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Submitted electronically via: <https://cara.ecosystem-management.org/Public/CommentInput?project=52904>

RE: Comments on the Draft Environmental Impact Statement regarding the Idaho (Boise, Caribou-Targhee, Salmon-Challis, and Sawtooth National Forests and Curlew National Grassland); Nevada (Humboldt-Toiyabe National Forest); Utah (Ashley, Dixie, Fishlake, Manti-La Sal, and Uinta-Wasatch-Cache National Forests); Wyoming (Bridger-Teton National Forest); and Wyoming/Colorado (Medicine Bow-Routt National Forest and Thunder Basin National Grassland) Amendments to Land Management Plans for Greater Sage-Grouse Conservation

Dear Ms. Rasure and Mr. Ferebee:

On October 5, 2018, the U.S. Forest Service ("USFS") published a notice of availability of land management plan amendments ("LMPAs") and a draft environmental impact statement ("DEIS")

(together, “LMPAs/DEIS”) to amend the 2015 Land Management Plan Amendments (“2015 LUPAs”) regarding the conservation of greater sage-grouse (“GRSG”) in Colorado, Idaho, Nevada, Wyoming, and Utah.

The American Petroleum Institute (“API”), Western Energy Alliance (“the Alliance”) and the Petroleum Association of Wyoming (“PAW”) (together, the “Trades”) appreciate USFS’ efforts to improve GRSG conservation consistent with all applicable laws. The Trades appreciate the opportunity to comment and hereby submit the following in support of Alternative 2, the Preferred Alternative, as identified in the LMPAs/DEIS.

API is a national trade association representing over 625 companies involved in all aspects of the oil and natural gas industry. API’s members include producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies that support all segments of the industry. API member companies are leaders of a technology-driven industry that supplies most of America’s energy, supports more than 10.3 million jobs and nearly 8 percent of the U.S. economy, and since 2000, has invested more than \$3 trillion in U.S. capital projects.

IPAA is a national trade association representing the thousands of independent crude oil and natural gas explorers and producers in the United States. It also operates in close cooperation with 44 unaffiliated independent national, state, and regional associations, which together represent thousands of royalty owners and the companies that provide services and supplies to the domestic industry. IPAA is dedicated to ensuring a strong, viable domestic oil and natural gas industry, recognizing that an adequate and secure supply of energy developed in an environmentally responsible manner is essential to the national economy.

Western Energy Alliance represents over 300 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas across the West. The Alliance represents independents, the majority of which are small businesses with an average of fifteen employees.

The Petroleum Association of Wyoming (PAW) is Wyoming’s largest and oldest oil and gas organization dedicated to the betterment of the state’s oil and gas industry and public welfare. PAW members, ranging from independent operators to integrated companies, account for approximately ninety percent of the natural gas and eighty percent of the crude oil produced in Wyoming.

The stated purpose of the 2015 LUPAs was to conserve GRSG to avoid a listing under the Endangered Species Act (“ESA”). However, the 2015 LUPAs imposed myriad restrictions on public land uses without the benefit of the best available science nor consideration of modern technology now commonly used in oil and gas development.

GRSG inhabit some 165 million acres across eleven Western states. Data from the states indicate populations as robust as an estimated 535,542 birds, with significant increases occurring due to favorable weather conditions and existing conservation mechanisms over the past couple of years. In addition, such populations have risen dramatically in recent years due to unprecedented state, local and private conservation efforts and favorable weather patterns (the birds respond well to the wet springs experienced throughout the region over the past few years). We question whether such a wide-ranging and numerous species should be seriously considered for listing under the ESA.

The 2015 LUPAs process was characterized by top-down, one-size-fits-all direction from Washington, D.C. Accordingly, the Trades were among the 283 states, local governments and other entities that

protested the 2015 LUPAs. Nine Governors provided Consistency Review letters and five states appealed the Bureau of Land Management's ("BLM") responses. Ultimately, no fewer than nine lawsuits were filed against the 2015 LUPAs. At least one federal court in Nevada has already held that last-minute Washington, D.C. mandates in the 2015 LUPAs were unlawful. *See Western Exploration LLC et al. v. U.S. Dep't of Interior et al.*, 250 F.Supp.3d 718 (D. Nev. 2015).

I. Marked Improvements from the 2015 LUPAs

The Trades are greatly encouraged to note the USFS' determination to improve efficiency, clarity, and implementation of GRSG conservation documents; to incorporate new scientific information; and to enhance collaboration between federal and state agencies and local stakeholders.

The Preferred Alternative addresses many of the issues which have been raised in public comments on the 2015 LUPAs and subsequent GRSG planning documents. Adoption of the Preferred Alternative would go far to rectify the problems brought about by the one-size-fits-all approach of the 2015 LUPAs, in addition to the eleventh-hour changes to the same (which included: GRSG "strongholds" or "focal areas" ("SFAs"); the involvement of the U.S. Fish and Wildlife Service ("USFWS") and state wildlife agencies in the determination of waivers, modifications or exceptions to no surface occupancy areas ("NSO"); and so-called hard or soft triggers). There was no public review or comment on these changes prior to publication of the Final Environmental Impact Statement and Record of Decision in September 2015.

In addition, the Trades heartily endorse the purpose and need here, in pertinent part:

The need for further plan amendments is that the FS has gained new information and understanding from the 55,000 comments received as a result of the 2017 NOI, from within-agency scoping, and from coordination with the Sage-grouse Task Force (with members from state agencies, BLM, USFWS, and the Natural Resources Conservation Service). The purpose of the proposed action is to incorporate new information to improve the clarity, efficiency, and implementation of the 2015 Greater Sage-Grouse Plan Amendments, including better alignment with BLM and state plans, in order to benefit GRSG conservation at the landscape scale.

