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

June 5, 2008 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 April 18, 2008. TRCP requests the following parcels be withdrawn from sale because they: 1) Contain designated elk and mule deer crucial winter range and migration routes, or 2) contain designated crucial pronghorn fawning habitat, or 3) contain vital habitat for greater sage grouse:

UTU86170; UTU86171; UTU86172; UTU86174; UTU86175; UTU86176; UTU86177;
UTU86178; UTU86179; UTU86180; UTU86181; UTU86182.

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 113,000 individual members in the U.S. and over 1000 individual members 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, pronghorn, mule deer, and greater 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 (UT-DWR), leasing and development of energy resources within crucial big game winter range, fawning habitat, and migration routes, or within sage grouse

habitat, can have a devastating impact on those wildlife resources and the hunting opportunities they afford.

THE IMPORTANCE OF KEY HABITATS

The Utah Division of Wildlife Resources (UTDWR) has stated in its *Statewide Management Plan for Mule Deer* that "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. The UTDWR has also stated in its *Statewide Management Plan for Elk* that "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."

BLM generally has identified big game as an important resource in its Resource Management Plans ("RMP"), recognized the sensitive nature of winter ranges and migration routes, and subsequently has applied lease stipulations and activity restrictions to prevent loss of these areas for these purposes.

Crucial habitats and features are essential to mule deer, elk, and sage grouse population survival. 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*). This means that these habitats and features are essential to big game population survival. *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*.

Again, 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.

In addition, 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." "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.

LEGAL REQUIREMENTS

I. THE NATIONAL ENVIRONMENTAL POLICY ACT.

The National Environmental Policy Act ("NEPA"), 42 U.S.C. §4321 *et seq.*, requires federal agencies to take a "hard look" at new information or circumstances concerning the environmental effects of a federal action even after an initial environmental analysis has been prepared. Agencies must supplement existing environmental analyses if new circumstances "raise[] significant new information relevant to environmental concerns[.]" *Portland Audubon Soc'y v. Babbitt*, 998 F.2d 705, 708-709 (9th Cir. 2000). Moreover, an "agency must be alert to new information that may alter the results of its original environmental analysis, and continue to take a 'hard look at the environmental effects of [its] planned action, even after a proposal has received initial approval.'" *Friends of the Clearwater v. Dombek*, 222 F.3d 552, 557 (9th Cir. 2000) quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 374 (1989).

NEPA's implementing regulations further underscore this obligation. An agency "shall prepare supplements to either draft or final environmental impact statements if ... there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. §1502.9(c)(1)(ii). Even where an environmental impact statement ("EIS") has been previously prepared, "[i]f there remains 'major Federal actio[n]' to occur, and if the new information is sufficient to show that the remaining action will 'affect[] the quality of the human environment' in a significant manner or to a significant extent not already considered, a supplemental EIS must be prepared." *Marsh v. Oregon Natural Resources Council*, 109 S.Ct. 1851, 1859 (1989).

The Council on Environmental Quality's ("CEQ") NEPA guidance states that "if the proposal has not yet been implemented, EISs that are more than 5 years old should be carefully reexamined to determine if [new circumstances or information] compel preparation of an EIS supplement." See 46 Fed. Reg. 18026 (1981) (Question 32). This caution was reiterated by earlier BLM Instruction Memoranda ("IM") Nos. 2000-034 (expired September 30, 2001) and 2001-062 (expired September 30, 2002).

A. Existing Analyses Are Not Sufficient in Light of Significant New Information Concerning the Needs of Big Game and Sage Grouse.

TRCP understands the resource management plans ("RMP") on which BLM relies to support the proposed leasing action are the Price MFP (1982), San Rafael RMP (1989) and the Diamond Mountain Resource Area RMP (1993).

As a preliminary matter, TRCP notes that these RMPs are all at least 15 years old, with one being more than two decades old, clearly triggering the need for heightened scrutiny under CEQ guidance and BLM's earlier IM Nos. 2000-034 and 2001-062. Additionally, given that both the Vernal and Price RMPs are currently under revision, the BLM has admitted that the land use plans used to evaluate the nominated lease parcels for the June 5, 2008 lease sale are based

on information in need of revision. However, because no additional information has been provided, TRCP assumes BLM has determined that these RMPs and the NEPA analyses conducted to support their adoption decades ago have been deemed adequate for purposes of supporting the proposed lease sale.

