



United States Forest Service
Department of Agriculture

Intermountain Region

324 25th Street
Ogden, UT 84401

File Code: 1570

Date: SEP 16 2015

Erik Molvar
WildEarth Guardians
319 S. 6th Street
Laramie, WY 82070

Dear Mr. Movar:

Thank you for participating in the objection resolution meetings. My staff and I appreciate your willingness to discuss your concerns related to the Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan Amendment Environmental Impact Statement (EIS) and Draft Record of Decision (ROD). I am pleased that we were able to reach mutual agreements on many of the issues.

Attached to this letter is my written response to your objection issues that were either not covered during the meetings; or there was no agreement on the resolution; or the agreed upon resolution included instructions to the Forest (Attachment A) is included; also enclosed is the signed Resolution Agreement (Attachment B).

The Legal Notice of the objection period for the EIS and draft ROD was published on February 6, 2015. I received your objection on behalf of WildEarth Guardians on April 3, 2015, you were eligible to file an objection and your objection letter was filed during the objection-filing period (36 CFR 219.56(c)).

Project Area

The area affected by the Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan Amendment (project area) is located on the Carson and Bridgeport Ranger Districts of the Humboldt-Toiyabe National Forest. The project area comprises 967,878 acres of National Forest System (NFS) lands administered by the Humboldt-Toiyabe National Forest along the boundary between California and Nevada. The project area extends south of Carson City, Nevada, to the Humboldt-Toiyabe National Forest boundary north of Bishop California. The overall project area boundary, used for analysis, also includes 1,701,618 acres of Bureau of Land Management (BLM) land managed by the Carson City District and the Tonopah Field Office.

Conclusion

The Responsible Official's rationale for this amendment is clear and the reasons are logical and responsive to direction contained in the 36 CFR 219. Once the instructions are complete,



***Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan
Amendment Response to Objection
Objector: WildEarth Guardians***

Issue 1:

The Forest Service failed to respond to the Comments submitted by WildEarth Guardians on the Revised Draft Environmental Impact statement violating NEPA (WEG p. 3)

Response to Issue 1:

The Forest admittedly did not include a response to Wild Earth Guardians comment letter dated October 9, 2014 in the revised DEIS. This was due to an oversight with respect to the Forest's email inbox. The comments were received and were responded to (Doc numbers 811 and 839 in the project record). In addition, the Forest also published the response to Wild Earth Guardians letter on the Forest's public internet site at <http://www.fs.usda.gov/project/?project=40683>. While the Forest did not follow the requirements of 40 CFR 1503.4 (a) and (b), they did do their best to accommodate for that shortcoming by posting the response to comments on their website.

OBJECTOR PROPOSED REMEDY:

To the extent that the substantive issues raised in the October 9, 2015 comments of WildEarth Guardians et al. can be successfully resolved in the Record of Decisions for this RDEIS, we will consider the response to public comments requirement of NEPA successfully fulfilled by the agencies.

FOREST SERVICE FINAL REMEDY AND INSTRUCTION:

The Forest has prepared and posted online a response to the comments submitted by WildEarth Guardians on the revised DEIS on October 9, 2015. See: <http://www.fs.usda.gov/project/?project=40683>.

Issue 2:

Failure to consider voluntary grazing permit retirement. For the agencies to willfully ignore this reasonable alternative is arbitrary and capricious and an abuse of discretion, and represents a NEPA failure to adequately consider a range of reasonable alternatives. EISs fail to consider implementing direction that allows the voluntary retirement of grazing permits (WEG, pp. 27-28).

OBJECTOR PROPOSED REMEDY:

Include permit retirement enabling language as a reasonable alternative to address significant threats posed by livestock grazing to greater sage grouse. Permit retirement is a provision that has already been included in the proposed alternatives of a number of BLM sage grouse RMP amendment and/or revision EISs, including South Dakota, Billings – Pompey's Pillar, Bighorn Basin, and Miles City.

***Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan
Amendment Response to Objection
Objector: WildEarth Guardians***

FOREST SERVICE FINAL REMEDY AND INSTRUCTIONS:

- **Add new guideline to Table ROD-1:** In bi-state DPS habitat, consider closure of grazing allotments, pastures, or portions of pastures or managing the allotment as a forage reserve consistent with maintaining sage-grouse habitat based on desired conditions as opportunities arise under applicable regulations, where removal of livestock grazing would enhance the ability to achieve desired habitat conditions (Amendment Table 1).
- The response to Wild Earth Guardians letter from October of 2014 should be incorporated in the response to comments and built into the FEIS. The response to comments should also include the entire issue statement instead of an excerpt from that statement so as to better understand the context of the message Wild Earth Guardians is trying to convey. The Forest's response to Wildearth Guardians with respect to retiring allotments is brief in content and does not fully address the issue. The recommendation would be to fully answer this concern in a well thought and articulated response, making sure to include it in the response to comments in the FEIS.
- The language should be changed in Doc 149, line 37 from "*Analyze the adverse impacts of no livestock.....*" to "*Analyze the impacts of no livestock....*" By making this change, the Forest is not only addressing potentially adverse impacts of no grazing, but also the beneficial impacts of no grazing.

Issue 3:

Implementation of Grass Height and other Grazing Management Prescriptions.

- ***The agencies provide absolutely no scientific support for the precept that 4 to 6 inches of residual grass height is adequate to provide hiding cover for sage grouse (a NEPA hard look and scientific integrity issue). The adoption of B-RU-S-01 also limits this implementation to within 3 miles of leks and between March 1 and June 30 (FEIS at 30). That leaves nesting habitats between 3 and 4 miles from the lek exposed to excessive grazing (WEG, p. 11).***
- ***The approval of a guideline [B-RU-S-01 and B-Weed-G-01] that is directly contradictory to what the best available science recognizes as effective is arbitrary and capricious, and is likely to add additional grazing impacts (and even weed spread) to already degraded areas resulting in resource damage.***

OBJECTORS PROPOSED REMEDY:

1. Standard B-RU-S-02 should be adjusted so that it requires achievement of (not merely movement toward) the Desired Future Conditions for vegetation contained in Table 2-1 (rather than Table 2-5). This is critical to meet the effectiveness prong of the PECE policy.

**Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan
Amendment Response to Objection
Objector: WildEarth Guardians**

2. Eliminate B-Weed-G-01

FOREST SERVICE FINAL REMEDY AND INSTRUCTIONS:

1. In regards to B-RU-S-02: No remedy, we are going to keep the “moving toward” language in the desired condition as it does take years and even decades at times to achieve desired habitat conditions.

2. Change language of B-Weed-G-01

From: Grazing may be used to target removal of cheatgrass or other vegetation hindering bi-state DPS objectives to move habitat toward desired habitat conditions (Table 2-1) when restoring habitat and or mitigating disturbance. Sheep, goats, or cattle may be used as long as the animals are intensely managed and removed when the utilization of desirable species reaches 35%.

To: Grazing may be used to target removal of cheatgrass or other vegetation hindering bi-state DPS objectives where monocultures occur to reduce risk of fire and achieve or move toward desired habitat conditions. Sheep, goats, or cattle may be used as long as the animals are intensely managed and removed when incidental utilization of desirable species reaches 25%.

3. The final ROD will include a table specifying Desired Future Conditions. Edits to Table 1 as shown in Draft ROD Attachment 1 are discussed above.

Issue 4:

The agencies have failed to meet NEPA's baseline information and hard look requirements. The Forest Service failed to consider the best available science as represented in the NTT report WEG, pp. 3, 25, 27).

Response to Issue 4:

The National Environmental Policy Act (NEPA) states that all Federal agencies "to the fullest extent possible" must provide a detailed environmental impact statement (EIS) (42 U.S.C. 4332). Neither Congress nor the courts have indicated precisely how much detail an EIS must contain. However, courts consistently have held that, at a minimum, NEPA imposes a duty on Federal agencies to take a "hard look at environmental consequences" (Natural Resources Defense Council v. Morton, 458 F.2d 827, 838 (D.C. Cir., 1972)). Hence, courts have carefully checked EIS's for completeness of information and detail, soundness of analysis, thorough discussion of alternatives, and disclosure of sources.

The courts' interpretation is that the agency has the "requirement of a substantial, good faith effort at studying, analyzing, and expressing the environmental issues in the EIS and the decision making process, and a recognition that a rule of reason must prevail because an EIS which fully explores every relevant environmental detail could never be drafted" (Natural Resources Defense Council v. Morton, 458 F.2d 827, 838 (D.C. Cir., 1972)).

***Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan
Amendment Response to Objection
Objector: WildEarth Guardians***

Based upon the above information, the Forest did indeed take a “hard look” at the results of its proposed action. The FEIS, (pp. 56-147) provides a thorough discussion the various resource programs that would be impacted by the various alternatives. In addition, the following specialist reports address the impacts of the alternatives in detail to include: Wildlife Report (Doc 427), Range Report (Doc 320), Fire and Fuels Report (Doc 178), Wild Horses Report (Doc 243), Lands and Recreation Report (Doc 266), Minerals Report (Doc 291), Social and Economic Report (Doc 345), and Weeds Report (Doc 410).

Wild Earth Guardians questions the lack of baseline data provided in the FEIS. The Forest makes a valid and well thought out statement to this issue.

Comment 6 on p. 205 states the following: “Please explain what base line data, if any, is being used by the two agencies. How much Bi-State Sage-grouse habitat was lost in the last 10 years and how much habitat was restored? How much did the Bi-State Sage grouse populations decrease or increase in the last 10 years?”

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

With respect to best available science as presented in the NTT report, the Forest clearly utilized this document during alternative development. Documents 149 and 157 are tables that show how the NTT report was considered during alternative development. In the revised DEIS, the Forest clearly states on multiple pages (51, 52, 57, and 59) “*These standards and guidelines were developed from input received from the public, other agencies, the national sage grouse conservation efforts, and the NTT report.*” The Forest then addressed the NTT and COT reports in the FEIS on p. 202 and states the following: “*Both the Conservation Objectives Team and the National Technical Team reports were used in the development of the management direction for this EIS. The original draft EIS heavily relied on the National Technical Team report, in particular to develop its specific goals, objectives, and standards and guidelines. ... While the wording changed to be more specific to the bi-state DPS than the original National Technical Team or Conservation Objectives Team reports, the intent of those specific items was preserved.*” The Forest thus clearly addressed its reliance on these

***Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan
Amendment Response to Objection
Objector: WildEarth Guardians***

two documents as the foundation and part of the framework for developing the alternatives carried forward in the FEIS.

The Forest responded to Comment 10 on p. 268 of the FEIS in reference to this very question. Comment 10 which is from American Bird Conservancy states the following: *“The Scorecard for Greater Sage-Grouse Conservation is a synthesis of the government’s own scientific experts’ recommendations in the National Technical Team (NTT) report to “ensure that management actions are effective and based on the best available science” to conserve the Greater Sage-Grouse and its habitat. It was developed by American Bird Conservancy (ABC), Center for Biological Diversity, Wildearth Guardians and sage grouse conservation experts”* The Forest responds to this by stating: *“The management direction developed and analyzed in this EIS is based on recommendations from the Conservation Objectives Team report as well as the National Technical Team report. The management direction was crafted to specifically address the threats to bi-state DPS identified by the USFWS.”*

Conclusion: With respect to the NTT report and utilizing the science contained in that report, the Forest has made a clear connection to the importance of that document as well as the COT report in the development of the alternatives. Additionally, the Forest made a clear and well thought out rationale for not providing a baseline with respect to sage-grouse numbers, and as such, no additional attention is needed for that topic.

The Forest has taken a hard look at the environmental consequences of the alternatives in the FEIS.

FOREST SERVICE FINAL INSTRUCTIONS:

The Plant BA/BE needs to be included in the project record. This is a requirement per Section 7 of the ESA and Forest Service Manual 2672.42, which require agencies to address the effects of actions on listed species, and the Forest Service to address the effects of actions on Forest Service sensitive species, respectively.

Issue 5:

Throughout the FEIS, the Forest Service applies smaller lek buffers in the absence of any supporting science that these buffers will prevent significant impacts (i.e., cause both unnecessary and undue degradation and/or loss of lek population viability) to sage grouse populations and their habitats. This is also a legal problem in the context of Purpose and Need, because smaller lek buffers fail the science-based effectiveness prong of the PECE policy. WEG, p. 17).

Response to Issue 5:

A wide range of recommended buffers limiting different anthropogenic activities around leks can be found in scientific literature and various conservation plans. Recent work by Manier et al. 2014 describes this variation in scientific research. Therefore having a variety of recommended buffers for this effort is not

***Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan
Amendment Response to Objection
Objector: WildEarth Guardians***

surprising, and it is logical to have differing buffers between the alternatives to represent different levels of protection.

Similarly lek buffers for other anthropogenic activities varied between Alternatives B and C allowing the decision maker deference between levels of protection for sage-grouse. In all cases, either alternative would provide greater protection for sage-grouse than Alternative A (no action alternative), and would meet the purpose and need as described in the FEIS and DROD.

Science (Coates et al, 2013) indicates that the 95th percentile of nest distribution occurs within 3.1 mi (5 km) of leks. Buffer designations that extend 3.1 – 4.66 mi (5– 7.5 km) from all known lek locations are likely to limit both direct and indirect adverse effects to sage-grouse nesting associated with anthropogenic disturbance. Based on the science, activity-specific buffers in the selected alternative will be changed to 4 miles (6.4 km).

OBJECTORS PROPOSED REMEDY:

1. Adjust lek buffers limiting all surface-disturbing activities and activities that cause stress or displacement to sage grouse to lands beyond 4.66 miles from active leks.
2. If the lease is entirely within priority habitats, apply a 4-mile NSO around the lek, and limit permitted disturbances to 1 per section with no more than 3% surface disturbance in that section as follows.
3. If the entire lease is within the 4-mile lek perimeter, limit permitted disturbances to 1 per section with no more than 3% surface disturbance in that section. Require any development to be placed at the most distal part of the lease from the lek, or, depending on topography and other habitat aspects, in an area that is less demonstrably harmful to sage-grouse.

FOREST SERVICE FINAL REMEDY AND INSTRUCTIONS:

1. Science (Coates et al, 2013) indicates that the 95th percentile of nest distribution occurs within 3.1 mi (5 km) of leks. Buffer designations that extend 3.1 – 4.66 mi (5– 7.5 km) from all known lek locations are likely to limit both direct and indirect adverse effects to sage-grouse nesting associated with anthropogenic disturbance. Based on the science, activity-specific buffers in the selected alternative will be changed to 4 miles (6.4 km).

a. Change B-AR-S-03:

From: Between March 1 and May 15, off-highway vehicle events that pass within 3 miles of an active and pending lek shall only take place during daylight hours after 10 a.m.

To: Between March 1 and June 30, off-highway vehicle events that pass within 4 miles of an active or pending lek shall not be authorized.

***Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan
Amendment Response to Objection
Objector: WildEarth Guardians***

- b. Adopt B-Min-S-03 (Minerals General) and edit as follows:

From: Apply timing restrictions in all bi-state DPS habitat areas to avoid construction, drilling, completion, and reclamation activities, including those of exploratory wildcat wells within seasonal habitat periods.

To: Apply timing restrictions between March 1 and June 30 within 4 miles of active or pending leks to avoid construction, drilling, completion, geophysical explorations, and reclamation activities, including those of exploratory wildcat wells.

2. No remedy. B-Min-G-05 (FS Final Remedy to Issue 12), C-Min-S-04 (FS Final Remedy to Issue 14) and C-Min-S-06 (FS Final Remedy to Issue 12) are all part of the selected amendment.
3. No Remedy. As discussed for FS Final Remedy to Issue 20, the spatial scale of the anthropogenic disturbance cap for all resources is the 4.7 mile active and pending lek buffers.

Issue 6:

In order to address the "inadequacy of regulatory mechanisms" highlighted in the Bi-State DPS Proposed Rule, the federal agencies must apply sage grouse protections that in every respect satisfy the certainty of implementation and science-based effectiveness requirements employed by the U.S. Fish and Wildlife Service to judge regulatory mechanisms under that agency's Policy on Effective Conservation Efforts ("PECE") (WEG, p.5).

Response to Issue 6:

The purpose and need for Bi-State DPS Forest Plan Amendment analysis is directly related to addressing the FWS March 2010 finding that the existing regulatory mechanisms to protect sage grouse and their habitats were inadequate to ameliorate the threats to the bi-state DPS. The proposed action was developed to amend the LRMP with stronger management direction that removes much of the discretion present in the current Forest Plan. The approved amendment meets this purpose and need (DROD page 3).

Conclusion: The approved amendments as described in the DROD and analyzed in the FEIS meet the requirements of FWS to ensure adequate regulatory mechanisms. The FWS recently determined to not list the Bi-State DPS of sage-grouse in part due to this amendment.

Issue 7:

This project fails to meet obligations under the ESA, the NFMA and Forest Service national policy and will directly and indirectly harm sensitive species such as

***Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan
Amendment Response to Objection
Objector: WildEarth Guardians***

goshawk and flammulated owl to such an extent that it constitutes a failure to meet USFS Sensitive species policy.

