April 7, 2011

Marla Rae
Chair, Oregon Fish and Wildlife Commission
Oregon Department of Fish and Wildlife
3406 Cherry Ave, NE
Salem, Oregon 97303

Dear Chair Rae and Members of the Commission,

For over two years the Renewable Northwest Project and its members have actively engaged the Oregon Department of Fish and Wildlife (ODFW) in a critically important discussion of how to enhance greater sage-grouse and sagebrush habitat while balancing society’s growing demand for regionally produced, renewable energy. In both our September 13, 2010 comments on the August draft, and in our January 19, 2011 correspondence with ODFW staff, we expressed our concern that the proposed Greater Sage-Grouse Conservation Assessment and Strategy plan revision (Proposed Plan Revision) and March 2011 Draft Rules for Greater Sage-Grouse Strategy (Rules) would effectively eliminate renewable energy development options in southeastern Oregon, failing to realize the partnership opportunities associated with responsibly sited renewable energy development to achieve the State’s conservation priorities. While we acknowledge some progress has been made in this draft, in our view the changes made in the Proposed Plan Revision are largely form over substance. The dramatic effect of the Rules and Proposed Plan Revision, which eliminates the opportunity for renewable energy development in southeastern Oregon, remains unchanged.

Premature to Adopt Rule and Plan Before Map Process is Complete:

The Core Area map is the critical tool that guides decision-makers as they consider activities that cover nearly one-third of the State. How the Rules affect renewable energy development opportunities will be seen most clearly through the map. The Fish and Wildlife Commission is scheduled to consider and vote on the Rules and Proposed Plan Revision during the April 22, 2011 meeting, before a final map has been released and before the Local Implementation Team process is complete. Because understanding the full impact of the Rules and Proposed Plan Revision hinges upon the Core Area designations as shown on the map, it is difficult (if not impossible) to assess the effect of such rules without the map itself.

Before any version of the Rules or Proposed Plan Revision is adopted, Commissioners and stakeholders should have a chance to see the final map and decide whether precluding development in such a large area of the state is consistent with the priorities of the Rules and Proposed Plan Revision under the seven co-equal goals of the Wildlife Policy (ORS 496.012). Affected communities should have the opportunity to participate in the development and completion of this map. To propose the adoption of
a decision-making tool without first showing Oregonians the product is not “the Oregon Way,” and should not be the product of the process we have all worked so hard to guide.

**Core Area Rightly Depict Areas of Concern – But Should Not Prohibit Development Without Review:**

Earlier versions of the Rules directly equated Core 1 areas to Category 1 habitat and therefore would have outright prohibited renewable energy development within its boundaries. Based on our review of the Proposed Plan Revision and our conversations with ODFW staff, when the final core areas are designated they will indicate areas of strong concern – but the designation itself does not automatically equate to Category 1 habitat designation. Yet while the new draft Rules appear to soften this core=category approach, the practical effect appears to be nearly unchanged. Any progress made toward greater site-specific designations is obstructed by the fact that the conservation “action,” “issue,” and “conservation guidelines” from the conservation strategy are incorporated by rule and direct ODFW to make Category 1 habitat designations for sage-grouse habitat in Core Areas without further fact-finding on the ground with respect to specific sites.

ODFW staff advise when they are asked by other state agencies (EFSC, DOGAMI) to comment on development proposals, they will recommend no disturbance to sage-grouse habitat in Core Areas. Development proposals that would be combined with actions to improve habitat and provide net benefits to the species specifically are not considered for Category 1 habitat. Staff take comfort in the assertion this is not a “regulatory” action, just a recommendation, but EFSC and DOGAMI will undoubtedly take these recommendations and decide against development in those areas.

There is no sound biological basis for refusing to consider, within Core Areas, development proposals that may include mitigation and other actions providing net benefit to the species. The Rules should be amended to allow this and the Proposed Plan Revision changed to avoid directing habitat categorization without closer analysis on a site-specific basis.

