

October 24, 2011

VIA E-MAIL (UT\_Comments@blm.gov)

Bureau of Land Management  
Utah State Office  
Attn: Don Ogaard  
P.O. Box 45155  
SLC, UT 84145-0155

**Re: Comments on the Canyon County District Office's February 2012 Oil & Gas Lease Sale Environmental Assessment (DOI-BLM-UT-9100-2011-0005)**

Dear Mr. Ogaard:

Thank you for the opportunity to comment on the Canyon County District Office's February 2012 Oil and Gas Lease Sale Environmental Assessment (DOI-BLM-UT-9100-2011-0005) [hereinafter, "Draft EA"]. Additionally, we wish to thank BLM for posting GIS shapefiles of the proposed lease parcels on its website. This information is critical to full public participation, and we encourage BLM to post this information for all future lease sales. However, we would greatly appreciate if BLM would post this information at the beginning of the public comment periods for leasing EAs, rather than toward the end, as was the case here.

According to the Draft EA, the Bureau of Land Management ("BLM") is proposing to defer leasing of proposed parcels 09 and 10 "in their entirety because of the presence of Rocky Mountain bighorn sheep ("RM bighorn") habitat and range improvements specifically for the species" because the Moab Field Office "determined more analysis is needed to determine the extent the RM bighorn are using the area and if stipulations are needed." Draft EA at 15. We fully support this decision, since leasing in RM bighorn habitat without protections would significantly impact the species and more analysis is needed. Further, we support the decision to defer parcels that occur within Master Leasing Plan ("MLP") areas.

## **I. INTRODUCTION**

### **a. Commenting Party**

Rocky Mountain Wild ("RMW") works to conserve and recover the native species and ecosystems of the Greater Southern Rockies using the best available science. RMW achieves this goal by working with biologists and landowners, utilizing GIS technology to promote understanding of complex land-use issues, and monitoring government agencies whose actions affect endangered and threatened species. RMW's members include approximately 1,975 outdoor enthusiasts, wildlife conservationists, scientists, and concerned citizens in Utah and across the country. RMW is very concerned about the

potential impacts of the proposed oil and gas leasing and subsequent development on a number of important species and critical habitat areas.

**b. Overview of Desired Action**

RMW conducted our own screen utilizing the GIS data provided for the proposed parcels and data layers for environmentally sensitive species and habitat. Our screen has identified parcels that require further analysis in the final Environmental Assessment. (*See Attachment 1*) The following list will show the parcel number and the environmental aspect requiring further analysis.

002	Bonytail Colorado Pikeminnow Roundtail Chub White-tailed Prairie-dog Bald Eagle
003	Roundtail Chub White-tailed Prairie-dog
004	Roundtail Chub White-tailed Prairie-dog
006	Kit Fox White-tailed Prairie-dog Prairie dog habitat
011	Burrowing Owl Ferruginous Hawk Kit Fox White-tailed Prairie-dog Prairie dog habitat
020	Burrowing Owl Ferruginous Hawk Kit Fox Townsend's Big-eared Bat White-tailed Prairie-dog prairie dog habitat
021	Burrowing Owl Ferruginous Hawk Kit Fox Townsend's Big-eared Bat White-tailed Prairie-dog Prairie dog habitat
022	Burrowing Owl Ferruginous Hawk Kit Fox Townsend's Big-eared Bat White-tailed Prairie-dog Prairie dog habitat
024	Burrowing Owl Ferruginous Hawk Kit Fox

	Townsend's Big-eared Bat White-tailed Prairie-dog Prairie dog habitat
028	Gunnison Sage-grouse Greater Sage-grouse Lewis's Woodpecker Bald Eagle Gunnison's Prairie-dog Southwestern Willow Flycatcher Gunnison sage-grouse crucial brooding use areas - La Sal SW Gunnison sage-grouse crucial winter use areas - West La Sal
029	Greater Sage-grouse Southwestern Willow Flycatcher
030	Greater Sage-grouse Southwestern Willow Flycatcher
031	Gunnison Sage-grouse Greater Sage-grouse Lewis's Woodpecker Bald Eagle Gunnison's Prairie-dog Southwestern Willow Flycatcher
032	Gunnison Sage-grouse Lewis's Woodpecker Gunnison's Prairie-dog Southwestern Willow Flycatcher prairie dog habitat
034	Gunnison Sage-grouse Lewis's Woodpecker Bald Eagle Gunnison's Prairie-dog Southwestern Willow Flycatcher Gunnison sage-grouse crucial brooding use areas - La Sal SW Gunnison sage-grouse crucial winter use areas - West La Sal
035	Gunnison Sage-grouse Lewis's Woodpecker Gunnison's Prairie-dog Southwestern Willow Flycatcher

RMW asks the BLM to withdraw all parcels or portions of parcels that overlap with Gunnison sage-grouse, Greater sage-grouse, Gunnison prairie dog, and white-tailed prairie dog habitat until BLM conduct adequate NEPA analysis. This will ensure that BLM's leasing of these parcels does not contribute to the extinction of these species. We also request further analysis and mitigation of leasing impacts in the habitat of the bald eagle, the Southwest willow flycatcher, and the bonytail, roundtail chub, pikeminnow, and other sensitive fish and wildlife species.

