Laurence ("Laird") J. Lucas (ISB # 4733)
llucas@advocateswest.org
Todd C. Tucci (ISB # 6526)
ttucci@advocateswest.org
Talasi B. Brooks (ISB # 9712)
tbrooks@advocateswest.org
Advocates for the West
P.O. Box 1612
Boise, ID 83701
(208) 342-7024
(208) 342-8286 (fax)

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

WESTERN WATERSHEDS PROJECT, WILDEARTH GUARDIANS, CENTER FOR BIOLOGICAL DIVERSITY, and PRAIRIE HILLS AUDUBON SOCIETY, *Plaintiffs*, v. JANICE SCHNEIDER, Assistant Secretary of Interior; BUREAU OF LAND MANAGEMENT; and U.S. FOREST SERVICE, *Defendants.*	No. 1:16-cv-83 **COMPLAINT**

INTRODUCTION

1. Plaintiffs challenge Defendants' recent decisions approving amended or revised land use plans for Bureau of Land Management ("BLM") and U.S. Forest Service lands across the range of the greater sage-grouse (*Centrocercus urophasianus*) in Idaho and other states, which fail to ensure that sage-grouse populations and habitats will be protected and restored in accordance with the best available science and legal mandates

of federal law including the National Environmental Policy Act ("NEPA"), the Federal Land Policy and Management Act ("FLPMA"), the National Forest Management Act ("NFMA"), and the Administrative Procedure Act ("APA").

2. In response to potential Endangered Species Act ("ESA") listing and this Court's remand order in a related sage-grouse/land use plan case, *see W. Watersheds Project v. Salazar*, No. 08-cv-516-BLW, 2012 WL 5880658 (D. Idaho Nov. 20, 2012), ECF Docket No. 31, Defendants recently completed a "National Greater Sage-Grouse Planning Strategy" to address sage-grouse conservation needs in federal land use plans. Through four Records of Decision ("RODs") approved in September 2015 – two each for BLM and the Forest Service, covering the Rocky Mountains and Great Basin regions, respectively – plus an earlier ROD for BLM's Lander Field Office, Defendants have now amended or revised some ninety-eight (98) BLM Resource Management Plans ("RMPs") and Forest Service Land and Resource Management Plans ("Forest Plans") addressing management of sage-grouse habitats on approximately 70 million acres of BLM and Forest Service lands in Idaho and other western states.

3. While the scope of this National Greater Sage-Grouse Planning Strategy is impressively large, and the new federal plans represent an important step forward for sage-grouse conservation, the plans fail to implement the best available science and the government's own expert recommendations – and thus will not ensure the survival of greater sage-grouse into the foreseeable future, in which the synergistic impacts of climate change and human activities threaten to further reduce and fragment sage-grouse habitats and continue the species' population decline.

4. Rather than comprehensively evaluate threats and needed conservation measures across the sage-grouse range, Defendants fragmented the planning process into fifteen (15) separate Environmental Impact Statements ("EISs") covering various parts of Idaho and nine other states. Each EIS proposed local or regional management alternatives without any "big picture" or range-wide analysis of sage-grouse habitats and populations, or how to protect the species across its range.

5. The outcome of this fragmented process is the adoption by BLM and Forest Service of land use plan amendments or revisions that fail to implement scientific conservation measures needed to ensure sage-grouse survival; and which differ widely in terms, scope, and effectiveness – and are even contradictory in numerous respects. For example, the agencies defined and mapped priority sage-grouse habitats differently from state to state, and from EIS to EIS; protections against surface disturbance in sage-grouse habitat differ across adjacent states, and even within the same state; and common threats are treated differently in the challenged EISs and RODs.

6. By relying on 15 separate EISs without any range-wide or comprehensive analysis, Defendants failed to evaluate critical aspects of sage-grouse conservation needs, including connectivity between state and regional populations and habitats. Likewise, Defendants failed to evaluate the cumulative impacts of the land use plan decisions upon the greater sage-grouse and its habitats. Defendants have thus violated core commands of NEPA that all environmental impacts must be studied in a scientifically valid manner.

7. Substantively, Defendants failed to adopt consistent, enforceable, science-based conservation measures needed to redress major threats to sage-grouse, notably impacts from energy and mineral development, infrastructure, and livestock grazing. The

challenged land use plan decisions adopt variable measures that fail to follow the best available science to protect sage-grouse populations from adverse effects of fluid mineral development (oil, gas, and geothermal); and they exempt major new transmission lines despite their adverse impacts in fragmenting sage-grouse priority habitats.

8. Of critical importance, the revised land use plans adopt substantially weaker protections for sage-grouse habitats and populations from oil and gas development in Wyoming, home to the largest sage-grouse populations and approximately 37% of all remaining birds. All the plans – but especially Wyoming's – are riddled with exceptions and loopholes for fluid mineral and energy development. The plans will thus allow further loss and fragmentation of sage-grouse habitats, and contribute to further population declines, most notably in the Powder River Basin where the viability of sage-grouse populations is already jeopardized.

9. Livestock grazing is the most ubiquitous land use across the sage-grouse range, but Defendants failed to analyze the full scope of grazing impacts to sage-grouse habitats or to adopt grazing-related conservation measures, including limits on grazing to protect key sage-grouse habitats during nesting and brood-rearing seasons. Instead, the amended and revised land use plans omit analysis of meaningful grazing alternatives, and indefinitely postpone implementing modifications to grazing that would protect sage-grouse, thus ensuring that adverse impacts will continue from this overarching threat.

10. The challenged EISs and RODs also fail to analyze or protect sage-grouse from impacts of climate change – a stunning omission, given that the National Planning Strategy was intended to ensure the species' long-term survival, and climate change poses major threats to sage-grouse survival. Indeed, federal and independent scientists

have projected that the sagebrush steppe will contract substantially with hotter and drier conditions associated with climate change in the semi-arid West; and the synergistic impacts of climate change – including promoting larger and more frequent wildfires and droughts, and facilitating invasions of cheatgrass and other non-native vegetation – will further reduce and fragment sage-grouse habitats. Yet the challenged EISs and RODs largely omitted analysis of such impacts, and failed to adopt the conservation measures needed on a range-wide basis to protect sage-grouse populations and habitats from impacts of climate change into the foreseeable future.

11. The new plans also violate FLPMA's substantive mandate that BLM must prioritize the designation and protection of Areas of Critical Environmental Concern ("ACECs") in the land use planning process. *See* 43 U.S.C. § 1712(c)(3). Although the challenged EISs and RODs acknowledge that threats facing greater sage-grouse warrant special management protection of their critical habitats, and that ACEC designations could provide better or additional protections for sage-grouse, BLM refused to designate ACECs to protect priority sage-grouse habitats and populations; and thus violated its mandatory duty under FLPMA.

12. Despite these and other deficiencies identified below, Plaintiffs acknowledge that the National Greater Sage-Grouse Planning Strategy represents a substantial step forward in sage-grouse conservation, including by identifying priority habitats deserving full protection. Plaintiffs thus do not seek to reverse or set aside the challenged EISs and RODs, or the amended and revised land use plans.

13. Rather than vacate or reverse the challenged plans, Plaintiffs request the Court order Defendants to cure the legal violations identified below by preparing

supplemental NEPA analysis at a comprehensive range-wide scale, and issue further amended or revised land use plans that adopt consistent, science-based conservation measures needed to ensure survival and recovery of the greater sage-grouse across its range into the future.

JURISDICTION AND VENUE

14. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including FLPMA, 43 U.S.C. §§ 1301 *et seq.*; NEPA, 42 U.S.C. §§ 4321 *et seq.*; NFMA, 16 U.S.C. §§ 1601 *et seq.;* the APA, 5 U.S.C. §§ 701 *et seq.*; the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*; and the Equal Access to Justice Act ("EAJA"), 28 U.S.C. §§ 2412 *et seq*.

15. An actual, justiciable controversy now exists between Plaintiffs and Defendants. The requested relief is therefore proper under 28 U.S.C. §§ 2201-2202 and 5 U.S.C. §§ 701-06.

16. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because Plaintiff Western Watersheds Project resides in this district and other Plaintiffs have offices, staff and/or members in this district; and a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district.

17. The federal government has waived sovereign immunity in this action pursuant to 5 U.S.C. § 701.

PARTIES

18. Plaintiffs in this action are as follows:

A. WESTERN WATERSHEDS PROJECT ("WWP") is an Idaho non-profit corporation, which is dedicated to protecting and conserving the public lands and natural

resources in Idaho and the American West. WWP is headquartered in Hailey, Idaho, and has additional staff and offices in Boise, as well as Wyoming, Montana, Oregon, California and Arizona. WWP has long-standing interests in preserving and conserving greater sage-grouse populations and habitat in Idaho and other states across the range of the greater sage-grouse. WWP is the plaintiff in related BLM sage-grouse/RMP litigation, *see* Complaint, *W. Watersheds Project v. Salazar*, No. 08-cv-516-BLW (D. Idaho Nov. 28, 2008), ECF No. 1, as well as other sage-grouse cases before this Court.

B. WILDEARTH GUARDIANS ("Guardians") is a non-profit organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the American West. Headquartered in Santa Fe, New Mexico, Guardians has staff and other offices around the West, including in Missoula, Laramie, Salt Lake City, and Denver. Guardians has over 130,000 members and supporters, many of whom have particular interests in conserving greater sage-grouse populations and habitats, particularly on public lands. Guardians' Sagebrush Sea Campaign focuses on the conservation of sagebrush landscapes and sage-grouse populations around the West. Guardians has participated in prior sage-grouse litigation before this and other courts.

C. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY ("Center") is a non-profit organization dedicated to the preservation, protection, and restoration of biodiversity, native species, and ecosystems. The Center was founded in 1989 and is based in Tucson, Arizona, with offices throughout the country, including Idaho, Oregon, California, and Colorado. The Center has more than 55,000 members, including many who reside in, explore, and enjoy the native species and ecosystems of the Interior Mountain West, where the greater sage-grouse is found. The Center has an organizational interest in

Defendants' management of habitat for imperiled species on the public lands; and has participated in prior sage-grouse litigation before this and other courts.

D. PRAIRIE HILLS AUDUBON SOCIETY ("PHAS") is a South Dakota non-profit organization which is a chapter of the National Audubon Society. PHAS is a volunteer grassroots organization that works to conserve the rich natural resources and wildlife heritage of the prairies and hills of western South Dakota and the surrounding region. PHAS volunteers and members have been active in seeking to protect and preserve remaining sage-grouse populations and habitats in South Dakota and the surrounding region.

19. The decline of the greater sage-grouse in Idaho and other states across its range is of great concern to Plaintiffs and their staff, members, and supporters; and the preservation and recovery of the species and its sagebrush-steppe habitat are highly important to Plaintiffs and their staff, members, and supporters.

20. Plaintiffs' staff, members, and supporters work, live and/or recreate throughout the public lands of the sagebrush-steppe ecosystem of Idaho and other states which are occupied by greater sage-grouse; and they regularly visit and utilize the public lands in Idaho and other states encompassed within the scope of the National Greater Sage-Grouse Planning Strategy area to observe and study the greater sage-grouse and the sagebrush-steppe ecosystem. Plaintiffs' members, supporters and staff derive recreational, aesthetic, scientific, inspirational, educational, and other benefits from these activities and have an interest in preserving the possibility of such activities in the future. Their use and enjoyment of the sage-grouse depends on its continued existence within, and the scientifically sound management of, public lands within the National Planning Strategy area.

21. Many of Plaintiffs' activities – including research and advocacy – have focused on preserving the remaining habitats of greater sage-grouse on public lands in Idaho and other states across the sage-grouse range; and in restoring those habitats to protect and recover greater sage-grouse populations. Plaintiffs participated extensively in the National Greater Sage-Grouse Planning Strategy, including by submitting scoping comments to BLM and the Forest Service at the first stage of public involvement in the process; submitting detailed comments on the draft EISs released by BLM and the Forest Service; and submitting detailed protests of the BLM's Final EISs/Proposed RMPs and Forest Service's Forest Plans (as well as the Lander RMP in 2013). Plaintiffs have exhausted all administrative remedies before bringing this action.

22. Defendants' violations of NEPA, FLPMA, NFMA, APA, and other provisions of law in adopting the challenged EISs and RODs have injured the aesthetic, commercial, conservation, scientific, recreational, educational, wildlife preservation, procedural, and other interests of Plaintiffs and their staff, members, and supporters. These are actual, concrete injuries caused by Defendants' violations of law, for which judicial relief is required to remedy those harms. The relief sought herein would redress these injuries. Plaintiffs have no adequate remedy at law.

23. Defendants in this action are as follows:

A. JANICE SCHNEIDER is the Assistant Secretary of the Department of Interior for Land and Minerals Management, and signed the September 2015 BLM RODs challenged here. She is sued solely in her official capacity.

B. BUREAU OF LAND MANAGEMENT is an agency or instrumentality of the United States, within the Department of Interior. BLM is charged with statutory

duties to manage public lands under its jurisdiction pursuant to FLPMA, NEPA and other authorities. BLM was the lead agency in conducting the National Greater Sage-Grouse Planning Strategy; along with Defendant Schneider, BLM Director Neil Kornze signed the September 2015 BLM RODs amending or revising at least 68 RMPs for management of BLM lands within the range of the greater sage-grouse, challenged herein. BLM also previously approved the Lander ROD challenged herein.

C. U.S. FOREST SERVICE ("Forest Service") is an agency or instrumentality of the United States, within the Department of Agriculture. The Forest Service is charged with statutory duties to manage public lands under its jurisdiction pursuant to NFMA, FLPMA, NEPA and other authorities. The Forest Service participated with BLM in the National Greater Sage-Grouse Planning Strategy; and Forest Service Regional Directors signed the Forest Service's September 2015 RODs amending 20 Forest Plans for management of Forest Service lands within the range of the greater sage-grouse, challenged herein.

BACKGROUND INFORMATION

The Plight of the Greater Sage-grouse.

24. The plight of the greater sage-grouse is well-known to this Court from prior cases, including the BLM sage-grouse/RMP litigation referenced above, as well as ESA listing and other cases. *See, e.g.*, *W. Watersheds Project v. Salazar*, No. 08-cv-516-BLW, 2011 WL 4526746 (D. Idaho 2011) ("*Salazar*") (holding that BLM "test case" RMPs violated NEPA and FLPMA for failing to address sage-grouse conservation needs); *W. Watersheds Project v. U.S. Fish and Wildlife Serv.*, No. 06-cv-277-BLW, 535 F. Supp.2d 1173 (D. Idaho 2007) (reversing "not warranted" ESA listing determination

for greater sage-grouse); *W. Watersheds Project v. Jewell*, 56 F. Supp. 3d 1182 (D. Idaho 2014) (BLM violated NEPA and FLPMA in renewing dozens of grazing permits in key sage-grouse habitat in southern Idaho); *W. Watersheds Project v. Salazar*, 843 F. Supp. 2d 1105 (D. Idaho 2012) (BLM violated NEPA and FLPMA in renewing grazing permits in southern Idaho without considering cumulative impacts on sage-grouse and RMP duties to prioritize protection of sage-grouse as a sensitive species).

25. The greater sage-grouse is a "sagebrush obligate" species, meaning it relies on the sagebrush steppe ecosystem for all its habitat needs. The fate of the sage-grouse thus depends on ensuring that healthy and well-distributed sagebrush steppe habitat exists for the species across its range.

26. Greater sage-grouse once numbered in the millions across the western U.S and Canada, but loss and fragmentation of their native sagebrush-steppe habitats have caused populations to decline precipitously over the last century. The current population of greater sage-grouse is estimated at less than 10% of historic population levels, *i.e.*, sage-grouse populations have experienced a 90% or more decline.

27. Reflecting these population declines, greater sage-grouse distribution has decreased by at least 44 percent as illustrated in Figure 1 below:

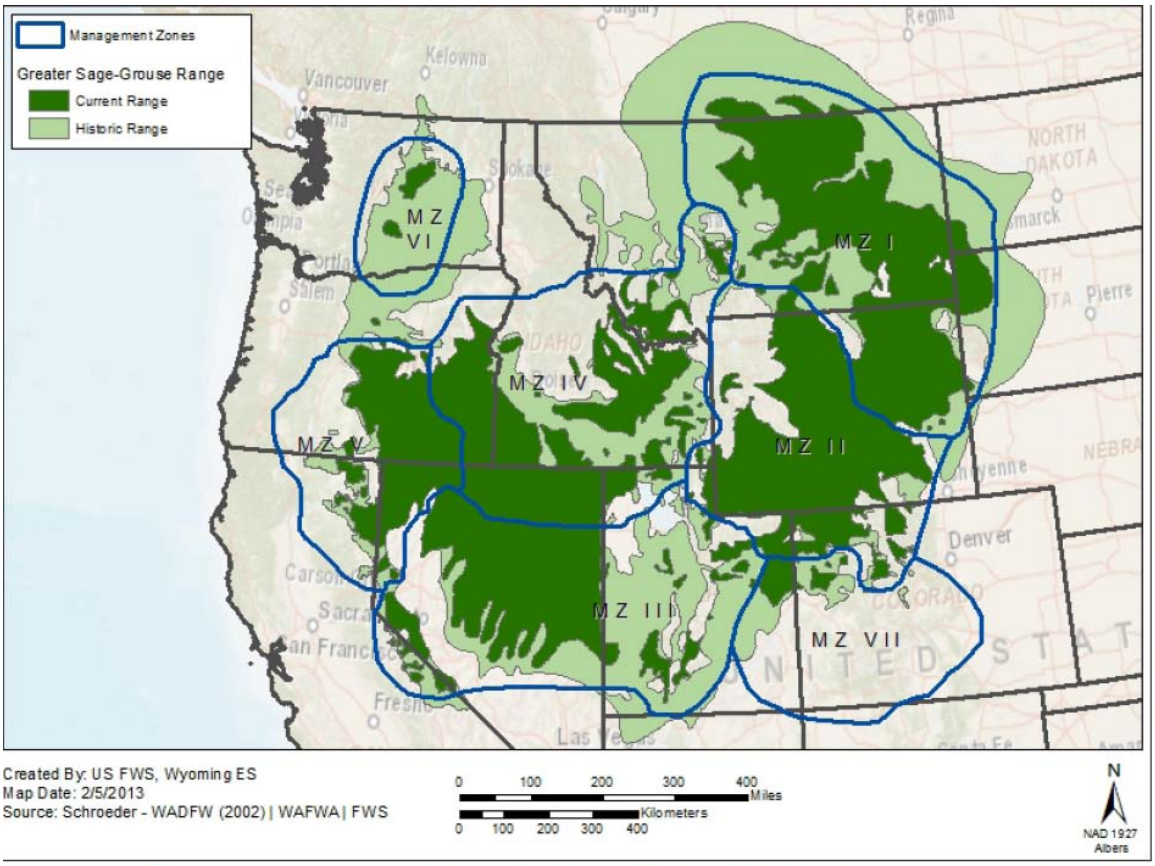


Figure 1. The current (occupied since the late 1990s) and historic (maximum distribution from the 1800s to early 1990s) range of the greater sage-grouse (Schroeder et al. 2004).

28. Federal agencies manage over half the remaining sagebrush steppe. Although cooperation among federal and state agencies, private land owners, and others is important to conserve sage-grouse and sagebrush habitat, the federal government and federal lands are key to ensuring conservation of the species.

29. Greater sage-grouse is a landscape species that uses a variety of seasonal habitats throughout the year. Sage-grouse breeding sites (leks) and associated nesting and brood-rearing habitats, as well as winter concentration areas, are especially important to the species' life cycle. The grouse have high fidelity to leks, and most hens will nest within four miles of the lek where they mated. Sage-grouse also return to the same winter habitats year after year, even if these habitats have been degraded. Anthropogenic

disturbance and disruptive activities, noise, and habitat degradation in breeding, nesting, brood-rearing, and winter habitats negatively affect sage-grouse productivity.

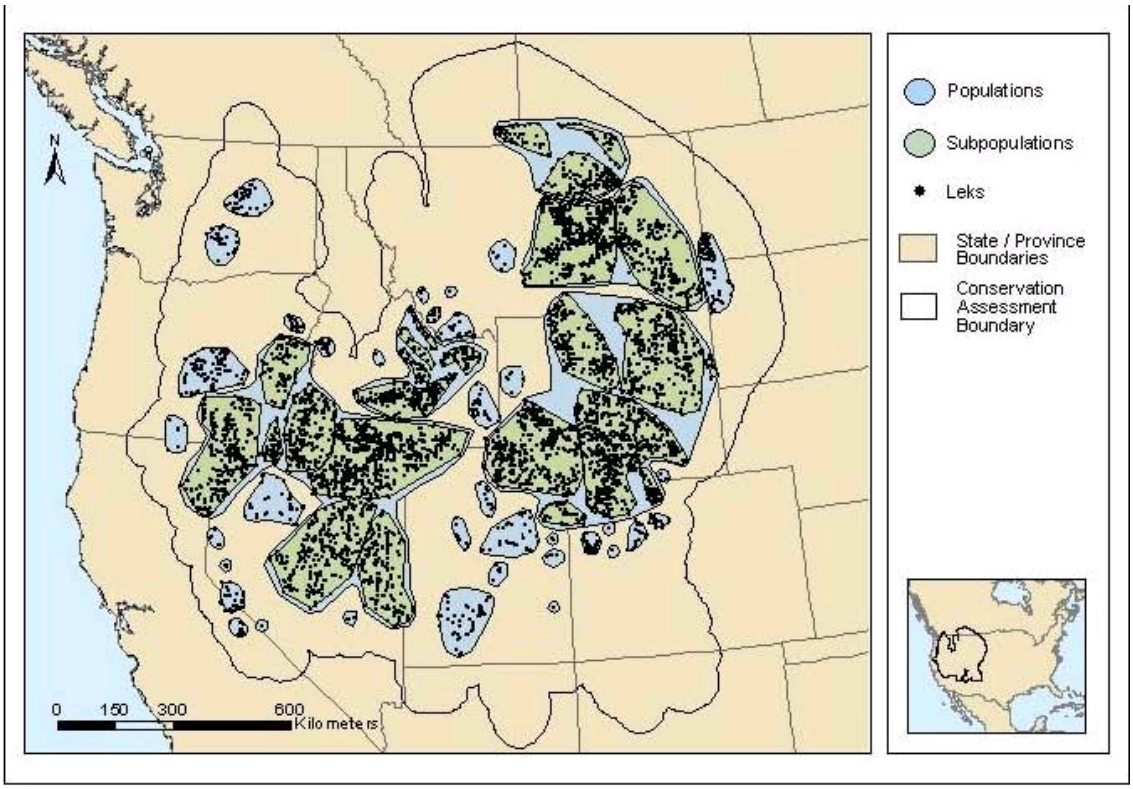
30. Sage-grouse are also a useful "umbrella species" for sagebrush habitats used by more than 350 other species of conservation concern, including a suite of sagebrush-dependent avifauna that would benefit from increased protection of sagebrush habitat (such as sage sparrow, Brewer's sparrow, loggerhead shrike, and other sensitive birds) as well as pygmy rabbit and other mammals, reptiles, amphibians, plants and fish.

