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Via Email and Overnight Mail

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Dear Ms. Todd, Mr. Magaletti, and Mr. Steed:

I. Introduction

The Women’s Mining Coalition (WMC) is a grassroots organization with members nationwide including the western states in the Great Basin and Rocky Mountain regions affected by BLM’s 2015 Greater Sage-Grouse (“GSG”) Land Use Plans (“LUPs”). WMC is submitting these comments in response to the Bureau of Land Management’s (“BLM’s”) request for scoping comments to amend the GSG LUPs because our members have numerous interests that are adversely affected by the current GSG LUPs.

WMC members work in all sectors of the mining industry including hardrock, industrial minerals, and coal; energy generation and mining-related distribution, manufacturing, transportation, and service industries. We actively participated in the National Environmental Policy Act (“NEPA”) 43 USC 4321-4347 environmental review process pertaining to the development of the 2015 LUPs that recommended withdrawing 2.8 million acres of land in Nevada and 10 million acres in six western states from operation of the U.S. Mining Law (20 USC 21a et seq as amended).

Our March 2017 DEIS comments commended BLM for preparing a well written and well organized DEIS that properly disclosed that mineral activities have a miniscule impact on GSG habitat throughout the 10-million acre SFA proposed withdrawal area and the devastating socioeconomic impacts that would result from withdrawing this land. As shown in the DEIS, the footprint of mineral exploration and mining activities in the SFA proposed for mineral withdrawal is so small that there would be virtually no conservation or environmental benefits to GSG or its habitat that would result from the mineral withdrawal.

Consequently, WMC strongly supports BLM’s October 11, 2017 decision to cancel this unwarranted withdrawal application, which if implemented, would have had no measurable benefits to GSG and its habitat while at the same time would have caused significant socioeconomic hardships in the six SFA states (e.g., Idaho, Montana, Nevada, Oregon, Utah, and Wyoming). Although BLM has decided to terminate the preparation of a mineral withdrawal Final EIS, WMC believes that the mineral withdrawal DEIS contained important information that should be incorporated into the Environmental Impact Statements or Environmental Assessments, hereinafter called “NEPA Documents,” that are the subject of this Notice of Intent.

As discussed in detail in these comments, WMC suggests BLM evaluate the following GSG land use management decisions in the LUPs, which we believe may require amendments to the 2015 LUPs:

- The SFA designations and SFA land use restrictions, which the March 31, 2017 order from the United States District Court for the District of Nevada ruled were unlawful because BLM violated NEPA by failing to prepare a Supplemental EIS for the SFA designations in the six SFA states;

- The habitat maps in the FEIS and Great Basin Region and Rocky Mountain Region Records of Decision (“RODs”) and the inappropriate use of these landscape-scale maps that have not been field-verified and are inconsistent with current Executive and Secretarial Orders that have revoked landscape-scale land use planning and mitigation policies;

- The need to include Geology and Minerals sections in the Affected Environment and Environmental Consequences chapters of the SEIS. These sections were omitted from previous NEPA documents, rendering these documents incomplete and fatally flawed;

- The inconsistency of numerous aspects of the LUPs including the SFA designations, the net conservation gain mitigation standard, uniform lek buffer zones, disturbance and density caps, and rigid adaptive management triggers, which are inconsistent with the following Secretarial and Executive Orders:
Secretary Zinke’s June 2017 Secretarial Order 3353 “Greater Sage-Grouse Conservation and Cooperation with Western States;”
President Trump’s March 2017 Energy Independence Executive Order (EO 13783); and
Secretary Zinke’s March 2017 Secretarial Order 3349 implementing EO 13783.

In addition to addressing the land use management decisions listed above, this letter presents the following recommendations:

- BLM should use policy guidelines rather than plan amendments, wherever possible to provide immediate relief from the inappropriate implementation of the LUP restrictions that are based on the landscape-scale habitat maps rather than on site-specific, field-verified habitat data;
- The NEPA Documents should require the use of site-specific, field-verified habitat data in place of landscape-scale habitat maps;
- The Proposed Action in the NEPA Documents should evaluate the adequacy of the habitat management directives for special-status species like GSG in Manual 6840; and
- The NEPA Documents should eliminate any reliance on the reports and studies in the LUPs that are premised on landscape-scale land use policies such as the National Technical Team Report, the U.S. Fish and Wildlife Mitigation Framework, the USGS Lek Buffer Study, and others.

