

**CENTER FOR NATIVE ECOSYSTEMS**

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Selma Sierra  
Bureau of Land Management  
Utah State Office  
PO Box 45155  
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November 2, 2009

**BY FAX**

**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 Sierra:

**I. Protested Parcels**

In accordance with 43 C.F.R. §§ 4.450-2; 3120.1-3, Center for Native Ecosystems ("CNE") protests the June 23, 2009 sale of the following parcels:

UT11909-001	UT1109-006	UT1109-011	UT1109-024
UT1109-002	UT1109-007	UT1109-012	UT1109-025
UT1109-003	UT1109-008	UT1109-013	UT1109-027
UT1109-004	UT1109-009	UT1109-014	UT1109-029
UT1109-005	UT1109-010	UT1109-016	

UTAH STATE OFFICE  
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## II. Affected Resources

Oil and gas exploration and development authorized through the proposed leasing of the protested parcels is likely to have significant negative impacts on greater sage-grouse, Uinta Basin hookless cactus, black-footed ferret, white-tailed prairie dog, kit fox, burrowing owl, yellow-billed cuckoo, ferruginous hawk, bald eagle, roundtail chub, bluehead sucker, razorback sucker, flannelmouth sucker, Colorado pikeminnow, Maguire daisy, Last Chance Townsendia, Winkler's pincushion cactus, Despain pincushion cactus (San Rafael cactus), Wright fishhook cactus, and other special status species.

Please see Exhibit 1 for a list of special status species that will be negatively impacted as a result of the proposed leasing of the protested parcels. Exhibit 1 lists the species that are likely to occur within the protested parcels, according to GIS data from BLM, Utah Division of Wildlife Resources, Utah Natural Heritage program and other sources. In many cases the protested parcels contain key habitat for these species, and there are one or more known occurrences of the species within the protested parcel. In some cases, the species no longer occurs within the protested parcel, but the parcel contains habitat which may be important to the recovery of the species. CNE has provided additional information on the records of occurrence of each species within each protested parcel (e.g. the date the species was last observed in the parcel etc.), and on the type and importance of habitat within the protested parcels upon request. In addition, oil and gas exploration and development authorized through the proposed leasing of the protested parcels is also likely to have significant impacts on lands of high conservation value and the rare and imperiled species and other unique resources they support. Lands of high conservation value that may be significantly impacted by the proposed leasing include the Upper San Rafael Canyon Area of Critical Environmental Concern and areas that CNE has nominated as white-tailed prairie dog Areas of Critical Environmental Concern. Parcels that are listed in Exhibit 1 as containing white-tailed prairie dog habitat in may be within areas that CNE nominated as white-tailed prairie dog Areas of Critical Environmental Concern as part of the RMP revision process.

The issues raised in the statement of reasons apply to these species and areas of high conservation value. We provide additional information on some of these species in the following paragraphs.

### **greater sage-grouse and Gunnison sage-grouse**

Oil and gas development authorized by the leasing of the protested parcels will have significant impacts on greater sage-grouse. Please see Exhibit 1 for details on the overlap between protested parcels and key greater sage-grouse habitat.

Oil and gas development authorized by the leasing of the protested parcels is likely to have significant direct, indirect, and cumulative impacts on greater sage-grouse breeding, nesting, brood rearing and winter habitat, and result in population declines and lek abandonment. The studies listed below contain information on:

- the status of the greater sage-grouse
- the impacts of oil and gas development on greater sage-grouse
- the efficacy of application of various protective measures (including protective measures applied to the protested parcels as lease stipulations and notices) in mitigating impacts of oil and gas development on greater sage-grouse
- expert recommendations on how best to minimize and mitigate impacts of oil and gas development on greater sage-grouse
- information essential to analysis of the direct and indirect impacts of the oil and gas development on the protested parcels on greater sage-grouse
- information essential to analysis of the cumulative impacts of oil and gas development on the protested parcels, and other past, present and reasonably foreseeable activities, including grazing, climate change, fire, grazing etc., on greater sage-grouse populations

This information is essential to adequate NEPA analysis of the likely direct, indirect, and cumulative impacts of oil and gas development on the protested parcels on greater sage-grouse. In addition, this information is crucial to any effort to develop a range of alternatives for oil and gas development, and to develop and analyze the likely effectiveness of lease notices and stipulations applied to the protested parcels to mitigate impacts of oil and gas development on greater sage-grouse to insignificance. The information in these documents constitutes the best available science on greater sage-grouse, and the impacts of oil and gas development on greater sage-grouse. The BLM has not considered the information contained within these documents as part of a National Environmental Policy Act (NEPA) analysis of the impacts of oil and gas development authorized by the leasing of the protested parcels on greater sage-grouse. We hereby incorporate the following documents by reference<sup>1</sup>:

2007. *Western Watersheds Project v. U.S. Forest Service*. 535 F. Supp. 2d 1173; D. Idaho

Aldridge CL, Boyce MS. 2007. Linking occurrence and fitness to persistence: habitat-based approach for endangered greater sage-grouse. *Ecological Applications* 17: 508-526.

Baxter RJ, Flinders JT, Mitchell DL. 2008. Survival, movements, and reproduction of translocated greater sage-grouse in Strawberry Valley, Utah. *Journal of Wildlife Management* 72: 179-186.

Braun CE. 2006. *A blueprint for sage-grouse conservation and recovery*. Tucson, AZ: Grouse Inc.

U.S. Bureau of Land Management. 2009. *Final BLM Review of 77 Oil and Gas Lease Parcels Offered in BLM-Utah's December 2008 Lease Sale*.

Colorado Division of Wildlife. 2008. *Colorado Greater Sage-Grouse Conservation Plan*.

<sup>1</sup> These documents can also be found on the accompanying CD-ROM as attachments to this protest.

Colorado Division of Wildlife. 2007. Letter: Re: Little Snake Resource Management Plan Draft Environmental Impact Statement—Comments from Colorado Division of Wildlife.

Connelly JW, Schroeder MA, Sands AR, Braun CE. 2000. Guidelines to manage sage grouse populations and their habitats. *Wildlife Society Bulletin* 28: 967-985.

Copeland HE, Doherty KE, Naugle DE, Pocewicz A, Kiesecker JM (2009) Mapping Oil and Gas Development Potential in the US Intermountain West and Estimating Impacts to Species. *PLoS ONE* 4(10): e7400.  
doi:10.1371/journal.pone.0007400

Dahlgren DK., Chi R, Messmer TA. 2006. Greater Sage-Grouse Response to Sagebrush Management in Utah. *Wildlife Society Bulletin* 34(4):975-985.

Doherty KE. 2008. Sage-grouse and energy development: Integrating science with conservation planning to reduce impacts. Ph.D. Dissertation. University of Montana, Missoula.

Doherty KE, Naugle DE, Walker BL, Graham JM. 2008. Greater sage-grouse winter habitat selection and energy development. *Journal of Wildlife Management* 72: 187-195.

Freudenthal D, Office of the Governor, State of Wyoming. 2008. Executive Order 2008-2: Greater Sage-Grouse Core Area Protection.

Holloran MJ, Anderson SH. 2005. Spatial distribution of greater sage-grouse nests in relatively contiguous sage-brush habitats. *The Condor* 107: 742-752.

Holloran MJ, Heath BJ, Lyon A, Slater SJ, Kuipers JL, Anderson SH. 2005. Greater sage-grouse nesting habitat selection and success in Wyoming. *Journal of Wildlife Management* 69: 638-649.

Moynahan BJ, Lindberg MS, Rotella JJ, Thomas JW. 2007. Factors affecting nest survival of greater sage-grouse in Northcentral Montana. *Journal of Wildlife Management* 71: 1773-1783.

Naugle, D.E., K.E. Doherty, B.L. Walker, M.J. Holloran and H.E. Copeland. 2009. Energy development and greater sage-grouse. *Studies in Avian Biology* In Press.

Oyler-Mccance SJ, Taylor SE, Quinn W. 2005a. A multilocus population genetic survey of the greater sage-grouse across their range. *Molecular Ecology* 14: 1293-1310.  
Oyler-Mccance SJ, St. John J, Taylor SE, Apa A, Quinn TW. 2005b. Population genetics of Gunnison sage-grouse: Implications for management. *Journal of Wildlife Management* 69: 630-637.

Schroeder MA, et al. 2004. Distribution of sage-grouse in North America. *The Condor* 106: 363-376.

Teddy Roosevelt Conservation Partnership, North American Grouse Partnership. 2008. Petition for rulemaking to protect greater sage-grouse on lands administered by the Bureau of Land Management. 44 pages.

Utah Department of Natural Resources, Division of Wildlife Resources. 2009. Utah Greater Sage-Grouse Management Plan 2009. Publication 09-17.

U.S. Department of the Interior. 2004. Bureau of Land Management National Sage-Grouse Habitat Conservation Strategy.

Western Association of Fish and Wildlife Agencies. 2008. Using the Best Available Science to Coordinate Conservation Actions that Benefit Greater Sage-Grouse Across States Affected by Oil and Gas Development in Management Zones I and II.

Western Association of Fish and Wildlife Agencies. 2004. Conservation of Greater Sage-Grouse and Sagebrush Habitats.

Biologists from the Western Association of Wildlife Agencies ("WAFWA") recently authored a memorandum entitled: Using the best available science to coordinate conservation actions that benefit sage-grouse across states affected by oil and gas development in Management Zones I-II (Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming) (Memorandum from Terry Cleveland and John Emmerich to Tom Christiansen and Joe Bohne, Wyoming Game and Fish Department, January 29, 2008).

Walker BL, Naugle DE, Doherty KE. 2007. Greater sage-grouse population response to energy development and habitat loss. *Journal of Wildlife Management* 71: 2644-2654.

Wyoming Game and Fish Department. 2009. Recommendations for Development of Oil and Gas Resources Within Important Wildlife Habitats. V 2.0.

The above documents demonstrate that the leasing of the protested parcels is likely to have significant impacts on greater sage-grouse and Gunnison sage-grouse that have not been adequately analyzed, that the mitigation measures applied as lease notices and stipulations will not prevent significant impacts to greater sage-grouse, and that BLM management, including the proposed leasing, is exacerbating declines across the species' range. Finally, these documents suggest that BLM will continue to contribute significantly to the decline and eventual extinction of greater sage-grouse unless BLM begins to consider land management alternatives that maximize conservation of important sage-grouse habitat in Resource Management Plans and other management decisions (including decisions to authorize oil and gas development through leasing

We ask that BLM consider the information contained within these documents in making a decision regarding whether to withdraw the protested parcels given the arguments outlined below in the statement of reasons. In addition to the sources listed above, we request that the BLM consider information from the forthcoming Ornithological Monograph regarding greater sage-grouse, due to be published by the University of California Press soon. Should this publication become available while this protest is still outstanding and BLM has not yet resolved the disposition of the protested parcels, we ask that the information in it also be considered.

