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U.S. House Committee on Natural Resources

“Empowering State-Based Management Solutions for Greater Sage-Grouse Recovery”

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Good morning Chairman Bishop, Ranking Member Grijalva and members of the Committee. My name is John Tubbs and I serve as Chairman of the Montana Sage Grouse Oversight Team and Director of the Montana Department of Natural Resources and Conservation. Thank you for the opportunity to provide Montana’s perspectives on how Congress and the Administration can most effectively empower state management for the Greater sage-grouse.

I have three main points today.

First and foremost, states have been and will continue to be empowered best if Congress and the Administration recognize and support the long history of bipartisan, state-led collaboration to conserve Greater sage-grouse across its range in the west. States have served as the primary convener of diverse stakeholders for decades and have been the primary drivers of policy initiatives targeting sage-grouse conservation through executive action and through the Western Association of Fish and Wildlife Agencies and the Western Governors’ Association Sage Grouse Task Force. Congress and the Administration should continue to give deference to state leadership and should avoid actions that undermine years of collaborative efforts among our partners.

Second, Congress and the Administration can best empower states by avoiding policy changes that foster uncertainty and hold potential to land sage-grouse on the Endangered Species Act (ESA) list. The conclusion that sage-grouse did not warrant listing in 2015 was predicated on the fact that federal and state land use plans provided the certainty required to demonstrate that threats would be reduced in approximately 90% of the breeding habitat and the majority of occupied range. These regulatory mechanisms did not exist in 2010 when it was determined that listing was warranted. Congress and the Administration should avoid changes that undermine the foundation of the 2015 not warranted finding and must consider how future risk of a listing may disproportionately impact states.

Finally, states can be supported by efforts to adaptively implement land use plans to address changing conditions, use new science and build consistency across ownerships with State conservation strategies. The Administration should use all available tools including the issuance of guidance, instructional memoranda, trainings and other strategies to build consistency. The Administration must exercise due diligence and meaningfully consult with states prior to embarking on costly and time consuming plan amendments that may spark litigation or new petitions for an Endangered Species Act listing. Congress should avoid changes that limit the

flexibility of federal agencies to resolve conflicts when and where they occur under the Federal plans.

1. States will continue to be empowered if Congress and the Administration recognize and support the long history of states' bipartisan collaboration to conserve Greater Sage-Grouse.

Montana has a long history of bipartisan collaboration to conserve Greater Sage-Grouse and their habitats. Montana sportsmen, resource managers, landowners and other conservation interests have been concerned about the status of sage-grouse as far back as the 1950s. Similar concerns across the west crystallized in a formal Memorandum of Understanding signed by Western Association of Fish and Wildlife Member Agencies and federal natural resource management agencies in 2000. Each state committed to convene a work group and craft a plan.

Montana adopted its first formal Greater Sage-Grouse Management Plan in 2005. It was the product of a diverse working group that included representatives of federal and state agencies, tribal representatives, private organizations, and the public. The Plan charted a path to achieve long-term conservation and enhancement of sagebrush steppe that would support not only sage-grouse, but people and other wildlife. It created local working groups. As importantly, it provided for coordinated management across jurisdictional boundaries and development of community support to balance conservation with social, cultural, and community values.

New science, coupled with new or expanded potential threats to sage-grouse habitat and populations and litigation prompted Montana to update its original 2005 plan. Early in 2013, following efforts in Wyoming and other states, Governor Bullock issued Executive Order 2-2013 creating a diverse citizen-based advisory council. The council was directed to gather information, furnish advice, and provide recommendations for a state-wide strategy to preclude the need to list the Greater Sage-Grouse under the ESA.

Private landowners, conservation groups, industry, and state and federal partners worked together intensively for nearly a year. After extensive public comment and meetings around the state, the council finalized their recommendations. Governor Bullock issued Executive Order 10-2014 in 2014 based on their work.

