

December 1, 2017

Submitted via BLM Web Site and Email

Ms. Johanna Munson
BLM-Idaho State Office
U.S. Department of the Interior
1387 South Vinnell Way
Boise, ID 83709
(208) 373-3834
BLM_sagegrouseplanning@blm.gov

Re: Request for Comment on the Bureau of Land Management Notice of Intent to Amend Land Use Plans Regarding Greater Sage-Grouse Conservation and Prepare Associated Environmental Impact Statements or Environmental Assessments; 82 *Fed. Reg.* 47248 (October 11, 2017)

To Ms. Munson:

The National Rural Electric Cooperative Association (NRECA) submits these comments in response to the request by the Bureau of Land Management (BLM) for input on land management issues that should be addressed in any potential resource management plan (RMP) amendments regarding greater sage-grouse conservation, 82 *Fed. Reg.* 47248 (October 11, 2017).

NRECA is the national service organization for America's electric cooperatives. NRECA represents the interests of the nation's more than 900 rural electric utilities and public power districts responsible for keeping the lights on for more than 42 million people across 47 states. Co-ops are member-owned, not-for-profit small businesses serving member-consumers facing significant economic challenges, especially in rural areas. Affordable electricity is the lifeblood of the American economy, and for 75 years electric co-ops have been proud to keep the lights on. Because of their critical role in providing affordable, reliable, and universally accessible electric service, electric cooperatives are vital to the economic health of the communities they serve. On behalf of its members, NRECA serves as an advocate for legislative and regulatory policies that are scientifically sound, cost-effective, and balance consumer interests and environmental protection.

NRECA membership includes sixty electric cooperatives that have greater sage-grouse habitat within their service territory and subsequently, operate under the BLM RMPs. Electric cooperatives have a legal obligation to serve their members by providing safe, reliable, and affordable electric service within those areas. To do so, they construct, own, operate, and maintain generation facilities, transmission and distribution lines, substations, and other electrical infrastructure.

For years, NRECA members have been actively engaged in state and federal initiatives to provide greater sage-grouse conservation. This includes playing a key role in the BLM RMP development that ensured power line construction and maintenance could continue responsibly. These collaborative efforts ultimately made Endangered Species Act (ESA) protections unnecessary for the greater sage-

grouse. Accordingly, BLM's review and potential plan amendments are important to NRECA and its members, their operations and continued ability to meet their public service obligations.

NRECA's comments focus on ways to improve the BLM RMPs to alleviate unnecessary burdens to electric cooperatives and local economies, while continuing to afford protection for the greater sage-grouse. NRECA and its members urge the BLM to ensure that any potential plan amendments retain the finding that ESA listing is not warranted.¹ Further, the US Forest Service (USFS) recently initiated a similar public scoping process on potential greater sage-grouse land management plan amendments.² The BLM should coordinate its review and amendment efforts with the USFS to ensure any changes to the conservation strategies remain consistent, cost-effective, and streamlined across both agencies.

1) Align with State Plans.

Early in the RMP development process, the BLM collaborated with affected states to ensure alignment with state-by-state land use planning approaches and greater sage-grouse conservation strategies. However, there are several instances where the final approved RMPs deviated from some individual state plans leading to inconsistent and more stringent requirements for cooperatives and other project proponents. This presents numerous challenges, confusion, as well as increased costs and project delays, for electric infrastructure that crosses both federal and state lands. NRECA and its members recommend the BLM revise RMPs to better align them with all state plans to promote greater conformity. Each state has different greater sage-grouse management issues and therefore, the BLM should ensure amendments still provide flexibility to tailor RMP implementation on a state-by-state, local, and project-specific basis. Some state plans already include this flexibility and should be used as reference when revising the RMPs.

2) Revise Mitigation Standards.

NRECA and its members recognize mitigation as a valuable tool to address potential impacts to the greater sage-grouse and aid efforts to prevent future ESA listing. However, the RMPs require onerous, costly standards that are inconsistent with and go beyond BLM statutory authority under the Federal Land Policy and Management Act (FLPMA) by following the mitigation hierarchy (avoid, minimize, and compensate), incorporating compensatory mitigation, and requiring that a "net conservation gain" be provided to the species. These concepts, as well as the BLM's authority to address impacts of its land use authorizations through mitigation,³ are currently in question and under review by the Administration. Presidential Memorandum (November 3, 2015) and Department of the Interior (Interior) Secretarial Order 3330 (October 13, 2013) have been rescinded and revoked, respectively,⁴ which directed the use of such standards mentioned above. The BLM should remove these unlawful, overreaching provisions when considering RMP amendments.

