



ROCKY MOUNTAIN WILD

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Juan Palma
Bureau of Land Management
Utah State Office
PO Box 45155
Salt Lake City, Utah 84145

December 17, 2012

**Re: Protest of the Bureau of Land Management's Notice of Competitive Oil and Gas Lease
Sale of Parcels with High Conservation Value**

Dear Director Palma:

In accordance with 43 C.F.R. §§ 4.450-2; 3120.1-3, Rocky Mountain Wild protests the February 19, 2013 sale of the following parcels.

I. Protested Parcels

UTU89433

UTU89434

UTU89435

UTU89436

II. Protesting Party

a. Rocky Mountain Wild

Rocky Mountain Wild is a non-profit environmental organization based in Denver, Colorado, that works to conserve and recover the native species and ecosystems of the Greater Southern Rockies using the best available science. RMW was formed in July 2011 by the merging of two organizations, Center for Native Ecosystems ("CNE") and Colorado Wild, and is the legal successor to both parties. Colorado Wild has worked for over a decade to protect, preserve, and restore the native plants and animals of the Southern Rocky Mountains.

Both CNE and Colorado Wild have a well-established history of participation in Bureau of Land Management ("BLM") planning and management activities, including participation in Utah BLM oil and gas leasing decisions and the planning processes for the various Utah BLM Field Offices ("FO"). RMW continues the work of each organization to save endangered species and preserve landscapes and critical ecosystems. It achieves these goals 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. Its members include approximately 1200 outdoor enthusiasts, wildlife conservationists, scientists, and concerned citizens across the country.

RMW's staff and members visit, recreate on, and use lands on or near the parcels proposed for leasing. Our staff and members enjoy various activities on or near land proposed for leasing, including viewing and studying rare and imperiled wildlife and native ecosystems, hiking, camping, taking photographs, and experiencing solitude. Our staff and members plan to return to the subject lands in the future to engage in these activities, and to observe and monitor rare and imperiled species and native ecosystems. We are collectively committed to ensuring that federal agencies properly manage rare and imperiled species and native ecosystems. Members and professional staff of RMW are conducting research and advocacy to protect the populations and habitat of rare and imperiled species discussed herein. We advocate for Endangered Species Act protection, strong agency regulations, public awareness, and protection of habitat. Our members and staff value the important role that areas of high conservation value should play in safeguarding rare and imperiled species and natural communities, and other unique resources on public land.

Our members' interests in rare and imperiled species and ecosystems on BLM lands will be adversely affected if the sale of these parcels proceeds as proposed. Oil and gas leasing and subsequent mineral development on the protested parcels, if approved without response to public comments made under the National Environmental Policy Act ("NEPA"), consultation required by the Endangered Species Act ("ESA"), and appropriate safeguards to minimize negative impacts, is likely to result in a greatly increased risk of significant harm to rare and imperiled species and native ecosystems. As a result, BLM's decision to lease the protested parcels is not based on the best available science and will result in significant harm to rare and imperiled species and native ecosystems. The proposed leasing of the protested parcels will harm our members' interests in the continued use of these public lands, and the rare and imperiled species

they support. Therefore protestors have legally recognizable interests that will be affected by the proposed action.

c. Authorization to File:

Matthew Sandler, Staff Attorney for Rocky Mountain Wild, is authorized to file this protest on behalf of the Protesting Party.

III. Affected Resources

Oil and gas development authorized through the proposed leasing of the protested parcels is likely to have significant negative impacts on the greater sage-grouse and other wildlife species. The protested parcels are also within inventoried roadless areas and will threaten the wilderness characteristics of these important conservation areas. RMW conducts an internal Geographic Information Systems screen to determine what conservation and biological values will be impacted by leasing the proposed parcels. *See Exhibit 1, RMW's internal screen results for the protested parcels.* The RMW screen results detail all the important wildlife and wilderness values impacted by the protested parcels. RMW has also prepared a map of the protested parcels detailing the negative environmental impacts. *See Exhibit 2, RMW GIS Map*

A. Imperiled Species

2) Greater Sage-Grouse

Parcels UTU89434, UTU89435, and UTU89436 are within 2011 Utah Division of Wildlife Resources Preliminary Priority Habitat (PPH). These parcels are listed as brood rearing and winter use areas.

Instructional Memorandum 2012-043 says this about PPH:

I. Interim Conservation Policies and Procedures for "Preliminary Priority Habitat"

Through these policies and procedures, you should seek to maintain, enhance, or restore conditions for Greater Sage-Grouse and its habitat. These policies and procedures apply to PPH only.

- Fluid Mineral Leasing (i.e., oil, gas, and geothermal)

It is BLM policy that where a field office determines that it is appropriate to authorize a proposed leasing decision, the following process must be followed:

- The BLM will document the reasons for its determination and require the lessee to implement measures to minimize impacts to sage-grouse habitat.
- In addition to considering opportunities for onsite mitigation, the BLM will consider whether it is appropriate to condition the lease with a requirement for offsite mitigation that the BLM, coordinating with the respective state wildlife agency, determines would

- avoid or minimize habitat and population-level effects (refer to WO-IM-2008-204, Off-Site Mitigation).
- Unless the BLM determines, in coordination with the respective state wildlife agency, that the proposed lease and mitigation measures would cumulatively maintain or enhance Greater Sage-Grouse habitat, the proposed lease decision must be forwarded to the appropriate BLM State Director, State Wildlife Agency Director, and FWS representative for their review. If this group is unable to agree on the appropriate mitigation for the proposed lease, then the proposed decision must be forwarded to the Greater Sage-Grouse National Policy Team with the addition of the State Wildlife Agency Director, when appropriate, for its review. If the National Policy Team and the State Wildlife Agency Director are unable to agree on the appropriate mitigation for the proposed lease, the National Policy Team will coordinate with and brief the BLM Director for a final decision in absence of consensus.
- Exception: Where drainage is likely or the lands are designated as No Surface Occupancy (NSO) in the existing LUP, the BLM may issue new leases with an NSO stipulation. The NSO stipulation will also have appropriate exception, waiver, and modification criteria. **Note: A Controlled Surface Use stipulation is not an appropriate substitution for an NSO stipulation.**
- Field offices retain the discretion to not move forward with a nomination or defer making a final decision on a leasing decision until the completion of the LUP process described in the *National Greater Sage-Grouse Planning Strategy* for the affected area

BLM has failed to follow the mandates of IM 2012-043. BLM should not be leasing these parcels in PPH. As outlined later in this protest, the NEPA analysis supporting this decision does not adequately consider the impacts on the greater sage-grouse. Further, BLM has failed to ensure that protective stipulations are attached to these parcels.

A letter was sent to Secretary Ken Salazar by eighteen conservation groups dedicated to sage-grouse recovery. The letter states:

As our nation's energy demands fuel the continued push for development on western lands, we are concerned that BLM field offices will continue to make decisions that could further degrade remaining sage-grouse crucial habitat. We ask that the agency follow the precautionary principle of **developing conservative interim guidelines** for all field offices that clearly specify actions that are appropriate and inappropriate in sage-grouse habitat. Furthermore, **decisions that could push the species closer to a full listing should be avoided.**

The action of BLM through leasing the protested parcels in sage-grouse habitat highlights these conservation groups' fears. Leasing and developing these protested parcels will contribute to the need to list the greater sage-grouse under the Endangered Species Act.