**raptors (including bald eagle, burrowing owl, and ferruginous hawk)**

Appendix I demonstrates that important habitat for a number of raptor species is found within the protested parcels. The BLM has not adequately considered the information in the following document in developing alternatives to the proposed leasing to protect raptors; or in analyzing the impacts of the proposed leasing on raptors; or in applying mitigation measures to the protested parcels as lease notices and stipulations:

Whittington DM, Allen GT. 2008. Draft guidelines for raptor conservation in the Western United States. U.S. Fish and Wildlife Service, Region 9, Division of Migratory Bird Management, Washington, D.C., February 2008, 156 pages.

This document is also attached to this protest, and hereby incorporated by reference. We ask that BLM give adequate consideration to the information in this document prior to leasing the protested parcels that contain habitat for raptors.

**rare and imperiled plants (including Uintah Basin hookless cactus, Maguire daisy, Last Chance townsendia, Despain pincushion cactus [San Rafael cactus], Winkler's pincushion cactus, and Wright fishhook cactus)**

We are very concerned that the mitigation measures proposed to protect rare plants may not be sufficient to mitigate impacts to insignificance. In fact, the parcel in the Vernal Field Office containing habitat for the Uinta Basin hookless cactus does not even include a Notice regarding the presence of a federally protected endangered species. We recommend that BLM apply a lease stipulation that requires a 200 meter (600 ft.) no surface occupancy buffer between surface disturbance (roads, well pads, pipeline right-of-ways etc. in occupied habitat for all the rare plants in question here. Please see the following document for support for this recommendation:

Elliott, B.A., S. Spackman Panjabi, B. Kurzel, B. Neely, R. Rondeau, and M. Ewing. Recommended best management practices for plants of concern: Practices developed to reduce the impacts of oil and gas activities. Colorado Rare Plant Conservation Initiative, April 2, 2009, 14 pages.

In addition, the notices and stipulations proposed for the plants are entirely voluntary and should be made mandatory. Also, surveys for Uintah Basin hookless

cactus should be done when the cactus is blooming as they are difficult to detect at other times of the year.

Finally, BLM should make sure that the stipulations can still be enforced for species whose regulatory status has changed. The population of plants formerly referred to as Uinta Basin hookless cactus was recently confirmed to be three different species: *Sclerocactus wetlandicus* (Uinta Basin hookless cactus), *Sclerocactus brevispinus* (Pariette cactus), and *Sclerocactus glaucus* (Colorado cactus). All three species, which were formerly protected as a single taxa under the Endangered Species Act, are now recognized as Threatened species under the Endangered Species Act. This change (which was finalized after the notice for this lease sale was posted) underscores the importance of protecting all three species from harm, such as the direct, indirect, and cumulative impacts of oil and gas development. Now that these three species are no longer erroneously lumped together, their individual populations are recognized as much smaller than originally thought. Thus, previous evaluations of the relative security of the species that informed the current standard stipulations for these plants may no longer be accurate. The standard measures relied upon to protect *Sclerocactus* habitat and individuals from oil and gas impacts should be reevaluated.

Specifically, the BLM must reconsult with the U.S. Fish and Wildlife Service regarding all potential impacts to the Uinta Basin hookless cactus and other *Sclerocactus* species. Because the listing of the Uinta Basin hookless cactus and the other *Sclerocactus* species constitute new ESA listings, the BLM has not to date conducted any consultation under Section 7 of the Endangered Species Act that adequately addresses these species.

#### **White-tailed prairie dog and black-footed ferret**

Several parcels would impact the Cisco complex of white-tailed prairie dog colonies. This important site represents an important segment of core habitat for a highly imperiled species, the white-tailed prairie dog, which is currently under consideration for Endangered Species Act protection, as well as a proposed reintroduction site for black-footed ferrets, North America's most endangered mammal, which is currently protected under the Endangered Species Act.

CNE recently protested 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 population decline. 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. This is particularly important in the Cisco complex, where recent plague events have rendered several colony site unoccupied, but evidence suggests prairie dog populations can rebound and animals will eventually

reoccupy currently abandoned burrows. Here we provide the relevant excerpt from our protest of the Moab Field Offices Proposed RMP:

**I. 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:

Some of the percentages of habitat designated NSO are very low -- for example, Alternative C (preferred) only sets 5% NSO for Gunnison sagegrouse, 1% for Gunnison prairie dog; <1% for whitetailed prairie dog, and 20% for MSO. These are very low levels of protection from oil and gas development and would seemingly have significant impacts. See Comment 586-28.

NSO stips would have allowed the lease to be developed, it would just have to be accessed elsewhere.

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. The Service is currently performing a status review for the white-tailed prairie dog and may protect it as well.

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.

Similarly, the U.S. Fish and Wildlife Service has made a positive 90-day finding on our petition to protect the white-tailed prairie dog under the Act, and must make a determination as to whether protection is warranted by June 2010. BLM's approach to white-tailed prairie dog management should be an important factor in this decision, yet BLM has failed to show that it will conserve this species.

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.

It makes no sense, and is illegal, for BLM to provide absolutely no protection for Gunnison's prairie dogs under Alternative D. The fact that there are few colonies should if anything make protecting them uncontroversial. Failing to do so is contributing to the need to list the species under the Endangered Species Act and failing to meet the agency's special status species obligations.

**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.

Since the Moab Field Office adopted their new RMP in October 2008, CNE has filed suit challenging this and two other RMPs in part on their failure to designate Areas of Critical Environmental Concern (ACECs) to protect natural resources including the Cisco white-tailed prairie dog complex. Below we provide an excerpt from the complaint filed in that case, addressing the BLM's failure to designate ACECs for white-tailed prairie dogs:

Likewise, despite FLPMA's mandate to prioritize the designation and protection of "areas of critical environmental concern" (ACECs) such as areas with sensitive wildlife populations, important scenic vistas, or irreplaceable cultural artifacts, 43 U.S.C. § 1712(c)(3), BLM overlooked nominated ACECs and arbitrarily eliminated areas meeting the ACEC criteria from further consideration. (#4, p. 4)

37. RMPs provide a blueprint for how public lands are managed. For example, they allocate lands as available for oil and gas leases and impose conditions on that leasing, identify areas that are opened or closed to motorized vehicle use,

designate ACECs, and recommend protection of wild and scenic river segments. (p. 14)

46. FLPMA also mandates that BLM "give priority to the designation and protection of areas of critical environmental concern" or "ACECs." 43 U.S.C. § 1712(c)(3). ACECs are areas "where special management is required . . . to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes." *Id.* § 1702(a). ACECs must possess both relevance and importance as those terms are defined in BLM regulations. 43 C.F.R. § 1610.07-2. If BLM does not designate an area as an ACEC, it must nonetheless protect through other means the resources that meet the identified relevance and importance criteria and require special management attention. (p. 16-17)

75. In the Moab PRMP/FEIS BLM determined that 613,077 acres within 14 areas met the "relevance and importance" criteria for designation as ACECs. Of these 613,000 acres, BLM designated only five ACECs covering 63,323 acres. BLM based its decision not to designate additional ACECs largely on the factually incorrect basis that the relevant and important values in potential ACECs would be protected through other means, including administrative designations. (p. 23)

#### **EIGHTH CAUSE OF ACTION**

##### **(Violation of FLPMA: Failure to Prioritize Areas of Critical Environmental Concern)**

172. Plaintiffs incorporate herein by reference paragraphs 1-129 above.

173. FLPMA mandates that when developing an RMP, BLM must "give priority to the designation and protection of areas of critical environmental concern." 43 U.S.C. § 1712(c)(3).

174. ACECs are areas "where special management is required . . . to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes." *Id.* § 1702(a). ACECs must also meet relevance and importance criteria. 43 C.F.R. § 1610.7-2.

175. BLM refused to give priority to the designation and protection of ACECs in the Moab, Price, and Vernal RMPs, as mandated by FLPMA. The agency arbitrarily determined that certain nominated and otherwise qualifying areas were not eligible for ACEC status and relied on other insufficient administrative tools to provide protections to sensitive wildlife, cultural resources, and scenic vistas.

176. BLM refused to determine whether two nominated ACECs in the Vernal field office that would have protected habitat for the Graham's penstemon and Pariette cactus—imperiled native plants—should be designated as ACECs. BLM admitted that the nominations were "overlooked" in the RMP planning process. However, the agency refused to consider the nominations until an unspecified time in the future.

177. BLM's failure to give priority to the designation and protection of ACECs in the Moab, Price, and Vernal RMPs violates FLPMA and its implementing regulations and is arbitrary, capricious, or otherwise not in accordance with law in violation of the APA. 5 U.S.C. § 706. (p. 40-41)

## **II. Protesting Parties**

Center for Native Ecosystems has 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. CNE's mission is to use the best available science

to participate in policy and administrative processes, legal actions, and public outreach and education to protect and restore native plants and animals in the Greater Southern Rockies.

CNE's members visit, recreate on, and use lands on or near the parcels proposed for leasing. The staff and members of CNE 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. CNE's 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 CNE are conducting research and advocacy to protect the populations and habitat of rare and imperiled species discussed herein. CNE's members and staff value the important role that areas of high conservation value, should play in safeguarding rare species and 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 adequate environmental analysis and appropriate safeguards to minimize negative impacts, is likely to result in significant, unnecessary and undue 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 those public lands and the rare and imperiled species they support. Therefore protestors have legally recognizable interests that will be affected and impacted by the proposed action.

Megan Mueller, CNE's staff biologist, like all other CNE employees, is authorized to file this protest on behalf of CNE.

