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**Subject:** Comments on Greater Sage-Grouse Report, Secretarial Order 3353  
**Date:** Friday, September 1, 2017 10:29:10 AM  
**Attachments:** [AWEA Sage Grouse Comments on Recommendations \(8-29-17\).pdf](#)

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Ms. Benedetto and the DOI Sage-Grouse Team,

Please find attached AWEA's comments on the August 4, 2017 "Report in Response to Secretarial Order 3353."

We appreciate the department's goal of balancing the responsible development of our natural resources and conservation of the greater sage-grouse.

Wind energy has played an important role in the production of domestic energy, creating tens of thousands of jobs (and growing) and spurring economic growth across the economy. In 2016 alone, over 14,000 jobs were added in the wind energy sector, driven by about \$13 billion of private investment. AWEA encourages the DOI to consider our comments to protect greater sage-grouse and its habitat, while also ensuring that conservation efforts do not impede economic opportunities for wind.

Please let me know if you have any question. I will also follow up to schedule a meeting to discuss our recommendations and the next steps in this process.

Sincerely,



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August 22, 2017

**Re: Comments of the American Wind Energy Association on the “Report in Response to Secretarial Order 3353”**

*Submitted via e-mail to: Kathleen Benedetto; John F. Ruhs: Co-Leads, DOI Sage-Grouse Review Team; cc: Vincent DeVito*

The American Wind Energy Association (AWEA)<sup>1</sup> submits these comments on the August 4, 2017 “Report in Response to Secretarial Order 3353” (Report) to assist the Department of the Interior (DOI), pursuant to the directive from the Secretary to Deputy Interior Secretary David Bernhardt, to begin consideration of the implementation of short- and long-term recommendations based on the report. It is our hope that the following comments are beneficial to your efforts to balance the responsible development of our natural resources and ensure the conservation of greater sage-grouse. AWEA offers its comments in response to the Report’s suggested outreach to industries and would like to participate in any outreach initiated by DOI.

AWEA shares the common goal of protecting greater sage-grouse populations and their habitat and, in particular, keeping them from being listed as an endangered or threatened species under the Endangered Species Act (ESA). We believe that a balanced conservation policy should be implemented that promotes wind development, consistent with the Administration’s goal of deploying domestic energy on public lands, as laid out in Executive Order 13783 (March 28, 2017) “Promoting Energy Independence and Economic Growth” and Secretarial Order 3349 (March 29, 2017) “American Energy Independence.”

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<sup>1</sup> AWEA is a national trade association representing a broad range of entities with a common interest in encouraging the expansion and facilitation of wind energy resources in the United States. AWEA members include wind turbine manufacturers, component suppliers, project developers, project owners and operators, financiers, researchers, renewable energy supporters, utilities, marketers, customers, and their advocates.

while conserving greater sage-grouse populations. Considering the expansive habitat of greater sage-grouse across the western United States, it is important that greater sage-grouse conservation measures be as flexible as possible to domestic wind energy development, while ensuring the health and conservation of the species.

With this end in mind, AWEA generally supports the review of the Obama-era greater sage-grouse conservation plans and the Report's recommendations that direct a reevaluation of sage-grouse habitat protection, among other things. The revisions discussed below with respect to the existing plans would not put the species at great risk of further population declines or habitat loss. Indeed, as explained below, we firmly believe that wind energy and greater sage-grouse can successfully coexist, and that the development of reasonable, science-based measures for wind energy development in greater sage-grouse habitat, through incorporation into BLM's resource management plans and the United States Forest Service's (USFS) land and resource management plans, can effectively achieve this objective.

## **I. Executive Summary**

Secretarial Order 3353 shows the large need for the continued development of domestic energy, consistent with Executive Order 13783. In particular, section 4(b)(iv) of the Secretarial Order requires identification of provisions of the 2015 greater sage-grouse plans that need to be modified or rescinded in order to "give appropriate weight to the value of energy." This directive provides DOI an opportunity to promote the domestic energy development goals of EO 13783 and SO 3349 in a real and meaningful way.

