each other as far in advance as possible, of any related actions, issues or procedural problems that may affect the environmental analysis and documentation process or that may affect either party’ and ‘work together cooperatively and ... communicate about issues of mutual concern.’”

Unfortunately, even with the effort we took to engage BLM, there was no follow-up or any effort by BLM to coordinate with us to address these issues.

A couple months later, on June 13, 2014, we provided another letter to BLM (enclosed), addressed to Mr. Joe Tague, on the Draft Proposed Plan Amendment. Many of the same issues and concerns of the April 7 letter were repeated. We noted that BLM was simply going through the motions to check of a box due to the very short timeframe for review and the continued failure to address our comments and coordinate with us regarding inconsistencies with our proposals, plans, policies, and controls. We highlighted that “we expected and continue to expect BLM to reach out to us to coordinate on finding this consistency to the maximum extent rather than wasting our time pointing these issues out again when we have already previously done so.”

We concluded in the June 2014 letter:

“We call for BLM/USFS to complete the analysis necessary to implement our local plans, policies, and proposals for conservation of GSG in Eureka County. If BLM/USFS analysis determines that our plans,

policies, and proposals will not benefit and conserve GSG in Eureka County, then BLM/USFS needs to describe why and provide the analysis defending that position. We are certain that if our Master Plan and GSG proposals were incorporated and followed, GSG would thrive and habitat would be improved all while maintaining a strong and vibrant economic base.

We again exhort BLM/USFS to take an adequate hard look at our comments on the DEIS and apply the necessary changes to incorporate our comments, plans, policies, and proposals.

We look forward to coordinating and working with BLM/USFS on the Final EIS and LUP revisions.”

As before, there was no follow-up or any effort by BLM to coordinate with us to address these issues or incorporate changes for consistency.

Our initial, cursory review of the ADFEIS spotlights the failure to incorporate our proposals and inconsistencies with our plans, policies, and controls are “explained away.” There are only two short paragraphs on page 6-27 with perfunctory statements about inconsistencies with county plans, policies, and procedures and nothing specific to the Eureka County. The ADFEIS states that “The BLM is aware that there are specific...local plans relevant to aspects of public land management that are discrete from, and independent of, federal law. However, the BLM is bound by federal law. As a consequence, there may be inconsistencies that cannot be reconciled” (p. 6-25). Yet, the ADFEIS nowhere identifies how any of the inconsistencies with Eureka County’s plans, policies, or controls is not in accordance with federal law. There continues to be no analysis that can conclude or determine that our plans, policies, and proposals will not benefit and conserve sage-grouse in Eureka County. If this analysis exists, BLM has made no effort to describe why BLM can defend that position. We are certain that if our Master Plan and sage-grouse proposals were incorporated and followed, sage-grouse would thrive and habitat would be improved all while maintaining a strong and vibrant economic base.

The NEPA regulations highlight in 40 CFR 1502.16 that the environmental consequences section of any EIS “shall include discussions of: (c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See §1506.2(d).)....” We note that there is no “discussion” of these possible conflicts in the environmental consequences section of the ADFEIS. Further, 40 CFR 1506.2 states that “(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law... (d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.” The ADFEIS inadequately addresses inconsistencies and does not have any language describing “the extent to which the agency would reconcile its proposed action with the [local] plan or law.

Additionally, question 23b of the CEQ FAQs further clarifies that conflicts with “Proposed plans should also be addressed if they have been formally proposed...in a written form, and are actively pursued by officials of the jurisdiction” and “The term ‘policies’ includes formally adopted statements of land use policy as embodied in laws or regulations. It also includes proposals for action such as the initiation of a planning process, or a formally adopted policy statement of the local, regional or state executive branch, even if it has not yet been


formally adopted by the local, regional or state legislative body.” The ADFEIS focuses only on plans and does nothing to address inconsistencies with the policies we specifically referenced.

Question 23c of the CEQ FAQs states that “In the Record of Decision, the decisionmaker must explain what the decision was, how it was made, and what mitigation measures are being imposed to lessen adverse environmental impacts of the proposal, among the other requirements of Section 1505.2. This provision would require the decisionmaker to explain any decision to override land use plans, policies or controls for the area.” We are puzzled on how BLM will meet this requirement in the ROD when there is simply no analysis to base any “decision to override land use plans, policies or controls for the area.”

Please, as current State Director, engage with us in the process to adequately incorporate our proposals, plans, policies, and controls for management of sage-grouse in Eureka County. We ask that you do not conclude the process is too far advanced to come to the table and “do it right.” We ask you to step back and re-evaluate the process to this point and address the grievous shortcomings of BLM to coordinate with us towards the mutual goal of conserving the sagebrush ecosystem and sage-grouse while providing for sustained socioeconomic stability.

In closing, please grant an extension for review of the ADFEIS and work with us to incorporate changes for maximum consistency with our local plans, policies, and controls before the Final EIS is published.

Respectfully,



J.J. Goicoechea DVM, Chairman
Eureka County Board of Commissioners

Enclosures (2)

cc: BLM Director Neil Kornze
US Congressman Mark Amodei
US Senator Dean Heller
US Senator Harry Reid
NV Governor Brian Sandoval
NV Senator Pete Goicoechea
NV Assemblyman John Ellison
NV Sagebrush Ecosystem Council
NV Boards of County Commissioners
NV Association of Counties
NV State Land Use Planning Advisory Council
Lauren Mermejo, BLM LUPA Project Manager, NV/NE CA Sub-region

Eureka County comment Administrative Draft Final EIS,
May 13, 2015



EUREKA COUNTY BOARD OF COMMISSIONERS

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May 13, 2015

Mr. John Ruhs, Acting State Director
Nevada Bureau of Land Management
1340 Financial Blvd.
Reno, Nevada 89502

RE: 1610 (NV930); Input on Sage-Grouse LUPA ADFEIS

Dear Mr. Ruhs:

We submit this letter to you as Eureka County's input on the Greater Sage-Grouse Land Use Plan Amendment Administrative Draft Final EIS (ADFEIS).

First, we note our preliminary input provided through a letter dated May 6, 2015. This letter asked for an extension of time to review the ADFEIS. To date, we have not received a response to this request. Further, the letter focused on the overwhelming failure of BLM/USFS to adequately coordinate with Eureka County to include our proposals to the maximum extent possible and strive for consistency with our local plans, policies, and controls. We again ask that BLM/USFS properly and adequately coordinate with us to incorporate changes for maximum consistency with our local plans, policies, and controls before the Final EIS is published.

Given the exacting timeframe cavalierly imposed by BLM/USFS for review and comment on the ADFEIS, we found it impossible to construct any specific comments. BLM/USFS has had months—in fact over a year—to make changes to the EIS. Yet Eureka County and other local government cooperating agencies were provided less than two weeks for review, digestion of the material, and construction of meaningful comments. This underscores the BLM's efforts all along in "going through the motions" to reach a pre-determined outcome while largely ignoring Nevada's local governments.

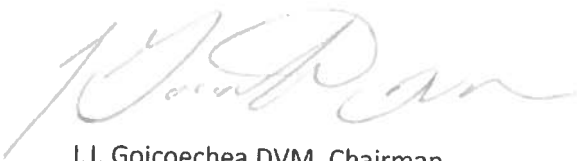
We recognize that many changes were made and assert that the changes made, especially related to habitat maps and associated restriction categories and disturbance caps, are too substantial to simply move from the public draft EIS to a final EIS. Given the EIS changes, reorganization, and incorporation of new analysis and information, BLM/USFS must provide a revised public draft EIS for full public participation and proper coordination and involvement of cooperation agencies.

Additionally, Eureka County never received a response to our comments on the DEIS. It is difficult to provide additional input into the ADFEIS without having an understanding on why changes were or were not made according to our previous comments. We cannot evaluate any changes in the ADFEIS in context without being able to compare with our previous comments. We ask BLM/USFS to provide us with the specific responses to our previous comments. We find that the predominance of our comments on the DEIS still apply to outstanding issues in the ADFEIS. We will not repeat these comments and fully expect BLM/USFS to

adequately coordinate with us to reach the obligations to reach consistency with our proposals, plans, policies, and controls. We ask BLM/USFS to read and familiarize itself with Eureka County's comments on the DEIS and adequately coordinate with us to incorporate changes in the EIS to address these comments and reach consistency with Eureka County. We request at least a full day to conference with BLM/USFS on these outstanding issues and find consensus on a path forward before the Final EIS is published.

Eureka County does support conservation of Greater Sage-Grouse and the sagebrush ecosystem. We also value positive, working relationships with BLM/USFS and other agencies. As you know, we are at a turning point in the West that hinges on the Greater Sage-Grouse. The EIS process to this point has not worked. It has not built the necessary bridges or positive partnerships to accomplish sustainability of the rangelands and our local economies and livelihoods. A large bulk of the provisions being proposed in the EIS for management of sage grouse will not work, will not result in benefit to the bird, the resource, or the socioeconomics of Nevada. All the EIS is doing in pushing the issue to be determined through court where we may all lose close-to-home control of the management. Please take the time now to work with Nevada communities to do what is right and keep the control as close to the people affected as possible by finding maximum consistency with the local government plans, policies, and controls.

Respectfully,

A handwritten signature in dark ink, appearing to read 'J.J. Goicoechea', is written over a light gray circular stamp that contains the text 'Eureka County Board of Commissioners'.

J.J. Goicoechea DVM, Chairman
Eureka County Board of Commissioners

cc: BLM Director Neil Kornze
US Congressman Mark Amodei
US Senator Dean Heller
US Senator Harry Reid
NV Governor Brian Sandoval
NV Senator Pete Goicoechea
NV Assemblyman John Ellison
NV Sagebrush Ecosystem Council
NV Association of Counties
NV State Land Use Planning Advisory Council
Lauren Mermejo, BLM/USFSLUPA Project Manager, NV/NE CA Sub-region

Email to BLM asking for specific responses to County comments
on DEIS, June 18, 2015

Jake Tibbitts

From: Jake Tibbitts <natresmgr@eurekanv.org>
Sent: Thursday, June 18, 2015 11:39 AM
To: 'Ruhs, John'; 'John_Ruhs@blm.gov'
Cc: Jackie Berg (jberg@eurekanv.org); 'jjgoicoechea'; 'Lauren Mermejo'
Subject: RE: Eureka County input on GRSG ADFEIS
Attachments: 5 13 15 Eureka Cnty input on GSG LUPA ADFEIS.PDF

Dear Mr. Ruhs,

We submitted the attached letter as input into the GSG Administrative Draft Final EIS. In the letter, we specifically requested that "BLM/USFS to provide us with the specific responses to our previous comments" because we "...never received a response to our comments on the DEIS. It is difficult to provide additional input...without having an understanding on why changes were or were not made according to our previous comments." To date, we have still not received a response to this formal request. Now that we are in the protest period, we especially need to understand why changes were or were not made. So again, we formally request a copy of BLM responses to our previous comments.

Thanks for your time and attention to this matter.

With regards,

Jake Tibbitts
Natural Resources Manager
Eureka County, NV
PO Box 682
Eureka, NV 89316

Phone: 775-237-6010

Fax: 775-237-6012

From: Jake Tibbitts [mailto:natresmgr@eurekanv.org]
Sent: Wednesday, May 13, 2015 2:30 PM
To: 'Ruhs, John'; 'John_Ruhs@blm.gov'; 'Lauren Mermejo'
Cc: Jackie Berg (jberg@eurekanv.org); 'jjgoicoechea'
Subject: Eureka County input on GRSG ADFEIS

Please find attached Eureka County's input on the Greater Sage Grouse LUPA Administrative Draft Final EIS.

Jake Tibbitts
Natural Resources Manager
Eureka County, NV
PO Box 682
Eureka, NV 89316

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Elko County Board of Commissioners

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May 13, 2015

Bureau of Land Management
Attn: Mr. John Ruhs, Acting State Director
1340 Financial Blvd.
Reno, Nevada 89502

Re: Nevada and Northeastern California Greater Sage-Grouse Land Use Plan
Amendments and Final Environmental Impact Statement (LUPA/FEIS).

Mr. Ruhs;

Elko County received the above referenced LUPA/FEIS for Cooperating Agency administrative review on Thursday April 30, 2015 the deadline for comment is Wednesday May 13, 2015. This provides us nine (9) days to attempt to review, understand, comprehend and construct meaningful comment on the voluminous material and any changes that were made from the DEIS. Our MOU with the BLM outlines we would have "no less than fifteen (15) business days for the review and commenting on these documents." As you are aware the LUPA/FEIS is over 1,600 pages of information and regulation concerning the Greater Sage-Grouse in Northeastern California, Central and Northern Nevada. We are finding it extremely difficult to track changes based on our comments of the DEIS. The responses to the comments section of the LUPA/FEIS lumps comment responses together and does not provide enough specificity to allow a streamlined review. Effectively, we are forced to attempt to review the entire document. Additionally the Administrative Review requires that the cooperating agency must provide written comment as per the provided Cooperating Agency Review form. Given the short deadline and extensiveness of the document and requirements of how the comments are to be submitted it is an impossibility for us or any entity to provide any reasonable or concise comment to the LUPA/FEIS as written.

Furthermore, we believe that there is a tremendous failure by the BLM/USFS to adequately coordinate with Elko County to include our comment or evaluation to any extent and strive for consistency with our local plans, policies, and controls. Therefore, Elko County offers the following general comments concerning the “Nevada and Northeastern California Greater Sage-Grouse Land Use Plan Amendments and Final Environmental Impact Statement”.

Elko County offered numerous comments concerning the Land Use Plan Amendments Draft Environmental Impact Statement (LUPA/DEIS) and the direct impacts that the alternatives as written will have on the County, State and Region. Many comments have been offered by entities, special interest groups and individuals concerning the many implications of Greater Sage-Grouse (GRSG) populations and habitat. Elko County asserts that the United States Fish and Wildlife Service (USFWS), the Bureau of Land Management (BLM) and the United States Forest Service (USFS) have failed to completely identify the full impacts of the Alternatives offered in the GRSG LUPA/FEIS including social and economic impacts to private concerns that the preferred alternative will serve on the social and economic detriment of the regions.