### **III. Statement of Reasons**

For the reasons set forth below, the Bureau of Land Management should withdraw all of the protested parcels pending completion of an adequate National Environmental Policy Act ("NEPA") analysis of the environmental impacts of the proposed leasing. BLM should withdraw from the sale all protested parcels because there is credible evidence of resource conflicts and potentially significant environmental impacts which have not been properly analyzed. Oil and gas development authorized by the leasing of the protested parcels is likely to have significant impacts on greater sage-grouse, Uinta Basin hookless cactus, black-footed ferret, white-tailed prairie dog, kit fox, burrowing owl, yellow-billed cuckoo, ferruginous hawk, bald eagle, roundtail chub, bluehead sucker, razorback sucker, flannelmouth sucker, Colorado pikeminnow, Maguire daisy, Last Chance Townsendia, Winkler's pincushion cactus, Despain pincushion cactus (San Rafael cactus), Wright fishhook cactus, and other special status species.

CNE and others have protested the Moab, Price, Vernal, and Monticello proposed Resource Management Plans and Final Environmental Impact Statements. These

Resource Management Plans do not constitute adequate consideration of a range of alternatives for management of habitat for special status species, nominated Areas of Critical Environmental Concern and other sensitive resources, nor do they contain an adequate analysis of the potential impacts of oil and gas exploration and development over the next 15-20 years, across the range of each of the aforementioned rare and imperiled species. The BLM's conclusions in their resolution of our protests are arbitrary and capricious. We hereby incorporate our protests of these RMPs by reference. We incorporate by reference all of the information contained within any previous protests of Utah BLM oil and gas lease sales, or appeals to the Interior Board of Land Appeals, that are relevant to the protested parcels.

The BLM should withdraw the protested parcels pending completion of an adequate NEPA analysis of the impacts of the proposed leasing on special status species, nominated ACECs, and other sensitive resources. In addition, the BLM should suspend the protested leases until it has met its obligations under the Administrative Procedure Act, Endangered Species Act, and the Federal Land and Policy Management Act, and until it has met its obligations outlined in the BLM Manual with respect to special status species.

#### A. National Environmental Policy Act

##### 1. BLM Has Failed to Take a "Hard Look" at the Environmental Effects of the Proposed Leasing

The National Environmental Policy Act (NEPA) requires federal agencies to prepare a statement on the environmental impacts of every major action significantly affecting the quality of the human environment. National Environmental Policy Act of 1969 § 102(2)(C), 42 U.S.C. § 4332(C) (2009). According to the Supreme Court, agencies must take a "hard look" at the environmental effects of major federal actions in order to satisfy that requirement. *Kleppe v. Sierra Club*, 427 U.S. 390, 410n.21 (1976). While NEPA does not mandate particular results, it does prescribe a necessary process that agencies must follow during their decision-making processes. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350-51 (1989). "Federal agencies shall use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment." 40 C.F.R. §1500.2(e) (2009). Agencies are required to consider alternatives to a proposed action and must not prejudge whether it will take a certain course of action prior to completing the NEPA process. 42 U.S.C § 4332(C). Federal regulations make clear that discussion of alternatives to the proposed action is "the heart" of the environmental impact statement. 40 C.F.R. §1502.14 (2009).

The BLM has not taken the required "hard look" at the potential impacts of the proposed action on greater sage-grouse, Uinta Basin hookless cactus, black-footed ferret, white-tailed prairie dog, kit fox, burrowing owl, yellow-billed cuckoo, ferruginous hawk, bald eagle, roundtail chub, bluehead sucker, razorback sucker, flannelmouth sucker, Colorado pikeminnow, Maguire daisy, Last Chance Townsendia, Winkler's pincushion

cactus, Despain pincushion cactus (San Rafael cactus), Wright fishhook cactus, and other special status species.

The BLM has not considered an adequate range of alternatives to minimize impacts to these species, including a 'No Surface Occupancy' alternative, or alternatives with lease stipulations and notices that provide varying degrees of protection; in any of the documents to which the proposed leasing is tiered.

None of the NEPA documents to which the proposed leasing is tiered, take the required "hard look at the potential impacts of the proposed leasing of the protested parcels. The relevant Resource Management Plans, Determinations of NEPA Adequacy and Environmental Assessments do not take a 'hard look' at the potential impacts of the proposed leasing on greater sage-grouse, Uinta Basin hookless cactus, black-footed ferret, white-tailed prairie dog, kit fox, burrowing owl, yellow-billed cuckoo, ferruginous hawk, bald eagle, roundtail chub, bluehead sucker, razorback sucker, flannelmouth sucker, Colorado pikeminnow, Maguire daisy, Last Chance Townsendia, Winkler's pincushion cactus, Despain pincushion cactus (San Rafael cactus), Wright fishhook cactus, and other special status species.

**a. BLM Failed to Consider Significant New Information**

None of the NEPA documents, to which the leasing is tiered, adequately address the significant new information now available on the status of the greater sage-grouse, Uinta Basin hookless cactus, black-footed ferret, white-tailed prairie dog, kit fox, burrowing owl, yellow-billed cuckoo, ferruginous hawk, bald eagle, roundtail chub, bluehead sucker, razorback sucker, flannelmouth sucker, Colorado pikeminnow, Maguire daisy, Last Chance Townsendia, Winkler's pincushion cactus, Despain pincushion cactus (San Rafael cactus), Wright fishhook cactus, and other special status species.

An "agency must be alert to new information that may alter the results of its original environmental analysis, and continue to take a 'hard look at the environmental effect of [its] planned action, even after a proposal has received initial approval.'" *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 557 (9th Cir. 2000), quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 374 (1989).

In order to satisfy the "hard look" requirement, the BLM must supplement its existing environmental analyses when new circumstances "raise[] significant new information relevant to environmental concerns . . ." *Portland Audubon Soc'y v. Babbitt*, 998 F.2d 705, 708 (9th Cir. 2000). Agencies are required to "prepare supplements to either draft or final environmental impacts statements if . . . there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. § 1502.9(c)(1)(ii) (2009). The Supreme Court has held that a supplemental EIS must be prepared if "new information is sufficient to show that the remaining action will 'affect[] the quality of the human environment' in a significant manner or to a significant extent not already considered . . ." *Marsh v. Or. Natural Res. Council*, 490 U.S. 390, 374 (1989); see 42 U.S.C. § 4332(2)(C) (2009). In a recent Utah

case, the court held that the "Utah BLM ignored significant new information when it decided to lease the sixteen parcels at issue without first conducting a supplemental NEPA analysis." *So. Utah Wilderness Alliance v. Norton*, 457 F. Supp. 2d 1253, 1267 (D. Utah 2006). The analysis relied upon failed to reflect significant new information regarding the wilderness characteristics of the parcels at issue. *Id.* Further, in *Center for Native Ecosystems*, the Interior Board of Land Appeals held that once the BLM has identified existing NEPA documents, it is the responsibility of the relevant field office reviewers to determine whether there were "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." *Center for Native Ecosystems*, 170 IBLA 331, 346 (2006) ("CNE 1").

The BLM has been provided with significant new information relevant to the potential impacts of the proposed leasing on a number of the special status species at issue here, including, but not limited to: greater sage-grouse, Uinta Basin hookless cactus, black-footed ferret, white-tailed prairie dog, kit fox, burrowing owl, yellow-billed cuckoo, ferruginous hawk, bald eagle, roundtail chub, bluehead sucker, razorback sucker, flannelmouth sucker, Colorado pikeminnow, Maguire daisy, Last Chance Townsendia, Winkler's pincushion cactus, Despain pincushion cactus (San Rafael cactus), Wright fishhook cactus, and other special status species. See the section on affected resources for details on the new information available for some of the aforementioned species. In addition, Center for Native Ecosystems has provided BLM with significant new information on a number of these special status species, in each of our previous protests of BLM oil and gas lease sales, and in our comments submitted during the relevant Resource Management Plan revision processes, and in our recent appeals of BLM's decisions to implement several of the relevant revised Resource Management Plans. Though the BLM has completed new Resource Management Plans or Environmental Assessments, the BLM has still failed to adequately consider all of the significant new information that has been provided to them through our previous protests of oil and gas lease sales, our comments on Environmental Assessments and Resource Management Plans etc. We hereby incorporate the significant new information section in each of our past protests of UT BLM oil and gas lease sales by reference, as well as significant new information provided to BLM in our comments and protests throughout the RMP revision process, and provided to BLM as comments on oil and gas leasing environmental assessments. The BLM must address the significant new information on all of the aforementioned species, in order to comply with NEPA.

**b. BLM Failed to Conduct Adequate Direct, Indirect, Cumulative Impacts Analysis**

None of the NEPA documents, to which the leasing is tiered, adequately consider the potential direct, indirect, and cumulative effects of oil and gas drilling on greater sage-grouse, Uinta Basin hookless cactus, black-footed ferret, white-tailed prairie dog, kit fox, burrowing owl, yellow-billed cuckoo, ferruginous hawk, bald eagle, roundtail chub, bluehead sucker, razorback sucker, flannelmouth sucker, Colorado pikeminnow, Maguire daisy, Last Chance Townsendia, Winkler's pincushion cactus, Despain pincushion cactus

(San Rafael cactus), Wright fishhook cactus, and other special status species, and their habitat.

At a minimum, "the agency's [Environmental Assessment] must give a realistic evaluation of the total impacts and cannot isolate a proposed project, viewing it in a vacuum." *Grand Canyon Trust v. F.A.A.*, 290 F.3d 339, 342 (D.C. Cir. 2002). More specifically, "an environmental impact statement must analyze not only the direct impacts of a proposed action, but also the indirect and cumulative impacts." *Utahns for Better Transp. v. U.S. Dep't of Transp.*, 305 F.3d 1152, 1172 (10th Cir. 2002) (citing *Custer County Action Assoc. v. Garvey*, 256 F.3d 1024, 1035 (10th Cir. 2001)) (internal quotation omitted); see also 40 C.F.R. § 1509.25(a)(2) (2009) (scope of EIS is influenced by cumulative actions and impact); *Greenpeace v. Nat'l Marine Fisheries Serv.*, 80 F. Supp. 2d 1137, 1149 (W.D. Wash. 2000) (management plans were unlawful for failing to consider cumulative impacts on species). *Conner v. Burford* holds that the inability at the lease sale stage to fully ascertain effects of development "is not a justification for failing to estimate what those effects might be." *Conner v. Burford*, 848 F.2d 1441 (9th Cir. 1988); see also *Methow Valley Citizens Council*, 490 U.S. 332 (1989).

Cumulative impact is defined as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." 40 C.F.R. § 1508.7 (2009).