Response to Issue 7:

“The purpose of the proposed amendment is to conserve, enhance, and/or restore sagebrush and associated habitats to provide for the long-term viability of the bi-state DPS.” (FEIS p. 9) The proposed amendment includes specific measures to protect this population, and the analysis describes how these measures will do so without negatively affecting other identified sensitive species. Objector cites (WEG, p.7) potential harm to two sensitive species, Northern Goshawk and Flammulated owl

In the BEBA (document 427 of the Project Record), the Forest provides information in Table 31 (beginning on p. 118) for sensitive species. Northern Goshawk, with mature conifer and aspen woodland habitat, are listed with a ‘No Effect’ determination based on criteria 2 and 3 below. Flammulated owls, with montane conifer habitat, also were given a ‘No Effect’ determination based on criteria 2.

1. Suitable habitat and/or elevation range does not exist for these species in the analysis area.
2. The type or intensity of the activity in the proposed action is expected to have no impact/effect on these species or their habitat.
3. Individual animals may be accidental, dispersing, migrating, happenstance, vagrant, nomadic or opportunistic visitors to the habitat(s) impacted by the proposal, but no affiliation or dependence upon these habitat(s) has been shown.

Flammulated owl also appear in the BEBA in a table on page 140 showing as a USFWS Birds of Conservation Concern, but not listed as a NV priority species for sagebrush, pinyon-juniper or mountain shrub, and with no nesting habitat or foraging elements affected by the proposed action.

Conclusion - The project record and analysis provide adequate information insure the to meet obligations under the ESA, the NFMA and Forest Service national policy direction as well as the purpose and need to conserve, enhance, and/or restore sagebrush and associated habitats to provide for the long-term viability of the bi-state DPS.

Issue 8:

There is insufficient direction for connectivity habitat. The issue of improving connectivity is critical to assuring the viability of individual populations in the Bi-State area (particularly the isolated Pine Nut and White Mountains populations) and is recognized as a pivotal issue by the Service in the context of an ESA listing decision. BA/BE at 62. (WEG, p. 27).

OBJECTORS PROPOSED REMEDY:

***Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan
Amendment Response to Objection
Objector: WildEarth Guardians***

Connectivity Habitat as delineated in FEIS Figure 3-1 should be treated as Sage Grouse Habitat for the purposes of all conservation measures adopted under the RMP amendment, and protections that apply in identified habitat should apply in connectivity areas as well.

FOREST SERVICE FINAL AGREEMENT AND INSTRUCTIONS:

- Clarify in ROD: The habitat used in the FEIS has been identified through modeling, telemetry, and field surveys/verification. Recognizing that all bi-state DPS habitat is of very high value and needs to be managed accordingly, the standards and guidelines in the proposed action/selected alternative apply to all areas mapped as habitat, including connectivity habitat.
- Add a section in the ROD which clearly shows what S & G's apply to connective habitat.

Issue 9:

The agencies have failed to provide any scientific support for allowing more than 3% surface disturbance. In failing to adopt RDEIS B-Min-S-05, C-AR-S-01, and C-Wild-S-04, the Forest Service has parted ways with the best available science without justification.

OBJECTORS PROPOSED REMEDY:

Implement RDEIS B-Min-G-05 to require a maximum 3% surface disturbance and one industrial site per square mile. C-Wild-S-04 should also apply across all programs and permitted activities, to clarify that the 3% maximum cumulative disturbance standard applies across all programs.

FOREST SERVICE FINAL AGREEMENT AND INSTRUCTIONS:

- Adopt B-Min-G-05, in Fluid Minerals. Change wording of B-Min-G-05 as follows:
 - From:** Limit disturbances to an average of one site per 640 acres on average, with no more than 3% total anthropogenic surface disturbances. The intent of the guideline is to minimize disturbance foot print wherever possible.
 - To:** Limit disturbances to an average of one site per 640 acres on average, subject to valid existing rights. The intent of the guideline is to minimize disturbance foot print wherever possible.
- Add the following definition of Anthropogenic Disturbances to the Glossary:

Anthropogenic Disturbance: Human-created features within 4.7 miles of leks that include but are not limited to paved highways, graded gravel roads, transmission lines, substations, oil and gas wells, geothermal wells

***Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan
Amendment Response to Objection
Objector: WildEarth Guardians***

and associated facilities, pipelines, landfills, agricultural conversion, homes, and mines.

Issue 10:

We remain concerned that by adopting C-Min-S-04 (which applies only to future leases) as an alternative management prescription, the Forest Service inadvertently fails to manage development on current existing leases to prevent serious impacts to sage grouse populations and habitats (Minerals). (WEG, p. 16)

The Forest Service failed to apply disturbance and site density standards in the context of valid existing leases, which will not be covered under NSO provisions that are limited to newly issued leases (WEG, pp. 16-17).

Response to Issue 10:

Management of current existing leases under valid existing rights must adhere to Federal minerals law. These are existing contracts without opportunity for current changes. 36 CFR 228.107 and 36CFR 228.108(f) Subpart E discuss surface use requirements that are in place for all existing leases, including “(f) Fisheries, wildlife and plant habitat. The operator shall comply with the requirements of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and its implementing regulations (50 CFR chapter IV), and, except as otherwise provided in an approved surface use plan of operations, conduct operations in such a manner as to maintain and protect fisheries, wildlife, and plant habitat.”

Under 36 CFR 228 Subpart E - Forest Service, Minerals, Oil and Gas Resources there are standard stipulations to every existing lease that the leasing agency (BLM) must comply with all rules and regulations covering surface disturbance for agency that is responsible for surface management (in this case the Forest Service), which would include the new plan amendment ROD (Tina Robison, CTNF Soda Springs, personal communication). The Forest Service modifies existing leases in certain cases. The agency does this by working with operators to make changes that minimize harm to the environment (Dale Harber, WO/R4 personal communication). However, an existing lease is a binding contract; the Agency cannot materially interfere with approved operations without compensation. To do so would constitute a regulatory taking of private property, a violation of the 5th amendment to the U.S. Constitution.

The Forest Service Minerals Program Policy letter (p. 2), clearly states: “Ensure private rights are respected in all resource management decisions.” Requiring a disturbance cap of valid existing rights may be unlawful.

(<http://www.fs.fed.us/geology/FOREST%20SERVICE%20MINERALS%20PROGRAM%20POLICY.pdf>)

Conclusion: The Forest has sufficiently described the basis for its choices relative to these specific elements of its Plan Amendment in terms of providing for long-term survival of bi-state sage grouse.

***Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan
Amendment Response to Objection
Objector: WildEarth Guardians***

The agency is consistent with NEPA regulations when it changed a proposed standard in an alternative to a guideline because it was necessary to make it reasonable and selectable. The agency properly changed what it believed was a typo in the objector's letter in order to make it consistent so that it would make sense and because it disclosed that it did so and why.

OBJECTORS PROPOSED REMEDY:

1. The agency should apply C-Min-S-06 regardless of whether leases presently exist or not, and this would solve the problem.

FOREST SERVICE FINAL REMEDY AND INSTRUCTIONS:

1. The agency adopted C-Min-S-06 in the draft ROD and will retain the standard (applicable to existing leases only) in the final ROD with the following change:

From: Upon expiration or termination of existing leases, do not consent to leasing if inquired by the BLM.

To: Upon expiration or termination of existing leases in bi-state DPS habitat, do not consent to leasing if inquired by the BLM. *(Note: This applies to all bi-state habitat whether or not it is located within the 4-mile lek buffer).*

1. The agency also adopts B-Wild-S-06 with edits shown below. B-Wild-S-06 will be moved to the All Resources section of Table ROD-1.

From: Require buffers, timing limitations, or offsite habitat restoration for new or renewed discretionary actions to mitigate potential long term impacts.

To: Subject to valid existing rights, require buffers, timing limitations, or offsite habitat restoration for new or renewed disturbance actions to mitigate potential long term impacts.

2. Include brief minerals policy explanation for removal of B-Min-S-05.
3. Change Rationale 1 to Rationale 4 for B-AR-G-02.

Issue 11:

In adopting B-Min-S-07, the Forest Service commits to preventing geophysical exploration seasonally in identified winter habitats during their season of use by grouse. DROD at 16. This is a good measure to protect wintering habitat. However, the current plan amendment does nothing to prevent geophysical operations from being conducted inside breeding, nesting, and/or brood rearing habitats during their critical seasons of use (WEG, p. 20).

OBJECTORS PROPOSED REMEDY:

***Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan
Amendment Response to Objection
Objector: WildEarth Guardians***

The agency has identified March 1 through June 30 as the critical period to protect spring habitats, and the geophysical exploration timing limitation should apply throughout this period in identified breeding, nesting, and brood-rearing habitats. In addition, adopt B-Min-S-09 to require the least invasive geophysical methods feasible in sage grouse habitats.

FOREST SERVICE AGREEMENT REMEDY

Combine B-Min-S-07 and B-Min-S-09 (Fluid Minerals) and modify as follows to apply buffer, extend winter seasonal restriction, and address both seismic and geophysical exploration.