Recognizing the value of proactive stewardship and conservation, in 2015 the Montana Legislature passed the Greater Sage-Grouse Stewardship Act (Stewardship Act) by an overwhelming bipartisan majority, codifying many of the recommendations of the advisory council. The Legislature created the Montana Sage Grouse Oversight Team, which has met regularly since fall, 2015. Separately, the Montana Legislature appropriated funding to implement Montana's Sage-Grouse Program and encourage voluntary conservation of private lands to address threats. In fact, Montana has committed \$10 million towards private land conservation. In partnership with others thus far, Montana will have protected 72,000

acres of private land from the threat of cultivation. Additional conservation measures have been implemented on private lands through Montana Fish, Wildlife & Parks.

Governor Bullock issued Executive Order 12-2015 later in 2015 to address additional program needs. Taken together, Executive Order 12-2015 and the Stewardship Act comprise Montana's Conservation Strategy (or State Plan). Montana's plan aligns closely with Wyoming's plan, only with a greater emphasis on private lands where most of Montana's best sage-grouse habitat occurs.

Montana has nearly 1,000 leks and an estimated 18 percent of the total greater sage-grouse population and nearly 20% of the rangewide habitat; however, about 78 percent of the occupied range is in state, tribal and private landownership. Only 22 percent of the occupied range is federally owned and managed in Montana.

Montana takes an "all lands, all hands" approach to sage-grouse conservation because private lands and state trust lands are intermingled with federal lands in a checkerboard fashion. By working with private landowners, conservation groups, industry, and federal agencies, Montana has found a path forward that conserves working landscapes and that supports sage-grouse, other wildlife, agriculture, economic opportunities for industry, and outdoor recreation.

Diverse stakeholders have been at the table every step of the way in Montana. They lobbied extensively in support of the Stewardship Act in 2015 and continue to be directly engaged with Montana's Sage-Grouse Program on a regular basis. Moreover, they continue to testify before the Montana Legislature and various interim committees to support Montana's sage-grouse conservation efforts to this day. They also express support for how the federal plans and the state plan work together and in concert towards Montana's common, shared goal: maintaining authority to manage our lands, our economy, and our wildlife.

Similar collaborative efforts occurred in other western states, and Governors have led the way. Along with local citizens and federal partners, states have forged a path that balances economic opportunity with conservation. States are committed to maintaining the state and federal conservation efforts developed at the local level, which when taken together, will preclude the need to list sage-grouse under ESA across its range.

Meaningful consultation and coordination between states and the federal government has been a hallmark of this effort. Governors have consistently demanded that the Department of the Interior offer direct and meaningful consultation opportunities given states' track record, the commitments of our partners, and the leadership role and responsibility states have for managing wildlife. Those expectations have been the same, regardless of the Administration.

Given decades of bipartisan work, Congress and the Administration must continue to stand behind and respect state efforts and avoid actions that unnecessarily polarize the collaborative work of our partners. States have consistently requested the Department of the Interior work hand in hand with the Western Governors Sage Grouse Task Force. Only the Governors can speak for whether this consultation is adequate. Future policy actions must be

developed in concert with the states—top down approaches from Washington D.C., whatever their intentions, must not be pursued under the guise of state empowerment.

2. States will continue to be empowered if Congress and the Administration avoid policy changes that foster uncertainty and hold potential to disproportionately impact individual states.

In 2010, the U.S. Fish and Wildlife Service (USFWS or Service) identified habitat loss, fragmentation, and the inadequacy of existing regulatory mechanisms to address threats as the key factors leading to the determination that ESA protections for the Greater Sage-Grouse were warranted. Populations had been in decline for decades and some local populations had been extirpated.¹

In September of 2015, the Service concluded that the primary threats were ameliorated by conservation efforts implemented by Federal, State, and private landowners. Regulatory mechanisms were adopted in three state plans and in the federal land use plans, incorporating conservation principles identified by the scientific experts to substantially reduce risks through avoidance and minimization measures at a landscape scale.² These efforts were complimented by voluntary conservation efforts on private lands by individual landowners, the NRCS Sage Grouse Initiative, and Candidate Conservation Agreements with Assurances.