For example, the NEPA documents to which the proposed leasing is tiered, do not provide adequate analysis of the potential direct and indirect effects of oil and gas exploration and development on the protested parcels on greater sage-grouse. In addition, the BLM has not adequately analyzed the potential cumulative impacts of oil and gas development, grazing, climate change, oil shale and tar sands development, geothermal development, alternative energy development, off-road vehicle use, and other activities on greater sage-grouse over the life of the Resource Management Plans. The BLM National Sage-Grouse Habitat Conservation Strategy (Nov. 2004) has failed, and BLM has contributed to significant declines in sage-grouse populations across the species' range, and has contributed to the need to list the species under the Endangered Species Act. On December 4, 2007, the Federal District Court for the District of Idaho reversed and remanded the U.S. Fish and Wildlife Service's ("FWS") decision not to list the sage grouse as "threatened" or "endangered" under the ESA. *Western Watersheds Project v. U.S. Forest Service*, 535 F. Sup. 2d 1173 (D. Idaho 2007). The court explained the perilous condition of the sage grouse and the impact suffered by its habitats to date. *Id.* at 1173. Further elaborating on the current state of grouse habitat, the court noted: "Nowhere is sage-grouse habitat described as stable. By all accounts, it is deteriorating, and that deterioration is caused by factors that are on the increase." *Id.* at 1186. The court specifically focused on the impact of oil and gas development on grouse habitat as identified by an independent expert team. *Id.* at 1179. The court noted "a singular lack of data on measures taken by the BLM to protect the sage-grouse from energy development, the single largest risk in the eastern region." *Id.* at 1188. The BLM has failed to adequately protect greater sage-grouse from significant declines on BLM lands

across its range, in large part because it has systematically failed to adequately analyze the direct, indirect and cumulative impacts of oil and gas development, and a variety of other BLM authorized activities, on the greater sage-grouse. An emerging scientific consensus amongst sage-grouse experts suggests that, in order to avoid significant continued declines of greater sage-grouse, BLM must: 1) set aside substantial areas of sage-grouse habitat as reserves free from oil and gas development, and 2) avoid development within breeding, summer and winter habitats, which are essential to the survival of populations, and 3) apply adequate mitigation measures as lease stipulations, to ensure against significant declines in response to energy development in areas outside of core reserves. In this instance the BLM is authorizing leasing of a significant amount of key sage-grouse habitat. Experts recommend avoiding development within breeding and winter habitats, particularly crucial breeding and winter habitats that have been identified as key to the survival of populations. BLM is authorizing oil and gas development within these key habitats, with lease stipulations that are unlikely to prevent significant declines in greater sage-grouse populations in these areas. The best available science on the greater sage-grouse suggests that BLM's lease stipulations (including those attached to the leases at issue here, are inadequate to prevent significant declines of greater sage-grouse in response to large-scale oil and gas development. Please see the references outlined in the Affected Resources section of this protest for details. BLM failed to conduct an adequate NEPA analysis of the proposed leasing. BLM's conclusion that sale of the leases at issue here, will not significantly impact the greater sage-grouse, is arbitrary and capricious.

Similarly, the BLM has not adequately consider the direct, indirect and cumulative impacts of oil and gas leasing and subsequent development on Uinta Basin hookless cactus, black-footed ferret, white-tailed prairie dog, kit fox, burrowing owl, yellow-billed cuckoo, ferruginous hawk, bald eagle, roundtail chub, bluehead sucker, razorback sucker, flannelmouth sucker, Colorado pikeminnow, Maguire daisy, Last Chance Townsendia, Winkler's pincushion cactus, Despain pincushion cactus (San Rafael cactus), Wright fishhook cactus, and other special status species. The BLM must address the effects of direct, indirect, and cumulative impacts of oil and gas leasing on the all of these special status species, in a NEPA document in order to comply with NEPA.

### **c. BLM Failed to Address an Adequate Range of Alternatives**

The purpose of NEPA's alternatives requirement is to ensure that agencies do not undertake projects "without intense consideration of other more ecologically sounds courses of action, including shelving the entire project, or of accomplishing the same result by entirely different means." *Envtl. Def. Fund, Inc. v. U.S. Army Corps of Eng'rs*, 492 F.2d 1123, 1135 (5th Cir. 1974); see also *Or. Env'tl. Council v. Kunzman*, 614 F. Supp. 657, 660 (D. Or. 1985) (stating that the alternatives that must be considered under NEPA are those that would 'avoid or minimize' adverse environmental effects.) Federal agencies shall "use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment." 40 C.F.R. § 1500.2(e). Alternatives should include

reasonable alternatives to a proposed action that will accomplish the intended purpose, are technically and economically feasible, and yet have a lesser impact. *Headwaters, Inc. v. BLM*, 915 F.2d 1174, 1180-81 (9th Cir. 1990); *City of Aurora v. Hunt*, 749 F.2d 1457, 1466-67 (10th Cir. 1984).

In *Pennaco Energy*, the Tenth Circuit upheld the IBLA's ruling, which overturned BLM's decision to lease a number of parcels for oil and gas development because the NEPA analysis failed to consider an adequate range of alternatives. *Pennaco Energy, Inc. v. Dept. of Interior*, 377 F.3d 1147, 1150 (10th Cir. 2004). The court stated "in order to provide 'a clear basis for choice among options by the decision maker and the public,' an agency's EIS must consider the 'no action' alternative." *Id.* at 1150; 40 C.F.R. § 1502.14(d) (EIS shall "[i]nclude the alternative of no action"). The court found that "the EIS did not consider reasonable alternatives available in a leasing decision, including whether specific parcels should be leased, appropriate lease stipulations, and NSO and non-NSO areas." *Pennaco*, 377 F.3d at 1154.

BLM must consider a "reasonable range of alternatives," in a site-specific NEPA analysis of leasing of each of the protested parcels. The BLM should analyze an adequate range of alternatives, including for example, permanently suspending leasing in key habitat for rapidly declining species that may be significantly impacted by oil and gas development at a landscape scale, applying 'no surface occupancy' stipulations to key habitat for special status species and in areas of high conservation value, and conducting phased leasing in key habitat for special status species. When new research suggests that existing lease stipulations are ineffective, and that alternative lease stipulations might better minimize impacts of oil and gas exploration and development on a particular special status species, or other sensitive resources, the BLM should consider a range of alternatives that include application of any such alternative lease stipulations.

In the present case, BLM must consider a "reasonable range of alternatives," including a no-action alternative, in site-specific NEPA analysis. The relevant NEPA documents do not contain an adequate range of alternatives to explore the best ways to minimize impacts of the proposed leasing to special status species, including greater sage-grouse, Uinta Basin hookless cactus, black-footed ferret, white-tailed prairie dog, kit fox, burrowing owl, yellow-billed cuckoo, ferruginous hawk, bald eagle, roundtail chub, bluehead sucker, razorback sucker, flannelmouth sucker, Colorado pikeminnow, Maguire daisy, Last Chance Townsendia, Winkler's pincushion cactus, Despain pincushion cactus (San Rafael cactus), Wright fishhook cactus, and other special status species. For example, BLM's own National Sage-Grouse Habitat Conservation Strategy (cited above) obligates the agency to consider an alternative in its land management planning processes that would maximize sage-grouse conservation. Such an alternative would very likely require more protective stipulations for sage-grouse in all oil and gas leasing situations than the BLM currently provides.

## 2. BLM Must Conduct NEPA Analysis Prior to Making an Irretrievable and Irreversible Commitment of Resources

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). Leasing without a No Surface Occupancy ("NSO") stipulation has on-the-ground consequences and is an "irreversible and irretrievable commitment of resource," which requires NEPA analysis. *So. Utah Wilderness Alliance*, 166 IBLA 270, 276-77 (2005). In *Conner v. Burford*, the court addressed oil and gas leasing in the Flathead and Gallatin National Forests. 848 F.2d 1441 (9th Cir. 1988). That case mandates an EIS at the lease sale stage, even though it is difficult to ascertain whether, or where, drilling activity might occur. *Id.* at 1451; see also *Pennaco Energy, Inc. v. U.S. Dep't of Interior*, 377 F.3d 1147, 1160 (10th Cir. 2004). 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). The Court went on to conclude that the issuance of an oil and gas lease without an NSO stipulation constituted such a commitment of resources. *Id.* at 718.

## 2. Site-Specific NEPA Analysis Required Prior to Leasing

Lease issuance is the point at which there has been an irretrievable and irreversible commitment of resources, therefore, "the appropriate time for considering the potential impacts of oil and gas exploration and development is when BLM proposes to lease public land for oil and gas purposes . . ." *Ctr. for Native Ecosystems*, 170 IBLA 345 (2006) (emphasis added); see also *So. Utah Wilderness Alliance (SUWA)*, 166 IBLA 270, 276-77 (2005); *Sierra Club v. Peterson*, 717 F.2d 1409 (D.C. Cir. 1983) (concluding that an EIS must be prepared when the lease is issued); *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223 (9th Cir. 1988). In *Park County*, the court permitted the agency to forego preparation of an EIS when it had previously prepared an extensive environmental assessment covering the leases in question. *Park County Resource Council v. U.S. Dep't of Agric.*, 817 F.2d 609, 624 (10th Cir. 1987). That holding does not preclude BLM from preparing an EIS at the pre-leasing stage. *Pennaco Energy, Inc. v. U.S. Dep't of the Interior*, 377 F.3d 1147, 1162 (10th Cir. 2004). Rather, that holding is limited to cases where the agency prepared an "extensive" environmental assessment covering the leases in question. *Id.*

The BLM has not conducted a detailed site specific NEPA analysis of the impacts of oil and gas development in and adjacent to each protested parcel, on greater sage-grouse, Uinta Basin hookless cactus, black-footed ferret, white-tailed prairie dog, kit fox, burrowing owl, yellow-billed cuckoo, ferruginous hawk, bald eagle, roundtail chub, bluehead sucker, razorback sucker, flannelmouth sucker, Colorado pikeminnow, Maguire daisy, Last Chance Townsendia, Winkler's pincushion cactus, Despain pincushion cactus (San Rafael cactus), Wright fishhook cactus, and other special status species.

a. **Resource Management Plans Do Not Constitute Consideration of the Adequate Range of Alternatives**

None of the NEPA documents that the proposed leasing is tiered to, consider an adequate range of alternatives to leasing the protested parcels. The NEPA documents that the proposed leasing is tiered to, do not contain an adequate range of alternatives to explore the best ways to minimize impacts of the proposed leasing to special status species, including greater sage-grouse, Uinta Basin hookless cactus, black-footed ferret, white-tailed prairie dog, kit fox, burrowing owl, yellow-billed cuckoo, ferruginous hawk, bald eagle, roundtail chub, bluehead sucker, razorback sucker, flannelmouth sucker, Colorado pikeminnow, Maguire daisy, Last Chance Townsendia, Winkler's pincushion cactus, Despain pincushion cactus (San Rafael cactus), Wright fishhook cactus, and other special status species.