The greater sage-grouse (*Centrocercus urophasianus*) is a unique species of grouse found only in sagebrush dominated habits of western North America. This species, first described by Meriwether Lewis near the confluence of the Marias and Missouri rivers in Montana in 1805 (Schroeder et al. 2004, Exhibit 2), is the largest grouse in North America, and the second largest grouse in the world. Greater sage-grouse were once widely distributed across western U.S. and Canada, numbering in the hundreds of thousands. Greater sage-grouse have long been the subject of fascination because of their elaborate courtship displays, in which large numbers of males gather on display grounds (known as leks) to perform a "strutting display" for watching

females. Males lift and fan their pointed tail feathers, erect their head plumes, inflate air sacs on their chests, strut about, and produce a series of interesting sounds including “wing swishes”, “air sac plops” and a whistle. Females observe these displays and select the most attractive males to mate with. Only a small number of males are selected by most of the females for breeding. The same lek may be used by grouse for decades. Observing the courtship ritual of the greater sage-grouse is one of the most captivating wildlife watching experiences in North America. The greater sage-grouse is also one of 19 upland game birds in the United States, which bring in significant hunting revenue and provide recreation for millions of licensed hunters. Finally, the greater sage-grouse has become the symbol for conserving sagebrush ecosystems, increasingly valued for their wide-open spaces, abundant wildlife, opportunities for recreation and hunting, and central place in defining the character of western landscapes and people. The greater sage-grouse is an icon of a vanishing western landscape.

Over the past century, human activities have caused heavy loss, fragmentation and degradation of sagebrush, such that sagebrush ecosystems are among the most threatened habitats in North America (*see* Knick et al. 2003, Ecology and Conservation of Greater Sage-Grouse: A Landscape Species and Its Habitats, Monograph chapters for publication in *Studies in Avian Biology*, Cooper Ornithological Society, 2009, at <http://sagemap.wr.usgs.gov/monograph.aspx>). Loss and degradation of native habitats has impacted much of the sagebrush ecosystem and its associated wildlife (*see* Knick et al. 2003, Exhibit 3; and Connelly et al. 2004). Greater sage-grouse have declined dramatically as a result of loss of suitable sagebrush habitat to meet seasonal requirements for food, cover and nesting (*see* Ecology and Conservation of Greater Sage-Grouse: A Landscape Species and Its Habitats, Monograph chapters for publication in *Studies in Avian Biology*, Cooper Ornithological Society, 2009, at <http://sagemap.wr.usgs.gov/monograph.aspx>)

The underlying cause of greater sage-grouse population declines is the loss of suitable sagebrush habitat from a variety of causes (*see* Ecology and Conservation of Greater Sage-Grouse: A Landscape Species and Its Habitats, Monograph chapters for publication in *Studies in Avian Biology*, Cooper Ornithological Society, 2009, at <http://sagemap.wr.usgs.gov/monograph.aspx>). Human land use has altered landscapes used by greater sage-grouse in most parts of their range (Knick et al. 2003, Connelly et al. 2004, Connelly and Knick 2009, Chapter 1 in: Ecology and Conservation of Greater Sage-Grouse: A Landscape Species and Its Habitats, Monograph chapters for publication in *Studies in Avian Biology*, Cooper Ornithological Society, 2009, at <http://sagemap.wr.usgs.gov/monograph.aspx>). Loss and degradation of sagebrush habitat and concomitant declines in greater sage-grouse populations have been attributed primarily to agriculture, human development, altered fire regimes, and exotic plant invasions.

Oil and gas development is widespread and increasing across the eastern portion of the sage-grouse range, (including Wyoming, Utah and Colorado). Oil and gas development currently impacts 8% of sagebrush habitats (*see* Chapter 21 in Ecology and Conservation of Greater Sage-Grouse: A Landscape Species and Its Habitats, Monograph chapters for publication in *Studies in Avian Biology*, Cooper Ornithological Society, 2009, at <http://sagemap.wr.usgs.gov/monograph.aspx>). In addition, exploration and development of wind, solar and geothermal energy is increasing rapidly in many parts of the sage-grouse range.

For example, new corridors proposed for energy transmission would affect another 2% of the current sagebrush distribution.

Nearly all of the threats to sagebrush habitat and greater sage-grouse populations are likely to continue to increase into the foreseeable future. Given that greater sage-grouse have been extirpated from half of their historic range and experienced rangewide population declines of 65% or more (Garton et al. 2009), the future survival of the greater sage-grouse as a viable species in the wild is very much in doubt.

In early 2010 the U.S. Fish and Wildlife Service made a determination that greater sage-grouse did meet the definition of a threatened or endangered species (i.e. the species is threatened with extinction throughout all or a significant portion of its range within the foreseeable future) but elected to place the species on the Candidate list instead of proceeding with formal threatened or endangered species listing immediately.

It is now widely agreed that the most effective way to ensure against further declines of greater sage-grouse is to establish large greater sage-grouse refuges set aside from energy development. Expert comments on the LSFO Proposed RMP recommended that BLM establish large greater sage-grouse refuges through the RMP planning process, either through use of phased development to allow for long-term deferral of energy development across areas of key habitat, or through designation of ACECs (See expert comments to the RMP from CDOW, USFWS, Clait Braun and Environmental Protection Agency (EPA)). The final RMP fails to accomplish this outcome. The BLM Washington Office recently issued greater sage-grouse interim management policies and procedures in Instructional Memorandum 2012-043.¹ The Interim Management Policies and Procedures call for more protections for the greater sage-grouse than the LSFO RMP. The policies and procedures in the interim management document are based on "A Report on National Greater Sage-Grouse Conservation Measures" dated December 21, 2011, and produced by the Sage-grouse National Technical Team.² This document represents the best available science on greater sage-grouse management and conservation.

Oil and gas development authorized by the leasing of the protested parcels will have significant impacts on greater sage-grouse. A number of the protested parcels are located within a four mile buffer around occupied greater sage-grouse leks. (Information on overlap between protested parcels and the above types of sage-grouse habitat was obtained from a GIS overlay of the parcels proposed for leasing and sage-grouse habitat data layers provided by COGCC and CPW).

Leasing the protested parcels would (1) undermine the RMP sage-grouse amendment process currently proceeding within Utah, (2) violate existing BLM sage-grouse policies and Instruction Memoranda, (3) violate NEPA (specifically the "hard look", new information and

¹ Found at:

http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2012/IM_2012-043.html

² Found at:

http://www.blm.gov/pgdata/etc/medialib/blm/wo/Information_Resources_Management/policy/im_attachments/2012.Par.52415.File.dat/IM%202012-044%20Att%201.pdf

cumulative impacts provisions), (4) violate Federal Land Policy Management Act provisions, including the multiple-use, sustained-yield mandate and unnecessary and undue degradation provisions (see 43 U.S.C. §§ 1712(c)(1), 1732(a) and (b); and 43 C.F.R. § 1601.0-2); and (5) risk undermining the public's trust in the Department of Interior's stewardship responsibility of the nation's public lands and wildlife resources.

Relying on hypothetical or not-yet-determined post-leasing mitigation measures cannot justify leasing the disputed parcels. At this point, respecting the range-wide planning effort and the NTT Report requires deferral. Utah and neighboring states already contain hundreds of thousands of acres of valid leases in sage-grouse habitat. It would be irresponsible and reckless to compound the problem by authorizing even more leasing of important habitat at this time.

Premature leasing decisions will inhibit BLM's ability to ensure full and adequate protections. These policies must be informed by the best available and most recent scientific literature, and subject to comment and suggestions by interested public, private, other agency, and NGO stakeholders.

The Disputed Parcels must be removed or deferred. The Parties look forward to working collaboratively on future planning efforts regarding the recovery of the Greater sage-grouse and its habitat across Utah and neighboring states. The pendency of range-wide planning, and the inadequacy of the existing NEPA documents for this auction to consider the National Technical Team Report, require granting this protest. BLM has not sufficiently considered new information, taken a hard look at the potential impacts of leasing on sage-grouse conservation, or analyzed the cumulative impacts to these avian populations and habitat of leasing in addition to other proposals and valid existing rights.

Important Conservation Areas:

Roadless Areas:

Parcels UTU89433, UTU89434, UTU89435, and UTU89436 are within United States Forest Service inventoried Roadless Areas. Parcels UTU89433 and UTU89434 are within the East Mountain roadless area, and UTU89435 and UTU89436 are within the Boulger-Black Canyon roadless area.