LMPAs/DEIS at 1.3. Thank you for recognizing new information and understanding from comments received, new science and research, and coordination with the Sage-grouse Task Force.

Dramatic increases in GRSG populations in recent years (prior to implementing the 2015 LUPAs) speaks to the supposition that human influences on GRSG populations had been unreasonably assumed to be uniformly negative in the 2015 LUPAs and that instead, land use restrictions should be more measured and based upon causal analysis.

The Trades support USFS efforts related to: incorporating casual factor review and response processes into the adaptive management strategies; removing net conservation gain and aligning better with states' mitigation strategies; modifying lek buffers; revising livestock management guidelines to replace grass height requirements with standardized evaluation methods..." as well as action to withdraw SFAs.

The Trades appreciate that the USFS recognizes and respects that the authority to manage and preserve fish and game is inherent in the sovereignty of a State. The Trades also appreciate USFS involvement

and support for state and local plans and the commitment to cooperate with same as feasible and legally appropriate.

II. Issues that Should be Addressed in the LMPAs/DEIS

Several issues were apparently not addressed in the LMPAs/DEIS “because they were analyzed in the 2015 FEIS, no significant new information has emerged, or they are not affected by the changes proposed in Chapter 2 of this DEIS.” See ES 3.3.

A. Remaining issues from the 2015 LUPAs

The Trades urge the USFS to address the need for more flexibility in the LMPAs/DEIS relative to:

- Restrictions on Right of Ways (“ROWS”) and infrastructure;
- Prioritization of fluid mineral leases outside of Priority Habitat Management Areas (“PHMA”) and General Habitat Management Areas (“GHMA”) in Colorado, Idaho, Nevada, and Wyoming;
- Numerical noise limitations within PHMA;
- Vegetation treatments and wildfire response;
- Habitat assessment framework; and
- Contribution of disturbance caps toward GRSG conservation objectives.

B. Multiple Uses of Federal Lands pursuant to Federal Laws

In enacting National Forest Management Act of 1976 (16 U.S.C. § 1600 *et seq.* hereinafter “NFMA”) in 1976, Congress directed the Secretary of Agriculture to provide for a broad range of resource issues consistent with the principles established under Multiple Use and Sustained Yield Act of 1960 (16 U.S.C. § 528 *et seq.*, hereinafter “MUSYA”). Section 528 of MUSYA provides “[n]othing herein shall be construed so as to affect the use or administration of the mineral resources of national forest lands” Emphasis added.

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 consider both environmental and commercial goals (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 § 531 directs the Secretary to ensure:

The 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....

16 U.S.C. 531 (emphasis added). Under the multiple use requirements, minerals and wildlife are on equal footing. Consequently, USFS must strike an appropriate balance between potentially competing interests and land management objectives, while considering the needs of all resources. This balance is to be achieved through the land use planning process and the resulting land management plans. NFMA and MUSYA do not authorize the subordination of any use in preference for a single land use such as GRSG

habitat conservation outside the requirements under USFS' surface management regulations at 36 CFR 228.

Likewise, under § 529 of MUSYA Congress directs USFS to give “due consideration” to resources. Nonetheless, the Trades are concerned that USFS continues to, in effect, manage GRSG above all other uses, contrary to federal laws. As such, many of the 2015 management prescriptions retained in the Preferred Alternative should be revised or eliminated.

The Department of Agriculture may “cooperate with interested State and local governmental agencies and others in the development and management of the national forests” to manage harmoniously various resources “without impairment of the productivity of the land. . .” 16 U.S.C. §§ 530 and 531. Moreover, 36 CFR 219.19 defines integrated resource management (which is to be a consideration in National Forest System unit planning per 36 CFR 219.2(b)(1)) as:

Multiple use management that recognizes the interdependence of ecological resources and is based on the need for integrated consideration of ecological, social, and economic factors.

Id. Finally, the Mining and Minerals Policy Act establishes that it is the continued policy of the United States to recognize the Nation's need for domestic minerals. 30 U.S.C. § 21a.

Accordingly, the Trades encourage USFS to ensure that all future planning decisions comply with the multiple-use mandates within the federal laws as discussed herein. The corollary is that many of the 2015 management prescriptions retained in the Preferred Alternative should be revised, as discussed in detail below.

C. The Best Available Science

The 2012 Planning Rule, as amended, requires the responsible official to use the best available scientific information to inform the planning process for developing, amending, or revising a forest plan, including plan components. 36 CFR 219.3 and 219.14(a)(3). *See* LMPAs/DEIS at 4.2. The Trades appreciate that new science published since the 2015 LUPAs has been used to develop the plan components and to inform this LMPAs/DEIS. *Id.*

However, as detailed at length in Data Quality Act¹ (“DQA”) challenges (hereinafter, the “Challenges”) to key reports cited in the 2015 LUPAs, there were significant flaws with the science and information relied upon. *See* Exhibit A. Pursuant to the DQA, agencies are required to establish guidelines by which the quality, utility, objectivity, and integrity of the information disseminated by agencies may be maximized as much as possible. Public Law 106-554 § 515(1)(a). The DQA requires federal agencies to ensure and maximize the quality, objectivity, utility, and integrity of information disseminated. The Information Quality Guidelines promulgated by USDA and which are adhered to by USFS^{2,3} also require the implementation of the information quality standards of objectivity, utility, and integrity in the

¹ The DQA or Information Quality Act, passed the [United States Congress](#) in Section 515 of the [Consolidated Appropriations Act, 2001 \(Pub.L. 106-554\)](#). Because the Act was a two-sentence rider in a spending bill, it had no name given in the actual legislation. The [Government Accountability Office](#) calls it the Information Quality Act, while others call it the Data Quality Act.

