



**WESTERN RESOURCE
ADVOCATES**

2008 JUL 21 775-6203

RECEIVED
DOI - BLM
WYOMING S.O.

TO: Vickie Mistanka 307-775-6203 (FAX)

FM: Dan Heilys' 307-332-3614 (ph)

RE Protest of August 5 oil/gas lease sale

Date July 21, 2008

Pages: 21 pages, including this cover sheet.

Here are Exhibits C - F in the
above-referenced protest filed earlier today.

Call me if you have any questions.

Thanks

Dan Heilys



WESTERN RESOURCE ADVOCATES

By FAX to 307-775-6203 and
U.S. Mail

July 21, 2008

Acting State Director
Bureau of Land Management
5353 Yellowstone Road
P.O. Box 1828
Cheyenne, WY 82003

2008 JUL 21 775-6203
RECEIVED
DOI - BLM
WYOMING S.O.

**RE: PROTEST OF PARCELS TO BE OFFERED AT THE BLM'S
AUGUST 5, 2008 COMPETITIVE OIL & GAS LEASE SALE**

Dear Acting State Director:

We are writing today to express, once again, our concern about the troubling decline of the Greater sage-grouse in Wyoming, as well as our continued frustration with BLM management decisions and actions that threaten the fundamental health and viability of the sage-grouse and its habitat in Wyoming. While we recognize that threats to the sage-grouse are diverse and include drought, disease, predation, land practices, and other pressures, we are especially worried by the BLM's aggressive oil and gas development campaign which has irreversibly transferred development rights on hundreds of thousands of acres of public lands under your care to energy companies without adequate disclosure of the impacts and without sufficient safeguards to ensure protection for this imperiled species.

Prior to the April 1, 2008 oil and gas lease sale, the Wyoming State Office had conveyed oil and gas development rights to approximately 14.45 million acres of public lands in Wyoming, of which, about 5.7 million acres are within sage-grouse core population areas. Beginning with the April 1, 2008 sale, your office has issued oil and gas leases covering approximately 631,098 acres of public lands, of which approximately 141,578 acres fall within the Governor's sage-grouse core population area, thus irreversibly and irretrievably committing those lands - which are critical to the continued survival of the Greater sage-grouse - to oil and gas development.

The August 2008 oil and gas lease sale, which offers 173 parcels comprising 169,357 acres of public land, would potentially commit an additional 59,483 acres within identified sage-grouse core population areas to oil and gas development without adequate safeguards for the protection of sage-grouse. With roughly 40% of the total statewide core population area presently encumbered by federal oil and gas leases allowing surface occupancy, the long-term effectiveness of the Governor's recently adopted sage-grouse conservation strategy is in doubt.

Motivated by these concerns, the National Audubon Society has determined - based on the best available science and professional judgment reflecting decades of avian study and field experience - that the sale and subsequent development of certain parcels (identified below)

offered for sale by your office on August 5, 2008, would further jeopardize the continued viability of the Greater sage-grouse and therefore requests that the protested parcels be withdrawn from sale. Specifically, in accordance with 43 C.F.R. §§ 4.450-2 and 3120.1-3, the National Audubon Society protests the sale of fifty-two (52) lease parcels displayed in Table 1 and thirty-three (33) additional parcels identified in Table 2 (attached as Exhibit A) scheduled to be offered by the Bureau of Land Management (BLM) at the August 5, 2008, competitive oil and gas lease sale in Cheyenne, Wyoming.

The fifty-two parcels displayed in Table 1 lie within the core population areas for Greater sage-grouse. See Figure 1 (attached as Exhibit B). Eighteen (18) of these "core area" parcels contain no sage-grouse-specific stipulations whatsoever, the absence of which is directly contrary to commitments made in Resource Management Plans that govern oil and gas leasing in the areas where the contested leases are located. Core population areas are necessary for the protection of this candidate species and integral to the State of Wyoming's – and to the BLM's – sage-grouse conservation strategy. The core habitat is the nesting and early brood rearing habitat for seventy-five percent of the Greater sage-grouse breeding population of the State of Wyoming. This population has already experienced a ninety percent decline from historic record – additional intrusions into core habitat of the sage-grouse may result in a determination that listing this species as threatened or endangered under the Endangered Species Act is necessary.

As indicated above, Audubon also protests the sale of thirty-three additional parcels identified in Table 2. Although outside identified core areas, the parcels are within the sage-grouse range and contain important habitat that is at risk from oil and gas development as well as other threats, such as electric power transmission and generation, wind energy production, oil shale development, uranium mining, etc. Importantly, these 33 lease parcels contain sage-grouse timing and controlled surface use stipulations that are now known from studies conducted in Wyoming and elsewhere to be ineffective at protecting the integrity of sage grouse habitat and health of the species.

PROTESTING PARTY

The National Audubon Society, founded in 1905, is a not-for-profit corporation organized under the laws of the State of New York, with its headquarters in New York. Nationwide, there are more than one million Audubon members and supporters, including approximately two thousand in Wyoming. Audubon has offices in 23 states, including a state office in Wyoming. Audubon's mission is to conserve and restore natural ecosystems, focusing on birds, other wildlife, and their habitats for the benefit of humanity and the earth's biological diversity. Audubon carries out that mission through a variety of activities, including education, habitat conservation and public policy advocacy.

Audubon's members in all parts of the state share a deep concern for the future of Wyoming's wildlife resources, especially native birds and their habitats. Our state and local organizations commit significant time and resources every year to efforts to conserve and restore wild birds and habitats. Audubon's members work cooperatively with state and federal resource agencies on a range of projects that are designed to achieve a secure environmental future for birds and other wildlife and their habitats and for the people of Wyoming and the United States.

Audubon's members value the conservation, sound management, and sustainable use of the public lands comprised of the lease parcels offered for sale on August 5, 2008, use and enjoy the lands in question, and frequently engage in sage-grouse viewing and hunting opportunities, and other activities that would be diminished by any further decline in the population of the

species or continued destruction of sage grouse habitat. As a consequence, Audubon and its members would be adversely affected by the sale of the lease parcels protested herein.

BACKGROUND

The Sagebrush Ecosystem that defines the Intermountain West and once covered much of western North America is undergoing intense change; today we hang onto less than half of its original area. Wyoming is the last stronghold for the sagebrush sea: over 60% of the state is covered by sagebrush, making it the critical area for sage-grouse and sage-grouse habitat. Over the past century, human activities have caused heavy sagebrush loss and the fragmentation of the remaining sagebrush ecosystems. Sage-grouse are native to the semi-arid sagebrush habitats of western North America. Previously widespread, this species has been extirpated from approximately half of its former range due to loss and degradation of sagebrush habitat. It has been estimated that Wyoming's sagebrush country has the highest remaining population of grouse, over 25% of these birds remaining in the world. Sage-grouse are a landscape scale species that depend on large intact sagebrush habitats for every aspect of their life cycle and use multiple seasonal habitats that must all be available to maintain healthy populations.

The loss of this ecosystem is a grave threat not only to sage-grouse but also to world-class populations of mule deer, elk and pronghorn, as well as the other 296 bird species, 85 mammals and 63 fish species that depend on it for habitat and survival. Proactive conservation measures to assure the sage-grouse's future will have far-reaching benefits to other species of concern that have similar habitat needs including world-class populations of mule deer, elk, pronghorn, as well as many other sagebrush obligate species of concern.

The dramatic decline of the greater sage-grouse prompted several individuals and organizations in 2002 and 2003 to petition the USFWS to list the Greater sage-grouse as endangered across its entire range. The USFWS found in response that the petitions "presented substantial information indicating that the petitioned actions may be warranted." See 69 FR 21484 (April 21, 2004). However, in early January 2005, the Service announced its 12-month finding that listing the Greater sage-grouse was not warranted. See 70 FR 2244 (January 12, 2005). In July 2006 a suit was filed seeking to overturn the Service's decision not to list the sage-grouse, and on December 4, 2007, the U.S. District Court for the District of Idaho set aside the agency's action, finding that political interference in the scientific review tainted the process to such extent that the decision not to list the sage-grouse as threatened or endangered must be deemed arbitrary and capricious under the law. *Western Watersheds Project v. U.S. Forest Service*, No. 06-277, 2007 WL 4287476 (D. Idaho decided Dec. 4, 2007). The Court explained the perilous condition of the sage-grouse and the damage to its habitat, noting that "[n]owhere 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.* The Court specifically focused on the impact of oil and gas development on grouse habitat and noted a "singular lack of data on measures taken by BLM to protect the sage grouse from energy development, the single largest risk in the eastern region." *Id.* (emphasis added).

In response to the Court's ruling, the USFWS initiated a new status review to consider information regarding "threats, conservation measures, and population and habitat status of the greater sage-grouse" that has become available since the legally flawed petition struck down by the Idaho court. See 73 FR 10218 (February 26, 2008). The comment period on this status review closed June 27, 2008, and USFWS indicates a decision on the petition to list could be issued before the end of 2008.

ARGUMENT

I. NEPA VIOLATIONS

A. The BLM Failed to Take a Hard Look at the Environmental Impacts of Leasing

A fundamental purpose of the National Environmental Policy Act (NEPA) is to foster and encourage *fully informed* agency decisions by requiring the disclosure of impacts before actions are taken and before decisions are made, and by requiring agencies to consider reasonable alternatives that can achieve agency objectives with less impact to the environment. 42 USC § 4331 et seq. At its core, NEPA requires agencies to take a "hard look" at the environmental consequence of proposed actions and to broadly disseminate relevant information. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). With respect to issues raised in this protest, numerous Federal courts have held that the issuance of an oil and gas lease that allows surface occupancy and development is a major federal action requiring the preparation of an environmental impact statement. *Sierra Club v. Petersen*, 717 F.2d 1409 (D.C. Cir. 1983), *Conner v. Burford*, 848 F.2d 1441 (9th Cir.1988).

