



December 1, 2017

VIA EMAIL & U.S. MAIL

Jamie Connell, State Director
Oregon/Washington Bureau of Land Management
Greater Sage-grouse NOI/Attn: Molly Anthony
1220 SW 3rd Avenue
Portland, OR 97204
BLM_sagegrouseplanning@blm.gov

Re: Notice of Intent to Amend Land Use Plans Regarding Greater Sage-Grouse Conservation and Prepare Associated Environmental Impact Statements or Environmental Assessments

Dear Ms. Connell:

On behalf of the Oregon Natural Desert Association, Audubon Society of Portland, Central Oregon LandWatch, Greater Hells Canyon Council, Oregon Wild, and Soda Mountain Wilderness Council (collectively, "ONDA"), please accept the following comments regarding the 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. 47,248 (Oct. 11, 2017).

INTRODUCTION

Greater sage-grouse (*Centrocercus urophasianus*) are a symbol of the Intermountain West. But sage-grouse are in trouble. As many as 16 million of these iconic birds once ranged across 297 million acres of sagebrush grasslands, an area of western North America so vast it is called the "sagebrush sea." But over the past 200 years, agriculture and development have reduced sage-grouse range by nearly half, and sage-grouse populations have steadily declined. In 2010, the Department of the Interior's expert wildlife agency, the U.S. Fish & Wildlife Service ("USFWS"), determined that the Greater sage-grouse is "warranted" for protection under the Endangered Species Act, 16 U.S.C. §§ 1531–43. 12-Month Findings for Petitions to List the Greater Sage-Grouse (*Centrocercus urophasianus*) as Threatened or Endangered, 75 Fed. Reg. 13,910 (Mar. 23, 2010). Scientists believe that the fate of the sage-grouse may be a harbinger for at least 350 other species dependent upon the West's sagebrush habitats.

In 2015, the Bureau of Land Management ("BLM") unveiled a series of landscape-scale plans to protect the Greater sage-grouse and its sagebrush habitats on public lands across the West, including Oregon, which provides about 20% of this iconic and imperiled bird's remaining

range. Notice of Availability of the Record of Decision and Approved Resource Management Plan Amendments for the Great Basin Region Greater Sage-Grouse Sub-Regions of Idaho and Southwestern Montana; Nevada and Northeastern California; Oregon; and Utah, 80 Fed. Reg. 57,633 (Sept. 24, 2015). The new federal plans represent an important step forward for sage-grouse conservation and this was the main factor the USFWS cited in revising its earlier decision and determining in 2015 that the sage-grouse was now “not warranted” for listing under the Endangered Species Act. 12-Month Findings on a Petition to List Greater Sage-Grouse (*Centrocercus urophasianus*) as an Endangered or Threatened Species, 80 Fed. Reg. 59,858, 59,871, 59,887 (Oct. 2, 2015).

Less than two years later, on June 7, 2017, Secretary of the Interior Ryan Zinke issued Secretarial Order 3353, “Greater Sage-Grouse Conservation and Cooperation with Western States,” directing a review of the federal sage-grouse plans. On August 4, 2017 the Department of the Interior Sage-Grouse Review Team issued its “Report in Response to Secretarial Order 3353.” The Report identified a series of short- and long-term options to generally weaken or remove protections or processes established in the 2015 plans. And on October 11, 2017, BLM published its Notice of Intent to undertake re-scoping and amend land use plans across the West regarding Greater sage-grouse conservation.

As Oregon’s only conservation organization dedicated exclusively to protecting eastern Oregon’s native deserts, the Oregon Natural Desert Association has long been committed to addressing the plight of the Greater sage-grouse. We were among the nearly 70 organizations that in 2003 petitioned the USFWS to consider the species for listing under the Endangered Species Act. We and our conservation partners who join us on this letter are concerned that if the Department of the Interior rolls back the vital protections established in the ARMPA, the Greater sage-grouse and the vast, sagebrush habitats it relies upon for survival from one year to the next will be vulnerable to extirpation given the urgency of the bird’s conservation status.

Until recently, Oregon was the only state whose Greater sage-grouse Approved Resource Management Plan Amendment (“ARMPA”) was not subject to any direct challenge in federal court. Among other reasons, BLM’s sage-grouse plan for Oregon resulted in large measure from the collaborative work undertaken by the Governor of Oregon’s Sage Grouse Conservation Partnership (“SageCon”). Expressly supporting community sustainability in central and eastern Oregon into the future, the SageCon group sought to coordinate federal, state, and local efforts to address the multiple threats to sage-grouse across the eastern Oregon sagebrush landscape. A broad cross-section of stakeholders including state and local governments, ranchers, landowners, conservation groups and others, worked to create a plan that most felt was an important first step in the difficult task of saving the Greater sage-grouse from extinction.

During BLM’s sage-grouse conservation planning process, ONDA participated extensively with agency staff, in numerous public forums, discussing sage-grouse management and providing written comments during all phases of the NEPA and planning processing leading to the ARMPA. We attach, incorporate by reference, and re-affirm the input, analysis, citations to scientific literature, and policy recommendations included in ONDA’s March 23, 2012 scoping comments; February 19, 2014 comments on the Oregon Sub-Region Greater Sage-grouse Draft Resource Management Plan Amendment and Environmental Impact Statement;

July 30, 2014 further comments and Notice of Factual Development regarding the Oregon Sub-Region Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement; and June 29, 2015 administrative protest of the Oregon Sub-Regional Greater Sage-Grouse Proposed Resource Management Plan Amendment and Final Environmental Impact Statement, including all references cited in and other documents attached to those letters.¹

For these reasons and those further discussed below, ONDA opposes changes to the ARMPA and urges BLM in the strongest possible terms not to amend the ARMPA. If the plan amendments are revised or amended, they should provide greater, not lesser, protection—including eliminating the non-science-based Lake-Harney-Malheur counties carve-out for solar and wind energy transmission lines and rights-of-way; include genetic connectivity corridors and identified winter habitat within Priority Habitat Management Areas (“PHMA”); buffering leks to prevent impacts from known disturbances; providing clear management actions to benefit sage-grouse habitat with regard to timing of making changes to grazing management, temporal limitations on turnout and trailing, standards for riparian areas, addressing water quantity, and quantifying grazing management responses; ensuring that grazing allotments are meeting science-based standards for sagebrush habitat integrity; eliminating vegetation treatments that degrade sagebrush habitat; limiting disturbances particularly in priority habitats; refraining from fluid mineral leasing in priority habitats; withdrawing sagebrush habitats from locatable mineral entry; and preserving priority habitats through a network of areas of critical environmental concern and other core, focal areas managed to ensure the survival and recovery of the Greater sage-grouse.