² <https://www.fs.fed.us/qoi/>

³ <https://www.ocio.usda.gov/policy-directives-records-forms/information-quality-activities>

development and dissemination of information. Literature cited by the Trades in these comments are attached hereto as Exhibit B.

1. Scientific Shortcomings with the Reports used in the 2015 LUPAs

The Reports underpinning the 2015 LUPAs as well as the 2010 warranted but precluded GRSG listing decision, were plagued with conflicts of interest, bias and selective citation. They ignored the most relevant factors to grouse populations (weather, predation, wildfire, hunter harvest, West Nile Virus, and invasive vegetation encroachment) in favor of restrictions that will cost jobs and harm local communities without corresponding benefits to the species. Nonetheless, both the 2010 GRSG listing decision and the 2015 LUPAs relied heavily on the scientifically flawed Reports. *See* Exhibit A.

In the 2015 Challenges, a coalition of 20 local governments, as well as diverse agricultural and energy interests undertook an independent scientific review of the Reports. The reviews uncovered significant errors, omissions and biases in the Reports that have contaminated subsequent policy and management actions based thereon. The Challenges document hundreds of pages of flaws with respect to:

- 3 percent disturbance caps
- Density caps of 1 disturbance per 640 acres
- Lek buffers
- Required Design Features
- No Surface Occupancy areas (NSOs) without exception in priority habitat
- Implementation of an avoid-minimize-compensate policy
- Net conservation gains
- Sagebrush canopy cover
- The warranted but precluded listing decision for GRSG

See Exhibit A. The Reports create a narrative that ignores natural population fluctuations; blames human activities such as energy development and ranching for alleged declines; ignores actual threats to GRSG; and then seeks to impose unfounded regulatory restrictions on human activities. The Reports erroneously ignore accurate population data and adopt flawed modeling approaches that have consistently failed to accurately predict populations. This selective use of science is wholly misleading, and assumes GRSG populations are in decline despite evidence to the contrary. In sum, the Reports fail to meet the standards of quality, integrity, objectivity and utility required by the Data Quality Act, as well USFS standards of scientific integrity and transparency. These shortcomings have never been adequately addressed.

The NTT Challenge was 97 pages in length with four exhibits for a total of 197 pages of detailed issues. The COT Challenge was 88 pages with four exhibits for a total of 159 pages. The Monograph Challenge was 99 pages with three exhibits for a total of 332 pages. The Buffers Challenge was 41 pages. Nonetheless, the agencies virtually ignored these shortcomings and issued only a four-page response to the cumulative 729-page Challenges, and a two-page response to subsequent appeals.

Moreover, in the National Environmental Policy Act (“NEPA”) documents, the agencies hardly recognized the existence of the Challenges, let alone addressed their merits. BLM and the USFS failed to address the substance and detail in these Challenges and provided little—if any—rationale for their misplaced use of the Reports. No corrective actions were taken nor were adequate disclosures of these flaws recognized or addressed as required by implementing regulations for NEPA. *See* 40 C.F.R. § 1502.9(b).

2. Science in the LMPAs/DEIS is not Complete and Representative

As discussed in detail below, the USFS should consider additional scientific literature and modern technology now commonly employed in oil and gas development and operations. *See* attached Exhibit C.

The Trades noticed unsettling errors of omission in both the summary of scientific literature in the LMPAs/DEIS and the U.S. Geological Society (“USGS”) report that synthesized and outlined the potential management implications of “new” science (Hanser et al. 2018). More specifically, both documents omitted any mention of scientific papers that had reported: 1) that GRSG population dynamics are primarily driven by variation in regional climate (i.e. variations in annual weather conditions and precipitation), and 2) the impacts of oil and gas development on GRSG have been lessened over time as a result of less impactful technologies, increased regulation and mitigation, and conservation set asides (Ramey, Brown, and Blackgoat 2011; Applegate and Owens 2014; Ramey, Thorley, and Ivey 2015 and Exhibit C attached hereto; Christiansen and Belton 2017; Ramey, Thorley, and Ivey 2018). The Trades urge the USFS to correct these omissions and objectively revise its conclusions accordingly.

Additionally, the authors of the USGS synthesis report (Hanser et al. 2018) disproportionately cited studies authored by themselves and a handful of other USGS biologists. Of 261 reports and papers listed in the literature, 31% were written by the authors of Hanser et al. 2018, or a handful of other USGS biologists. Moreover, 39% of the 587 citations (excluding government policy documents) were attributable to the authors and USGS biologists. The authors of Hanser et al. 2018 were also more likely to cite their own work more frequently than those of other USGS biologists with an average of 2.9 citations per paper compared to papers by non-USGS biologists (an average of 2.0 citations per paper).

Such statistics, and the omissions documented above, call into question a lack of objectivity in the USGS report by Hanser et al. (2018). Regrettably, this fits a systematic pattern documented in the DQA challenges to other USGS reports that were that were heavily relied upon in the 2010 listing decision on GRSG as well as the 2015 LUPAs and corresponding RODs.

3. Continuing Need for More Transparency

USFS must commit to develop processes to use independent data from a variety of sources, including peer-reviewed journals, agency data, and local information. The LMPAs/DEIS must rely on locally relevant science and data to inform implementation of management actions; data sharing; and the development of methods to gather and use local and traditional ecological knowledge.

The Trades strongly support peer review, transparency and reproducibility in regard to science as well as the analysis of local conditions. As was the case with the 2015 LUPAs, USGS-supported research is one of the primary shortcomings of the current LMPAs/DEIS. As evidenced by the Challenges, USGS-supported research has incorrectly utilized in support of a one-size-fits-all method of federally-mandated wildlife management.

