

Sagebrush Ecosystem Council

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BRIAN SANDOVAL
Governor



Sagebrush Ecosystem Technical Team
Kacey KC, Program Manager
Sheila Anderson, Forestry/Wildland Fire
Melissa Faigeles, State Lands
Kelly McGowan, Agriculture
Lara Niell, Wildlife

STATE OF NEVADA
Sagebrush Ecosystem Program

201 S. Roop Street, Suite 101
Carson City, Nevada 89701
Telephone (775) 684-8600
Facsimile (775) 684-8604
www.sagebrusheco.nv.gov

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