SUMMARY OF ISSUES

ONDA’s opposes amending the ARMPA and weakening sage-grouse habitat protections on the basis of our long-standing interest in stabilizing and recovering Greater sage-grouse populations through meaningful habitat protection. One of the key factors behind the USFWS “not warranted” determination in 2015 was the regulatory certainty provided by the ARMPA along with other sage-grouse conservation plans range wide. This certainty can only be maintained if the ARMPA and other plans are maintained and implemented. Amending the ARMPA is nearly certain to bring about new and renewed endangered species listing petitions, generating animosity, uncertainty, and diminished conservation effort. In Oregon, the ARMPA must remain consistent with the “Oregon Sage-Grouse Action Plan” (Sage-Grouse Conservation Partnership 2015). The Plan was developed in conjunction with the ARMPA and the plans rely on one another to ensure effective management across all land tenure types.

Related to regulatory certainty and consistency with the Oregon Sage-Grouse Action Plan is our concern that amending the ARMPA will have detrimental impacts to the Oregon sage-grouse stakeholder collaboration. Any effort to amend the ARMPA will assure a breakdown of the unprecedented collaboration and coordination among Oregon stakeholders that is a result of

¹ ONDA attaches electronic copies of these documents on CD-ROM to the hard copy of this letter delivered via U.S. Mail to the Oregon/Washington BLM State Office. The CD-ROM also includes additional scientific references cited in this letter.

the planning processes for the ARMPA and State Action Plan. Hundreds of local stakeholders—both individuals and organizations—invested years, even decades, of work that culminated in these two plans. Top-down changes to the ARMPA will spoil that collaboration and lead to a breakdown in support for stakeholder-driven conservation, give rise to litigation and set back more than a decade of forward progress for the Greater sage-grouse and for conservation more generally. This would be directly contrary to the Order’s goals related to enhancing cooperation and supporting partnerships with States.

Furthermore, an insufficient amount of time has passed since issuance of the ARMPA for plan provisions to be implemented and given a chance to work. This lack of adequate time prevents BLM, USFWS, and partner organizations from being able to detect beneficial or adverse changes to habitat or populations as a result of plan actions. In other words, not enough has yet been done to generate an environmental baseline against which any proposed changes may be reasonably assessed.

To the degree that plan actions are resulting in benefits to sage-grouse habitat or populations those benefits will be obfuscated by changes to the ARMPA, and possibly lost altogether. The confusion or loss of measurable benefits to sage-grouse habitat and populations will only enhance uncertainty surrounding the species’ conservation status and will be further reason that the species should be reconsidered for listing under the Endangered Species Act.

Whether or not amending the ARMPA would result in a need to list sage-grouse under the Endangered Species Act listing should be pivotal in considering whether any amendment should move forward. ONDA strongly suggests that the existing ARMPA is a *minimum* threshold for regulatory certainty and meaningful conservation actions. Should the ARMPA be amended to weaken conservation measures ONDA would seek reconsideration of Greater-sage grouse endangered species status during the 2020 USFWS status review, or sooner, in order to ensure that conservation actions continue to benefit sage-grouse habitat and populations.

ONDA is also concerned that the Order, the Report, and the Notice of Intent disregard the ample flexibility and adaptability built into the existing ARMPA. ARMPA provisions such as adaptive management triggers, adjustments to habitat standards based on site potential, disturbance caps, avoidance areas, optional retirement of grazing permits, and other plan decisions are infused with ample manager discretion to give BLM flexibility in permitting land uses in sage-grouse habitat and in determining which on-the-ground actions should take place to best manage sage-grouse habitat. If the purported basis for this plan amendment is increased flexibility, that is spurious reasoning in light of existing plan flexibility—and amendments along the lines of those outlined in the Report would be both unnecessary and harmful.

For these reasons and the additional information below we urge BLM not to amend the ARMPA, to utilize the existing flexibility in the ARMPA to continue implementing appropriate multiple-use and conservation management and to allow the monumental sage-grouse conservation effort to proceed without this undue, top-down interference.

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DISCUSSION

I. REGULATORY CERTAINTY

The ARMPA guides the management of Greater sage-grouse habitat on more than 12 million acres of public land administered by the Burns, Lakeview, Prineville, and Vale BLM Districts in Oregon. The ARMPA was one of the primary factors the USFWS cited in determining that the Greater sage-grouse was “not warranted” for listing under the Endangered Species Act in 2015. 80 Fed. Reg. at 59,871, 59,887. In that determination, the USFWS specifically cited its reliance upon the habitat protections set forth in the new plans including restrictions on oil and gas development and mining, disturbance caps, lek buffers, required design features intended to mitigate impacts, and the net conservation benefit mitigation standard. In that determination, the USFWS found these ARMPA provisions, among others, would provide adequate regulatory mechanisms to reduce the threats of human-caused habitat disturbance on the most important sage-grouse habitats. *See* 80 Fed. Reg. at 59,934.

The 2015 not warranted finding relied upon the ARMPA in its entirety. The ARMPA was written, in part, to assure USFWS that meaningful sage-grouse conservation would be implemented. The agencies and stakeholders who had worked to develop the ARMPA proffered the ARMPA as the primary mechanism to provide the certainty needed to address ESA § 4(a)(1) listing factors A (destruction, modification, or curtailment of the habitat or range) and D (inadequacy of existing regulatory mechanisms). The 2015 finding did not anticipate further plan amendments and could not have anticipated whether such amendments would or would not sufficiently protect Greater sage-grouse habitat and populations. Weakened ARMPA provisions would not have then, and will not now, be sufficient to reach that same determination. Weakening the ARMPA should and would lead to the need for an Endangered Species Act listing.

II. CONSISTENCY WITH THE OREGON SAGE-GROUSE ACTION PLAN

The Oregon Sage-Grouse Action Plan was expressly designed to work in concert with the ARMPA (Sage-Grouse Conservation Partnership 2015). The “all lands, all threats” approach used in Oregon is intended to ensure that all values and threats within the range of sage-grouse in Oregon can be addressed in a thoughtful manner that benefits sage-grouse without undue or unreasonable restrictions on or impacts to other land uses.