In summary, TRCP submits that BLM has not evaluated fully the impact of habitat fragmentation, loss, and other factors (both indirect and cumulative) associated with development of the offered parcels on key big game and sage grouse habitat. BLM's RMPs made, at best, a determination that leasing was suitable at the planning level and deferred specific analysis to the project level. Now, BLM - at the project level - relies on the RMPs and outdated NEPA analysis conducted at the planning level to support leasing the offered parcels. This circular construct avoids the "hard look" NEPA requires BLM to take when evaluating the impact of oil and gas leasing on big game and upland bird habitats. Since BLM has determined that leasing confers a "right" to develop the parcel and therefore a leasee may develop lands once a lease is awarded, the action that sets into motion the development of the lease is the leasing stage - where no specific analysis has been done.

In light of the significant new information discussed below, the agency's decision to lease parcels that could significantly impact crucial mule deer winter range and migration routes and grouse habitat without further evaluating the impacts of leasing is unsupportable. Any Documentation of NEPA Adequacy ("DNA") prepared for the proposed lease sale is arbitrary, capricious, contrary to law, and an abuse of discretion.

1. New Information on Big Game Needs.

Since the time when the RMPs were originally developed, BLM has acquired significant new information about oil and gas development, and important wildlife habitats like crucial winter range, fawning areas, and migration routes. This has led BLM to adjust, and in some instances significantly change, winter range boundaries for mule deer and other big game species, as well as boundaries for sage grouse breeding areas. BLM has also learned much more about the impacts of oil and gas development on mule deer. BLM has funded and advised on specific research to evaluate impacts on mule deer from development in winter range. The most recent findings, including published literature, report significant impacts to mule deer use of winter range, with 27% being attributed to energy development. Sawyer, H. et al., 2006 ANNUAL REPORT, SUBLETTE MULE DEER STUDY (PHASE II): LONG-TERM MONITORING PLAN TO ASSESS POTENTIAL IMPACTS OF ENERGY DEVELOPMENT ON MULE DEER IN THE PINEDALE ANTICLINE PROJECT, Cheyenne, Wyoming, USA (2006) and Sawyer, H. et al., 2006. WINTER HABITAT SELECTION OF MULE DEER BEFORE AND DURING DEVELOPMENT OF A NATURAL GAS FIELD, *Journal of Wildlife Management* 70:396-403 (2006). The mule deer research from Sublette County, Wyoming paints a "seriously different picture of the likely environmental consequences of the proposed action" that has never been discussed in an environmental assessment or impact statement. *State of Wisconsin v. Weinberger*, 745 F.2d 412 (7th Cir. 1984); *accord, Essex County Preservation Ass'n v. Campbell*, 536 F.2d 956 (1st Cir. 1976).

In addition, recent studies have concluded that protection of migration corridors is critical to sustaining migratory mule deer populations in key areas. *See generally* Western Ecosystems Technology, Final Report for the Atlantic Rim Mule Deer Study (April 2007). "Prior to 2000

[when nearly all the RMPs at issue here were adopted], conserving migration routes had not been a top management concern for agencies" in areas where development was relatively minor. Hall Sawyer and Matthew Kauffman, *Identifying Mule Deer Migration Routes in the Atlantic Rim Project Area* (April 1, 2008) at 1.

Finally, through the use of radio and satellite telemetry, scientists from UT DWR and other big game researchers have been able to identify migration routes used by big game in their seasonal movements. These materials constitute inventories and evaluations of the areas using vastly improved techniques and methods - including compilation of comprehensive on-the-ground data, photographs, mapping, and extensive documentation of land conditions and values collected during extended visits, and research conducted subsequent to the BLM's RMP development. This information was not available at the time the relevant RMPs were developed and cannot be said to have been considered for NEPA purposes.

