



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Colorado State Office

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In Reply Refer To:
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AUG 08 2012

Decision

Rocky Mountain Wild
1536 Wynkoop, Ste. 303
Denver, Colorado 80202

On Behalf of:
Audubon Colorado
Wild Earth Guardians
The Wilderness Society

February 9, 2012, Competitive Geothermal and Oil & Gas Lease Sale;
Protests of Oil & Gas Parcels COC75185 through COC75190 are Dismissed;
Protests of Geothermal Parcels COC73584/COC75275 and
COC73585/COC75274 are Dismissed

This office received a protest from Rocky Mountain Wild (formerly Center for Native Ecosystems and Colorado Wild) on behalf of Audubon Colorado, WildEarth Guardians and The Wilderness Society regarding the above named parcels offered in the February 9, 2012, Competitive Oil & Gas Lease Sale.

Responses from Gunnison Field Office (GFO) for Forest Service & BLM Parcels

The Interior Board of Land Appeals (IBLA) recently affirmed the Bureau of Land Management's (BLM) decision to authorize the leasing of National Forest System (NFS) lands in COC-73584 (*Center for Native Ecosystems, Wildearth Guardians and Colorado Wild*, 182 IBLA 37 (January 31, 2012)), and affirmed BLM's decision to offer parcels COC-73584 and COC-73855 (*Double Heart Ranch*, IBLA 2011-163, Order dated February 27, 2012). 182 IBLA 37. The BLM adopted the Forest Service's Environmental Assessment (EA) (March 25, 2011, Proposed Decision Record), and the Gunnison Field Office is responding to the protest points raised on the Forest Service parcels.

Protest: BLM should defer leasing of the proposed parcels until 1) Fish and Wildlife Service (FWS) has properly designated critical habitat for the Canada lynx, 2) BLM has reinstated its Conservation Agreement with the U.S Fish and Wildlife Service (USFWS), and 3) timing limitation stipulations, restrictions on snow compacting activities, and appropriate reclamation plans, in accordance with the Canada Lynx Conservation Assessment and Strategy (LCAS), have been developed and applied.

Response: Impacts to lynx were analyzed by the BLM in detail on pages 66-67 of the March 2011 Environmental Analysis (DOI-BLM-CO-S060-2010-0030-EA). Mapped lynx habitat was field reviewed, and per the LCAS habitat definitions, it was determined that the BLM lands do not include any lynx habitat, so no stipulations or other mitigation was required. However, the parcel does include a lease notice (G-32) specific to Canada lynx and its current or future habitat, and a lease stipulation (C0-34) specific to threatened, endangered, and other special status species.

Impacts to lynx were analyzed by the Forest Service (FS) in detail on pages 100-111 of the January 2011 Final Environmental Analysis (FEA). Mapped lynx habitat was field reviewed, and per the LCAS/Southern Rockies Lynx Amendment (SRLA) habitat definitions, it was determined that the FS lands include approximately 1,457 acres of lynx habitat. Accordingly, the FS parcels include a Controlled Surface Use (CSU) lease stipulation that addresses protection of lynx habitat, and a lease stipulation (C0-34) specific to threatened, endangered, and other special status species.

Protest: Parcel COC-73585 contains active Gunnison prairie dog colonies as indicated by GIS analysis per surveys conducted by the Colorado Division of Wildlife. BLM should defer leasing of this parcel, remove portions of the parcels with active colonies from the lease, or add stipulations to protect the prairie dog. BLM should defer leasing the parcels until it has conducted a complete analysis of the impacts of leasing the parcels on the Gunnison's prairie dog colonies.

Response: The Gunnison prairie dog was discussed on page 14 of the Environmental Analysis (EA). In addition, similar comments were submitted during the 30-day EA review period. The GFO response is on page 174 of the EA. The analysis area was surveyed for prairie dogs and no active colonies were identified in the area. At this time, no protections for the prairie dog are needed. However, the parcel includes a lease stipulation (C0-34) that addresses protection of any current or future threatened, endangered, or other special status species or its designated or proposed critical habitat.

Protest: All or portions of Parcels COC-73584 and COC-73585 are located within Colorado Natural Heritage Program (CNHP) Lower Priority Potential Conservation Areas (PCAs). The BLM should consider whether leasing would result in unacceptable impacts to specially designated areas and would be incompatible with the purpose of the designation, per IM-2010-117, and defer leasing accordingly.

Response: Similar comments were submitted to BLM during the initial scoping period of the geothermal analysis. Impacts to riparian areas were analyzed in detail on pages 67-84 of the BLM's EA and on pages 69-86 of the FS EA. The CNHP areas in the parcels are montane riparian areas that are within the riparian areas subject to No Surface Occupancy (NSO) and CSU lease stipulations applicable to both parcels for protection of riparian areas.

Protest: The decision is inconsistent with BLM IM-2009-071 and IM-2010-028. BLM should withhold from leasing the proposed parcels due to the effect leasing and subsequent development

will have on the Gunnison sage-grouse population. The EA should also have analyzed alternatives that would exclude priority habitat from energy development and transmission projects. BLM failed to consider the range wide effects of leasing this parcel.

Response: BLM IM 2009-071 directs the BLM, when undertaking a land use planning effort, to analyze one or more alternatives that would exclude priority habitat from energy development and transmission projects. The BLM complied with this direction in the EA. Alternative 5 would have closed the analysis area to geothermal leasing (EA, page 53).

BLM CO IM 2010-028 directs the BLM, when amending a land use plan to: (1) coordinate and seek technical assistance from the USFWS on sage-grouse habitats and planned land uses; (2) include language in the Resource Management Plan (RMP) that gives the BLM discretion to add mitigation measures that modify surface operations supported by site-specific National Environmental Policy Act (NEPA) analysis; and (3) analyze one or more alternatives that exclude fluid mineral leasing in sage-grouse habitat. The BLM complied with these directives in the preparation of the RMP Amendment as follows:

1. The BLM coordinated with USFWS throughout the NEPA process. At the start of the EA process, the BLM in conjunction with the FWS and the CDOW (within Colorado Department of Natural Resources) determined that a population viability assessment would not be necessary to further inform the effects analysis for this EA (EA, page 50). The BLM also sent the USFWS a scoping letter on February 24, 2010 (EA, page 97). As discussed in the Purpose and Need for the Proposed Action (EA, pg. 6), the EA was prepared largely to determine the appropriateness of geothermal leasing in the area, particularly as it relates to Gunnison sage-grouse to better analyze the potential effects of geothermal leasing on Gunnison sage-grouse, and to develop additional lease stipulations necessary for the protection of Gunnison sage-grouse and its habitat. Given that concern, the BLM worked closely with the USFWS and the CDOW as cooperating agencies in the preparation of the EA and development of appropriate lease stipulations (EA, pg. 8).

