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State of Nevada
Assembly
Seventy-Sixth Session

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BLM Comments on the Sage Grouse EIS

Jan. 28, 2014

ELKO COUNTY, WHITE PINE, EUREKA, AND PARTS OF LINCOLN, NEVADA
“NEVADA AND NORTHEASTERN CALIFORNIA GREATER SAGE-GROUSE”
DRAFT LAND USE PLAN AMENDMENTS AND ENVIRONMENTAL IMPACT STATEMENT

SUMMARY COMMENTS

Elko County has offered numerous comments concerning the Draft Environmental Impact Statement / Land Use Plan Amendments and the direct impacts that the Proposed Action Alternatives as written will have on the County, State and Region. Many comments have been offered by entities, special interest groups and individuals concerning the many implications of Greater Sage-Grouse (GRSG) populations and habitat. Elko County asserts that the United States Fish and Wildlife Service (USFWS), the Bureau of Land Management (BLM) and the United States Forest Service (USFS) have failed to completely identify the full impacts of the Alternatives offered in the GRSG DEIS / LUPA including social and economic impacts to private concerns that the proposed alternatives will serve on the social and economic detriment of the regions.

In our experiences with the NEPA process as a cooperating agency we have many times provided specific pertinent scientific data and information concerning the respective NEPA project. In most all circumstances this information and data has been disregarded by the agency as rhetorical, non-scientific, unquantifiable or unsubstantiated by the agencies. Therefore, Elko County has developed acute reservations concerning the federal land management agencies and the NEPA process. We reason that the process is entirely a matter of the agency personnel interpretation of information and data that best suits management policies set forth by the current administration and/or Special Interest Groups that have filed in federal courts. Elko County has incessantly entered into Memorandums of Understanding (MOU's) with the federal agencies with no satisfaction or direct contribution into the various decisions of the respective EA, EIS or any other planning effort. However, Elko County offers the following summary comments concerning the Nevada and Northeastern California Greater Sage-Grouse Draft Land Use Plan Amendments and Environmental Impact Statement.

Range Management

Elko County maintains that the GRSG DEIS / LUPA has not identified and conceded the reality that changes in range management over the past seventy five (75) years or more have lead to the current status of lost sage steppe habitat because of wildlands fires that have destroyed and devastated all

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wildlife and wildlife habitat. The federal government is now expecting local, state and regional economies to concede these losses and concede our constituent's civil rights to utilize public resources and access to federally managed lands. Elko County insists that these mandates as proposed are not in compliance or accordance with the multiple use mandates of the Federal Land Policy and Management Act (FLMPA) of 1976 and NEPA.

Elko County has established and quantified within the "Elko County Greater Sage-Grouse Management and Conservation Strategy Plan" that peak Sage-Grouse populations coincide with much greater numbers of agricultural developments post European settlement supplying water and habitat including livestock cattle and sheep, grazing within Sage-Grouse habitats. Elko County believes and has provided information in "Elko County Greater Sage-Grouse Management and Conservation Strategy Plan" that identifies inaccuracies leading to changes in federally managed public land use policies over the past 75 years by the federal land management agencies. Federal land use policies that have created and enhanced the habitat plight and predicament that the western states are now enduring. The changes that reduced livestock grazing and other multiple uses on federally managed public lands that have lead to habitat decadence and overgrowth ultimately leading to catastrophic wildland fires that have destroyed millions of acres of wildlife and wildlife habitat including the Greater Sage-Grouse and its habitat.

GRSG Populations and the ESA

Elko County asserts that the alleged best current scientific data utilized by the USFWS, in their summation of the measures and policies for Sage-Grouse population and habitat protection and conservation is not the best current scientific information available. Elko County contends that federal land managers must base Sage-Grouse and habitat decisions on the best current available science and not the threat of litigation. Elko County argues that the current data and information utilized by the USFWS to develop the posture and summation of federal land and wildlife managers will cause further loss of millions of acres of federally managed public lands resources, wildlife and wildlife habitat. Consequently the process also causes the decline or loss of many multiple uses including but not limited to mining, mineral exploration, recreation, agriculture and livestock grazing, while having severe negative impacts to the local, regional and national economies.

