

WildEarth Guardians Response to Content

October 9, 2015 Comments on Revised DEIS

Prepared March/April 2015 by Cristi Corey-Luse and James Winfrey

Comment: Federal agencies should be meeting these benchmarks in all land-use plans regardless of whether or not the Bi-State Distinct Population Segment (“DPS”) listing is inevitable, as the implementation of these measures will be key to addressing threats to the Bi-State DPS and its habitats and preventing further population declines while improving the odds for recovery to viable population sizes for each of the meta populations of grouse in this DPS.

Response: The standards and guidelines analyzed in the FEIS address the threats to the bi-state DPS.

Comment: We would particularly call the agencies’ attention to the 2012 National Forest Management Act (“NFMA”) Forest Planning Rule’s requirements that riparian areas be adequately protected (in the case of the Bi-State DPS, from livestock grazing), and the Forest Service’s responsibility to document the agency’s view of the best available science and how each alternative does or does not reflect this on a point-by-point basis.

Response: The plan amendment for protection of the BSSG includes protections for riparian zones and meadows. See Standards B-RI-S-07, B-RI-S-08, B-RI-S-09; Brood-Rearing/Summer habitat desired future conditions (Table 2-1 in FEIS); and Range Utilization standards in Table 2-6 of the FEIS.

Comment: The agencies will need to provide a baseline analysis regarding the current viability of each sage grouse Population Management Unit (“PMU”) under current management (Alternative A) in order to establish baseline viability conditions.

Response: The programmatic questions being asked in this analysis do not require the types of base line data being requested. The USFWS identified that existing regulatory mechanisms to protect sage grouse and their habitats in the bi-state area “...afford sufficient discretion to the decision makers as to render them inadequate to ameliorate the threats to the Bi-state DPS”. The Forest and the BLM are proposing to amend their respective Forest Plan and Resource Management Plans to increase the regulatory vigor of the different plans to reduce the available discretion of the decision makers. The baseline for the analysis of the proposed action is the current level of protection allowed by the plans and the interim directions. Population statistics and fluctuation of habitat boundaries, while important for making determinations regarding the regulatory status of the species, are not particularly helpful when assessing the strengths or weaknesses of regulatory mechanisms. What species-specific data we use is included as reference material supporting the “Wildlife” section of the FEIS.

Comment: We are concerned that Alternative B in particular relies heavily on guidelines (signified by the letter "G") rather than standards. In order to meet the certainty of implementation threshold established under the USFWS PECE policy (see Guardians' original Draft EIS comments on the Bi-State DPS plan revision), the Forest Service must apply standards in all cases rather than guidelines in order to ensure that the proposed protections will be applied in practice when permitted activities are considered for approval. Alternative B as presently crafted fails to implement adequate regulatory mechanisms, failing in many cases to apply appropriate science based protections to be deemed biologically effective, and in many other cases applying discretionary (and therefore unreliable) measures that will fail to meet PECE policy thresholds for certainty of implementation.

Response: While guidelines are more present in Alternative B that does not mean that guidelines are useless. According to the 2012 Planning Rule guidelines are defined as follows: "A constraint on project and activity decision making that allows for departure from its terms, so long as the purpose of the guideline is met. Guidelines are established to help achieve or maintain a desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements." The key part of this definition is that it allows for departure so long as "*the purpose of the guideline is met.*" While guidelines allow some flexibility the agency is still responsible for meeting and documenting that the purpose of the guideline is met through some other action.

Comment: We support a modified version of Alternative C including the Fluid Minerals Only additional Regulation Option (RDEIS at 76), as outlined below.

Response: Comment noted.

Comment: For all fluid minerals (petrochemicals, geothermal), proposed Critical Habitats should be closed to future leasing in accordance with National Technical Team recommendations, with additional restriction applied to valid existing leases as Conditions of Approval under the revised LRMP and RMPs.

Response: There are standards and guidelines in Alternative B and Alternative C that close take strides to close the bi-state habitat area to fluid mineral development.

Comment:

Response: Several standards and guidelines address restrictions on fluid mineral and industrial uses that will occur year round in habitat. See table 2-5 of the FEIS.

Comment: We agree with the agencies' proposal to apply conservation measures equally to projects involving federal surface estate and federal minerals estate.

Response: Comment noted

Comment: Standard energy development within 2 miles of a lek is projected to reduce the probability of lek persistence from 87% to 5% (Walker et al. 2007). Taylor et al. (2012: 27) examined sage grouse dynamics in the Powder River Basin and found,

Response: Standard C-Min-S-04 specifically states that, "For fluid minerals do not consent to leasing unless only under no-surface-occupancy stipulations without exceptions, modifications or stipulations." That is for all habitat, not just a buffer around leks. There are also several other standards and guideline designed to promote the conservation of habitat address possible impact from various mineral extraction. See Table 2-5 in the FEIS for details.