Sage-grouse Conservation Assessment And Strategies.

31. Leading sage-grouse experts and other scientists documented the declining trends of sagebrush habitats and sage-grouse populations in the Conservation Assessment released by the Western Association of Fish and Wildlife Agencies ("WAFWA") in June 2004. *See* CONNELLY ET AL., CONSERVATION ASSESSMENT OF GREATER SAGE-GROUSE AND SAGEBRUSH HABITATS (WAFWA June 2004) ("2004 Conservation Assessment").

32. The 2004 Conservation Assessment addressed the historic losses of sage-grouse habitats; the status of remaining sage-grouse populations; and many threats facing sage-grouse, including loss and fragmentation of sagebrush habitats from agriculture, grazing, energy development, infrastructure, weed invasions, fire, and others. It concluded that "long term population changes coupled with the continued loss and degradation of habitat and other factors (including West Nile virus) do not provide causes for optimism" for the future survival of sage-grouse.

33. The 2004 Conservation Assessment identified five "core" sage-grouse populations plus smaller isolated and subpopulations, as reflected on the map below:



Discrete populations and subpopulations of sage grouse in western North America
Connelly et al. 2004

34. In November 2004, responding to the threats documented in the 2004 Conservation Assessment, BLM adopted a "National Sage-Grouse Habitat Conservation Strategy," which remains in effect and applicable to the challenged EISs and RODs. *See* BUREAU OF LAND MANAGEMENT, NATIONAL SAGE-GROUSE HABITAT CONSERVATION STRATEGY (U.S. Dep't of Interior November 2004) ("2004 Conservation Strategy"). The Conservation Strategy emphasized using BLM's land use planning process to conserve and restore sagebrush habitats in order to prevent further sage-grouse declines and avoid ESA listing, and specified that BLM will use the best available science and other relevant information to develop conservation efforts for sage-grouse and sagebrush habitats.

35. In 2006, WAFWA published its own "Greater Sage-Grouse Comprehensive Conservation Strategy", which established an overall goal to maintain

and enhance populations and distribution of greater sage-grouse by protecting and improving sagebrush habitats and ecosystems. *See* STIVER ET AL., GREATER SAGE-GROUSE COMPREHENSIVE CONSERVATION STRATEGY (WAFWA December 2006) (unpublished Report) ("2006 Conservation Strategy"). The National Greater Sage-Grouse Planning Strategy was expressly intended to satisfy this overarching 2006 Conservation Strategy goal.

ESA Listing History.

36. In January 2005, the U.S. Fish and Wildlife Service ("Service") responded to ESA listing petitions submitted by Plaintiffs WWP, Guardians, the Center, and others, and concluded that listing greater sage-grouse under the ESA was "not warranted" despite the extensive science in the 2004 Conservation Assessment documenting declining grouse habitats and populations due to many threats. *See* 12-Month Finding For Petitions to List the Greater Sage-Grouse As Threatened Or Endangered, 70 Fed. Reg. 2244-82 (Jan. 12, 2005) ("2005 Not Warranted Finding").

37. Plaintiff WWP challenged that 2005 Not Warranted Finding before this Court. In December 2007, the Court reversed and remanded the finding due to improper political interference in the listing process, and the Service's arbitrary treatment of the best available science showing that sage-grouse populations and habitats are deeply imperiled. *See W. Watersheds Project v. U.S. Fish and Wildlife Serv.*, 535 F. Supp. 2d 1173 (D. Idaho 2007).

38. In 2010, a group of leading sage-grouse and sagebrush experts released a draft sage-grouse "Monograph" which contained numerous chapters addressing sage-grouse populations, habitats, and threats, updating the analysis of the 2004 Conservation

Assessment. *See* GREATER SAGE-GROUSE: ECOLOGY AND CONSERVATION OF A LANDSCAPE SPECIES AND ITS HABITATS (S. Knick and J. Connelly eds., Studies in Avian Biology No. 38, Univ. Cal. Press 2011).

39. Upon remand from this Court's decision overturning the 2005 Not Warranted Finding, in March 2010 the Service announced a new finding that listing greater sage-grouse was "warranted" under the ESA, based on the draft Monograph, Conservation Assessment, and other best available science. But the Service also determined that proceeding with an ESA listing rule for greater sage-grouse was "precluded" at that time by limited resources and higher priority species. *See* 12-Month Findings for Petitions to List the Greater Sage-Grouse As Threatened or Endangered, 75 Fed. Reg. 13910 (March 5, 2010) ("March 2010 Finding").

40. The March 2010 Finding stressed the inadequacy of existing regulatory mechanisms to protect greater sage-grouse from the many identified threats to grouse habitats and populations – particularly focusing on BLM and Forest Service land use plans, which did not incorporate measures necessary to ensure conservation of sage-grouse. The March 2010 Finding underscored, in particular, that BLM's existing regulatory mechanisms to protect sage-grouse populations and habitats from energy development (particularly oil and gas) were inadequate and not scientifically based, including BLM's use of 0.25 mile and 0.6 mile "buffers" around sage-grouse leks.

41. After Plaintiffs WWP, Guardians, and the Center challenged the "precluded" portion of the March 2010 Finding before this Court, *see W. Watersheds Project v. U.S. Fish and Wildlife Serv.*, No. 4:10-cv-229-BLW, 2012 WL 369168 (D. Idaho Feb. 2, 2012), the Service agreed in separate litigation to reevaluate listing the

greater sage-grouse and complete a proposed listing rule or "not warranted" finding by the end of fiscal year 2015. The Court relied on that settlement in denying WWP's challenges to the "precluded" determination. *Id*. at **9, 17.

Pending Sage-Grouse/RMP Litigation.

42. In the related BLM sage-grouse/RMP litigation, this Court ruled for Plaintiff WWP in September 2011, holding that BLM's "test case" RMPs – for the Craters of the Moon National Monument and Pinedale Field Office – violated NEPA and FLPMA in failing to address sage-grouse conservation needs, and livestock grazing impacts and alternatives. *See* Memorandum Decision and Order, *Salazar*, 2011 WL 4526746 (D. Idaho Sept. 28, 2011) (No. 4:08-CV-516-BLW), ECF No. 131.

43. Following that ruling, the Court conducted an evidentiary hearing on potential remedies for the adjudicated violations in the "test case" RMPs, and agreed that, upon remand, BLM could utilize the proposed National Sage-Grouse Planning Strategy to cure the defects in the Craters of the Moon and Pinedale RMPs. *See* Memorandum Decision and Order, *Salazar*, 2012 WL 5880658 (D. Idaho Nov. 20, 2012) (No. 4:08-CV-516-BLW), ECF No. 231.

44. Because of the pending National Sage-Grouse Planning Strategy, there has been no further litigation over Plaintiff WWP's challenges to the other BLM RMPs challenged in *Salazar*. All but two of the challenged RMPs from that litigation, *i.e.*, BLM's Moab and Monticello RMPs, are included within the scope of the National Greater Sage-Grouse Planning Strategy.

APPLICABLE LEGAL REQUIREMENTS

NATIONAL ENVIRONMENTAL POLICY ACT.

45. NEPA is America's basic "charter for protection of the environment." 40 C.F.R. § 1500.1(a). The Council on Environmental Quality ("CEQ") promulgated regulations implementing NEPA, which are binding on all federal agencies. *Id*. §§ 1500-1518.4.

46. NEPA requires federal agencies to ensure fully informed decision-making and provide for public participation in environmental analysis and decision-making. *Id*. § 1500.1(b)-(c). NEPA serves two principal purposes: (1) it ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts, and (2) it guarantees that the relevant information will be made available to the public so it may play a role in the decision-making process. This "hard look" at an action's impacts fosters both informed decision-making and informed public participation.

47. NEPA requires federal agencies to prepare an EIS for all "major federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). "Environmental information [must be made] available to public officials and citizens before decisions are made and before actions are taken." 40 C.F.R. § 1500.1(b).

48. One of NEPA's fundamental goals is to "promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man." 42 U.S.C. § 4321. The scope of NEPA review is quite broad, including disclosure and consideration of all reasonable alternatives, 40 C.F.R. § 1502.14(a), and direct, indirect, and cumulative effects, *id.* § 1508(b). The federal

agency must "[r]igorously explore and objectively evaluate all reasonable alternatives," "[d]evote substantial treatment to each alternative considered in detail including the proposed action," and "[i]nclude reasonable alternatives not within the jurisdiction of the lead agency." *Id*. § 1502.14(a)-(c).

49. Direct effects are caused by the action and occur at the same time and place as the proposed project. *Id*. § 1508.8(a). Indirect effects are caused by the action and are later in time or farther removed in distances, but are still reasonably foreseeable. *Id*. § 1508.8(b). Both types of impacts include "effects on natural resources and on the components, structures, and functioning of affected ecosystems." *Id*. § 1508.8.

50. A cumulative impact is defined as:

> [T]he impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Id. § 1508.7.

51. NEPA obligates the agency to make available to the public high-quality information, including accurate scientific analyses, expert agency comments, and public comments before decisions are made and actions are taken. The CEQ's NEPA regulations require that information used to inform NEPA analysis "must be of a high quality," and that "[a]ccurate scientific analysis . . . [is] essential to implementing NEPA." *Id*. § 1500.1(b). The agency's analysis must be based on professional and scientific integrity. *Id.* § 1502.24. To take the required "hard look" at a proposed action's effects, an agency may not rely on incorrect assumptions or data.

52. Under NEPA and implementing regulations and guidance, a programmatic EIS should be prepared when federal actions are connected or cumulative. *Id*. § 1508.25(a)(1)-(2).

53. In recent guidance, CEQ recommends agencies "give particular consideration to preparing" a programmatic EIS when: (1) initiating or revising a national or regional rulemaking, policy, plan, or program; (2) adopting a plan for managing a range of resources; or (3) making decisions on common elements or aspects of a series or suite of closely related projects. COUNCIL ON ENVIRONMENTAL QUALITY, EFFECTIVE USE OF PROGRAMMATIC NEPA REVIEWS 15 (Dec. 18, 2014).

54. Thus, when several proposals for related actions that will have cumulative or synergistic environmental impacts upon a region are pending concurrently before an agency, their environmental consequences must be considered together. Only through comprehensive consideration of pending proposals can the agency evaluate different courses of action. *Kleppe v. Sierra Club*, 427 U.S. 390, 409-10 (1976).

FEDERAL LAND POLICY AND MANAGEMENT ACT.

55. Enacted in 1976, FLPMA governs BLM's management of the public lands. *See* 43 U.S.C. §§ 1701 *et seq.*; *Oregon Natural Desert Ass'n v. BLM*, 625 F.3d 1092, 1096-97 (9th Cir. 2010).

56. In FLPMA, Congress directed that,

> [P]ublic lands be managed in a manner that will protect the quality of the scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use.

43 U.S.C. § 1701(a)(8).

57. FLPMA provides that BLM public lands "shall" be managed "for multiple use and sustained yield." *Id*. § 1732(a). FLPMA further mandates that the Secretary of Interior "shall" take any action necessary to prevent "unnecessary or undue degradation" of public lands. *Id*. § 1732(b).

58. FLPMA's definition of "multiple use" calls for "harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output." *Id*. § 1702(c) (emphasis added).

59. This prohibition on permanent impairment of the environment in FLPMA's definition of multiple-use is unique and purposeful. Instead of using the definition of multiple-use from the Multiple-Use Sustained-Yield Act, as it did in enacting NFMA, Congress chose to weave this environmental protection mandate into FLPMA's multiple-use provisions. *See* H. R. Rep. No. 94-583, 94th Cong. 1st Sess. (Dec. 18, 1975).

FLPMA's Land Use Planning Provisions.

60. In adopting FLPMA, Congress found that "the national interest will be best realized if the public lands and their resources . . . and their present and future use is projected through a land use planning process," and it adopted FLPMA in part to establish "goals and objectives . . . as guidelines for public land use planning . . . ." 43 U.S.C. § 1701(a)(2), (7).

61. FLMPA directs that the Secretary of Interior (and hence BLM, which has been delegated the Secretary's authority in management of the public lands) develop and periodically revise lands use plans, and adhere to those plans in management decision-making. *See* 43 U.S.C. § 1712(a) (Secretary "shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands"); *id.* § 1732(a) (Secretary "shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans"). When a land use plan is revised, existing resource plans and permits, contracts and other instruments are to be revised within a "reasonable period of time." 43 C.F.R. § 1610.5-3.

62. FLPMA Section 202(c) enumerates the statutory criteria which BLM must consider in the development and revision of land use plans. *See* 43 U.S.C. § 1712(c).

63. BLM has adopted land use planning regulations, as well as a Land Use Planning Handbook as part of the BLM Manual, which provide further requirements and guidance for the development or revision of land use plans under FLPMA. *See* 43 C.F.R. Subpart 1601; BLM Land Use Planning Handbook, H-1601-1 (2005).

FLPMA Requires Prioritizing ACEC Designation and Protection.

64. FLPMA defines ACECs as "areas within the public lands where special management attention is required . . . to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards." *Id*. § 1702(a).

65. Among the statutory criteria to be considered in land use planning, FLPMA Section 202(c) places a priority on the designation and protection of ACECs.

See 43 U.S.C. § 1712(c)(3) ("In the development and revision of land use plans, the Secretary shall . . . give priority to the designation and protection of areas of environmental concern") (emphasis added).

66. Other FLPMA provisions reflect this same Congressional directive that BLM give priority to ACECs in the planning and administration of the public lands. *See* 43 U.S.C. § 1701(11) (FLPMA statement of policy requiring "regulations and plans for the protection of public land areas of critical environmental concern be promptly developed"); *id.* § 1711(a) (requiring that the Secretary "shall prepare and maintain . . . an inventory of public lands and their resources and other values . . . giving priority to areas of critical environmental concern").

67. In addition to the land use planning regulations cited above, BLM adopted "Policy and Procedure Guidelines" with respect to ACECs in 1980, followed by an ACEC section of the BLM Manual eight years later. Areas of Critical Environmental Concern; Policy and Procedures Guidelines, 45 Fed. Reg. 57318-30 (Aug. 27, 1980); BLM Manual 1613—Areas of Critical Environmental Concern (1988) ("ACEC Manual").

68. BLM's planning regulations provide that "[a]reas having potential for [ACEC] designation and protection management shall be identified and considered throughout the resource management planning process . . . ." 43 C.F.R. § 1610.7-2 (citing to §§1610.4-1 through 1610.4-9).

69. This requires that the agency compile a list of areas to be considered for potential ACEC designation, which should include existing ACECs, areas recommended for ACEC consideration by members of the public and from within BLM, areas identified

through inventory and monitoring, and areas adjacent to areas protected by other federal and state agencies. *See* ACEC Manual 1613.21.

70. Once areas to be considered as ACECs have been identified, BLM must determine whether the proposed ACEC possesses "relevance" and "importance" to qualify as an ACEC. *See* 43 C.F.R. § 1610.7-2(a); ACEC Manual 1613.21. "Relevance" means that "[t]here shall be present a significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard." 43 C.F.R. § 1610.7-2(a)(1). "Importance" means that "[t]he [relevant] value, resource, system, process, or hazard shall have substantial significance and values. This generally requires qualities of more than local significance and special worth, consequence, meaning, distinctiveness, or cause for concern." *Id.* § 1610.7-2(a)(2).

71. If BLM determines that a proposed ACEC meets the "relevance" and "importance" criteria, the area is then identified as a potential ACEC for evaluation in the RMP process. ACEC Manual 1613.21C.

72. Designation of proposed ACECs is undertaken through the RMP process. "Designation is based on whether or not a potential ACEC requires special management attention in the selected plan alternative." ACEC Manual 1613.23. Special management attention consists of "[a]ctions or other measures considered necessary or appropriate to protect, enhance, or restore an important environmental resource within an ACEC." 45 Fed. Reg. at 57323.

73. The RMP should contain "the general management practices and uses, including mitigating measures, identified to protect designated ACEC[s]." 43 C.F.R. § 1610.7-2. "Protection is afforded by implementing management prescriptions set forth in

the approved RMP or plan amendment." ACEC Manual 1613.6. "This direction should be specific enough to minimize the need for subsequent ACEC management plans." Land-use Planning Handbook 1601-1, C-28.

NATIONAL FOREST MANAGEMENT ACT.

74. Congress enacted NFMA in 1976 to reform the Forest Service's management of the National Forest System, including by requiring greater recognition of non-timber resources – such as wildlife, water, and soils – and greater public participation in National Forest management.

75. NFMA directs the Forest Service to "develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System. . . ." 16 U.S.C. § 1604(a). The "land and resource management plans" under NFMA are commonly called Forest Plans.

76. NFMA established substantive forest management provisions, including by requiring that Forest Plans "provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives." *Id.* § 1604(g)(3)(B). NFMA further directs the Forest Service to adopt regulations specifying guidelines for Forest Plans that address a variety of other resource management issues. *See id.* § 1604(g)(3)(A), (C)-(F).

77. NFMA requires that resource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands must be consistent with Forest Plans. *Id*. § 1604(i). When a plan is revised, existing resource plans and permits, contracts and other instruments are also to be revised "as soon as practicable." *Id*.

NFMA's 1982 Forest Planning Rule.

78. The Forest Service promulgated NFMA planning regulations on September 30, 1982. *See* Final Rule, National Forest System Land and Resource Management Planning, 47 Fed. Reg. 43,026 (Sept. 30, 1982) (codified at 36 C.F.R. pt. 219) ("1982 Rule"). The Forest Plan amendments and revisions approved pursuant to the National Greater Sage-Grouse Planning Strategy are subject to the 1982 Rule requirements.

79. The 1982 Rule addressed four primary areas of national forest planning, including identifying regional standards and guidelines for the various National Forests, 36 C.F.R. §§ 219.4(b)(2), 219.9; establishing a process for developing individual Forest Plans, *id.* § 219.12; and adopting planning requirements for a variety of resources, including wilderness, wildlife, grazing, recreation, minerals, water, and soil, *id.* § 219.18-.25.

80. With respect to wildlife, the 1982 Rule established a "population viability" provision to implement NFMA's so-called diversity requirement, 16 U.S.C. § 1604(g)(3)(B). The 1982 Rule required that "[f]ish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area." 36 C.F.R. § 219.19; *id.* § 219.27(a)(6) (requiring Forest Service to "[p]rovide for adequate fish and wildlife habitat to maintain viable populations of existing native vertebrate species").

81. The 1982 Rule defined a "viable population" as "one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area," and specified that "habitat must be

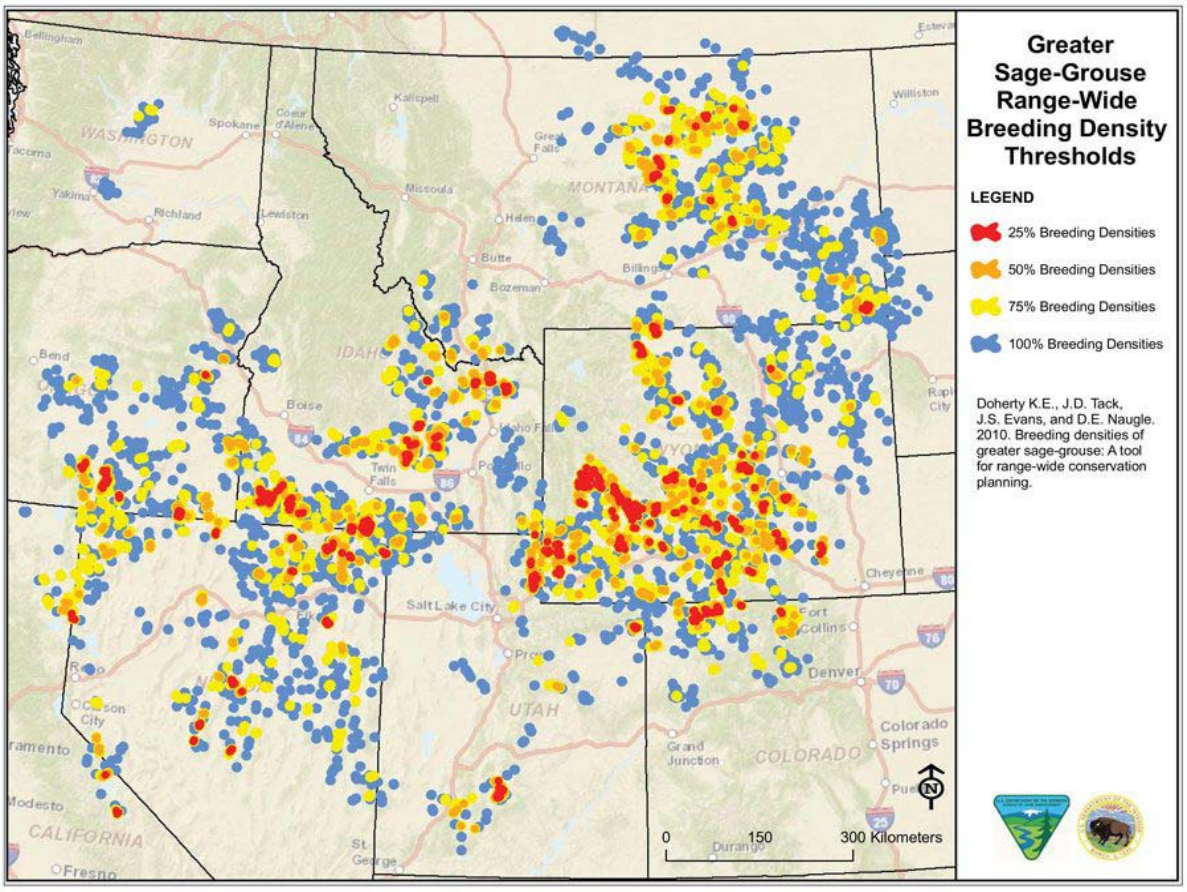
provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area." *Id.* § 219.19.