Lease stipulations for protection of Gunnison sage-grouse and its habitat were developed from the Gunnison RMP and the Gunnison Sage-grouse Rangewide Conservation Plan (RCP), in accordance with BLM policy (EA, pages 51-54). Based on coordination with the CDOW, the FWS, and other cooperating agencies, the BLM developed additional lease stipulations and lease notices to address protection of inactive leks, winter habitat, and mapped summer-fall habitat, as well as to minimize noise impacts. The various lease stipulations and lease notices developed for Gunnison sage-grouse and habitat protections were incorporated in the Proposed Action and in Alternatives 3, 4, and 5.

2. The EA states: "Additional mitigation measures will be incorporated into the operations plan and into the conditions of approval or project stipulations. The operations plan will include site plans, location of facilities, wells, pipelines, transmission lines, roads, and other infrastructure (BLM, 2008b). The BLM has the discretion to modify surface operations to change or add specific mitigation measures when supported by scientific analysis. All mitigation/conservation measures not already required as stipulations would be analyzed in a site-specific NEPA

document, and be incorporated, as appropriate, into conditions of approval of the permit, plan of development, and/or other use authorizations" (EA, page 37).

3. As referenced above, Alternative 5, analyzed in the EA, closed the analysis area to geothermal leasing.

Protest: BLM failed to consider significant new information. The EA does not include information from recent research on the impacts of energy development on sage-grouse. The findings of Aldridge et.al, 2011 are contrary to information presented in the NEPA documents and suggest that the proposed action will have significant impacts on Gunnison sage-grouse that have not been adequately considered in the NEPA documents at issue here. Further, there is additional significant new information that has also not been considered. Several additional presentations at the Gunnison Sage-grouse Summit detailed information that was: 1) directly relevant to determining the likely impacts of the proposed action, 2) available to the BLM at the time it made its decision, and 3) not adequately considered in the BLM EA, including but not limited to the following talks: Phillips, Hicks, Davis. The BLM must address this significant new information in order to comply with NEPA. The BLM failed to consider the best available science in the U.S. Fish and Wildlife Service's (FWS) twelve-month finding for the Gunnison sage-grouse. The Final Programmatic Environmental Impact Statement (PEIS) for Geothermal Leasing in the Western U.S. and the Gunnison Sage Grouse Rangewide Conservation Plan are out of date and do not represent the best available science that should be used in assessing the impacts of geothermal energy development on Gunnison sage-grouse.

Response: NEPA regulations require the BLM to "insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements" (40 CFR 1502.24). The BLM NEPA Handbook also directs the BLM to "use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed" (BLM NEPA Handbook, page 55). Regarding the PEIS, the BLM noted in the EA that the existing NEPA documentation in the PEIS and the RMP, as amended by the Geothermal PEIS Record of Decision, were not adequate for analysis of effects on Gunnison sage-grouse. The EA states that the purpose of this NEPA analysis is to determine if the previous leasing availability decision is valid in light of the new information (EA, page 3). Based on the findings and analysis in the EA, the BLM determined in the proposed decision that the lease stipulations to be amended to the RMP would allow the BLM to make public lands geothermal resources in the analysis area available for lease in a manner that protects public lands resources while helping to meet the increasing interest in geothermal development.

The Rangewide Conservation Plan (RCP) is a foundation for current management of Gunnison sage-grouse. It is the BLM's policy to implement the RCP through the NEPA process and to utilize the RCP as the basis for managing the multiple uses of public lands in identified sage-grouse habitat (EA, page 52). The Gunnison Sage-grouse Rangewide Steering Committee met recently and has committed to reviewing the need to update the RCP (EA, page 189). As part of this review, applicable peer-reviewed and other published literature regarding both greater sage-grouse and Gunnison sage-grouse will be considered. Accordingly, recommended conservation

strategies may be revised. This information will be available for application of Conditions of Approval (COA) during the site-specific NEPA analysis phase.

The BLM reviewed the FWS's twelve-month finding in preparing the EA. The twelve-month finding represents a synthesis of many sources of information constituting the best available science regarding the Gunnison sage-grouse. One of the specific concerns of the proposed action as identified in the EA is the potential impacts on the USFWS's 2010 Gunnison sage-grouse species status review.

The Aldridge et al. analysis found high probability of nesting in the Monson Gulch area within the geothermal lease analysis area. Aldridge et al. used a landscape-scale spatial model that used satellite imagery to determine areas of sagebrush that met several criteria. While the model may predict habitat quality, it provides broad scale information and in order to ensure quality of data, site-specific analysis is necessary. The BLM conducted site specific analysis on the geothermal lease nomination and found that little of the area met sage-grouse standards (RCP 2005). This analysis was done in accordance with IM CO 2010-028 and IM WO 2010-071. It is also important to note that the Aldridge et al study area, where the grouse data and the habitat data were analyzed, was on the western side of the Gunnison Basin. No bird movement data from the eastern part of the Basin were used in the study, and the nesting quality map that USFWS used was based on data extrapolated from the study area on the other side of the Basin.

As noted in the EA response to comments, "[the] BLM does look at new research when analyzing decisions in addition to the Rangeland Conservation Plan. Many of the papers that are being published are associated with Greater sage-grouse in Wyoming. Results from these papers on Greater sage-grouse cannot be immediately extrapolated for Gunnison sage-grouse (GUSG) management. Also, most of the new literature is specific on the origin of disturbance (well pads, roads, coalbed methane), and it is difficult without specific data on geothermal development to determine if these same disturbances exist and whether they are at the same level" (EA, page 188).

The BLM recognizes that potential geothermal development in close proximity to known leks or within nesting habitat may have a negative impact on individuals in the GUSG population. However, as discussed in the EA, the proposed action will not have a substantial impact on the population as a whole and the project area is not large enough to affect the overall habitat from a landscape perspective. Additional COAs or Best Management Practices (BMPs) will be applied through site-specific NEPA analysis (as discussed on pp. 7-8 of the EA). These additional conservation measures will focus on minimizing disturbance to nesting habitat within and surrounding proposed development.

The information considered in the EA and project record is sufficient to support the decisions resulting from this analysis.

Protest: The Decision fails to adequately analyze the direct, indirect, and cumulative effects of leasing these parcels. The BLM failed to adequately analyze the indirect and cumulative impacts of reasonably foreseeable geothermal development on adjacent geothermal lease parcels on Forest Service, State Land Board, and private lands on Gunnison sage-grouse. In addition, the

BLM failed to adequately analyze indirect and cumulative impacts that will extend beyond the boundaries of these lease parcels, and outside of the boundaries of the BLM cumulative effects analysis area for Gunnison sage-grouse. These indirect and cumulative impacts include: impacts associated with 1) direct and functional loss of a high quality Gunnison sage-grouse habitat on and around the lease parcels, 2) large-scale avoidance of energy development infrastructure by Gunnison sage-grouse, 3) construction of new roads and increased use of existing roads used to access the parcels, 4) construction, upgrade and maintenance of transmission lines, 5) potential for facilitation of the spread of West Nile Virus, noxious weeds and fire, 6) cumulative impacts of past, present and reasonably foreseeable activities on the quality and quantity of sagebrush vegetation and sage-grouse habitat on lands adjacent to the BLM parcel, 7) impacts to Waunita lek and consequences for lek viewing opportunities, and 8) the indirect and cumulative effects of geothermal development, both at the scale of the BLM analysis area considered in the EA, and at appropriate larger scales, including the overall cumulative impact on the Gunnison Basin population.

