



State of Utah

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PUBLIC LANDS POLICY COORDINATING OFFICE

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June 29, 2015

*Sent via electronic mail: protest@blm.gov
Sent via certified mail: Return Receipt Requested*

BLM Director (210)
Attn: Protest Coordinator
P.O. Box 71383
Washington, D.C. 20024-1383

**Protest of Proposed BLM and Forest Service Plan Amendments
Greater Sage-Grouse
State of Utah**

Dear Protest Coordinator:

The State of Utah hereby files the following formal protests of the proposed plan amendments for greater sage-grouse contained within the Final Environmental Impact Statement/Proposed Plan for Greater Sage Grouse, published in the Federal Register on May 29, 2015.¹ The State of Utah is a formal Cooperating Agency with the BLM and the Forest Service for the preparation of the EIS, and provided comments upon the Draft EIS in January, 2014.² In addition, the state filed comments on the Administrative Draft of the FEIS on May 13, 2015³ after a short two week review period. In its response letter to the Administrative Draft, the state reserved the right to make additional comment as further review of the document may warrant. This protest letter encompasses just some of the state's concerns about the proposed plans.

The State of Utah protests each and every topic presented below and in the Administrative Draft letter as a violation of the Federal Land Policy and Management Act, the National Environmental Policy Act, the Information Quality Act, BLM Handbook guidelines, guidelines of the Council on Environmental Quality, and/or the Administrative Procedures Act.

¹ 80 Fed. Reg. 20711, available at http://www.blm.gov/ut/st/en/prog/planning/SG_RMP_rev/FEIS.html. Accessed June 29, 2015.

² See Attachment 1

³ See Attachment 2

Failure to Employ Best Available State Seasonal Habitat Data

First and foremost, the state objects to, and protests, the BLM's failure to adopt the state's 2012 mapping of seasonal greater sage-grouse habitat as the basis for all alternatives in the proposed FEIS. The 2012 seasonal and other habitat data, which remains to this day as the best available scientific information, was presented to the BLM as the foundation of the state's Conservation Plan for Greater Sage-Grouse.⁴ The seasonal habitat data was created as part of the state's response to the December 2011 invitation by Interior Secretary Salazar for each state to prepare a comprehensive state plan for the conservation of greater sage-grouse, and to respond to the threats to the species identified in the U.S. Fish and Wildlife Service's March 2010 listing decision. The seasonal habitat data, as presented in a mapped (shapefile) format, represented the most comprehensive delineation to date of each of the types of habitat necessary for the year-round needs of the bird. This data was specifically designed for the purposes of a response to the U.S. Fish and Wildlife Service's statement of threats, and has far better utility for conservation planning purposes than any earlier work. The 2012 data specifically superseded any information the state had published earlier, for purposes of conservation planning.

BLM is required by law and regulation to use state wildlife data, especially if it directly addresses a planning issue such as protection of wildlife habitat.⁵ As part of recent Resource Management Plan revision and amendment processes, the state and the BLM successfully coordinated the presentation of state wildlife habitat data, as presented in a mapped format. The state and the BLM cooperated to ensure that the mapped data was not compromised in terms of its *objectivity*, *utility* and *integrity*, as required by BLM Handbook.⁶ In those RMP revision efforts, the state and the BLM cooperatively worked on data use parameters so that state data was not used for purposes outside the intended use, and outside the limitations of the underlying research.⁷ In support of this point, the state recently noted in its letter in response to the Administrative Draft:

Reaching a joint conclusion about suitability requires consultation and active dialogue between BLM and the state, which did not occur prior to the BLM's new proposed determination concerning suitability. This lack of consultation and active discussion is the complete opposite of the constructive discussions which occurred during the preparation of the Kanab Resource Management Plan (RMP). Consultation with the state requires active discussions, not simply reading a plan prepared by the state or using the boundaries shown on a map. The intent behind this type of data or plan must be emphasized as much as the data itself, and such intent may only be determined through a specific request for information and

⁴ See Conservation Plan for Greater Sage-Grouse in Utah, February 14, 2013, at <http://publiclands.utah.gov/wp-content/uploads/2013/08/Conservation-Plan-February-14-2013.pdf>. Accessed June 29, 2015.

⁵ See e.g., Report in Congressional Appropriations Bill, Department of the Interior, Environment, and Related Agencies Appropriations Bill, 2016, H.R. Rep. No. 114-170, pg. 6.

⁶ See BLM Information Quality Guidelines, February 9, 2012.

⁷ See Letter from Kathleen Clarke to Jenna Whitlock, dated March 27, 2015, sent as part of the Cooperating Agency review of the SEIS for the Alton Coal Lease-by-Application, which letter is incorporated into this protest.

coordination. The context of the state's data and plans is essential to interpreting the data itself. Full understanding of the state's data and plans can only be achieved through specific requests for information and coordination.

This type of agreement is vitally important in the new, digital age where GIS vendors and users love to hawk the latest presentation tool, but often choose to deemphasize or obscure the meaning of the data itself. In particular, the state noted:⁸

In each case, the state very carefully worked with the BLM to assure that these deer, elk, and sage-grouse habitat maps were spatial representations of areas requiring consultation with the state on individual projects, and that no automatic conclusions, planning or otherwise, would be reached through use of this data. The state provided the data to encourage consultation with the state concerning the impacts of resource use proposals, and to provide recommendations for minimizing or mitigating those impacts, if any, at the time of the proposal. BLM explicitly recognized and agreed with this request in the final Kanab RMP.⁹

Unfortunately, in the current EIS process, BLM is simply adopting boundaries shown on a map, and making automatic conclusions, without regard to the purpose or intent behind the state's mapped data. BLM's Utah State Office deliberately decided to ignore the thorough, complete and best available seasonal habitat data generated in the spring and summer of 2012 as the foundation of all alternatives in the EIS process, even though the data was presented in a timely manner. This politically-motivated decision reverberates throughout the entire FEIS, because many of the ill-considered and ill-matched provisions for management contained in the proposed plan amendments are a direct result of this decision.

The FEIS represents an entire framework of analysis built without a foundation of the best available scientific and observational data, and therefore represents an arbitrary and capricious decision by the BLM and the Forest Service. The decision by the Utah State Office of the BLM to ignore the state's fundamental seasonal habitat data, contrary to law, is also arbitrary and capricious. The Utah State Office of the BLM is the only Office west-wide which failed to employ the relevant state's basic empirical data concerning the distribution of all the types of seasonal habitat for the species, as such was known in 2012. Not only has the Utah State Office chosen to illegally reject the state's best available seasonal habitat data, it has not produced any data of its own as an alternative, choosing instead to falsify older representations of habitat produced by the state for other purposes.

BLM's Improper Representations in the FEIS Concerning State Seasonal Habitat Data

BLM asserts:

In a letter received by the BLM on February 26, 2013, the State of Utah requested

⁸ *Id.*

⁹ See BLM's Response to the state's comment on the provisions of the Draft EIS. Found in *Proposed Resource Management Plan and Final Environmental Impact Statement*, July 2008, p. 5-70.

that the BLM and Forest Service use the areas identified as SGMAs in the State of Utah Sage-Grouse Conservation Plan for all alternatives being considered in the land use planning process. This alternative was considered but eliminated from detailed analysis because the BLM, Forest Service, USFWS, and State of Utah have not reached agreement on which lands have the highest conservation value, or which lands are necessary to maintain or increase GRSB populations. NEPA section 102(e) requires agencies to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.”¹⁰

This statement, collectively, is composed of unrelated information blatantly constructed to portray a completely false and self-serving position. The State of Utah transmitted the latest, best available information on seasonal habitat types and locations to BLM in late August 2012, with the understanding that that this information was the most scientifically accurate information available, and must therefore be the foundation of all analyses in the EIS. The BLM was fully aware that the state was finalizing this data all through the spring and summer of 2012, as a result of its regular and well-appreciated attendance at meetings of the state’s Working Group.¹¹ In August of 2012, the BLM was early in the process of preparing the EIS, and was working to determine the scope and extent of the necessary alternatives, yet refused to accept the state’s data as the foundation for seasonal habitat in Utah, and therefore as the foundation for the required analysis of alternatives.¹²

Specifically, the above statement by BLM is used in a circular argument to imply that the requirements of NEPA would not be fulfilled, because of “unresolved conflicts.” Of course, no such unresolved conflict existed. The BLM simply refused to accept the state’s seasonal habitat data, and then self-created a conflict scenario because the data was apparently not what the BLM expected. BLM’s use of the provisions of NEPA in this regard are specious, and must be disregarded.

BLM’s Improper Conclusions Regarding NEPA Analysis

BLM attempts to divert attention away from its illegal decision, by creating a smoke-screen. After the state protested the BLM’s choice, the BLM continued to resist adopting the state’s seasonal habitat data. The above statements regarding the state’s seasonal data in the FEIS inaccurately and incorrectly refers to BLM’s continued reticence as a lack of agreement concerning the lands which “have the highest conservation value, or which lands

¹⁰ See FEIS, at p. 2-239.

¹¹ Governor Herbert convened a multi-stakeholder Working Group tasked with making recommendations concerning a conservation plan for greater sage-grouse. BLM, Forest Service and U.S. Fish and Wildlife Service were regular attendees at the meetings of the Group. The Working Group was created as a direct result of the invitation of Secretary Salazar, and conducted its review from January to the end of August, 2012.