Amending the ARMPA will necessarily expose BLM to inconsistency with the Action Plan. Plan elements such as focal, priority and general habitat designations, disturbance caps, application of the mitigation hierarchy, State of Oregon and BLM joint administration of disturbance calculations, optional grazing permit retirement, and the compensatory mitigation framework have all been designed such that State plan elements and ARMPA plan elements work in concert.

For example, the Report questions whether the Oregon ARMPA’s provision for optional grazing permit retirement runs “counter to State interests in working lands and habitat health.” Report Appendix A AT 12. The answer is “no.” The ARMPA’s MD LG 15 provides that “[a]t

the time a permittee or lessee voluntarily relinquishes a permit or lease, the BLM will consider whether the public lands where that permitted use was authorized should remain available for livestock grazing or be used for other resource management objectives, such as reserve common allotments.” ARMPA at 2-21. This provides common sense flexibility so that local land managers can make decisions based on local conditions. That is consistent with the BLM National Technical Team’s recommendation to “[m]aintain retirement of grazing privileges as an option in priority sage-grouse areas” (NTT 2011). And it is consistent with the Oregon Sage-Grouse Action Plan’s emphasis on “steering [human disturbance] activities away from the most important and sensitive areas in order to avoid habitat fragmentation and other impacts” and also flexibility to provide “grass banks” where and when appropriate.²

The Report similarly questions whether the Oregon ARMPA’s decision to remove livestock grazing from a small subset of Research Natural Areas (“RNA”) is consistent with the Oregon Sage-Grouse Action Plan. Report Appendix A at 11. Yes: it is. The Oregon ARMPA identifies “key” RNAs that were previously designated in underlying land use plans to protect “intact representative native plant communities” and which today are recognized as being important for Greater sage-grouse both for (1) their high habitat value (lying within PHMA-designated areas, and containing essential breeding, nesting, brood-rearing, foraging, breeding or wintering habitat) and (2) their high management value, in terms of gauging plan effectiveness. See ARMPA at 5-11 to -12 (defining “Key research natural area”).

In particular, these areas “provide baseline vegetation information to document successional changes, to serve as areas for comparison to treated areas, and to document future vegetation shifts in the plant communities from changes in precipitation and temperature (climate change).” ARMPA at 5-12; *see also* ARMPA at 2-33 (Objective SD 4, providing that BLM will manage “key RNAs, or large areas within the RNAs,” as “undisturbed baseline reference areas for the sagebrush plant communities they represent that are important for Greater Sage-grouse” and will “allow[] natural succession to proceed”). The only way BLM can assess whether the ARMPA has been effective in conserving sage-grouse habitats and populations is to set aside key baseline areas like these in order to measure natural succession and recovery in the absence of human-caused degradation.

Again, this is consistent with the Oregon Sage-Grouse Action Plan’s emphasis on providing for “working lands” where appropriate, but steering human-caused disturbance activities away from the most important habitat areas. The ARMPA explained that on BLM-managed lands in Oregon, 12,083,622 acres will continue to be available for livestock grazing in Greater Sage-grouse habitat, while just 22,765 acres will be unavailable to grazing in key RNAs. ARMPA at 2-18 (Table 2-6). This is an extraordinarily modest initial withdrawal of areas

² In fact, the Oregon ARMPA is the only plan amendment that provides for option grazing permit retirement. If anything, every Plan should be amended to allow BLM the flexibility to retire voluntarily relinquished grazing permits for allotments within sage-grouse habitats. Because land use plans are the appropriate place to determine various land uses and to weigh the relative values of the lands at issue, consideration for and facilitation of permit retirement following permit relinquishment should be included in every amendment.

available to grazing. If anything, BLM should protect more, and more diverse, key areas in essential, core sage-grouse habitats, including key genetic and habitat connectivity corridors. *See also* Section V.1., *infra* (discussing genetic connectivity).

In sum, any changes to the ARMPA will leave BLM in a position of inconsistent and lesser management when compared to the State of Oregon plan. Such a scenario would clearly illustrate a failure to address the listing factors under ESA and create a clear and necessary path to listing.

III. OREGON COLLABORATION

In her 2015 Executive Order 15-18 adopting the Oregon Sage-Grouse Action Plan,³ Governor Kate Brown explained that it is in Oregon’s best interests to ensure that the significant investments that Oregon stakeholders have made in conservation are supported to foster economic prosperity and a healthy environment. Contrary to the clear goal of the Action Plan, the goals of the Order, the Report, and the Notice of Intent are not in fact aligned with strong collaboration and are sure to impact the already successful Oregon SageCon process and collaborative relationships among stakeholders working on ARMPA implementation. Such an outcome would be detrimental to conservation progress and certain to interfere with the goals and plans of all stakeholders with an interest in sage-grouse habitat and populations in eastern Oregon.

IV. INSUFFICIENT TIME FOR THE ARMPA TO WORK

Implementation of the ARMPA is incomplete. Although some provisions of the ARMPA have begun to be implemented, not all of the land use management decisions have taken full effect. Where ARMPA provisions have been implemented an insufficient amount of time has passed to be able to evaluate their *effectiveness* in conserving and restoring habitat to ensure the survival and recovery of the Greater sage-grouse.

For example, baseline levels of disturbance related to the disturbance caps established in ARMPA Management Decisions SSS-4 and SSS-6 have only recently been calculated and refined through a joint BLM-State of Oregon effort and have only been evaluated with respect to a small number of proposed projects. Any alteration to the disturbance caps, baseline disturbance calculation methodology or their applications—ungrounded in any scientific basis whatsoever—would create needless work by numerous stakeholders including BLM and result in further negative impacts to sage-grouse.

Likewise, adaptive management provisions of the ARMPA are only now beginning to be implemented in Oregon and we have no idea yet as to their effectiveness. In 2015 and 2016 BLM identified thirteen instances where adaptive management triggers were reached in Oregon Priority Areas for Conservation (“PAC”). Three hard triggers were reached along with ten soft

³ Available at http://www.oregon.gov/gov/Documents/executive_orders/eo_15-18.pdf (last visited Nov. 28, 2017).

triggers. Where a soft or hard trigger is reached, the ARMPA requires BLM to conduct a causal factor analysis to investigate and identify the likely causes of the habitat loss population decline and then to carry out management actions to attempt to address those factors.

