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Bureau of Land Management
Rawlins Field Office
Lost Creek Uranium ISR Project
Attn: Dennis J. Carpenter
1300 North Third Street
P.O. Box 2407
Rawlins, WY 82301

September 17, 2012

Re: Lost Creek In Situ Recovery Project Final Environmental Impact Statement

Dear Mr. Carpenter:

Please accept the following comments from the Wyoming Outdoor Council on the Final Environmental Impact Statement (FEIS) for the Lost Creek In Situ Recovery Project (hereafter Lost Creek project). The Wyoming Outdoor Council has been working to protect Wyoming's air, water, wildlife, and quality of life for future generations since 1967. We are disappointed that BLM proposed virtually no changes to the Lost Creek project based on the comments that we and others submitted on the Draft Environmental Impact Statement (DEIS). Since the majority of the FEIS is identical to the DEIS, the concerns that we expressed in our June 11, 2012 comments still stand and we incorporate those comments into the record again by this reference.

We are particularly concerned by the Lost Creek project's potential impact on Greater Sage-Grouse and Wyoming pocket gopher. Neither species is accorded sufficient protections to ensure that it will not need the additional support that would be provided by a federal listing under the Endangered Species Act. The BLM is currently engaged in a national planning process to incorporate sage-grouse conservation measures into resource management plans in ten Western states. In addition, the Sage-Grouse National Technical Team (NTT), comprised principally of BLM's own sage-grouse experts, has outlined important measures for protecting sage-grouse in

the face of energy development.[1] We therefore find it both surprising and concerning that the Rawlins BLM has ignored the recommendations of the NTT and its own conservation standards and has proceeded with a project – in designated sage-grouse core area habitat – that research has shown will be detrimental to sage-grouse. BLM appears to have done so based on the rationale that Wyoming's Game and Fish Department and Department of Environmental Quality can envision *worse* scenarios than the one that is currently being proposed.[2] The claim that building a new access road through sage-grouse habitat would be worse for the area's sage-grouse than upgrading a two-track and dirt road within 0.8 miles of *five* occupied (three active) sage-grouse leks and within several miles of numerous additional active leks does not justify permitting a project that violates the sage-grouse conservation measures outlined in the Governor's Executive Order (EO-2011-5), the stipulations outlined in BLM's own internal memorandum (BLM IM WY-2010-12), and the recommendations of BLM's own sage-grouse experts.[3] If changes cannot be made so that potential impacts to sage-grouse are reduced, the Lost Creek project should not be allowed to proceed.

In its response to our previous comments expressing concern that this project, as proposed, violates stipulations outlined in EO-2005-11, BLM stated that "Revising the contents of the Sage Grouse Executive Order and associated policies are outside the scope of this FEIS." FEIS, Appendix F at F-30. We are not asking the BLM to revise the contents of EO-2011-5 and are aware that it has no jurisdiction to do so. Rather, we are asking the BLM to ensure that the Lost Creek project *complies* with the stipulations outlined in the EO, since the BLM adopted Wyoming's state strategy (as outlined in EO-2005-11) through the issuance of BLM IM WY-2012-019. In our view compliance means adhering to the stipulations outlined in EO-2011-5, including the following:

- New development or land uses within Core Population Areas should be authorized or conducted *only when it can be demonstrated that the activity will not cause declines in Greater Sage-Grouse populations.*

- Surface Occupancy: *Within 0.6 miles of the perimeter of occupied sage-grouse leks there will be no surface occupancy* (NSO). NSO, as used in these recommendations, means no surface facilities *including roads* shall be placed within the NSO area.

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[1] Sage-grouse National Technical Team. 2011. A Report on National Greater Sage-Grouse Conservation Measures. Produced for the Bureau of Land Management. 74 pp.

[2] From FEIS at 4.9-32: "In the cases of the conflicting aspects (no surface disturbance within 0.6 miles of occupied leks and no main roads used to transport production and/or waste products located within 1.9 miles of an occupied Greater sage-grouse lek), consideration on the part of the WGFD supported exemption from these stipulations in the specific case of the Project, as the current road layout is anticipated to create less disturbance than if new roads meeting these stipulations were required."