Wind energy has played a major role in the production of domestic energy, particularly for the past decade. This domestic energy source has created tens of thousands of jobs and spurred economic development in a wide range of business sectors, including manufacturing. Wind energy currently provides jobs in every state in the United States. In 2016 alone, over 14,000 jobs were added in the wind energy sector, with an expected total of 147,000 people employed in wind by 2020. Around \$13 billion in



private capital is being invested annually in wind energy, spurring economic activity in rural America, where it has an even greater impact. AWEA encourages DOI to protect greater sage-grouse and its habitat, while also ensuring conservation efforts do not impede economic opportunities from wind energy.

We note that the development of wind energy can also help serve the goal of greater sage-grouse conservation. Climate change is an existential threat to billions of birds, including the sage-grouse. Wind energy and renewable energy in general play a critical role in mitigating climate change, as its production emits no greenhouse gases. This environmental contribution is an important factor that should not be overlooked when conservation measures are being evaluated that have the potential to significantly compromise wind energy's mitigation of climate change. Therefore, greater sage-grouse efforts that unduly burden the siting and operation of wind energy projects should be looked upon with caution given the benefits that the continued development of this energy source can have for greater sage-grouse, as well as other wildlife.

The existing plans focus on habitat conservation that unnecessarily limits wind energy development on federal land through the designation of priority and general greater sage-grouse habitat (with exclusion and avoidance areas) and the establishment of buffers around leks. While the recommendations call for policy revisions that could broaden oil and natural gas development opportunities in areas designated in the Obama plans as "priority habitat management areas," the recommendations do not specifically discuss wind energy development therein. This a grave oversight as wind energy activity is also limited in these areas through significant "no-surface occupancy" requirements and other stipulations. As discussed below, the current research, (including additional research on the issue done since the plans were adopted), does not demonstrate a correlation between wind energy development and significant impacts to greater sage-grouse populations.

In light of these facts, we recommend that resource management plans be amended to adopt the risk- based and site-specific approach put forth in the U.S. Fish and Wildlife Service Land-Based Wind Energy Guidelines (WEGs) for wind energy development in greater sage-grouse habitat.<sup>2</sup> The WEGs would serve as a more effective approach for evaluating wind energy's impacts on greater sage-grouse. Specifically, as there is already a DOI-approved regulatory mechanism (the WEGs) in place that addresses the interaction of wind development and species of concern, such as greater sage-grouse, wind energy projects should be exempted from the exclusion/avoidance approach taken by the previous Administration.

The WEGs have the significant advantage of having already been issued by DOI. The WEGs also provide wind developers and DOI with greater flexibility to analyze the risk to greater sage-grouse from any particular wind project at any given time. As explained in more detail below, this site-specific approach is also likely to result in better conservation outcomes for greater sage-grouse populations. As DOI continues to manage greater sage-grouse populations through the protection and restoration of grouse habitat, we encourage DOI to investigate opportunities to provide additional waivers, modifications, and exceptions for activities in priority habitat management areas.

We realize that our recommendations would likely entail plan amendments. However, we think these steps can be taken without sacrificing effective and durable measures that provide for the conservation of sage-grouse and ensure there is no need to list them under ESA in the future. While it will take many months, if not years, to amend the plans, such amendments will allow the plans to effectively protect greater sage-grouse without needlessly hindering wind energy development and, in turn, the jobs and economic opportunities that

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<sup>2</sup> Available at: [http://www.fws.gov/windenergy/docs/weg\\_final.pdf](http://www.fws.gov/windenergy/docs/weg_final.pdf).

flow from it. While plan amendments are under way, more immediate actions can be taken as recommended in the Report and highlighted in your Memorandum to the Secretary that accompanied the Report. AWEA will briefly address these actions in Section II.B, below.

Finally, we note that one of the chief methods of achieving effective conservation that is not unduly restrictive is to enlist the wind industry as a partner in sage-grouse preservation and to fully realize the many benefits that the industry can offer, such as coordinating conservation partnerships that develop essential and much needed data, and supporting/developing conservation plans that utilize mitigation measures. Such measures can help the conservation of greater sage-grouse and avoid simply excluding wind development from much of the western United States without adequate science and data to justify such an outcome.