The Trades encourage the USFS to bolster its requirements for transparency in terms of data, code, input parameters, and methods used to estimate sage-grouse lek attendance, as well as population and habitat trends, habitat, and causal factors. While responsibility for these are currently delegated to the states (or in some cases, the Western Area Fish and Wildlife Association (“WAFWA”) or a non-governmental entity, and therefore, are free from the requirements of the DQA and the Freedom of Information Act, the USFS could take a more active role in requiring data transparency for actions on federal lands, as required by the DQA. This would ensure that models and results relied upon in management decisions will be fully

reproducible as required by the DQA. In the case of data restricted under statute or state policy, legally-binding non-disclosure and data sharing agreements may be used.

Because of the complexity of data and mathematical models used to determine GRSG trends, habitat use, and effects, we encourage the USFS to rely only on studies that have made data and code available, rather than studies that have simply been peer reviewed. That is because peer reviewers rarely have access to or review the underlying data and code. As a result, many GRSG research papers have been published in wildlife journals absent real transparency. This inadequacy of standards, checks and balances in the peer review process has been well-documented in the scientific and legal literature. (Jasanoff 2006; Ferguson et al. 2014; Fraser et al. 2018).

By requiring minimum standards of data availability, the FEIS would also require standards consistent with both the DQA and recommendations by the National Research Council. In their 2012 report, *Assessing the Reliability of Complex Models: Mathematical and Statistical Foundations of Verification, Validation, and Uncertainty Quantification* (NRC 2012), the NRC stressed that:

Predictions with uncertainty are necessary for decision makers to assess risks and take actions to mitigate potential adverse events with limited resources. In addition to providing an estimate of the uncertainty, it is also crucial to assess the quality of the prediction (and accompanying uncertainty), describing and assessing the appropriateness of key assumptions on which the estimates are based, as well as the ability of the modeling process to make such a prediction.⁴

Additionally, a growing number of leading scientific journals, including *Science* and *Nature*, are signatories to the policies of the Center for Open Science.⁵ Briefly, these guidelines require that data, materials, and code must be posted to a trusted, publicly-accessible data repository. Requiring studies to meet these minimum requirements would ensure that the USFS complies with requirements for data quality and integrity in the DQA.

4. The USFS must Right these Previous Wrongs

The Trades were dismayed to note that the LMPAs/DEIS still reference the Reports. For example:

The minimum recommended buffer distances documented by a USGS literature review (Manier et al. 2014) would be applied in IHMA, which has approximately a quarter of all known occupied leks, and GHMA, which contains less than 10 percent of all known leks. These buffers, which are smaller than the buffers identified for use in the 2015 ROD/LMPA, would be applied to tall structures and would vary for different types of structures.

⁴ <https://www.nap.edu/catalog/13395/assessing-the-reliability-of-complex-models-mathematical-and-statistical-foundations>.

⁵ See *Guidelines for Transparency and Openness Promotion (TOP) in Journal Policies and Practices* (<https://osf.io/9f6gx/wiki/Guidelines/> and <https://www.the-scientist.com/features/replication-failures-highlight-biases-in-ecology-and-evolution-science-64475>).

LMPAs/DEIS at 4-222. *See also Id.* at 4-270. The USFS cannot possibly justify the alleged benefits of measures recommended in the Reports (such as increased federal controls over public and private lands as discussed below and in the attached) against the dramatic societal costs they would entail. Accordingly, the Trades urge the USFS to remove references to the Reports in these and any future land use plan amendments and to include the following language in the FEIS and Records of Decisions (“RODs”):

The NTT Report, the COT Report, the USGS Monograph and Manier, *et al.* 2014 (collectively “the Reports”) were heavily relied upon in the 2010 listing decision on GRSG as well as the corresponding LUPAs and RODs. Since then, the science and understanding on GRSG has evolved and some significant shortcomings with the Reports have come to light. Management prescriptions from the Reports should be viewed with caution and tempered with the best available information, including specifically state and local science and knowledge.

In addition, the Trades have urged the USFWS to amend the listing file for GRSG to remove unwarranted reliance on the Reports as well as the 2015 LUPAs. In so doing, the agencies would correct significant wrongs in the 2015 LUPAs without risk of an adverse decision on the listed status of GRSG.

III. Specific Comments on the Preferred Alternative as outlined at Section 1.4 of the LMPAs/DEIS

- 1. “Areas designated as sagebrush focal areas (SFAs) will be eliminated and designated as PHMAs in order to streamline plans in accordance with BLM and FS policy.”**

Trades’ Response to Item 1:

While removing the SFA designation is a step in the right direction, merely re-categorizing former SFA land as PHMA is insufficient without providing a basis for such PHMA designation(s), and the restrictions applicable thereto.

In other words, the lands formerly classified as SFA must be managed according to their actual habitat conditions based on site-specific habitat data and should not be automatically categorized as PHMA. As an example, in *Western Exploration, LLC v. U.S. Dep’t of the Interior*, 250 F. Supp. 3d 718 (D. Nev. 2015), it was shown that the SFA in the 2015 LUPAs included areas of non-habitat and lower priority habitats.

- 2. “The use of mineral withdrawals will be eliminated, in accordance with the limits of FS authority.”**

Trades’ Response to Item 2:

The Trades appreciate the USFS’ efforts to comply with the BLM’s cancellation of the withdrawal of “10 million acres of public and National Forest System lands in Idaho, Montana, Nevada, Oregon, Utah, and Wyoming.” 82 Fed. Reg. 47248.