82. These specific management requirements apply to the development, revision, and amendment of Forest Plans, and to the implementation of Forest Plans through specific projects and actions. *Id.* § 219.27.

83. In addition to NFMA and its implementing regulations, the Forest Service's land use planning process is guided by Department of Agriculture regulations, the Forest Service Manual, and Forest Service Handbooks.

THE NATIONAL GREATER SAGE-GROUSE PLANNING STRATEGY.

84. In 2010, BLM began identifying priority sage-grouse areas based on breeding bird densities around leks. The breeding bird density mapping (below) provided the initial analysis leading to the sage-grouse priority habitat designations in the National Greater Sage-Grouse Planning Strategy, and is available on BLM's website. In the figure below, the leks with a 25% breeding density are the most densely attended (or largest) leks, and the leks with a 100% density are the smallest (or least densely attended) leks:



85. On August 22, 2011, BLM promulgated the official charter for the National Greater Sage-Grouse Planning Strategy. The charter established various policy and technical teams to carry out the new planning process. These included a National Technical Team ("NTT") to serve "as an independent, technical and science-based team to ensure the best information related to greater sage-grouse management is fully reviewed, evaluated and provided to the BLM for consideration in the land use planning process." BUREAU OF LAND MANAGEMENT NATIONAL GREATER SAGE-GROUSE PLANNING STRATEGY CHARTER 2 (Aug. 22, 2011).

86. Indeed, the NTT was directed to "[i]dentify science-based management considerations for the greater sage-grouse (e.g., conservation measures) that are

necessary to promote sustainable sage-grouse populations, and which focus on the threats in each of the management zones." *Id.*

87. In carrying out the National Greater Sage-Grouse Planning Strategy, BLM and the Forest Service have publicly and repeatedly committed to using the best available science in their analysis and adoption of proposed sage-grouse conservation measures.

National Technical Team Report.

88. On December 21, 2011, BLM released the NTT's "Report on National Greater Sage-grouse Conservation Measures" ("NTT Report"), which BLM filed with this Court in the related BLM sage-grouse/RMP litigation. *See* Hearing Exhibit 6, *Salazar,* No. 08-cv-516-BLW, ECF No. 167-14. Based on the evidence and testimony at the remedies hearing, the Court found that the NTT Report "contains the best available science concerning the sage-grouse" at the time. Memorandum Decision and Order, *Salazar*, 2012 WL 5880658 at *2 (Nov. 21, 2012) (No. 08-cv-516-BLW), ECF No. 231.

89. The NTT Report avers that BLM has adopted a "new paradigm" for its public lands management to ensure that sage-grouse populations and habitats receive scientifically-based management protection, as follows:

> Through the establishment of the National Sage-grouse Planning Strategy, BLM has committed to a new paradigm in managing the sagebrush landscape. . . . Land uses, habitat treatments, and anthropogenic disturbances will need to be managed below thresholds necessary to conserve not only local sage-grouse populations, but sagebrush communities and landscapes as well. Management priorities will need to be shifted and balanced to maximize benefits to sage-grouse habitats and populations in priority habitats.

SAGE GROUSE NATIONAL TECHNICAL TEAM, A REPORT ON NATIONAL GREATER SAGE-GROUSE CONSERVATION MEASURES 6-7 (Dec. 21, 2011).

90. The NTT Report established the following overriding "goal" for future conservation measures required under the National Sage-grouse Planning Strategy:

> **Maintain and/or increase sage-grouse abundance and distribution by conserving, enhancing or restoring the sagebrush ecosystem upon which populations depend in cooperation with other conservation partners.**

NTT Report at 6 (bold type in original).

91. The NTT Report emphasized that the designation and protection of priority sage-grouse habitats is key to conserving the greater sage-grouse:

> The overall objective is to protect priority sage-grouse habitats from anthropogenic disturbances that will reduce distribution or abundance of sage-grouse. Priority sage-grouse habitats are areas that have the highest conservation value to maintaining or increasing sage-grouse populations. These areas would include breeding, late brood-rearing, winter concentration areas, and where known, migration or connectivity corridors.

Id. at 7.

92. The NTT Report further stated that it will be necessary to achieve the following "sub-objectives" for sage-grouse priority habitats:

- Designate priority sage-grouse habitat for each WAFWA management zone (Stiver et al. 2006) across the current geographic range of sage-grouse that are large enough to stabilize populations in the short term and enhance populations over the longer term.

- To maintain or increase current populations, manage or restore priority areas so that at least 70% of the land cover provides adequate sagebrush habitat to meet sage-grouse needs.

- Manage priority sage-grouse habitats so that discrete anthropogenic disturbances cover less than 3% of the total sage-grouse habitat regardless of ownership. Anthropogenic features include but are not limited to paved highways, graded gravel roads, transmission lines, substations, wind turbines, oil and gas wells, geothermal wells and associated facilities, pipelines, landfills, homes, and mines.

    - In priority habitats where the 3% disturbance threshold is already exceeded from any source, no further anthropogenic disturbances will

> be permitted by BLM until enough habitat has been restored to maintain the area under this threshold (subject to valid existing rights).

Id. at 7-8.

93. The NTT Report identified specific "Conservation Measures" by categories of management actions, which "are designed to achieve population and habitat objectives stated in this report." *Id.* at 11-31. Among the relevant recommended Conservation Measures in the NTT Report are the following:

Range management:

94. The NTT Report underscored the importance of modifying livestock grazing management to protect sage-grouse nesting and early brood-rearing habitats, stating: "Managing livestock grazing to maintain residual cover of herbaceous vegetation so as to reduce predation during nesting may be the most beneficial for sage-grouse populations. . . . An important objective in managing livestock grazing is to maintain residual cover of herbaceous vegetation during nesting." *Id.* at 14-15.

95. The NTT Report recommended that BLM "[i]mplement management actions (grazing decisions, AMP/Conservation Plan development, or other agreements) to modify grazing management to meet seasonal sage-grouse habitat requirements (Connelly et al., 2011c)," including through changes in season or timing of use, numbers of livestock, and distribution. *Id.*

96. The NTT Report also identified voluntary grazing permit retirement as a recommended conservation measure, directing that: "Each planning effort will identify the specific allotment(s) where permanent retirement of grazing privileges is potentially beneficial." *Id*. at 17.

Energy and mineral development:

97. The NTT Report explained that the "primary potential risks to sage-grouse from energy and mineral development" are:

> 1) Direct disturbance, displacement, or mortality of grouse;
>
> 2) Direct loss of habitat, or loss of effective habitat through fragmentation and reduced habitat patch size and quality; and
>
> 3) Cumulative landscape-level impacts.

Id. at 18.

98. The NTT Report extensively discussed the scientific literature on the impacts of energy development on sage-grouse, *id.* at 19-21, and concluded that:

> There is strong evidence from the literature to support that surface-disturbing energy or mineral development within priority sage-grouse habitats is not consistent with the goal to maintain or increase populations or distribution. . . . Breeding populations are severely reduced at well pad densities commonly permitted. Magnitude of losses varies from one field to another, but findings suggest that impacts are universally negative and typically severe.

Id. at 19 (emphasis added; citations omitted).

99. The NTT Report found that BLM's existing 0.25 mile "No Surface Occupancy" ("NSO") buffers around leks, and its seasonal timing stipulations applying to 0.6 mile buffers around leks, are inadequate to protect sage-grouse, stating that "**protecting even 75 to >80% of nesting hens would require a 4-mile radius buffer**. . . . Even a 4-mile NSO buffer would not be large enough to offset all the impacts" of energy development. *Id.* at 21.

100. In one of its key recommendations, the NTT Report concluded that "the conservation strategy most likely to meet the objective of maintaining or increasing sage-grouse distribution and abundance is to exclude energy development and other large-scale disturbance from priority habitats, and where valid existing rights exist, minimize

those impacts by keeping disturbances to 1 per section with direct surface disturbance impacts held to 3% of the area or less." *Id.* (emphasis added).

101. The NTT Report provided other specific recommendations for conservation measures to limit adverse impacts of energy development on greater sage-grouse, including:

- "Close priority sage-grouse habitat areas to fluid mineral leasing,"
- "Do not allow new surface occupancy on federal leases within priority habitat, this includes winter concentration areas during any time of the year," and
- "Apply a seasonal restriction on exploratory drilling that prohibits surface-disturbing activities during the nesting and early brood-rearing season in all priority sage-grouse habitats during this period."

Id. at 22-23.

Infrastructure and Rights-of-Way ("ROWs"):

102. The NTT Report noted that "[e]xisting and proposed developments for ROWs (such as powerlines, pipelines, and renewable energy projects) and access to various mineral claims or energy development locations have the potential to cause habitat loss and fragmentation that decreases habitat and population connectivity." *Id.* at 12. It provided specific recommendations for overhead electrical transmission lines, including: "Make priority sage-grouse habitat areas exclusion areas for new ROWs permits." *Id.* (emphasis added)

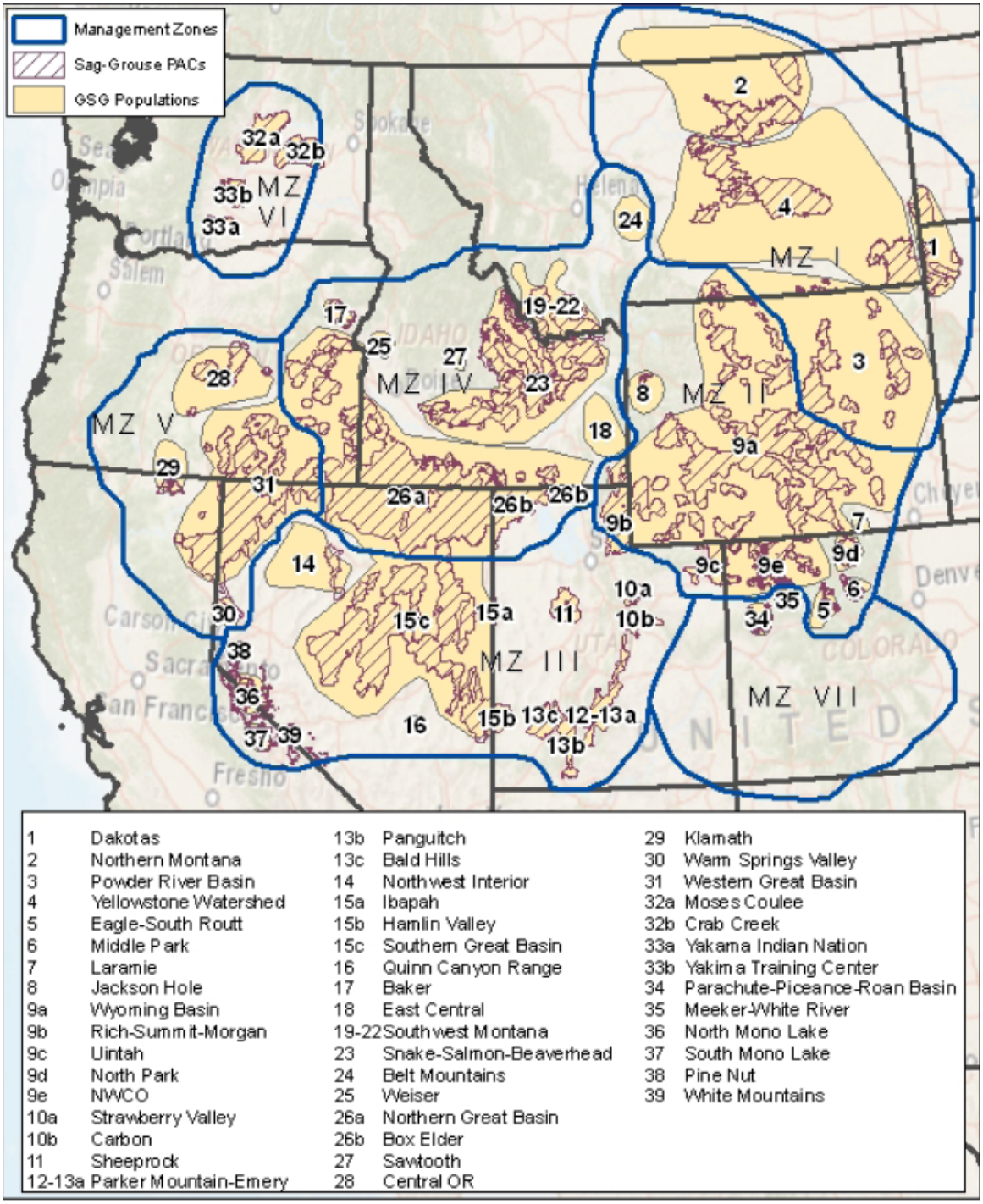
103. Then-BLM Director Robert Abbey issued Instruction Memorandum ("IM") 2012-044 on December 27, 2011, which required that the NTT Report's conservation recommendations must be considered within the National Sage-Grouse Planning Strategy.

Conservation Objectives Team Report.

104. The U.S. Fish and Wildlife Service convened a separate "Conservation Objectives Team" ("COT") of federal and state experts, which was tasked with producing recommendations "regarding the degree to which threats need to be reduced or ameliorated to conserve the 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," *i.e.,* would not need to be listed under the ESA.

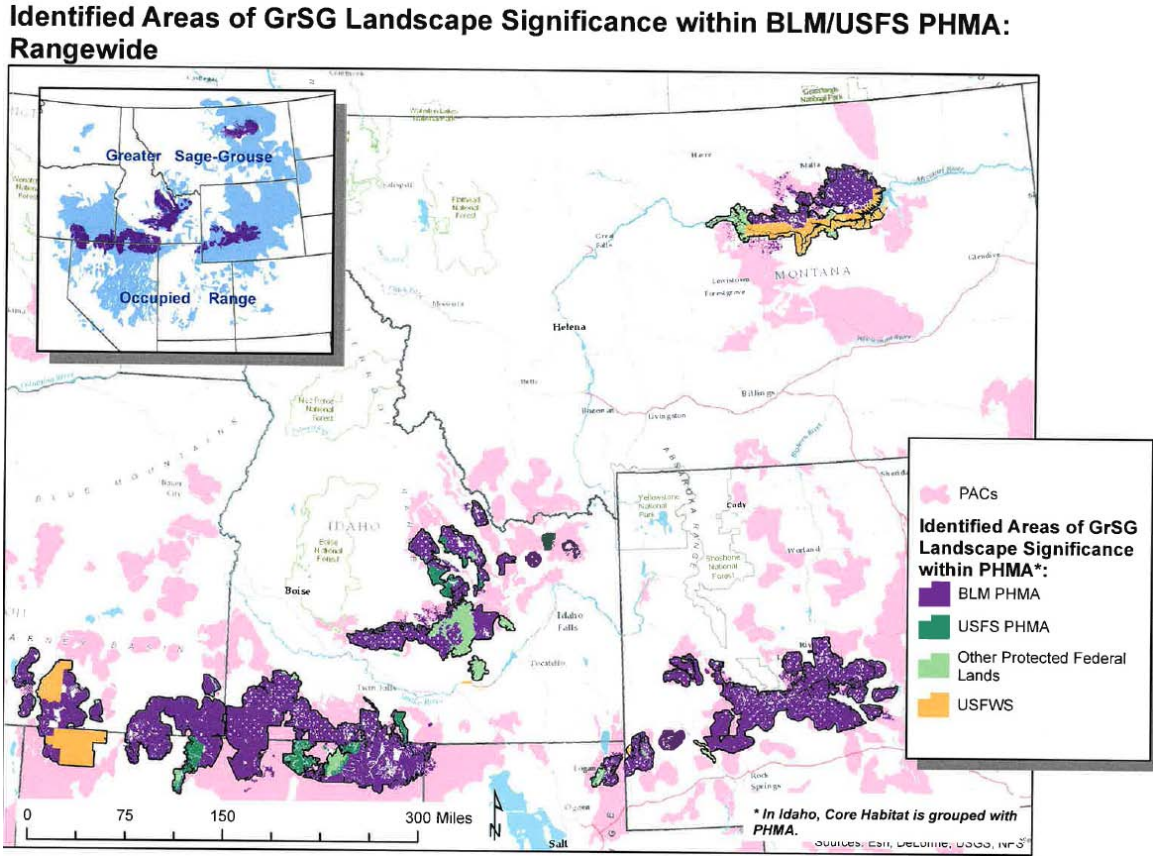
105. In March 2013, the U.S. Fish and Wildlife Service released the team's findings – known as the "COT Report" – which was peer-reviewed and purportedly based on the best scientific and commercial date available. *See* GREATER SAGE-GROUSE (*CENTROCERCUS UROPHASIANUS*) CONSERVATION OBJECTIVES: FINAL REPORT (U.S. Fish and Wildlife Service, 2013).

106. The COT Report identified "Priority Areas for Conservation" ("PACs"), which it termed as "key habitats essential for sage-grouse conservation." The PACs "were identified using the best available information" and were described as "highly important for long-term viability of the species and should be a primary focus of our collective conservation efforts." Figure 3 from the COT Report mapped these PACs as follows:



107. Subsequently, in an October 27, 2014 letter to the BLM and Forest Service, entitled "Greater Sage-Grouse: Additional Recommendation to Refine Land Use Allocations in Highly Important Landscapes," the Service identified a sub-category of lands within the PACs, which it termed sage-grouse "stronghold" areas – the most vital

sage-grouse areas within the priority habitats designated as PACs. These sage-grouse "stronghold" areas are illustrated on the map below from the October 2014 letter:



Fragmentation of the National Sage-Grouse Planning Process.

108. Although the NTT Report, COT Report, and other best available scientific studies emphasize the protection of priority sage-grouse habitats across the species' range in order to achieve the goals of conserving the species and avoiding ESA listing, the National Sage-Grouse Planning Strategy quickly veered away from taking a comprehensive look at sage-grouse threats and conservation needs across the species' range. Instead, BLM and Forest Service released draft EISs for public comment as part of the National Greater Sage-Grouse Planning Strategy in 2013-14, which included 14 draft EISs for different combinations of BLM field offices and National Forests across

the entire planning region, plus the Lander RMP EIS, as illustrated on the following map prepared by BLM:

Greater Sage-grouse Planning Areas

109. BLM's Lander, Wyoming Field Office was included within the planning area for the National Greater Sage-Grouse Planning Strategy; but since the Lander RMP revision was already underway, BLM proceeded to finalize a separate EIS and ROD for the revised Lander RMP, as noted below.

110. Other BLM RMP revisions were also underway for the BLM's Buffalo and Bighorn Basin District Offices in Wyoming, and the HiLine, Miles City, Lewistown, and Billings/Pompeys Pillar areas in Montana. BLM thus determined to prepare separate EISs for each of these RMP revisions as part of the National Greater Sage-Grouse Planning Strategy, as reflected on the map above.

111. As the map above underscores, none of the draft EISs for the National Greater Sage-Grouse Planning Strategy provided a range-wide analysis of sage-grouse

populations, habitats, or proposed conservation measures. None of them evaluated cumulative impacts, connectivity between key habitats and populations, or similar range-wide or overarching issues regarding sage-grouse ecology and habitat needs to persist into the future. Without such comprehensive or range-wide analysis, neither the agencies nor the public have sufficient information to understand how the various measures contained in these different plans may impact sage-grouse throughout the species' range.

112. Reflecting the fragmented nature of the planning process, the draft EISs and the preferred alternatives varied widely, and fell far short of proposing the suite of conservation measures recommended in the NTT and COT Reports and supported by the best available science. Contrary to IM 2012-044 (cited above), most of the draft EISs failed to address large components of the NTT Report recommendations, and none presented preferred alternatives that would ensure adequate science-based conservation measures would be adopted for greater sage-grouse and their habitats. At least one draft EIS actually ignored the IM's direction that BLM consider an NTT Alternative (Bighorn Basin DEIS).

113. Plaintiffs prepared detailed comments on the draft EISs pointing out these and many other defects, and strongly encouraged BLM and the Forest Service to follow the recommendations of the NTT Report and the best available science in preparing Final EISs and Proposed Plans for the National Planning Strategy. Plaintiffs also submitted a complete management alternative during scoping for BLM and Forest Service to consider in the planning process, based on the NTT Report and other best available science.

114. Eleven top sage-grouse scientists sent comments to Interior Secretary Jewell and Agriculture Secretary Vilsack in March 2015 stating that the draft EISs and

their proposed conservation measures were weak and scientifically insufficient to conserve sage-grouse populations and habitats, particularly regarding their treatment of fluid mineral development, livestock grazing, infrastructure, and vegetation treatments. Letter from J. Connelly *et al.* to Secretaries Jewell and Vilsack (March 12, 2015) ("Scientists' Letter"). The scientists reiterated that the NTT Report recommendations should be adopted and strengthened as a template for baseline management in sage-grouse habitat.

Final EISs and Proposed Land Use Plan Amendments.

115. On May 29, 2015, BLM and Forest Service released fourteen final EISs and Proposed Land Use Plan Amendments for the National Greater Sage-Grouse Planning Strategy, which followed the same fragmented approach seen in the draft EISs.