According to a statement from Agriculture Secretary Tom Vilsack: "The Obama Administration is committed to the protection of roadless areas on our National Forests as these areas are vital for conservation of water resources, for wildlife and for outdoor recreation – an important driver of economic opportunity and jobs in rural communities."³

The June 24, 2010 FS memo regarding Activities in Roadless Areas provides that "The Regional policy for roadless project reviews has not changed and will continue until further notification. Any project that involves NEPA, lease nomination, mineral extraction, land

³ Statement from Agriculture Secretary Vilsack found at: <http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=2010/04/0167.xml>

exchange, ground disturbance, forest planning, or other decisions within a 2001 Inventoried Roadless Area (IRA), or Colorado Roadless Area (CRA), needs to be submitted to the Regional Office for evaluation. These evaluations continue to be important to ensure consistency, and keep the Regional Forester and line officers informed of decisions and actions being made.”⁴

Proposals to lease roadless areas are clearly covered by the policy. BLM did not conduct an EA for leasing the parcels within IRAs. Excluding the State, and the public, from the approval process for the disputed lease parcels in the February sale is unacceptable. BLM must defer the parcels in order to provide for the legally required public comment process.

V. Statement of Reasons

Violations of the National Environmental Policy Act:

The protested parcels on Forest Service land were not analyzed in an adequate NEPA process. They do not appear in the EA for the February 2013 lease sale. The decision to lease these parcels is tiered to an extremely outdated EIA from 1986. This stale document does not analyze the impacts of leasing these parcels based on current information and circumstances. These parcels must be deferred from this lease sale to ensure NEPA compliance.

a. The Decision Fails to Adequately Analyze the Direct, Indirect, and Cumulative Affects of Leasing These Parcels:

NEPA dictates that BLM 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 (emphasis added). “[C]umulative impact analysis must be timely. It is not appropriate to defer consideration of cumulative impacts to a future date when meaningful consideration can be given now.” *Kern v. US. Bureau of Land Management*, 284 F.3d 1062, 1075 (9th Cir. 2000); *Neighbors of Cuddy Mountain v. United States Forest Service*, 137 F.3d 1372, 1380 (9th Cir. 1998); *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1312-1313 (9th Cir. 1990). The BLM failed to adequately analyze potential direct, indirect, and cumulative impacts of the proposed leasing on the greater sage-grouse throughout the planning area.

“In determining the scope of the required NEPA analysis, an agency must consider not only the proposed action, but also three types of related actions – ‘connected actions’, similar ‘actions’, and ‘cumulative actions’. 40 C.F.R. 1508.25(a). “Cumulative actions” are those” which when viewed with other proposed actions have cumulatively significant impacts.” *Id. at 1508.25 (a)(2)*. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts. 40 C.F.R. 1508.27 (b)(7).

⁴ Exh. 6, Forest Service Memo, file codes 1230, Jun. 18, 2010.

Leasing parcels in greater sage-grouse habitat will have significant effects on the species. Leasing for oil and gas development presents a death by a thousand cuts scenario. One well will not have a significant effect on the bird, but large scale development like what is being proposed by the BLM will. This is especially true when widespread leasing is spread out over a number of lease sales. BLM cannot rely on the outdated 1986 FEIS for Oil and Gas leasing on Lands Administered by the Manti-La Sal National Forest to approve this leasing decision. This antiquated planning document was drafted prior to the greater sage-grouse endangered species act decisions and guiding Instructional Memorandum. Decisions made in this EIS cannot guide current leasing decisions.

BLM has failed to analyze cumulative impacts on the greater sage-grouse. The EA does not analyze the impacts of leasing this parcel for oil and gas development compounded by past mineral development. Sage-grouse using this habitat are already being impacted by this past action and will be stressed further by this new authorized development. An analysis of this cumulative impact must be completed prior to leasing these parcels.

b. The BLM has failed to adequately analyze the effectiveness of the lease stipulations and other mitigation measures in the Environmental Assessment, and the determination that lease stipulations and other mitigation measures will prevent significant impacts to greater sage-grouse is arbitrary and capricious:

A complete discussion of steps that can be taken to mitigate adverse environmental impacts is an important ingredient of the NEPA process. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351 (1989). “Without such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects.” *Id.* In recognition of the importance of a discussion of mitigation measures, Council on Environmental Quality (CEQ) regulations “require that the agency discuss possible mitigation measures in defining the scope of the EIS, 40 CFR § 1508.25(b), in discussing alternatives to the proposed action, § 1502.14(f), and consequences of that action, § 1502.16(h), and in explaining its ultimate decision, § 1505.2(c).” *Id. at 352.* When a proposed action will result in impacts to resources, the Agency is obligated to describe what mitigating efforts it could pursue to off-set the damages that would result from the proposed action. *See 40 C.F.C. § 1502.16(h) (2009)* (stating that an EIS “shall include discussions of . . .[m]eans to mitigate adverse environmental impacts”).

“Mitigation must ‘be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated.’” *Carmel-by-the-Sea v. U.S. Dep’t of Transp.*, 123 F.3d 1142, 1154 (9th Cir. 1996). (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 353 (1989)). The Ninth Circuit explained that fair evaluation requires agencies to “analyze[] the mitigation measures in detail [and] explain how effective the measures would be. A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA.” *Nw. Indian Cemetery Protective Ass’n v. Peterson*, 764 F.2d 581, 588 (9th Cir. 1985), *rev’d on other grounds*, 485 U.S. 439 (1988).

In *Davis v. Mineta*, the Tenth Circuit found that federal agencies did not comply with NEPA when they relied on the possibility of mitigation measures in issuing a FONSI. According to the court, “[m]itigation measures may be relied upon to make a finding of no significant impact only if they are imposed by statute or regulation, or submitted by an applicant or agency as part of the original proposal. As a general rule, the regulations contemplate that agencies should use a broad approach in defining significance and should not rely on the possibility of mitigation as an excuse to avoid the EIS requirement.” *Davis v. Mineta*, 302 F.3d 1104, 1125 (10th Cir. 2002)

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)). If there is scientific uncertainty NEPA imposes the mandatory duties to: (1) disclose the scientific uncertainty; (2) complete independent research and gather information if no adequate information exists unless costs are exorbitant or the means of obtaining the information are not known; and (3) evaluate the potential, reasonably foreseeable impacts in the absence of relevant information. *See* 40 C.F.R. § 1502.22 (2009).

BLM has failed to consider new information about greater sage-grouse. The Report on National Greater Sage-Grouse Conservation Measures dated December 21, 2011, and produced by the Sage-grouse National Technical Team represents the best available science on the species. This leasing decision does not consider the recommendations made by the technical team in the report and is contrary to many of its findings.

C. BLM fails to consider the best available science:

The Report on National Greater Sage-Grouse Conservation Measures represents the best available information on greater sage-grouse protection. BLM has failed to analyze if the stipulations in the LSFO RMP meet the standards of effectiveness outlined in this report. Failure to analyze these stipulations in light of this new information is a violation of NEPA.

VI. Federal Land Policy Management Act

a. The BLM failed to Prevent Undue and Unnecessary Degradation to Greater Sage-Grouse Populations and Potential Conservation Areas and Has Failed to Meet its Obligations Under BLM Manual 6840:

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. “In managing the public lands the [Secretary of Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.” 43 U.S.C. § 1732(b). The

use of the imperative language “shall” makes clear that Congress intended to leave the Secretary no discretion in administering the Act. *NRDC v. Jamison*, 815 F. Supp. 454, 468 (D.D.C. 1992). “The court in *Mineral Policy Ctr. v. Norton* [found] that in enacting FLPMA, Congress’s intent was clear: Interior is to prevent, not only unnecessary degradation, but also degradation that, while necessary . . . is undue or excessive.” *Mineral Policy Ctr. v. Norton*, 292 F. Supp. 2d 30, 43 (D.D.C. 2003). In addition, that court held that “FLPMA, by its plain terms, vests the Secretary of the Interior with the authority – and indeed the obligation – to disapprove of an otherwise permissible . . . operation because the operation though necessary . . . would unduly harm or degrade the public land.” *Id.* at 49.