**II. THE DRAFT EA CONSIDERS AN INSUFFICIENT RANGE OF ALTERNATIVES.**

**a. BLM Must Evaluate Additional Alternatives To Address “Unresolved Resource Conflicts.”**

The Draft EA contains only two alternatives: a “proposed action” alternative and “no action” alternative. Draft EA at 11. This range of alternatives is not consistent with the National Environmental Policy Act (NEPA), which requires BLM to “[r]igorously explore and objectively evaluate all reasonable alternatives” to proposed federal actions. 40 C.F.R. § 1502.14(a). Nor does it comply with Instruction Memorandum (IM) 2010-117, which directs BLM to develop “alternatives to the proposed action that may address unresolved resource conflicts.” *IM 2010-117 at III.E; see also BLM NEPA Handbook at 6.6.1 (recommending that for “externally generated” actions, such as leasing proposed by the oil and gas industry, BLM evaluate a “proposed action” alternative, a “no action” alternative and an alternative that includes “changes BLM makes to the proponent’s proposal.”)*. Thus, in the Final EA, BLM must consider additional “alternatives to the proposed action that may address unresolved resource conflicts.”

Through consideration of just two alternatives, the Draft EA fails to fully consider the impacts of the proposed leasing and potential development, and fails to consider measures to adequately minimize and mitigate those impacts. Instead, BLM should consider a broader range of alternatives involving options such as leasing with more stringent stipulations, not leasing parcels that conflict with priority fish and wildlife habitat, leasing reduced size parcels, and other alternatives that will ensure proper analysis and decision-making. See 40 C.F.R. § 1502.14(e), (f) (requiring the identification of “appropriate mitigation measures not already included in the proposed action or alternatives” in NEPA documents). Many other field offices are evaluating such alternatives in leasing EAs, and are typically designating one of those alternatives as the agency’s “preferred” alternative.<sup>1</sup> See 40 C.F.R. § 1502.14(e) (requiring BLM to identify a “preferred alternative” in NEPA documents). BLM should do the same here, as well as in all future leasing EAs. Only a consideration of a real range of alternatives will allow BLM and the public to evaluate the trade-offs between the potential for development of energy resources in the area and impacts to the human environment.

**Recommendation:** In the Final EA, BLM should revise the “proposed action” alternative to include all of the proposed lease parcels that conform to the current RMP. BLM should also develop a third alternative to address “unresolved resource conflicts” associated with the proposed action. This alternative, which should be designated as the agency’s “preferred alternative,” should contain exclusions of priority fish and wildlife habitat, as well as any other measures that are necessary to resolve resource conflicts.

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<sup>1</sup> See, e.g., Roswell Field Office, October 2011 Competitive Oil and Gas Lease Sale EA at 6-7, available at [http://www.blm.gov/pgdata/etc/medialib/blm/nm/programs/0/og\\_sale\\_notices\\_and/2011/october\\_2011.Par.60046.File.dat/RFO%20EA\\_October%202011%20Lease%20Sale.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/nm/programs/0/og_sale_notices_and/2011/october_2011.Par.60046.File.dat/RFO%20EA_October%202011%20Lease%20Sale.pdf); High Plains District Office, High Plains District Portions of the February 2012 Lease Sale EA at 12-16, available at <http://www.blm.gov/pgdata/etc/medialib/blm/wy/information/NEPA/og/2012/02feb.Par.52411.File.dat/HPDO-EA1.pdf>.

**b. BLM Should Evaluate Additional Measures to Protect Sage-grouse Habitat.**

As discussed above, BLM must consider alternatives to address “unresolved resource conflicts” in leasing EAs. IM 2010-117 lists several measures that BLM should evaluate in those alternatives, including modifying the boundaries of proposed lease parcels. *IM 2010-117 at III.F*. Because several parcels contain sage-grouse habitat, and because the existing stipulations do not adequately protect sage-grouse habitat, BLM should evaluate additional measures to protect sage-grouse, including modification to exclude sage-grouse habitat from the boundaries of the parcels.

BLM has failed to evaluate adequate measures in the Draft EA to mitigate impacts to Gunnison sage-grouse. According to the Draft EA and the screen that RMW conducted utilizing the GIS data provided for the proposed lease parcels and data layers for environmentally sensitive species and habitat, Gunnison sage-grouse occurs on several of the parcels. Approximately 24 acres of parcel 28 and 85 acres of Parcel 34 are Gunnison sage-grouse crucial brooding use and winter use areas and there are documented occurrences of Gunnison sage-grouse on parcels 28, 31, 32, 34, and 35.<sup>2</sup> (*See Attachment 1*) However, Stipulation UT-S-215 only prohibits surface disturbing activities “within 0.6 miles of a lek where Gunnison sage-grouse leks are discovered within sage-grouse habitat” and, furthermore, it allows for modification or waiver of the prohibition where lek sites have been abandoned or destroyed. *Draft EA at 68*. As BLM has previously recognized, the impacts of oil and gas development on sage-grouse leks “remain discernable out to distances more than 6 km (3.6 miles).” *Billings Field Office, Oil and Gas Lease Parcel Sale, October 18, 2011 EA at 6*;<sup>3</sup> *see also id.* (noting “that lek counts decreased with distance to the nearest active drilling rig, producing well, or main haul road, and that development influence[s] counts of displaying males to a distance of between 4.7 and 6.2 km (2.9 and 3.9 miles).”). Therefore this stipulation is insufficient to adequately mitigate impacts to Gunnison sage-grouse in both occupied habitat and unoccupied habitat as loss of unoccupied habitat reduces the potential for the species to recover. Because Gunnison sage-grouse is a candidate species under the Endangered Species Act, BLM should with the U.S. Fish and Wildlife Service before leasing parcels containing Gunnison sage-grouse in order to determine the appropriate stipulations and other protective measures.