1) The BLM fails to adequately analyze the potential for direct and functional loss of high quality habitat on and around the lease parcels, and the consequence of this for the Gunnison Basin population. Aldridge et.al. 2011 developed a landscape-scale spatial model predicting Gunnison sage-grouse nesting probability in the Gunnison Basin. Aldridge et.al., 2011 suggest that their model be used as an initial management tool to identify crucial nesting habitat for Gunnison sage-grouse. The BLM's conclusion that habitat on the lease parcels is of relatively low quality is based on an analysis of the degree to which small-scale characteristics of the habitat align with the habitat guidelines in the RCP. However, significant new information outlined in the findings of Aldridge et.al., 2011 suggests that Gunnison sage-grouse nest site selection is influenced by a number of landscape factors and patch-scale factors. These factors were not included in the BLM's analysis of habitat quality described in the EA. The BLM must consider this information as part of a new NEPA analysis of the impacts of the proposed leasing, prior to leasing the protested lands.

2) The BLM fails to adequately analyze the impacts of behavioral avoidance of energy development infrastructure. In addition, the BLM fails to discuss the potential population level consequences of behavioral avoidance of energy development and other cumulative impacts of energy development.

3) The BLM fails to adequately analyze the indirect and cumulative impacts of increased use of existing roads and construction of new roads for geothermal energy development on Gunnison sage-grouse. The BLM has not analyzed the potential impacts of increased traffic on existing or new roads in light of existing and new science. There is no discussion of the likely location of roads that will be used to access the project, the existing road density or of how roads built for geothermal development will contribute to road density, nor of the class of roads that will be required.

4) There is no discussion of the consequences of such impacts to the Gunnison sage-grouse population given that all habitat in the Gunnison Basin is currently indirectly affected by roads, and existing road densities are negatively affecting the Gunnison Basin population (75 FR

59804). Meaningful analysis of this issue is possible at the current time, and thus cannot legally be deferred to a later date.

5) The BLM has failed to adequately analyze the potential impacts of construction, upgrade and maintenance of transmission lines that will be needed if geothermal development occurs in the area, and to analyze the cumulative impacts of existing transmission lines combined with reasonably foreseeable upgrade and maintenance of existing lines and construction of new lines.

6) The BLM has failed to adequately analyze the potential indirect and cumulative impacts of the potential for the facilitation of the spread of West Nile Virus due to sump pits which may provide short-term breeding grounds for mosquitoes.

7) The BLM has failed to adequately analyze the potential for the project to result in the spread of weeds outside of the BLM cumulative effects analysis area for Gunnison sage-grouse, or the potential cumulative impacts of increased risk of fire associated with the geothermal development.

8) The BLM inappropriately limited its analysis of the cumulative impacts of activities that will alter sagebrush vegetation to activities on the lease parcels, rather than considering the cumulative impacts of removal and alteration of sagebrush vegetation on the entire area that will be impacted by geothermal development. The cumulative effects analysis should have considered all lands open to geothermal development under the RMP and the Geothermal PEIS within this planning area since the decision to amend the RMP will affect geothermal leasing on all these areas.

9) The EA has failed to adequately analyze the potential cumulative impacts of geothermal development in the area on the Waunita lek, and thus public opportunities to view the Gunnison sage-grouse.

10) The BLM fails to provide an adequate analysis of cumulative impacts within the analysis area in the EA. The decision to amend the Gunnison RMP to facilitate geothermal development will affect resources beyond the boundaries of the analysis area in the EA. BLM should have considered how this RMP amendment will affect all the areas it manages. In addition, the EA limits reasonably foreseeable impacts in the area for the purpose of its cumulative effects analysis solely to the impacts outlined in the reasonably foreseeable development scenario for geothermal development. It does not consider a variety of other reasonably foreseeable activities likely to occur in the area that will contribute to the cumulative effects of the proposed development on Gunnison sage-grouse. Further the EA has failed to disclose the overall magnitude of cumulative impacts on the Gunnison sage-grouse population.

Response: The EA's analysis of effects of geothermal development incorporates the analysis in the PEIS, by reference, relies on the Reasonably Foreseeable Development Scenario (RFDS), and includes site-specific information (EA, page 7). At the decision stage for leasing, many of the impacts of actual development are speculative, as much is unknown about the location, scope, scale, and timing of that development. (See section 1.3.1 of the EA for additional information.) As explained in the EA and in the response to comments, the proposed action has

no direct impacts on the environment. The level of detail in the EA is sufficient to support reasoned conclusions by comparing the amount and the degree of impacts to Gunnison sage-grouse that would result from the proposed action and alternatives.

Consistent with the purpose and need statement, the BLM's EA identified and analyzed additional lease stipulations necessary for the protection of Gunnison sage-grouse and its habitat, as well as alternatives with varying degrees of protective measures, to better address the analysis of potential effects of the leasing decision on Gunnison sage-grouse. The BLM worked closely with the USFWS and the Colorado Division of Wildlife (CDOW) as Cooperating Agencies in the preparation of the environmental analysis and development of appropriate lease stipulations (EA, page 8). Potential effects of geothermal development on Gunnison sage-grouse were discussed in section 3.2 of the EA on pages 50-66.

The RMP amendment decision added stipulations to the analysis area and did not authorize any surface disturbing activities. Indirect and cumulative effects are limited under NEPA to discussion of effects related to an RFDS scenario developed by the Federal agencies in order to determine appropriate lease stipulations for the protection of surface resources. Should the land be leased and should development be proposed, consideration will be given to these items on a site-specific basis in subsequent NEPA analysis (EA, page 195).

The analysis area for the EA includes the nominated BLM and private lands and additional BLM lands within an area identified as having high potential for geothermal development (approximately 5,525 acres) (EA, page 2). The cumulative effects analysis areas varied with the resource or issue being analyzed. The cumulative impacts summary (EA, page 95) summarized known past and current activities, as well as reasonably foreseeable geothermal development described in the RFDS (see pages 4-5 of the EA for more detail), in the analysis area and adjacent private and Forest Service lands in sagebrush habitats.