Although the BLM insists in its DNA worksheets prepared for this sale that it may defer detailed environmental analysis to the APD stage, BLM knows better. Its 1992 IM directly addresses the subject: "[t]he simple rule coming out of the *Conner v. Burford* case is that *we will comply with NEPA and ESA prior to leasing.*" See U.S. DOI Information Bulletin 92-198 (1992) (emphasis added). This approach to NEPA compliance has been affirmed numerous times by the Interior Board of Land Appeals (IBLA) and is the "black letter" law of the agency.

The IBLA reiterated the well-established rule in a 2006 decision involving a challenge by environmental organizations to the sale of oil and gas leases in sensitive species habitat:

"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, because leasing without stipulations requiring no surface occupancy constitutes an irreversible and irretrievable commitment to permit surface-disturbing activity."

Center for Native Ecosystems, 170 IBLA 331, 345, November 22, 2006.

Despite the unambiguous and unequivocal duty to take a hard look at impacts before leasing, the BLM has decided to postpone its analysis for another day, apparently based on an incorrect understanding of the "law" coming out of *Park County*. See, e.g., *Worland DNA* worksheet. Regardless of whatever *Park County* may mean with respect to BLM's duty to analyze site-specific impacts, *Park County* certainly does not permit the BLM to ignore new information and new circumstances concerning the sage-grouse, nor does it allow the BLM to completely disregard cumulative effects of projects and proposals that were not even conceived of 10-20 years ago, much less studied. The unfortunate but predictable result of BLM's distorted view of *Park County* has apparently caused the agency to not even attempt the "hard look" at environmental impacts required by NEPA.

1. **BLM violated NEPA by not considering new information and changed circumstances relevant to the decision to lease.**

Agencies must supplement existing environmental analyses if new circumstances "raise significant new information relevant to environmental concerns." *Portland Audubon Soc'y v Babbitt*, 998 F.2d 705, 708-709 (9th Cir. 2000). Moreover, 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 effects of its planned action, even after the 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).

NEPA's implementing regulations further underscore this obligation. An agency "shall prepare supplements to either draft or final environmental impact statements if ... there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 CFR §1502.9(c)(1)(ii). Even where an environmental impact statement has been previously prepared, "if there remains 'major federal action' to occur, and if the 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, a supplemental EIS must be prepared." *Marsh v. Oregon Natural Resources Council*, 109 S.Ct. 1851, 1859 (1989).

Consistent therewith, the DNA Worksheets for these lease sales ask whether existing analysis is adequate in light of new information or circumstances. Unbelievably, the BLM asserted that:

- "there has been no observed changes in environmental concerns, interests, and resource values since the signing of the FEIS, ROD 9/2/88."
- "The existing analysis is valid, there have been no new information or circumstances."
- "cumulative impacts have remained substantially unchanged."
- The range of alternatives analyzed in the existing NEPA documents is appropriate because "there have been no observed changes in environmental concerns, interests and resource values since the signing of the FEIS ROD 9/2/88."

Each and every one of these assertions is incorrect, and as the land management agency directly responsible (through its authorizations and land use allocations) for many of the changed circumstances and cumulative impacts, BLM surely must be aware of this.

As a result, the NEPA analysis referenced by BLM in various "DNA Worksheets" to support its decision to lease the contested parcels is meaningless. In the thousands of pages of analysis contained in dozens of referenced EISs and EAs, not a single sentence is devoted to considering the implications of the "new" information and circumstances referenced in the USFWS notice, analyzing causes of declining populations of sage-grouse or what to do about the BLM's inadequate sage-grouse stipulations.

In February 2008, the U.S. Fish and Wildlife Service announced in the Federal Register the initiation of a status review and solicitation of new information for the Greater sage-grouse. The Service's notice stated: "*Since the publication in 2004 of the Conservation Assessment, a*

significant amount of new research has been completed and new information has become available regarding threats, conservation measures, and population and habitat status of the greater sage-grouse." 73 Fed.Reg. 10218, 10219 (February 26, 2008) (emphasis added).

The new information referenced by the USFWS includes a widely-circulated memorandum (attached as Exhibit C), prepared in January 2008 by professional biologists and resource managers under the auspices of the Western Association of Fish and Wildlife Agencies ("WAFWA"): *Using the Best Available Science to Coordinate Conservation Actions that Benefit Greater Sage-Grouse Across States Affected by Oil & Gas Development in Management Zones I-II (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming)* (January 29, 2008). Based on a review of "current published peer-reviewed and unpublished literature" the "representatives from the state agencies with authority for managing fish and wildlife from the major sage-grouse and energy producing states" concluded that:

Full field energy development appears to have severe negative impacts on sage-grouse populations under current lease stipulations (Lyon and Anderson 2003, Holloran 2005, Kaiser 2006, Holloran et al. 2007, Aldridge and Boyce 2007, Walker et al. 2007, Doherty et al. 2008) Much of the greater-sage grouse habitat in MZ 1 and 2 has already been leased for oil and gas development. *These leases carry stipulations that have been shown to be inadequate for protecting breeding and wintering sage-grouse populations during full field development.* (Holloran 2005, Walker et al. 2007, Doherty et al. 2008). New leases continue to be issued using the same stipulations. To ensure the long-term persistence of populations and meet goals set by the states for sage-grouse, *identifying and implementing greater protection within core areas from impacts of oil and gas development is a high priority.*

(emphasis added)

A key outcome of the WAFWA meeting was broad agreement on "concepts and strategies" which "when used in combination with other conservation measures ... may enhance the likelihood that sage grouse populations will persist at levels that ... avoid the need to list the sage-grouse under the Federal Endangered Species Act." WAFWA memo at 1. Unfortunately, despite the tremendous significance of the information and findings presented in the WAFWA memo, there is no evidence that BLM considered it.

The CEQ's NEPA regulations require agencies to supplement their NEPA analyses when "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 CFR 1502.9(c). "If information developed after the NEPA statements was sufficiently new and significant when compared to the information upon which the NEPA statements were based, a new NEPA statement was required." *Center for Native Ecosystems*, 170 IBLA 331, 346 (November 22, 2006). Given the importance and gravity of the WAFWA findings, this is of course the situation here, which BLM cannot deny.

The significant "new" information about the sage-grouse is common knowledge and frequently discussed among wildlife professionals. It has been widely distributed to federal and state land and resource management agencies including the Wyoming BLM, which partially funded several of the studies, and is now using information gathered in these studies to inform its

effort to develop an interim management plan while it updates the Buffalo RMP. See <http://www.blm.gov/wy/st/en/info/NEPA/bfodocs/sagegrouse.html>. Further, the BLM's own web site, at: <http://www.blm.gov/wy/st/en/info/NEPA/bfodocs/sagegrouse.html> contains a link to a page on the WGF D's website that displays a complete list of the "new" information: http://gf.state.wy.us/wildlife/wildlife_management/sagegrouse/techdocs/index.asp.

Clearly, this information was readily available to BLM, yet the agency chose to ignore it. There is simply no legitimate justification for BLM's failure to consider the information outlined above. BLM is aware of the information and has it in its possession, and the law and BLM's policies require that it be taken into account. In this instance BLM Field Managers did nothing to assess "whether there are significant new circumstances or information relevant to environmental concerns bearing on the proposed action." This blatant disregard of BLM's responsibilities under NEPA reflected by these DNA comments illustrate clearly why the Greater sage-grouse is in trouble.

2. BLM violated NEPA by failing to consider alternatives that would protect the sage grouse such as new lease stipulations or not leasing parcels in core population area

The consideration of alternatives under Section 1502.14 of the CEQ's NEPA regulations is often described as the heart of the environmental impact statement. Under this section, agencies must –

- Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
- Include appropriate mitigation measures not already included in the proposed action or alternatives.

There are three good reasons why BLM must consider additional alternatives to the proposed action: 1) existing oil and gas lease stipulations have been shown to be inadequate; 2) the State of Wyoming and Wyoming BLM office have adopted the sage-grouse "core area" approach and now must preserve "decision space"; and 3) RMP revisions that are underway must consider specific alternatives for the conservation of sage grouse.

a) Inadequate stipulations.

The WAFWA, the U.S. Fish and Wildlife Service¹, and the Governor of Wyoming have concluded that existing stipulations used by BLM are ineffective. As discussed above, the nation's top sage-grouse researchers, biologists and wildlife professionals have determined that existing oil and gas lease stipulations in use by BLM to protect sage-grouse simply do not work, and that much larger NSO or avoidance areas are required to protect the biological integrity of sage-grouse and their habitat. The WAFWA memo explained that "[r]esearch in Montana and Wyoming in coal-bed methane natural gas (CBNG) and deep-well fields suggests that impacts to leks from energy development are discernable out to a minimum of 4 miles, and that some leks within this radius have been extirpated as a direct result of energy development." WAFWA

¹ See USFWS comments on Atlantic Rim Natural Gas Project Draft Environmental Impact Statement, dated January 26, 2008 (on file with Wyoming BLM).

memo at 3. The WAFWA concluded that the standard ¼ mile NSO stipulation applied to leases with strutting grounds resulted in a shocking 96% lek loss with only 4% lek persistence. Not surprisingly, lek persistence increased with the size of the buffer: 0.5 mile, 1.0 mile, and 2.0 mile buffers resulted in estimated lek persistence of 5%, 10% and 28%, respectively. In contrast, lek persistence in the absence of oil and gas development was about 85%.