For example, BLM identified a hard trigger issue for low sage-grouse population numbers in the Baker PAC earlier this year. The agency completed its Casual Factor Analysis in late fall of 2017 and many of the implementation actions have not yet begun. Should the ARMPA be amended it is entirely unclear how the work in the Baker PAC would or would not move forward and how any changes could impact the Baker PAC sage-grouse population—which already teeters on the edge of extirpation. The ARMPA must remain in place, as issued, in order to maintain the investment and potential benefits to the species associated with ongoing management actions like this.

Non-government stakeholders have similarly invested time and resources into assessing ARMPA implementation and effectiveness. The Oregon Natural Desert Association, for example, is in the second year of a habitat monitoring project gathering information, using agency methodology (BLM 2005), on the functional plant groups, forb diversity and abundance, and wet meadow condition, in the Beatys and Louse Canyon Sagebrush Focal Areas in southeastern Oregon (Oregon Natural Desert Association 2017). We intend to provide our data and conclusions to BLM, as well as use it to conduct our own evaluation of how effective the ARMPA has been in preserving and restoring core sage-grouse habitats and populations.

Even where ARMPA decisions have been implemented, there have been relatively few constraints imposed on proposed actions for multiple-use management in sage-grouse habitat in Oregon. For instance, as of today we understand that BLM has renewed about 66 grazing permits in Oregon since the ARMPA was completed in 2015, without making any substantial changes to the permitted grazing. If land uses like livestock grazing can continue to occur in sage-grouse habitat without substantial changes to the terms and conditions of their approvals, that suggests there is no real need to amend and weaken the ARMPA. If ongoing land uses are having a neutral to positive influence on sage-grouse habitat and populations, additional time to determine plan effectiveness will bear that out. On the other hand, if habitat quality and population figures continue to decline as they have over the past 30-plus years, it would strongly suggest that ongoing and newly approved land uses are continuing to have a negative impact on sage-grouse habitat and the ARMPA is a bare minimum approach that needs to be fully implemented and allowed sufficient time to work—if not strengthened.

V. NEW SCIENTIFIC INFORMATION

1. Landscape-Scale Genetic Connectivity

“Genetic connectivity is the glue that holds populations together, and remaining Priority Habitats, though impacted, may help maintain connectivity among populations” (Taylor *et al.* 2012). The Oregon Department of Fish and Wildlife (“ODFW”) has identified connectivity corridors throughout southeastern Oregon that are essential to the survival and recovery of the Greater sage-grouse in Oregon and range wide (Hagen 2011). If anything the ARMPA needs to increase, not weaken protection of this essential habitat attribute.

In the ARMPA, BLM notes “genetic diversity” in Objective SSS 2 (“Maintain or improve habitat connectivity between PHMA within Oregon and adjoining states to promote [GRSG] movement and genetic diversity.”). ARMPA at 2-3. Genetic diversity is not mentioned anywhere else in the ARMPA, aside from a couple references in supporting documents like the Fire and Invasives Assessment Tool in describing Oregon PACs. The ARMPA’s MD SSS-12 (2-9) is also relevant, directing BLM to “[i]dentify [Greater sage-grouse] habitat outside of PHMA that can function as connecting habitat. Consider the habitat connectivity map developed by The Nature Conservancy and BLM for Oregon (Jones and Schindel 2015).”⁴

Significant new information further supports this, including the habitat connectivity map for Oregon (Jones & Schindel 2015) and a U.S. Geological Survey (“USGS”) study further highlighting connectivity corridors as the key to protecting the Greater sage-grouse (Crist *et al.* 2015). The USGS study ranks priority areas by importance to sage-grouse health and identifies corridors between priority areas. Protecting these corridors would allow the grouse to move easily in response to disturbances such as wildfires, disease, or the spread of invasive plant species that can overwhelm the sagebrush-steppe ecosystem the bird depends upon. The study explains that “[m]aintaining connectivity within and among the clusters potentially allows for dispersal to augment declining populations and maintain genetic exchange across the entire network reducing the chance for the creation of isolated or genetically distinct populations in the long-term.” Several of the study’s highest-ranked Priority Areas are part of the Western Great Basin population, which includes the nationally significant Steens Mountain landscape in southeastern Oregon.

And this year, further research again underlines that priority habitat areas with few connected linkages average greater environmental resistance to movement along connecting pathways (Crist *et al.* 2017). “Without maintaining corridors to larger priority areas or a clustered group,” write the authors, “isolation of small priority areas could lead to regional loss of Greater Sage-Grouse.” Other researchers found that Greater Sage-Grouse are an even more mobile species than previously understood, moving large distances of up to 194 kilometers (120 miles) in a single breeding season (Cross *et al.* 2017). These findings highlight the importance of coordinated, landscape-scale efforts like the ARMPA that conserve movement corridors.

2. Transmission Lines

Another significant new study, not mentioned in the ARMPA ROD, confirms for the first time that powerline corridors get in the way as sage-grouse move across the landscape for food and breeding (Shirk *et al.* 2015). The authors determined that transmission lines that funnel power from hydroelectric dams and wind turbines affect Greater sage-grouse by isolating populations and limiting movement. Other studies similarly continue to expand our

⁴ The concept of connectivity is also mentioned here and there in the Record of Decision, although it is not always clear whether BLM is referring to connectivity between seasonal habitats or to genetic, population-level connectivity. *See, e.g.,* ROD at 1-14, 1-15 to -16, 1-23, 1-26, 1-42.

understanding of the bird’s habitat selection process—for example, a recent study (Gibson *et al.* 2016) suggesting that “nest-site selection was more predictive of chick survival than of nest survival, which suggests that females’ selection of nesting habitat was based primarily on its qualities as brood-rearing habitat” and that “nest-site selection may be influenced by more than increased reproductive success, or that there is a landscape-level pattern to local-scale habitat characteristics.”

3. Oregon Greater Sage-Grouse Population

New information shows that Oregon’s sage-grouse population has declined dramatically, as hundreds of thousands of acres of habitat have continued to suffer the effects of wildfire, invasive species infestation, mismanaged livestock grazing, climate change, and drought.