At the outset of the analysis process, the BLM, in conjunction with the FWS, and the CDOW, considered performing a population viability assessment (PVA) similar to the effort prepared for the RCP and CCP to determine if the proposed action would have an effect on the overall population. The goal of a PVA is to determine the relative impact to the population based on two impact scenarios: (1) loss of habitat assuming full development over the entire lease area, and (2) potential changes in population. Since no geographically independent demographic information is available for this population, the BLM and cooperating agencies looked at the percent population possibly negatively affected by future development within the lease area, per EA discussion. The percent habitat and percent population potentially affected by the proposed action was relatively small in context of the overall Gunnison Basin population. The collective agency biologist team determined that a PVA would not further inform this EA. (See pages 50-51 of the EA for additional information).

The BLM and cooperating agencies began their effects analysis with limited sage-grouse habitat data for the analysis area. As a result, BLM contracted with an environmental consultant company to perform a habitat evaluation of the lease nomination area. This company has performed all of the habitat evaluations for the CDOW and FWS' private land owner Candidate Conservation Agreement with Assurances program. The BLM had the analysis area inventoried and assessed by the BLM consultant in order to better understand the extent and quality of

Gunnison sage-grouse habitat in the analysis area in accordance with RCP guidelines. The BLM's site-specific habitat assessment was based on that habitat inventory, as well as other ground-truthed site-specific data (see section 3.2.1 of the EA). The habitat assessment of the analysis area referenced in the FWS's determination (Aldridge et al.) was based on broad-scale, remotely sensed data. Per the FWS finding, the Aldridge et al. analysis found high probability of nesting in the geothermal lease analysis area.

This appears to be contradictory to site-specific GUSG habitat assessment work. The Aldridge et al. analysis found high probability of nesting in the Monson Gulch area within the geothermal lease analysis area. Aldridge et al was a landscape-scale spatial model that used satellite imagery to determine areas of sagebrush that met several criteria of the model. Although this might be a predictor of habitat quality, it is broad scale and in order to ensure quality of data, site-specific analysis would have to be done. The BLM conducted site specific analysis on the geothermal lease nomination and found that little of the area met sage-grouse standards (RCP 2005). This analysis was done in accordance with IM CO 2010-028 and IM WO 2010-071. It is also important to note that the Aldridge et al study area, where the grouse data and the habitat data were analyzed, was on the western side of the Gunnison Basin. No bird movement data was used from the eastern part of the Basin and the nesting quality map that USFWS used was data extrapolated from the study area on the other side of the Basin. The BLM's site-specific habitat assessment of the analysis area found that little of the area met sage-grouse habitat objectives per the RCP.

Based on this level of analysis, the EA concludes that the effects of the proposed action on a portion of the Gunnison sage-grouse population will not result in adverse impacts to the overall grouse population (EA, page 63). Quoting the FWS, the EA states, "Because of the current preliminary status of geothermal development, we lack the specific project details to evaluate the extent to which this activity will affect the population's overall viability. Therefore, we do not consider renewable energy development to be a threat to the Gunnison sage-grouse at this time" (EA, page 64). The RFDS for the proposed action indicates that it is likely that a site much smaller than the lease area would be utilized once any lease that is issued is developed: "Once operational, the project as a whole would likely be limited to an area no larger than two sections with a much smaller area of actual surface disturbance within those sections" (EA, page 4).

The plan amendment decision, that the lease offer is based on, only encompasses the analysis area, not the entire area covered by the Gunnison RMP. The Decision Record states, "The proposed decision is to amend the Gunnison Resource Area Approved Resource Management Plan (RMP) to include the following new geothermal lease stipulations that would be applied to any geothermal leases in the analysis area" (emphasis added). As previously stated, the analysis area for the EA includes the nominated BLM and private lands as well as BLM lands within an area identified as having high potential for geothermal development (approximately 5,525 acres) (EA, page 2).

Protest: The BLM must evaluate the effectiveness of the mitigation measures used in geothermal leasing with the best available science. The lease stipulation prohibiting surface occupancy within 0.6 miles of a lek will not prevent significant adverse impacts to Gunnison sage-grouse. The BLM EA states that the purpose of the 0.6 mile NSO buffer is to protect grouse courtship

sites from disturbances that would force strutting sage-grouse onto less desirable sites, interfere with mating processes, or result in lek site destruction (EA pgs. 31- 32). This 0.6 mile buffer distance is based on the following information from the RCP. The RCP defines 'lek habitat' as an area within 0.6 miles of an active lek, based on several studies of daytime movements of adult male Greater sage-grouse during the breeding season (no similar data is available for Gunnison sage-grouse) (GSG RCP). In addition, the RCP cites one study that found that, 23 percent of Gunnison sage-grouse nests (GSG RCP, App. J. Fig. 1), and 27.5 percent of seasonal habitat locations occurred within 0.6 miles of the lek of capture in the Gunnison Basin (Gunnison Sage-Grouse Rangewide Conservation Plan 2005). The 0.6 mile NSO stipulation may prevent geothermal development from resulting in direct loss of 27.5 percent of the habitat used by a population from a given lek and 23 percent of the nests of birds from a given lek in a given breeding season. However, it allows geothermal development to result in direct loss of: 1) roughly 77 percent of the nests of birds from a given lek in a given breeding season, and 2) roughly 73 percent of the habitat used by a population from a given lek (including nesting, brood rearing, summer-fall, and winter habitat). Thus, even if this lease stipulation achieves its stated intent, it will not prevent significant adverse impacts to Gunnison sage-grouse populations.

The impacts of direct loss of nesting habitat in these areas will have significant adverse impacts on the Gunnison Basin population. A recent landscape-scale spatial model predicting Gunnison sage-grouse nesting probability in the Gunnison Basin shows that a significant amount of high quality nesting habitat exists on or near the lease application parcels, and in the much larger area surrounding the lease parcels that could experience indirect and cumulative impacts associated with the proposed geothermal development. (Aldridge et al. 2011). Loss of substantial amounts of this nesting habitat due to geothermal development will have significant negative impacts on the Gunnison Basin population, and the protection of a small proportion of this nesting habitat afforded by the 0.6 mile buffer does not mitigate these impacts to insignificance.

Significant impacts are also highly likely to result from the potential direct loss of up to 73 percent of the habitat used by a population from a given lek, including not only nesting habitat, but also brood rearing, summer-fall, and winter habitat. Gunnison sage-grouse require all of these seasonal habitats to survive. Gunnison sage-grouse populations in the Gunnison Basin may be limited by the availability of sufficient high quality brood rearing and winter habitat. A stipulation that protects only 'lek habitat' while allowing for direct loss of a substantial proportion of all other seasonal habitat types, will not prevent significant adverse impacts to the population. The 0.6 mile buffer will not mitigate these impacts to insignificance, nor will any of the other stipulations attached to the lease.