Research indicates that oil or gas development exceeding approximately 1 well per square mile with the associated infrastructure, results in calculable impacts on breeding populations, as measured by the number of male sage-grouse attending leks (Holloran 2005, Naugle et al. 2006). Because breeding, summer, and winter habitats are essential to populations, development within these areas should be avoided.

WAFWA memo at 2.

In response to the information contained in the WAFWA memo, on March 27, 2008, Wyoming Governor Dave Freudenthal submitted a letter to Wyoming BLM specifically requesting new stipulations that "effectively" protect sage-grouse: "While I am not suggesting that these leases should not be offered, *I would submit that any leases that are offered, especially those within "core areas," both in the April sale and beyond, be subject to stipulations that effectively protect sage grouse and their habitat.*"²

Obviously, in light of this new information the BLM has a duty to analyze new or revised stipulations that will protect the sage-grouse, including limiting development to 1 well per section and expanding NSO buffers as recommended by WAFWA.

b) The Core Area Strategy has been adopted by the State of Wyoming and Wyoming BLM.

On March 25, 2008, the State of Wyoming Sage Grouse Implementation Team (SGIT) submitted to the Governor of Wyoming their recommendations for "actions and strategies which will effectively manage sage-grouse and their habitats in Wyoming[.]" Exhibit D. A key element of that effort is the development of a "Core Population Area" strategy to "maintain habitats and viable populations of sage-grouse in areas where they are most abundant." According to the SGIT, Core Population Areas will include habitats and existing populations for no less than two-thirds of the sage-grouse in Wyoming. The core areas were identified by Wyoming Game and Fish Department biologists, the oil and gas industry, representatives from agriculture groups and conservation organizations. The SGIT estimated that approximately 40 core areas are needed to ensure geographic and genetic diversity, and stressed that flexibility to adjust core area boundaries in response to "emerging conditions and information is essential to future management." Most importantly in connection with this protest, the SGIT determined that "development within Core Population Areas should occur only when it can be demonstrated that the activity will have no negative effects on sage-grouse, using a case-by-case localized approach

² Letter from Dave Freudenthal, Governor, State of Wyoming to Bob Bennett, Director, Bureau of Land Management, Wyoming State Office, March 27, 2008 (emphasis added).

and appropriate ground-truthing." There is no evidence in the record that this analysis has occurred.

In April 2008 the Governor submitted the SGIT recommendations along with maps of core areas to the USFWS's Wyoming office for "an independent evaluation" of the core area strategy.³ In response, the USFWS determined that: 1) "the core population area strategy ... is a sound framework for a policy by which to conserve greater sage-grouse in Wyoming" and 2) the "service agrees that the core areas as currently defined by the Implementation Team are among the most important sage-grouse habitats in the State."⁴⁵

Having participated in the SGIT, the BLM state office was not only "in the loop" regarding the development of the core area strategy, it ultimately decided to adopt the strategy as the basis for future management actions: "I am aware of your Sage-Grouse Implementation Team's work to define "core areas" for sage-grouse within the Powder River Basin and across Wyoming. We have received maps of the core areas identified by the Team along with recommendations to you and understand that the U.S. Fish and Wildlife Service have provided an endorsement of both the areas and strategy. Consequently, it seems appropriate to base our management strategy on these "core areas."⁶

Thus, having adopted the core area strategy, the Wyoming BLM must analyze it as an alternative to the action proposed here, and also avoid taking any action that would prejudice its consideration as an alternative in future management actions.

c) BLM's National Sage-Grouse Conservation Strategy Requires New Alternatives

Five of the ten BLM Field Offices in Wyoming are currently revising their RMPs. The geographic area covered by these plans encompasses many millions of acres of public lands containing important sage-grouse habitat, along with very significant oil and gas fields including the enormous Continental Divide-Creston project that alone covers over one million acres.

Given the scale and intensity of impacts occurring across its range, this may well be BLM last chance to "get it right" with respect to sage grouse protection. Aware of mounting science showing a decline of the health of the species, the Washington Office of the BLM in November 2004, issued its National Sage-Grouse Habitat Conservation Strategy. Acknowledging "the BLM manages more sage-grouse habitat than any other entity and as a result has a key role in the conservation of the species and its habitat" the agency identified "one of BLM's highest priorities is to implement the National Sage-grouse Strategy on BLM-managed lands... All State Directors and Field Managers will take appropriate actions to ensure immediate implementation." See BLM IM 2005-024.

³ Letter from Mr. Ryan Lance, Deputy Chief of Staff, Office of the Governor to Brian T. Kelly, Field Supervisor, Wyoming Field Office, U.S. Fish and Wildlife Service, dated April 17, 2008, appended hereto as Exhibit E.

⁴ Letter from Brian T. Kelly, Field Supervisor, Wyoming Field Office, U.S. Fish and Wildlife Service to Mr. Ryan Lance, Deputy Chief of Staff, Office of the Governor, dated May 7, 2008, appended hereto as Exhibit F.

⁵ The Service stopped short, however, of rendering an unequivocal endorsement of the core area strategy. The absence of a regulatory enforcement mechanism and failure to identify and manage seasonal habitats for those key populations, including migratory corridors were among the deficiencies identified by USFWS.

⁶ Letter from Donald A. Simpson, Acting State Director, Wyoming BLM to Governor Dave Freudenthal, dated June 12, 2008 (BLM State Office files) (emphasis added).

A core element of the Strategy is the development of alternatives that must identify and evaluate reasonable, feasible and effective options for conserving sagebrush habitats and associated species in accordance with BLM's multiple-use mandate in FLPMA. Under the Strategy, at least one alternative is supposed to "maximize conservation of sagebrush habitat through objectives, land use plan decisions and management direction." *Id.* Further, the Strategy requires BLM to:

ensure that each alternative contains considerations for sagebrush habitat conservation by (1) developing one or more goals related to sagebrush habitat with emphasis on sage-grouse habitat that will apply to all alternatives, (2) including objectives in each alternative that pertain to the goals, and (3) identifying allowable uses or management actions to achieve the objectives. *This method will ensure that all alternatives, including the preferred alternative, will include sagebrush and sage-grouse habitat considerations."*

Id. (emphasis added).

One field office has responded to this new information and changed circumstances by proposing an amendment to its RMP to address sage-grouse declines. According to May 16, 2008 press release issued by the Buffalo Field Office:

BLM is proposing to prepare an amendment to the 1985 Resource Management Plan (RMP). We have reviewed new information from recent inventories and scientific studies which indicate that BLM's current planning decisions in the Powder River Basin may not be sufficient to prevent the greater sage-grouse from becoming listed under the Endangered Species Act. As part of the RMP amendment process BLM is required to determine what management actions are appropriate during the preparation of the amendment. This is necessary to preserve the BLM's decision space during the analysis process - in other words, we cannot permit actions on an interim basis that would compromise the implementation of the alternatives that result from the plan amendment process. The BLM is developing an interim management strategy which considers all seasonal habitat requirements in areas large enough to meet the landscape scale requirements of the greater sage-grouse. BLM will present its preliminary interim sage-grouse management strategy at the meeting.

A "fact sheet" prepared by the BFO states that:

- Current management practices may be insufficient to sustain local sage-grouse populations.
- Large blocks of contiguous habitat may be necessary to conserve sage-grouse.
- The population has seasonal ranges – activities not centered around the lek site year-round.
- West Nile virus a new stressor was not present at the time of the PRB FEIS.
- There is a genetic linkage with population strongholds in eastern Montana and southern Wyoming.

As noted above, 52 lease parcels offered for sale on August 5, 2008, are in core areas identified by the SGIT. All 52 parcels allow for surface occupancy and use in accordance with the standard lease form. Thirty-three additional parcels contain important sage-grouse habitat outside identified core areas. By moving ahead now with its leasing decisions before carrying out the important actions outlined in the Sage-grouse Habitat Conservation Strategy, the BLM has precluded any opportunity to consider and implement effective alternatives and conservation options for the sage-grouse and habitat on the parcels protested herein, such as not leasing, or leasing with NSO stipulations. Withdrawing the contested parcels from the August 5, 2008, lease sale would give the BLM the time and opportunity to update its NEPA and planning documents to incorporate the most current research and planning efforts and management actions. Only then will BLM be in a position to make a fully informed decision that balances resource extraction with the protection of this sensitive species.

3. BLM violated NEPA by failing to consider the cumulative impacts of oil and gas development with past, present and reasonably foreseeable future activities that present incremental threats to sage-grouse and its habitat.

The "hard look" requirement mandated by NEPA includes an appropriate examination and disclosure of cumulative impacts. "Cumulative impact" is 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 actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. 40 CFR 1508.7

Sage-grouse face a complex array of threats to their continued survival. Housing developments, energy projects, mining, improper livestock grazing, habitat alteration and fragmentation, disease, predation, transportation and energy transmissions facilities, drought, climate change, and myriad other activities impact the sage grouse. See USFWS 12-month finding, 70 Fed. Reg. 2244 (January 12, 2004). As the Western Watersheds Court astutely observed, "*It is the cumulative impacts of the disturbances, rather than any single source, [that] may be the most significant influence on the trajectory of sagebrush ecosystems.*" *Western Watersheds at 11* (emphasis added).