## **II. Comments**

### **A. The DOI Should Ensure that its Sage-Grouse Policy does not Unnecessarily Impede Wind Energy Development**

When evaluating options under SO 3353, AWEA encourages DOI to make sure to avoid another “China Mountain” scenario. On March 7, 2012, the Bureau of Land Management (BLM) announced that it was deferring action on the 425 MW China Mountain project in Idaho and Nevada and was suspending work on the Federal Environmental Impact Statement (FEIS) pending completion of the Idaho/SW Montana sage-grouse FEIS and Resource Management Plan (RMP) amendments. These amendments were finally issued in 2015. By the time the action was deferred, BLM and the project proponent had spent over two years and a significant amount of money processing the application. The deferral killed the project prior to completion of the NEPA analysis or any assessment of related mitigation options.

#### **1. The DOI Should Amend ARMPA/ROD provisions that Unnecessarily Impose Significant Costs on the Siting of Wind Energy**

With the above in mind, AWEA respectfully requests that DOI amend the Approved Resource Management Plan Amendment (ARMPA)/Record of Decision (ROD) provisions that “unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, projection, utilization, transmission, or delivery of [wind] energy resources,” consistent with EO 13783, Sec. 2(b). As written, the ARMPAs exclude new utility-scale (defined to mean greater than 19 MW) and commercial wind projects from 35 million acres of priority greater sage-grouse habitat on BLM and USFS lands.<sup>3</sup> Wind projects are discouraged from being developed in another 32 million acres of general habitat, with priority given to projects that are outside this general habitat. This means that all 67 million acres of greater sage-grouse habitat managed by BLM and USFS are wind energy exclusion or avoidance zones.

We note that wind energy development has a high potential throughout much of the greater sage-grouse’s occupied range, including these priority and general habitat areas.<sup>4</sup> In fact, more than 14 percent of this range has high potential for commercial wind power.<sup>5</sup> Despite this high potential for commercial wind development, the Fish and Wildlife Service (FWS) expects these restrictions to remain in place for the next 20 to 30 years.<sup>6</sup>

In January 2014, AWEA commented on the burdens in the Nevada/ Northeastern California Draft Environmental Impact Statement (DEIS), among other land use plans. The ARMPA that was subsequently issued in September 2015 retained many of the burdens found in the DEIS. While this only represents one of 15 such greater sage-grouse ARMPAs, it illustrates AWEA’s concerns across all of the ARMPAs and RODs. For example, Management Decisions (MD) and Required Design Features (RDF) that burden wind energy development in the Nevada/ Northeastern California plans include, but are not limited to the following:

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<sup>3</sup> See FWS not warranted listing decision, 80 Fed. Reg. 59858, 918 (Oct. 2, 2015) (Hereinafter “FWS 2015”).

<sup>4</sup> FWS 2015 at 59917.

<sup>5</sup> *Id.*

<sup>6</sup> FWS 2015 at 59918.

- **State Plans**

SO 3353 is intended to enhance cooperation between the DOI and the sage-grouse states per section 1 of the order. As AWEA stated previously in comments, the State of Nevada's Alternative E was the best of all proposed alternatives on this matter. Nevertheless, the ARMPA rejected the state plan in favor of the BLM preferred alternative with a few modifications that did not assist development of wind energy.<sup>7</sup>

- **Priority Habitat**

Under the plans, priority habitat is a right of way (ROW) exclusion zone for commercial wind.<sup>8</sup> General habitat has been designated as an avoidance zone.<sup>9</sup> In short, vast areas are precluded from wind development, regardless of whether any potential risks can be mitigated.

- **Utility Corridors**

As it stands, under the plans only previously identified utility corridors are allowed to remain in greater sage-grouse designated habitat.<sup>10</sup> Except for grandfathered projects, transmission lines greater than 100 kV are to be avoided both in general and priority habitat areas, making it difficult to develop any energy projects in those areas.<sup>11</sup>

- **Travel Restrictions**

No new roads are allowed in priority habitat under the plans, except for public safety or federal agency access.<sup>12</sup> Roads not designated in the travel management plans are to be closed and

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<sup>7</sup> ROD Sec. 3.1.7 and 2.4.2.

<sup>8</sup> MD RE 3.

<sup>9</sup> MD RE 5; RDF Gen 10.

<sup>10</sup> MD LR 2.

<sup>11</sup> MD LR 5.

<sup>12</sup> MD LR 18; RFD Gen 1.

rehabilitated.<sup>13</sup> This makes it virtually impossible to develop in those areas, as these roads are often required to construct and service projects.

