NEVADA ASSOCIATION OF COUNTIES (NACO)

Board of Directors' Meeting
November 20, 2015, 9:30 a.m.
NACO Office
304 S. Minnesota Street
Carson City, NV 89703

AGENDA

Some NACO Board members may attend via video link or phone from other locations. Items on the agenda may be taken out of order. The NACO Board may combine two or more agenda items for consideration. The NACO Board may remove an item from the agenda or delay discussion relating to an item on the agenda at any time.

Call to Order, Roll Call, Salute to the Flag

1. Public Comment. Please Limit Comments to 3 Minutes.

2. Approval of Agenda. **For Possible Action.**

3. President's Report.

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4. NACO Executive Director's Report.

5. Approval of Minutes of the October 23, 2015 NACO Board of Directors Meeting. **For Possible Action.**

6. Update on a Proposal to Consolidate the University of Nevada, Reno College of Agriculture, Biotechnology and Natural Resources (CABNR), Cooperative Extension, and the Nevada Agriculture Experiment Station (NAES) and Possible Approval of a NACO Position Paper regarding the Proposed Consolidation. **For Possible Action.**

7. Approval of NACO Board Meeting Dates for 2016. **For Possible Action.**

8. Appointment of One of NACO's Representatives to the Nevada Rural Housing Authority (NRS 315.977). **For Possible Action.**

9. Appointment of a Member of the Committee on Local Government Finance (NRS 354.105). **For Possible Action.**

10. Appointment of NACO's Representative to the State Land Use Planning Advisory Council (NRS NRS 321.740). **For Possible Action.**

11. Appointment of One of NACO's Two Representatives to the National Association of Counties Board of Directors. **For Possible Action.**

12. Appointment of NACO's Two Representatives to the National Association of Counties, Western Interstate Region Board of Directors. **For Possible Action.**

13. Acceptance of NACO's September Financials and Investment Report. **For Possible Action.**

14. Discussion and Possible Approval of Dues to Join Western Counties Alliance. **For Possible Action.**

15. Discussion and Possible Approval of NACO's 2016 Budget. **For Possible Action.**

16. Discussion and Possible Action Regarding NACO's Participation in National Association of Counties Contracts Including; Prescription Discount Card Program, Dental Program and Medical Program, Community Service Purchasing Alliance and Nationwide Retirement Services. **For Possible Action.**

17. Update on the Committee on Local Government Finance (NRS 354.105).

18. Update on the Cohesive Strategy Advisory Group Proposed as an Advisory to the Nevada Fire Board.

19. Update and Possible Action regarding the Nevada Supreme Court's Committee to Study Evidence-Based Pretrial Release in Nevada. **For Possible Action.**

20. Update and Possible Action on AB191 Enacted in the 2015 Legislative Session which Authorizes a County to Place on the Ballot at the General Election on November 8, 2016 a Question which Asks the Voters in the County whether to Authorize the Board of County Commissioners to Impose, for the Period beginning on January1, 2017, Annual Increases to Taxes on Certain Motor Vehicle Fuels. **For Possible Action.**

    Note: The NACO Board of Directors May Interrupt the Open Meeting and Exclude the Public from the Meeting for the Limited Purpose of Receiving the Information and for Deliberation Relative to Agenda Item #21 below:

21. Discussion and Possible Action regarding the Bureau of Land Management's and U.S. Forest Service's Greater Sage-Grouse Approved Resource Management Plans (ARMP'S) including;

    a. The Complaint for Declaratory and Injunctive Relief Filed by Western Exploration LLC, Elko County, Eureka County, Quantum Minerals, White Pine County, Lander County, Humboldt County Ninety-Six Ranch, LLC, Paragon Precious Metals, LLC, Churchill County, Washoe County and the State of Nevada. **For Possible Action.**

    b. Providing Comment on the BLM's and USFS's Proposal under the ARMP's to Withdraw Lands Within Sagebrush Focal Areas from Location and Entry under the 1872 Mining Law, Subject to Valid Existing Rights. **For Possible Action.**

22. Update and Possible Action regarding NACO's Efforts Seeking to Compel the U.S. Bureau of Land Management to Comply with the Provisions of the Wild Free-Roaming Horse and Burro Act. **For Possible Action.**

23. NACO Committee of the Emeritus Update. **For Possible Action**.

24. National Association of Counties and Western Interstate Region Board Member Updates.

25. NACO Board Member Updates.

26. Public Comment - Please Limit Comments to 3 Minutes

Adjournment.

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify NACO in writing at 304 S. Minnesota Street, Carson City, NV 89703, or by calling (775) 883-7863 at least three working days prior to the meeting.

Members of the public can request copies of the supporting material for the meeting by contacting Amanda Evans at (775) 883-7863. Supporting material will be available at the NACO office and on the NACO website at: www.nvnaco.org

This agenda was posted at the following locations:
NACO Office 304 S. Minnesota Street, Carson City, NV 89703
Washoe County Admin. Building 1001 E. Ninth Street, Reno, NV 89520
Clark County Admin. Building 500 S. Grand Central Parkway, Las Vegas, NV 89155
POOL/PACT 201 S. Roop Street, Carson City, NV 89701

The following links and/or pages are support for agenda Item 5

NEVADA ASSOCIATION OF COUNTIES (NACO)

Board of Directors' Meeting
October 23, 2015, 9:30 a.m.
NACO Office
304 S. Minnesota Street
Carson City, NV 89703

UNADOPTED MINUTES

Attendance: (NACO Staff: Jeff Fontaine, Dagny Stapleton, Amanda Evans and Tori Sundheim) President Wichman, Douglas County Commissioner Johnson, Humboldt County Commissioner French, Washoe County Commissioner Herman, Mineral County Commissioner Tipton, Lyon County Commissioner Hastings, Eureka County Commissioner Goicoechea, Lander County Commissioner Waits, Esmeralda County Commissioner Bates, Clark County Commissioner Kirkpatrick, Lincoln County Commissioner Higbee.

Others in attendance were: Rob Stokes, Elko County; Austin Osborn, Storey County; Larry Burtness, County Fiscal Officers Association; Tammi Davis, Washoe County Treasurer; Nancy Parent, County Clerks & Election Officials; Steve Thaler, Douglas County Commissioner; Don Alt, Lyon County Commissioner; Jake Tibbetts, Eureka County; Steve Steinmetz, Lander County Commissioner; Nancy Boland, Esmeralda County Commissioner; Linda Bissett, NV Energy; Sondra Rosenberg and Lee Bonner, NDOT and Bob Lucey, Washoe County Commissioner.

1. **Public Comment.** Esmeralda County Commissioner humbly thanked the Board for awarding her the Participatory Democracy award at the Annual Conference and NV Energy's Linda Bissett thanked the Board for participating in their winter coat drive.

2. **Approval of Agenda.** The agenda was approved on a motion by Commissioner Johnson with Second by Commissioner Tipton.

3. **President's Report.** None was given.

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4. **NACO Executive Director's Report.** Jeff invited the Board to join the SLUPAC meeting for their discussion on county planning issues. He informed the Board that Elko County Commissioner Dahl and President-Elect Carson were injured earlier in the week; cards were circulated for both members of the Board. Jeff reminded the Board that the Legislative Commission would be meeting on Tuesday the 27th, to review regulations and other items. They will also be discussing interim committees and that pursuant to the Boards previous discussion that NACO will be attending to support the request for an interim study on property taxes. He circulated the reworked draft op-ed regarding the Basin and Range Monument and requested any suggestions be sent via email. Dagny updated the Board on the Home Rule White Paper developed after the Home Rule Roundtable held in July. She also requested that any uses of the "functional home rule" authority be reported to her so that she can compile the report to the legislature as required by the home rule bill passed last session. Commissioner Johnson noted that all counties should report even if they haven't used the authority, to ensure that the reporting requirement is being met. Amanda updated the Board on the preliminary financials and attendance at the Annual Conference.

5. **Approval of Minutes of the September 30, 2015 NACO Board of Directors Meeting.** The minutes were approved on a motion by Commissioner Tipton with second by Commissioner French.

6. **Approval of NACO Resolution 15-03, "Thanking Clark County for Hosting the 2015 NACO Annual Conference.** The Resolution was unanimously passed on a motion by Commissioner Tipton with second by Commissioner Johnson.

7. **Update on the Programs and Activities of the Nevada Commission on Off-Highway Vehicles.** Sue Baker, Clark County and NACO's representative to the Commission on Off Highway Vehicles gave the Board an update. She began with a summary of the creation of the Commission and the revenues kept by the DMV for the issuance of grants. The grants are awarded by the Commission. The Commission will be working on outreach to inform Nevadans about the registration requirements for OHV's and that they are working toward unification of activities of agencies with OHV connections. They are also preparing for the 2017 Legislative Session to address issues such as the $25 late fee for a $20 registration fee. Commissioner Waits inquired as to the next grant cycle and Ms. Baker noted that they will not know what funds will be available because the grant funding is dependent on the registration fees collected, nor do they know the dates of the 2016 cycle

8. **Discussion and Possible Action regarding the Bureau of Land Management's and U.S. Forest Service's Greater Sage-Grouse Approved Resource Management Plans (ARMP'S) including;** Jeff reviewed the Board's previous decision to join the action and contribute up to $10,000. as well as Tori's time on an as needed basis for specific tasks to be authorized by Jeff, following a presentation by Debbie Struhsacker.

    a. **Amending the Complaint for Declaratory and Injunctive Relief Filed by Western Exploration LLC, Elko County, Eureka County and Quantum Minerals LLC.** Laura Granier thanked and congratulated the Board for their attention to the issue, noting that without the support of the Board that there would not be the momentum behind the issue. She also thanked staff for their efforts in compiling data critical to the case, and noted that the Attorney General's office has been actively engaged since before the case was filed. She noted that the amended complaint grew 30 impactful pages with the additional information provided by the counties. She noted there are now 7 counties on the suit, an additional mineral exploration company as well as the Ninety-Six Ranch and that with the additional parties it adds impact to the overall case. She noted that November 12th is the hearing on the motion for preliminary injunction and that she hopes to have as many members of the suit as possible in attendance to make an impression on the court. She stated that the government's opposition was due that day (10-23-15) and the reply is due November 6th. Nicholas Trutanich of the Attorney General's office joined the discussion and thanked the Board for the opportunity to join the suit on behalf of the state. In light of events the previous day he requested that NACO and its members discuss the possibility of 'reauthorization' of the suit in a show of support to the AG's office. Commissioner French questioned what they are looking for, noting that Humboldt County is on the suit and Mr. Trutanich clarified that they are looking for a show of support. Commissioner Goicoechea noted that they sent a letter of support in the previous evening and if that was enough or if the AG's office would like to see an agenda item. Mr. Trutanich said that if there is an appetite for an agenda item to ratify the statement that would be great but the statement of support is good as well. Commissioner Waits noted that Lander County has had the item on the agenda several times and that it might be of assistance for the District Attorney's to be contacted directly regarding the request for an item to be placed on the county's agendas. Laura offered that an agenda item could be regarding the amended complaint and additional parties involved, to ratify the support of the evolving situation. Mr. Trutanich also touched on issues raised in the press the previous day confirming that the AG's office does have the authority to join the suit under NRS. Debbie Struhsacker also brought up the option of Op-eds to show support for the suit. Commissioner French noted that since the suit has been gaining momentum they have experienced a certain level of push back on their involvement and that op-eds might be a better venue because there has been some vacillation in the press with regards to support of the issue. President Wichman inquired as to the drafting of an op-ed that can be customized per the individual counties. Commissioner Higbee noted that this situation is almost a mirror to their and Clark County's situation with the Desert Tortoise and that the impacts are horrendous and have been devastating to the Lincoln and rural Clark counties. Commissioner Herman noted the massive impacts to her district in Washoe County including the loss of land for a veteran's cemetery and a school. Commissioner Tipton noted that while they can't join the suit, as a county with Bi-State Sage Grouse they support the suit. Commissioner French spoke to Commissioner Higbee's statement that the regulations are for an unlisted animal and if they are allowed to go through it will be an open door for massive regulations on all

public lands for animals that are not in fact in danger. Commissioner Goicoechea moved for NACO to affirm the decision to join the suit in light of the amended complaint and the motion was passed unanimously on a second by Commissioner French.

b. **Requesting Governor Sandoval to Assist in the Legal Challenges to the BLM's and USFS's Greater Sage-Grouse ARMP's and to Ensure that Greater Sage-Grouse are Managed in Accordance with the State Plan and Local Plans and Policies.** Jeff led the discussion with the item being agenized prior to recent events making it clear that the Governor is not in favor of the current state of events, staff drafted a letter which was distributed and Jeff inquired of the Board as to whether it was appropriate to change the existing letter and/or draft a new letter requesting the Governor reconsider his position. Commissioner French inquired as to how many counties had sent a formal letter urging the Governor to join the suit. It was clarified that 5 of the 7 counties named in the suit had already sent letters to the Governor. He also stated that he believes that it is important for NACO to send a letter clarifying the Association's position. Commissioner Goicoechea echoed Commissioner French's sentiments that it is important to 'make the ask'. Commissioner Kirkpatrick noted that the existing letter is somewhat innocuous and that it might not be received well but it did let the Governor know where the Association stands. Jeff clarified for the Commissioner that the addition of a couple of legal arguments would help strengthen the letter. Commissioner Tipton moved for staff to add legal language to the letter with the distribution for approval via email. Commissioner Goicoechea noted that time is of the essence and the motion was amended to remove the need for email distribution/approval, with second by Commissioner Goicoechea the item passed unanimously. A letter of support to the Attorney General's office was discussed as fitting under the agenda item and was approved under the original motion.

c. **Providing Comment on the BLM's and USFS's Proposal under the ARMP's to Withdraw Lands Within Sagebrush Focal Areas (SFAs) from Location and Entry under the 1872 Mining Law, Subject to Valid Existing Rights.** Jeff noted the in order to complete this withdrawal the agency(s) must complete an official action and therefore have imitated a process in the Federal Register in which comments can be made within 90 days; he asked for direction from the Board and that the counties that have SFA's make comments as well. Commissioner Tipton moved for staff to prepare comments for review prior to the November Board meeting and the item passed with a second by Commissioner Higbee. Austin Osborne noted for the record that Storey County is in agreement with the motion.

d. **Supporting a Congressional Concurrent Resolution of "Nonapproval" of the BLM's and USFS's ARMP's as Provided in Section 202 (e) of the Federal Land Management Policy Act of 1976 as Amended**. Tori noted that this action would block the withdrawals and she requested direction on whether the Board wants to support the resolution. Laura Granier further clarified that one of the primary purposes of FLPMA was for Congress to be able to 'rein in' abuses of withdrawal power. She noted that there are two areas in which Congress could act and that the Resolution falls within the first of those (Section 202e) areas giving Congress 90 days to pass the Resolution and there is no opportunity for veto. Commissioner Tipton moved that NACO support the Resolution and the item passed unanimously on a second by Commissioner Bates.

e. **Contracting for Mapping Services.** Jeff noted that during the process of putting the complaint together there was a strong reliance on maps. He noted that it could be helpful going forward to having access to mapping services and that the item is a request to utilize a portion of the approved funds available to utilize minimal funds to acquire the services as needed. Commissioner Tipton moved to allow staff to contract for the services on an as needed basis with a second by Commissioner Waits. The item passed unanimously.

Debbie Struhsacker concluded the discussion of item 8 with a request that all counties included in the suit provide further information on conflicts with their individual county plans and/or conservation plans.

9. **Update on the First Responder Network Authority (First Net).** Dennis Cobb of The Digital Decision introduced Robert LeGrande II the founder of the company who gave an in depth report on the program, how it came about, where they currently stand and what the future holds for the program. Questions from the Board included how the plan will affect local providers and Mr. LeGrande noted that there is the opportunity for partnerships but that some local cellular providers will be affected, he further clarified that all current cellular providers are in favor of the program regardless of effect due to the need for strengthening the public safety network. It was noted that there is no exact date for completion but the first milestone was reached on September 30th and the second milestone of creating state plans for submission to the Governor's is expected in the 3rd quarter of 2016. Mr. Cobb and Mr. LeGrande also informed the Board that they are more than happy to report to individual counties upon invitation as well as welcoming input from the counties. Commissioner Kirkpatrick inquired as to where/how the land would be acquired for the project, as Lincoln and Clark County waited eight years for their first, first responder site. It was explained that the system would be predominately built on existing sites and although new sites would be incorporated in the future the program is not dependent on new sites. It was also clarified that companies with existing sites will be partnering to ensure the completion of the project.

10. **Update and Possible Action on AB191 Enacted in the 2015 Legislative Session which Authorizes a County to Place on the Ballot at the General Election on November 8, 2016 a Question which Asks the Voters in the County whether to Authorize the Board of County Commissioners to Impose, for the Period beginning on January1, 2017, Annual Increases to Taxes on Certain Motor Vehicle Fuels.** Jeff noted that the item will be a standing item until the questions surrounding the bill are answered. He noted that the issue is very complicated and that NACO has reached out to one of the bill's sponsors to request an opinion from LCB to determine if it is in fact a requirement for each county to put the item on the ballot and that it would cover all portions of the bill, and if the county Clerks are responsible for writing the question. The LCB was also asked about the wording of the question and if it could be brought back in 2026 if it doesn't pass in 2016 as well as how the federal diesel tax revenues would be distributed. Jeff noted that LCB expects to have some answers by the November meeting. Sondra Rosenberg of NDOT reiterated that it is a complicated issue that they are also working with LCB on some questions and that they are working with the DMV on calculations to determine estimated costs and revenues. Commissioner Tipton inquired if it would be possible to have NACO or DOT representatives come to the counties to explain the details and requirements once the questions have been answered. Jeff stated that it is NACO's intention to hold a workshop and/or create a brief on how to create the question and that staff could attend commission meetings. He also noted that NACO can request representatives from Washoe and Clark counties to give a presentation on how they implemented the indexing. Jeff noted that there may be counties that would like to see the ballot measure pass and that Board may be interested in having a discussion on how the association can become further involved.

11. **Discussion and Possible Action to Support the Resilient Federal Forests Act of 2015, H.R. 2647**. Tori informed the Board that a representative from the National Association of Counties had contacted her and asked for the item to be placed on the agenda for consideration. She was asked to distribute sample letters by NACo to express support for the Act by the individual counties if there is an appetite for support. Commissioner Tipton moved to support the Act and the item passed unanimously with a second by Commissioner Goicoechea.

12. **Update and Possible Action regarding a Proposal to Consolidate the University of Nevada, Reno College of Agriculture, Biotechnology and Natural Resources (CABNR), Cooperative Extension, and the Nevada Agriculture Experiment Station (NAES).** Jeff noted the direction given at the September Board meeting to produce a position statement for the Board's consideration and to invite the Chancellor to the meeting. The Chancellor is aware of the issue and but was unable to attend due to a Board of Regents meeting but committed to attending the November 20th meeting of the NACO Board. Jeff referred to the draft position statement that had been distributed to the Board for review, as well as the special meeting of the Churchill County Commission being held on the 23rd which included an item in opposition to the consolidation. President Wichman noted that it might be a good idea to wait for the Chancellor and Commissioner Johnson noted that he did not believe there was a reason to wait and that the

meetings held in previous years were for naught. Commissioner Goicoechea announced that while they understand and share the concerns of the other counties, but the Eureka County Commission voted to support the merger because they still have an educator and that they are fearful of them completing the merger anyway. Commissioner Tipton echoed Commissioner Goicoechea's sentiments and that Mineral County's educator is in support of the merger. Commissioner Waits noted that the item hasn't come before her board and that with the pending retirement of their educator she is not in a position to vote on behalf of Lander County. Commissioner Kirkpatrick told the Board that Clark County was informed that the merger has been postponed until February of 2016 and that the University is planning on reaching out to all counties. She also noted that they have been working with the Board of Regents but are not comfortable with the University's lack of guarantee of services in writing. She stated that they are meeting with each individual Regent in an attempt to develop policy that will ensure a back stop. Commissioner French noted that Humboldt County would be more comfortable with the consolidation if there were some guarantee's with regards to personnel, budgets etc. Commissioner Johnson said that he is not completely against working with the University but that he feels that the University has alienated counties and there were misleading statements made in the past. Commissioner Herman stated that they are still receiving a lack of service for the monies Washoe County pays and that they are not happy with the proposed merger. Commissioner Goicoechea said that if work can be done on the backstops to ensure programs and budgets stay where they are supposed to stay and Commissioner Kirkpatrick said that Regent policies can be adopted that they would both be more comfortable with the situation. Jeff confirmed that the position of Board that they are opposed to the consolidation without guarantees but that they are open to discussion with Regent policies and putting written assurances in place.

13. **Update and Possible Action regarding NACO's Efforts Seeking to Compel the U.S. Bureau of Land Management to Comply with the Provisions of the Wild Free-Roaming Horse and Burro Act.** Jeff informed the Board that Mr. Pollot is finishing the brief that was due on October 30th and that it is expected for review on Monday the 26th and would be circulated to the Public Lands Committee.

14. **NACO Committee of the Emeritus Update.** Dagny noted that the Committee is meeting on Nov. 6th and that the workshops announced at the Annual Conference will begin on Dec. 10th. The topic of the workshop on December 10th will be getting familiar with the National Association and getting involved with national issues that affect individual counties as well as national issues in the next Congress that affect counties as a whole. She noted that the workshops will be held in Carson City and they would be video conferenced as well. Jeff reviewed the history of the PAC noting that it was approved four years previously and the officers are the members of the Committee of Emeritus, he noted that the PAC has not been active in any particular issue and that the $5,000 seed funds have not been transferred. He questioned the extent to which the Board wants to interact with the PAC on issue advocacy and that the officers of the PAC are looking for direction from the Board as to what issues they could become involved with. Commissioner Johnson noted that PAC was set up for addressing specific concerns at the legislature and not individual political races. The Board confirmed that is still their intention for the PAC.

15. **National Association of Counties and Western Interstate Region Board Member Updates.** No updates were given.

16. **NACO Board Member Updates.** Rob Stokes of Elko County informed the Board on behalf of Commissioner Dahl that he had been asked to testify at a hearing of the House Subcommittee on Natural Resources on Monday the 26th with regards to the findings of the Nevada Public Lands Task Force, in his stead Mike Baughman attended the meeting and further information on the meeting will be provided. Commissioner Goicoechea informed the Board that he will be in Washington on November 17th on behalf of the Public Lands Council to update staffers and testify on the Antiquities Act and the ESA. Washoe County Commissioner Lucey reported that the NACo steering committee on transportation provided markups on an HR bill regarding the Surface Transportation Reauthorization Act. He also noted that there are changes to the amount of local matching funds to larger projects.

17. **Public Comment**. Patty Cafferata informed the Board that she had received a promotion at the AG's office and is now a Special Assistant AG for Law Enforcement, Counties & Municipalities so she will be attending most meetings and is excited to work further with counties.

The following links and/or pages are support for agenda Item 7

Possible 2016 NACO Board Meeting Dates

January

Su	Mo	Tu	We	Th	Fr	Sa
27	28	29	30	31	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31	1	2	3	4	5	6

February

Su	Mo	Tu	We	Th	Fr	Sa
31	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	1	2	3	4	5

March

Su	Mo	Tu	We	Th	Fr	Sa
28	29	1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31	1	2

April

Su	Mo	Tu	We	Th	Fr	Sa
27	28	29	30	31	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

May

Su	Mo	Tu	We	Th	Fr	Sa
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8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31	1	2	3	4

June

Su	Mo	Tu	We	Th	Fr	Sa
29	30	31	1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	1	2

July

Su	Mo	Tu	We	Th	Fr	Sa
26	27	28	29	30	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31	1	2	3	4	5	6

August

Su	Mo	Tu	We	Th	Fr	Sa
31	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31	1	2	3

September

Su	Mo	Tu	We	Th	Fr	Sa
28	29	30	31	1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	1

October

Su	Mo	Tu	We	Th	Fr	Sa
25	26	27	28	29	30	1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31	1	2	3	4	5

November

Su	Mo	Tu	We	Th	Fr	Sa
30	31	1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	1	2	3

December

Su	Mo	Tu	We	Th	Fr	Sa
27	28	29	30	1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

The following links and/or pages are support for agenda Item 8

http://www.leg.state.nv.us/NRS/NRS-315.html#NRS315Sec977

The following links and/or pages are support for agenda Item 9

http://www.leg.state.nv.us/NRS/NRS-354.html#NRS354Sec105

The following links and/or pages are support for agenda Item 10

http://www.leg.state.nv.us/NRS/NRS-321.html#NRS321Sec740

The following links and/or pages are support for agenda Item 13

WOODS CAPITAL PARTNERS
An Independent Firm

RAYMOND JAMES®

Nevada Assoc Of Counties Account Summary

Closing Value $174,766.98

NEVADA ASSOC OF COUNTIES (NACO)
EAM EQINC
304 S MINNESOTA ST
CARSON CITY NV 89703-4270046

JOE WOODS II
Raymond James Financial Services, Inc.
RAYMOND JAMES FINANCIAL SVCS. | 1203 2ND ST | SUITE_A | CORONADO, CA 92118 |
(619) 435-1693
RaymondJames.com/SanDiego | Joe.Woods@RaymondJames.com

Raymond James Client Services | 800-647-SERV (7378)
Monday - Friday 8 a.m. to 6 p.m. ET
Online Account Access | raymondjames.com/investoraccess

Investment Objectives

Primary: Growth with a medium risk tolerance and a time horizon exceeding 10 years

Activity

		This Statement		Year to Date
Beginning Balance	**$**	**179,105.31**	**$**	**198,007.77**
Deposits	$	0.00	$	0.00
Income	$	697.48	$	4,230.54
Withdrawals	$	0.00	$	0.00
Expenses	$	0.00	$	(3,735.05)
Change in Value	$	(5,035.81)	$	(23,736.28)
Ending Balance	**$**	**174,766.98**	**$**	**174,766.98**
Purchases	$	(5,285.08)	$	(26,927.11)
Sales/Redemptions	$	5,020.80	$	26,873.49

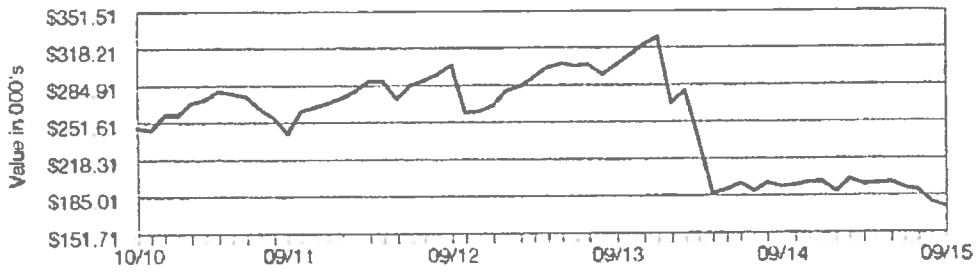
Time-Weighted Performance

See Understanding Your Statement for important information about these calculations.