For example, sage-grouse on Steens Mountain are part of the biologically-defined Western Great Basin population. This is one of four populations scientists have identified within the Northern Great Basin Management Zone.⁵ The Western Great Basin population is the largest of the four in this Management Zone, and thus the critical population of this core zone (Garton *et al.* 2011). In 2010, sage-grouse experts undertook an unprecedented population viability analysis. It showed a *100% probability* that the Western Great Basin population will decline below 500 birds (the minimum size to maintain population viability) in just 100 years if the lands’ carrying capacity continues to decline (Garton *et al.* 2011).

Since that time, Garton *et al.* have refreshed their research and concluded that the Western Great Basin Population now has an estimated minimum population size of just 1,934 males, which represents a *69% decline* from the reconstructed estimate of 6,327 males based on lek counts in 2007 (Garton *et al.* 2015; Fig. 6d). The last six years showed a decline (Fig. 6c) to reach “abundances lower than ever observed before and approximately 16% of average values close to 11,765 males counted in the 1970s and 1980s” (Garton *et al.* 2015). The authors bluntly described the Western Great Basin population as experiencing “an extinction vortex.”

Although some data had suggested modest population rebounds (WAFWA 2015), the fact remained that range wide populations in 2015 were 27% below the 2009 level—the level that formed the basis of the U.S. Fish & Wildlife Service’s original “warranted” determination under the Endangered Species Act. Moreover, that rebound was thought to be allowed in part by (not caused by) the *de facto* federal moratorium on industrial projects in Priority Habitats, for example in Wyoming (Molvar 2015).

⁵ The Western Association of Fish and Wildlife Agencies—an organization of U.S. state and Canadian provincial wildlife agencies, including the ODFW—has defined seven sage-grouse Management Zones for assessing population and habitat trends independent of administrative and jurisdictional boundaries. According to the USFWS, the Northern Great Basin Management Zone, where Steens Mountain is located, is significant because it is among the zones holding “core populations” and that “have the highest reported densities” of the birds. 75 Fed. Reg. at 13,919 (including map at Fig. 2).

Also in 2015, Braun *et al.* reported chick-to-hen ratios well below thresholds considered by the ODFW to be necessary to sustain a stable population. In 2011, the ODFW explained that published guidelines indicate that a chick-to-hen ratio of 2.25 is required for stable or increasing sage-grouse populations (Hagen 2011). The ODFW suggested that number could be as low as 1.56 “needed for a stable population” in Oregon. But the ODFW *Strategy’s* Table 10 shows that the Burns District (where Steens Mountain is located) is at 1.43 (average over the period 1993–2009). In other words, the Burns District was below either chick-to-hen ratio threshold. The most recent information in the ODFW-Braun report, documents a ratio of 1.3 for Steens Mountain—again, below what is needed for a stable population.

In its annual sage-grouse monitoring report in 2017, the ODFW has again concluded that sage-grouse populations in Oregon have not stabilized, have not begun to recover, and in fact are far from population objectives (ODFW 2017). As illustrated in the figure below, taken from the ODFW report, the estimated spring Greater sage-grouse population in Oregon during 2017 was 20,510 individuals. This was a 7.7% decline from 2016, and the population in 2017 remained 30% below the 2003 baseline population estimate of 29,237 individuals (ODFW 2017).

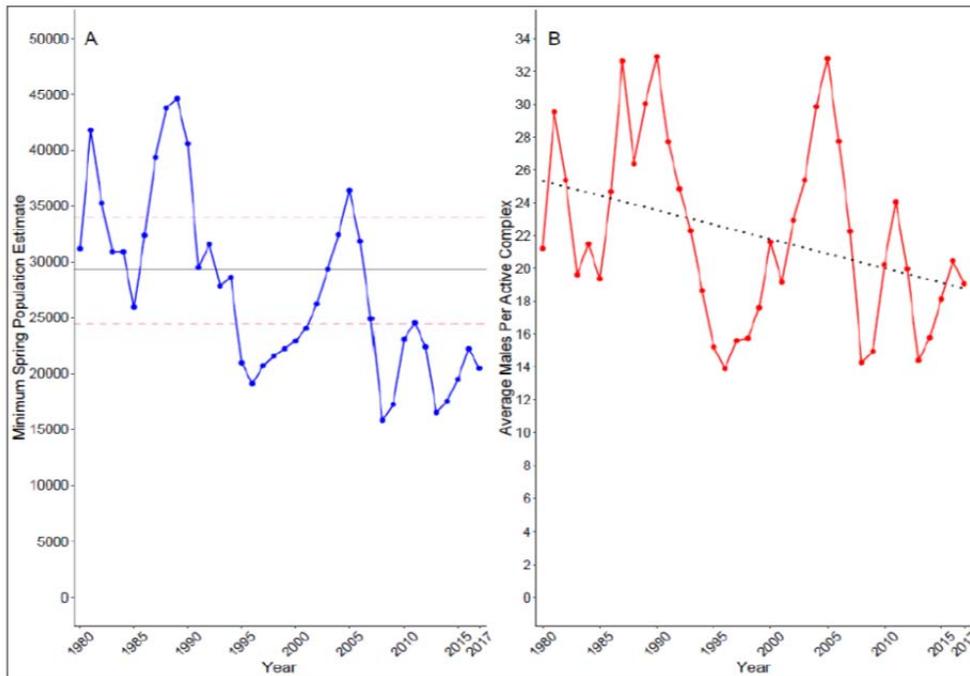


Figure 3. Greater sage-grouse population trends in Oregon, 1980 – 2017. A - Estimated spring breeding population of greater sage-grouse, gray line indicates 2003 baseline population level of 29,327 individuals, pink dotted lines indicate the 95% confidence interval around the 2003 baseline estimate. B - Change in average lek complex size (males per active lek complex).

In fact, there have been precipitous population declines within some Priority Areas for Conservation, indicating that some sub-populations within Oregon are at high risk and that such risks do not seem to be abating. The BLM Burns District population declined 17.1% from 2016 to 2017, with a 5-year average population trend of -3.6%. The BLM Prineville District declined 23.6% from 2016 to 2017, with a 5-year population trend that is flat. Despite ODFW locating additional leks in the BLM Vale District, male lek attendance decreased 4.5% from 2016 to 2017. Finally, the sage-grouse population in BLM’s Baker Resource Area, including the Baker PAC, is currently 75% below baseline population levels (ODFW 2017).