In our experiences with the NEPA process as a cooperating agency we have many times provided specific pertinent scientific data and information concerning the respective NEPA project. In most all circumstances this information and data has been disregarded by the agency as rhetorical, non-scientific, unquantifiable or unsubstantiated by the agencies. Therefore, Elko County has developed acute reservations concerning the federal land management agencies and the NEPA process. We reason that the process is entirely a matter of the agency personnel interpretation of information and data that best suits management policies set forth by the current administration and/or Special Interest Groups that have filed in federal courts. Elko County has incessantly entered into Memorandums of Understanding (MOU's) with the federal agencies with no satisfaction or direct contribution into the various decisions of the respective EA, EIS or any other planning effort. However, Elko County offers the following summary comments concerning the Nevada and Northeastern California Greater Sage-Grouse Draft Land Use Plan Amendments and Environmental Impact Statement.

Comments:

Range Management

Elko County maintains that the GRSG LUPA/FEIS has not identified and conceded the reality that changes in range management over the past seventy five (75) years or more have led to the current status of lost sage steppe habitat because of wildlands fires that

have destroyed and devastated all wildlife and wildlife habitat. The federal government is now expecting local, state and regional economies to concede these losses and concede our constituent's civil rights to utilize public resources and access to federally managed lands. Elko County insists that these mandates as written are not in compliance or accordance with the multiple use mandates of the Federal Land Policy and Management Act (FLMPA) of 1976 and NEPA.

Elko County has established and quantified within the "Elko County Greater Sage-Grouse Management and Conservation Strategy Plan" that peak Sage-Grouse populations coincide with much greater numbers of agricultural developments post European settlement supplying water and habitat including livestock cattle and sheep, grazing within Sage-Grouse habitats. Elko County believes and has provided information in "Elko County Greater Sage-Grouse Management and Conservation Strategy Plan" that identifies inaccuracies leading to changes in federally managed public land use policies over the past 75 years by the federal land management agencies. Federal land use policies that have created and enhanced the habitat plight and predicament that the western states are now enduring. The changes that reduced livestock grazing and other multiple uses on federally managed public lands that have led to habitat decadence and overgrowth ultimately leading to catastrophic wildland fires that have destroyed millions of acres of wildlife and wildlife habitat including the Greater Sage-Grouse and its habitat.

GRSG Populations and the ESA

Elko County emphasizes that the alleged best current scientific data utilized by the USFWS, in their summation of the measures and policies for Sage-Grouse population and habitat protection and conservation is not the best current scientific information available. Elko County contends that federal land managers must base Sage-Grouse and habitat decisions on the best current available science and not the threat of litigation. Elko County argues that the current data and information utilized by the USFWS to develop the posture and summation of federal land and wildlife managers will cause further loss of millions of acres of federally managed public lands resources, wildlife and wildlife habitat. Consequently the process also causes the decline or loss of many multiple uses including but not limited to mining, mineral exploration, recreation, agriculture and livestock grazing, while having severe negative impacts to the local, regional and national economies.

We have established that USFWS does not have a basis to list the GRSG as warranted but precluded under the Endangered Species Act (ESA) based on the mandates of the act. The USFWS have relied on an ambiguous and discerning clause concerning animal habitat as the sole issue. The "Elko County Greater Sage-Grouse Management and Conservation Strategy Plan" has identified the malfeasance of the USFWS GRSG populations in a white paper entitled "*The Greater Sage Grouse Does Not Warrant*

Listing Under the Endangered Species Act.” Prepared by; Quinton J. Barr, Range Consultant, Western Range Services.

Mr. Barr states: Any answer to this question must be consistent with the primary purposes of the ESA and its definitions of endangered and threatened species. R. Barr concludes that the ESA states that the primary purposes of the Act are to: 1] “provide a means whereby ecosystems upon which endangered species and threatened species depend may be conserved” and, 2] “provide a program for the conservation of such endangered species and threatened species” (see ESA, Sec. 2(b) Purposes) (1). Since these purposes apply specifically to “endangered species and threatened species” a finding that a species is either endangered or threatened must occur before a species or the ecosystem (habitat) upon which it depends, falls under the purview of the Act. By definition under the ESA, an “endangered species” is “any species which is in danger of extinction” and a “threatened species” is “any species which is likely to become an endangered species within the foreseeable future” (see ESA, Definitions, Secs. 3(6) and 3(20)) (1). ***Thus, under the ESA, a species can only be listed as endangered if it faces imminent extinction, or as threatened if it is at risk of extinction in the foreseeable future.***

The current estimated population for greater Sage-Grouse exceeds 535,000 birds (see USFWS Findings, Table 4, page 13921) (2), which is 107 times greater than a minimum effective population of 5,000 birds. USFWS findings reported contemporary rates of decline for Greater Sage-Grouse estimated by several sources. Connelly et al. 2004 estimated the rate of decline from 1986 to 2003 to average 0.37% per year, and reported that some populations actually increased during that period. At that rate of decline, it would take more than 1,260 years for the estimated current Greater Sage-Grouse population to dwindle to a minimum effective population of 5,000 birds range wide, and it would take more than 1,060 years for each of the stronghold areas to fall below a minimum effective population of 5,000 birds. In contrast, WAFWA 2008 estimated the rate of decline from 1985 to 2007 to be 1.4% per year. At that rate of decline, it would take more than 330 years for the estimated current Greater Sage-Grouse population to dwindle to a minimum effective population of 5,000 birds range wide, and it would take more than 280 years for each of the stronghold areas to fall below a minimum effective population of 5,000 birds.

In the ongoing GRSB issue, it is crucial for all to understand that by agency count there are 535,000 birds. The minimum viable population for genetic survivability – the Endangered Species Act listing criteria, is 5,000 birds. There over 100 times the number of Sage-Grouse required for an effective population. Yet the USFWS threatens they will list the bird unless citizens and local government acquiesce to oppressive agency habitat management plans on federally managed lands and ultimately privately owned property.

Wildland Fire

Elko County has provided information to the BLM/USFS in the preparation of the GRSG LUPA/FEIS concerning several issues that have been identified by the USFWS as primary causes of population and habitat loss. The primary cause of habitat loss is due to catastrophic wildland fires that the west has suffered of the past 50 years.

DR. PAUL TUELLER, professor of range ecology at UNR for 42 years: *“The extreme fire years in the recent past must be due, in part, to the noted reduction in grazing the forage base, resulting in significant fuel buildup. The lower and sometimes upper reaches of the mountain ranges have turned yellow as a result of post-fire cheatgrass establishment...Development of intensive grazing strategies is needed to allow utilization of cheatgrass and reduce future fuel loads. Grazing animals will be the tools that must be used to make desirable changes in vegetation.”*

DR. LYNN JAMES, director of the USDA ARS plant research laboratory at Logan, Utah for 35 years: *“Fires depend on adequate fuels-grasses and certain shrubs. The larger the fuel load, the hotter the fire will burn and the more damaging it will be...An economical and efficient way to remove excess grass is with an on-off grazing system. Fuel loads are reduced, while producers benefit from forage consumed by their livestock. Other grazing strategies can aid in preventing or managing wildfires and controlled burns. Fires that do occur burn with reduced intensity and a general upward trend in rangeland condition is sustained.”*

DR. KEN SANDERS, professor of rangeland ecology at the University of Idaho for 32 years: *“The third biggest threat is the reduction in grazing on public rangelands. If the proposed sage grouse habitat guideline that recommends leaving a grass stubble height of 18 centimeters is applied, it will not only result in an adverse economic impact on livestock producers ,but it will also result in increased, higher intensity wildfire due to a larger fuel load.”*

DR. WAYNE BURHHARDT, UNR professor of range management, emeritus: *“For the past 40 years, the management strategy, at least on public lands, has been to reduce or modify livestock grazing on these annual grasses, presumably to allow the re-establishment of native bunchgrasses. This has proven to be disastrous. Pre-adopted annual grasses [such as cheatgrass] can out-compete native bunchgrasses for early spring moisture on arid range sites. Reductions in grazing on these rangelands have not promoted the establishment of native flora, but rather have allowed flammable fuel build-up and increased fire frequency, intensity and spread. These unnatural fires remove the sagebrush overstory, prevent shrub re-establishment and create the conditions for the*

establishment of monotypic annual grasslands on what should be a shrub/grassland vegetation community.”

GRSG Predation

The BLM, USFS and USFWS have failed to identify nest and youngling GRSG predation as a significant cause to loss of populations in the west. The BLM/USFS GRSG LUPA/FEIS will not associate the loss of population with the predation issue and has not addressed needed management practices to reduce predation occurrence to the GRSG. Nest and youngling predation has been considered by some researchers to be the primary limiting factor for Sage-Grouse populations (e.g., Batterson and Morse 1948, Autenrieth 1981, Gregg 1991, Gregg et al. 1994), and predation on eggs and youngling birds was considered by Schroeder et al. (1999) as the primary cause of mortality. Studies have demonstrated that the primary nest predator species varies among study sites. Avian predators, primarily corvids (ravens, crows, and magpies), are the primary predators in Nevada.

DR. PETER COATES, USGS Wildlife Biologist stated that sixty percent (60%) of nest depredation is due to ravens, and ninety-five percent (95%) of total nesting loss is due to predation. Federal and state agencies do not report, account or estimate wildlife loss due to fire. With both predation and fire loss, the USFWS response is to downplay actions which have substantially protected the sage grouse. Ted Koch, USFWS Nevada State Supervisor, addresses predator control only as the last resort. Collecting road kill to discourage predator attraction and congregation has higher priority. Warding ravens off by daily covering landfills with tarps is not useful to sage grouse. High-personnel programs are the agency goals, whether spotted owl, sage grouse or red snapper are killed under those very programs. Despite the reality that predators decimate sage-grouse nine times over, the agencies tell us that predator control is a long-term problem and should not be initiated because we will have to pursue it indefinitely. Studies and policy drafts with indefinite timetables are acceptable, but actions which may reduce the need for a massive bureaucracy are unacceptable.

Elko County contends that federal legislation must be prepared concerning changes to the Migratory Bird Treaty Act of 1918. An action to remove the Raven (*Corvus corax*), also known as the Northern Raven from protected status to permit local and state regulation concerning GRSG depredation without further federal intervention as per 50 CFR 21.43. The original 1918 statute implemented the 1916 Convention between the U.S. and Great Britain (for Canada) for the protection of migratory birds. Later amendments implemented treaties between the U.S. and Mexico, the U.S. and Japan, and the U.S. and the Soviet Union (now Russia).

Specific provisions in the statute include:

- Establishment of a Federal prohibition, unless permitted by regulations, to "pursue, hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry, or cause to be carried by any means whatever, receive for shipment, transportation or carriage, or export, at any time, or in any manner, any migratory bird, included in the terms of this Convention . . . for the protection of migratory birds . . . or any part, nest, or egg of any such bird." (16 U.S.C. 703).

As the USFWS is considering the ESA listing of an indigenous North American species, the Greater Sage-Grouse, numerous studies have disclosed and proved that the primary predator of the GRSB nest and younglings is the Raven (*Corvus corax*) a nonnative invasive species. This reality alone should command legislative changes to the Migratory Bird Treaty Act to remove the common raven from the protected list to ensure the protection and security of future GRSB populations and other indigenous species that the common raven is known to predate in the United States. The USFWS is considering the listing of the GRSB and subsequently will make critical decisions that will have severe negative impacts to public and private lands in eleven western states. Changes to the Migratory Bird Treaty Act must be made to provide the tools for local and state agencies to control the predation of the Greater Sage-Grouse as an indigenous North American species while addressing sage steppe habitat using alternative management practices to curtail wildland fire.

Culture, Socio-economics and Economies

Currently the Bureau of Land Management operates under Instructional Management Memorandum No. 2012-043. This document, issued on Dec. 27, 2011 without public notification or participation by an acting director. The action was implemented by the BLM and subsequently adopted by the USFS for GRSB habitat management practices. Its nature is to condition both agency and public for endangered species listing of the Greater Sage-Grouse through initiating ESA measures before actual listing. The BLM and USFS maintain that the public will not notice a change since the change already will have occurred with scant publicity.

The BLM has removed from Elko County production in excess of 2,000 square miles of federally managed public lands to protect the Greater Sage-Grouse. Effectively declaring humans are unfit to use an area the size of Delaware. Sourcing the USDA agricultural census, the agricultural productivity to be lost, totals nearly \$31 million per year. A vast portion of the removed ground additionally has mineral, oil/natural gas, wind energy and other natural resource potential, with their concomitant potential for direct and indirect economic benefit and jobs.

March 2012, the BLM deferred the China Mountain Wind Energy Project citing that forty two percent (42%) of the Sage-Grouse population in a management area is within the proposed project site, so the decision will await the BLM's completion of environmental impact statements on conserving the Sage-Grouse to prevent its listing as an endangered species. The project would have provided Elko County \$500 million dollars to the local economy in phase one construction and roughly 750 construction jobs and up to 50 permanent jobs. The full project would provide \$18.8 million in property taxes on the Nevada side, with \$7.6 million going to the state and the remainder to Elko County.

In March 2013, the BLM announced an Elko County oil and gas lease reduction from 208 to 113 square miles. The agency touts collecting \$1,788,595 in lease fees, but not the opportunity cost associated with the withdrawn parcels. These actions taken without local or state public involvement have already had severe negative impact to the local and regional culture and economies. But yet the GRSG LUPA/FEIS clearly states that preferred alternative within the GRSG LUPA/ FEIS will not serve severe impacts.

In 2010 the Elko County Board of Commissioners addressed changes to federally managed public land use management policies in the Elko County Public Land Use and Natural Resource Management Plan and again in 2012 in the Elko County Greater Sage-Grouse Management and Conservation Strategy Plan. These two plans along with many others, prepared by local agencies were provided to the BLM and USFS for review and consideration during preparation of the GRSG DEIS as per NEPA requirement. The plans submitted by Elko County contained realistic professionally prepared information concerning federal land management policy changes and their impacts to the local, state and regional economies; *The Impact of Federal Land Policies on the Economy of Elko County, Nevada, George Leaming Report 12/2010*) (*Harris Technical Report UCED 2006/07-11*). Elko County again was more than frustrated that neither of these documents were given any consideration in the GRSG LUPA/FEIS. The documents provide professionally established information that corroborates that the preferred alternative GRSG LUPA/FEIS will serve severe economic impacts not only to Elko County but the entire planning area and all western states with GRSG habitat and populations.