¹² As mentioned earlier, every other BLM state office accepted data such as this from the relevant states in the same general timeframe. Only the Utah Office rejected the state’s data. Data from other states was not as robust in terms of its seasonal habitat delineations, so, ironically, the Utah State Office rejected useable and accurate information from the state most able to provide it.

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are necessary to maintain or increase GRSG populations.”¹³

The state’s seasonal habitat data, which the BLM rejected, does not, and was never intended, to represent conclusions about “the highest conservation value” or lands which “are necessary to maintain or increase GRSG populations.” Those conclusions by the state were presented in the state’s Conservation Plan, finalized in February, 2013, a full six months after the data was presented to the BLM. In late August 2012, the state’s data represented the best scientific information concerning seasonal and other habitat. The above statement, which is used to justify the BLM’s rejection of basic data, is employing conclusions which are normally reached at the conclusion of the NEPA and plan amendment process, *not at the very initiation of the process*. The explanation above, published in the FEIS, constitutes a pre-decisional conclusion reached by BLM and Forest Service in direct contravention of the facial validity of the state’s seasonal habitat data, and constitutes a violation of the provisions of NEPA, the APA, and the BLM’s Handbook on data integrity.

Having rejected the state’s best available information concerning seasonal habitat for Utah’s populations, BLM proceeds to mischaracterize other state habitat information in order to support its pre-decisional conclusions. BLM asserts:

*The UDWR broad GRSG habitat maps are intended to encompass GRSG habitats used throughout the year by known GRSG populations. Peer-reviewed literature notes that GRSG habitat can be identified at one of four scales, from a broad geographic range that defines populations of interest to the quantification of food and cover attributes and foraging behavior at particular sites (see Appendix N). Broad habitat maps are necessary at the LUP-scale of planning in order to include a variety of important seasonal habitats and movement corridors that are spread across Utah’s geographically diverse and naturally fragmented landscape.*¹⁴

This statement represents BLM’s rationale for choosing a different representation of habitat, which representation was generated by the state in 2009, before the March 2010 listing decision of the Fish and Wildlife Service. The BLM apparently prefers this representation of habitat because it is “broad” in nature, and encompasses habitat “used throughout the year.” Also it includes “a variety of important seasonal habitat and movement corridors.” This explanation, of course, strongly infers that the 2012 seasonal habitat data, rejected by BLM as discussed above, does none of these things.

The state’s 2012 data meets all of these requirements, and is specifically designed to do so. The 2012 data is very broad in nature. It represents the essential year-round (seasonal) habitat needs of the species for population centers covering the entire state.¹⁵ It completely portrays the landscape-scale nature of the species. In fact, it clearly

¹³ See FEIS, at p. 2-239.

¹⁴ *Id.*

¹⁵ See the detailed presentation of all essential habitat types displayed on Map 2-4, which represents the August 2012 data submission.

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demonstrates where exactly on the landscape the species is located, based upon peer-reviewed scientific data concerning population density.

The fact that it contains more detail, and fully delineates all the necessary habitat types rather than simply lumping the various types into one generic category (as BLM subsequently does), does not make it any less broad and landscape-oriented in nature. The 2012 data demonstrates “the populations of interest” mentioned by, and apparently required by, the BLM, and it also includes all important seasonal habitats for those populations. The above reasons used by BLM to reject the 2012 data are completely specious.

The Utah State Office of the BLM dismissively ignored the copious amount of detailed information Utah was able to provide, as a direct result of the two decades of work by the state and its researchers, in order to employ other, less detailed data in order to further its own pre-ordained outcomes for the NEPA process. As a result, BLM’s failure to use the 2012 data amounts to an arbitrary and capricious decision to avoid the best available data, and violates NEPA’s requirement for a “hard look.” This work must be redone before BLM and Forest Service may make any final decisions.

Representations of Movement Corridors

In addition to favoring the 2009 map because it is allegedly more “broad” in scope, the BLM asserts the 2009 map is better because it broadly includes “movement corridors.” This argument is without merit. As the state’s data demonstrates, Utah’s populations exist in a highly fragmented state. Some of the population centers are isolated, while some are connected to populations in other states. Recent radio collar and GPS research is starting to demonstrate local movement patterns, but research has already demonstrated significant information about movement patterns which do not exist.

The state demonstrated the meaning of this research in several letters to BLM, Forest Service and Fish and Wildlife Service concerning the West Tavaputs and Anthro Mountain populations. This research conclusively demonstrated a lack of genetic connectivity among the West Tavaputs and Anthro Mountain populations, and those to the east and the north. Therefore, agency assumptions about such movement were proven to be unsubstantiated. Concerning the movement of birds in the West Tavaputs region, the state wrote:

Finally, the radio-collared bird data demonstrates that one bird flew east across the Desolation Canyon barrier and back within a two week period during the non-mating season. This one flight does not demonstrate genetic connectivity, but rather reinforces the isolation of the area, especially given the apparent abandonment of the leks to the east. Specifically, this one flight occurred at the wrong time of the year, and did not travel far enough to have reached the next populations to the east. The fundamental point is not that birds can fly over barriers, but that there is no scientific evidence which demonstrates that this flight, the only one in 15 years of data collection, resulted in any genetic exchange. Flights at different times of the year are not supported by the radio-collared movement data. Mere supposition that

*genetic exchange may result from this isolated flight does not rise to the level of the best available science on the topic.*¹⁶

Significantly, the data presented to the BLM demonstrates that the 2009 map and the 2012 data are equal in their presentation of movement data, that is, neither was designed to present the data at all. Subsequent discussions among the parties brought the required information to light. The unsubstantiated statement in the FEIS about movement corridors must be stricken.

Mischaracterization of State Data

Unfortunately, rather than embrace the detailed seasonal habitat data offered by the state in August, 2012, the BLM chose to base its entire NEPA analysis upon an earlier representation of habitat, generated in 2009 by the state for entirely different purposes. In so doing, BLM disregards its own data management standards by ignoring the *objectivity, utility* and *integrity* of the state's previous representation. According to BLM's guidelines,¹⁷ and Information Quality Act guidance,¹⁸ data quality standards must ensure and maximize information *objectivity, utility* and *integrity*. The guidelines for the Information Quality Act define information *objectivity* as information that is "...presented in an accurate, clear, complete, and unbiased manner, and as a matter of substance, is accurate, reliable and unbiased."¹⁹

The state's data, and its mapped representation, are displayed on a map, and within GIS shapefiles. The general title of the map is "occupied habitat." The mapped representation of the data was produced in 2009 (before the 2010 Fish and Wildlife Service greater sage-grouse listing decision), and includes areas of pinyon pine and juniper – areas that are not suitable for any life stage of sage-grouse. The state's wildlife management agency was, at the time, focusing on the scientifically-supported literature suggesting that expanding useable habitat, i.e., removing pinyon/juniper encroachment for the species would be beneficial for the populations in Utah. The state was targeting future sage-brush revegetation and rehabilitation projects, and included those areas on the generalized habitat map.²⁰ BLM may not attempt to obscure or minimize this fundamental fact by focusing solely on the title of the map.

BLM has intentionally altered the intended use of state's map in the FEIS by reclassifying the entire coverage in the 2009 map as possessing seasonal or year-round

¹⁶ See letter from Kathleen Clarke to Larry Crist, Juan Palma and Nora Rasure, dated December 22, 2014, at p. 5. This letter is hereby incorporated into this protest. See Attachment 3.

¹⁷ See BLM Manual Handbook H1283.1 on Data Administration and Management.

¹⁸ See Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies issued by the Office of Management and Budget, 67 F.R 8452.

¹⁹ *Id.*

²⁰ See FEIS, Appendix N, Greater Sage-Grouse Habitat Baseline, p. N-3.

utility for greater sage-grouse.²¹ This reclassification implies that all of the areas subsequently identified by BLM as general habitat supply some benefit to sage-grouse. This assumption is not scientifically supportable, constitutes a use of the map far beyond that intended by the state, and therefore constitutes a violation of the BLM and OMB data integrity guidelines.

Data *integrity* specifically refers to protecting the data or information from corruption and from unauthorized revision.²² By using the 2009 map for purposes other than its original design, BLM has clearly compromised the integrity, and the underlying data quality, of the sage-grouse habitat representation. Revising the intended use of the map is a serious abuse of the state's research, expertise and authority over wildlife. The state has voiced opposition to the misuse of the state's data on numerous occasions in person and in writing.

The Information or Data Quality Act guidance refers to data *utility* as the usefulness and reliability of the information to the intended user.²³ Because BLM intentionally mischaracterized the state's 2009 habitat map as depicting all included area as useful to sage-grouse, BLM has deeply undermined the *utility* of the information provided by the state. BLM's misuse and rebranding of the state's 2009 map could jeopardize future restoration efforts benefitting sage-grouse and unduly restrict activities in areas that, in fact, present absolutely no habitat value for the bird. BLM has not met its own standards of information or data quality by disseminating misinformation in the FEIS. The BLM's rebranded 2009 sage-grouse habitat map, not does meet the *objectivity, utility, or integrity* requirements under the Act.

Faulty Alternative A

Because BLM refused to use the maps provided by the state of Utah in August, 2012, BLM created a faulty baseline for the creation of the various Alternatives. Without the detailed state-generated habitat-mapping data, the no-action alternative (Alternative A) was not based upon the most accurate data. As a consequence, all comparisons to Alternative A and within the various alternatives are faulty. BLM must revisit the analysis of alternatives using the state's 2012 maps as the baseline of accurate information.

