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Comments Regarding the March 15, 2024 Notice of Availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning

Bureau of Land Management

Submitted by:

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Filed electronically to the attention of:

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The Energy and Wildlife Action Coalition (“EWAC”)¹ submits these comments in response to the Bureau of Land Management’s (“BLM”) Notice of Availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangeland Planning (“Draft RMPA/EIS”).² EWAC has previously submitted comments on BLM’s greater sage-grouse (“GRSG”) efforts dating back to the 2019 Resource Management Plans (“RMPs”) and on the 2022 Notice of Intent to Amend Land Use Plans Regarding Greater Sage-Grouse Conservation and Prepare Associated Environmental Impact Statements. EWAC provides these comments based upon the knowledge and experience of its membership.

EWAC believes stakeholder input is critical to this process and appreciates the opportunity to comment. The Biden Administration has prioritized grid modernization and deployment of renewable energy on federal lands,³ and EWAC agrees that renewable energy and electric infrastructure development on federal lands are instrumental to achieving the Biden Administration’s goals to address climate change and ensure that safe, reliable, affordable, and increasingly cleaner energy is available to all communities throughout the United States. EWAC also understands that species conservation is not only a Biden Administration priority but also an important piece of the Administration’s climate change strategy.

In general, EWAC is supportive of the BLM’s preferred alternative (Alternative 5) in the Draft RMPA/EIS, which updates the data available on GRSG and increases flexibility for renewable energy and electric infrastructure development on public lands. However, EWAC has some concerns regarding the approach the BLM has taken specific to renewable energy and electric infrastructure development on public lands. Below EWAC provides recommendations to BLM that would help balance the Biden Administration’s renewable energy and grid modernization goals with its conservation goals as it proceeds with amending the GRSG RMPs.

I. EWAC supports the BLM’s preferred alternative (Alternative 5).

Of the six alternatives BLM proposes and examines in the Draft RMPA/EIS, EWAC supports BLM’s preferred alternative (Alternative 5). BLM’s stated purpose in developing Alternative 5 is to attempt to balance GRSG conservation with public land uses.⁴ EWAC agrees that, of the six alternatives proposed, Alternative 5 will provide the most flexibility for renewable energy and electric infrastructure while also altering existing habitat management areas to ensure protection of GRSG habitat.

Specifically, EWAC supports Alternative 5’s proposed management of General Habitat Management Areas (“GHMA”) as open to right-of-way application and utility-scale wind and solar development with minimization measures to maintain GRSG habitat. EWAC believes that designating GHMA as open to renewable energy and electric infrastructure development and Priority Habitat

¹ EWAC is a trade association formed in 2014 whose members consist of electric utilities, electric transmission providers, and renewable energy entities operating throughout the United States, and related industry 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. EWAC is a majority-rules organization and therefore specific decisions made by the EWAC Policy Committee may not always reflect the positions of every member.

² 89 Fed. Reg. 18,963 (Mar. 15, 2024).

³ See E.O. 14008, *Tackling the Climate Crisis at Home and Abroad*, 86 Fed. Reg. 7,619 (Feb. 1, 2021).

⁴ *Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement, Vol. 1*, BLM ES-5 (March 2024), https://eplanning.blm.gov/public_projects/2016719/200502020/20105921/251005921/GRSG_DEIS_Vol1_508.pdf [hereinafter “Draft RMPA/EIS”].

Management Areas (“PHMA”) as avoidance zones instead of exclusion zones strikes a better balance than the other alternatives. These changes allow for more focused, project-specific assessments of renewable energy and electric infrastructure applicability, instead of blanket applications that may not reflect on-the-ground conditions.

II. BLM should provide mechanisms to factor into account on-the-ground realities of GRSG habitat.

EWAC recognizes that landscape-scale planning has its advantages in efficiency and large-scale administration, and believes one of the advantages of Alternative 5 is its uniform application across states. However, BLM should consider in the Final Rule methods and pathways to allow for flexibility where on-the-ground circumstances and data from other stakeholders, such as state fish and wildlife agencies, who may have better local area data and knowledge, do not align with RMP assumptions regarding suitability for GRSG. For example, each of the alternatives in the Draft RMPA/EIS propose to label large swaths of land as either PHMA or GHMA, and prescribes to designate those areas as either exclusion, avoidance, or open to development. However, within those designated areas, there are locations where no GRSG habitat is present even within a several mile radius of designated PHMA or GHMA. For those instances, restriction on development is unnecessary.

