



Submitted via www.regulations.gov

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Patricia Deibert

National Sage-Grouse Conservation Coordinator
Bureau of Land Management
Utah State Office
ATTN: HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, UT 84101

Re: Areas of Critical Environmental Concern (ACEC) in the Draft Resource Management Plan Amendment and Environmental Impact Statement (DRMPA/EIS) for Greater Sage-Grouse Rangeland Planning

Dear Ms. Deibert:

Western Energy Alliance (Alliance) appreciates that BLM's Preferred Alternative, Alternative 5, does not include ACECs. We are concerned that two other alternatives, Alternatives 3 and 6, include excessive ACEC acreage and strongly urge BLM not to include ACECs in the final plan and Record of Decision. Through the range of alternatives being considered, BLM already includes numerous existing, extensive protections for Greater Sage-Grouse (GrSG), such as no surface occupancy (NSO) restrictions, timing limitations, and disturbance caps, rendering inclusion of ACECs unwarranted. The Alliance urges BLM to ensure the final alternative selected does not include ACECs.

Western Energy Alliance is the leader and champion for independent oil and natural gas companies in the West. Working with a vibrant membership base for over 50 years, the Alliance stands as a credible leader, advocate, and champion of industry. Our expert staff, active committees, and committed board members form a collaborative and welcoming community of professionals dedicated to abundant, affordable energy and a high quality of life for all. Most independent producers are small businesses, with an average of fourteen employees.

Although still developing our full comments to the plan, the Alliance finds the Preferred Alternative, Alternative 5, appears to strike a more balanced, sensible approach to protecting GrSG while enabling responsible oil and natural gas development compared to other alternatives. The Alliance appreciates that BLM has correctly decided to exclude ACECs from Alternative 5. The restrictions already in place and as enumerated extensively in Alternative 5 provide strong protections for the species. Conversely, under alternatives 3 and 6, BLM would designate 11,139,472 acres as ACECs. Yet lands designated as Priority Habitat Management Areas (PHMA) and General Habitat Management Areas (GHMA) would already be encumbered with extensive restrictions on development in Alternatives 3 and 6, rendering ACEC designations redundant.

Legal Framework for ACEC Designations

Section 201 of the Federal Land Policy and Management Act (FLPMA) requires the Secretary of Interior to “prepare and maintain on a continuing basis an inventory of all public lands and their resource values and other values, giving priority to areas of critical environmental concern.” 43 U.S.C. § 1711(a). This Section states that ACECs do not change the allowed uses of public lands. *See* 43 U.S.C. § 1711(a) (“The preparation and maintenance of such inventory or the identification of such areas shall not, of itself, change or prevent change of the management or use of public lands.”)

FLMPA defines an ACEC as an area “within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish or wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards.” 43 U.S.C. § 1702(a).¹

FLPMA’s implementing regulations require that an ACEC designation meet both the relevance and importance criteria. 43 C.F.R. § 1610.7-2(a).² To be designated as an ACEC, lands must be relevant in that they contain important wildlife resources. 43 C.F.R. § 1610.7-2(d)(1). They must be important in that the wildlife resource “has qualities of special worth, consequence, meaning, distinctiveness, or cause for concern; national or more than local importance, subsistence value, or regional contribution of a resource, value, system, or process; or contributes to ecosystem resilience, landscape intactness, or habitat connectivity.” 43 C.F.R. § 1610.7-2(d)(2). Further, the lands must require special management attention. 43 C.F.R. § 1610.7-2(d)(3).

Particularly relevant for purposes of BLM’s ACEC review here, BLM’s revised regulations, effective June 10, 2024, explain that BLM should determine whether to designate an ACEC based on, among other things, the “relationship to other types of designations and protective management available.” 43 C.F.R. § 1610.7-2(j)(1)(iv). Similarly, ACEC designation may be removed where “another legally enforceable mechanism provides an equal or greater level of protection” 43 C.F.R. § 1610.7-2(k)(1).

As part of BLM’s determination for whether or not to include ACECs in the final RMP, it should take into account that western states and local governments with significant GrSG populations have worked for years on conservation programs to protect the species. The states have engaged broad groups of stakeholders and devoted significant resources to protecting the sage grouse. Given these efforts, BLM should defer to the greatest possible extent to state management plans. Each state with GrSG habitat presents unique on-the-ground circumstances that require different management prescriptions. In

¹ The Alliance is referencing BLM regulations as provided in the Conservation and Landscape Health Final Rule, effective June 10, 2024, 89 Fed. Reg. 40308 (May 9, 2024).

² It should be noted that the version of the regulation effective as of the date of this comment letter also applies relevance and importance criteria to ACEC designation at 43 C.F.R. § 1610.7-2(a).

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addition, BLM has been managing GrSG habitat across the West according to 2015 plans that include significant protective and restorative mechanisms that will continue in any final sage grouse plan.

Such mechanisms include variations in protection between PHMA and GHMA, adjusting based on the species as well as the applicable habitat. In PHMA, which already receives the highest level of protection for GrSG and its habitat, BLM applies NSO restrictions, timing limitations, density and disturbance caps, and additional provisions. ACEC designation on top of PHMA designation is not required under FLPMA or its implementing regulations to protect GrSG. In fact, under alternatives proposed to include ACEC designation, the rationale for including such lands is based on high-density sage grouse populations. Yet these same lands are already protected by PHMA and have shown that the populations are both maintaining or growing with some level of existing disturbance and fragmentation, and are already protected from unreasonable levels of disturbance due to the protections in current management.

BLM's final plan should enable sound decision-making based on the best available science; conserve high-quality habitat where it makes the greatest ecological difference, while balancing economic activity and recognizing valid existing rights; foster transparency, accountability, and credibility; and provide adaptability to improve the efficiency and effectiveness of BLM management. ACEC designation is not required, nor is it supported, to achieve these goals.

Indeed, ACEC designation is not required to meet the needs of the GrSG. Designating ACECs on top of the restrictions already in place or newly-specified for PHMA and GHMA will add unnecessary, duplicative and often conflicting restrictions on the uses of those lands. BLM already developed the PHMA/GHMA structure in order to provide the appropriate level of restrictions in the areas that will most benefit the species. ACEC designation is not required nor recommended, and would upset the balance that was achieved by BLM's existing structure, provide little or no additional benefit to GrSG, and merely act to further limit productive uses of those lands. BLM should not designate ACECs in its final plan.

BLM has failed to prove how additional management prescriptions in the form of ACEC designation are needed, and has failed to explain how oil and natural gas development would impair GrSG conservation. BLM has not shown in the DRMP/EIS how the ACECs contemplated in Alternatives 3 and 6 meet the relevance and importance criteria necessary under FLPMA.

Sincerely,



Kathleen M. Sgamma

President