Elko County senses that that the GRSG will provide the same negative severe impact to Nevada and much of the west as did the Spotted Owl. ***“The consequences for the rural economy in many areas of the Pacific Northwest were devastating. As many as 135 mills were closed, pushing unemployment up to 25 percent in some small communities. The mill closings affected cutters, loggers, and truck drivers, including other businesses that provided services to them were also out of work.”*** Des Jardins, J. (1997) *Environmental Ethics*; Power, T. (1995) *Economic Well-Being And Environmental Protection a report By 60 Northwest Economists, Reviewed by George McKinley*. There were many comprehensive economic impact studies prepared during the Spotted Owl listing, however they were also disregarded and deemed exaggerating. *“The*

environmentalist argued that the economic impact of the listing has been exaggerated. They maintain that the loss of thousands of timber industry jobs during the 1990s was the result of long-term processes related to the inherent instability of the timber industry, industry restructuring, and overcutting of old-growth on both public and private lands.” The impacts have been proved and realized in the Pacific Northwest from the listing of the Spotted Owl. The GRSG LUPA/FEIS clearly states “*The alternatives are unlikely to have a significant impact on state tax revenues*”. (Chapter 4 pg. 417) Although the LUPA/FEIS addresses public lands generated economic components, the GRSG LUPA/FEIS did not specifically address private local, state and regional economic components and impacts as required by NEPA.

Planning Strategy

USFWS State Director, Ted Koch publically stated that the public will have to concede to “***short term minimal sacrifices***” until the decline of the GRSG populations comes to an end. It materializes that the USFWS will utilize populations concerns when directly challenged, but has for the most part focused on the GRSG habitat issue. This statement indicates to the County that all issues associated with the GRSG should be equally focused on; the decline of GRSG populations, predation and loss of habitat must be equally addressed within any action that is mandated in GRSG LUPA/FEIS or any other federal land management action. Additionally Elko County believes that the federal agencies must identify and focus efforts on a smaller local planning area to identify and implement management actions specific to the individual areas or regions and refrain from the overall western states policy of a one size fits all planning strategy.

The USFWS, BLM and USFS have not fulfilled the mandate of NEPA in the review and consideration of local and state public land use management plans and have continually disregarded information and data that was specifically and professionally prepared specific to the GRSG population and habitat issues. Elko County believes that these plans are not considered because they are converse to the conclusions and findings of information provided by non-local sources. Elko County would ask for a review by the Committee on Environmental Quality to identify and quantify the BLM/USFS actions to disregard local and state data. Again Elko County maintains that planning areas must be locatable specific areas of habitat and populations and not based on large regions with varying GRSG habitat.

Federal Agency Actions

Many people of the west are still in economic peril from the extreme devastation caused by the listing of the Spotted Owl, an administrative decision that virtually obliterated many rural economies of the Pacific Northwest and other regions. Elko County contends

that the many petitions for rulings filed by Special Interest Environmental Groups in specifically identified federal courts is not an effort to protect wildlife species under the ESA, but to gain and maintain control of the federally managed lands. These actions and decisions are against the resolve and necessity of the taxpaying public that relies and utilizes the public lands for resources to maintain and preserve healthy, viable and solvent economies even during economic recession occurring in the majority of the country. The continual petitions, filings and subsequent rulings have proven to devastate western states economies and have initiated negative ramifications on public and private lands throughout the United States. Currently the United States national debt exceeds eighteen (18) trillion dollars and the 2015 US Federal budget deficit approaches five hundred (500) billion dollars. Can the United States afford to continue to limit our natural resources and continue to misuse tax payers money to further the personal agendas of select special interest environmental groups that only desire closure and further restriction of federally managed public lands?

The GRSG potential listing is an important and crucial decision affecting far reaching areas of the west and the United States. We believe that regulations and restrictions imposed by the BLM/USFS to be imposed by the LUPA/FEIS should not be made by a federal government employee without full accountability to the general public. Elko County maintains that administrative services such as the BLM, USFS and USFWS should not be delegated or authorized to conclude and take an action that will serve severe negative impacts to local, state and regional cultures and economies such as the impacts of the Spotted Owl in neighboring states. The constituents of the United States elect our congressional and senatorial representatives to consider actions that impact our civil rights as a nation. Elko County stresses that the LUPA/FEIS as written and ESA action to list the Greater Sage-Grouse will have very long term negative impacts to all areas affected by the actions. These decisions should be made by elected officials accountable to their constituents in the respective districts affected by the potential of the regulations and restrictions of LUPA/FEIS and potential ESA action.

Conclusion

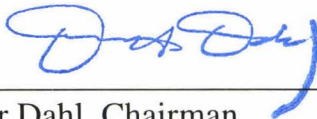
Western states have seen conflicts over natural resources for more than a century. These conflicts have involved issues such as grazing, roads, fences, mineral, oil and gas development, urban expansion, the spread of invasive species, water rights, Native rights, timber harvest, recreation and pollution. Recent additions to the list include development of alternative energy such as wind and solar power. In many cases, the more recent conflicts have involved the protection of endangered and threatened species, often with one group of advocates seeing listed species as an obstacle to their development goals or property rights, and another group advocating protection in line with their environmental, scientific, or economic goals. Such controversy has developed in eleven (11) western states over the Greater Sage-Grouse, whose numbers have said to be threatened by

wildfire, livestock grazing, roads, fences, power lines, urban expansion, and energy development.

Elko County contends that meaningful and successful Greater Sage-Grouse population and habitat as well as public land and resource management can't just mean saying 'no' to regional and local economic sustainability. It is vital that local and state Greater Sage-Grouse management and conservation efforts are maintained and expanded without causing devastation to local Socio-Economic and Economic factors. Without sensible local, state and federal level management strategies that are informed and directed by local stakeholders, we will be encumbered by the federal, one-size-fits all approaches that will have severe everlasting harmful impacts on the social and economic lifeblood of our region and heritage.

In closing I reiterate to you that due to the time availed Elko County and all cooperating agencies to provide comment, Elko County was unable to provide comment in the prescribed BLM format and offers these comments for your review and consideration. Thank you for your time and consideration concerning this very important issue. Please feel free to contact me if you have any questions or if I may be of any further assistance.

Respectfully;



Demar Dahl, Chairman
Elko County Board of Commissioners

cc: US Congressman Mark Amodei
US Senator Dean Heller
NV Senator Pete Goicoechea
NV Assemblyman John Ellison



Board of County Commissioners
Lincoln County, Nevada

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Adam Katschke, Vice Chair
Paul Mathews
Paul Donohue
Varlin Higbee

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COUNTY CLERK

Lisa C. Lloyd

July 6, 2015

Governor Brian Sandoval
Care of: Skip Canfield, Program Manager
Nevada State Clearinghouse
901 S. Stewart St., Ste. 5003
Carson City, Nevada 89701-5246

Via Email to:

nevadaclearinghouse@lands.nv.gov

RE: Input to Governor's 60-Day Consistency Review of the *Nevada and Northeastern California Greater Sage-Grouse Proposed Land Use Plan Amendment and Final Environmental Impact Statement (BLM/NV/NV/ES/15-09+1793)* from Lincoln County

Governor Sandoval:


As you are well aware, Lincoln County is comprised primarily of public land (approximately 97%) mostly managed by the Bureau of Land Management under the Ely District Resource Management Plan. The *Nevada and Northeastern California Greater Sage-Grouse Proposed Land Use Plan Amendment and Final Environmental Impact Statement* would greatly alter the Resource Management Plan that is currently in place. The County worked diligently with the Ely BLM District in development of its current RMP, and believes the changes proposed by this document will adversely affect the County, its citizens, as well as its customs, culture and economy. The County strongly believes that the Proposed Amendment is inconsistent with its adopted Public Lands Policy Plan, see attached.

Due to the high percentage of public land in the County, any change in management will significantly impact how the County and its citizens do business and conduct their daily lives. The proposed action and documents were significantly changed between the draft and final versions, allowing little time for the County to react to and address the new information presented.

While the County would suggest issuance of a Supplemental Draft EIS to be true to the NEPA process, the only recourse left at this time is to file a formal protest or participate in this consistency review. The County would hope that you are willing to carry forward the attached concerns. The County available to further articulate the attached concerns if necessary.

It should also be noted that the County has supported the development and work of the Nevada Sagebrush Ecosystem Council (SEC) from the beginning. It has provided an avenue for local participation and planning. However, it is clear to the County that the Federal proposal is vastly different than the State's plan adopted by the SEC. The County would once again re-iterate its support of the SEC process and the State Plan. The County would further request that your office advance the SECs Consistency Review and advocate for the State's approach in place of the Proposed Amendment.

Thank you,

A handwritten signature in dark ink, appearing to read "Kevin Phillips". The signature is fluid and cursive, with the first name "Kevin" and last name "Phillips" clearly distinguishable.

Kevin Phillips, Chair
Lincoln County Board of Commissioners

Attachments: Table of Inconsistencies between the Lincoln County Public Lands Policy Plan and the *Nevada and Northeastern California Greater Sage-Grouse Proposed Land Use Plan Amendment and Final Environmental Impact Statement*

CC: Nevada Association of Counties

**Input to Governor's 60-Day Consistency Review of the
Nevada and Northeastern California Greater Sage-Grouse Proposed Land Use Plan Amendment and
Final Environmental Impact Statement (BLM/NV/NV/ES/15-09+1793)
from Lincoln County**

Excerpts from the Lincoln County Public Lands Policy Plan 2010, Amended 2015	Proposed Land Use Plan Amendment Goal, Objective, Action and/or Impact Being Protested	Statement Explaining Why the Inconsistency is Significant
<p>Policy Section 3: Federal Land Transactions</p> <p><i>The Lincoln County Conservation, Recreation and Development Act of 2004 designates 90,000 acres of Federal land as suitable for disposal to improve the County's tax base and its fiscal health, foster measured community expansion and promote diverse economic development. There has been approximately 57,000 acres of Federal land identified for disposal through the BLM Ely District Resource Management Plan, (RMP) 2008.</i> This disposal acreage would increase the non-Federal land base of Lincoln County.</p> <p><i>Specific parcels will be recommended by the County for release when deemed appropriate.</i> This list will be maintained and updated by the County in coordination with the BLM. Each parcel will need to be further reviewed at the time a specific reality action is proposed.</p>	<p>Page 2-44, Action LR-LT 1: <i>Lands classified as PHMAs and GHMAs for GRSG will be retained in federal management, unless:</i> (1) the agency can demonstrate that disposal of the lands will provide a net conservation gain to GRSG or (2) the agency can demonstrate that the disposal of the lands will have no direct or indirect adverse impact on conservation of the GRSG.</p>	<p>The County believes the proposed action is in stark contrast to the County-adopted plan as well as the Lincoln County Conservation, Recreation and Development Act of 2004, and the 57,000 acres of federal land identified for disposal through the BLM Ely District's RMP.</p> <p>This discrepancy could well result in future economic development hardships for a County that is already composed of approximately 97% public lands.</p> <p>The County is adamantly opposed to restricting the transfer of federal lands previously identified for disposal. This proposed action is over-reaching and disingenuous to already established and long-standing agreements.</p>

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<p>Policy 3-9: Acquisition or exchanges of Private Land for Public Purposes: Recognize that the acquisition of some private lands for certain special public purposes is a benefit to residents. Recommendations for acquisition or exchange of private land for public purposes shall ensure:</p> <ul style="list-style-type: none"> A. All transactions must involve a “willing seller”. B. Private land should not be acquired or exchanged unless it includes broad fiscal, social and economic benefits to the citizens of Lincoln County. Such acquisition should be very limited and be able to clearly demonstrate public benefit or need. C. Environmental, recreation, and cultural values are protected. D. Private property interests are protected. E. Socio-economic impacts are duly considered and the local economy and fiscal health is not negatively impacted. F. Due process is guaranteed to all 	<p>Page 2-45, Action LR-LT 2: <i>Where significant conservation actions could be achieved in PHMAs and GHMAs, seek to acquire lands</i> with intact subsurface mineral estate by donation, purchase, or exchange in order to best conserve, enhance, or restore GRSG habitat.</p>	<p>As a County where a substantial amount of the land base is already under federal management, the County remains opposed to any future federal acquisition of private land under any circumstance. It should be noted that in Nevada, per state water law, that water rights are also considered private property.</p> <p>The guidelines for federal land acquisition between the County-adopted plan and the proposed actions differ significantly.</p>
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<p>private parties involved in land use controversies by means that do not demand or create a financial hardship.</p> <p>G. Acquisition may be considered to include conservation easements by a willing party.</p> <p>H. Community values and identified sites such as those in the Open Space and Community Lands Plan are considered.</p>		
<p>Policy Section 4: Agriculture and Livestock Production</p> <p>Agricultural production is necessary to help maintain the historical, cultural and economic viability of Lincoln County. <i>There is a strong relationship between the continued availability of public lands for agricultural and the vitality of the communities and traditions of the County.</i> Agricultural lands require few public services but offer many direct and indirect fiscal and economic benefits to Lincoln County.</p>	<p>Page 4-232, 4.10.10 The Proposed Plan</p> <p><i>Impacts from GRSB Management</i></p> <p>One way the Proposed Plan differs from Alternative A is its <i>requirement to meet GRSB-specific habitat objectives contained in Table 2-2</i>, on 16,812,800 acres in PHMA and GHMA, as well as other actions to achieve desired GRSB habitat conditions. In addition to restricting management in PHMA and GHMA, 2,797,400 acres are designated as SFA, which provide additional restrictions on development and disturbance.</p>	<p>The County has always adamantly supported agriculture, including livestock grazing on public lands, as an important part of its heritage, culture and economy. The BLM is being disingenuous by saying that the proposed management action "could" affect livestock grazing.</p> <p>The changes being proposed are significant, and WILL have negative effects on livestock grazing.</p> <p>The County has long advocated for "no net loss of AUMs" within the County, and it is a near certainty that AUMs will be reduced, and likely could to be significantly reduced as a result of the proposed action.</p>

