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Public Lands Council and
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VIA EMAIL ONLY

Sage-Grouse Amendment Comment
USDA Forest Service Intermountain
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Re: Comments on Notice of Intent to Prepare Environmental Impact Statements on Greater Sage-Grouse Land Management Issues that Could Warrant Land Management Plan Amendments for National Forests in Idaho, Montana, Nevada, Utah, Colorado and Wyoming. 82 Fed. Reg. 47248 (Oct. 11, 2017).

Dear Sage Grouse Plan Revision Team:

The Public Lands Council ("PLC"), along with its national affiliates the National Cattlemen's Beef Association ("NCBA") and the American Sheep Industry Association ("ASI"), appreciates the opportunity to provide scoping comments on greater sage-grouse land management issues that could warrant land management plan amendments for National Forests in Idaho, Montana, Nevada, Utah, Colorado and Wyoming. 82 Fed. Reg. 47248 (Oct. 11, 2017).

In May 2015, BLM and the Forest Service released their respective final Environmental Impact Statements, amending 98 Western resource management plans. The decision documents issued in September 2015 included four RODs, one from each agency for the Great Basin region and one from each agency for the Rocky Mountain region. The major planning effort involved coordination between the BLM and the Forest Service. These two agencies manage about half of the 165 million acres where sage grouse are spread among various Western BLM districts and National Forests ("federal lands").

While the amended plans did not mandate any specific on-the-ground conservation actions, they identified and imposed significant land-use restrictions within vast areas of federal lands. The plan amendment decision was met with substantial opposition, and nine states

appealed. Beginning in the mid-2000s, many Western States had already begun developing their own sage grouse management plans at the request of the federal government, with the goals of both addressing various conservation challenges unique to each state and preventing restrictive federal management plans or a species listing under the ESA. Western States' sage grouse management plans have been the primary driver of improvements to the species range-wide. These affected states have attempted to avoid a restrictive and economically damaging federal sage grouse management plan and address the different management concerns unique to each state. To date, 11 affected Western States have issued state management plans.

The current administration is now reconsidering portions of the 98 BLM and Forest Service plan amendments made by the prior administration. BLM just completed a scoping comment period on its Notice of Intent to Amend BLM's Land Use Plans that were amended or revised in 2014 and 2015 regarding Greater Sage-Grouse conservation in the States of California, Colorado, Idaho, Nevada, Oregon, Wyoming, North Dakota, South Dakota, Utah and Montana ("2015 Sage-Grouse Plans") and Prepare Associated Environmental Impact Statements or Environmental Assessments. 82 Fed. Reg. 47248 (Oct. 11, 2017). The Forest Service's request for scoping comments is the USDA's counterpart in this interagency process for greater sage-grouse land management issues that could warrant plan amendments for National Forests in Western States. A key concern is how to remove the overly-restrictive components of these amendments, which have been criticized as rushed, too restrictive on land use, and procedurally flawed.

PLC represents livestock ranchers in public policy and federal legislation as part of PLC's mission to preserve the natural resources and unique heritage of the West. Public land ranchers own some of the most productive private land and manage vast areas of public land, accounting for critical wildlife habitat and a huge portion of the nation's natural resources. PLC works to maintain a stable business environment in which livestock producers can conserve the West and feed the nation and world. PLC is a national organization dedicated to representing approximately 22,000 ranching families operating on federal lands in the Western United States. Those 22,000 families graze livestock and steward approximately 250 million acres of federal lands while owning approximately 140 million acres of adjacent private land. As such, PLC is committed to rangeland and farmland use programs that allow their members to continue the responsible and productive use of federal lands within their respective states.

The following are key concerns PLC has about potential amendments to the 98 affected RMPs and Forest Plans.

Plan Amendments are Necessary. As an initial matter, PLC believes that the anticipated plan amendments are necessary. Administrative changes would not provide the necessary authority to make the significant changes that are needed to properly address sage-grouse management while avoiding overly-restrictive criteria that unnecessarily limits grazing. Administrative changes can only be used to reflect minor changes such as corrections or clerical errors. Formal plan amendments are required to add, modify, or remove plan components, or to change how or where plan components apply to all or part of the planning area of a particular Forest Plan. Plan amendment is required by 36 C.F.R. § 219.13.

