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OIL AND GAS LEASE SALE PROTEST
(Filed Pursuant to 43 C.F.R. §§ 4.450-2 and 3120.1-3)

August 18, 2009 Lease Sale State of Utah

The Theodore Roosevelt Conservation Partnership ("TRCP") hereby protests the inclusion of certain parcels in the above referenced lease sale as advertised by the Bureau of Land Management ("BLM") on June 8, 2009. TRCP requests the following 19 parcels be withdrawn from sale because they: 1) Contain designated elk, pronghorn, and mule deer crucial winter range, fawning and calving habitat, and migration routes, or 2) are located on Gunnison sage grouse or greater sage grouse concentration areas, nesting areas, and leks.

UTU87451; UTU87452; UTU87453; UTU87454; UTU87469; UTU87470; UTU87471; UTU87473;
UTU87474; UTU87475; UTU87476; UTU87477; UTU87480; UTU87481; UTU87482; UTU87483;
UTU87484; UTU87485; UTU87486

BACKGROUND ON TRCP'S INTEREST

TRCP is a national non-profit (26 U.S.C. § 501(c)(3)) conservation organization dedicated to guaranteeing every American a place to hunt and fish, particularly on public lands. TRCP accomplishes its goal three ways: 1) Ensuring access to public lands, 2) ensuring adequate funding for natural resource agencies, and 3) helping to conserve fish and wildlife habitats. TRCP has formed, with various partners, a Fish, Wildlife, and Energy Working Group, comprised of some of the country's oldest and most respected hunting, fishing, and conservation organizations. With over 118,000 individual partners in the U.S. and over 1000 individual partners in Utah, TRCP is working hard to ensure that the development of oil and gas resources on public lands in the West is balanced with the needs of fish and wildlife resources, but is concerned that the rapid pace of development is precluding BLM from managing these resources as required by the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. § 1701 *et seq.*

TRCP is especially concerned with the fate of elk, mule deer, pronghorn, greater sage grouse, and Gunnison sage grouse and the recreational opportunities they provide tens of thousands of sportsmen each fall in Utah. Without comprehensive habitat management planning, closely coordinated with the Utah Division of Wildlife Resources ("UTDWR"), leasing and development of energy resources within crucial big game winter range, fawning and calving

habitat, and sage grouse wintering areas and leks can have a devastating impact on those wildlife resources and the hunting and fishing opportunities they afford.

THE IMPORTANCE OF KEY HABITATS

UTDWR has stated in its *Statewide Management Plan for Mule Deer*: "Mule deer are the most important game animal in Utah" and that the state has received a consistently high demand for annual mule deer harvest tags. UTDWR has also stated in its *Statewide Management Plan for Elk*: "Maintaining a diverse and high quality elk hunting program is important to Utah sportsmen. Hunter demand for opportunity to hunt mature bulls is high and increasing." Unfortunately, mule deer harvest numbers have plummeted over the past few decades (e.g., from 101,761 in 1970 to just 34,720 in 2000). See State of Utah Mule Deer Status Report (<http://www.muledeernet.org/utahstatus.htm>). And the UTDWR *Statewide Management Plan for Elk* states that "Crucial elk habitat is continuously being lost in many parts of Utah and severely fragmented in others due to human expansion and development. Urbanization, road construction, OHV use, and energy development have all impacted elk habitat." Energy development is associated with increased fragmentation, human expansion and development, road construction, increased OHV use through new roads, and the actual energy development footprint itself.

Crucial habitats and features are essential to mule deer, pronghorn, and elk survival. See, e.g., *White et al., Effect of Density Reduction on Overwinter Survival of Free-ranging Mule Deer Fawns, Journal of Wildlife Management 62:214-225 (1997)*; and *Sweeney, et al., Snow Depths Influencing Winter Movements of Elk, Journal of Mammalogy, Vol. 65, No. 3 (Aug. 1984), pp. 524-526*. The quantity and quality of mule deer and elk habitat is identified by UTDWR as the primary determiner of the health and size of mule deer and elk herds. UTDWR also identifies energy development as a main source of "loss or degradation of mule deer habitat," meaning these habitats should retain their qualities in order to sustain populations over time *Utah Division of Wildlife Resources Statewide Management Plan for Mule Deer (Nov. 13, 2003)*.

According to the UTDWR 2009 statewide management plan for pronghorn, "The recent expansion of energy development in the West has the potential to have serious impacts to pronghorn and their habitat" (available at: http://wildlife.utah.gov/hunting/biggame/pdf/Statewide_prong_mgmt_2009.pdf). Additionally, as explained in the UTDWR pronghorn management plan:

In addition to the direct habitat loss, there are indirect impacts from increased traffic, increased human presence, spread of invasive weed species, poaching, and other disturbances that could lead to pronghorn avoiding areas with intense development and a reduction in pronghorn carrying capacity.