The Controlled Surface Use (CSU) stipulation applied to Gunnison sage-grouse habitat will allow for the ability to design road and other infrastructure locations are placed within the lease parcels, but it will not prevent direct and functional loss of habitat outside the lease parcels, and will have limited utility in protecting this habitat within the lease parcels, as much of the habitat in the parcels is either important sage-grouse habitat or is not ideal for development for other reasons, and thus roads and structures are likely to be sited in sage-grouse habitat even with the CSU stipulation in place. Protective measures applied as conditions of approval at later stages of the permitting process will be limited to measures consistent with lease rights, and thus may be limited in their ability to reduce these impacts to insignificance.

In addition, the likelihood that the lease stipulations will mitigate impacts to insignificance is further reduced by the fact that they are subject to waiver, modification and exception, (WEM) and that the criteria for WEM are unlikely to ensure that WEM of stipulations do not result in significant adverse impacts. For example, the 'No Surface Occupancy' stipulation (NSO) that prevents development in mapped Gunnison sage-grouse habitat within 0.6 miles of Gunnison sage-grouse leks will be subject to Waiver, Exception, and Modification criteria (WEMs). "An exception may also be granted by the authorized officer if the proponent, BLM, State wildlife agency, and where necessary, other affected interests, develop non-monetary compensation or mitigation that satisfactorily offsets anticipated impacts to Gunnison sage-grouse habitats and/or breeding activities." There is no discussion of what types of compensation or mitigation would be considered to satisfactorily offset impacts.

The BLM also fails to adequately analyze other potential mitigation measures that might effectively mitigate impacts to insignificance, including, but not limited to a non-waiveable 4 mile NSO buffer around Gunnison sage-grouse leks.

Though application of the proposed lease stipulations may prevent direct loss of a small proportion of the Gunnison sage-grouse habitat likely to be impacted by the geothermal footprint, there is no reason to believe that these stipulations will prevent significant impacts on Gunnison sage-grouse due to direct loss of 73% of the habitat associated with each lek (including nesting, brood rearing, and wintering habitat), impacts on leks and breeding populations associated with the placement of energy development structures within 3.9 miles of active leks, declines in lek attendance associated with traffic exceeding 1 vehicle per day within 1.9 miles of leks, impacts of cumulative increases in road density and the overall human footprint, and the direct and indirect impacts associated with construction of 5 miles of new transmission line and improvement of existing lines. The BLM provides no rationale describing how the lease stipulations will minimize these likely impacts to insignificance.

Response: The protesting party's statement that the 0.6-mile NSO stipulation allows geothermal development to result in direct loss of 77 percent of nests of birds from a given lek and 73 percent of the habitat used by a population from a given lek is misleading. The 0.6-mile NSO stipulation around Gunnison sage-grouse leks is not intended to protect nesting habitat, but rather the integrity of existing lek habitat; providing roosting and cover for GUSG during the breeding period. The protesting party's statement also assumes that all nests and habitat used by a given population that is outside the 0.6-mile buffer would be destroyed as a result of the proposed leasing. However, during subsequent site-specific NEPA analysis, additional COAs and BMPs will be identified to minimize the footprint of proposed development and fragmentation within nesting habitat. Refer to section 1.3.1 and Appendix B of the EA.

Specifically, the protesting party's statement ignores several factors associated with the proposed lease. First, the RFDS projects less than 122 acres of surface disturbance associated with the proposed action (EA, pages 4-5). Second, additional NSO stipulations for other factors such as water and riparian resources, steep slopes and erosive soils, big game winter range, gullies and other areas of chronic erosion, and geologic hazards would provide additional incidental protection (EA, page 63). The detailed maps of the alternatives in Appendix D of the EA display

the extent of the lands in the analysis area where surface disturbance would be prohibited or controlled (EA, pages 164-166). Lastly, the lease notice related to sage-grouse habitat specifies additional resource protection concerns that would be addressed in subsequent permitting of surface disturbing activities in sage-grouse habitat (page 63).

This lease notice addresses nesting sage-grouse within a 4-mile buffer of active leks, critical winter habitat, and fragmentation of habitat (EA, page 33). As stated in the EA, "With the wildlife stipulations in place, the already lower quality sage-grouse habitat, and lower bird occurrence than other areas in the Gunnison Basin, the proposed action to lease geothermal mineral rights is unlikely to cause adverse impacts to the overall grouse population" (EA, page 63).

Exceptions, waivers, and modifications provide an effective means of applying adaptive management to leases and associated permitting activities to meet changing circumstances (see section 2.2.1 of the EA for a discussion of how exceptions, waivers, and modifications to lease stipulations are reviewed for approval or denial). As discussed in the response to comments, the EA was edited to reflect that under the Proposed Action and Alternatives 2, 3, and 4, any waivers, exemptions, or modifications to lease stipulations would be subject to public notice (see section 2.3 of the EA). For the Proposed Action and Alternatives 1, 3, and 4, additional criteria for applying waivers, exceptions, or modifications to stipulations designed to protect Gunnison sage-grouse and habitat were developed in coordination with the Colorado DOW and other Cooperating Agencies (see Criteria Specific to Gunnison Sage-grouse Lease Stipulations under section 2.2.1 of the EA).

The effects of a range of alternatives were analyzed in detail in the EA, including Alternative 4, Lease with Existing and Additional NSO Stipulations for all Occupied Gunnison Sage-grouse Habitat (EA, pg. 39). Occupied GUSG habitat essentially corresponds with a 4-mile buffer of all leks.

Protest: The BLM should have prepared an Environmental Impact Statement (EIS) analyzing the leasing of these parcels. In addition, the BLM should have either considered the impacts of geothermal development on Forest Service lease parcels in its analysis of cumulative impacts in an EIS; or considered the geothermal leasing proposed on adjacent Forest Service and BLM parcels to be connected actions and prepared a joint BLM/FS EIS that considered the impacts of leasing and subsequent development on both parcels. Preparing separate EAs for the BLM and Forest Service parcels failed to give an accurate analysis of the proposed leasing and anticipated development of this sensitive land. An EIS is necessary to determine how leasing the whole 8,351 acres will affect the human environment.

Further, BLM should have analyzed the effects of amending the Gunnison RMP on the entire management area. The RMP amendment covers substantial amounts of land that were not analyzed within this EA. The Decision Notice is not limited to this specific project, yet was based on analysis of only the proposed BLM lease parcel. An EIS should have been prepared that analyzed all the areas managed by the Gunnison RMP that are open to geothermal development.

The statement that the area of the decision does not contain unique characteristics (FONSI pg. 3) is arbitrary and capricious. Our comments on the BLM EA clearly establish that the area is ecologically critical due to its significance as key habitat for the globally critically imperiled Gunnison sage-grouse. (comments on the EA at 3-8). Significant new information also indicate that the area includes crucial nesting habitat for Gunnison sage-grouse, which is defined as habitat that is necessary for the survival and long-term viability of Gunnison sage-grouse. Further, the FWS considers all occupied habitat in delineation of critical habitat in early 2012 (FWS comments at Gunnison sage-grouse candidate conservation agreement biology team meeting, December 2011). The BLM EA does [not] adequately analyze the potentially significant direct, indirect, and cumulative impacts to critical, and therefore ecologically significant, Gunnison sage-grouse habitat. Further, the Waunita lek is the only location in the world where the public has an opportunity to view the Gunnison sage-grouse. The BLM EA does not adequately disclose potentially significant direct, indirect and cumulative impacts to the persistence of the population that uses this lek, and therefore does not adequately analyze the potentially significant impact of loss of the only location where the public can view the Gunnison sage-grouse.