Defer to State Affiliates Concerning State Conservation and Grazing Management Practices. PLC appreciates the Forest Service’s continued acknowledgement of the multiple-use and sustained yield mandates of NFMA and MUSYA, the BLM’s corresponding management duties under FLPMA, and the agencies’ recognition that well-managed grazing can be beneficial to Greater Sage-Grouse (GRSG). PLC believes that sage-grouse conservation and livestock grazing can beneficially co-exist. Top threats to the GRSG include rangeland wildfire, invasive weeds, and development pressure, not livestock grazing. Livestock grazing is not even in the top-ten list of threats. Yet, despite this, the Forest Service and BLM have wrongfully imposed landscape-wide regulatory changes on the grazing livestock industry for purposes of conserving habitat for a single species through an inflexible framework that is overly restrictive and fails to account for the very site-specific conditions necessary to make informed decisions. The factors driving habitat loss and fragmentation vary greatly from state to state.

As noted above, 11 Western States’ sage-grouse management plans have been the primary driver of improvements to sage-grouse range-wide. Currently, there is a lack of evidence that the existing management approaches under each of the Western States’ individual state conservation plans are insufficient. PLC’s members include affiliates from each of the affected Western States.¹ PLC defers to the positions about whether Forest Plans and RMPs for federal lands within the geographic regions of individual states should be amended, and whether such amendments should include some or all of the sage-grouse conservation measures and strategies contained in the individual state plans. To the extent any of PLC’s state affiliates submit scoping comments regarding the Forest Service’s intent to amend the 2015 Sage-Grouse Plans, PLC joins and incorporates those comments. To the extent any of PLC’s state affiliates submit comments or concerns that vary from PLC’s overall comments contained in this scoping letter, PLC conforms its comments with respect to those of its state affiliate regarding local issues.

Promote Predator Control to Enhance Conservation Efforts. The Forest Service and BLM have invested substantial resources to help prevent or reduce wildlife damage to agricultural, industrial, and natural resources; property; livestock; and threats to public health and safety on private and federal lands in cooperation with other federal, State and local agencies, tribes, private organizations, and individuals. Programs have been specifically developed to responsibly reduce conflicts involving animals preying on, or harassing, livestock and wildlife,

¹ PLC has state affiliates in California (California Cattlemen’s Association, California Wool Growers Association), Colorado (Colorado Cattlemen’s Association, Colorado Livestock Association, Colorado Wool Growers Association), Idaho (Idaho Cattle Association, Idaho Wool Growers Association), Nevada (Nevada Cattlemen’s Association, Nevada Wool Growers Association), Oregon (Oregon Cattlemen’s Association, Oregon Sheep Growers Association), Wyoming (Wyoming Stock Growers Association, Wyoming Wool Growers Association), North Dakota (North Dakota Stockmen’s Association, North Dakota Lamb & Wool Producers Association), South Dakota (South Dakota Cattlemen’s Association, South Dakota Sheep Growers Association), Utah (Utah Cattlemen’s Association, Utah Wool Growers Association) and Montana (Montana Stockgrowers Association, Montana Wool Growers Association).

including to programs to address predatory populations and their threat to sage-grouse recovery efforts. In amending the 2015 Sage-Grouse Plans, PLC encourages the agencies to promote active predation management, which is necessary to effectively manage nesting areas to protect eggs and chicks during nesting and fledging periods.

Unrealistic Funding and Ability to Implement. The Forest Service follows interagency Sage-Grouse management with guidance issued by BLM, including through seven instruction memoranda (IMs 2016-139 through 2016-145). These IMs provide guidance on certain elements of the 2015 Sage-Grouse Plans, note that implementation will necessarily require substantial future work by both the Forest Service and BLM – in addition to the *98 land use plans already amended* – with no proportionate increase in budget or staffing for either agency. Without commenting on the substance of any particular case, it is well known that the agencies are already under intense litigation pressure from environmental groups and others throughout the Western U.S. due to continuing delays in completing mandatory statutory deadlines, failing to comply with NEPA’s procedural requirements, and not completing required monitoring. We are extremely concerned that the Forest Service will simply add more work to its already full decisional plate with absolutely no realistic ability to fund or implement those decisions meaningfully.

