



January 29, 2014

Submitted via electronic mail: blm_id_swmt_sagegrouse_eis@blm.gov

Brent Ralston
Idaho and Southwestern Montana Sub Regional Project Lead
Bureau of Land Management
1387 S. Vinnell Way
Boise, Idaho 83709

RE: Idaho and Southwestern Montana Greater Sage-Grouse Draft Land Use Plan Amendments and Draft Environmental Impact Statement

Dear Mr. Ralston:

In the Idaho and Southwestern Montana Greater Sage-Grouse (GSG) Draft Land Use Plan Amendment and Draft Environmental Impact Statement (LUPA/DEIS), published in the *Federal Register* on November 1, 2013, the Bureau of Land Management and U.S. Forest Service (the agencies) must recognize state and local conservation plans and efforts, include common-sense measures to conserve and protect the species and its habitat, and allow for continued economic activity in the planning area. Western Energy Alliance (the Alliance) and Public Lands Advocacy (PLA) submit the following comments on the LUPA/DEIS to the agencies and request that they be given serious consideration.

Western Energy Alliance represents more than 480 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas across the West. PLA is a non-profit trade group comprised of both operators and other non-profit trade associations whose purpose is to promote the discovery, development, and production of oil and gas resources on public lands; furnish opportunities for open discussion between land managers and industry; and accumulate and disseminate information to foster the best interests of the public and industry.

Many of our member companies have a direct interest in how the agencies plan to manage lands in Idaho, Montana and adjoining states with respect to the GSG and its habitat. These companies hold valid existing leases and are interested in future oil and gas leasing, exploration, and production activities in areas that will be directly affected by the agencies' management decisions. These companies are also dedicated to meeting environmental requirements, while economically developing and supplying energy resources for consumers. The management restrictions and closures in the DEIS will have a direct impact on the future viability of oil and natural gas development in the planning area and beyond. As such, our comments identify several issues and concerns.

General

We recognize that the agencies have been instructed to adopt management strategies to conserve and protect GSG and its habitat on public lands in Idaho and Montana in order to demonstrate to the U.S. Fish & Wildlife Service (FWS) that listing the species under the Endangered Species Act of 1973 (ESA) is unnecessary. However, the proposed management procedures in the LUPA/DEIS far exceed what is needed to demonstrate to FWS that ample regulatory mechanisms for the management of GSG populations and habitat on public lands will exist in the future. Moreover, we have discovered many

serious flaws in the LUPA/DEIS and the data relied upon in the planning documents. Implementation of the preferred alternative in this process would severely impede the agencies' statutory missions and seriously compromise the oil and gas industry's ability to explore for, produce, and transport domestic energy on public lands. The leasing measures outlined in the LUPA/DEIS go far beyond what is necessary and reasonable and appear designed to prohibit or preclude new oil and natural gas activity within GSG habitats in the planning area. Rather than imposing overly prescriptive restrictions on oil and natural gas development that may not be suitable for actual on-the-ground conditions, the agencies should pursue a consultation-based, adaptive management approach and include technical experts from industry who are intimately familiar with technology, operations, and mitigation. Such site-specific analysis would result in more effective conservation tailored to on-the-ground conditions.

The State of Idaho has developed a conservation plan for GSG and the State of Montana is in the process of developing a plan as well. We believe these plans should be more meaningfully incorporated into the final LUPA/EIS and Record of Decision (ROD). The agencies must also recognize the state's primary authority over wildlife management and central role in managing GSG populations and habitat within its borders. The states are better suited than the federal government to perform this function as it falls within its traditional jurisdiction and professional expertise. Active consultation between the states and federal agencies is a more effective approach than one-size-fits-all restrictions. This consultation process would also provide the opportunity for local working groups, made up of state and federal agency personnel, stakeholders, and local government representatives to provide input on future management decisions. The agencies must recognize that state and local conservation efforts are already underway and likely to be more effective than a top-down federal approach.

If implemented, the planning documents will have enormous social and economic consequences in Idaho and Montana without commensurate benefits to local GSG populations and habitat. The agencies must rectify these issues before preparing the final LUPA/EIS and issuing a ROD.

BLM National Technical Team Report

BLM's 2011 National Technical Team (NTT) report, entitled *A Report on National Greater Sage-Grouse Conservation Measures*, is frequently cited in the LUPA/DEIS and serves as the basis of many proposed management procedures in the preferred alternative. We object to BLM's reliance upon the NTT report as its principal guiding document, particularly for oil and gas leasing and operations. There are significant and fundamental flaws with the NTT Report that should preclude its use and inclusion in this LUPA/DEIS. The NTT report contains overly burdensome recommendations that are not based on local conditions in Idaho and Montana.