- **Lek Buffers<sup>14</sup>**

Lek buffers are required at the following distances in the plans: roads, energy infrastructure, and surface disturbance must be 3.1 miles away; tall structures must be 2 miles away; and noise must be 0.25 miles away. As discussed further below, these buffers are not supported by science for wind. Strictly implemented, these lek buffers could either zone out or severely restrict land use activities across the entire planning areas. Further, the possibility of a lek moving in at the last minute and adding to a buffer for a project ready to begin construction is always a possibility. Recognizing the enormous economic impact of this decision, there are project-level exemptions. However, it is hard for developers to rely on whether justifiable departures to increase or decrease the specified distances will be approved, even if local data, landscape features, and other existing protections (including state regulations) support such a decision. Based on these factors, it is difficult for developers to predict how often agencies will grant lek buffer variances in general areas.

- **Mitigation**

Mitigation provisions require perch preventers within four miles of active and pending leks.<sup>15</sup> The plans also require and ensure mitigation that provides a net conservation gain to the species. This will be achieved by avoiding, minimizing, and compensating for impacts by applying beneficial mitigation standards. If, after applying this mitigation hierarchy, there is still habitat loss, then compensatory mitigation projects will be used to meet the overall standard. While a net

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<sup>13</sup> MD TTM 3; RDF CTTM 1.

<sup>14</sup> Appendix B.

<sup>15</sup> MD LR 17; RFD Gen 11, 20.

conservation gain was required by Solicitor Tompkins' Opinion, that opinion was subsequently revoked by M-Opinion No. M-37046 on June 30, 2017. The revocation of Secretarial Order 3330, through the issuance of Secretarial Order 3349, is a commendable step in the right direction toward domestic energy production.

- **Sagebrush Focal Areas are de facto Areas of Critical Environmental Concern**

Sagebrush Focal Areas (SFA) were not included in the DEIS process; therefore, AWEA and others were not given the opportunity to comment on this issue. Because SFAs were not included in the DEIS originally, the DEIS needs to be supplemented for review but this has not occurred. A federal court in Nevada has remanded the FEIS back to the DOI for review of the SFAs.<sup>16</sup> As such, this creates an optimal time to rethink the planning and utilization of SFAs, and we encourage the DOI to do so now.

- **National Technical Team and Federal Advisory Committee Act**

There are obvious limits on the National Technical Team (NTT) with respect to representing all stakeholders. In fact, we believe that the NTT violated the Federal Advisory Committee Act (FACA). Further, many principal stakeholders did not support the NTT; for instance, the Western Association of Fish and Wildlife Agencies (WAFWA) did not endorse the NTT as the sole source of greater sage-grouse science. Moreover, whatever the state of the science at the time of the 2011 NTT report, it is no longer determinative for management actions in 2017 and beyond. To improve this situation and provide better feedback, there needs to be a broader inclusion of interested stakeholders in the evaluation of the existing management plans. The wind industry looks forward to working with the DOI and USFS as they consider reforms to the existing greater sage-grouse plans.

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<sup>16</sup> *Western Exploration LLC et al. v. US DOI*, Case No. 15-cv-491, 2017 WL 1237971 (D. Nev. Mar. 31, 2017).

## **2. Reconsider BLM IMs**

Section 4(b)(iv) of Secretarial Order 3353 calls for a review of the September 2016 BLM Instruction Memoranda for burdens on energy development. This includes a review of Instruction Memorandum (IM) No. 2016-145, Tracking and Reporting Surface Disturbance and Reclamation—inside and outside priority habitat. The IM implements a very complicated system to track surface disturbance, all predicated on the 2011 Report on National Greater Sage-Grouse Conservation Measures (NTT Report) and the findings in that report, which rely on extremely limited anthropogenic surface disturbance across all land ownership. This determination should be reconsidered in light of the lack of science on the issue.

## **3. Wind Energy's Impacts on greater sage-grouse**

The NTT Report determined that wind energy would have a negative impact on sage-grouse habitat and development.<sup>17</sup> At the time of this conclusion, there was very little scientific or empirical studies of the actual impacts of wind energy development on any of the grouse species. Without adequate science on the actual impacts of wind energy development, BLM's land-use plans erroneously based their conclusions on the NTT Report's claims that wind energy development was a threat to greater sage-grouse populations.