116. Following the pattern established with the draft EISs, as illustrated by the map above, the Final EISs were splintered into numerous proposed land use plan amendments within each of the EIS regions, as follows:

(a) Idaho and Southwestern Montana: The "Idaho and Southwestern Montana Subregional Greater Sage-grouse RMP Amendments" Final EIS ("Idaho and Southwestern Montana FEIS") encompassed BLM and Forest Service lands with greater sage-grouse habitat in Idaho and southwest Montana. A small amount of National Forest land in northern Utah administered by the Sawtooth National Forest was also included in this EIS.

(b) Billings/Pompeys Pillar: The "Billings and Pompeys Pillar National Monument Proposed Resource Management Plan" Final EIS included BLM's Billings Field Office as well as the Pompeys Pillar National Monument in south/central Montana.

(c) HiLine: The "HiLine Proposed Resource Management Plan" Final EIS ("HiLine FEIS") covered public lands and federal minerals administered by BLM's HiLine District in north/central Montana.

(d) Lewistown: The "Lewistown Greater Sage-grouse Draft Resource Management Plan Amendment" Final EIS covered the BLM's Lewistown Field Office in north/central Montana.

(e) Miles City: The "Miles City Field Office Proposed Resource Management Plan" Final EIS covered the BLM's Miles City Field Office within the Powder River Basin of Montana.

(f) Bighorn Basin: The "Bighorn Basin RMP Revision/EIS Supplement" included BLM's Cody and Worland Field Offices within the Bighorn Basin of Wyoming.

(g) Buffalo: The "Buffalo RMP Revision" Final EIS covered BLM's Buffalo Field Office in northeastern Wyoming.

(h) Lander : The Lander Final EIS ("Lander FEIS") and Proposed RMP covers BLM's Lander, Wyoming Field Office, and was issued on February 22, 2013. A final ROD approving the Lander RMP was adopted by BLM on June 26, 2014.

(i) Wyoming: The "Wyoming Greater Sage-grouse Proposed Land Use Plan Amendment" Final EIS ("Wyoming FEIS") encompassed BLM and Forest Service lands across most of southern Wyoming, including BLM's Casper, Rock Springs, Kemmerer, Newcastle, Pinedale, and Rawlins Field Offices, and the Forest Service's Bridger-Teton National Forest, Medicine Bow National Forest, and Thunder Basin National Grasslands.

(j) Nevada and Northeastern California: The "Proposed Nevada and Northeastern California Land Use Plan Amendment" Final EIS ("Nevada and

Northeastern California FEIS") covered BLM lands with greater sage-grouse habitat in Nevada and northeastern California, plus the majority of the Humboldt-Toiyabe National Forest in Nevada.

(k) North Dakota: The "North Dakota Greater Sage-grouse Proposed Resource Management Plan Amendment" Final EIS addressed BLM lands with greater sage-grouse habitat in southwestern North Dakota.

(l) Northwest Colorado: The "Northwest Colorado Greater Sage-grouse RMP Amendment" Final EIS ("Northwest Colorado FEIS") covered BLM and Forest Service lands with greater sage-grouse habitat in northwestern Colorado.

(m) Oregon: The "Oregon Sub-regional Greater Sage-Grouse Proposed Resource Management Plan Amendment" Final EIS ("Oregon FEIS") included sage-grouse habitats on BLM lands in Oregon.

(n) South Dakota: The "South Dakota Proposed Resource Management Plan" Final EIS ("South Dakota FEIS") included all BLM lands with greater sage-grouse habitat in northwestern South Dakota.

(o) Utah: The "Utah Greater Sage-grouse Land Use Plan Amendments" Final EIS ("Utah FEIS") covered all BLM and Forest Service lands with greater sage-grouse habitat in Utah, as well as a small portion of the Ashley National Forest that extends into Wyoming.

117. The foregoing Final EISs represent the "challenged EISs" for purposes of this Complaint.

118. Plaintiffs submitted timely protests of the proposed land use plan amendments set forth in the foregoing Final EISs, in accordance with the protest procedures and timelines specified therein.

Priority Habitat Designations in Final EISs.

119. The Final EISs each provided a range of alternatives, which included a "no action" alternative (meaning existing management would continue), as well as other alternatives drawn from the NTT Report, state conservation plans, conservation group recommendations, alternatives developed by the agencies, and others. Each of the challenged EISs also included a Proposed Plan representing the agencies' recommended course of action among the various alternatives considered.

120. The designation of priority sage-grouse habitats with differing management provisions was the focus of all alternatives in the challenged EISs. Although the draft EISs used different nomenclature (such as "preliminary priority habitat," "preliminary general habitat," and "core areas"), the Final EISs and Proposed Plans identified "Priority Habitat Management Areas" ("PHMAs") and "General Habitat Management Areas" ("GHMAs"), along with "Sagebrush Focal Areas" ("SFAs"), which are a special subset of PHMAs. The Idaho and Southwestern Montana FEIS also identified "Important Habitat Management Areas" ("IHMAs") and the Nevada and Northeastern California FEIS identified "Other Habitat Management Areas" ("OHMAs"); while the Wyoming FEIS, Bighorn Basin FEIS, and Buffalo FEIS identified "core" and "connectivity" PHMAs, following the State of Wyoming's sage-grouse "core area" strategy. Other plans also used different names like "restoration"

habitat, for example, to apply lesser protections in priority habitats where the BLM or the Forest Service anticipated resource extraction activities that damage sage-grouse habitat.

121. Of these priority habitat designations, PHMAs were defined as "lands identified as having the highest value to maintaining sustainable GRSG [greater sage-grouse] populations." *See, e.g.,* Idaho and Southwestern Montana FEIS at ES-4. The EISs asserted that the boundaries of the PHMAs "generally follow the Preliminary Priority Habitat boundaries" from the draft EISs, and "largely coincide with areas identified as Priority Areas for Conservation in the COT report," *i.e.*, the PACs. *Id.*

122. The SFAs were identified "as a subset of PHMA" derived from the sage-grouse "stronghold areas" within the PACs, as set forth in the Service's October 2014 letter to BLM and the Forest Service (see map above).

123. GHMAs were defined as "BLM-administered and National Forest System lands that require some special management to sustain GRSG populations." *Id.* The EISs asserted that the GHMA boundaries generally followed the Preliminary General Habitat boundaries identified in the draft EISs. *Id.*

Management Restrictions in Priority Areas.

124. The Final EISs and Proposed Plans set forth different management restrictions and provisions applicable to these priority sage-grouse habitats, *i.e.*, the SFAs, PHMAs, IHMAs (in Idaho) and OHMAs (in Nevada and Oregon), "core" and "connectivity" PHMAs in Wyoming, "restoration" habitat in Montana, and GHMAs. These habitat delineations varied considerably between the different EISs, within the alternatives they identified (including the Proposed Plans), between BLM and Forest Service lands, and even within the same states. Where industrial development potential

existed in priority habitats, plan provisions were generally weakened in comparison to other plans, presumably to allow for that development.

125. For instance, in the Idaho and Southwestern Montana FEIS, the Proposed Plan for Idaho identified 3,842,900 acres as SFAs, within the larger 5,192,600 acres identified as PHMAs; while 3,153,300 acres are designated as IHMAs – a category unique to Idaho – and 2,760,500 acres are designated as GHMAs. *See* Idaho and Southwestern Montana FEIS at ES-7. Even though IHMAs were identified as "Preliminary Priority Habitats" in the draft EIS, they receive lesser protections in the final plans.

126. Similarly, in the Wyoming FEIS, the Proposed Plan identified 4,894,900 acres of PHMAs, including 1,196,000 acres of SFAs, and 5,951,300 acres of GHMAs. Wyoming FEIS at ES-4. This Plan further distinguished between "core" PHMAs and "connectivity" PHMAs. Connectivity habitat receives lesser protections under the Proposed Plan than core habitat, and both receive greater protections than GHMAs. In core PHMAs, the Wyoming FEIS limits density of disturbance from an energy or mining facility to an average of one site per square mile (640 acres) within the Disturbance Density Calculation Tool ("DDCT") area, and the one location and cumulative value of existing disturbances is not to exceed 5% of suitable habitat in the DDCT area. *Id.* at 2-59. In connectivity PHMAs, however, only the 5% disturbance cap applies. *Id*. Thus, more oil and gas development can occur in connectivity habitat than in core habitat. In fact, each of the Wyoming Plans contain weaker provisions shielding priority habitats from the effects of fluid mineral development than the plans in other states, relying

primarily on lek buffers and timing restrictions, which scientists have already found to be inadequate to protect sage-grouse, as addressed further below.

127. The Utah FEIS's Proposed Plan delineated 2,763,100 acres of PHMA, 228,500 acres of which are also SFAs, and 583,000 acres of GHMA. The Proposed Plan set forth at least three sets of management direction depending on where the lands are located (e.g., Utah or Wyoming), and whether the lands are managed by BLM of the Forest Service. In addition, the protections that apply to GHMA in Utah are more relaxed than in other states. More specifically, in Utah, GHMAs are open to wind energy and high voltage transmission ROW development, as well as open to oil and gas development with only "standard" constraints.

128. The Nevada and Northeastern California FEIS's Proposed Plan identified 10,296,100 acres of PHMAs (including 2,797,400 acres of SFAs); 6,516,700 acres of GHMAs and 6,498,000 acres of OHMAs – a designation unique to this plan. Nevada and Northeastern California FEIS at ES-4, 7. The Proposed Plan's provisions differ along political boundaries, however. On Nevada BLM lands, the agencies commit to implementing a "Disturbance Management Protocol" ("DMP") that could limit disturbance to 3%, except in "situations where a biological analysis indicates a net conservation gain to the species," though it is unclear how this operates in practice. *Id.* at ES-13. According to the BLM's subsequent Great Basin ROD (identified below), "[t]he Nevada ARMPA [Approved Resource Management Plan Amendment] does not use a disturbance density cap, required in the three other Great Basin Region ARMPAs, in light of the disturbance management protocol for BLM-administered lands in Nevada." BUREAU OF LAND MANAGEMENT, RECORD OF DECISION AND APPROVED RESOURCE

MANAGEMENT PLAN AMENDMENTS FOR THE GREAT BASIN REGION, INCLUDING THE GREATER SAGE-GROUSE SUB-REGIONS OF IDAHO AND SOUTHWESTERN MONTANA, NEVADA AND NORTHEASTERN CALIFORNIA, OREGON, UTAH 1-31 (U.S. Dep't of Interior 2015) ("BLM Great Basin ROD"). Meanwhile, in California, and the Forest Service portion of Nevada, the 3% disturbance cap applies with no exceptions whatsoever, and is to be calculated both at the regional level (a/k/a "Biological Significant Unit" or BSU) level and at the project analysis area level. Nevada and Northeastern California FEIS at ES-13 to ES-14, 2-21 to 2-22. In addition, provisions governing geothermal development have been weakened only on BLM lands in Nevada.

Final Records of Decision and Approved Plan Amendments/Revisions.

129. BLM and Forest Service finalized the National Greater Sage-Grouse Planning Strategy through issuance of four RODs in September 2015, which approved amended or revised land use plans – called "Approved Resource Management Plan Amendments" ("ARMPAs") or "Approved Resource Management Plans" ("ARMPs") for the BLM lands, and "Land Management Plan Amendments" ("LMPAs") for Forest Service lands – with respect to each of the BLM and Forest Service planning areas identified in the various EISs and Proposed Plans cited above.

130. The September 2015 RODs were divided into two RODs separately issued by BLM and the Forest Service for the Rocky Mountain and Great Basin regions, respectively, as follows:

(a) BLM's "Record of Decision and Approved Resource Management Plan Amendments for the Rocky Mountain Region, Including the Greater Sage-grouse Sub-Regions of Lewistown, North Dakota, Northwest Colorado, Wyoming, and the Approved

Resource Management Plans for Billings, Buffalo, Cody, HiLine, Miles City, Pompeys Pillar National Monument, South Dakota, Worland," signed by Assistant Interior Secretary Janice Schneider and BLM Director Neil Kornze, dated September 21, 2015 ("BLM Rocky Mountain ROD");

(b) The Forest Service's "Greater Sage-grouse Record of Decision for Northwest Colorado and Wyoming and Land Management Plan Amendments for the Routt National Forest, Thunder Basin National Grassland, Bridger-Teton National Forest, Medicine Bow National Forest," signed by Regional Foresters Nora B. Rasure (Intermountain Region) and Daniel J. Jirón (Rocky Mountain Region) dated September 16, 2015 ("FS Rocky Mountain ROD");

(c) BLM's "Record of Decision and Approved Resource Management Plan Amendments for the Great Basin Region, Including the Greater Sage-grouse Sub-Regions of Idaho and Southwestern Montana, Nevada and Northeastern California, Oregon, Utah," signed by Assistant Interior Secretary Janice Schneider and BLM Director Neil Kornze, dated September 21, 2015 ("BLM Great Basin ROD"); and

(d) The Forest Service's "Greater Sage-grouse Record of Decision for Idaho and Southwest Montana, Nevada and Utah, and Land Management Plan Amendments for the Ashley National Forest, Beaverhead-Deerlodge National Forest, Boise National Forest, Caribou National Forest, Challis National Forest, Curlew National Grassland, Dixie National Forest, Fishlake National Forest, Humboldt National Forest, Manti-La Sal National Forest, Salmon National Forest, Sawtooth National Forest, Targhee National Forest, Toiyabe National Forest, Uinta National Forest, Wasatch-Cache National Forest,"

signed by Regional Foresters Nora B. Rasure (Intermountain Region) and Daniel J. Jirón (Rocky Mountain Region) dated September 16, 2015 ("FS Great Basin ROD").

131. The foregoing RODs, along with the ROD adopting the Lander RMP which (as noted above) was approved by BLM in June 2014, represent the "challenged RODs" for purposes of this Complaint.

132. The "challenged RODs" as used in this Complaint also includes all of the plan amendments and revisions approved in the RODs identified above, *i.e.*, BLM's ARMPAs and ARMPs and the Forest Service's LMPAs approved in the RODs listed above (for ease of reference, these are sometimes called the "Plans" or "plans" in this Complaint).

133. Repeating similar statements made by the agencies throughout the National Greater Sage-Grouse Planning Strategy, the Forest Service and BLM assert in the challenged RODs that they relied on the "best available science" in reaching the management decisions approving the various Plans. *See, e.g.*, BLM Rocky Mountain ROD at 1-12 ("BLM used the best available science") & 1-33 (revised/amended plans "are grounded in the best available science, drawn from published literature and input from recognized experts, state agencies, the USGS, the FWS, and other sources").

DEFECTS IN CHALLENGED EISs, RODs AND PLANS

134. As indicated by the discussion above, the National Greater Sage-Grouse Planning Strategy was fragmented into fifteen separate EISs and five different RODs, with each EIS and ROD covering widely varying amounts of federal lands and jurisdictions.

135. This fragmentation of the planning process means that the National Greater Sage-Grouse Planning Strategy did not undertake any comprehensive or range-wide analysis of sage-grouse habitats, populations, threats, or conservation needs. The challenged RODs adopted revised or amended land use plans having differing and often inadequate conservation measures, which fail to assure the conservation of sage-grouse in accordance with the stated goals of the National Greater Sage-Grouse Planning Strategy and the best available science.

136. The ramifications of these deficiencies, and the legal violations they have caused, are detailed in the sections below, and include the following specific claims at issue in this Complaint:

- Failure to include all key sage-grouse habitats within the priority habitat designations, including all PACs and winter habitats;
- Failure undertake programmatic or range-wide analysis, including analysis of connectivity and cumulative impacts;
- Refusal to plan for and address likely impacts of climate change;
- Failure to analyze livestock grazing impacts and alternatives, and refusal to require modifications of livestock grazing necessary to protect and restore sage-grouse habitats;
- Inconsistent and inadequate treatment of fluid mineral (oil, gas, geothermal) leasing and development;
- Unwarranted exemptions for infrastructure projects;
- Inconsistent and arbitrary provisions for vegetation treatments;
- Violating FLMPA's mandatory duty to designate and protect sage-grouse ACECs;
- Violating FLPMA's directives to prevent unnecessary and undue degradation and/or permanent impairment of the public lands, including by failing to adopt adequate sage-grouse protections; and

- Violating NFMA's population viability requirement by failing to ensure viability of the Powder River Basin sage-grouse population.

A. Failure To Include Key Sage-grouse Habitats Within Priority Habitat Designations.

137. The challenged RODs assert that the designated PHMAs "largely coincide with PACs in the COT Report," which is not accurate. As discussed further below, millions of acres of PACs from the COT report were evidently omitted from the final PHMA designations – including (but not limited to) Idaho, where extensive areas within the PACs were designated as less-protective IHMAs instead of PHMAs.

138. The challenged RODs assert that, "[c]ombined, all of the [revised and amended land use plans]" for both BLM and Forest Service lands "would affect approximately 67 million areas of remaining habitat" for the greater sage-grouse. *See* BLM Rocky Mountain ROD at 1-33. *But see id*. at 1-14 (asserting that the revised/amended plans "contain land use plan direction on approximately 67 million acres of the GRSG's remaining habitat on BLM-administered land," without addressing amount of Forest Service lands covered by the plans).

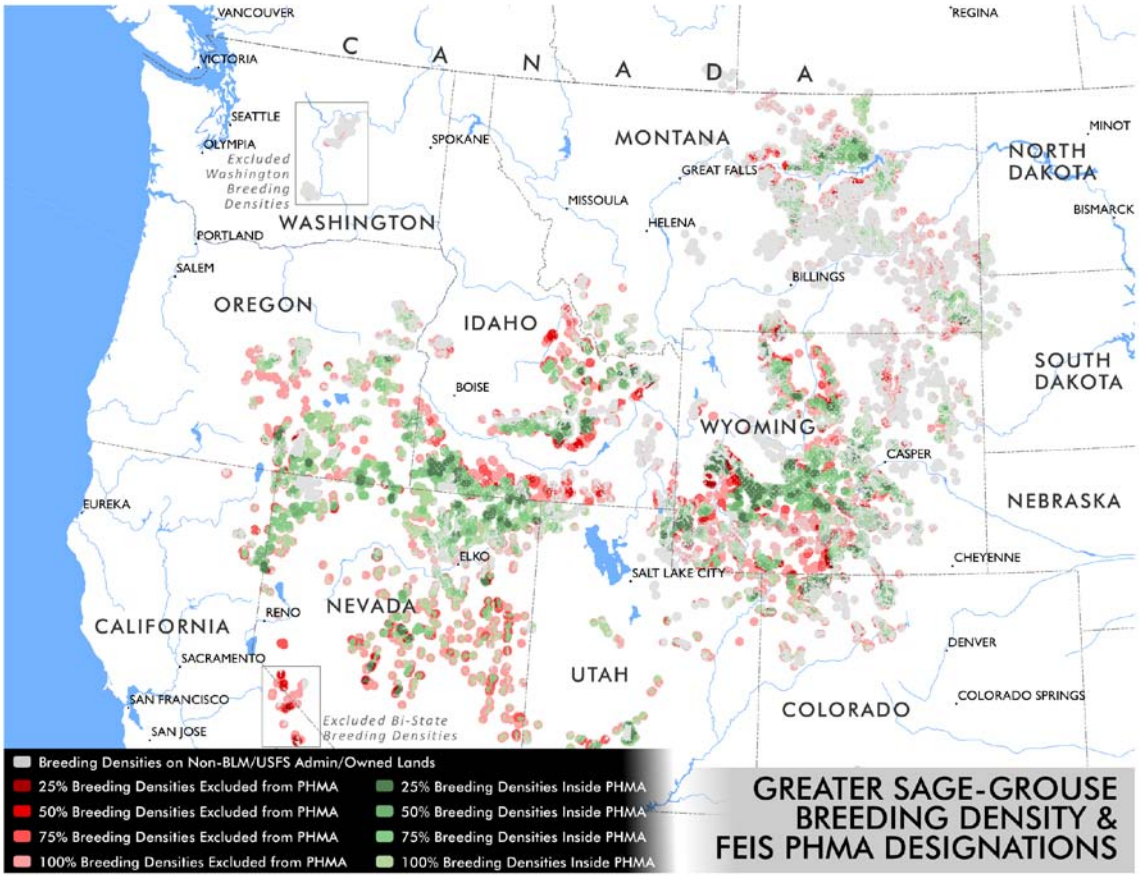
139. It is impossible to verify these figures because no comprehensive, overarching, or range-wide analysis was provided to the public during the National Greater Sage-Grouse Planning Strategy in any EIS or other document.

140. However, Plaintiffs have added up the acreages provided in the challenged RODs, and it appears that either 70,915,673 or 71,599,770 acres of public lands are included within the sage-grouse habitat designations (*i.e.*, SFAs, PHMAs, IHMAs, GHMAs, etc.), depending on whether figures are used from the Executive Summaries or the more detailed figures provided in the RODs.

141. By largely deferring to state agencies in defining priority sage-grouse habitats, Defendants failed to ensure that all priority sage-grouse habitats were encompassed within the designations of the respective EISs and RODs. Many areas that qualify as priority habitats (under the NTT Report definitions, for instance, or the COT Report's identification of PACs) have been omitted from the priority habitat designations or downgraded. Moreover, sage-grouse wintering areas are omitted from many of the priority habitat designations, despite their critical importance to sage-grouse survival.

142. Similarly, the priority habitats designated in the challenged EISs and RODs fail to encompass all existing sage-grouse populations and subpopulations – a striking omission given the strong warnings from the scientific literature cited above that all sage-grouse populations need to be preserved in order to ensure the species' viability into the future.

143. Utilizing Defendants' data concerning breeding bird densities and the surface priority habitat designations for the National Sage-Grouse Planning Strategy, the following map prepared for Plaintiffs illustrates the omission of numerous sage-grouse populations and habitat from the PHMA designations adopted through the challenged EISs and RODs, with the omitted priority habitat areas shown in red colors:



Indeed, BLM's and the Forest Service's omissions of important habitat is likely worse, especially because this analysis does not include split estate areas (surface rights owned privately, and subsurface federally-owned), even though the agencies previously delineated split-estate land as PHMA and management of these lands will impact greater sage-grouse populations.

