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**Comments regarding the November 21, 2017
Notice of Intent to Amend Land Management Plans
for Greater Sage-Grouse Conservation
and Prepare Associated Environmental Impact
Statements or Environmental Assessments**

Submitted by:

Energy and Wildlife Action Coalition

Filed electronically to the attention of:

Sage-grouse Amendment Comment
USDA Forest Service Intermountain Region
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The Energy and Wildlife Action Coalition (“EWAC”) submits these comments in response to the U.S. Forest Service (“Forest Service”) November 21, 2017, Notice of Intent to Prepare an Environmental Impact Statement for Amendments to Land Management Plans for Greater Sage-Grouse Conservation (the “Notice”).¹

EWAC is a national coalition formed in 2014 whose members consist of electric utilities, electric transmission providers, and renewable energy entities operating throughout the United States, and related trade associations. The fundamental goals of EWAC are to evaluate, develop, and promote sound environmental policies for federally protected wildlife and closely related natural resources while ensuring the continued generation and transmission of reliable and affordable electricity. EWAC supports public policies, based on sound science, that protect wildlife and natural resources in a reasonable, consistent, and cost-effective manner.

The Forest Service manages about eight percent of existing greater sage-grouse habitat across five western states: Idaho, Montana, Nevada, Utah, Wyoming and Colorado . In September 2015, the Forest Service adopted twenty amendments to land management plans that restrict the use of more than 6 million acres of National Forest and Grasslands in those five states, incorporating a nearly uniform set of greater sage-grouse conservation measures. The recent Notice announces the Forest Service’s intent to consider amendments to those greater sage-grouse conservation measures and initiates the public scoping process for National Environmental Policy Act analysis of any new land management plan amendments.

The Forest Service adopted the current (September 2015) greater sage-grouse conservation plans through a coordinated process with the Bureau of Land Management (“BLM”), which manages about 50 percent of existing sage grouse habitat across eleven western states. BLM recently completed its own scoping comment period as it considers amendments to its greater sage-grouse conservation plans. EWAC encourages the Forest Service to again coordinate with BLM regarding potential amendments to the agencies’ respective greater sage-grouse conservation measures.

As EWAC recently noted in its comments to BLM, we would like to re-emphasize here two primary principles viewed by the electricity generation and transmission sectors as central to the Forest Service scoping and amendment process:

1. Amendments should be considered that would give Ranger Districts and Regional Foresters greater flexibility in balancing conservation of greater sage-grouse habitat with other uses of public lands.
2. Amendments also should continue to provide sufficient regulatory certainty to avoid listing of the greater sage-grouse under the Endangered Species Act (“ESA”) without being so conservative as to prevent reasonable development of energy projects and similar land use activities within sage-grouse habitat (i.e., defaulting to the precautionary principle approach of employing excessive setbacks or restrictions that are not based on extensive data and/or best available science).

The current federal greater sage-grouse land management plans are excessively rigid in their approach and unduly restrict multiple uses of federal lands. In order to counter this restrictive approach EWAC encourages the Forest Service to provide greater flexibility to federal and state land managers at the local level. EWAC further encourages the Forest Service to look to the various state greater sage-grouse conservation plans for guidance in developing or revising the federal resource management plans for the species. Finally, EWAC stresses the importance that conservation and management measures to benefit the greater sage-grouse remain sufficiently robust to conserve the species and avoid the need to list the species as threatened or endangered in the foreseeable future.

¹ 82 Fed. Reg. 55,346 (Nov. 21, 2017).

I. Flexibility for Ranger Districts and Regional Foresters

The greater sage-grouse provisions of Forest Service land management plans currently focus on habitat preservation, rather than conserving and restoring habitat, and unnecessarily limit development on broad swaths of National Forest lands through the designation of “priority” and “general” greater sage-grouse habitat management areas, as well as sagebrush focal areas. Many land uses are prohibited or restricted by the establishment of large, fixed buffers around leks and firm limits on surface disturbance at the project and regional level.

For example, the current plans prohibit new wind and solar energy development on 2.7 million acres of priority sage-grouse habitat on National Forest lands across five western states. Additionally, wind and solar energy projects are to be avoided (i.e., are allowed only if no other sites are available) on another 2 million acres of general habitat on National Forest lands, with no clear criteria for demonstrating that avoidance is not warranted for a particular project. Further, transmission lines greater than 100 kV also are to avoid placement on all protected sage-grouse habitat managed by the Forest Service, aside from specific grandfathered projects and corridors. The lands available for renewable energy and electric transmission are further limited by the fixed buffers from sage-grouse leks and firm caps on surface disturbance. Limitations to support sage-grouse conservation are one of many issues that EWAC members consider as they plan, site and route energy projects. The existing large-acreage restrictions for sage grouse will over time tend to focus projects in areas acceptable from a sage-grouse perspective, but this may result in an increase in conflicts with other types of resources the Forest Service manages. The likelihood for these competing resource issues is a key reason that local Forest Service land managers (staff at the regional office and ranger district level) need additional flexibility.