BLM’s 2016 SFA Withdrawal DEIS clearly documents that the proposed withdrawal for SFAs

was unwarranted. The Trades urge the USFS to incorporate by reference the October 2016 Mineral Potential Report and Sagebrush Mineral Resource Assessment⁶ that the USGS prepared for BLM as well as BLM's 2016 SFA Withdrawal DEIS in order to further strengthen the NEPA analysis of this management decision.

3. *“Where restrictions on mineral developments are required, specific requirements for habitat disturbing activities will be inserted to clarify plan direction.”*
4. *“Where exceptions to restrictions on minerals development are allowed, the details, requirements, and process of making the exceptions will be modified in order to streamline the plans in accordance with FS and BLM policy.”*

Trades' Response to Items 3 and 4:

First and foremost, the Trades urge USFS to ensure that such actions will respect valid existing rights and comply with all applicable laws. On a related note, the Trades urge the USFS to re-incorporate reference to permits and licenses in its description of valid existing rights. *See* LMPAs/DEIS glossary at 289.

In addition, because the 2015 LUPAs subjectively restricted certain surface-disturbing activities while not placing similar restrictions on other surface-disturbing activities, the 2015 LUPAs, the USFS should address in-depth the restrictions referred to in Item 3, and as necessary, reassess or remove unfounded restrictions from the 2015 LUPAs that remain in the LMPAs/DEIS.

Oil and gas surface development within one (1) mile of a lek should be allowed if no, or minimal, GRSG disturbance would occur. USFS should be able to utilize waivers, exceptions, and modifications from NSOs up to .6 mile from a known active lek. Oil and gas lease activities may be located where non-habitat (such as local terrain features including ridges and ravines) may reduce the habitat importance and shield nearby habitat from disruptive factors. Energy development should be allowed in primary habitat where minimal impact to GRSG exists.

Disturbance and density caps must be eliminated or reevaluated. These were first offered as policy in the NTT Report absent scientific justification for the three percent disturbance cap. Ultimately, disturbance caps were adopted in the 2015 LUPAs. However, conservation measures based upon “professional judgment” and flawed studies do not constitute the best available science, and the Agencies should not have relied upon these studies or the NTT Report in the governing planning documents. Disturbance caps violate valid existing rights. For example, as defined, disturbance caps may include existing disturbances such as livestock grazing or impacts from fire in the calculation of activities that would henceforth be allowed. When the cap is reached, existing activities will foreclose future activities. Disturbance caps must be re-evaluated for functionality and scientific validity. The one (1) disturbance per 640-acre density cap must be removed or re-defined.

To be clear, the Preferred Alternative, while lessening applicable restrictions, still elevates GRSG management above other uses. GRSG conservation cannot be the primary goal in managing USFS

⁶ <https://pubs.usgs.gov/sir/2016/5089/b/sir20165089b.pdf>

land, but instead must be balanced with all other possible allowed uses in accordance with applicable law. The USFS may not use this NEPA process as an attempt to amend federal law.

- 5. *“Updated information will be incorporated to revise mapped HMAs, and the purpose and use of HMA maps will be clarified.”***

The Trades’ Response to Item 5:

The Trades wholeheartedly support USFS’ endeavor to seek out and rely upon more accurate habitat maps. For example, the Trades support collaborative mapping efforts such as those between local governments and Colorado Parks and Wildlife in northwest Colorado. Further, the Trades support use of improved technology in such efforts.

The fact that not all lands within designated habitats actually contain viable habitat (e.g., non-habitat in the form of agricultural fields, topography, or existing oil and gas fields, within designated core areas) cannot be emphasized enough. As past practice has shown with a variety of wildlife and other resource management plan mapping exercises, reliance on low-resolution GIS mapping layers has led to inaccurate landscape and habitat assumptions, and arbitrary imposition of restrictions on valid existing rights. Again, the USFS may not ignore the multiple use mandate of federal law through this NEPA process.

The Trades strongly recommend that USFS engage with counties and local governments and other stakeholders and pursue opportunities to improve coordination, develop MOUs, increase data sharing, initiate new research and incorporate new information and new means of analyzing problems into plan implementation. Where local mapping has been developed at a finer scale and with greater accuracy than state or federal mapping, USFS should commit to incorporating and relying upon the local mapping as the best available information.

“Through the adaptive planning cycle set forth in this subpart, a plan can be changed to reflect new information and changing conditions.” 36 CFR 219.2(b)(1). Accordingly, the USFS may update maps relevant to GRSG habitat in reliance upon states and local governments without the need for additional NEPA compliance. We urge the USFS to do so.

- 6. *“Livestock management guidelines will be revised to remove restrictions on water developments and to replace specific grass-height requirements with standardized evaluation methods (e.g., the habitat assessment framework) in order to better reflect current research and to align local management with local habitat conditions.”***

The Trades’ Response to Item 6:

The Trades are encouraged to note the acknowledgement of “a significant and overlooked bias in research that linked greater sage-grouse nest success to grass height” in the 2015 LUPAs. LMPAs/DEIS at 3-195. Even assuming an entire grazing allotment or even a particular site on an allotment is capable of meeting the habitat objectives, it is virtually impossible for *any* permittee to meet the 2015 LUPAs’ specific grass-height requirements.

7. *“Invasive plant management will be further emphasized by adding a plan objective that stresses treatment of invasive plants in PHMAs, since invasive plants are a primary threat to the sagebrush ecosystem and greater sage-grouse.”*

The Trades’ Response to Item 7:

The Trades appreciate USFS’ recognition of invasive plants’ effects on GRSG habitat. Invasive species, along with annual variations in weather and precipitation, predation, wildfire, hunter harvest, and West Nile Virus, are much more significant threats to GRSG populations than well-mitigated energy development or agriculture.