144. As a result of these omissions of recognized key habitats and existing sage-grouse populations from the priority areas designated in the challenged EISs and RODs, the new Plans are inadequate in geographic scope, contrary to the best available science, inconsistent with the NTT and COT Reports, and arbitrary, capricious and contrary to law under the APA and other authorities discussed herein. By failing to

disclose these omissions and inadequacies, the challenged EISs and RODs also violate NEPA.

B. Failure to Include Winter Habitats In Priority Designations.

145. As mentioned above, the priority habitat designations generally failed to include sage-grouse winter habitats, which are essential to the birds' survival.

146. Winter habitat must provide sufficient sagebrush cover and food to support sage-grouse throughout the season, especially during periods with above-average snow cover. Wintering areas are often on windswept ridges, south-facing slopes or in protected draws. These landscape features may be limited in some areas.

147. Sage-grouse typically show high fidelity to winter habitat areas, and a single area may support several different breeding populations. Consequently, the loss or fragmentation of a wintering area can have a disproportionate adverse impact on sage-grouse populations.

148. The NTT Report made specific recommendations with respect to winter habitat, including:

- Allow no treatments in known winter range unless the treatments are designed to strategically reduce wildfire risk around or in the winter range and will maintain winter range habitat quality. NTT Report at 26.
- Include winter concentration areas as priority habitats upon which no new surface occupancy should be authorized for fluid mineral leases. *Id.* at 23.

149. The definition of "priority sage-grouse habitat" or "priority habitat management area" used in some of the amended or revised Plans purportedly includes "winter concentration areas." *See, e.g.* BUREAU OF LAND MANAGEMENT, OREGON GREATER SAGE-GROUSE APPROVED RESOURCE MANAGEMENT PLAN AMENDMENT 5-18 (U.S. Dep't of Interior September 2015) ("Oregon ARMPA"); BUREAU OF LAND

MANAGEMENT, UTAH GREATER SAGE-GROUSE APPROVED RESOURCE MANAGEMENT PLAN AMENDMENT 5-15 (U.S. Dept't of Interior September 2015) ("Utah ARMPA"); BUREAU OF LAND MANAGEMENT, NEVADA AND NORTHEASTERN CALIFORNIA GREATER SAGE-GROUSE APPROVED RESOURCE MANAGEMENT PLAN AMENDMENT 1-4 (U.S. Dep't of Interior September 2015) ("Nevada and Northeastern California ARMPA").

150. Yet most of the challenged EISs and RODs failed to map or identify sage-grouse winter habitat; instead, they delayed identifying winter habitat until sometime in the future. For example, BLM's Rocky Mountain ROD states: "As additional important habitats are identified (e.g., winter habitat and key connectivity areas), the BLM will map and incorporate these habitats for GRSG, consistent with best available science, through subsequent plan maintenance, revision, or amendment, as appropriate. Priority should be given to ensuring that wintering habitat is identified and captured in all changes in habitat maps subsequent to this decision." BLM Rocky Mountain ROD at 1-40. The BLM Great Basin ROD contains the same language. *See* BLM Great Basin ROD at 1-42. Thus, although the science emphasizes, and the EISs and RODs acknowledge, the importance of protecting winter habitat, in many cases the agencies do not actually know where that wintering habitat is.

151. Where the challenged EISs and RODs address winter habitat, BLM generally failed to adequately restrict vegetation treatments in these areas. For instance, the Wyoming Plan Amendment allows vegetation treatments in wintering habitat so long as they do not reduce sagebrush canopy cover to less than 15%. BUREAU OF LAND MANAGEMENT CASPER, KEMMERER, NEWCASTLE, PINEDALE, RAWLINS AND ROCK SPRINGS FIELD OFFICES, APPROVED RESOURCE MANAGEMENT PLAN AMENDMENT FOR

GREATER SAGE-GROUSE 38 (U.S. Dep't of Interior September 2015) ("Wyoming ARMPA"). The Utah Plan provides: "In PHMA, avoid sagebrush reduction treatments within GRSG nesting and winter habitat unless the project plan and associated NEPA document demonstrate a biological need for the treatment to maintain or improve habitat for the GRSG population, or unless the treatment is for Utah prairie dog recovery where the needs of both species will be addressed on the landscape." Utah ARMPA at 2-15. And the Nevada and Northeastern California Plan even includes a standard that "[o]n public lands, where the attributes, quality, or lack of GRSG winter habitat has been identified as a limiting factor, emphasize vegetation treatments in known winter habitat . . . ." Nevada and Northeastern California ARMPA at 2-15.

152. Further, none of the challenged EISs and RODs incorporates the ban on fluid mineral leasing in winter habitat recommended in the NTT Report. Many of them instead rely on seasonal use restrictions, which the NTT Report discouraged as an inadequate conservation mechanism, stating:

> We do not include timing restrictions on construction and drilling during the breeding season because they do not prevent impacts of infrastructure (e.g., avoidance, mortality) at other times of the year, during the production phase, or in other seasonal habitats that are crucial for population persistence (e.g., winter; Walker et al. 2007). . . . Instead, we recommend excluding mineral development and other large scale disturbances from priority habitats where possible, and where it is not limit disturbance as much as possible.

NTT Report at 21. Only two Plans (Billings and South Dakota) require NSO in sage-grouse winter range, and still they fall short of the withdrawal that the NTT Report recommended. BUREAU OF LAND MANAGEMENT, SOUTH DAKOTA APPROVED RESOURCE MANAGEMENT PLAN 2-9 (U.S. Dep't of Interior September 2015) ("South Dakota ARMP"); BUREAU OF LAND MANAGEMENT, BILLINGS FIELD OFFICE APPROVED

RESOURCE MANAGEMENT PLAN 2-12 (U.S. Dep't of Interior September 2015) ("Billings ARMP").

153. In failing to map, identify and adequately protect crucial sage-grouse winter habitats, the challenged EISs and RODs are arbitrary, capricious and contrary to the best available science, as well as NEPA and BLM's own sage-grouse Conservation Strategy and the stated goals of the National Planning Strategy.

C. Failure To Undertake Range-Wide Analysis, Including Habitat Connectivity And Cumulative Impacts.

154. The fragmentation of the National Greater Sage-Grouse Planning Strategy into fifteen EISs also means that BLM and Forest Service never took a comprehensive "hard look" at existing sage-grouse populations and habitats, impacts, and threats to them on a range-wide basis, or conservation measures needed to secure sage-grouse as a species on a range-wide basis into the future.

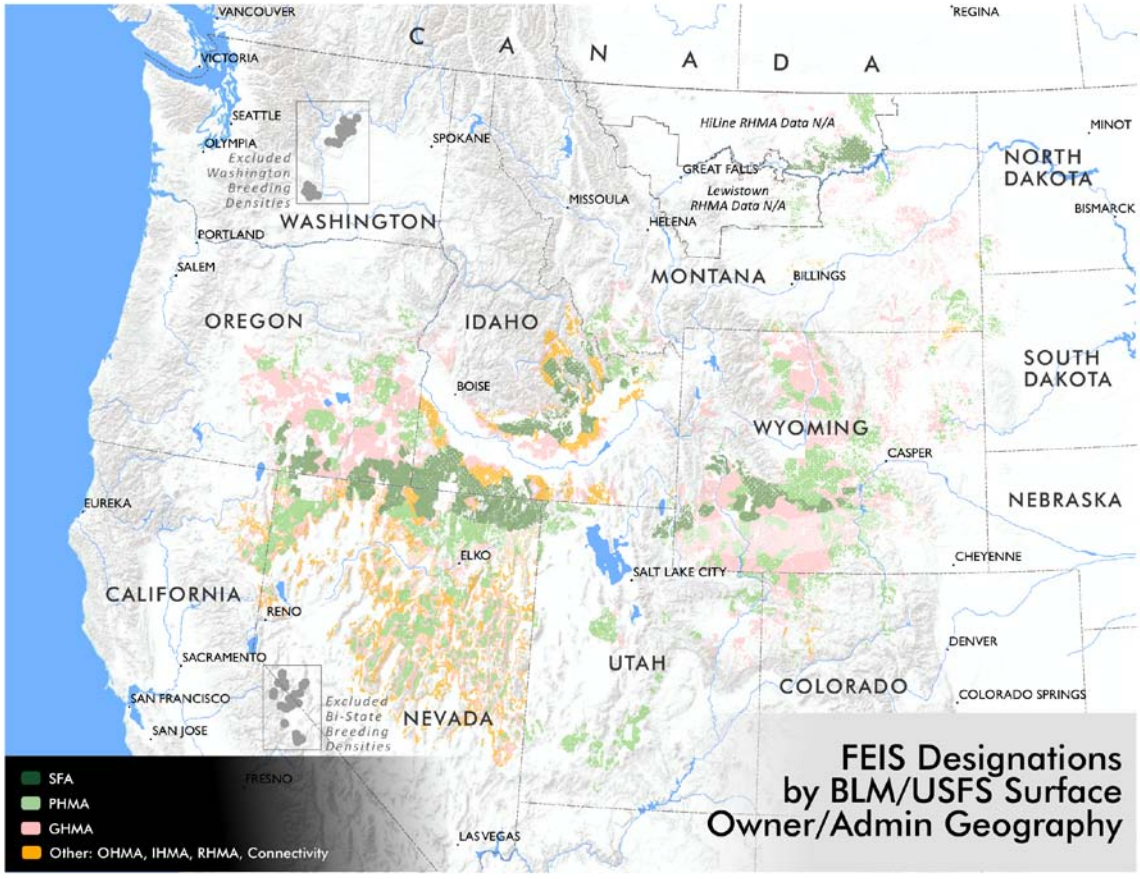
Lack of Range-wide Analysis

155. Although the NTT and COT Reports, March 2010 Finding, Monograph, BLM 2004 Conservation Strategy, 2004 Conservation Assessment, and other science all underscore the importance of preventing fragmentation and degradation of existing sage-grouse habitats at the range-wide level in order to conserve sage-grouse as a species, no such analysis was provided in the EISs prepared for the National Greater Sage-Grouse Planning Strategy.

156. While the challenged EISs and RODs together address millions of acres of BLM and Forest Service lands – some of which are now designated as priority sage-grouse habitats – there is no underlying analysis in any NEPA document of how those priority habitat designations fit together on a range-wide or even regional scale, or how

well they may serve to protect remaining sage-grouse habitats and populations across the sage-grouse range or even at regional scales.

157. The map below was prepared for Plaintiffs using Defendants' data to illustrate how the priority habitat designations made in the 15 challenged EISs and RODs actually fit together across the sage-grouse range. While this map provides a useful illustration of the range-wide scope of priority habitats designated under the National Sage-grouse Planning Strategy, what is particularly notable about this map is that Plaintiffs had to prepare it since Defendants failed to undertake any similar comprehensive or range-wide analysis in their NEPA documents:



158. The failure to evaluate sage-grouse conservation needs at the range-wide level means that critical information regarding sage-grouse conservation was omitted

from the National Greater Sage-Grouse Planning Strategy, and the challenged EISs and RODs fail to undertake the analysis necessary to ensure conservation of the species. This key defect again reveals that the challenged EISs and RODs are arbitrary, capricious and contrary to the best available science, as well as NEPA and BLM's own sage-grouse Conservation Strategy and the stated goals of the National Planning Strategy.

Failure to Analyze and Protect Connectivity.

159. A key problem that results from this lack of a range-wide or comprehensive analysis is that connectivity between sage-grouse populations has not been adequately analyzed under the challenged EISs and RODs.

160. The Monograph and March 2010 Finding both addressed the importance of ensuring that connectivity persists between sage-grouse populations. For example, Chapter 13 of the Monograph evaluated sage-grouse connectivity by examining data showing male sage-grouse presence at different leks within inter-connected lek complexes. *See* S. Knick and S. Hanser, *Connecting Pattern and Process in Greater Sage-grouse Populations and Sagebrush Landscapes*, *in* Steven T. Knick and John W. Connelly, supra.

161. The U.S. Geological Survey (the independent science arm of the Interior Department) prepared a report in August 2015, before the challenged September 2015 RODs were issued, which underscored that the failure of the National Greater Sage-Grouse Planning Strategy to address connectivity between sage-grouse populations means there are significant questions about whether the priority habitat designations will suffice to protect remaining sage-grouse populations from habitat fragmentation and population declines. *See* M. Crist, S. Hanson & S. Knick, RANGE-WIDE NETWORK OF

PRIORITY AREAS FOR GREATER SAGE-GROUSE: A DESIGN FOR CONSERVING CONNECTED DISTRIBUTIONS OR ISOLATING INDIVIDUAL ZOOS? (USGS Open File Report 2015-1158).

162. That report and substantial other scientific literature and information (including in the March 2010 Finding, Monograph, and the NTT and COT Reports) confirm the critical importance of preserving connectivity between sage-grouse populations to ensure future survival of the species.

163. Although the challenged EISs largely fail to address connectivity, the challenged September 2015 RODs did acknowledge the Crist *et al.* study and purported to respond to it by claiming that the GHMAs could include and offer protections for connectivity habitats. However, the GHMAs receive the least protections of all the priority sage-grouse habitat designations. Moreover, the Crist *et al.* study itself contradicts this assertion. The challenged EISs and RODs did not identify and impose adequate protections to ensure connectivity between key and isolated sage-grouse populations, as recommended by the NTT Report, BLM's 2004 Conservation Strategy, and other best available science.

164. The failure of the challenged EISs and RODs to analyze and protect connectivity between sage-grouse populations is a major flaw in the outcome of the National Greater Sage-Grouse Planning Strategy; demonstrates that the challenged EISs and RODs are not consistent with the best available science; and undermines Defendants' assertions in the challenged RODs that the priority habitat designations and management measures adopted therein will be adequate to ensure conservation of sage-grouse into the future.

Failure to Address Cumulative Impacts.

165. Similarly, the challenged EISs and RODs failed to take a "hard look," as required by NEPA, at the cumulative impacts of the determinations made in the challenged RODs and Plans regarding management of anthropogenic as well as natural threats affecting sage-grouse populations and habitats on a range-wide scale.

166. As explained above, the 15 different EISs and five separate RODs adopted differing priority habitat designations and management measures or recommendations regarding BLM and Forest Service authorizations of human activities in sage-grouse habitats, including energy and mineral leasing and development; livestock grazing; infrastructure and rights-of-ways; and vegetation management (including fire suppression, post-fire rehabilitation, and vegetation treatments). Individually each of these types of actions poses direct and indirect impacts to sage-grouse habitats and populations; but they also pose substantial cumulative impacts at the local, regional and range-wide scales.

167. The challenged EISs each purport to address cumulative impacts, but these analyses vary widely in their scope, analysis, and scientific accuracy. Overall, however, none of the challenged EISs addresses cumulative impacts of the Proposed Plans at a range-wide scale, to evaluate how the proposed actions may individually and cumulatively affect sage-grouse populations and habitats. Indeed, the challenged EISs do not even address cumulative impacts at the scale selected for the RODs, *i.e.*, the eastern and western portions of sage-grouse range.

168. By failing to undertake any comprehensive analysis, including of connectivity and cumulative impacts, the challenged EISs and RODs are arbitrary, capricious, an abuse of discretion, and contrary to law under NEPA and the APA.

D. Refusal To Plan For And Address Climate Change Impacts.

169. The March 2010 Finding identified climate change as a significant threat to sage-grouse habitats and populations. *See* 75 Fed. Reg. at 13954-57. As it explained:

> Climate changes such as shifts in timing and amount of precipitation, and changes in seasonal high and low temperatures, as well as average temperatures, may alter distributions of individual species and ecosystems significantly (Bachelet *et al*. 2001, p174). Under projected future temperature conditions, the cover of sagebrush within the distribution of sage-grouse is anticipated to be reduced (Neilson *et al*. 2005, p. 154; Miller *et al*. in press, p. 45). Warmer temperatures and greater concentrations of atmospheric carbon dioxide create conditions favorable to *Bromus tectorum* [cheatgrass], as described above, thus continuing the positive feedback cycle between the invasive annual grass and fire frequency that poses a significant threat to greater sage-grouse (Chambers and Pellant 2008, p. 32; Global Climate Change Impacts in the United States 2009, p. 83).

Id. at 13955 (emphasis added).

170. The March 2010 Finding also discussed several models that projected how climate change may affect sagebrush communities, and numerous studies on how climate change impacts may exacerbate other threats to sage-grouse populations, including from cheatgrass and other weed invasions, increased wildfires, and exposure to West Nile virus. *Id.* at 13955-57. It explained:

> Under current climate-change projections, we anticipate that future climatic conditions will favor further invasion by *B. tectorum,* as well as woody invasive species that affect habitat suitability, and that fire frequency will continue to increase, and the extent and severity of fires may increase as well. Climate warming is also likely to increase the severity of WNv outbreaks and to expand the area susceptible to outbreaks into areas that are now too cold for the WNv vector. Therefore, the consequences of climate change, if current projections are realized, are likely to exacerbate the existing primary threats to greater sage grouse of frequent wildfire and invasive nonnative plants, particularly *B. tectorum* as well as the threat posed by disease. As the IPCC projects that the changes to

> the global climate system in the 21st century will likely be greater than those observed in the 20th century (IPCC 2007, p. 45), we anticipate that these effects will continue and likely increase into the foreseeable future.

Id. at 13956 (emphasis added).

171. Most climate change simulations similarly predict that the geographic extent of sagebrush steppe will contract as mean temperatures increase and the frost line shifts northward (Blomberg et al. 2012; Neilson et al. 2005). In the worst-case scenario, sagebrush species are simulated to contract to just 20 percent of current distribution (Wisdom et al. 2005: 206, *citing* Neilson et al. 2005). The largest remaining areas will be in southern Wyoming and in the gap between the northern and central Rocky Mountains, followed by areas along the northern edge of the Snake River Plateau and small patches in Washington, Oregon and Nevada (*see* Miller et al. 2011: 181, Fig. 10.19). Sagebrush steppe may also shift northward in response to increased temperatures (Schlaepfer et al. 2012; Shafer et al. 2001).

172. New research by the U.S. Geological Survey projects that climate change is likely to eliminate over 11 percent of sage-grouse nesting habitat in what is otherwise expected to be a future stronghold for the species in southwestern Wyoming. The authors cautioned that "given declining sage-grouse populations are suffering from other habitat degradation forces, a potential additional 11% loss of future habitat from climate change could be very detrimental to some populations." Collin Homer et al., *Forecasting sagebrush ecosystem components and greater sage-grouse habitat for 2050: Learning from past climate patterns and Landsat imagery to predict the future,* 55 Ecological Indicators 131-45 (August 2015).

173. BLM elsewhere has recognized that climate change threatens substantial adverse impacts to sage-grouse. For instance, BLM's recent "Rapid Ecoregional Assessment" ("REA") for a portion of the Great Basin explained that: "The longer-term perspective for Greater sage-grouse (GSG) within the ecoregion appears to be quite challenging." P COMER ET AL., CENTRAL BASIN AND RANGE RAPID ECOREGIONAL ASSESSMENT REPORT App. F (2013) (emphasis added). It analyzed multiple climate regime forecasts, and mapped the forecasted contraction in sage-grouse habitats within the Great Basin core sage-grouse population region as a result of climate change impacts over a fifty-year period as follows:

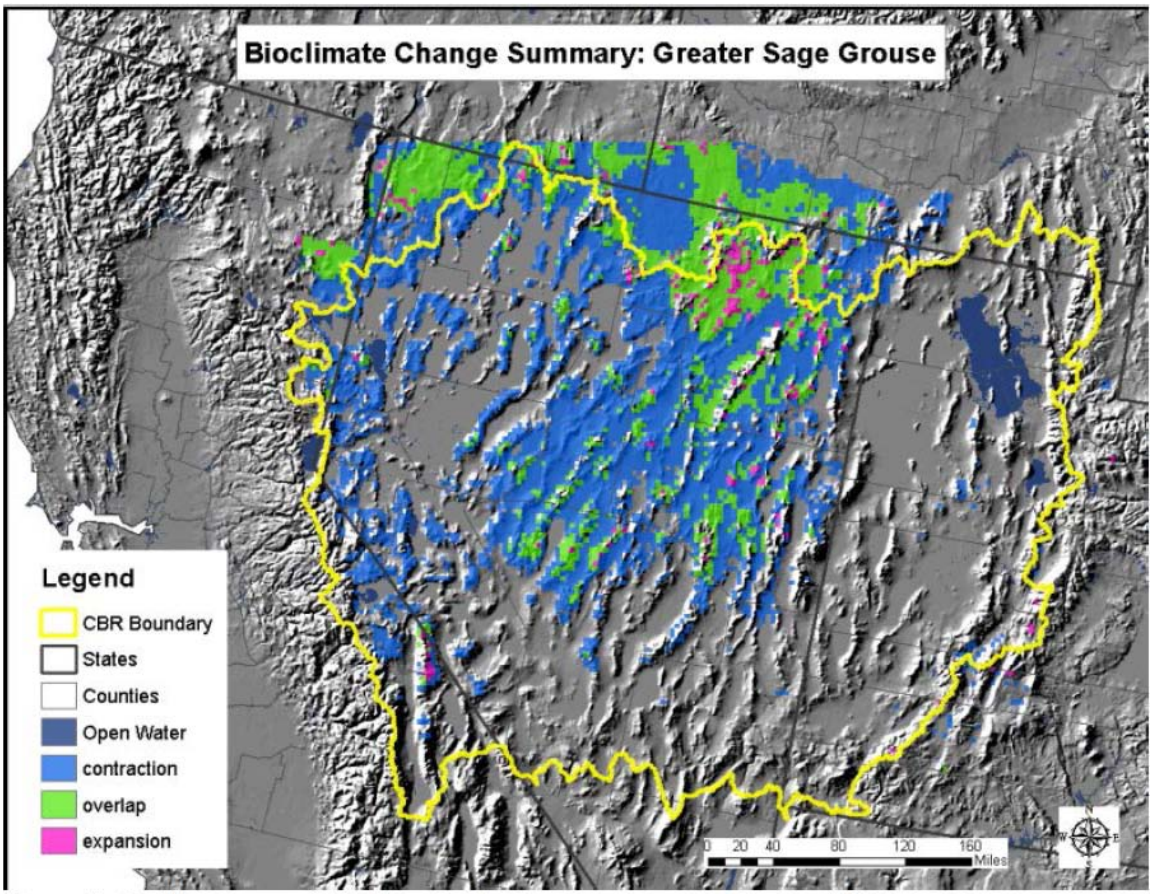


Figure F- 6. Climate envelope forecast for Greater sage-grouse as of 2060

Source: BLM, "Central Basin and Range Ecoregion – Final REA Report II-3-C Appendix F.