Recognizing a pressing need to better protect these habitats, the Western Governors Association ("WGA") recently approved a wildlife corridors initiative report offering a series of recommendations, including identification of important corridors and the critical habitats they connect, collaborative planning to keep the corridors intact and a standardized mapping and data-collection system to be used across the region. As noted in the report: "Large, open spaces have long been emblematic of the West, but our burgeoning network of highways, canals,

urbanization, energy development, and other land uses now threaten to fragment our grand landscapes, cutting off pathways linking crucial habitats and reducing the ecological value of the remaining crucial habitats." The process to assess the impacts to wildlife and their habitats began in February 2007, when the governors approved the *Protecting Wildlife Migration Corridors and Crucial Wildlife Habitat in the West* (Resolution No. 07-01). Overall, the initiative is based on the recognition that large intact and functioning ecosystems, healthy fish and wildlife populations, and abundant public access to natural landscapes that define the West and that, in their own right, draw people to the region.

As explained in the WGA's Oil and Gas Working Group Report (Dec. 2007):

Care in early stages of planning oil and gas development is important to avoid damage that can take decades to overcome. The Governors' policy resolution specifically identifies the importance of crucial habitats and corridors to healthy wildlife populations and recognizes the need to mitigate the impacts of energy development on these important resources. The reason behind the Governors' focus is clear -- both energy development and wildlife are crucial to a healthy economy and high quality of life in the West. Therefore, accommodating oil and gas development, while minimizing impacts to wildlife habitat, is essential.

"Sage-grouse historically inhabited much of the sagebrush-dominated ecosystems of North America. Today, sage-grouse population abundance and extent have declined throughout most of their historical range." BLM National Sage-Grouse Habitat Conservation Strategy (Nov. 2004) at 6. "Large-scale modification of sagebrush habitats associated with energy development may have important impacts on habitat use or vital rates of sagebrush-dependent wildlife species." Naugle et al., *Sage-grouse Population Response to Coal-bed Natural Gas Development in the Powder River Basin: Interim Progress Report on Region-wide Lek-count Analyses* (May 26, 2006). Additional information has shown the importance of winter habitat use by sage grouse. Naugle et al., *Sage-Grouse Winter Habitat Selection And Energy Development In The Powder River Basin: Completion Report* (June 24, 2006). "Knowledge that sage-grouse avoid energy development in breeding (Naugle et al. 2006) and wintering seasons (this report) shows that conservation strategies to date to protect the species have been largely ineffective." *Id.* at 1.

The UTDWR *Strategic Management Plan for Sage Grouse 2002*, identifies the effects of coal bed methane, gas/oil drilling on sage grouse habitat as a key "issue." Greater sage grouse is listed in all western states as a special (or comparable) status species. For example, the state of Utah lists sage grouse as "sensitive" species, meaning there is "credible scientific evidence to substantiate a threat to continued population viability" (<http://dwrcdc.nr.utah.gov/ucdc/ViewReports/SSL121407.pdf>).

The Gunnison Sage Grouse is listed on the Utah Sensitive Species List and is a candidate for the Endangered Species Act (<http://wildlife.state.co.us/NR/rdonlyres/58E2A50C-74E3-412B-BDB4-4F5376C06FDF/0/UDWR.pdf>). According to the Utah Gunnison Sage Grouse Conservation Plan, "Range wide, breeding populations are estimated at 3,000 to 4,000 birds. San Juan County is the only county in Utah currently known to support a breeding population of Gunnison sage grouse" (<http://wildlife.utah.gov/uplandgame/pdf/gsgcp.pdf>). Increasingly rare, only 44 individual Gunnison sage grouse were counted in the state of Utah during 2007

(<http://www.western.edu/bio/young/gunnsg/gunnsg.htm>). Additionally, UTDWR states, "Habitat loss appears to be the major threat to the Gunnison Sage-grouse" (<http://dwrcdc.nr.utah.gov/rsgis2/search/Display.asp?FINm=centmini>). The UT BLM has a conservation agreement as part of the Gunnison Sage Grouse Rangewide Conservation Plan that states that the BLM will:

To the extent possible, protect or mitigate Gunnison Sage-grouse populations, as well as suitable habitats located on BLM lands, from negative impacts which may be caused by other land use activities (<http://wildlife.state.co.us/NR/rdonlyres/C91788FA-1E83-4FA8-831E-156E802AE1A3/0/BLMUtah.pdf>).

Section 6840.06.D of the BLM Manual (Special Status Species Management) provides "BLM shall carry out management for the conservation of State listed plants and animals." (Emphasis supplied). In this context, the term "conservation" means "the use of all methods and procedures which are necessary to improve the condition of special status species and their habitats to a point where their special status recognition is no longer warranted." BLM Manual § 6840.01. The Manual further directs "[a]ctions authorized by BLM shall further the conservation of ... special status species and shall not contribute to the need to list any special status species under provisions of the ESA," BLM Manual § 6840.12 (emphasis supplied). See also BLM Manual § 6840.22.C.