As BLM well knows, the State of Wyoming is experiencing a significant surge in both the scale and pace of energy development activities. In fact, all the major natural gas producing basins are undergoing dramatic landscape-scale alterations caused by extensive industrial developments, many of which have been authorized by the BLM itself. The change is not limited to fossil fuels development; the BLM's LR2000 database shows that BLM has approved or is presently reviewing ROW applications for as many as 20 major wind power projects, each consisting of between 3000 – 5000 turbines, which collectively will impact close to one million acres of land in Wyoming, much of it providing habitat for sage grouse. In addition, due to a significant increase in the price of yellowcake, uranium mining is also enjoying a dramatic surge in activity. Several large interstate energy transmission facilities have been approved, and more are proposed; and several new coal plants are proposed, all of which add to the cumulative impacts not heretofore considered with respect to the offering of the contested parcels.

The RMPs, EISs, and other environmental documents relied upon by BLM to support its leasing decisions, particularly the ones written in the late 1980s, are devoid of any discussion of these and other cumulative threats to the sage grouse. The BLM's contention that "the cumulative

impacts have remained substantially unchanged" and that "there have been no observed changes in environmental concerns, interests and resource values since the signing of the FEIS, ROD 9/2/88" is patently absurd. *See, e.g.,* Worland Field Office DNA (4/16/2008).

The BLM's failure to take a hard look at actions, activities, programs, and projects that may have a cumulative impact on the sage-grouse is inexcusable—the BLM itself is responsible for authorizing a wide range of projects, activities and actions that have a cumulative impact on the sage-grouse and therefore has better, easier and faster access to this information than the public. If the agency needs a reminder, its own website would be a good place to start: the "Newsroom" at <http://www.blm.gov/wy/st/en/info/news_room.2.html> contains news releases organized by year and month, and each Field Office has a user-friendly NEPA site that contains notices of proposed actions and other NEPA related information. Likewise, the State of Wyoming's website is a source of information for state programs such as oil and gas leasing (<http://slf-web.state.wy.us/>) and oil and gas permitting. *See* <http://wogcc.state.wy.us/>

4. Despite compelling new information proving the ineffectiveness of existing oil and gas stipulations, BLM failed to consider necessary mitigation including new or modified stipulations and deferral of leasing decisions.

Among the many consequences of BLM's failure to take a hard look at impacts, especially the new information and changed circumstances over the past 20 years, is its failure to recognize the need to review and verify the effectiveness of existing stipulations and to consider new stipulations that might do a better job of protecting the sage-grouse from the impacts of oil and gas development activities.

The CEQ's NEPA regulations at 40 CFR §1508.20 define mitigation to include--

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

Given the proven ineffectiveness of existing lease stipulations attached to leases to protect the sage grouse and its habitat, including the TLS and CSU stipulations placed on the leases protested herein, it is incumbent upon BLM to evaluate other forms of mitigation. Such measures include, for example, 1) leasing with NSO stipulations, or 2) designing and attaching stipulations requested by the Governor that have been *shown to be effective*, such as stipulations configured differently than those proposed to be attached to contested leases, conditional NSO stipulations, stipulations with expanded buffer zones, timing limitations that apply to production, etc. For example, the standard CSU stipulation in use by BLM (no surface occupancy within 1/4 mile of a sage grouse strutting/dancing ground) does not reflect the latest research information (Holloran 2005, Naugle et al., 2006) which makes it clear that a radius of well over 3 miles, at least, is required for no surface occupancy in order to avoid damaging impacts to this species.

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The moment it became clear that existing stipulations attached to lease parcels for the protection of the sage-grouse were less effective than believed to be, the BLM had a duty to consider other forms of mitigation measures. 40 CFR 1502.14(f) "Agencies shall--[i]nclude appropriate mitigation measures not already included in the proposed action or alternatives[]" and 1502.16(h), NEPA documents "shall include... means to mitigate adverse environmental impacts...).

II. VIOLATIONS OF THE FEDERAL LAND POLICY MANAGEMENT ACT

A. The Federal Land Management and Policy Act requires affirmative action to protect sensitive species such as the Greater sage-grouse

Section 102 of FLPMA sets forth broad national policy goals including a directive that "the public lands be managed in a manner that will protect the quality of ... ecological ... values" and "provide food and habitat for fish and wildlife..." 43 U.S.C. 1701(a)(8). To protect sensitive species, the BLM has drafted a Sensitive Species Manual and related BLM Instruction Memoranda that require BLM to "ensure that actions authorized, funded, or carried out by the BLM are consistent with the conservation needs of special status species and *do not contribute to the need to list any special status species*, either under the provisions of the Endangered Species Act or other provisions of this policy." See BLM 6840 Special Status Species Management (1/17/01) at 1 (emphasis added).

The Wyoming BLM Sensitive Species Policy and List (dated September 20, 2002) promulgated pursuant to BLM 6840 identifies the Greater sage-grouse as a sensitive species. "The sensitive species designation is normally used for the species that occur on Bureau administered lands for which BLM has the capability to significantly affect the conservation status of the species through management." See BLM 6840 at 6. The Wyoming sensitive species policy explains that, "[b]y definition the sensitive species designation includes species that could easily become endangered or extinct in the state. Therefore, if sensitive species are designated by the State Director, the protection provided by the policy for candidate species shall be used as the minimum level of protection for BLM sensitive species." See Wyoming Sensitive Species Policy at 1. With respect to the greater sage-grouse as well as other species on the sensitive species list, BLM's specific non-discretionary mandate is "to avoid or minimize adverse impacts and maximize potential benefits to species whose viability has been identified as a concern by reviewing programs and activities to determine their potential effect on sensitive species." (emphasis added). Moreover, under this and related policy, Field Office managers are responsible for implementing the special status species program within their jurisdiction by "*ensuring actions are evaluated to determine if special status species objectives are being met.*" BLM 6840 at 4 (emphasis added).

Despite these clear directives, the administrative record for the August 5, 2008, lease sale is completely devoid of any evidence that the Field Office managers made any effort to ensure that special status species objectives were carried out. Indeed, to the contrary, the DNAs prepared for this lease sale reveal a complete and utter disregard for sensitive species management in general, and for management of the sage-grouse in particular. Claims of "no new information" and "no change in circumstances" in the various DNAs fly in the face of reality and on-the-ground conditions that are rapidly moving the species to a need for listing as threatened or endangered.

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The predictable consequence of BLM's misplaced reliance on obsolete planning-level NEPA analyses to support its leasing decisions is that none of the documents referenced in the DNAs adequately disclose the environmental effects of the proposed lease sale in the context of the level of development now occurring in Wyoming, nor does any describe or discuss mitigation measures that could be implemented to protect the sage-grouse before making a commitment that allows for surface occupancy and use. The failure to attach effective stipulations on the contested lease parcels, along with the absence of any evidence that BLM considered other measures to mitigate the adverse effects of development on the parcels, amount to "unnecessary or undue degradation of the public lands" in contravention of FLPMA section 302(b), 43 U.S.C. §1732(b). Moreover, BLM's decision to offer the protested parcels without adequate lease stipulations or other effective mitigation measures circumvents the 4180 – Rangeland Health Standards promulgated for Wyoming. The regulations at 43 CFR 4180.1(d) require the management of rangelands so that "habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal Proposed ... and other special status species." The continued decline of the sage-grouse and relentless destruction of its habitat demonstrates that BLM is not fulfilling its duty to manage rangelands for special status species.

III. VIOLATIONS OF EXECUTIVE ORDER 13443

A. **BLM's decision to lease the contested parcels without considering the impacts to hunting does not comply with Presidential Executive Order 13443**

Hunters are justifiably concerned about the decline of a popular upland bird game species.⁷ On August 16, 2007, George W. Bush issued Executive Order 13443 - Facilitation of Hunting Heritage and Wildlife Conservation. The Order directs all Federal agencies with programs and activities "that have a measurable effect on public land management, outdoor recreation, and wildlife management, including the Department of the Interior and the Department of Agriculture, to facilitate the expansion and enhancement of hunting opportunities and the management of game species and their habitat." To achieve this objective, the Order requires agencies to:

- Evaluate the effect of agency actions on trends in hunting participation and, where appropriate to address declining trends, implement actions that expand and enhance hunting opportunities for the public.
- Consider the economic and recreational values of hunting in agency actions.
- Manage wildlife and wildlife habitats on public lands in a manner that expands and enhances hunting opportunities.
- Foster healthy and productive populations of game species.
- Ensure that agency plans and actions consider programs and recommendations for comprehensive planning efforts ... and other range-wide management plans for big game and upland game birds.

⁷ See, e.g., "Petition for Rulemaking -- Greater Sage Grouse" submitted by Theodore Roosevelt Conservation Partnership to Department of Interior Secretary Dirk Kempthorne (June 27, 2008) available at: <http://www.trcp.org/>

The issuance of oil and gas leases in core sage-grouse habitat that allow for surface occupancy and lack adequate timing and controlled use stipulations will diminish, rather than "enhance" hunting opportunities and will complicate, rather than "facilitate" the management of game species and their habitat. Moreover, by reducing the availability of sage-grouse habitat and numbers of sage-grouse, BLM's actions will harm, rather than "foster" healthy and productive populations of sage-grouse.

Unfortunately, the record in this case lacks any evidence suggesting compliance with, or for that matter, any attention to, Executive Order 13443. Besides the shortcomings identified above, it is clear that BLM failed to consider how the issuance of the contested parcels could impact the economical and recreational values of sage-grouse hunting. Most importantly, BLM failed to "ensure" that its decision to offer the contested parcels considered "range-wide management plans for upland game birds" such as, for example, the Western Association of Fish and Wildlife Agencies (WAFWA) Guidelines for Management of Sage Grouse Populations and Habitats.