The NTT report asserts that oil and natural gas "impacts are universally negative and typically severe,"¹ but provides no scientific data to support that assertion. This statement is predicated upon a select few studies while ignoring other data and studies that clearly demonstrate impacts from oil and natural gas are not universally negative and typically severe. While we acknowledge there may be temporary decreases in lek counts within close proximity to initial well construction and other activities, this cannot be construed to indicate general population declines. Rather, it has been scientifically demonstrated that GSG are temporarily displaced to other areas with less activity until the initial area returns to a less active state.

The Department of the Interior (DOI) has been criticized by the Western Association of Fish and Wildlife Agencies (WAFWA) for using the NTT report as BLM's only source of GSG management direction. In a letter sent to the Interior Secretary on May 16, 2013, WAFWA member states made it clear they never endorsed

¹ NTT Report at 19.

the sole use of the NTT or any other scientific publication. Rather, they believe that a wide variety of peer-reviewed publications that collectively provide the best available science for GSG should form BLM's basis for conserving the species. They went on to recommend that management and regulatory mechanisms be centered upon the best available science which would provide the best strategy for near- and long-term management of GSG and provide the best opportunity for precluding a listing under ESA.

We are concerned that many of the Required Design Features (RDF) recommended by the NTT are included in the LUPA/DEIS. These features fail to reflect the complexity of oil and natural gas exploration and development and represent a one-size-fits-all management approach that disregards topography, local conditions, and practicality. We recommend that the agencies revisit the RDFs proposed in the LUPA/DEIS to ensure they are technically feasible and appropriate. Further, the agencies must maintain flexibility required when considering design features on a site-specific basis.

For these reasons, we strongly urge the agencies to refrain from directly incorporating any of the NTT report recommendations into the preferred alternative in the final LUPA/EIS and ROD. To further elucidate these concerns, attached to these comments is an independent review of the NTT report, entitled *Review of Data Quality Issues in A Report on National Greater Sage-Grouse Conservation Measures Produced by the BLM Sage-Grouse National Technical Team (NTT)*.² This review describes a number of shortcomings with the report, including:

- Failure to use the best available science
- Selective presentation of scientific information
- Misrepresentation of the impact of oil and natural gas operations on GSG
- Disproportionate influence from a small group of specialist advocates
- Bias against voluntary conservation
- Unnecessarily restrictive recommendations
- Undefined priority habitat
- Lack of credible peer review.

FWS Conservation Objectives Team Report

We are similarly concerned with the document's reliance on the FWS *Greater Sage-Grouse Conservation Objectives Final Report* (COT Report). While the COT Report is intended to serve as a guidance document to federal agencies, states, and others, there are several data quality issues that should be taken into consideration before it is used to guide conservation efforts for the species. An independent review of the COT Report, which is attached to these comments, found that it is a selective review of scientific literature and unpublished reports on GSG, was not adequately or legitimately peer-reviewed, presents outdated information, overstates some threats to GSG while downplaying others, and relies on a threats analysis that contains methodological bias and error.³

Further, the COT report does not represent a comprehensive scientific review; rather, it is simply an incomplete examination of limited literature and unpublished reports that were used to identify conservation objectives to ensure the long-term viability of the GSG. In fact, the COT report provides no original data or quantitative analyses and fails to review all of the available scientific literature on the GSG.

² *Review of Data Quality Issues in A Report on National Greater GRSG Conservation Measures Produced by the BLM GRSG National Technical Team (NTT) Dated December 21, 2011*. Dr. Rob Roy Ramey. (September 19, 2013) (Attachment A).

³ *Data Quality Issues in the Greater Sage-Grouse (Centrocercus urophasianus) Conservation Objectives: Final Report*. Dr. Rob Roy Ramey. (October 16, 2013). (Attachment B).

Due to these significant flaws, we request that BLM reconsider its reliance on the COT report in the final LUPA/EIS and ROD.

Fluid Mineral Development on Public Lands

Under the Federal Land Policy and Management Act (FLPMA), BLM is required to manage the public lands on the basis of multiple use and sustained yield. "Multiple-use management" is a concept that describes the complicated task of achieving a balance among the many competing uses on public lands, "including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and [uses serving] natural scenic, scientific and historical values." *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. at 58 (quoting 43 U.S.C. § 1702(c)). "Of course not all uses are compatible." *Id.* We recognize the difficult task the agencies face when managing public lands for multiple use in the planning areas. However, oil and natural gas development is a crucial part of the BLM's multiple-use mandate and the agency must ensure that it is not unreasonably limited in the LUPA/DEIS.

FLPMA clearly identified mineral exploration and development as a principal or major use of the public lands. The Multiple-Use Sustained-Yield Act of 1960 specifically states: "Nothing herein shall be construed so as to affect the use or administration of the mineral resources of national forest lands ...". The laws require the agencies to foster and develop mineral activities, not stifle and prohibit them. It does not appear this was a primary goal during the preparation of the LUPA/DEIS. The agencies must reconsider their view of oil, natural gas and mineral development when preparing the final LUPA/EIS and ROD.