[3] For example the NTT recommends not allowing new surface occupancy on federal leases within priority habitats, including winter concentration areas (which to our knowledge BLM has not mapped for the Lost Creek Area) during any time of the year. As an exception to this recommendation, the NTT suggests that if the lease is entirely within priority habitats, the BLM should *apply a 4-mile NSO around the lek*, and limit permitted disturbances to 1 per section with no more than 3% surface disturbance in that section. (Italics added).

- *Locate main roads used to transport production and/or waste products >1 .9 miles from the perimeter of occupied sage-grouse leks*. Locate other roads used to provide facility site access and maintenance > 0.6 miles from the perimeter of occupied sage-grouse leks.

- Any exceptions to these general or specific stipulations will be considered on a case by case basis and *must show that the exception will not cause declines in sage grouse populations*. (Italics added).

The Wyoming Game and Fish Department (WGFD) has determined that the Lost Creek project is in compliance with EO-2011-5 by capitalizing on the "exceptions" clause listed above since otherwise the project clearly violates stipulations related to no surface occupancy and main haul road locations. However, the WGFD has *not* shown that these exceptions will not cause declines in sage-grouse populations and it therefore falls to BLM, as the agency tasked with permitting the project on public land, to do so or risk violating both its management mandates and Wyoming's EO 2011-5.

BLM Should Conduct a Comprehensive Analysis on the Impact of Roads on Greater Sage-Grouse

The BLM should rely on its own analysis of the most current scientific research in determining whether this project should proceed as proposed and follow the recommendations of its NTT, rather than relying exclusively and unquestioningly on the WGFD's stated approval of the project. The WGFD conducted a "viewshed analysis" and determined that the access roads will mainly be out of view of lekking sage-grouse so should not pose a problem to the area's grouse. FEIS at 4.9-29. To our knowledge, there is no scientific research to support the conclusion that roads that cannot be *seen* by lekking sage-grouse do not have an adverse impact on sage-grouse. The BLM intimates that the WGFD has anecdotal evidence supporting this claim. If so, this information should be provided in detail to the public to support the WGFD and BLM's arguments that the Lost Creek roads will not adversely impact sage-grouse.

The WGFD's conclusion that the proposed Lost Creek access roads will not be visible to lekking sage-grouse and therefore will not adversely affect project area sage-grouse fails to acknowledge the abundant scientific research that has documented sage-grouse declines as a result of access roads related to energy development,[4] much of which we detailed in our previous comments. It fails to acknowledge recent findings by Blickley and others (2012) that suggest that it is the

[4] For example: Holloran, M. J. 2005. Greater sage-grouse (*Centrocercus urophasianus*) population response to natural gas field development in western Wyoming. Ph. D. Dissertation. University of Wyoming, Laramie, Wyoming. Lyon, A. G. and S. H. Anderson. 2003. Potential gas development impacts on sage grouse initiation and movement. Wildlife Society Bulletin 31:486-491. Braun, C. E. 1986. Changes in sage-grouse lek counts with advent of surface coal mining. Proceedings of Issues and Technology in the Management of Impacted Western Wildlife 2:227-231.

intermittent *noise* associated with traffic that is so disruptive to sage-grouse.[5] Furthermore, this conclusion fails to acknowledge other impacts associated with roads, such as vehicular collisions, habitat fragmentation, and fugitive dust. It also fails to acknowledge that roads and other anthropogenic changes to landscapes facilitate the incursion of ravens – a sage-grouse nest predator – into pristine sagebrush habitat.[6] Likewise, it fails to acknowledge that roads can serve as conduits for predators, particularly synanthropic predators that could prey on both sage-grouse and their nests. It also fails to recognize that both male and female sage-grouse walk and fly to leks and so are quite likely to "see" the roads even if they can't see them when on the leks. And finally, and perhaps most importantly, it fails to recognize that a significant proportion of female sage-grouse nest within four miles of the leks on which they breed,[7] so the proposed roads are likely to adversely impact nesting females and reduce their reproductive success. Lower reproductive success will lead to lower recruitment on the leks and therefore fewer males lekking, regardless of whether or not male grouse can see or are disturbed by the nearby roads while displaying.