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<p>Policy 4-1: Preserve agricultural land and <i>promote the continuation of agricultural pursuits, both traditional and non-traditional, in Lincoln County.</i></p> <p>Policy 4-2: <i>The pursuit and production of renewable agricultural resources are consistent with the long term heritage of Lincoln County. This private industry benefits Lincoln County economically and culturally.</i></p> <p>Policy 4-3: <i>Opportunities for agricultural development on public lands should continue at levels that are consistent with historical customs, environmental sustainability, culture and compatibility with other multiple uses.</i></p>	<p><i>These management actions</i>, designed to enhance GRSG habitat on BLM administered and National Forest System lands, <i>could affect livestock grazing by the following:</i></p> <ul style="list-style-type: none"> • <i>Modifying grazing strategies or rotation schedules</i> • <i>Changing duration and the season of use</i> • <i>Changing the kind and class of livestock</i> • <i>Reducing livestock numbers</i> <p><u>These modifications could reduce AUMs on some allotments.</u></p> <p>Management to achieve these desired conditions would also impact permittees by increasing the amount of time permittees spend to manage livestock on BLM administered lands and the total costs to a livestock operation. However, restricting development in SFA would reduce disturbance on livestock and their forage. Indirectly, implementing management direction to achieve desired conditions in GRSG seasonal habitat could impact</p>	<p>The County strongly believes that there is a major inconsistency between its adopted plan and policy and the proposed action. This inconsistency is made worse by the BLMs unwillingness to acknowledge such impacts to a valid land use that is of critical importance to the County.</p>
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<p>Policy 4-7: Range water rights and improvements such as those associated with seeps, springs, streams, lakes and wells used by livestock should be protected in the long term for that use. Encourage cooperation between the Federal land management agencies and the grazing operator in protecting the riparian values of these water sources.</p>	<p>livestock grazing in the long term, particularly on allotments in the improve category. It would do this by implementing management that improves rangeland conditions. Improved rangeland condition could also contribute to increased forage production.</p> <p>Additionally, because of the GRSg habitat objectives, improvement projects would be designed to maintain or improve GRSg habitats. <i>Consideration of GRSg habitat needs would likely reduce the number of constructed range improvements.</i> In some instances, improvements may be removed to assist in attainment of GRSg habitat objectives.</p>	<p>Range improvements include developed water sources and associated water rights. There is clearly a significant inconsistency between the County’s policy and the proposed action that includes the “likely” reduction of already-constructed range improvements.</p>
<p>Policy 4-4: Grazing should utilize sound adaptive management practices consistent with the BLM Mojave-Southern Great Basin Resource Advisory Council’s Standards and Guidelines for Grazing Administration. Lincoln County supports the periodic updating of the <i>Nevada Rangeland Monitoring Handbook</i> to help establish proper levels of grazing. Lincoln County supports accountability between BLM and Lincoln County Commission to assure these</p>	<p>Page 2-38, Objective LG 1: Manage permitted livestock grazing to maintain and/or enhance PHMAs and GHMAs to meet or make progress towards meeting all GRSg lifecycle requirements and habitat objectives (Table 2-2), based on site potential.</p>	<p>This objective and Table 2-2 completely alter the way livestock grazing is permitted and regulated. Despite the County’s urging to consider local Resource Advisory County Standards and Guidelines and the range management concepts contained in the Nevada Rangeland Management Monitoring Handbook, the BLM developed new “habitat objectives” that are inconsistent with these documents.</p>

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<p>management practices are carried out in a timely and professional manner.</p> <p><u>Policy 4-5: Allotment management strategies should be developed that provide incentives to optimize stewardship by the permittee. Flexibility should be given to the permittee to reach condition standards for the range. Monitoring should utilize all science-based relevant studies, as described in the current Nevada Rangeland Monitoring Handbook. Changes to these standards should involve pre-planning collaborative consultation with the permittee and Lincoln County Commission.</u></p>	<p>Page 2-39, Action LG 1: When renewing term grazing permits or leases, or when revising or developing new allotment management plans within PHMAs and GHMAs, if not meeting, or making progress towards meeting land health standards, <i>as associated with not meeting GRSg habitat objectives</i>, and grazing is a significant causal factor, adjust permits and take actions prior to the start of the next grazing season by implementing management strategies, including the addition of one or more of the following (not in priority order):</p> <ul style="list-style-type: none"> • Season or timing of use • Numbers of livestock (includes temporary nonuse or livestock removal) • Intensity of use • Type of livestock (e.g., cattle, sheep, horses, llamas, alpacas, and goats) • Extended rest or temporary closure from grazing through BLM administrative actions • <i>Make allotment unavailable to grazing</i> 	<p>Consistent with its adopted Plan, the County proposed development of collaborative Allotment Management Plans or Ranch Conservation Plans as a means of achieving standards or making progress towards standards.</p> <p>However, Action LG 1 does NOT provide an opportunity for collaboration if an allotment is not meeting standards. In fact, this approach discourages collaboration. By mandating that regulatory action occur prior to the start of the next grazing season it discourages development of new allotment management plans, and does not allow any time for implementation of such plans.</p> <p>The County suggested that reductions in AUMs and adjustments to permits be a last resort, and the approach taken by Action LG 1 makes these action the first approach.</p> <p>The County has been, and will remain adamantly opposed to making allotments unavailable to grazing. This approach is</p>
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	<p>Page 2-40 through 2-41, Action LG 5: If results from a land health assessment indicate that GRSG habitat objectives (Table 2-2) are not met in SFAs, PHMAs, or GHMAs and grazing is a causal factor, and until appropriate modifications (Action LG 1) are incorporated through the permit renewal process, implement management strategies that may include the following:</p> <ul style="list-style-type: none"> • Provide periods of rest or deferment during critical growth periods of key vegetation species • Limit grazing duration and intensity to allow plant growth sufficient to meet GRSG habitat objectives (Table 2-2) • Employ herd management techniques to minimize impacts of livestock on breeding, nesting, and brood-rearing habitat during the breeding season (March 1 to June 30; Lek—March 1 to May 15, and Nesting—April 1 to June 30) • Consider any temporary projects that could mitigate livestock impacts (e.g., temporary fencing or temporary water 	<p>in stark contrast to the County's adopted Public Lands Policy Plan.</p> <p>The approach proposed by the Objectives and Actions in the previous column does not allow for or foster cooperation or flexibility, and is in stark contrast to proven range management practices. The approach removes the very implementation tools that are required to ensure proper grazing management, and will likely result in significantly less grazing in a County whose customs and culture is based largely on public land grazing.</p> <p>This is a significant inconsistency that must be addressed.</p>
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	<p>hauling locations;</p> <ul style="list-style-type: none"> • Work with permittees to avoid concentrated turn-out locations for livestock within 4 miles of active and pending leks from March 1 to June 30 • Avoid domestic sheep use and bedding areas and herder camps within 2 miles of active and pending leks from March 1 to June 30 • Utilizing land features and roads on maps provided to the permittee to help delineate livestock use avoidance areas • Considering no grazing from May 15 – Sept. 15 in riparian areas and wet meadows. • Removing livestock within 3-7 days for the remainder of the grazing year once the allowable use levels are reached (BLM 1996, Burton et. al 2011, Cagney et. al, 2010, Connelly et. al 2000, France et. al 2008, Hagen et. al 2007, Holechek 1988, Platts 1990, and Tanaka et. al 2014): <ul style="list-style-type: none"> – In riparian areas and wet meadows the allowable percent utilization is 35% 	
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	<p>woody species, and a minimum stubble height of 4-6 inches (10-15 cm) for herbaceous riparian vegetation based on site. 2. Proposed Action and Alternatives (Proposed Plan Amendment) June 2015 Nevada and Northeastern California Greater Sage-Grouse Proposed LUPA/Final EIS 2-41</p> <ul style="list-style-type: none"> – In mountain big sage habitat, the allowable percent utilization is 40 % herbaceous key species and/or 35 % shrub key species. – In Wyoming Basin big sage habitat, the allowable percent utilization is 35% herbaceous key species and/or 35 % shrub key species. – In black sage habitat, the allowable percent utilization is 35% herbaceous key species and/or 35 % shrub key species. <p>Page 2-41, Action LG 6: Appropriate allowable utilization levels will be defined through the grazing permit renewal process. At least one alternative in the NEPA process will consider the utilization levels identified in Action LG 5.</p> <p>Page 2-41, Action LG 7: In pastures where post livestock removal use monitoring</p>	
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	<p>results in utilization levels that exceed allowable use levels and livestock are identified as a causal factor, reduce AUMs grazed the following year accordingly. AUMs cannot be applied to another pasture.</p> <p>Page 2-41, Action LG 8: Within PHMAs and GHMAs, incorporate terms and conditions into grazing permits to meet GRSG habitat objectives (Table 2-2), specific terms and conditions would be based on rangeland health assessments (and subsequent monitoring data).</p>	
<p>Policy 6-2: <i>Manage wild horses within the HMAs and maintain low Appropriate Management Level (AML) so there can be continued and sustainable multiple uses on the public lands.</i> Adopt innovative strategies to maintain appropriate levels of horses.</p> <p>Policy 6-4: Support wild horse gathers to achieve AML and assist with a sustainable balance of the multiple uses on public lands.</p> <p>Policy 9-10: BLM Wild horse management practices should be modified to address</p>	<p>Page 2-43, Action WHB 2: Manage herd management areas (HMAs) in GRSG habitat within established AML ranges to achieve and maintain GRSG habitat objectives (Table 2-2).</p>	<p>This action does not establish a timeline for achieving AML within HMAs, which should be immediate. This action does not address wild horses and burros that are located outside of HMAs, but within GRSG habitat, and that is a major oversight. Such areas should be immediately gathered and populations zeroed out and maintained as horse free areas.</p> <p>Over population of wild horses has been, and continue to be an identified as a major threat factor to Sage-grouse in the County, and yet the BLM has not been</p>

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<p>herd management levels in regard to wildlife and livestock habitat degradation within Lincoln County. Areas in which the livestock and wildlife habitat is substantially degraded due to overpopulation of wild horses should be identified and measures taken to address the issue. Recommendations by the LCABMW, the N-4 State Grazing Board and NDOW regarding wild horses should be prepared jointly with appropriate BLM personnel.</p>		<p>able to “manage HMAs in GRSg habitat within established AML ranges...”</p>
<p>Policy 13-5: <i>Encourage year-round recreational opportunities on public lands as a substantial economic asset to local economies.</i> Adhere to local inventories of public land resources and or public access to these sites, where either disposals may occur or where large developments for utilities, energy or other developments may have a detrimental effect on community resources such as those identified in the County's adopted Open Space and Community Lands Plan.</p>	<p>Page 2-23, Action SSS-2: <i>Seasonal restrictions will be applied during the period specified below to manage discretionary surface-disturbing activities and uses on public lands to prevent disturbances to GRSg during seasonal life-cycle periods:</i></p> <p>In breeding habitat within 4 miles of active and pending GRSg leks from March 1 through June 30</p> <ul style="list-style-type: none"> ♣ Lek—March 1 to May 15 ♣ Lek hourly restrictions—6 p.m. to 9 a.m. ♣ Nesting—April 1 to June 30 – Brood-rearing habitat from May 15 to 	<p>The proposed action is inconsistent with the County Adopted Policy in regards to recreation. Imposing such piece-meal restriction on “discretionary...uses on public lands” will be impossible to implement and enforce.</p> <p>The 4-mile buffer will not be appropriate for all leks given topography, existing infrastructure and vegetation surrounding the leks. For instance, many of the leks in the County are in open areas that are surrounded within the 4-mile buffer by dense stands of pinyon and juniper. There needs to be some way of altering this buffer area where suitable habitat is clearly not present and where</p>

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	<p>September 15</p> <ul style="list-style-type: none"> ♣ Early—May 15 to June 15 ♣ Late—June 15 to September 15 – <p>Winter habitat from November 1 to February 28 The seasonal dates may be modified due to documented local variations (e.g., higher/lower elevations) or annual climatic fluctuations (e.g., early/late spring, long/heavy winter), in coordination with NDOW and CDFW, in order to better protect GRSG and its habitat</p>	<p>limitations, seasonal or otherwise, could impact recreational opportunities.</p>
<p>Policy 15-4: <i>There may be situations where livestock grazing may be effective in helping to reduce hazardous fuels (fire danger), in the form of invasive plant species</i> (e.g. <i>Bromus tectorum</i>), without resulting in environmental damage. Therefore, encourage Federal agencies to use livestock to reduce such hazardous fuels during opportune times. Under such circumstances, active AUMs should not be negatively affected.</p> <p><i>Support the use of livestock, where deemed appropriate and with agency and grazing operator approval, to control established areas of noxious</i></p>	<p>No similar proposed action exists under <i>Wildfire Management</i>.</p> <p>Page 2-31, Action VEG- ISM 7: Treat sites in PHMAs and GHMAs that contain invasive species infestations through an integrated pest management (IPM) approach, using fire, chemical, mechanical, and <i>biological (e.g., targeted grazing) methods</i>, based on site potential and in accordance with FIAT (Appendix G).</p>	<p>The BLM doesn’t acknowledge livestock grazing as a means to reduce hazardous fuels in the proposed plan, and that is in contrast to Policy 15-4.</p> <p>While the BLM proposed plan does allow for targeted grazing in dealing with invasive species, this approach is not likely to fill the void left by the proposed livestock regulations. In fact, the proposed regulations could well eliminate the availability of livestock in the County to help address such needs.</p>

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<p>weeds, promote eradication, and help prevent spread. Cattle, sheep and goats should be used, wherever practical and appropriate, to achieve such goals.</p> <p><i>The aforementioned use of livestock as a management tool should be prioritized and facilitated by the appropriate Federal agencies with all interested parties working collaboratively in making policy changes, in a timely manner, to achieve intended goals.</i></p>		
<p>Policy 16-8: Surface disturbing activities in the County should be quickly revegetated with a certified weed-free <i>native and non-native seed mix that is an adapted beneficial species to prevent the establishment of invasive species.</i></p> <p>Policy 16-9: If weeds increase due to plant community changes as a result of any project, immediate revegetation projects will be necessary to stabilize the surface and <i>revegetate the area with native or adapted beneficial species.</i></p>	<p>Page 2-29, Action VEG 8: In PHMAs and GHMAs, <i>give preference to native seeds</i> for restoration, based on availability, adaptation (ecological site potential), and probability of success. <i>Where the probability of success or adapted seed availability is low, nonnative seeds may be used, as long as they support GRS habitat objectives.</i> Choose native plant species outlined in Ecological Site Descriptions (ESDs), where available, to revegetate sites. Emphasize use of local seed collected from intact stands or greenhouse cultivation. If the commercial supply of appropriate native seeds and plants is limited, work with the BLM Native Plant Materials Development</p>	<p>While the County appreciates the ability to utilize non-native seed, the emphasis and side boards on what type of seed to use will be extremely costly and limit the amount of restoration work can be completed.</p> <p>It is unfortunate that only “restoration” with native seed, a near impossible challenge, is emphasized. “Rehabilitation”, including use of adapted beneficial species is often the most practical, effective and useful tool in establishing favorable vegetation while limiting the potential for invasive and noxious weed infestation.</p>

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	<p>Program, NRCS Plant Material Program, or State Plant Material Programs. If currently available supplies are limited, use the materials that provide the greatest benefit for GRSB. In all cases, seed must be certified as weed free.</p>	<p>By emphasizing use of native seed, the Agencies have committed to the most expensive approach, and the least likely to succeed. This is opposite of the triage approach that should be applied, utilizing "rehabilitation" to maintain some semblance of ecological integrity in the face of mounting challenges to "restoration", most notably invasive species and climate change.</p> <p>The County views this as a major inconsistency between its adopted plan and the BLMs proposed action.</p>
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Nevada Association of Counties

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June 3, 2015

The Honorable Brian Sandoval
Governor, State of Nevada
101 N. Carson Street
Carson City, Nevada 89701

Re: Request for Governor's Consistency Review of the Greater Sage-Grouse Land Use Plan Amendment Administrative Draft Final EIS (ADFEIS).