As a result, amending the 2015 Sage-Grouse Plans in a manner which undertakes more substantive work, rather than carefully conforming to existing state conservation plans where appropriate, will only result in more litigation, and it will not benefit the resource or those who depend upon the resource for their livelihoods. Any amendments must be designed to allow the Forest Service to affordably and efficiently implement workable conservation in light of its finite resources.

Abandon Habitat Assessment Framework (HAF). The agencies already have a system in place for Rangeland Health Assessments and standards to determine habitat suitability. The Forest Service lacks the budget and training to implement the Habitat Assessment Framework and already has sufficient monitoring protocols that have been developed and implemented through its existing rangeland health assessment. At most, the Habitat Assessment Framework should only be applied as a guideline on Forest Service allotments. We believe that permit requirements together with the existing Rangeland Health Assessment monitoring provide all of the necessary standards and should remain the only required tools for assessing livestock grazing. The Forest Service should abandon using the HAF, including tables 2-2 and 2-3, as a basis for adjustments or developing thresholds under grazing permits (for example, for perennial grass height). HAF is not sustainable over the long-term due to the vast area at issue, the extent of the Forest Service’s other commitments, and the agency’s current level of funding. If the Forest Service determines that a method beyond the existing permit requirements and Rangeland Health Assessment monitoring is required, PLC would prefer an alternative to HAF that is more compatible with state conservation plans, where appropriate (and if consistent with the views of our state affiliates). Whatever method selected should rely primarily on state and local insight and direction in order to achieve a more ecologically based, flexible approach suitable to addressing site-specific issues.

Allow Proper Grazing and Compatible Grazing Practices. Implementing the 2015 Sage-Grouse Plans has resulted in eliminating livestock grazing on some RNAs and ACECs. There is no rational reason under either NFMA or FLPMA to close certain areas to livestock grazing on a large land scale, particularly where proper grazing is compatible with the ecology of the local areas. We are further concerned that incorrect assumptions and speculation, rather than science, is being used to support these broad closures. Many RNAs have accommodated livestock grazing since their inception, which has been found to be compatible with sage-grouse conservation by reducing fuels, helping to control the spread of invasive species, and maintaining rangeland health. The agencies should more explicitly recognize that livestock grazing practices complement sage-grouse conservation and may improve its habitat by sustaining a diversity of plants that are important to the greater sage-grouse and by reducing the risk of wildfire that destroys the habitat.

No Permit Modification Pending NEPA Analysis and Documentation. The agencies should provide certainty that they will not be modifying any grazing permits based on greater sage-grouse population or habitat criteria pending finalization of the Land and Resource Management Plan amendments anticipated by the Forest Service's latest scoping notice and corresponding BLM process that is already underway. For all of the reasons set forth in these comments, modifying grazing permits based on these criteria is unworkable.

Remove Constraints to Manage Water Development. Members of PLC have constructed and maintain ditches, canals, water diversion structures, watering troughs, and watering holes within federal allotments and sage grouse focal areas (SFAs), priority habitat management areas (PHMAs), general habitat management areas (GHMAs), important habitat management areas (IHMAAs), and other habitat management areas (OHMAs). These water developments also occur within lek buffer zones where activity is restricted during the breeding season under the 2015 Sage-Grouse Plans. These improvements and features represent a significant investment and are absolutely necessary for our members' agricultural and ranching operations. The Forest Service should amend the 2015 Sage-Grouse Plans within affected Western States to remove constraints and interference with our members' ability to maintain and operate these water developments.

De facto Creation of ACECs. The Forest Service absolutely must reevaluate its creation and decision to set aside *millions of acres of federal lands designated off-limits* as SFAs, PHMAs, GHMAs, IHMAAs, and OHMAs because such designations have unlawfully created de facto Areas of Critical Environmental Concern (ACECs). The agencies should avoid using SFAs and these other de facto land allocations as a tool to prioritize the review or evaluation of grazing allotments. These areas were adopted without sufficiently complying with the required notice and public comment and plan amendment procedures, and their creation violates NFMA, FLPMA, and NEPA. These areas were not properly analyzed in adopting the 2015 Sage-Grouse Plans. Several levels of sage-grouse habitat with associated restrictions already existed, and if

specific areas of concern warrant added restrictions they should be addressed locally through flexible guidelines on a site-specific basis.