On December 4, 2007, the Federal District Court for the District of Idaho reversed and remanded the U.S. Fish and Wildlife Service's ("FWS") decision not to list the sage grouse as "threatened" or "endangered" under the ESA. *Western Watersheds Project v. U.S. Forest Service*, 535 F. Supp. 2d 1173 (D. Idaho 2007). The court explained the perilous condition of the sage grouse and the impact suffered by its habitats to date. *Id.* at 1173. Further elaborating on the current state of grouse habitat, the court noted: "Nowhere is sage-grouse habitat described as stable. By all accounts, it is deteriorating, and that deterioration is caused by factors that are on the increase." *Id.* at 1186. The court specifically focused on the impact of oil and gas development on grouse habitat as identified by an independent expert team. *Id.* at 1179. The court noted "a singular lack of data on measures taken by the BLM to protect the sage grouse from energy development, the single largest risk in the eastern region." *Id.* at 1188.

LEGAL REQUIREMENTS

I. THE NATIONAL ENVIRONMENTAL POLICY ACT.

The National Environmental Policy Act ("NEPA"), 42 U.S.C. §4321 *et seq.*, was enacted in recognition of "the profound impact of man's activity on the interrelations of all components of the natural environment, [and] ... the critical importance of restoring and maintaining environmental quality to the overall welfare ... of man" 42 U.S.C. § 4331. NEPA "prescribes the necessary process by which federal agencies must take a 'hard look' at the environmental consequences of [their] proposed courses of action." *Pennaco Energy, Inc. v. U.S. Dept. of Interior*, 377 F.3d 1147, 1150 (10th Cir. 2004) (internal quotations omitted); see also *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). NEPA is intended to focus the attention of the government and the public on the likely environmental consequences

of a proposed agency action. *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989).

Within the Price, Vernal, and Moab field offices, TRCP understands that the proposed sale of the following 25 parcels contested within this protest are based on the Price RMP (2008), Vernal RMP (2008), Moab RMP (2008): UTU87469; UTU87470; UTU87471; UTU87473; UTU87474; UTU87475; UTU87476; UTU87477; UTU87480; UTU87481; UTU87482; UTU87483; UTU87484; UTU87485; UTU87486.

Despite the recent revision of these RMPs, the BLM has 1) failed to adequately analyze new information concerning the impact of oil and gas development on mule deer, pronghorn, elk, Gunnison sage grouse and greater sage grouse 2) and relies on an arbitrary "reasonable foreseeable development" or "RFD" scenarios.

Within the Fillmore Field Office, TRCP understands the proposed sale of the following 4 parcels contested within this protest are based on the Warm Springs Resource Area Resource Management Plan and Record of Decision (WSRA RMP ROD, 1988), the House Range Resource Area Resource Management Plan and Record of Decision (HRRR RMP/ROD1987) and Fillmore Field Office Oil and Gas Leasing Environmental Assessment (UT-010-08-050, 2009): UTU87451; UTU87452; UTU87453; UTU87454.

In August 2007 the BLM acknowledged that the Fillmore RMP's did not adequately evaluate impacts to wildlife in order to lease them and subsequently deferred 41 parcels in crucial elk and mule deer habitat from the August 2007 lease sale.

In an effort to lease these parcels within the Fillmore Field Office (FFO), the BLM developed a the Fillmore Oil and Gas Leasing Environmental Assessment (EA) (UT-010-08-050) with a comment period deadline that was the same date as the December 2008 lease sale protest deadline. TRCP protested these parcels and discussed how an EIS was necessary prior to leasing because leasing these parcels in the FFO will constitute a significant impact. In addition to our Dec. 2008 lease protest, the TRCP commented during the FFO EA public comment period, and pointed to the need for an EIS because the potential for significant impacts that trigger the requirement for a full EIS.

Again, in December 2008, the BLM deferred all FFO lease parcels, including those with crucial elk and mule deer habitat and parcels near important Bonneville cutthroat trout habitat. The BLM concluded it would need additional time to complete the EA.

In February of 2009 TRCP commented on the FFO EA Unsigned Finding of No Significant Impact, again pointing to the need for an EIS prior to leasing in the FFO. Additionally, TRCP along with the Mule Deer Foundation, Utah Trout Unlimited Council, Federation of Fly Fishers, Backcountry Hunters and Anglers, National Wildlife Federation, and Great Basin Chapter of Trout Unlimited sent a letter to UT BLM Director Selma Sierra pointing to the need to conduct and EIS prior to leasing in the FFO because leasing will constitute a significant impact to wildlife, which triggers the need for an EIS.