The purpose of Section 6840 of the BLM Manual is to provide policy and guidance for the conservation of BLM special status species and the ecosystems upon which they depend on BLM-administered lands. BLM special status species are:

- (1) species listed or proposed for listing under the Endangered Species Act (ESA), and
- (2) species requiring special management consideration to promote their conservation and reduce the likelihood and need for future listing under the ESA

The objectives of the special status species policy are:

- A. To conserve and/or recover ESA-listed species and the ecosystems on which they depend so that ESA protections are no longer needed for these species.
- B. To initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA.

The leasing of the protested parcels violates this section. The greater sage-grouse is a BLM special status species and BLM should not be leasing parcels within important habitat. The protested parcels should be withdrawn from the lease sale.

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. BLM must also mitigate adverse effects on sensitive resources within ACEC and CNHP PCAs *Kendall’s Concerned Area Residents*, 129 IBLA 130, 138; *see* 42 C.F.R. 3809.2-1(b). The BLM has failed to minimize adverse impacts of oil and gas development on the aforementioned species and lands of high conservation value.

c. Consistency

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 greater sage-grouse and other species. FLPMA requires the BLM to seek to “be consistent with officially approved and adopted resource related policies and programs . . . of other federal agencies, State and local governments and Indian tribes.” 43 C.F.R. § 1610.3-2; *see* 43 U.S.C. § 1712(c)(9). The proposed leasing is not consistent with CO Division of Wildlife policy, COGCC Regulations and other state, local and federal policies and programs.

VII. Endangered Species Act

The greater sage-grouse is a candidate species for Endangered Species Act listing. Leasing parcels in occupied greater sage-grouse habitat is a violation of BLM's duty to manage its land for multiple uses. One reason for the listing determination was a lack of regulatory mechanisms to protect this species. BLM's actions in leasing occupied habitat for energy development further demonstrates the agencies lack of protective mechanisms. This 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 species.

a. Duty to Conserve and Duty to Engage in Recovery Planning

In addition to consultation requirements, federal agencies are bound by two affirmative obligations under the ESA. Section 7(a)(1) states that federal agencies shall "seek to conserve [listed] species and shall utilize their authorities in furtherance of the purposes of [the] Act." 16 U.S.C. § 1536(a)(1). A number of courts have held that the duty to conserve imposes an independent duty upon agencies to give the conservation of a listed species top priority. *Carson-Truckee Water Conserv. Dist. v. Watt*, 549 F. Supp. 704 (D. Nev. 1982) citing *TVA v. Hill*, 437 U.S. 153, 184 (1978); *Bensman v. U.S. Forest Serv.*, 984 F. Supp. 1242, 1246 (D. Mont. 1997). The ESA also states that the Secretary "shall develop and implement plans for the conservation and survival [of listed species] unless he finds that such a plan will not promote the conservation of the species." 16 U.S.C § 1533(f)(1).

VIII. BLM has Discretion to Not Lease

Under the statutory and regulatory provisions authorizing this lease sale, the BLM has full discretion over whether or not to offer these lease parcels for sale. The Mineral Leasing Act of 1920 ("MLA") provides that "[a]ll lands subject to disposition under this chapter which are known or believed to contain oil and gas deposits may be leased by the Secretary." 30 U.S.C. § 226(a) (2009) (emphasis added). The Supreme Court has concluded that this "left the Secretary discretion to refuse to issue any lease at all on a given tract." *Udall v. Tallman*, 380 U.S. 1, 4 (1965); see also *Wyo. Ex rel. Sullivan v. Lujan*, 969 F.2d 877 (10th Cir. 1992); *McDonald v. Clark*, 771 F.2d 460, 463 (10th Cir. 1985) ("While the [Mineral Leasing Act] gives the Secretary the authority to lease government lands under oil and gas leases, this power is discretionary rather than mandatory y."); *Burglin v. Morton*, 527 F.2d 486, 488 (9th Cir. 1975).

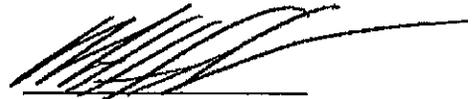
Submitting a leasing application vests no rights to the applicant or potential bidders. The BLM retains the authority not to lease. "The filing of an application which has been accepted does not give any right to lease, or generate a legal interest which reduces or restricts the discretion vested in the secretary whether or not to issue leases for the lands involved." *Duesing v. Udall*, 350 F.2d 748, 750-51 (D.C. Cir. 1965), cert. den. 383 U.S. 912 (1966); see also *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1230 (9th Cir. 1988); *Pease v. Udall*, 332 F.2d 62, 63 (9th Cir. 1964); *Geosearch v. Andrus*, 508 F. Supp. 839, 842 (D.C. Wyo. 1981).

The arguments set forth in detail above demonstrate that exercise of the discretion not to lease the protested parcels is appropriate and necessary. Withdrawing the protested parcels from the lease sale until BLM has met its legal obligations to conduct an adequate NEPA analysis by responding to public comments, upheld the requirements of the Endangered Species Act, and met the requirements of IM 2010-117 and other BLM regulations is a proper exercise of BLM's discretion under the MLA. 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 law.

IX. Conclusion & Request for Relief

The Protesting Parties therefore requests that the BLM withdraw the protested parcels from the February 2013 lease sale.

Sincerely,



MATTHEW SANDLER
Staff Attorney
Rocky Mountain Wild
1536 Wynkoop St. Suite 303
Denver, CO 80202
Tel: (303) 546-0214 ext. 1
Email: matt@rockymountainwild.org

Attachments:

- 1: Rocky Mountain Wild Internal GIS Screen
- 2: GIS Map of Protested Parcels
- 3: Letter to Secretary Salazar re: Conservation community's interest in range-wide conservation of greater sage-grouse