Rescind the Instructional Memoranda. The agencies should rescind the seven instructional memoranda (IMs 2016-139 through 2016-145) that provide guidance on certain elements of the 2015 Sage-Grouse Plans and issue replacement IMs for the interim period while plan amendments are being prepared. Key concerns about the IMs include the following:

IM 2016-139. This IM outlines use of Assessment, Inventory and Monitoring (“AIM”) to monitor and assess aquatic systems. This framework contains unproven recommendations for monitoring and should be replaced with the 2011 Multiple Indicator Monitoring (“MIM”) system. Water quality monitoring should be managed and maintained by states consistent with EPA requirements and protocols set forth in the Natural Resources Inventory (“NRI”). The NRI field protocol is already an accepted protocol for data collection to estimate conditions and trends across federal lands. NRI, along with supplemental legacy data, is a better protocol to address habitat dynamics, and relying on HAF is unnecessary and duplicative.

IM 2016-141. This IM sets priorities for processing grazing permits and leases in sage-grouse habitat. The Forest Service already has a process for prioritizing allotments. The IM unlawfully elevates the sage-grouse to a priority species, and it should be vacated.

IM 2016-142. This IM provides guidance for incorporating thresholds and NEPA analysis into grazing permits for lands within SFAs or PHMAs. This IM is duplicative of the Forest Service’s annual monitoring, contains thresholds generally not influenced by grazing (e.g., sagebrush canopy and tree cover requirements), and introduces concepts that do not belong in permit terms. These adaptive management triggers should be reversed. The Habitat Objective table should also be deleted. The Table is being strictly implemented and is contrary to establishing objectives based on site-specific conditions. The IM also relies on HAF to assess habitat conditions along with Habitat Assessment Summary Reports. HAF should be eliminated in favor of standards and guidelines based on existing evaluation practices, and the report requirement should be rescinded.

IM 2016-144. This IM requires policy on use of sage-grouse HAF to assess habitat, and under what circumstances habitat assessment is required. This entire IM and HAF framework should be eliminated. HAF is designed for single-species management, contrary to both the mandates of the Forest Service and BLM. Implementing AIM and HAF is highly variable between states and field offices, results in excessive data collection and duplicative Habitat Assessment Summary Reporting, and should be abandoned in favor of legacy monitoring and Rangeland Health Assessments, including use of NRI protocols and MIM.

Surface Disturbance Cap and Mitigation Policy. Under existing direction, disturbance caps are applied to all habitats whether public or private, and the agencies can preclude authorizations on federal lands to compensate for disturbances on private land. We believe that

the 3% anthropogenic disturbance feature found in the 2015 Sage-Grouse Plans is not supported by the best available science, and that the calculation methods the Forest Service uses are significantly different than the research relied on to support the 3% cap. The 1% decade cap was also not analyzed, and it is not supported by science. There also is a lack of best available science and policy support for excessive, one-size-fits-all stubble height requirements and expansive lek buffers.

Travel Management Plan. There is limited research on the impacts of roads on sage-grouse and what scant research exists is conflicting. Implementing travel management plans across all federal lands within affected Western States on a large scale within set time frames is irrational, unnecessary, and completely unrealistic. Potential conflict areas (for example, high traffic roads close to leks) should not be established in Forest Service LRMPs, but instead should be addressed locally on a site-specific basis with flexible guidance for possible restrictions that can account for seasonal, type of use, or date/time restrictions, as needed based on local conditions.

Manage Lek Buffers on a Site-Specific Basis. Lek buffers increased dramatically in size and breadth in terms of restrictions during the plan amendment processes for the 2015 Sage-Grouse Plans. If certain areas around leks require closure due to certain activity, such as restrictions on grazing within lek buffers, those areas should be identified and managed on a site-by-site basis. Since there is no single distance that is appropriate for all populations and all habitats across the range, it makes abundant sense to revise the LRMPs so that decisions about distance can be made flexibly based on local conditions, using guidelines that assess the specific topography and vegetation near the lek.