The difference is significant. Because BLM started out without the most scientifically robust information, BLM's subsequent decisions, such as the self-creation of the category of general habitat, are fruit derived from the poisonous tree, and must be rejected. Use of the faulty Alternative A violates the provisions of NEPA.

Maps of Priority and General Habitat

The State of Utah protests the depiction of priority, general and Anthro Mountain habitat portrayed on Maps 1-1, 2-6, 2-29 and all the others which depict priority, general or

²¹ See FEIS, p. 1-3.

²² *Id.* p. 8453.

²³ See 67 F.R 8452 and BLM Manual Handbook H1283.1

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Anthro Mountain habitat on state, tribal and private lands. BLM has no jurisdiction on private, state or tribal lands, and has absolutely no authority to include those lands within any habitat designations the BLM or the Forest Service may create.

In contrast, the state's Conservation Plan explicitly recognizes the type and extent of habitat, non-habitat, and opportunity areas without regard to ownership, and then asks the land owners within each type to contribute to greater sage-grouse conservation through different legal and factual mechanisms. The state's Conservation Plan recognizes the need for the various landowners to contribute differently, but all efforts are coordinated in pursuit of the state's overarching strategy. Specifically, private landowners are asked to contribute through easements, leases, conservation measures sponsored by the National Resources Conservation Service and the like. The Governor's recent Executive Order contributes to conservation as well. The federal land management agencies are asked to adopt management provisions on their lands through plan amendment processes such as that represented by the current proposals.

The depiction of priority, general and Anthro Mountain habitat on each and every one of these maps is arbitrary and capricious because it does not reflect an accurate representation of land ownership and jurisdiction, and consequently the various conservation plans which affect each of these non-federal lands. The BLM and the Forest Service may not minimize or ignore these vital differences as part of its explanation of its own proposals for management. Specifically, neither BLM nor Forest Service may include private, state, or tribal lands within its definition of priority, general, Anthro Mountain, or any other type of habitat simply as a convenience designed to assist each agency in the implementation of any of its proposed planning provisions, such as a disturbance cap. BLM and Forest Service must accurately portray these habitat types solely as upon lands under each agency's jurisdiction.

This argument is true also of the maps which contain the new construct of biologically significant population units. This construct should not be portrayed upon private, state or tribal lands.

None of the maps contains an explanation or a specific disclaimer about any limitations on federal authority, therefore the maps collectively express inaccurate information about the extent of BLM and Forest Service planning and regulatory authority. BLM and Forest Service are collectively acting outside the bounds of the law and their jurisdiction to portray a private, state or tribal land as contained within either priority, general, Anthro Mountain, or any other habitat type, or within the new construct of biologically significant population units.

The state protests BLM cavalier treatment of its jurisdiction in violation of law, and requests BLM and Forest Service correct these maps and any related descriptions to accurately represent federal lands and jurisdiction only.

Resolution of the Data Quality Act Challenge

On March 18, 2015, the Western Energy Alliance (WEA), in association with many western counties and organizations, filed a Challenge for Correction of Information²⁴ (Challenge) against the BLM's National Technical Team Report (*A Report on National Greater Sage-Grouse Conservation Measures*).²⁵ The Challenge was filed pursuant to the Federal Information Quality Act, and directly challenges the veracity and applicability of the scientific research behind the Report, and therefore behind the proposed plan amendments.²⁶ The state protests the BLM's failure to respond to the Challenge prior to issuance of the FEIS. The BLM must provide a full response to the Challenge so that the public may be fully informed about the scientific basis behind the provisions of the proposed plan amendments.

Because many of the draconian and unnecessary provisions within the proposed plan amendments are based upon the NTT Report, and research conducted in the state of Utah is scientifically superior and more relevant locally, to that contained in the Report, the BLM has failed to provide sufficient information to constitute the required "hard look"²⁷ at the environmental consequences of the proposal, as required by NEPA. BLM and Forest Service must issue a Supplemental EIS to correct this deficiency.

Forest Service Habitat Objectives

The Habitat Objectives proposed for adoption by the BLM are based on vegetation characteristics from local research and monitoring in Utah.²⁸ These indicators were developed cooperatively between the State of Utah, BLM, Fish and Wildlife Service and scientists from Utah State University in order to correctly represent the best available science for desired habitat conditions. Unfortunately, the Forest Service declined to participate in the development of these Habitat Objectives, and is now proposing to ignore this best available scientific information in lieu of adopting older, less specific standards, prepared in 2000 by Connelly and others, that are not suitable for Utah sage-grouse populations.²⁹

²⁴ *Western Energy Alliance v. BLM*, Data Quality Act Challenge to the U.S. Department of the Interior Dissemination of Information Present in the Bureau of Land Management National Technical Team Report, March 18, 2015, available at <http://cdn.westernenergyalliance.org/sites/default/files/BLM%20NTT%20Data%20Quality%20Challenge.pdf>.

²⁵ BLM, Sage-Grouse National Technical Team, *A Report on National Greater Sage-Grouse Conservation Measures*, available at <http://www.blm.gov/pgdata/etc/medialib/blm/co/programs/wildlife.Par.73607.File.dat/GrSG%20Tech%20Team%20Report.pdf> (Dec. 21, 2011).

²⁶ 44 U.S.C. § 3516.

²⁷ 233 See, e.g. *All Indian Pueblo Council v. United States*, 975 F.2d 1437, 1444-46 (10th Cir. 1992).

²⁸ See FEIS, Table Objective GRSG-3, Habitat Objectives for Greater Sage-Grouse – BLM Proposed Plan.

²⁹ See FEIS, Table GRSG-GEN-DC-003, Seasonal Habitat Desired Conditions for Greater Sage-Grouse, Connelly, J. M. A. Schroeder, A. R. Sands, and C. E. Braun. 2000. Guidelines to manage sage-grouse

For example, the Parker Mountain sage-grouse habitat does not, and will never, meet the peer-reviewed Connelly et al. 2000 sage-grouse habitat guidelines, yet this sage-grouse population remains one of the most robust in the west. In 1999, Utah researchers hosted a tour of the area with several prominent western sage-grouse biologists. At that time, male lek counts were less than 200 on Parker Mountain. Nearly all of the biologists, including Connelly, were dubious that the area could sustain the 200 males let alone a stronger population. However, in 2007, the peak numbers of males counted on leks exceeded 1,500 due to extensive revegetation efforts by the state and its partners. Locally driven, site-specific science has a proven record of supporting and growing greater sage-grouse at Parker Mountain and in Utah, and has generated strong evidence that local conditions should be favored over the general suggestions of the Connelly guidelines.³⁰

If the Forest Service adopts the vegetation indicators listed in the FEIS, the Parker Mountain sage-grouse habitat will be negatively impacted as this area is like no other place in the west. This Parker Mountain area is a perfect example of how BLM and Forest Service resource management and land use plan amendments should incorporate site-specific science to achieve long-term conservation benefits. By deliberately discounting local research in their proposed land use amendments in the FEIS, the Forest Service is not utilizing the best science for successful sage-grouse conservation, and is therefore acting in an arbitrary and capricious manner. The Forest Service must adopt the standards proposed by the BLM, which are scientifically appropriate in Utah.

Defense Authorization Act of 2000

BLM has not demonstrated compliance with the provisions of the Defense Authorization Act of 2000. The National Defense Authorization Act for Fiscal Year 2000 (Act), directs the Secretary of Defense to conduct a study to evaluate the impact upon military training, testing, and operational readiness of any proposed changes in “Utah national defense lands.”³¹ These lands are defined in the Act as “Public Lands under the jurisdiction of the Bureau of Land Management in the State of Utah that are adjacent to or near the Utah Test and Training Range and Dugway Proving Ground or beneath the Military Operating Areas, Restricted Areas, and airspace that make up the Utah Test and Training Range.”³²

Specifically, “until the Secretary of Defense submits to Congress a report containing the results of the study, the Secretary of the Interior may not proceed with the amendment of any individual resource management plan for Utah national defense lands....”³³ The BLM admits that “None of the comments the US Department of Defense has provided on the Proposed LUPA/Final EIS represent the study or analysis referenced in either law.”³⁴

Within Section 6.3.4 of the FEIS, BLM acknowledges the obligation to procure a

³⁰ The Connelly guidelines suggest this very point – use local indicators when such are developed.

³¹ The National Defense Authorization Act for Fiscal Year 2000, PL 106-65, 113 Stat.512, Section 2815.

³² *Id.*

³³ *Id.*

³⁴ Utah Greater Sage-Grouse Proposed LUPA/Final EIS, pg. 6-5.

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study of the impact upon military training, testing, and operational readiness of the proposed changes affecting the GRSG areas.³⁵ Nonetheless, the FEIS proposes amendments to four LUPs within areas applicable to the Act, including all or portions of the Sheeprocks, Ibabah, and Box Elder GRSG population areas. Because the BLM is proposing changes that affect “Utah national defense lands” that may impact military training, testing, and operating readiness, BLM must meet all the requirements under the Act before any changes to the land plans which cover these greater sage-grouse populations.

In the recent past, the BLM has recognized the correctly-interpreted requirements of the Act. For example, amendments to three Resource Management Plans (RMPs), the Pony Express RMP, the House Range RMP, and the Warm Springs RMP, were recently suspended because:

*This plan cannot be amended at this time due to restrictions to plan amendments imposed by Section 2815(d) of Public Law 106-65, the National Defense Authorization Act for Fiscal Year 2000 (October 5, 1999). Should these restrictions be lifted, the amendments to this plan would become effective and the BLM would provide public notice of the effective date of the amendments.*³⁶

The BLM has postponed plan amendments in the past due to failure to comply with the requirements under the Act. At his point in time, the military impact study has not been completed. Therefore, BLM is prohibited from proceeding with any amendments of any individual RMPs for Utah national defense lands until the impact study has been completed and provided to Congress.