IV. REQUESTED RELIEF

The National Audubon Society requests that all fifty-two (52) "Table 1" parcels located within identified core population areas protested herein be indefinitely withdrawn from the sale pending a detailed review of the arguments presented herein. Further, with respect to the thirty-three (33) "Table 2" parcels, Audubon requests that those parcels either be withdrawn from the sale pending the review noted above or, in lieu of withdrawal, affixed with NO SURFACE OCCUPANCY STIPULATIONS which could be modified to allow for surface occupancy and development should the BLM determine, based upon subsequent site-specific environmental review and disclosure, that occupancy and development could occur somewhere on the leasehold without further impact to the sage-grouse or its habitat.

Respectfully submitted,



Dan Heilig
Western Resource Advocates
262 Lincoln Street
Lander, WY 82520
(307) 332-3614

Counsel for Audubon

Exhibit A

Table 1 (52 Parcels)

WY-0808-009	WY-0808-082	WY-0808-109*	WY-0808-142*
WY-0808-011	WY-0808-083	WY-0808-113	WY-0808-143*
WY-0808-018	WY-0808-085	WY-0808-115	WY-0808-144
WY-0808-026*	WY-0808-090	WY-0808-116	WY-0808-145
WY-0808-029*	WY-0808-093	WY-0808-117	WY-0808-146
WY-0808-030*	WY-0808-094	WY-0808-120*	WY-0808-148
WY-0808-032*	WY-0808-095	WY-0808-122	WY-0808-154
WY-0808-063	WY-0808-096*	WY-0808-123	WY-0808-160
WY-0808-071	WY-0808-101*	WY-0808-134	WY-0808-161
WY-0808-072	WY-0808-102*	WY-0808-135*	WY-0808-162
WY-0808-078	WY-0808-103*	WY-0808-136*	WY-0808-163
WY-0808-080	WY-0808-106*	WY-0808-138*	WY-0808-165
WY-0808-081*	WY-0808-107*	WY-0808-140	WY-0808-166

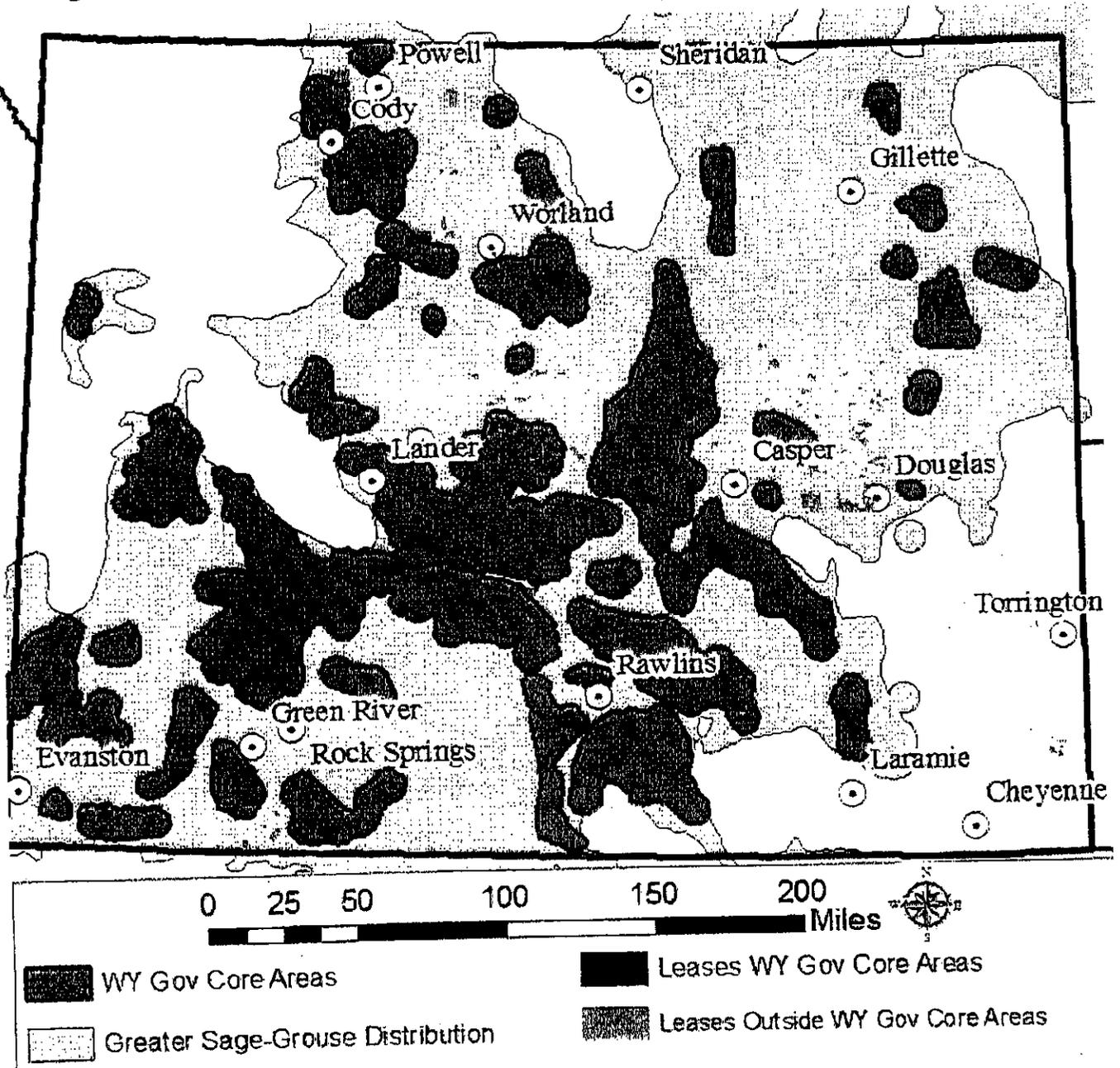
* Leases lacking specific stipulations for sage-grouse protection

Table 2 (33 Parcels)

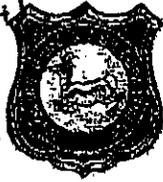
WY-0808-008	WY-0808-051	WY-0808-070	WY-0808-126
WY-0808-010	WY-0808-053	WY-0808-086	WY-0808-149
WY-0808-012	WY-0808-054	WY-0808-087	WY-0808-150
WY-0808-013	WY-0808-055	WY-0808-089	WY-0808-152
WY-0808-015	WY-0808-059	WY-0808-090	WY-0808-153
WY-0808-022	WY-0808-061	WY-0808-091	WY-0808-155
WY-0808-044	WY-0808-062	WY-0808-092	
WY-0808-049	WY-0808-064	WY-0808-104	
WY-0808-050	WY-0808-069	WY-0808-114	

84 parcels

Figure 1. Distribution of the BLM's August 2008 Lease sales.



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WYOMING S.O.

WYOMING GAME AND FISH DEPARTMENT

5400 Bishop Blvd. Cheyenne, WY 82006

Phone: (307) 777-4800 Fax: (307) 777-1010

Web site: <http://gfd.state.wy.us>

GOVERNOR
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DIRECTOR
TERRY CLEVELAND
COMMISSIONERS
BILL WILLIAMS, DVM - President
JERRY GALLES - Vice President
CLARK ALAN
CLIFFORD KINK
FRED LINDZEY
RON LOVERCHECK
BO MCHERY

January 29, 2008

MEMORANDUM

TO: Terry Cleveland and John Emmerich
FROM: Tom Christiansen and Joe Bohne
COPY TO: Jay Lawson, Bill Rudd, Reg Rothwell, Bob Oakleaf
SUBJECT: Multi-State Sage-Grouse Coordination and Research-based Recommendations

As assigned by Assistant Director Emmerich, we have been working with other state fish and wildlife agencies in WAFWA Sage-Grouse Management Zones 1 and 2 (MT, CO, UT, SD, ND, WY) in order to coordinate interpretation of recent sage-grouse research related to oil and gas development.

Attached for your review, please find the latest and final document capturing the multi-state interpretation of the recent science related to sage-grouse conservation and oil and gas development. It has been well scrutinized by staff from MT, WY, CO, ND and UT and there is consensus on the content by the participants. South Dakota was unable to attend the initial meeting in Salt Lake City on January 8-9, but they have been provided with meeting notes and the resulting document.

It is our recommendation that WGFD acknowledge this document as the correct interpretation of the recently published sage-grouse research and use this information to update and augment department documents and policies. It should be used in the forthcoming discussions with the BLM regarding their update to their sage-grouse Instruction Memorandum. In addition, we suggest that in order for this document to serve the broadest purpose for sage-grouse conservation four additional actions are needed. First, the document should be shared with Governor Freudenthal's staff. Second, we recommend that the Director's Office enter into discussions with MT FWP Director Jeff Hagener to ensure consistency in the application of these recommendations between our border states, and especially with the WY and MT BLM State Field Offices. Third, we recommend the document be submitted to WAFWA's Sage-Grouse Technical Committee as well as the WAFWA Executive Committee for their consideration and use. Finally, we recommend this document be included with other materials sent to the USFWS for consideration in their review of the status of sage-grouse and measures in place to conserve those populations.

We look forward to your direction on how to proceed.