The purpose of NEPA's alternatives requirement is to ensure that agencies do not undertake projects "without intense consideration of other more ecologically sound courses of action, including shelving the entire project, or of accomplishing the same result by entirely different means." *Env't'l Defense Fund, Inc. v. U.S. Army Corps of Eng'rs*, 492 F.2d 1123, 1135 (5th Cir. 1974); see also *Or. Env't'l Council v. Kunzman*, 614 F.Supp. 657, 660 (D. Or. 1985) (stating that the alternatives that must be considered under NEPA are those that would 'avoid or minimize' adverse environmental effects). "Federal agencies shall use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment." 40 C.F.R. §1500.2 (e). Alternatives should include reasonable alternatives to a proposed action that will accomplish the intended purpose, are technically and economically feasible, and yet have a lesser impact. *Headwaters, Inc. v. BLM*, 914 F.2d 1174, 1180-81 (9th Cir. 1990); *City of Aurora v. Hunt*, 749 F.2d 1457, 1466-67 (10th Cir. 1984).

*Pennaco Energy, Inc. v. Department of the Interior*, was a challenge to an IBLA ruling overturning the BLM's decision to lease certain oil and gas parcels. 377 F.3d 1147, 1150 (10th Cir. 2004) The IBLA found the NEPA requirements were not satisfied and remanded the case to the BLM after Pennaco successfully bid on three of the plots. *Id.* The district court reversed the IBLA, ruling for Pennaco. *Id.* The IBLA decision was appealed to the 10th Circuit. *Id.* The court stated that for proposed "major Federal actions significantly affecting the quality of the human environment," agencies must prepare an environmental impact statement (EIS) in which they consider the environmental impact of the proposed action and compare this impact with that of "alternatives to the proposed action." *Id.*; see 42 U.S.C. § 4332(2)(C). Further, "in order to provide 'a clear basis for choice among options by the decision maker and the public,' an agency's EIS must consider the "no action" alternative." *Id.*; 40 C.F.R. § 1502.14; see *id.* at (d) (EIS shall "[i]nclude the alternative of no action"). *Pennaco*, 377 F.3d at 1150. The court found that because "the leasing decisions had already been made and the leases issued, the EIS did not consider reasonable alternatives available in a leasing decision, including whether specific parcels should be leased, appropriate lease stipulations, and NSO [no surface

occupancy] and non-NSO areas." *Id.* at 1154. The court upheld the IBLA's determination that the BLM did not take the required "hard look" at the environmental impacts of coal bed methane in its existing NEPA documents. *Id.* at 1152, 1162.

BLM must consider a "reasonable range of alternatives," in a site specific NEPA analysis prior to leasing of each of the protested parcels.

For example, none of the RMPs to which the proposed leasing is tiered, consider setting aside large core reserves for greater sage-grouse that will remain free from oil and gas development for the life of the RMPs. Nor do any of the RMPs consider an alternative in which oil and gas development activities are prohibited within 3.3 miles of active leks and associated nesting areas. These measures have been recommended by experts in the studies referenced previously. The best available science suggests that these alternatives may better protect greater sage-grouse in the face of oil and gas development, and that adoption of more protective alternatives may be necessary in order to ensure that BLM does not continue to contribute to the need to list the greater sage-grouse under the Endangered Species Act.

Similarly, BLM failed to consider a reasonable range of alternatives to leasing with the proposed lease stipulations in habitat for all of the following species: greater sage-grouse, Uinta Basin hookless cactus, black-footed ferret, white-tailed prairie dog, kit fox, burrowing owl, yellow-billed cuckoo, ferruginous hawk, bald eagle, roundtail chub, bluehead sucker, razorback sucker, flannelmouth sucker, Colorado pikeminnow, Maguire daisy, Last Chance Townsendia, Winkler's pincushion cactus, Despain pincushion cactus (San Rafael cactus), and Wright fishhook cactus.

#### **b. DNA's Cannot Substitute for Site-specific NEPA Analysis**

"DNAs, unlike EAs and [Findings of No Significant Impact], are not mentioned in [ ] NEPA or in the regulations implementing [ ] NEPA'. . . . Thus, DNAs are not themselves documents that may be tiered to NEPA documents, *but are used to determine the sufficiency of previously issued NEPA documents.*" *SUWA v. Norton*, 457 F. Supp. 2d 1253, 1262 (2006) (emphasis supplied); *Southern Utah Wilderness Alliance*, 164 IBLA at 123 (quoting *Pennaco*, 377 F.3d at 1162).

#### **3. NEPA Requires Analysis of Effectiveness of Mitigation Measures, BLMs FONSI 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.

a. **FONSI Must be Based on NEPA Analysis of Effectiveness Unless the Leases Have NSO Stipulations**

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.R. § 1502.16(h) (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-the-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1154 (9th Cir 1997) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 353 (1989)).

Agencies must "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." *Northwest 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). When an agency acknowledges that a proposed project will negatively impact a species, the agency must identify mitigation measures that decrease the negative impacts to the species in the area in question, provide and estimate of how effective the mitigation measures would be if adopted, or give a reasoned explanation as to why such an estimate is not possible. *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1381 (9th Cir. 1998). Further, the agency must make it clear that the mitigating measures in question will be adopted. *Id.*

In *Neighbors of Cuddy Mountain v. United States Forest Service* the court found that while the U.S. Forest Service ("USFS") had acknowledged that a proposed timber sale would negatively impact the redband trout by increasing sedimentation levels, the EIS prepared by the USFS did not identify which (or whether) mitigation measures might decrease sedimentation in the creeks affected by the sale. *Id.* Further, the court noted that "it is also not clear whether any mitigating measures would in fact be adopted. Nor has the Forest Service provided an estimate of how effective the mitigation measures would be if adopted, or given a reasoned explanation as to why such an estimate is not possible." *Id.* Further, the court found that "The Forest Service's broad generalizations and vague references to mitigation measures in relation to the streams affected by the Grand/Dukes project do not constitute detail as to mitigation measures that would be undertaken, and their effectiveness, that the Forest Service is required provide." *Id.*

None of the NEPA documents that the proposed leasing is tiered to contain an analysis of the likely effectiveness of mitigation measures applied as lease stipulations, lease notices, or conditions of approval of APDs, in mitigating impacts to greater sage-grouse, Uinta Basin hookless cactus, black-footed ferret, white-tailed prairie dog, kit fox,

burrowing owl, yellow-billed cuckoo, ferruginous hawk, bald eagle, roundtail chub, bluehead sucker, razorback sucker, flannelmouth sucker, Colorado pikeminnow, Maguire daisy, Last Chance Townsendia, Winkler's pincushion cactus, Despain pincushion cactus (San Rafael cactus), Wright fishhook cactus, and other special status species.

Merely listing mitigation measures, without analyzing the effectiveness of the measures, is contrary to NEPA. *Northwest 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). The BLM must evaluate the effectiveness of the mitigation measures used in oil and gas 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). The BLM is required to use "best available science and supporting studies conducted in accordance with sound and objective scientific practices." Thus, 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. The BLM has not met these obligations with respect to the mitigation measures applied to the protested parcels to protect greater sage-grouse, Uinta Basin hookless cactus, black-footed ferret, white-tailed prairie dog, kit fox, burrowing owl, yellow-billed cuckoo, ferruginous hawk, bald eagle, roundtail chub, bluehead sucker, razorback sucker, flannelmouth sucker, Colorado pikeminnow, Maguire daisy, Last Chance Townsendia, Winkler's pincushion cactus, Despain pincushion cactus (San Rafael cactus), Wright fishhook cactus, and other special status species. In fact, in a number of instances (e.g. greater sage-grouse), BLM continues to use mitigation measures that have been demonstrated to be completely ineffective at mitigating impacts of oil and gas development to insignificance, and has not disclosed this fact, or evaluated the potential impacts of the proposed leasing on the species in question, given this fact.

The BLM is "proceeding in the face of uncertainty," contrary to the NEPA regulations, *Save Our Ecosystems v. Clark*, 747 F.2d at 1244.

None of the NEPA documents to which the proposed leasing is tiered, include an adequate analysis of likely effectiveness of the mitigation measures applied as lease notices and stipulations to protect the special status species, nominated ACECs and other sensitive resources that occur in the protested parcels.

For example, there is a broad scientific consensus that the lease stipulations applied to mitigate impacts to greater sage-grouse are ineffective, and will not prevent significant declines in greater sage-grouse populations in response to oil and gas development on the protested parcels. None of the NEPA documents to which the proposed leasing is tiered, provide an adequate analysis of the effectiveness of the mitigation measures proposed to protect greater sage-grouse from significant impacts associated with oil and gas development, particularly given the scientific consensus that these mitigation measures are inadequate. The BLM's conclusion that these mitigation

measures will mitigate impacts of the oil and gas development authorized by this lease sale on greater sage-grouse to insignificance, is arbitrary and capricious.

Similarly, the lease notices and stipulations attached to oil and gas leases in brooding and winter habitat for Gunnison sage-grouse are unlikely to mitigate impacts to this species to insignificance. None of the NEPA documents to which the proposed leasing is tiered provide an adequate analysis of the likely effectiveness of the following mitigation measures proposed to protect the Gunnison sage-grouse from the impacts of oil and gas development. The Gunnison sage-grouse is closely related to the greater sage-grouse, and is likely to experience a response to oil and gas development activities that is similar to that of the greater sage-grouse. Thus, all of the critiques of the lease notices and stipulations applied to parcels occupied by greater sage-grouse, applies to the lease stipulations listed above.