In summarizing our concerns with the WGFD's reliance on its viewshed analysis to dismiss concerns of adverse impacts to sage-grouse from the proposed access roads, we stated in our comments on the DEIS that:

> "The WFGD has also erred in determining that based on a "topographical visual assessments of the West Access Road, the topography creates a barrier between the West Access Road and the nearby leks, reducing the impact this road could have on neighboring leks." DEIS at 2-94. The BLM should not support this disingenuous analysis that presumes that sage-grouse will not be adversely impacted by roads if they cannot see them."

Quite bafflingly, the BLM summarized our comment by claiming that we stated that "The WGFD does not believe that the topographical visual assessment is an appropriate method to determine the effect the Project roads could have on Greater sage-grouse." In response to this alleged statement by the Wyoming Outdoor Council, the BLM assured us that " The visual assessment was added to the DEIS at the request of WGFD." FEIS, Appendix F at F-39. We are

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[5] Blickley, J. L., D. Blackwood, and G. L. Patricelli. 2012. Experimental evidence for the effects of chronic anthropogenic noise on abundance of Greater Sage-Grouse at leks. Conservation Biology 26(3):461–471.

[6] Bui, T.-V. D., J. M. Marzluff, and B. Bedrosian. 2010. Common raven activity in relation to land use in western Wyoming: Implications for greater sage-grouse reproductive success. Condor 112:65-78. Coates, P. S., and D. J. Delehanty. 2010. Nest predation of greater sage-grouse in relation to microhabitat factors and predators. Journal of Wildlife Management 74:240-248.

[7] Moynahan, B. 2004. Landscape-scale factors affecting population dynamics of greater sage-grouse (*Centrocercus urophasianus*) in north-central Montana, 2001-2004. Ph. D. Dissertation. University of Montana. Missoula, MT. Holloran, M. J. and S. H. Anderson. 2005. Spatial distribution of greater sage-grouse nests in relatively contiguous sagebrush habitats. Condor 107:742-752. Sage-grouse National Technical Team. 2011. A Report on National Greater Sage-Grouse Conservation Measures. Produced for the Bureau of Land Management. 74 pp.

aware of that the viewshed analysis was initiated by the WGFD; it is the conclusions that they drew from this analysis that we dispute.

BLM further states that the WGFD claimed "that the vegetation and prevailing wind direction would help dissipate the sounds of traffic before they reached the edge of the lek. Therefore, it was concluded by the WGFD that the sage-grouse leks would not be exposed to noise levels above those specified in the EO." As far as we are aware, the WGFD has no data to support these claims. Moreover, Blickley and others showed that it was the intermittent nature of the traffic noise, not the volume of the traffic noise that was disruptive to sage-grouse. And, as we have underscored, the roads are most likely to adversely affect nesting female sage-grouse and the existence of a hill between the roads that fragment the nesting habitat associated with these nearby leks is unlikely to mitigate this impact. We suspect that the 50 SUVs and 2-5 tractor/trailers per day that are projected to travel along the access roads *will* be heard by sage-grouse – if not on nearby leks then certainly by sage-grouse that are dispersed in adjacent nesting habitat. And we remind the BLM that even light traffic of 1-12 vehicles per day has been shown to adversely affect sage-grouse by reducing female nest-initiation rates and increasing the distances that females move from leks when selecting their nest sites.[8]

The core area strategy outlines conservation measures based on a wealth of scientific research to better protect core area grouse. Core area stipulations were developed to counteract development and other pressures on sage-grouse in non-core areas. In addition, EO-2011-5 states that protective measures were to be re-evaluated on a yearly basis to accommodate new scientific research findings,[9] such as those outlined by Blickley and others.[10] By allowing Lost Creek ISR, LLC (hereafter LCI) to build main haul roads in close proximity to active sage-grouse leks and in sage-grouse nesting habitat, BLM is failing to adhere to recommendations laid out by the Governor's Sage-Grouse Implementation Team and endorsed by two Wyoming governors. Just because state agencies are willing to do so does not mean that the BLM should follow in their footsteps and risk undermining the main regulatory mechanism that stands between continued energy development in Wyoming and a listing of the sage-grouse under the ESA. Nor should BLM ignore the management directives laid out in its own policy guidance (IM 2012-43), which requires that the agency "seek[s] to maintain, enhance, or restore conditions for Greater Sage-Grouse and its habitat."