Further, proposed electric infrastructure construction and rebuild projects already undergo extensive planning, designing, and siting efforts to avoid and minimize impacts to natural resources. These steps are completed in consultation with state and federal resource agencies and often results in electric

¹ 80 *Fed. Reg.* 59857 (October 2, 2015).

² 82 *Fed. Reg.* 55346 (November 21, 2017).

³ Interior Solicitor M-37046 (June 30, 2017) revoked and withdrew M-37039 (December 21, 2016), which concluded that FLPMA did provide BLM with the authority to require mitigation.

⁴ *Via*: Executive Order 13783 (March 28, 2017) and Interior Secretarial Order 3349 (March 29, 2017), respectively.

cooperatives implementing numerous project-specific measures to off-set impacts that should be considered “mitigation” but are currently not counted when determining mitigation requirements. For example, projects may be located to parallel with other existing linear infrastructure or disturbances, have activities restricted seasonally and/or spatially, or have design and/or project location altered, among other project-specific best management practices. These tailored efforts add significant cost and delays to projects, but are used to avoid and minimize impacts to greater sage-grouse and its habitat. Therefore, the BLM should ensure project proponents get “credit” for these voluntary avoidance and minimization actions and that in appropriate cases additional “mitigation” may not be necessary. This would encourage implementation of voluntary avoidance and minimization measures for the benefit of greater sage-grouse, while reducing the overall economic impact to electric cooperatives and other project proponents.

3) Amend Required Design Features.

RMP required design features (RDFs) establish minimum specifications for certain activities, including energy infrastructure development, to mitigate impacts to greater sage-grouse. For electric cooperatives and other utilities, undergrounding power lines or installing perch discouragers are often the only mitigation options given for rights-of-way permit application or renewal in greater sage-grouse habitat. Myriad financial, environmental, and efficacy risks result from both approaches that outweigh the alleged benefits to the species, which have yet to be proven effective.

Undergrounding power lines is not always feasible due to costs, consumer needs, federal safety code requirements, line voltage, terrain, and other factors. A major constraint for electric cooperatives is the increased costs incurred when burying lines. Numerous studies have shown that costs are 4 to 17 times more than constructing overhead lines (APLIC 2015).⁵ These costs are passed directly to electric cooperative member-consumers and have a real, substantive negative impact on local economies. Another concern includes the unintended consequences like habitat modification and introduction of invasive species from required surface disturbance activities during installation, periodic inspection, and maintenance of underground power lines. These concerns are also important because the life span of an underground power line is about half that of an overhead line.

The installation of perch discouragers is a RDF aimed at eliminating or reducing artificial hunting perches and nesting surfaces for aerial predators of greater sage-grouse like raptors and corvids. However, many studies have shown this rigid requirement is ineffective at deterring perching and may even increase electrocution risk of sensitive species like golden eagles (APLIC 2006⁶ and 2015). Therefore, these devices are no longer considered industry best practice. Other alternatives are available like using equipment “coverups” that can be more effective at achieving desired results.

Therefore, undergrounding and perch discouragers should only be applied in limited circumstances where they are proven effective and warranted based on risk instead of as an inflexible, one-size-fits-all requirement. Greater flexibility in RDFs is also necessary to address project-specific conditions to

⁵ See: Avian Power Line Interaction Committee (APLIC). 2015. *Best Management Practices for Electric Utilities in Sage-Grouse Habitat*. Edison Electric Institute and APLIC. Washington, DC.

⁶ See: Avian Power Line Interaction Committee (APLIC). 2006. *Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006*. Edison Electric Institute, APLIC, and the California Energy Commission. Washington, DC and Sacramento, CA.

ensure that the BLM is not being overly prescriptive. The RMPs should be revised to clarify that RDFs are best management practices (BMPs) that will be applied as appropriate once projects are analyzed on a case-by-case basis. The RDF's should also acknowledge the proportionate level of potential impacts between single and three phase distribution power lines and between distribution power lines and transmission lines. In addition, new and emerging science and industry best practices should be taken into consideration. For example, the Avian Power Line Interaction Committee (APLIC) publishes utility-specific suggested BMPs for addressing avian issues, including those developed in 2015 for greater sage-grouse (APLIC 2015). APLIC publications are living documents, incorporating the best available science, that are developed in conjunction with electric utilities, the BLM, US Fish and Wildlife Service, and state wildlife agencies. The existing RMPs should be reviewed and adjusted, where necessary, to consistently refer to APLIC BMPs as guidelines rather than standards. The BLM should also allow project proponents a choice to apply RDFs or recognized industry best practices like APLIC suggested guidelines during case-by-case project reviews when appropriate, feasible, and applicable.