Secondly, BLM has failed to evaluate adequate measures in the Draft EA to mitigate impacts to greater sage-grouse. According to the screen that RMW conducted utilizing the GIS data provided for the proposed lease parcels and data layers for environmentally

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<sup>2</sup> The Draft EA claims that all Gunnison sage-grouse habitat is unoccupied and fails completely to mention the greater sage-grouse. Draft EA at 84. The BLM should clear up this inconsistency through site-specific biological surveys. If the habitat is occupied, then BLM must analyze impacts on occupied habitat. If it is unoccupied, the EA has failed to analyze the impacts of leasing and development on potential recovery of Gunnison sage-grouse to historically occupied habitat, and the impacts of development on connectivity between occupied sage-grouse habitat.

<sup>3</sup> Available at [http://www.blm.gov/pgdata/etc/medialib/blm/mt/blm\\_programs/energy/oil\\_and\\_gas/leasing/lease\\_sales/2011/oct.Par.74862.File.dat/BiFOea.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/mt/blm_programs/energy/oil_and_gas/leasing/lease_sales/2011/oct.Par.74862.File.dat/BiFOea.pdf).

sensitive species and habitat, there are documented occurrences of greater sage-grouse on parcels 28, 29, 30, and 31. (*See Attachment 1*) However, the Draft EA contains no analysis or protective stipulations for greater sage-grouse and therefore completely fails to mitigate impacts to greater sage-grouse and its habitat. The BLM has recognized that in Resource Management Plans do not contain adequate regulatory mechanisms to prevent the need to list the greater sage-grouse under the Endangered Species Act. As a consequence, BLM is conducting a National Greater Sage-grouse planning process, that will amend Resource Management Plans across the range of the species (including in Utah) to include adequate regulatory mechanisms to conserve greater sage-grouse and reduce the need to protect the species under the Endangered Species Act.<sup>4</sup> Thus, BLM should defer all parcels in greater sage-grouse habitat pending review for consistency with the results of the national planning process. The Wyoming BLM State Office recently deferred the leasing of 42 parcels located within delineated Wyoming sage-grouse core areas pending a consistency review with proposed National BLM sage-grouse management policy.<sup>5</sup> Similarly, the Utah BLM State Office should defer these parcels that overlap sage-grouse habitat until the BLM's Eastern Regional Management Team has reviewed the Utah RMPs in question and determined whether they contain adequate regulatory mechanisms to conserve greater sage-grouse

**Recommendation:** BLM should defer the parcels or portions of the parcels that are located in Gunnison sage-grouse habitat from the lease sale and defer the parcels or portions of all parcels that are located in greater sage-grouse habitat pending the Eastern Regional Management Team's review of the Utah RMPs.

**c. BLM Should Evaluate Additional Measures to Protect Prairie Dog Habitat.**

BLM has failed to evaluate adequate measures in the Draft EA to mitigate impacts to prairie dogs. According to the screen that RMW conducted utilizing the GIS data provided for the proposed lease parcels and data layers for environmentally sensitive species and habitat, Gunnison's Prairie-dog is present on parcels 28, 31, 32, 34, and 35, and white-tailed Prairie-dog is present on parcels 2, 3, 4, 6, 11, 20, 21, 22, and 24. BLM must consider in the final EA additional measure to protect prairie dog habitat. Because several parcels contain prairie dog habitat, and because the existing stipulations do not adequately protect prairie dog habitat, BLM should additional evaluate measures to protect prairie dogs and their habitat.

RMW has challenged the RMPs for the Moab, Price, and Vernal Field Offices due to inadequate consideration of white-tailed prairie dogs in the adopted management alternatives. The recently adopted RMP for the Moab Field Office imposed a 660-foot Controlled Surface Use stipulation around all active prairie dog colonies. This boundary is arbitrary and inadequate to protect the species and ensure its recovery from its current

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<sup>4</sup> See *BLM National Greater Sage-Grouse Planning Strategy*, available at [http://www.blm.gov/or/news/files/sage-grouse\\_fact\\_sheet.pdf](http://www.blm.gov/or/news/files/sage-grouse_fact_sheet.pdf)

<sup>5</sup> See *BLM Information Notice, October 20, 2011*, available at [http://www.blm.gov/wy/st/en/programs/energy/Oil\\_and\\_Gas/Leasing/2011/11notice2.html](http://www.blm.gov/wy/st/en/programs/energy/Oil_and_Gas/Leasing/2011/11notice2.html)

population decline. BLM is still using this inadequate buffer in the current EA. Multiple expert sources recommend at least a half-mile No Surface Occupancy stipulation for prairie dog colonies. Further, this stipulation should be expanded to include historical habitat as well.