**Using the Best Available Science to Coordinate Conservation Actions that
Benefit Greater Sage-Grouse Across States Affected by Oil & Gas Development in
Management Zones I-II (Colorado, Montana, North Dakota, South Dakota, Utah,
and Wyoming)**

Background

Greater Sage-grouse are widely considered in scientific and public policy arenas to be a species of significant conservation concern. Loss, degradation and fragmentation of important sagebrush grassland habitats have negatively impacted sage-grouse populations. Much of this loss of habitat function is occurring in Sage-grouse Management Zones (MZ) 1 and 2 (Stiver et al. 2006) in Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming as a result of oil and gas development (Connelly et al. 2004). Oil and gas development is rapidly increasing within these areas. In response to those concerns, states and provinces are in various stages of completing or updating management plans in order to provide for long-term sage-grouse conservation. Special emphasis is being placed on oil and gas development as it rapidly spreads across much of the eastern range of sage-grouse.

The recent decision by B. Lynn Winmill, Chief U.S. District Judge (2007), which remands the original 2005 not warranted decision back to the USFWS for reconsideration, has highlighted the need for States to coordinate their application of best available science. Representatives from the state agencies with authority for managing fish and wildlife from the major sage-grouse and energy producing states comprising MZ 1 and 2 and sage-grouse researchers who have published new findings, met on January 8 and 9, 2008 in Salt Lake City. The objectives of the meeting were to better understand the application of most recent peer-reviewed science within the context of oil and gas development and coordinate and compare implementation of conservation actions utilizing that information.

Review Process

The participants at this meeting represented technical science and management advisors from each of the states. Researchers having the most recently peer reviewed and published articles concerning sage grouse and oil and gas development were invited to present their findings and answer questions. State agency participants agreed that the goal was not to establish state or regional policy or to determine the management actions that will be implemented in any or all states within MZ 1 or 2. Rather, the goal was to reach agreement on the conservation concepts and strategies related to oil and gas development that are supported by current published peer-reviewed and unpublished literature. If implemented, these concepts and strategies likely will not eliminate impacts to sage-grouse populations that result from energy development. However, when used in combination with other conservation measures, these actions may enhance the likelihood that sage-grouse populations will persist at levels that allow historical uses such as grazing and agriculture and maintain their current distribution and abundance, thereby avoiding the need to list sage-grouse under the federal Endangered Species Act.

Each researcher was invited to present their findings and to answer questions posed by the states. Following this, each state provided an overview of their review of the science and their resulting management actions and recommendations. The group then collectively reviewed, debated and agreed on the concepts and strategies supported by that science. The focus of the meeting was on five key issues: core areas, no-surface-occupancy zones, phased development, timing stipulations, well-pad densities, and restoration. Scientific data are available to inform many other issues related to sage-grouse management and conservation that were not reviewed (e.g., BMPs).

Core Areas

Identification and protection of core areas, sometimes also referred to as crucial areas, will help maintain or achieve target goals for populations including distribution and abundance.

Full field energy development appears to have severe negative impacts on sage-grouse populations under current lease stipulations (Lyon and Anderson 2003, Holloran 2005, Kaiser 2006, Holloran et al. 2007, Aldridge and Boyce 2007, Walker et al 2007, Doherty et al. 2008). Much of greater sage-grouse habitat in MZ 1 and 2 has already been leased for oil and gas development. These leases carry stipulations that have been shown to be inadequate for protecting breeding and wintering sage-grouse populations during full field development. (Holloran 2005, Walker et al. 2007, Doherty et al. 2008) New leases continue to be issued utilizing these same stipulations. To ensure long-term persistence of populations and meet goals set by the states for sage-grouse, identifying and implementing greater protection within core areas from impacts of oil and gas development is a high priority.

In order to conserve core areas it is essential that they be identified and delineated. Sage-grouse populations occur over large landscapes comprising a series of leks and lek complexes with associated seasonal habitats. Therefore, core areas should capture the range required by a defined population to maintain itself. This concept is consistent with Crucial Wildlife Habitats recently endorsed by the Western Governor's Association (2007). Criteria that could be used to identify and map core areas include, but are not limited to: (1) lek densities, (2) displaying male densities, (3) sagebrush patch sizes, (4) seasonal habitats (breeding, summering, wintering areas), (5) seasonal linkages, or (6) appropriate buffers around important seasonal habitats.

Research indicates that oil or gas development exceeding approximately 1 well pad per square mile with the associated infrastructure, results in calculable impacts on breeding populations, as measured by the number of male sage-grouse attending leks (Holloran 2005, Naugle et al. 2006). Because breeding, summer, and winter habitats are essential to populations, development within these areas should be avoided. If development cannot be avoided within core areas, infrastructure should be minimized and the area should be managed in a manner that effectively conserves sagebrush habitats within that area.

No Surface Occupancy (NSO)

At the scale that NSOs are established, they alone will not conserve sage-grouse populations without being used in combination with core areas. The intent of NSOs is to maintain sage-grouse distribution and a semblance of habitat integrity as an area is developed.

Breeding Habitat - Leks

Research in Montana and Wyoming in coal-bed methane natural gas (CBNG) and deep-well fields suggests that impacts to leks from energy development are discernable out to a minimum of 4 miles, and that some leks within this radius have been extirpated as a direct result of energy development (Holloxan 2005, Walker et al. 2007). Walker et al. (2007) indicates that the current 0.25-mile buffer lease stipulation is insufficient to adequately conserve breeding sage-grouse populations in areas having full CBNG development. A 0.25-mi. buffer leaves 98% of the landscape within 2 miles open to full-scale energy development. In a typical landscape in the Powder River Basin, 98% CBNG development within 2 miles of leks is projected to reduce the average probability of lek persistence from 87% to 5% (Walker et al. 2007). Only 38% of 26 leks inside of CBNG development remained active compared to 84% of 250 leks outside of development (Walker et al. 2007). Of leks that persisted, the numbers of attending males were reduced by approximately 50% when compared to those outside of CBNG development (Walker et al. 2007).

The impact analyses provided in Walker et al. (2007) are based on a 7-year dataset where probability of lek persistence is strongly related to extent of sagebrush habitat and the extent of energy development within 4 miles of the lek and the extent of agricultural tillage in the surrounding landscape. The estimated probabilities of lek persistence are only reliable for the length of the dataset, and it is not understood how other stressors (e.g., West Nile virus [Naugle et al. 2004], invasive weeds [Bergquist et al. 2007]) will cumulatively impact sage-grouse over longer time periods. While increased NSO buffers alone are unlikely to conserve sage-grouse populations, results from Walker et al. 2007 suggest they will increase the likelihood of maintaining the distribution and abundance of grouse and should increase the likelihood of successful restoration following energy development.

Additional information provided in Walker et al. (2007) allows managers and policy makers to estimate trade-offs associated with allowing development within a range of different distances from leks (Figures 1a and 1b). These probabilities will also need to be applied over larger landscapes in future analyses to better understand projected region- and state-wide population impacts under current and future development scenarios. Walker et al. (2007) studied lek persistence from 1997-2005 in relation to coal bed natural gas (CBNG) development in the Powder River Basin. These models are based on projected impacts of full-field development within (a) 2 miles and (b) 4 miles of the lek. We present results from these models (rather than models with impacts at smaller scales)

because development within 2 and 4 miles of leks are known to decrease breeding populations as measured by the number of displaying males (Holloran et al. 2005, Walker et al. 2007), and 52% and 74-80% of hens are known to nest within 2 and 4 miles of leks, respectively (Holloran and Anderson 2005, Colorado Greater Sage-Grouse Conservation Plan Steering Committee 2008). Sizes of NSO buffers required to protect breeding populations may be underestimated because leks in CBNG fields have fewer males per lek and a time lag occurs (avg. 3-4 years) between development and when leks go inactive. As a result, it is expected that not only will lek persistence decline, the number of males per lek will also decline. In contrast, sizes may be overestimated where high lek densities cause buffers from adjacent leks to overlap. Additional time is required to develop models demonstrating the probabilities of lek persistence at well-pad densities less than full development.

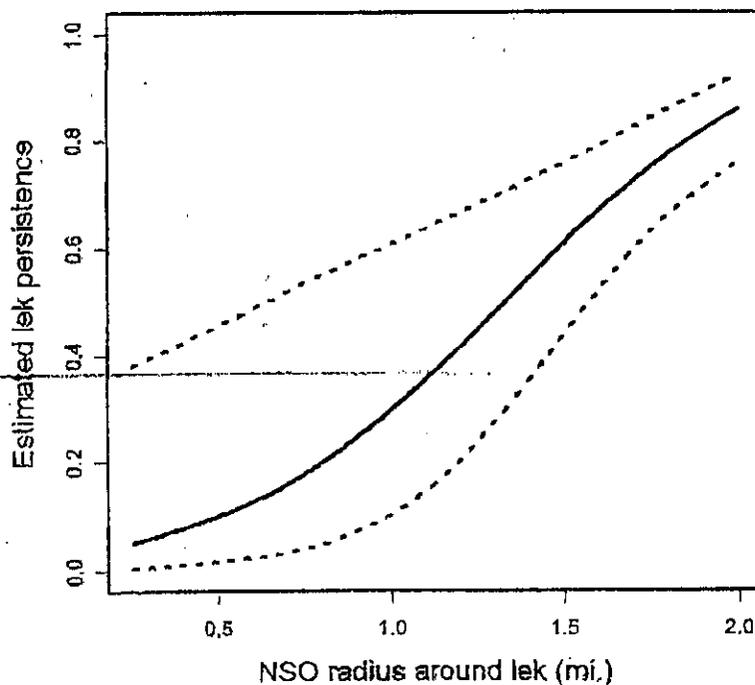


Figure 1a. Estimated probability of lek persistence (dashed lines represent 95% CIs) in fully-developed¹ coal-bed natural gas fields within an average landscape in the Powder River Basin (74% sagebrush habitat, 26% other habitats types) with different sizes of no-surface-occupancy (NSO) buffers around leks, assuming that only CBNG within 2 miles of the lek affects persistence. Buffer sizes of 0.25 mi., 0.5 mi., 0.6 mi., and 1.0 mi. result in estimated lek persistence of 5%, 11%, 14%, and 30%. Lek persistence in the absence of CBNG averages ~85%.