Generally speaking, BLM's lease notices and stipulations may begin to minimize direct impacts, but are utterly incapable of preventing significant cumulative impacts to all of the special status species at issue here. In the case of nearly all of the rare and imperiled species at issue here, BLM proposes measures aimed at preventing direct impacts, but fails to address the impacts of habitat loss and fragmentation due to oil and gas development and other activities across the range of each species on BLM lands. None of BLM's lease stipulations and notices address the the indirect and cumulative impacts of oil and gas development on greater sage-grouse, Gunnison sage-grouse, Gunnison's Prairie-dog, white-tailed prairie dog, black-footed ferret, burrowing owl, kit fox, ferruginous hawk, grasshopper sparrow, long-billed curlew, Southwestern willow flycatcher, yellow-billed cuckoo, Northern goshawk, short-eared owl, Mexican spotted owl, bald eagle, clay reed-mustard, Uintah Basin hookless cactus, Horseshoe milkvetch, Despain pincushion cactus, shrubby reed mustard, Winkler's pincushion cactus, Wright fishhook cactus, bluehead sucker, roundtail chub, flannelmouth sucker, Southern leatherside chub, Uintah Basin hookless cactus, the four endangered Colorado River fish species, least chub, Colorado River cutthroat trout, spotted bat, Townsend's big-eared bat, big free-tailed bat, Western toad, smooth greensnake, silky pocket mouse, bifid duct pyrg, and other special status species.

Due to concern that increasing oil and gas development in the Vernal Field Office may result in contamination of critical habitat for the four endangered Colorado Fish Species, FWS suggested that BLM require contaminant monitoring at major drainage intersections upstream from and within critical habitat for these species, as part of the lease stipulation for oil and gas lease parcels proposed for sale upstream of critical habitat. BLM has failed to require the contaminant monitoring requested by FWS.

Despite evidence that suggests mitigation measures may not mitigate impacts to insignificance, BLM provides little or no rationale for its assertion that assorted lease stipulations, notices and COAs will mitigate impacts to insignificance. The record is devoid of support for BLM's assertion that the lease stipulations and notices applied to the protested parcels, will mitigate impacts to special status species to insignificance.

### **BLM Must Demonstrate That Mitigation Measures Will Actually Be Implemented**

NEPA requires that the "possibility of mitigation" should not be relied upon as a means to avoid further environmental analysis. *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*; see *Davis v. Mineta*, 302 F.3d 1104, 1125 (10th Cir. 2002). The Tenth Circuit found that the "Forty Questions" are "persuasive authority offering interpretive guidance" on NEPA. *Id.*

Many of the lease notices and stipulations applied to protect special status species at issue here (greater sage-grouse, Uinta Basin hookless cactus, black-footed ferret, white-tailed prairie dog, kit fox, burrowing owl, yellow-billed cuckoo, ferruginous hawk, bald eagle, roundtail chub, bluehead sucker, razorback sucker, flannelmouth sucker, Colorado pikeminnow, Maguire daisy, Last Chance Townsendia, Winkler's pincushion cactus, Despain pincushion cactus (San Rafael cactus), Wright fishhook cactus, and other special status species) contain language that allows them to be waived, but the conditions under which they may be waived are not clearly spelled out in the lease stipulations, leaving the public with little certainty regarding whether and under what circumstances the mitigation measures will actually be implemented. For example, the mitigation measures for greater sage-grouse can be waived if "...the lessee/operator demonstrates that adverse impacts can be mitigated." This language is so general that it may allow notices and stipulations to be waived under a wide range of circumstances, making it unclear when exactly the mitigation measures will be required, and under what specific circumstances they might be waived. In addition, a number of the protested parcels do not contain any stipulations to protect one or more of the aforementioned special status species that occur on the parcel.

### **BLM Must Appropriately Address Expert Comments**

Federal regulations require that agencies "make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action." 40 C.F.R. § 1502.9(a) (2009). The agency is required consider opposing views prior to approving any proposed action, in this case the lease sale. See *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350n.13(1989) (EIS should reflect critical views of other to whom copies of the draft were provided and responses to opposing views); see also *Seattle Audubon Society v. Lyons*, 871 F. Supp. 1291, 1318 (W.D. Wash. 1994) ("[An EIS] must also disclose responsible scientific opinions in opposition to the proposed action, and make a good faith, reasoned response to it."). In the final environmental impact statement, BLM must assess and consider comments, respond to each comment by one or more of the provided means, and state its responses. 40 C.F.R. § 1503.4 (2009).

The BLM has not appropriately dealt with expert comments on the potential impacts of the proposed leasing and the inadequacy of mitigation measures proposed to protect greater sage-grouse, Uinta Basin hookless cactus, black-footed ferret, white-tailed prairie dog, kit fox, burrowing owl, yellow-billed cuckoo, ferruginous hawk, bald eagle, roundtail chub, bluehead sucker, razorback sucker, flannelmouth sucker, Colorado

pikeminnow, Maguire daisy, Last Chance Townsendia, Winkler's pincushion cactus, Despain pincushion cactus (San Rafael cactus), Wright fishhook cactus, and other special status species. We have provided BLM with information on the inadequacy of mitigation measures proposed for the species at issue here on numerous instances in the past, including information developed by experts on these species. BLM's failure to disclose and thoroughly respond to differing scientific views violates NEPA.

### **NEPA Analysis of Effectiveness of Mitigation Measures Must Have Scientific Integrity**

The BLM must evaluate the effectiveness of the mitigation measures used in oil and gas 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[.]'" *Envil. 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).

The BLM is ignoring the best available science on the impacts of oil and gas development on special status species, and the adequacy of proposed mitigation measures with respect to greater sage-grouse, Uinta Basin hookless cactus, black-footed ferret, white-tailed prairie dog, kit fox, burrowing owl, yellow-billed cuckoo, ferruginous hawk, bald eagle, roundtail chub, bluehead sucker, razorback sucker, flannelmouth sucker, Colorado pikeminnow, Maguire daisy, Last Chance Townsendia, Winkler's pincushion cactus, Despain pincushion cactus (San Rafael cactus), Wright fishhook cactus, and other special status species.

## **B. Federal Land Policy and Management Act**

### **1. BLM Must Prevent Unnecessary and Undue Degradation**

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 court in *Mineral Policy Center 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 Center 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.

Leasing the protested parcels will result in unnecessary and undue degradation to the following special status species and their habitats: greater sage-grouse, Uinta Basin hookless cactus, black-footed ferret, white-tailed prairie dog, kit fox, burrowing owl, yellow-billed cuckoo, ferruginous hawk, bald eagle, roundtail chub, bluehead sucker, razorback sucker, flannelmouth sucker, Colorado pikeminnow, Maguire daisy, Last Chance Townsendia, Winkler’s pincushion cactus, Despain pincushion cactus (San Rafael cactus), Wright fishhook cactus, and other special status species.

## **2. BLM Must Mitigate Adverse Effects**

The BLM must minimize the adverse effects on greater sage-grouse, Uinta Basin hookless cactus, black-footed ferret, white-tailed prairie dog, kit fox, burrowing owl, yellow-billed cuckoo, ferruginous hawk, bald eagle, roundtail chub, bluehead sucker, razorback sucker, flannelmouth sucker, Colorado pikeminnow, Maguire daisy, Last Chance Townsendia, Winkler’s pincushion cactus, Despain pincushion cactus (San Rafael cactus), Wright fishhook cactus, and other special status species that occur in the protested parcels, in order to comply with the “unnecessary and undue degradation” standard of FLPMA. “[T]he using department shall . . . minimize adverse impacts on the natural, environmental, scientific, cultural, and other resources and values (including fish and wildlife habitat) of the public lands involved. 43 U.S.C. §1732(d)(2)(a). “If there are significant environmental effects that cannot be mitigated, an EIS must be prepared even if there is no unnecessary or undue degradation of the public lands.” *Kendall’s Concerned Area Residents*, 129 IBLA 130, 138 (1994); 42 U.S.C. § 4332(2)(C) (1988). “If there is unnecessary or undue degradation, it must be mitigated.” *Kendall’s Concerned Area Residents*, at 138; see 43 CFR 3809.2-1(b). “If unnecessary or undue degradation cannot be prevented by mitigating measures, BLM is required to deny approval of the plan.” *Kendall’s Concerned Area Residents*, at 138; see 43 CFR § 3809.0-3(b); *Department of the Navy*, 108 IBLA 334, 336 (1989); see 43 U.S.C. § 1732(b) (1988); 43 CFR § 3809.0-5(k).

The BLM has failed to do so.

In the case of the greater sage-grouse, the BLM has further committed to the principles of the Western Association of Fish and Wildlife Agencies’ Greater Sage-Grouse Conservation Assessment. These principles include a commitment not to contribute to the species’ decline.

## **3. BLM Has Failed to Protect Sensitive Species as Required**

We are aware that BLM recently completed a revision of Section 6840 of the BLM manual. This revision was illegal, and will likely be overturned by Congress and/or the Obama administration. Thus, BLM should implement the previous version of section 6840 of the BLM manual. The following paragraphs summarize BLM's requirements under the previous version of Section 6840 of the BLM manual.

Instruction Memorandum 97-118, issued by the national BLM office, governs BLM Special Status Species management and requires that actions authorized, funded, or carried out by BLM do not contribute to the need for any species to become listed as a candidate, or for any candidate species to become listed as threatened or endangered. It recognizes that early identification of BLM sensitive species is advised in efforts to prevent species endangerment, and encourages state directors to collect information on species of concern to determine if BLM sensitive species designation and special management are needed.

If Sensitive Species are designated by a State Director, the protection provided by the policy for candidate species shall be used as the minimum level of protection. BLM Manual 6840.06. The policy for candidate species states that the "BLM shall carry out management, consistent with the principles of multiple use, for the conservation of candidate species and their habitats and shall ensure that actions authorized, funded, or carried out do not contribute to the need to list any of these species as threatened/endangered." BLM Manual 6840.06. Specifically, BLM shall:

- (1) Determine the distribution, abundance, reasons for the current status, and habitat needs for candidate species occurring on lands administered by BLM, and evaluate the significance of lands administered by BLM or actions in maintaining those species.
- (2) For those species where lands administered by BLM or actions have a significant affect on their status, manage the habitat to conserve the species by:
  - a. Including candidate species as priority species in land use plans.
  - b. Developing and implementing rangewide and/or site-specific management plans for candidate species that include specific habitat and population management objectives designed for recovery, as well as the management strategies necessary to meet those objectives.
  - c. Ensuring that BLM activities affecting the habitat of candidate species are carried out in a manner that is consistent with the objectives for those species.
  - d. Monitoring populations and habitats of candidate species to determine whether management objectives are being met.
- (3) Request any technical assistance from FWS/NMFS, and any other qualified source, on any planned action that may contribute to the need to list a candidate species as threatened/endangered.