Here we provide the relevant excerpt from our protest of the Moab Field Offices Proposed RMP which applies to our issues with this EA:

### **The PRMP fails to conserve the white-tailed prairie dog**

BLM provides no meaningful new protections for prairie dogs in the PRMP. Instead, it merely clarifies that prairie dogs are important, and fixes some typos about the size of the proposed buffers. BLM fails to demonstrate that adequate regulatory mechanisms are in place to avoid listing the Gunnison's prairie dog and white-tailed prairie dog under the Endangered Species Act, and does not take necessary steps to recover both species.

#### **A. BLM relies on an arbitrary buffer that does not provide meaningful protection.**

The reason why BLM asserts that avoidance of active prairie dog colonies can be implemented on *existing* leases is that the 660' buffer conveniently is basically within the 200m distance that BLM can request that facilities be moved under standard lease terms (technically 200m = 656', but BLM does not seem to be accounting for the 4' discrepancy).

Mitigations should be designed based on the biological needs of the resources at risk. Instead, BLM chose to tailor its mitigations for prairie dogs to existing standard lease terms. Using a 660' buffer is arbitrary and capricious, and is not based on the best available science. BLM acknowledges that "the buffer is within the parameters of Standard Operating Procedures " (BLM response to comment 485-2), and also discloses that the 1300' buffer in Alternative B is based on the distance at which Utah prairie dogs reacted to disturbance. Clearly 1300' should be the minimum buffer distance in all alternatives. BLM provides no evidence to back its claim that 660' buffers "are sufficient to facilitate colony protection" (See BLM Response to Comment 485-6).

Even the 1300' buffer only addresses the need for protection of active colonies from direct disturbance. As the states noted in the White-tailed Prairie Dog Conservation Assessment (which has been approved by the Western Association of Fish and Wildlife Agencies), unoccupied and suitable habitat *must* also be conserved because prairie dogs operate on a landscape scale.

Knowledge of where habitat loss has and will occur on both a local and landscape scales and in what spatial patterns is crucial for proper management of white-tailed prairie dogs. Identifying habitat patches and corridors between these patches will help determine the long-term viability of local populations, probability of dispersal among populations, and areas important for conservation. Critical areas identified during these analyses must be incorporated into Land Use Plans (RMPs) with conservation actions focusing on protecting unoccupied and occupied habitat, protecting corridors for immigration and emigration and allowing maintenance and expansion of white-tailed prairie dog colonies and complexes. *See Seglund, A.E., A.E. Ernst, M. Grenier, B. Luce, A. Puchniak and P. Schnurr. 2004. White-tailed Prairie Dog Conservation Assessment at 63-64.*

The 1300' buffer, designed for protecting against the effects of physical disturbance, does not address the need for prairie dogs to be able to move from one colony to the next securely. A buffer for connectivity like that needs to be based on the average distance between colonies. Our own GIS analysis found that with 0.5 mile buffers, most colonies were provided with a connection to at least one other colony.

**B. BLM seeks to maintain the status quo and thus the imperiled status of prairie dogs rather than providing for their recovery.**

BLM claims that "Standard Operating Procedures" will be adequate to conserve white-tailed and Gunnison's prairie dogs. However, it also discloses that both species are imperiled in the Moab Field Office: "Currently prairie dog numbers are low" (*See BLM Response to Comment 485-1*); "Currently, active colonies are very limited on public lands" (*See BLM Response to Comment 485-3*). The status quo is one of endangerment. BLM also acknowledges that should prairie dogs recover, the SOP protections will have to be waived or excepted so that leases can still be developed: "if numbers approach those of earlier decades, it may become impossible to develop a lease and adhere to these stipulations. For that reason, exception language was developed to ensure there would not be a taking on a lease holding" (*See BLM Response to Comment 485-1*). This is true only because BLM has ignored the advice of its sister agency the U.S. Fish and Wildlife Service, which recommended No Surface Occupancy stipulations instead:

BLM proposes to only actively conserve active prairie dog colonies and hope that prairie dogs are able to expand on their own. However, the story of the past 20 years in the Cisco Complex has been one of major declines, not expansion. The states (including UDWR) determined that the Complex declined by 84% between 1985 and 2002 (*See Seglund, A.E.,*

A.E. Ernst, M. Grenier, B. Luce, A. Puchniak and P. Schnurr. 2004. White-tailed Prairie Dog Conservation Assessment). The states also noted that BLM planned to designate the Cisco Complex as an ACEC. Although BLM purports to want to allow UDWR to manage wildlife, BLM has ignored much of the states' input on prairie dog management needs.

UDWR has indicated that the Cisco Complex is actually the second highest priority reintroduction area in the state (*See* Comment 120-29), and BLM claims that it will support ferret recovery, but that requires bolstering prairie dog populations, which the PRMP does not do.

