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July 31, 2018

Brian Steed  
Deputy Director, Policy and Programs  
Bureau of Land Management  
1849 C Street  
Washington, DC

Re: Proposed Amendments to 2015 Greater sage-grouse plans

Dear Deputy Director Steed:

The Pew Charitable Trusts strongly supports conservation of the Greater sage-grouse and its habitat, and appreciates this opportunity to comment on the draft environmental impact statements proposing changes to the Bureau of Land Management's (BLM) 2015 sage-grouse plans in seven states.

Pew was deeply engaged in the unprecedented collaborative effort by a wide range of stakeholders and federal, state, and local governments that resulted in the original 2015 plans. Sportsmen, local business owners, elected officials including Western governors, conservationists, and industry officials worked together to develop commitments and protections that would conserve our iconic sagebrush landscapes, preserve the Western way of life, and sustain the region's outdoor economy.

More than half of the West's iconic sagebrush lands have been lost, resulting in a reduction of more than two-thirds of greater sage-grouse populations since the mid-1960s. The 2015 plans were collaboratively developed and rooted in sound science that was upheld by the March 2018 report by the U.S. Geological Survey study, *Greater Sage Grouse Science (2015 – 2017): Synthesis and Potential Management Implications*. The U.S. Fish and Wildlife Service (FWS) has determined that the Greater sage-grouse is no longer warranted listing under the Endangered Species Act (ESA). That "not warranted" finding would be imperiled by the changes BLM has proposed.

Our comments are mostly applicable to all the proposed amendments, and to the process by which they were crafted. We are providing these comments to you as they apply to all elements of the current planning process.

**Our concerns are as follows:**

*Walking away from the vital commitments in BLM's 2015 sage-grouse plans will have unavoidable consequences for the grouse, the more than 350 species that rely on the same habitat and the many stakeholders who have benefitted from the current, flexible management of millions of acres of public lands. The proposed amendments would erode fundamental land use planning prescriptions intended to avoid the need to list the sage-grouse for protection under the Endangered Species Act.*

As proposed, the changes to the 2015 plans are likely to result in weakening or altogether removing the actual protections in BLM's 2015 sage-grouse plans – the foundation of FWS's 2015 not warranted decision – despite a wealth of science showing that those protections are needed. Without reliable, effective actions to address ongoing threats to greater sage-grouse, there will no longer be a basis for finding that a listing is not

warranted, leading to action by the FWS and/or the courts to formally list the species under the Endangered Species Act.

Among the proposed and current actions that would undermine certainty that protective measures specifically identified in FWS's finding will be implemented are: making protections discretionary rather than binding; allowing loopholes regarding surface disturbance or timing restrictions in oil and gas development permits and lease stipulations; eliminating prioritization of drilling outside of sage-grouse habitat; increased leasing in sage-grouse habitat; and administration policies directing BLM to focus on energy development with little or no regard for other uses and commitments.

*The current planning process does not comply with the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et seq., and the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1701 et seq.*

First, every version of BLM's planning rule since the enactment of FLPMA has contained a requirement for an analysis of the management situation (AMS) as part of a planning process. Without explanation, BLM has chosen to ignore this critical requirement in the current planning effort. The AMS for the 2015 Sage-grouse Plans was completed over 7 years ago. Changes in administration priorities, updated science and conditions on the ground all require an updated AMS for this planning process.

Second, while BLM has some discretion over a project's "purpose and need," that discretion is not unlimited. BLM may not define the "purpose and need" so narrowly that it forecloses consideration of a reasonable range of alternatives. Yet, the Draft EISs decline to consider any alternative that does not "align with individual state plans. . . ."

In fact, the Draft EISs consider only one alternative, the Management Alignment Alternative, and refer to the 2015 sage-grouse plans as the No Action Alternative. This does not meet BLM's obligations under NEPA, which requires BLM to "rigorously explore and objectively evaluate" a range of alternatives to proposed federal actions. BLM must consider additional alternatives, including alternatives that are more environmentally protective than the Management Alignment Alternative.

*There are significant problems in the DEISs relating to the assumptions, data, and planning criteria BLM uses in support of the proposed amendments to the 2015 land use plans.*

These flaws lead to a series of inadequacies in the DEISs themselves, including both faulty conclusions and a high degree of regulatory uncertainty as to the meaning of the proposed amendments.

The scientific grounding for the BLM plans was an integral part of the FWS "not warranted" decision. Unfortunately, much of the relevant data is omitted in the current DEISs, and BLM has ignored important studies that would argue against many of the changes BLM proposes in the DEISs.

