



Energy and Wildlife Action Coalition
c/o Nossaman LLP
1666 K Street, NW
Suite 500
Washington, DC 20006
www.energyandwildlife.com

November 27, 2017

**Comments regarding the October 11, 2017
Notice of Intent to Amend Land Use Plans
Regarding 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:

Bureau of Land Management
Idaho State Office
1387 South Vinnell Way
Boise, ID 83708
<http://bit.ly/GRSGplanning>

The Energy and Wildlife Action Coalition (“EWAC”) submits these comments in response to the Bureau of Land Management’s (“BLM”) October 11, 2017, “Notice of Intent to Amend Land Use Plans Regarding Greater Sage-Grouse Conservation and Prepare Associated Environmental Impact Statements or Environmental Assessments” (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 recent Notice announces BLM’s intent to consider amending certain BLM land use plans that were amended or revised in 2014 and 2015 regarding greater sage-grouse conservation in California, Colorado, Idaho, Nevada, Oregon, Wyoming, North Dakota, South Dakota, Utah, and Montana. The Notice initiates the public scoping process for greater sage-grouse resource management plan amendments with associated analyses under the National Environmental Policy Act. Presumably BLM intends to coordinate this initiative with the U.S. Forest Service, which adopted companion amendments to National Forest land management plans as part of the same process in 2015 and recently gave notice that it intends to consider amendments to its sage-grouse land management plans.

EWAC members would like to emphasize two primary principles viewed by the electricity generation and transmission sectors as central to the BLM scoping and amendment process:

1. Amendments should be considered that would give BLM State and Field Offices and state land managers 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 energy and other development 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 use plans are excessively rigid in their approach and unduly restrict multiple uses of federal lands. EWAC encourages BLM to provide greater flexibility to local federal and state land managers. EWAC further encourages BLM 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.

I. Flexibility for Local Federal Land Managers

The current federal greater sage-grouse land use plans primarily focus on habitat preservation, rather than conserving and restoring habitat, and unnecessarily limit development on broad swaths of federal land 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 35 million acres of priority sage-grouse habitat across ten western states. Additionally, wind and solar energy projects are to

¹ 82 Fed. Reg. 47,248 (Oct. 11, 2017).

be avoided (i.e., are allowed only if no other sites are available) on another 32 million acres of general habitat, 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 67 million acres of protected sage-grouse habitat, 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 also are but 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 BLM manages. The likelihood for these competing resource issues is a key reason that local BLM managers 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 federal land managers. Those more rigid restrictions are material impediments to future development, including renewable energy generation and electric transmission. We strongly believe that local federal land managers could be given more flexibility 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 BLM considers amendments to the federal plans it should look to the flexibility incorporated in plans developed by Oregon, Idaho and other states. State plans also include provisions that would provide local federal 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 inflexible “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 Secretarial Order that attempted to impose new federal mitigation requirements 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.

Further, it is critical that all industries be treated equally and fairly under any revised greater sage-grouse land use plans and in the development of such measures when there are identical or similar effects on sage-grouse between industries. The current plans 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 separate management prescriptions for each industry excluding them from priority habitat management areas. Accordingly, as BLM considers amendments to land use 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. 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 BLM, the U.S. Fish and Wildlife Service, the U.S. Forest Service, 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 use plans in improving regulatory protections to negate the need for ESA listing. However, EWAC believes the federal sage-grouse land use 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 BLM consider suggested amendments to the greater sage-grouse land use plans that would give local federal and state land managers greater flexibility in balancing the conservation of greater sage-grouse habitat and other uses of public lands while continuing to support 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 BLM'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. EWAC appreciates the opportunity to comment on BLM's Notice of Intent and looks forward to continuing to work with BLM in its efforts to improve land use management related to the greater sage-grouse.

Please feel free to contact the following EWAC representatives:

Jim Meiers, EWAC Policy Chair, Jim.Meiers@duke-energy.com, 980-373-2363

Tim Rogers, EWAC Policy Chair-elect, timothy.g.rogers@xcelenergy.com, 612-330-6590

John M. Anderson, EWAC Policy Director, janderson@nossaman.com, 202-887-1441

Alan M. Glen, Nossaman, LLP, Partner, aglen@nossaman.com, 512-813-7943

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

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