Comment: We would ask the responsible official also to render the same determination regarding the accuracy, reliability, and relevance of science supporting the 3% disturbance cap proposed for implementation as a Condition of Approval for existing fluid mineral leases under Alternatives B and C.

Response: While a 3 percent disturbance cap has been included in the proposed action since the draft EIS, there have always been questions regarding how it would be calculated and implemented. The revised draft introduces the "no net unmitigated loss" of habitat which is much easier to comprehend and does not provide for the incremental reduction of available habitat through the 3 percent process. It is the no net loss of habitat standard that is being included in the preferred alternative. The 3 percent cap would be based on existing anthropogenic disturbance in bi-state DPS habitat regardless of ownership. Existing roads, power line corridors, substations, fence lines, range facilities, recreation facilities and trails, disturbance related to mineral exploration and development, would all contribute to the determination of the existing condition. Once the existing condition was determined, any additional (proposed) disturbance would be added to that level until the 3 percent cap was met.

Comment: Please also make a formal determination regarding the disturbance cap in the context of sagebrush canopy cover, and if 3% is not the scientifically defensible threshold, then where that threshold should be set, for the same reasons as noted above for the 3% and 5% disturbance caps.

Response: See response above

Comment: Alternative B does appear to apply a 3% surface disturbance limit in the context of fluid minerals (RDEIS at 31); to provide adequate protection against habitat fragmentation and disturbance/displacement impacts, this standard needs to be applied to all surface-disturbing activities and must be calculated per square-mile section, as recommended by the National Technical Team, not "on average" across a larger area. It should be further specified that the 3% disturbance cap must be calculated per square-mile section, as recommended by the National Technical Team (2011). Knick et al. (2013) found that 99% of active sage grouse leks in the western half of the species' range were surrounded by lands with 3% or less (typically much less) surface disturbance.

Response: Comment noted

Comment: Noise can have a major negative impact on sage grouse, causing disturbance and displacement of birds from preferred habitat and drowning out the

mating calls of males during the lekking season. Blickley and Patricelli (2012) found that low-frequency noise from oil and gas development can interfere with the audibility of male sage grouse vocalizations

Response: There are several standards and guidelines that specifically address noise problems within habitat, especially when it comes to motorized recreation and mineral extraction. See table 2-5 of the FEIS for details.

Comment: We support the direction in standards CMin-S-10, -011, and -12 prohibiting new compressor stations and mining permits in sage grouse habitats. RDEIS at 34. In addition, the plans should recommend closing habitats to future mineral entry and development of all kinds. This should include a prohibition on mineral material sales and development (RDEIS at 34) and a prohibition on expanding existing pits (RDEIS at 35) as in Alternative C.

Response: Please note that standards B-Min-S-01 and B-Min-S-02 that address noise levels do apply to all minerals. They are in the 'Minerals General' section of the amendment.

Comment: We support the Alternative C provision to cease livestock grazing in sage grouse habitats as the most beneficial outcome for both sage grouse and their habitat needs. If the agencies are unwilling to take this step, then at the very least livestock grazing must be managed in such a manner that it prevents any further sage grouse habitat degradation, fosters the recovery of currently degraded habitats to full function in accordance with sage grouse needs, and in all ways maintains all habitat elements required for the survival and recovery of greater sage grouse.

Response: There are standards and guidelines that constrain decision making in the permitting process, the and the livestock management process.

Comment: Unless the agency can articulate a justification for sage grouse habitat objectives not being enhanced by permit retirement, it should presumptively accept that improvements in native understory composition, residual grass height, forb production,

Response: Retirement of term grazing permits is a business decision made by the Permittee. If a Permittee makes such a decision the Forest could consider closing the allotment in compliance with policy.

Comment: We are concerned that the federal agencies have incorporated rankings of threats to the Bi-State DPS from the Bi-State Technical Advisory Committee ("TAC," see RDEIS at Table 3-9), and that this threat assessment was biased and does not reflect the best available science. For instance, livestock grazing was ranked as a "low" level threat in all Population Management Units, while wild horse and burro grazing was ranked as a "moderate" threat in three of the five units. RDEIS at 80. Forest Service reports a total of 85,886 AUMs of domestic livestock within bi-State sage grouse habitat RDEIS at 99.