Performance Inception 08/26/96	This Quarter	YTD	2014	2013	Annualized Since 08/26/1996
	(9.16)%	(11.62)%	7.86%	26.96%	5.72%

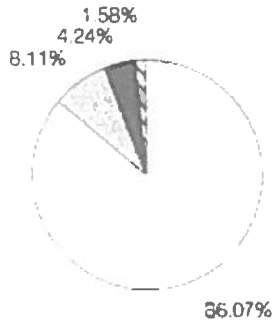
Excludes some limited partnerships unpriced securities and annuity history prior to the annuity being linked to the account

Value Over Time



Asset Allocation Analysis

			Value	Percentage
	US Equities	$	150,378.46	86.07%
	Non-US Equities	$	14,190.82	8.11%
	Fixed Income	$	-	-
	Real Estate & Tangibles	$	7,425.56	4.24%
	Alternative Investments	$	-	-
	Non-classified	$	-	-
	Cash & Cash Alternatives	$	2,772.14	1.58%



Morningstar asset allocation information is as of 09/29/2015 (mutual funds & annuities) and 09/18/2015 (529s)

WOODS CAPITAL PARTNERS
An Independent Firm

RAYMOND JAMES®

August 31 to September 30, 2015

Nevada Assoc Of Counties Account Summary

Closing Value $443,391.27

00005243 04 MB 1 433 04 TR 00087 RJCP4T02 000100

NEVADA ASSOC OF COUNTIES (NACO)
EAM HQTAX
304 S MINNESOTA ST
CARSON CITY NV 89703-4270046

JOE WOODS II
Raymond James Financial Services, Inc
RAYMOND JAMES FINANCIAL SVCS. | 1203 2ND ST | SUITE_A | CORONADO, CA 92118 |
(619) 435-1693
RaymondJames com/SanDiego | Joe.Woods@RaymondJames.com

Raymond James Client Services | 800-647-SERV (7378)
Monday - Friday 8 a.m. to 6 p.m. ET
Online Account Access | raymondjames.com/investoraccess

Investment Objectives

Primary: Income with a medium risk tolerance and a time horizon exceeding 10 years

Activity

		This Statement		Year to Date
Beginning Balance	$	**440,683.58**	$	**438,597.91**
Deposits	$	0.00	$	0.00
Income	$	1,013.36	$	9,629.48
Withdrawals	$	0.00	$	0.00
Expenses	$	0.00	$	(1,649.66)
Change in Value	$	1,694.33	$	(3,186.46)
Ending Balance	$	**443,391.27**	$	**443,391.27**
Purchases	$	(37,700.90)	$	(128,176.68)
Sales/Redemptions	$	29,141.14	$	114,650.06

Time-Weighted Performance

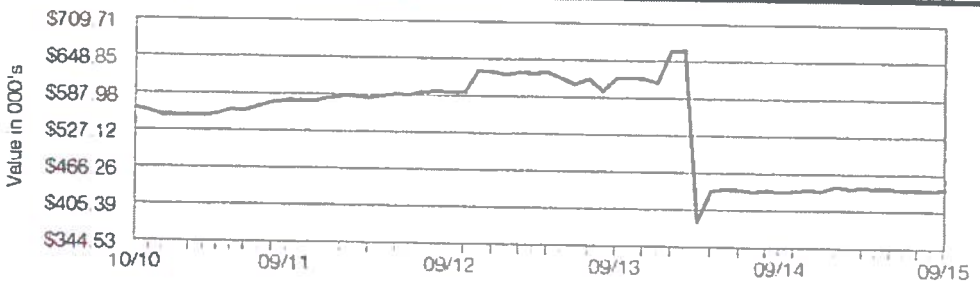
See Understanding Your Statement for important information about these calculations.

Performance Inception 08/26/96

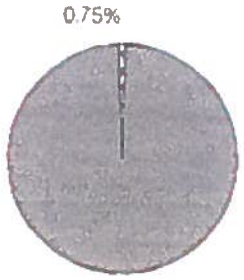
This Quarter	YTD	2014	2013	Annualized Since 08/26/1996
0.61%	0.93%	0.26%	(3.71)%	3.85%

Excludes some limited partnerships unpriced securities and annuity history prior to the annuity being linked to the account

Value Over Time



Asset Allocation Analysis



		Value	Percentage
US Equities	$	-	-
Non-US Equities	$	-	-
Fixed Income	$	440,031.15	99.25%
Real Estate & Tangibles	$	-	-
Alternative Investments	$	-	-
Non-classified	$	-	-
Cash & Cash Alternatives	$	3,360.12	0.75%

Morningstar asset allocation information is as of 09/29/2015 (mutual funds & annuities) and 09/18/2015 (529s)

RECEIVED
OCT 13
By

Nevada Association of Counties
Balance Sheet
September 30, 2015

ASSETS		
Current Assets		
Cash - Bank of America	$ 260,558.68	
Cash - NV State Bank	7,562.48	
Money Market	110,071.49	
PayPal Cash Account	884.05	
Investments Cash Equivalents	2,772.14	
Investments Cash Equivalents	3,360.12	
Accounts Receivable	17,301.58	
Prepaid Expenses	2,853.67	
Total Current Assets		405,364.21
Property and Equipment		
Office Equipment	167,265.95	
Building	447,906.18	
Land	131,000.00	
Building Improvements	90,311.78	
Fixed Assets - Vehicle	32,878.25	
Accumulated Depreciation	(189,808.63)	
Total Property and Equipment		679,553.53
Other Assets		
Investments - RJ Equity	171,994.84	
Investments - RJ Securities	440,031.15	
Grants Reimbursable Costs	15,498.00	
Total Other Assets		627,523.99
Total Assets		$ 1,712,441.73
LIABILITIES AND CAPITAL		
Current Liabilities		
Accrued Payroll Benefits	$ 15,022.83	
Total Current Liabilities		15,022.83
Long-Term Liabilities		
Total Long-Term Liabilities		0.00
Total Liabilities		15,022.83
Capital		
Retained Earnings	1,601,917.96	
Net Income	95,500.94	
Total Capital		1,697,418.90
Total Liabilities & Capital		$ 1,712,441.73

The following links and/or pages are support for agenda Item 16

http://www.naco.org/resources/us-communities-cooperative-purchasing

http://www.naco.org/resources/live-healthy-us-counties

http://www.naco.org/resources/naco-deferred-comp-program

The following links and/or pages are support for agenda Item 17

Committee on Local Government Finance

Overview of Committee's Purpose, Membership, and Activities

November 2015

The Committee of Local Government Finance (CLGF) is responsible for policy decisions and fiscal administration topics found in Nevada Revised Statutes Chapters 350 related to Debt, Chapter 354 Local Government Budget and Finance and certain matters in Chapter 361 Property Tax, as well as to advise the Department of Taxation on matters of local government fiscal administration. The Committee is composed of eleven members who are appointed as follows:

Three from League of Cities:
Marvin Leavitt, Chair, retired - City of Las Vegas; Mark Vincent, City of Las Vegas; Andrew Clinger, City of Reno.

Three from Nevada Association of Counties:
John Sherman, Vice Chair, retired Washoe County; Alan Kalt, Churchill County; George Stevens, retired - Clark County.

Three from Nevada School Trustees Association:
Jeff Zander, Elko County School District; Jim McIntosh, Clark County School District; Marty Johnson, JNA Consulting Group, LLC.

Two from Nevada State Board of Accountancy:
Beth Kohn-Cole, Kohn & Company LLP; Mary Walker, Walker & Associates.

The following is a summary of recent topics and issues the Committee has provided technical guidance, proposed regulations and oversite to the Department of Taxation and local governments over the past year.

- Local Government Financial Conditions, timely submission of required reports.
- Requirements for establishing Trust Funds for funding future retirement benefits and OPEB Trust investment plans pursuant to NAC 287.788(2).
- Requirements for reporting the financial impacts of heart lung regulations.
- Guidance letter regarding the nature and use of special revenue funds and enterprise funds.
- NRS 354.613(6) Transfers from Enterprise Funds
- Legislative items as requested
- Implementing guidelines for various Governmental Accounting Standard Board (GASB) Pronouncements and Statements.
- Review various reports of local governments: Tax Rates, Indebtedness, Ending Fund Balances.

The following links and/or pages are support for agenda Item 18

http://www.forestsandrangelands.gov/leadership/documents/wflc_letter_of_support_cohesive_strategy_20120127.pdf

The following links and/or pages are support for agenda Item 19

http://nvcourts.gov/AOC/Committees_and_Commissions/Evidence/Overview/

The following links and/or pages are support for agenda Item 20

http://www.leg.state.nv.us/Session/78th2015/Bills/AB/AB191_EN.pdf

The following links and/or pages are support for agenda Item 21 a

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Pro Hac Vice Application To Be Submitted

Roger Flynn (CO Bar No. 21078),
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wmap@igc.org
Pro Hac Vice Application To Be Submitted

Attorneys for Applicants in Intervention

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

STATE OF NEVADA, *et al.*, Plaintiffs, vs. UNITED STATES DEPARTMENT OF THE INTERIOR, *et al.*, Defendants, and THE WILDERNESS SOCIETY, *et al.*, Applicants in Intervention/ Defendants	Case No. 3:15-cv-00491-MMD-VPC **MOTION TO INTERVENE ON BEHALF OF DEFENDANTS AND MEMORANDUM IN SUPPORT BY THE WILDERNESS SOCIETY, NATIONAL WILDLIFE FEDERATION AND EARTHWORKS**

Three nonprofit conservation organizations, The Wilderness Society, National Wildlife Federation, and Earthworks ("Conservation Groups"), now move for intervention as of right on behalf of the Federal Defendants, pursuant to Federal Rule of Civil Procedure 24(a). In the alternative, they move for permissive intervention pursuant to Federal Rule of Civil Procedure 24(b). Because of the timing of this motion, the Conservation Groups do not seek intervention in order to participate in the briefing or hearing on the Plaintiffs' motion for preliminary injunction scheduled to be heard by the Court on November 17, 2015.

Counsel for the Conservation Groups has contacted counsel for the Plaintiff and the Federal Defendants. The Federal Defendants have stated that they do not oppose this motion as long as the Conservation Groups agree not to file any new claims in the litigation and not to file any motions challenging the scope or content of the administrative record, limitations to which the Conservation Groups hereby agree. The Plaintiffs have stated that they reserve their position until they have reviewed this motion. The Conservation Groups have lodged a proposed Answer with this motion, which should be filed by the Court if it grants this motion.

INTRODUCTION

Plaintiffs challenge the September 21, 2015 Record of Decision and Approved Resource Management Plan Amendments for the Great Basin Region, including the Greater Sage-Grouse Sub-Regions of Idaho and Southwestern Montana, Nevada and Northeastern California, Oregon, and Utah, approved by the United States Bureau of Land Management, and the September 16, 2015 Greater Sage-Grouse Record of Decision for Idaho and Southwest Montana, Nevada, and Utah, issued by the United States Forest Service, and seek to enjoin the Nevada portions of those Plans. The Conservation Groups generally support these Plans, as well as the proposed mineral withdrawal, and would be harmed if the Plans were set aside

and/or portions of the Plans and proposed withdrawal were enjoined. The wildlife habitat and other environmental protection measures in the challenged Plans and proposed withdrawal represent a needed improvement in public land and wildlife management in the interior West – measures directly in line with the mission of each Conservation Group and affecting lands used and enjoyed by members of the Groups.

For this reason, the Conservation Groups should be permitted to intervene as of right on the side of the Federal Defendants, or alternatively, should be granted permissive intervention.

ARGUMENT

I. The Conservation Groups Should be Granted Intervention as of Right

Rule 24(a)(2) "requires a court, upon timely motion, to permit intervention of right by anyone" who satisfies the rule's four-part test:

> (1) the motion must be timely; (2) the applicant must claim a "significantly protectable" interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) the applicant's interest must be inadequately represented by the parties to the action.

Wilderness Soc'y v. U.S. Forest Serv., 630 F.3d 1173, 1177 (9th Cir. 2011) (*en banc*) (quotations and citations omitted). "In evaluating whether Rule 24(a)(2)'s requirements are met," the Court should "construe the Rule broadly in favor of proposed intervenors," recognizing that "a liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts." *Id.* at 1179 (quotations and citations omitted). The Court noted its "consistent approval of intervention of right on the side of the federal defendant in cases asserting violations of environmental statutes." *Wilderness Soc'y*, 630 F.3d at 1179.

Proposed Intervenors meet each part of Rule 24(a)(2)'s four-part test.

A. The Motion to Intervene is Timely

Timeliness is measured by examining "(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay." *United States v. Alisal Water Corp.*, 370 F.3d 915, 921 (9th Cir. 2004) (quotations omitted). Here, there has been no delay, as this motion has been filed at an early stage of this case. Federal Defendants' answer is not yet due and no administrative record has been submitted to the Court, and no proceedings other than regarding Plaintiffs' motion for preliminary injunction (in which the Conservation Groups do not seek to participate) have occurred. *See Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995) (holding an intervention motion timely when filed four months after the complaint and two months after the government's answer). No parties are prejudiced by the timing of this motion. This motion is thus timely.

B. Each Of The Conservation Groups Have Significantly Protectable Interests In The Subject Of This Action

"Whether an applicant for intervention demonstrates sufficient interest in an action is a practical, threshold inquiry." *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1493 (9th Cir. 1995) (quotations and citations omitted), *abrogated on other grounds, Wilderness Soc'y*, 630 F.3d at 1177-78, 1180. The requirement of a protectable interest is not a rigid, technical or onerous requirement, in that Rule 24(a)(2) "does not require a specific legal or equitable interest." *Wilderness Soc'y*, 630 F.3d at 1179. Rather, it is a "practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Id.* (quotations and citation omitted). "[I]t is generally enough that the interest is protectable under some law, and that there is a relationship between the legally protected interest and the claims at issue." *Id.* (citation and quotations omitted).

The Conservation Groups have a great interest in the property at issue in this case – the millions of acres of public land subject to the Plans and proposed

withdrawal. These interests are exactly the type the courts have long held meet the "interest" test for intervention as of right. As described below and in the attached Declarations from members of the Conservation Groups, a primary reason that the Conservation Groups exist is to protect the United States' public land from the type of development threats that are the focus of the Plans and proposed withdrawal, such as hardock mining (*e.g.,* gold, uranium, molybdenum, copper), oil and gas drilling and development, cattle grazing, and other intensive uses of public land. Members of the Groups make frequent use of the lands covered by the Plans and proposed withdrawal for recreation, wildlife viewing, and scenic enjoyment, and traditional cultural purposes, and have a demonstrated interest and history in seeking to protect the area's natural, recreational, and cultural values. Such "environmental, conservation and wildlife interests" have long been held sufficient for intervention of right. *See Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 526-28 (9th Cir. 1983).

Further, the Ninth Circuit has repeatedly concluded that a public interest group is entitled to intervene as of right to defend the federal government's compliance with environmental laws. As the Court has stated:

> In *Sagebrush Rebellion, Inc. v. Watt*, for example, we held that several conservation groups could intervene of right to defend the federal government's compliance with the Federal Land Policy and Management Act of 1976 in designating a conservation area for birds of prey. In doing so, we noted that there could "be no serious dispute" concerning the existence of a protectable interest supporting the conservation groups' right to intervene. Similarly, in *Idaho Farm Bureau* … we approved intervention of right by environmental groups as defendants in an action challenging the Fish and Wildlife Service's compliance with the Endangered Species Act ….

Wilderness Soc'y, 630 F.3d at 1179-80 (footnote and citations omitted). Similarly, the Ninth Circuit has held conservation groups merit intervention of right where a plaintiff challenges the legality of a measure that the organization had supported. *See Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 837-38 (9th Cir. 1996) (public interest groups allowed to intervene as of right when groups "were directly involved

in the enactment of the law or in the administrative proceedings out of which the litigation arose").

The Conservation Groups are in exactly the same position as those organizations that the Ninth Circuit has previously held had sufficient interest to intervene. As explained by the Senior Director for Agency Policy and Planning at the Wilderness Society ("TWS"), Nada Culver, TWS has been extensively involved in commenting on and supporting the wildlife habitat protections contained in the challenged Plans to make sure that they are protective of the sage grouse and to ensure that its members' interests in the sage grouse and the lands they inhabit are protected. Declaration of Nada Culver, Intervenor Exhibit ("Int. Exh.") 1 ¶ 6. The same is true of National Wildlife Federation (*see* Declaration of Tom France, Int. Exh. 2 ¶¶ 8-12). Proposed intervenor Earthworks has a special interest in the proposed mineral withdrawal that Plaintiffs challenge, and in seeing that it does not get set aside. Int. Exh. 3 ¶¶ 4-8 (declaration of Thomas Myers).

Applicant TWS has a long-standing interest in the management of Bureau of Land Management ("BLM") and Forest Service lands across the West, including in Nevada, and engages frequently in the decision-making processes for land use planning and project proposals that could potentially affect wilderness-quality lands, wildlife habitat, and other natural resources managed by the BLM and Forest Service. TWS members and staff enjoy a myriad of recreation opportunities on public lands, including hiking, biking, nature-viewing, photography, hunting, birdwatching and quiet contemplation in the solitude offered by wild places. Int. Exh. 1 ¶¶ 3-5.

Founded in 1935, TWS's mission is to protect wilderness and undeveloped lands and inspire Americans to care for our wild places. TWS has more than 500,000 members and supporters around the West, including in Nevada. TWS has a

continuing interest in ensuring the protection of wild lands under the jurisdiction of the BLM and the Forest Service. *Id.*

The National Wildlife Federation ("NWF") is the nation's largest member-supported nonprofit conservation advocacy and education organization. NWF has more than four million members, partners, and supporters nationwide, and affiliate organizations in 48 states and territories, including Nevada and Idaho. NWF is headquartered in Reston, Virginia, with offices throughout the United States, including regional centers in Denver, Colorado and Missoula, Montana. The mission of NWF is to educate, mobilize and advocate to preserve and strengthen protection for wildlife and wild places. Int. Exh. 2 ¶¶ 4-6.

For nearly 80 years, NWF has been advocating for the conservation of vital resources upon which wildlife like the greater sage-grouse depend. As part of its mission to preserve and strengthen protection for wildlife and wild places, NWF has actively worked on behalf of its members to ensure conservation of America's sagebrush steppe. This iconic Western landscape provides habitat for more than 350 species, including the greater sage-grouse, pronghorn, mule deer and golden eagles. Many of these species are declining. greater sage-grouse have lost more than half of their native habitat and their numbers have plummeted from an estimated 16 million to less than 500,000. Among NWF's activities relating to greater sage-grouse, NWF has worked to secure effective provisions in land use planning documents, mineral leases, drilling and mining permits issued by both federal and state agencies. These provisions include buffers for breeding habitats; limits on surface disturbance in breeding, brooding and wintering habitats and restrictions on structures that provide perches for predators. In addition, NWF has worked with ranchers on both public and private lands to encourage grazing practices that

conserve sage-grouse habitat, including marking fences to prevent grouse losses through collisions. *Id.* ¶ 7.

Earthworks is a nonprofit conservation organization dedicated to protecting communities and the environment from the adverse impacts of mineral and energy development while promoting sustainable solutions. Earthworks fulfills its mission by working with communities and grassroots groups to reform government policies, improve corporate practices, influence investment decisions, and encourage responsible materials sourcing and consumption. Earthworks partners with local affected communities and national and international advocates to respond to and solve the growing threats to the earth's natural resources, clean water, biodiversity, special places, and communities from irresponsible mining, drilling, and digging. Earthworks has its main office in Washington D.C.; as well as offices in Missoula, Montana and Durango, Colorado. Int. Exh. 3 ¶ 3.

Earthworks is the nation's leading conservation organization focusing on hardrock mining issues in the West. Earthworks regularly participates in federal agency permitting and review of proposed hardrock mining operations (i.e., gold, silver copper, molybdenum, uranium, and other minerals subject to location under the 1872 Mining Law). Earthworks has been a plaintiff in numerous federal court cases and administrative appeals challenging BLM and Forest Service approvals of hardrock mining in Nevada, Idaho, Montana, and other western states, as well as national litigation dealing with the federal government's regulation of hardrock mining operations on public land in the West. Through these efforts, Earthworks seeks to protect public environmental resources, including important wildlife habitat for imperiled species such as the Greater Sage Grouse, from the adverse impacts from hardrock mining. *Id.* ¶¶ 4-5.

In sum, each of the Conservation Groups and their members have a deep interest in the public lands at issue, and a strong interest in defending the wildlife and environmental protection measures contained in the Plans and proposed withdrawal which they have long sought. These interests are sufficient for intervention as of right.

C. This Lawsuit Threatens the Interests of the Conservation Groups and their Members

Rule 24(a) requires that an applicant for intervention of right be "so situated that disposing of the action *may* as a practical matter impair or impede the movant's ability to protect its interest." Fed. R. Civ. P. 24(a)(2) (emphasis added). "Rule 24 refers to impairment 'as a practical matter.' Thus, the court is not limited to consequences of a strictly legal nature." *Forest Conservation Council*, 66 F.3d at 1498 (quotations and citation omitted); *see also Natural Res. Def. Council, Inc. v. U.S. Nuclear Regulatory Comm'n*, 578 F.2d 1341, 1345 (10th Cir. 1978) (court "may consider any significant legal effect in the applicant's interest"). Rather, "a prospective intervenor has a sufficient interest for intervention purposes if it will suffer a practical impairment of its interests as a result of the pending litigation." *Wilderness Soc'y*, 630 F.3d at 1179 (quotations and citation omitted). The Ninth Circuit applies this test liberally in favor of intervention. *See*, *e.g.*, *Sagebrush Rebellion*, 713 F.2d at 527-28.

If the Plans and proposed withdrawal are set aside, the wildlife habitat and other environmental protection measures long sought by the Conservation Groups will be eliminated. Further, as detailed in the attached Declarations, their members' use of the lands at issue, and interests in wildlife and public land protection, would be irreparably harmed. Int. Exh. 1 ¶¶ 7-10; Int. Exh. 2 ¶¶ 13-14; Int. Exh. 3 ¶¶ 10-12.

The Ninth Circuit has long permitted conservation groups to intervene where, as here, the litigation at issue may result in harm to natural and other resource values that are important to the groups' missions and where the groups have worked to protect those values. *See*, *e.g.*, *Idaho Farm Bureau Fed'n*, 58 F.3d at 1398 (concluding impairment prong of intervention test was satisfied when plaintiff's claim could impair conservation groups' ability to protect an interest in a threatened species for which they had advocated); *Sagebrush Rebellion*, 713 F.2d at 527-28 (holding that there "can be no serious dispute" regarding, *inter alia*, potential impairment of interest where lawsuit seeks to invalidate conservation area designation, and proposed intervenor conservation group had interests in protecting wildlife and habitat). Although the Conservation Groups have long advocated for stronger and more comprehensive protections for the Greater Sage Grouse and wildlife habitat than contained in the Plans, at a minimum, the challenged agency actions represent a marked improvement in public land management in the West.

Because the interests of the Conservation Groups and their members are threatened by a lawsuit that seeks to set aside the environmental protection measures for which they have advocated, and which if set aside would cause harm their members' use and enjoyment of the lands they protect, this suit "may impair" their interests.

D. The Interior Department May Not Adequately Represent The Interests Of The Proposed Intervenors And Their Members.

The fourth prong of Rule 24(a)(2) requires courts to consider "whether the interest of a present party is such that it will undoubtedly make all the intervenor's arguments; whether the present party is capable and willing to make such arguments; and whether the intervenor would offer any necessary elements to the proceedings that other parties would neglect." *Forest Conservation Council*, 66 F.3d at 1498-99. Ultimately, "[t]he requirement of [Rule 24(a)(2)] is satisfied if the applicant shows that representation of his interest '*may be*' inadequate; and the

burden of making that showing should be treated as *minimal*." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972) (emphasis added); *see also id.* at 538 (Rule 24(a)(2) intervention held warranted where there was "sufficient doubt about the adequacy of representation"); *Sagebrush Rebellion*, 713 F.2d at 528 (burden of showing potentially inadequate representation "is minimal"); *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 823 (9th Cir. 2001) (same).

Here, Federal Defendants will not adequately represent the Conservation Groups' focused interests on environmental protection. While it is "presumed that [the government] adequately represents its citizens when the applicant shares the same interest," *Prete v. Bradbury*, 438 F.3d 940, 956 (9th Cir. 2009) (citations and quotations omitted), the Conservation Groups and Federal Defendants do not share the same interests. Rather, "[a federal department or agency] is required to represent a broader view than the more narrow, parochial interests" of the applicant organizations and their members. *See Forest Conservation Council*, 66 F.3d at 1499. That is especially true here, where the BLM been directed by Congress to manage its lands, *inter alia*, "in a manner which recognizes the Nation's need for domestic sources of minerals," and for multiple uses including mining, not just for environmental protection. 43 U.S.C. § 1701(a)(12); *see also Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 58 (2004) (describing the "enormously complicated" balancing act required by BLM's multiple use mandate). Forest Service lands are also managed for "multiple uses." *See* 16 U.S.C. §§ 528-531 (Multiple Use-Sustained Yield Act of 1960). *See, e.g., Trbovich,* 404 U.S. at 538 (there was "clear[ly] … sufficient doubt about the adequacy of representation" of applicant's interest where the relevant statute "plainly impose[d] on the [government] the duty to serve two distinct interests, which [we]re related, but not identical"); *Sw. Ctr. for Biological Diversity*, 268 F.3d at 823-24.

By contrast, the Conservation Groups focus more narrowly on environmental protections. *See, e.g.*, Int. Exh. 2 ¶ 6 ("The mission of NWF [National Wildlife

Federation] is to educate, mobilize and advocate to preserve and strengthen protection for wildlife and wild places. For nearly 80 years, NWF has been advocating for the conservation of vital resources upon which wildlife like the greater sage-grouse depend."). Accordingly, no presumption of adequate representation applies in this case.

Because the Federal Defendants cannot adequately represent the Conservation Group's interests, the fourth and final requirement for intervention as of right is satisfied.

II. Alternatively, the Conservation Groups Should Be Granted Permissive Intervention Under Rule 24(B)

If the Court determines that the Conservation Groups have not satisfied all of the requirements for intervention as of right, the Court should grant them permissive intervention under Rule 24(b). Rule 24(b) permits intervention where an applicant's claim or defense, in addition to being timely, possesses questions of law or fact in common with the existing action. Fed. R. Civ. P. 24(b)(1)(B); *see also Venegas v. Skaggs*, 867 F.2d 527, 529-30 (9th Cir. 1989), *aff'd sub nom. Venegas v. Mitchell*, 495 U.S. 82 (1990). Like intervention of right, permissive intervention is to be granted liberally. *See* 7C Federal Practice and Procedure § 1904 (3d ed.).