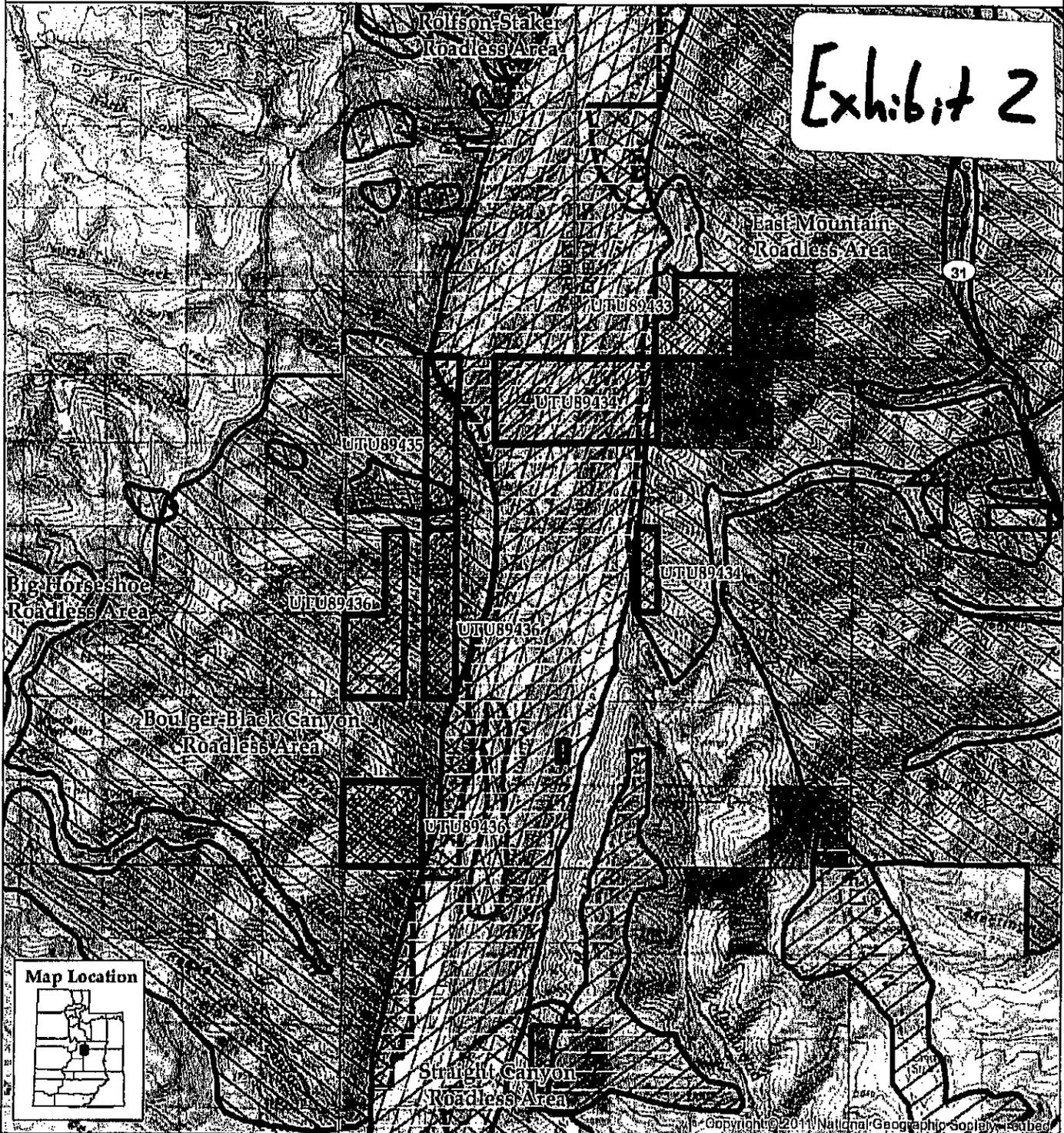
Sale Parcel ID	BLM Field Office/USFS Ranger District	Parcel Acres	Value Name	Source
UTU89433	Price	554	Inventoried Roadless Area USFS UTSGID 2001	UTSGID
UTU89433	Price	554	Conservation Action Areas State Wildlife Action Plan UTDWR UTSGID 2008	UTSGID
UTU89433	Price	554	Conservation Action Areas State Wildlife Action Plan UTDWR UTSGID 2008	UTSGID
UTU89433	Price	554	Generalized Sensitive Species Occurrence Canada Lynx UTDWR 2012	UTDWR
UTU89433	Price	554	Generalized Sensitive Species Occurrence Greater Sage-grouse UTDWR 2012	UTDWR
UTU89433	Price	554	The Nature Conservancy Ecoregional Portfolio Sites TNC UT 2011	TNC
UTU89433	Price	554	Generalized Sensitive Species Occurrence Colorado River Cutthroat Trout UTDWR 2012	UTDWR
UTU89433	Price	554	Generalized Sensitive Species Occurrence Northern Goshawk UTDWR 2012	UTDWR
UTU89433	Price	554	Generalized Sensitive Species Occurrence Townsend's Big-eared Bat UTDWR 2012	UTDWR
UTU89434	Price	1,460	Greater Sage-Grouse Brood Rearing Areas UTDWR 2011	UTDWR
UTU89434	Price	1,460	Greater Sage-Grouse Preliminary Priority Habitat (PPH) (synonomous with Occupied Habitat) UTDWR 2011	UTDWR
UTU89434	Price	1,460	Greater Sage-Grouse Winter Use Areas UTDWR 2011	UTDWR
UTU89434	Price	1,460	Inventoried Roadless Area USFS UTSGID 2001	UTSGID
UTU89434	Price	1,460	Conservation Action Areas State Wildlife Action Plan UTDWR UTSGID 2008	UTSGID
UTU89434	Price	1,460	Conservation Action Areas State Wildlife Action Plan UTDWR UTSGID 2008	UTSGID
UTU89434	Price	1,460	Generalized Sensitive Species Occurrence Canada Lynx UTDWR 2012	UTDWR
UTU89434	Price	1,460	Generalized Sensitive Species Occurrence Greater Sage-grouse UTDWR 2012	UTDWR
UTU89434	Price	1,460	The Nature Conservancy Ecoregional Portfolio Sites TNC UT 2011	TNC
UTU89434	Price	1,460	The Nature Conservancy Ecoregional Portfolio Sites TNC UT 2011	TNC
UTU89434	Price	1,460	Generalized Sensitive Species Occurrence Colorado River Cutthroat Trout UTDWR 2012	UTDWR
UTU89434	Price	1,460	Generalized Sensitive Species Occurrence Northern Goshawk UTDWR 2012	UTDWR

Exhibit 1

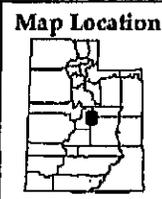
UTU89434	Price	1,460	Generalized Sensitive Species Occurrence Townsend's Big-eared Bat UTDWR 2012	UTDWR
UTU89434	Price	1,460	Rare Vertebrate Species Occurrence Low Precision American Pika UDWR 2001	UTDWR
UTU89435	Price	519	Greater Sage-Grouse Brood Rearing Areas UTDWR 2011	UTDWR
UTU89435	Price	519	Greater Sage-Grouse Preliminary Priority Habitat (PPH) (synonomous with Occupied Habitat) UTDWR 2011	UTDWR
UTU89435	Price	519	Greater Sage-Grouse Winter Use Areas UTDWR 2011	UTDWR
UTU89435	Price	519	Inventoried Roadless Area USFS UTSGID 2001	UTSGID
UTU89435	Price	519	Protected Area UT USFS GAP PAD US 2011	GAP
UTU89435	Price	519	Conservation Action Areas State Wildlife Action Plan UTDWR UTSGID 2008	UTSGID
UTU89435	Price	519	Generalized Sensitive Species Occurrence Canada Lynx UTDWR 2012	UTDWR
UTU89435	Price	519	Generalized Sensitive Species Occurrence Greater Sage-grouse UTDWR 2012	UTDWR
UTU89435	Price	519	The Nature Conservancy Ecoregional Portfolio Sites TNC UT 2011	TNC
UTU89435	Price	519	Generalized Sensitive Species Occurrence Colorado River Cutthroat Trout UTDWR 2012	UTDWR
UTU89435	Price	519	Generalized Sensitive Species Occurrence Northern Goshawk UTDWR 2012	UTDWR
UTU89436	Price	1,797	Greater Sage-Grouse Brood Rearing Areas UTDWR 2011	UTDWR
UTU89436	Price	1,797	Greater Sage-Grouse Preliminary Priority Habitat (PPH) (synonomous with Occupied Habitat) UTDWR 2011	UTDWR
UTU89436	Price	1,797	Greater Sage-Grouse Winter Use Areas UTDWR 2011	UTDWR
UTU89436	Price	1,797	Inventoried Roadless Area USFS UTSGID 2001	UTSGID
UTU89436	Price	1,797	Conservation Action Areas State Wildlife Action Plan UTDWR UTSGID 2008	UTSGID
UTU89436	Price	1,797	Generalized Sensitive Species Occurrence Canada Lynx UTDWR 2012	UTDWR
UTU89436	Price	1,797	Generalized Sensitive Species Occurrence Greater Sage-grouse UTDWR 2012	UTDWR
UTU89436	Price	1,797	Rare Vertebrate Species Occurrence Low Precision Evening Grosbeak UDWR 2001	UTDWR
UTU89436	Price	1,797	Generalized Sensitive Species Occurrence Colorado River Cutthroat Trout UTDWR 2012	UTDWR
UTU89436	Price	1,797	Generalized Sensitive Species Occurrence Northern Goshawk UTDWR 2012	UTDWR
UTU89436	Price	1,797	Generalized Sensitive Species Occurrence Townsend's Big-eared Bat UTDWR 2012	UTDWR
UTU89436	Price	1,797	Rare Vertebrate Species Occurrence Low Precision American Pika UDWR 2001	UTDWR