II. The Urgent Need for Interim Policy Relief Prior to Completing the NEPA Documents

Many of the land use restrictions in the current LUPs are imposing onerous constraints on multiple use of lands with alleged GSG habitat – especially in the SFAs and lands designated as Priority Habitat Management Areas (“PHIMAs”). These constraints are causing socioeconomic harms to state and local governments and to companies and individuals that use these lands for multiple use purposes. Additionally, the current LUPs do not include optimal measures to address the greatest threat to GSG habitat – the spread of invasive species and wildfire risks.

In order to eliminate or minimize these adverse impacts while the NEPA Documents are being prepared, WMC urges BLM to evaluate whether some of these adverse impacts could be wholly or partially alleviated through policy changes and interim measures such as Instruction Memoranda. This suggestion is consistent with BLM’s August 4, 2017 Report in Response to Secretarial Order 3353, which describes numerous near-term opportunities that may be available to modify some of the LUP land use decisions that restrict multiple use.

Although the August 2017 report finds that it may be necessary to prepare plan amendments to modify some of the LUP land use management decisions, interim measures may be used to address others. We strongly support BLM’s efforts to evaluate as many near-term measures as possible to lessen the onerous impact of the LUPs while the NEPA Documents are being prepared. We emphasize that there is an urgent need to take immediate steps to lessen wildfire
risks. Consequently, BLM should implement policy decisions and use available emergency management tools to reduce wildfire risks in the 2018 – 2019 timeframe.

As discussed in Section III, many of the LUP policies are based on the Obama administration’s landscape-scale land use planning policies that the Trump administration has rescinded. Because many of the land use restrictions in the LUPs are premised on landscape-scale planning concepts, they are no longer authorized. BLM should use all available remedies to provide immediate regulatory relief to states, local governments, operators, and permittees that are currently being adversely impacted by these now unauthorized policies. Additionally, BLM must not impose landscape-scale policies on proposed projects that are being evaluated simultaneously with development of the NEPA Documents.

III. Landscape-Scale Habitat Maps are No Longer Authorized and are the Key Problem

WMC believes that the key problem with the LUPs revolves around the landscape-scale habitat maps in the Great Basin and Rocky Mountain RODs, and in all of the EIS documents prepared for the LUPs. These maps incorrectly identify many areas as important habitat, when in fact, they are not significant habitat, and in some cases, are not habitat at all. The incorrect habitat designations are the result of BLM’s now unauthorized use of landscape-scale habitat maps that have not been field verified and thus misidentify the habitat resulting in significant misclassification of lands as important habitat. Despite the serious inaccuracies in the ROD and EIS habitat maps, the current LUPs require BLM to implement the LUP restrictions on lands with mischaracterized habitat conditions – and even on lands that are not habitat.


Because the Trump Administration has revoked the Obama Administration’s policy directives pertaining to landscape-scale land use planning, the landscape-scale habitat maps that are the foundation upon which the LUP land use decisions are based, are not consistent with current policies. There is thus a compelling reason for BLM to take all appropriate short-term and long-term measures to address this inconsistency using a combination of issuing immediate policy guidelines and developing plan amendments as necessary. This approach would provide states, local governments, companies, and individuals with as much relief as possible as soon as possible for those issues that may ultimately require plan amendments before they can be fully addressed.

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1 This now rescinded Presidential Memorandum directed BLM and the U.S. Fish and Wildlife Service to develop mitigation policies that incorporated compensatory mitigation into the planning and permitting processes.
Specifically, WMC urges BLM to develop policy guidance like an Instruction Memorandum to require site-specific, field-verified habitat data prior to making future land use decisions. This guidance could serve as an interim “umbrella” solution to alleviate many of the problems states, counties, companies, and individuals are experiencing with the 2015 LUPs. The NEPA Documents could subsequently incorporate such policy guidance in order to make the future LUPs consistent with current law.