Response: The Technical Advisory Committee team includes wildlife biologists from the BLM, Forest Service, U.S. Geological Survey, USFWS, and California and Nevada state wildlife agencies. They were brought together because of their expertise and experience studying the life habitat and habitat requirements of the sage grouse. Their efforts are primarily responsible for what is currently known regarding the population and distribution of the bi-state DPS.

Comment: This is a programmatic EIS analyzing the potential effects of the proposed action and alternatives on the resource programs managed by the Forest that may affect bi-state DPS habitat. The management direction that makes up the plan amendment does not include any specific actions on the ground. That is what the secondary 'project level' NEPA analysis does and where further analysis of wild horses and burros would take place once a project is proposed if needed.

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Comment: For the Great Basin, Connelly et al. (2000a) recommended leaving residual grass cover at least 18 cm in height, available during the nesting season. This finding was empirically confirmed by Hagen et al. (2007). Gregg et al. (2008) found that forb components are critical for early brood rearing, and recommended that land managers establish standards for these; such standards are also absent under the Preferred Alternative and not considered under any alternative, although such measures are reasonable and scientifically supported.

Response: The desired future conditions in Table 2-1 apply to the entire habitat area as identified in the FEIS. These DFCs include residual grass height requirements in addition to utilization standards for grazing in Table 2-6 to help maintain appropriate height for the grouse during all of its life stages.

Comment: Collisions with fences pose a potentially major cause of mortality for sage grouse. There are 212 miles of fence in Bi-State DPS sage grouse habitats. RDEIS at 99. Stevens et al. (2013) found that fence collisions are an important source of grouse mortality, and fences on flat areas near leks were a particularly high risk for causing sage grouse fatalities.

Response: There are standards and guidelines that address fences within bi-state grouse habitat. These standards and guidelines apply not only to minerals, but to rangeland improvements as well. See Table 2-5 of the FEIS for details.

Comment: The Forest Service should require as a standard that all crested wheatgrass plantings be remediated to be replaced with native bunchgrasses and shrubs.

Response: If there are crested wheat seedings in the area and converting them to native bunch grass and sage-brush habitat would improve habitat condition it is may be accomplished through site specific project planning. Using genetically and climatically appropriate seed that is certified weed free. All with the intent to move habitat toward the future desired conditions as described in Table 2-1 of the FEIS.

Comment: The role of fire in the sagebrush ecosystem, and how (or if) it drives the patch dynamics of the system, is poorly understood at present. A landscape mosaic of burns may not meet the nesting habitat needs of sage grouse (Nelle et al. 2000), and may also fail to meet grouse habitat requirements during other seasons (Wamboldt et al 2002).

Response: We are not proposing any prescribed fire or vegetation improvement with this EIS. This plan amendment is stickily programmatic and does not propose any on site activities. See the fire resource sections of Table 2-5 in the FEIS for details.

Comment: Under all action alternatives, prescribed fire can be used in key sage grouse habitats where the benefits outweigh the risks. RDEIS at 18. However, the science does not support the use of any fire under any circumstances in key sage grouse habitats. We are particularly concerned that Objective 3(a) will result in degradation of sage grouse habitats; it provides,

Response: While prescribed fire was not out right 'banned' from habitat several standards and guidelines look to minimize any potential effects a fire may have on habitat. Specific actions and their potential effects will be further analyzed in a project level NEPA analysis. Please see the fire resource section of Table 2-5 in the FEIS.

Comment: For fire suppression, the direction in Alternative B regarding a prohibition on prescribed fire where risk of escape could cause negative impacts is complementary with the corresponding direction in Alternative C to suppress fire to prevent invasive grasses (RDEIS at 35), and both standards should be applied. This is not an 'either-or' situation.

Response: See the ROD for specifics. Both of those standards were identified for selection.

Comment: Furthermore, vegetation projects should in no case be allowed to remove sagebrush below the 15% cover threshold, neither for fire suppression purposes or any other purpose. See RDEIS at 35. In this regard, no alternative provides an adequate an appropriate level of protection for sage grouse habitat to prevent significant impacts from vegetation projects.

Response: Specific kinds of projects are not identified nor 'banned' by this plan amendment. All projects that are potentially proposed in Bi-state sage grouse habitat must follow the management direction (i.e. desired future conditions, standards, guidelines, etc.) that is selected and decided upon in the ROD.

