



***VIA ELECTRONIC MAIL (with attachments) AND FACSIMILE (without attachments)***

April 7, 2015

Reviewing Officer  
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**Re: Objection to Proposal to Amend to Humboldt-Toiyabe NF Plan LRMP**

Dear Reviewing Officer Rasure:

Thank you for the U.S. Forest Service's ("USFS") consideration of previous comments from the Center for Biological Diversity ("Center") on the Draft Environmental Impact Statement ("EIS") and Revised Draft EIS for the National Forests Land and Resource Management Plan Amendment ("Amendment") pertaining to the Humboldt-Toiyabe National Forest ("HTNF"). This Amendment modifies land use plans pertaining to HTNF lands managed by the Carson Ranger District in Nevada; it is our understanding that there is currently no proposal to adopt any revisions to the LRMPs on the HTNF within lands managed by the Bridgeport Ranger District in California at this time.

The Center has reviewed the Final EIS and the draft Record of Decision ("draft ROD") issued by USFS in February, 2015. Pursuant to Forest Service regulations at 36 C.F.R. § 219 et seq., the Center respectfully submits this timely objection for the reasons discussed below.

***STANDING TO FILE OBJECTION***

The Center for Biological Diversity is a non-profit conservation organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has more than 825,000 members and on-line advocates throughout the United States, including residents in Nevada and members who visit and utilize the HTNF lands affected by this proposal. The Center has worked for many years to protect imperiled plants and wildlife (including the Bi-State population of the Greater Sage grouse), the habitat they depend on, open space, air and water quality and has actively participated in the ongoing planning process for the HTNF LRMP amendments. The Center submitted comments on the Draft EIS on January 16,

2014, and additional comments on the Revised DEIS on October 9, 2014. Accordingly, the Center has standing to bring this appeal pursuant to 36 CFR § 219.50 et seq.

***Objector Contact:***

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***REQUEST FOR RESOLUTION MEETING***

Forest Service regulations provide that an objector may request to meet with the Responsible Official to discuss issues raised in this objection and potential resolution. Pursuant to 36 C.F.R. § 219.57(a), the Center respectfully requests to meet with the Regional Forester to discuss and attempt to resolve these objection points. Please contact the Objector Contact listed above to coordinate the meeting.

***STATEMENT OF ISSUES AND OBJECTIONS***

While the Forest Service's draft Record of Decision ("ROD") to has improved from the initial proposal, the draft ROD is still inadequate in several respects. All of these issues and objections made herein were raised in our previous comment letters, as detailed below.

**Issue #1:** The FEIS for the Amendment fails to adequately evaluate the environmental impacts of the decision on cumulative surface disturbance by PMU. Further, the Amendment does not implement a cumulative disturbance cap for all surface-disturbing activities.

- ***Objection #1:*** There is no baseline analysis to current surface disturbance in the plan amendment area and by Bi-State PMU. Additionally, B-AR-G-02 in relation to Access/ Recreation is too permissive of disturbance because there is no overall disturbance cap.

The Center has previously commented on this issue (October 2014, page 4-5, 24). This recommendation does not comport with FS rationale #1 to include standards that prohibit projects or activities that, by their nature, would not be able to avoid adverse effects to habitat, because conserving habitat is a purpose of the amendment. Without a cap placed on all surface disturbances there is no mechanism by which the Forest Service can calculate the total percent disturbance and then limit these disturbances. The science is clear that roads can cause adverse effects to habitat and sage grouse. Capping surface disturbance as percent as under Alternative C (C-AR-S-01, RDEIS at 20) is the appropriate threshold that should be included in the final Plan.

***Recommendation to Resolve Objection #1:*** Require establishment of a baseline surface disturbance and a cap on surface disturbance for each PMU. Adopt C-AR-S-01 that would authorize new roads only when necessary for public safety, administrative or public need to accommodate valid existing rights up to 3 percent anthropogenic disturbance limit. Adopt C-Wild S-04 that would limit total anthropogenic disturbances to no more than 3 percent of total bi-state DPS habitat on federal lands within the Bodie Mountain/Grant, Desert Creek/Fales, and White Mountains population management unit. Implement C-Wild S-05 that would limit total anthropogenic disturbances to no more than 1.5 percent of the total bi-state DPS habitat on Federal lands within the Pine Nut Mountains Population Management Unit.

**Issue #2:** The Amendment did not include a viability analysis in violation of the NFMA.

- **Objection #2:** The Amendment was conducted under the 1982 NFMA regulations, which requires the agencies conduct viability analysis to ensure that the species is well distributed across its range.