The NTT Report's conclusions about the negative impacts of wind energy development on greater sage-grouse were largely made by analogy to other development activities (e.g., oil and gas). However, studies from other activities should not be used to impose conservation measures on the wind industry. Wind development is not necessarily analogous to other development activities. All development that may impact sage-grouse is distinct and includes differing densities of roads, structures, and traffic, lighting, structures of varying heights, etc. It is not reasonable to just extrapolate impacts from one kind of development to a totally different kind of development or to just assume that

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<sup>17</sup> 76 Fed. Reg. 77008 (Dec. 9, 2011)

conservation measures applicable to one type of development are necessary or workable for another kind of development.

The “typical” wind project is several orders of magnitude smaller than many other types of development activities where greater sage-grouse have been previously studied. The average wind farm is about 100-200 MW, and the land needed by wind farm infrastructure is about one acre per MW. To definitively answer whether studies for other development activities hold true for wind energy development would require actual long-term data from multiple existing wind energy facilities in the greater sage-grouse range. Until this is done, BLM appears willing to continue to rely on surrogate development activities (other than wind) to support the basis for imposing restrictions on wind energy development, even though there is no evidence to support drawing such an analogy and, in turn, imposing similar restrictions for such distinct development activities.

BLM’s assertion that negative impacts were likely to occur with wind energy development in areas occupied by greater sage-grouse thus appears to be based less on science and more on conjecture.<sup>18</sup> Since the time of the NTT Report, several studies regarding the impacts of wind energy on wildlife in the plains region have been conducted, including studies specifically focusing upon the potential impacts of wind energy development on sage-grouse. As such, there is a more expansive body of studies now available on the subject of wind energy and the potential impacts it may have on the greater sage-grouse. As outlined in the following examples, these studies have shown that wind energy production generally does not cause negative impacts on the sage-grouse.

In January 2016, for instance, a group of scientists working for the National Wind Coordinating Collaborative released a report entitled “Effects of a Wind Energy Development on Greater Sage-Grouse

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<sup>18</sup> NTT Report, 57, December 21, 2011 (asserting that it is not known what impacts the development of wind energy in sage-grouse habitats will have).

Habitat Selection and Population Demographics in Southeastern Wyoming.”<sup>19</sup> The study did find that once sage-grouse eggs were hatched, the hens were likely to move their brood away from the turbine development; but this movement appeared to be more related to movement away from infrastructure generally rather than from the wind turbines specifically.<sup>20</sup> In addition, a similar study found: “The relative probability of greater sage-grouse selecting brood-rearing and summer habitats decreased as percentage of surface disturbance associated with the facility infrastructure increased. We did not, however, detect a negative effect of the wind energy facility on nest site selection or on nest, brood-rearing, or female survival during the study.”<sup>21</sup> Further, a study published in the *Wildlife Society Bulletin* in February 2017 entitled “Greater sage-grouse male lek counts relative to wind energy development” observed no negative effect on males attending lek areas that were greater than 1.5 km from the nearest wind turbine.<sup>22</sup>

A study in Utah done in 2016 found that transmission lines sited in areas of low quality winter habitat for sage-grouse did not appear to influence where the sage-grouse chose to roost in the winter.<sup>23</sup> The study found that because the areas where the transmission lines were sited were already of low probability of use by the sage-grouse, the line had little to no impact on where the grouse population chose to live in the winter months.<sup>24</sup>

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<sup>19</sup> LeBeau, C., G. Johnson, M. Holloran, J. Beck, R. Nielson, M. Kauffman, E. Rodemaker, and T. McDonald. 2016. *Effects of a Wind Energy Development on Greater Sage-Grouse Habitat Selection and Population Demographics in Southeastern Wyoming*. Prepared for: National Wind Coordinating Collaborative, Washington, DC. Prepared by: Western Ecosystems Technology, Inc., Cheyenne, WY. January 2016.

<sup>20</sup> *Id.* at 65.

<sup>21</sup> Greater Sage-Grouse Habitat Selection, Survival, and Wind Energy Infrastructure (PDF Download Available). Available from: [https://www.researchgate.net/publication/315812396\\_Greater\\_Sage-Grouse\\_Habitat\\_Selection\\_Survival\\_and\\_Wind\\_Energy\\_Infrastructure](https://www.researchgate.net/publication/315812396_Greater_Sage-Grouse_Habitat_Selection_Survival_and_Wind_Energy_Infrastructure) (2015).