[8] Lyon, A. G. and S. H. Anderson. 2003. Potential gas development impacts on sage grouse initiation and movement. Wildlife Society Bulletin 31:486-491.
[9] EO-2011-5 at 4: "The protective stipulations outlined in this Executive Order should be reevaluated on a continuous basis and at a minimum annually, as new science, information and data emerge regarding Core Population Areas and the habitats and behaviors of the Greater Sage-Grouse."
[10] Blickley, J. L., D. Blackwood, and G. L. Patricelli. 2012. Experimental evidence for the effects of chronic anthropogenic noise on abundance of Greater Sage-Grouse at leks. Conservation Biology 26(3):461–471.

The BLM Should Reconsider the One-Access-Road Alternative

The BLM claims in the FEIS, as it did in the DEIS, that Sweetwater County requires two access roads for ingress and ingress as justification for why potential impacts to sage-grouse may not be reduced through the use of one instead of two access roads. Once again BLM cites LCI 2011a – Lost Creek ISR, LLC's closing arguments before the Environmental Quality Council – as the source for this information. This reference is hardly unbiased given that it is based entirely on a claim made by the proponent. If this county rule does indeed exist, BLM should either cite the county legislation that states this requirement or it should provide a letter from Sweetwater County Commissioners validating this claim.

Interestingly, in their comments on the DEIS, Sweetwater County Commissioners stated that:

> "Even though Lost Creek ISR, LLC (Lost Creek) has obtained the required Development Plan and Zone Changes from Sweetwater County, *they may have to amend these permits if they are required to move their plant site and other extraction facilities* ***to accommodate existing designated Sage Grouse Core Areas***. If amendments are required, Lost Creek should contact Eric Bingham, Land Use Director ... to discuss this process." (Italics and emphasis added). FEIS, Appendix F at F-8.

These statements show a willingness by the County Commissioners to remain flexible and work with the BLM to reduce the project's impact on sage-grouse. The County Commissioners appear to recognize the importance of adhering to the stipulations governing sage-grouse protection in EO 2011-5 in order to prevent a listing of sage-grouse that would have a significant effect on other energy projects in Sweetwater County. We believe that the Sweetwater County Commissioners' stated willingness to be flexible and accommodate necessary adjustments in the project's footprint in order for the project to remain in compliance with the EO should precipitate a meeting between the commissioners and the BLM to further discuss the one road option, which could reduce the project's proposed impact on sage-grouse. We urge the BLM to address this issue directly and we would appreciate hearing about the outcome of any such correspondence or meeting. If two roads are indeed required, the BLM should consider designating one road as emergency-use-only to minimize traffic impacts on the area's sage-grouse and construct it as a lower level (local or resource) road.

The BLM Should Conduct a Habitat Equivalency Analysis for the Lost Creek Project

Given the serious impact the Lost Creek project could have on local sage-grouse if the project proceeds as proposed and the unwillingness of permitting agencies to reduce potential impacts by redesigning the project footprint, we urge the BLM to conduct a Habitat Equivalency Analysis (HEA) so that proposed losses to habitat services and associated costs can be

adequately measured and suitable compensatory mitigation can be developed. The Lost Creek project is being proposed at a critical juncture for both the Greater Sage-Grouse, for which a final listing decision is expected by 2015, and for Wyoming, whose sage-grouse core area conservation strategy is being closely watched to monitor its effectiveness. It would behoove both the proponent and the BLM to conduct a quantitatively robust and scientifically defensible analysis of both project impacts and proposed mitigation.

BLM claims that "particular attention was given to protection measures for Greater sage-grouse." FEIS at 4.9-1. Nevertheless, the project is in clear violation of Wyoming and the BLM's stipulations regarding no surface occupancy and the location of main haul roads in core sage-grouse areas. Conducting an HEA would allow the BLM to quantitatively analyze the predicted impacts from the access roads and other project infrastructure and develop suitable mitigation and compensation measures as the project is developed, rather than waiting to document sage-grouse declines and then trying to develop measures to reverse those declines.

The BLM states that project monitoring "would lead to and guide effective protection actions." FEIS 4.9-13, though it provides limited examples of what might comprise such actions. BLM plans to mitigate any documented sage-grouse population declines that result from the development of the Lost Creek project by enacting "additional protective measures" if an impact threshold is reached. FEIS at 4.9-9. Nevertheless, BLM is unspecific about what such protective actions might consist of other than instituting speed limits, watering the road to reduce fugitive dust, and putting markers on fences – all of which are measures that the BLM presumably would implement from the project's outset. Once roads and facilities have been constructed, measures such as reducing speed limits and watering roads are unlikely to reverse downward population trajectories. However, conducting an HEA would ensure that mitigation measures were implemented *prior* to project development and adequate compensatory measures were developed to counteract any development components that could not be adequately mitigated.