From:

Current Language of B-Min-S-07: Require seasonal restriction November 1 to March 1 on geophysical exploration within winter habitats.

Current Language of B-Min-S-09: Apply the least invasive seismic exploratory method in habitat.

To: Between November 1 and June 30, seismic and geophysical exploration within 4 miles of an active or pending lek shall not be authorized. During other times apply the least invasive seismic and geophysical exploratory methods in habitat.

Issue 12:

The Forest Service fails to set the ambient noise level.

Forest Service proposes to adopt B-Min-S-01 to regulate noise levels in sage grouse habitat, but only from 2 hours before sunset to 2 hours after sunrise. DROD at 15.

Proposed guidance fails to explicitly set ambient noise levels, a critical omission that could lead to major impacts to sage grouse through inappropriately high noise levels allowed under the plan amendment.

The Forest fails to provide noise protection round-the-clock and throughout the nesting and early brood-rearing season (March 1 through June 30, recognized by the agencies as the most sensitive season for sage grouse as noted elsewhere in this objection). This results in unacceptable levels of disturbance and sage grouse using the most sensitive habitats during the most sensitive times of year. (WEG, p. 24-26).

Response to Issue 12:

The Objector correctly states that the standard for protecting the DPS from noise disturbance (B-Min-S-01) is based on limiting noise level increases from disturbance activities to a 10 decibel increase over ambient noise levels at the lek. However, ambient noise levels have not yet been defined or measured for sage grouse leks in the

***Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan
Amendment Response to Objection
Objector: WildEarth Guardians***

project area. Therefore it is possible that the additive noise level may end up being at an unintended high level of disturbance. This assertion is borne out in (Patricelli et. Al. 2010) which recommends that typical ambient noise levels be set prior to development. Patricelli goes on to estimate that pre-development ambient values from nights and calm mornings in sagebrush habitat are near 16 to 20 dBA. The Forest adopted the standard recommended by the NTT. That recommendation noted that typical ambient noise levels are 20-24 decibels.

Conclusion: No studies were found in the record or in the objection letter to support the need to increase the area where the standard would apply to the entire occupied habitat or to apply the threshold around the clock. Additionally, there is nothing in the record or objection indicating that development has already increased noise levels over what would be expected in undeveloped areas.

OBJECTORS PROPOSED REMEDY:

Ambient noise levels should be explicitly defined as 15 dBA under B-Min-S-01, after Ambrose and Florian (2014) in the significantly windier habitats of western Wyoming. This would place an upper limit of 25 dBA on noise levels in occupied sage grouse habitats. In addition, noise thresholds should be measured at the edge of occupied habitat rather than at the edge of the lek, and these noise limitations should apply around the clock, not just from 2 hours before sunset to 2 hours after sunrise.

FOREST SERVICE FINAL REMEDY AND INSTRUCTION:

1. No remedy for request to define ambient noise levels as 15 dBA in B-Min-S- 01. The 10 decibel above ambient noise limit in B-Min-S-01 comes from the NTT Report, which describes ambient as 20-24db (regardless of noise source). B-Min-S-01 applies to Minerals – General.

2. Change B-AR-S-03:

From: Between March 1 and May 15, off-highway vehicle events that pass within 3 miles of an active and pending lek shall only take place during daylight hours after 10 a.m.

To: Between March 1 and June 30, off-highway vehicle events that pass within 4 miles of an active or pending lek shall not be authorized.

3. Adopt B-Min-S-03 (Minerals General) and edit as follows:

From: Apply timing restrictions in all bi-state DPS habitat areas to avoid construction, drilling, completion, and reclamation activities, including those of exploratory wildcat wells within seasonal habitat periods.

To: Apply timing restrictions between March 1 and June 30 within 4 miles of active or pending leks to avoid construction, drilling, completion, geophysical explorations, and reclamation activities, including those of exploratory wildcat wells.

***Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan
Amendment Response to Objection
Objector: WildEarth Guardians***

Issue 13:

The agencies are treating locatable minerals as "nondiscretionary," and strong limitations on project design as prescribed by the National Technical Team (2011) will not apparently be applied. FEIS at 53. This constitutes a tacit assertion that adequate regulatory mechanisms will not be applied for hard-rock mining in the planning area. If the agencies assert that they will exert little control over locatable minerals projects, then withdrawal of sage grouse habitats from future mining claim availability becomes the Forest Service's primary management tool. The agencies must exercise their authority to prevent such unnecessary and undue degradation and to emplace adequate regulatory mechanisms to neutralize this threat to sage grouse. (WEG, pp. 21-22).

OBJECTORS PROPOSED REMEDY:

Forest Service must apply adequate regulatory mechanisms on hard-rock mining projects that prevent unnecessary or undue degradation to sage grouse populations and their habitats in order to satisfy FLPMA, and in order to meet the Purpose and Need for this EIS.

To remedy the current deficiency, Forest Service should propose withdrawal of sage grouse habitats from future locatable mineral entry (applying C-Min-S-12), and on existing claims provide that surface facilities and disturbance be sited outside occupied habitat, and where this is not possible, limit surface disturbance to more than one site per square-mile section and no more than 3% cumulative surface disturbance (in effect, a more explicit and non-discretionary implementation of B-Min-G-13), and comply with other limitations on transmission lines, noise, and other impacts.

FOREST SERVICE AGREEMENT REMEDY:

- On the withdrawal of sage grouse habitats from future locatable mineral entry:
No Remedy
- Adopt a modified B-Min-G-05, in fluid minerals as discussed in FS Final Remedy for Issue 10.
- Undue and Unnecessary language – Guardians proposes the following language: “For the purposes of this plan amendment, undue degradation is defined for the purposes of protecting the greater sage-grouse as surface disturbance exceeding one site per square mile or cumulative exceedance of the 3% surface disturbance standard.”
 - a. While the agency will not adopt Guardians’ proposed language regarding the definition of undue degradation, the agency has proposed multiple plan components in the draft ROD and changes to plan components as described in this and other relief elements that prevent unnecessary or undue degradation to sage-grouse populations and their habitat.

**Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan
Amendment Response to Objection
Objector: WildEarth Guardians**

Issue 14:

In proposing to adopt B-LUSU-S-04, the Forest Service proposes to allow outfitter and guide activities as close as 0.25 mile from a lek between March 1 and May 15, and imposes no restrictions at all between May 15 and June 30. DROD at 7. This is a biologically inadequate level of protection for two reasons: 1. The 0.25-mile lek buffer is woefully inadequate to protect breeding activities at the lek itself, and affords the vast majority of nesting and brood-rearing habitat no protection at all from outfitter and guide activities. A 4.66-mile buffer is required pursuant to Coates et al. (2013). 2. The season of use restriction provides no protection at all during much of the nesting season and all of the early brood-rearing season, when sage grouse are equally vulnerable to disturbance (WEG, p. 15).

In conflicting direction, Standard LUSU-S-07 in Appendix 1 prohibits outfitter and guide activities within 3 miles of leks from March 1 to May 15. DROD at 43. Which standard applies? A 0.25-mile buffer or a 3-mile buffer? Based on the introduction of the DROD, the guidance indicates that the proposed decision is in Table ROD-1 rather than Appendix 1 (WEG, p. 16).

OBJECTORS PROPOSED REMEDY:

Implement C-LUSU-S-05, and expand its season of applicability to March 1 to June 30 to encompass the season of greatest sensitivity for sage grouse.

FOREST SERVICE FINAL REMEDY AGREEMENT AND INSTRUCTIONS:

Adopt C-LUSU-S-05 in place of B-LUSU-S-04. Change seasonal dates for C-LUSU-S-05 as follows to cover nesting and breeding seasons:

From: Do not authorize outfitter-guide activities in bi-state habitat that occur within 4 miles of active leks from March 1 to May 15.

To: Do not authorize outfitter-guide activities in bi-state habitat that occur within 4 miles of active leks from March 1 to June 30.

Issue 15:

The Forest Service failed to select B-Min-S-09, which would have required less invasive geophysical methods. This outcome would potentially allow the use of vibroseis off-road vehicle use as part of geophysical projects, further exacerbating the impact of geophysical exploration in key sage grouse habitats, and potentially resulting in long-term crushing of sagebrush that results in the creation of linear travel corridors used by terrestrial predators (WEG, p. 21).

OBJECTORS PROPOSED REMEDY:

The agency has identified March 1 through June 30 as the critical period to protect spring habitats, and the geophysical exploration timing limitation should apply

**Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan
Amendment Response to Objection
Objector: WildEarth Guardians**

throughout this period in identified breeding, nesting, and brood-rearing habitats. In addition, adopt B-Min-S-09 to require the least invasive geophysical methods feasible in sage grouse habitats.