The effects of the proposed action on Gunnison sage-grouse are highly controversial. There is scientific controversy and uncertainty regarding the likely impacts of the proposed action on Gunnison sage-grouse, the likely efficacy of lease stipulations and other mitigation measures applied to minimize impacts, and the degree to which the proposed project is likely to contribute to local and regional population declines.

Further, there is substantial uncertainty regarding how geothermal development will impact Gunnison sage-grouse, and the proposed action involves unique or unknown risks to Gunnison sage-grouse. The effects of energy development (and geothermal development in particular) on Gunnison sage-grouse have never been studied. Some predictions regarding impacts can be made from what is known about Gunnison sage-grouse biology and from understanding of research on the impacts of other types of energy development on greater sage-grouse. However, it is not known how impacts of geothermal development to Gunnison sage-grouse may differ based on potential differences in their level of sensitivity to impacts, differences between geothermal development and other types of development (e.g. oil and gas) whose impacts have been better studied. In addition, there are unique risks associated with allowing development in habitat for a population that has already declined to the point where it's long-term probability of persistence is low, even without any further reduction in numbers (Wisdom et al, in press, EA pg. 55). The conclusion that the possible effects of the proposed action are not highly uncertain, and do not involve unique or unknown risks (FONSI pg. 3), is arbitrary and capricious.

Response: IBLA held that the analysis in the EA was sufficient to support a Finding of No Significant Impact (FONSI) and affirmed the BLM's decision to offer COC73584 for geothermal lease. The IBLA explained that the BLM and the Forest Service are required by section 102(2)(C) of NEPA and its implementing regulation, 40 CFR § 1508.25, to consider the environmental impacts of a proposed action and any other action that is "connected" to the proposed action, by virtue of the fact that (1) the proposed action automatically triggers the other action; (2) the proposed action cannot or will not proceed unless the other action is taken previously or simultaneously; or (3) the proposed action and the other action are interdependent

parts of a larger action and depend on the larger action for their justification. However, actions that have "independent utility", i.e., where there exists sufficient justification for each action such that it may proceed without the other, are generally not connected actions. In light of uncertainty as to whether developable geothermal resources exist in the area and, if so, where they are located, it is speculative to assume that the leasing of NFS and BLM-administered lands are interdependent actions that lack independent utility (Center for Native Ecosystems, WildEarth Guardians, and Colorado Wild, 182 IBLA 51-52 (2011)).

Scope of Amendment: The RMP amendment only applies to the EA analysis area. Refer to the response to the Adequacy of Effects Analysis issue for additional information. Although the BLM and FS prepared separate EA's, the basis for analyzing the effects of leasing geothermal resources and potential effects of geothermal development included the following common factors (see section 1.1.3 of the EA, pgs. 3-5):

- the projected amount of disturbance described in the Reasonably Foreseeable Development Scenario of the Geothermal PEIS.
- the projected amount of disturbance described in the Geothermal Resource Reasonably Foreseeable Development Scenario for Electrical Generation of Tomichi Dome and Surrounding Area.

The respective EA's focused on the potential effects of geothermal development on each Agency's lands; however, the projected amount of disturbance is the same amount, no matter where the potential geothermal development were to eventually occur. Both agencies cumulative analyses considered the potential geothermal development on the adjacent federal land, as well as the nominated split-estate private parcel, and the two State parcels.

Unique Characteristics: The Waunita lek and sage-grouse habitat in the analysis area do not constitute unique characteristics within the meaning of NEPA. The BLM NEPA Handbook (H-1790-1) explains that "unique characteristics" are generally limited to those that have been identified through the land use planning process or other legislative, regulatory, or planning process, such as wild and scenic rivers, wilderness or wilderness study areas, and areas of critical environmental concern (EA, page 71). None of these are present in the analysis area (FONSI, page 3).

As noted in the response to comments: "When looking at the daily movement patterns of male sage-grouse during the breeding season, males typically move within 0.6 mile from the leks. The Waunita lek is outside of the 0.6 mile from the lease boundary so activities within the geothermal lease nomination area should not have a significant impact on the daily [movement] patterns during the breeding season for the Waunita lek" (EA, page 186).

Again, as discussed on page 63 of the EA, based on the site-specific sage-grouse habitat analysis, it was determined that the sage-grouse occupied habitat in the analysis area overall is of less than average quality relative to sage-grouse habitat throughout the Gunnison Basin; particularly for nesting and early brood-rearing, and during winter. The presence of sage-grouse birds and sign on the area indicates fairly regular use, but it is presumed that the density of sage-grouse on the area is low compared to higher quality habitats elsewhere in the Gunnison Basin.

Highly Controversial Effects: The effects of the plan amendment are not highly controversial. The BLM NEPA Handbook explains, "Controversy in this context means disagreement about the nature of the effects, not expressions of opposition to the proposed action or preference among the alternatives. There will always be some disagreement about the nature of the effects for land management actions and the decision-maker must exercise some judgment in evaluating the degree to which the effects are likely to be highly controversial" (EA, page 71). The EA discusses the effects of the plan amendment on sage-grouse and its habitat (EA, pages 63-67). Substantial dispute does not exist within the scientific community about the effects of the proposed action. The FWS has stated that a portion of the Gunnison Basin population will likely be adversely affected by geothermal development, but it does not consider such development to be a threat to sage-grouse at this time (EA, page 64).

Highly Uncertain Effects: The effects of the proposed action are not highly uncertain. The FONSI explains that geothermal development has been occurring in other areas of the western United States for decades, while oil and gas development has been occurring in other areas of Colorado (FONSI, page 3). As with controversy, there will always be some uncertainty about the effects of land management actions, and the decision-maker must exercise some judgment in evaluating the degree to which the effects are likely to be highly uncertain (BLM NEPA Handbook, H-1790-1, page 72). The EA describes the likely effects of the proposed action and alternatives on Gunnison sage-grouse and its habitat (EA, pages 63-67).

Protest: The BLM has a duty under the Federal Land Policy and Management Act (FLPMA) to prevent unnecessary and undue degradation to the lands under its management. The Gunnison sage-grouse is a BLM sensitive species that is to be managed to promote its conservation and minimize the need for listing under ESA, in accordance with BLM's special status species policy (BLM Manual 6840). Allowing development in occupied Gunnison sage-grouse habitat is a violation of FLPMA and the BLM Manual. This development is going to hinder the chances of this population's rebound. The FWS has announced that this species is likely to become extinct in the foreseeable future. BLM is acting arbitrarily and capriciously by leasing these parcels for geothermal development.