Dear Governor Sandoval:

On behalf of the NACO Board of Directors I am writing to urge you to undertake a consistency review of the Greater Sage-Grouse Land Use Plan Amendment (LUPA) Administrative Draft Final EIS (ADFEIS) and both state and local land use plans and policies.

The Nevada counties that have cooperating agency status have spent significant time and effort reviewing and commenting on the LUPA, and some of these counties are concerned that a number of inconsistencies still exist. We, therefore, respectfully request that you review those comments regarding areas where the proposed BLM/USFS actions are not consistent with their plans and policies and urge you to use your authority to ask the federal agencies to address those inconsistencies.

We recognize, and thank you for, the leadership role that you have taken on the sage-grouse issue. Like you, Nevada's counties understand the critical importance of ensuring that sage-grouse habitat is protected and that populations thrive. We urge you to please consider the comments of Nevada's counties and use the authority under your 60-day consistency review to elevate and address the outstanding inconsistencies between the draft LUPA and county plans and policies.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jeffrey Fontaine".

Jeffrey Fontaine
Executive Director

Cc: NACO Board of Directors

Sagebrush Ecosystem Council

JJ Golcochea (C) Local Government
Chris MacKenzie (VC) Board of Wildlife
Allen Blaggl- Mining
Steve Boles- Ranching
Gerry Emm- Tribal Nations
Starla Lacy- Energy
Bevan Lister- Agriculture
Tina Nappe- Conservation and Environmental
Sherm Swanson- General Public

BRIAN SANDOVAL
Governor



Sagebrush Ecosystem Technical Team
Kacey KC, Program Manager
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July 20, 2015

The Honorable Governor Brian Sandoval
State Capitol Building
101 N. Carson Street
Carson City, NV 89701

RE: Governor's Consistency Review of the Nevada and Northeastern California Greater Sage-Grouse
Proposed Land Use Plan Amendment and Final Environmental Impact Statement (LUPA/FEIS)

Dear Governor Sandoval:

As a Governor appointed Council and Program, the Sagebrush Ecosystem Program (SEP) is requesting you use the consistency review as allowed under 43 CFR 1610.3-2 (e) to provide a reasonable balance between the national interest as outlined in the LUPA/FEIS and the State's interest, which is consistent with the national interest, as outlined in the 2014 Nevada Greater Sage-grouse Conservation Plan (State Plan).

On behalf of the Sagebrush Ecosystem Program(SEP), I would like to thank you for your support and oversight since 2012 with the signing of Executive Order 2012-19 drafted into law in AB 461 later codified in NRS 232.161 and 232.162 and NRS 321.592 and 321.594. The State of Nevada remains the first and only state to recognize our commitment to conservation of greater sage-grouse in statute, which created the SEP, representing multiple stakeholders as well as state and federal agencies. The mission of the SEP is to maintain and restore a functional and resilient sagebrush ecosystem to benefit all species while allowing for various land uses. This will be accomplished by working through a diverse coalition of public and private stakeholders. Through the SEP, the State has made significant progress toward creating a robust conservation plan for greater sage-grouse while supporting the economy, custom, and culture of our state.

Over the course of the past two years, the Sagebrush Ecosystem Council (SEC) has unanimously approved the *2014 Nevada Greater Sage-grouse Conservation Plan* (per NRS 232.162 part 7), consulted with the USGS to develop the Nevada Sage-grouse Management Categories Map, and engaged Environmental Incentives to create the Conservation Credit System (CCS) (per NRS 232.162 part 7(e)). The Sagebrush Ecosystem Technical Team (SETT) is currently piloting both credit development and credit obligation (debit) projects in important sage-grouse habitat areas to test and adaptively manage the CCS. The State showed its commitment to the conservation of sage-grouse again with the approval of the fiscal years 2016/2017 State Budget which included state funding for the SETT and the SEC, funding for the continued use of best available science through adaptive management, and \$2 million over the biennium to implement conservation projects for greater sage-grouse habitat throughout the state. The SETT is currently working with partners to prioritize project implementation areas and finalize the Strategic Action Plan (SAP) for future implementation. The 78th (2015) Session of the Nevada Legislature also showed its support and commitment for greater sage-grouse conservation not only through the approved budget allocating funding for the SEP, but also through such resolutions as SJRS

(requesting to adopt the State Plan as the EIS preferred alternative) and AJR2 (which supports State managed raven control in sage-grouse habitats).

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 greater sage-grouse as a consistent method for determining mitigation across the entire Sage-grouse Management Area, covering approximately 48,627,000 acres in Nevada.

The State Plan, including the CCS, can be applied across the range of habitats in Nevada regardless of ownership, whereas the proposed action in the LUPA/FEIS only applies to federal lands managed by the BLM and USFS. The State Plan is centered on collaboration and problem solving at the local level – which has been shown to be effective (such as in the Bi-State Action Plan).

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 SEP has spent considerable time and effort in submitting comments throughout this EIS process to address inconsistencies between the State Plan and the LUPA/FEIS. FLPMA and its implementing regulations require that BLM's land use plans be consistent with officially approved state and local plans to the extent state and local plans comply with federal law. Although the LUPA/FEIS includes elements of the State Plan in the preferred plan, there are several important features that are not consistent with the State Plan that the SEP seeks to bring to your attention for inclusion in your consistency review.

The creation of Sagebrush Focal Areas (SFA) is inconsistent with conservation strategies in the State Plan. The primary issues with SFAs are:

- The methods provided for delineation of the SFAs are not explicit and therefore not transparent nor scientifically defensible. 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."
- Applying the SFA concept primarily to the Northern Great Basin Management Zone may undervalue the importance of conserving habitats in the Southern Great Basin Management Zone 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 greater sage-grouse populations and their habitat statewide.

The State Plan uses best available science to delineate Core, Priority, and General Management Areas throughout the State that are most important to sage-grouse. The SAP will prioritize projects based many different factors including ecological site potential, resistance and resilience concepts, and threat assessments, thus providing the needed protection throughout the diverse populations in Nevada.

EXCLUSION AREAS

- **Creation of large areas which restrict or exclude certain land use allocations does not meet the intent of the State Plan which is to conserve sage-grouse and their habitat in Nevada while maintaining the economic viability of the State.** 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 SEC overwhelmingly ruled in favor of not having additional exclusion areas or mandatory set asides at the 9/12/13 meeting because the CCS identifies and recognizes the highest quality habitat, as mapped and verified on the ground and provides for a system through mitigation ratios, habitat

quality, distance criteria and many other factors to ensure the protection and conservation of the habitat.

- **A disturbance cap is inconsistent with the State Plan, as applied in the LUPA/FEIS is inconsistent with best science, does not adequately address the threats identified in the Conservation Objectives Report (COT), and will inadvertently impact the effectiveness of the Conservation Credit System. 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 creates another exclusion area, restricting certain land use allocations. The CCS and the State Plan more adequately account for quality of habitat and availability of seasonal habitat types by:**
 - Consistently defining habitat quality and availability at the site, local, and landscape scales 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.

Greater sage-grouse conservation is better served by the rigor of the CCS program rather than a three percent disturbance cap. If the disturbance cap remains in the LUPA/FEIS, additional conditions should be inserted whereby the cap is 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.

HABITAT OBJECTIVES AND THE ASSOCIATED MANAGEMENT ACTIONS

- **The Habitat Objectives in Tables 2-2, 2-5, and 2-6 and their associated management actions are inconsistent with Section 4 of 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 community pathway is even possible. Management actions in the State Plan focus on maintaining or trending toward resource objectives based on ecological site potential and state and transition models. The State Plan does not use the habitat objectives/desired conditions in tables directly as resource objectives because they are sometimes not achievable or optimum. Nor does it use objectives directly to restrict any permitted uses on the land, it does however, more appropriately use desired habitat conditions to inform setting resource objectives at the local level. The BLM and USFS should incorporate the introductory language (text of Section 4.0) and the desired habitat conditions (Table 4-1) from the State Plan for consistency of application.
- **The FEIS implements unduly restrictive livestock grazing actions that do not include important tools for proper range management to address site-specific concerns. At the same time, the proposed actions for wild horse and burro populations do not achieve proper grazing, both of which are inconsistent with the State Plan.** The State Plan supports proper grazing management practices, applicable to all large ungulates, which incorporate a high level of flexibility through adaptive management to achieve the overall management and resource objectives as defined by the permittee and the land manager through an allotment management planning process. The State Plan empowers local management with stakeholder input and collaboration to work toward the desired habitat conditions and overall ecosystem health to achieve a net conservation gain for sage-grouse, and adheres to all existing state and federal laws in its management actions. The LUPA/FEIS should make the management actions for both the Livestock Grazing and Wild Horses and Burros sections consistent with the State Plan.

MITIGATION FOR ANTHROPOGENIC DISTURBANCES

- **The preferred alternative allows for the development and use of other applicable mitigation systems in addition to the Nevada Conservation Credit System (CCS); however, it fails to provide detail on the level of rigor and net conservation gain of other systems, or assurance that these programs incorporate the best available science.** The CCS is a rigorous, scientifically based mitigation program that includes measures for habitat suitability and availability at multiple scales 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 across jurisdictional boundaries. 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 rigor of the CCS should be set as the bar that other allowed mitigation systems must meet to ensure that they are equitable and comparable and showing comparable net conservation gain for greater sage-grouse.
- **The State Plan requires mitigation for anthropogenic disturbances in ‘Other Habitat Management Areas (OHMA)’ while the LUPA/FEIS does not.** The State Plan requires the assessment and potential need for mitigation across 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. The 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. The LUPA/FEIS should 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. The State Plan protects additional sage-grouse habitats and offers greater assurances so that the concept of “net gain” to the habitats will be achieved.

MAPPING

- **The LUPA/FEIS may require a land use plan amendment to update the Nevada Management Categories maps. This does not allow for the use of best available science and would create a system where the State would be using a different map than the BLM/USFS in the implementation of the State Plan and the CCS.** 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. The BLM/USFS should 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 LUPA/FEIS and specifically indicates that updates to the maps using these methods will be incorporated through plan maintenance.

COMPREHENSIVE TRAVEL AND TRANSPORTATION MANAGEMENT

- **The LUPA/FEIS is unclear in the comprehensive travel and transportation management section and requires clarification in how it will be implemented.** Management of roads is under the jurisdiction of the State and local governments per Nevada Revised Statute (NRS) 405.191 (public roads include what are commonly referred to as R.S. 2477 rights-of-way) and NRS 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 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).

The ramifications of the inconsistencies described above between the State Plan and the LUPA/FEIS will have long-term effects on the economy, custom, and culture of the State of Nevada. The LUPA will set management direction for the vast majority of the lands within our State. Many of the proposed actions will negatively impact rural communities without well supported evidence of their effectiveness to address to address conservation objectives for sage-grouse.

The Nevada State Plan was created with the collaboration of the federal management agencies. The inconsistent issues in the LUPA/FEIS were added unilaterally without consultation or consideration for State values. While they indeed provide additional regulation, these regulations are not proven to provide greater conservation gain and it is implemented at the expense of our Nevada stakeholders and the process that you created through AB 461.

The SEP would again like to request you use your consistency review to rectify the inconsistencies outlined in this letter (more detail on each is provided in the attached letter of protest). Please contact me if you have any questions or require additional information.

Sincerely,



Kacey KC, Program Manager
Sagebrush Ecosystem Technical Team

Attachments: SEP Protest Letter (dated June 29, 2015)

cc: 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
State Clearinghouse
Sagebrush Ecosystem Council



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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 # LIOPG00911.

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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- Wyman, S., D. Bailey, M. Borman, S. Cote, J. Eisner, W. Elmore, B. Leinard, S. Leonard, F. Reed, S. Swanson, L. Van Riper, T. Westfall, R. Wiley, and A. Winward. 2006. Riparian area management: Grazing management processes and strategies for riparian-wetland areas. Technical Reference 1737-20. BLM/ST/ST-06/002+1737. U.S. Department of the Interior, Bureau of Land Management, National Science and Technology Center, Denver, CO. 105 pp. <http://www.blm.gov/or/programs/nrst/files/Final%20TR%201737-20.pdf>

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 is 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



Washoe County

COMMUNITY SERVICES DEPARTMENT

Planning and Development Division

July 14, 2015

TO: Skip Canfield, Program Manager, Nevada State Clearinghouse

FROM: Bill Whitney, Director, Washoe County Planning and Development Division

SUBJECT: Washoe County comments specific to the Governor's 60-day Consistency Review for the FEIS-Greater Sage Grouse-Nevada and NE California RMP Amendment (Notice E2015-168)

Washoe County is submitting this cover memo and attached comment matrix for consideration as part of the Governor's 60-day Consistency Review for the FEIS-Greater Sage Grouse-Nevada and NE California RMP Amendment (Notice E2015-168). Washoe County appreciates this opportunity as a local government to notify the Governor about the inconsistencies and issues between our plans and policies and the proposed Greater Sage Grouse FEIS.