Unleased Fluid Minerals

The agencies propose to close areas with no and low potential for fluid minerals to future leasing in preliminary priority management areas (PPMA) and preliminary medial management areas (PMMA), which cover almost 10 million acres.⁴ We strongly oppose this proposed closure. The agencies wrongly assume that areas currently identified as having no or low potential for oil and natural gas may not eventually prove to contain moderate or high potential. Due to major advances in geophysical exploration, drilling and completions technology in recent years, operators have produced significant amounts of oil and natural gas in areas across the country that were once thought to contain little or no economically accessible quantities. By closing these areas to future leasing the agencies will be unnecessarily preventing the exploration and possible production of oil and natural gas resources and associated economic benefits to local communities, states, and the nation. We strongly recommend that the agencies refrain from closing these areas to future leasing and instead apply more appropriate controlled surface use (CSU) and Timing Limitation (TL) stipulations.

PPMA and PMMA areas with moderate and high potential in fluid minerals are open to leasing but are subject to a number of restrictive constraints, including a disturbance density not to exceed 1/640 acres with a maximum of 3% disturbance per section.⁵ In most cases, limiting disturbance to 3% or less in a section is unachievable. More importantly, the agencies have not provided sufficient scientific data to support the disturbance density limitation or its effectiveness in conserving GSG and its habitat. Accordingly, we recommend that the agencies remove this disturbance density restriction in these areas and rely on restrictions that reflect site-specific considerations, including CSU stipulations and timing limitations.

⁴ LUPA/DEIS at 2-25 and 2-191.

⁵ LUPA/DEIS at 2-25 and 2-26.

Least Restrictive Stipulations

Section 363 of the Energy Policy Act of 2005 (EPA) requires federal land management agencies to ensure that lease stipulations are applied consistently and to ensure that the least restrictive stipulations are utilized to protect many of the resource values to be addressed. The LUPA/DEIS ignores established BLM policy that states “the least restrictive stipulation that effectively accomplished the resource objectives or uses for a given alternative should be used.” Moreover, the agencies have failed to demonstrate that less restrictive measures were considered but found insufficient to protect the resources identified. A statement that there are conflicting resource values or uses does not justify the application of restrictions. Discussion of the specific requirements of a resource to be safeguarded, along with a discussion of the perceived conflicts between it and oil and natural gas activities must be provided. Clearly, an examination of less restrictive measures must be a fundamental element of a balanced analysis and documented accordingly in the FEIS.

Valid Existing Rights

We appreciate the acknowledgment of valid existing rights throughout the LUPA/DEIS, but are concerned the planning documents offer no explicit statements of what constitutes valid existing rights, how they relate to the new land use management options considered, or that valid existing rights will be protected. We recommend that it be clearly stated in the final LUPA/EIS and ROD that the new stipulations proposed in the preferred alternative will not apply to lands already subject to valid existing oil and gas lease rights.

It is important for the agencies to recognize that oil and natural gas leases are existing rights that cannot be modified by a land use plan. *Sierra Club v. Peterson*, 717 F.2d 1409, 1411 (D.C. Cir. 1983); *Solicitor’s Opinion M-36910*, 88 I.D. 909, 912 (1981). Once BLM has issued a lease without a No Surface Occupancy (NSO) stipulation and in the absence of a nondiscretionary statutory prohibition against development, the BLM cannot completely deny development on the leasehold. As such, BLM has no legal authority to impose mitigation measures such as an NSO Condition of Approval (COA) if it would exceed the terms and conditions of previously issued lease.

Conclusion

We have significant concerns with the DEIS. Reliance upon the NTT Report and the COT Report is misplaced because these documents fail to meet established standards of scientific integrity under the ESA, the Data Quality Act, and Presidential and DOI memoranda and orders. Many of the proposed restrictions in the LUPA/DEIS are overly burdensome, fundamentally flawed their implementation would interfere with the statutory multiple-use mandates of BLM and USFS and valid existing rights.

We urge BLM to revise its preferred alternative to be significantly more flexible and adaptive. Myriad local, state, tribal and federal conservation measures are already in place; and, it is essential that they be fully and clearly recognized in the planning process and more meaningfully incorporated into the final LUPA/EIS and ROD. The agencies must also recognize the state’s primary authority over wildlife management and central role in managing GSG populations and habitat within its borders. The states are far better suited than the federal government to perform this function as it falls within its traditional jurisdiction and professional expertise.

The agencies must also develop a science-based, adaptive management approach for oil and natural gas development in the planning area that includes technical experts from industry. Rather than the

proposed one-size-fits-all restrictions, active consultation between the states and federal agencies would be a much more effective approach.

Thank you for considering these comments and recommendations.

Sincerely,



Kathleen M. Sgamma
Vice President of Government and Public Affairs
Western Energy Alliance



Claire Moseley
Executive Director
Public Lands Advocacy

Encl.