EWAC is confident that wind and solar energy generation, electric transmission, and other industries that utilize federal lands can successfully coexist with resilient populations of greater sage-grouse. The current greater sage-grouse plans unnecessarily focus on inflexible habitat preservation requirements and standardized conservation measures to the exclusion of site-specific and regional determinations by local Forest Service land managers. Those more rigid restrictions are material impediments to future development, including renewable energy generation and electric transmission. We strongly believe that local Forest Service land managers could be given more flexibility to consider project-specific impacts and mitigation measures and the quality of the affected habitat, and then make reasoned decisions based on that information while still obtaining the conservation benefits of a habitat-based approach to sage-grouse management.

In many of the affected states, the federal sage-grouse plans were developed in parallel with updates to state sage-grouse management plans. However, late in the planning process the federal plans diverged from several of the state plans and became more rigid and standardized in their approach. As the Forest Service considers amendments to the federal plans it should look to the flexibility incorporated in plans developed by Idaho and other states. State plans also include provisions that would provide local Forest Service land managers more guidance on how to balance sage-grouse conservation and other land uses. For example, the Oregon state plan provides clear criteria for determining whether a project may be allowed in a habitat area that is otherwise to be avoided – criteria that are missing from the federal plans.

The federal sage-grouse plans also should be amended to remove the overreaching “net conservation gain” mitigation standard. The plan requirements that all land use authorizations result in a net conservation gain for sage-grouse have no lawful foundation; they were based upon the since-revoked Presidential Memo and rescinded policies adopted by the Department of the Interior (a since-revoked Secretarial Order and a withdrawn Solicitor M Opinion). While individual land use actions may result in a net gain for the species, it was inappropriate for the federal sage-grouse plans to make mitigation that achieves a net conservation gain a uniform requirement for federal land use approvals.

The current plans also include separate conditions that are specific to particular industries or uses (e.g., wind, solar, oil and gas, mining) and identical or quite similar in their effects, such as management

prescriptions adopted for each industry that exclude them from priority habitat management areas. It is critical that when there are identical or similar effects on sage-grouse between industries, then those industries be treated equally and fairly under any revised greater sage-grouse land management plans and in the development of such measures. Accordingly, as the Forest Service considers amendments to land management plan conditions that specifically apply to one sector, it also should revise the companion conditions that impose the same or similar constraints on other sectors if and when effects on greater sage-grouse are the same or similar between sectors. Based upon the biology of the species and the somewhat generic nature of habitat disturbance caused by land use activities of a variety of industries and uses, it is appropriate from both a scientific and land management perspective for revisions not to discriminate between the different uses, and particularly between different energy sectors. The plans also have more broadly written management prescriptions, such as “no surface occupancy” in sagebrush focal areas, that affect all industries. Any changes to these provisions also should be consistent in their treatment of all affected industrial sectors.

II. Consistency with Objective of Avoiding ESA Listing of Greater Sage-Grouse

EWAC shares the common goal of the U.S. Fish and Wildlife Service, the Forest Service, BLM, the states, and other stakeholders who seek to conserve and protect greater sage-grouse and their habitat in order to avoid the need to list the species as threatened or endangered under the ESA. EWAC also recognizes the integral role of the federal land management plans in improving regulatory protections to negate the need for ESA listing. However, EWAC believes the federal sage-grouse land management plans can take a balanced conservation approach that allows for greater flexibility and still remain fully consistent with this goal; these notions are not mutually exclusive. Further, balancing the deployment of domestic energy on public lands with the conservation of greater sage-grouse populations should be consistent with the Administration’s goal as laid out in Executive Order 13783, “Promoting Energy Independence and Economic Growth,”² and Secretarial Order 3349, “American Energy Independence”³. As a result of the expansive suitable habitat of greater sage-grouse across the western states, it is essential that greater sage-grouse conservation measures remain flexible so that EWAC members can develop the nation’s energy resources (including wind and solar energy generation, and electric transmission and distribution) while also continuing to ensure the stability and conservation of the species’ populations.

III. Summary

We respectfully request that the Forest Service consider suggested amendments to the greater sage-grouse land use plans that would:

- (1) Give local Forest Service land managers greater flexibility in balancing the conservation of greater sage-grouse habitat and other uses of public lands;
- (2) Continue supporting the objective of avoiding the need to list the greater sage-grouse under the ESA.

EWAC believes that these two principles should be central to the Forest Service’s reconsideration and possible revision of land use plans regarding the species.

In addition, EWAC maintains that all industries should be treated equally and fairly, without one or more industries being singled out and made to “mitigate” for others. Also, with regard to mitigation requirements, the Forest Service must remove the “net conservation gain” mitigation standard from its land management plans, as there is no lawful basis for imposing that standard on all land management decisions.

² Executive Order 13783, “Promoting Energy Independence and Economic Growth” (Mar. 28, 2017).

³ Secretarial Order 3349, “American Energy Independence” (Mar. 29, 2017).

EWAC appreciates the opportunity to comment on the Forest Service's Notice of Intent and looks forward to continuing to work with the Forest Service in its efforts to improve land use management related to the greater sage-grouse.

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