<sup>22</sup> Lebeau, C. W., et al., Greater sage-grouse male lek counts relative to a wind energy development, *Wildl. Soc. Bull.*, 41: 17–26 (Feb., 2017).

<sup>23</sup> Hansen, Erica P., Stewart, A. Cheyenne, Frey, S. Nicole, *Influence of transmission line construction on winter sage-grouse habitat in southern Utah*, *Human-Wildlife Interactions* 10(2):169-187 (2016).

<sup>24</sup> *Id.*

An empirical study conducted by Messmer, et al., evaluated the available research on sage-grouse and the impacts of tall structures on their activities. This study concluded that most of the research about the impacts of tall structures on sage-grouse was related to oil and gas development as opposed to wind energy, only quantified the cumulative impact of the development, and did not implicate tall structures as the causal agent of the negative impacts sage-grouse were experiencing.<sup>25</sup>

In short, while wind energy is included as a “disturbance threat” in the NTT, there is not sufficient science in the record to back up that allegation. This determination should be reconsidered in light of the lack of science on the issue. Indeed, this conclusion seems in stark contrast with the fact that in 2015 the FWS’s own determination was that only about 0.002 percent of occupied greater sage-grouse range was impacted by wind energy development.<sup>26</sup> In light of these discrepancies, the DOI should rely on the best available science, while acknowledging its current limited understanding in this area, and developing additional science on the effects of wind energy development on greater sage-grouse rather than relying on conjecture from unrelated development activities when making decisions.

**B. The Wind Energy Guidelines Should be used to Analyze Risk from Wind Energy to Greater Sage-Grouse**

The previous Administration’s overly-expansive areas designated as conflicting with future wind development for greater sage-grouse could seriously threaten wind development and its associated economic benefits. Accordingly, BLM and the, as well as the FWS, should enter into a Memorandum of Understanding (MOU) with AWEA and the wind industry regarding the development of wind energy as it relates to greater sage-grouse. This memorandum should recognize that the WEGs<sup>27</sup> already provide specific guidance related to greater sage-grouse management with respect to wind energy. The MOU should allow the continued development of wind energy in both general and priority habitat through a

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<sup>25</sup> Utah Wildlife in Need 2010, Messmer et al. 2013, Walters et al. 2014

<sup>26</sup> FWS 2015 at 59917.

<sup>27</sup> Available at: [http://www.fws.gov/windenergy/docs/weg\\_final.pdf](http://www.fws.gov/windenergy/docs/weg_final.pdf).

voluntary risk-based and site-specific approach, pursuant to the WEGs, while protecting greater sage-grouse.

The existing resource management plans create sage-grouse conservation areas—exclusion and avoidance areas. Outside of exclusion zones, these management areas outline a suite of basic management activities that may, under certain conditions, or may not occur within a given area. In other words, the management areas represent a continuum that includes at one end a relatively restrictive approach aimed at providing a high level of protection to the species within “core” areas (which extend over the majority of potential wind development areas) and, on the other end, a relatively flexible approach to the remaining areas.

While AWEA agrees that the conservation of greater sage-grouse habitat is key to the maintenance of the species, the conservation area approach may not be the best way to achieve this goal, as it tends to be both over- and under-inclusive depending on the area chosen (i.e., overly restrictive in some areas and potentially not restrictive enough in others). In other words, such an approach is not narrowly tailored to solving the problem (protecting greater sage-grouse populations) and, therefore, likely will unnecessarily hamper wind energy development without providing a corollary benefit to greater sage-grouse conservation in some instances. Further, a core area conservation approach (no development in certain areas) might also be unjustified in light of an increasing amount of scientific evidence suggesting wind energy’s impacts are limited and can be mitigated (see section II. A. 3 above).

Because there is already a DOI-approved regulatory mechanism (the WEGs) in place that addresses the interaction of wind development and species of concern, such as greater sage-grouse, the WEGs can provide wind developers and the DOI with greater flexibility to analyze the risk to greater sage-grouse from any particular wind project at any given time. This site-specific approach is likely to result in better conservation outcomes for greater sage-grouse populations and allow an evaluation of a

specific wind project's impacts on the species in all areas, rather than just crudely limiting development in certain areas based on a landscape-level planning process.