174. Science-based measures for addressing the effects of climate change on species and landscapes include increasing the size and number of protected areas, maintaining and enhancing connectivity between protected areas, and identifying and protecting areas likely to retain suitable climate/habitat conditions in the future (even if not currently occupied by the species of concern). Management should also prevent the spread of invasive species, sustain ecosystem processes and functions, and restore degraded habitat to enhance ecosystem resilience to climate change (Chester et al. 2012; NFWPCAS 2012).

175. The President, Secretary of the Interior, and the Department of Agriculture have provided ample direction, and federal agencies have developed associated policies, to address climate change effects in resource management planning. These include:

Presidential Direction

- Executive Order 13653, "Preparing the United States for the Impacts of Climate Change"
- Council of Environmental Quality (draft) guidance on considering the effects of climate change climate change in planning under the National Environmental Policy Act (CEQ Memo, 12-18-2014)

Department of the Interior

- Secretarial Order 3289, "Addressing the Impacts of Climate Change on America's Water, Land, and Other Natural and Cultural Resources" (Sec. Order 3289, Amend. 1)
- Secretarial Order 3330, "Improving Mitigation Policies and Practices of the Department of the Interior" (Sec. Order 3330)
- U.S. Department of the Interior manual chapter on climate change (U.S. DOI Manual 523 DM 1)
- Bureau of Land Management Information Bulletin, "Landscape Approach to Managing Public Lands" (IB 2012-058)
- Toevs et al. (2011) Bureau of Land Management Assessment, Inventory and Monitoring Strategy for Integrated Renewable Resources Management

Department of Agriculture

- U.S. Department of Agriculture (2014) Climate Change Adaptation

Plan
- U.S. Forest Service (2010) National Roadmap for Responding to Climate Change
- U.S. Forest Service (2011) Climate Change Performance Scorecard
- Peterson et al. (2011) Responding to Climate Change in National Forests: A Guidebook for Developing Adaptation Options.

176. Despite these polices and directives, BLM and the Forest Service never assessed at a range-wide level the potential adverse direct, indirect and synergistic (or cumulative) impacts of climate change on sage-grouse habitats and populations; and neither did the EISs evaluate potential impacts even at regional scales.

177. A few of the challenged EISs included discussions of potential climate change impacts, which varied in their scope and quality. For example, the Nevada and Northeastern California, Oregon and HiLine FEISs included climate change discussions with their Affected Environment and/or Environmental Consequences sections, and recommended partial management measures to address those threats – such as securing high-elevation sage-grouse habitats as climate change "refugia" in Oregon. Some of the Plans contain minimal, non-mandatory measures that appear to respond to climate change, like using the warmer component of a species' current range when selecting native species when available. *See e.g.* BUREAU OF LAND MANAGEMENT, IDAHO AND SOUTHWESTERN MONTANA GREATER SAGE-GROUSE APPROVED RESOURCE MANAGEMENT PLAN AMENDMENT C-5 (U.S. Dep't of Interior September 2015) ("Idaho and Southwestern Montana ARMPA").

178. However, most of the challenged EISs paid little or no attention to climate change, and did not attempt to review the best available science and provide informed discussions of how the Proposed Plans may or may not redress the direct, indirect and

cumulative (or synergistic) impacts of climate change threats to sage-grouse habitats and populations.

179. Despite the substantial, clear direction to federal agencies to account for the effects of climate change in management planning (see above), all of the challenged EISs asserted that "[t]here is no BLM or Forest Service resource program in the proposed plan addressing this threat." *See, e.g.,* Utah FEIS at 2-10, Table 2.1.

180. Likewise, the final land use plan amendments and revisions approved in the challenged RODs did not provide management measures to address the effects of climate change, such as establishing ACECs or other reserve areas to protect "refugia" for sage-grouse that face substantial contraction of habitat due to impacts of climate change. None of the challenged RODs or amended/revised plans even references the President's direction or the Secretary of Interior's order on climate change, which is remarkable given the unprecedented attention that the current Administration has given the issue.

181. The challenged RODs candidly admit that the land use plan amendments and revisions adopted through the National Greater Sage-Grouse Planning Strategy do not address the threats posed by climate change, and that management actions to redress climate change will have to await further land use plan amendments or revisions. As stated in the BLM Rocky Mountain ROD at 1-28 (emphasis added):

> While several ARMPAs acknowledge the potential impact of climate change on GRSG habitat and conservation, specific strategies to address the impacts of climate change are limited. The BLM and Forest Service, in coordination with FWS, will continue to assess the potential impacts of climate change on GRSG and its habitat and will develop strategy to mitigate the anticipated effects on GRSG conservation, as necessary and appropriate. Changes to management decisions will require a plan revision or amendment, recognizing the need to

ensure that future management direction improves the resilience of habitat areas essential to species conservation.

182. The failure of the challenged EISs and RODs to analyze climate change threats and adopt management prescriptions to redress those threats represents another major defect in the National Greater Sage-Grouse Planning Strategy; is not consistent with the best available science; and renders the challenged EISs and RODs arbitrary, capricious, an abuse of discretion, and contrary to law under NEPA and the APA.

E. Failure To Assess And Redress Threats of Livestock Grazing.

183. As noted above, livestock grazing is the most ubiquitous land use across the sage-grouse range. Livestock grazing and associated infrastructure and management activities represents a substantial threat to sage-grouse habitats and populations on BLM and Forest Service lands throughout the National Greater Sage-Grouse Planning Strategy area.

184. The challenged EISs generally acknowledged that "improper" livestock grazing represents an ongoing threat to sage-grouse habitats and populations in many areas. Yet the EISs largely ignored the extensive scientific evidence and literature showing that livestock grazing poses numerous direct, indirect, and cumulative adverse impacts to sage-grouse habitats and populations; and they failed to address the many ways in which livestock grazing facilities and practices contribute to sagebrush steppe degradation and fragmentation, weed invasions, and other adverse impacts.

185. Moreover, rather than impose meaningful changes in current livestock grazing, the challenged EISs and RODs failed to require any meaningful or immediate changes in existing grazing management. Instead, the challenged RODs "kicked the can down the road" by indefinitely delaying any requirements for grazing management

revisions to protect sage-grouse habitats and populations – and then only under very narrow, highly discretionary circumstances.

186. Specifically, rather than adopt management requirements consistent with the best available science to protect sage-grouse habitats from adverse grazing-related impacts, the RODs assert that BLM is committed to "prioritizing" the review and processing of grazing permits in SFAs, followed by PHMAs. BLM will also "prioritize" field checks in SFAs, followed by PHMAs, to ensure compliance with the terms and conditions of grazing permits. The RODs indicate that the NEPA analysis for renewals and modifications of grazing permits and leases will include specific management thresholds, based in part on sage-grouse habitat objectives, land health standards, and ecological site potential, to allow adjustments to grazing that have already undergone NEPA analysis.

187. Contrary to the BLM's assertions in the RODs and EISs, nothing about these later NEPA processes, rangeland health evaluations, or grazing authorization decisions will ensure that the ongoing impacts of livestock grazing are addressed in the highest priority areas, nor do they provide for grazing management reforms where needed in the near-term.

188. These assertions are also false or misleading in relying on subsequent permit renewals to assert that NEPA analysis will occur and change grazing management within sage-grouse habitats. Remarkably, the challenged EISs and RODs utterly fail to mention, much less discuss, the fact that recent Congressional appropriations "riders" have substantially eliminated requirements for NEPA analysis and directed that expiring grazing permits be renewed on their same terms and conditions (irrespective of their

harmful impacts to sage-grouse). *See, e.g.,* Section 3023 of the 2015 National Defense Authorization Act, P.L. 113-291, 128 STAT 3310, § 3023. Moreover, BLM has a poor track record of conducting NEPA analysis and complying with NEPA requirements in its grazing permit renewals, as demonstrated in extensive prior litigation before this Court.

189. The measures recommended in the NTT Report (quoted above) focused on ensuring that livestock grazing management is adjusted to ensure grazing is compatible with sage-grouse seasonal habitat needs, particularly for nesting and brood-rearing habitats, so that improvement on the ground in sage-grouse habitat conditions would be seen and benefit sage-grouse populations.

190. As reflected in the NTT Report recommendations, as well as the March 2010 Finding and substantial other science (including much science presented before this Court in other sage-grouse/grazing litigation, including cases cited above), livestock grazing management must allow essential habitat requirements for sage-grouse seasonal needs to be satisfied, including nesting, brood-rearing, and overwintering.

191. This means, *inter alia,* that grazing must ensure sufficient cover to conceal nesting sage-grouse from predators; sufficient forage to provide for the nutritional needs of overwintering sage-grouse and developing young; an absence of infrastructure that threatens survival; undisturbed places (audibly and visually) to carry out courtship displays, mating, nesting and brood-rearing. In practice, this means that livestock grazing in sage-grouse habitat must be limited in duration, intensity, and frequency so as not to contribute to further population declines. However, the challenged EISs and RODs failed to evaluate and adopt such requirements.

193. Moreover, none of the BLM plans specify the spatial extent where these habitat criteria will be applied or measured. The Forest Service will manage for breeding and nesting DCs within as far as 6.2 miles of an active lek, *see* Idaho and Southwestern Montana FEIS at 2-60, but BLM appears not to have made such spatial commitment, *see id.* at 2-2 to 2-22. Because the plans do not define this, it is not clear where the potential parameters would even be applied or monitored on BLM lands. The current key area monitoring scheme used by BLM is not tied to the seasonal habitats of sage-grouse, and the existing data sets would be insufficient to ensure these criteria are being met at the relevant locations.

194. The challenged EISs and RODs also contain insufficient restrictions on spring season grazing, a known disturbance in nesting and brood-rearing sage-grouse that is not mitigated by grass height restrictions alone. None require that grazing authorizations in sage-grouse nesting and brood-rearing habitat be deferred until mid-June, as directed in the best available science.

195. The challenged EISs and RODs largely fail to prescribe grazing utilization limits in greater sage-grouse habitat, and fail to ensure that winter grazing will leave sufficient residual grass height prior to the next grazing season.

196. The challenged EISs and RODs largely fail to identify livestock grazing as a cause of cheatgrass invasion, and they fail to limit grazing to avoid contributing to the spread of this invasive species. While some plans do acknowledge a relationship between the two, they still do not propose to limit grazing to prevent the spread of cheatgrass; and many actually would allow the use of grazing as a method to "control" cheatgrass, despite the lack of scientific support for this. Similarly, they fail to

acknowledge the link between livestock grazing and pinyon-juniper encroachment, while relying on extensive (and often ineffective) measures to "restore" habitat by removing pinyon-juniper.

197. Not all of the challenged EISs and RODs mandate "proper functioning condition" ("PFC") for riparian and wetlands. Some instead allow "progress towards" meeting PFC to avoid grazing management changes, *e.g.* BUREAU OF LAND MANAGEMENT, NORTH DAKOTA GREATER SAGE-GROUSE APPROVED RESOURCE MANAGEMENT PLAN AMENDMENT 2-14 (Dep't of Interior September 2015) ("North Dakota ARMPA"), BUREAU OF LAND MANAGEMENT BUFFALO FIELD OFFICE, APPROVED RESOURCE MANAGEMENT PLAN 101 (Riparian-4002) (Dep't of Interior September 2015) ("Buffalo ARMP"), BUREAU OF LAND MANAGEMENT, RECORD OF DECISION AND APPROVED RESOURCE MANAGEMENT PLAN FOR THE LANDER FIELD OFFICE PLANNING AREA 12 (Record # 4030) (June 2014) (available at https://eplanning.blm.gov/) (accessed Jan. 12, 2016) ("Lander ARMP"), BUREAU OF LAND MANAGEMENT CODY FIELD OFFICE, APPROVED RESOURCE MANAGEMENT PLAN 75 (Dep't of Interior September 2015) ("Cody ARMP"). Others make PFC a habitat objective only during certain times of the year, *e.g.*, Wyoming ARMPA at 30, 33; Idaho and Southwestern Montana ARMPA at 2-6; BUREAU OF LAND MANAGEMENT, MILES CITY FIELD OFFICE APPROVED RESOURCE MANAGEMENT PLAN 2-15 (U.S. Dep't of Interior September 2015) ("Miles City ARMP").

198. The challenged EISs and RODs also contain insufficient measures to address new range infrastructure. The challenged BLM RODs do not prohibit new construction of cattle guards, fences, exclosures, corrals, pipelines, troughs, storage tanks,

windmills, ponds/reservoirs, spring developments, etc. Instead, they merely require that such range infrastructure be designed to have a neutral effect or to conserve, enhance, or restore sage-grouse habitat "through an improved grazing management system relative to GRSG objectives." *See e.g.* Utah FEIS at 2-29.

199. The challenged EISs and RODs are also riddled with inconsistencies in their treatment of livestock grazing management, both among the Plans and within each Plan. Despite the mostly uniform scientific recommendations for managing livestock to best protect sage-grouse, the variability between and among the plans reflects arbitrary and capricious decision-making.

200. Few of the challenged EISs and RODs identify the livestock grazing allotments which are located within the various sage-grouse priority habitat designations. Except for the Billings ARMP, there is no list of allotments in the SFAs, PHMAs, and GHMAs that includes whether the allotments are meeting rangeland health or other applicable standards and the cause, if not; only general acreages are provided. Neither do most of the challenged EISs and RODs provide any evidence regarding current grazing plans, number of AUMs authorized, seasons of use, actual use levels, or rangeland health conditions of the allotments in the planning area. There is no schedule setting the implementation of review of these allotments to assess conformance with the management plan amendments. There are no "trigger" dates by which the habitat criteria kick in by default and become mandatory if the agencies fail to develop site-specific management plans and reviews.

201. Additionally, the challenged EISs and RODs fail to identify specific allotments where voluntary grazing retirement could improve sage-grouse habitats,

contrary to the NTT Report's direction that voluntary grazing retirement is an important tool for sage-grouse conservation, and that the plans should identify particular allotments where grazing retirement might benefit sage-grouse.

202. These and other defects mean that the challenged EISs and RODs are not consistent with the best available science, and are arbitrary, capricious, an abuse of discretion and contrary to law in their treatment of livestock grazing management and grazing-related infrastructure, in violation of NEPA and the APA; and the challenged RODs in fact ensure that adverse impacts of livestock grazing and infrastructure will continue across the sage-grouse range without significant change.

F. Inconsistent and Inadequate Treatment of Fluid Minerals And Energy Development.

203. Another key threat to sage-grouse populations and habitats is fluid mineral and other energy development, including oil and gas as well as geothermal leasing and development. Renewable energy development, particularly from large wind and solar installations, also threatens the birds.

204. Peer-reviewed literature establishes that sage-grouse populations are negatively affected whenever oil and gas sites exceed 1 site per square mile within sage-grouse habitat or are within 4 miles of a lek.

205. In the eastern portion of sage-grouse range, where BLM, the Forest Service, and U.S. Fish and Wildlife Service acknowledge the species is most threatened by oil and gas development, the challenged RODs provide fewer protections than in other places where little potential for such development exists. Wyoming and Montana, which contain the most important eastern sage-grouse populations, allow more and denser oil and gas development in sage-grouse habitats than are imposed by plans in other states.

206. Similarly, although the NTT Report and other best available science recommended excluding renewable energy development (like wind farms) from priority habitats, where potential for development of renewable energy resources exists in PHMAs, the PHMAs have been made "avoidance" rather than "exclusion" areas for such development in the majority of EISs and plans. And in Nevada, where the greatest potential for geothermal energy development exists, geothermal energy development has been exempted from restrictions that apply in other areas covered by the same EIS.

207. The challenged EISs and RODs are internally inconsistent and variable, not consistent with the NTT Report recommendations, contrary to the best available science, and fail to ensure conservation of sage-grouse populations and habitats in numerous respects including (as discussed below): (1) their failure to close priority habitats to future fluid mineral extraction; (2) failure to apply strong protections to existing fluid mineral leases; (3) inadequate lek buffers; (4) failure to protect priority habitats from surface disturbance; and (5) failure to make all PHMAs exclusion areas for renewable energy development.

Failure To Close PHMAs To Future Mineral Extraction.

208. The NTT Report unequivocally recommended that sage-grouse priority habitats be closed to future fluid minerals leasing, future coal leasing, locatable minerals claims, and other forms of mining. Closure of these lands to future leasing and other forms of mineral entry helps prevent industrial impacts to important sage grouse habitats. Yet with one minor exception, none of the challenged RODs closed priority habitats (other than a limited closure of SFAs to locatable mineral claims) to these activities.

209. For oil and gas, the challenged RODs and Plans instead rely on No

Surface Occupancy ("NSO") stipulations, Required Design Features ("RDFs"), Conditions of Approval ("COAs"), and other limitations to restrict development in sage-grouse habitats. But, outside of SFAs, these limitations may explicitly be suspended or modified. And NSO stipulations are not tantamount to withdrawal for several reasons.

210. The challenged RODs and Plans will now allow for mineral development in areas where leases have been deferred to protect sage-grouse. Between 2006 and 2014, BLM has deferred the sale of more than five million acres of oil and gas leases that industry had nominated in seven western states. These include 2.2 million acres in Nevada, 1.6 million acres in Wyoming, 600,000 acres in Montana, and more than 300,000 acres each in Colorado and Utah. Smaller acreage has also been deferred in the Dakotas. Together, the acreage is more than three times what BLM has leased annually for oil and gas over the past five years.

211. By allowing future oil and gas leasing in PHMAs under the challenged EISs and RODs, the deferred lands may now be leased for industrial development contrary to the science-based recommendations of BLM's own experts.

212. Relying on NSO stipulations, rather than withdrawal or closure, to protect priority habitats also significantly reduces sage-grouse habitat effectiveness because it gives lessees an incentive to locate well sites directly adjacent to the borders of PHMAs. The disturbance from the well sites will affect sage-grouse habitats within the priority areas and effectively reduce the size of the habitat protected. Recognizing this, some Plans include lek buffers that could partially alleviate the effect (*e.g.*, Miles City ARMP at 2-9, Billings ARMP at 2-21)—but not all of them do.

213. Further, in Wyoming, where sage-grouse are most imperiled by oil and

gas development, the challenged RODs do not even require NSO throughout priority habitats. Instead, future leases will allow surface-disturbing drilling in PHMAs, except within 0.6 mile of active sage-grouse leks. They will allow drilling throughout GHMAs, except within 0.25 miles of active sage-grouse leks. These minimal buffers are demonstrably insufficient to prevent population declines.

214. Similarly, the Nevada and Northeastern California ARMPA creates a broad exception to the generally-applicable NSO stipulation in PHMAs for future geothermal energy development in Nevada. Although geothermal energy development is known to have impacts on sage-grouse similar to those of oil and gas, for which similar protections are required, the Nevada provisions of the Nevada and Northeastern California ARMPA rely on future analysis, mitigation, and a disturbance calculation tool rather than a strict NSO requirement to protect sage-grouse. This departure is arbitrary and capricious, and provides yet another example of the agencies creating a loophole to allow an identified threat to continue, rather than preventing the threat from impacting sage-grouse.

215. In addition, none of the challenged RODs closed priority habitats to future coal leasing as recommended. Instead, many of the Plans provide as follows:

> At the time an application for a new coal lease or lease modification is submitted to the BLM, the BLM will determine whether the lease application area is "unsuitable" for all or certain coal mining methods pursuant to 43 CFR, Part 3461.5. PHMA is essential habitat for maintaining GRSG for purposes of the suitability criteria set forth at 43 CFR, Part 3461.5(o)(1).

See Utah ARMPA at 2-30; Idaho and Southwestern Montana ARMPA at 2-30. However, even if lands at issue are considered "unsuitable," coal leasing may still be allowed if state and federal agencies concur. Surface disturbances from coal leasing, if conducted in

sage-grouse habitats, will harm sage-grouse, which do not recover following reclamation.

216. Although in many states, most locatable minerals in SFAs have been recommended for withdrawal, locatable minerals in PHMAs and GHMAs have not been recommended for withdrawal. And the Wyoming Plans elected not to recommend over 800,000 acres of SFAs originally proposed to be recommended for withdrawal, without any explanation following the Governor's consistency review. Thus priority habitats have not been closed to locatable mineral entry, contrary to the NTT Report recommendation. NTT Report at 24.

217. The RODs also fail to close PHMAs to non-energy leasable minerals and mineral materials sales (which includes sand and gravel mining). Although the National Technical Team recommended that all PHMAs be closed to future leasing or sale for these types of mineral development, several RMP amendments and revisions (including Bighorn Basin, Buffalo, and Wyoming Plans) allow future leasing for non-energy leasable minerals and future sale for mineral materials.

218. The failure to comply with the best available science regarding mineral withdrawals is arbitrary and capricious and violates the agencies' mandates in multiple respects.

Failure to Apply Effective Protections to Existing Fluid Mineral Leases.

219. All of the challenged Plans also reject incorporating the sage-grouse conservation measures into existing leases, as recommended by the NTT Report. The Plans are also significantly and inexplicably inconsistent in their treatment of existing mineral leases.