Additionally, the 2015 FEIS and associated RODs rely on the following documents that are premised upon landscape-scale planning and mitigation principles:

- The National Technical Team Report;
- The Conservation Objectives Team Report;
- The October 2014 SFA Memo from the U. S. Fish and Wildlife Director to the BLM Director and the U.S. Forest Service Chief;
- The September 2014 U.S. Fish and Wildlife Service Mitigation Framework;
- The November 2014 USGS Lek Buffer Study; and

Because all of these documents were developed to implement the Obama Administration’s landscape-scale land use and mitigation policies, they are no longer consistent with current policy. Consequently, BLM must eliminate any future reliance on the findings or recommendations in these documents.

IV. BLM’s Proposed Action Should Use Site-Specific Habitat Data Rather than Landscape-Scale Habitat Maps

Because the use of landscape-scale land use planning and mitigation is not consistent with current policies, the landscape-scale habitat maps in the RODs are no longer viable. Consequently, the NEPA Documents cannot rely on broad landscape-scale maps that have not been field verified and should not include a Proposed Action premised on such a map.

WMC suggests that:

1) BLM establish that site-specific, field verified habitat data represent the Best Available Scientific Data, which must be used in making land use decisions; and

2) The Proposed Action in the NEPA Documents require the use of site-specific, field-verified habitat data for making land use decisions rather than using landscape-scale (i.e., statewide or regional) habitat maps.

In order to comply with E.O. 13783 and S.O. 3349, both of which reject landscape-scale land use planning, BLM can no longer base land use decisions on landscape-scale habitat maps. BLM’s Proposed Action should require the use of Best Available Scientific Data comprised of site-specific, field-verified habitat maps on a project-by-project basis in preference over landscape-
scale habitat maps based on remote sensing data and modeling. The NEPA Documents should evaluate procedures that would base land use decisions using site-specific, field-verified habitat data.

If land use restrictions such as lek buffer zones, travel and access restrictions, seasonal use constraints, noise limits, Required Design Features, and other land use decisions that impede or affect multiple uses are warranted, their application should be limited to areas with verified important habitat. Similarly, any required or voluntary mitigation should reflect actual on-the-ground habitat conditions. Land use restrictions and mitigation measures must not be based on unconfirmed landscape-scale habitat designations. In the case of mineral exploration and development projects, land use restrictions and mitigation requirements must not interfere with claimants’ rights to enter, occupy, and use the public lands for mineral purposes pursuant to the U.S. Mining Law.

WMC’s recommendation to base land use decisions on field-verified habitat data will *improve* the protection of actual and important GSG habitat while eliminating arbitrary and unnecessary restrictions on lands with less important habitat – or even no habitat. The use of field-verified maps will insure that BLM’s management of GSG habitat will focus on protecting the “best-of-the-best” habitat by applying appropriate land use restrictions and mitigation measures to address site-specific conditions and basing these measures on the best way to protect identified important GSG habitat.

Basing land use decisions on actual habitat conditions stands in marked contrast to the “numbers game” in the current LUPs, which apply land use restrictions to millions of acres of supposed GSG habitat identified in the habitat management area maps in the RODs, resulting in onerous and unnecessary socioeconomic impacts. WMC’s recommendation to take a more surgical approach based on actual habitat conditions will ensure protection of important habitat areas while reducing the broad and serious economic hardships to state and local governments and companies and individuals who use public lands for mineral exploration and development, renewable and conventional energy development, grazing, hunting, guiding, recreation, and other uses.

WMC’s suggestion to eliminate the use of the landscape-scale habitat maps and use instead site-specific, field-verified habitat maps is directly relevant to all of the scoping issues on which BLM is seeking comments:

**SFA Designation** – As discussed above, the SFA designations should be eliminated because they are based on faulty landscape-scale habitat maps that include areas of marginal habitat and areas of non-habitat. Moreover, as discussed below, the SFA designation is not necessary to protect important GSG habitat from the impacts associated with mineral exploration and development.