Setting aside occasional and slight population increases over 30 years of data the overall trend in every Oregon PAC is downward with few indications that management actions taken pursuant to the ARMPA are having a measurable, positive effect. Nothing in the Oregon sage-grouse population figures suggests that weakening ARMPA provisions would in any way be reasonable.

The Baker PAC has reached the adaptive management hard trigger threshold for low population. The population figures causing that trigger are alarmingly low. The count of male birds on leks in the Baker PAC was just 125 birds in 2015 and 102 in 2016—substantially below the hard trigger threshold of 170 birds. Federal, State and County agencies and members of the public have made significant efforts to develop meaningful solutions to the Baker PAC population decline, but those solutions are only partially implemented and their long-term effect on population figures remains uncertain.

Additional adaptive management hard triggers for both habitat and population have been reached in the Bully Creek and Cow Lakes PACs in Oregon. Soft Triggers have been reached in an additional ten PACs in Oregon for both population and habitat thresholds. In all, more than half of Oregon's PACs have experienced declines in habitat quantity or quality and/or sage-grouse populations significant enough to warrant an adaptive management response under the ARMPA. It would be spurious logic, at best, to suggest that amending the ARMPA and the adaptive management thresholds would meaningfully address these situations. There have been significant impacts to Oregon sage-grouse habitat over many decades and additional impacts continue to occur. Rapid and effective implementation of the existing ARMPA provisions is the only viable means of addressing these critical population and habitat declines.

VI. USFWS 2020 STATUS REVIEW

As discussed by USFWS in its not warranted determination in 2015, the Endangered Species Act and implementing regulations set forth procedures for adding species to the Federal endangered species list. The law defines an “endangered” species as “any species which is in danger of extinction throughout all or a significant portion of its range,” and a “threatened” species as one “which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” 16 U.S.C. §§ 1532(6), (20). The USFWS determines whether a species warrants listing as endangered or threatened based on any of five factors: (A) present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. *Id.* § 1533(a)(1).

In Oregon, the primary factors impacting Greater sage-grouse are factors A and D, concerning habitat and regulatory mechanisms. Much of the ARMPA focuses on management efforts to limit the destruction, modification, or curtailment of habitat in a durable and long-term manner that can adequately assure USFWS that the ARMPA is an adequate regulatory mechanism. The threats to sage-grouse populations in Oregon have not changed since 2015 and the conservation actions designed to address those threats were deemed reasonably sufficient to

do so by the USFWS in 2015. Any modification of conservation actions in the ARMPA would, therefore, require USFWS to re-examine the plan's adequacy for sage-grouse conservation.

The USFWS not warranted determination in 2015 was based on the best scientific and commercial data then available. That determination, however, did not guarantee that the sage-grouse would not in the future warrant listing under the ESA. As noted by the USFWS in its 2015 determination, "new threats may develop, management may change, or the species may not prove as resilient as we concluded based on the currently available science." 80 Fed. Reg. at 59,941.

The USFWS further emphasized that sage-grouse management has an important influence on the status of sage-grouse that requires ongoing review. In its 2015 not warranted determination the USFWS stated that "although our best judgment today indicates that successful sage-grouse conservation will be achieved by continued implementation of the regulatory mechanisms and conservation efforts we relied on in our finding above, we and our partners must carefully monitor threats to the sage-grouse and its response to those threats." 80 Fed. Reg. at 59,941. The Service thus explained that it would conduct a sage-grouse status review in 2020, which would "inform adaptive management and guide future research needs to ensure that conservation efforts continue to benefit sage-grouse into the future." *Id.*

The 2020 sage-grouse status review will take into account the effectiveness of sage-grouse conservation actions implemented through the ARMPA. Should the ARMPA be amended as proposed in the Notice of Intent it will not only undermine the effectiveness and certainty of those conservation actions it will also substantially decrease the amount of time for plan actions to take effect and result in measurable outcomes. In all likelihood the 2020 status review would find little in the way of progress from an amended ARMPA even if an amendment were completed in an expeditious manner. Many stakeholders share a desire to avoid an endangered species listing for Greater sage-grouse—whether out of a desire for robust habitat and recovering populations, or in order to avoid additional regulations. No matter the underpinnings of that desire, many stakeholders are concerned about the potential that any amendment of the ARMPA will increase the likelihood of an endangered species listing. ONDA strongly urges BLM and the Department of the Interior not to amend the ARMPA, in order to avoid the need for listing the Greater sage-grouse.

VII. THE ARMPA HAS AMPLE FLEXIBILITY

The ARMPA was designed with management flexibility and "adaptive management" as a primary attribute. BLM made this clear throughout the planning process and in the ARMPA itself. Stakeholders in the parallel State and Federal planning processes in Oregon had extensive and frequent communication about the need to have management adjust to changing circumstances in order to maximize benefits for sage-grouse. The USFWS agreed, stating that "[a]daptive management will help ensure that sage-grouse conservation measures in the Federal Plans are effective, and if they are not effective, that corrective actions will be implemented." 80 Fed. Reg. at 59,881.

However, the Order, the Report and the Notice of Intent state that some unspecified degree of “additional flexibility” is necessary when making management decisions. There is no such purported lack of flexibility in the plan. Management flexibility is readily apparent in most of the management decisions in the ARMPA

ARMPA Objective SSS 4 relates to desired habitat conditions for sage-grouse and how to evaluate proposed actions in sage-grouse habitat areas. It states that the conditions listed in Table 2-2 are for the purpose of meeting or moving towards these desired conditions. Additional clarification about the intended use of Table 2-2 has been issued by BLM since issuance of the ARMPA indicating that the desired conditions in Table 2-2 should be applied in context, using multiple indicators and multiple measurements over time (BLM 2017). *See also* Instruction Memorandum No. 2016-142, “Incorporating Thresholds and Responses into Grazing Permits/Leases” (Sept. 1, 2016), *available at* <https://www.blm.gov/policy/im-2016-142> (last visited Nov. 29, 2017). These clarifications by BLM indicate the high degree of flexibility it is using in implementing this provision of the ARMPA and how additional flexibility is not needed to accommodate proposed actions in sage-grouse habitat.