The Center has raised this issue in our comments (October 2014, Page 2) The Amendment was conducted under the 1982 NFMA regulations, which requires the agencies provide a baseline analysis regarding the current viability of each sage grouse Population Management Unit (“PMU”) to establish baseline viability conditions under current management. While the FEIS summarily concludes that viability will be maintained or improved, this is insufficient and the Forest Service must conduct a thorough analysis. The agency will then need to provide more detail and analyze the impact of implementing alternative B and C on the viability of sage grouse in each PMU, applying the effects of specific standards and/or guidelines to the threat levels (as independently assessed by USFWS, rather than the Bi-State Technical Advisory Committee, which was biased in its analysis) to project the viability of PMU subpopulations across the life of the plans in light of reasonably foreseeable development scenarios.

**Recommendation to Resolve Objection #2:** Conduct a detailed viability analysis for each PMU and across the LRMP area as a whole.

**Issue #3:** The Amendment is inadequate to protect Bi-State Sage Grouse populations from off road vehicle events.

- **Objection #3:** B-AR-G-03 allows ORV races to occur on sensitive sage grouse habitat during key seasons. Allowing off-road vehicle rallies within 4 miles of leks during breeding season is likely to cause displacement of grouse and should not be allowed. Moreover, given the large number of off-road vehicle events detailed in the FEIS on pages 57 and 58, the cumulative impact allowed under the proposed amendment would likely be severe. These comments were raised in our October 2014 comment letter (Page 23).

The Center has previously commented on this issue (October 2014 page 24). Nesting habitat occurs within 4.66 miles of the lek for the Bi-State population (Coates et al. 2013), and all of this nesting habitat also needs to be closed (in addition to an appropriate buffer of 1.9 miles around the outer edge of the nesting habitat) around the clock – sage grouse nest at all hours of the day

and night, and off-road vehicle events occurring in these habitats would potentially disturb, stress, or displace (temporarily or permanently) nesting sage grouse, resulting in nest failure. The recommendation of B-AR-G-03 is not adequate to avoid adverse effects to habitat.

***Recommendation to Resolve Objection #3:*** Replace B-AR-G-03 with C-AR-S-03, which does not authorize off-highway vehicle events in sage grouse mating, nesting and brood rearing habitat. For all categories of sage-grouse habitat, the Forest Service should impose seasonal closures of these areas during the breeding and nesting season, and during winter for winter concentration areas. For Priority Habitat, the Forest Service should also close these areas through the early- and late- brood-rearing seasons.

**Issue #4:** The Amendment is inadequate to protect Bi-State Sage Grouse populations from predation from tall structures.

- **Objection #4:** B-LUSU-S-01 and B-LUSU-S-08 would allow installation of tall structures within 2 miles of a lek but do require anti-perching devices.

The Center has previously commented on this issue (October 2014 pages 24-25). The 2-mile prohibition for installing tall structures is a good distance to prevent impacts to breeding birds but does little to prevent major impacts to nesting grouse, which occur within 4 miles of the lek. The requirement that all tall structures be fitted with anti-perching devices is good but these devices have limited effectiveness (Prather 2010, Lammers and Collopy 2007) and therefore are no substitute for an outright prohibition on tall structures in key grouse habitats with adequate buffer distances.

***Recommendation to Resolve Objection #4:*** Replace with C-LUU-S-8 that would prohibit installation of tall structures that could serve as predator perches within 4-miles of an active or pending lek.

**Issue #5:** The Amendment is inadequate to protect Bi-State Sage Grouse populations during nesting season.

- **Objection #5:** Desired Future Condition (FEIS Table 2-1) only states there should be adequate grass height yet provides no specific standards. Further, Standard B-RU-S-01 would require grazing management to maintain residual cover of herbaceous vegetation within 3 miles of active leks during the breeding and nesting season (March 1 - June 30). Average stubble height is defined as at least 4 to 6 inches (depending on site capability and potential) for herbaceous riparian vegetation and only applies to riparian and wet meadows.

The Center for Biological Diversity raised the issue of adequate nesting cover in our October 2014 comments on the RDEIS (page 14). Adequate grass height is essential for nesting success and species viability. The agencies should implement a standard within the plan to address a measurable stubble height that must remain throughout the nesting season in grouse nesting habitat. The Center recommends at minimum using the 7-inch perennial grass height standard to provide overhead and lateral concealment from predators (Connelly et al. (2000a); Stiver et al.

(in press); Connelly et al. 2003; Hagen et al. 2007). A utilization measure is not adequate because utilization does not prohibit grass height from being reduced below the minimum threshold of 7 inches.

Further, the 3-mile lek buffer fails to address sage grouse that nest between 3 and 4 miles and would not result in meeting adequate nest hiding cover minimum requirements. (October 2014 comment, page 14).