We have established that USFWS does not have a basis to list the GRSG as warranted but precluded under the Endangered Species Act (ESA) based on the mandates of the act. The USFWS have relied on an ambiguous and discerning clause concerning animal habitat as the sole issue. The "Elko County Greater Sage-Grouse Management and Conservation Strategy Plan" has identified the malfeasance of the USFWS GRSG populations in a white paper entitled "*The Greater Sage Grouse Does Not Warrant*

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Listing Under the Endangered Species Act.” Prepared by: Quinton J. Barr, Range Consultant, Western Range Services.

Mr. Barr states: Any answer to this question must be consistent with the primary purposes of the ESA and its definitions of endangered and threatened species. R. Barr concludes that the ESA states that the primary purposes of the Act are to: 1] “provide a means whereby ecosystems upon which endangered species and threatened species depend may be conserved” and, 2] “provide a program for the conservation of such endangered species and threatened species” (see ESA, Sec. 2(b) Purposes) (1). Since these purposes apply specifically to “endangered species and threatened species” a finding that a species is either endangered or threatened must occur before a species or the ecosystem (habitat) upon which it depends, falls under the purview of the Act. By definition under the ESA, an “endangered species” is “any species which is in danger of extinction” and a “threatened species” is “any species which is likely to become an endangered species within the foreseeable future” (see ESA, Definitions, Secs. 3(6) and 3(20)) (1). ***Thus, under the ESA, a species can only be listed as endangered if it faces imminent extinction, or as threatened if it is at risk of extinction in the foreseeable future.***

The current estimated population for greater Sage-Grouse exceeds 535,000 birds (see USFWS Findings, Table 4, page 13921) (2), which is 107 times greater than a minimum effective population of 5,000 birds. USFWS findings reported contemporary rates of decline for Greater Sage-Grouse estimated by several sources. Connelly et al. 2004 estimated the rate of decline from 1986 to 2003 to average 0.37% per year, and reported that some populations actually increased during that period. At that rate of decline, it would take more than 1,260 years for the estimated current Greater Sage-Grouse population to dwindle to a minimum effective population of 5,000 birds range wide, and it would take more than 1,060 years for each of the stronghold areas to fall below a minimum effective population of 5,000 birds. In contrast, WAFWA 2008 estimated the rate of decline from 1985 to 2007 to be 1.4% per year. At that rate of decline, it would take more than 330 years for the estimated current Greater Sage-Grouse population to dwindle to a minimum effective population of 5,000 birds rangewide, and it would take more than 280 years for each of the stronghold areas to fall below a minimum effective population of 5,000 birds.

In the ongoing GRSG issue, it is crucial for all to understand that by agency count there are 535,000 birds. The minimum viable population for genetic survivability – the Endangered Species Act listing criteria, is 5,000 birds. There over 100 times the number of sage grouse required for an effective population. Yet the USFWS threatens they will list the bird unless citizens and local government acquiesce to oppressive agency habitat management plans on federally managed lands and ultimately privately owned property.

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Wildland Fire

Elko County has provided information to the BLM / USFS in the preparation of the GRSG DEIS / LUPA concerning several issues that have been identified by the USFWS as primary causes of population and habitat loss. The primary cause of habitat loss is due to catastrophic wildland fires that the west has suffered of the past 50 years.

DR. PAUL TUELLER, professor of range ecology at UNR for 42 years: *“The extreme fire years in the recent past must be due, in part, to the noted reduction in grazing the forage base, resulting in significant fuel buildup. The lower and sometimes upper reaches of the mountain ranges have turned yellow as a result of post-fire cheatgrass establishment...Development of intensive grazing strategies is needed to allow utilization of cheatgrass and reduce future fuel loads. Grazing animals will be the tools that must be used to make desirable changes in vegetation.”*

DR. LYNN JAMES, director of the USDA ARS plant research laboratory at Logan, Utah for 35 years: *“Fires depend on adequate fuels-grasses and certain shrubs. The larger the fuel load, the hotter the fire will burn and the more damaging it will be...An economical and efficient way to remove excess grass is with an on-off grazing system. Fuel loads are reduced, while producers benefit from forage consumed by their livestock. Other grazing strategies can aid in preventing or managing wildfires and controlled burns. Fires that do occur burn with reduced intensity and a general upward trend in rangeland condition is sustained.”*

DR. KEN SANDERS, professor of rangeland ecology at the University of Idaho for 32 years: *“The third biggest threat is the reduction in grazing on public rangelands. If the proposed sage grouse habitat guideline that recommends leaving a grass stubble height of 18 centimeters is applied, it will not only result in an adverse economic impact on livestock producers, but it will also result in increased, higher intensity wildfire due to a larger fuel load.”*