TRCP notes BLM Utah's sister offices are rethinking the continued viability of existing NEPA analysis. Montana BLM recently pulled 73,000 acres from a proposed sale based on concerns over impacts to mule deer and sage grouse. Albright G., *BLM Defers Acres from July Oil and Gas Lease Sale*, Montana/Dakota BLM Newsroom (19 July 2007). Additionally, Wyoming BLM decided to pull two parcels from its December 2006 Oil and Gas Lease Sale based on concerns expressed by WGFD. Lewis, P., *Information Notice-Protest Filed Parcels WY-0612-160 and WY-0612-161 Withdrawn*, Wyoming BLM Newsroom (28 November 2006). Wyoming BLM also decided to pull 13 parcels from the November 2007 lease sale at the request of Governor Freudenthal and the Wyoming Game and Fish Commission. Wertz, C., *BLM Defers Offering 13 Parcels in Upcoming Oil and Gas Sale* (30 November 2007). Also, Colorado BLM recently deferred 84 parcels from their May 8, 2008 lease sale. Gardner, J., *BLM Colorado's May 2008 oil and gas lease sale nets \$4 million*, Colorado BLM Newsroom (9 May 2008). Finally, New Mexico BLM deferred 37 parcels for the April 16, 2008 lease sale due to concerns raised by sportsmen and the New Mexico Fish and Game about desert bighorn sheep habitat. Lortez, O., *Amendment #2 Competitive Sale Notice BLM Lease Sale Notices and Results* (3 April 2008) and Lortez, O., *Amendment #3 Competitive Sale Notice BLM Lease Sale Notices and Results* (4 April 2008).

These actions are consistent with the Utah BLM's decision to pull 42 parcels in the August 2007, lease sale, cancel the entire November 2007 lease sale and then defer 5 parcels in the February, 2008 lease sale. Catlin, T., *Federal Oil and Gas Sale Scheduled for August 21*, Utah BLM Newsroom (15 August 2007); Catlin, T., *November Competitive Oil and Gas Lease Sale Cancelled*, Utah BLM Newsroom (28 September 2007); Catlin, T., *Federal Oil and Gas Sale Scheduled for February 19*, Utah BLM Newsroom (15 February 2008).

Uniformity of action among BLM offices is something BLM has identified as critical in wildlife management. BLM's National Sage Grouse Habitat Conservation Strategy provides:

FLPMA gave BLM the legal authority and mandate to manage and regulate the uses on the public lands "so that their various resource values are utilized in a combination that will best meet the present and future needs of the American people" (Section 103 (c)). *Consistency and coordination* in identifying and addressing threats to sage-grouse and sagebrush habitat in context of the multitude of programs that BLM

manages is required. Addressing these threats throughout the range of the sage-grouse is critical to achieving the mandate of FLPMA and threat reduction, mitigation, and elimination to sage-grouse and sagebrush habitats.

Id. at 4 (Emphasis supplied).

2. New Information on Sage Grouse Needs.

Biologists from the Western Association of Fish and Wildlife Agencies ("WAFWA") recently presented to Wyoming Game and Fish a memorandum entitled: *Using the Best Available Science to Coordinate Conservation Actions that Benefit Sage-Grouse Across States Affected by Oil and Gas Development in Management Zones 1-II (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming)* (29 January 2008) (Copy attached as Exhibit A). The memorandum states:

Full field energy development appears to have negative impacts on sage-grouse populations under current lease stipulations (Lyon and Anderson 2003, Holloran 2005, Kaiser 2006, Holloran et al. 2007, Aldridge and Buyce 2007, Walker et al. 2007, Doherty et al. 2008). Much of greater sage-grouse habitat in MZ 1 and 2 has already been leased for oil and gas development. These leases carry stipulations that have been shown to be inadequate for protecting breeding and wintering sage-grouse populations during full field development. (Holloran 2005, Walker et al. 2007, Doherty et al. 2008). New leases continue to be issued using the same stipulations. To ensure the long term persistence of populations and meet goals set by the states for sage-grouse, *identifying and implementing greater protection within core areas from impacts of oil and gas development is a high priority.*

.....

Research indicates that oil and gas development exceeding approximately 1 well pad per square mile with associated infrastructure, results in calculable impacts on breeding populations, as measured by the number of male sage-grouse attending leks (Holloran 2005, Naugle et al. 2006). Because breeding, summer, and winter habitats are essential to populations, development within these areas should be avoided.

(Emphasis supplied).

WAFWA's critique was directed at current stipulations BLM places on oil and gas leases (and also applies as a condition of approval on Applications for Permits to Drill and Right of Ways). Those stipulations are not based on science, but instead on a traditional consensual agreement from the "late 1960's" as stated in the attached Affidavit by BLM Biologist David A. Roberts (July 20, 1998) in Laramie County, Wyoming. (See Exhibit B). As WAFWA correctly notes, those stipulations have been determined to be ineffective in accomplishing their purpose. The U.S. Fish and Wildlife Service ("FWS") agrees. In commenting on the use of these stipulations in the Atlantic Rim, FWS stated that it "does not support a 0.25 mile protective buffer around sage-grouse leks as a mitigation measure, nor does [FWS] support a 2-mile

[seasonal] buffer to protect nesting habitat." Rather, FWS "strongly recommend[] minimum protection measures as described by Connelly et al. (2000)." See Letter from FWS to BLM dated January 26, 2006. Those measures include precluding surface disturbance within two miles of an active lek. Connelly et al., *Guidelines to Manage Sage Grouse Population and Their Habitats*, Wildlife Society Bulletin 2000, 28(4): 967-985.