220. The NTT Report recommended that Defendants "not allow new surface occupancy on federal leases within priority habitats," including winter concentration areas. NTT Report at 23.

221. The NTT Report further recommended that "[w]hen permitting APDs [applications for permit to drill] on existing leases that are not yet developed, the proposed surface disturbance cannot exceed 3% for that area." *Id.*

222. But the challenged EISs and RODs arbitrarily rejected these recommendations, and instead stated throughout the plans that BLM will "work with" industry in the hopes of gaining voluntary agreement to reduce impacts on sage-grouse, such as follows:

> Where a proposed fluid mineral development project on an existing lease could adversely affect Greater Sage-Grouse populations or habitat, the BLM will work with the lessees, operators, or other project proponents to avoid, reduce and mitigate adverse impacts to the extent compatible with lessees' rights to drill and produce fluid mineral resources. The BLM will work with the lessee, operator, or project proponent in developing an application for permit to drill (APD) for the lease to avoid and minimize impacts to sage-grouse or its habitat and will ensure that the best information about the Greater Sage-Grouse and its habitat informs and helps to guide development of such federal leases.

Wyoming FEIS at 2-13; *see also* BUREAU OF LAND MANAGEMENT, NORTHWEST COLORADO GREATER SAGE-GROUSE APPROVED RESOURCE MANAGEMENT PLAN AMENDMENT 2-15 (U.S. Dep't of Interior September 2015) ("Northwest Colorado ARMPA"); BUREAU OF LAND MANAGEMENT, HILINE DISTRICT OFFICE APPROVED RESOURCE MANAGEMENT PLAN 2-9 (U.S. Dep't of Interior September 2015) ("HiLine ARMP"). These departures from the NTT Report's recommendations are thus not consistent with the best available science, are arbitrary and capricious, and allow for oil and gas development to continue harming sage-grouse.

223. Demonstrating that better standards are possible and practicable, plans in other states commit to applying a variety of protective measures to existing fluid mineral leases, including Conditions of Approval, disturbance caps, site density limits, lek buffers, and Required Design Features. *See, e.g.,* Nevada and Northeastern California ARMPA at 2-30; Utah ARMPA at 2-27; Miles City ARMP at 2-9; Northwest Colorado ARMPA at 2-16. While also often inadequate and subject to vague and ill-defined loopholes, *e.g.,* Utah ARMPA at 2-27 ("If it is determined that this restriction renders the recovery of fluid minerals infeasible or uneconomic . . . apply other measures"), these specific conservation measures demonstrate that the absence of any mandatory direction in the Wyoming Plans was arbitrary and unwarranted.

Inadequate Lek Buffers.

224. "Buffers" around sage-grouse lek areas and their surrounding nesting habitats are used to define areas of potential adverse impacts from human activities, particularly energy and infrastructure development. The NTT Report determined that "[e]ven a 4-mile NSO buffer would not be large enough to offset all the impacts" of energy development. NTT Report at 21.

225. A recent study cited in the challenged EISs and RODs, MANIER ET AL., CONSERVATION BUFFER DISTANCE ESTIMATES FOR GREATER SAGE-GROUSE - A REVIEW (USGS Open-File Report 2014–1239 2014) ("Manier *et al.* (2014)"), reviewed existing studies concerning lek buffers, and recommended an "interpreted range" of lek buffers of 3.1 to 5 miles for surface disturbance and energy facilities. Yet the study cautioned that "for some populations, the minimum distance inferred here (5 km [3.1 mi]) from leks may be insufficient to protect nesting and other seasonal habitats." *Id*. at 2. The study

thus recommended that, in the absence of other information, the larger 5-mile buffer should be used:

> Without population-specific information regarding the location of habitats and movement of birds, which may be utilized when available (for an example see, Colorado Greater Sage-grouse Steering Committee, 2008), this generalized protection area (circular buffer around active leks with radius of 8 km [5mi]) offers a practical tool for determining important habitat areas.

Id. at 4.

226. Manier *et al.* (2014) further explained that even the larger 5-mile buffer does not eliminate all industrial impacts, because "the cumulative effect of development may extend across the landscape many kilometers (>10 km [6 mi]) beyond the immediately affected areas." *Id.* at 5.

227. For the Buffalo RMP revision, BLM's analysis of the science acknowledged that even 4-mile buffers around leks are insufficient to prevent all adverse impacts from energy development, stating in the draft EIS that:

> Energy development within two miles of leks is projected to reduce the average probability of lek persistence from 87% to 5% (Walker et al. 2007a). Current research suggests that impacts to leks from energy development are discernible out to a minimum of 4 miles, and that some leks within this radius have been extirpated as a direct result of energy development (Apa et al. 2008). Even with a timing limitation on construction activities, Greater Sage-Grouse avoid nesting in oil and gas fields because of the activities associated with operations and production.

Buffalo RMP Revision DEIS at 367. For Montana's HiLine Field Office, BLM similarly observed in its draft EIS that "[i]mpacts from energy development occur at distances between 3 and 4 miles. Impacts to leks caused by energy development would be most severe near the lek." HiLine RMP Revision DEIS at 4-135. Yet this acknowledgement by BLM of the science regarding impacts of energy development and needed "buffers"

was not adhered to in all of the challenged EISs, RODs and Plans.

228. All of the revised land use plans – except for Wyoming's – generally manage fluid mineral leasing by adopting NSO stipulations on future leases only throughout PHMAs. Some plans buffer leks in GHMAs by 0.6 miles. *See* HiLine ARMP at 2-5; Miles City ARMP at 2-5; South Dakota ARMP at 2-4. Other plans buffer leks in GHMAs by 1.0-2.0 miles. *See e.g.*, Oregon ARMPA at 2-23. Colorado alone actually closes BLM lands to leasing within one mile of active leks. Northwest Colorado ARMPA at 2-15. Some plans also adopt a 3.1-mile buffer around leks. *See e.g.*, Nevada and Northeastern California ARMPA at App. B; Idaho and Southwestern Montana ARMPA at App. B; South Dakota ARMP at 2-8; Utah ARMPA at App. B. While these buffers are not mandatory in all circumstances, the plans purport to adopt them, and decisions to depart from them must be justified.

229. Yet even a 3.1 mile lek buffer would not be adequate to protect sage-grouse. Buffering a lek by 3.1 miles protects less than half the nesting habitat of buffering the lek by 5 miles, as Manier *et al.* (2014) recommended. The application of this inappropriately small lek buffer in even the most restrictive federal plans leaves more than half of the important nesting habitat unprotected.

230. The Wyoming lek buffers are even worse for sage-grouse. The Wyoming plans apply a 0.6-mile buffer around occupied leks in PHMA and a 0.25-mile buffer around occupied leks in GHMA for future leases, along with timing limitations in larger areas for certain activities.

231. No scientific study ever has recommended that a 0.6-mile buffer around leks is adequate to prevent major population losses of sage grouse, and indeed this buffer

distance falls far outside the range of buffer distances reported in the NTT Report and the Manier *et al.* (2014) literature review. The NTT Report specifically pointed out the inadequacy of these lek buffers:

> Past BLM conservation measures have focused on 0.25 mile No Surface Occupancy (NSO) buffers around leks, and timing stipulations applied to 0.6 mile buffers around leks to protect both breeding and nesting activities. Given impacts of large scale disturbances described above that occur across seasons and impact all demographic rates, applying NSO or other buffers around leks at any distance is unlikely to be effective. Even if this approach were to be continued, it should be noted that protecting even 75 to >80% of nesting hens would require a 4 mile radius buffer (Table 1).

NTT Report at 20-21.

232. One study determined that just the presence of a single natural gas well (after drilling and completion) within 1.9 miles of a lek resulted in significant lek population declines (Holloran 2005). A U.S. Geological Survey review of published sage-grouse literature concluded that "[i]n general, the research suggests that sage-grouse are negatively affected when well-pad densities within approximately 3.2 km (2 mi) of a lek exceed 1 pad/section and when leks become surrounded by infrastructure. Energy development as far as 6.4 km (4 mi) to a lek may negatively influence lek attendance." D.J. MANIER ET AL., SUMMARY OF SCIENCE, ACTIVITIES, PROGRAMS, AND POLICIES THAT INFLUENCE THE RANGEWIDE CONSERVATION OF GREATER SAGE-GROUSE 59 (U.S. Dep't of Interior and USGS Open File Report 2013-1098 2013).

233. The response of breeding and nesting sage-grouse to disturbance, noise, and human infrastructure does not vary across state boundaries. None of the challenged EISs and RODs adopted lek buffers that sage-grouse require to persist or recover; and accordingly, all are arbitrary and capricious and fail to apply the best available science. Wyoming's violations in this respect are particularly egregious.

Failure to Apply Appropriate 3% Surface Disturbance Thresholds.

234. As noted above, the NTT Report found that "the conservation strategy most likely to meet the objective of maintaining or increasing sage-grouse distribution and abundance is to exclude energy development and other large-scale disturbance from priority habitats," but where "valid existing rights exist," it recommended that the BLM plans "minimize those impacts by keeping disturbances to 1 per section with direct surface disturbance impacts held to 3% of the area or less." NTT Report at 21.

235. The 3% surface disturbance limit is in accord with other best available science, which found that once the percentage of land that is developed reaches 3%, most sage-grouse leks are extirpated and few active leks remain (Knick *et al.* 2013).

236. Most of the challenged EISs and RODs use a 3% cumulative limit on surface disturbance for sage grouse PHMAs. But there are striking variations among the states and plans, excessive and open-ended exceptions for "valid existing rights," and key areas where this 3% disturbance cap is not applied even within critical sage-grouse population areas.

237. In the Idaho and Southwestern Montana ARMPAs, a 3% disturbance cap is adopted for Idaho lands, but a 5% disturbance cap may be allowed in Montana, if the State adopts a sage-grouse plan like Wyoming's. *See* Idaho and Southwestern Montana FEIS at 36.

238. The disturbance caps also fail to establish effective limits on density of development by exempting ill-defined "valid existing rights" from application of the caps. *See, e.g.,* BLM Rocky Mountain ROD at 1-18.

239. In the Nevada and Northeastern California ARMPAs, the 3% disturbance

cap applies only to Forest Service lands in Nevada and in California, while Nevada BLM lands are subject to no disturbance percentage limit at all. Nevada and Northeastern California FEIS at 2-22; BLM Great Basin ROD at 1-31. Instead, on BLM lands in Nevada, a "Disturbance Management Protocol" will apply which is "intended" to limit surface disturbances to 3% except where a conservation gain to the species would occur. Nevada and Northeastern California ARMPA at E-2.

240. In the challenged Wyoming and Montana plans, the limit on development percentage can be 5%, almost double the limit recommended by the NTT Report and seen in other states. There is no science ever published that suggests sage-grouse can persist amid a surface development threshold above 3%. No scientific studies support a 5% cap on surface disturbance as an adequate regulatory mechanism.

241. Generally, the challenged RODs and FEISs contend that Wyoming's (and Montana's) 5% surface disturbance cap is the same as the 3% surface cap elsewhere because it is calculated at a finer scale and counts additional disturbances (such as fire and certain vegetation treatments) against the cap. But if it were truly the intention to limit surface disturbances in PHMAs to 3%, states using a 5% cap could have adopted a plan provision more similar to the one in North Dakota's and South Dakota's ARMPs:

> If the 3% anthropogenic disturbance cap is exceeded on lands (regardless of land ownership) or if anthropogenic disturbance and habitat loss associated with conversion to agricultural tillage or fire exceed 5% within a project analysis area in PHMA, then no further discrete anthropogenic disturbances (subject to applicable laws and regulations, such as the 1872 Mining Law, valid existing rights, etc.) will be permitted by BLM within PHMA in a project analysis area until the disturbance has been reduced to less than the cap.

South Dakota ARMP at 2-11; *see also* North Dakota ARMP at 2-9.

242. Defendants' decision to allow 5% surface disturbance in Wyoming and in

Montana is wholly inconsistent with the best available science, conflicts with the NTT Report, and is arbitrary and capricious in its inconsistency with disturbance limits in other states. The only authority supporting Wyoming's theory that this strategy would protect the sage-grouse at all is a single November 2010 letter from the FWS. *See* BLM Rocky Mountain ROD at 1-17. Defendants' decision not to impose any surface disturbance cap on Nevada BLM lands also conflicts with the NTT Report and is arbitrary and capricious.

Failure to Adopt Consistent Provisions for Renewable Energy Development.

243. In recognition of potential negative impacts to sage-grouse from renewable energy development, most of the plans made PHMAs "exclusion areas" for utility-scale wind and solar development, while GHMAs are "avoidance areas" for wind and solar development. However, as with other threats, the plans carved out exceptions for areas with known renewable energy development potential.

244. In Oregon, for instance, PHMAs are exclusion areas for wind development, except for in southeastern Oregon where "portions" of PHMAs are avoidance areas in Lake, Harney and Malheur Counties. BLM Great Basin ROD at 1-17. Wyoming makes PHMAs only avoidance areas for wind development, with the exception of the Lander ARMP, which states: "Until research on impacts of wind energy to greater sage-grouse is completed and adequate mitigation can be developed, exclude wind-energy development in Core Area." Lander ARMPA at 19 (Record # 4112); *see* BLM Rocky Mountain ROD at 1-19. GHMAs in Utah, Idaho and Wyoming are open to wind development, but they are avoidance areas for wind development everywhere else. BLM Great Basin ROD at 1-18.

245. PHMAs are also exclusion areas for solar energy development, except in

Wyoming and the same southeastern Oregon counties, where they are avoidance areas. *Id*.; BLM Rocky Mountain ROD at 1-19. GHMAs are exclusion areas for solar energy development throughout the Great Basin Region, except in Oregon and Montana, where they are avoidance areas for solar energy development, and Idaho, where they are open to solar energy development. BLM Great Basin ROD at 1-18. Throughout the Rocky Mountain Region, GHMAs are avoidance areas for solar energy development. BLM Rocky Mountain ROD at 1-19. Idaho also contains an additional category of lands, IHMAs, and these are avoidance areas for solar energy development. BLM Great Basin ROD at 1-18.

246. It is arbitrary and capricious for the EISs and RODs to adopt inconsistent provisions with respect to these threats, and these inadequate protective measures will allow continued fragmentation and degradation of priority sage-grouse habitats and consequent population declines.

G. Exemptions for Infrastructure Projects.

247. Although the challenged EISs and RODs acknowledge the critical importance of preserving remaining priority sage-grouse habitats from further degradation and fragmentation, and that construction of major infrastructure facilities like overhead powerlines, cellular towers, pipelines, and others can have significant adverse direct, indirect, and cumulative impacts on sage-grouse habitats and populations, nonetheless Defendants have exempted a number of major infrastructure projects from the conservation measures adopted in the challenged land use plans.

248. In particular, the challenged EISs and RODs provide generally that SFAs and PHMAs are "avoidance" areas for the granting of public land rights-of-way for

various types of infrastructure projects; yet those designations are not applied to several major inter-state electrical transmission corridors that will bisect priority sage-grouse habitats in several states, including the Gateway West (Wyoming, Idaho, Oregon), Gateway South (Wyoming, Colorado, Utah, Nevada), TransWest Express (Wyoming, Colorado, Utah, Nevada), and Boardman to Hemingway (Oregon, Idaho) proposed transmission lines.

249. Even though no public land rights-of-way have been granted for these projects, the challenged EISs and RODs exclude them from the sage-grouse conservation measures and from their analysis of likely direct and indirect adverse impacts to sage-grouse populations.

250. Defendants acknowledge that excluding these proposed transmission lines from the sage-grouse conservation measures adopted through the National Greater Sage-Grouse Planning Strategy could result in significant adverse impacts to sage-grouse, which could be avoided or minimized by including them within the challenged RODs. For example, the Wyoming FEIS stated that:

> Presidential Priority transmission projects that are proposed in MZ II/VII (such as the TransWest Express, Gateway South and Gateway West projects), would not be subject to Greater Sage-Grouse conservation requirements in BLM/Forest Service LUP Amendments, but would be subject to those requirements in applicable state plans and other state and federal laws and regulations. They would also develop their own suite of protective measures analyzed in project-specific NEPA documents. Whether or not these project-specific measures would adequately protect Greater Sage-Grouse is unknown because the measures have not been finalized. Regardless, impacts would likely be greater in Colorado where the TransWest Express proposed route would impact approximately 26 miles in PACs (key habitats that are essential for Greater Sage-Grouse conservation) and 57 miles of PHMA in the BLM Little Snake and White River Field Offices. This impact would be especially harmful to fringe Greater Sage-Grouse populations in Colorado, as some are less robust than those in Wyoming and southern Montana.

Wyoming FEIS at 5-563

251. As indicated by this quote, the justification offered for these exclusions of proposed but as-yet unapproved powerlines from the challenged EISs and RODs is that they were previously identified as "Presidential Priority transmission projects" for expedited federal approvals. But just because they are identified as priorities does not mean that federal law requirements are waived for these projects, or they will have no adverse impacts on sage-grouse priority habitats and populations.

252. The fact that they are still proposed (not approved) projects means they do not qualify as "existing valid rights," and there is no basis in the NTT Report or the best available science for excluding such projects from the National Greater Sage-Grouse Planning Strategy, especially when they pose potentially significant adverse impacts across many states in the sage-grouse range.

253. The failure to exclude these major infrastructure projects from priority sage-grouse habitats represents another example of how the challenged EISs and RODs are arbitrary and capricious in their adoption of sage-grouse conservation measures, at odds with the NTT Report and the best available science.

H. Inconsistent and Arbitrary Provisions For Vegetation Treatments.

254. The challenged EISs and RODs are also inconsistent with the scientific understanding of sagebrush restoration and the best available science regarding the impacts of vegetation "treatments" on this fragile habitat, including the NTT Report recommendations. Specifically, they allow reduction of sagebrush canopy cover below recommended minimums, allow use of prescribed fire in sensitive sagebrush habitats, differ with respect to their provisions regarding vegetation treatments to increase forage for livestock, and fail to close treated areas to livestock grazing.

255. In the 2015 Scientists' Letter, *see* ¶ 114, *supra,* eleven leading sage-grouse experts warned that "[n]o prescribed fire should be allowed in sage-grouse nesting, early brood rearing or winter habitat," saying that scientific studies provide "compelling evidence that these kinds of treatments have few or no positive effects on sage-grouse; the evidence is clear that prescribed burning in sage-grouse nest habitat harms sage-grouse populations." Nonetheless, most of the challenged EISs and RODs allow for prescribed fire even in sage-grouse PHMAs, and even in sage-grouse winter habitats, as long as a Burn Plan is completed and/or alternative techniques are explored through NEPA analysis. *See, e.g.,* Miles City ARMP at 3-37; BUREAU OF LAND MANAGEMENT, LEWISTOWN FIELD OFFICE GREATER SAGE-GROUSE APPROVED RESOURCE MANAGEMENT PLAN AMENDMENT 2-12 (Dep't of Interior September 2015) ("Lewistown ARMPA"); HiLine ARMP at 2-8; Oregon ARMPA at 2-17; Idaho and Southwestern Montana ARMPA at 2-22; South Dakota ARMP at 3-32.

256. The NTT Report also recommended against using prescribed fire to treat sagebrush in less than 12-inch precipitation zones, unless it is the only option to create fuel breaks. NTT Report at 26. The Forest Service plans – except for in Wyoming – generally incorporate this restriction, but most of the BLM plans do not. BLM Wyoming's direction is unclear: The Green River RMP specifically allows using prescribed fire outside of PHMAs in 10-inch precipitation zones, Wyoming ARMPA at 38, but in an Appendix the Wyoming Plan says that using fire in less than 12-inch precipitation zones should be avoided, Wyoming ARMPA at App. H.

257. Although some of the Plans limit the use of vegetation treatments to increase forage for livestock in sage-grouse habitat, others do not. For instance, the

North Dakota ARMPA provides:

> Action LG-1.16: In PHMA, allow treatments that conserve, enhance or restore GRSG habitat as well as other priority species habitat (this includes treatments that benefit livestock as part of an AMP/Conservation Plan to improve GRSG habitat).

North Dakota ARMPA at 2-15. And the Buffalo Field Office ARMP contains guidance to "[a]llow increases in livestock stocking rates as a result of vegetation treatments when resource objectives are met." Buffalo ARMP at 151 (Grazing-6022). In contrast, the Oregon ARMPA limits the use of vegetation treatments in PHMAs: "Do not conduct forage enhancement solely for domestic livestock in PHMA." Oregon ARMPA at 2-13. The Northwest Colorado ARMPA ambiguously cautions: "On a site-by-site basis, do not allow treatments that would adversely affect GRSG populations." Northwest Colorado ARMPA at 2-11.

258. The NTT Report also recommended vegetation treatment areas be closed to livestock grazing "for two full growing seasons unless vegetation recovery indicates otherwise." NTT Report at 26. But several of the challenged plans do not contain this prohibition. *See, e.g.,* Lewistown ARMPA at 2-13 to 2-14; Nevada and Northeastern California ARMPA at 2-20 to 2-27; South Dakota ARMP at 3-32; Buffalo ARMP at 76 (Grazing-6021); Cody ARMP (absent); Utah ARMPA at 2-17; Miles City ARMP at 3-12; HiLine ARMP at 3-11. Generally, the Forest Service Plans contain no direction with regards to resting treated areas from grazing.

259. In these and other ways to be presented to the Court in briefings, the challenged EISs and RODs are inconsistent with the NTT Report and best available science with regards to vegetation treatments, and are arbitrary, capricious, an abuse of

discretion and not in accordance with law under NEPA and the APA and other authorities below.

I. Refusal To Designate Sage-grouse ACECs.

260. As discussed above, FLPMA Section 202(c) requires BLM to place a priority on designating and protecting ACECs through the land use planning process.

261. Plaintiffs and others recommended in their comments that BLM adhere to this statutory mandate by designating "Sage-grouse ACECs" (or sage-grouse reserves) to protect the most important remaining sage-grouse habitats and populations through the National Greater Sage-Grouse Planning Strategy.