DR. WAYNE BURHHARDT, UNR professor of range management, emeritus: *“For the past 40 years, the management strategy, at least on public lands, has been to reduce or modify livestock grazing on these annual grasses, presumably to allow the re-establishment of native bunchgrasses. This has proven to be disastrous. Pre-adopted annual grasses [such as cheatgrass] can out-compete native bunchgrasses for early spring moisture on arid range sites. Reductions in grazing on these rangelands have not promoted the establishment of native flora, but rather have allowed flammable fuel build-up and increased fire frequency, intensity and spread. These unnatural fires remove the sagebrush overstory, prevent shrub re-establishment and create the conditions for the establishment of monotypic annual grasslands on what should be a shrub/grassland vegetation community.”*

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GRSG Predation

The BLM / USFS and USFWS have failed to identify nest and youngling GRSG predation as a significant cause to loss of populations in the west. The BLM / USFS GRSG DEIS / LUPA will not associate the loss of population with the predation issue and has not addressed needed management practices to reduce predation occurrence to the GRSG. Nest and youngling predation has been considered by some researchers to be the primary limiting factor for Sage-Grouse populations (e.g., Batterson and Morse 1948, Autenrieth 1981, Gregg 1991, Gregg et al. 1994), and predation on eggs and youngling birds was considered by Schroeder et al. (1999) as the primary cause of mortality. Studies have demonstrated that the primary nest predator species varies among study sites. Avian predators, primarily corvids (ravens, crows, and magpies), are the primary predators in Nevada.

DR. PETER COATES, USGS Wildlife Biologist stated that sixty percent (60%) of nest depredation is due to ravens, and ninety-five percent (95%) of total nesting loss is due to predation. Federal and state agencies do not report, account or estimate wildlife loss due to fire. With both predation and fire loss, the USFWS response is to downplay actions which have substantially protected the sage grouse. Ted Koch, USFWS Nevada State Supervisor, addresses predator control only as the last resort. Collecting road kill to discourage predator attraction and congregation has higher priority. Warding ravens off by daily covering landfills with tarps is not useful to sage grouse. High-personnel programs are the agency goals, whether spotted owl, sage grouse or red snapper are killed under those very programs. Despite the reality that predators decimate sage-grouse nine times over, the agencies tell us that predator control is a long-term problem and should not be initiated because we will have to pursue it indefinitely. Studies and policy drafts with indefinite timetables are acceptable, but actions which may reduce the need for a massive bureaucracy are unacceptable.

Elko County insists that federal legislation must be prepared concerning changes to the Migratory Bird Treaty Act of 1918. An action to remove the Raven (*Corvus corax*), also known as the Northern Raven from protected status to permit local and state regulation concerning GRSG depredation without further federal intervention as per 50 CFR 21.43. The original 1918 statute implemented the 1916 Convention between the U.S. and Great Britain (for Canada) for the protection of migratory birds. Later amendments implemented treaties between the U.S. and Mexico, the U.S. and Japan, and the U.S. and the Soviet Union (now Russia).

Specific provisions in the statute include:

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- Establishment of a Federal prohibition, unless permitted by regulations, to "pursue, hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry, or cause to be carried by any means whatever, receive for shipment, transportation or carriage, or export, at any time, or in any manner, any migratory bird, included in the terms of this Convention . . . for the protection of migratory birds . . . or any part, nest, or egg of any such bird." (16 U.S.C. 703).

However, as the USFWS is considering the ESA listing of an indigenous North American species, the Greater Sage-Grouse, numerous studies have disclosed and proved that the primary predator of the GRSG nest and younglings is the Raven (*Corvus corax*) a nonnative invasive species. This reality alone should command legislative changes to the Migratory Bird Treaty Act to remove the common raven from the protected list to ensure the protection and security of future GRSG populations and other indigenous species that the common raven is known to predate in the United States. The USFWS is considering the listing of the GRSG and subsequently will make critical decisions that will have severe negative impacts to public and private lands in eleven western states. Changes to the Migratory Bird Treaty Act must be made to provide the tools for local and state agencies to control the predation of the Greater Sage-Grouse as an indigenous North American species while addressing sage steppe habitat using alternative management practices to curtail wildland fire.