Comment: Off-road vehicle use is widespread in the planning area (see, e.g., RDEIS at 49-50). BLM notes that continuation of existing management is likely to result in “absence of sage grouse or degradation of habitat.” RDEIS at 51. Some 503.6 miles of vehicle routes occur within 5 miles of active sage grouse leks (RDEIS at 48), and these routes would be expected to have the greatest impact on sage grouse. These roads should be the top-priority candidates for removal and at minimum should be closed throughout the season(s) of grouse habitat use.

Response: Cross country use is no longer allowed in habitat areas. See Table 2-5 for details.

Comment: We support complete closure of federal lands to cross- country travel as under Alternative C (RDEIS at Table 3-3) rather than merely maintaining the current closure of Forest Service lands only, with a future determination for BLM lands as in Alternative B (RDEIS at Table 3-2).

Response: That has been corrected; see Table 2-5 of the FEIS for details.

Comment: It is important to note that the Bridgeport Travel Management Plan did not result in sufficient road closures to address the habitat needs of sage grouse, and additional closures of some 388 miles of roads crossing key sage grouse breeding and nesting habitats would benefit Bi-State DPS recovery. The travel planning process should be re-opened on national forest lands to address this deficiency

Response: The revised draft EIS and final EIS removed this paragraph and revised its discussion about the miles of road passing through leks; please see the “Effects on the Management of Access to Federal Lands” for updated information. Travel planning is an ongoing process. If NFS roads or NFS trails open to motorized vehicles are causing resource impacts they can be addressed through a site specific NEPA analysis and seasonally closed or removed from the road system.

Comment: However, the ability to permit off-road vehicle events within 0.25 mile of active leks, during the breeding season, as long as they occur after 10 am (RDEIS at 20) is absurdly permissive. First of all, the 0.25-mile buffer is ridiculously small.

Response: This buffer has been enlarged to 3 miles between March 1 and May 15th and those events can only take place during daylight hours after 10 a.m. See Table 2-5 in the FEIS for more details.

Comment: The direction limiting tall structures in both Alternatives B and C are steps in the right direction but in the end are inadequate to prevent significant impacts to sage grouse population.

Response: Standards identified for selection includes the 4 mile buffer in addition to other standards that require predator perches be equipped with anti-perching devices. See Table 2-5 in the FEIS for more details.

Comment: We support the direction in Alternative C to exclude all utility scale wind farms (RDEIS at 21), with the caveat that this should apply only to lands within 2 miles of Priority or General Habitats or proposed Critical Habitat; it would be desirable to permit the construction of new wind farms in otherwise environmentally appropriate areas at a safe distance (2 miles) from occupied sage grouse habitats or sage grouse expansion areas identified in Critical Habitat.

Response: Comment noted

Comment: Nonne et al. (2011) found that raven abundance increased along the Falcon-Gondor powerline corridor in Nevada both during the construction period, and long-term after powerline construction activities had ceased. Braun et al. (2002) reported that 40 leks with a power line within 0.25 mile of the lek site had significantly slower population growth rates than unaffected leks, which was attributed to increased raptor predation. Dinkins (2013) documented sage grouse avoidance of powerlines not just during the nesting period but also during early and late brood rearing. In other sage grouse plan amendment DEISs, BLM has documented negative effects to 4 miles from powerlines and beyond.

Response: Comment noted. Various standards and guidelines specifically address ROW, tall structures, and power-lines. Including guideline B-LUSU-G-06 that encourages that power-lines be buried where ever feasible. See the Access/Recreation and Special Land use sections of Table 2-5 in the FEIS.

Comment: We support proposed restrictions on new recreation facilities to keep them below 3% surface disturbance as in Alternative B (RDEIS at 20); this should be specified to be measures on a per square-mile-section basis.

Response: Alternative C has a standard that prohibits new recreation facilities of all kinds within habitat (C-AR-S-04). In addition, various buffers of 3 miles are proposed for protection of leks and habitat in table 2-5 of the FEIS.

Comment: The existing direction to “maintain desirable sagebrush habitat within 2 miles of leks” in the No Action and Alternatives B and C (RDEIS at 23) is insufficient to prevent habitat impairment across occupied nesting habitats.

Response: The desired future conditions (Table 2-1 in FEIS) and other standards and guidelines in the FEIS apply to all identified habitat in the FEIS. Therefore it is expected that the 'desirable sagebrush habitat' will extend beyond the 2 miles of a lek that is discussed in the no action alternative.

Comment: We support the direction under Alternative C to work to re-establish connectivity through maintaining vegetation suitable for sage grouse and seeding and transplanting sagebrush to re-establish suitable habitats. RDEIS at 91.

Response: Comment noted.