Washoe County did provide formal comments to the Bureau of Land Management on the DEIS in January of 2014. Those comments raised concerns in terms of the size of the proposed buffer areas around leks in comparison to the already enormous amount of federal lands in the County that have existing special designations such as NCA's, wilderness areas, ACEC's and the Sheldon Antelope Refuge in addition to concerns such as livestock grazing in the northern portion of the County continuing at the status quo since current grazing allotments are not at capacity

The attached comment matrix includes our input to the governor on how we feel our comments were addressed or not addressed in the FEIS. If you need further clarification or information pertinent to the input provided, please feel free to contact me at 775-328-3617.

Sincerely, Bill Whitney, Director

COMMENT MATRIX

Cooperating Agency: Washoe County, Nevada

Date: July, 2015

Cmt #	Section	Line	Comment
1.	2.4.5	All	<p>Washoe County supports the concepts in the State of Nevada alternative and would like to see them incorporated into the eventual preferred alternative wherever possible. For example, the NV state plan has far better and more detailed emergency management / response action plans for wild fire than the other alternatives. It also has a better mix of conservation versus industry perspectives.</p> <p>The FEIS preferred alternative incorporates only certain components of the State of Nevada Greater Sage-Grouse Conservation Plan (State of Nevada 2014) and the State of Nevada Conservation Credit System (Nevada Natural Heritage Program and Sagebrush Ecosystem Technical Team 2014) by establishing conservation measures and focusing restoration efforts in the same key areas most valuable to the GRSG.</p>
2.	2.5	34-37	<p>Required Design Features (RDF) – Washoe County is very concerned about the practicality and cost of meeting the RDF's as proposed. The RDF's should be implemented as BMP's and not as development standards since specific site conditions can vary widely from one project area to the next (and because priority habitat (PPH) and general habitat (PGH) mapping is very coarse and should not be used for site specific habitat decisions – biological surveys in the field should be the basis). Suggest re-wording to allow more flexibility. The National Technical Team (NTT) created these design features as BMP's and they should be implemented as such.</p> <p>It unfortunately appears that the RDF's will still be applied, but positive that some flexibility in how they are applied is possible and can vary to accommodate unique, site-specific conditions and local resource conditions.</p>
3.	2.5	34-37	<p>Required Design Features (RDF) – Requiring ALL projects to meet the RDF's proposed in Alternatives B, C, D, and F may ultimately result in very little additional land / energy development or utilization in the planning area, which is perhaps the goal of these requirements. If they are to be retained as written, more detail is necessary (for example, for how much distance does the project have to underground power lines, and for what transmission capacity?) and there should be some means for flexibility or waivers (or appeals).</p> <p>See above response in comment 2.</p>

COMMENT MATRIX

Cooperating Agency: Washoe County, Nevada

Date: July, 2015

Cmt #	Section	Line	Comment
4.	RDF's, Habitat Mapping		<p>A BLM published "white paper" on habitat mapping methodology states that the PPH and PGH habitat maps are "not intended to be used to delineate sage-grouse habitat at the project-level scale." Also according to the white paper, "it is necessary to conduct a field investigation by a qualified biologist for the purpose of impact assessment" at specific locations. If this is the case, then why apply RDF's over all habitat and at the planning level? RDF's should be applied at the project level based on an impact assessment and should not preemptively preclude certain activities.</p> <p>It is positive that the FEIS views the RDF's as mitigation strategies that are not applied at the "planning" level, so presumably they would not themselves preclude any activities. But other planning level management strategies certainly would, such as excluding wind and solar in priority habitat.</p>
5.	2.5.2	All	<p>Washoe County supports a required and standardized monitoring approach / framework for assessing the health of GRSG populations and habitat. However, monitoring efforts should not trigger the need for additional NEPA analysis, such as an EA, if they are to be successfully implemented in a timely and efficient manner. If NEPA must be satisfied, explore the possibility of Categorical Exclusions for certain types of monitoring efforts.</p> <p>This was deemed as "not a substantive comment", so there is no response. The FEIS was updated, though, to include a wide array of monitoring activities that includes such concepts as adaptive management and thresholds that would automatically trigger certain management actions. Not clear how NEPA fits into that.</p>
6.	2.6.4	All	<p>Grazing should continue status quo (i.e. as currently managed) since current grazing allotments are not at capacity.</p> <p>It looks like grazing will continue to be managed under current plans, but with additional monitoring and management action triggers if grazing is determined to be the cause of any decline in habitat condition.</p>

COMMENT MATRIX

Cooperating Agency: Washoe County, Nevada

Date: July, 2015

Cmt #	Section	Line	Comment
7.	Table 2-3	Wild Horses	<p>Washoe County supports proposed actions to address the management of Wild Horses and Burros as a threat the GRSG habitat. Alternative D is currently the only alternative that has such management actions, albeit at a smaller scale than under the “no action” alternative.</p> <p>The FEIS preferred alternative has a range of management actions to address Wild Horse and Burro impacts to habitat which the county supports the use of.</p>
8.	2.8	33 (pg 2-24), et.al.	<p>Washoe County supports efforts to combat Pinyon / Juniper conifer encroachment, especially if it can be done in a way that creates jobs, benefits habitat, reduces fire threats, and allows public access to resources. The BLM and USFS should partner with local governments to best utilize and dispose of the removed conifers (e.g. Parks department mulching, power generation, fire wood, etc.).</p> <p>This comment was deemed outside the scope of the EIS.</p>
9.	2.8	1 (pg. 2-24)	<p>The goal of restoring habitat lost to fire and other disturbances is laudable and all alternatives discuss the need to utilize native seed stock for this purpose, and some alternatives additionally discuss the need for “seed banking.” There is, however, nowhere near enough funding and resources for the BLM or USFS to conduct such seed collection and banking without the help of private sector seed collection activity. It is therefore incumbent upon the agencies to have a consistent and efficient approach to permitting such activities across the various management districts where it will occur. Under present management and permitting approaches, this is not the case and permitting requirements and the amount of time required to obtain a permit for seed collection varies widely. Seed collection opportunities are highly variable due to climatic and range conditions and time is of the essence when seed is ready to be harvested.</p> <p>This comment was deemed outside the scope of the EIS.</p>

COMMENT MATRIX

Cooperating Agency: Washoe County, Nevada

Date: July, 2015

Cmt #	Section	Line	Comment
10.	A	Pg. A-9, lines 36-38	<p>Placing all liquid gathering facilities outside of priority habitat areas (PPH) will probably result in the need for long pipelines and / or increased truck traffic that will produce even more impact than siting the facility closer to the area of extraction would. Suggest implementing nesting and raptor control at the site instead and allow waiver (under certain conditions) to NSO policy.</p> <p>It appears that many commenters had concerns about the impacts on fluid mineral development from NSO stipulations without the availability of modifications, waivers, and/or exceptions. The FEIS states that “the Proposed LUPA/Final EIS would apply an NSO stipulation to PHMA <u>with exceptions</u>.”</p>
11.	A	Pg. A-16, lines 29-37	<p>This reads as if it would preclude all surface disturbing activities throughout the year since every part of the year is affected by a life cycle event. Washoe County also strongly objects the 4-mile buffer requirement as this would cover the majority of public land within northern Washoe County based on the number of Leks and the size of other protected areas such as ACEC’s, WSA’s, and wildlife refuges.</p> <p>It appears The FEIS will still apply the buffers based on the USGS report, but that they have been modified/updated in the FEIS resulting in some buffer areas being smaller based on local conditions. Also, the RDF’s (of which the buffers are component) will supposedly be applied on a case by case basis as determined through the NEPA process on specific projects (project level analysis. The buffers required will vary by seasonal activity and type of disturbance (i.e. noise, surface disturbance, etc.).</p> <p>The BLM will apply the lek buffer-distances specified as the lower end of the interpreted range in the report unless justifiable departures are determined to be appropriate but these distances are still substantial in most cases.</p>

COMMENT MATRIX

Cooperating Agency: Washoe County, Nevada

Date: July, 2015

Cmt #	Section	Line	Comment
12.	A	Pg. A-16, lines 29-37	<p>Approximately 770,505 acres of land in Washoe County are already affected by the 2-mile standard distance from a known Lek. Using a 4-mile buffer would increase this impact to 1,541,010 acres, much of which would be in addition to the nearly 1,000,000 acres already protected by the combination of WSA's, ACEC's, the High Rock NCA and wilderness area, and the Sheldon National Wildlife Refuge. Add on top of that the proposed ROW exclusions in the various alternatives, and basically most of the land in the county becomes unusable for energy or any other kind of development. Suggest implementing buffers on a case-by-case basis since the management conditions noted above vary widely by planning area (not all PPH and PGH exists and is managed equally). In areas with less intensive existing land management, bigger buffers might be more appropriate where the available land supply is greater.</p> <p>See above response in comment 11.</p>
13.	Chapter 2	Habitat	<p>Much of northern Washoe County is covered by priority habitat (PPH) and to a lesser extent general habitat (PGH). There are 1,553,547 acres of PPH in Washoe County and 202,364 acres of PGH. Because of the exceptionally large amount of priority habitat mapped in Washoe County, and when added to WSA's, ACEC's, Wildlife Refuge, and NCA designations, Washoe County is disproportionally impacted by the presence of priority or highly managed land. Washoe County suggests, therefore, removing PGH habitat from additional regulation, such as RDF's (at least in Washoe County), to offset the disproportionate impact of the large amount of priority habitat and other highly managed/regulated area in Washoe County.</p> <p>Not addressed. The proposed action still includes this management approach. The WSA's, ACEC's, Sheldon, etc. have now been identified/mapped as SFA – Sagebrush Focal Areas, as described below.</p>
14.	Chapter 2	Pg. 92, line/row 3	<p>Action D-SSS 7 (i.e. Implement the RDFs in areas outside of mapped PPMA and PGMA where GRSG use has been observed or <u>suspected</u>, areas and habitats which may be necessary to maintain viability of GRSG, or where the activity would affect GRSG or their habitat in PPMA or PGMA) is too <u>subjective</u> and an invitation for conservation groups to sue any and all projects based on the subjective wording of the action.</p>

COMMENT MATRIX

Cooperating Agency: Washoe County, Nevada

Date: July, 2015

Cmt #	Section	Line	Comment
15.	Economic Impact	Comment	<p>The Washoe County Board of County Commissioners (BCC) is very concerned about the outcome of this EIS precluding an eventual route of the proposed Interstate 11 corridor from going through Washoe County. NDOT is currently conducting a corridor alternatives analysis for the proposed north-south Interstate 11 (now in the Phoenix to Las Vegas implementation phase). The BCC feels strongly that this corridor should go through Washoe County and is concerned about the loss of economic benefit should a different corridor alignment be selected based on the management actions of this EIS. Suggest including a management action that critical transportation routes, such as new federal interstates that facilitate inter-state commerce, be exempted from travel management actions, provided certain conditions are met (like the route chosen follows existing disturbed area as much as possible). Of course, a separate EIS will be required for such a project.</p> <p>Deemed outside the scope of the EIS. But if the I11 corridor is proposed through priority habitat, we would anticipate problems.</p>
16.	General	Comment	<p>It is unclear to the reader whether or not a project, if it meets the management actions of the selected preferred alternative and the RDF's, will still need to do separate EIS to comply with NEPA and BLM policy. Washoe County believes that if a project can actually meet such stringent requirements as outlined in this programmatic EIS, then it should not also be burdened by having to do another EIS on top of the requirements of this EIS.</p> <p>NEPA analysis will still be required. BLM/USFS views the programmatic EIS as a "planning level" document and not site/project specific. The FEIS proposed action clarifies that RDF's will only be applied at the project level during NEPA review for that specific project/action.</p>
17.			



June 29, 2015

Via Email and Overnight Delivery

BLM Director (210)
Attn: Protest Coordinator
20 M Street SE, Room 2134LM
Washington, D.C. 20003
protest@blm.gov

Re: Protest of the Bureau of Land Management/United States Forest Service Nevada and Northeastern California Proposed Land Use Plan Amendments and Final Environmental Impact Statement

Dear Director:

EP Minerals, LLC ("EPM" or "Protestant") in accordance with 43 C.F.R. § 1610.5-2, hereby files this protest of the *Nevada and Northeastern California Greater Sage-Grouse Proposed Land Use Plan Amendments and Final Environmental Impact Statement* (hereinafter "PLUPA/FEIS") by Bureau of Land Management/United States Forest Service ("Agencies"). EPM protests for the reasons set forth below.

This protest is timely filed pursuant to 43 C.F.R. § 1610.5-2(a)(1), *see* Environmental Protection Agency Notice of Availability published in the Federal Register on May 29, 2015, 80 Fed. Reg. 30,676 (May 29, 2015) (Nevada and Northeastern California).

This protest is filed in accordance with 43 C.F.R. § 1610.5-2 and contains: (1) the identity of the Protestant; (2) a statement of the standing of the Protestant to file the protest; (3) a statement of the issues and parts of the plan being protested; and (4) a concise statement explaining the various ways that BLM erred in this PLUPA/FEIS.

I. Identity of the Protestant

EP Minerals, LLC
9785 Gateway Dr.
Reno, NV 89521 USA
Attn: Chris Coley, General Counsel
chris.coley@epminerals.com
T: (775) 824-7600
F: (775) 824-7601

II. Statement of Standing to File Protest

Protestant EP Minerals, LLC, operates a network of mining projects across the United States. It is headquartered in Reno, Nevada and maintains three major diatomaceous earth (DE) projects in Nevada: Clark, Fernley, and Lovelock. The Company's products are used in a variety of applications for customers around the world. DE is used in applications such as paint and plastics, absorbents, pharmaceuticals, soil amendments and in a variety of functional additives. DE is also used extensively in food and beverage filtration applications including wine and brewing, corn wet milling, water, and fruit juices.

In 1945, the Company acquired the Clark DE deposits. Today, the Clark Project consists of 1801 acres and is located in Storey County 15 miles east from the Reno-Sparks metropolitan area off of Clark Station Road. The Clark Project mines DE and has a rotary kiln for granular DE products, three Flash Dry lines for natural DE powders, and a DE Surface Treatment Line. Products such as soil amendments, absorbents, and carriers as well as natural filter aids and functional additives are generated by the Clark Project.