This is a substantially lower burden than the test for intervention as of right under Rule 24(a) since it entirely omits any requirement relating to interests or adequacy of representation. As shown above, this motion is timely and granting the motion will not prejudice the proceedings or the existing parties. Moreover, the Conservation Groups intend to respond directly to the Plaintiff's challenges to the lawfulness of the Federal Defendants' actions. *See Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1110 (9th Cir. 2002) (applicants "satisfied the literal requirements of Rule 24(b)" where they "asserted defenses … directly responsive to the [plaintiff's] claims"), *abrogated on other grounds*, *Wilderness Soc'y*, 630 F.3d at 1177-78, 1180. Accordingly, permissive intervention is warranted.

CONCLUSION

For the foregoing reasons, this Court should grant the Conservation Groups motion to intervene as of right. Alternatively, they should be allowed permissive intervention.

Respectfully submitted,

/s/Julie Cavanaugh-Bill

Attorney for Applicants in Intervention

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing MOTION TO INTERVENE ON BEHALF OF DEFENDANTS AND MEMORANDUM IN SUPPORT BY THE WILDERNESS SOCIETY, NATIONAL WILDLIFE FEDERATION AND EARTHWORKS, along with three exhibits, a proposed Answer, and proposed Order, with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
(RENO)

WESTERN EXPLORATION, LLC ET AL., Plaintiffs, v. U.S. DEPARTMENT OF THE INTERIOR, ET AL., Defendants.	Civil No. 3:15-cv-491-MMD-VPC **DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

INTRODUCTION

This case involves a planning effort of unprecedented scope – covering ten western states – conducted by the U.S. Bureau of Land Management ("BLM") and the U.S. Forest Service ("Forest Service") (collectively, "Agencies") designed to protect the Greater Sage-Grouse ("Sage-Grouse") and its habitat. During this process, the Agencies worked closely with the U.S. Fish and Wildlife Service ("FWS"), state and county governments, state wildlife agencies, and industry and environmental interests. The Agencies used a landscape-level approach to analyze threats to Sage-Grouse across its range and develop management strategies to ameliorate the threats to the species and to avoid the need to list the bird as a threatened or endangered species under the Endangered Species Act ("ESA"). The resulting planning-level protections that benefit Sage-Grouse, as well as other species that rely on the sagebrush ecosystem, were a key factor in FWS's recent decision not to list the species under the ESA.

The Court should deny Plaintiffs' motion to enjoin ("Pl. Mot.") (ECF No. 4) BLM's Resource Management Plan Amendment and the Forest Service's Land and Resource Management Plan Amendment for the Nevada and Northeastern California Greater Sage-Grouse Sub-Region (collectively, "Plan Amendments"). Plaintiffs are unlikely to succeed on the merits of their claims because the Agencies have complied with the procedural and substantive requirements of all applicable laws, including the Federal Land Policy and Management Act ("FLPMA"), National Forest Management Act ("NFMA"), and National Environmental Policy Act ("NEPA").

Plaintiffs also have failed to demonstrate that they face any immediate irreparable injury. The Plan Amendments operate by guiding future site-specific decisions. Any changes to grazing management will only occur when the Agencies issue new, or modify existing, grazing permits. Nor do the Plan Amendments close existing routes or limit emergency vehicle access; any closures of existing routes will occur based on future travel management decisions. Finally, Western Exploration LLC and Quantum Minerals LLC (collectively, "Mining Companies") claim that their rights will be harmed by the proposed withdrawal, and resulting segregation, of

lands from the Mining Law of 1872 ("Mining Law"). The proposed withdrawal, however, is subject to valid existing rights and has no immediate effect on mining operations. Thus, the Plaintiffs have failed to demonstrate that they will suffer any imminent irreparable harm.

Finally, the government's interest and the public interest weigh strongly against an injunction. Numerous stakeholders, including state and local governments, participated in a four-year process to create a landscape-level framework for protecting Sage-Grouse and avoiding the need to list the species under the ESA. That process was based on the best available science and on extensive good faith negotiations with interested parties. An injunction would diminish the protections for Sage-Grouse, undermine the collaborative effort that went into the Plan Amendments, and could have implications for FWS' recent decision not to list the species. Accordingly, the motion for a preliminary injunction should be denied.

BACKGROUND

I. Factual Background

A. The National Greater Sage-Grouse Conservation Strategy

Sage-Grouse once occupied nearly half a million square miles, and its population is estimated to have been in the millions. AR 5876; 75 Fed. Reg. 13,910, 13,920 (Mar. 23, 2010).[1] Sage-Grouse now occupy a little over half of their historic range, and the current population is roughly several hundred thousand birds distributed across the West. 75 Fed. Reg. at 13,918-23; *see also* 80 Fed. Reg. 59,858, 59,684 (Oct. 2, 2015). The population decline is due to many factors, chief among those, the fragmentation and loss of habitat caused by energy development, fire, agricultural conversion, and encroachment of pinyon and juniper trees. AR 5879-80; 75 Fed. Reg. at 13,924-62, 13,986. In 2010, the FWS issued a finding that listing of the Sage-Grouse under the ESA was "warranted, but precluded by higher priority listing actions." 75 Fed. Reg. at 13,910. FWS specifically found that existing regulatory mechanisms, including BLM

[1] "AR" refers to the consecutively Bates numbered documents in Defendants' Core Administrative Record, ECF No. 21, filed to facilitate briefing of this motion. A full administrative record will be filed prior to resolution of the case on the merits.

and Forest Service land management plans which govern nearly 60% of remaining Sage-Grouse habitat, were inadequate to protect the species. *Id.* at 13,919, 13,973-82; AR 5472.

In light of FWS's 2010 finding, BLM initiated a national strategy to protect Sage-Grouse. AR 5439. BLM's strategy built on the 2006 Greater Sage-Grouse Comprehensive Conservation Strategy developed by the Western Association of Fish and Wildlife Agencies ("WAFWA"). BLM established a National Technical Team ("NTT'), comprising resource specialists from BLM, FWS, state fish and wildlife agencies, the USDA's Natural Resource Conservation Service ("NRCS"), and the U.S. Geological Survey ("USGS"). *Id.* The team met and produced the NTT Report, which proposed science-based conservation measures to protect Sage-Grouse within management zones identified by WAFWA and discussed in the FWS's 2010 "warranted, but precluded" finding. *Id.* Subsequently, FWS – with support from the Western Governors Association Sage-Grouse Task Force – convened a Conservation Objectives Team ("COT"), which also was composed of representatives from federal and state entities. AR 5441. The COT Report, issued in March 2013, analyzed the primary threats to Sage-Grouse survival and identified Priority Areas for Conservation – areas that are the "essential foundation for sage-grouse conservation." *Id.*

Meanwhile, beginning in December 2011, the Agencies launched a national planning process to incorporate Sage-Grouse conservation measures into the Agencies' land management plans in ten western states. *See* 76 Fed. Reg. 77,008 (Dec. 9, 2011); *see also* AR 5441; AR 5603. For purposes of the planning process, Sage-Grouse habitat was divided into two regions with differing ecological characteristics and threats to the species: (1) the Great Basin Region, covering all or parts of California, Nevada, Oregon, Idaho, Utah, and Montana, and (2) the Rocky Mountain Region, covering all or parts of Montana, North and South Dakota, Wyoming, Colorado, and Utah. AR 5443, 5445 (Fig. 1-13); AR 5606. Within those regions, BLM conducted separate planning efforts in 15 sub-regions, and the Forest Service participated in the planning process in five of the sub-regions. AR 5443-45; AR 5605. The Plan Amendments at

issue in this case cover the Nevada and Northeastern California Sub-Region, which is within the Great Basin Region. AR 5444-45; AR 5606-07.

The Agencies engaged in a four-year planning and NEPA process, which included extensive input from the affected states and local governments, federal and state agencies, and interested parties. AR 5499-504; AR 4825-27; AR 3306-08. Following numerous public scoping meetings, the Agencies issued a Draft Plan Amendment and Draft Environmental Impact Statement ("EIS") for the Nevada and Northeastern California Sub-Region in November 2013. AR 3307-08. There was a 90-day public comment period on the draft, and the Agencies held seven public meetings in December 2013. AR 3308-09. The Agencies issued a Final EIS and Proposed Plan Amendments on May 29, 2015. AR 5486; AR 5652. A 30-day protest period and 60-day governor's consistency review followed, during which the Agencies accepted additional public comment. AR 5486-90. The Agencies completed the planning process in late September 2015 by each issuing records of decision ("ROD") approving management plan amendments and revisions for the Great Basin Region and the Rocky Mountain Region. *See* AR 5423; AR 5592. Overall, the management plan amendments affect 67 million acres of federal land. AR 5446.

B. The Agencies' Land Management Plan Amendments for the Nevada and Northeastern California Sub-Region

This case involves the Plan Amendments applicable to Nevada and Northeastern California, which govern 23 million acres of Sage-Grouse habitat. AR 1801. The Plan Amendments categorize Sage-Grouse habitat based on the value of the habitat and identify goals, objectives, and management decisions applicable to each type of habitat. AR 5444-46. With the assistance of the state wildlife agencies, BLM mapped Sage-Grouse habitat and categorized it as: (1) Priority Habitat Management Areas ("Priority Habitat") (highest value habitat), (2) General Habitat Management Areas ("General Habitat") (land that is occupied seasonally or year round by Sage-Grouse), or (3) Other Habitat Management Areas ("Other Habitat") (unmapped habitat that contains seasonal or connectivity habitat). AR 5446-48; AR 5610. The Plan Amendments also identify Sagebrush Focal Areas ("Focal Areas") within Priority Habitat that were identified by the FWS as the "most vital to the species' persistence." AR 5447-48; AR 5611.

The Plan Amendments incorporate specific conservation measures to address threats to Sage-Grouse, including energy development, mining, improper grazing, and fire. *See* AR 5449-51; AR 5618-31. The measures fall into four categories: (1) avoiding or minimizing new surface disturbance in Sage-Grouse habitat, (2) improving habitat, (3) reducing the risk of fire, and (4) monitoring and adaptive management. AR 5452. The conservation measures vary depending on the type of habitat. Conservation measures are strongest in Focal Areas, followed by Priority Habitat and General Habitat. *See* AR 5449-51. For the most part, the Plan Amendments do not require any immediate action by the Agencies or other entities; instead, conservation measures will be applied when the Agencies make site-specific decisions. *See* AR 5475-76; AR 5661-62.[2] For example, with respect to grazing, the Plan Amendments do not alter existing permits; they instead direct the Agencies, when processing permits, to consider modifications to the permits to protect Sage-Grouse habitat. *See* AR 5450; AR 4809-10; AR 5622, 5662-62, 5709-10.

The Plan Amendments recommend, but do not initiate, the withdrawal of Focal Areas from location and entry under the Mining Law, subject to valid existing rights. *See* AR 5452; AR 5625. Following the approval of the Plan Amendments and given the importance of minimizing further disturbance in vital Sage-Grouse habitat, the U.S. Department of the Interior published a notice announcing a proposed withdrawal of Focal Areas from the Mining Law, pursuant to 43 U.S.C. § 1714(a), and its intent to prepare an EIS regarding the proposal. 80 Fed. Reg. 57,635 (Sept. 24, 2015), as amended by 80 Fed. Reg. 63,583 (Oct. 20, 2015). The publication of the notice had the effect of segregating the lands from entry under the Mining Law, subject to valid existing rights, for a period of up to two years while the proposed withdrawal is being considered. *See* 80 Fed. Reg. at 57,635.

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[2] Both the Forest Service and the BLM manage lands in a staged process. The first stage is the development of an overall management plan, setting forth goals and guidelines for a particular area. *See* 16 U.S.C. § 1604(a) (Forest Service); 43 U.S.C. § 1712 (BLM). At the second stage, the Agencies propose, analyze, and approve project-level decisions; for example, approving a grazing permit or a mining plan of operations. *See* 16 U.S.C. § 1604(i) (Forest Service); 43 C.F.R. § 1610.5-3(a) (BLM).

C. The Fish and Wildlife Service's 2015 Finding that a Listing of the Greater Sage-Grouse is Not Warranted

Following the issuance of the Plan Amendments, FWS found that the listing of the Sage-Grouse under the ESA is not warranted. *See* 80 Fed. Reg. 59,858 (Oct. 2, 2015). FWS noted that the Agencies' planning process was "unprecedented in scope and scale, and represents a significant shift from management focused within administrative boundaries to managing at a landscape scale." *Id.* at 59,874. FWS found that one of the key circumstances that had changed since its 2010 "warranted, but precluded" finding was that the Plan Amendments "provide adequate mechanisms to reduce and minimize new disturbance in the most important areas for the species." *Id.* at 59,882. In its conclusion, FWS emphasized that its determination that a listing was not warranted was dependent upon the "continued implementation of the regulatory mechanisms and conservation efforts," including the Plan Amendments. *Id.* at 59,941.

II. Legal Background

A. Management of Federal Lands by the U.S. Bureau of Land Management and the U.S. Forest Service

The Forest Service manages the lands of the National Forest System under a broad multiple-use mandate informed by several federal statutes, including the Organic Administration Act of 1897, *see* 16 U.S.C. § 551; the Multiple-Use Sustained-Yield Act ("MUSYA") of 1960, 16 U.S.C. §§ 528 *et seq.*; and NFMA, 16 U.S.C. §§ 1600 *et seq.* The national forests "are established and shall be administered" for the sustainable provision of multiple uses; *viz.*, "outdoor recreation, range, timber, watershed, and wildlife and fish purposes." 16 U.S.C. § 528. "Multiple use" allows for management of the various uses in the combination that will best meet the needs of the American people. 16 U.S.C. § 531(a). "Sustained yield" means that "the several products and services" of the national forests must be provided "in perpetuity" and "without impairment of the productivity of the land." 16 U.S.C. § 531(b). Congress noted that "some land will be used for less than all of the resources," and emphasized that management for multiple uses does not require "the combination of uses that will give the greatest dollar return or the greatest unit output." *Id.* at § 531(a).

The BLM manages the federal lands under its jurisdiction under a similarly broad multiple use mandate. FLPMA charges BLM with protecting environmental, ecological, and recreational values while also providing for "multiple use and sustained yield" management. 43 U.S.C. § 1701(a)(1)-(8). FLPMA's definition of "multiple use" calls for the "combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific, and historical values . . . ." *Id.* § 1702(c). FLPMA affords BLM the discretion to determine the combination of uses "that will best meet the present and future needs of the American people," to "use some land for less than all of the resources," and to give consideration "to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output." *Id.*

B. The Mining Law of 1872 and the Secretary of the Interior's Authority to Withdraw Lands from Location and Entry under the Law

The Mining Law authorizes citizens to locate claims on lands belonging to the United States that are "open to exploration," 30 U.S.C. § 22, by making the "discovery" of a "valuable mineral deposit" and complying with other applicable statutes and regulations. 30 U.S.C. § 23; *see Chrisman v. Miller*, 197 U.S. 313, 320-22 (1905). A valid mining claim confers the right to use the surface of federal lands for mining, subject to reasonable regulation by BLM or the Forest Service. *United States v. Weiss*, 642 F.2d 296, 299 (9th Cir. 1981); 30 U.S.C. § 26; *see also* 36 C.F.R. Part 228A (Forest Service mining regulations); 43 C.F.R. Subpart 3809 (BLM mining regulations). Section 204 of FLPMA authorizes the Secretary of the Interior to withdraw federal lands, including lands under the jurisdiction of other federal agencies, from the public land laws, including the mining laws. 43 U.S.C. § 1714(a), (i). Publication in the Federal Register of a proposal to withdraw lands from the Mining Law has the effect of segregating the lands from location of new mining claims for up to two years, or until the Secretary makes a decision regarding the withdrawal, whichever comes first. *Id.* § 1714(b)(1); 43 C.F.R. § 2310.2.

C. National Environmental Policy Act

NEPA serves the dual purpose of informing agency decision-makers of the significant environmental effects of proposed major federal actions and ensuring that relevant information is made available to the public so that they "may also play a role in both the decisionmaking process and the implementation of that decision." *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). To meet these dual purposes, NEPA requires that an agency prepare a comprehensive EIS for "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.3. The requirements of NEPA are procedural. *See Robertson*, 490 U.S. at 351. In reviewing the sufficiency of an EIS, a court should evaluate whether the agency has presented a "'reasonably thorough discussion of the significant aspects of the probable environmental consequences.'" *California v. Block*, 690 F.2d 753, 761 (9th Cir. 1982) (citation omitted). A court should not "substitute its judgment for that of the agency," *id.*, and should not "'fly speck' an EIS and hold it insufficient on the basis of inconsequential, technical deficiencies." *Ass'n of Pub. Agency Customers, Inc. v. Bonneville Power Admin.*, 126 F.3d 1158, 1184 (9th Cir. 1997) (citation omitted). Rather, "[o]nce satisfied that a proposing agency has taken a 'hard look' at a decision's environmental consequences, the review is at an end." *Block*, 690 F.2d at 761 (citation omitted).

STANDARDS OF REVIEW

I. Judicial Review under the Administrative Procedure Act

Agency decisions are reviewed under the judicial review provisions of the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-06. *See Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008). Under the APA, agency decisions may be set aside if they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). In accordance with that standard, an agency's decision will be overturned

> [O]nly if the agency relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, or offered an explanation for its decision that runs counter to the evidence before the agency or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

McFarland v. Kempthorne, 545 F.3d 1106, 1110 (9th Cir. 2008) (citations and quotation marks omitted). The standard of review is "highly deferential, presuming the agency action to be valid and affirming the agency action if a reasonable basis exists for its decision." *Nw. Ecosystem Alliance v. U.S. Fish & Wildlife Serv.*, 475 F.3d 1136, 1140 (9th Cir. 2007) (citation omitted). The APA "does not allow the court to overturn an agency decision because it disagrees with the decision or with the agency's conclusions about environmental impacts." *River Runners for Wilderness v. Martin*, 593 F.3d 1064, 1070 (9th Cir. 2010) (citation omitted).

II. Standard for Obtaining Preliminary Injunctive Relief

A preliminary injunction is "an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). To obtain a preliminary injunction, a plaintiff must, at a minimum, demonstrate four elements: (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm in the absence of an injunction, (3) that the balance of equities tips in its favor, and (4) that the injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). A party *must* demonstrate a "'likelihood of success on the merits'" in order to obtain a preliminary injunction. *Munaf v. Geren*, 553 U.S. 674, 690 (2008) (citations omitted). Furthermore, a party seeking preliminary injunctive relief must "demonstrate that irreparable injury is *likely* in the absence of an injunction." *Winter*, 555 U.S. at 22 (rejecting a "possibility" of irreparable harm standard). The Ninth Circuit has held that, notwithstanding the *Winter* decision, a preliminary injunction may issue if the plaintiffs can show "that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2010) (citation omitted).

ARGUMENT

I. PLAINTIFFS ARE NOT LIKELY TO SUCCEED ON THE MERITS

The Agencies complied with their legal obligations under FLPMA, NFMA, and NEPA, and therefore, as shown below, Plaintiffs are not likely to succeed on the merits of their claims.

A. Plaintiffs Are Not Likely to Succeed on Their FLMPA and NFMA Claims

1. The FLPMA and NFMA Claims Are Not Ripe

Plaintiffs' claims that the Plan Amendments violate the Agencies' substantive mandates under FLPMA and NFMA must fail at the outset because they are not ripe. The Supreme Court has made clear that substantive challenges to a land management plan are not ripe until they are implemented through a site-specific decision. *See Ohio Forestry Ass'n v. Sierra Club*, 523 U.S. 726, 733-37 (1998). In *Ohio Forestry*, the Court explained that immediate judicial review of land management plans is inappropriate because, in the context of the multi-tiered management structure used by federal land management agencies, the plans are only "tools for agency planning and management," 523 U.S. at 737, they "do not grant, withhold, or modify any formal legal license, power, or authority [and] create no legal rights or obligations," *id.* at 733. Here, the Plan Amendments modify the standards and guidelines of the BLM and Forest Service land management plans in Nevada. But until they are implemented through site-specific decisions, *e.g.*, modification of grazing permits, their substantive terms are not ripe for judicial review.[3]

2. BLM Complied with the Requirement to Coordinate with State and Local Governments

BLM complied with its obligations under FLPMA to coordinate its planning efforts with state and local governments. *See* 43 U.S.C. § 1712(c)(9). Plaintiffs claim that BLM violated this requirement by failing to allow the Elko and Eureka Counties (the "Counties") meaningful participation in the planning process and by not adopting the provisions of state and local plans. Pl. Mot. at 7-9, 11-12. These claims are without merit. Through a four-year planning effort involving stakeholders in ten states, including the Counties and the State of Nevada, BLM more than met its obligation to coordinate with state and local entities.[4]

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[3] Defendants do not concede that any procedural claims, including NEPA, are ripe for review and reserve the right to conduct further briefing on the issue at a later stage of the litigation.

[4] Plaintiffs also claim that BLM violated Executive Order 13132, 64 Fed. Reg. 43,255 (Aug. 4, 1999), but that order contains no obligations that are "enforceable at law by any party against the United States, its agencies, its officers, or any person." *Id.* at 43,259.

Section 202(c)(9) of FLPMA directs BLM to coordinate its land use planning process with state and local governments. 43 U.S.C. § 1712(c)(9). This requirement has both procedural and substantive components. Procedurally, BLM should "assure that consideration is given" to relevant state and local plans and "provide for meaningful public involvement of State and local government officials" in the land management planning process. *Id.*; *see also* 43 C.F.R. § 1610.3-1. Substantively, FLPMA instructs that BLM's plans "shall be consistent with State and local plans to the maximum extent [BLM] finds consistent with Federal law and the purposes of this Act." 43 U.S.C. § 1712(c)(9). BLM's regulations provided that it should ensure that its plans are "consistent with officially approved or adopted resource-related" state and local plans, but only so far as the state and local plans are "consistent with the purposes, policies and programs of federal laws and regulations applicable to public lands." 43 C.F.R. § 1610.3-2(a). BLM must submit a proposed resource management plan to the governors of affected states for consistency review, and, at that time, "identify any known inconsistencies with state or local plans, policies, or programs." 43 C.F.R. 1610.3-2(e).

Contrary to Plaintiffs' assertions, *see* Pl. Mot. at 9, 11-12, the record demonstrates that BLM acknowledged and adequately responded to the Counties' comments and list of inconsistences. BLM conducted an extraordinary planning process, during which it designated dozens of state and local entities in ten states, including Elko and Eureka Counties, as cooperating agencies. AR 3300; *see also* 40 C.F.R. § 1501.6. These cooperating agencies were involved in the early stages of the plan amendment process and reviewed and commented on a proposed range of alternatives based on their own plans. AR 3302. BLM coordinated closely with state and local governments during the preparation of the Plan Amendments, identified inconsistencies with state and local plans, made efforts to reconcile them, and provided an opportunity for state and local governments to file protests. *See* AR 3303-05; AR 5486-89.

In Nevada, BLM responded to a consistency letter from the Governor and to the Governor's appeal. *See* August 6 and September 15, 2015 Letters. BLM also responded to the protest letters submitted by the Counties. *See* Elko and Eureka Protest Letters and Protest

Report. BLM explained that the Plan Amendments were inconsistent with the Counties' plans because they would provide restrictions on resource development and introduce the potential for road closures and grazing standards, which the Counties oppose. AR 3304. BLM also provided additional explanation in its response to the Counties' concerns in response to the Counties' protest letters. *See*, *e.g.*, AR 5283-94 (socioeconomic impacts), AR 5294-300 (grazing), and AR 5377 (travel). Accordingly, Plaintiffs cannot credibly claim that they were not "meaningfully involved" in the planning process or the BLM failed to engage in the process for ensuring consistency with state and local plans. *See* Pl. Mot. at 7-9, 11.[5]

Where possible, BLM took steps to reconcile differences with state and local plans. In Nevada, for example, BLM incorporated elements of the State of Nevada's Sage-Grouse Conservation Plan. For example, BLM will consider Nevada's conservation credit system in developing mitigation for particular projects. AR 5463; AR 3934-45. In addition, the Plan Amendments provided exceptions to the three percent ground disturbance cap for proposed activities in key Sage-Grouse habitat, did not impose a no surface occupancy ("NSO") restriction for geothermal development, and did not apply a disturbance density cap, all of which are requirement that apply elsewhere. AR 5463-64. Other efforts to reconcile BLM's proposed Plan Amendments with Nevada's plans are described in BLM's correspondence with the Governor's Office. *See* AR 5400-07; AR 5418-21. Thus, Plaintiffs are wrong that BLM made no effort to resolve differences with state and local plans.

Insofar as it was not possible to reconcile the differences, BLM adequately explained why they could not be reconciled. The Counties complain that BLM did not explain why differences between BLM's proposed Plan Amendments and the Elko County's Sage-Grouse Management and Conservation Strategy Plan ("Elko Plan")[6] could not be reconciled. *See* Pl.

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[5] *American Motorcyclist Association v. Watt* is inapposite because, in that case, BLM did not explain its consistency process. *See* 534 F. Supp. 923, 936 (C.D. Cal. 1981).

[6] The Elko Plan is available at: http://www.elkocountynv.net/Grouse/Elko_County_Sage_Grouse_Management_and_Conservation_Strategy_Plan___Final_Signatures_Sept_19_2012.pdf.

Mot at 8. To the contrary, BLM clearly explained that the Elko Plan was inadequate to meet BLM's goal of conserving and enhancing Sage-Grouse habitat and inconsistent with BLM's policy on special status species because it "would not provide sufficient certainty to conserve, enhance, and restore [Sage-Grouse] habitat by reducing, eliminating, or minimizing threats to habitat." AR 108-09; *see also* AR 5210; AR 5441; AR 11093 (BLM Manual 6840). Some aspects of the Elko Plan, such as offering incentives to private landowners, also were beyond the scope of the Plan Amendments. AR 109.

Plaintiffs argue that by considering its goal to protect Sage-Grouse and its sensitive species policy, BLM violated its substantive consistency obligations. *See* Pl. Mot. at 8. Plaintiffs are wrong, however, in asserting that provisions of state and local plans must be adopted as long as they are consistent with FLPMA. FLPMA requires that BLM resolve inconsistencies with state and local plans "to the maximum extent," that the Secretary finds that those plans are consistent with "Federal law and the purposes of [FLPMA]," 43 U.S.C. § 1712(c)(9), and BLM's regulations interpreting this provision require consistency only so far as state and local plans are also consistent with the "*purposes, policies and programs* of Federal laws." 43 C.F.R. § 1610.3-2(a)-(b) (emphasis added). If it were otherwise, BLM would be required to subordinate its authority to state and local entities; but that is not what FLPMA requires. BLM must "strik[e] a balance among the many competing uses to which land can be put." *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 58 (2004) ("*SUWA*"). Thus, BLM was permitted to consider its own policy goals in the consistency review and to reject portions of state and local plans that were inconsistent with those goals.