BLM Manual 6840.06. Despite this clear guidance, there is little evidence that BLM is fulfilling these obligations. Specifically, BLM failed to: 1) conduct surveys and/or inventories necessary to determine the distribution and abundance of Sensitive Species; 2) failed to assess the reasons for the current status of Sensitive Species; 3) failed to evaluate the potential impacts of leasing and subsequent oil and gas activities on Sensitive Species; 4) develop conservation strategies for Sensitive Species and ensure that the activities in question are consistent with those strategies; 5) monitor populations and habitats of Sensitive Species; and 6) request appropriate technical assistance from all other qualified sources; for any of the sensitive species at issue here. This failure has compromised BLM's NEPA analyses of the likely impacts of oil and gas development authorized by the leasing of the protested parcels, on greater sage-grouse, Uinta Basin hookless cactus, black-footed ferret, white-tailed prairie dog, kit fox, burrowing owl, yellow-billed cuckoo, ferruginous hawk, bald eagle, roundtail chub, bluehead sucker, razorback sucker, flannelmouth sucker, Colorado pikeminnow, Maguire daisy, Last Chance Townsendia, Winkler's pincushion cactus, Despain pincushion cactus (San Rafael cactus), Wright fishhook cactus, and other special status species.

**a. BLM failed to adequately consider sensitive species in its NEPA documents to which the leasing is tiered**

BLM Manual § 1622.1 refers to "Fish and Wildlife Habitat Management" and contains specific language requiring the BLM in the RMP process to, among other things:

- 1) Identify priority species and habitats . . .
- 2) [E]stablish objectives for habitat maintenance, improvement, and expansion for priority species and habitats. Express objectives in measurable terms that can be evaluated through monitoring.
- 3) Identify priority areas for HMPs [Habitat Management Plans] . . .
- 4) Establish priority habitat monitoring objectives . . .
- 5) Determine affirmative conservation measures to improve habitat conditions and resolve conflicts for listed, proposed, and candidate species.

BLM Manual § 1622.11(A)(1) – (A)(3). The RMPs and other NEPA documents to which this leasing is tiered do not meet these obligations, and BLM did not take appropriate steps to remedy these failings before initiating this lease sale.

As a result, oil and gas development authorized by the leasing of the protested parcels will contribute to the need to list the greater sage-grouse, white-tailed prairie dog, kit fox, burrowing owl, yellow-billed cuckoo, ferruginous hawk, bald eagle, roundtail chub, bluehead sucker, razorback sucker, flannelmouth sucker, Colorado pikeminnow, Maguire daisy, Last Chance Townsendia, Winkler's pincushion cactus, Despain pincushion cactus (San Rafael cactus), Wright fishhook cactus, and other special status species.

**4. BLM has failed to adequately consider ACEC nominations**

This protest includes areas that have been nominated as Areas of Critical Environmental Concern ("ACEC"). CNE nominated several areas that may be included in this lease sale as ACECs to protect white-tailed prairie dog habitat. Protested parcels that contain white-tailed prairie dog habitat may be within areas that CNE nominated as ACECs. These areas were nominated as ACECs because of their relevance and importance as key habitat for white-tailed prairie dog, black-footed ferret and other species associated with white-tailed prairie-dogs, and because of their value as recovery habitat for this species. We hereby incorporate by reference CNE's white-tailed prairie dog ACEC nominations and all the references they contain. FLPMA and the BLM Manual are clear that Field Managers are required to determine whether nominated areas meet the relevance and significance criteria for ACEC designation and then decide whether interim management is necessary. The BLM did not respond to all of our ACEC nominations, and has not considered the impacts of oil and gas leasing and development on the resources for which these ACECs would be designated. We incorporate all of our comments on and protests of the relevant Resource Management Plans by reference. By not protecting this habitat, the BLM is contributing to the need to list the white-tailed prairie dog, black-footed ferret and other species associated with white-tailed prairie dogs, and is in violation of the BLM Manual.

NEPA regulations require that, while BLM is in the process of an EIS, such as during revision or amendment of a RMP, the agency must not take any action concerning a proposal that would "[l]imit the choice of reasonable alternatives." 40 C.F.R. § 1506.1. *See also* 40 C.F.R. § 1502.2(f) (while preparing environmental impact statements, federal agencies "shall not commit resources prejudicing selection of alternatives before making a final decision"). BLM has historically interpreted this NEPA regulation to require that proposed actions that could prejudice selection of any alternatives under consideration "should be postponed or denied" in order to comply with 40 C.F.R. § 1506.1, and the Land Use Planning Handbook previously contained this direction. Another section of this same regulation directs that while BLM is preparing a required EIS "and the [proposed] action is not covered by an existing program statement," then BLM must not take any actions that may "prejudice the ultimate decision on the program." 40 C.F.R. § 1506.1(c). The regulation continues that "[i]nterim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives." *Id.* (emphasis added).

Granting valid and existing rights in these parcels before ACEC designation is fully considered and management prescriptions are developed could both adversely impact the environment and limit the choice of reasonable alternatives for the management of these areas. These parcels should be withdrawn until the nominated ACECs are evaluated and management prescriptions are developed. ACECs may be nominated even when plan revision is not in progress, and a preliminary evaluation should take place after receiving such a nomination. The District Manager may determine that either a plan amendment or temporary management is required.

If an area is identified for consideration as an ACEC and a planning effort is not underway or imminent, the District Manager or Area Manager must make a preliminary evaluation on a timely basis to determine if the relevance and importance criteria are met. If so, the District Manager must initiate either a plan amendment to further evaluate the potential ACEC or provide temporary management until an evaluation is completed through resource management planning. Temporary management includes those reasonable measures necessary to protect human life and safety or significant resource values from degradation until the area is fully evaluated through the resource management planning process. BLM Manual 1613.21.E (emphasis added).

The public has an opportunity to submit nominations or recommendations for areas to be considered for ACEC designation. Such recommendations are actively solicited at the beginning of a planning effort. However, nominations may be made at any time and must receive a preliminary evaluation to determine if they meet the relevance and importance criteria, and, therefore, warrant further consideration in the planning process....BLM Manual 1613.41 (emphasis added).

The presence of oil and gas leases should have no bearing on whether an area meets the criteria for ACEC designation, but may prejudice the development of ACEC management prescriptions. BLM Manual 1613.22.A states:

Identify Factors Which Influence Management Prescriptions.... These factors are important to the development of management prescriptions for potential ACEC's. Factors to consider include, but are not limited to, the following:....

8. Relationship to existing rights. What is the status of existing mining claims or pre-FLPMA leases? How will existing rights affect management of the resource or hazard?

CNE strongly believes that temporary management is required to preserve the values of these areas as potential ACECs. Instead of approving leasing of key wildlife habitat -- and opening the floodgates for a wave of new APDs on these sensitive lands, the BLM should focus on evaluating our ACEC nominations in a timely fashion and managing exploration and development under *existing* leases.

It simply makes no sense for the BLM to waste its opportunity to designate ACECs that could help conserve white-tailed prairie dogs, black-footed ferrets and other special status species. Not only is this poor judgment, it is also a violation of NEPA, FLPMA, and the BLM Manual.

BLM presently has the opportunity to plan for rational, environmentally sound development of energy resources in the nominated ACECs while protecting other uses of these lands—as required by law. Allowing leasing prior to ACEC evaluation and RMP

revision will sacrifice this opportunity – without taking a hard look at the consequences. BLM and the public will have lost the chance to prevent the haphazard, poorly planned development that has characterized other federal lands in the Rockies. As an irretrievable commitment of resources, leasing will severely limit the range of management prescriptions.

Our protest of the Vernal Resource Management Plan was upheld on the grounds that BLM violated FLPMA and the BLM manual by failing to consider our ACEC nominations. BLM has stated that it will address our ACEC nominations in the next RMP revision process. However, in the meantime, BLM must not issue leases within these nominated ACECs, as this will limit the range of alternatives that can be considered for these areas in the next RMP revision.

### C. Endangered Species Act

#### 1. Consultation

Before the BLM makes any “irreversible or irretrievable commitment of resources” that may have an impact on a listed species, ESA § 7 requires it to comply with consultation requirements. BLM is required to prepare a biological assessment (BA) to determine whether the listed species is “likely to be affected” by the proposed action. 16 U.S.C. § 1536(c)(1); 50 C.F.R. § 402.12. If the species will be affected, then BLM must engage in formal consultation with FWS to determine whether the activity “is likely to jeopardize the continued existence of” the species or “result in the destruction or adverse modification of” its critical habitat. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14; *see also* 50 C.F.R. § 402.02 (defining “jeopardy” as lessening the likelihood of survival and recovery of a species). At the conclusion of consultation, the FWS must prepare a “biological opinion” (BO) to evaluate the potential effects of the proposed action on the species or its critical habitat. If the Service concludes that the action will have a negative effect, it must suggest “reasonably and prudent alternatives” (RPAs) that will not cause jeopardy. Otherwise, the Service issues a “no jeopardy” opinion. 16 U.S.C. § 1535(b)(4). The Tenth Circuit stated that “despite its name, consultation is more than a mere procedural requirement, as it allows FWS to impose substantive constraints on the other agency's action if necessary to limit the impact upon an endangered species.” *N.M. ex rel. Richardson v. BLM*, 565 F.3d 683 (10th Cir. 2009).

The consultation process is triggered by the action of leasing because it is likely to have an affect on the bald eagle, black-footed ferret, and Uinta Basin hookless cactus. *See Conner v. Burford*, 848 F.2d 1441, 1452 (1988). In *Connor*, the BLM could not issue oil and gas leases until the FWS analyzed consequences of all stages of the leasing plan in the Biological Opinion (“BiOp”). *Id.* at 1455. ESA’s consultation requirement is not met by “incremental steps” and by mere notification of the potential presence of endangered species. *Id.* at 1452-58. Contrary to the BLM position that relies upon *Wyo. Outdoor Council v. Bosworth*, the Tenth Circuit stated that the critical stage for environmental analysis is the leasing stage, not the APD stage. *Pennaco Energy v. U.S. Dep’t of the Interior*, 377 F.3d 1160 (10th Cir. 2004).

Under the ESA, the BLM must consult with FWS before offering parcels for lease because several species listed under the Act, including but not limited to the bald eagle, black-footed ferret, and Uinta Basin hookless cactus may be jeopardized by oil and gas development authorized through leasing of the protested parcels.