FOREST SERVICE FINAL REMEDY AND INSTRUCTION:

Forest Service Final Remedy Agreement and Instruction for Issue 11.

Issue 16:

The Forest Service proposal calls for "same as B-AR-G-02" in regard to authorizing new roads "only when necessary for public safety" and other considerations. DROD at 5. This is a discretionary guideline ("G rather than a mandatory standard "S"). The "S" (standard approach) creates regulatory certainty, while the "G" (guideline approach) undermines the 'certainty of implementation' of this management prescription.

It is likewise critical that the Forest Service preclude the construction of roads that contribute to an exceedance of the cumulative 3% surface disturbance threshold, which leads to lek abandonment, as in C-AR-S-01. (WEG, pp. 12-13).

OBJECTORS PROPOSED REMEDY:

- Please clarify that plan applies this prescription as a mandatory action rather than a best management practice in the RMP amendment. Specific direction is needed to limit road construction below 3% cumulative surface disturbance per square mile. Both of these concerns are remedied by adopting C-AR-S-01, which is both a mandatory standard (showing certainty of implementation) and recognizes the need to stay below the 3% disturbance cap.

FOREST SERVICE REMEDY AGREEMENT:

- Adopt C-Wild S-04 and move to All Resources Section. Change C-Wild-S-04 as follows:

From: Total anthropogenic disturbances shall affect no more than 3% of the total bi-state DPS habitat on Federal lands within the Bodie/Mount Grant, Desert Creek/Fales, and White Mountains population management unit boundaries.

To: Total anthropogenic disturbances shall affect no more than 3% of the bi-state DPS habitat within 4.7 mile of leks in the Bodie/Mount Grant, Desert Creek/Fales, and White Mountains population management unit boundaries. See definition of Anthropogenic Disturbance in Glossary.

- Remove C-AR-S-01 as it is redundant.
- Adopt Pine Nuts PMU standard (C-Wild-S-05) and move to All Resources section of Table ROD-1:

**Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan
Amendment Response to Objection
Objector: WildEarth Guardians**

From: Total anthropogenic disturbances shall affect no more than 1.5% of the total bi-state DPS habitat on Federal lands within the Pine Nut Mountains Population Management Unit boundaries.

To: Total anthropogenic disturbances shall affect no more than 1.5% of the bi-state DPS habitat within 4.7 miles of leks in the Pine Nut Mountains Population Management Unit boundaries.

- Fix the typographical error on p. 4 of the draft ROD for Rationale 1. Currently, that rationale states “*I have decided to include standards that prohibit projects or activities that, by their nature, would not be able to avoid adverse effects to habitat, because conserving habitat is a purpose of the amendment.*” The instruction would be to change that statement to read “*I have decided to include standards and guidelines....*”

Issue 17:

Standard B-AR-S-03 would allow off-road vehicle events that pass within 3 miles of sage grouse leks during daylight hours after 10 am. DROD at 5. This direction represents an inadequate regulatory mechanism in two ways: 1. By using 3-mile buffer around sage grouse leks instead of a 4-mile buffer for this standard, the Forest Service allows off-road vehicle events between 3 and 4 miles of a lek, an area that represents prime nesting habitat for sage grouse. The plan direction as proposed allows off-road vehicle events and outfitter activities in immediate proximity to leks (even atop them) during the breeding season, which is likely to disturb, stress, and displace male and female birds loafing in the vicinity of leks and lead to lek abandonment. There is no basis in science supporting this intense level of disturbance during this sensitive period, which therefore violates the science-based effectiveness prong of the adequate regulatory mechanisms test. The Forest Service is allowing an intense level of disturbance By using 3-mile buffer around sage grouse leks instead of a 4-mile buffer for this standard, the Forest Service allows off-road vehicle events between 3 and 4 miles of a lek, an area that represents prime nesting habitat for sage grouse. (WEG, p. 14).

The agency's current management of off-highway vehicles will result in "absence of sage grouse or degradation of habitat" based on the agency's own analysis. RDEIS at 49-50, FEIS at 59. The agencies themselves concede of the proposal to allow OHV events in key sage grouse habitats after 10 am. This is a clear indicator of inadequate regulatory mechanisms. The failure to prevent offhighway vehicle impacts to sage grouse in their most sensitive habitats during the most sensitive periods of the year is particularly problematic given the high density of existing (and likely to be designated) vehicle routes in the planning area, and that closures of designated routes within 4 miles of sage grouse leks is not part of plan direction. (WEG, p. 14).

OBJECTOR PROPOSED REMEDY:

***Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan
Amendment Response to Objection
Objector: WildEarth Guardians***

The unambiguous direction in B-AR-S-04 (DROD at 6) regarding winter habitat prevents special use permits authorizing off-road vehicle events at all times of day in sensitive wintering habitats during their season of use by grouse. This same level of protection must be applied to nesting and brood-rearing habitats during their season of use, March 1 through June 30.

FOREST SERVICE FINAL REMEDY AND INSTRUCTIONS:

4. Change B-AR-S-03:

From: Between March 1 and May 15, off-highway vehicle events that pass within 3 miles of an active and pending lek shall only take place during daylight hours after 10 a.m.

To: Between March 1 and June 30, off-highway vehicle events that pass within 4 miles of an active or pending lek shall not be authorized.

5. The recommendation to the Forest is correct this typographical error in Table-1 so that both tables are consistent with one another.

Issue 18:

B-Fire-G-06 (proposed for adoption) applies the correct management, but is framed as a discretionary guideline rather than a compulsory standard. This undermines this measure's certainty of implementation. (WEG, p. 26).

OBJECTOR PROPOSED REMEDY:

Implement B-Fire-S-01 and B-Fire-G-06, which focus on protecting grouse habitat without the fragmentation and associated disturbance of “greenstripping.” Instead of implementing B-Fire-G-01 and B-Fire-G-06 as guidelines, implement them as standards (i.e., for B-Fire-G-06, implement B-Fire-S-09) to assure certainty of implementation).

FOREST SERVICE FINAL REMEDY AND INSTRUCTIONS:

1. Change B-Fire-G-06:

From: Do not use fire, including brush control, as a management tool in areas where there is threat of cheatgrass invasion, sagebrush areas with less than 12 inches of annual precipitation or 12 inches of soil, or areas where the sagebrush cover would be reduced to less than 15%.

To: Do not use prescribed fire, except for pile burning, in 12-inch or less precipitation zones, in areas where there is threat of cheatgrass invasion, or areas where the sagebrush cover would be reduced to less than 15% unless necessary to facilitate site preparation for restoration of Bi-State DPS habitat consistent with desired conditions.

2. Change C-Fire-G-01:

***Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan
Amendment Response to Objection
Objector: WildEarth Guardians***

From: Vegetation treatments should include fuel breaks to provide anchor points for wildland fire suppression to protect areas meeting or moving toward desired conditions to provide protection for habitat that is moving toward or meeting desired condition.

To: Vegetation treatments should include fuel breaks to provide anchor points for wildland fire suppression to protect areas meeting or moving toward desired conditions.

3. Both B-Fire-G-06 and C-Fire-G-01 will remain guidelines.

4. Remove C-Fire-G-02 from selected alternative:

C-Fire-G-02: Use fuel breaks and green strips to protect areas with >25% landscape sagebrush cover to provide protection for habitat that is moving toward or meeting desired condition.

5. Adopt B-Fire-G-05 in selected alternative:

B-Fire-G-05: Fuels treatments should emphasize protecting existing sagebrush ecosystems to provide protection for habitat that is moving toward or meeting desired condition.

Objection Resolution

Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan Amendment, Humboldt-Toiyabe NF

Objections from Wild Earth Guardians


The below final remedies are in response to the resolution meetings between the objector and the Forest Service. The Objector is asked to indicate their acceptance or rejection of the final remedies by circling the correct response and signing at the indicated location below each remedy. Acceptance of a final remedy will indicate the objectors willingness to withdraw the corresponding objection issue. Upon receipt of the final Objection Resolution Agreement the Forest Service will document their acceptance of the partial or complete issue withdrawal and will commit to implementation of the final remedies through signature at the end of this document.

Relief Element 1 To the extent that the substantive issues raised in the October 9, 2015 comments of WildEarth Guardians et al. can be successfully resolved in the Record of Decisions for this RDEIS, we will consider the response to public comments requirement of NEPA successfully fulfilled by the agencies.

FOREST SERVICE FINAL REMEDY:

The forest has prepared and posted online a response to the comments submitted by WildEarth Guardians on the revised DEIS on October 9, 2015. See:
<http://www.fs.usda.gov/project/?project=40683>.

Accept/Decline Remedy: _____


Erik Molvar
WildEarth Guardians

Relief Element 2: Standard B-RU-S-02 should be adjusted so that it requires achievement of (not merely movement toward) the Desired Future Conditions for vegetation contained in Table 2-1 (rather than Table 2-5). This is critical to meet the effectiveness prong of the PECE policy. Eliminate B-Weed-G-01.