In addition, on December 4, 2007, the Federal District Court for the District of Idaho rebuked the FWS for failing to consider the best available science when it refused to list greater sage grouse as "threatened" or "endangered" under the Endangered Species Act ("ESA"), 16 U.S.C. § 1531 et seq. *Western Watersheds Project v. U.S. Forest Service* ___ F. Supp. 2d ___, 2007 WL 4287476 (D. Idaho Dec. 4, 2007). The court reversed and remanded the agency's 12-month "not warranted" decision issued in 2005. The court explained the perilous condition of the sage grouse and the impact suffered by its habitats to date. *Id.* at *1. Further, elaborating on the current state of grouse habitat according to the experts, 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 *12. The court specifically focused on the impact of oil and gas development on grouse habitat as identified by an independent expert team. *Id.* at *5. 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 *14.

In light of the obvious concerns expressed by the court about the state of sage grouse and grouse habitat, as well as the acute recognition of the impact of oil and gas development on grouse and the inadequacy of information concerning BLM efforts to mitigate the same, TRCP contends it is simply not prudent to lease lands containing documented sage grouse habitat pending further study of the grouse's status. Indeed, if the species were listed and protected under the ESA, that law requires that certain "critical habitats" also be defined. 16 U.S.C. § 1533. It is possible that the very lands BLM now intends to lease will be so designated. At a minimum, regardless of FWS' obligations, the court's findings certainly warrant additional NEPA review by BLM prior to leasing.

Finally, sage grouse are already listed as a "Wildlife Species of Concern" in Utah, which means "there is credible scientific evidence to substantiate a threat to continued population viability" <http://dwrcdc.nr.utah.gov/ucdc/ViewReports/SSL121407.pdf>. Section 6840.06.D of the BLM Manual (Special Status Species Management) explains with respect to "State Listed Species" that "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 federally listed species and other special status species and shall not contribute to the need to list any special status species under provisions of the ESA, or designate additional sensitive species under provisions of this policy." BLM Manual § 6840.12 (emphasis supplied). See also BLM Manual § 6840.22.C. As demonstrated by TRCP, and as acknowledged by WAFWA and FWS, existing analyses are not adequate to ensure BLM can meet this obligation. None of the protested parcels should be sold until BLM updates its existing environmental analyses and demonstrates coordination and compliance with the State's goals for this sensitive species.

B. BLM Must Conduct the Required NEPA Analysis Before Leasing or Impose "No-Surface Occupancy" Stipulations.

CEQ regulations make clear that the discussion of alternatives is "the heart" of the NEPA process. 40 C.F.R. §1502.14. NEPA analyses must "[r]igorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. §1502.14(a). Objective evaluation is no longer possible after BLM has bound itself to a particular outcome (such as surface occupation within sensitive areas) by failing to conduct adequate analysis before foreclosing alternatives that would protect the environment (i.e., no leasing or No Surface Occupancy (NSO) stipulations).

An oil and gas lease conveys "the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold." 43 C.F.R. §3101.1-2. This right is qualified only by "[s]tipulations attached to the lease; restrictions deriving from specific, nondiscretionary statutes; and such reasonable measures as may be required by the authorized officer to minimize adverse impacts to other resource values, land uses or users not addressed in the lease stipulations at the time operations are proposed." 43 C.F.R. § 3101.1-2. Unless drilling would violate an existing lease stipulation or a specific nondiscretionary legal requirement, BLM argues lease development must be permitted subject only to limited discretionary measures imposed by the surface-managing agency.¹

Accordingly, the appropriate time to evaluate the impact of leasing on crucial winter range, fawning habitat, or grouse habitat is *before* an oil and gas lease is granted. *Sierra Club v. Peterson*, 717 F.2d 1409, 1414-1415 (D.C. Cir. 1983) citing *Mobil Oil Corp. v. F.T.C.*, 562 F.2d 170, 173 (2nd Cir. 1977)). The court in *Sierra Club* specifically rejected the contention that leasing was a mere paper transaction not requiring NEPA compliance. Rather, it concluded where the agency could no longer completely preclude surface disturbance through the issuance of NSO leases, the "critical time" before which NEPA analysis must occur is "the point of leasing." 717 F.2d at 1414. Thus, unless BLM is prepared to withdraw the protested parcels or incorporate NSO stipulations into leases on the protested parcels, BLM must analyze the impacts of subsequent development prior to leasing. BLM cannot defer all site-specific analysis to later stages such as submission of Applications for Permit to Drill ("APDs") or proposals for full-field development.