Along with Wyoming and Oregon, Montana is one of the three states that adopted affirmative regulatory mechanisms that addressed threats to sage-grouse. In contrast, other states adopted primarily voluntary state plans. Federal land use plans filled the gaps across the west through sage-grouse specific provisions and land use allocations. Federal land use plans provided the high degree of certainty required to demonstrate that threats would be reduced across approximately 90% of the breeding habitat and the majority of occupied range because common elements were included across the range which avoided and minimized disturbance in the remaining large priority blocks of habitat, while also providing management flexibility in areas that are less critical for conservation.³ The federal plans and state plans from Wyoming, Oregon, and Montana provide protective, regulatory mechanisms for the majority of the most important habitat for sage-grouse. All told, the Montana, Wyoming and Oregon plans provide assurances for over 56 million acres of occupied range on state, tribal and privately-owned lands.

The 2015 not warranted finding relies on the foundation of both the state and federal plans. The regulatory nature of state plans from Wyoming, Oregon, and Montana provided the greatest degree of certainty in addressing threats on state and private lands and were complemented by other state plan efforts, and the voluntary work of NRCS with private landowners. The federal plans provided new regulatory mechanisms on over half of the occupied sage-grouse range that did not exist in 2010 when listing was warranted and sage-grouse became a candidate for listing.⁴ The new sage-grouse measures and land use

¹ See 80 Fed. Reg. 59858, 59870 (Oct. 2, 2015).

² See 80 Fed. Reg. 59858, 59874-59882 (Oct. 2, 2015).

³ See 80 Fed. Reg. 59858, 59874-59882, 59928, 59931, 59934 (Oct. 2, 2015).

⁴ See 80 Fed. Reg. 59858, 59873-59882, 59928 (Oct. 2, 2015).

allocations adequately addressed threats, and through common elements, conserved the most important habitats across the range of the species.⁵ All states benefited from the federal plans contributing to habitat conservation and threat abatement in consistent ways across the range, regardless of whether individual state plans were regulatory or voluntary. This is because the Service analyzed the adequacy of habitat conservation measures, threats, and the combined effect of state and federal regulatory mechanisms at a landscape scale and rangewide.

Montana believes there are potential legal issues that could arise from taking a hasty and narrow view towards changing federal plans. First, a thoughtful analysis is needed to identify elements of the federal plans that were necessary to conserve habitat through avoidance and minimization measures in key habitats across the range and that were relied upon by the Service when it concluded that listing was not warranted in 2015. Any changes that would undercut the efficacy of conservation measures to address threats, as measured against the best available science, should give us pause to reconsider. Sage-grouse do not tolerate habitat loss and fragmentation very well, nor are they good pioneers. The science is unambiguous in that regard.

Secondly, the sum of changes within individual states must be analyzed when they are aggregated up to a landscape scale and across the range. If the aggregate of changes undercuts that which is necessary to address threats adequately and sustain sage-grouse into the future, then litigation is not only certain, but a listing is also likely. Here, Montana again stresses the need for due diligence and meaningful consultation prior to moving forward.

Montana is very concerned that potential changes to federal plans may erode the very underpinnings that were critical to achieving conservation rangewide and that was sufficient to avoid a listing in 2015. State plans alone are not, and will not ever be, adequate.

Montana did however identify a number of areas where plans could be improved as part of our Governor's consistency review. To date, those issues have been addressed through administrative arrangements not requiring plan amendment at the state level. Shortsighted, piecemeal changes to federal plans (individually or collectively) would be a step back in time to the days when management was focused on administrative boundaries alone, not natural resources on a landscape scale. Piecemeal changes could impact and fragment larger blocks of known valuable habitat, and as a result, could lead to population declines and eventual listing. Montana would be disproportionately impacted by such a result.

Montana's most valuable sage-grouse habitats occur on private lands. In fact, 66% of Montana's sage-grouse habitat is privately owned. That's 21,582,000 acres. An additional 2.2 million acres of sage-grouse habitat is state trust land. All told, about 75% of Montana's sage-grouse live on private and state trust lands. For generations, Montana ranchers have knit together grazing opportunities on private, state, and federal lands to sustain their families and the integrity of the land.

The impacts to private landowners and Montana's economy if sage-grouse were listed would be severe, in both regulatory and pragmatic ways. Montana's private landowners should not

⁵ See 80 Fed. Reg. 59858, 59874-59882, 59928, 59931, 59934-59936 (Oct. 2, 2015).

be forced to carry the burden for more than their fair share of the stewardship responsibility to preclude or respond to an ESA listing.