**Mitigation Standards** – The net conservation gain mitigation standard required in the current LUPs is inconsistent with the Trump Administration’s policies that reject landscape-scale land use planning and mitigation requirements premised upon landscape-scale planning. As discussed in more detail below, appropriate mitigation measures
should be developed on a project-by-project basis based on site-specific factors and must respect claimants’ rights under the U.S. Mining Law and be consistent with the multiple use land use policies in the Federal Land Policy and Management Act (“FLPMA”). 43 U.S.C. §§ 1701 et seq.

Lek Buffer Zones – The lek buffer zone restrictions in Appendix B of the 2015 LUPs are rigid, distance-based, one-size-fits-all measures premised on landscape-scale land use planning concepts as presented in the 2014 USGS report entitled “Conservation Buffer Distance Estimates for Greater Sage-Grouse – A Review” (Open File Report 2014 – 1239). The current lek buffer zones restrict infrastructure related to energy development within 3.1 miles of leks, tall structures within 2 miles of leks, low structures within 1.2 miles of leks, surface disturbance that alters vegetation within 3.1 miles of leks, and projects creating noise to at least 0.25 miles from leks. (Appendix B at B-1). These restrictions have the potential to put millions of acres of land off-limits to multiple use. BLM should eliminate the current lek buffer zone restrictions because they are premised on landscape-scale land use polices that this administration has revoked.

WMC recognizes that it may be appropriate to limit or even preclude certain activities near active leks during the active breeding season. However, the LUP applies these restrictions throughout the year. Moreover, the one-size-fits-all, distance-based buffer zone management directives in Appendix B of the current LUPs are completely inappropriate because the specified distances for each disturbance type embrace a “flat Earth” theory that ignores important site-specific features such as topography, which may shield some leks, lessening or even eliminating any impacts from nearby land use activities. If restricting nearby land uses is necessary to protect certain leks, BLM must apply such restrictions on a limited, project-by-project basis using field-verified data regarding the location and actual use of the lek. Rather than simplistically drawing a radius around an active lek and restricting activities within the area circumscribed by that radius, BLM must take into consideration the surrounding terrain and other site-specific conditions that reduce or remove impacts when strutting male sage-grouse occupy the lek. At many sites the resulting buffer zone can be much smaller than the current one-size-fits all approach. Additionally, any restrictions that are warranted to protect leks during the breeding season must respect claimants’ rights under the U.S. Mining Law and be consistent with FLPMA’s multiple use land use directives.

Disturbance and Density Caps – Because this land management concept is premised on landscape-scale land use management principles that the Trump Administration has rescinded, it must be eliminated from the LUPs.

Habitat Boundaries to Reflect New Information – Eliminating the faulty landscape-scale maps, which BLM must do to comply with this administration’s land use policies, will facilitate the development of accurate habitat maps based on site-specific, field-verified data. This approach will result in much more accurate habitat maps that will be continually updated using new on-the-ground data collected in conjunction with specific project proposals. BLM should use project-specific habitat maps to make decisions regarding necessary GSG conservation measures. This eliminates the current delays and
confusion surrounding changes to the map and whether a plan amendment is needed to incorporate new data.

**Reversing Adaptive Management Responses**  – The current LUPs treat adaptive management responses as a one-way-street that are designed solely to address adverse impacts to GSG habitat rather than to respond to monitoring data that indicate habitat conditions have improved. Curiously, this policy appears to be premised on the notion that there will be continual habitat degradation, belying the underlying purpose of the LUPs, which is to protect and enhance GSG habitat.

BLM must modify this inappropriate policy that recognizes failure and ignores success. BLM should use site-specific habitat monitoring data to adjust BLM’s management approach on a case-by-case, project-specific basis. Because the LUP conservation measures should be designed for success to protect and enhance GSG habitat, adaptive management should focus on refining mitigation measures to improve – or at least stabilize – habitat conditions based on site-specific monitoring data.

It is inappropriate to create a one-size-fits-all adaptive management response to monitoring data – which defeats the purpose of site-specific monitoring in the first place. The appropriate response to project-specific monitoring data (i.e., adaptive management) must be determined on a case-by-case basis that carefully considers site monitoring data.