¹ That said, BLM has broad discretion in leasing federal lands in the first instance. The Mineral Leasing Act ("MLA") "left the Secretary discretion to refuse to issue any lease at all on a given tract." *Udall v. Tallman*, 85 S.Ct. 792, 795 (1965) *reh. den.* 85 S.Ct. 1325. "The filing of an application which has been accepted does not give any right to lease, or generate a legal interest which reduces or restricts the discretion vested in the Secretary whether or not to issue leases for the lands involved." *Duesing v. Udall*, 350 F.2d 748, 750-51 (D.C. Cir. 1965), *cert. den.* 383 U.S. 912 (1966). See also *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1230 (9th Cir. 1988) ("[R]efusing to issue [certain petroleum] leases ... would constitute a legitimate exercise of the discretion granted to the Secretary of the Interior"); *McDonald v. Clark*, 771 F.2d 460, 463 (10th Cir. 1985) ("While the [MLA] gives the Secretary the authority to lease government lands under oil and gas leases, this power is discretionary rather than mandatory").

In this case, BLM is attempting to defer environmental review without retaining the authority to preclude surface disturbance. None of the environmental documents previously prepared by BLM examines the site-specific or cumulative impacts of mineral leasing and development on crucial big game winter range and migration routes. BLM has not analyzed the new information cited herein, nor has it assessed what stipulations, other than timing restrictions, might protect special surface values. This violates federal law by approving leasing absent environmental analysis as to whether NSO stipulations should be attached to the crucial big game winter ranges and migration routes lands in efforts to maintain the vital habitat function these lands provide.

BLM, at a minimum, must analyze whether or not leasing is appropriate for these parcels given the significant resources to be affected and/or analyze whether or not NSO restrictions are appropriate beyond what was done at the RMP level. TRCP contends the proposed parcels cannot lawfully be sold unless NSO stipulations are considered in a site specific analysis for each parcel and are added for all parcels within these sensitive areas, where appropriate, to maintain the function of these habitats. However, whether BLM agrees with TRCP as to the appropriate outcome of the analysis is not the point. BLM's failure to perform an alternatives analysis to determine the appropriateness of such restrictions in advance of leasing is arbitrary, capricious, and an abuse of discretion.

Indeed, in an effort to prevent further loss of crucial big game habitats and migration corridors, the Western Governor's Association ("WGA") in 2007 issued a resolution calling for better identification and cooperation to protect these important habitats for the future. *See WGA Resolution 07-01, Protecting Wildlife Migration Corridors and Crucial Wildlife Habitat in the West*. In the associated follow-up report made to the WGA from the Oil and Gas Working Group (December 2007), problems with the current leasing process and recommendations for better management and coordination were made. Recommendation #1-D states: "Western Governors should request the Secretaries of the Interior and Agriculture to assess, and implement where appropriate, a policy of site-specific NEPA analysis before offering new federal lease parcels in the areas that the states deem to be wildlife corridors and crucial habitats." (Emphasis supplied).

II. FEDERAL LANDS POLICY AND MANAGEMENT ACT ("FLPMA")

FLPMA requires BLM to prepare and maintain a current inventory of all public lands and their resources. 43 U.S.C. § 1711(a). This systematic inventory forms the basis of the land use planning process. 43 U.S.C. § 1701(a)(2). "Th[e] inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values." 43 U.S.C. § 1711(a). As noted above, BLM is relying on outdated RMPs and corresponding inventories for this lease sale. A decision by BLM to hold the lease sale as scheduled without taking into account the new information cited above would be arbitrary and capricious. *Compare Center for Biological Diversity v. Bureau of Land Management*, 422 F. Supp. 2d 1115, 1167-68 (N.D. Cal. 2006) ("The Court concludes it was arbitrary and capricious to approve the RAMP with such obviously outdated and inadequate inventories.").

"In managing the public lands the [Secretary of Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." 43 U.S.C.