EWAC favors a flexible approach to GRSG management that will account for instances where the on-the-ground data does not support restrictions. The Draft RMPA/EIS does follow this approach in some regards; for example, Alternative 5 provides for site-specific exceptions to PHMA avoidance areas when certain criteria are met, and allows for RMP-designated corridors where projects would not need to comply with disturbance cap or compensatory mitigation requirements.⁵ EWAC encourages BLM to allow for the implementation of additional measures in the Final Rule that will allow for site-specific variability, perhaps allowing land managers to authorize a wider range of uses where local studies show no GRSG are present or degraded habitat that would take extensive, proactive management to support the species long-term.

III. BLM lacks conclusive data to support its assertions with regards to the impacts of renewable energy development on GRSG.

EWAC is concerned with the Draft RMPA/EIS’s stated reliance on scientific studies from other industries, including oil and gas development, to inform its assumptions on the impacts to GRSG from wind, solar, and electric development. BLM admits that the impacts of renewable energy and electric infrastructure on GRSG are “anecdotal” and have not been as widely studied as those from other industries.⁶ Existing studies cited in the Draft RMPA/EIS are not conclusive: tall vertical structures “*may* displace GRSG from their habitat” and GRSG “*may* abandon leks” due to various activities associated with energy development.⁷

In EWAC’s view, broad assumptions of adverse impacts extrapolated from other forms of development are insufficient to determine actual impacts of renewable energy development and electric infrastructure on GRSG and likely overstate impacts, particularly when other studies specific to renewable energy generation and transmission and distribution infrastructure for other grouse species do not arrive at the same conclusions or show far less adverse impact. BLM should ensure that the impacts to GRSG attributed to renewable energy and electric infrastructure are consistent with good science and without being overly speculative. Without sufficient evidence indicating that renewable energy and electric infrastructure negatively impacts GRSG habitat and population, BLM cannot adequately determine whether and how to

⁵ *Id.* at 2-97–2-98.

⁶ *Id.* at 4-6.

⁷ *Id.* (emphasis added).

restrict such development to meaningfully conserve GRSG.⁸ EWAC is concerned that the habitat management plans proposed in the Draft RMPA/EIS rely on worst-case scenarios instead of likely outcomes. EWAC cautions BLM from relying on too many conservative assumptions regarding impacts of renewable energy and electric infrastructure on GRSG habitat.

EWAC is also concerned that BLM may be discounting or ignoring studies that demonstrate take is not occurring where renewable energy and electric infrastructure development occurs in or near GRSG habitat. Indeed, some of these studies indicate a lack of harm and instead suggest potential compatibility between GRSG and renewable energy development.⁹ In the Final Rule, BLM should give more weight to these studies and ensure the measures set forth in any final documentation are supported by the relevant data.

IV. The mitigation approach set forth in the RMPs is lacking in sufficient clarity.

EWAC's concerns regarding the data relied upon to support a finding of impacts to GRSG spill over to the BLM's proposed mitigation approach. EWAC favors Alternative 5's "no net loss" mitigation standard as compared to the existing RMPs "net conservation standard" suggested in Alternative 1.¹⁰ However, the Draft RMPA/EIS does not provide sufficient detail on how mitigation requirements will be administered. This detail is important to ensure consistency and predictability of a requirement that carries significant costs.

As explained in Section III above, EWAC believes the Draft RMPA/EIS does not rely on the best available and most accurate data for impacts to GRSG from wind, solar, and electric infrastructure development. Applying the "no net loss" standard may therefore result in mitigating for impacts that are not occurring. Additionally, the RMPA/EIS does not provide detail on how mitigation will be assessed and what may be required. Given mitigation can have a significant impact on project costs, it is important for any final rule to provide clarity on how the mitigation requirement will be administered to allow potential applicants to factor those costs into project development. It is also critical that any avoidance, minimization, and mitigation required align with actual impacts to GRSG based on site-specific conditions.

⁸ BLM should also consider how its GRSG RMPs will be interpreted in light of the U.S. Supreme Court's imminent decisions in *Loper Bright Enterprises v. Raimondo* and *Relentless, Inc. v. Department of Commerce*. Currently, BLM is afforded significant deference under *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) in promulgating its regulations. Should the Supreme Court modify or repeal the *Chevron* Doctrine, BLM's RMPs will likely have to withstand increased scrutiny. In any final rule, EWAC encourages BLM to provide regulatory revisions that are not based on a merely permissible interpretation of the statute, but rather reflect the most accurate and reasonable interpretation of the statutory language and legislative intent.

