

January 19, 2018

Submitted via *Federal Register* and Email

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Sage-grouse Amendment Comment
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Re: Request for Comment on the USDA Forest Service Notice of Intent to Amend Land Management Plans for Greater Sage-Grouse Conservation and Prepare an Associated Environmental Impact Statement; 82 *Fed. Reg.* 55346 (November 21, 2017)

To Mr. Shivik:

The National Rural Electric Cooperative Association (NRECA) submits these comments in response to the request by the USDA Forest Service (FS) for input on greater sage-grouse land management issues that could warrant land management plan (LMP) amendments, 82 *Fed. Reg.* 55346 (November 21, 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. Given their critical role in providing affordable, reliable, and universally accessible electric service, electric co-ops 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.

The service territories of certain NRECA members overlap with the range of the greater sage-grouse and subsequently, they operate under the FS LMP amendments covering the Rocky Mountain and Great Basin regions. 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 developing the FS LMP amendments to ensure 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, the FS 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 FS LMP amendments to alleviate unnecessary burdens to electric cooperatives, while continuing to afford protection for the greater sage-grouse. NRECA and its members urge the FS to ensure that any potential plan amendments retain the finding that ESA listing is not warranted.¹ Further, the Bureau of Land Management (BLM) recently concluded a similar public scoping process, in which NRECA and its members participated.² The FS should coordinate its review and amendment efforts with the BLM 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 LMP development process, the FS 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 LMP amendments 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 FS revise the LMP amendments to better align them with all state plans to promote greater conformity. Each state has unique greater sage-grouse management issues and therefore, the FS should ensure amendments still provide flexibility to accommodate differences 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 LMPs.

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 LMP amendments require onerous, costly standards that are inconsistent with and go beyond FS statutory authority under the National Forest Management Act (NFMA) 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 are currently in question and under review per Executive Order 13783 (March 28, 2017). The FS should remove these unlawful, overreaching provisions when considering LMP 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 result in electric cooperatives implementing numerous project-specific measures to offset impacts that should be

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

² 82 *Fed. Reg.* 47248 (October 11, 2017).

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 costs and delays to projects, but are used to avoid and minimize impacts to greater sage-grouse and its habitat. Therefore, the FS 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 Special-Use Authorization Stipulations.

The LMP amendments establish minimum standards 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 deterrents are often the only options given for special-use permit authorizations in greater sage-grouse habitat. Myriad financial, environmental, and efficacy risks result from both approaches that outweigh the alleged benefits to the species, and 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 cost incurred when burying lines. Numerous studies have shown that costs are 4 to 17 times more than constructing overhead lines (APLIC 2015).³ These costs are passed directly to electric cooperative member-consumers and have a real, substantive negative impact on local economies. Other concerns include 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 compounded given that the life span of an underground power line is about half that of an overhead line.

The installation of perch deterrents is a stipulation 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 these devices are ineffective at deterring perching and may even increase electrocution risk of sensitive species like golden eagles (APLIC 2006⁴ and 2015). Due to these concerns, perch deterrents are no longer considered industry best practice. The FS should amend the LMPs to emphasize perch deterrent installation is voluntary and should only be used on a case-by-case basis.

Overall, both undergrounding and perch deterrents should only be applied as permit stipulations in limited circumstances where they are proven effective and warranted based on risk, instead of a blanket

³ 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.

⁴ 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.

requirement. Greater flexibility in permit stipulations is also necessary to address project-specific conditions to ensure that the FS is not being overly prescriptive. The LMP amendments should be revised to clarify that permit stipulations are best management practices (BMPs) that will be applied as appropriate once projects are analyzed on a case-by-case basis. Permit stipulations 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 and natural resource agencies. The existing LMPs should be reviewed and adjusted, where necessary, to consistently refer to APLIC BMPs as guidelines rather than standards. The FS should also allow project proponents a choice to apply undergrounding, perch deterrents, 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 FS inconsistently applies fixed lek buffer-distances and often, the distances are incompatible with state and BLM requirements. The FS should clarify the application of lek buffers and ensure consistency with state and BLM conservation plans. Further, the FS should adopt the least restrictive standard radius based on best-available scientific literature and then allow buffer size adjustments given project site conditions, existing disturbances, topography and other local factors.

5) Clarify Disturbance and Density Caps.

The LMP amendments include a process for calculating the amount of surface disturbance and density. Disturbances of more than 3 percent (or 5 percent in some areas) 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 3 (or 5) percent disturbance caps is also unclear. The FS should clarify the calculation process, as well as ensure the caps, if warranted, are based on best-available science.

The LMP amendments also call 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 FS should instead incorporate the concept of “paralleling” rather than “co-location” into revised LMPs. When the disturbance cap has already been filled, NRECA members are forced to delay necessary projects. 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 must be relocated to areas that have not reached disturbance caps.

6) Use Habitat Availability Targets for Species Management.

The BLM is considering setting population targets for managing and conserving the species based on recent Interior Sage-Grouse Review Team Report (August 4, 2017) recommendations. NRECA and its members have strongly encouraged the BLM to continue the use of habitat availability targets. While population targets 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 conservation 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. Therefore, NRECA and its members also strongly encourage the FS to continue the use of habitat availability targets in any revisions to LMP amendments.

Conclusion

Development of the LMP amendments was a historic example of collaboration that has been effectively used to conserve greater sage-grouse and its habitat. Again, NRECA urges the FS 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 LMP amendments and we welcome an opportunity to discuss these issues further with your team.

Sincerely,



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