BLM Should Provide Additional Information About Sage-Grouse Leks and Lost Creek's Exploration Activities

The BLM provides data (lek counts for 2010 and 2011) about two leks in the FEIS that are not mentioned in the FEIS: Stinking Springs North and Stratton Camp. FEIS Table 3.8-40. The accompanying text makes no mention of these leks. Nor does it explain why additional leks were included in the table. According to the "Lost Creek Project, 2010 Wildlife Monitoring Report", the Stinking Springs North and Stratton Camp are "reference area" leks (newly located in 2010) rather than "affected area" leks. FEIS Appendix C, Table 2.2C. If that is indeed the case then BLM should explain why it has included these reference area leks in the FEIS and not all of the other reference area leks that were monitored.

BLM also should explain why only one count was conducted for the Stratton Camp lek in 2011 compared, for example, to seven counts for the Southland Well Lek. The Stratton Camp had a maximum male count of 26 males in 2010 and 22 males in 2011, so it is not an insignificant lek. Finally, in its discussion of leks that are likely to be affected by the proposed project BLM lists the leks that occur within two to five miles of the permit area boundary. However, we are unclear why the BLM does not list all of the leks that occur within this distance. Other nearby leks such as Osborne Draw, Little Osborne, Eagle's Nest Reservoir, Eagle Nest Draw, and Sand Gully are not mentioned and yet they may well be impacted by the proposed project. As we mentioned in our previous comments, the BLM should provide a table that lists the distances between each lek and the permit area, as well as the distances between each lek and the closest proposed project infrastructure.

Finally, we suggested in our comments on the DEIS that LCI's exploratory activities may already have had an impact on sage-grouse lek numbers in the project area, stating that:

> We are concerned that LCI's exploratory activities ... including associated increases in levels of traffic and human activity over the last few years already have caused significant disturbance to the area's grouse, particularly given some of the population declines seen in the Lost Creek area ... [T]he level of disturbance that the Lost Creek area already has experienced as a result of initiation of the Lost Creek project merit further investigation and disclosure in the [F]EIS.

The BLM dismissed these concerns by stating that "The discussion of declines in populations referenced in Section 3.8.3.2 is regional, not specific to Lost Creek." FEIS, Appendix F at F-40. However, the "Lost Creek Project, 2010 Wildlife Monitoring Report" states that:

> Population trends estimated as the slope of the line through annual counts on leks throughout the [sage-grouse] monitoring areas cumulatively suggest populations decreased 15% on average annually throughout the monitoring areas over the last 5 years (2006-2010). *Leks within 4 miles of the Lost Creek lease area boundaries decreased on average 20% annually, as compared to leks >4 miles from the lease boundary and within the Large [Sage-Grouse] Monitoring Area that decreased on average 14% annually over the last 5 years*." FEIS, Appendix C at C-16 to C-17. (Italics added).

While the authors of the report do not state whether the difference in population declines within and outside four miles of the Lost Creek lease boundary is statistically significant, we still believe that this information is important and should be made more readily accessible to the general public. We therefore urge the BLM to address the issue of Lost Creek's exploration activities and their potential impacts on the area's sage-grouse population in its Record of Decision and other documents related to Lost Creek. Given that current sage-grouse numbers will be used as a baseline when evaluating the future impact of the Lost Creek project, it is important for the public to be aware that sage-grouse numbers may already have declined prior to the project's inception because of exploratory activities in the area and other anthropogenic

disturbances associated with the initiation of the Lost Creek project.

BLM Should Eliminate Language Stating that the Lost Creek Project is in Compliance with EO-2011-5

As we mentioned previously, the BLM made remarkably few changes to the DEIS, copying it almost verbatim for the FEIS. However, the BLM did remove the sentence: "In an effort to mitigate [vehicular] strikes and comply with the Executive Order, main hauling roads would be located farther than 1.9 miles away from occupied leks" (DEIS at 4.9-7). We view this deletion as tacit acknowledgement that the agency realized this statement was inaccurate. Not only will main haul roads be located within 1.9 miles of at least five occupied sage-grouse leks, but such a stipulation clearly runs counter to the EO-2011-05 which states that energy development projects in designated sage-grouse core areas must "Locate main roads used to transport production and/or waste products >1 .9 miles from the perimeter of occupied sage-grouse leks."