STANDARD AND GUIDES:

*B-RU-S-02: Manage livestock grazing in accordance with the utilization standards in Table 2-6.

*B-Weed-G-01: Grazing may be used to target removal of cheatgrass or other vegetation hindering bi-state DPS objectives to move habitat toward desired habitat conditions

Objection Resolution

Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan Amendment, Humboldt-Toiyabe NF

Objections from Wild Earth Guardians

(Table 2-1) when restoring habitat and or mitigating disturbance. Sheep, goats, or cattle may be used as long as the animals are intensely managed and removed when the utilization of desirable species reaches 35%.

FOREST SERVICE FINAL REMEDY:

1. Adjusting B-RU-S-02: No remedy, we are going to keep the "moving toward" language in the desired condition as it does take years and even decades at times to achieve desired habitat conditions.
2. Concealment / cover: No remedy, science supports our use of overhead and lateral concealment as desired condition.

From Kolada, et al, 2009: "In contrast to the hypothesis that sage-grouse maximize nest concealment based on both shrub cover and understory vegetation, we found no evidence that female sage-grouse selected nest sites with greater residual grass cover or height (Figs. 3, 4), even though such sites were available. Female sage-grouse in Mono County nested in sites with substantially less residual grass cover (2.7%) or residual grass height (10.5 cm) than in other geographic locations (Gregg et al. 1994, Popham and Gutierrez 2003, Lane 2005). Differences between our results and those of other studies suggest complexity in habitat selection by nesting sage-grouse" (Kolada et al. 2009).

Hagen et al (2007) also finds a bias of selection for greater sage brush cover for nest concealment and for high forb cover for females with broods. Selection for grass height and cover by nesting and brood rearing females was less of a factor. This is also reflected in Stiver et al 2015 where the importance of grass height summer brood rearing habitat is not a factor based on the work of Connelly et al. 2000. The literature review suggests that having a 7" grass height in either the nesting or summer brood rearing desired habitat conditions may be unwarranted. We are reviewing best science on minimum grass height where shrub component is <40% and will include language if appropriate.

3. Change language of B-Weed-G-01

From: Grazing may be used to target removal of cheatgrass or other vegetation hindering bi-state DPS objectives to move habitat toward desired habitat conditions (Table 2-1) when restoring habitat and or mitigating disturbance. Sheep, goats, or cattle may be used as long as the animals are intensely managed and removed when the utilization of desirable species reaches 35%.

To: Grazing may be used to target removal of cheatgrass or other vegetation hindering bi-state DPS objectives where monocultures occur to reduce risk of fire

Objection Resolution

Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan Amendment, Humboldt-Toiyabe NF

Objections from Wild Earth Guardians

and achieve or move toward desired habitat conditions. Sheep, goats, or cattle may be used as long as the animals are intensely managed and removed when incidental utilization of desirable species reaches 25%.

4. The final ROD will include a table specifying Desired Future Conditions. Edits to Table 1 as shown in Draft ROD Attachment 1 are discussed above.

Accept/Decline Remedy: 
Erik Molvar
WildEarth Guardians

Relief Element 3: Forest Service proposal calls for "same as B-AR-G-02" in regard to authorizing new roads "only when necessary for public safety" and other considerations. DROD at 5. This is a discretionary guideline ("G" rather than a mandatory standard "S"). The "S" (standard approach) creates regulatory certainty, while the "G" (guideline approach) undermines the 'certainty of implementation' of this management prescription. It is likewise critical that the Forest Service preclude the construction of roads that contribute to an exceedance of the cumulative 3% surface disturbance threshold, which leads to lek abandonment, as in C-AR-S-01

Please clarify that plan applies this prescription as a mandatory action rather than a best management practice in the RMP amendment. Specific direction is needed to limit road construction below 3% cumulative surface disturbance per square mile. Both of these concerns are remedied by adopting C-AR-S-01, which is both a mandatory standard (showing certainty of implementation) and recognizes the need to stay below the 3% disturbance cap.

STANDARD AND GUIDES:

B-AR-G-02: Authorize new roads only when necessary for public safety, administrative, or public need to accommodate valid existing rights and to minimize disturbance footprint of ROWs in bi-state habitat.

C-AR-S-01: Authorize new roads only when necessary for public safety, administrative, or public need to accommodate valid existing rights up to 3% total anthropogenic disturbance limit.

FOREST SERVICE FINAL REMEDY:

Adopt C-Wild S-04 and move to All Resources Section. Change C-Wild-S-04 as follows:

Objection Resolution

Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan Amendment, Humboldt-Toiyabe NF

Objections from Wild Earth Guardians

From: Total anthropogenic disturbances shall affect no more than 3% of the total bi-state DPS habitat on Federal lands within the Bodie/Mount Grant, Desert Creek/Fales, and White Mountains population management unit boundaries.

To: Total anthropogenic disturbances shall affect no more than 3% of the bi-state DPS habitat within 4.7 mile of leks in the Bodie/Mount Grant, Desert Creek/Fales, and White Mountains population management unit boundaries. See definition of Anthropogenic Disturbance in Glossary.

Add the following definition of Anthropogenic Disturbances to the Glossary:

Anthropogenic Disturbance: Human-created features within 4.7 miles of leks that include but are not limited to paved highways, graded gravel roads, transmission lines, substations, oil and gas wells, geothermal wells and associated facilities, pipelines, landfills, agricultural conversion, homes, and mines.

Adopt Pine Nuts PMU standard (C-Wild-S-05) and move to All Resources section of Table ROD-1:

From: Total anthropogenic disturbances shall affect no more than 1.5% of the total bi-state DPS habitat on Federal lands within the Pine Nut Mountains Population Management Unit boundaries.

To: Total anthropogenic disturbances shall affect no more than 1.5% of the bi-state DPS habitat within 4.7 miles of leks in the Pine Nut Mountains Population Management Unit boundaries.

Remove C-AR-S-01 as it is redundant.

Accept/Reject Remedy:  _____

Erik Molvar
WildEarth Guardians

Relief Element 4: The unambiguous direction in B-AR-S-04 (DROD at 6) regarding winter habitat prevents special use permits authorizing off-road vehicle events at all times of day in sensitive wintering habitats during their season of use by grouse. This same level of protection

Objection Resolution

Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan Amendment, Humboldt-Toiyabe NF

Objections from Wild Earth Guardians

must be applied to nesting and brood-rearing habitats during their season of use, March 1 through June 30.

STANDARD AND GUIDES

*B-AR-S-04: Do not authorize off-highway vehicle events within winter habitats November 1 to March 1.

*B-AR-S-03: Between March 1 and May 15, off-highway vehicle events that pass within 3 miles of an active and pending lek shall only take place during daylight hours after 10 a.m.

FOREST SERVICE FINAL REMEDY:

Change B-AR-S-03:

From - Between March 1 and May 15, off-highway vehicle events that pass within 3 miles of an active and pending lek shall only take place during daylight hours after 10 a.m.

To: Between March 1 and June 30, off-highway vehicle events that pass within 4 miles of an active or pending lek shall not be authorized.

Accept/Reject Remedy: 

Erik Molvar
WildEarth Guardians

Relief Element 5: Implement C-LUSU-S-05, and expand its season of applicability to March 1 to June 30 to encompass the season of greatest sensitivity for sage grouse.

STANDARD AND GUIDES:

*B-LUSU-S-04: Do not authorize outfitter-guide activities that occur within 3 miles of active leks from March 1 to May 15.

C-LUSU-S-05: Do not authorize outfitter-guide activities in bi-state habitat that occur within 4 miles of active leks from March 1 to May 15.

FOREST SERVICE FINAL REMEDY:

Objection Resolution

Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan Amendment, Humboldt-Toiyabe NF

Objections from Wild Earth Guardians

Adopt C-LUSU-S-05 in place of B-LUSU-S-04. Change seasonal dates for C-LUSU-S-05 as follows to cover nesting and breeding seasons:

From: Do not authorize outfitter-guide activities in bi-state habitat that occur within 4 miles of active leks from March 1 to May 15.

To: Do not authorize outfitter-guide activities in bi-state habitat that occur within 4 miles of active leks from March 1 to June 30.

Accept/Reject Remedy: 
Erik Molvar
WildEarth Guardians

Relief Element 6: Implement RDEIS B-Min-G-05 to require a maximum 3% surface disturbance and one industrial site per square mile. C-Wild-S-04 should also apply across all programs and permitted activities, to clarify that the 3% maximum cumulative disturbance standard applies across all programs.

STANDARD AND GUIDES:

B-Min-G-05: Limit disturbances to an average of one site per 640 acres on average, with no more than 3% total anthropogenic surface disturbances. The intent of the guideline is to minimize disturbance foot print wherever possible.