¹ Defined as entire area outside the NSO buffer, but within 2 miles, being within 350 meters of a well.

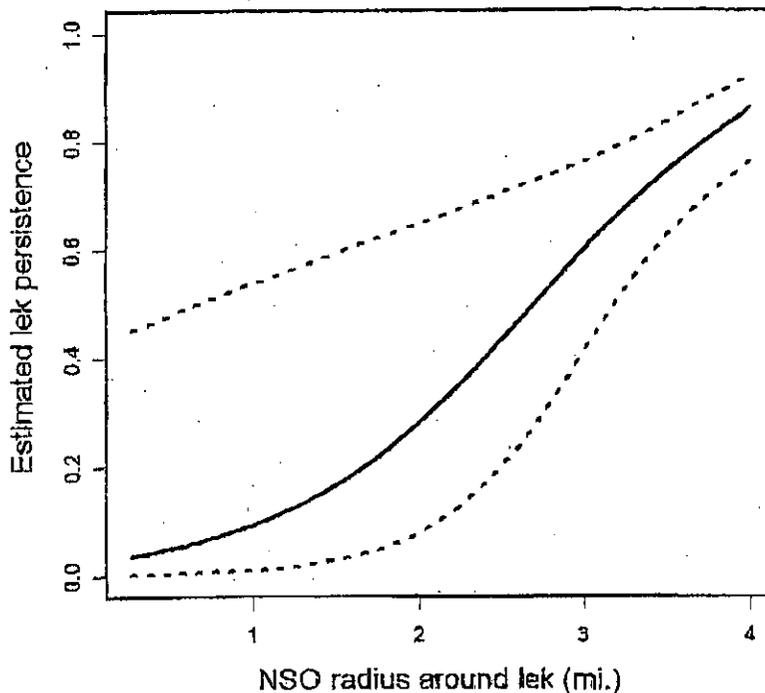


Figure 1b. Estimated probability of lek persistence (dashed lines represent 95% CIs) in fully-developed² coal-bed natural-gas fields within an average landscape in the Powder River Basin (74% sagebrush habitat, 26% other habitats types) with different sizes of no-surface-occupancy (NSO) buffers around leks, assuming that only CBNG within 4 miles of the lek affects persistence. Buffer sizes of 0.25 mi., 0.5 mi., 0.6 mi., 1.0 mi., and 2.0 mi. result in estimated lek persistence of 4%, 5%, 6%, 10%, and 28%. Lek persistence in the absence of CBNG averages ~85%.

Figures 1a and 1b provide an illustration of the trade-offs between differing NSO buffers in relation to lek persistence in developing CBNG fields. The group does not offer a specific NSO recommendation but provides these graphs to guide decision-making.

Breeding Habitat - Nesting and Early Brood-rearing

Yearling female greater sage-grouse avoid nesting in areas within 0.6 miles of producing well pads (Holloran et al. 2007), and brood-rearing females avoid areas within 0.6 miles of producing wells (Aldridge and Boyce 2007). This suggests a 0.6-mile NSO around all suitable nesting and brood-rearing habitats is required to minimize impacts to females during these seasonal periods. In areas where nesting habitats have not been delineated, research suggests that greater sage-grouse nests are not randomly distributed. Rather, they are spatially associated with lek location within 3.1 miles in Wyoming (Holloran and Anderson 2005). However, a 4-mile buffer is needed to encompass 74-80% (Moynahan

² Defined as entire area outside the NSO buffer, but within 4 miles, being within 350 meters of a well.

2004, Holloran and Anderson 2005, Colorado Greater Sage-Grouse Conservation Plan Steering Committee 2008). These suggest that all areas within at least 4-miles of a lek should be considered nesting and brood-rearing habitats in the absence of mapping.

Winter Habitat

NSO or other protections may also need to be considered for crucial winter range. Survival of juvenile, yearling, and adult females are the three most important vital rates that drive population growth in greater sage-grouse (Holloran 2005, Colorado Greater Sage-Grouse Conservation Plan Steering Committee 2008). Although overwinter survival in sage-grouse is typically high, severe winter conditions can decrease hen survival (Moynahan et al 2006). Crucial wintering habitats can constitute a small part of the overall landscape (Beck 1977, Hupp and Braun 1989). Doherty et al. (2008) demonstrated that sage-grouse avoided otherwise suitable wintering habitats once they have been developed for energy production, even after timing and lek buffer stipulations had been applied (Doherty et al. 2008). For this reason, increased levels of protection may need to be considered in crucial winter habitats.

Phased Development

Population-level impacts and avoidance associated with energy development have been documented (Braun et al. 2002, Lyon and Anderson 2003, Holloran 2005, Kaiser 2006, Holloran et al. 2007, Aldridge and Boyce 2007, Walker et al 2007, Doherty et al. 2008). Phased development maximizes the amount of area within a landscape that is not being impacted by development at any one time, and can occur at multiple spatial scales (e.g., phased development of separate fields in a landscape, phased development of infrastructure within a single unit or field, or phased development within a single lease). Unitization, clustering, and geographically staggered development are all forms of phased development. As a tool to minimize impacts to sage-grouse, developing oil and gas resources by employing one of these phased methods may help maintain large, functional blocks of sage-grouse habitat.

Timing Stipulations

As with NSOs, at the scale that timing stipulations are established, they alone will not conserve sage-grouse populations without being used in combination with core areas. The intent of timing stipulations is to help maintain sage-grouse distribution and a semblance of habitat integrity as an area is developed. Timing stipulations are of lesser value at the scale of full-field development.

Breeding Habitat - Leks

Traffic during the strutting period when males are on a lek results in declines in male attendance when road-related disturbance is within 0.8 miles (Holloran 2005). The distance traveled by males from the lek during the breeding season has been reported in varying ways but generally averages 0.6 miles from a lek (Colorado Greater Sage-Grouse

Conservation Plan Steering Committee 2008 - see Appendix B). Additionally, females breeding on leks within 1.9 miles of natural gas development had lower nest initiation rates and nested farther from the lek compared to non-impacted individuals (Lyon and Anderson 2003), suggesting disturbance to leks influence females as well. Local variations may influence the application of specific dates, which are typically within a window of March 1 and May 31.

Breeding Habitat - Nesting and Early Brood-rearing

Often, timing stipulations (periods where no activity that creates disturbance are allowed) for breeding habitat have been applied using a radius around a lek. However, nesting and brood-rearing habitat is not uniformly distributed around the lek. Mapping of habitat would allow for more accurate application of this stipulation. Research on the distribution of nests relative to leks and on the timing of nesting indicates that timing stipulations to protect nesting hens and their habitat should be in place from March through June in mapped breeding habitat or (when nesting habitat has not been mapped) within 4 miles of active lek sites (Moynahan 2004, Holloran et al. 2005, Colorado Greater Sage-Grouse Conservation Plan Steering Committee 2008).

Winter Habitat

Research suggests that no surface occupancy should also be applied to important wintering habitats (Doherty et al. 2008), but if development occurs, impacts would be reduced if development activities were avoided between December 1 and March 15.

Well-Pad Densities

Leks tend to remain active when well-pad densities within 1.9 miles of leks are less than 1 pad per square mile (Holloran 2005) but leks tend to go inactive at higher pad densities (Holloran 2005, Naugle et al. 2006).

Restoration

The purpose of restoration in sage-grouse habitat should be the removal of infrastructure associated with energy development from the land surface and subsequent re-establishment of native grasses, forbs, and shrubs, including sagebrush, to promote natural ecological function. Restoration should reestablish functionality of seasonal habitats for sage-grouse. Thus a field should not be considered restored until sagebrush-grassland habitats have been reestablished.

Future Needs

Time did not allow for a detailed discussion of specific Best Management Practices for oil and gas development and restoration, seasonal habitat mapping, or future research. These topics are all recognized as needing action in the immediate future.

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Appendix 1.

Participants (Alphabetical)

Dr. Tony Apa, Colorado Division of Wildlife
Mr. Joe Bohne, Wyoming Game and Fish Department
Mr. Tom Christiansen, Wyoming Game and Fish Department
Mr. Jeff Herbert, Montana Department of Fish, Wildlife and Parks
Mr. Bill James, Utah Division of Wildlife Resources
Mr. Rick Northrup, Montana Department of Fish, Wildlife and Parks
Mr. Dave Olsen, Utah Division of Wildlife Resources
Mr. Aaron Robinson, North Dakota Game and Fish
Ms. Pam Schnurz, Colorado Division of Wildlife
Mr. T.O. Smith, Montana Department of Fish, Wildlife and Parks
Mr. Brett Walker, Colorado Division of Wildlife

Invited Guests

Dr. Matt Holloran, Wyoming Wildlife Consultants, LLC
Dr. David Naugle, University of Montana

Exhibit D

SAGE GROUSE IMPLEMENTATION TEAM

Tuesday, 25 March 2008

Governor Dave Freudenthal
Wyoming State Capitol
Cheyenne, WY 82002

Dear Governor Freudenthal,

On behalf of the Implementation Team you asked to identify actions and strategies which will effectively manage Sage-grouse and their habitats in Wyoming, we would like to recommend that you take the appropriate steps to formally adopt a process for conservation that includes the following:

Wyoming should develop a "Core Population Area" strategy to maintain habitats and viable populations of Sage-grouse in areas where they are most abundant. This approach is similar to the highly successful "Core Native Herd" approach used to manage Bighorn sheep in the state.