Habitat conservation for sage-grouse translates to habitat for big game. Montana has a deep tradition of hunting on both public and private lands. Big game hunting in Montana contributes \$324 million annually to the Montana economy. In counties that contain designated sage-grouse habitats, big game hunters spend over \$113.5 million annually when hunting Montana's checkerboard landscape.⁶ For these 38 rural counties, hunter expenditures have significant and positive impacts on local economies. Montana's motto of "think habitat" applies equally to sage-grouse and big game. The state recognizes the synergies between sage-grouse conservation, maintaining working ranchlands, and supporting our hunting heritage.

Sagebrush habitats in the west support over 300 other wildlife species, any one of which could be in trouble and heading for the ESA emergency room. We have limited data for most of these species, but are confident that addressing threats to sage-grouse through habitat conservation will take care of them, too.

Congress and this Administration can empower states by fully funding federal agencies to implement their missions and respective land management plans. The existing federal plans account for the complexity of managing millions of acres at a landscape scale and endeavor to balance multiple use mandates with conservation. This work is expensive, but critical to sustaining future energy development and outdoor recreation over the long haul. Farm Bill conservation programs remain critical to sage-grouse conservation on working lands and must continue to receive adequate funding.

3. States can be supported by efforts to adaptively implement land use plans to address changing conditions, use the best available science and build consistency across ownerships with state conservation strategies.

In July of 2015, Montana voiced a number of concerns regarding potential issues with the BLM sage-grouse plans in our Governor's consistency review letter. We continue to see the need for improvement and consistency in some areas. However, we have also learned a lot in the first two years of implementing the state and federal plans. Many issues flagged at the outset in 2015 have either not materialized or have not proven to be insurmountable. We have found ways to address them administratively and expect to find new ways in the future.

For example, Montana BLM now implements Montana's disturbance cap threshold of 5%. This has been or soon will be institutionalized through a new Instructional Memorandum from the BLM State Office. The state and Montana BLM now take the same analytic approach to range improvement projects. Going even further, conversations have already begun in Montana about increasing training and collaboration between BLM and livestock producers. This would ensure consistent and effective implementation of the plans while also providing needed flexibility for local managers to implement science-based management

⁶ Montana Fish, Wildlife & Parks (2016); *see* <https://mtfwp.maps.arcgis.com/apps/Cascade/index.html?appid=0fa1de4222074cdeb7dbf0710ecb2ee0>.

at the local site scale in an ecologically meaningful way that's appropriate for Montana habitats. It also provides certainty for ranching families. Federal land use plans were always expected to evolve based on changing needs and circumstances. We have already seen that in Montana, and we will continue to adapt and resolve issues locally in the future. A commitment to flexibly address conflicts when and where they occur is a cornerstone of Montana's Greater Sage-Grouse Plan and has proven to be a tenant that has been supported by our federal agency partners.

Nonetheless, there are areas where alignment could still be improved. But it is equally important that we analyze and exhaust the full range of administrative tools to address inconsistencies and resolve conflicts before resorting to lengthy, costly plan amendments under NEPA. Once more, it is equally important that we ensure that any new proposed changes to the federal sage-grouse plans not create further inconsistencies with state policy. Top down policy from Washington DC holds potential to further exacerbate the inconsistencies with state and federal efforts rather than resolve them.

Montana believes the most efficient approach to address concerns is to look at the full spectrum of tools, ranging from public outreach to staff training, instructional memoranda at the national and state levels, and maintenance actions to existing plans. In short, we can best move forward by refining the existing plans. It is imperative that we avoid prolonged and unnecessary work that would unravel the foundation of the 2015 "not warranted" finding to the point that we all risk a result we worked so hard to avoid. Adaptive implementation of the plans can reduce uncertainty for our partners, industry, and working ranch families who take care of the land and the wildlife on our behalf and can help address inconsistencies efficiently. While properly vetted, limited plan amendments may be needed to address concerns over time, Montana believes most conflicts can be addressed in the near term through other means.

Thank you for the opportunity to share Montana's perspective. We look forward to continuing our work with Congress and the Administration to improve certainty, address inconsistencies with state policy through adaptive actions, and support the collaboration among diverse partners that resulted in the 2015 not warranted finding.