*Keeping grouse habitat in federal ownership is important for consistent management and connectivity. We oppose provisions in several of the DEISs that would allow disposal of federal lands if that disposal improves the condition of sage-grouse habitat, or BLM can demonstrate disposal would not have an adverse effect on sage-grouse populations within priority habitat.*

Sage-grouse habitat should be retained in federal ownership to provide consistent management for the species and its habitat. It can be difficult under the standards proposed by BLM to determine if land disposal "will compromise" sage-grouse persistence, or have "no direct or indirect impact" on populations. Retaining habitat in federal ownership helps ensure the land will be managed as prescribed in the BLM land use plans, and provide certainty regarding the long-term conservation objectives for the sage-grouse and its habitat. It also will promote connectivity of sage-grouse populations. States have not committed to all the same management and approaches as BLM. Moreover, in some cases, such as for state trust lands, they are required to manage the lands to maximize revenues, which is likely inconsistent with conserving sage-grouse habitat.

*Density and disturbance caps should be maintained.*

The DEISs propose changes in Utah and Idaho to the density and disturbance caps set out in the 2015 BLM sage-grouse land use plans limiting the amount of development that can occur in priority habitat management areas. We oppose these changes.

There is a substantial body of scientific literature concluding that discrete anthropogenic activities that are present in sagebrush have negative effects on sage-grouse. The extent of these effects varies based on the size, intensity and persistence of the human activity, and can range from displacement to local extirpation of sage-grouse. The issue is discussed in numerous recent reports and studies, including the National Technical Team's December 2011 Report on National Greater Sage-Grouse Conservation Measures and the February 2013 Conservation Objectives Team Final Report.

*Mitigation is a well-established tool that was relied upon in the 2015 FWS decision to not list the sage-grouse as threatened or endangered under the ESA. BLM should apply the full mitigation hierarchy in the sage-grouse plans.*

Mitigation is consistent with FLPMA's "unnecessary and undue degradation" mandate. The practice of mitigation is based on two common-sense principles: (1) certain activities are more appropriate in some locations than others; and (2) as responsible citizens, public land users should clean up after conducting activities that damage the landscape. Mitigation "done right" involves smart planning, efficient and effective decision-making, and predictability for project proponents, as well as a multitude of other stakeholder interests, and can result in positive outcomes for all – the public, communities, businesses, and the environment.

*Habitat boundary adjustments and exemptions to the plans' protective stipulations should be based on best available science and data, and made with full transparency.*

All the 2018 DEISs except for the Oregon DEIS include provisions for adjustment of sage-grouse habitat management boundaries. We support transparent and consistent science-based efforts to ensure that any changes to habitat management boundaries (1) represent the most available up-to-date and accurate information; and (2) do the most effective job possible of conserving sage-grouse habitat, and do not result in a meaningful decrease in the current level of conservation provided by the 2015 sage-grouse land use plans. Moreover, boundary adjustments and complementary adjustments of related management prescriptions should only be made to reflect a changed understanding of the preferences of the species and/or data showing changed use and conditions of habitat; adjustments should not be made to accommodate a proposed use that might otherwise be prohibited or conditioned based on a different habitat classification.

We recognize that some changes to boundaries will be so small that they do not require a plan amendment. Plain maintenance procedures are available to refine or clarify a previously approved decision. For larger adjustments, NEPA and BLM planning rules and procedures should apply, requiring a plan amendment and public notice and engagement.

Similarly, one-time exceptions should be the preferred approach where relief is sought from protective stipulations, such that the safeguards prescribed in these stipulations will remain in place for the majority of oil and gas leases. In such cases, FWS should have the opportunity to submit information for consideration prior to granting waivers, exceptions and modifications.

Finally, it is critical that BLM track boundary adjustments, waivers, exceptions and modifications requested and those granted, and make that information available to the public. These records will provide important insight into how the plans' requirements are being applied and the potential impact of such changes on the overall function of the plans. This information will also allow BLM to determine if the availability of or criteria for granting waivers, exceptions and modifications needs to be further narrowed to ensure sufficient protection for sage-grouse habitat.

## CONCLUSION

The 2015 sage-grouse plans and related state plans commit to maintaining, restoring and enhancing greater sage-grouse habitat. Those commitments were sufficiently specific, based on science and provided real certainty for the sage-grouse, the FWS, and the many stakeholders who care about the management of public lands in the West, local economies there, and the 350 species that rely on the sagebrush ecosystem. BLM needs to take a hard look at its 2018 proposed amendments, which as drafted have the potential to upend the many benefits of the 2015 plans, including FWS's "not warranted" decision.

Sincerely,



Ken Rait, Project Director  
U.S. Public Lands Conservation

cc: Brian St. George, BLM  
State BLM Planning Leads