Rather than demonstrate compliance with the law, BLM instead chose to tout discussions with local Department of Defense installations. For example, BLM provides that language was changed in Chapter 1 and Chapter 5 as a result of discussions brought about from a cooperating agency agreement between the BLM and the Department of Defense dated April 23, 2014.³⁷ This does not demonstrate compliance with the law.

Need for Plan Amendments Within or Near the UTTR

Conservation of greater sage-grouse within and near the UTTR does not require BLM plan amendments. The two major threats to the species in the area are wildfire and the associated problem of invasive weeds, and conifer encroachment. Both of these threats are being ameliorated through administrative action by the state and the federal agencies outside RMP provisions. Fire suppression prioritization and burned area rehabilitation are underway with the appropriate agencies, and conifer removal projects are already being processed and implemented. For these reasons, the BLM may not amend the Resource Management Plans within or near the Utah Test and Training Range, and the provisions of

³⁵ *Id.* pg. 6-5.

³⁶ Approved Resource Management Plan Amendment Plan Amendments/Record of Decision (ROD) for Designation of Energy Corridors on Bureau of Land Management Administered Lands in the 11 Western States, pg. 18.

³⁷ Utah Greater Sage-Grouse Proposed LUPA/Final EIS, pg 6-5, 6-6.

the FEIS which indicate otherwise are contrary to law.

Adaptive Management

The state has numerous concerns with the proposed adaptive management strategy. BLM's proposal makes use of "soft" and "hard" triggers keyed to both greater sage-grouse populations and habitat. Under the proposal, BLM would make significant management changes if the events identified in any particular trigger occurred without initiating an amendment process, including the public involvement required by NEPA, at that point in the future.

The state is supportive of the concept of adaptive management, as long as it is properly executed according to statutory authority. The proposed triggers themselves were developed through the hard work of the state, academia, the BLM, the Forest Service, and the U.S Fish and Wildlife Service, and are based on historic lek trends and other Utah specific information.

However, the proposed hard trigger responses, identified as the result of a random Delphi process sponsored by the BLM, have no scientific basis because the cause and effect relationship is speculative. The list of possible responses to a hard trigger implies knowledge of a cause and effect relationship which may not exist, or be indefensible.³⁸

BLM has other regulatory mechanisms which properly provide a path for solutions to the type of imminent problem envisioned by the hard triggers - mechanisms which do not violate the law and which rely on information current at the time of the need. The tool chosen for execution of the adaptive management strategy is flawed and violates the provisions of the Federal Land Policy & Management Act (FLPMA) and NEPA.

Violations of the Federal Land Policy & Management Act

FLPMA³⁹ establishes requirements for land use planning on public land. FLPMA requires the BLM, under the Secretary of the Interior, to "develop, maintain, and when appropriate, revise land use plans" to ensure that land management be conducted "on the basis of multiple use and sustained yield."⁴⁰

The process for developing, maintaining, and revising resource management plans is controlled by federal regulations at 43 C.F.R. §§ 1610.0-1610.8. Under FLPMA, if BLM

³⁸ Appendix B, page B-8 of the plan states that "Soft trigger responses can come in the form of terms, conditions, design features, BMPs, or site specific mitigation measures." Appendix B, p. B-9 of the Plan states that "Hard triggers represent a threshold indicating that immediate action is necessary to stop a severe deviation from GRSG conservation objectives set forth in the BLM and Forest Service plans.

³⁹ See 43 U.S.C. §§ 1701-1785.

⁴⁰ See 43 U.S.C. §§ 1701(a)(7), 1712(a).

wishes to make changes to a resource management plan, it can only do so by formally amending the plan pursuant to 43 C.F.R. § 1610.5-5.⁴¹ Section 1610.5-5 states, in part:

An amendment shall be initiated by the need to consider monitoring and evaluation findings, new data, new or revised policy, a change in circumstances or a proposed action that may result in a change in the scope of resource uses or a change in the terms, conditions and decisions of the approved plan. An amendment shall be made through an environmental assessment of the proposed change, or an environmental impact statement, if necessary, public involvement as prescribed in § 1610.2 of this title, interagency coordination and consistency determination as prescribed in § 1610.3 of this title and any other data or analysis that may be appropriate ...

Under the statute, BLM must amend a management plan when an action is proposed that changes either “the scope of resource uses” or the “terms, conditions and decisions” of the plan.⁴² There are limits to how dramatic “modifications” can be before they are deemed “amendments.”⁴³ Section 1610.5-5 requires plan amendments whenever there is a “need to consider monitoring and evaluation findings, new data, new or revised policy, or a change in circumstance.”

On the other hand, refining a plan based on minor data changes does not require an amendment or analysis under NEPA. BLM may take steps to “maintain” plans:⁴⁴

...As necessary to reflect minor changes in data. Such maintenance is limited to further refining or documenting a previously approved decision incorporated in the plan. Maintenance shall not result in expansion in the scope of resource uses or restrictions, or change the terms, conditions, and decisions of the approved plan. Maintenance is not considered a plan amendment and shall not require the formal public involvement and interagency coordination process described under §§ 1610.2 and 1610.3 of this title or the preparation of an environmental assessment or environmental impact statement. Maintenance shall be documented in plans and supporting records.⁴⁵

Courts have held that plan maintenance actions and plan amendment actions are not equal in scope of proposed changes or action under a plan.⁴⁶ In order for a plan to merely be maintained under the statute, refinement may be made to reflect only minor data changes, not actions that change the scope of the resource uses or the terms, conditions, and decisions of the plan.

⁴¹ See *Klamath Siskiyou Wildlands Center v. Boody*, 468 F.3d 549 (2006).

⁴² *Boody*, 468 F.3d at 556.

⁴³ *Id.*, 468 F.3d at 558. See also *Oregon Natural Ass'n v. Bureau of Land Management*, 2011 WL 5830435.

⁴⁴ under 43 C.F.R. § 1610.5-4.

⁴⁵ 43 C.F.R. § 1610.5-4.

⁴⁶ *Boody*, 468 F.3d at 557.

As written, the BLM's plan contemplates a variety of management decisions based on a myriad of projected scenarios. BLM is proposing that anytime one or more of these "hard" triggers might be tripped, BLM can immediately alter the provisions of the area's duly-approved Resource Management Plan without completion of an amendment process. BLM asserts this is possible because the required NEPA work has been completed by virtue of the current NEPA documentation. Therefore, the BLM is asserting that the conclusion of any particular NEPA process summarily defines all current NEPA alternatives, or parts of Alternatives, as minor in nature, simply because those changes were studied.

This conclusion, on its face, is preposterous, especially in light of constantly changing environmental conditions, and the population dynamics of the fragmented greater sage-grouse populations in Utah. It is irrelevant that possible future adjustments were reviewed as part of NEPA documentation at the current time. The obligation is for the BLM or the Forest Service to consider the conditions as the time that the defined hard trigger may be tripped, determine the best course of action, and act accordingly. In Utah, such an amendment process could be fairly simple, as long as the state and the federal agencies have been coordinating sage-grouse management issues.

FLPMA requires that all future proposed revisions to duly-adopted Resource Management Plans that are based on a change in circumstance ultimately require an amendment to the plan, pursuant to 43 C.F.R. § 1610.5-5. The BLM does not have the luxury of contemplating several different future scenarios involving several pre-determined corresponding solutions to avoid an amendment. The court in *Klamath Siskiyou Wildlands Center v. Boody*, 468 F.3d 549 (2006) (*Boody*) looked at a similar misguided adaptive management strategy and analyzed it as follows:

However, merely because the 2001 ROD contemplated this type of change, it does not necessarily follow that all contemplated changes fall under the narrow definition of plan maintenance in § 1610.5-4. If that were the law, BLM could circumvent the mandates of § 1610.5-5 (i.e., requiring environmental assessments and impact statements, public disclosure, etc.) by merely designing a management plan that "contemplates" a wide swath of future changes."⁴⁷ Not only would such a strategy flip the regulatory scheme created by §§ 1610.5-4 and 1610.5-5 on its head by defining plan maintenance broadly and plan amendments narrowly, it would render nugatory the provisions of FLPMA requiring BLM to act in accordance with established resource management plans.

As the court held in *Boody*, the BLM cannot circumvent the requirement of an amendment process under FLPMA by drafting an adaptive management strategy of the type proposed.

Inconsistent Application of Reverse Triggers – Violation of FLPMA

The state, in previous comments, requested that the BLM and the Forest Service

⁴⁷ *Id.* at 557.

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work in collaboration with the state to identify reverse triggers. That is, if events indicated that the conditions of a soft or hard trigger were met, what events could cause the reverse management effect to kick in? The state was informed that reverse triggers were not possible because of the intervention of time. That is, the time to achieve the reverse trigger was too far in the future to be supported by the current NEPA analysis.⁴⁸

However, BLM is inconsistent about its rationale to decline the identification of reverse triggers in Utah. BLM and Forest Service have supported the concept in the Idaho and Southwestern Montana Greater Sage-Grouse Proposed LUPA/Final EIS (Idaho FEIS). In that plan, BLM proposes a mechanism to remove hard trigger responses once the habitat or population shows a return to pre-trigger values. The Idaho FEIS states:

*Remove any adaptive management response when the habitat or population information shows a return to or an exceedance of the 2011 baseline values within the associated Conservation Area in accordance with the Adaptive Management Strategy. In such a case, upon removal of the adaptive management response, the original habitat and population triggers would apply.*⁴⁹

The state protests BLM's refusal to provide for reverse triggers in the proposed plan amendments for Utah. The state urges the BLM to redraft the Adaptive Management Plan to provide for the same reverse hard triggers in the Utah Final EIS as are provided in the Idaho Final EIS.