**State Specific Issues**  – WMC’s recommended approach to eliminate landscape-scale maps and to base land use decisions on site-specific data addresses the question of how to deal with state-specific issues and whether to amend the LUPs for the Great Basin and Rocky Mountain regions or prepare state-specific LUPs. It is not necessary to create separate LUPs for each state if the two regional LUPs are amended to eliminate the use of landscape-scale habitat maps and instead require site-specific habitat data. Focusing on site-specific conditions will effectively address the differences in habitat conditions and threats from state to state and eliminates the need for state-specific LUPs to accommodate these differences.

**V. The NEPA Documents Should Evaluate a Manual 6840 Alternative**

WMC’s January 29, 2014 comments on the 2013 DEIS for the current LUPs noted that BLM should have evaluated an alternative to examine the existing land use management and habitat protection requirements in BLM’s December 2008 Manual 6840, *Special Status Species Management*, rather than developing sweeping new land use management regulations. In our comments on the 2013 DEIS, WMC asserted that BLM’s failure to evaluate an alternative to amend the Resource Management Plans (“RMPs”) by incorporating the conservation measures required in Manual 6840, or explain why the measures required under Manual 6840 are inadequate was a reasonable alternative that BLM should have evaluated in the 2013 DEIS. Because NEPA requires agencies to give full and meaningful consideration to all reasonable alternatives, the NEPA Documents that are the subject of this scoping notice should evaluate better implementation of Manual 6840, which is directly applicable to GSG habitat management because the GSG is a BLM special-status species.
The conservation measures outlined in Manual 6840 are binding upon BLM to enforce for all activities on BLM lands. Manual 6840 requires specific conservation measures and provides mandatory guidance on how GSG habitat is to be managed in conjunction with proposed use and development (including exploration and mining) on BLM-administered lands.

The August 6, 2015 letters to each western governor from the respective BLM State Directors in response to the Governors’ Consistency Review letters describe Manual 6840 as follows:

“The BLM’s Special Status Species Manual sets forth BLM policy with respect to FLPMA’s consideration of wildlife and fish and renewable resources. In particular, the objective of the special status species policy are A) to conserve and/or recover ESA-listed species and the ecosystems on which they depend so that ESA protections are no longer needed for these species; and B) to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA. Manual No. 6840, Section .02(A)(B).”

Manual 6840 requires that BLM’s RMPs address sensitive species, and that implementation of these plans “should consider all site-specific methods and procedures needed to bring species and their habitat to the condition under which management under the Bureau sensitive species policies would no longer be necessary.” (Manual 6840 at 2A1).

This directive is also noted in the following excerpt from the US Fish and Wildlife Service’s (‘USFWS’) March 2010 Warranted but Precluded determination:

“As a designated sensitive species under BLM Manual 6840, sage-grouse conservation must be addressed in the development and implementation of RMPs on BLM lands…. If an RMP contains specific direction regarding sage-grouse habitat, conservation, or management, it represents a regulatory measure that has the potential to ensure that the species and its habitats are protected during permitting and other land use decision-making on BLM lands.” (Federal Register, March 4, 2010, Page 65, emphasis added).

BLM must not repeat the same mistakes it made in the 2013 DEIS and the 2015 FEIS by overlooking the important and binding species protection management directives in Manual 6840, which WMC asserted eliminated the need for the new, sweeping land use restrictions described in the 2013 DEIS, the 2015 FEIS, and implemented in the RODs for the current LUPs. The situation is unchanged today. Manual 6840 is a viable but heretofore unexamined alternative that already provides BLM with effective regulatory tools to protect GSG habitat. Rather than reinvent the wheel (again) by developing new land use management policies for GSG, BLM should carefully evaluate whether the existing policies in Manual 6840 are adequate to protect GSG habitat. If this evaluation reveals that the Manual 6840 regulatory tools are not sufficient, BLM should propose modifications to improve Manual 6840 rather than developing wholesale new regulatory tools.