Response: Lease stipulations for protection of Gunnison sage-grouse and habitat were developed from the Gunnison RMP and the Gunnison Sage-grouse Rangewide Conservation Plan (RCP), in accordance with BLM policy (EA, pages 51-54). Based on coordination with the CDOW, the FWS, and other cooperating agencies, the BLM developed additional lease stipulations and lease notices to address protection of inactive leks, winter habitat, and mapped summer-fall habitat, as well as to minimize noise impacts. The various lease stipulations and lease notices developed for Gunnison sage-grouse and habitat protections were incorporated in the Proposed Action and in Alternatives 3, 4, and 5.

The concern related to the BLM Manual 6840 was raised during the public review of the draft EA and was discussed on pg. 175 of the EA.

Protest: The BLM is violating FLPMA because it is not being consistent with the policies of state, tribal, and other agencies in its conservation policies regarding Gunnison sage-grouse,

Gunnison's prairie dog. The proposed leasing is not consistent with COGCC Regulations and other state, local, and federal policies and programs.

Response: BLM worked with several Cooperating Agencies on the environmental analysis of the proposed leasing, including the US Fish and Wildlife Service, Gunnison County, the Colorado Geological Survey, the Colorado Division of Water Resources, the Colorado State Land Board, and the Colorado Division of Wildlife. The Forest Service also assisted the BLM under the terms of a national Memorandum of Understanding.

Consultation with tribes was discussed on pg. 93 of the EA. The Ute Mountain Ute tribe relayed some concerns that the proposed lease area is within an archaeologically sensitive area that includes Tomichi Dome and its nearby hot springs. With these concerns raised, the BLM will continue tribal consultation specific to any potential subsequent geothermal exploration, drilling, utilization, and/or reclamation and abandonment activities in the analysis area.

The EA was also subject to a 60-day Governor's Consistency Review. The review permits the State to identify any inconsistencies between the EA and proposed RMP amendment and State plans, programs, and policies. No inconsistencies were identified.

Protest: The US Fish and Wildlife Service has announced that the Gunnison sage-grouse will receive Endangered Species Act protection in the coming months. One reason for the listing determination was a lack of regulatory mechanisms to protect this species. This geothermal leasing is going to contribute to the need to list the species. Consultation with FWS should have been conducted to ensure adequate protection for this candidate species.

Response: As discussed in the EA on pg. 64, the FWS considered the potential geothermal leases in their September 2010, Determination for the Gunnison Sage-grouse as a Threatened or Endangered Species. According to the USFWS, "a portion of the Gunnison Basin population will likely be adversely affected by proposed geothermal development if it is implemented. Because of the current preliminary status of geothermal development, we lack the specific project details to evaluate the extent to which this activity will affect the population's overall viability. Therefore, we do not consider renewable energy development to be a threat to the Gunnison sage-grouse at this time. Geothermal energy development could become a future threat to the species, but we do not know to what extent future geothermal energy development will occur. Future geothermal development could be encouraged by a new Colorado State law, signed April 30, 2010, that will facilitate streamlining of the State permitting process" (USFWS, 2010).

The FWS was a Cooperating Agency in the preparation of the environmental analysis of the leasing proposal. Their concerns, raised as part of the analysis cooperation and from separate comments submitted after review of the draft EA, were incorporated in the Proposed Action and Alternative 3. Refer to pgs. 175-177 of the EA Response to Comments for more detail.

Specifically, an additional NSO lease stipulation for summer-fall sage-grouse habitat was developed and the Lease Notice specific to Gunnison sage-grouse was edited accordingly; both were incorporated in the leasing decision and are included with the proposed lease stipulations.

Responses from Little Snake Field Office (LSFO):

Protest: Columbian Sharp-Tailed Grouse: Center for Native Ecosystem's GIS screening of the lease sale parcels indicates that the parcels COC75185, 75186, 75187, 75188, 75190 contain Columbian sharp-tailed overall range, and winter range. COC75188 contains Columbian sharp-tailed grouse production area. Only COC75185, 75187, 75190 have a timing limitation stipulation attached to them. This timing limitation is not sufficient to protect this grouse. No surface occupancy stipulations should have been attached to these parcels to protect the Columbian sharp-tailed grouse. The other three parcels in Columbian sharp-tailed habitat have no protections for this species. At a minimum BLM should add a special lease stipulation to the parcels stating that BLM reserves the authority to implement restrictions greater than a ¼ mile buffer and seasonal timing limitations, to protect Columbian sharp-tailed grouse, if future scientific analysis suggests such measures are necessary. BLM should defer the parcels in Columbian sharp-tailed grouse habitat until proper stipulations have been attached.

Response: The alternatives analyzed and environmental impacts addressed in the LSFO Resource Management Plan (RMP) (October 2011) and DOI-BLM-CO-N010-2011-0104-EA adequately address potential impacts to special status species, including Columbian sharp-tailed grouse. Mitigation measures, including a no surface occupancy stipulation and timing limitations were developed during the RMP amendment process to protect this species. Timing limitations to protect nesting and wintering sharp-tailed grouse have been attached to leases in nesting and winter habitat.

Protest: Greater Sage-Grouse: Parcel COC75190 is in medium priority greater sage-grouse habitat and parcel COC75186 is within 4 miles of a greater sage-grouse lek. Neither of these parcels contains stipulations addressing the greater sage-grouse. Timing and controlled surface use stipulations should be attached to these parcels to protect this species.

Response: Parcel COC75186 does not provide habitat for greater sage-grouse. Habitat within the parcel is not mapped as nesting, brood rearing, winter, or even as general sage-grouse habitat by Colorado Parks and Wildlife (CPW). The closest lek is over 4 miles from the boundary of this parcel. This information was verified with CPW biologists on 10/07/11.

Parcel COC75190 does not provide habitat for greater sage-grouse. Habitat within the parcel is not mapped as nesting, brood rearing, winter or even as general sage-grouse habitat by CPW. The closest lek is over 4 miles from the boundary of this parcel. A small portion of this parcel (12 acres) is within LSFO medium priority sagebrush habitat, as identified in the LSFO RMP. Medium priority sagebrush habitat does not necessarily provide habitat for greater sage-grouse. Medium priority sagebrush habitat also encompasses important big game winter habitats. This particular area is within medium priority sagebrush habitat due to big game species, not greater sage-grouse.