Unfortunately, the BLM did not correct these inaccuracies throughout the FEIS. For example, the BLM states that "LCI would follow the stipulations and management principles provided by the Wyoming Governor's SGIT [Sage-Grouse Implementation Team] while conducting the Proposed Action." FEIS at 3.8-28. It later states that "the Proposed Action would include adherence to the SGIT stipulations." FEIS at 4.9-26. In actuality, however, LCI will *not* be adhering to the EO stipulations of no surface occupancy within 0.6 miles of leks and no main haul roads within 1.9 miles of leks. The BLM states more explicitly in Table 4.9.1 that it will allow "No surface disturbing or disruptive activities within 0.6 mile of an occupied lek" and yet it intends to allow main access or haul roads within one active lek (Discover) and one Occupied Inactive lek (Discover 2). Two other active leks (Green Ridge and Sooner) also occur within 0.6 miles of an access road. Although this is an existing road, traffic will increase significantly once this project is initiated which could have an adverse impact on sage-grouse, particularly on those females which visit these leks and subsequently nest in their vicinity.

Statements about LCI's compliance with the EO should be eliminated in subsequent project-related documents (such as the Record of Decision). The BLM should state more accurately that exceptions are being made for the Lost Creek project and that LCI is not being required to adhere to the protective sage-grouse stipulations that are outlined in EO-2011-5 and form the basis of Wyoming's core area conservation strategy. It is important for the BLM to be transparent in its decision-making and the public, other development projects, and state and federal agencies should be aware of how Wyoming's sage-grouse core area strategy is being implemented and which energy development projects are being required to adhere to its stipulations.

Despite its many claims that the project is in compliance with EO-2011-5, the BLM appears to

recognize that the Lost Creek project is likely to adversely impact the area's sage-grouse. For example, it states that "given the potential reaction of females to Project activities, the probability of maintaining a sample of radio-equipped birds in areas affected by Project activities throughout the life of the Project may be low." The BLM continues by stating that "Therefore, for the purposes of designing the monitoring program, it has been assumed that uranium extraction in the Permit Area would have an influence on nesting and early brood-rearing females similar to the influence of natural gas development." This statement runs counter to LCI's repeated claims that uranium is a low impact type of energy development compared to oil and gas. BLM cannot have it both ways. It cannot recognize the likely impacts of the project on sage-grouse and state that they are likely to be similar to other types of development and then allow the company to claim that its impacts on sage-grouse will be minimal and it should not have to adhere to the same protective stipulations as other types of energy development projects.

The BLM Must Institute Protective Measures for Wyoming Pocket Gopher

Despite the extensive concerns that we (and others) expressed about the Wyoming pocket gopher, the likelihood that it will be petitioned again for listing under the Endangered Species Act, and the BLM's responsibility for managing its designated sensitive species, BLM made no changes to the sections regarding pocket gophers in the FEIS. We are disappointed that the BLM opted not to provide any protections whatsoever for the Wyoming pocket gopher, a rare and little-studied species that is endemic to Carbon and Sweetwater Counties. Instead the BLM simply and unabashedly repeated that "Wyoming pocket gopher burrow complexes *can be expected to disappear* in the disturbed areas for the life of the Project." FEIS at 4.9-38.

BLM responded to our previously expressed concerns by stating that "the monitoring and mitigation measures described in Sections 4.9.1 and 4.9.2 conform with current policies and procedures for protection of these species in the Permit Area." We fail to see how the complete disappearance of a species of concern from a proposed project area conforms to BLM's management policies, particularly given BLM's mandate to "implement management plans that conserve [sensitive] species and their habitats." BLM Manual MS-6840.06.C & .06.E.

As mentioned in our comments on the DEIS, the BLM also must ensure that "activities affecting the habitat of candidate [and sensitive] species are carried out in a manner that is consistent with the objectives for managing those species." BLM Manual MS-6840.06.C.2. We are baffled that BLM can reconcile allowing the complete disappearance of a rare species in a designated project area with its supposed management objectives. We ask that the BLM address these concerns more explicitly than it did in its response in the FEIS to our previous comments.