FOREST SERVICE FINAL REMEDY:

Adopt B-Min-G-05, in Fluid Minerals. Change wording of B-Min-G-05 as follows:

From: Limit disturbances to an average of one site per 640 acres on average, with no more than 3% total anthropogenic surface disturbances. The intent of the guideline is to minimize disturbance foot print wherever possible.


To: Limit disturbances to an average of one site per 640 acres on average, subject to valid existing rights. The intent of the guideline is to minimize disturbance foot print wherever possible.

See Relief Element 3 for remedies related to anthropogenic disturbance caps.

Objection Resolution

Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan
Amendment, Humboldt-Toiyabe NF

Objections from Wild Earth Guardians

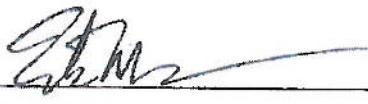
Reject Accept Remedy: 
Erik Molvar
WildEarth Guardians

Relief Element 7: Adjust lek buffers limiting all surface-disturbing activities and activities that cause stress or displacement to sage grouse to lands beyond 4.66 miles from active leks.

FOREST SERVICE FINAL REMEDY:

Science (Coates et al, 2013) indicates that the 95th percentile of nest distribution occurs within 3.1 mi (5 km) of leks. Buffer designations that extend 3.1 – 4.66 mi (5– 7.5 km) from all known lek locations are likely to limit both direct and indirect adverse effects to sage-grouse nesting associated with anthropogenic disturbance. Based on the science, activity-specific buffers in the selected alternative will be changed to 4 miles (6.4 km). See Relief Element 11 for additional details on buffers to be applied to specific activities and uses. No further remedy.

There is a guideline B-RI-G-01 which addresses fences: Do not install fences unless to protect habitat or for human health and safety. If fences must be installed, they should be at least 1.2 miles from and active or pending lek, and should be let-down fences when not needed for the purpose of their installation. The intent is to reduce perch opportunities for avian predators and to reduce risk of collision.

Accept/Reject Remedy: 
Erik Molvar
WildEarth Guardians

Objection Resolution

Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan Amendment, Humboldt-Toiyabe NF

Objections from Wild Earth Guardians

Relief Element 8:

8 a) The agency should apply C-Min-S-06 regardless of whether leases presently exist or not, and this would solve the problem.

STANDARD AND GUIDES:

***C-Min-S-06:** Upon expiration or termination of existing leases, do not consent to leasing if inquired by the BLM.

***C-Min-S-04:** For fluid minerals do not consent to leasing unless only under no-surface-occupancy stipulations without exceptions, modifications or waivers. (Note: This applies to all bi-state habitat whether or not it is located within the 4-mile lek buffer).

B-Min-G-05: Limit disturbances to an average of one site per 640 acres on average, with no more than 3% total anthropogenic surface disturbances. The intent of the guideline is to minimize disturbance foot print wherever possible.

FOREST SERVICE FINAL:

The agency adopted C-Min-S-06 in the draft ROD and will retain the standard (applicable to existing leases only) in the final ROD with the following change:

From: Upon expiration or termination of existing leases, do not consent to leasing if inquired by the BLM.

To: Upon expiration or termination of existing leases in bi-state DPS habitat, do not consent to leasing if inquired by the BLM. (Note: This applies to all bi-state habitat whether or not it is located within the 4-mile lek buffer).

The agency also adopts B-Wild-S-06 with edits shown below. B-Wild-S-06 will be moved to the All Resources section of Table ROD-1.

From: Require buffers, timing limitations, or offsite habitat restoration for new or renewed discretionary actions to mitigate potential long term impacts.

To: Subject to valid existing rights, require buffers, timing limitations, or offsite habitat restoration for new or renewed disturbance actions to mitigate potential long term impacts.

Accept/Reject Remedy:  _____

Objection Resolution

**Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan
Amendment, Humboldt-Tolyabe NF**

Objections from Wild Earth Guardians

Erik Molvar
WildEarth Guardians

8 b) If the lease is entirely within priority habitats, apply a 4-mile NSO around the lek, and limit permitted disturbances to 1 per section with no more than 3% surface disturbance in that section as follows:

FOREST SERVICE FINAL REMEDY:

No remedy. B-Min-G-05 (Relief Element 6), C-Min-S-04 (Relief Element 8d) and C-Min-S-06 (Relief Element 8a) are all part of the selected amendment.

As discussed for Relief Element 3, the spatial scale of the anthropogenic disturbance cap for all resources is the 4.7 mile active and pending lek buffers.

Accept/Reject Remedy:

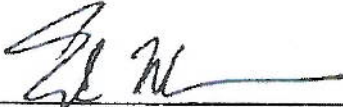

Erik Molvar
WildEarth Guardians

c) If the entire lease is within the 4-mile lek perimeter, limit permitted disturbances to 1 per section with no more than 3% surface disturbance in that section. Require any development to be placed at the most distal part of the lease from the lek, or, depending on topography and other habitat aspects, in an area that is less demonstrably harmful to sage-grouse.

FOREST SERVICE FINAL REMEDY:

No Remedy.

Accept/Reject Remedy:


Erik Molvar
WildEarth Guardians

Objection Resolution

Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan Amendment, Humboldt-Toiyabe NF

Objections from Wild Earth Guardians

D) The Forest Service should close sage grouse habitats to future fluid mineral leasing, per the science-based recommendations of its own experts, by implementing C-Min-S-06 not just for presently held leases but for unleased lands as well. In addition, the agency should implement B-Min-G-05 for existing leases (as a standard rather than a guideline as in the RDEIS and on a per-square-mile-section basis), and also 4-mile NSO buffers around leks, a maximum of one site per square-mile section, and other measures recommended for valid existing fluid mineral leases by the National Technical Team.

FOREST SERVICE FINAL REMEDY

No remedy. The EIS analyzed fluid mineral leasing standards and guidelines. For existing leases, the DROD included selection of C-Min-S-06. For new leases, the DROD also selected C-Min-S-04 which specifies "Do not consent to leasing unless only under no-surface-occupancy stipulations without exceptions, modifications or stipulations." The agency will not close all future leasing options and if NSO does not currently exist on existing leases we cannot require that of the operator.

See Relief Element 6 for discussion of B-Min-G-05.

Accept/Reject Remedy: 

Erik Molvar
WildEarth Guardians

Relief Element 9: The agency has identified March 1 through June 30 as the critical period to protect spring habitats, and the geophysical exploration timing limitation should apply throughout this period in identified breeding, nesting, and brood-rearing habitats. In addition, adopt B-Min-S-09 to require the least invasive geophysical methods feasible in sage grouse habitats.

FOREST SERVICE FINAL REMEDY

Combine B-Min-S-07 and B-Min-S-09 (Fluid Minerals) and modify as follows to apply buffer, extend winter seasonal restriction, and address both seismic and geophysical exploration.

From:

Objection Resolution

Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan Amendment, Humboldt-Toiyabe NF

Objections from Wild Earth Guardians

Current Language of B-Min-S-07: Require seasonal restriction November 1 to March 1 on geophysical exploration within winter habitats.

Current Language of B-Min-S-09: Apply the least invasive seismic exploratory method in habitat.

To: Between November 1 and June 30, seismic and geophysical exploration within 4 miles of an active or pending lek shall not be authorized. During other times apply the least invasive seismic and geophysical exploratory methods in habitat.

Accept/Reject Remedy: 
Erik Molvar
WildEarth Guardians

Relief Element 10: The Forest Service must apply adequate regulatory mechanisms on hard-rock mining projects that prevent unnecessary or undue degradation to sage grouse populations and their habitats in order to satisfy FLPMA, and in order to meet the Purpose and Need for this EIS.

To remedy the current deficiency, Forest Service should propose withdrawal of sage grouse habitats from future locatable mineral entry (applying C-Min-S-12), and on existing claims provide that surface facilities and disturbance be sited outside occupied habitat, and where this is not possible, limit surface disturbance to more than one site per square-mile section and no more than 3% cumulative surface disturbance (in effect, a more explicit and non-discretionary implementation of B-Min-G-13), and comply with other limitations on transmission lines, noise, and other impacts.

STANDARDS AND GUIDES:

B-Min-G-05: Limit disturbances to an average of one site per 640 acres on average, with no more than 3% total anthropogenic surface disturbances. The intent of the guideline is to minimize disturbance foot print wherever possible.

***C-Min-S-12:** Request that the BLM not issue permits for solid leasable mineral prospecting or mining in habitat.

Objection Resolution

Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan Amendment, Humboldt-Toiyabe NF

Objections from Wild Earth Guardians

B-Min-G-13: Request that the BLM not authorize new mine facilities on the surface unless there is no technically feasible alternative, and it has demonstrated no net loss of habitat, to minimize the disturbance footprint in habitat.