Culture, Socioeconomics and Economies

Currently the Bureau of Land Management operates under Instructional Management Memorandum No. 2012-043. This document, issued on Dec. 27, 2011 without public notification or participation by an acting director, it officially expires in September, 2013 unless renewed or effectively implemented by that time. The action was implemented by the BLM and subsequently adopted by the USFS for GRSG habitat management practices. Its nature is to condition both agency and public for endangered species listing of the Greater Sage-Grouse through initiating ESA measures before actual listing. The BLM and USFS maintain that the public will not notice a change since the change already will have occurred with scant publicity.

The BLM is in the process of removing from Elko County production a total of 1,875 square miles in order to protect the sage-grouse. Essentially saying humans are unfit to use an area the size of Delaware. Using the USDA agricultural census, the agricultural productivity to be lost, totals nearly \$31 million per year. Some of the removed ground has mineral or natural gas potential, with their concomitant potential for direct and indirect jobs.

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March 2012, the BLM deferred the China Mountain Wind Energy Project citing that forty two percent (42%) of the sage-grouse population in a management area is within the proposed project site, so the decision will await the BLM's completion of environmental impact statements on conserving the sage-grouse to prevent its listing as an endangered species. The project would have provided Elko County \$500 million dollars to the local economy in phase one construction and roughly 750 construction jobs and up to 50 permanent jobs. The full project would provide \$18.8 million in property taxes on the Nevada side, with \$7.6 million going to the state and the remainder to Elko County.

In March 2013, the BLM announced an Elko County oil and gas lease reduction from 208 to 113 square miles. The agency touts collecting \$1,788,595 in lease fees, but not the opportunity cost associated with the withdrawn parcels. These actions taken without local or state public involvement have already had severe negative impact to the local and regional culture and economies. But yet the GRSG DEIS / LUPA clearly states that actions proposed within the GRSG DEIS / LUPA will not serve severe impacts.

In 2010 the Elko County Board of Commissioners addressed changes to federally managed public land use management policies in the Elko County Public Land Use and Natural Resource Management Plan and again in 2012 in the Elko County Greater Sage- Grouse Management and Conservation Strategy Plan. These two plans along with many others, prepared by local agencies were provided to the BLM and USFS for review and consideration during preparation of the GRSG DEIS / LUPA as per NEPA requirement. The plans submitted by Elko County contained realistic professionally prepared information concerning federal land management policy changes and their impacts to the local, state and regional economies; *The Impact of Federal Land Policies on the Economy of Elko County, Nevada, George Leaming Report 12/2010 (Harris Technical Report UCED 2006/07-11)*. Elko County again was more than frustrated that neither of these professional documents were given any consideration in the GRSG DEIS / LUPA. The documents provide professionally established information that proves and corroborates that Alternatives A, B,C, D and F proposed GRSG DEIS / LUPA will serve severe economic impacts not only to Elko County but the entire planning area and all western states with GRSG habitat and populations.

Elko County believes that that the GRSG will provide the same negative severe impact to Nevada and much of the west as did the Spotted Owl. ***“The consequences for the rural economy in many areas of the Pacific Northwest were devastating. As many as 135 mills were closed, pushing unemployment up to 25 percent in some small communities. The mill closings affected cutters, loggers, and truck drivers, including other businesses that provided services to them were also out of work.”*** Des Jardins, J. (1997) *Environmental Ethics*; Power, T. (1995) *Economic Well-Being And Environmental Protection a report By 60 Northwest Economists, Reviewed by George McKinley*. There were many comprehensive

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economic impact studies prepared during the Spotted Owl listing, however they were also disregarded and deemed exaggerating. *“The environmentalist argued that the economic impact of the listing has been exaggerated. They maintain that the loss of thousands of timber industry jobs during the 1990s was the result of long-term processes related to the inherent instability of the timber industry, industry restructuring, and overcutting of old-growth on both public and private lands.”* The impacts have been proved and realized in the Pacific Northwest from the listing of the Spotted Owl. The GRSG DEIS / LUPA clearly states alternatives proposed within the GRSG DEIS / LUPA, *“The alternatives are unlikely to have a significant impact on state tax revenues”*. (Section 4.19.2 pg 245) Although the DEIS / LUPA addresses public lands generated economic components, the GRSG DEIS / LUPA did not specifically address private local, state and regional economic components and impacts as required by NEPA.