FEBRUARY 2013 UTAH LEASE SALE - LEASE PARCEL GROUP 5

Exhibit 2



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Legend

- Greater Sage-Grouse Preliminary Priority Habitat (PPH) UTDWR 2011
- Greater Sage-Grouse Brood Rearing Areas UTDWR 2011
- Greater Sage-Grouse Winter Use Areas UTDWR 2011
- Inventoried Roadless Area USFS UTSGID 2001
- Protected Area UT USFS GAP PAD US 2011
- City
- Interstate
- US Highway
- State Highway
- Feb 2013 Lease Sale Parcels
- County
- Land Status: BLM
- Land Status: NPS
- Land Status: USFS
- Land Status: Other Federal
- Land Status: State
- Land Status: Tribal
- Land Status: Private



Data Sources: BLM, ESRI, UTSGID
 Other data sources listed in the legend
 Map by: Rocky Mountain Wild 9/2012

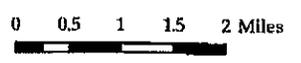


Exhibit 3

AUDUBON WYOMING * NEVADA WILDERNESS PROJECT
THE WILDERNESS SOCIETY * WYOMING OUTDOOR COUNCIL
NATIONAL WILDLIFE FEDERATION * OREGON NATURAL DESERT ASSOCIATION
THE WILD UTAH PROJECT * AUDUBON SOCIETY OF PORTLAND
NATIONAL AUDUBON SOCIETY * AUDUBON CALIFORNIA * AUDUBON COLORADO
SPOKANE AUDUBON SOCIETY * WESTERN RESOURCE ADVOCATES
ROCKY MOUNTAIN WILD * MONTANA AUDUBON * AUDUBON SOCIETY OF NEVADA
IDAHO CONSERVATION LEAGUE * COLORADO ENVIRONMENTAL COALITION

August 27, 2011

Secretary Ken Salazar
United States Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington DC 20240

Via U.S. Postal and email (exsec@ios.doi.gov)

Re: Conservation community's interest in range-wide conservation of Greater Sage-Grouse

Dear Secretary Salazar,

We are a consortium of conservation organizations that is interested in establishing effective, proactive management actions, long-term habitat protections and funding mechanisms that will bolster sage-grouse populations and eliminate the need to federally list this iconic species. On behalf of our organizations and our concerned members across the region, we appreciate Interior's recent efforts to coordinate resources and develop strategies for sage-grouse conservation. Two things are clear: 1) past efforts have failed to sufficiently conserve sage-grouse and their habitat, resulting in the 2010 finding that listing the Greater Sage-Grouse is "warranted but precluded"; and 2) there is an urgent need to develop and implement substantive conservation measures between now and 2015, when the U.S. Fish and Wildlife Service (USFWS) will reconsider the status of the bird.

We are encouraged by the Bureau of Land Management's (BLM) announcement of a regional strategy that focuses on the conservation of sage-grouse and the protection of their habitat. This strategy, which includes both short-term and long-term approaches, must result in the **consistent application of adequate regulatory mechanisms that are scientifically defensible**. Given the expanse of sage-grouse habitat managed by the BLM and the short timeline proposed for this regional planning effort, inconsistent application of regulatory protections within states and across the sage-grouse's range could be detrimental to sage-grouse conservation efforts.

As our nation's energy demands fuel the continued push for development on western lands, we are concerned that BLM field offices will continue to make decisions that could further degrade remaining sage-grouse crucial habitat. We ask that the agency follow the precautionary principle of **developing conservative interim guidelines** for all field offices that clearly specify actions that are appropriate and inappropriate in sage-grouse habitat. Furthermore, **decisions that could**

push the species closer to a full listing should be avoided. Pending final decisions on RMP amendments and the regional planning process, BLM *must at least preserve or improve the status quo of habitat conditions for sage-grouse* -- to avoid dooming conservation efforts from the start.

High priority areas for conservation and restoration **should be designated by BLM's planning process across the range as core areas.** Management actions within these core areas should focus on maintaining and enhancing grouse habitats and viable populations. **However, populations that are small and isolated** (such as along the periphery of their range or on seasonal habitats) **must also be included in the planning process and given special management considerations.**

We applaud recognition by the BLM of the urgency for rapid and meaningful, landscape scale sage-grouse conservation actions. However, effectiveness and public support should not be undermined by the urgent need for such action. The composition of the planning teams needs to be carefully considered. The National Technical team should be composed of sage-grouse and sagebrush experts, including state game and fish agency personnel, who provide recommendations based on peer-reviewed science. **The Policy, Regional, and State teams should include broad stakeholder involvement, including representatives from the conservation community.** Careful consideration of team compositions and processes used will be essential for ensuring credibility and public support. As this planning effort moves forward at a rapid pace, communication with the public will be critical. Thus, **elements of a successful strategy should include** 1) sustained outreach to stakeholders (including but not limited to public comment under the National Environmental Policy Act); 2) the adoption and implementation of new policies; 3) rigorous monitoring and adaptive management; and 4) enforcement. For specifics, we feel at a minimum the Department should undertake the attached guidelines (*see Appendix*) to ensure that the Greater Sage-grouse is not federally listed and adequate guidance for managers is in place.

Finally, we hope that as the BLM proceeds in its regional conservation efforts, **the process will be open and transparent.** We recognize that because of the large range occupied by sage-grouse, all stakeholders have an interest in seeing this effort be successful. Success will depend on BLM-wide and interagency commitments, using MOUs or other appropriate means, to ensure requisite conservation measures are adopted as federal policy. Our organizations look forward to remaining engaged and providing assistance as the BLM develops its regional sage-grouse conservation strategy.

Sincerely,



Brian Rutledge
Executive Director/ VP Intermountain West
Audubon Wyoming

On behalf of:

John Tull
Conservation Director
Nevada Wilderness Project

Mike Chiropoulos
Lands Program Director
Western Resource Advocates

Nada Culver
Senior Counsel
The Wilderness Society

Lara Rozzell
Public Lands Energy Fellow
Idaho Conservation League

Kathleen C. Zimmerman
Senior Policy Advisor II Public Lands Program
National Wildlife Federation

Kim Marie Thorburn
Board of Directors
Spokane Audubon Society

Ken Strom
Interim Executive Director
Audubon Colorado

Matt Little
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Oregon Natural Desert Association

Sophie Osborn
Wildlife Program Director
Wyoming Outdoor Council

Wayne Martinson
Utah Important Bird Areas Coordinator
National Audubon Society

Allison L. Jones
Conservation Biologist
The Wild Utah Project

Dan Taylor
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Audubon California

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Rocky Mountain Wild

Mike Daulton
Senior Director for Government Relations
National Audubon Society

Robin Wilson
Director of Bird Conservation
Audubon Society of Nevada

Steve Hoffman
Executive Director
Montana Audubon

Luke Schafer
West Slope Campaign Coordinator
Colorado Environmental Coalition

Cc:

U.S. Department of Interior

Steve Black, Counselor to the Secretary of the Interior
David Hayes, DOI Deputy Secretary
Michael Bean, DOI Counselor to Assistant Secretary for Fish and Wildlife and Parks
Marcilynn Burke, DOI Acting Assistant Secretary for Land and Minerals Management
Ned Farquhar, DOI Deputy Assistant Secretary for Land and Minerals Management