Further, the map demonstrates how staff interprets the criteria in the current draft rule. Very large areas of significantly degraded habitat have been swept into Core Area designation, including areas that have been cut over and replaced with cheat grass, such as the Vale Project area in Malheur County. We believe that either the criteria for inclusion in Core Areas should be greatly tightened or that Core Areas must allow for some consideration of projects that will be implemented that could provide net benefit to the species.

We respectfully urge that the following changes be incorporated into the Proposed Plan Revision before you take final action:

1. **Clarify How Current Core Areas and Low Density Habitat Relate to Old Habitat Category 1 Core Areas and Habitat Category 2 Core Areas:**

   The Rules and Proposed Plan Revision both shift from using category 1 and 2 Core Areas to utilizing “Core Areas” and “Low Density Habitat Areas” terminology. Without the benefit of seeing the new final maps revealing these areas, it is hard to know how to evaluate this change. We recommend you change
the wording on the map located on page 97, and anywhere else appropriate, to reflect the current terminology of Core Areas and Low Density Habitat Areas.

2. **Avoid Language That Reflects the Confusion Over Directly Equating Core Areas to Habitat Categorization:**

   Section V, Factor A, of the Proposed Plan Revision: “action,” “issue,” and “conservation guidelines” are incorporated by reference into the draft rule (OAR 635-140-0015(2)(b)). Our reading of this section indicates that the same care to remove confusion regarding “category” were not yet taken (see chart, “conservation guidelines” column for examples such as 2)a) “…classify habitat as Category 1…”; 1)a), “…classify habitat as Category 2…”). *This is new language introduced into the Proposed Plan Revision, and, in large measure, defeats the decision to take the Core=Category out of the Rules.*

To address this concern, we recommend making the following corrections:

   a. Factor A (page 113): Strike the first statement, “As a broad-scale filter avoid impacts from development in Core Areas” to avoid unnecessary confusion over how the guidance relates to the Fish and Wildlife Habitat Mitigation Policy. The first statement only serves to further the misunderstanding that Core Areas are predetermined to be undevelopable and adds unnecessary confusion to the habitat determination process.

   b. Factors A and D: Under the Conservation Guidelines, delete “habitat categories” and replace with “approach” to avoid further confusion over the relationship with the Fish and Wildlife Habitat Mitigation Policy. Delete direction in 2a) to automatically categorize sage-grouse habitat in Core Areas as Category 1 habitat. Such categorization should not be pre-determined but rather should only be done with close attention to the site-specific details.

3. **Sage-Grouse Core Area Habitat Categorization and Conservation Recommendations (pages 79-89):**

   Overall, this section continues to conflate core area and habitat categorization consistent with ODFW Mitigation Policy. Under the section entitled “framework”, the Proposed Plan Revision uses the term “protection” in a way that suggests there are no circumstances in which responsibly sited renewable energy development is feasible in designated Core Areas. On page 83, the Proposed Plan Revision outlines the rationale for habitat categorization within Core Areas, ending on pages 85 and 86 with a detailed discussion of Habitat Category 1 and 2 criteria. Even a careful reading of this section leaves a reader confused as to the relationship between “Core Area” and “Category 1 and 2” designations – confusion exacerbated by the lack of clarity with regard to the ability of Local Implementation Teams to adjust Core Area designations.

   We recommend that you simplify this section by doing the following:

   a. At the outset of this section emphasize the distinction between Core Area and Categorization under ODFW Wildlife Mitigation Policy.
b. Strike the reference to USFWS category definitions found on page 87. Nowhere else in the Proposed Plan Revision is a reference to USFWS policies. And there are more than sufficient places already in the Proposed Plan Revision that underscore the guidance to federal officials offered by ODFW’s plan.

c. To avoid any confusion between the Core Area and Habitat Category exercises, strike the language at the end of the page 86 where “Habitat Category-1” begins. A reference to ODFW Mitigation Policy should suffice.

d. Allow more flexible adjustments to the Proposed Core Areas: Under the section entitled “Implementation of Core Area Approach” (page 87), the Proposed Plan Revision stipulates, “adjustments should be made ONLY to boundaries of Core Areas”. There is no reason to insist on such narrow restrictions, especially given the overall lack of understanding of the relationship between renewable energy project operation and sagebrush habitat restoration. Adjustments should be allowed to the extent science, or direction from the state legislature, warrants or instructs. Adjustments to the implementation of the Core Area approach are also consistent with the ‘adaptive management plan’ repeatedly referenced in the Proposed Plan Revision.