Instead, BLM must actively conserve historical habitat for the white-tailed and Gunnison's prairie dog. The U.S. Fish and Wildlife Service has revealed that "We would have liked to have gotten protection for historic-but-inactive areas as well, but BLM was unwilling to institute such restrictions" (*See* U.S. Fish and Wildlife Service. 2008. Pers. comm. (29 August 2008). Electronic mail correspondence.). By failing to take these kinds of steps BLM is demonstrating that it fails to provide adequate regulatory mechanisms to conserve these two species, and that the protections of the Endangered Species Act are needed to trump the expansive drilling rights that BLM has granted and will continue to grant within the range of both species.

**C. BLM ignores the fact that a portion of the Gunnison's prairie dog's range has been protected under the Endangered Species Act, and the portion in Utah will likely be added soon.**

BLM attempts to maintain a distinction between Utah prairie dogs and other prairie dog species in Utah by pointing to the Utah prairie dog's status as Threatened under the Endangered Species Act and noting its smaller range. However, BLM does not acknowledge that the U.S. Fish and Wildlife Service has found that a portion of the range of the Gunnison's prairie dog has been found warranted for protection under the Act, and has been officially added to the Candidate list of species awaiting protection. The Service's attempt to only protect a portion of the range relies on a new interpretation of the Act that is being challenged, and BLM should be prepared for the Service's piecemeal approach to protection to be overturned and thus the entire range of the Gunnison's prairie dog to be added to the Candidate list.

BLM attempts to discount the importance of its management of white-tailed and Gunnison's prairie dogs by citing the larger acreages once occupied by these two species compared to the Utah prairie dog. However, more important than the size of the original range is the extent of the species' decline. BLM states that the original range of the white-

tailed prairie dog included 50 million acres. However, the states (including UDWR) estimate that the white-tailed prairie dog now occupies 841,320 acres, or about 2% of its original range.

It also is important to note that while most of the occupied habitat for the Utah prairie dog occurs on private lands, most of the predicted habitat for white-tailed prairie dogs (56%) occurs on BLM lands. Thus, BLM management plays a much larger role in white-tailed prairie dog endangerment, and could also be instrumental for recovery.

**D. BLM has its own obligations to wildlife and Sensitive species and cannot rely on UDWR to execute those.**

BLM claims that it is UDWR's responsibility to conserve animals and BLM's only obligation is to habitat (*See* BLM Response to Comment 485-5). However, BLM fails to conserve habitat for white-tailed and Gunnison's prairie dogs and other Sensitive and special status species in the PRMP. BLM cannot rely on future actions by UDWR to remedy its own deficiencies in this area.

**E. BLM claims that plague and drought are the biggest threats to prairie dogs, and ignores the states' assessment that oil and gas extraction on BLM lands is also a major threat.**

BLM claims that it cannot affect prairie dog recovery because it has no control over plague and drought, "Two of the biggest threats to prairie dog populations" (*See* BLM Response to Comment 485-6). However, BLM fails to mention that the states actually found that oil and gas drilling on BLM lands may pose the largest threat of all:

“the threat posed by oil and gas exploration and extraction could justify listing unless it is immediately addressed on public lands managed by the BLM. It is critical that the BLM through its Land Use Plans, manage oil and gas leasing and development in white-tailed prairie dog complexes to maximize prairie dog habitat potential. Land Use Plans must be revised on a state-by-state basis and white-tailed prairie dog protection initiated in order to prevent further, more drastic actions, possibly including listing the white-tailed prairie dog under the ESA. *See* Seglund, A.E., A.E. Ernst, M. Grenier, B. Luce, A. Puchniak and P. Schnurr.” 2004. White-tailed Prairie Dog Conservation Assessment at 83.

The states also recommend maintaining landscape level connectivity to address plague, and adjusting grazing during times of drought, which BLM fails to do in the PRMP.

**F. The PRMP is the correct place for BLM to plan for species conservation; deferring to some later HMP may be ineffective.**

BLM repeatedly states that it will address Sensitive species conservation, including that for white-tailed and Gunnison's prairie dogs, as part of a later Habitat Management Plan. In fact, when the U.S. Fish and Wildlife Service requested that BLM describe the distribution of Sensitive species as part of the PRMP, BLM refused (*See* BLM Response to Comment 586-17). BLM also claims that it has funded an inventory for Sensitive species in the Cisco area, but it appears that this inventory has not yet been completed (*See* BLM Response to Comment 485-6). It is irresponsible to plan the future of the Field Office for the next 20 years without current data as to the status and distribution of Sensitive species. If BLM does indeed wait until after the RMP takes effect to obtain this information, it must then perform an RMP amendment and SEIS to analyze this new information under NEPA. Instead, BLM should obtain this information now and delay RMP implementation until it can be considered. Providing for the needs of special status species should be one of the highest priorities in RMP revision.

**Recommendation:** BLM should defer the parcels that overlap Gunnison's and White-tailed prairie-dog habitat. In the alternative, BLM should increase the buffer around active prairie dog colonies to .5 mile. BLM should also add protections for unoccupied habitat to allow for these imperiled populations to expand.

**d. BLM Should Evaluate Additional Measures to Protect Habitat for Other Sensitive Fish and Wildlife Species.**

Finally, BLM has failed to evaluate adequate measures in the Draft EA to mitigate impacts to other sensitive species, including raptors, fish, kit fox, and Southwest willow flycatcher. Because several parcels contain habitat for these sensitive species, and because the existing stipulations do not adequately protect their habitat, BLM should evaluate additional measures to protect these species.