3. The Plan Amendments Are Consistent with the Principle of Multiple Use and Sustained Yield

Plaintiffs claim that the Plan Amendments violated the Agencies' obligations under FLPMA and MUSYA to manage according to the principle of multiple use and sustained yield by placing undue emphasis on the protection of Sage-Grouse, including the designation of Focal Areas, compensatory mitigation, and alleged travel restrictions. *See* Pl. Mot. at 9-10. Plaintiffs

are mistaken. The Agencies' targeted Plan Amendments, which are designed to conserve and enhance Sage-Grouse habitat, are well within the Agencies' discretion.[7]

Managing the public lands to provide for the multiple use and sustained yield of sometimes conflicting resources, is – as the Supreme Court has observed – an "enormously complicated" task. *SUWA*, 542 U.S. at 58. Acknowledging that the multiple-use mandate "breathe[s] discretion at every pore," courts have broadly deferred to Agency determinations of the proper mix of uses on public lands. *Perkins v. Bergland*, 608 F.2d 803, 806 (9th Cir. 1979); *see also Wyoming v. U.S. Dep't of Agric.*, 661 F.3d 1209, 1269 (10th Cir. 2011) ("[T]the ultimate mix of uses chosen by the [agency] after consideration of the competing resource values is largely left to agency discretion."); *Bighole Ranchers Ass'n v. U.S. Forest Serv.*, 686 F. Supp. 256, 264 (D. Mont. 1988) (multiple-use management affords "wide discretion to weigh and decide the proper uses with any area"). "Multiple use" does not mean that any particular piece of land must be used for all uses or that extractive uses are favored. *New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 710 (10th Cir. 2009) ("The Act does not mandate that every use be accommodated on every piece of land; rather, a delicate balancing is required.").

Here, BLM and the Forest Service appropriately balanced conservation measures to protect Sage-Grouse and with other uses. The Agencies explicitly sought "to provide sustainable habitat conditions, while continuing to provide for recreation and access opportunities, livestock grazing, access to locatable mineral resources, development of renewable energy resources, and active habitat restoration efforts." AR 5617; *see also* AR 5465 (the Plan Amendment "provides a coherent framework across BLM land use plans . . . to effectively address threats to [Sage-Grouse] in the context of the agency's multiple-use sustained yield mandates."). The Agencies gave detailed consideration to wide range of uses and carefully compared the impacts of different management alternatives on each use. *See, e.g.*, AR 1946-49 (comparing allocations of land to various uses under the proposed plan and its alternatives); AR 2978-3015 (comparing

[7] The Plan Amendments contain direction for Sage-Grouse habitat within the planning area; lands that are not within Sage-Grouse habitat will continue to be managed according to pre-existing land management plans. *See* GB ROD at 1-2.

alternatives with regard to impacts to grazing, recreation, oil and gas leasing, locatable minerals, saleable minerals, geothermal exploration and development, wind energy, tax revenues, employment, earnings and social issues).

Plaintiffs argue that the Plan Amendments violate the principle of multiple use because they are weighted too heavily in favor of protecting of Sage-Grouse and are too restrictive of other uses of the land, such as grazing. *See* Pl. Mot. at 10-11. The case law, however, reflects unanimous judicial recognition that multiple use management affords the BLM and the Forest Service statutory authority to restrict certain uses on specific lands to benefit wildlife. *See Wyoming*, 661 F.3d at 1267-68 (upholding the Forest Service's "Roadless Rule" and rejecting a challenge that the rule violated the principle of multiple use); *Seattle Audubon v. Lyons*, 871 F. Supp. 1291, 1300-11 (W.D. Wash. 1994) (finding that a plan to reduce timber production in order to protect the Northern Spotted Owl was "entirely consistent" with the multiple use mandate); *Wind River Multiple-Use Advocates v. Espy*, 835 F. Supp. 1362, 1372-73 (D. Wyo. 1993) (rejecting a challenge to the establishment of "Grizzly Bear zones" within a National Forest to promote recovery of the Grizzly Bear and finding that the Forest Service had acted consistently with its multiple-use mandate).

4. BLM Did Not Delegate Its Authority to the Fish and Wildlife Service

Plaintiffs argue that BLM improperly delegated its planning authority under FLPMA to FWS by adopting Sage-Grouse "strongholds" identified by FWS in an October 27, 2014 memorandum as Focal Areas in the Plan Amendments. *See* Pl. Mot. at 21-22. In response to a request from BLM and based on the latest studies, FWS found that these "strongholds" were the areas most vital to the conservation of the species. AR 7736-37. Plaintiffs are incorrect, however, that the Agencies simply adopted FWS's "strongholds." The Focal Areas are based on FWS's memorandum and on updated mapping conducted by the USGS in conjunction with Nevada and California. AR 1842-43. Moreover, an improper delegation only occurs, however, when an agency "shifts to another party almost the entire determination of whether a specific statutory requirement . . . has been satisfied or where the agency abdicates its final reviewing

authority." *La. Forestry Ass'n v. Dep't of Labor*, 745 F.3d 653, 672 (3d Cir. 2014) (citation omitted). A delegation does not occur merely where an agency "turn[s] to an outside entity for advice and policy recommendations." *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 568 (D.C. Cir. 2004). Here, BLM retained the authority to approve the Plan Amendments, including the designation of the Focal Areas and the management measures that would be applied therein, and therefore did not improperly delegate its authority to FWS. *See, e.g.*, AR 5447-48; AR 4776-77; *see also* AR 1842-43.[8]

B. Plaintiffs Are Not Likely to Succeed on Their Claim that the Agencies Violated the Procedures for Proposing a Withdrawal from the Mining Law

Plaintiffs claim that the Agencies have not followed the proper procedures for a withdrawal pursuant to 43 U.S.C. § 1714. This claim is not properly before the Court and fails on the merits. Plaintiffs have not challenged the notice of proposed withdrawal, which is the agency action through which the Secretary segregated the affected lands and initiated the process of considering the withdrawal proposal. *See* 80 Fed. Reg. at 57,635-37. Rather, the only agency actions that Plaintiffs have challenged are the Agencies' decisions to adopt the Plan Amendments, which only indicated that the Agencies would *recommend* to the Secretary that she withdraw the Focal Areas. *See* Pl. Compl. (ECF No. 1) at ¶ 2; Pl. Mot. at 3; AR 5612; AR 5452. Even if Plaintiffs had challenged the notice of proposed withdrawal, that challenge would be premature. Under the APA, this Court has jurisdiction only over "final agency actions." 5 U.S.C. § 706. To be "final" an agency action must satisfy two conditions: it must "mark the consummation of the agency's decisionmaking process" and "must be one by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 178 (1997). The notice of proposed withdrawal fails the first step of this inquiry because it is only an initial step in an up to two-year public decision-making process that will determine whether to withdraw the Focal Areas. 80 Fed. Reg. at 57,637. While the notice

[8] *Trustees for Alaska v. Watt* is inapposite because in that case, the Secretary transferred the administration of a wildlife refuge from FWS to the USGS, in violation of an express statutory requirement. 524 F. Supp. 1303, 1309-10 (D. Alaska 1981). No such violation occurred here.

may have legal consequences, inasmuch as it immediately segregates the lands for up to two years, to be judicially reviewable, an action must satisfy both prongs of the Bennett test. *See, e.g., Indus. Customers of Nw. Utilities v. Bonneville Power Admin.*, 408 F.3d 638, 646 (9th Cir. 2005); *Safari Club Int'l v. Jewell*, 76 F. Supp. 3d 198, 208 (D.D.C. 2014). Therefore, the Court should not consider this claim.

Even if this claim were properly before the Court and were not premature, it is without merit. Only the Secretary or her immediate subordinates may make a withdrawal. *See* 43 U.S.C. § 1714(a). When the Secretary proposes a withdrawal "on [her] own motion" or she receives an application for withdrawal, the Department publishes notice in the Federal Register, which has the effect of segregating the lands from the laws specified in the notice. 43 U.S.C. § 1714(b); *see also* 43 C.F.R. § 2310.1-2. Here, the proposed withdrawal was initiated by a petition submitted by BLM that, once approved by the Assistant Secretary, became the Secretary's "proposal" to withdraw the lands. *See* AR 6403; AR 6394-402; 43 C.F.R. 2310.1-3(e). Contrary to Plaintiffs' suggestion, Pl. Mot. at 22, BLM's regulations do not require that an application be submitted by the FWS or the Forest Service. Rather, they provide that if the Secretary proposes a withdrawal that would affect lands outside of the jurisdiction of the U.S. Department of the Interior, then she must obtain the consent of the agency head responsible for managing those lands. 43 C.F.R. § 2310.1-2(c)(3). The Department did obtain the Forest Service's consent. *See* AR 6372. Accordingly, BLM and the Department followed the proper procedure for a proposed withdrawal under FLPMA.[9]

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[9] Plaintiffs also claim that the Forest Service violated internal guidance regarding withdrawals, Pl. Mot. at 23, but this guidance does not create legal obligations that can be enforced against the agency. *See W. Radio Serv. Co. v. Espy*, 79 F.3d 896, 901 (9th Cir. 1996). Further, Plaintiffs misconstrue the guidance. It states that the Forest Service should notify permittees of "their risks and liabilities where *withdrawal of the area is not appropriate*," not that the Forest Service is obligated to provide advance notice to permittees in areas proposed for withdrawal. USFS Manual 2761.03 (emphasis added).

C. BLM and the Forest Service Complied with NEPA

BLM and the Forest Service fully met their procedural obligations under NEPA, and therefore Plaintiffs are not likely to succeed on the merits of these claims.[10]

1. The Agencies Were Not Required to Prepare a Supplemental Environmental Impact Statement

Plaintiffs argue that changes to the proposed action made between the Draft EIS ("DEIS") and the Final EIS ("FEIS") required the preparation of a Supplemental Environmental Impact Statement ("SEIS"). Pl. Mot. at 12. Specifically, Plaintiffs argue that an SEIS was required to address the designation of 2.8 million acres of Focal Areas in Nevada, the imposition of lek buffers based on a USGS report, and the application of a "net conservation gain" mitigation strategy. *Id.* Plaintiffs' arguments are without merit because each of these components were qualitatively within the spectrum of alternatives analyzed in the DEIS.

An agency need not prepare an SEIS for every change occurring between the DEIS and FEIS. *Westlands Water Dist. v. U.S. Dep't of the Interior*, 376 F.3d 853, 873 (9th Cir. 2004) (citing *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 373 (1989)). Such a requirement would frustrate the purposes of NEPA by deterring agencies from changing their proposals in response to information received during the comment period. *Block*, 690 F.2d at 771. An SEIS should be prepared when "[t]he agency makes substantial changes in the proposed action that are relevant to environmental concerns," or when "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. § 1502.9(c)(1)(i)-(ii). The touchstone is whether the change "will have a significant impact on the environment in a manner not previously evaluated or considered." *Westlands Water Dist.*, 376 F.3d at 873; *see also N. Idaho Cmty. Action Network v. U.S. Dep't of Transp.*, 545 F.3d 1147, 1157 (9th Cir. 2008).

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[10] The Mining Companies' claims of purely economic injury do not fall within NEPA's zone of interests. *See Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377 (2014); *Ashley Creek Phosphate Co. v. Norton*, 420 F.3d 934, 940 (9th Cir. 2005).

NEPA thus affords agencies the "flexibility to modify alternatives canvassed in the draft EIS to reflect public input," *Block*, 690 F.2d at 771, and does not require supplementation as long as the action proposed in a final EIS is "qualitatively within the spectrum of alternatives that were discussed in the draft." Forty Most Asked Questions Concerning CEQ's NEPA Regulations, 46 Fed. Reg. 18,026, 18,035 (Mar. 23, 1981) ("Forty Questions").[11] In determining whether an SEIS is required, the Ninth Circuit has urged courts to consider: (1) whether the new action is "within the range of alternatives the public could have reasonably anticipated the [agency] to be considering," and (2) "whether the public's comments on the draft EIS alternatives also apply to the chosen alternative and inform the [agency] of the public's attitudes towards the chosen alternative." *Block*, 690 F.2d at 772.

Applying these principles, the three changes between the DEIS and FEIS identified by Plaintiffs did not warrant the preparation of an SEIS. The Agencies explained in the FEIS that, although the "Focal Areas" label did not appear in the DEIS, the management decisions applicable to Focal Areas were analyzed in the DEIS. *See* AR 1842-43. Focal Areas are generally subsets of Priority Habitat,[12] AR 5447-48; AR 4776-77, and designation of Priority Habitat was part of the proposed action analyzed in the DEIS. *See* AR 52.[13] For Priority Habitat, the DEIS discussed a range of potential management actions, including the management actions that were ultimately applied to Focal Areas, *i.e.*, recommending that all

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[11] The Ninth Circuit has adopted the Council on Environmental Quality's ("CEQ's") Forty Questions guidance as a "framework for applying § 1502.9(c)(1)" of CEQ's regulations. *See Russell Country Sportsmen v. U.S. Forest Serv.*, 668 F.3d 1037, 1045 (9th Cir. 2011).

[12] In Nevada, the Focal Areas include some areas which FWS identified as "strongholds" for the species, but which were outside of mapped Priority or General Habitat in the DEIS. Because Sage-Grouse depend on large swaths of intact habitat, and because the goal of the Plan Amendments was to provide landscape-level conservation for the species, these pockets of habitat that are necessary for the range-wide conservation of the species were identified in the FEIS and adopted in the Plan Amendments as Focal Areas. *See* AR 1842-43.

[13] There were some changes to mapped Priority Habitat, and therefore to Focal Areas, in Nevada based on updated data compiled by the USGS in coordination with the State of Nevada. *See* AR 1842-43; AR 3681-85. The DEIS indicated that mapped habitat would be revised to reflect the best science available. AR 1843; AR 147, 149, 179.

Priority Habitat (not just the smaller Focal Areas) for withdrawal from the Mining Law, AR 920, 984, requiring NSO stipulations for oil and gas leasing, AR 916-17, 982, and prioritizing grazing permits for processing, AR 869, 926. *See also* AR 1843; AR 5250-51.

Plaintiffs' assertion that the DEIS did not disclose that the Agencies were considering a recommendation to withdraw lands from the Mining Law is simply incorrect. *See* Pl. Mot. at 14. The DEIS explained that "the study area produces several salable and locatable minerals" and that Sage-Grouse management alternatives under consideration would impose "restrictions on development of mineral production" and that under certain alternatives, "some lands would be petitioned for withdrawal from locatable mineral entry." AR 975. Specifically, alternatives B, C, and F in the DEIS analyzed a recommended withdrawal. AR 984. Thus, a recommended withdrawal was "within the range of alternatives" the agency was considering. *Block*, 690 F.2d at 772. Further, as demonstrated by comments submitted by the Counties on the DEIS, Plaintiffs were aware that a recommended withdrawal from the Mining Law was being considered. *See* AR 10038 ("Elko County does not support any proposed action that would withdraw from mineral entry."); *see also* AR 10593 (Eureka County comments).

Similarly, the lek buffers and the net conservation gain strategy are qualitatively and quantitatively within the spectrum of alternatives analyzed in the DEIS. The USGS's buffer report study was not available at the time of the DEIS, but the application of buffers was analyzed in the DEIS. *See* AR 1843-44; AR 5251. The buffer distances discussed in the DEIS, such as a four-mile seasonal buffer around active leks, AR 1182, are consistent with (or greater than) the buffer distances discussed in the USGS report. *See* AR 2227 (4 mile buffer from leks for construction of new routes); AR 2262 (4 mile NSO buffer for fluid mineral development). Further, at least one of the alternatives analyzed closing areas to certain types of activities. *See, e.g.*, AR 2235 (exclusion area for rights of way); AR 2270 (closure to fluid mineral leasing). Likewise, a "net conservation gain" mitigation strategy was adequately discussed in the DEIS. *See* AR 1845. The goal of the Plan Amendments was not simply conserve existing Sage-Grouse populations, but to "conserve, enhance, and restore [Sage-Grouse] habitat," a goal that

was made express in the DEIS. AR 5441; AR 1845; AR 128. Although the preferred alternative in the DEIS did not expressly include a "net conservation gain" mitigation strategy, the principle was analyzed in the DEIS. *See, e.g.*, AR 102 (directing BLM to "[c]onserve, enhance and restore the sagebrush ecosystem"); AR 760 ("Management actions would . . . conserve, enhance, or restore [Sage-Grouse] habitat"); *see also* AR 5252. Thus, lek buffers and net conservation gain were "qualitatively within the spectrum of alternatives" considered in the DEIS. Forty Questions, 46 Fed. Reg. at 18,035.

No SEIS is required because the approved action includes management measures that were qualitatively analyzed in the DEIS and further study would not reveal any impacts on the human environment that were overlooked. *See Wyoming*, 661 F.3d at1257-62 (the Forest Service was not required to prepare an SEIS when it made changes to a proposed rule, including the addition of 4.2 million acres of protected forest land as a result of mapping changes); *Russell Country Sportsmen*, 668 F.3d at 1045-49 (Forest Service was not required to prepare an SEIS when a travel plan closed routes not designated for closure in the DEIS and made other changes to the plan); *Westlands Water Dist.*, 376 F.3d at 873-74 (U.S. Bureau of Reclamation was not required to prepare an SEIS based on reasonable and prudent measures required by the National Marine Fisheries Service after the issuance of the draft EIS). The Agencies' reasoned decision that no SEIS was required is entitled to deference. *Marsh*, 490 U.S. at 383.

Further, Plaintiffs' claim that the Agencies did not disclose the planned use of Focal Areas until the issuance of the FEIS in May 2015 is incorrect. *See* Pl. Mot. at 14. After the FWS issued its October 27, 2014 memorandum, BLM notified the affected states of the memorandum and of the proposed designation of Focal Areas. *See* AR 5401. The proposal to use Focal Areas was also presented at a January 20, 2015 meeting of the Western Governors Association Sage Grouse Task Force Meeting. *Id.*; AR 10705-15. The presentation also included information on the use of lek buffers, AR 10716-19, and the application of a "net conservation gain" mitigation strategy. AR 10721. Through these meetings, BLM made involved parties aware of the changes prior to the issuance of the final Plan Amendments.

Finally, Plaintiffs had the opportunity to comment on the FEIS/Proposed Plan Amendments during the protest period, and each of the Plaintiffs did so. *See* AR 10236; AR 10253; AR 10269; AR 10275. In those letters, the Plaintiffs commented on the changes in the Proposed Plan Amendments, including the plan to include Focal Areas and the management measures that would apply to such areas. *See, e.g.*, AR 10271-74 (Quantum Minerals); AR 10255-59 (Western Exploration). BLM fully considered and responded to those comments following the conclusion of the Protest Period. *See, e.g.*, AR 5237-52 (responding to comments regarding the Focal Areas, buffers and net conservation gain). This opportunity to comment "before the adoption of the final rule . . . further alleviated the need to prepare a separate supplemental EIS." *Wyoming*, 661 F.3d at 1262 n.39; *see also Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1118 (9th Cir. 2002) (noting that the public was permitted an opportunity to comment on a final EIS before a rule was finalized), *abrogated on other grounds by Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011).

2. The EIS Analyzes a Reasonable Range of Alternatives

NEPA requires an EIS to include an analysis of "alternatives to the proposed action." 42 U.S.C. § 4332(2)(C)(iii); 40 C.F.R. § 1502.14. The alternatives analysis should "describe and analyze 'every reasonable alternative within the range dictated by the nature and scope of the proposal.'" *Alaska Survival v. Surface Transp. Bd.*, 705 F.3d 1073, 1087 (9th Cir. 2013) (citation omitted). The range of alternatives must "relate to the purposes of the project." 40 C.F.R. §§ 1502.13, 1508.9(b); *see Westlands Water Dist.*, 376 F.3d at 865. An agency need not consider alternatives that are "unlikely to be implemented or [are] inconsistent with its basic policy objectives." *Seattle Audubon Soc'y v. Moseley*, 80 F.3d 1401, 1404 (9th Cir. 1996). Plaintiffs' claims that the Agencies violated these requirements are without merit.

First, Plaintiffs claim that the Agencies did not consider all existing regulatory tools – including state and local plans, BLM Manual 6840, and federal regulations governing the development of locatable minerals – as part of the "no action" alternative. Pl. Mot. at 15-16. To the contrary, the "no action" alternative ("Alternative A") in both the DEIS and FEIS presumed

the continuation of "management decisions and agency policies under the current approved [land management plans]" and stated that "[d]irection contained in existing statutes, regulations, and policies would also continue to be implemented." AR 1950; *see also* AR 1951-59; AR 98. Those existing regulations and policies expressly included BLM Manual 6840 regarding special status species, AR 1950; AR 3715, and federal regulations governing the development of locatable minerals, AR 1957. The Agencies determined that these existing regulatory tools were not sufficient to meet their purpose and need of conserving and enhancing Sage-Grouse habitat in response to FWS's 2010 "warranted, but precluded" finding, which specifically concluded that existing regulatory mechanisms were insufficient to protect Sage-Grouse. AR 108-09; AR 1803; AR 2298-99; AR 5439; *see also* 75 Fed. Reg. at 13,982. Accordingly, the Agencies appropriately rejected the no action alternative. *See, e.g.*, *Alaska Survival*, 705 F.3d at 1087.

Second, Plaintiffs wrongly claim that the Agencies gave inadequate consideration to state and local plans, and, in particular, the Elko Plan, in the FEIS. Pl. Mot. at 16. As discussed in section I.A.2., *supra*, the Agencies considered and incorporated many elements of state and local plans, but did not consider the Elko Plan to be a valid stand-alone alternative for conserving and enhancing Sage-Grouse habitat. *See* AR 108-09; AR 2298-99; AR 3304-05. In particular, the Agencies noted that the Elko Plan "questions the rationale and science used by [FWS]" in its 2010 finding. AR 108; *see also* Elko Plan at 1, 7. Indeed, the goal of the Elko Plan is not to provide additional protections for Sage-Grouse, but rather to provide an "alternative view" and to "challenge[] the presumption or conjecture that [Sage-Grouse] should be listed" under the ESA. Elko Plan at 1; *see also id.* at 13. Since the premise is of the Elko Plan is that FWS's Sage-Grouse finding should be rejected, it is not a "reasonable alternative" to address the plight of the Sage-Grouse or FWS's 2010 finding, and therefore was properly rejected from detailed consideration. *See City of Angoon v. Hodel*, 803 F.2d 1016, 1021–22 (9th Cir. 1986).

Third, Plaintiffs claim that the Agencies inappropriately eliminated an "Increased Grazing" alternative from detailed consideration. Pl. Mot. at 16-17. As explained in the FEIS, however, the Agencies dismissed an "increased grazing" alternative from detailed consideration

because there is no scientific evidence to support a correlation between increased grazing and improved Sage-Grouse habitat. AR 2298-99. In its 2010 finding, FWS concluded that while "some research suggests that *under very specific conditions* grazing can benefit sage-grouse," this is countered by the determination that "livestock management and domestic grazing can [also] seriously degrade sage-grouse habitat." 75 Fed. Reg. at 13,910-01; *see also* 80 Fed. Reg. 59,909. Although Plaintiffs claim that the scientific literature supports the view that an increase in grazing will benefit Sage-Grouse, they identify no studies supporting that claim. They rely instead on an unattributed quotation referring to an "on-off grazing system" as one method of removing excess grass for "preventing or managing wildfires and controlled burns." Pl. Mot. at 17. Regardless of its origin, the quoted material does not suggest that increased grazing would be beneficial to Sage-Grouse. Further, as noted in the FEIS, there does not appear to be demand for increased grazing, as grazing usage levels are currently at 60% of allowable rates. AR 2299-30. Accordingly, this alternative was properly rejected from detailed consideration.

3. The EIS Discloses the Scientific Basis of the Analysis

Plaintiffs claim that the FEIS does not contain "high-quality information and accurate scientific analysis" and that he scientific data analyzed in the FEIS was incomplete. Pl. Mot. at 17 (citing 40 C.F.R. §§ 1500.1(b), 1502.22). This claim boils down to two assertions: (1) that the Agencies failed to consider peer review comments on the NTT Report and alleged scientific deficiencies in the COT Report, and (2) the Agencies have failed to disclose the scientific bases for the delineation of the Focal Areas. Both of these assertions are false.

First, the criticisms of the NTT Report and its incorporation into the Sage-Grouse planning process are without merit. *See* Pl. Mot at 17-18. The NTT Report was the result of a collaboration by BLM, USGS, NRCS, and state wildlife specialists. AR 5439. It preceded the planning process and provided a framework for analyzing and addressing threats to Sage-Grouse. *See id.* The draft NTT Report was scrutinized in a transparent peer review process commissioned by the Nevada Department of Wildlife. *See* Pl. Ex. 8 (Peer Review Report); AR 10211-12; AR 10233. A subset of the NTT members then met in Phoenix, from December 6-8,

2011, to address issues raised during the peer review process and further articulate and document the scientific basis for the recommended conservation measures. Pl. Mot. Ex. 8 at 2-3. Revisions reflecting these additional deliberations were ultimately incorporated into the final NTT Report. *Id.* at 3.

Moreover, the NTT Report was issued before the start of BLM's planning process, and BLM continued to address any shortcomings in the Report as it developed its Plan Amendments. *See* AR 4799-83; AR 5444-48. Thus, the criticisms that Plaintiffs raise with respect to the recommendations in the NTT Report are not true of the Plan Amendments.[14] For example, while Plaintiffs complain that the NTT Report did not assess state-level data, Pl. Mot at 18, the Agencies clearly did consider such data in the 2014 USGS study, *see* AR 3681-82, and considered and incorporated aspects of state plans. *See* AR 5463-64; *see also* AR 3303-04; AR 3934-45. The Plan Amendments also do not adopt a "one size fits all" approach; instead, the conservation measures are tailored based on the type of habitat, potential threats to Sage-Grouse habitat, and state-specific policies. *See* AR 5441-51; AR 5463-64; *see also* AR 4779-83. Finally, the Plan Amendments are supported by numerous scientific studies and reports. *See*, *e.g.*, AR 3325-91) (listing references); AR 5437-41. Accordingly, the alleged deficiencies in the NTT Report were not ignored during the planning and NEPA process, and in no way undermine that process.

Plaintiffs also claim that both the NTT Report and the COT Report are "not reflective of the best available science." Pl. Mot. at 19. Like the NTT Report, the COT Report was peer reviewed. COT Report Cover Ltr at 1. Aside from the peer review comments on the NTT Report – which reflect the give-and-take of a valid scientific process – Plaintiffs point to no actual deficiencies in the science. While Plaintiffs may disagree, Defendants are entitled to rely on the expert analysis of biologists at FWS, BLM, the Forest Service, and state wildlife agencies. *See Marsh*, 490 U.S. at 378 ("When specialists express conflicting views, an agency must have

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[14] The NTT Report recommendations were analyzed as an alternative in the NEPA process, but the full set of recommendations was not selected in the Plan Amendments. AR 1934-35.

discretion to rely on the reasonable opinions of its own qualified experts . . ."); *see also Lands Council*, 537 F.3d at 993 ("We are to be most deferential when the agency is making predictions, within its area of special expertise, at the frontiers of science.") (citations and quotation marks omitted). Plaintiffs have offered no reason for overturning the Agencies' and FWS's carefully considered scientific opinions regarding the Sage-Grouse.