FOREST SERVICE FINAL REMEDY

1. Withdrawal of sage grouse habitats from future locatable mineral entry: No Remedy
2. Adopt a modified B-Min-G-05 as discussed in Relief Element 6.
3. Undue and Unnecessary language – Guardians proposes the following language: "For the purposes of this plan amendment, undue degradation is defined for the purposes of protecting the greater sage-grouse as surface disturbance exceeding one site per square mile or cumulative exceedance of the 3% surface disturbance standard."
 - a. While the agency will not adopt Guardians' proposed language regarding the definition of undue degradation, the agency has proposed multiple plan components in the draft ROD and changes to plan components as described in this and other relief elements that prevent unnecessary or undue degradation to sage-grouse populations and their habitat.

Accept/Reject Remedy: _____


Erik Molvar
WildEarth Guardians

Note: This proposed remedy is inconsistent with the FS Proposed Remedy we accepted for Relief Element 10 on the 6/1/15 document.

Relief Element 11: Ambient noise levels should be explicitly defined as 15 dBA under B-Min-S-01, after Ambrose and Florian (2014) in the significantly windier habitats of western Wyoming. This would place an upper limit of 25 dBA on noise levels in occupied sage grouse habitats. In addition, noise thresholds should be measured at the edge of occupied habitat rather than at the edge of the lek, and these noise limitations should apply around the clock, not just from 2 hours before sunset to 2 hours after sunrise.

FOREST SERVICE FINAL REMEDY

1. No remedy for request to define ambient noise levels as 15 dBA in B-Min-S-01. The 10 decibel above ambient noise limit in B-Min-S-01 comes from the NTT Report, which

Objection Resolution

Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan Amendment, Humboldt-Toiyabe NF

Objections from Wild Earth Guardians

describes ambient as 20-24db (regardless of noise source). B-Min-S-01 applies to Minerals – General.

2. Change B-AR-S-03:

From: Between March 1 and May 15, off-highway vehicle events that pass within 3 miles of an active and pending lek shall only take place during daylight hours after 10 a.m.

To: Between March 1 and June 30, off-highway vehicle events that pass within 4 miles of an active or pending lek shall not be authorized.

3. Replace B-LUSU-S-04 with C-LUSU-S-05. Change C-LUSU-S-05 as follows:

From: Do not authorize outfitter-guide activities in bi-state habitat that occur within 4 miles of active leks from March 1 to May 15.

To: Do not authorize outfitter-guide activities in bi-state habitat that occur within 4 miles of active leks from March 1 to June 30.

4. Adopt B-Min-S-03 (Minerals General) and edit as follows:

From: Apply timing restrictions in all bi-state DPS habitat areas to avoid construction, drilling, completion, and reclamation activities, including those of exploratory wildcat wells within seasonal habitat periods.

To: Apply timing restrictions between March 1 and June 30 within 4 miles of active or pending leks to avoid construction, drilling, completion, geophysical explorations, and reclamation activities, including those of exploratory wildcat wells.

5. See Relief Element 9 for discussion of B-Min-S-09.

Accept/Reject Remedy: 

Erik Molvar
WildEarth Guardians

Objection Resolution

Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan Amendment, Humboldt-Toiyabe NF

Objections from Wild Earth Guardians

Relief Element 12: Implement B-Fire-S-01 and B-Fire-G-06, which focus on protecting grouse habitat without the fragmentation and associated disturbance of "greenstripping." Instead of implementing B-Fire-G-01 and B-Fire-G-06 as guidelines, implement them as standards (i.e., for B-Fire-G-06, implement B-Fire-S-09) to assure certainty of implementation).

B-Fire-S-01: Fuels treatment projects shall not reduce sagebrush canopy cover to less than 15% of the treatment unit unless needed to meet fire management/protection objectives.

***B-Fire-G-06:** Do not use fire, including brush control, as a management tool in areas where there is threat of cheatgrass invasion, sagebrush areas with less than 12 inches of annual precipitation or 12 inches of soil, or areas where the sagebrush cover would be reduced to less than 15%.

B-Fire-G-01: Do not use fire as a management tool in areas where the risk of escaped fire could cause negative long-term impacts during wildfire situations.

C-Fire-G-01: Vegetation treatments should include fuel breaks to provide anchor points for wildland fire suppression to protect areas meeting or moving toward desired conditions to provide protection for habitat that is moving toward or meeting desired condition.

B-Fire-S-09: To reduce the risk of habitat loss related to management actions do not use fire as a management tool in areas where the risk of escaped fire could cause negative long-term impacts.

FOREST SERVICE FINAL REMEDY

1. Change B-Fire-G-06:

From: Do not use fire, including brush control, as a management tool in areas where there is threat of cheatgrass invasion, sagebrush areas with less than 12 inches of annual precipitation or 12 inches of soil, or areas where the sagebrush cover would be reduced to less than 15%.

To: Do not use prescribed fire, except for pile burning, in 12-inch or less precipitation zones, in areas where there is threat of cheatgrass invasion, or areas where the sagebrush cover would be reduced to less than 15% unless necessary to facilitate site preparation for restoration of Bi-State DPS habitat consistent with desired conditions.

2. Change C-Fire-G-01:

From: Vegetation treatments should include fuel breaks to provide anchor points for wildland fire suppression to protect areas meeting or moving toward desired

Objection Resolution

Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan Amendment, Humboldt-Toiyabe NF

Objections from Wild Earth Guardians

conditions to provide protection for habitat that is moving toward or meeting desired condition.

To: Vegetation treatments should include fuel breaks to provide anchor points for wildland fire suppression to protect areas meeting or moving toward desired conditions.

3. Both B-Fire-G-06 and C-Fire-G-01 will remain guidelines.

4. Remove C-Fire-G-02 from selected alternative:

C-Fire-G-02: Use fuel breaks and green strips to protect areas with >25% landscape sagebrush cover to provide protection for habitat that is moving toward or meeting desired condition.

5. Adopt B-Fire-G-05 in selected alternative:

B-Fire-G-05: Fuels treatments should emphasize protecting existing sagebrush ecosystems to provide protection for habitat that is moving toward or meeting desired condition.

Accept/Reject Remedy: 

Erik Molvar
WildEarth Guardians

Relief Element 13: Connectivity Habitat as delineated in FEIS Figure 3-1 should be treated as Sage Grouse Habitat for the purposes of all conservation measures adopted under the RMP amendment, and protections that apply in identified habitat should apply in connectivity areas as well.


FOREST SERVICE FINAL REMEDY

Clarify in ROD: The habitat used in the FEIS has been identified through modeling, telemetry, and field surveys/verification. Recognizing that all bi-state DPS habitat is of very high value and needs to be managed accordingly, the standards and guidelines in the proposed action/selected alternative apply to all areas mapped as habitat, including connectivity habitat.

Objection Resolution

Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan
Amendment, Humboldt-Toiyabe NF

Objections from Wild Earth Guardians

Accept Remedy: 
Erik Molvar
WildEarth Guardians

Relief Element 14: Include permit retirement enabling language as a reasonable alternative to address significant threats posed by livestock grazing to greater sage grouse. Permit retirement is a provision that has already been included in the proposed alternatives of a number of BLM sage grouse RMP amendment and/or revision EISs, including South Dakota, Billings – Pompey's Pillar, Bighorn Basin, and Miles City.

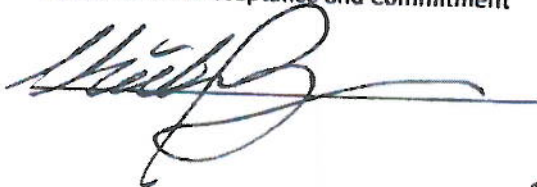
FOREST SERVICE FINAL REMEDY

Add new guideline to Table ROD-1: In bi-state DPS habitat, consider closure of grazing allotments, pastures, or portions of pastures or managing the allotment as a forage reserve consistent with maintaining sage-grouse habitat based on desired conditions as opportunities arise under applicable regulations, where removal of livestock grazing would enhance the ability to achieve desired habitat conditions (Amendment Table 1).

Accept/Reject Remedy: 
Erik Molvar
WildEarth Guardians

Signature by the Forest Service represents Forest Service acceptance of the above partial or complete objection issue withdrawal and Forest Service commitment to implement the remedies listed for the subject issues(s).

Forest Service Acceptance and Commitment



8/26/15

Objection Resolution

**Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan
Amendment, Humboldt-Toiyabe NF**

Objections from Wild Earth Guardians

Bill Dunkelberger, Forest Supervisor
Humboldt-Toiyabe National Forest

Date



George C. Iverson, Objection Reviewing Officer
/Deputy Regional Forester
Intermountain Region, USDA Forest Service

Date