Violations of the National Environmental Policy Act

The BLM's proposed adaptive management strategy is flawed, misguided, and violates the National Environmental Policy Act (NEPA). There is an additional independent threshold that BLM must meet under its adaptive management strategy. Under NEPA, agencies must draft supplemental EISs not only prior to taking federal action, but whenever:

- (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or*
- (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.*⁵⁰

Under the law, an agency must perform supplemental EISs whenever there are substantial changes in the resource management plan.⁵¹ As it is written, the "soft" triggers under the plan may raise to the level which requires EIS analysis and public involvement under NEPA. The "hard" triggers proposed under the plan would certainly meet the threshold required under NEPA.

It also seems highly likely that new data and science will become available in the

⁴⁸ This rationale also speaks against the adoption of the current trigger responses as well.

⁴⁹ Idaho and Southwestern Montana Greater Sage-Grouse Proposed LUPA/Final EIS, pg. 2-19.

⁵⁰ See 40 C.F.R. § 1502.9(c)(1).

⁵¹ See 40 C.F.R. § 1502.9(c)(1).

future relating to environmental concerns which may bear on the proposed plan. The second threshold under the law will also likely require an EIS under NEPA as new information and data become available. The best available science ought to guide future management decisions for greater sage-grouse, not information that will inevitably become outdated. Courts have held that BLM must reexamine its decision when the EIS “rests on stale scientific evidence...and false assumptions.”⁵² As it is now written, BLM will rely on stale, outdated science for future management decisions under its adaptive management strategy.

Additionally, the courts have held that BLM cannot circumvent an EIS requirement under NEPA by merely implementing an already established and EIS supported agency policy.⁵³ NEPA requires agencies considering “major Federal actions significantly affecting the quality of the human environment” to perform an “environmental impact statement.”⁵⁴ An environmental impact statement (EIS) provides “full and fair discussion of significant environmental impacts and shall inform decision makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.”⁵⁵ NEPA requires an agency to take a “hard look” at potential environmental consequences before taking action,⁵⁶ and if the proposed action might significantly affect the quality of the environment, a supplemental EIS is required.⁵⁷ Just as BLM cannot avoid the requirement of a plan amendment by using “soft” and “hard” triggers to change management of greater sage-grouse, BLM also cannot use the adaptive management plan to avoid the requirements under NEPA.

As enumerated above, the state has numerous concerns with the BLM’s adaptive management strategy for the proposed plan amendments in Utah. BLM cannot avoid a plan amendment under FLPMA in the future by contemplating a variety of management decisions based on a myriad of projected scenarios. Likewise, BLM cannot use the adaptive management plan to avoid the requirements of an EIS process under NEPA. For these reasons, the adaptive management strategy in the plan is flawed, misguided, and violates FLPMA and NEPA and must be rewritten. The BLM must also provide for language describing a reverse trigger mechanism.

Net Conservation Gain

The BLM consistently fails to acknowledge the net conservation gain derived from habitat improvement projects performed under the auspices of the state’s Conservation Plan.⁵⁸ The state’s Conservation Plan meets the challenge of the greatest conservation need

⁵² See *Oregon Natural Ass’n v. Bureau of Land Management*, 2011 WL 5830435 at 6 (quoting *Seattle Audubon Soc’y v. Espy*, 998 F.2d 699, 704 (9th Cir. 1993)).

⁵³ *Id.* at 560.

⁵⁴ 42 U.S.C. § 4332(2)(C).

⁵⁵ 40 C.F.R. § 1502.1. See *Environ. Advocates v. Nat’l Marine Fisheries Serv.*, 460 F.3d 1125, 1134 (9th Cir. 2006). See also *Boody*, 468 F.3d at 560.

⁵⁶ *Id.* at 560 (quoting *Baltimore Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983)).

⁵⁷ *Id.* at 560 (quoting *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 371 (1989)).

⁵⁸ Conservation Plan for Greater Sage-grouse in Utah, available at https://wildlife.utah.gov/uplandgame/sage-grouse/pdf/greater_sage_grouse_plan.pdf.

in Utah – the maintenance and creation of useable space - through the large-scale improvement of habitat. In Utah, the science is clear – **“good available seasonal habitat can mitigate the effects of the anthropogenic footprint on the landscape.”**⁵⁹

For example, the FEIS completely mischaracterizes the teachings of the best available science in Utah, by opining:⁶⁰

“The additional protections under the Proposed Plans provide the greatest net conservation gain to GRSG habitats and populations in the Utah Sub-region.”

The FEIS makes similar assertions about net conservation gain of habitat in discussions about noxious weed control⁶¹ and coal mining restrictions⁶². In each of these sections, the BLM features net conservation gains caused by restrictions on development, but fails to recognize that the creation and maintenance of useable habitat can mitigate the effects of disturbance, and provide a net conservation gain.

To compound the BLM’s message of the absolute and sole need for restrictions, the FEIS makes the bold conclusion that:

*“By implementing restrictions on infrastructure in PHMA and on state and private land together, the cumulative beneficial effect on GRSG would be greater than the sum of their individual effects because protections would be applied more consistently across the landscape.”*⁶³

This statement itself makes no sense at all. Reasonable restrictions on infrastructure are only a portion of the conservation needs of the species. Habitat improvement and rehabilitation is just as vital, and completely complements a regimen of reasonable restrictions.

The state objects to the implication that federal regulatory action provides the “greatest” net conservation gains to habitat for the species. For example, the state has developed a 15 year conifer removal plan, which will significantly reduce the fuel load in critical areas. This plan will assist with the reduction in the potential for fire, and allows more useable landscape for the individual birds. This is conservation far beyond simple restrictions as proposed by BLM and Forest Service, and is completely ignored in the cumulative effects section of the FEIS.

These provisions of the FEIS should be amended to reflect the central role of the state’s habitat improvement projects in creating net conservation gains for GRSG habitat.

⁵⁹ Terry Messmer, Utah State University, personal communication, 2015.

⁶⁰ See FEIS at p. 5-89, referring to disturbance criteria, density caps, buffers, RDFs, and other infrastructure restrictions.

⁶¹ See FEIS at p. 5-86.

⁶² See FEIS at p. 5-72.

⁶³ FEIS at 5-57, 5-89, and 5-124.

Coal Mining - Criterion 15

The FEIS inaccurately represents Criterion 15 of the BLM regulations concerning the determination of suitability for the leasing of coal for any particular tract of land.⁶⁴ Criterion 15 states:

*Federal lands which the surface management agency and the state **jointly** agree are habitat for resident species of fish, wildlife and plants of high interest to the state **and which are essential** for maintaining these priority wildlife and plant species shall be considered unsuitable. (Emphasis added).*

Unfortunately, the FEIS does not include this critical provision. Instead, the FEIS states:

*Under ... the Proposed Plan, new coal lease applications on federal mineral estate would be subject to suitability determinations governed by 43 CFR, Part 3461.5. Under unsuitability criterion 15, **the BLM** may determine that portions of the MZ contain **essential** GRSG habitat and are unsuitable for all or certain stipulated methods of coal mining. If the BLM made this determination, it would apply stipulations to restrict coal mining and protect GRSG, including possibly prohibiting surface coal mining. (Emphasis added)⁶⁵*

The FEIS incorrectly omits the state's role in this determination, and incorrectly suggests that the BLM may unilaterally make a suitability determination. Such a reading is a plain violation of the BLM's regulations.

The state protests the inaccurate reflection of the BLM's regulations, and the intentional omission of the state's role in making suitability determinations for coal leasing for potential surface operations. The intent of the regulation, as evidenced by the initial discussions published in the Federal Register, and within a Secretarial Opinion, was that Criterion 15 was the place in the coal leasing review process, where the state could raise issues of habitat essential for the species it manages, according to constitutional law. The idea of joint determinations was finalized as a guard against the state recommending too much land be determined essential, in the BLM's discretionary opinion. Instead, the BLM has now turned this concept on its head, and is asserting, incorrectly, that the BLM is the initiator of the review, and the entity which makes the final determination. The state's role has been excised completely.

The state commented previously on this issue in letters to the BLM dated March 27,⁶⁶ April 9th,⁶⁷ and June 17,⁶⁸ 2015 concerning the Alton Coal Lease-by-Application

⁶⁴ See 43 C.F.R. 3461.5(o).

⁶⁵ FEIS at 5-72.

⁶⁶ See Attachment 4.

⁶⁷ See Attachment 5

Supplemental EIS. The state incorporates these letters by reference, and incorporates the included points of law and requests for action into this protest.

The above provision concerning Criterion 15 is contrary to law, and must be rewritten to reflect an accurate representation of the state's role in the suitability determination process.