According to the Draft EA and the screen that RMW conducted utilizing the GIS data provided for the proposed lease parcels and data layers for environmentally sensitive species and habitat, bald eagle, ferruginous hawk, and burrowing owl are present on several of the proposed parcels. Impacts from oil and gas development to these species include direct loss of habitat, noise and disturbance at nest sites (which are in prairie dog burrows for burrowing owls), indirect impacts due to reduction of prey populations (e.g. oil and gas could reduce populations of prairie dogs and thus reduce food available for these species), impacts of habitat fragmentation from roads, impacts of power lines and infrastructure (e.g. potential for electrocution, collisions etc.), impacts of contaminants (e.g. potential for birds to drink out of retention pits, etc.), and impacts of increased vehicle traffic on roads (e.g. collisions). Guidelines for evaluating and minimizing such

impacts to raptors are detailed in the U.S. Fish and Wildlife Service's *Guidelines for Raptor Conservation in the Western United States*. (See Attachment 2) BLM should conduct site-specific analysis of all of the impacts to the species and evaluate additional site-specific protection measures in the final EA using the Raptor Guidelines. Regardless of the specifics of the protective measures included in the final EA, BLM must include analysis to support the conclusion that the measures are adequate to protect these species.

Further, there are documented occurrences of the endangered bonytail and Colorado pikeminnow, as well as the sensitive roundtail chub in the vicinity of the lease parcels, and there is designated critical habitat for the endangered Colorado River fish species within 2 miles of the lease parcels. (See Attachment 1) The final EA should disclose whether oil and gas development on the parcels will have direct, indirect or cumulative impacts on occupied or critical habitat for these species. This should include assessment of whether the oil and gas development will result in water depletion, release of contaminants, or impacts to riparian areas. The effectiveness of necessary measures to protect these fish species should be evaluated in the final EA.

Finally, there are also documented occurrences of kit fox, Southwest willow flycatcher, and other sensitive species on the parcels. (See Attachment 1) Though the Draft EA includes lease notices and stipulations that address some of these species, the Draft EA fails to provide analysis of their effectiveness in minimizing impacts to these species. As discussed below, the Draft EA's attempt to rely on the RMP in this regard fails to satisfy the requirements of NEPA because the RMP does not involve any site-specific analysis. The final EA should address whether oil and gas development on the parcels will have direct, indirect or cumulative impacts on occupied or critical habitat for these species.

This should include assessment of whether the oil and gas development will result in loss of habitat, habitat fragmentation, release of contaminants, noise and disturbance of nest and den sites, indirect impacts due to reduction of prey populations, and other impacts. The Draft EA should then also evaluate the effectiveness of any measures to protect these species. If the current stipulations are sufficient to protect these species, the final EA must provide the analysis to support that conclusion.

### **III. THE DESCRIPTION OF THE AFFECTED ENVIRONMENT PROVIDES INSUFFICIENT DETAIL.**

#### **a. BLM Must Adequately Describe the Proposed Parcels**

The Draft EA's description of the affected environment within the proposed lease parcels lacks sufficient detail. Under NEPA, BLM must "succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration." 40 C.F.R. § 1502.15. Without such a description, "there is simply no way to determine what effect [an action] will have on the environment, and consequently, no way to comply with NEPA." *Half Moon Bay Fisherman's Marketing Ass'n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988). The Draft EA's description of the affected environment is too general

and lacks an adequate site-specific discussion of each proposed lease parcel's resources and values.

When describing the seventeen parcels, the Draft EA provides basic location, proximity to roads, and vegetation class information, but provides no information about the type, condition or significance of terrestrial wildlife habitat (along with other values) on specific parcels. *Draft EA at 16-20*. For example, in describing Parcel 028, the Draft EA merely states that “[t]he vegetation class for the parcel is mainly piñon-juniper with portions of its southern end in the sagebrush vegetation class. The terrain is variable with rolling benches bisected by several drainages one of which is Buck Draw.” *Draft EA at 18*.

However, aside from noting in Appendix C that several species occur on parcel 28 (including Burrowing owls habitat, Kit fox habitat, White-tailed and/or Gunnison prairie dog habitat, Bald eagle winter habitat, unoccupied Gunnison sage-grouse habitat, antelope fawning habitat, Mexican owl habitat, and riparian area) (Draft EA at 83-91), the Draft EA provides no details regarding these species located somewhere within this 2,122.72 acre parcel. Without more detailed information, BLM cannot satisfy the two fold NEPA requirements of taking a “hard look” at the environmental consequences of leasing individual parcels<sup>6</sup> and evaluating “appropriate mitigation measures” that address those consequences.<sup>7</sup>

**Recommendation:** In Wyoming, BLM has developed an extremely effective approach to describing the affected environment of proposed lease parcels. Under this approach, BLM typically includes a summary of each parcel's potentially affected “resource values” in leasing EAs. For example, in the leasing EA for the November 2011 lease sale, the High Desert District Office disclosed that:

Parcel 022 falls within a Greater sage-grouse key habitat area. The parcel provides crucial big game winter and Greater sage-grouse nesting habitat. The parcel also potentially provides habitat for Wyoming pocket gopher, Laramie false sagebrush, and Rocky Mountain twinpod. There are no known occupied dwellings within ¼ mile of the parcel. The parcel lies within the Platte River watershed and is subject to water depletion restrictions to protect threatened or endangered fish species occurring in the river proper. The predominant vegetation type is sagebrush dominated shrublands with a variety of forbs and grasses. The parcel falls within the Seminoe and Stone livestock grazing allotments. The parcel does not contain riparian habitat, but it does contain slopes greater than 25 percent. The soils are mid-elevation stabilized sand dunes that are moderate to deep, with a depth to bedrock of greater than 20 inches occurring in areas. They can have a thick organic based surface horizon and are in the 10 to 14 inch precipitation zone. They are moderately productive and are

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<sup>6</sup> 42 U.S.C. § 4321 et seq; 40 C.F.R. § 1508.8; *see also* Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 348 (1989); *Metcalf v. Daley*, 214 F.3d 1135, 1151 (9th Cir. 2000).

<sup>7</sup> 40 C.F.R. § 1502.14(f)

generally stable but do have areas with moderate or greater erosion potential, especially in blowout areas that are actively moving.

*High Desert District Office, November 2011 Lease Parcels at 18.*<sup>8</sup> We encourage the Utah BLM State Office to follow such an approach here and incorporate a similar level of site-specific information for each proposed lease parcel in the Final EA.

**b. BLM Must Adequately Describe the Biological Values of the Proposed Parcels**

The Draft EA's description of the Affected Environment wholly fails to discuss the vegetation, wetland and riparian zones, and the fish and wildlife species and their habitat that will be affected by the proposed leases. Rather, the EA explains that "[t]hese issues were eliminated from analysis because they were either not applicable to the lands considered in the proposed action or the reviewing specialists did not consider the proposed action to represent a potential impact to these issues, under applicable leasing protective measures..." and points the reader to Appendix C for "[r]ationale as to why these resources or issues were not carried forward for analysis." *Draft EA at 10.*

Appendix C of the Draft EA lists the stipulations and leasing notices it claims are sufficient to protect each BLM and state sensitive fish and wildlife species, the few Federal Threatened, Endangered, or Candidate Animal Species mentioned in Appendix C, and all other fish and wildlife species within the proposed parcels. Although RMW commends BLM on requiring these stipulations and leasing notices, which can provide important and needed protections to fish and wildlife, doing so does not substitute for analysis of the affected environment as required by NEPA. Without a thorough description and analysis of the environmental resources and values that will be impacted by the proposed lease sale, BLM and the public cannot evaluate the trade-offs between the potential for development of energy resources in the area and impacts to the human environment.

**Recommendation:** In the Final EA, BLM should provide the public with additional site-specific information about all of the resources and values that are present on each of the proposed lease parcels.

**III. THE DESCRIPTION OF THE ENVIRONMENTAL IMPACTS PROVIDES INSUFFICIENT DETAIL.**

**a. Direct, Indirect and Cumulative Impacts**

The BLM failed to adequately analyze potential direct, indirect, and cumulative impacts of the proposed leasing on fish and wildlife species and habitat. NEPA requires BLM to

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<sup>8</sup> Available at <http://www.blm.gov/pgdata/etc/medialib/blm/wy/information/NEPA/og/1111.Par.46894.File.dat/ea.pdf>.

take a “hard look” at the environmental consequences of a proposed action and the requisite environmental analysis “must be appropriate to the action in question.” *Metcalf v. Daley*, 214 F.3d 1135, 1151 (9th Cir. 2000); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989). In order to take the “hard look” required by NEPA, BLM is required to assess impacts that include: “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.” 40 C.F.R. § 1508.8. The BLM has failed to analyze the potential direct, indirect, and cumulative impacts of the proposed leasing on the Gunnison sage-grouse, Greater sage-grouse, Gunnison prairie dog, White-tailed prairie dog, and other species.

In order to adequately analyze the environmental baseline and the direct, indirect and cumulative impacts of the proposed action in combination with other past, present and reasonably foreseeable actions, the BLM must take these steps as part of the NEPA analysis at this stage. The Draft EA wholly fails to address site-specific direct, indirect, and cumulative impacts to all fish and wildlife species, except for migratory birds. See Draft EA at 29-39. Instead, the Draft EA attempts to rely on the RMPs. See, e.g., Draft EA at 83, 85, 90, 92-93. Although the Draft EA claims that species habitats and riparian areas were address in the RMP and provided needed protections through stipulations or notices, the RMPs are not *site-specific* and tiering the current analysis to the RMPs does not relieve BLM of its duty under NEPA to undertake site-specific analysis. Simply relying on the large-scale general description and analysis found in the RMPs does not satisfy NEPA at the leasing stage. Without any site-specific discussion whatsoever of the impacts to species such as Gunnison sage-grouse and Gunnison prairie dog, the Draft EA utterly fails to satisfy the requirements of NEPA.