⁹ See, e.g., LeBeau, C. W., Johnson, G. D., Holloran, M. J., Beck, J. L., Nielson, R. M., Kauffman, M. E., Rodemaker, E. J., & McDonald, T. L. (2017). Greater sage-grouse habitat selection, survival, and wind energy infrastructure. *The Journal of Wildlife Management*, 81(4), 690–711. <https://doi.org/10.1002/jwmg.21231> (finding limited impacts of wind structures on GRSG); Gerringer, M.G., K.T., Smith, and K.L. Kosciuch. In Press. Observations of Greater Sage-Grouse at a Solar Energy Facility in Wyoming. *Western North American Naturalist*, 2022. <https://scholarsarchive.byu.edu/wnan/vol82/iss1/21/> (finding compatibility of solar development with GRSG development).

¹⁰ The "no net loss" mitigation standard proposed in Alternative 5 more closely aligns with CEQ's mitigation policy than the 2015 RMPs standard of requiring a "net conservation gain," and eases the burden on renewable energy developers attempting to balance cost-effective siting and construction with GRSG conservation. See *MS-1794 – Mitigation Manual (P)*, BLM (Sept. 22, 2021).

V. Proposed habitat maps included within the Draft RMPA/EIS do not align with state GRSG habitat maps.

In their review of the Draft RMPA/EIS, EWAC members have noted that at least one of the proposed habitat maps included in Volume 2, Appendix 1 of the Draft RMPA/EIS does not align with state GRSG habitat maps. Specifically, the map displaying proposed GRSG Habitat Management Areas under Alternative 5 (Map 2.5) does not reflect a recent amendment where BLM removed a PHMA designation from certain lands in Wyoming. The proposed map in the Draft RMPA/EIS would reinstate as PHMA the area that BLM recently removed from that designation. The discrepancy between the maps would have a meaningful effect on project feasibility. BLM should ensure and clarify which maps will be used and make corrections to maps that better align with local data in the final rule.

VI. BLM should ensure that its efforts to conserve GRSG habitat are congruent with other BLM objectives.

When finalizing the RMPA/EIS, BLM must ensure that its various efforts work compatibly together to further its objectives. BLM has recently issued its Draft Programmatic Environmental Impact Statement for Utility-Scale Solar Energy Development (“Draft Solar PEIS”)¹¹ and final Rights-of-Way, Leasing, and Operations for Renewable Energy Rule,¹² both of which have the potential to impact renewable energy and electric infrastructure development on BLM lands as standalone efforts. BLM must consider how these efforts, taken as a whole, could impact renewable energy and electric infrastructure development when applied together. For example, the Draft Solar PEIS contained, in EWAC’s view, several elements that would further deter rather than support solar energy deployment on federal lands. Included in these restrictive elements is a proposed blanket restriction of solar development on all GRSG habitat.¹³ BLM should be mindful of how the exclusion and avoidance areas for wind, solar, and electric infrastructure proposed by the Draft RMPA/EIS will further restrict renewable energy, transmission, and distribution infrastructure development when combined with other efforts such as the Draft Solar PEIS. BLM must be careful to ensure that its efforts work together to promote the agency’s and Biden Administration goals rather than unintentionally creating impediments.

VII. Conclusion.

EWAC is appreciative of the land use planning initiative undertaken by BLM to address the management of GRSG habitat on BLM-administered public lands while promoting greater flexibility for renewable energy and electric infrastructure development. EWAC respectfully requests that these comments be given due consideration in the Final Rule. EWAC looks forward to continued coordination and participation in this process and is happy to discuss any aspects of these comments in greater detail as may be helpful.

Please feel free to contact the following EWAC representatives:

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¹¹ *Notice of Availability of the Draft Programmatic Environmental Impact Statement for Utility-Scale Solar Energy Development and Notice of Public Meetings*, 89 Fed. Reg. 3,687 (Jan. 19, 2024) [“Draft Solar PEIS”]. EWAC submitted comments on the Draft PEIS on April 18, 2024.

¹² *Right-of-Way, Leasing, and Operations for Renewable Energy*, 89 Fed. Reg. 35,634 (May 1, 2024). EWAC submitted comments on this rule on August 15, 2023.

¹³ Draft Solar PEIS at ES-17.