Priority Habitat within the Panguitch Population Area

Alton Coal Development, LLC operates the Coal Hollow Mine, the only surface coal mine in the Utah Sub-region planning area, and seeks to expand the mining operation into adjacent BLM lands located within the South Panguitch Population planning area pursuant to a federal lease application filed in 2004.⁶⁹ In the BLM's Draft EIS for the LUPA, BLM determined that the sage-grouse population in the Panguitch Population Area was "low risk" and therefore the Panguitch Population Area was General Habitat which would allow for future mine expansion.⁷⁰ However, in the FEIS the BLM arbitrarily and capriciously changed the classification of the Panguitch Population Area from General Habitat to highly restrictive Priority Habitat, which may block Alton Coal from expanding its operations on to BLM land.⁷¹

Unfortunately the BLM did not provide any evidence or analysis in the FEIS explaining why it made this change. The state protests this reclassification of the Panguitch Population Area and requests that BLM eliminate the priority habitat designation for the Panguitch Population Area. The BLM's unexplained and unsupported reclassification is arbitrary and capricious and therefore unlawful.

Pursuant to the mitigation requirements in its existing private land mining permit, issued by the Utah Division of Oil, Gas and Mining in 2010, Alton Coal is obligated to increase sage-grouse habitat in the Panguitch Population Area by 1,700 acres.⁷² Pursuant to this enforceable mitigation requirement, Alton Coal has engaged in aggressive sage-grouse habitat improvements including predator control and pinyon-juniper removal.⁷³ During the period of Alton Coal's operations, sage-grouse populations in the Panguitch Population Area have been "stable to slightly increasing" according to the FEIS.⁷⁴ The FEIS also concludes that sagebrush cover within the Panguitch Population Area "reflect[s] a generally stable trend in habitat condition" and that it will "increase slightly" over the next 50 years.⁷⁵ This expanding sagebrush cover can be attributed in large part to Alton Coal's enforceable mitigation measures such as its pinyon-juniper removal projects, projects that led to the BLM's "low risk" assessment of sage-grouse population in the DEIS.

⁶⁸ See Attachment 6

⁶⁹ See Utah Greater Sage-Grouse Proposed LUPA/Final EIS ("FEIS"), p. 3-214; 4-116.

⁷⁰ See FEIS, at p. 3-34.

⁷¹ See FEIS, at p. 2-1, 2-14.

⁷² See Alton Sage-Grouse Habitat Mitigation Plan (Oct. 2009, Updated May 2012), p. 14.

⁷³ Alton Coal Annual Reports summarized and referenced in Alton Coal's comments to LUPA DEIS, January 29, 2014.

⁷⁴ See Utah Greater Sage-Grouse Proposed LUPA/Final EIS ("FEIS"), p. 3-34.

⁷⁵ *Id.* At 3-34.

Alton Coal can expand its coal mining operations to federal lands and also improve the habitat for sage-grouse. Habitat improvements would be required by the mitigation plan proposed in the SDEIS for Alton Coal's pending lease application. This mitigation plan would require Alton Coal to provide an additional 7,258 acres of sagebrush habitat.⁷⁶ Alton Coal's current mitigation plan is an enforceable condition of the existing mine permit, and the new mitigation plan would be enforceable as a lease stipulation as a condition of a new mine expansion permit on federal land. This new mitigation plan would likely be deemed an adequate regulatory mechanism under the ESA, addressing the Fish and Wildlife Service's concern over "inadequacy of regulatory mechanisms" in the ESA "warranted by precluded" listing decision for the Greater Sage-grouse.⁷⁷ The BLM should accordingly eliminate the proposed priority habitat designation for the Panguitch Population Area, in order to allow Alton Coal to continue its habitat improvement projects and to resolve the unexplained reclassification in the FEIS that is arbitrary, capricious, and contrary to federal law.

Process to Approve Waivers and Exemptions to NSO Stipulations

The State of Utah protests BLM's proposed review process for waivers and exemptions from the general stipulation requiring No Surface Occupancy (NSO) for fluid mineral operations within priority habitat. The proposed review process features the requirement for unanimous agreement among the BLM, the state and the U.S. Fish and Wildlife Service. This proposed requirement for a decision to be made by unanimous approval of a committee rests upon an improper assumption of authority by the BLM, given that the state is the entity with constitutional authority to manage the species. The state does not waive its constitutional authority over management of the species, and determinations concerning the use of the habitat for this purpose.

BLM proposes that PHMA would be designated as open to leasing fluid minerals, subject to NSO stipulations.⁷⁸ The FEIS proposes the following:

Any exceptions to this lease stipulation may be approved by the Authorized Officer only with the concurrence of the State Director. The Authorized Officer may not grant an exception unless the applicable state wildlife agency, the USFWS, and the BLM unanimously find that the proposed action satisfies (i) or (ii). Such finding shall initially be made by a team of one field biologist or other GRSG expert from each respective agency. In the event the initial finding is not unanimous, the finding may be elevated to the appropriate BLM State Director, USFWS State Ecological Services Director, and state wildlife agency head for final resolution. In the event their finding is not unanimous, the exception will not be granted.⁷⁹

The state protests BLM's proposed "decision by committee" process. First, as long

⁷⁶ See Alton Coal Tract Lease By Application, Greater Sage-Grouse Mitigation Plan (March 2014).

⁷⁷ ESA Listing Petition Decision, 75 Fed. Reg. 13910. (March 23, 2010).

⁷⁸ See FEIS, at p. 2-36.

⁷⁹ *Id.* at pg. 2-36.

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as greater sage-grouse is not listed under the provisions of the Endangered Species Act, management authority of the species constitutionally resides with the state of Utah. The state will provide the biological information for these and other BLM determinations. BLM and Forest Service are required to use the state's data. The recent Report accompanying the Appropriations Act states:

The Federal government should recognize and fully utilize State resources, including scientific information about species population numbers, conservation status, and habitat availability, among other data. The Committee directs Federal agencies to cooperatively engage with State wildlife agencies and to use State fish and wildlife data and analyses as a primary source to inform Federal land use, land planning, and related natural resource decisions. The agencies should not duplicate analysis of raw data previously prepared by the States. Federal agencies should also provide their data to State wildlife managers to ensure that the most complete data is available to be incorporated into all decision support systems.⁸⁰

Allowing the Fish and Wildlife Service's to have an equal, decision-making role in a required "unanimous" determination violates the state's authority over wildlife, and is therefore contrary to law. The provision for unanimous agreement represents, conversely, the authority to exercise veto power over state management decisions. The state strongly objects to giving Fish and Wildlife Service the power to veto any requests for waivers or exemptions, because the Fish and Wildlife Service has no authority over the species or the habitat if the species is not listed. This section must be rewritten.

Appendix R – Reasonably Foreseeable Development Failure to Employ the Best Available Information Failure to Meet Agency Defined Expertise Standards

The state protests the failure to amend Appendix R to include important, relevant scientific data in the required discussion of the Reasonably Foreseeable Development scenario for oil and gas development. In addition, the information in Appendix R was generated using information which was not prepared or review by persons with the requisite expertise. As a result, the FEIS lacks sufficient information upon which to make the required oil and gas resource occurrence determinations, and to thereafter make development potential ratings within sage-grouse habitat.

The BLM relies on the work of Copeland and others as the basis for the required Reasonably Foreseeable Development study. This work was used simply because it was a peer-reviewed paper. However, the data within the work does not meet the required foundation as data created or reviewed by the requisite expertise for BLM mineral evaluations.⁸¹ As a direct result, the map which purportedly demonstrates "potential" is

⁸⁰ See Report in Congressional Appropriations Bill, Department of the Interior, Environment, and Related Agencies Appropriations Bill, 2016, H.R. Rep. No. 114-170, pg. 6.

⁸¹ See e.g., BLM Manual Section 3060, Subsection 14: "Mineral land determinations will only be conducted by mineral examiners or by engineers and **geologists** who have completed BLM Course 3000-11, Mining and Beneficiation Cost Estimation and Economic Evaluation." See also Subsection 44: ""All mineral reports will

dramatically mislabeled, and does not meet any reasonable standard for data accuracy in reference to mineral potential.⁸² The map, which is really no more than a display tool, does little to disguise the fact that the underlying analysis is, in fact, no more than an attempt to predict areas of potential future drilling based on existing drill holes, broad geophysical and topographical data which collectively determine the edges of the oil and gas-trapping basins,⁸³ and some very coarse (1:5,000,000 scale) geologic mapping. These techniques, even if employed by professional geologists, are not appropriate for delineating oil and gas occurrence and development potential, especially when more detailed and specific geologic petroleum information is available. The 1:5,000,000 scale mapping may be appropriate for some purposes, but is not the appropriate scale for analysis of oil and gas occurrence within individual habitat areas for greater sage-grouse. As a further challenge to the usefulness of the Copeland paper in this context, the paper ignores new information, and the effects of technological advances. The paper's assessment of "potential" is dramatically ill-suited for the purposes of a mineral potential report. The BLM must address this serious deficiency in information, or face a determination of an arbitrary and capricious decision.

Given the inappropriate use of the Copeland paper for the purpose of determining oil and gas occurrence in a RFD scenario, the BLM should use the most recent determination of oil and gas occurrence available. For eastern Utah, this data was developed as part of the complete mineral potential reports prepared as part of the recent Price, Vernal, Richfield, and Kanab Resource Management Plan planning processes. The FEIS summarily dismisses this information as dated. However though technology has advanced, and the world markets have fluctuated, thereby affecting the ebb and flow of actual development, the underlying occurrence potential has not changed significantly in the last 10 to 15 years.

As a result of the BLM's use of the Copeland paper rather than engaging in the required detailed analysis, all environmental or economic determinations in the FEIS must be redone to reflect the more accurate data yet to be produced. Failure to do so constitutes an arbitrary and capricious decision to avoid the BLM's regulations, and violates the NEPA provisions requiring a hard look.