Protest: Colorado Natural Heritage Program (CNHP) Potential Conservation Areas (PCA): All or portions of parcels COC75187 and 75190 are located within CNHP Lower Priority PCA's. CNHP recommends that "consideration of specific activities or land use changes proposed within

or adjacent to the preliminary conservation planning boundary should be carefully considered and evaluated for their consequences to the element on which the conservation unit is based. Given that the proposed parcels have already been recognized as being the site of 'ecological process that are necessary to support the continued existence of an element of natural heritage significance,' the BLM should consider whether "Leasing would result in unacceptable impacts to specially designated areas (whether Federal or non-Federal) and would be incompatible with the purpose of the designation, and defer leasing accordingly.

Response: The BLM consults with other Federal, State, and local agencies, partners, interest groups and industry throughout the land use planning process and during the comment for the individual oil and gas lease sales. These collaborations result in measures to protect all uses and resource values while still allowing for environmentally sound energy development. In all of the areas where parcels were offered, the current RMP allows energy development. When parcels were nominated for leasing, the BLM considered available new information to determine if any significant new circumstances or impacts have occurred since completion of the RMP. Every parcel offered for lease in this sale was analyzed in DOI-BLM-CO-N010-2011-0104-EA.

Issuing a lease does not necessarily result in drilling. The drilling of an exploratory well doesn't guarantee there will be widespread development of wells. Some leases are never drilled, and are allowed to expire due to changes in supply vs. demand, company finances, or new/updated geologic information.

Additional site-specific NEPA analysis will be conducted upon receipt of an Application for Permit to Drill (APD). The site-specific NEPA analysis will determine the potential impacts of the proposed actions and will be used to determine the mitigation measures required to minimize those impacts including social and economic impacts. Drilling of wells on a lease would not be permitted until the lease owner or operator meets the site specific requirements specified in 43 CFR 3162.

Protest: Federal Land Policy Management Act (FLPMA). A. BLM must prevent unnecessary or undue degradation. Leasing the protested parcels as proposed will result in unnecessary and undue degradation to rare and imperiled species and their habitat and lands of high conservation value that may be significantly impacted by the proposed leasing include CNHP designated PCAs.

B. BLM must mitigate adverse effects. The BLM must mitigate the adverse effects on the aforementioned imperiled species in order to comply with the "unnecessary and undue degradation" standard of FLPMA. The BLM has failed to minimize adverse impacts of oil and gas development on the aforementioned species and land of high conservation value.

Response: Restrictions are applied to field operations by federal regulation, based on all applicable laws and Section 6 of the lease instrument. Federal oil and gas leasing regulations are found in CFR, Title 43 Part 3100. These regulations are mandatory and give the Authorized Officer authority to determine how field operations are conducted. Operations which fall within the jurisdiction of other federal or state and local agencies may also be field inspected by those agencies.

The BLM analyzed the impacts of leasing the nominated parcels in the EA. LSFO will conduct a site-specific NEPA analysis when exploration or drilling activities are proposed. The NEPA document review procedures help to assure identified mitigation measures will prevent undue and unnecessary degradation of the leased lands.

All proposed oil and gas development is evaluated for potential impacts to BLM sensitive species, as required by BLM policy. If any special status species is identified in the Little Snake Field Office, it is protected through no-surface-occupancy stipulations and any other actions needed to prevent its deterioration and allow its recovery. The LSFO staff regularly communicates with the US Fish & Wildlife Service, CPW, CNHP, U.S. Geological Survey, Natural Resources Conservation Service (NRCS), and other qualified sources. Specific mitigation is applied on a site by site basis at the time of development.

The alternatives analyzed and environmental impacts addressed in the 1991 Colorado Oil and Gas Leasing and Development FEIS, and the EA, in our judgment, adequately address current environmental concerns, interests, and resource values including sensitive species. Environmental impacts will be evaluated again at a site-specific level upon receipt of oil and gas Application for Permit to Drill (APD).

Oil and gas leasing in the LSFO remains within the reasonably foreseeable development projections as described in Appendix B and summarized in Chapter 2 of the 1991 Colorado Oil and Gas Leasing and Development FEIS. Cumulative impacts were analyzed for such development and not considered significant because of the small area of permanently disturbed area (Chapter 4, Page 4-29).

Protest: BLM has discretion to not lease. Under the statutory and regulatory provision authorizing this lease sale, the BLM has full discretion over whether or not to offer these lease parcels for sale. The arguments set forth in detail above demonstrate that exercise of the discretion not to lease the protested parcels is appropriate and necessary. The BLM has no legal obligation to lease the disputed parcels and is required to withdraw them until the agencies have complied with the applicable laws.

Response: The 1920 Mineral Leasing Act, as amended, authorizes the Secretary of the Interior to lease oil and gas resources on all public domain and acquired land. To lease federal oil and gas, a decision must be reached by the BLM as to which lands to lease. If BLM decides to lease a parcel of land, additional actions will be required before on the ground operations begin. For each action, conformance with the RMP and compliance with NEPA is certified. Lease operations must conform to the decisions in the RMP.

The BLM elected to eliminate from the RMP (October 2011) a Resource or Planning Area wide No Leasing Alternative, but did consider an alternative (Alternative D, RMP[2011], p. 2-63) to close more acreage to leasing. Alternative D was analyzed and not selected. A No Leasing Alternative was analyzed in DOI-BLM-CO-N010-2011-0104-EA, but was not selected. A No Lease decision is made where it is determined that oil and gas leasing is not in the public's interest. No Leasing was considered and analyzed on a site-specific basis as part of the analyzed alternatives in the 1991 Colorado Oil and Gas Leasing and Development FEIS. Where it was

determined that even the most restrictive mitigation available (No Surface Occupancy) would not adequately mitigate conflicts or environmental consequences, which could indicate that leasing is not in the public's interest, a No Leasing decision was considered. A No Lease decision is reached only after careful consideration of conflicting resource values and uses and environmental consequences.

The decision to offer the above named parcels for leasing was made in accordance with Bureau of Land Management policy and regulations. Your protest of the sale of these parcels is dismissed.

Within 30 days of receipt of this decision, you have the right to appeal to the Board of Land Appeals, in accordance with the regulations at 43 CFR Part 4. If an appeal is taken, the procedures outlined in the enclosed Form CSO 1842-1, Information on Taking Appeals to the Board of Land Appeals, must be strictly followed. The form also includes instructions for filing a petition for stay on any decision appealed from. The appellant has the burden of showing that the Decision appealed from is in error.

If you have any questions regarding this response, contact Karen Zurek, Chief, Fluid Minerals Adjudication at (303) 239-3795.

Sincerely,



for Lonnie R. Bagley
Deputy State Director
Division of Energy, Lands and Minerals

Enclosure

CSO Form 1842-1

cc: Audubon Colorado, Ken Strom, 1536 Wynkoop St., Ste. 302, Denver, CO 80202
The Wilderness Society, Barbara Hawke, 1617 American Way, Montrose, CO 81401
WildEarth Guardians, Mark Salvo, 1 E. Lexington Ave., #805, Phoenix AZ 85012

FOM, Brian St. George, Gunnison FO
FOM, Wendy Reynolds, Little Snake FO