Specifically, by incorporating the WEGs into the BLM approval process, wind energy projects should be exempt from the current exclusion and avoidance approach of greater sage-grouse management. Instead, the WEGs should be the process for analyzing the risk to greater sage-grouse from any particular wind project at any given time. When the FWS published the WEGs, the FWS said "when used in concert with appropriate regulatory tools, the Guidelines form the best practical approach for conserving species of concern," including, by name, sage-grouse.

Employing the WEGs for wind energy development would create "smarter" siting of facilities with regard to impacts on greater sage-grouse and would provide greater flexibility for these developers. Based on recommendations from experts on the FACA committee that created the WEGs, the guidelines call for a tiered site-specific analysis to determine potential adverse effects of wind energy development on species of concern and their habitats. The tiered approach creates an iterative decision-making process for collecting information in increasing detail, quantifying the possible risks of proposed wind energy projects to species of concern and their habitats, and evaluating those risks to make siting, construction, and operation decisions. The WEGs site-specific analysis offers a better way to balance habitat preservation and economic wind development, both of which serve important policy goals, identifying both areas appropriate for positive economic development and sensitive areas requiring more study and mitigation than have otherwise been identified by the conservation areas approach. Unlike the current conservation area approach, the WEGs' comprehensive process ensures that the final decision regarding development in a potentially valuable habitat is based on sound scientific data, promotes consistency among sites, and helps ensure that an appropriate balance is struck between development and the risk it poses.

The five tiers listed in the WEGs are described below, which we have modified to fit the context of greater sage-grouse management:

- **Tier 1 – Preliminary Site Evaluation (landscape-scale screening of possible project sites)**

Tier 1 serves as the investigative screening stage of the process based on a review of publicly available data. It offers early guidance about the sensitivity of the site within a larger landscape context; it can help direct development away from sites that will be associated with additional study need, greater mitigation requirements, and uncertainty; or it can identify those sensitive resources that will need to be studied further to determine if the site can be developed without significant adverse impacts to greater sage-grouse.

- **Tier 2 – Site Characterization (broad characterization of one or more potential project sites)**

Under Tier 2, a qualified biologist would visit and assess the prospective site to determine whether greater sage-grouse are present. If the site were categorized as greater sage-grouse habitat, the developer would use the framework outlined in the WEGs to preliminarily assess the project's impacts on the habitat.

- **Tier 3 – Field Studies to Document Wildlife and Habitat and Predict Project Impacts**

Under Tier 3, the developer would conduct extensive quantitative studies to better assess the proposed project's potential risk to greater sage-grouse and how to avoid, minimize, or mitigate significant adverse impacts. The scientific third-party studies would provide pre-construction information to: (1) further evaluate whether the project should be developed or abandoned; (2) design and operate a site to avoid or minimize significant adverse impacts; (3) design compensatory mitigation measures; and, if necessary, (4) determine the duration and level of effort of post-construction monitoring.

The WEGs state that the estimation of indirect impact risk requires an understanding of animal behavior in response to a project and its infrastructure, and a pre-construction estimate of

presence/absence of species whose behavior would cause them to avoid areas in proximity to turbines, roads, and other components of the project. The WEGs further state that the amount of habitat that is lost to indirect impacts will be a function of the sensitivity of individuals to the project, and the population-level significance of this indirect impact will depend on the amount of habitat available to the affected population. If the indirect impacts include habitat fragmentation, then the risk to the demographic and genetic viability of the isolated animals is increased.

The WEGs explain that the results of Tier 3 studies should provide a basis for identifying measures to mitigate significant adverse impacts predicted for species of concern. In cases of uncertainty with regard to impacts to species of concern, additional studies may be necessary to quantify significant adverse impacts and determine the need for mitigation of those impacts. The WEGs also conclude that when significant adverse impacts cannot be fully avoided or adequately minimized, some form of mitigation may be appropriate to address the loss of habitat value.