Forest Service Misapplied Scientific Standards on Anthro Mountain

The Forest Service has continued to impose erroneous priority habitat standards, desired conditions, and guidelines on the general habitat within the Anthro Mountain area. The State of Utah informed USFS of this scientific error in the Draft EIS in a letter dated March 3, 2015⁸⁴ (hereby incorporated into this letter). As a result of the state's comments on the DEIS, USFS agreed to a series of stipulations specific to the Anthro Mountain area

be reviewed and approved by the DSD, Mineral Resources. A knowledgeable mineral specialist or **geologists** approved by the DSD, Mineral Resources shall conduct a technical review."

⁸² BLM also fails to properly cite the study by Copeland and other in the reference portion of Appendix R, though it is cited in the text.

⁸³ Geophysical data includes gravity and aeromagnetic surveys. Along with topographic data, this type of information is useful in determining the outer edges, or geographic extent of, the primary oil and gas trapping basins.

⁸⁴ See Attachment 7.

noted in Appendix P of the FEIS.⁸⁵ Unfortunately, the Forest Service's Proposed Plan Amendment in the FEIS is not consistent with Appendix P.⁸⁶ In numerous sections,⁸⁷ the Forest Service proposes to apply conditions to a smaller piece of land as providing priority habitat to sage-grouse without a scientific basis and without acknowledging known mineral development. The Forest Service must revise their Proposed Plan Amendment to abide by the provisions within Appendix P which are consistent with sage-grouse habitat conditions and future sanctioned oil and gas projects.

Failure to Issue a Supplemental Environmental Impact Statement Failure to Provide Opportunity for Comment on New Information

NEPA requires federal agencies to consider the environmental impact of any major federal actions they propose to undertake, and to prepare EISs for all "major Federal actions significantly affecting the quality of the human environment."⁸⁸

NEPA regulations further require that:⁸⁹

"agencies shall prepare supplements to either draft or final environmental impact statements if:

- (i) the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or*
- (ii) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."*

Most courts interpret the terms "substantial changes" and "environmental concerns" by adopting the Council for Environmental Quality's (CEQ) guidance that "supplementation is not required when two requirements are satisfied: (1) the new alternative is a '*minor variation* of one of the alternatives discussed in the draft EIS,' and (2) the new alternative is '*qualitatively within* the spectrum of alternatives that were discussed in the draft [EIS]."⁹⁰ The First, Eighth, Ninth, and Tenth Circuits have adopted this CEQ guidance as the framework of the analysis.⁹¹

⁸⁵ See FEIS, Appendix P, GRSG-M-FML-ST-082-Standard, p. 50.

⁸⁶ See FEIS, Section 2.6.3,

⁸⁷ *Id.* see: GRSG-LR-LOA-GL-023, GRSG-WS-ST-025, GRSG-WS-ST-026, GRSG-R-ST-063, GRSG-M-FML-ST-081, GRSG-M-FML-GL-083, GRSG-M-FML-GL-085, GRSG-M-NEL-GL-099, GRSG-LR-LW-GL-024, GRSG-LR-SUA-ST-013, GRSG-LG-ST-036, GRSG-LG-GL-038, GRSG-R-GL-065, GRSG-RT-GL-071, GRSG-M-FMUL-ST-075, GRSG-M-FML-ST-077, GRSG-M-FMO-ST-086, GRSG-M-FMO-GL-088, GRSG-M-CMUL-ST-092, GRSG-M-CML-ST-093, GRSG-M-MM-ST-100, GRSG-LR-SUA-GL-021

⁸⁸ 42 U.S.C. § 4332(2)(C); *Habitat Educ. Ctr. v. U.S. Forest Serv.*, 673 F.3d 518 (7th Cir. 2012).

⁸⁹ See 40 C.F.R. § 1502.9.

⁹⁰ *Russell Country Sportsmen v. U.S. Forest Service*, 668 F.3d 1037 (9th Cir. 2011).

(emphasis added in *Russell Country Sportsman*) (quoting Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18, 026, 18, 035 (Mar. 23, 1981)).

⁹¹ See *New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683 (10th Cir. 2009); *In re Operation of Missouri River Sys. Litig.*, 516 F.3d 688 (8th Cir. 2008); *Dubois v. U.S. Dep't of Agric.*, 102 F.3d 1273 (1st Cir. 1996); *Russell Country Sportsmen v. U.S. Forest Service*, 668 F.3d 1037 (9th Cir. 2011).

While it's true that the courts have ruled that "agencies must have some flexibility to modify alternatives canvassed in the draft EIS to reflect public input,"⁹² if the final action departs substantially from the alternatives described in the draft EIS, however, a supplemental draft EIS is required.⁹³ A supplemental EIS is unnecessary when an agency's final decision falls "within the range of alternatives" considered in an EIS.⁹⁴ However, an SEIS is required whenever a proposed project constitutes "a different configuration" of previously analyzed elements.⁹⁵

The CEQ regulations reflect that "[a] significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial."⁹⁶ Even if post-EIS changes in a project are beneficial to the environment, or are intended to mitigate environmental impact, if those changes are significant, a supplemental statement is required:

The proper question is not the intent behind the actions, but the significance of the environmental impacts. And even if ... the new land use will be beneficial in impact, a beneficial impact must nevertheless be discussed in an EIS, so long as it is significant. NEPA is concerned with all significant environmental effects, not merely adverse ones.⁹⁷

Sagebrush Focal Areas and Biologically Significant Population Units

The State of Utah protests the inclusion of two brand-new legal constructs in the FEIS. Each of these two constructs must be made available to the public for review in a Supplemental EIS before the BLM may make use of them in a final decision. These two concepts – sagebrush focal areas and biologically significant units – were not offered for review in the Draft EIS. These constitute wholly new planning features, and are not themselves simply items within the spectrum of alternatives analyzed in the Draft EIS.

Sagebrush Focal Areas stem from a memo from U.S. Fish and Wildlife Service Director Dan Ashe. In this memo, dated October 27, 2014 (the October Memo), the U.S. Fish and Wildlife Service introduces, for the first time, the concept of population "strongholds" for greater sage-grouse. Prior to this time, the Service had endorsed the idea that conservation objectives would be focused within areas denominated as Priority Areas for Conservation (PACs). PACs were created in a collaborative manner between each individual state and the Fish and Wildlife Service during the preparation of the Conservation Objective Team (COT) Report, finalized by the Fish and Wildlife Service in March 2013.

⁹² See *California v. Block*, 690 F.2d 753 (9th Cir. 1982).

⁹³ See *Russell Country Sportsmen v. U.S. Forest Service*, 668 F.3d 1037 (9th Cir. 2011).

⁹⁴ *Russell Country Sportsman*, 668 F.3d at 1046.

⁹⁵ *Dubois v. U.S. Dep't of Agric.*, 102 F.3d 1273 (1st Cir. 1996).

⁹⁶ 40 C.F.R. Section 1508.27(b)(1); See *National Parks Conservation Ass'n v. Jewell*, 965 F.Supp.2d 67 (2013).

⁹⁷ *National Wildlife Fed'n v. Marsh*, 721 F.2d 767 (11th Cir. 1983) (quoting *Envtl. Def. Fund v. Marsh*, 651 F.2d 983 (5th Cir. 1981)).

The COT Report consists of a set of recommendations concerning the objectives for conservation, but is specifically not intended to be a determination of the mechanisms – easements, regulations, incentives – necessary to meet the objectives. States were purposely provided the freedom to determine how best to achieve the objectives, based upon each state’s ecological and legal environment. However, as a result of the strongholds memo, the Service has functionally rejected the COT Report’s reliance on flexibility, and firmly established an absolute requirement of regulatory inflexibility. No longer are the collaboratively-created PACs the center of the conservation effort, rather these completely unknown stronghold constructs are.

Neither the BLM, the Forest Service nor the U.S. Fish and Wildlife Service has provided a detailed explanation concerning the information or analytics which went into the creation of these new constructs - strongholds. The October Memo mentions several data layers, but provides no relative weighting scheme, or no discussion of the relevance of any particular data layer, or even a reference to the actual data itself. None of this has been provided for public review. In contrast, the PACs within the state of Utah were derived from the 2012 seasonal habitat data (which the BLM rejected) and the resulting state Conservation Plan. The process for identification of the PAC areas was fully discussed in a public forum.

The October Memo mentions data such as the “highest breeding densities of sage-grouse” and “existing high-quality sagebrush habitat.” Of course, the state of Utah used this very same information in the preparation of the PACs contained in the COT Report. The October Memo also mentions scientific literature which identifies areas essential to the conservation and persistence of the species. Again, the state of Utah identified all essential conservation areas as part of its process, and employed the best locally-relevant scientific research.

The October Memo also identifies “partner organizations, and accords those organizations credibility toward the creation of the strongholds. This statement is a direct affront to the information provided by Utah and the other states. The Fish and Wildlife Service completely ignores the basic scientific information provided by the state, which was used to create the PACs, in favor of information (completely unidentified) provided by others. What information? When can the public see this information and evaluate it against the state’s fundamental scientific literature?

The October Memo also mentions models which predict the “velocity of climate change” and “fire potential.” When will these be made available for review by the public?