4) Clarify Application and Size of Lek Buffer-Distances.

The BLM inconsistently applies fixed lek buffer-distances and often, the distances are incompatible with state requirements. This is particularly troublesome as it affects RDFs. For example, NRECA members have received rights-of-way permits that have required blanket installation of avian perch discouragers where no lek buffer is specified and other permits where the devices were only required within 4 or 3.2 miles of a lek. The BLM should clarify the application of lek buffers, adopt the least restrictive standard radius, and address the impacts of topography and trees on the effectiveness of buffers. For example, perch discouragers provide no benefit when nearby trees are taller than the power line. There are also circumstances where large buffers cross ridges and hills that are much taller than the power line, so the potential perch has no value to a potential predator.

5) Clarify Disturbance and Density Caps.

The RMPs include a process for calculating the amount of surface disturbance and density. Disturbances of more than 5 percent within given greater sage-grouse habitat are prohibited. Clarity is needed regarding the calculations to better understand where the caps should apply. The scientific basis for setting 5 percent disturbance caps is also unclear. The BLM should clarify the calculation process, as well as ensure the caps, if warranted, are based on best available science.

The RMPs also calls for proposed projects to be co-located in existing disturbed areas or otherwise be deferred. Co-location, particularly of high voltage power lines, is not possible and the BLM should instead incorporate the concept of "paralleling" rather than "co-location" into revised RMPs. When the disturbance cap has already been filled, NRECA members are forced to delay necessary projects. For example, one NRECA member recently experienced this issue with a new distribution line rights-of-way application. Despite all efforts to site the line in close proximity to other existing anthropogenic disturbances, their application has yet to be approved. NRECA and its members request greater flexibility and exceptions regarding the disturbance caps to accommodate the co-location, paralleling, or clustering of projects in areas that are already disturbed. In some cases, the cumulative disturbance has so greatly diminished the habitat potential that additional disturbances would have negligible impacts to the greater sage-grouse. Further, disturbance caps have the potential to cause unnecessary habitat fragmentation when projects can be relocated to areas that have not reached disturbance caps.

6) Use Habitat Availability Targets for Species Management.

The recent Interior Sage-Grouse Review Team Report (August 4, 2017) includes a recommendation on setting population targets for managing and conserving the species. While this approach may be useful and scientifically-supported for large, big game species, NRECA and its members do not support its use for managing greater sage-grouse or similar avian species. Greater sage-grouse populations naturally fluctuate, up and down from year to year, in response to changes in habitat conditions mainly influenced by weather, wildfire, and other factors. These commonly occurring changes in population numbers can vary widely within states and across the species range. Thus, establishing a statewide or range-wide population target would be an unreliable and biologically-incompatible approach for estimating greater sage-grouse viability and BLM RMP success.

Energy development and other activities could be significantly delayed or indefinitely blocked if land use authorizations were pursued during a period when the species population was estimated below the target. This places electric cooperatives at risk for not meeting grid reliability, resiliency, and safety obligations. Cooperatives need timely authorization to construct, rebuild, and maintain electric infrastructure to avoid wildfires, power outages, and other risks to system integrity and public safety. Due to these factors, NRECA believes habitat availability targets are ultimately the best method for managing the species and providing greater certainty for energy infrastructure. NRECA and its members strongly encourage the BLM to continue the use of habitat availability targets.

Conclusion

Development of the RMPs was a historic example of collaboration that has been effectively used to conserve greater sage-grouse and its habitat. Again, NRECA urges the BLM to ensure any changes avoid the need for listing the greater sage-grouse as a threatened or endangered species under the ESA. NRECA appreciates this opportunity to provide recommendations for RMP amendments and we welcome an opportunity to discuss these issues further with your team.

Sincerely,



Janelle Lemen
Regulatory Director, Environmental Policy
National Rural Electric Cooperative Association

cc: T. Cromwell, NRECA
R. Cronmiller, NRECA
P. Sharma, SBA Office of Advocacy
D. Rankin, RUS