Second, Plaintiffs also are wrong that the Agencies have not adequately disclosed the scientific bases for the delineation of the Focal Areas. Pl. Mot. at 19-20. As explained in the FEIS, the delineation of the Focal Areas in Nevada is based on the "strongholds" identified by FWS in its October 27, 2014 memorandum, as updated based on a 2014 USGS mapping study conducted in conjunction with Nevada and California. AR 1842-43; AR 3681-82. FWS identified the "strongholds" because they contain "[e]xisting high-quality sagebrush habitat for sage-grouse," and FWS identified several scientific studies supporting its conclusions. AR 7736-44. The USGS mapping study utilized telemetry data collected from 1998 through 2013, landscape habitat mapping, and Sage-Grouse lek data. AR 3681-82. The resulting map was peer-reviewed and is considered by the states, the USGS, and BLM to be "the best available science on location and suitability of sage grouse habitat in Nevada and northeastern California." *Id.*[15] Accordingly, the sound scientific basis for the Focal Areas was disclosed in the FEIS.

4. The Agencies Appropriately Responded to Comments

Plaintiffs' final NEPA claim is that the Agencies "fail[ed] to adequately address comments and inconsistencies." Pl. Mot. at 20-21. This argument is redundant of Plaintiffs'

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[15] Plaintiffs complain that the Agencies' habitat maps include the Town of Eureka, as well as roads, subdivisions, and facilities on state or private land. Pl. Mot. 19-20. It is unclear what map Plaintiffs are referring to. A map included with the FEIS identifies habitat on federal land and shows state land, which is not identified as habitat. *See* AR 3576. While the map does not show subdivisions or particular facilities, Defendants disagree that the mapped habitat includes non-federal land. In any case, the Plan Amendments apply only to federal land – not state or private land. *See* AR 5434. Accordingly, Defendants disagree that mistakes were made in the mapping process. However, to the extent that new information about Sage-Grouse habitat becomes available, any corrections to delineations of habitat could be addressed through a plan maintenance or plan amendment process. *See* AR 1924; AR 3702; AR 4798; AR 4830.

FLPMA claims, *see* section I.A.2., *supra*, and fares no better as a NEPA claim. NEPA requires any agency preparing an EIS to "assess and consider comments both individually and collectively" and to "stat[e] its response in the final statement." 40 C.F.R. 1503.4(a). The record demonstrates that the Agencies fully complied with NEPA's requirements for considering and responding to comments. *See, e.g.*, AR 10180-205; AR 3687-89; AR 5169-84. Plaintiffs insist that the Agencies did not consider their comments regarding consistency with state and local plans, but the record shows that they did. *See* AR 33-4-05; AR 5417-21; AR 5397-408; AR 5201-10; AR 5232-36; AR 3696-97; AR 3711-13. The Agencies also responded to comments regarding inconsistencies among the plans, water rights, travel management, managed grazing, and best available science. *See* AR 3746-47 (inconsistencies); AR 3776-77 (water rights); AR 3764-65 (travel management); AR 3745-47, 3772 (managing grazing to reduce fire risk); AR 3713-14, 3717-18, 5252-68 (best available science). Thus, Plaintiffs' claim that the Agencies did not adequately consider comments is baseless.

II. PLAINTIFFS HAVE FAILED TO DEMONSTRATE IRREPABLE HARM

To obtain emergency injunctive relief, Plaintiffs bear the burden of proving it is "likely"—and not just possible—that they will suffer substantial and immediate irreparable injury to their interests *before a decision on the merits can be rendered*. *Winter*, 555 U.S. at 22. The Plaintiffs seek to trace a host of injuries to the Plan Amendments, but as set forth below, none satisfies Plaintiffs' burden of showing imminent irreparable injury.[16]

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[16] In addition to declarations from the four original named plaintiffs, the Plaintiffs have submitted "supplemental" harm declarations and, on the eve of this filing, amended their complaint. *See* ECF Nos. 13, 18, 20. Plaintiffs' motion for injunctive relief should be adjudicated on the basis of the allegations and declarations made in that motion, not on these late-filed materials. Even had they been properly submitted with Plaintiffs' motion, Plaintiffs' supplemental declarations fail to identify imminent irreparable harm, because – like the original declarations – they allege speculative injuries that will come to pass, if at all, only after future site-specific decisions are made. Should Plaintiffs seek to rely on these late-filed materials in their reply brief, Defendants respectfully seek leave to file a sur-reply.

A. The Counties Fail to Demonstrate Imminent Environmental Harm from Grazing Reductions

The Counties assert that they face imminent environmental injury because the Plan Amendments will allegedly reduce grazing levels, resulting in accumulation of annual grasses and an increase in wildfire. Pl. Mot. at 24. This claim fails.

First, the record belies the claim that implementation of the Plan Amendments will increase fire risk. The Plan Amendments are, in fact, projected to reduce the risk of fire, which is a significant threat to Sage-Grouse habitat. *See* AR 5458-60; AR 2772 (management actions to improve vegetation are expected to lead to a more natural fire regime and a *decrease* in "fire sizes, intensity and management costs") (emphasis added).

Second, even assuming that grazing management under the Plan Amendments will lead to an increase in fire risk, Plaintiffs still have not shown any imminent risk of harm because, the Plan Amendments do not immediately change grazing practices. Grazing will continue under existing permits, and those permits will be modified through future judicially reviewable decisions over the next several years to ensure that grazing is conducted consistent with the objectives outlined in the Plan Amendments. *See* AR 5662 ("There will be no immediate change in grazing management or modification of term grazing permits."); AR 8495 (outlining management direction to be considered in reviewing BLM grazing permits).

B. The Counties Fail to Demonstrate Imminent Injury to Their Transportation Systems or to Their Ability to Provide Emergency Services

The Counties allege that they face imminent harm because the Plan Amendments restrict their use of "thousands of miles of roads," impeding their ability to maintain their transportation systems and provide for emergency services. Pl. Mot. at 24, 28. This claim misrepresents the Plan Amendments: the Amendments not close any existing routes, but even if they did, the Agencies' regulations exempt emergency vehicles from OHV restrictions.

First, the Plan Amendments do not close any existing routes. All existing routes will remain open until the Agencies complete a separate transportation management planning

process.[17] *See* AR 4821-22 ("limit OHV travel to existing routes … until subsequent implementation–level travel planning is completed and a designated route system is developed."). During that process, the Agencies will determine whether existing routes must be closed and will impose any conditions on the use of routes needed to ensure consistency with the Plan Amendments. *See* AR 5453 ("Travel management plans, included route inventories, NEPA analysis, and route designation will be completed in subsequent public planning process."). In sum, the record provides no support for the Counties' assertion that routes of importance to them will be closed. And any claim that such routes would be closed in the future after travel management planning is speculative and cannot establish an imminent irreparable injury.[18] *See Caribbean Marine Servs. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1998).

Further, the Agencies' regulations make clear that emergency public-safety uses are not subject to the obligation to remain on existing routes. *See* 36 C.F.R. § 261.13(e) (exempting "use of any fire, military, emergency, or law enforcement vehicle for emergency purposes" from the prohibition on using motorized vehicles on Forest Service lands off of designated roads and trails); 43 C.F.R. § 8340.0-5(a)(2), (4) (providing that limits to use of OHVs on BLM land do not apply to "[a]ny military, fire, emergency, or law enforcement vehicle while being used for emergency purposes" or "[v]ehicles in official use").

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[17] The Plan Amendments define "existing routes" broadly as "those routes on the ground that clearly show prior use to the extent that a clear path is visible with no vegetation on it, or in some cases there is little vegetation in the center of the travel path." AR 4840.

[18] Although not explicitly addressed in Plaintiffs' motion, the Counties' declarants assert the Plan Amendments interfere with the Counties' unadjudicated rights of way under Revised Statute ("R.S.") 2477. *See* Dahl Decl. at ¶ 24; Goicoechea Decl. at ¶ 27. This claim does not demonstrate an injury traceable to the Plan Amendments. BLM is not obligated to determine ownership of R.S. 2477 rights of way during development of land management plans, and any claim of interference with rights of way must be resolved in a Quiet Title action. *Kane County v. Kempthorne*, 495 F. Supp. 2d 1143, 1159 (D. Utah 2007), *aff'd sub nom. Kane County, Utah v. Salazar*, 562 F.3d 1077 (10th Cir. 2009).

C. The Counties Cannot Assert Injury as *Parens Patriae*

The Counties also allege a host of injuries to the citizens of the Counties rather than the Counties themselves.[19] However, States, and political subdivisions such as counties, may not sue the federal government as *parens patriae* to protect the physical or economic wellbeing of their citizens. *Alfred L. Snapp & Son, Inc., v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 610 n.16 (1982); *Nevada v. Burford*, 918 F.2d 854, 858 (9th Cir. 1990); *In re Multidistrict Vehicle Air Pollution M.D.L. No. 31*, 481 F.2d 122, 131 (9th Cir. 1973) ("[P]olitical subdivisions such as cities and counties, whose power is derivative and not sovereign cannot sue as *parens patriae*."). To establish standing to sue the federal government, the Counties must show harm to their *own* proprietary interests rather than those of their citizens. *See, e.g., Massachusetts v. EPA*, 549 U.S. 497, 519 (2007). Because the Counties cannot use alleged injuries to the interests of their citizens to support standing, those injuries cannot support their claim of irreparable harm.[20]

D. The Counties Fail to Demonstrate Imminent Economic Injury

The Counties' claims that they face imminent economic injury also fall short. Dahl Decl. at ¶ 20; Goicoechea Decl. at ¶ 7. First, these generalized allegations of economic harm concern the Counties in their capacity as *parens patriae* and—as noted above—cannot constitute an injury in litigation against the federal government. *See Pennsylvania v. Kleppe*, 533 F.2d 668 (D.C. Cir. 1976) ("The alleged injuries to the state's economy . . . implicate the *parens patriae* rather than the proprietary interest of the state."). Second, even if the Counties could assert general economic injuries, the economic harms they allege here are not imminent. The Counties'

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[19] *See, e.g.*, Dahl Decl. at ¶ 15-16 (alleging interference with use of private lands for agriculture and grazing); *id.* at ¶ 25 (alleging private landowners are deprived of reasonable access to their private property); *id.* at ¶ 24 (alleging "ranchers, hunters, recreationists, and exploration geologists" are injured by travel restrictions); Goicoechea Decl. at ¶ 7(alleging lost jobs in Eureka County); *id.* at ¶ 24 (alleging grazers in Eureka County will be forced out of business).

[20] The Counties also claim the Plan Amendments conflict with their land management plans, *see* Pl. Mot. at 24, but such interference is not an immediate irreparable harm. *See Am. Motorcyclist Ass'n*, 534 F. Supp. at937 (holding that although the allegation that BLM Land Management Plan interfered with county land use plan was adequate to demonstrate standing, it did not justify preliminary injunction).

alleged economic harms stem from the allegations that the Plan Amendments will reduce the grazing economy. *See* Goicoechea Decl. at ¶ 7; Dahl Del. at ¶ 20. But as explained above, the Plan Amendments do not make any immediate changes to existing grazing permits, and thus any alleged economic impacts are not imminent.[21]

E. The Mining Companies Fail to Demonstrate Imminent Injury

The Mining Companies wrongly assert that they will suffer imminent irreparable injury from the proposed withdrawal of Focal Areas from the Mining Law because the resulting segregation will allegedly deprive them of their "right" to mining claims and prevent them from developing the claims. *See* Pl. Mot. at 24-25. First, as discussed in section I.B., *supra*, Plaintiffs' claims of injury based on the notice of proposed withdrawal cannot support their request for injunctive relief because the notice of proposed withdrawal has not been challenged and any such challenge would be premature. Second, assuming the notice of proposed withdrawal is properly before the Court, it does not cause any imminent injury to Plaintiffs' rights under the Mining Law or immediately affect current operations on their mining claims.

Plaintiffs assert that they hold hundreds of unpatented mining claims within the segregated area, but they do not specify whether they have made a discovery of a valuable mineral deposit on any these claims.[22] If they have made such a discovery, the proposed withdrawal has no impact on them because they have a valid property interest in the claim that is

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[21] The Plaintiffs allege that the Plan Amendments' restrictions on wind energy will cost Elko County over $500 million because they prevent construction of the China Mountain Wind Energy project. Pl. Mot. at 4. But no final agency decision has been made on the Project and Elko's speculation that ultimately it will not be approved is not an imminent injury. *See Caribbean Marine*, 844 F. 2d at 674.

[22] Mr. Cleary asserts that Western Exploration controls 331 unpatented claims in Woods Gulch/Gravel Creek area and 112 unpatented claims at Doby George. Cleary Decl at ¶ 4. Mr. Gustin testifies that Quantum controls 110 unpatented and 9 patented mining claims in the Jarbridge area. Gustin Decl. at ¶ 4. On October 20, 2015, the Department of the Interior published a Correction Notice which clarifies that the only federal lands proposed for withdrawal are the Focal Areas within the listed townships, rather than all of the federal lands within the listed townships. 80 Fed. Reg. at 63,583. This correction makes clear that the Doby George unpatented claims, which Mr. Cleary alleges are not within a Focal Area, *see* Cleary Decl. at ¶ 12, are therefore not subject to the proposed withdrawal.

protected. 30 U.S.C. § 26; *Indep. Mining Co., Inc. v. Babbitt*, 105 F.3d 502, 506 (9th Cir. 1997); *see also* 80 Fed. Reg. at 57,637 (the segregation is subject to valid existing rights). If Plaintiffs have located unpatented mining claims but have not discovered a valuable mineral deposit, they have no "rights" that can be injured by segregation. *See Cameron v. United States*, 252 U.S. 450, 460 (1920); *see also VANE Minerals v. United States*, 116 Fed. Cl. 48, 63 (2014) ("Without a determination as to the validity of the plaintiffs' unpatented mining claims, those claims do not constitute a compensable property interest . . . ."). Nor does a claimant have a "right" to conduct exploration activities to make a discovery after an area is withdrawn. *See, e.g., Freese v. United States*, 639 F.2d 754, 758 (Ct. Cl. 1981) ("At best, plaintiff has suffered a denial of the opportunity to obtain greater property than that which he owned upon the effective date of the [withdrawal]. This cannot fairly be deemed the divestment of a property interest, save by the most overt bootstrapping."). Thus, Plaintiffs have no rights that are affected by the notice of proposed withdrawal.[23]

Plaintiffs also cannot demonstrate an imminent irreparable injury based on the speculative fear that the segregation will disrupt ongoing approved exploratory activities, and that they may be precluded from engaging in new exploratory activities. Gustin Decl. ¶ 16; Cleary Decl. ¶ 6. Neither the Forest Service nor the BLM are required to conduct an immediate validity examination or to halt ongoing operations under a Plan of Operations approved before the issuance of a segregation notice. *See* 36 C.F.R. Part 228A (Forest Service Regulations); AR 10908 (BLM Handbook providing that operation under a Plan of Operations approved before segregation notice "may continue as accepted or approved and do not require a validity examination unless or until there is a material change in the activity").[24] Indeed, the Forest

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[23] Plaintiffs make a passing claim that their interests in nine patented mining claims are injured by the segregation. Gustin Decl. at ¶ 18; Pl. Mot. at 25. Patented mining claims, however, are private property and thus not affected by the segregation and not subject to the Plan Amendments. Plaintiffs have provided no basis for concluding that their private property interests will be injured by the segregation.

[24] Mr. Cleary asserts that he was informed by Forest Service personnel that the BLM would "immediately . . . initiate claim contests" challenging Western's unpatented mining claims.

Service could only require the Mining Companies to suspend or modify their operations under current plans of operation by following the procedures set forth under 36 CFR § 228.4(e), which has not yet happened here. *Baker v. U.S. Dep't of Agric.*, 928 F. Supp. 1513, 1523 (D. Idaho 1996). Until the Forest Service completes this administrative process, including opportunities for administrative appeal, there is no final agency action affecting ongoing operations that is ripe for judicial review, and there is no imminent threat of harm to Plaintiffs. And, even were the Agencies to immediately require a validity determination, any expense of complying with the examination procedure is not an irreparable injury justifying injunctive relief. The need to expend money for completion of agency procedures "which are normal incidents of participation in the agency process do not constitute irreparable injury" regardless of how "substantial and nonrecoverable" those expenditures may be. *California ex rel. Christensen v. FTC*, 549 F.2d 1321, 1323 (9th Cir. 1977).

Finally, Plaintiffs allege that they are harmed because the notice of proposed withdrawal will have a "chilling effect" on the Mining Companies' ability to raise outside funding. Pl. Mot. at 25. But speculation about the independent business decisions of future investors not before the Court does not suffice to demonstrate an actual and imminent injury. *See, e.g., Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 43 (1976) (holding plaintiffs lacked standing where their alleged injury required speculation that the challenged rule would affect behavior of non-parties).

In sum, neither the plaintiff Counties nor the plaintiff Mining Companies have demonstrated that the Plan Amendment will cause imminent injury to their interests.

Cleary Decl. ¶11. But immediate initiation of an administrative mining claim contest is not possible here. BLM cannot initiate a claim contest until after it or the Forest Service has completed a validity determination and found the mining claim is not valid. *See McKown v. United States*, 908 F. Supp. 2d 1122 (E.D. Cal. 2012) (describing validity examination process and subsequent request to initiate contest proceeding). As noted above, no validity examination has been initiated, and none is required for the existing plans of operation. Consequently, even if the cited statement was made, there is no imminent threat of the initiation of a contest proceeding on any of the mining claims within the segregated area.

III. THE BALANCE OF THE HARMS AND THE PUBLIC INTEREST WEIGH AGAINST AN INJUNCTION

The balance of the harms and the public interest weigh heavily against an injunction. "When the Government is a party, these . . . two factors merge." *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). "[When] an injunction is asked [for] which will adversely affect a public interest . . . the court may in the public interest withhold relief until a final determination of the rights of the parties, though the postponement may be burdensome to the plaintiff." *Weinberger v. Romero–Barcelo*, 456 U.S. 305, 312-13 (1982). Thus, even if the Court finds that Plaintiffs have established a likelihood of success on the merits and would suffer immediate irreparable harm in the absence of an injunction, the Court should not enter a preliminary injunction because both the government and the public have a compelling interest in seeing the Plan Amendments implemented. *See, e.g.*, *Winter*, 555 U.S. at 26 (denying an injunction based on public interest despite injury to plaintiffs).

This planning process was necessitated by the FWS's finding that the listing of the Sage-Grouse was warranted and, specifically, that existing regulatory mechanisms were inadequate to protect the Sage-Grouse from further population declines. *Id.* at 13,982. The Plan Amendments are designed to conserve and enhance Sage-Grouse habitat so that the need to list the species under the ESA can be avoided. AR 5441. Moreover, protecting the Sage Grouse and it ecosystem, but will benefit local economies and rangeland activities such as grazing and recreation. AR 5428. An injunction against implementation of the Plan Amendments would frustrate the Agencies' efforts to protect the Sage-Grouse by delaying the implementation of conservation measures to protect the species. The protection of a species that may become threatened or endangered in the absence of adequate protections in federal land management plans weighs heavily in the public interest. *See Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 422 F.3d 782, 794-95 (9th Cir. 2005) (upholding an injunction to protect endangered salmon); *Marbled Murrelet v. Babbitt*, 83 F. 3d 1068, 1073 (9th Cir. 1996) ("[T]he balance of hardships always tips sharply in favor of endangered or threatened species.").

Further, the government and numerous stakeholders who were involved in the development of the Plan Amendments have an interest in having them remain in place. The four-year process that led to the issuance of the Plan Amendments involved an unprecedented level of coordination and cooperation with states, state wildlife agencies, county governments, FWS, environmental groups, tribes and other stakeholders. *See* AR 5499; AR 4825-27 In light of the Plan Amendments, FWS found that the listing of the Sage-Grouse under the ESA is no longer warranted, but that finding is dependent upon the "continued implementation of the regulatory mechanisms and conservation efforts" in the land management plans. 80 Fed. Reg. at 59,941. An injunction would undo four years of collaboration and could undermine FWS's finding. The alleged harms to Plaintiffs do not outweigh the interests of the other stakeholders, including the government, in keeping the Plan Amendments fully in place pending the Court's full consideration of Plaintiffs' claims on the merits. *Cf. Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1405-06 (9th Cir. 1995) (declining to vacate a rule listing a species, in part, because of the significant resources that were expended in preparing the rule).

Finally, even if injunctive relief were warranted, it should be narrowly tailored to address only the specific injuries and legal violations found by the Court. *See Friends of the Earth v. Laidlaw Envtl. Servs.*, 528 U.S. 167, 193 (2000) (noting that injunctive relief should be "no broader than required by the precise facts"); *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 558 (9th Cir. 1990) (an injunction must be "narrowly tailored to give only the relief to which plaintiffs are entitled").

CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for a Preliminary Injunction should be denied.

Respectfully submitted this 23rd day of October, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION** with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

WESTERN EXPLORATION LLC, ET AL. **Plaintiffs,** **v.** **U.S. DEPARTMENT OF THE INTERIOR, ET AL.,** **Defendants.**	Case No. 3:15-cv-00491-MMD-VPC **PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION** Hearing Date: November 17, 2015 Hearing Time: 9:00 AM

TABLE OF CONTENTS

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TABLE OF AUTHORITIES

Page No.

Cases

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Statutes

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Plaintiffs,hereby submit this Reply in Support of their Motion for Preliminary Injunction.

I. PLAINTIFFS' FLPMA AND NFMA CLAIMS ARE RIPE

Ripeness does not require that plaintiffs wait to challenge site-specific decisions where, as here, the agencies' decision negatively and immediately impacts them. The agencies' reliance on *Ohio Forestry Ass'n v. Sierra Club* is misplaced. 523 U.S. 726 (1998). The *Ohio Forestry* holding relies upon the language of a specific USFS Resource Management Plan ("Ohio Plan") that, unlike the Nevada portions of the BLM and USFS approved land management plans ("NVLMP"),[1] did not command inactivity, withhold, or modify any legal authority, or restrict legal rights. *Id.* at 733. Therefore, the Court held that the challenge was not ripe because the Sierra Club had not been "forc[ed] to modify its behavior in order to avoid future adverse consequences." *Id.* at 734. If the Sierra Club had raised specific harm, "those provisions of the Plan that produce the harm" would have been immediately justiciable. *Id.* at 738-39.

Unlike the contested Ohio Plan, the NVLMP's requirements produce immediate harm. The NVLMP is in effect and, a "showstopper" in the agency's words. Jim Perry, Senior Natural Resource Specialist for BLM in Washington D.C., acknowledged that the NTT conservation measures (which the agencies concede were used in the NVLMP) "are complete game-changers for any actions within the Priority Habitats where there are valid existing rights ***and showstoppers for those actions where there are no valid existing rights***." **Ex. 1** (extracted from Dkt. 20-3)**.** The NVLMP restrictions and prohibitions are in place; mineral or wind energy projects like China Mountain in avoidance areas are categorically prohibited, and will never see future agency decision. The NVLMP restrictions render other projects infeasible which means they will never reach the project level permitting process, and some small businesses won't survive.

Plaintiffs with lands in the designated Sagebrush Focal Areas ("SFAs") suffered immediate harm as acknowledged in the recent FWS listing decision: "Upon publication of the

[1] Plaintiffs' use of the acronyms NVLMP and ROD collectively refers to the Nevada portions of BLM's Record of Decision and Approved Resource Management Plan Amendments for the Great Basin Region and USFS' Record of Decision and Approved Land Management Plan Amendments for the Great Basin Region.

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[proposed withdrawal], the lands are immediately segregated from location and entry under the Mining Law" for two years and "segregation temporarily has essentially the same effect as a withdrawal; that is, it closes the lands to location and entry under the Mining Law, subject to valid existing rights." 80 *Fed. Reg.* 59858, 59878 (Oct. 2, 2015). Withdrawal of the SFAs is not speculative; it is being applied, and there is no lawful basis to require plaintiffs to wait two years for a site-specific decision when property values, development potential, and livelihoods are at stake. Plaintiffs have lost security in how they manage their properties: they put at risk range improvements given the concern that prioritized review of their grazing permits will erode grazing rights and devalue adjacent private lands; they cannot get fair market value for their property when buyers must be told that the land cannot be used to its full potential; and they cannot accurately value federal grazing permits (or adjacent private lands) that are essential ranch assets knowing that their permits could be severely restricted or eliminated, when the prioritized review in SFAs and Priority Habitat Management Areas ("PHMAs") is completed. (AR 1880).

The FEIS contains 23 actions (AR 1878-1883) that will be ***applied immediately*** to selected livestock grazing permits. BLM will "…review [] grazing permits/leases in particular to determine if modification is necessary prior to renewal." (AR 1879). BLM will conduct field checks to determine whether the vegetation is meeting the Table 2-2 habitat objectives and for permits that do not, BLM will exercise its authority pursuant to 43 CFR §4130.3-3 to require a modification of the permit at any time prior to the renewal. The highly prescriptive habitat objectives in Table 2-2 of the FEIS (AR 1858) are a one-size-fits all mandate that are not best available science and will be unrealistic at many sites as described in the State of Nevada's Protest Letter p. 4 (Dkt. 4-10): "The proposed management actions in the preferred alternative tied to the tables fail to use the best available science to establish management actions and are "inconsistent with the Nevada Range Monitoring Handbook" which the BLM and USFS adopted in Nevada."

Based on the results of field checks, Action LG-5 (AR 1880) authorizes BLM to require permit modification(s) at any time (including in the immediate future for permits in the SFA and

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PHMA) that can include permit reductions and restrictions such as periods of rest or deferment; limits on grazing duration and intensity to allow plant growth to meet the Table 2-2 habitat objectives (which could take several years – or may not be achievable); seasonal use constraints (March 1 to June 30); restricting livestock turn-out locations within four miles from an active or pending lek from March 1 to 30; prohibiting domestic sheep use, bedding areas, and herder camps within two miles of active and pending leks from March 1 to 30; potentially eliminating grazing in riparian areas May 15 to September 15; and requiring the removal of livestock within three to seven days for the remainder of the grazing year. These new restrictions present major operating challenges and constraints that create serious hardships to and impose imminent harm on grazing permittees, such as Plaintiff Ninety-Six Ranch.