U.S. Fish & Wildlife Service

Dan Ashe, USFWS Director
Rowan Gould, USFWS Deputy Director
Pat Deibert, USFWS National Sage-Grouse Coordinator
Steve Guertin, USFWS Regional Director Mountain Prairie Region (Region 6)

U.S. Fish & Wildlife Service (continued)

Noreen Walsh, USFWS Deputy Regional Director Mountain Prairie Region (Region 6)
Ren Lohofener, USFWS Regional Director Pacific Southwest Region (Region 8)
Alexandra Pitts, USFWS Deputy Regional Director Pacific Southwest Region (Region 8)
Robyn Thorson, USFWS Regional Director Pacific Region (Region 1)
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Robert Abbey, BLM Director
Mike Pool, BLM Deputy Director of Operations
Dwight Fielder, BLM Division Chief of Fish, Wildlife and Plant Conservation
Jim Kenna, Director for BLM California
Helen Hankins, Colorado State Director
Steven Ellis, Idaho State Director
Jamie Connell, Montana/Dakotas State Director
Amy Lueders, Acting Nevada State Director
Ed Shepard, Oregon/Washington State Director
Juan Palma, Utah State Director
Don Simpson, Wyoming State Director

U.S. Forest Service

Tom Tidwell, USFS Chief

Natural Resources Conservation Service

David White, NRCS Director
Tim Griffiths, NRCS Sage-grouse Initiative Coordinator

APPENDIX

Incorporating science-based conservation measures is a critical *first* step in conserving the necessary habitat to preclude the need to list the Greater Sage-Grouse. Goals should include *adequate minimum standards across the region and landscape-scale management strategies*, which states or field offices should seek to exceed where conditions are appropriate. The following guidelines concerning management of sagebrush habitat and sage-grouse should be considered the *minimum* needed to ensure adequate regulatory mechanisms are in place -- one of the concerns specified in the USFWS' March 2010 Finding.

- The interim guidelines, programmatic EISs, and RMP amendments should ensure that each BLM field office manages sagebrush and sage-grouse in a **consistent manner**.
- The National Technical Team, composed of sage-grouse and sagebrush experts, **should consider existing state and federal resources and significantly improve upon these by incorporating the latest scientific information**. Understanding the failures of these well-intentioned efforts will help the BLM develop its new regional strategy, which should include range-wide prescriptions, restrictions, and stipulations developed by the national technical committee.
- **State game and fish agency personnel provide extensive local knowledge**. We encourage coordination with state agencies, which may provide the best information on local sage-grouse populations and help ensure management consistency within each state. As species managers, they should be full partners in the regional planning process and implementation.
- As planning moves forward, **sufficient funding must be secured not only to meet the immediate needs of this range-wide strategy but also to ensure long-term success**. A consistent and long-term commitment must be made to ensure species maintenance and recovery. Efforts should be focused not only on core populations, which will require monitoring to determine successes and address failures, but also on smaller critical populations located in the periphery of the range.
- **Core areas delineate high priority areas for sage-grouse conservation and restoration and thus should be designated by BLM's planning process**. The Sage-Grouse Breeding Density Map, spearheaded by the BLM, is the first cooperative federal-state-private effort that looks at sage-grouse densities in a consistent manner across the West. This tool provides a peer-reviewed, scientifically defensible foundation for important range-wide focal areas having high densities of Greater Sage-Grouse, thus allowing for the establishment of priority conservation areas range-wide.
 - **Development should be avoided in core areas, unless it can be demonstrated that the activity will not cause declines in sage-grouse populations**. Stipulations, based on best available science, should be applied as a means to minimize impacts.
 - BLM should conduct an inventory of each core area – documenting vegetation, land ownership, existing disturbances, etc. This knowledge is critical for establishing baseline data and enabling effective review of proposed actions.
 - Particular sage-grouse core areas should be designated as Areas of Critical Environmental Concern (ACEC – 43 U.S.C. 1702). This would allow for special management to protect and prevent irreparable damage to important wildlife habitat. This type of progressive and sound management would protect high quality sage-grouse habitat, sage-grouse populations, and the several hundred other species that depend on sagebrush habitats.
- In addition to core areas, managers should concentrate on protecting **important seasonal habitat** for sage-grouse and recognize the value of **connectivity** to maintaining genetic viability. Additional effort is needed to identify these areas and to collect baseline data

(both on the species and the existing land use pressures). With compromised populations or during extreme weather conditions, these habitats become even more critical.

- **Development activities should generally be directed to already-disturbed areas (avoiding intact habitat), in areas with the fewest environmental impacts, and be subject to science-based project design and stipulations that minimize impacts to sage-grouse. Energy development activities should be located as close to target human population centers as possible.**
- **Energy Development**
 - **Identify areas not available for leasing or exclusion areas (oil and gas leasing, wind energy development, solar, geothermal, transmission) to maintain quality habitat for sage-grouse. All alternatives except no-action should propose designating enough lands in such areas to ensure conservation of the species. Excluding priority sage-grouse habitat from energy development projects will allow land managers to take meaningful conservation actions. As recognized by IM 2010-071, the Mineral Leasing Act vests absolute discretion in the Secretary over mineral leasing decisions. The same legal authority extends to renewable energy and transmission projects**
 - **Refrain from leasing inside core areas unless those leases contain appropriate, science-based stipulations that have been demonstrated to adequately protect sage-grouse populations and habitat from the impacts of development. We are concerned that the BLM's reliance on conditions of approval (COA) as a surrogate for appropriate lease stipulations could lead to legal challenges, particularly in instances where such COAs are applied on a broad scale. We believe a more prudent approach is to defer all leasing within core habitat until the RMP amendments incorporating new science-based stipulations have been completed.**
 - **Consider lease deferral for small parcels of known important sage-grouse habitat, such as wintering habitat, breeding grounds or leks, nesting, and brood-rearing habitat. These areas can be extremely important to specific populations of sage-grouse during critical times of the year, especially if they are experiencing population pressures in surrounding areas.**
 - **Sagebrush landscapes, upon which sage-grouse depend, consist of few naturally occurring vertical structures. Therefore, vertical structures (such as *transmission lines, wind turbines, meteorological towers, and fences*) are problematic for sage-grouse and their use should be avoided in important habitats. Impacts to sage-grouse include *direct mortality* from collisions and *indirect impacts*, such as avoidance of an area, habitat disruption/degradation/fragmentation, reduced nesting/breeding density, habitat loss (abandonment, unsuitability), mortality from avian and synanthropic predators (i.e., predators that live near and benefit from an association with humans), and behavioral effects. These impacts can be avoided or reduced, however, with proper siting, operation and mitigation. Important habitat, such as core areas and critical seasonal habitats, should be avoided until research on the impact of vertical structures is completed and means for effectively minimizing these impacts are identified.**
 - **Avoid siting new temporary meteorological (met) towers near leks and other important sage-grouse habitat. Where wind turbines or met towers are considered appropriate, guy wires should be marked with recommended bird deterrent devices.**
 - **Route transmission projects to avoid priority sage-grouse habitats.**
 - **Limit the density of cumulative disturbances on the landscape to a scientifically-justifiable threshold of impacts, especially in all nesting, early brood rearing and winter habitats.**
 - **Identify areas containing large, contiguous unleased Federal minerals. These areas, especially in important sage-grouse habitat, should remain unleased and**

undeveloped. Criteria for determining size of area needed for sustaining sage-grouse populations should be based on best available science and take into account current site-specific conditions (e.g. size and movement patterns of existing sage-grouse populations, surrounding landscape pressures) and recommendations of qualified biologists.