e. Recognize certain kinds of activities might take place in areas designated “Core Area”. As is already referenced on page 88, certain areas of activity and land usage (e.g. existing industrial activity, municipalities and subdivisions, tilled agriculture) are to be excluded from Core Area boundaries. The draft does not indicate how other habitat impacts such as roads and ATV tracks, outbuildings, hunting ranges, cattle troughs, generating stations, transmission, or lands that have been significantly degraded by prior uses will be treated under the Core Area approach. It is feasible to predict that even within some of the most robust Core Areas there will be additional areas of significant enough impact to prevent Core Area designation. These areas, which have already undergone habitat transformations, could feasibly be appropriate to site for renewable energy development in addition to a myriad of other activities. We recommend that ODFW expand this “Map refinement” section to better outline areas of impact to be excluded, and to also allow the Local Implementation Teams the opportunity to assess appropriate land uses on already impacted lands.

**Unclear and Insufficient Role of the Local Implementation Teams and Affected Community Officials:**

While the Proposed Plan Revision recognizes the role for Local Implementation Teams, and an enhanced role for elected officials or their designates from affected communities, the role played by the local implementation team described on pages 87-88 narrowly limits their potential value to the successful implementation of the plan. For example, the list of reasons to exclude areas from core area designation does not explicitly recognize the presence of plans for various linear structures (gas pipelines,
communication and power lines, railroads, or roads). The narrow scope of the Local Implementation Teams’ responsibilities marginalizes the ability of local landowners and community planners to adequately assess current land uses and quality; address their future needs and to plan accordingly for changing populations, the availability of new technologies, and the construction of necessary infrastructure while also meeting the population and habitat priorities of the Proposed Plan Revision. Failure to sufficiently recognize the critical role played by local people and to empower local communities to incorporate their long-range planning within the Local Implementation Team process risks undermining the “transparent and inclusive” natural resource management process that this plan seeks to nurture and could threaten the “social capital” that is critical to the successful implementation of any plan.

We urge ODFW to place a greater value on building cohesive social capital for long-range planning that works in tandem with conservation goals. We suggest that to accomplish this increased emphasis, ODFW provide additional suggestions for creating an “adaptive co-management” framework as described on page 124. The Proposed Plan Revision instructs Local Sage-Grouse Implementation Teams to evaluate and refine Core Area maps, yet provides confusing guidance regarding the authority of these teams. For example, page 87 the Draft Plan Revision states “ODFW staff will conduct local analyses to verify that habitats within Core or Low Density are in fact sage-grouse habitat.” The Proposed Plan Revision then goes on to state “each Local Sage-Grouse Implementation Team will evaluate Core Area maps and refine boundaries”. Perhaps the real instructions lie in “Map Refinement 1,” where it states “Adjustments should be made ONLY to boundaries of Core Areas.”

These confusions or limitation of scope prevents or severely restricts the inclusion of the local information that the Core Area approach seeks to address and allows the ambiguity of Core Area versus Category designations to persist. It is our hope that prior to finalizing this draft plan, greater efforts will be made to provide a comprehensive description of the role that Local Implementation Teams have on future planning efforts and on their role influencing category designations. Furthermore, do state officials never envision a time when conservation measures actually result in a shrinking of core areas of concern? Given the stated goal of establishing and maintaining a population goal of approximately 30,000 birds, we would hope ODFW would demonstrate sufficient flexibility and adjust the Core Area boundaries accordingly.