8. *“In order to promote landscape-scale effectiveness, the adaptive management framework will be changed to align the FS framework with BLM and state-based adaptive management systems.”*

The Trades’ Response to Item 8:

The Trades commend the USFS recognizing the importance of state-based adaptive management, and we encourage the agency to coordinate with local GRSG working groups as well. Further, we encourage the USFS to include all states in decisions relative to the allowance for waivers, exceptions, and modifications on NSO Stipulations and for adaptive management.

9. *“Plan components will be altered to focus protections for greater sage-grouse into priority habitat management areas (PHMAs) in order to better incentivize habitat disturbance to areas outside of PHMAs.”*

The Trades’ Response to Item 9:

The 2015 LUPAs unreasonably impacted oil and gas development. While the Trades agree that GRSG protections should be more focused within areas supporting a known active lek, USFS should recognize that it is eminently feasible for industry to horizontally drill under existing leks with no impact to these leks or to GRSG that use them. *See* Ramey, Brown, and Blackgoat 2011, Applegate and Owens 2014, and Ramey, Thorley, and Ivey 2015 Supplemental Material S2 (Exhibit C attached hereto). Horizontal drilling and other less-impactful technologies have become the norm since 2005 although these changes may not be readily apparent to those unfamiliar with the industry. The Trades also incorporate their Response to Items 3 and 4.

10. *“The compensatory mitigation framework, including the use of no net loss or net conservation gain elements, will be changed in order to promote landscape-scale effectiveness by aligning the FS framework with BLM and state-based compensatory mitigation systems.”*

The Trades’ Response to Item 10:

The Trades are encouraged to note that USFS intends to reassess the net conservation gain mitigation framework (sometimes referred to as “conservation uplift”) for most states. The net conservation gain mitigation standard contravenes the multiple-use mandate and is inconsistent with federal law. Similar concerns may also exist with a no net loss standard. Moreover, there are

no clear means or methodology by which such management would occur. The USFS should consider compensatory mitigation as an exchange between private and public lands on a voluntary basis. Off-site mitigation should be an option—not a mandate. As discussed in the response to Item 6, the Trades remain concerned the USFS proposes to manage GRSG above all other uses contrary to federal law.

The Trades recognize USFS' planning effort is to better align with the BLM's concurrent planning process, and that the BLM retained the net gain requirement in Nevada at the request of the state. However, DOI and the BLM have modified their mitigation policies since the 2015 plans were finalized; and, most importantly, Congress and the President rejected landscape scale planning, including managing to a net conservation gain standard, in the passage and signing of H.J. Resolution 44.

Furthermore, EO 13783 rescinded several presidential actions, in particular, the Presidential Memorandum of November 3, 2015, titled "Mitigation Impacts on Natural Resources from Development and Encouraging Related Private Investment" ("2015 Presidential Memorandum"). EO 13783, § 3(a). That Memorandum tried to apply *post hoc* rationalization for, *inter alia*, the BLM's net conservation gain standard:

Agencies' mitigation policies should establish a net benefit goal or, at a minimum, a no net loss goal for natural resources the agency manages that are important, scarce, or sensitive, or wherever doing so is consistent with agency mission and established natural resource objectives.... Agencies should explicitly consider the extent to which the beneficial environmental outcomes that will be achieved are demonstrably new and would not have occurred in the absence of mitigation (i.e., additionality) when determining whether those measures adequately address impacts to natural resources.

2015 Presidential Memorandum, § 3(b).

The rescission of the 2015 Presidential Memorandum by EO 13783 means the BLM no longer has a basis or obligation to establish landscape scale mitigation, including the net conservation gain/benefit standard. Furthermore, IM 2018-093 clearly states that BLM "must not require compensatory mitigation from public land users," except for under very limited voluntary situations.

Further, on July 30, 2018, after soliciting comment from the public, FWS published in the Federal Register its withdrawal of its 2016 Mitigation Policies⁷ which required managing to a "net conservation gain." The 2016 Mitigation Policies were issued based on the revoked 2015 Presidential Memorandum. In issuing its withdrawal of the 2016 Mitigation Policy, FWS concluded that it *does not have authority* to require "net conservation gain" under the ESA, and the policy is inconsistent with current Executive branch policy. Except as otherwise specified, all policies or guidance documents that were superseded by 2016 Mitigation Policies are reinstated.

USFS' surface management regulations for oil and gas require that:

⁷ See 83 FR 36472 and 83 FR 36469, July 30, 2018.

The operator shall conduct operations on a leasehold on National Forest System lands in a manner that *minimizes* effects on surface resources, prevents *unnecessary or unreasonable* surface resource disturbance, and that is in compliance with the other requirements of this section... The operator shall comply with the requirements of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR chapter IV), and, except as otherwise provided in an approved surface use plan of operations, conduct operations in such a manner as to maintain and protect fisheries, wildlife, and plant habitat.

36 CFR 228.108(a)(f) (emphasis added). To that end, operations must seek to minimize impacts to maintain desired conditions when feasible and in compliance with the ESA. 36 C.F.R. 228.8 provides USFS with ample authority to protect GRSG habitat on National Forest System lands. However, the net conservation gain standard and the no net loss standard would require operators to improve sage-grouse habitat above that provided for under the 228.8 regulations. USFS does not have the authority to require mineral project proponents to provide mitigation that exceeds the requirements in the 36 C.F.R. 228 Subpart E regulations.

Simply put, USFS (and BLM) lack the statutory authority to require mitigation outside of 36 CFR 228.8 Subpart E and 43 CFR 3809 regulations. Thus, USFS' Preferred Alternative cannot include net gain or compensatory mitigation on public lands despite similar provisions in BLM and state specific plans.