Specific procedures, mitigation measures and best management practices (BMPs) described in the WEGs could also be tailored to the various types of projects as necessary to ensure appropriate measures are taken to avoid, minimize, and mitigate impacts that will vary by project type, thus encouraging development that will not be adverse to greater sage-grouse conservation to the fullest extent possible. The adoption of the BMPs would also ensure that potentially adverse impacts to the species and its habitat are reduced in a consistent manner across all sites.

- **Tier 4 – Post-construction Studies to Estimate Impacts**

Tier 4 post-construction studies would assess “whether predictions of fatality risk and direct and indirect impacts of [greater sage-grouse] were correct.” Methods and protocols in this tier are designed to assess both direct greater sage-grouse mortality and direct and indirect impacts to its habitat loss and fragmentation.

- **Tier 5 – Other Post-construction Studies and Research**

Tier 5 studies would only be necessary when impacts are significant and mitigation efforts proposed earlier are not effective. The developer and the state would coordinate to determine whether additional Tier 5 study and mitigation is needed and to develop the methodologies for any study deemed necessary.

In sum, AWEA believes that the systematic tiered approach described in the WEGs could serve as a better way to strike a balance between habitat preservation for greater sage-grouse and wind energy development.

### **C. The Report's Initial Actions are Compatible with AWEA's Recommendations**

The Report's cover memo recommends nine initial actions that DOI can take now to collaborate with the States, engage stakeholders, implement short-term recommendations, and investigate plan amendments. Secretary Zinke adopted those actions in his memorandum to Deputy Secretary Bernhardt. Where those actions are applicable to wind energy, AWEA offers the following comments.

- AWEA supports updating **habitat boundaries**. Doing so is consistent with AWEA's concerns, stated above, regarding blanket assertions in the existing plans that fully 67 million acres of federal habitat are off limits or highly restricted to wind energy development. All boundary maps are static and cannot reflect future conditions. The actual, on-the-ground, habitat should modify the boundary maps, not vice versa. The WEG process promotes site-specific habitat analysis that could be used to update habitat boundaries.
- **Waivers, exceptions, and modifications** of permit stipulations are often associated with BLM oil and gas leases. See, e.g., 43 CFR Sec. 3101.1-4. Any clarification for their use in PHMAs should consider applying these concepts equally to FLPMA Title V right-of-way permits issued to wind energy facilities and other land use authorizations on public lands.

- AWEA supports enhanced policy and training broadly for collection and use of **monitoring data** as it relates to lek locations, lek viability status, predators, fire rehabilitation, and the other factors needed to monitor sage-grouse lifecycle habitat with respect to other activities. Monitoring data can establish highly relevant trends that can be used during preliminary wind energy site evaluations and subsequent site characterizations of the type required in Tier 1 and 2 of the WEGs.
- AWEA supports **adaptive management**. DOI's regulation at 43 CFR Sec. 46.145 directs all bureaus, offices, and services within DOI to use adaptive management in concert with monitoring to make adjustments in subsequent implementation decisions. Adaptive management comports with the WEGs' post-construction studies and research (Tier 4 and 5).
- **Streamlining use authorizations** with little impact on sage-grouse is a laudable and necessary goal. However, until DOI abandons the ill-conceived 2015 wind energy exclusion and avoidance zones that encompass all sage-grouse habitat, all wind energy use authorizations will be presumed to impact sage-grouse. This illustrates the compelling need for the tailored, scientific, site-specific approach embedded in the WEGs.
- **Compensatory mitigation**, the lowest tier in the 5-tier mitigation hierarchy, can be an important tool when mitigation is not achieved first through avoidance, minimization, rectification, or reduction and elimination of impacts. 40 CFR. Sec. 1508.20. AWEA supports DOI's clarification of the appropriate use of compensatory mitigation and consistency with state mitigation programs.
- AWEA addressed **Sagebrush Focal Areas** in its comments, above. DOI is under a federal court order to investigate SFA's further under NEPA. This is an opportune time to



reconsider their modification or removal, together with the current NEPA analysis of the proposed mineral withdrawals in SFAs.

### **III. Conclusion**

For the above reasons, AWEA supports the intent of Secretarial Order 3353 and the subsequent recommendations based thereon and believes this effort represents an opportunity to promote domestic wind energy development goals in a real and meaningful way, while conserving greater sage-grouse. AWEA stands ready to answer any questions you may have and looks forward to working further with the Department of the Interior on these issues.

Sincerely,

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