**Poor Balance of Priorities as Stipulated in the Oregon Wildlife Policy:**

In our view, the Proposed Plan Revision and Rules continue to ignore the other co-equal goals stipulated in the Wildlife Policy. We agree that the Policy states “…wildlife shall be managed to prevent serious depletion of any indigenous species and to provide the optimum recreational and aesthetic benefits for present and future generations of the citizens of this state.” But it also states “in furtherance of this policy, the State Fish and Wildlife Commission shall represent the public interest of the State of Oregon and implement the following coequal goals of wildlife management… (7) To make decisions that affect wildlife resources of the state for the benefit of the wildlife resources and to make decisions that allow for the best social, economic, and recreational utilization of wildlife resources by all user groups.”
Failure to balance the seven Wildlife Policy priorities undermines the Proposed Plan Revision’s stated objective of writing a comprehensive adaptive management plan that adequately addresses the full ecology of greater sage-grouse populations and habitats. De-valuing the significant role of designing conservation policies that are sound socially, economically, and biologically endangers the success of those policies. Were the health of rural communities given full consideration in this Proposed Plan Revision, we believe it would also include other goals, such as restored watersheds, curtailment of invasive species, and removal of barbed-wired fencing. Economically healthy communities should be recognized as significant allies in protecting natural resources and enhancing conservation efforts.

**Missed Opportunity to Offer a Conservation Partnership to the Renewable Energy Industry:**

In both the executive summary and on page 79, the Proposed Plan Revision characterizes livestock ranching as “compatible with sage-grouse conservation, and necessary management activities to maintain a sustainable ranching operation are not considered ‘development actions.’” Despite evidence to support a similar possible relationship between wind farm operations and sagebrush habitat enhancement, the Proposed Plan Revision continues to depict renewable energy development as a threat to sage-grouse and sagebrush habitat. Throughout our previous comments and conversations with ODFW, RNP presented evidence of positive habitat correlations associated with wind energy facilities. For example, on page 42 the Draft Plan Revision cites Dallgren et al: “mechanical treatments may enhance brood rearing habitats where such habitats have been degraded.” When applied in the context of wind energy facilities where habitat transformation and recapture are necessary elements of project construction, Dallgren’s findings connote obvious habitat benefits and restoration opportunities made possible by the presence of renewable energy development. Examples of wind energy facilities that have implemented land restoration programs such as envisioned by Dallgren, most notably the Wild Horse Wind Farm in Washington, include appropriately sited projects to avoid active lek sites, multi-acre replanting of native species, prominent tagging of fences, and large-scale removal of invasive species rehabilitation. Renewable energy proponents have pursued many of these projects on a voluntary basis, in addition to completing required mitigation efforts. Additionally, given that no budget explanation for meeting habitat enhancement is provided in this plan, renewable energy project development and operation can be a source for funding and staffing landscape-scale habitat restoration and mitigation. In our view, ODFW’s failure to acknowledge and seek partnership opportunities between responsible renewable energy development and conservation opportunities sadly undermines opportunities to develop landscape scale conservation efforts and pursue the development of large-scale, creative mitigation techniques.

**Seemingly Arbitrary Language in Draft Rules, Not Fully Supported by Plan Document:**

The Rules include a number of language changes that potentially shift the interpretation and outcome of these Rules. We seek clarification on the following:
1. 635-140-0005 “In accordance with the Wildlife Policy (ORS 496.012) the primary goal is to restore, maintain and enhance populations…”
   a. As previously illustrated, the Wildlife Policy emphasizes that “the State Fish and Wildlife Commission shall represent the public interest of the State of Oregon and implement the following coequal goals of wildlife management.” The Wildlife Policy is very clear that goals are meant to share equal weight and that one goal should not be prioritized over any other.
   b. “Restore” connotes a vastly different biological meaning than “maintain and enhance.” Further, this restoration theme is not emphasized elsewhere in either the Rules or Proposed Plan Revision.

To correct for these two inconsistencies, we suggest that this sentence read, “In accordance with the Wildlife Policy (ORS 496.012), the overall goal is to maintain and enhance populations of greater sage-grouse such that multiple uses of populations and their habitats can continue.” This language is more consistent with the introduction on page x of the Proposed Plan Revision. We appreciate the inclusion of the concept of “multiple uses” in this section and recommend that this language be retained in the final version.