The FWS issued Biological Opinions for the recently released Resource Management Plans to which the leasing of the majority of the protested parcels is tiered. These BO's conclude that oil and gas development authorized under the Resource Management Plans will not jeopardize species listed under the Endangered Species Act. However, this conclusion is arbitrary and capricious. The BOs do not provide an adequate analysis of the indirect and cumulative impacts of oil and gas leasing on the survival and recovery of listed species, including black-footed ferret, Southwestern willow flycatcher, yellow-billed cuckoo, Mexican spotted owl, clay reed-mustard, Uintah Basin hookless cactus, Winkler's pincushion cactus, Wright fishhook cactus, Despain pincushion cactus, shrubby reed-mustard, and the four endangered Colorado River fish species. Such an analysis must include the cumulative impacts of oil and gas development that occurs not only on parcels occupied by listed species, but also on adjacent parcels. In addition, the BOs do not include an adequate analysis of the likely effectiveness of mitigation measures applied through lease stipulations and lease notices, at mitigating impacts such jeopardy to the survival or recovery of these species is avoided. In addition, the BO's largely rely on lease stipulations and notices that were developed as part of earlier consultation processes done at a time when the reasonable foreseeable oil and gas development in the region was expected to be much lower, and there was less information suggesting that oil and gas development might jeopardize listed species. The BO's did not adequately update the lease notices and stipulations in response to new circumstances and new information.

Finally, in addition to the programmatic consultation provided by the BOs, the BLM and FWS must conduct site-specific consultation at the leasing stage that considers not only direct impacts to species on lease parcels, but also indirect and cumulative impacts to listed species and their habitat both on lease parcels and on adjacent lands. The BLM and FWS must consider not only impacts to survival of the species, but also impacts to recovery. The BLM and FWS have failed to meet these requirements under the ESA with respect to black-footed ferret, Southwestern willow flycatcher, yellow-billed cuckoo, Mexican spotted owl, clay reed-mustard, Uintah Basin hookless cactus, Winkler's pincushion cactus, Wright fishhook cactus, Despain pincushion cactus, shrubby reed-mustard, and the four endangered Colorado River fish species.

## 2. 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).

#### **D. BLM Manual 6840 is Inconsistent with the ESA and with its Own Objective**

The 2008 revisions to BLM manual 6840 on special status species are inconsistent with the mandate of the Endangered Species Act. The ESA states that agencies *shall* (1) utilize their authorities in furtherance of the Act; (2) carry out programs for the conservation of listed species; and (3) insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of, or result in the destruction or adverse modification of habitat of any listed species. ESA §§ 2(c)(1), § 7(a)(1)-(2). The nondiscretionary nature of these duties is evidenced by the use of the word "shall" in all three cases. As a result of the 2008 revisions, the manual purports to give the BLM discretion in performing duties where it does not exist under the ESA. For example, the manual allows the BLM to dispose of lands providing habitat for listed species, including critical habitat under certain circumstances. Disposal of critical habitat could result in a violation of ESA § 7(a)(2), which requires agencies to insure that actions will not result in destruction or adverse modification of critical habitat of listed species.

In addition, portions of the revised manual are inconsistent with the stated objective of the special status species policy. The weakening of protections for various categories of species could result in an increased likelihood that such species will need to be listed in the future. This is in direct conflict with one of the stated policy objectives which is 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." BLM Manual 6840.02(B). For example, the 2008 revisions remove state-listed species from coverage under the policy. Instead, the manual directs State Directors to apply narrow criteria in designating sensitive species. This change could result in a number of state-listed species being removed from coverage under the policy and increasing the likelihood of future listing. Such a result would be contrary to the policy objective of the special status species policy.

#### **D. BLM Has the 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).

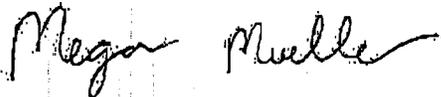
Submitting a leasing application vests no rights to the applicant or potential bidders. The BLM retains the authority not to lease. "The filing of an application which has been accepted does not give any right to lease, or generate a legal interest which reduces or restricts the discretion vested in 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 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.

#### IV. CONCLUSION & REQUEST FOR RELIEF

CNE therefore requests that the BLM withdraw the protested parcels from the November Sale.

Sincerely,



Megan Mueller  
Staff Biologist  
Center for Native Ecosystems

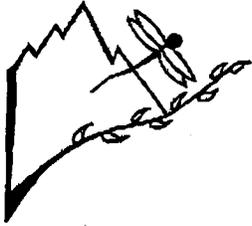
**EXHIBIT 1- CNE PROTEST**

Protested Parcel: Sale ID	Sale ID (from BLM GIS Data )	Parcel ID (from BLM GIS Data)	Field Office	Rare and Imperiled Species and/or Areas of High Conservation Value in Protested Parcel
UT1109-001	001	4944	Price Field Office	Maguire Daisy
	001	4944	Price Field Office	Last Chance Townsendia
	001	4944	Price Field Office	Winkler's Pincushion Cactus
	001	4944	Price Field Office	Despain Pincushion Cactus
	001	4944	Price Field Office	Wright Fishhook Cactus
	001	4944	Price Field Office	Ferruginous Hawk
UT1109-002	002	4945	Price Field Office	Last Chance Townsendia
	002	4945	Price Field Office	Wright Fishhook Cactus
	002	4945	Price Field Office	Maguire Daisy
	002	4945	Price Field Office	Winkler's Pincushion Cactus
	002	4945	Price Field Office	Ferruginous Hawk
	002	4945	Price Field Office	Despain Pincushion Cactus
UT1109-003	003	4946	Price Field Office	Last Chance Townsendia
	003	4946	Price Field Office	Wright Fishhook Cactus
	003	4946	Price Field Office	Maguire Daisy
UT1109-004	004	####	Price Field Office	Bald Eagle
	004	####	Price Field Office	Ferruginous Hawk
	004	####	Price Field Office	Roundtail Chub
	004	####	Price Field Office	Bluehead Sucker
	004	####	Price Field Office	White-tailed Prairie-dog
	004	####	Price Field Office	Yellow-billed Cuckoo
UT1109-005	005	0	Price Field Office	Kit Fox
	005	0	Price Field Office	Ferruginous Hawk
	005	0	Price Field Office	Roundtail Chub
	005	0	Price Field Office	Black-footed Ferret
	005	0	Price Field Office	Despain Pincushion Cactus
	005	0	Price Field Office	White-tailed Prairie-dog
	005	0	Price Field Office	Burrowing Owl
	005	0	Price Field Office	Bald Eagle
	005	0	Price Field Office	Flannelmouth Sucker
	005	0	Price Field Office	Bluehead Sucker
	UT1109-006	006	0	Price Field Office
006		0	Price Field Office	Flannelmouth Sucker
006		0	Price Field Office	Bluehead Sucker
006		0	Price Field Office	Black-footed Ferret
006		0	Price Field Office	Despain Pincushion Cactus
006		0	Price Field Office	Kit Fox
006		0	Price Field Office	Ferruginous Hawk

	006	0 Price Field Office	White-tailed Prairie-dog
	006	0 Price Field Office	Burrowing Owl
	006	0 Price Field Office	Bald Eagle
UT1109-007	007	0 Price Field Office	Roundtail Chub
	007	0 Price Field Office	Flannelmouth Sucker
	007	0 Price Field Office	Bluehead Sucker
	007	0 Price Field Office	Despain Pincushion Cactus
UT1109-008	008	0 Price Field Office	Roundtail Chub
	008	0 Price Field Office	Flannelmouth Sucker
	008	0 Price Field Office	Bluehead Sucker
	008	0 Price Field Office	Black-footed Ferret
	008	0 Price Field Office	Despain Pincushion Cactus
UT1109-009	009	0 Price Field Office	Roundtail Chub
	009	0 Price Field Office	Flannelmouth Sucker
	009	0 Price Field Office	Bluehead Sucker
	009	0 Price Field Office	Black-footed Ferret
UT1109-010	010	0 Price Field Office	Roundtail Chub
	010	0 Price Field Office	Flannelmouth Sucker
	010	0 Price Field Office	Bluehead Sucker
	010	0 Price Field Office	Black-footed Ferret
UT1109-011	011	0 Price Field Office	Roundtail Chub
	011	0 Price Field Office	Flannelmouth Sucker
	011	0 Price Field Office	Bluehead Sucker
	011	0 Price Field Office	Black-footed Ferret
	011	0 Price Field Office	Despain Pincushion Cactus
UT1109-012	012	0 Price Field Office	Roundtail Chub
	012	0 Price Field Office	Flannelmouth Sucker
	012	0 Price Field Office	Bluehead Sucker
	012	0 Price Field Office	Black-footed Ferret
UT1109-013	013	0 Price Field Office	Roundtail Chub
	013	0 Price Field Office	Flannelmouth Sucker
	013	0 Price Field Office	Bluehead Sucker
	013	0 Price Field Office	Black-footed Ferret
UT1109-014	014	4948 Price Field Office	Maguire Daisy
	014	4948 Price Field Office	Last Chance Townsendia
UT1109-016	016	0 Price Field Office	Upper San Rafael Canyon -- ACEC
	016	0 Price Field Office	Roundtail Chub
	016	0 Price Field Office	Flannelmouth Sucker
	016	0 Price Field Office	Bluehead Sucker
	016	0 Price Field Office	Despain Pincushion Cactus
UT1109-024	024	0 Price Field Office	Ferruginous Hawk
	024	0 Price Field Office	White-tailed Prairie-dog
	024	0 Price Field Office	Roundtail Chub
	024	0 Price Field Office	Bluehead Sucker
	024	0 Price Field Office	Despain Pincushion Cactus
UT1109-025	025	25 Vernal Field Office	Greater Sage-grouse Crucial Brooding Use Areas
	025	25 Vernal Field Office	Ferruginous Hawk
UT1109-027	027	4966 Vernal Field Office	Greater Sage-grouse Crucial Brooding Use Areas
	027	4966 Vernal Field Office	Bluehead Sucker

UT1109-029

027	4966 Vernal Field Office	Razorback Sucker
027	4966 Vernal Field Office	Roundtail Chub
027	4966 Vernal Field Office	Uinta Basin Hookless Cactus
027	4966 Vernal Field Office	Colorado Pikeminnow
029	5003 Moab Field Office	Prairie Dog Habitat
029	5003 Moab Field Office	Prairie Dog Habitat
029	5003 Moab Field Office	Kit Fox
029	5003 Moab Field Office	Ferruginous Hawk
029	5003 Moab Field Office	White-tailed Prairie-dog
029	5003 Moab Field Office	Burrowing Owl



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