See for example, John Ruhs, Acting State Director’s, August 6, 2015 letter to Nevada Governor Brian Sandoval.
To the extent that the habitat protection measures in Manual 6840 already provide adequate GSG habitat protection, land use plan amendments are unnecessary. Better implementation of Manual 6840 could be achieved through policy clarifications such as an Instruction Memorandum to emphasize the need for BLM’s land use decisions to comply with Manual 6840.

VI. The NEPA Documents Must Eliminate the Unlawful SFA Designations

In *Western Exploration, LLC v. U.S. Dep’t of the Interior*, 250 F. Supp. 3d 718, (“Nevada litigation”) the United States District Court for the District of Nevada ruled on March 31, 2017 that the SFA are unlawful because BLM violated NEPA by failing to prepare a Supplemental EIS for the designation of SFAs in the 2015 Nevada LUP. One of the purposes of BLM’s scoping notice is to comply with the Court’s order to prepare a Supplemental EIS to evaluate the SFA. In response to this order, BLM is seeking public comment on the SFA designation and whether BLM should retain, modify, or eliminate the SFA designations.

The SFA designations are based on the landscape-scale habitat maps, which have not been field verified and therefore incorrectly characterize GSG habitat as discussed in Sections II and III. The record in the Nevada litigation documents that the maps in the RODs overlook important habitat areas, fail to identify the “best-of-the-best” habitat, and include areas of non-habitat within the SFAs, PHMA, GHMA. For example, during preparation of the FEIS, BLM ignored the advice from Nevada’s wildlife experts at the Nevada Department of Wildlife (“NDOW”) regarding the location of the most important GSG habitat areas:

“Top Nevada BLM officials knew that roughly 26 percent (723,000 acres) of the 2.8 million acre Nevada SFA was not priority habitat – it included lower priority habitat and 75,100 acres of non-habitat. They also knew from NDOW’s comments…that the State’s wildlife experts said the SFAs “do not fully represent the most important landscapes.” NDOW expressed concerns about the re-prioritization of management actions to the SFA given the lack of state input and that the “conservation priorities may be misplaced as a result of policy-based, rather than science-based, planning.” Nevada litigation, Motion for Summary Judgment, Case 3:15-cv-00491-MMD-VPC, Document 67 at 6 – 7, 04/01/16.

The Nevada litigation record also reveals that the SFA designation did not reflect actual habitat conditions because BLM officials inappropriately “turned” lower priority habitat and non-habitat into SFAs:

“The FEIS designated 2.8 million acres as SFA, which caused an additional 722,800 acres to be designated as PHMA, turned 436,000 acres of GHMA into PHMA, turned 211,100 acres of OHMA into PHMA, and turned 75,100 acres of non-habitat into PHMA.” Nevada litigation, Order, Case 3:15-cv-00491-MMD-VPC Document 126 at 37, 03/31/17.

The SFA habitat classification is a special subset of PHMA as shown on the landscape-scale habitat maps in the RODs. As discussed in Sections II and III, current Executive and Secretarial
Orders have rescinded the Obama Administration’s landscape-scale land use management policies. Consequently, BLM must jettison all of the landscape-scale habitat maps in the RODs that include the SFA designations. Additionally, BLM must discontinue the special land use restrictions in the RODs that apply to the SFAs, including but not limited to the restrictions on mineral exploration and development, grazing, renewable and conventional energy development, transmission lines and pipelines, and access and travel. Land use restrictions, if warranted, must be applied surgically on a case-by-case basis based on actual, field-verified habitat conditions.

VII. The NEPA Documents Must Include Sections on Geology and Minerals in the Affected Environment and Environmental Consequences Chapters

The complete absence of sections on Geology and Minerals in the Affected Environment and Environmental Consequences chapters of the 2013 DEIS and the 2015 FEIS are a glaring deficiency and fatal flaw. BLM must correct this deficiency in the NEPA Documents being prepared in response to this scoping notice.

Fortunately, BLM can cure this deficiency by tiering to or incorporating the information in two recent documents:

1. The October 2016 Mineral Potential Report and Sagebrush Mineral Resource Assessment\(^3\) that the U.S. Geological Survey (“USGS”) prepared for BLM; and


Together, the October 2016 USGS report and BLM’s 2016 SFA Withdrawal DEIS present much of the information that should have been included in the 2013 DEIS and the 2015 FEIS.