262. In response to these recommendations, BLM staff developing the EISs evaluated a suite of proposed Sage-grouse ACECs under the BLM's land use planning procedures for ACEC designations, described above. As reflected in the EISs' discussions of the proposed Sage-grouse ACECs, BLM generally determined that the proposed Sage-grouse ACECs with contiguous BLM surface ownership within PHMAs met both the "relevance" and "importance" criteria for ACEC designation and protection. BLM determined that ACEC proposals for GHMA did not meet these criteria.

263. Thus, the Final EISs included alternatives with differing designations of proposed Sage-grouse ACECs. The only EIS that did not evaluate any proposed Sage-grouse ACECs was South Dakota.

264. In the Idaho and Southwestern Montana FEIS, for example, Alternative C proposed designating 39 new BLM ACECs encompassing 4,200,000 acres of occupied greater sage-grouse habitat "as sagebrush reserves for the relevant and important value of conserving greater sage-grouse." *See* Idaho and Southwestern Montana FEIS at 2-223.

Alternative F evaluated designating up to 18 BLM ACECs (and Forest Service Zoological Areas) encompassing up to 8.3 million acres of occupied sage-grouse habitat for the same "relevant and important value of conserving greater sage-grouse." *Id.* However, the Proposed Plan did not provide for designating any Sage-grouse ACECs, without any explanation in the Final EIS as to why not, or how the relevant and important values (sage-grouse and sage-grouse habitat) would be adequately protected absent such designation.

265. Similarly, the Wyoming FEIS addressed two different alternatives designating Sage-grouse ACECs (and Zoological Areas). Alternative B of the FEIS would have designated all sage-grouse priority habitat areas as sage-grouse conservation ACECs. Alternative C would have designated all sage-grouse priority habitat areas and Audubon Important Bird Areas as sage-grouse conservation ACECs. With regard to Alternative B, the Environmental Consequences section of the FEIS acknowledged that "[d]esignating all priority habitat areas as a sage-grouse conservation ACEC would greatly increase the area for which relevant and important values would be established and protected." Wyoming FEIS at 4-245. With regard to Alternative C, the FEIS stated that relevant and important values would be further protected on a total of 6,423,374 acres, or 1,397,821 acres greater than in Alternative B. *Id.* at 4-246. In addition, the FEIS admitted that in both alternatives, management focused on the sage-grouse would provide benefits to the sage-grouse, and potentially to other species.

266. Proposed Sage-grouse ACECs (and Zoological Areas) addressed in the other challenged EISs included the following total acreages under one or more different alternatives:

Billings/Pompeys, Montana: 154,140-158,926 acres;
HiLine, Montana: 1,226,867-1,391,485 acres (analyzed, but not proposed);
Lewistown, Montana: 96,246-98,091 acres;
Miles City, Montana: 1,067,000-1,300,000 acres;
Bighorn Basin, Wyoming: 1,232,583 acres (surface);
Buffalo, Wyoming: 467,897 acres (surface), 2,248,685 acres (subsurface);
Lander, Wyoming: 1,246,791 acres;
Nevada and Northeastern California: 9,458,000 acres;
North Dakota: 32,900 acres;
Northwest Colorado: 912,700 acres;
Oregon: 4,346,223 acres;
South Dakota: 93,266 acres (surface), 289,563 acres (subsurface);
Utah: 2,233,800 acres.

267. Altogether, the 15 challenged EISs identified over 39 million acres of proposed sage-grouse ACECs for assessment – but Plaintiffs only know this by manually adding up the proposed ACEC designations from the respective EISs. The EISs failed to provide any comprehensive analysis of the impacts of designating these ACECs; and similarly failed to discuss the ecological impacts of refusing to designate any ACEC, even though they determined that these areas all met the "relevance" and "importance" standards for ACEC designation. This lack of comprehensive analysis of potential Sage-grouse ACECs across the entire sage-grouse range further confirms that Defendants' failure to undertake a range-wide or comprehensive analysis violates NEPA, the best available science, and the National Greater Sage-Grouse Planning Strategy.

268. As demonstrated in the challenged EISs and project records, all of the potential Sage-grouse ACECs were found by BLM to satisfy the FLPMA definition of an ACEC and the "relevance" and "importance" criteria under the BLM's ACEC Handbook.

269. Yet the Proposed Plans in the Final EISs did not propose to designate any Sage-grouse ACECs, even though most of the EISs acknowledged that ACEC designations would provide greater protections for critical sage-grouse habitats and

populations, and even though all of the plans essentially provided special management attention to protect sage-grouse and their habitats in PHMAs and SFAs.

270. Following the Proposed Actions in the FEISs, the challenged RODs did not designate and protect a single new Sage-grouse ACEC (aside from a small ACEC intended to benefit sage-grouse in the Lander RMP, and adding sage-grouse as a protected resource in a few existing ACECs).

271. This failure and refusal to designate and protect Sage-grouse ACECs for BLM lands violates the mandates of FLPMA as discussed above, and renders the challenged EISs and RODs arbitrary, capricious, an abuse of discretion, and contrary to law under the APA and other authorities below.

CLAIMS FOR RELIEF

First Claim for Relief – NEPA and APA Violations

272. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

273. This First Claim for Relief challenges Defendants' violations of NEPA, 42 U.S.C. §§ 4321 *et seq*., and NEPA's implementing regulations, 40 C.F.R. §§ 1500 *et seq*., in preparing the challenged EISs and approving the challenged RODs and Plans based on them. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

274. As alleged hereinabove in more detail, the challenged EISs and RODs violated NEPA and the APA by failing to provide any comprehensive analysis of threats to sage-grouse populations and habitats, or of the conservation measures being adopted to address those threats. By utilizing 15 separate EISs to carrying out the National Greater Sage-Grouse Planning Strategy and approve the challenged RODs and Plans, Defendants

fragmented their NEPA analysis into separate evaluations that failed to address key range-wide issues, including but not limited to:

A. Designation of priority sage-grouse habitats;

B. Connectivity between key sage-grouse populations and habitats, including consideration of how local and regional populations are inter-connected and threatened, and how the proposed conservation measures might prevent habitat and population fragmentation at the regional and range-wide levels;

C. The likely cumulative impacts of the various threats, habitat designations, and management prescriptions identified in the 15 challenged EISs and RODs, including the cumulative and synergistic impacts of multiple threats at the regional and range-wide scales, the cumulative impacts of the anthropogenic activities authorized in priority sage-grouse habitats under the challenged RODs, and how effective the proposed conservation measures might be at the regional and range-wide scales in redressing those threats;

D. The likely impacts of climate change to sage-grouse populations and habitats, and how the proposed conservation measures or other measures might or might not address those climate change threats;

E. Analysis of livestock grazing impacts to sage-grouse habitats and populations, necessary management requirements to redress adverse impacts of livestock grazing, and evaluation of the grazing management conservation measures identified in the NTT Report (including implementing grazing management revisions and allowing voluntary grazing permit retirement to benefit sage-grouse habitats); and/or

F. Consistent and effective management measures for fluid mineral development (oil, gas, geothermal), renewable energy development, infrastructure and rights-of-way, and other anthropogenic impacts to sage-grouse habitats and populations.

275. Defendants also violated NEPA by failing to prepare a programmatic EIS or other comprehensive EIS taking a "hard look" at sage-grouse populations and priority habitats, threats, management measures, potential ACEC designations, and similar issues affecting management of federal lands within the National Greater Sage-Grouse Planning Strategy region, and the connected actions encompassed within the Plan amendments identified in the challenged EISs and RODs.

276. Because of the foregoing violations, Defendants' challenged EISs and RODs are arbitrary, capricious, an abuse of discretion, not in accordance with law under NEPA and the APA, and have caused or threaten serious prejudice and injury to the rights and interests of Plaintiffs and their members and staff.

WHEREFORE, Plaintiffs pray for relief as set forth below.

Second Claim for Relief –
FLPMA and APA Violations
(Failure To Prioritize Designation And Protection of Sage-grouse ACECs)

277. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

278. This Second Claim for Relief challenges the BLM Defendants' violation of FLPMA Section 202(c), which mandates that the Secretary of Interior (and BLM) must give priority to the designation and protection of ACECs in the land use planning process. *See* 43 U.S.C. § 1712(c)(3). This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

279. As alleged hereinabove in more detail, the challenged EISs considered different alternatives for designation and protection of Sage-grouse ACECs, and found that potential Sage-grouse ACECs meet both the "relevance" and "importance" criteria for designation as ACECs. The challenged EISs also acknowledged that designating Sage-grouse ACECs would provide better or additional protections for priority sage-grouse habitats and sage-grouse populations than other management alternatives. In addition, the Proposed Plans provided for special management attention aimed at preserving the relevant and important values—sage-grouse and sage-grouse habitats. Yet the challenged EISs never proposed to designate any new Sage-grouse ACECs within the Proposed Plans, and the challenged RODs and Plans did not designate any new Sage-grouse ACECs either.

280. The record demonstrates that, instead of following FLPMA's mandatory duty to prioritize the designation and protection of ACECs, the BLM Defendants did the exact opposite: They avoided and refused to designate Sage-grouse ACECs in the challenged EISs and RODs; and instead they adopted priority habitat designations and management measures that provide less and weaker protections for critical sage-grouse habitats and their sage-grouse populations.

281. Because of the foregoing violations, the challenged EISs and BLM RODs are arbitrary, capricious, an abuse of discretion, not in accordance with law under FLPMA and the APA, and have caused or threaten serious prejudice and injury to the rights and interests of Plaintiffs and their members and staff.

WHEREFORE, Plaintiffs pray for relief as set forth below.

Third Claim for Relief –
FLPMA, NFMA, and APA Violations
(Failure to Follow Best Available Science)

282. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

283. This Third Claim for Relief challenges Defendants' adoption of inadequate and inconsistent sage-grouse conservation measures in the challenged EISs, RODs and Plans, which are contrary to the best available science and do not comport with the standards and procedures adopted by Defendants. This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

284. In addition, or in the alternative, Plaintiffs seek declaratory relief with respect to Defendants' violations as alleged herein pursuant to the Declaratory Relief Act, 28 U.S.C. § 2201-02.

285. As noted above, FLPMA and NFMA impose procedural and substantive statutory requirements upon Defendants' management of the public lands in question here, including mandates relating to land use planning, multiple use/sustained yield, preventing unnecessary or undue degradation of the public lands and resources, and/or prohibiting actions that will permanently impair the quality of the environment.

286. Pursuant to these and other statutory authorities, Defendants have adopted various regulations, handbooks, manuals, conservation strategies, and other policies relating to their management of the public lands, including those relating to land use planning and sage-grouse conservation, identified above.

287. Through the 2004 Conservation Strategy and the National Greater Sage-Grouse Planning Strategy, Defendants committed to using the best available science to adopt conservation measures sufficient to maintain and enhance populations and

distribution of greater sage-grouse by protecting and improving sagebrush habitats and ecosystems to sustain those populations. In the challenged EISs and RODs, as well, Defendants repeatedly asserted that they have employed and utilized the best available science.

288. However, the challenged EISs and RODs do not follow the best available science in numerous respects, as alleged in detail above; and will not result in protecting and improving sagebrush habitats and ecosystems as necessary to sustain sage-grouse populations, in violation of the many policies, procedures and other authorities identified above.

289. Because of the foregoing defects and deficiencies in failing to adopt sage-grouse conservation measures consistent with the best available science, the challenged EISs and RODs are arbitrary, capricious, an abuse of discretion, not in accordance with law under FLPMA, NFMA, and the APA, and have caused or threaten serious prejudice and injury to the rights and interests of Plaintiffs and their members and staff.

WHEREFORE, Plaintiffs pray for relief as set forth below.

Fourth Claim for Relief –
FLPMA and APA Violations
(Unnecessary and Undue Degradation, And Permanent Impairment)

290. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

291. This Fourth Claim for Relief challenges the BLM Defendants' violations of FLPMA's requirements that BLM must manage the public lands in order to prevent unnecessary and undue degradation ("UUD") and permanent impairment to the quality of the environment. *See* 43 U.S.C. §§ 1702(c), 1732(b). This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

292. FLPMA directs that the Secretary of Interior (and hence BLM) must "take any action necessary to prevent unnecessary or undue degradation of the lands." 43 U.S.C. § 1732(b). The obligation to avoid "unnecessary and undue degradation" is a substantive one, and BLM is required to deny approval of an action if UUD cannot be avoided.

293. BLM has adopted regulations interpreting UUD for mining, which defines UUD as "impacts greater than those that would normally be expected from an activity being accomplished in compliance with current standards and regulations and based on sound practices, including use of the best reasonably available technology." 43 C.F.R. § 3802.0-5(l). In the context of oil and gas development, the UUD requirement does not bar all degradation, but prohibits "degradation unnecessary to, or undue in proportion to" the agency's proposed action. *Theodore Roosevelt Conservation Partnership v. Salazar*, 661 F.3d 66, 76-78 (D.C. Cir. 2011) ("*TRCP*"). In other words, UUD means "something more than the usual effects anticipated from appropriately mitigated development." *Id.* at 76 (quoting *Biodiversity Conservation Alliance*, 174 IBLA 1, 5-6 (Mar. 3, 2008)).

294. When an agency relies on mitigation or conservation measures to mitigate or reduce the impacts of an action – and avoid UUD – the conservation measures must comply with agency standards, regulations, and rules, as well as available scientific and agency information on the efficacy of these conservation measures. *TRCP*, 661 F.3d at 78.

295. Similarly, FLPMA provides that the Secretary "shall manage the public lands under principles of multiple use and sustained yield," which means, *inter alia*, "without permanent impairment of the productivity of the land and the quality of the

environment." 43 U.S.C. §§ 1702 (c), 1732(a) (emphasis added). FLPMA's obligation to avoid "permanent impairment . . . to the quality of the environment" is a substantive limitation on BLM's actions, and BLM is required to deny approval of an action is the action will "permanently impair" the environment.

296. FLPMA's "non-impairment" provision elevates the protection of the "environmental quality" of public lands as an "important objective" of public lands management. Thus, the "non-impairment" mandate is not a factor to be balanced in determining whether to approve a project on public lands, but is a non-discretionary mandate to judge the propriety of moving forward with an agency action.

297. Under FLPMA's "non-impairment" requirement, BLM must disapprove of any action that will have a fixed or enduring impact damaging, weakening or diminishing the environmental quality of the public lands.

298. In the challenged EISs, RODs, and Plans, BLM failed to implement the recommendations and conclusions of its own sage-grouse experts, including the NTT Report; and adopted sage-grouse provisions at odds with the best available science and its own management standards, which allows unnecessary and undue degradation to sage-grouse habitats, including in the following ways:

- Refusing to close priority sage-grouse habitat to future fluid mineral leasing rangewide;
- Exempting over 2,500 miles of new transmission lines – including Gateway West, Gateway South, Transwest Express, and the Boardman to Hemingway transmission lines, which bisect PHMA and SFA in

Wyoming, Utah, Colorado and Idaho – from sage-grouse management provisions (disturbance cap, lek buffers, seasonal measures, etc.).

- Adopting an anthropogenic disturbance cap of 5% within PHMA in Wyoming (and in the near future, Montana), and no disturbance cap in parts of Nevada, while adhering to the agency scientists' recommendation of 3% disturbance cap in other states;
- Approving inadequate lek buffers for fluid mineral leasing and oil and gas development;
- Refusing to adopt seasonal grazing closures of all grazing allotments within PHMAs and SFAs during the spring nesting and breeding seasons; and
- Failing to identify and protect crucial winter habitat.

299. Because of the foregoing deficiencies and defects, the challenged EISs and BLM RODs and Plans are arbitrary, capricious, an abuse of discretion, not in accordance with law under FLPMA and the APA, and have caused or threaten serious prejudice and injury to the rights and interests of Plaintiffs and their members and staff.

WHEREFORE, Plaintiffs pray for relief as set forth below.

Fifth Claim for Relief –
NFMA and APA Violations
(Forest Service Rocky Mountain ROD Violates Population Viability Requirements)

300. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

301. This Fifth Claim for Relief challenges the Forest Service's Rocky Mountain ROD for violating NFMA and its implementing regulations requiring that land use plans maintain viable populations of native species well-distributed across the

planning area. *See* 43 C.F.R. § 219.19 ("Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area"); *id.* at § 219.27(a)(6) (requiring Forest Service to "[p]rovide for adequate fish and wildlife habitat to maintain viable populations of existing native vertebrate species"). This claim is brought pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

302. The population viability requirements of the Forest Service's 1982 Rule apply to the challenged EISs and RODs regarding Forest Plan amendments/revisions as part of the National Greater Sage-Grouse Planning Strategy. The population viability provision constitutes a substantive requirement that Forest Plans incorporate conservation measures adequate to maintain viable sage-grouse populations in each planning area.

303. The Powder River Basin subpopulation and/or the Thunder Basin Core population of greater sage-grouse are associated with the Northeastern Wyoming/Southeastern Montana subpopulation within the Wyoming Basin population. These birds occupy the Buffalo, Newcastle, and Casper BLM Field Offices and the Thunder Basin National Grassland in Wyoming, as well as parts of the Billings and Miles City Field Offices in Montana. The Powder River sage-grouse population forms an important linkage connecting the Montana and Dakotas sage-grouse populations to the rest of the sage-grouse range. Indeed, a leading researcher referred to these populations as "stepping stones maintaining connections across" priority areas.

304. Adoption of the Forest Service Rocky Mountain ROD and the Land and Resource Management Plan Amendments for the Thunder Basin National Grasslands (Wyoming) will foreseeably impair the viability and sustainability of the Thunder Basin

Core population and/or the Powder River Basin subpopulation of greater sage-grouse within and adjacent to the Powder River Basin.

305. In a recent assessment of sage-grouse populations, leading sage-grouse experts determined that the Powder River Basin subpopulation and/or the Thunder Basin Core population of greater sage-grouse has a 98.7% probability of declining below an effective population size of 50 within 30 years, and 99 percent probability of falling below an effective population size of 500 within 100 years (Garton *et al.* (2015)). According to these researchers, these probabilities "suggest[s] that this is fairly certain to happen." These same independent researchers found a 55% probability that the entire Great Plains population (by floristic region) of sage-grouse would fall below an effective population size of 50 within 100 years.

306. Population trends for sage-grouse in the Powder River Basin subpopulation and/or the Thunder Basin Core population show steeper declines than the rest of the state, and are distinguished by having a higher than average reduction in the numbers of active leks and lower numbers of males per active leks than elsewhere in the state since 2007.

307. BLM's own Population Viability Analysis study for the Buffalo Field Office suggested that sage-grouse in this subpopulation were one major stochastic event (e.g., West Nile virus outbreak) away from functional extinction as a result of the combined effects of oil, gas, and coalbed methane development and West Nile virus.

308. BLM's Population Viability Analysis for the Miles City Field Office predicted a 62% decline in sage-grouse populations due to the synergistic effects of oil and gas development and West Nile virus, with additional negative effects from

agricultural tillage.

309. The challenged Forest Service Rocky Mountain ROD violates the NFMA population viability requirement by adopting inadequate and unscientific measures that will not prevent further declines of sage-grouse populations below the viability threshold on each National Forest unit to which it applies.

310. These include adopting a 0.6-mile buffer around occupied leks including within PHMA and SFAs, even though the best available science demonstrates that such a buffer is wholly inadequate to prevent sage-grouse population declines from oil and gas or other energy development.

311. The Forest Service similarly violated the viability requirement by adopting an inflated disturbance cap of 5% in PHMAs and SFAs in the Thunder Basin National Grasslands plan amendment. The best available science has determined that a 3% disturbance cap is needed within important sage-grouse habitat to ensure local populations remain viable. Indeed the Forest Service admitted that the inflated disturbance cap may lead to the loss, degradation, or disturbance of sagebrush habitat in PHMAs and SFAs, but the Forest Service provided no explanation or analysis justifying its inflated disturbance cap in the challenged Rocky Mountain ROD or Thunder Basin National Grasslands management plan which that ROD approved.

312. Because of the foregoing violations, the Forest Service's Rocky Mountain ROD is arbitrary, capricious, an abuse of discretion, not in accordance with law under NFMA and the APA, and has caused or threatens serious prejudice and injury to the rights and interests of Plaintiffs and their members and staff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court grant the following relief:

A. Order, adjudge, and declare Defendants violated NEPA, FLPMA, NFMA, their implementing regulations and policies, and/or the APA in preparing and adopting the challenged EISs and RODs for one or more of the reasons identified above;

B. Because the challenged EISs and RODs do improve sage-grouse conservation measures within the affected federal lands, Plaintiffs expressly do not seek any court order vacating or setting aside the challenged EISs, RODs or Plans. Instead, without vacating or setting aside the challenged EISs, RODs, and Plans, Plaintiffs request that the Court issue a remand order (and/or enter declaratory and/or injunctive relief) requiring Defendants to undertake comprehensive and legally valid supplemental NEPA analysis and adoption of further amended or revised RODs (and Plan amendments or revisions) in order to cure the legal violations and defects found by the Court and to adopt scientifically adequate sage-grouse conservation measures;

C. Enter such other declaratory and/or injunctive relief as Plaintiffs may specifically request hereafter;

D. Award Plaintiffs their reasonable costs, litigation expenses, and attorney's fees associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. §§ 2412 *et seq.*, and/or all other applicable authorities; and/or

E. Grant such further relief as the Court deems necessary or appropriate in order to remedy Defendants' violations of law, vindicate the interests of Plaintiffs and the public, and preserve and protect the public lands and resources at issue.

Dated this 25th day of February, 2016.

Respectfully submitted,

/s/ Laurence ("Laird") J. Lucas
Laurence ("Laird") J. Lucas (ISB # 4733)
Todd C. Tucci (ISB # 6526)
Talasi B. Brooks (ISB #9712)
Advocates for the West
P.O. Box 1612
Boise, ID 83701
(208) 342-7024
(208) 342-8286 (fax)

Attorneys for Plaintiffs