BLM attempts to excuse its abrogation of its management responsibilities for the Wyoming pocket gopher by claiming that "[b]ecause of the very similar surrounding habitat conditions, Wyoming pocket gophers are expected to exist throughout the Permit Area and outside the Permit Area; thus, a population-level effect is not expected for the surrounding areas." FEIS at 4.9-38. Considering that "similar surrounding habitat conditions exist in much of the state, yet the Wyoming pocket gopher does not occur outside a very limited range argue against this claim. Given the species' narrow ecological niche and limited dispersal capabilities (WYNDD 2010), the BLM's assumptions lack any scientific basis. Indeed, the U.S. Fish and Wildlife Service (USFWS) states that "[b]ased on the characterization of the Wyoming pocket gopher's size and habitat, it appears to fit the island model of isolation displayed by other species of pocket gophers specifically adapted to the soils of an area."[11] Before dismissing concerns about the Lost Creek project's potential impacts on area pocket gopher populations because of the assumed occurrence of the species in and around the project area, the BLM must conduct significantly more extensive surveys to ensure that these claims have any scientific merit and to guarantee that a core population of this sensitive species is not carelessly eliminated.

The BLM has a unique responsibility to manage the Wyoming pocket gopher to conserve its scattered and vulnerable population. The agency administers approximately half of the lands within the species' range[12] and the Lost Creek project area contains the densest-known concentration of Wyoming pocket gophers in the state (Personal communication with Gary Beauvais, Director, Wyoming Natural Diversity Database, June 18, 2012). The species is a State imperiled species with a G2/S2 rank, with the G2 indicating a relatively high probability of global extinction based primarily on the species' extremely small global range and the S2 referring to the species relatively high probability of extinction from Wyoming based on the species' restricted range, its low range occupation, uncertain abundance trends, and biological vulnerability.[13] The Wyoming Game and Fish Commission restricts take of Wyoming pocket gophers in its regulations.[14] As part of the basis for its decision not to list the Wyoming pocket gopher under the Endangered Species Act in 2010, the USFWS argued that despite the fact that proposed oil and gas development covered much of the species known range, "[b]ased on our current understanding of the Wyoming pocket gopher, energy development, at levels that we can detect or anticipate, is as likely to benefit Wyoming pocket gophers as it is to harm them." 75 FR 19599. No one could argue, however, that the complete "disappearance" of the Lost Creek

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[11] From Miller, R. S. 1964. Ecology and distribution of pocket gophers (Geomyidae) in Colorado. Ecology 45(2):256-272. Referenced in 75 FR 19594.
[12] 75 FR 19599 (April 15, 2010).
[13] Keinath, D.A. and G. P. Beauvais. 2003. Wyoming Animal Element Ranking Guidelines. The Wyoming Natural Diversity Database, University of Wyoming, Laramie, WY. Keinath, D. A. and G. P. Beauvais. 2006. Wyoming pocket gopher (*Thomomys clusius*): a technical conservation assessment. USDA Forest Service, Rocky Mountain Region. <http://www.fs.fed.us/r2/projects/scp/assessments/wyomingpocketgopher.pdf.>. Accessed September 13, 2012.
[14] W.S. §23-1-103 and §23-1-302. Wyoming Game and Fish Commission Regulations. 1998. Chapter 52 – Nongame wildlife. Section 11.

Wyoming pocket gopher burrow complexes could be "beneficial" to this vulnerable species. A small geographic range has been identified as the single most important indicator of elevated extinction risk in mammals (references in 75 FR 19604). Conservative and protective management activities therefore are critical to prevent such geographically constrained species from succumbing to stochastic events. What occurs in the range of a geographically constrained species is therefore critical and the BLM must live up to its mandate and "ensure that actions authorized, funded, or carried out by the BLM *do not contribute to the need for the species to become listed*." BLM Manual MS-6840.06.C & .06.E. (Empasis added).