The disturbance and density cap concepts included in the ARMPA are based on the best available science on the effects of activity and infrastructure on sage-grouse (Knick *et al.* 2011). Limiting disturbance in sage-grouse habitat is a fundamental tenet from conservation biology and one of the best available tools to provide long-term habitat for the species. The disturbance cap is a critical aspect of the ARMPA and one that has a direct relationship with the Oregon Sage-Grouse Action Plan, and that needs to be maintained in order to be effective. While the disturbance caps are critical, the ARMPA already includes a number of exceptions to the cap that allow proposed actions to move forward under a variety of circumstances. The ARMPA includes exceptions for development within utility corridors where there is a net conservation gain. And there are also exceptions for mining and allowances for development once mitigation has occurred to reduce disturbance below the cap. In sum, the ARMPA does, in fact, provide flexibility to allow development in sage-grouse habitat—and this is particularly so here where few of Oregon’s PACs have approached a relevant disturbance cap.

The mitigation hierarchy described in ARMPA Appendix F is similarly rooted in flexibility and adaptability. Ultimately, many proposed actions are likely to be approved through avoidance or mitigation of impacts to sage-grouse habitat. For those projects that would create impacts to sage-grouse habitat, the ARMPA describes a system of compensatory mitigation that allows for direct and indirect mitigation to achieve a net-conservation gain. This conceptual framework has been the subject of significant effort from Oregon stakeholders since adoption of the ARMPA and is closely coordinated between BLM and the State. Any amendment to the ARMPA changing mitigation would create substantial uncertainty for proponents of development actions, as well as uncertainty for sage-grouse habitat protection. Changes to the mitigation framework would simply be duplicative of existing efforts and an unwise use of Federal and State resources.

Greater sage-grouse lek buffers are identified in the ARMPA in association with seasonal avoidance periods for different types of land uses. ARMPA at 2-8. Table 2-3 provides the temporal and spatial buffers to be applied to different proposed activities and in itself provided

ample period of time and areas available for these uses. However, the ARMPA goes even further to provide flexibility to allow activities in these areas so long as such activity would not impair the life-cycle or behavioral needs of the sage-grouse. ARMPA at 2-9. Further still, the ARMPA specifically states that BLM may adjust temporal buffers based on local variations such as elevation differences or climatic fluctuations. It is unlikely that additional flexibility to spatial and temporal buffers could be identified without wholly undercutting the intent and efficacy of the ARMPA.

The ARMPA also provides significant, even excessive, flexibility to permit renewable energy development in sage-grouse habitat. The ARMPA includes an exception for solar and wind development in Lake, Harney, and Malheur Counties as an avoidance area instead of an exclusion area. As noted in our 2015 administrative protest, this designation allows for renewable energy development activities that would lead to significant impacts to priority sage-grouse habitat and should not have been permitted. Nevertheless, this ARMPA provision certainly provides the “flexibility” described in the Order, the Report, and the Notice of Intent. Any further relaxation of development standards for renewable energy would risk substantial harm to the sage-grouse and its habitat.

ARMPA Management Decision SSS-15 specifies that adaptive management responses to hard triggers will be removed through a plan amendment or when the criteria for recovery have been met. ARMPA Appendix J provides additional detail on the longevity of responses to hard triggers. Soft trigger responses can be removed when conditions reach or surpass the soft trigger criteria. Again, ONDA opposes any changes to the ARMPA triggers and trigger removal process, given BLM’s clear ability to adjust adaptive management trigger responses and the lack of need or reason for changes to this pivotal aspect of the plan.

VIII. CRITICAL PROVISIONS OF THE ARMPA

The ARMPA’s designation of Sagebrush Focal Areas is of paramount importance for sage-grouse habitat and populations in Oregon. The Louse and Beatys Sagebrush Focal Areas contain some of the largest intact expanses of sagebrush steppe habitat in the state if not range wide, as well as some of the most robust populations of sage-grouse in Oregon. Conserving these areas provides Oregon with precisely the type of large, core area that conservation biology identifies as critical to this landscape-scale species’ survival. Failure to protect these two areas will lead to extirpation of sage-grouse in Oregon. ONDA strenuously opposes any modification to the Louse or Beatys Sagebrush Focal Areas in terms of area or regulatory approach.

Similarly, the process of identifying Oregon’s sage-grouse habitat boundaries is poorly suited to any top-down interference or additional decisions in the ARMPA. The State of Oregon, BLM, USFWS, and an array of stakeholders helped develop the methodology for identifying sage-grouse habitat in Oregon, and BLM used ODFW’s habitat boundaries in the ARMPA. Any changes to those boundaries would create widespread confusion and frustration with sage-grouse management without any appreciable benefit. Furthermore, the effort to identify these boundaries was precisely the type of local-driven effort called for by the Order, the Report, and the Notice of Intent. ONDA opposes any ARMPA-driven re-delineation of sage-grouse habitat boundaries.

CONCLUSION

The ARMPA should not be amended because of the significant uncertainty such a process would create for Greater sage-grouse and the sagebrush steppe ecosystem, as well as the stakeholders who use and cherish this iconic bird and the imperiled sagebrush landscape upon which it relies. BLM should maintain the existing consistency between the ARMPA and the Oregon Sage-Grouse Action Plan. Continued collaboration between all stakeholders, especially Oregon and Federal agencies, will be beneficial to sage-grouse conservation and to other uses of our public lands. Undermining that collaboration would pose a very real threat to those same values.

The ARMPA must be given time to work in order to understand whether or not its provisions are effective. Amending the ARMPA prior to the 2020 USFWS status review would impose impacts from a host of human and natural factors, destroying and fragmenting sagebrush habitat and in turn exacerbating sage-grouse population declines. Any additional decline in sage-grouse populations will more than likely require listing the bird as an endangered species, resulting in even more stringent management of sage-grouse habitat that would lead to substantial and undesirable impacts to the rural communities of eastern Oregon.

We urge BLM to leave the ARMPA in place and allow this collaboratively developed, largely scientifically sound, and widely supported plan to continue to work.

Sincerely,



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REFERENCES

BLM. 2017. Clarification of the Relationship between the Greater Sage-Grouse Habitat Objectives, Rangeland Health Standards and Evaluations, and Use Authorizations Including Grazing Permit Renewals. Oregon/Washington BLM. Portland, OR. 5pp.