The U.S. Fish and Wildlife Service may be using this information as part of its listing deliberations, but if the Fish and Wildlife Service is strongly encouraging – even requiring – its use, the fundamental information behind the construct must be made

available for public review, pursuant to the provisions of NEPA.⁹⁸

The October Memo has been directly translated by the BLM and Forest Service into the areas labeled Sagebrush Focal Areas (SFAs). Both agencies are proposing to attach stringent management restrictions to the new construct. Specifically, the areas would be withdrawn from the application of the mining laws, would become permanent NSO areas for fluid mineral development, and would have the highest priority for the review of grazing allocations and allotments.

The FEIS asserts that NEPA is not violated through the creation of this new construct. The FEIS asserts that the name is simply a new label, and that each of the proposed management restrictions – withdrawal, NSO and grazing review - were analyzed in one of the Draft EIS alternatives. This is an inaccurate representation of the requirements of NEPA, and the facts behind the creation of the stronghold/SFA construct.

NEPA requires all aspects of a proposal to be included for public comment and review. As discussed above, the fundamental data behind the need for, and the creation of, SFAs has been withheld from public scrutiny. The fact that some of the management restrictions were reviewed, in unrelated contexts, is irrelevant. The SFA construct is not a minor variation of one of the alternatives in the EIS (the FEIS does not even hazard a guess as to which one of the five), nor is it “qualitatively within the spectrum” of the various alternatives.

The SFA construct is proposed to be employed in conservation plan implementation just as similar entities such as an Area of Critical Environmental Concern would be employed. Proposed ACECs, for example, require full NEPA disclosure concerning the need, the qualifications of an area according to a pre-determined standard, and the local conditions requiring the creation of any particular ACEC. ACECs may not be generated suddenly between the Draft and Final EISs for an RMP amendment or revision. SFAs are not simply new labels for geographic areas, they are full plan implementation structures which were not presented within the spectrum of alternatives analyzed. SFAs are a direct challenge to the information presented in the COT Report about the collaboratively created PACs, and are based upon information and analytic choices hidden from public scrutiny. Neither BLM nor Forest Service may make use of this construct until the SFA construct is fully subjected to NEPA’s “hard look” doctrine.

The new construct of Biologically Significant Population Areas suffers from the same NEPA deficiencies. The construct was not presented within the Draft EIS, and absolutely no information has been provided about the information or analytic choices which went into the creation of the construct. Because management choices are tied to the existence of the construct, the background information must be made available for review by the public. Neither the BLM nor the Forest Service may make use of the construct until the requirements of NEPA are satisfied.

⁹⁸ The Director of the Fish and Wildlife Service has been heard to say in recent meetings that the strongholds are “pivotal” to a potential “not warranted” decision, and the Department of Interior has been pushing this requirement on many fronts. Pers. comm.. 2015.

Similarly, the new treatise on lek buffers, published by the U.S.G.S. between the Draft and Final EISs, must be subjected to public review through the mechanism of an SEIS.⁹⁹ This Report does not constitute original source material, and is therefore not a proper choice of information to employ in the FEIS. These limitations, along with the relevant source studies, must be made available for public comment in an SEIS.

SFAs May Have Unintended Consequences – Rich County SFA

Full compliance with the provisions of NEPA concerning the SFA construct is vital for a full examination of the SFA concept in Utah, because unintended consequences may result. The proposed SFA in Rich County, Utah is a case in point. The area is primarily rural, agricultural countryside. Ranching is a big part of the way of life, and ranchers must use the federal lands as part of their operations. The bottom lands owned by the private ranchers are the winter habitat for the year-round needs of the birds, however, the winter habitat lands are not included in the SFA. The SFA designation does *not* provide for the year-round habitat needs of the species, while the coordinated conservation tools found in the state's SGMA (PAC) do. The SFA designation does little for the conservation needs of the species.

Deseret Land and Livestock (DL&L) runs a large ranching operation within the state's Rich-Morgan-Summit SGMA, and has had great success stabilizing sage-grouse populations, along with improving the lands for both livestock and wildlife. Areas on the ranch also once provided well pads for oil and gas operations, which well pads are now covered in sage and provide excellent habitat. BLM and the Forest Service have been evaluating a proposal (known as Three Creeks) to manage similar lands just to the north of DL&L, using the techniques which DL&L has employed to such success. These techniques are generally described as rapid movement of herds through smaller fields, or time and intensity adjustments.

The area also has high potential for oil and gas, though development is difficult and expensive, and would not be expected for some time. The proposed SFA lies directly on top of this potential oil and gas area, and therefore represents nothing more than an attempt to block development of the resource. The proposed NSO stipulation will not provide the expected conservation benefits, because the federal lands within the proposed SFA are also intermixed with state and private lands. There is the possibility that the Fish and Wildlife Service proposal, using the provisions of the state Conservation Plan, will only have the ultimate result of placing the development in a location less advantageous from a conservation perspective than if the federal lands were available for surface activities. The proposed management for fluid minerals in priority habitat provides just this flexibility. The only "certainty" represented by the Fish and Wildlife Service demand is that development, when and if the economics permit it, will be saddled by counter-productive restrictions on the ability to make an intelligent and reasoned choice. This represents a definitive Fish and Wildlife Service decision to foster poor conservation of the species.

⁹⁹ See USGS Report *Conservation Buffer-distance Estimates for Greater Sage-Grouse – A Review*; Open File Report 2014-1239, 2014.

The BLM and the Forest Service may not simply adopt the Stronghold concept generated by the Fish and Wildlife Service. BLM and Forest Service must provide all the relevant information about the need for the construct, and the basis for its placement in various locales. Failure to do so allows BLM and Forest Service to impose restrictive management provisions without full compliance with NEPA, and contrary to the best scientific information available.

Elimination of Mineral Exploration

As a result of its failure to properly release information related to the creation of SFAs, the BLM may also not propose attachment of any particular restrictions to the new management construct. In particular, the proposal to withdraw areas from the application of the mining laws is unwarranted by the evidence, and is therefore contrary to law.

A mine is simply another disturbance, one which must be authorized according to the state or federal permitting authorities, as provided in state conservation plans. The ultimate plan amendments adopted by BLM and Forest Service will add to the requirements. The Fish and Wildlife Service 2010 listing decision does not list mining as a major threat to the species, reinforcing the idea that it is just another disturbance to be reckoned with.

The FEIS identifies the recommendations for mining contained within the COT Report, stating:

“For mining, the COT report objective is to maintain stable to increasing GRSG populations and no net loss of GRSG habitats in areas affected by mining.”¹⁰⁰

The FEIS further states that “actual locatable mining in GRSG habitat is minimal” in MZ III (Utah, Nevada mostly south of I-80),¹⁰¹ but also states:

“There are approximately 1,137,000 acres of GRSG habitat in MZ IV where energy and mineral development ... is presently occurring.”

This latter statement is designed specifically to mislead the public, and is therefore inaccurate. Industry provides figures which demonstrate that total disturbance west-wide from mining is far less than that, perhaps on the order of 375,000 acres. The FEIS itself disputes the above exaggeration by stating:

“There are 652,000 acres of mining and mineral materials disposal sites On BLM administered surface land on priority habitat and general habitat in MZ IV.National Forest System lands contribute to the direct effects on 170,000 acres of priority habitat and general habitat.”¹⁰²

These more accurate figures must be provided to the public through issuance of an

¹⁰⁰ See FEIS at p. 5-96.

¹⁰¹ See FEIS at p. 5-74.

¹⁰² See FEIS at p. 5-100.

SEIS. Mineral exploration will be eliminated upon nine million acres of land, in order to eliminate a minor threat. The solution is arbitrary and capricious because it is disproportionate to the threat of mining, and the flexibility in the recommended solution, as presented in the Fish and Wildlife Service-issued COT Report.

BLM has not provided sufficient information to the public concerning the impact the proposed withdrawal will have upon mineral exploration. BLM and Forest Service may not make a recommendation of this scope and magnitude until the provisions of NEPA have been satisfied concerning the true amount of land disturbed by mining operations, in light of the nine million acre proposed withdrawal. The proposed withdrawal, even as a recommendation, far exceeds the need for management of mining as a minor disturbance on the land.

Failure to comply with the Regulatory Flexibility Act of 1980

The proposed plan amendments and FEIS have been drafted and proposed for implementation without regard to the requirements under the Regulatory Flexibility Act of 1980 (Act). In the Act, Congress declared that:

*when adopting regulations to protect the health, safety and economic welfare of the Nation, Federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public.*¹⁰³

Additionally, the Act also states that:

*the process by which Federal regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact of proposed and existing rules on such entities, and to review the continued need for existing rules.*¹⁰⁴

The proposed plan amendments and FEIS will impose unnecessary burdens on the public and have been developed by the BLM and Forest Service without the necessary involvement and comments from small businesses, small organizations, or cities. Although some small governmental jurisdictions and towns have been allowed to participate in the process as a cooperator, their comments have not been considered or used in a thoughtful or meaningful way to guide the outcome of the impacts that will arise from the federal agencies' decisions. There has not been an adequate assessment of the impact that the proposed rules may have on small businesses, small organizations, and small governmental jurisdictions as required by the Act.

¹⁰³ Section 2(a)(1), Public Law 96-354, the Regulatory Flexibility Act.

¹⁰⁴ *Id.*, Section 2(a)(8).

BLM Director (210)
Attn: Protest Coordinator
June 29, 2015
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Conclusion

The State of Utah appreciates the opportunity to file these protests, and to work further with the BLM to produce plan amendments which will support conservation of greater sage-grouse in Utah. Please feel free to call us with any questions or concerns.

Sincerely,

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

Kathleen Clarke
Director