Comment: We remain concerned, however, that efforts at piñon-juniper removal lack the kind of specificity and direction (as well as a hard look at environmental consequences) that is necessary to ensure that piñon-juniper removal will benefit sage grouse, and not harm piñon-juniper obligate species.

Response: This plan amendment is programmatic in nature and at this level we are not able to dictate specific on-site actions. This will be done at the 'project' level NEPA proposal and analysis. However, the desired future conditions (Table 2-1 in the FEIS), goals and objectives (Table 2-3 in the FEIS), and standards and guidelines in Table 2-5 in the FEIS (i.e. C-Wild-G-03) specifically address the importance of removal of phase 1 and 2 pinon-jumpier within habitat.

Comment: The plan revision needs to incorporate standards to minimizing the use of herbicides and pesticides inside sage grouse habitats, and using them as a last resort. We are concerned that aerial applications of herbicides and pesticides are reasonably foreseeable in the planning area. Insects are an important food source for sage grouse; this is particularly true during the early brood-rearing phase.

Response: Standard B-Weed-S-02 in Table 2-5 of the FEIS prohibits the use of herbicides during the critical disturbance period. Herbicide use would only be allowed in bi-state DPS habitat if other integrated pest management approaches are inadequate or infeasible. Limiting the timing of herbicide application could hinder noxious and invasive weed management efforts for some species. There are no proposals for the aerial application of herbicides in this EIS and any proposals to apply herbicides aerially would require an EIS.

Comment: While NEPA requires a 'hard look' to be taken at the direct and cumulative impacts of alternatives, the RDEIS fails to provide this hard look regarding impacts of the various alternatives on sage grouse and their habitats in the Bi-State DPS area (see 'Effects to Wildlife ,RDEIS at 78 *et seq.*). The impacts analysis for wildlife appears to be limited to a descriptive recapitulation of the proposed protection measures in each alternative, without including the direct or cumulative impact of applying those measures on sage grouse or their habitats. For a given threat, will the collective conservation measures by alternative result in improved grouse habitats, further impacts to grouse habitats, or no change?

Response: In the Forest Service, Land and Resource Management Plan direction (NFMA) sets the "side boards" for specific project proposals. Plan direction is considered "programmatic" while site-specific NEPA actions on Forest Service lands are analyzed at the "project" level. We believe the proposed goals, objectives, and standards and guidelines provide enough direction to ensure that project-specific design features and mitigation measures will ensure the restoration and protection of the bi-state DPS habitat. The best way to do something changes frequently as the science improves. Therefore, having specific mitigation at the planning level is not prudent. These and other analysis assumptions are described in detail on p. 51-52 of the FEIS.

Comment: The RDEIS fails to consider the designation of occupied sage grouse habitats as either Research Natural Areas (RNAs, Forest Service) or Areas of Critical Environmental Concern (ACECs BLM) in any alternative.

Response: The purpose and need provides the rationale for the critical need to protect the bi-state DPS. Both the proposed amendment and the alternative apply to all mapped bi-state DPS habitat. While the mapped area does not have a special designation such as an ACEC, it still contains similarly specific management prescriptions to manage and protect the bi-state DPS and its habitat. All of these management actions provide similar and equal protections for the bi-state DPS. This EIS is a Forest Service-lead planning effort and is following the Forest Service planning process. The Forest Service does not recognize or establish ACECs, nor does the Agency have the authority to establish special reserves equating to a wilderness (that authority resides with congress).

Comment: We recommend the adoption of the following measures which are proposed for adoption in the Preferred Alternative of other BLM plan revisions or sage grouse amendments. Some of these are similar to the provisions of Alternatives B and/or C.

Response: Many of the items included in your list of measures are being considered in the Alternatives in the FEIS and ROD. Some do not apply to the bi-state dps habitat area.

Comment: We encourage the Humboldt-Toiyabe National Forest and Nevada BLM Field Offices to combine this planning effort with sage grouse plan amendments for the Inyo National Forest and Bishop Field Office in California.

Response: Comment noted. We are aware of the other units and their efforts and are consistent with them.

Comment: We caution the federal agencies that there is a need to achieve regulatory certainty in fulfillment of the USFWS Policy on Effectiveness of Conservation Efforts ("PECE Policy"). The Endangered Species Act is a statute with substantive requirements directing that threats to the persistence of candidate species be addressed in a manner that incorporates scientifically sound and defensible protection measures to ensure that they will be eliminated or minimized.

Response: The FS and BLM are aware of our roles in meeting the PECE process and that of the USFWS. The implementation of the standards and guidelines on the amendment will provide regulatory certainty that the appropriate steps are being taken to protect the bi-state DPS and habitat.