BLM. 2005. Monitoring Manual for Grassland, Shrubland and Savanna Ecosystems. USDA-ARS Jornada Experimental Range, Las Cruces, NM. Available at <https://www.ntc.blm.gov/krc/viewresource.php?courseID=281> (last visited Nov. 30, 2017).

Braun, C.E., *et al.* 2015. Fall Population Structure of Sage-grouse in Colorado and Oregon. Oregon Dep't of Fish and Wildlife, Wildlife Technical Report 005-2015. Available at <https://digital.osl.state.or.us/islandora/object/osl:19092> (last visited Nov. 29, 2017).

Crist, M.R., S.T. Knick, and S.E. Hanser. 2017. Range-wide connectivity of priority areas for Greater Sage-Grouse: Implications for long-term conservation from graph theory. *The Condor*:

February 2017, Vol. 119, No. 1, pp. 44–57. Available at <https://doi.org/10.1650/CONDOR-16-60.1> (last visited Nov. 29, 2017).

Crist, M.R., S.T. Knick, and S.E. Hanser. 2015. Range-wide network of priority areas for greater sage-grouse—A design for conserving connected distributions or isolating individual zoos? U.S. Geological Survey Open-File Report 2015-1158, 34 p. Available at <https://pubs.usgs.gov/of/2015/1158/ofr20151158.pdf> (last visited Nov. 29, 2017).

Cross, T.B., D.E. Naugle, J.C. Carlson, and M.K. Schwartz. 2017. Genetic recapture identifies long-distance breeding dispersal in Greater Sage-Grouse (*Centrocercus urophasianus*). The Condor: February 2017, Vol. 119, No. 1, pp. 155–166. Available at <https://doi.org/10.1650/CONDOR-16-178.1> (last visited Nov. 29, 2017).

Garton *et al.* 2015. Greater Sage-Grouse Population Dynamics and Probability of Persistence. Final Report to PEW Charitable Trusts, Portland, OR. Available at <http://www.pewtrusts.org/~media/Assets/2015/04/Garton-et-al-2015-Greater-SageGrouse-Population-Dynamics-and-Persistence-31815.pdf> (last visited Nov. 29, 2017).

Garton, E.O., *et al.* 2011. Greater Sage-Grouse Population Dynamics and Probability of Persistence. In S.T. Knick and J.W. Connelly (eds). Greater Sage-Grouse: Ecology and conservation of a landscape species and its habitats. Studies in Avian Biology Series, Univ. of Cal. Press, Berkley, CA 38: 293–381.

Gibson, D., E.J. Blomberg, M.T. Atamian, and J.S. Sedinger. 2016. Nesting habitat selection influences nest and early offspring survival in Greater Sage-Grouse. The Condor: November 2016, Vol. 118, No. 4, pp. 689–702. Available at <https://doi.org/10.1650/CONDOR-16-62.1> (last visited Nov. 29, 2017).

Hagen, C.A. 2011. Greater Sage-grouse Conservation Assessment and Strategy for Oregon: A plan to maintain and enhance populations and habitat. Oregon Department of Fish and Wildlife, Salem, OR. Available at <http://www.dfw.state.or.us/wildlife/sagegrouse/> (last visited Nov. 29, 2017).

Jones, A., M. Schindel, and S. Scott. 2015. Mapping Habitat Connectivity for Greater Sage-Grouse in Oregon’s Sage-Grouse Conservation Partnership (SageCon) Assessment Area. Produced by The Nature Conservancy (Portland, OR) in partial fulfillment of BLM Cooperative Agreement L12AC20615.

Knick, S.T. *et al.* 2011. Ecological Influence and Pathways of Land Use in Sagebrush. In S.T. Knick & J.W. Connelly (eds.). Greater Sage-grouse: Ecology and Conservation of a Landscape Species and its Habitats. Studies in Avian Biology, Univ. of Cal. Press, Berkeley, CA 38: 203–251.

Molvar, E.M. 2015. Sage Grouse Conservation Efforts and Population Trends: A Wyoming Case Study. Laramie, WY, 19 pp. Available at http://www.wildearthguardians.org/site/DocServer/Evaluating_Sage_Grouse_Conservation_Efforts_final_opt.pdf?docID=16543 (last visited Nov. 29, 2017).

National Technical Team. 2011. A Report on National Greater Sage-grouse Conservation Measures. Sage-Grouse National Technical Team, Washington, D.C. Available at https://eplanning.blm.gov/epl-front-office/projects/lup/9153/39961/41912/WySG_Tech-Team-Report-Conservation-Measure_2011.pdf (last visited Nov. 30, 2017).

ODFW. 2017. Oregon Greater Sage-Grouse Population Monitoring: 2017 Annual Report. Oregon Department of Fish and Wildlife, Hines, OR. Available at http://www.dfw.state.or.us/wildlife/sagegrouse/docs/ODFW_2017_Sage-Grouse_Population_Report.pdf (last visited Nov. 29, 2017).

Oregon Natural Desert Association. 2017. 2017 Sage-Grouse Habitat Monitoring. Presentation (Nov. 28, 2017) by the Oregon Natural Desert Association, Bend, OR.

Sage-Grouse Conservation Partnership. 2015. The Oregon Sage-Grouse Action Plan. Governor's Natural Resources Office. Salem, Oregon. Available at <http://www.dfw.state.or.us/wildlife/sagegrouse/> (last visited Nov. 29, 2017).

Shirk, A.J., *et al.* 2015. Empirical validation of landscape resistance models: insights from the Greater Sage-Grouse (*Centrocercus urophasianus*). Landscape Ecol. DOI 10.1007/s10980-015-0214-4. Available at <http://link.springer.com/article/10.1007%2Fs10980-015-0214-4> (last visited Nov. 29, 2017).

Taylor, R. L., D.E. Naugle, L.S. Mills. 2012. Viability analysis for conservation of sage-grouse populations: Buffalo Field Office, Wyoming. BLM Contract 09-3225-0012; Number G09AC00013. Final Report. Prepared for Bureau of Land Management, Buffalo Field Office. Buffalo, WY.

Western Association of Fish and Wildlife Agencies. 2015. Greater sage-grouse population trends: An analysis of lek count databases, 1965–2015. Cheyenne, WY, 54 pp. Available at <http://www.wafwa.org/Documents%20and%20Settings/37/Site%20Documents/News/Lek%20Trend%20Analysis%20final%208-14-15.pdf> (last visited Nov. 29, 2017).