As noted in our March 30, 2017 comments, the 2016 SFA Withdrawal DEIS provides well-organized, useful, and compelling information about the adverse socioeconomic impacts that would result from implementing the proposed SFA mineral withdrawal. The SFA Withdrawal DEIS documents that the proposed 20-year withdrawal would cause a staggering aggregate adverse impact of $14 billion in reduced economic output, $2.4 billion in less labor compensation, and 34,000 fewer jobs in five of the six SFA states, with Nevada, Idaho, and Wyoming bearing the brunt of these impacts. BLM must consider these enormous adverse impacts when evaluating whether to retain any aspect of the SFA.

In response to BLM’s request for comments on the SFA designation, BLM must also fully consider the impact analysis in the 2016 SFA Withdrawal DEIS which revealed that the footprint of mining and mineral exploration activities in the SFAs was projected to amount to a mere 2,620 acres\(^4\) across the six SFA states. BLM quantifies these impacts as affecting only about 0.026 percent of the 10-million acre SFAs. (SFA Withdrawal DEIS at 4-75). The 2016 SFA Withdrawal

\(^3\) [https://pubs.usgs.gov/sir/2016/5089/b/sir20165089b.pdf](https://pubs.usgs.gov/sir/2016/5089/b/sir20165089b.pdf)

\(^4\) The 2,620 acres is comprised of 187 acres in Idaho, 81 acres in Montana, 2,285 acres in Nevada, 66 acres in Oregon, 1 acre in Wyoming, and 0 acres in Utah. (SFA Withdrawal DEIS at 2-10).
Withdrawal DEIS also includes important information about the scope of mining impacts under a No Action Alternative (i.e., without the SFA withdrawals):

“…the total amount of mining related disturbance in sagebrush habitat under the No Action Alternative would be 9,554 acres, or **approximately one-tenth of 1 percent of the total withdrawal area**…These disturbances could impact vegetation communities on **0.1 percent of the SFAs** with the majority of the impacts estimated to occur in Nevada and Idaho.” (SFA Withdrawal DEIS at 4-71 and 4-72, bold emphasis added.)

The 2016 SFA Withdrawal DEIS clearly documents that mineral activities do not adversely impact GSG or its habitat and that the proposed withdrawal was unwarranted.

WMC applauds BLM’s October 11, 2017 decision to cancel the proposed SFA withdrawal. We strongly suggest that the NEPA Documents that will be prepared in response to the Court’s order in the Nevada litigation include the information presented in the 2016 SFA Withdrawal DEIS, which clearly illustrates that mineral activities are not a threat to GSG habitat and that the proposed mineral withdrawal would have resulted in devastating socioeconomic impacts in Nevada, Idaho, and Wyoming. This information should have been included in the 2015 FEIS. Incorporating the findings of the 2016 SFA Withdrawal DEIS into the NEPA Documents will cure this deficiency.

**VIII. Mitigation Standards**

BLM’s scoping notice specifically asks for public comments on the mitigation standard in the LUPs, which requires compensatory mitigation that produces a net conservation gain. The net conservation standard must be eliminated for two reasons. First, this standard was not proposed in the 2013 DEIS; it was unlawfully added to the 2015 FEIS and the RODs without giving the public an opportunity to comment on this new standard as NEPA requires.

Secondly, the Obama administration’s landscape-scale land use planning and mitigation directives are the foundation of the LUP’s net conservation gain mitigation requirement. Now that the Trump Administration has rescinded these Obama-era landscape-scale planning and mitigation policies, the net conservation gain concept is no longer consistent with current land management policies. BLM must thus amend the GSG LUPs to eliminate the net conservation gain mitigation standard.