Planning Strategy

At a meeting held in Elko County USFWS State Director, Ted Koch publically stated that the public will have to concede to *“short term minimal sacrifices”* until the decline of the GRSG populations comes to an end. It materializes that the USFWS will utilize populations concerns when directly challenged, but has for the most part focused on the GRSG habitat issue. This statement indicates to the County that all issues associated with the GRSG should be equally focused on; the decline of GRSG populations, predation and loss of habitat must be equally addressed within any action that is mandated in GRSG DEIS / LUPA or any other federal land management action. Additionally Elko County believes that the federal agencies must identify and focus efforts on a smaller local planning area to identify and implement management actions specific to the individual areas or regions and refrain from the overall western states policy of a one size fits all planning strategy.

The USFWS, BLM and USFS have not fulfilled the mandate of NEPA in the review and consideration of local and state public land use management plans and have continually disregarded information and data that was specifically and professionally prepared specific to the GRSG population and habitat issues. Elko County believes that these plans are not considered because they converse to the conclusions and findings of information provided by non-local sources. Elko County would ask for a review by the Committee on Environmental Quality to identify and quantify the BLM / USFS actions to disregard local and state data. Again Elko County maintains that planning areas must be locatable specific areas of habitat and populations and not based on large regions with varying GRSG habitat.

Federal Actions

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Many people of the west are still in economic peril from the extreme devastation caused by the listing of the Spotted Owl, an administrative decision that virtually obliterated many rural economies of the Pacific Northwest and other regions. Elko County declares that the many petitions for rulings filed by Special Interest Environmental Groups in specifically identified federal courts is not an effort to protect wildlife species under the ESA, but to gain and maintain control of the federally managed lands. These actions and decisions are against the resolve and necessity of the taxpaying public that relies and utilizes the public lands for resources to maintain and preserve healthy, viable and solvent economies even during economic recession occurring in the majority of the country. The continual petitions, filings and subsequent rulings have proven to devastate western states economies and have initiated negative ramifications on public and private lands throughout the United States. Currently the United States national debt exceeds seventeen trillion dollars; Can the United States afford to continue to limit our natural resources and continue to misuse tax payers money to further the personal agendas of select special interest environmental groups that only desire is for closure and further restriction of federally managed public lands?

Elko County believes that the GRSG potential listing is an important and crucial decision affecting far reaching areas of the west and the United States. Therefore we believe that GRSG listing decision should not be made by a federal government employee without full accountability to the general public. Elko County maintains that an administrative service such as the USFWS should not be delegated or authorized to conclude and take an action that will serve severe negative impacts to local, state and regional cultures and economies such as the impacts of the Spotted Owl in neighboring states. The constituents of the United States elect our congressional and senatorial representatives to consider actions that impact our civil rights as a nation. Elko County realizes that the ESA action potentially made by the USFWS to list the Greater Sage-Grouse on the endangered species list will have very long term negative impacts to all areas affected by the actions. This decision must be made by constituent accountable legislative representatives not salary paid federal government appointed officials. These decisions should be made by elected officials accountable to their constituents in the respective districts affected by the potential ESA action.

Conclusion

Western states have seen conflicts over natural resources for more than a century. These conflicts have involved issues such as grazing, roads, fences, mineral, oil and gas development, urban expansion, spread of invasive species, water rights, Native rights, timber harvest, recreation and pollution. Recent additions to the list include development of alternative energy such as wind and solar power. In many

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cases, the more recent conflicts have involved the protection of endangered and threatened species, often with one group of advocates seeing listed species as an obstacle to their development goals or property rights, and another group advocating protection in line with their environmental, scientific, or economic goals. Such controversy has developed in 11 western states over the Greater Sage-Grouse, whose numbers have said to be threatened by livestock grazing, roads, fences, power lines, urban expansion, and energy development.

Elko County contends that meaningful and successful Greater Sage-Grouse population and habitat as well as public land and resource management can't just mean saying 'no' to regional and local economic sustainability. It is vital that local and state Greater Sage-Grouse management and conservation efforts are maintained and expanded without causing devastation to local Socio-Economic factors. Without sensible local, state and federal level management strategies that are informed and directed by local stakeholders, we will be encumbered by the federal, one-size-fits all approaches that will have severe everlasting harmful impacts on the social and economic lifeblood of our region and heritage.

Respectfully ,

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