The agencies are immediately implementing the grazing provisions in the FEIS and ROD (AR 5662; ROD 71) ("Under NFMA, the Forest Service may conduct implementation "as soon as practicable" after the effective date of the ROD."). As described in Section 1.9.1 of BLM's ROD (AR 5473), the agency will be completing Instructional Memoranda "within 90 days of the RODs" for oil and gas leasing and development prioritization and livestock grazing. So the other shoe will drop on grazing permittees by no later than December 18, 2015. Defendants' assertion at that the provisions in the ROD pertaining to modification of grazing permits (Opposition p. 10) are not ripe or imminent is without merit. As the FEIS (AR 2985-86) discloses, there will be imminent impacts to grazing permittees: requirements "may impose direct short-term impacts on operator costs and/or jobs . . . required rest periods following treatments may impact the ability of livestock operators to fully use permitted AUMs in the short term."

Further harm is imminent from the travel restrictions in the FEIS and ROD, which are being implemented as interim management pending completion of Travel Management Plans. Lek buffer zones will preclude counties from conducting road maintenance, expansion or new construction. For numerous roadways falling within lek buffer zones or that traverse or otherwise enter now-protected habitat, counties will have to bear the tremendous expense of proving the roads are eligible for RS 2477 status; this process must begin now and will take years to complete and cost millions of dollars. (Goicoechea Decl. ¶26) This harm would be

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eliminated in some instances with proper scientifically based, site-specific mapping of sage-grouse habitat (or if the agencies had considered the Counties' comments as NEPA requires). The prohibition against off-road travel in PHMA and GHMA harms Plaintiffs immediately.

The NVLMP changes the disposal status for PHMA and GHMA to retain lands in federal ownership. Consequently, the counties have lost their ability to acquire lands previously identified for disposal upon which they relied in their planning. Faulty habitat maps, which show PHMA and GHMA adjacent to community development (Goiceochea Decl; Herman Decl) are facially erroneous -- such as the desired middle school site and veterans' cemetery location adjacent to Reno-Sparks urbanized areas that BLM now refuses to convey to Washoe County.

The NVMLP has created a public health and safety emergency in the small community of Baker, Nevada in White Pine County where the Baker General Improvement District ("District") must replace a leaking water storage tank that is part of the community's water supply and fire suppression system. In September 2015 the District secured a State Revolving Fund ("SFR") loan to replace the tank contingent upon receiving BLM's approval to expand the Right of Way where the existing tank is located. BLM indicated that this approval would take a matter of weeks. However, the BLM is now applying the NVLMP to require an EIS for the ROW amendment – despite the fact that the water tank site is unvegetated, is not near a lek, and is clearly not habitat. The District has already incurred substantial costs in designing the new tank, which they cannot pay now because the loan is on hold. There is urgency to replace the tank before next summer when water demands increase and the fire season begins. Moreover, the leak is getting worse which increases the potential for bacterial contamination, and puts the community at risk in the event of a fire. (Miller Decl., **Ex. 2**). This poses substantial imminent harm to Plaintiff White Pine County and interferes with its sovereign powers.

Unlike the Sierra Club's non-specific harms asserted in *Ohio Forestry*, Plaintiffs allege specific harms that are occurring now and that flow immediately from the NVLMP which forces immediate compliance across over 22 million acres of sage-grouse habitat with layered, multiple land use restrictions (AR 10705) that places the SFAs "off limits" to mining, wind energy and solar projects, and subjects grazing permits to prioritized (expedited) permit review. (AR 1948,

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Figures 2-40, 2-46). *Ohio Forestry* expressly identified such immediate compliance/enforcement as a way in which a plan can force behavior modifications. 523 U.S. at 727. The challenged *Ohio Forestry* Plan did not permit action until a site was identified, reviewed, and presented to the public and, therefore, it was uncertain whether such activity would be prohibited. Here, there is no future identification of sites to which the NVLMP applies because it expressly applies to the millions of acres in the planning areas (AR 1795) covered by the faulty habitat maps, including the arbitrarily defined SFAs where certain uses are prohibited. Ripeness is designed to avoid premature adjudication over contested administrative policies that have not been finalized; judicial review is appropriate here when ". . . an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Abbott Labs. v. Gardner*, 387 U.S. 136, 148-49 (1967), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977). Review of the NVLMP at this stage will not deny BLM "an opportunity to correct its own mistakes and to apply its expertise," a guiding premise with respect to when issues are ripe for review. *FTC v. Standard Oil Co. of Cal.*, 449 U.S. 232, 242 (1980). Instead, and unlike in *Ohio Forestry*, there is no further consideration to occur; the agencies are already implementing the challenged prohibitions and restrictions in the NVLMP.

Lastly, the agencies' ripeness argument rests on the asserted need for a site-specific decision to implement the NVLMP before a court can adjudicate the issue. That premise is incorrect. A plaintiff has standing to challenge programmatic management direction, especially where such direction unlawfully taints future projects or decisions.[2] *Citizens for Better Forestry v. U.S. Dep't of Agric*, 341 F.3d 961 (9th Cir. 2003). A claim "is ripe for review when it is not 'merely tentative or interlocutory,' but rather the agency has 'rendered its last word on the matter.'" *Cottonwood Envtl. Law Ctr. v. U.S. Forest Serv.*, 789 F.3d 1075, 1084 (9th Cir. 2015). "Judical intervention does not interfere with further administrative action when an agency's decision is at an administrative resting place." *Citizens for Better Forestry*, 341 F.3d 961.

[2] In discussing why the Federal Land Policy Management Act and the National Forest Management Act claims are ripe for review, Plaintiffs do not waive any arguments that procedural claims, including NEPA, are also ripe for review, and Plaintiffs reserve the right to conduct further briefing on this issue at a later stage of the litigation.

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There is no legal mechanism by which the challenged NVLMP restrictions could be replaced or revised in the interim period between the present and when a later, site-specific activity is contemplated. BLM would be legally precluded from making site-specific decisions contrary to the NVLMP mandates. BLM has expressed the importance of the NVLMP providing "regulatory certainty" to purportedly protect the Greater Sage Grouse from being listed as threatened or endangered.[3] "The BLM proposed to incorporate the management direction and conservation measures into its RMPs. The goal was to conserve, enhance, and restore GRSG and its habitat and to provide sufficient regulatory certainty such that the need for listing the species under the ESA could be avoided." (ROD, AR 5441) The agencies cannot have it both ways – claiming the NVLMP provides such regulatory certainty and now arguing it's not yet clear how the restrictions and requirements will be applied. No intervening period of time or project proposal will change the agencies' position on the challenged restrictions. The promise of site-specific environmental impact statements in the future is meaningless where development under the NVLMP is outright prohibited (such as within the SFAs for mineral development (FEIS Fig. 2-34, AR 1874) and wind energy projects (FEIS Fig. 2-40, AR 1948), in the SFA and PHMA (as already applied to the China Mountain Wind Project in Elko). *Cal. v. Block*, 690 F.2d 753 (9th Cir. 1982) (site-specific impacts of decisive allocative decisions to use land in specific ways must be scrutinized before, and not when, specific development proposals are made). Where, as here, future decisions will be constrained by the NVLMP, site-specific analyses are not necessary to show specific harm and challenges to programmatic decisions are ripe.[4] The

[3] Defendants' assertion that an injunction would diminish sage-grouse protection and have implications for FWS' recent decision not to list the species is without merit. Recent surveys document increases in sage-grouse populations and prove that Counties' and Nevada Plans are successfully conserving sage-grouse habitat without the NVLMP. However, the grazing restrictions in the NVLMP increase wildfire risks leading to habitat destruction and the possibility that a future listing will be warranted.

[4] In such cases, programmatic challenges may be heard. *Neighbors of Cuddy Mountain v. Alexander*, 303 F.3d 1059 (9th Cir. 2002) ("Where the Forest Service generally fails to comply with NFMA and the governing Forest Plan, and where that failure renders an approval of a timber sale unlawful, this Court has power, under the APA, to review the sale and to conclude that its approval was unlawful—even if doing so would, as a practical matter, require us to consider forest-wide management decisions.); *Lujan v. Nat'l Wildlife Fed.*, 497 U.S. 871, 894 (1990) (Courts "intervene in the administration of the laws only when . . . a specific 'final agency action' has actual or immediately threatened effect . . . Such an intervention may ultimately have the effect of requiring a regulation, a series of regulations, or even a whole "program" to be revised by the agency in order to avoid the unlawful result . . . ."). Similar to *Neighbors of Cuddy Mountain*, where plaintiffs sustained a claim that a failure to monitor species

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NVLMP is at an administrative "resting place" where all that is left to do is apply the requirements to affected parties. The Plaintiffs' claims are ripe for review. Less than two months after the ROD, the widespread and onerous implications of the NVLMP land use restrictions are just beginning to be understood. Washoe County's and Baker, Nevada's experiences are just the tip of the iceberg and emblematic of the serious constraints that northern Nevada communities, ranchers, miners, and other public land users will face as BLM implements the NVLMP.

II. THE PLAN AMENDMENTS ARE FINAL REVIEWABLE AGENCY ACTIONS

The agencies erroneously suggest that the action Plaintiffs challenge on the SFAs is the notice of proposed withdrawal. However, "[c]ourts traditionally take a pragmatic and flexible view of finality." *Abbott Labs.*, 387 U.S. at 149-50. Here, the NVLMP consummates the agency's decision-making process because the notice of proposed withdrawal is a manifestation of the plans and undertakings recommended following plan amendment development. The consummation of the agency's decision-making process was the NVLMP itself; the notice of proposed withdrawal is a logical outgrowth of that. The agency's decision-making process culminated in the NVLMP and that document is reviewable as final action under the APA.

Region-wide management plans (rather than site-specific agency decisions) are open to judicial review – thereby necessarily considering the plans to be final agency actions. *See Res. Ltd., Inc. v. Robertson*, 35 F.3d 1300, 1303–04 (9th Cir. 1994) (holding that the plaintiffs' challenge to a resource management plan and EIS was ripe, and plaintiffs did not have to wait for site-specific implementation); *Salmon River Concerned Citizens v. Robertson*, 32 F.3d 1346, 1355 (9th Cir. 1998) (rejecting the Government's argument that the plaintiffs' claims must wait for specific applications of the challenged vegetation management policy). Here, the agencies made their determinations as to land management practices, and no further agency process needs

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viability as required by NFMA rendered a final action unlawful, Plaintiffs here can sustain a claim that, due to violations of the NFMA, final agency action in the NVLMP's withdrawal of lands is unlawful. Plaintiffs' claims can withstand ripeness challenges because there is a sufficient connection between the NVLMP and Plaintiffs' challenge of the SFA withdrawal contained in the NVLMP; there is a causal connection between the NVLMP's failings (scientifically unsupported land withdrawal in the SFA) and the agencies' unlawful approval of SFA

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to occur to solidify that position. The challenged restrictions and requirements in the NVLMP such as lek buffers, net conservation gain, putting lands off-limits through withdrawal and other avoidance areas within lands mapped as priority habitat all are existing law. The "site-specific impact of this decisive allocative decision must therefore be carefully scrutinized now and not when specific development proposals are made." *Block*, 690 F.2d at 763. The NVLMP is an identifiable agency plan subject to review, as it establishes restrictions and prohibitions in areas identified as habitat and because legal consequences flow from the plan requirements.

III. THE AGENCIES VIOLATED NEPA, THE APA & FLPMA.

A. The Agencies Failed to Give Meaningful Consideration to Comments

Defendants failed to give meaningful consideration to the serious concerns raised by the Plaintiffs, at best engaging in an empty and perfunctory coordination effort and comment process. This failure is a violation of NEPA, FLPMA and the APA: all of these statutes require more than re-asserting the validity of points that have been challenged or questioned. *See Trout Unlimited, Inc. v. Morton*, 509 F.2d 1276, 1283 (9th Cir. 1974) (an EIS must contain "a reasonably thorough discussion of the significant aspects of the probable environmental consequences"); *Delaware Dep't. of Natural Res. and Envtl. Control v. EPA*, 785 F.3d 1, 15 (D.C. Cir. 2015) (under the APA, an agency must respond sufficiently to enable us to see what major issues of policy were vetted and "why the agency reacted to them as it did'"); *American Motorcyclist v. Watt*, 534 F. Supp. 923 (1981). In *Delaware*, EPA "refused to engage" with certain arguments presented to it; offered "wan responses" with respect to others; and told the court that it "'heard' commenters' concerns." 785 F.3d at 15. The court held that "merely hearing is not good enough[;] EPA must respond to serious objections . . . By failing to do so here, its rulemaking was arbitrary and capricious." *Id.* at 16.

BLM and USFS failed to respond to serious concerns with the NVLMP, and its responses (or lack of any response) are unlawful. Eureka County provided detailed comments demonstrating that mapped PHMAs coincided with urban and residential developments,

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boundaries. Compliance with the NFMA and FLPMA multiple use mandates is relevant to the lawfulness of the SFA withdrawal, NVLMP travel and access restrictions, etc. *Id.* at 1069.

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including County dump sites. Goicoechea Dec.¶14. Such disturbed areas lack sage-grouse populations and are physically inhospitable as sage-grouse habitat, let alone the more stringently-protected "priority" habitat. BLM merely responded that it had reviewed and considered Eureka County's comments. Protest Resolution Report at 171-72 (AR 5339-40). That purported consideration did not result in any revision to the PHMA-mapped areas of concern to the County. Similarly, Elko County commented that it will be significantly harmed based on the NVLMP's designation of SFA on land dedicated to the China Mountain Wind Energy Project; the NVLMP places such land off-limits to wind energy development, despite the fact that the project would have provided $500 million to Elko County's economy in phase one construction, 750 construction jobs, and up to 50 permanent jobs.[5] BLM failed to respond to the County's concerns and to address that, absent the SFA withdrawal, such revenue and job creation would boost Elko County's economic standing and attract residents to the County. Notably, these benefits are specific to the County's growth and success, and Elko County asserts them on its own behalf as a governmental entity that fears losing its financial and political bedrock, not as *parens patriae* to protect the physical or economic wellbeing of its specific citizens. BLM failed to give meaningful consideration to the County's comments during the NEPA process; this failure cannot and does not square with the long-standing requirement that agencies must take a hard look at the consequences of their proposed actions, particularly when those consequences stem from faulty or inaccurate data and conclusions. *Ctr. for Biological Diversity v. U.S. Dep't. of Interior*, 623 F.3d 633 (9th Cir. 2010).

B. The Agencies Ignored Science; the AR Does Not Sustain the Decision

The APA requires that the BLM "state a rational connection between the facts found and the decision made" in the NVLMP. *Gifford Pinchot Task Force v. U.S. Fish & Wildlife Serv.*, 378 F.3d 1059, 1065 (9th Cir. 2004). An action is arbitrary and capricious where the agency offers an explanation "that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor*

[5] Defendants' assertion at fn. 21 in the Response that there is no final agency decision on this project is incorrect. Wind projects are categorically prohibited in the SFA.

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Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983). Where there is a lack of science to support an agency's decision, a decision resting on ambiguous or contradictory data cannot be said to have "substantial basis in fact."[6] An agency cannot rely on ambiguous studies as evidence of a conclusion that the studies do not support. *See, e.g., Tucson Herpetological Soc. v. Salazar*, 566 F.3d 870, 879 (9th Cir. 2009); *Pollinator Stewardship Council, et al. v. EPA*, Opinion, No. 13-72346 (9th Cir. September 10, 2015).

For example, *in Tucson*, where the agency "affirmatively relied on ambiguous studies" to evidence persistence under the Endangered Species Act, the court held that the conclusion was unreasonable and remanded the agency's decision. *Id.* Similarly, in *Pollinator*, the court vacated an agency decision that was based on "flawed and limited data." *Pollinator* at 5. Notably, the studies relied upon to support the agency action "provided inconclusive or insufficient data." The court reasoned that "without sufficient data, the EPA has no real idea whether [the pesticide] will cause unreasonable adverse effects on bees . . . ." *Id.* at 24. The agency action was vacated and remanded "to obtain further studies and data regarding the effects of [the pesticide] on bees." *Id.* at 26. "Professional judgment and knowledge do not meet the substantial evidence standard independent of data and facts." *Id.* at 38.

Here, where the agencies failed to disclose that competing scientific conclusions exist and instead relied on conclusions that are not based on empirical, scientific, or reproducible evidence (claiming habitat exists in currently developed urban areas in Washoe and Eureka Counties), the agency cannot meet the substantial evidence or the arbitrary and capricious standard. In the case of grazing, the agencies erroneously assert that there are no relevant scientific publications and have ignored an enormous body of technical literature that should have been examined to inform their decisions and disclosed to the public. Another example is

[6] The 2.8 million acre SFA withdrawal is not justified in light of FWS' determination that "…Overall, the extent of [mining] projects ***directly affects less than 0.1 percent of the sage-grouse occupied range***. Although direct and indirect effects may disturb local populations, ***ongoing mining operations do not affect the sage-grouse range wide***." (FR 59858, October 2, 2015, p. 59915, emphasis added) Applying the 0.1% factor to the 22 million-acre planning area would mean the withdrawal area (if any at all) should only cover about 22,000 acres.

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the NVLMP's arbitrary 3% disturbance cap which the agency's own managers questioned as a "misapplication of professional judgment and science." **Ex. 3** (email from J. Perry Dec. 22, 2011). BLM Management at the highest level raised a "very serious question" in application of a 3% disturbance cap in priority habitat where the science supported a minimum range of 50-70% sagebrush cover in priority habitat for long-term sage-grouse persistence (citing Aldridge et al. 2008, Doherty et al. 2010, Wilson et al. 2011), noting that leaves an allowance of 30-50% in non-sagebrush cover – a "long way" from a 3% disturbance cap derived based on "professional judgment." *Id.* Where the agency cannot provide data to support its final decision, it cannot be said to have provided "a rational connection between the facts found and the decision made," as is legally required. *Humane Soc'y of U.S. Inc. v. Locke*, 626 F.3d 1040, 1048 (9th Cir. 2010).

An egregious omission in the NVLMP is its failure to consider the nexus between grazing and habitat conservation: "The Nevada LUPs do not contain management guidance for permitted livestock grazing specific to conserving GRSG habitat." (AR 1954). In attempting to justify the agencies' rejection of an Increased Grazing Alternative,[7] Defendants incorrectly assert that the scientific literature does not support a correlation between increased grazing and habitat conservation. (Resp. at 24; AR 2299-2300). Defendants ignored numerous references in Plaintiffs' documents including the Elko County Plan, the Nevada Plan, Humboldt and Eureka Counties' comments on the DEIS, and the State's Protest letter. Defendants erroneously state that the quotation at Pl. Mot. 17 describing the benefits of grazing is unattributed. This quotation is from a scientist who works for USDA: Dr. Lynn James, Director of USDA, ARS plant research laboratory at Logan Utah. (Plaintiff's Complaint & Amended Complaint at ¶ 60, 90).

The agencies ignore the State's Protest letter which is critical of the livestock grazing discussion that relies on outdated references and omits many important references: "The FEIS lacks pertinent citations on livestock grazing management as related to the functionality and sustainability of sagebrush/perennial herbaceous plant communities and meadows within

[7] The title of this alternative is misleading. It should have been called "Managed Grazing Alternative to properly describe the conservation measures in the Elko County and the Nevada State aged grazing to reduce rangeland fuels and improve riparian zones. The agencies mischaracterized the local and state plan conservation measures and failed to evaluate a reasonable alternative or to maximize consistency with either Plan as FLPMA requires.

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sagebrush ecosystems." (Protest Letter at 12, Dkt. 4-10). "The science used in the FEIS is incomplete…The FEIS violates the NEPA requirement for the use of best available science (40 CFR §1502.1). The SEP is requesting that the management actions be revised to reflect best available science from multiple disciplines, specifically to include range ecology." (*Id.* at 13). Documented science demonstrates the synergies between managed livestock grazing and sage-grouse habitat conservation. Elko Co. DEIS Comments, AR 10118; Humboldt Co. Comments, AR 10158.

Another extensive reference list provided to the agencies is Humboldt County's DEIS comments prepared by a University of Nevada Cooperative Extension expert that found the DEIS "largely ignores a significant amount of the range science literature about plant ecology, plant succession, grazing management, herbivory and their relationship with fire and fuels management, and how to merge those issues with habitat and vegetation conditions that are in the long-term interest of sage-grouse and sagebrush rangelands." AR 10119. Humboldt County's comments included a comprehensive list of published scientific studies pertaining to grazing management, fire, fuels, and vegetation management that was not included in the DEIS. (AR 10149 – 151) and a list of references absent from the DEIS. (AR 10152 – 158). The agencies failed to provide meaningful consideration or response as to why this science was ignored.

Despite the inappropriate dismissal in Chapter 2 of the FEIS of a managed grazing alternative as a viable range management tool that can conserve and enhance sage-grouse habitat, Chapter 4 of the FEIS recognizes the important role proper livestock grazing management plays in maintaining habitat. For example, Action VEG-ISM 1 includes the directive: "Prevent the establishment of invasive species into uninvaded areas in PHMAs and GHMAs through properly managed grazing . . ." (AR 2606-07). Chapter 4 directly contradicts the statement at FEIS 2-460 (AR 2300), regarding the lack of science-based studies demonstrating how livestock grazing can benefit sage-grouse. FEIS at 4-12 (AR 2588) cites numerous published scientific references that describe the benefits of grazing:

> Studies from Nevada have shown a preference for grazed meadows or grazed areas in meadows over ungrazed meadows (Neel 1980; Evans 1986; Klebenow 1982; Oakleaf

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> 1971). In these studies, GRSG were attracted to regrowth of grazed forbs or to the presence of selected food forbs common on grazed meadows;
>
> The attraction to grazed meadows may be explained by GRSG having adapted from a primary dependence on forbs in sagebrush communities to forbs in grazing-impacted meadows (Howell 2014). These forbs are generally tap-rooted, high-seed-producing plants that increase with disturbance (Howell 2014)
>
> GRSG would benefit most from properly managed grazing, which results in good ecological conditions in both uplands and riparian areas.

The FEIS at 2-460 (AR 2300) states that 2011 grazing usage levels were at 60% of allowable rates and uses this statistic to imply that there does not appear to be a demand for increased grazing as another reason to eliminate a grazing alternative from detailed consideration. This statement fails to disclose the primary reasons that grazing usage levels are not at maximum allowable rates. It is not uncommon for BLM to place restrictions on permittees that suspend a portion of the authorized AUMs and constrain the authorized time of year, place of use, and type and number of livestock. These restrictions may impose impracticalities or economic burdens that make it difficult or impossible for a Permittee to use all of its permitted AUMs. Plaintiff Ninety-Six Ranch has experienced "five decades of federal land managers systematically reducing our grazing permits to 50% of historic stocking rates." (Stewart Decl. ¶ 4). There also are many site-specific factors that determine whether using all of the authorized AUMs will achieve optimal rangeland conditions or will be responsive to market conditions. Land stewardship and conservation objectives may dictate that some AUMs remain unused in some years. Drought conditions are a prime example of why Permittees may determine that reducing AUM use is in the best interests of the range that year. Consequently, the implication that there is no demand for additional grazing based on current AUM utilization levels does not properly consider the complex and variable site-specific factors that ranching businesses must evaluate in determining AUM usage. As documented in the State's Protest letter, the livestock grazing restrictions in the NVLMP "…do not implement proper livestock grazing practices to maintain ecological functions or to promote the healthy perennial grasses and herbaceous vegetation component of a resilient plant community…The impacts of the proposed action to vegetation and

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soils could have adverse effects on maintaining resilient sagebrush communities, increasing rangeland fuel load, and exacerbating wildland fire behavior." (State Protest letter at 12, Dkt. 4-10). Defendants have not adequately responded to this essential point that the grazing provisions have a high likelihood of increasing wildfire risks and harming sage-grouse habitat, the environment, and the bird.

By failing to consider a managed grazing alternative in the EIS the agencies improperly eliminated an effective and affordable conservation tool. "There is a very large body of scientific evidence that shows that properly managed grazing can restore ecosystems, improve quality and functioning of soils, reduce wildfire severity by controlling fuel loads, improve riparian zones, control invasive species, and enhance biodiversity." **Ex. 4** at 10 (Letter from Dr. William A. Payne, Dean, Director, and Professor at UNR, College of Agriculture, Biotechnology and Natural Resources to Sagebrush Ecosystem Council).[8] Flexible range management tools can effectively reduce wildfire threats and science indicates that the management policies outlined in the FEIS are the major cause of cheatgrass proliferation." (*Id.* 9-10). Contrary to the agencies' assertion that there is no science to support this point, the AR is replete with such information and the public record includes further evidence of science the agencies improperly omitted from consideration or disclosure to the public in the NEPA process.

C. The Agencies Failed to Take a Hard Look as NEPA Requires

The legally insufficient impacts discussion in the EIS on minerals illustrates the agencies' failure to take a hard look at the consequences of their actions or to consider the best available science. First, the FEIS erroneously states: "Due to the large number of previously mined areas in the planning area and the lack of reliable data on those areas, the impact analysis focuses on existing mines as an indicator of areas of likely future development." (AR 2882). The statement that there is no reliable data is wrong. BLM should have obtained information from the Nevada Bureau of Mines and Geology, the USGS, and numerous scientific publications to inform the

[8] This letter is available on the Council's website at: http://sagebrusheco.nv.gov/uploadedFiles/sagebrusheconvgov/content/Meetings/2015/Correspondence-%20CABNR%20NAES%20Integrated%20Document%20Final.pdf

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discussion of geology and mineral resources. Without this foundation, the FEIS has no framework for the environmental consequences and cumulative impacts analyses.

Secondly, the perfunctory analysis of the potential presence of mineral resources within the SFA is woefully inadequate and violates the NEPA "hard look" requirement for impacts from the 2.8 million acre SFA mineral withdrawal zone. The FEIS at 4-311 (AR 2887) erroneously suggests impacts from the SFA will be minimal: "There are no active mines in the 2,731,600 acres that would be recommended for withdrawal in the SFA… [because] new locatable mineral development is most likely to occur in proximity to existing mines, anticipated impacts on locatable minerals under the proposed plan would be concentrated in these areas." This technically faulty statement fails to consider publicly available scientific information on geology and mineral resources available during the preparation of the EIS (or to meaningfully consider or respond to such information provided through comments). (AR 5304-08).

The EIS does not even discuss the number of mining claims located within the SFA that would be adversely affected by the segregation and potentially invalidated if these lands are withdrawn from operation of the Mining Law. BLM should have used its own Land Rehost 2000 (LR 2000) online database, which provides current information on the number and location of mining claims in Nevada and the other western states with locatable minerals, to provide information on the number of claims within the SFA as the factual basis for the impact analysis. As shown in **Exhibit 5**, the Nevada Division of Minerals ("NDOM") used the LR 2000 database to determine that there are 3,762 active mining claims in the SFA. These claims are imminently harmed by the segregation and may be extinguished as a result of the future withdrawal. The NDOM evaluation also shows that roughly 55 percent *of all of the mining claims in Nevada* are located in PHMA, GMHA and OHMA habitat.[9] Ex. 5.