***Recommendations to Resolve Objection #6:*** 1) The Desired Future Conditions for nesting/breeding must be revised to include a minimum 7-inch grass height. This standard should be applied to all brood rearing/summer habitat, and nesting habitats. It should be noted that the desired condition for brood rearing/summer habitat does call for grass/forb height greater than 7 inches (Hagen et al. 2007). This same desired condition needs to be required for nesting as well. In response to comments FEIS at 210, response 17, the FEIS acknowledges that researchers studying bi-state DPS (Table 2-1) found that 7 inches of grass height is needed to adequately provide protection and concealment during nesting and brood-rearing period. 2) Additionally, Standard B-RU-S-O1 for grazing management needs to be revised to require a minimum of 7-inches of grass height in all life cycle habitats. 3) The buffer should also be extended from 3-miles to 4-miles to capture grouse that nest between 3 and 4 miles. Given the highly fragmented habitat and low population levels, standards must extend protections to the full population.

**Issue #6:** The Amendment is inadequate to protect Bi-State Sage Grouse populations regarding assurance of implementation of the livestock management standard.

- **Objection #6:** B-RP-S-01 does not provide adequate guidance or assurance of implementation to maintain bi-state habitat. Specifically, language that says “moving toward [the desired condition]” does not ensure that the goal will be ever obtained.

The Center has brought up this issue in our previous comments (October 19, 2014 Pages 9-18).

***Recommendation to Resolve Objection #6:*** The Center requests that the language should be modified to “shall include terms, conditions, and direction that comply with or maintain desired conditions” and that grazing modifications be implemented immediately.

**Issue #7:** The Amendment is inadequate to protect Bi-State Sage Grouse populations regarding mineral management.

- **Objection #7:** B-Min-S-21 requires mitigation for development of locatable minerals. Best science indicates that the BLM should withdraw locatable minerals from priority habitat and the Forest Service should immediately request such withdrawal.

The Center for Biological Diversity has raised this issue in prior comments (October 2014, pages 8-9). Because federal agencies cannot deny a permit to mine on existing claims and have limited authority to require mitigation measures (RDEIS at 119), this places a premium on seeking withdrawal from locatable mineral entry through the plan revision.

**Recommendation to Resolve Objection #7:** Change B-Min-S-21 to C-Min-S-18 to petition the BLM to withdraw locatable minerals.

**Issue #8:** The Amendment fails to enact an adequate monitoring and reporting program for the species' status and the proposed management changes, in violation of the NFMA and NEPA.

- **Objection #8:** Robust monitoring and reporting is needed to ensure that management is implemented and in order for the USFS to be able to utilize adaptive management if needed. The monitoring strategy should be integrated with the proposed LRMPs and not added on later.

The Draft ROD says does not include approval of the monitoring elements identified as part of the proposed action. Rather, the monitoring component will wait until a comprehensive monitoring strategy is completed that is currently being developed by the Forest Service and BLM, in partnership with USFWS, U.S. Geological Survey, Nevada Department of Wildlife, California Department of Fish and Wildlife, and researchers specializing in the bi-state sage grouse. The strategy is expected to be completed in the summer of 2015. ROD at 2 and 28. Because adequate monitoring and reporting is key to ensuring the proposed protections are actually put in place and are effective, the monitoring and reporting program must be evaluated and integrated into this process, not provided as an add-on in a separate process.

- **Recommendation to Resolve Objection #8:** The Forest Service should wait until the monitoring and reporting strategy is completed and incorporate it into the EIS, LRMP evaluation and the draft ROD.

***THE DRAFT ROD FAILS TO UTILIZE THE BEST AVAILABLE SCIENCE TO PROVIDE ADEQUATE PROTECTION FOR THE BI-STATE SAGE GROUSE POPULATIONS:***

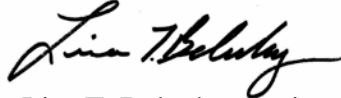
On March 12, 2015, a group of preeminent sage grouse scientists sent a letter to the Secretaries of Interior and Agriculture expressing concern “that federal agencies appear to be abandoning science-based conservation measures reflected in the published scientific literature...” (A copy of this letter is attached as Attachment 3.) The Center is concerned that the final EIS and Draft ROD do not reflect the best available science and should be modified to conform to the scientists’ recommendations as well.

***CONCLUSION***

The draft ROD’s proposed standards and guidelines often do not follow the best available science and overall do not provide for adequate conservation measures needed to protect The Bi-State sage grouse population. In many instances the needed standard was analyzed and included on the conservation alternative C, but then not chosen in the draft decision. In other cases, standards need to be modified to provide additional protection, and some proposed guidelines need to be changed to standards to ensure their implementation and effectiveness.

The Center looks forward to working with the USFS throughout this objection process to resolve these objection points and craft a solution that benefits all parties involved, resulting in stronger protections for the imperiled Bi-State population of the sage grouse in the HTNF.

Sincerely,



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Attachments:

Attachment 1: Center Comments on DEIS

Attachment 2: Center Comments on Revised DEIS

Attachment 3: Letter dated March 12, 2015 to Jewell and Vilsack