Because a portion of the Clark Project consists of 224 BLM acres and is located near potential habitat for the Greater sage-grouse ("GRSG"), EPM officials and representatives have been closely following the Agency land use plan amendment process. EPM principals participated in Agency meetings to become more fully informed on the DEIS, and they provided the views of the Company as it related to EPM interests in the designation of certain GRSG habitat near the location of the Clark Project.¹ Among others, David B. Harvey, Director of Exploration for EPM, participated in discussions with representatives from the Agencies at an Open House on the DLUPA/DEIS on December 5, 2013 at the Homewood Suites, 5450 Keitzke Lane, Reno, Nevada. Pursuant to the BLM policy, because the Protestant participated in the planning process that resulted in this PLUPA/FEIS by the Agencies, EPM meets the standing requirement to bring this protest.²

The Protestant is adversely impacted by the PLUPA/FEIS and its interests are in the compliance by the Agencies with NEPA, 42 U.S.C. §§ 4321–4375, the Federal Land Policy Management Act ("FLPMA"), 43 U.S.C. §§ 1701-1784, the National Forest Management Act ("NFMA"), 16 U.S.C. §§ 1600-1687, the General Mining Act of 1872, ("Mining Law") Ch. 152, 17 Stat. 91

1. See BLM Land Use Planning Handbook, App. E at 4:

The protesting party must have an interest which is or may be adversely affected and must have participated in the planning process by:

1. Sending written comments;
 2. making oral comments (at a hearing or meeting);
 3. attending a public meeting;
 4. calling the BLM field office; and/or
 5. discussing the project with BLM employees in the field.
2. Notwithstanding that the Protestant has individual standing to bring this protest, EPM is also a member of the American Exploration & Mining Association (AEMA), an organization that has also participated in the planning process for the Nevada and Northeastern California Proposed Land Use Plan Amendments and Final Environmental Impact Statement. On information and belief, the AEMA will be filing a timely protest of the Nevada and Northeastern California PLUPA/FEIS. To the extent not raised in this protest, Protestant incorporates by reference the issues raised by AEMA in its separate protest as if set forth separately herein.

(codified as amended at 30 U.S.C. §§ 22-24, 26-30, 33-35, 37, 39-43, 47), and the Mining and Minerals Policy Act of 1970, 30 U.S.C. § 21a. Because “significant aspects of the proposed plan or amendment are based upon invalid or incomplete information,” and because “the proposed plan or amendment does not comply with applicable laws, regulations, policies, and planning procedures,” this protest should be upheld, BLM Land Use Planning Handbook, App. E at 7.

III. Issues Being Protested

Pursuant to 43 C.F.R. § 1610.5-2(a)(2)(ii), EPM protests the following issues in the PLUPA:

1. A significant element of the PLUPA, as applied to the Protestant, is based upon invalid or incomplete information. The precise status of the BLM lands within the Clark Project site boundaries is not clear from the PLUPA/FEIS.
2. The dramatic and substantial change in the Proposed Action along with significant new information relied upon in the PLUPA/FEIS warrants preparation of a supplemental environmental impact statement (“SEIS”).
3. The PLUPA must be revised to fully account for rights under the General Mining Law of 1872, the Surface Use Act, the Mining and Mineral Policies Act, the Federal Land Policy and Management Act (FLPMA), and the implementing regulations of those statutes (collectively, the “Mining Laws”), particularly as it pertains to protection of valid existing rights and travel management restrictions.
4. The PLUPA fails under FLPMA due to its contravention of the multiple land use directives, particularly its proposal for unlawful land withdrawals.
5. The PLUPA violates the Mining and Minerals Policy Act of 1970 by failing recognize the Nation’s need for domestic sources of minerals.

IV. Parts of the PLUPA Being Protested

Pursuant to 43 C.F.R. § 1610.5-2(a)(2)(ii), EPM is protesting the following parts of the PLUPA: Chapter 2, Sections 2.1, 2.4, 2.4.2, 2.6.2, 2.6.3, 2.7, 2.8, 2.10, 2.10.2, 2.10.2, 2.10.2, 2.11, 2.11.1, 2.12, Table 2-9, Table 2-10; Chapter 3, Sections 3.2, 3.13, Chapter 4, Sections, 4.12, 4.12.1, 4.12.10, 4.13, 4.13.5, 4.13.6, 4.13.7, 4.13.9, 4.13.10, 4.15, 4.15.2, 4.21, 4.21.2; Chapter 5, Sections 5.1, 5.1.14, 5.11, 5.11.1, 5.12, 5.12.2, 5.12.3, 5.12.4, 5.12.6, 5.12.7, 5.14, 5.14.2; Appendices B, D, F and K.

V. Concise Statement of Why the State Director’s Decision is Believed to be Wrong

A. A Significant Aspect of the PLUPA, as applied to the Protestant, is Based upon Invalid or Incomplete Information

In the PLUPA/FEIS, it appears that a certain part of the Clark Project on BLM land is proposed to be bisected and designated as a General Habitat Management Area (GHMA) and Other

Habitat Management Area (OHMA).³ Even though the BLM portion of the Project is wholly disconnected from broader and more significant GRSG habitat to the north, the portion of the Clark Project designated as GHMA was also designated as a travel and transportation limited area. (See map attached as Attachment A.)

Additionally, from what the Protestant can ascertain, a spike of Federal land designated as GHMA splits the project site, and due to travel restrictions, appears to have cut off a key transportation corridor between parts of the Project site, *see also* Attachment A. Finally, the portion of BLM land incorporated located on the Project site was - only several months ago - designated for disposal by BLM in a draft RMP document, only to be subsequently designated GHMA and OHMA in the instant PLUPA/FEIS. *See* Draft Resource Management Plan and Environmental Impact Statement, Bureau of Land Management, Carson City District, Nevada (November 2014) Volume 4 Appendix A, Figures 2-70, 2-71, 2-73.

At an irreducible minimum, an EIS must, from its “form, content and preparation foster both informed decision-making and informed public participation.” *State of California v. Block*, 690 F.2d 753 (9th Cir. 1982). Here, the Protestant is whipsawed between two fully independent NEPA processes, and thus the PLUPA/FEIS suffers a fatal defect from a lack of clear information as to the status of the BLM lands on the Clark County project site.

B. The PLUPA Requires an SEIS Under NEPA

For the first time in the PLUPA/FEIS for the State of Nevada and Northeastern California, a new GRSG habitat management construct to the LUPs makes an appearance. This novel regime, “Sagebrush Focal Areas” (“SFAs”), is grounded in a pronouncement in an October 27, 2014 memorandum from Director Dan Ashe of the USFWS, entitled “*Greater Sage-grouse: Additional Recommendations to Refine Land Use Allocations in Highly Important Landscapes*” (“Ashe Memo”). Another element of the PLUPA/FEIS is the application of lek buffer distances identified in another document previously not available or included in the Draft Environmental Impact Statement (“DEIS”). A U.S. Geological Survey (“USGS”) report entitled *Conservation Buffer Distance Estimates for Greater Sage-grouse — a Review*, USGS Open File Report 2014-1239 (Mainer, et al. 2014) (“Lek Buffer Study”), forms the basis for newly applied GRSG buffer distances for activity on the public lands at issue.

An SEIS is required under NEPA: 1) if the agency makes substantial changes in the proposed action that are relevant to environmental concerns, 40 C.F.R. § 1502.9(c)(1)(i); or 2) if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, 40 C.F.R. § 1502.9(c)(1)(ii).

The new SFA habitat category dramatically reshaped the Proposed Federal Action (“Proposed Action”) due to its management as: 1) recommended for withdrawal from the Mining Law of

3. The Proposed LUPA/Final EIS uses the terms priority habitat management areas (PHMAs), general habitat management areas (GHMAs) and other management areas (OHMA). Land use allocations in the Proposed Plan would limit or eliminate new surface disturbance in PHMAs, while minimizing disturbance in GHMAs, *see* PLUPA/EIS at 2-16. In OHMAs, authorized/permitted activities are implemented adhering to the required design features [“RDFs”] described in Appendix D, “consistent with applicable law.” *Id.* at 2-25.

1872; 2) no surface occupancy (NSO), without waiver, exception, or modification, for fluid mineral leasing; and 3) prioritized for management and conservation actions in these areas, including, but not limited to, review of livestock grazing permits/leases. PLUPA/FEIS at 2-3. The debut of “SFAs” in the PLUPA/FEIS constitutes a substantial change in the proposed action, 40 C.F.R. § 1502.9(c)(1)(i), and an SEIS is required.

Additionally, the Lek Buffer Study, when coupled with the Ashe Memo, collectively constitute “significant” post-DEIS information bearing on the proposed action or its impacts, and thus an SEIS is required under 40 C.F.R. § 1502.9(c)(1)(ii).

When two new, key and significant pieces of information come late and are not subject to fair comment, this is fatal to the mandatory “meaningfulness” of this NEPA process. *See* 40 C.F.R. § 1506.6(b) (Federal government shall “[p]rovide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected” by proposed actions of the United States.”) *See also*, Council on Environmental Quality, *A Citizen’s Guide to the NEPA* at 26 (“Agencies are required to make efforts to provide meaningful public involvement in their NEPA processes.”).

Courts have required an SEIS when the proposed action differs “dramatically” from the alternatives described in the DEIS so that meaningful public comment on the proposed action was precluded, *see California v. Block*, 690 F.2d 753, 758 (9th Cir. 1982). Here, none of the DEIS alternatives utilized all or most of the key elements found in the Proposed Action, particularly the SFAs and lek-buffer distances as applied through the new Lek Buffer Study.

Indeed, the Proposed Action amalgamated so many different elements that the Preferred Alternative could not have been fairly anticipated by reviewing the DEIS alternatives, thus “seriously diluting the relevance of public comment on the DEIS alternatives.” *California v. Block*, 690 F.2d at 758. *See also New Mexico ex rel. Richardson v. Bureau of Land Management*, 565 F.3d 683, 707 (10th Cir. 2009) (new alternative proposing new locations of activities required an SEIS because it affected “environmental concerns in a different manner than previous analyses,” even though the general nature of the alternatives impact resembled those already analyzed).

This fatal error is compounded through the heavy reliance on the Ashe Memo and the Lek Buffer Study – both significant and material post-DEIS information- that formed key cornerstones to the Proposed Action. *See* PLUPA/FEIS at 2-2 (describing the need for SFAs, “In light of the landscape level approach to GRSG conservation provided through this planning effort and as defined by the characteristics set forth above, as well as additional considerations, including potential for impacts from climate change, fire and invasives, these areas have been identified as SFAs.”) and justifying buffers through “The USGS report [which] states that ‘various protection measures have been developed and implemented... [which have] the ability (alone or in concert with others) to protect important habitats, sustain populations, and support multiple-use demands for public lands.’”. PLUPA/FEIS at Appendix B-2. Accordingly, the Agencies’ justification that the PLUPA is a lawful “suite of management decisions that present a *minor* variation of the Preferred Alternative identified in the Draft LUPA/EIS,” FEIS at 2-6, fails both practically and as a matter of law.

C. The PLUPA Violates the General Mining Law of 1872

1. The Term “Valid Existing Rights” Throughout the PLUPA Is Misleading

The Proposed Plan makes numerous references to land management changes that will be “subject to valid existing rights” (VERs) under the General Mining Law of 1872. See:

- Section 2.4.3 at 2-11;
- Section 2.6.2: Action SSS 2, Action SSS 3, Action SSS 5, Action LR-LW, Action LR-LUA 6, Action LR-LUA 19, Action LR-LUA 21, Action LOC 2, Action LOC 4, Action D-LR-W 4;
- Section 2.6.3: GRSG-GEN-DC-002-Desired Condition, GRSG-RT-ST-081-Standard;
- Section 2.7 hard and soft triggers;
- Section 2.9: Action B-CTTM 7, Action D-CTTM 6, Action D-CTTM 7, Action B-LR-LUA 1, Action D-LR-LUA 1 Action F-LR-LUA 1; and
- Appendix F at F-1.

The Ashe Memo contemplates that roughly 16.5 million acres of high-priority Sage-grouse habitat on public land comprised in the western United States need to be withdrawn from mineral entry and operation of the Mining Law. The vast majority of claim holders with claims in GRSG strongholds face almost certain invalidation and forfeiture of their mining claims because very few mining claims can withstand the rigorous economic evaluation, known as a claim validity examination, to which they would be subjected.

The BLM uses claim validity examinations to determine whether a claim has a discovery of a valuable mineral deposit that qualifies as a VER that the Federal government must exclude from the proposed withdrawal. Thus, the many references to VERs in the PLUPA/FEIS will mislead the public and other interested parties because they create the false impression that the rights of mining claimants with claims in areas to be withdrawn from future mineral entry would be respected and that claimants could continue to explore and develop their claims. In fact, legitimate exploration activity will cease on lands withdrawn pursuant to the Proposed Plan.

2. The Travel Management Restrictions Violate the General Mining Law

Access across Federal lands attaches as of right to valid mining claims supported by discovery located pursuant to the General Mining Law which provides that mineralized public lands must be “free and open to exploration and purchase, and ... occupation.” 30 U.S.C. § 22. This right is well recognized by both the Department of the Interior and the courts. *See Mespelt & Almasy Mining Co.*, 99 IBLA 25, 27, GFS(MIN) 83 (1987); *see also Herbert I. Stewart*, 82 IBLA 329, GFS (MIN) 125 (1984); *United States v. 9,947.71 Acres of Land*, 220 F. Supp. 328 (D. Nev. 1963); Solicitor's Opinion, *Rights of Mining Claimants to Access over Public Lands to Their Claims*, 66 I.D. 361 (1959).

Action LR-LUA 21 provides: “In PHMAs and GHMAs, address access to valid existing rights to provide the minimum access necessary to exercise the right and maintain or enhance PHMAs and GHMAs.” *Id.* at 2-48. In its discussion of Action LR-LUA 21, the PLUPA should expressly state that access roads to locatable mineral exploration and development projects through PHMAs and GHMAs (1) are not subject to the 3% disturbance cap, and (2) are an exception to the designation of PHMAs as an avoidance area. If access to mining claims is made infeasible by requiring avoidance of PHMAs and/or limiting access through PHMAs and GHMAs to designated corridors or collocation with existing features, those mining claims would be *de facto* withdrawn from mineral entry, contrary to FLPMA, 43 U.S.C. § 1712(e)(3).

The restrictions on motorized travel will have an inadequately defined and significant adverse effect on mining and will significantly interfere with exploration and development of mineral resources on these lands. Limiting access to public lands to existing or designated routes may make economic exploration and development of some mineral deposits impossible. Maintaining lands available for mineral entry is a hollow gesture if the lands are inaccessible or surrounded by lands on which infrastructure, such as roads, cannot be located.