[9] Defendants' suggestion that this analysis will now occur for the withdrawal proposal inadequate. The regulations prohibit "segmentation" of environmental analysis by mandating that proposals related to each other closely enough to be a single course of action, shall be evaluated in a single impact statement. 40 C.F.R. 1502.4(a). The direct and indirect effects of the SFA withdrawals were clearly foreseen and their analysis "should not have been deferred until some other document was produced at some later date." *Western Land Exchange Project v. BLM*, 315 F.Supp.2d 1068, 1090 (D. Nev. 2004).

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NEPA required that BLM provide this kind of readily available information in the EIS. BLM should have evaluated the potential socioeconomic impacts to the State and local communities from the reduction in jobs and revenue associated with the NVLMP's impact on 55% of Nevada's mining claims. BLM should have considered lost mineral potential relative to its multiple-use mandates. BLM does not even take a hard look at the impacts to mineral related employment resulting from the land use restrictions. Table 5-49 (AR 3269), "Projected Employment by Alternatives for Socioeconomic Study Area" does not evaluate the impacts to mining employment. The EIS also fails to take a hard look at socioeconomic impacts in general stating: "Because specific impacts on local government tax revenues could not be quantified, the nature of the potential cumulative effect is not possible to characterize…" The statement at FEIS p. 4-420 (AR 2996) understates that there will be adverse impacts to minerals and completely fails to take a hard look at these impacts: "Overall, economic activity associated with management of locatable minerals would be the same for Alternatives A, D, and E, and may be lower under Alternatives B, C, F and the Proposed Plan depending on site-specific and operator-specific conditions."[10]

The agencies admit in the FEIS (AR 2995) that they did not evaluate reasonably foreseeable impacts to minerals: "No Reasonably Foreseeably Development scenario for locatable minerals was developed for this landscape level planning amendment that forecasts production of locatable minerals on Federal lands in the study area. In the absence of this information, it is not possible to quantify potential economic impacts across alternatives over the planning horizon." BLM minerals staff objected to the omission of this analysis. (AR 9811)

[10] The EIS should have quantified the radically different direct, indirect, and cumulative impacts associated with the mineral withdrawals in Alternatives C and F and the Proposed Plan compared to Alternatives A, B, D and E that did not include mineral withdrawals. This analysis should have considered a number of factors including the direct loss of mineral-related jobs; the indirect economic effects of reduced mineral exploration and development stemming from a loss of indirect jobs in the service and supplier sectors that formerly supported mineral exploration and development such as equipment dealers, fuel sales, lodging, meals, construction, engineering, geologic and other professional services; reduced state tax revenues; and the decrease in a reliable domestic supply of minerals and increased reliance on foreign sources of minerals needed to maintain a modern society. BLM should have disclosed that the proposed withdrawals would reduce annual claims maintenance fees paid to the federal government and other claims fees which support NDOM. None of these adverse socioeconomic impacts would result from the non-withdrawal alternatives.

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Moreover, the petition/application that BLM developed to support the segregation notice documents that publicly available USGS data show that the proposed withdrawal area contains abundant mineral resources, some of which may have economic value and contribute significantly to the Nation's need for mineral resources. (AR 6397). NEPA (and FLPMA) required that BLM disclose this information in the DEIS and conduct a thorough impact analysis. In failing to do so, BLM has not taken a hard look – in fact, it has barely taken any look at all.

Information compiled by Nevada's Geological Survey, the Nevada Bureau of Mines and Geology ("NBMG") at the request of NDOM illustrates that there is existing publicly available information on known mineral deposits and the location and number of mining claims in the SFA. (**Ex. 6**) The NBMG/NDOM maps show that the presence of mineral resources in the SFA is well documented. BLM should have performed a similar technical analysis for the EIS to evaluate impacts to minerals from withdrawing the SFA from operation of the Mining Law.

The January 22, 2015 SFA map (NVCA Pub 4830, AR 11141) confirms that the FEIS uses faulty and incomplete data to delineate the SFA. The map illustrates the areas of PHMA, GHMA, OHMA, and non-habitat within the SFA based on the 2014 USGS (Coates et al) habitat map. This map shows that over 77,000 acres in the SFA mineral withdrawal zone are non-habitat and also shows that nearly 726,000 acres of the SFA (which is more than 1,100 square miles and roughly 26 percent of the 2.8-million acre SFA withdrawal zone) are comprised of GHMA, OHMA and non-habitat. This map calls into serious question whether the so-called "strongholds" identified in the maps in the October 2014 Ashe memorandum and the SFA in the FEIS and ROD are important habitat that cannot be conserved through means other than withdrawal. If BLM had conducted its statutorily mandated evaluation of this information and properly disclosed it for public comment in an SEIS rather than simply subdelegating wholesale to FWS its land management authority, the outcome may have been far different.

BLM personnel provided further confirmation that the SFA includes areas of non-habitat in a presentation on November 6, 2015 where the BLM explained that PHMA, GHMA, and OHMA are areas in which lands will be managed as if they contain Priority Habitat, General Habitat, and Other Habitat. However, these habitat categories are not synonymous with habitat

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conditions and do not mean that lands with these habitat category designations contain contiguous areas of actual habitat. **Ex. 7**, Dec. of D. Struhsacker. AR 11141 and BLM's November 6th presentation further reveals the inadequacy of the habitat maps used to develop the NVLMP. Because the NVLMP imposes land use prohibitions in the SFA and restrictions and prohibitions in PHMA, and to a lesser extent in GHMA, the agencies are obligated to prepare a habitat map that accurately depicts habitat conditions. The data the agencies used to develop the NVLMP restrictions is inadequate in light of the severe and substantial impacts they have on Plaintiffs. The faulty and incomplete habitat maps that form the basis for the NVLMP render the resulting land use prohibitions and restrictions arbitrary and capricious and unlawful.

D. New Information Inserted in the FEIS Requires an SEIS

The agencies acknowledge that some lands in the SFAs that were within the FWS "strongholds" were "outside of mapped Priority or General Habitat in the DEIS." Resp. at 19; n.12. The identification of new lands for withdrawal under the SFAs for the first time in the FEIS, after the NEPA public comment period had closed, violates NEPA. Plaintiff Quantum is an example of one party who was not affected by any withdrawal in the DEIS but was swept into lands to be withdrawn in the FEIS. Moreover, the Priority Habitat conservation measures in the DEIS did not place mineral activity off-limits as the SFAs do. This material change cannot be said to be qualitatively within the analysis of the DEIS – there was no notice or public comment. Simply stating in the DEIS that the maps will be "revised" does not excuse the NEPA violation nor does a vague assertion that "some lands would be petitioned for withdrawal." Resp. at 20.

The agencies further concede that the lek buffer study was not available at the time of the DEIS but then argue the omission of this material science on which the agency relied upon in the NVLMP should be exempt from NEPA public review requirements because lek buffers were included in a DEIS n alternative analyzed. This is a blatant violation of NEPA's requirement that all science relied upon by the agency be disclosed for public comment. Similarly, replacing the standard of "no net loss" in the DEIS with the admittedly new standard of "net conservation gain" in the FEIS without any science disclosed to support the same or opportunity for public comment at this final stage flagrantly violates NEPA. The discussion of conservation efforts and

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principles in the DEIS is a far cry from a new and unprecedented unsubstantiated requirement of "net conservation gain" for any disturbance in areas identified as habitat. Nor does disclosure of these new concepts to only the Western Governors Association in January 2015 satisfy the NEPA requirement for public disclosure and comment. The Government's admission of this disclosure five months before the FEIS publication demonstrates the information could have been made available for public comment but the agencies intentionally withheld it until the FEIS.

The agencies' reliance on *Wyoming v. U.S. Dep't of Agric.* is unavailing. In *Wyoming*, the public was given an opportunity to comment on changes to the final EIS, thereby "alleviat[ing] the need to prepare a separate supplemental EIS." *Wyoming v. U.S. Dep't of Agric.*, 661 F.3d 1209, fn, 39 (10th Cir. 2011). That is not the case here as BLM's own regulations required a party to have participated in the process prior to filing a protest letter to the PLUPA. Moreover, the point raised about the impact of opportunity to comment on the need for an SEIS is mere dicta, located in a footnote and referencing a Fifth Circuit decision that is not binding on this Court (*i.e.*, *Dubois v. U.S. Dep't of Agric.*, 102 F.3d 1273 (1996)). In fact, the Fifth Circuit in *Dubois* found that USFS acted arbitrarily and capriciously in failing to prepare a SEIS required for an alternative design that entailed substantial changes from previously proposed actions. *Dubois*, 102 F.3d at 1293. Where, as here, the new SFA withdrawal maps, the new net conservation gain requirement, and the lek buffer zone study could not be commented on by the public (because BLM's protest regulations and USFS' adoption of the same barred participation by those who did not previously participate in the process), the dicta in *Wyoming* is irrelevant and binding Ninth Circuit decisions prevail. *See, e.g., Sierra Club v. United States Dept. of Transportation*, 310 F. Supp. 2d 1168, 1197 (D. Nev. 2004) (if there remains "major Federal actio[n]" to occur, and if the new information is sufficient to show that the remaining action will "affec[t] the quality of the human environment" in a significant manner or to a significant extent not already considered, a supplemental EIS must be prepared").

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Wyoming is distinguishable for another reason – namely that, in *Wyoming*, the change between the DEIS and FEIS was at most, 'only a 'minor variation' from those alternatives.'" *Wyoming*, 661 F.3d at 1262. Here, withdrawal boundaries and related habitat restrictions were described in the DEIS but were not included in the Preferred Alternative and parties relied on those boundaries when deciding to comment on the DEIS and engage in the NEPA process; in short, the boundaries were relied upon by those who did not comment because their lands were not impacted. The revised SFA maps markedly changed those boundaries and suddenly encompassed the lands of those who had not previously commented; lands went from being un-impacted to completely withdrawn. This withdrawal was made without any input from impacted parties: input that could have changed the withdrawal decisions. If the State had seen the 2.8 million acre withdrawal coming, it would have articulated and proposed recognizing *grandfathered rights*, which are defined in the FEIS Glossary, not just valid existing rights, and which BLM has recognized in other contexts. The agencies' recognition of grandfathered rights could have lessened the impact on existing mining claimants. But the State was deprived of the chance to make this proposal during the EIS development. The agencies attachment of the SFA maps to the FEIS cannot be said to have given previously uninvolved parties notice that their comment was needed. Rather, BLM's maps dropped in the midst of thousands of pages, could not reasonably have given previously un-impacted parties—particularly those parties lacking sophistication or representation—notice of their need to comment on the revised boundaries.

E. The Agencies Violated FLPMA's Consistency Review Requirements

The agencies erroneously argue that their coordination efforts over the four-year planning process satisfied their obligations under FLPMA. Explaining that the Plan Amendments were inconsistent with County plans because they provide resource development restrictions, road closures and grazing restrictions the Counties oppose (Response at 12) does not explain why these inconsistencies cannot be resolved as FLPMA requires. The agencies failed to explain

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why, if they considered the County Plans in light of their multiple-use mandate and conservation measures that could be implemented based on site-specific information and with off-site mitigation, such draconian restrictions were necessary. In fact, Michael Nedd, Assistant Director, Minerals and Realty Management for BLM in Washington D.C. expressed concerns with such conservation measures that would be "complete gamechangers for any actions within Priority Habitats . . . and showstoppers for those actions where there are no valid existing rights" emphasizing the need to allow off-site mitigation rather than exclusion and avoidance areas. **Ex. 10**. Yet, even in light of internal management's concerns over the necessity of placing such lands off-limits rather than allowing for other methods of mitigation, the agencies ignored the Counties' concerns, failed to reconcile inconsistencies in the Federal Plan with the County Plans and, therefore, violated FLPMA. Simply going through the motions without explaining why inconsistencies could not be resolved, does not satisfy FLPMA. Notably absent from the agencies' Response is any citation to the record to demonstrate reconciliation of differences with local plans. Response at 12-13 (reciting that BLM's conclusion was Elko's Plan "would not provide sufficient certainty" to conserve, enhance and restore habitat when, in fact, the increase in the birds' numbers reported by WAFWA demonstrates the Counties' efforts are working).

IV. BLM UNLAWFULLY DELEGATED ITS LAND USE PLANNING AUTHORITY

BLM is responsible for the development of resource management plans. 43 U.S.C. § 1712; 43 C.F.R. § 1610.4-8. While BLM must coordinate with other agencies, BLM is responsible for approving plans in conformance with FLPMA and its implementing regulations. *See id*. § 1610.5-1(a). BLM simply incorporated FWS' recommendations to the NVLMP without giving the public an opportunity for input. (*FAC*. ¶¶ *60-62*.) This amounts to improper delegation of BLM's responsibilities to develop the NVLMP. Agencies may not defer their final reviewing authority under the guise of taking advice. *See Fortney v. Yancey*, 2007 WL 1202766, at *5 (D.S.C. April 20, 2007). Pursuant to 18 U.S.C. § 3621(b), the Bureau of Prisons ("BOP") has the discretion to select the place of a federal prisoner's confinement based on various environmental factors at federal prison facilities. *Id*. at *4. In *Fortney*, the court found

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BOP abdicated its statutory responsibilities when the agency based its decision about prisoner placement solely on the federal sentencing court's opinion. *Id.* at *5. The BOP chose to follow a federal sentencing court's objections, rather than make its own reasoned determination. *Id.* "In other words, BOP may not simply defer entirely to the will or the reasoning of the federal sentencing court when faced with an inmate's request." *Id.* at *5. The court found that BOP refused to exercise any final decision-making process or authority. *Id.*

Similarly, in *G.H. Daniels III*, the Department of Homeland Security ("DHS") improperly delegated to the Department of Labor ("DOL") its authority to determine the threshold eligibility of potential H–2B temporary workers. *See G.H. Daniels III & Assoc.'s, Inc. v. Perez*, 2015 WL 5156810 at *3 (10th Cir. September 3, 2015). DHS claimed this was not an unlawful delegation, arguing the statute permitted consultation with DOL, and DOL's only role was to provide advice. *Id.* However, as the Tenth Circuit stated, "advice is only that; it can, and sometimes should, be prudently ignored." *Id.* DHS' action constituted improper delegation because DHS left itself no room to actually ignore or forego DOL's recommendations; rather, DHS adopted the recommendations wholesale. *See id.* at 2-3. Defendants acknowledge that "[t]he Focal Areas are based on FWS' memorandum and on updated mapping conducted by the USGS." (*Resp. at 15*).[11] Of critical importance to this assertion is that BLM failed to provide crucial context – the map identifying the "strongholds" was adopted by the FWS and used as the basis for the October 2014 Ashe Memorandum. (*FAC ¶ 59, Exhibit 1*.) As the agencies assert in their Response, the "Plan Amendments also identify Sagebrush Focal Areas" that were "identified by the FWS as the 'most vital to the species' persistence." Resp. at 4. Then, BLM simply attached the map based on the Ashe Memorandum's recommendations to the NVLMP, and deprived the public any opportunity to provide comment on FWS' recommendations.

Just like in *G.H. Daniels III,* BLM adopted FWS' recommendations for the SFAs and applied the recommendations to its NVLMP, without engaging in the appropriate review process.

[11] BLM claims *Trustees for Alaska v. Watt* is not pertinent to this matter. 524 F. Supp. 1303, 1309-10 (D. Alaska 1981). To the contrary, it is an example of improper subdelegation between sister agencies where, like here, BLM has completely passed off its statutory and regulatory responsibilities to its sister agency (the FWS).

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BLM cannot hide behind the guise that it was only taking FWS' advice. BLM's actions constitute unlawful subdelegation of its administrative authority under FLPMA. Plaintiffs claim of improper subdelegation have a strong likelihood of success on the merits.

V. BLM AND USFS VIOLATED WITHDRAWAL PROCEDURES

Instead of petitioning BLM for withdrawal of the "strongholds" as required by FLPMA, FWS skirted these procedural requirements and BLM acquiesced. BLM argues that its "regulations do not require that an application be submitted by the FWS or the Forest Service." This is unequivocally wrong. FWS and USFS are not exempt from the requirements of BLM's withdrawal procedures – in fact, all agencies that wish to propose withdrawal must petition and apply for withdrawal with BLM in accordance with regulations. *See* 43 C.F.R. § 2310.1-2(b).

In reviewing Plaintiffs' argument regarding withdrawal, it is essential to understand the defined terms used in BLM's withdrawal regulations. First, a "'withdrawal petition' means a request, *originated within the Department of the Interior* and submitted to the Secretary, to file an application for withdrawal." 43 C.F.R. § 2300.0-5(p). A "'withdrawal proposal' means a withdrawal petition approved by the Secretary." *Id*. § 2300.05-q. Notably, "before the [the BLM] can take action on a withdrawal proposal, a withdrawal application in support thereof shall be submitted." *Id*. § 2310.1-2(b). To seek withdrawal, an agency not within the Department of Interior must also submit an application. *Id.* § 2310.1-2(c)(2). An application may be submitted along with the petition, but the onerous application requirements apply. § 2310.1-3.

BLM attempts to excuse its failure to follow withdrawal procedures by informing the court of BLM's own publication of an application and proposal to the Federal Register, as required by regulations. Plaintiffs' argument here is not based on BLM's application and proposal for withdrawal[12]; rather, it concerns FWS' and USFS' proposed withdrawal to the BLM outside of the necessary procedural mechanism (via the SFA, affecting significant National Forest Land). USFS also ignored its own procedures, like those in Forest Service Manual 2761.03, which require USFS to evaluate lands according to certain criteria before deciding to

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petition and apply to BLM for withdrawal.[13] BLM may have published a withdrawal proposal and application in the Federal Register, this simply illustrates Plaintiffs' point: that FWS is calling the shots, and BLM is acquiescing, thereby subdelegating its authority and failing to uphold its responsibilities pursuant to FLPMA and its own implementing regulations.

BLM erroneously asserts that the claims regarding improper delegation and failure to comply with withdrawal procedures are not properly before this Court. BLM argues Plaintiffs should have challenged the notice of proposed withdrawal published in the *Federal Register* (but that the notice is not final agency action and, therefore, cannot be challenged – suggesting Plaintiffs have an injury without available judicial relief). Here, Plaintiffs do not need to address the notice of proposed withdrawal because the action underlying that notice is the focus of its challenge: the failure to comply with required withdrawal procedures when FWS proposed withdrawal in the SFA, thereby incorporating National Forest Lands.

VI. THE REMAINING REQUIREMENTS FOR AN INJUNCTION ARE SATISFIED

In addition to demonstrating a strong likelihood of success on the merits as described above, the balance of equities tips sharply in Plaintiffs' favor, so much so that they need only demonstrate a "substantial question" as to the merits of their case. Without an injunction, Plaintiffs will be subjected to unlawful restrictions and, in some instances, outright prohibitions to the use of their land. The Counties will suffer interference with their sovereign powers. Conversely, if this Court grants an injunction, not only will it prevent any statutory violations, but it will not harm anyone, and will instead avoid the environmental harm the NVLMP will create by increasing risk of wildfires and invasive species through decreased grazing. *See* **Ex. 8** (email of M. Pellant, Sept. 23, 2011, stating with respect to range management that "reduced economic production and no livestock = more fires"); **Ex. 9** (email from Robin Sell, September

[12] Plaintiffs do not waive any claims with regard to the sufficiency of the notice proposed rulemaking, and Plaintiffs reserve the right to conduct further briefing on this issue at a later stage of litigation.

[13] Agency guidance may be used to demonstrate an agency's custom and practice and has, in fact, been done so with respect to the USFS manual. *See Stone Forest Industries, Inc. v. U.S.*, 973 F.2d 1548 (Fed. Cir. 1992) ("Although it 'does not have the force and effect of law, the Manual is evidence of the custom and practice of the agency.'"). USFS customarily requires thoughtful assessments regarding the decision to petition for withdrawal. FSM 2761.03. Yet, in this case, it simply ignored the petition process and decades of usual practice without explanation.

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30, 2011, "the range [conservation measures] in particular seemed way off base, and reflect very narrow interpretations of proposed conservation measures. In fact, in the range section, most of the measures proposed should reflect current management – not a new way of doing business.") Issuing the injunction protects against significant environmental and other harms, disruption of counties' community development plans, and public safety risks leaving the majority of the NVLMP to be implemented alongside the State and Local Plans which have proven effective. *See Regents of Univ. of Cal. v. ABC,* 747 F.2d 511, 520 (9th Cir. 1984) (balance of hardships tilted sharply toward the plaintiffs where "[t]he records fail to reveal any significant injury to the defendants stemming from the issuance of a preliminary injunction"); *ABC v. Heller,* 2006 U.S. Dist. LEXIS 80030, at *39 (D. Nev.) (balance of harms from enjoining a statute "clearly tips" in plaintiffs' favor when the State has other means of furthering the purpose of the challenged law).

The agencies erroneously argue there is no science to support Plaintiffs' argument that interference with managed grazing will be harmful to sage-grouse habitat. The FEIS at 4-196 (AR 2772) directly contradicts this assertion: "The Proposed Plan would limit grazing treatments in PHMA unless the treatment conserves, enhances, or restores GRSG habitat. This may limit the total extent of treatment allowed on the landscape, potentially increasing FRCC (Fire Regime Condition Class) *and the probability and severity of fire*." The agencies ignored numerous comments that included dozens of references on grazing and habitat conservation. An injunction is in the public interest. Protecting the public from having agencies flagrantly disregarded Federal law requiring a transparent process and opportunity for comment is in the public interest as is avoiding the environmental harm that will result from the NVLMP's interference with County land use plans and the State Plan, and restricting livestock grazing which will increase rangeland fuel loads and increase wildfire risks, interference with County development plans, and interference with County sovereignty and obligations to provide for public health and safety. Thus, Plaintiffs satisfy the requirements for a preliminary injunction.

Respectfully submitted this 11th day of November, 2015.

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CERTIFICATE OF SERVICE

Pursuant to F.R.C.P. 5(b), I certify that I am an employee of Davis Graham & Stubbs LLP and not a party to, nor interested in, the within action; that on the 11th day of November, 2015, a true and correct copy of the foregoing document was transmitted electronically to the following via the Court's e-filing electronic notice system:

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Dated this 11th day of November, 2015.

/s/ Jeanette Sparks
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The following links and/or pages are support for agenda Item 21 b

Northeast quarter of Section 8 for a distance of 921.75 feet to the Point of Beginning; thence continuing along said North line, South 88°10′18″ East 921.26 feet; thence South 01°29′02″ West parallel with the West line of said Northeast quarter, 1316.97 feet to the South line of the North half of said Northeast quarter; thence North 88°07′39″ West along said South line, 921.26 feet; thence North 01°29′02″ East, 1316.26 feet to the Point of Beginning.

EXCEPT the right of way of NW 319th Street.

The above-described lands contain a total of 156.401 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the lands described above, nor does it affect any valid existing easements for public roads, highways, public utilities, railroads, and pipelines, or any other valid easements of rights-of-way or reservations of record.

Dated: November 6, 2015.

Kevin Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2015–28805 Filed 11–12–15; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO210000.16X.L11100000.PH0000 LXSISGST0000]

Extension of Public Comment Period and Schedule of Public Scoping Meetings and Public Meetings for the Proposed Withdrawal of Sagebrush Focal Areas in Idaho, Montana, Nevada, Oregon, Utah, and Wyoming, and an Associated Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: On September 24, 2015, the Bureau of Land Management (BLM) published a Notice of Proposed Withdrawal; Sagebrush Focal Areas; Idaho, Montana, Nevada, Oregon, Utah, and Wyoming and Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Withdrawal in the **Federal Register**. This notice extends the comment period for both the proposed withdrawal and initial scoping for the environmental impact statement (EIS) being prepared to consider the merits of the proposed withdrawal and announces the times, dates, and locations of public meetings.

DATES: Written or emailed comments for scoping for the EIS and on the proposed withdrawal may be submitted through January 15, 2016. In addition, through this Notice the BLM is also announcing that it will hold public meetings in December 2015 to focus on relevant issues and environmental concerns, identify possible alternatives, help determine the scope of the EIS, and provide an opportunity for public comments on the proposed withdrawal. For dates and locations for the scoping meetings, please see the **SUPPLEMENTARY INFORMATION** section below.

ADDRESSES: Written comments should be sent to the BLM Director, 1849 C Street NW. (WO–200), Washington, DC 20240 or emailed to *sagebrush_withdrawals@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Mark Mackiewicz, BLM, by telephone at 435–636–3616. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to reach the BLM contact person. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM filed an application requesting the Assistant Secretary of the Interior for Land and Minerals Management to withdraw, subject to valid existing rights, approximately 10 million acres of BLM-managed public and National Forest System lands located in the States of Idaho, Montana, Nevada, Oregon, Utah and Wyoming from location and entry under the United States mining law, but not from leasing under the mineral or geothermal leasing or mineral materials laws.

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), the BLM will prepare an EIS and conduct public scoping meetings on the withdrawal from the mining law of approximately 10 million acres of BLM- and United States Forest Service-administered public lands, in 6 western states as identified in the **Federal Register** notice of September 24, 2015 (80 FR 57635). The period for initial scoping comments from the public has been extended from December 23, 2015, to January 15, 2016. These public scoping meetings will also meet the requirements under 43 CFR 2310 to provide public meetings for comment on the Notice of Proposed Withdrawal that published on September 24, 2015.

The dates, times, and locations of the meetings are as follows:

Dates & times	Locations	BLM contact
Dec. 14, 2051:		
5 p.m. to 7 p.m.	Harney County Chamber of Commerce, 484 North Broadway, Burns, OR 97720.	Jody Weil, 503–808–6287.
5 p.m. to 7 p.m.	Lakeview BLM District Office, 1301 South G Street, Lakeview, OR 97630.	Jody Weil, 503–808–6287.
5 p.m. to 7 p.m.	Salt Lake City BLM Office, 2370 South Decker Lake Drive, West Valley City, UT 84119.	Megan Crandall, 801–539–4020.
Dec. 15, 2015:		
4 p.m. to 6 p.m.	Best Western Vista Inn & Conference Center, 2645 Airport Way, Boise, ID 83709.	Erin Curtis, 208–373–4016.
5 p.m. to 7 p.m.	Rock Springs BLM Field Office, 280 Highway 191 North, Rock Springs, WY 82901.	Kristen Lenhardt, 307–775–6015.
5 p.m. to 7 p.m.	The Nugget, 1100 Nugget Avenue, Sparks, NV 89431	Steve Clutter, 775–861–6629.
Dec. 16, 2015.		
2 p.m. to 4 p.m.	Great Northern Hotel, 2 South 1st Street East, Malta, MT 59538	Al Nash, 406–896–5260.
4 p.m. to 6 p.m.	Shiloh Suites Conference Hotel, 780 Lindsay Blvd., Idaho Falls, ID 83402.	Erin Curtis, 208–373–4016.