- **Close important habitat to future leasing when existing leases in sage-grouse habitat expire.**
- **Base management on defensible and current science where leasing is permitted. Effective best management practices (BMPs) and new stipulations, based on best available science, need to be included in the amended RMPs and applied uniformly to all ground-disturbing activities across the region. Existing stipulations that have no scientific merit, such as providing only a 0.25 mile buffer around leks, should not be used. Enforceable BMPs should be applied at the initiation of projects, at the exploratory/planning stage, and throughout production.**
- **Where leasing is permitted, implement site-specific conditions of approval, that include location, design and timing of operations to avoid, minimize and mitigate impacts at all phases of development.**
- **Grazing**
 - **Facilitate and promote voluntary permit retirement range-wide and within individual RMP amendments for *sage-grouse habitat areas identified as incompatible with grazing.***
 - **Where livestock-related activities occur, develop appropriate standards to maintain a healthy rangeland. Grazing management practices and/or facilities (such as fences and water development) should occur in a manner that maintains or promotes the physical and biological conditions necessary to sustain healthy sage-grouse populations. Grass banking and herd reductions should be considered in certain situations. Monitoring should allow for identification of disruption to sage-grouse populations and impacts to native vegetation and soil stability. Adaptive management should be addressed early and used to avoid negative impacts to sage-grouse populations.**
- **Fences**
 - **Carefully evaluate new fences for sage-grouse collision risks and site fences in locations away from leks, nesting areas, ridge tops etc.**
 - **Require an equal amount of fence removal if new fence is approved within sage-grouse habitat.**
 - **Identify priority areas for flagging or marking existing fences to avoid collisions and recommend the use of sage-grouse fence diverters in these areas.**
- **Climate Change**
 - **The increase of severe droughts throughout the West, associated with climate change, will exacerbate fire frequency and intensity in the sagebrush ecosystem. Managers and researchers also predict that cheatgrass and other harmful invasive species will increase, further degrading the sagebrush steppe. These threats, acting independently and synergistically, are predicted to cause a 30-80% reduction of sagebrush habitat, depending on the extent of green-house gas emissions. A warming climate will make it more challenging to restore degraded habitat and plan for habitat connectivity amongst grouse populations. Therefore, on-the-ground implications of a warming climate must be incorporated in all of the strategies used to secure a sustainable future for this species.**

- **West Nile virus**
 - West Nile Virus can have deleterious impacts on small and isolated populations of sage-grouse. **Limit man-made water developments** in mosquito breeding areas in sage-grouse habitat. Where this cannot be avoided, design water developments to inhibit growth of mosquitoes by reducing shallow stagnant water, sedimentation and vegetation growth. Focus on controlling mosquito populations in close proximity to sage-grouse leks rather than endorsing a broad use of adulticides.
- **Invasive species**
 - **Invasive species** are problematic for both native species and domestic livestock. The biggest threat to the sagebrush-steppe community, in addition to the slow regeneration of sagebrush, is the invasion of **cheatgrass** (*Bromus tectorum*). Cheatgrass has the potential to completely alter the ecosystem it invades, increase fire frequency, and prevent the establishment of sagebrush and native grass and forb understory. Activities that introduce and spread invasive species must be addressed and mitigated. Additionally, projects that use other non-natives such as crested wheatgrass to control faster-spreading species such as cheatgrass and medusahead, must be conducted very carefully and have long-term plans in place for eventual sagebrush and native grass restoration.
- **Fire**
 - The presence of fire on the landscape has a large impact on the probability of lek abandonment (Knick and Hanser 2009). Managers who use fire as a treatment for juniper control, invasive species and overall ecosystem health will need to have standards in place to determine where and when different types of fire management, such as broadcast burning, jackpot burning, spot treatments, are and are not appropriate in sage grouse habitat.
- **Project Analysis**
 - For the purpose of effects analysis for a proposed action, a sage-grouse habitat evaluation shall extend, at minimum, *out to 4 miles* from relatively small individual proposed actions and shall extend, at minimum, out 11 miles from the project boundary for large-scale proposed actions. This reflects the most current research that shows impacts to Greater Sage-Grouse leks from energy development are discernable out to a minimum of four miles (Holloran 2005, Walker et al. 2007, Walker 2008) and that 11 miles encompasses a significant portion of the seasonal habitats that will be affected. However, the scale of annual habitat needed is likely to be site dependent. Given that these data were based on research conducted in Wyoming, the area may need to be adjusted for site-specific conditions.
 - BLM should have a **standard review process for parcels proposed for development** (including fossil fuel, renewable, transmission, livestock management, water development), thus providing upfront clarity and certainty for all stakeholders. The process should incorporate: 1) participation by qualified sage-grouse biologists; 2) site-specific analysis including field visits to inform decisions; 3) projects impacting core areas should be postponed until the necessary stipulations can be added to the RMP governing the area.
 - **Comprehensive cumulative impact analysis will be key to sage-grouse conservation in the face of multiple threats.** Management decisions should be based on an evaluation of cumulative impacts *over a landscape*. Not only does this refer to the many types of energy development but also to other land use pressures, including efforts to manage other species/suppress undesirables. An example includes spraying diflufenzuron, carbaryl, and possibly malathion on sage-grouse habitat for grasshopper/mormon cricket suppression. This particular action leads to

wide scale reduction in insect numbers, an important food source for juvenile sage-grouse, thus leading to negative population level impacts.

- **Habitat Improvement, Reclamation and Restoration**
 - Sage-grouse populations are dependent upon healthy sagebrush. So called “**habitat improvement**” projects (e.g. mechanical sagebrush treatments) can be detrimental to sagebrush obligate species, such as sage-grouse. Scientifically defensible research is needed to **determine which activities are beneficial**. This information should be *maintained in a single database*.
 - Reclaiming or recovering sagebrush habitats is extremely challenging. Efforts should be directed towards **improving our ability to effectively reclaim degraded habitat**, which requires gathering site-specific baseline (pre-treatment) data to adequately evaluate success. Reclamation should be *mandatory* and managers must recognize that **methods for achieving success vary by region and are site-specific**. Reclamation efforts should be *monitored* and *results maintained in a single database* to improve our understanding and effectiveness. In addition, a process should be established to identify and address failed reclamation projects.
 - As the large landscapes required to sustain grouse populations become further fragmented by the **increasing frequency of wildfires**, **focus on restoration will become more important**. Sage-grouse have evolved in habitat that has extremely infrequent wildfires, enabling them to benefit from mature sagebrush stands. Habitat fragmentation and alteration due to fire may influence distribution (including lek abandonment) or migratory patterns. We suggest that a funded program be dedicated to identifying sagebrush landscapes at risk and that field offices be prepared with a response plan to avoid the conversion of compromised landscapes to invasive species following fires.
- **Mitigation**
 - **Mitigation**, to be meaningful in sage-grouse habitat, *must* create a *net increase* in sage-grouse habitat and be a *net benefit* to the local population.
- **Federal Ownership**
 - BLM should set forth a policy to retain important (core and non-core) **sage-grouse habitat in federal ownership**.
- **Terminology**
 - We urge BLM to develop a **formal set of definitions** for frequently used language to avoid inconsistent use of terminology, such as “suitable habitat” and “functional habitat.” A glossary of terms, to be used throughout the interim guidelines and planning process, would help to ensure a uniform understanding of expected outcomes. Furthermore, we suggest BLM establish a general policy that if a parcel is located within a designated core area, it is presumed to contain (or be within) suitable sage-grouse habitat.
- **Monitoring and Adaptive Management**
 - Implementation of an effective monitoring and adaptive management process with performance based standards for each RMP is critical to the success of this effort. In addition to developing management prescriptions for sage-grouse, the technical committee should recommend triggers for adaptive management throughout the range and clearly specify the consequences that will result if triggers are reached. Triggers could include sage-grouse population target ranges, target levels of survival and recruitment in particular areas, measures of the cumulative level of surface disturbance and well density in core areas etc. Consequences that would result if triggers are reached would include increases in protective measures. Monitoring should be required and adequately funded.