The LMPAs/DEIS further discusses additional facets of the Preferred Alternative such as:

11. Causal factor review and response.

The Trades' Response to Item 11:

The Trades wholeheartedly support the need for a causal analysis but oppose the concept of hard or soft triggers due to the many factors that influence populations (e.g., variations in annual weather and precipitation, predation, wildfire, and hunter harvest). *See* Exhibit A. Soft triggers are for management changes at the project implementation level; hard triggers are for immediate actions to stop a severe deviation from plan goals and objectives for GRSG. The Trades urge USFS to include coordination with local governments and local GRSG workgroups—which have up-to-date lek data that constitutes best available science—on any such discussions.

Similarly, USFS must recognize that GRSG populations, like those of many other species, fluctuate in response to annual variations in weather and precipitation driven by sea surface temperatures in the Pacific Ocean. The variances between wet/cold and dry/warm years have been shown in multiple studies, obtained from multiple sage-grouse populations, to be the largest influence on population dynamics, (i.e., lek counts, survival, clutch size and nesting success) apart from predation and hunting (Blomberg et al., 2012, 2014, 2017; Coates et al., 2016; Gibson et al., 2017; Ramey, Thorley, & Ivey 2018). As noted by Ramey, Thorley, and Ivey (2018), these findings are consistent with "a long and ecologically important history of studies on the influence of climatic variation on the population dynamics of other tetraonids." (Moran, 1952, 1954; Ranta, Lindstrom & Linden, 1995; Lindström et al., 1996; Cattadori, Haydon & Hudson, 2005; Ludwig et al., 2006; Kvasnes et al., 2010; Selås et al., 2011, Viterbi et al., 2015; Ross et al., 2016).

Notably absent from the LMPAs/DEIS and state plans are any examples from the scientific literature, or worked examples based on actual data, of triggers being used to benefit GRSG or other tetraonids that often experience dramatic natural population fluctuations. However, even a casual perusal of the available data from northwestern Colorado reveals that hard and soft population triggers would have been tripped multiple times in the natural course of historic population fluctuations. This means that the population triggers are effectively a set-up for failure and unnecessarily restrictive because they will inevitably be tripped during low ebbs of natural population cycles, regardless of human influences.

Additionally, triggers for habitat loss are strongly dependent upon the quality of habitat mapping. And finally, triggers in one population can result in restrictions in other nearby populations that are unaffected.

The USFS needs to acknowledge that the most scientifically defensible and transparent approach to determining the extent to which population trends may be attributable to natural factors, versus those which are due to human-caused factors, would be to employ estimative statistics. Estimative statistics allow one to objectively quantify effect sizes and confidence intervals of natural and human caused factors on population parameters (see review article in *Nature Methods* by Claridge-Chang and Assam 2016). This approach eliminates subjective interpretations based upon single values presented without confidence intervals (i.e., such as those utilized in determining population triggers in the Colorado and Idaho plans). For these reasons, two recently published quantitative approaches should be considered for estimating trends and their causal factors: 1) that demonstrated by Coates et al. (2017) in Nevada, and/or 2) that demonstrated by Ramey, Thorley, and Ivey (2018) in Wyoming.

12. Modification of lek buffers in Idaho.

The Trades' Response to Item 12:

The lek buffers delineated in the 2015 LUPAs are unsupported by scientific evidence. There is no data that lek buffers address any specific threat or that such buffers would result in any quantifiable benefits to survivorship or reproduction. These buffers do nothing to mitigate specific cause-and-effect threats to GRSG. Lek buffers do not take into account habitat that is separated from sight or sound disturbances by topographic relief. Moreover, according to Colorado Parks and Wildlife lek data in Garfield County, active leks commonly occur and thrive on reclaimed well pads in northwestern Colorado, and adjacent to existing county roads with daily traffic. Wyoming Game and fish lek location and count data even show one lek thriving at the end of an airport runway (the Jackson Hole Airport lek). Lek buffer restrictions should require *current* lek occupation data.

Yet, not only are the buffers being slightly revised (only in the state of Idaho), but, as noted earlier herein, the LMPAs/DEIS continue to reference the scientifically-flawed 2014 Manier et al. Buffers Report, which, along with the equally and outdated National Technical Team (“NTT”) Report, the Conservation Objectives Team (“COT”) Report, and the USGS Monograph (collectively, the “Reports”), supported unjustified management prescriptions in the 2015 LUPAs. See attached Exhibit A.

Ideally, buffers should be part of an adaptive approach to GRSG conservation; however, their size and dimensions should be scaled to fit the type and duration of expected impact, as well as local conditions, topography, and conservation priorities (i.e., we propose a "Smart Buffers" approach). This is an area wherein the Trades have substantial expertise as GIS tools are commonly used to model and mitigate audio and visual impacts to nearby human habitation. The same approach can easily be adapted to minimizing impacts to GRSG. Additionally, lek buffers should be based on field-verified habitat data to account for topographical or other conditions that would impact applicability. Finally, once the breeding season is over for the year, lek buffer restrictions should not apply.

13. Identification of habitat management areas as “management areas,” per 36 CFR 219.19

The Trades’ Response to Item 13:

The LMPAs/DEIS notes that “A footnote in the 2015 RODs explained that the habitat management areas were treated as ‘overlays’ instead of replacing existing management areas, which would have been required by the prior planning rule under which the 2015 amendment was developed (p. 17 of both 2015 RODs). This amendment is being developed under the 2012 planning rule, which provides for management areas that do not have to be spatially contiguous and may overlap existing ones. The identification of habitat management areas as management areas will not change boundaries of other management areas that are identified in the LMPs.” LMPAs/DEIS at 2-21.

The Trades urge the USFS to ensure such management is consistent with multiple uses and federal law.