These travel and transportation management restrictions are unlawful because they conflict with the rights granted by Section 22 of the General Mining Law and 30 U.S.C. 612(b) (Surface Use Act), which guarantee the right to use and occupy Federal lands open to mineral entry, *with or without a mining claim*, for prospecting, mining and processing and all uses reasonably incident thereto, including but not limited to ancillary use rights, and rights of and associated with ingress and egress. By closing routes, including primitive roads and trails not designated in a travel management plan,⁴ BLM will interfere with potential access to minerals as well as the public’s right-of-way across Federal lands.

Similarly, the Agencies’ proposal to authorize new roads only for administrative access, public safety or access to VERs (Section 2.6.2 and Section 2.6.3 Action LR-LUA 19, GRS-RT-ST-081-Standard), does not go far enough to maintain access, use and occupancy, associated with unpatented mining claims prior to discovery, and unclaimed lands open to mineral entry for prospecting, mining and processing and all uses reasonably incident thereto, including but not limited to ancillary use rights, and rights of and associated with ingress and egress. By limiting the potential for access to only VERs, the Agencies fail to maintain access and thus, conflict with § 22 of the General Mining Law.⁵

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4. Section 2.6.2: Action CTTM 3 “Evaluate all routes to determine the purpose and need and the potential resource or user conflicts from motorized travel. Where resource or user conflicts outweigh the purpose and need for the route, consider closing the route or relocating it outside of PHMAs and GHMAs. Evaluate for administrative access only routes not required for public access or recreation against current administrative/agency purpose or need... In PHMAs and GHMAs, close to motorized travel those roads, primitive roads, and trails not designated in travel management plans” (PLUPA/FEIS at 2-52; 2-53).
 5. *See also* BLM Land Use Planning Handbook, App. C at 24 (“For lands that are open to the location of lode, placer, and mill claims, the claimant has statutory authority under the mining laws to ingress, egress and development of those claims. This authority means that those areas open to mineral entry for the purposes of exploration or development of locatable minerals cannot be unreasonably restricted.”); BLM Surface Management Handbook at 8-14 (“land use plans must recognize the rights granted by the Mining Law to enter, explore, and develop mineral resources on the public lands. . . . in areas open to mineral entry, or closed

Further, a primary objective of the travel and transportation management program is to ensure access needs are balanced with resource management goals and objectives in resource management plans (BLM Manual 1626 at .06). However, the Agencies have not balanced access needs associated with minerals, or any other use, and instead place a preference on aesthetic values and protection of the GRSG.

D. The PLUPA Fails Under FLPMA and the MMPA

1. FLPMA's Multiple Use Directives Are Contravened by the PLUPA

Under FLPMA, BLM is required to manage the public lands on the basis of multiple use and sustained yield ("MUSY"). 43 U.S.C. § 1701(a)(7). " 'Multiple use management' is a concept that describes the complicated task of achieving a balance among the many competing uses on public lands, 'including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and [uses serving] natural scenic, scientific and historical values.' " *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 58 (2004) (quoting 43 U.S.C. § 1702(c)).

Congress directed the Secretary of the Interior through FLPMA to consider a broad range of resource issues, land characteristics, and public needs and values in determining how public lands should be managed. FLPMA commands BLM to manage public lands for multiple uses and to consider a wide range of resource values – including the need to protect wildlife and quality of habitat – in the context of the Nation's needs for minerals, energy, food, fiber, and other natural resources. Section 102(a)(8) requires BLM to manage the public lands in a "manner that will protect the quality of scientific, scenic historical, ecological, environmental ... values," 43 U.S.C. § 1701(a)(8).

The land use restrictions and prohibitions, especially the proposed withdrawals from mineral entry (Sections 2.6.2 and 2.6.3 at 2-25, 2-45, 2-50; and 2-63, respectively), and the widespread travel and transportation restrictions (Sections 2.6.2 and 2.6.3 at 2-52, 53, 54; and 2-70, 71, respectively) are not in compliance with the specific directive pertaining to minerals in FLPMA Section 102 (a)(12) that:

[T]he public lands [shall] be managed in a manner that recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including the implementation of the Mining and Minerals Policy Act of 1970 [at] 30 U.S.C. 21a . . . (43 U.S.C. 1701(a)(12)).

The definition of multiple use in FLPMA was essentially borrowed from the Multiple Use Sustained Yield Act of 1960 (MYUSA) and is intended to have the same meaning. See Senate Report No. 95-583 ("this [multiple use] definition is very similar to that . . . which presently appears at section 4 of the Multiple-Use Sustained-Yield Act of 1960" and House Report No. 94-1163 ("the definition of multiple use preserves essentially its same meaning as used in the Forest Service Multiple Use Act of 1960 [as MUSYA is also known].)")

subject to valid existing rights, the land use plan cannot be used to preclude mining or restrict certain types of mining activities.")

Therefore, by analogy, the legislative history of MUSYA regarding multiple use principles applies with equal weight to FLPMA. In explaining MUSYA's multiple use directive, the House Report discusses the "relative values" analysis as follows:

One of the basic concepts of multiple use is that all of these resources in general are entitled to equal consideration, but in particular or localized areas relative values of the various resources will be recognized.... no resource would be given a statutory priority over the others. The bill would neither upgrade nor downgrade any resource.

See H.R. Rep. No. 1551, 86th Cong., 2d Sess. (1960), *reprinted in* 1960 U.S.C.C.A.N. 2377, 2379. *See* 43 U.S.C. §§ 1701(a)(3) and *National Wildlife Federation v. Buford*, 835 F.2d 305, 308-09 (9th Cir. 1987) (finding that classifications must be reviewed consistent with the principles of multiple use and sustained yield).

In 2006, BLM issued an "Energy and Non-Energy Minerals Policy Statement" that clearly emphasizes the agency's multiple use mandate. The policy indicates that except for Congressional withdrawals, public lands shall remain open and available for mineral exploration and development unless withdrawal or other administrative actions are clearly justified in the national interest. Furthermore, the policy states that BLM land use planning and multiple-use management decisions will recognize that, with few exceptions, mineral exploration and development can occur concurrently or sequentially with other resource uses.

By withdrawing over 9 million acres of land from location under the General Mining Law and imposing exhaustive restrictions on mineral leasing, the PLUPA violates the multiple-use mandate of FLPMA and must be significantly revised.

2. The PLUPA Is Fatally Defective Due to Unlawful Land Withdrawals Under FLPMA

The proposed wholesale withdrawal of millions of acres of lands from mineral entry within SFAs is inconsistent with the General Mining Law. The Protestant objects to Sections 2.6.2 and 2.6.3 at 2-25 (Action SSS-5), 2-45 (Action LR-LW 1), 2-50 (LOC-2); and 2-63 (GRSG-LR-LW-GL-025-Guideline).

The maximum number of acres within Notices and Plan of Operations boundaries in the entire state of Nevada is only 191,374 acres, some of which are not co-located within GRSG habitat. By contrast, the proposed withdrawals within SFAs are over 2.8 million acres – 15 times larger than the total footprint of existing mining activities in the state of Nevada. Therefore, the proposal to withdraw over 2.8 million acres of land in Nevada from mineral entry is grossly out of proportion with the maximum potential impact that mineral activities might have on Sage-grouse and its habitat. Consequently, the proposed withdrawal within SFAs is not justified, is unreasonable and unnecessary, and is, therefore, arbitrary and capricious.

Withdrawals of the magnitude proposed under the Proposed Plan – 3,319,000 acres (including existing withdrawals at Table 2-14) conflict with § 22 of the General Mining Law, and the Mining and Minerals Policy Act and cannot be implemented through the land use planning process. Withdrawals of this magnitude can only be made by an Act of Congress or by the

Secretary of the Interior pursuant to the requirements and procedures of FLPMA § 204(c) for a period not to exceed 20 years.

The proposed withdrawals are designed to obstruct use of public lands from mineral exploration and development (and many other land uses). The proposed withdrawals will harm NMA and IMA-NA members and other claim holders with claims in the SFAs (and other withdrawal areas), as well as government units within the State of Nevada which benefit from and rely upon tax revenues and economic activity associated with mineral activities. The risk of exploration-stage claims to be found invalid as a result of validity examinations is high. Further, the fact that most Nevada mining claims are exploration-stage claims only increases the potential harm to the Protestant, other claim holders, and State and local governments.

The Agencies have not documented the rationale for their decisions regarding the management of minerals. Specifically those decisions associated with how the withdrawals, and *de facto* withdrawals recommended in the PLUPA/FEIS, comply with § 22 of the General Mining Law. For these reasons, the PLUPA is illegal and does not “comply with applicable laws, regulations, policies and planning procedures,” (BLM Handbook H-1601-1 at 7), which is one of the criteria to uphold a protest.

3. The PLUPA Violates the Mining and Minerals Policy Act of 1970

The Agencies must demonstrate its compliance with the mandate under the Mining and Minerals Policy Act of 1970 (“MMPA”) (30 U.S.C. §21(a)), and FLPMA (43 U.S.C. §1701(a)(12)) to recognize the Nation’s need for domestic minerals.

The PLUPA/FEIS omits reference to MMPA’s declaration that it “is the continuing policy of the Federal government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, mineral, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs,” 30 U.S.C. § 21a.

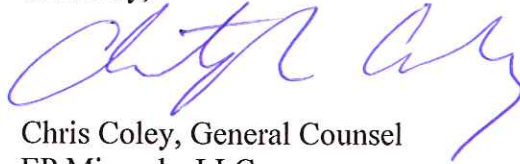
The Agencies have not documented the rationale for its decisions regarding the management of minerals. Specifically those decisions associated with how the widespread land use restrictions, prohibitions, withdrawals, and *de facto* withdrawals recommended in the PLUPA/FEIS comply with the mandate under § 21(a) to recognize the Nation’s need for domestic sources of minerals.

VI. Conclusion and Remedies

For the reasons discussed above, Protestant EP Minerals, LLC files this protest to seek fundamental clarity as to the relationship to the PLUPA habitat designations and its approved Clark Project. The Proposed Action has changed dramatically from the Alternatives analyzed in the DEIS and is based on significant new information. Additionally, the PLUPA requires

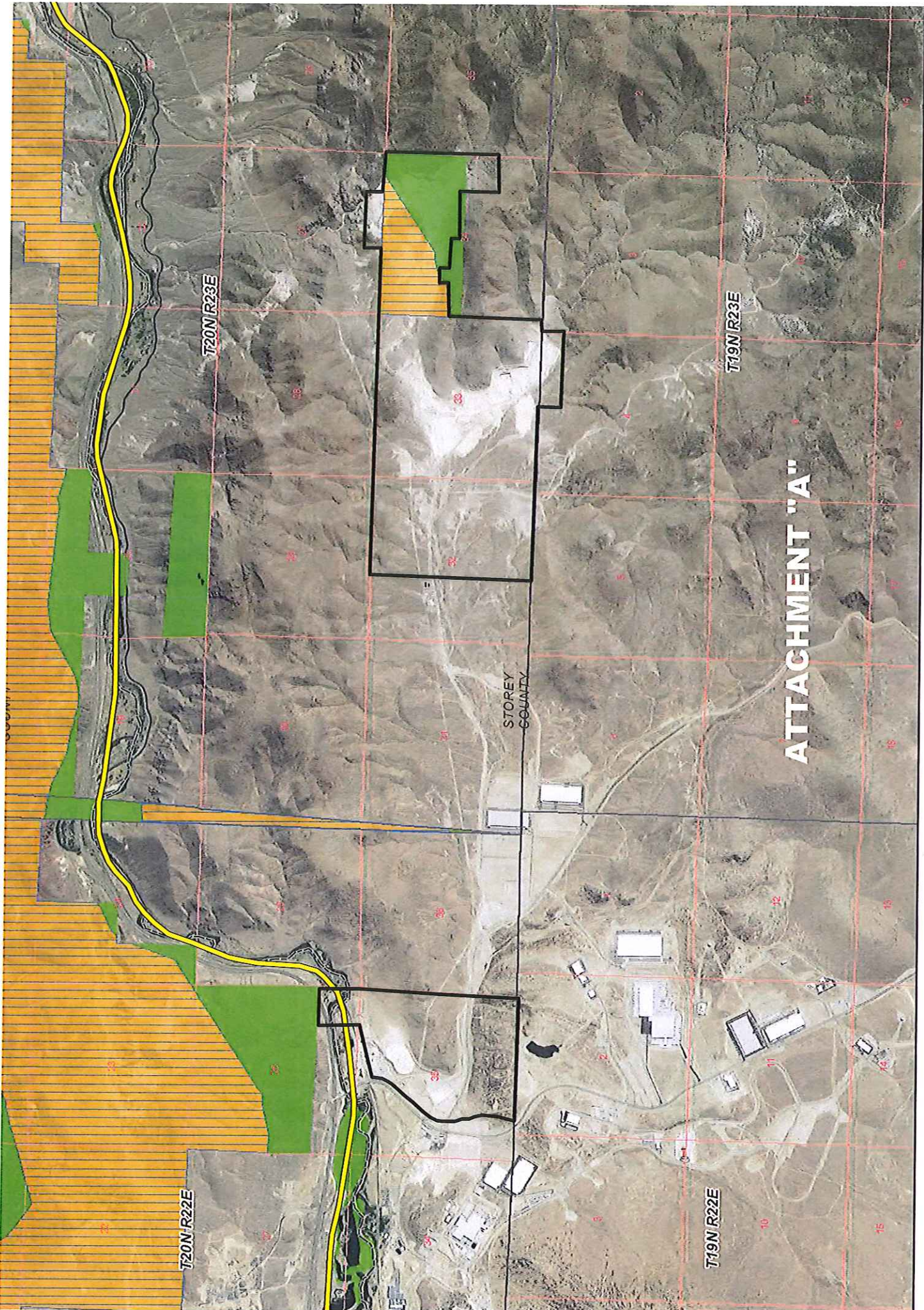
revision and clarification to ensure that they are consistent with rights under the Mining Laws, and this defect can only be cured by an SEIS prior to execution of any Record of Decision.

Sincerely,



Chris Coley, General Counsel
EP Minerals, LLC
9785 Gateway Dr.
Reno, NV 89521 USA

Attachment



NV-NECA Greater Sage-Grouse Habitat (Proposed Plan)

BLM/FS General Habitat Management Area (GHMA)