Dates & times	Locations	BLM contact
5 p.m. to 7 p.m.	Elko Conference Center, 724 Moren Way, Elko, NV 89801	Steve Clutter, 775–861–6629.

The EIS will consider a No Action alternative and consider reasonably foreseeable mineral development activities. The EIS does not support a land-use plan or a land-use plan amendment. It will provide a comprehensive programmatic NEPA analysis for the proposed action of the Secretary of the Interior withdrawing these public lands from operation of the mining law for the conservation benefit of the Greater Sage-grouse.

The BLM has initially identified the following issues for analysis in this EIS: Air quality/climate, American Indian resources, cultural resources, wilderness and wilderness characteristics, mineral resources, public health and safety, recreation, social and economic conditions, soil resources, soundscapes, special status species, vegetation resources, visual resources, water resources, and fish and wildlife habitat.

In addition, the BLM expects to address economic effects of withdrawing these public lands from operation of the mining law, wildlife habitat conservation; improvement, restoration of ecosystem processes; protection of cultural resources, watershed and vegetative community health, new listings of threatened and endangered species and consideration of other sensitive and special status species.

Steve Ellis,

Deputy Director, Bureau of Land Management.

[FR Doc. 2015–28877 Filed 11–12–15; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVC00000.L16100000.DR0000; 14–08807; MO# 4500080864]

Opportunity To Comment on Changes to the Nevada and California Greater Sage-Grouse Bi-State Distinct Population Segment Carson City Field Office Consolidated Resource Management Plan and the Tonopah Field Office Resource Management Plan Amendment, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) is soliciting comments on significant changes to the Proposed Plan as set forth in the Greater Sage-Grouse Bi-State Distinct Population Segment (BSSG) Forest Plan Amendment and Final Environmental Impact Statement (EIS), announced on February 13, 2015. Following consideration of any comments on these changes, the BLM intends to issue a Record of Decision (ROD) amending the Carson City Field Office Consolidated Resource Management Plan and the Tonopah Field Office Resource Management Plan.

DATES: Written comments on the changes to the Proposed Plan will be accepted until December 14, 2015.

ADDRESSES: You may submit comments related to the significant changes to the Proposed Plan by any of the following methods:

- *Email: blm_nv_ccdowebmail@blm.gov.*
- *Fax:* 775–885–6147.
- *Mail:* BLM Carson City District, Attn: Colleen Sievers, Project Manager, 5665 Morgan Mill Rd., Carson City, NV 89701.

FOR FURTHER INFORMATION CONTACT: Colleen Sievers, Project Manager, telephone: 775–885–6168; address: 5665 Morgan Mill Rd., Carson City, NV 89701; email: *blm_nv_ccdowebmail@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The United States Forest Service (USFS) was the lead agency for preparing the BSSG Forest Plan Amendment (Plan Amendment) and Final EIS. As part of that effort and based on the analysis in the Final EIS, the BLM, a cooperating agency, proposes to amend the Carson City Field Office Consolidated Resource Management Plan and the Tonopah Field Office Resource Management Plan. Following the release of the Proposed Plan and the conclusion of the protest process, the BLM identified changes and a clarification for the Proposed Plan as explained below and determined, pursuant to the applicable authorities (43 CFR 1610.2(f)(5) and 43 CFR 1610.5–1(b)), that public comment on those measures is necessary. The environmental consequences of the proposed changes and clarification have been analyzed as part of the Plan Amendment and Final EIS. After considering any comments on these changes, the BLM expects to issue a ROD amending the Carson City Field Office Consolidated Resource Management Plan and the Tonopah Field Office Resource Management Plan.

The Environmental Protection Agency (EPA) published the Notice of Availability (NOA) for the BSSG Forest Plan Amendment/Draft EIS in the **Federal Register** on August 23, 2013 (78 FR 52524), which initiated a 90-day comment period. An NOA for the BSSG Forest Plan Amendment/Revised Draft EIS was published by the EPA on July 11, 2014 (79 FR 40100), which initiated a second 90-day comment period. The EPA published the NOA for the BSSG Forest Plan Amendment and Final EIS in the **Federal Register** on February 13, 2015 (80 FR 8081), which initiated a 30-day BLM protest period and 60-day Governors consistency review period. The Plan Amendment and Final EIS identified the BLM Plan as the Proposed Plan. The BLM received three protest letters. In response to those protests and based on additional policy discussions, the BLM has determined that it will clarify and make changes to the Proposed Plan.

The clarification and changes include: (1) Identifying disturbance levels within BSSG habitat; (2) Adjusting buffers for tall structures near active or pending leks; (3) Adding a restriction for new high-power transmission lines; and (4) Changing on-the-ground management for habitat connectivity. This notice identifies those clarifications and changes and initiates a 30-day public comment period (43 CFR 1610.2(f)(5) and 43 CFR 1610.5–1(b)).

Habitat Disturbance—Proposed Change

The BLM is changing the Proposed Plan, as it was set forth in the Plan Amendment and Final EIS, to set a total anthropogenic disturbance of no more than 3 percent of the total BSSG habitat on Federal lands within the Bodie Mountain/Grant, Desert Creek/Fales, and White Mountains population management unit boundaries (C–Wild–S–04), and a total anthropogenic disturbance of no more than 1.5 percent of the total BSSG habitat on Federal lands within the Pine Nut Mountains population management unit (PMU)

issues raised during the protest period and how they were addressed, please refer to the Director's Protest Resolution Reports for all four ARMPAs, which are available at the following Web site: *http://www.blm.gov/wo/st/en/prog/planning/planning_overview/protest_resolution/protestreports.html.*

The BLM received notifications of inconsistencies and recommendations as to how to resolve them during the Governor's consistency review period from the States of Idaho, Montana, Nevada, Oregon, and Utah. The BLM also received a concurrence letter of consistency from the State of California. On August 6, 2015, the BLM State Directors for Idaho, Montana, Nevada, Oregon, and Utah sent notification letters to their respective States as to whether they accepted or rejected their recommendations for consistency. The States were then given thirty days to appeal the State Directors' decisions. The States of Idaho, Nevada, and Utah appealed the BLM State Directors' decisions. The BLM Director affirmed the State Directors' decisions on these recommendations as the recommendations did not provide the balance required by 43 CFR 1610.3–2(e). The Director communicated his decisions on the appeals in writing to the Governors concurrently with the release of the RODS.

The Proposed LUPAs/Final EISs were selected in the ROD as the ARMPAs, with some minor modifications and clarifications based on protests received, the Governors' consistency reviews, and internal agency deliberations.

Copies of the Idaho and Southwestern Montana GRSG ROD and ARMPA are available upon request and are available for public inspection at:

- BLM Idaho State Office, 1387 S. Vinnell Way, Boise ID 83709;
- BLM Boise District Office, 3948 Development Avenue, Boise, ID 83705;
- BLM Owyhee Field Office, 20 First Avenue West, Marsing, ID 83639;
- BLM Idaho Falls District Office, 1405 Hollipark Drive, Idaho Falls, ID 83401;
- BLM Salmon Field Office, 1206 South Challis Street, Salmon, ID 83467;
- BLM Challis Field Office, 1151 Blue Mountain Road, Challis, ID 83226;
- BLM Pocatello Field Office, 4350 Cliffs Drive, Pocatello, ID 83204;
- BLM Twin Falls District Office, 2536 Kimberly Road, Twin Falls, ID 83301;
- BLM Shoshone Field Office, 400 West F Street, Shoshone, ID 83352;
- BLM Burley Field Office, 15 East 200 South, Burley, ID 83318;
- BLM Coeur d'Alene District Office, 3815 Schreiber Way, Coeur d'Alene, ID 83815;
- BLM Cottonwood Field Office, 1 Butte Drive, Cottonwood, ID 83522;
- BLM Montana State Office, 5001 Southgate Drive, Billings, MT 59101;
- BLM Butte District Office, 106 North Parkmont, Butte, MT 59701; and
- BLM Dillon Field Office, 1005 Selway Drive, Dillon, MT 59725–9431.

Copies of the Nevada and Northeastern California GRSG ROD and ARMPA are available upon request and are available for public inspection at:

- BLM Nevada State Office, 1340 Financial Boulevard, Reno, NV, 89502;
- BLM Winnemucca District Office, 5100 E. Winnemucca Boulevard, Winnemucca, NV, 89445;
- BLM Ely District Office, 702 North Industrial Way, Ely, NV, 89301;
- BLM Elko District Office, 3900 E. Idaho Street, Elko, NV, 89801;
- BLM Carson City District Office, 5665 Morgan Mill Road, Carson City, NV, 89701;
- BLM Battle Mountain District Office, 50 Bastian Road, Battle Mountain, NV, 89820;
- BLM California State Office, 2800 Cottage Way, Suite W–1623, Sacramento, CA, 95825;
- BLM Alturas Field Office, 708 W. 12th Street, Alturas, CA, 96101;
- BLM Eagle Lake Field Office, 2950 Riverside Drive, Susanville, CA, 96130; and
- BLM Surprise Field Office, 602 Cressler Street, Cedarville, CA, 96104.

Copies of the Oregon GRSG ROD and ARMPA are available upon request and are available for public inspection at:

- BLM Oregon State Office, 1220 SW. 3rd Avenue, Portland, OR 97204;
- BLM Baker Resource Area Office, 3100 H Street, Baker City, OR 97814;
- BLM Burns District Office, 28910 Highway 20 West, Hines, OR 97738;
- BLM Lakeview District Office, 1301 S. G Street, Lakeview, OR 97630;
- BLM Prineville District Office, 3050 NE. 3rd Street, Prineville, OR 97754; and
- BLM Vale District Office, 100 Oregon Street, Vale, OR 97918.

Copies of the Utah GRSG ROD and ARMPA are available upon request and are available for public inspection at:

- BLM Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, UT, 84101;
- BLM Cedar City Field Office, 176 East D.L. Sargent Drive, Cedar City, UT 84721;
- BLM Fillmore Field Office, 95 East 500 North, Fillmore, UT 84631;
- BLM Kanab Field Office and Grand Staircase-Escalante National Monument, 669 South Highway 89A, Kanab, UT 84741;
- BLM Price Field Office, 125 South 600 West, Price, UT 84501;
- BLM Richfield Field Office, 150 East 900 North, Richfield, UT 84701;
- BLM Salt Lake Field Office, 2370 S. Decker Lake Boulevard, West Valley City, UT 84119; and
- BLM Vernal Field Office, 170 South 500 East, Vernal, UT 84078.

Authority: 36 CFR 219.59, 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2; 43 CFR 1610.5.

Amy Lueders,

Acting Assistant Director, Renewable Resources & Planning.

[FR Doc. 2015–24213 Filed 9–22–15; 4:15 pm]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO210000.15X.L11100000.PH0000 LXSISGST0000]

Notice of Proposed Withdrawal; Sagebrush Focal Areas; Idaho, Montana, Nevada, Oregon, Utah, and Wyoming and Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary of the Interior for Land and Minerals Management has approved an application to withdraw approximately 10 million acres of public and National Forest System lands identified as Sagebrush Focal Areas in Idaho, Montana, Nevada, Oregon, Utah, and Wyoming from location and entry under the United States mining laws to protect the Greater Sage-Grouse and its habitat from adverse effects of locatable mineral exploration and mining, subject to valid existing rights. This notice temporarily segregates the lands for up to 2 years while the application is processed. This notice also provides the public with an opportunity to comment on the proposed withdrawal application. In addition, this notice initiates the public scoping process for an Environmental Impact Statement (EIS) to analyze and disclose impacts of the proposed withdrawal.

DATES: Comments on the proposed withdrawal application or scoping comments on issues to be analyzed in the EIS must be received by December

23, 2015. Please clearly indicate whether comments are in regard to the withdrawal application or scoping comments on the EIS. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers and the BLM Web site at: *http://www.blm.gov/wo/st/en/prog/more/sagegrouse.html.* In order to be included in the Draft EIS, all comments must be received prior to the close of the 90-day scoping period or 15 days after the last public meeting, whichever is later. Additional opportunities for public participation will be available upon publication of the Draft EIS.

ADDRESSES: Written comments should be sent to the BLM Director, 1849 C Street NW., (WO–200), Washington, DC 20240 or electronically to *sagebrush_withdrawals@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Mark A. Mackiewicz, PMP, Senior National Project Manager BLM, by telephone at 435–636–3616, or by email at *mmackiew@blm.gov;* or one of the BLM state offices listed below. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to reach the BLM contact person. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management (BLM) filed an application requesting the Assistant Secretary of the Interior for Land and Minerals Management to withdraw, subject to valid existing rights, approximately 10 million acres of public and National Forest System lands located in the States of Idaho, Montana, Nevada, Oregon, Utah and Wyoming from location and entry under the United States mining laws, but not from leasing under the mineral or geothermal leasing or mineral materials laws. Copies of the map entitled ''BLM Petition/Application for Sagebrush Focal Areas Withdrawal'' depicting the lands proposed for withdrawal are posted on our Web site at *http://www.blm.gov/wo/st/en/prog/more/sagegrouse.html* and are also available from the BLM offices listed below:

Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709.

Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669.

Nevada State Office, 1340 Financial Boulevard, Reno, Nevada 89502.

Oregon State Office, 1220 SW 3rd Avenue, Portland, Oregon 97204.

Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101.

Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.

The Sagebrush Focal Areas include all public and National Forest System lands identified in the townships below:

Idaho

Boise Meridian

T. 1 N., Rs. 17 and 29 E.,
Tps. 1 and 10 N., R. 18 E.,
Tps. 1 and 9 to 12 N., R. 19 E.,
Tps. 1, 2, and 8 to 12 N., R. 20 E.,
Tps. 1, 2, and 5 to 12 N., R. 21 E.,
Tps. 1, 2, and 4 to 11 N., R. 22 E.,
Tps. 1 to 13 N., Rs. 23 and 24 E.,
Tps. 9, 10, and 12 N., R. 24½ E.,
Tps. 2 to 12, 15 and 16 N., R. 25 E.,
Tps. 2 to 5, 8 to 11, and 13 to 16 N., R. 26 E.,
Tps. 1, 2, 4 to 11, and 13 to 16 N., R. 27 E.,
Tps. 1, 4 to 9, and 13 to 15 N., R. 28 E.,
Tps. 1 and 6 to 9 N., R. 30 E.,
Tps. 8 and 9 N., Rs. 31 and 32 E.,
Tps. 7 to 9 N., Rs. 34 and 35 E.,
Tps. 9 to 12 N., R. 36 E.,
Tps. 10 to 12 N., R. 37 E.,
Tps. 10 and 11 N., R. 38 E.,
Tps. 9 to 11 N., R. 39 E.,
Tps. 8 to 11 N., R. 40 E.,
Tps. 8 to 10 N., R. 41 E.,
Tps. 8 to 16 S., R. 1 W.,
Tps. 9 to 16 S., R. 2 W.,
Tps. 10 to 16 S., R. 3 W.,
Tps. 11 to 16 S., R. 4 W.,
Tps. 12 to 16 S., R. 5 W.,
Tps. 13 to 16 S., R. 6 W.,
Tps. 8 to 14, and 16 S., R. 1 E.,
Tps. 7 to 14 S., R. 2 E.,
Tps. 8 to 14 S., R. 3 E.,
Tps. 8 to 16 S., R. 4 E.,
Tps. 9, and 11 to 16 S., R. 5 E.,
Tps. 11 to 16 S., R. 6 E.,
Tps. 13 to 16 S., Rs. 7 and 8 E.,
Tps. 14 to 16 S., Rs. 9 and 10 E.,
Tps. 3 and 4 and 14 to 16 S., Rs. 11E.,
Tps. 2 to 4 and 13 to 16 S., R. 12 E.,
Tps. 2 to 4 and 12 to 16 S., Rs. 13 and 14 E.,
Tps. 1 to 4 and 12 to 16 S., Rs. 15 and 17 E.,
Tps. 1 to 4, and 13 to 16 S., R. 16 and 18 E.,
Tps. 1 to 3 S., R. 19 E.,
Tps. 1 to 4 S., Rs. 20 and 24 E.,
Tps. 1 to 4, and 14 S., R. 21 E.,
Tps. 1 to 5, and 14 S., R. 22 E.,
Tps. 1 to 6 S., R. 23 E.,
Tps. 1 to 3 S., Rs. 25, and 27 to 29 E.,
T. 1 S., R. 30 E.

The areas described contain approximately 3,854,622 acres in Bingham, Blaine, Butte, Camas, Cassia, Clark, Custer, Elmore, Fremont, Gooding, Jefferson, Lemhi, Lincoln, Minidoka, Owyhee, Power, and Twin Falls Counties.

Montana

Principal Meridian

Tps. 21 to 23 N., R. 20 E.,
Tps. 20 to 23 N., R. 21 E.,
Tps. 20 N., R. 22 E.,
Tps. 19 to 21, 23 and 24 N., R. 23 E.,
Tps. 18 to 21, 23 and 24 N., Rs. 24 and 25 E.,
Tps. 18 to 20, 22 to 25, 27 and 28 N., R. 26 E.,
T. 24 N., R. 26½ E.,
Tps. 19 to 29 N., R. 27 E.,
Tps. 20, 22 to 24 and 26 to 29 N., R. 28 E.,
Tps. 22 to 27 N., R. 29 E.,
Tps. 22 to 26 N., R. 30 E.,
Tps. 23 to 26 N., Rs. 31 and 32 E.,
Tps. 23 to 29 N., Rs. 33, 35 and 36 E.,
Tps. 24 to 29 N., Rs. 34 and 37 E.,
Tps. 26 and 27 N., R. 36½ E.,
Tps. 24 to 28 N., R. 38 E.,
Tps. 24 to 27 N., R. 39 E.,
T. 26 N., R. 40 E.

The areas described contain approximately 983,156 acres in Fergus, Garfield, Petroleum, Phillips, and Valley Counties.

Nevada

Mount Diablo Meridian

Tps. 44, 46, and 47 N., R. 20 E.,
Tps. 43 to 47 N., Rs. 21, 40, 45, 53, 54, 55, 69, and 70 E.,
Tps. 43, 44, and 47 N., R. 22 E.,
T. 47 N., R. 23 and 23½ E.,
T. 45 N., R. 31 E.,
Tps. 44 to 47 N., Rs. 32, 33, 41 and 42 E.,
Tps. 44 to 48 N., Rs. 34 to 36 E.,
Tps. 45 to 47 N., R. 37 E.,
Tps. 42 to 44 N., R. 38 E.,
Tps. 42 to 47 N., Rs. 39, 46, 49, 50, 57, 58, 60 to 62, 67 and 68 E.,
Tps. 44 to 46 N., R. 43 E.,
Tps. 40 to 47 N., R. 47 E.,
Tps. 41 to 47 N., Rs. 48, and 63 to 66 E.,
T. 44 N., R. 52 E.,
Tps. 46 and 47 N., R. 54½ E.,
Tps. 42 to 45, and 47 N., R. 56 E.,
Tps. 42 to 44, 46 and 47 N., R. 59 E.,

The areas described contain approximately 2,797,399 acres in Elko, Humboldt, and Washoe Counties.

Oregon

Willamette Meridian

Tps. 35 and 36 S., R. 21 E.,
Tps. 32 to 40 S., R. 22 E.,
Tps. 31 to 40 S., Rs. 23 and 24 E.,
Tps. 34 to 41 S., Rs. 25, 29, and 46 E.,
Tps. 33 and 34, 38 to 41 S., R. 26 E.,
Tps. 32 to 41 S., R. 27 and 28 E.,
Tps. 35 to 41 S., R. 30 E.,
Tps. 36 to 41 S., Rs. 31, 40 to 43, 47 and 48 E.,
Tps. 37 to 40 S., R. 32 E.,
T. 37 S., R. 32½ E.,
Tps. 38 to 40 S., R. 33 E.,
Tps. 40 and 41 S., R. 36 E.,
Tps. 36 and 37, 39 to 41 S., R. 37 E.,
Tps. 38 to 41 S., Rs. 38 and 39 E.,
Tps. 33 to 41 S., Rs. 44 and 45 E.,
Tps. 37 to 41 S., R. 49 E.

The areas described contain approximately 1,929,580 acres in Harney, Lake, and Malheur Counties.

Utah

Salt Lake Meridian

Tps. 9 and 10 N., R. 3 E.,
Tps. 9, 10, 10½, and 11 N., R. 4 E.,
Tps. 9 to 12 N., R. 5 E.,
Tps. 9 to 13 N., Rs. 6 to 8 E.,
Tps. 12, 14, and 15 N., R. 17 W.,
Tps. 11 to 15 N., R. 18 W.,
Tps. 10 to 15 N., R. 19 W.

The areas described contain approximately 230,808 acres in Box Elder, Cache, and Rich Counties.

Wyoming

6th Principal Meridian

Tps. 27 and 28 N., R. 99 W.,
Tps. 27 to 29 N., R. 100 W.,
Tps. 25, 28, and 29 N., R. 101 W.,
Tps. 28 N., R. 102 W.,
Tps. 22 N., Rs. 104 and 120 W.,
Tps. 22, and 25 to 27 N., R. 105 W.,
Tps. 26 and 27 N., Rs. 106 to 108 W.,
T. 24 N., R. 112 W.,
Tps. 23 and 24 N., Rs. 113 and 115 W.,
Tps. 22 to 24 N., Rs. 114 and 119 W.,
Tps. 20 to 24 N., R. 117 W.,
Tps. 21 to 24 N., R. 118 W.,
Tps. 19 and 20 N., R. 121 W.

The areas described contain approximately 252,162 acres in Fremont, Lincoln, Sublette, Sweetwater, and Uinta Counties.

The total areas described aggregate approximately 10 million acres of public and National Forest System lands in the six states and counties listed above.

The Assistant Secretary of the Interior for Land and Minerals Management has approved the BLM's application. Therefore, this document constitutes a withdrawal proposal of the Secretary of the Interior (43 CFR 2310.1–3(e)).

The purpose of the proposed withdrawal of the Sagebrush Focal Areas in Priority Habitat Management Areas is to protect the Greater Sage-Grouse and its habitat from adverse effects of locatable mineral exploration and mining subject to valid existing rights.

The use of a right-of-way, interagency or cooperative agreement, or surface management by the BLM under 43 CFR part 3715 or 43 CFR part 3809 regulations or by the Forest Service under 36 CFR part 228 would not adequately constrain nondiscretionary uses, which could result in loss of critical sage-grouse habitat.

There are no suitable alternative sites for the withdrawal.

No water rights would be needed to fulfill the purpose of the requested withdrawal.

Records relating to the application may be examined by contacting the BLM offices listed above.

For a period until December 23, 2015, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the BLM Director, 1849 C Street NW., (WO–210), Washington, DC 20240, or electronically to *sagebrush_withdrawals@blm.gov.*

All comments received will be considered before any final action is taken on the proposed withdrawal.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. At present, the BLM has identified the following preliminary issues: Air quality/climate, American Indian resources, cultural resources, wilderness, mineral resources, public health and safety, recreation, socio-economic conditions, soil resources, soundscapes, special status species, vegetation resources, visual resources, water resources, and fish and wildlife resources.

Because of the nature of a withdrawal of public lands from operation of the mining law, mitigation of its effects is not likely to be an issue requiring detailed analysis. However, consistent with Council on Environmental Quality regulations implementing NEPA (40 CFR 1502.14), the BLM will consider whether and what kind of mitigation measures may be appropriate to address the reasonably foreseeable impacts to resources from the approval of this proposed withdrawal.

The BLM will utilize and coordinate the NEPA scoping process to help fulfill the public involvement process under the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts to Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed withdrawal that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

Comments including names and street addresses of respondents will be available for public review at the BLM Washington Office at the address noted above, during regular business hours Monday through Friday, except Federal holidays. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

For a period until September 24, 2017, subject to valid existing rights, the lands described in this notice will be segregated from location and entry under the United States mining laws, unless the application/proposal is denied or canceled or the withdrawal is approved prior to that date. Licenses, permits, cooperative agreements, or discretionary land use authorizations may be allowed during the temporary segregative period, but only with approval of the authorized officer of the BLM or the USFS.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

Neil Kornze,

Director, Bureau of Land Management.

[FR Doc. 2015–24212 Filed 9–22–15; 4:15 pm]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO350000.L14400000.PN0000]

Renewal of Approved Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-day notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) to continue the collection of information from owners of surface estates who apply for title to underlying Federally-owned mineral estates. The Office of Management and Budget (OMB) previously approved this information collection activity, and assigned it control number 1004–0153.

FACT SHEET: Proposed Withdrawal from Mineral Entry in Sagebrush Focal Areas

Background: The U.S. Fish and Wildlife Service (FWS) identified habitat disturbance and fragmentation caused by certain hardrock mining operations as a threat to sage-grouse habitat. As a result, the Bureau of Land Management (BLM) and U.S. Forest Service (USFS) land use plans recommend that the Secretary of the Interior exercise her authority under the Federal Land Policy and Management Act (FLPMA) to safeguard the most important landscapes identified by the FWS within Priority Habitat Management Areas – identified as Sagebrush Focal Areas – by withdrawing them from the operation of the hardrock mining law.

With the finalization of the BLM-USFS plans, the Secretary is taking prompt action to consider the recommendations. Through a public, transparent process, the Interior Department will seek to ensure that the Sagebrush Focal Areas that anchor the range-wide conservation strategy for the greater sage-grouse are protected from the threat of hardrock mining, subject to valid existing rights.

The elements of the proposed mineral withdrawal include:

Temporary segregation: Subject to valid existing rights, the Interior Department will propose to withdraw approximately 10 million acres of public and National Forest System lands located in the states of Idaho, Montana, Nevada, Oregon, Utah, and Wyoming from location and entry under the United States mining laws. This segregation, which lasts up to two years until the Secretary decides whether to make the withdrawal, prohibits the location and entry of new mining claims in the designated areas.

The notice of proposed withdrawal will publish in the *Federal Register* on September 24, 2015. The notice begins the segregation period and opens a 90-day public review period for the proposed withdrawal.

Analyses: During the segregation period, studies and environmental analyses will be conducted to determine if the lands should be withdrawn to protect sage-grouse habitat from location and entry of new mining claims. This process will invite participation by the public, tribes, environmental groups, industry, state and local government, as well as other stakeholders. These efforts will be undertaken under the leadership of the BLM in cooperation with the USFS and in compliance with the National Environmental Policy Act.

Public process: During the segregation period, the Interior Department will hold a public process to consider information provided by the states, stakeholders and others on mineral potential, including rare earths, as well as the importance of these areas as sagebrush habitat. At the end of the process, a decision on the proposed withdrawal may be made.

Valid, pre-existing claims: Neither the segregation for up to two years, nor any subsequent withdrawal, would prohibit ongoing or future mining exploration or extraction operations on valid pre-existing claims. Neither the segregation nor the proposed withdrawal would prohibit any other authorized uses on these lands. Under FLPMA, the Secretary can withdraw these lands for a maximum of 20 years, and may extend the period in the future.