IV. Additional Comments

The Trades further wish to bring the following concerns and issues to the USFS’ consideration:

1. A “one-size-fits-all” approach is not viable.

The Trades oppose a one-size-fits-all approach and strongly believe wildlife conservation and economic development are eminently compatible and can be successfully balanced. The Preferred Alternative has gone far to retract the uniform prescriptions and restrictions of the 2015 LUPAs. The Trades urge USFS to implement these actions on a local scale and in a manner that provides USFS flexibility to recognize, adopt, and adapt to state and local conservation plans. Each state—and each resource management area within each state—has varying ecosystems, topography, landscapes, surface and mineral ownership patterns, variance in local GRSG populations, existing surface disturbance and habitat fragmentation, geologic conditions for producing formations, and location of valid existing rights. Again, the Trades urge the USFS to re-incorporate reference to permits and licenses in its description of valid existing rights. *See* LMPAs/DEIS glossary at 289.

GRSG inhabit an expansive range estimated to be 670,000 hectares (1,655,606 acres) in eleven western states and two Canadian provinces. By recognizing and accommodating variations in management approaches in the GRSG range found in the distinct state plans, the USFS’ own management will be better able to address differences among GRSG sub-populations and differences in GRSG habitat, etc. A policy serious about conservation will take these differences into account.

2. Recognize that primary management for the species falls under the jurisdiction of the states.

Management of the species is a state responsibility. Federal land use plans cannot interfere with local governments' sovereign interests. *See Geer v. Connecticut*, 161 U.S. 519 (1896). The USFS must recognize the importance of state and local plans and work to be consistent with or complementary to the management actions in these plans whenever possible.

3. Federal population targets are inappropriate.

Federal population targets are inappropriate and unwarranted. As has been stated herein, wildlife management falls within state sovereignty. Moreover, the states and local governments have better population information. To the extent population thresholds are utilized, the agency should rely upon state and local governments and local working groups' input.

4. Meaningful consideration of predator management and hunting impacts.

The Trades urge USFS to adopt methods of predator management that track closely with the WAFWA white paper, "Predator Control as a Conservation Measure for Sage-grouse"⁸ and recent scientific literature on the topic that reported promising results using an adaptive approach to predator management rather than relying only on lethal methods (Dinkins et al. 2016; Peebles and Conover 2016; Peebles et al. 2017; O'Neil et al. 2018). These papers describe how it is possible to more effectively manage predators in the long-term by reducing food subsidies, eliminating nesting and perching opportunities on structures, and using GIS data to model and direct the allocation of effort to where it will do the most good. Population impacts from hunter harvest also have a significant impact on GRSG populations, as indicated by the spreadsheet attached as Exhibit D. From 2010 to the present, no fewer than 129,095 GRSG have been harvested in California, Colorado, Montana, Nevada, Utah and Wyoming. Annual harvest numbers vary from 11,000 to nearly 37,000 birds. Such drastic impacts to GRSG populations cannot be ignored.

5. Waivers, Exceptions, and Modifications on NSO Stipulations.

The LMPAs/DEIS acknowledges in Table ES-3 that under the Preferred Alternative, exceptions in Colorado, Idaho, and Nevada "could be granted by the authorized officer... [and will] be reviewed by the Technical and Policy Teams." ES-7. This is indeed a step in the right direction as the 2015 LUPAs contravened federal law. However, the USFS should coordinate with states and counties on proposed land uses in GRSG habitat including on whether to grant any waivers, exceptions, or modifications relating to fluid mineral leasing. Specifically, the counties should be authorized to identify parcels prior to leasing which they determine meet the criteria for exceptions or modifications to any NSO stipulations. Such recommendations should be discussed with the applicable state and USFS decisions should be made in concert with state and local recommendations.

V. Many Environmental Groups Will Litigate, Regardless of the Merits of a Management Strategy

⁸ Available at https://www.wafwa.org/initiatives/sagebrush_ecosystem_initiative/.

Some environmental groups, predictably, will cry wolf and threaten litigation. But litigation does absolutely nothing to further on-the-ground conservation work, and for some of these groups, ending multiple use management of our public lands, and not conservation, remains their overarching objective. The Center for Biological Diversity and WildEarth Guardians (and its predecessors) are among the most active and persistent litigants. Together, they have been party to over 1,500 lawsuits against the federal government. Frequently, they file on meaningless deadlines from petitions they themselves submitted. Often, they collect attorney fees at the taxpayers' expense for their trouble. These groups are creating the very problems upon which they litigate. Irrespective of any GRSG plan amendments now or in the future, the environmental litigants will file suit on GRSG again—and again.




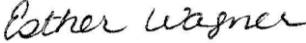
VI. Conclusion

The Trades commend the USFS for seeking to right the previous wrongs on GRSG and to work collaboratively with the states, local governments and stakeholders. The Trades urge the USFS to ensure that future planning documents:

- Meet and adhere to standards of applicable federal law;
- Rely on the best available independent, transparent, and peer-reviewed science for which data and computer code used in analyses are public, or in the case of data restricted by statute or policy, are made available via non-disclosure and data sharing agreements;
- Defer to states and local governments;
- Ensure flexibility in implementing the LMPAs; and
- Incentivize private conservation, which arguably has the most impact in conserving GRSG as a species.

Working together, the fundamental flaws within the 2015 LUPAs can be addressed to preserve multiple uses of our federal lands, our communities and GRSG.

Very truly yours,

 Richard Ranger Senior Policy Advisor API	 Daniel T. Naatz Senior Vice President Government Relations IPAA
 Tripp Parks Manager of Government Affairs Western Energy Alliance	 Esther Wagner Vice President – Public Lands Petroleum Association of Wyoming