Additionally, because net conservation gain does not comply with current land use management policies, BLM must not impose the net conservation gain requirement on projects undergoing evaluation while the NEPA Documents are being prepared. Prior to finalizing the NEPA process to amend the LUPs to remove the net conservation standard, BLM should develop an interim policy directive to clarify that net conservation gain is no longer required for proposed projects. Similarly, operators of projects authorized under the current LUPs where the net conservation gain standard was imposed should no longer be required to comply with the net conservation mitigation standard.
Section 302(b) of FLPMA requires the Secretary to manage public lands to prevent unnecessary or undue degradation of the land (“UUD Standard”). The UUD Standard explicitly amends the Mining Law of 1872 and requires operators of mineral projects on BLM-administered lands to develop, operate, close, and reclaim mineral projects in compliance with the UUD Standard.

BLM’s 43 CFR § 3809 surface management regulations for locatable minerals requires BLM to implement the FLPMA § 302(b) mandate to prevent unnecessary or undue degradation, including impacts to wildlife habitat. Prior to initiating a mineral project on BLM-administered lands, these regulations require the operator to provide detailed baseline information about wildlife habitat (43 CFR § 3809.401(c)). The 3809 regulations give BLM the authority to require a mineral operator to avoid or minimize an impact, compensate for an impact by replacing or providing substitute resources or environments, and to rehabilitate wildlife habitat. (See 43 CFR §3809.5). Before BLM will approve a proposed mineral exploration or mining project, an operator must satisfy these requirements and provide financial assurance to guarantee reclamation. Projects on National Forest System Lands are subject to similar environmental and habitat protection requirements.5

In the case of mineral exploration and development projects, the UUD Standard is the only mitigation standard consistent with claimants’ rights under the U.S. Mining Law as amended by FLPMA. BLM does not have the authority to require mineral project proponents to provide mitigation that exceeds the UUD Standard. UUD must be determined on a site-specific basis to determine which impacts are avoidable (i.e., unnecessary and undue) and which impacts are unavoidable (i.e., necessary and due) in order to develop the mineral project. Consequently, there is no one-size-fits-all mitigation standard or uniform ratio that is applicable to mineral projects. The appropriate mitigation measures must be determined on a site-specific basis in concert with determining UUD and how to mitigate avoidable impacts. For mineral projects on public lands, the mitigation policies in the States’ GSG conservation plans must be consistent with the UUD Standard on BLM-administered lands and similar policies on National Forest System lands.

IX. Conclusions

WMC commends BLM for recognizing that the current LUPs are inconsistent with current policies, taking the necessary steps to eliminate the inconsistencies and to respond to the Court order in the Nevada litigation to prepare a Supplemental EIS. We also support BLM’s decision to cancel the proposed SFA mineral withdrawals in light of the overwhelming data in the 2016 SFA Withdrawal DEIS that the withdrawal was not warranted to protect GSG habitat and would cause substantial socioeconomic harm in the six SFA states.

As described above, the landscape-scale policies in the current LUPs are no longer viable because the Trump administration has revoked the previous administration’s landscape-scale land use planning and mitigation policies. Consequently, BLM must eliminate the landscape-scale habitat maps, the net conservation gain standard, the SFA designations, the disturbance and density caps, the uniform lek buffer distances, and the one-size-fits-all adaptive management

responses because all of these measures are premised upon landscape-scale land use planning. Although formal land use plan amendments may be required to eliminate these measures and make the LUPs consistent with the Trump administration’s land use planning policies, WMC encourages BLM to use policy guidance wherever possible to eliminate the use of the LUP landscape-scale land use policies in order to provide land users with immediate regulatory relief while the NEPA Documents are being prepared.

Additionally, WMC requests that BLM examine the habitat protection measures in its existing management tools, including Manual 6840 and the 43 CFR § 3809 regulations applicable to locatable mineral projects, rather than proposing new or different GSG conservation measures in the NEPA Documents.

Finally, WMC strongly urges BLM to use all available management tools to reduce wildfire risks in the 2018 – 2019 wildfire seasons. We ask that BLM immediately authorize targeted and managed grazing to reduce the buildup of highly flammable annual non-native grasses as an emergency measure to address wildfire risks.

WMC appreciates the opportunity to provide these comments and stands ready to work with BLM during the process to develop the NEPA Documents.

Respectfully submitted:

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