Grazing Season Language. Language under the 2015 Sage-Grouse Plans about timing and location of livestock turnout impacting livestock concentrations on leks during the breeding season is also vague and unclear and leads to uncertainty and ambiguity for ranchers and agency range staff.

Comply with the WHBA and Avoid Unlawful Range Degradation. The Forest Service and BLM are currently mismanaging our federal lands by adopting science-based maximum Appropriate Management Levels (“AML”) for wild horses under the Wild Horse and Burros Act (“WHBA”), but then failing to act to achieve AML – and in many territories, failing to take sufficient action to even come close to achieving AML. As a result, overpopulations of excess wild horses well above the AML are causing serious, permanent degradation to rangeland and riparian areas. As part of any conservation strategy, both agencies must first comply with the law, comply with their own management directions for achieving AML, and act sufficiently to achieve and maintain AML within the wild horse territories. Attempting to achieve balance without achieving AML violates the WHBA, as well as the multiple use and plan consistency mandates under NFMA and FLPMA. Both agencies are already overcommitted financially, and it makes little sense to undertake further major tasks where the agencies are unable to complete the backlog of mandatory duties they already have.

Thresholds on Grazing Permits. This concept was adopted without sufficiently complying with the required notice and public comment and plan amendment procedures. Creating “thresholds” foreign to grazing permits without such process and public vetting violates NFMA, FLPMA, and NEPA. The public did not have an opportunity to comment on this. The Forest Service already had the authority under current grazing law to make immediate changes to livestock management if grazing management is deteriorating habitat. Additional thresholds that lack flexibility are unnecessary and unlawful.

Primary Threats of Wildfire and Invasive Species. Rather than address the primary threats of juniper encroachment, wildfire, and the spread of invasive species, the 2015 Sage-Grouse Plans increased regulatory measures on many secondary and perceived threats that are relatively insignificant. This approach will have negative impacts on sage-grouse populations and is detrimental to rural economies. The Forest Service must direct resources and address threats directly and correlate their importance to sage-grouse. Wildfires are among the top threats to sage grouse along with invasive species such as cheatgrass, which is positively correlated with wildfire. Wildfires result in habitat loss and fragmentation of sage-grouse habitat and have devastating social and economic effects on rural communities.

Any plan amendment must incorporate measures acknowledging that control of invasive species through active management and reduction of fine fuels is key for controlling fuel loads and avoiding wildfire. The best available science demonstrates that properly grazed rangeland is more resilient and resistant to fire than ungrazed landscapes. Control of invasive species through active management and reduction of fine fuels is an instrumental part of controlling excessive fuel loads. Vegetation treatments such as controlled, prescribed fire and manipulation of canopy cover can also improve rangeland health to benefit sage-grouse and increase livestock forage. Range specialists and researchers have concluded that grazing is an important and effective tool for the prevention and mitigation of wildfires, especially in moderate fire conditions. For example, flame length can be significantly reduced in areas where grazing has occurred and can result in a mosaic burn or gaps across which fire will not jump. Any plan amendments should be designed to prevent excessive fuel loads that will contribute to more frequent and intense range fires harmful to sage-grouse, healthy range, and adjacent private lands. The Forest Service must use the best available science about the negative effects of reduced grazing on the incidence, intensity, and damage from wildfire.

In sum, sagebrush habitat supports an agricultural economy critical to rural communities and generates over \$1 billion in economic activity. States, ranchers, farmers, energy developers, and other stakeholders have combined in an unprecedented effort to collaborate to conserve key sage-grouse habitat and avoid listing to the greater sage-grouse, while also continuing to promote sustainable economic use of the resource. We are very concerned that the Forest Service and BLM might continue to duplicate state conservation and management efforts unnecessarily. We cannot emphasize enough how important it is for the agencies to abandon their unworkable, unfunded framework in favor of planning designed to provide better protection and resource

balance using a flexible, site specific approach, rather than simply more duplicative, cost-prohibitive federal regulation. We hope that our feedback is useful in considering possible amendments to the 2015 Sage-Grouse Plans, and that the Forest Service will continue to recognize the ecological and economic importance of livestock grazing.

Sincerely,

Ethan Lane
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