2. Population Management Policy and Objectives population levels inconsistent. (1) Policy states that greater sage-grouse shall be managed to “maintain or enhance their abundance and distribution at the 2003 spring breeding population level, approximately 30,000 birds” yet the (2) Objectives and “regional population objectives” totals 29,700 from the five BLM Districts. Amend the rule so that these two population abundance goals achieve parity.

3. Given that the Core Area maps are not yet finalized, it is difficult to ensure that adequate mitigation, especially landscape-scale conservation, opportunities exist under the current language of 635-140-0010 Habitat Management. We draw the Commissioner’s attention to this and request additional review and explanation of how mitigation opportunities will be feasible once the Rules and Proposed Plan Revision are finalized.

4. 635-140-0015 Core Area Approach to Conservation: The Rules language requires further refinement to eliminate confusion and better distinguish (1) “core areas,” (1)(a) “core area habitat,” (1)(b) “low density habitat,” (2) “Application of Sage-grouse Core Area and Low Density Habitat Categorizations and Conservation Recommendations” and the role of the Local Sage-Grouse Implementation Teams for all of the reasons previously mentioned on pages 1-5 of this document.

5. Single-word adjustments requiring explanation:
   a. Utilization of “objectives” versus “goals” (page 1, Rules)
   b. Change from “numbers” to “abundance” (throughout Rules)
   c. Replacement of “winter” with “summer” (page 3, “Core Area Approach to Conservation” (1) (b) Policy 2.) Such a seasonal change has dramatic
implications on the ecology of the sage-grouse and we request that ODFW specify the legal biological rational behind this change.

**More Balanced Portrayal of Renewable Energy Impacts Rather Than Equating to Oil and Gas Fields and Other Industrial Activities:**

While the Proposed Plan Revision now creates a stronger distinction between the activities and habitat transformation of renewable energy development in contrast to non-renewable industrial activities, there are still apparent logical shortcomings. Page 47 distinguishes that “oil and gas fields may differ… compared to renewable energy” yet there is still a pejorative overall treatment of renewable energy activities. It is suggested that wind energy adversely impacts winter foraging range and that the natural placement and density of wind resources will necessitate significant habitat loss such as that found in coal-bed methane development sites.

This equating of renewable energy land disturbance to that of other commercial or industrial developments is expanded upon on page 113 with reference to Naugle et al. *in press*. While recognizing a lack of peer-reviewed science on the interaction between renewable energy and sage-grouse ecology, this section reinforces earlier associations and broadly portrays energy development and transmission as having “generally negative impacts on sage-grouse demography and habitat use.” Naugel et al’s work still generalizes from oil and gas activities, activities whose practices and sound characteristics are not similar to those of an operating wind farm. Such a treatment of so many unknown factors irresponsibly characterizes renewable energy and eliminates consideration of positive efforts renewable energy takes to decrease impacts that differ from other industrial activities. For instance, specific operations techniques such as minimizing road traffic during specific hours and scheduling routine maintenance during non-nesting seasons can significantly diminish or eliminate disturbance of sage-grouse leks. These voluntary operational measures are proven to decrease road threats and are directly responsive to sage-grouse specific nesting behaviors.

In closing, we again want to thank ODFW, especially Director Roy Elicker, for working with us to try and find a way forward that balances our desire to protect sensitive species and habitat with our need for clean, reliable, renewable energy. However, because the Proposed Plan Revision creates confusion of Core versus Category designations, fails to adequately explain how the conservation plan will be implemented, and fails to sufficiently outline and allow for local input into Core Area mapping, adoption at this time would severely threaten our collective desire to accomplish its goals. As a result we cannot support the Proposed Plan Revision as it is currently written. Before the Commission moves for final consideration, we respectfully ask you to conduct a thorough review of the Proposed Plan Revision to more fully examine the elements outlined in this letter and to understand the impacts to rural economic development. We support recommendations to create an advisory committee, compromised of representatives from the affected stakeholder communities, to work with ODFW to more fully incorporate public recommendations. The good work by ODFW staff to date, coupled with a transparent process, should be able to produce a completed Plan Revision within ninety days.
Thank you for your ongoing dedication to this important effort.

Sincerely,

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