Further, the Draft EA defers analysis of many impacts until the APD stage of the leasing process. In regards to wetlands and riparian zones, Appendix C states that, though “riparian resources may be impacted by surface disturbance including roads, well pads and pipelines,” only after an exploration or development application is received would “site-specific information [be] gathered and additional measures to Riparian Areas [be applied] as necessary.” Draft EA at 90. Similarly, in regards to vegetation, Appendix C states that while there are no impacts at the lease sale stage, both direct and indirect impacts would occur in the future and would be analyzed on a “site-specific basis at the APD state prior to development.” Draft EA at 90. Analysis of environmental impacts should not be deferred until the application for permit to drill stage. NEPA analysis must be conducted prior to a federal action that would result in an “irreversible and irretrievable commitment of resources.” *Mobile Oil Corp. v. F.T.C.*, 562 F.2d 170, 173 (2d. Cir. 1977). Doing otherwise “would frustrate the fundamental purpose of the National Environmental Policy Act . . . which is to ensure that federal agencies take a ‘hard look’ at the environmental consequences of their actions, early enough so that it can serve as an important contribution to the decision making process.” *Sierra Club v. Bosworth*, 510 F.3d 1016, 1026 (9th Cir. 2007). In a more recent Tenth Circuit case, the court stated that “assessment of all ‘reasonably foreseeable’ impacts must occur at the earliest practicable point, and must take place before an ‘irretrievable commitment of resources’ is made.” *N.M. ex rel Richardson v. BLM*, 565 F.3d 683, 717-18 (10th Circuit

2009). Once a lease is granted resources are already committed to the development process. It will be more difficult for BLM to ensure proper protections for the human environment once leases are issued.

We ask BLM to analyze all foreseeable impacts to species, riparian areas, and vegetation at the leasing stage. BLM has the ability to determine a reasonably foreseeable development scenario at this stage of the process and should use that to determine impacts to vegetation, riparian areas, and crucial wildlife habitat. Analysis of green house gas emissions should be conducted now to determine if the added emissions from this lease sale is harmful to the environment. Biological resource surveys should also be conducted now to determine the occurrence or condition of rare or threatened species on these parcels.

### **b. Effectiveness of Mitigation Measures**

The NEPA analysis should include a thorough description and analysis of the likely effectiveness of any proposed mitigation measures and mitigating impacts. The BLM must evaluate the effectiveness of the mitigation measures used in leasing with the best available science. “The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” 40 C.F.R. § 1500.1(b) (2009). “For this reason, agencies are under an affirmative mandate to ‘insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements[,] identify any methodologies used and . . . make explicit reference by footnote to the scientific and other sources relied upon for conclusions[.]’” *Envtl. Def. v. U.S. Army Corps of Eng’rs*, 515 F. Supp. 2d 69, 78 (D.D.C. 2007) (citing 40 C.F.R. § 1502.24 (2009)). This analysis should take into account the best available science on the impacts of energy development on the sensitive species present, as well as the best available science on the status of and threats to these species. The NEPA analysis must acknowledge that the best available science suggests that the mitigation measures proposed in the EA will not prevent unavoidable adverse impacts to these species.

The Draft EA wholly fails to describe or analyze the likely effectiveness of the proposed mitigation measures and mitigating impacts. The Draft EA lists and includes the text of the various stipulations and leasing notices that will attach to the proposed parcels. However, the Draft EA provides no discussion of these mitigation measures other than simply stating, in Appendix C, that the various stipulations and leasing notices will provide sufficient protection. *See, e.g.*, Draft EA at 83 (“Stipulation UT-S-272 is sufficient to protect burrowing owl at the leasing state.”). Again, the Draft EA attempts to rely on the RMPs despite the RMPs lack of site-specific analysis. *Draft EA at As* discussed above, tiering to the RMPs does not suffice. In order to satisfy NEPA, BLM must include in the final EA thorough analysis of the wildlife values on the parcels, the expected impacts of the proposed lease sale and future development on those wildlife values, and the effectiveness of the proposed mitigation measures.

#### IV. CONCLUSION

For the reasons outlined above, we ask that the BLM avoid leasing these parcels, modify the protections on the parcels, or conduct further analysis at this stage of the process to determine if leasing is appropriate. At a minimum, the proposed leasing should be modified to avoid crucial sage-grouse habitat. This is necessary in light of recent peer-reviewed scientific studies addressing the impacts of energy development and other human activities on sage-grouse, increasing authorization of energy development on public lands, the small numbers and continuing decline of Gunnison sage-grouse, the scientific consensus that it is necessary to conserve large, intact, interconnected expanses of sagebrush habitat in order to conserve sage-grouse, and new management guidance. We ask that the BLM thoroughly consider the affects of leasing on other species discussed above and the effectiveness of the proposed mitigation measures. We also request that green house gas emissions be analyzed at this stage of the process.

Thank you again for the opportunity to comment on the Draft EA and for providing the public with GIS shapefiles of the proposed lease parcels. Please feel free to contact us with any questions or concerns regarding this letter.

Sincerely,

Matt Sandler  
Staff Attorney  
Rocky Mountain Wild  
1536 Wynkoop St., Suite 303  
Denver, CO 80202  
(303) 546-0214 ext. 1  
matt@rockymountainwild.org

cc:

#### Attachments

1. EA parcel screen results
2. Raptor Guidelines