BLM Should Include Information about the Proposed Whirlwind I Project in its Cumulative Impact Analysis and Provide Critical Oversight in the Development of the Lost Creek Project

In response to our comment that the BLM did not include the proposed 65,000-acre, 500-800 MW Whirlwind I project in its cumulative effects analysis, the BLM responded by stating that "Other than press releases in early 2012 (e.g., Casper Star Tribune ...), which indicated the "eventual size of the project will be determined by factors like transmission capacity and siting constraints" and availability of leases, little information is available." FEIS, Attachment F-38 to F-39. We find this statement particularly surprising given that the project proponents have had two pre-scoping meetings with the BLM in which they provided a map and details of the proposed project. According to Wold Companies, which met with the Wyoming Outdoor Council in March 2012 *after* one of its pre-scoping meetings with the BLM, the proponents planned to complete Plan of Development and Cost Recovery agreements in March 2012 and initiate the NEPA process in April 2012. They have installed three meteorological towers and have been collecting wind data since 2009. They planned to install seven more meteorological towers in 2012. BLM cannot dismiss this project in its cumulative impact section by claiming ignorance of the project's details, given the level of engagement it has had with this proposed project.

BLM's oversight is critical to protecting the many sage-grouse that occur in the Lost Creek area and ensuring that Wyoming's Greater Sage-Grouse will not need the additional protection that would be accorded to them by a listing under the Endangered Species Act. If the project proponent, Lost Creek ISR, LLC (LCI) intends to develop the projected Lost Creek North and Lost Creek South projects as outlined in the FEIS's cumulative impact analysis, it has a disincentive to maintain sage-grouse in these areas (which are immediately adjacent – north and south – to the current project) since the presence of sage-grouse and the abundant leks in these areas will only impede project development. The easiest path to development for these projects will be if the sage-grouse in and around the proposed Lost Creek project are displaced or exterminated. BLM should be aware of this quandary and provide the necessary oversight to ensure that sage-grouse populations do not decline as a result of the Lost Creek project.

Conclusion

Although we have focused these comments on Greater Sage-Grouse and Wyoming pocket gopher issues, the concerns and recommendations we expressed regarding other wildlife in our DEIS comments still stand. For example, we believe that waste storage ponds should be covered with netting to provide adequate protection for birds and to ensure compliance with the Migratory Bird Treaty Act. In addition, we do not believe that the BLM adequately addressed our specific questions and concerns regarding the project's potential impact on sagebrush obligate passerines and other migratory birds. We are disturbed by the BLM's repeated claims that similar habitat exists adjacent to the project area so species that are displaced by the project can just go elsewhere. Such claims are indefensible and show a fundamental lack of understanding about ecological concepts such as territoriality, intra- and inter-specific competition, and micro-habitat selection. If animals could just go elsewhere whenever their current habitat were threatened by development, the sagebrush ecosystem surely would not have been highlighted as a system in "free fall" and categorized as the most threatened bird habitat in the continental United States.[15]

BLM is mandated to provide adequate protections for sensitive species such as sage-grouse and Wyoming pocket gopher so that they don't require the additional protections that would be provided by a federal listing under the Endangered Species Act. Furthermore, the USFWS has cautioned that Wyoming's core area conservation strategy (as outlined in EO-2011-5) must be appropriately implemented if the strategy is to serve as an adequate regulatory mechanism for conserving the state's sage-grouse.[16] Allowing companies to violate the EO's protective stipulations by capitalizing on a portion of an exception clause surely will *not* be viewed as successful implementation of the strategy. Furthermore, it sets a dangerous precedent for other development projects that likely will have equally compelling reasons for wanting to ignore the EO's science-based provisions. We urge the BLM to take a more critical look at the Lost Creek project and require adjustments that better protect sensitive species such as sage-grouse and Wyoming pocket gopher. Without such adjustments, the Lost Creek project is likely to exact an unacceptable toll on the area's wildlife for which there could be significant repercussions.

[15] American Bird Conservancy. 2007. Twenty most threatened bird habitats. American Bird Conservancy: The Plains, VA. 48 pp. North American Bird Conservation Initiative, U.S. Committee, 2009. The State of the Birds, United States of America, 2009. U.S. Department of Interior: Washington, DC. 36 pages.

[16] U.S. Fish and Wildlife Service. 2011. Letter from Mark Sattelberg, Field Supervisor, Wyoming Field Office, U.S. Fish and Wildlife Service, to Governor Mead, Deputy Chief of Staff, Office of the Governor, June 24, 2011.

Sincerely,

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