Wyoming will adopt a "statewide" approach to management of Sage-grouse in the state. While we recognize zonal recommendations within the region, we will work within our area of jurisdiction.

Core Population Areas will include habitats and existing populations for no less than two-thirds of the Sage-grouse in Wyoming. Based on initial evaluations, it is estimated there will be approximately 40 Core Population Areas, varying in size. Core Population Areas will reflect geographic and genetic distribution of Sage-grouse in Wyoming. Flexibility to adjust Core Population Area boundaries to adapt to emerging conditions and information is essential to future management.

Management within Core Population Areas will focus on maintenance and enhancement of grouse habitats and populations. Current management and existing land uses within Core Population Areas should be recognized and continued. Sage-grouse have clearly selected those areas based on existing conditions, and changes to those conditions should be carefully evaluated.

Development within Core Population Areas should occur only when it can be demonstrated that the activity will have no negative effects on Sage-grouse, using a case-by-case localized approach and appropriate ground-truthing.

Core Population Areas will be used to focus funding, assurances (including Candidate Conservation Agreements and Candidate Conservation Agreements

with Assurances), habitat enhancement, reclamation efforts, mapping, and other associated efforts to assure viability of Sage-grouse in Wyoming.

A non-regulatory approach will be used as much as possible to influence management within Core Population Areas. It is imperative that management alternatives reflect unique localized conditions, including soils, vegetation, types of development, climate, and other local realities.

Incentives to defer, reduce, or preclude development of all types in Core Population Areas will be necessary, but should follow a Controlled Surface Use (CSU) framework, rather than a No Surface Occupancy (NSO) approach.

Incentives to enable development of all types outside Core Population Areas will be necessary. These should include stipulation waivers, enhanced permitting processes, density bonuses, and other incentives. Development scenarios should attempt to maintain populations, habitats and essential migration routes outside Core Population Areas wherever possible.

Development of alternative strategies for maintenance of habitat, or proven enhancement strategies within Core Population Areas will be a priority. This will include such strategies as habitat leasing, conservation easements, and management plans (including CCAAs AND CCAs).

Incentives to accelerate or expand on required reclamation in habitats adjacent to Core Population Areas should be developed. These may include stipulation waivers, assistive funding for reclamation, and other strategies.

Existing rights should be recognized and may require compensation to facilitate management in Core Population Areas.

On-the-ground enhancements, monitoring, and ongoing planning should be facilitated by local working groups (LWGs) as much as possible.

Initial Core Population Areas were recommended jointly by technical experts from the oil and gas industry, Game and Fish, conservation organizations, and agriculture. Those recommendations were acted on by the Implementation Team in March, and the recommended boundaries are shown on the attached map.

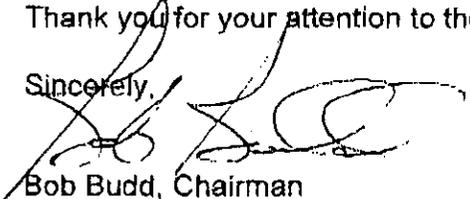
Core Population Areas will be further evaluated and refined by the recently initiated and funded mapping process headed by Wyoming Geographic Information System Center (WyGIS). Those results and associated ground-truthing are expected by the end of 2008.

It is the belief of the Implementation Team that this process is responsible, and will have a permanently beneficial effect on Sage-grouse in Wyoming. We would encourage you to engage the U.S. Fish and Wildlife Service, Bureau of Land Management, Forest Service and appropriate state agencies in implementation of this process as soon as possible.

Finally, the group discussed the means of implementing these actions, and it would appear that your use of an Executive Order to direct Wyoming government may be the most expedient and effective at this time. However, the group will defer to and support your judgment in that regard.

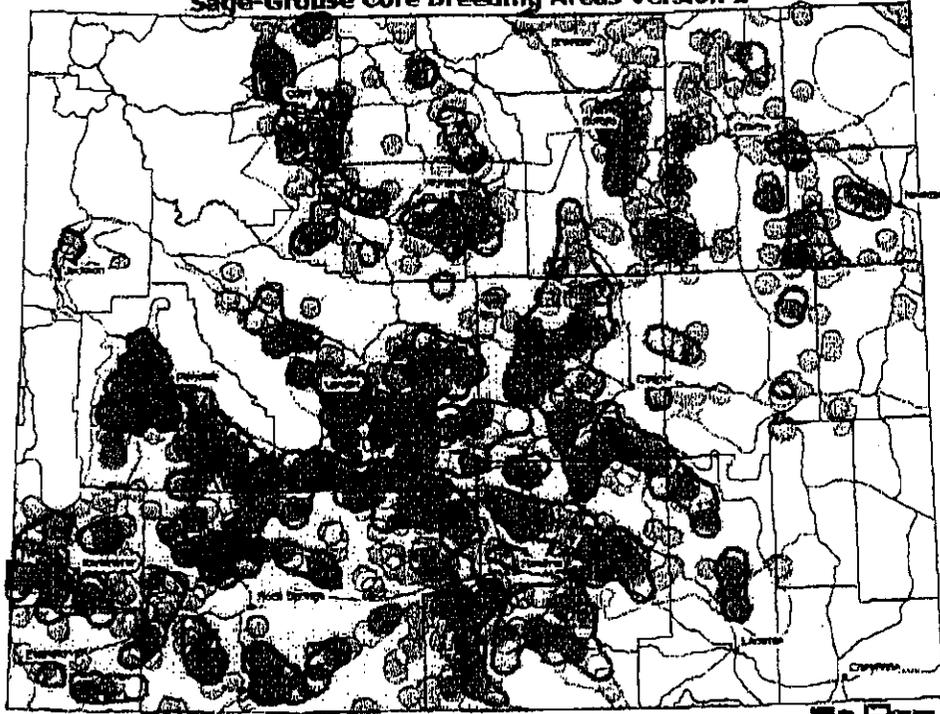
Thank you for your attention to these matters.

Sincerely,



Bob Budd, Chairman
SAGE-GROUSE IMPLEMENTATION TEAM

Sage-Grouse Core Breeding Areas Version 1



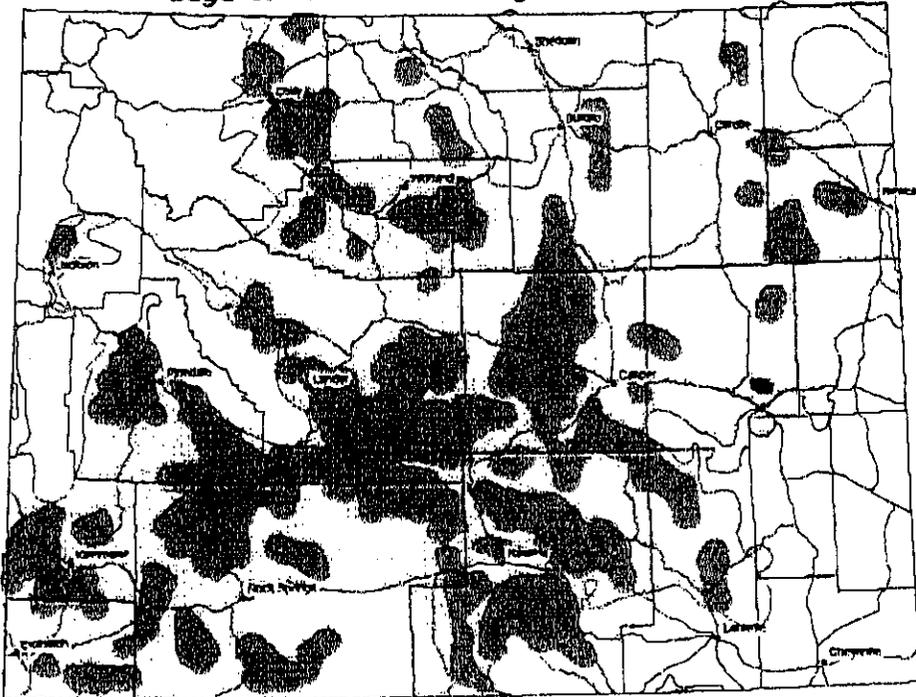
Core Areas shown were delineated by the University of Wyoming Sage-Grouse Information System (GIS) during the 05.17.06 meeting in Laramie, WY.

Percent of Sage-Grouse Density

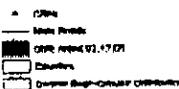
Note: The lighter shaded areas represent 25% or more density of Sage-Grouse Core Areas.



Sage-Grouse Core Breeding Areas Version 1



Core Areas shown were delineated by the University of Wyoming Sage-Grouse Information System (GIS) during the 05.17.06 meeting in Laramie, WY.



Wyoming Department of Game and Parks
Laramie Regional Office
05.16.07

Core Area Stats	Number	%
Peak Males within Core Areas (05-07)	46942	83.35%
Peak Males within state	56318	
Occupied Leks within Core Areas	1126	61.20%
Total Occupied Leks	1840	
Acres within Core Areas	14681050.51	23.41%
Acres within State	62713551.3	
Acres within Core Areas	14681050.51	33.74%
Acres within Current Range	43513267.87	

The above stats are ones that I compiled. I asked Kevin Doherty to also come up with a percentage. We used different methods and came up with similar results. Kevin did a nest simulation study to see what percentage of nests would be inside the core areas. Some of the leks are extremely close to the core area boundaries (inside and out) and those birds could nest inside the core area or outside. His results were that 75% core areas would represent 78.8% of the nests. This figure could be off by +/- 5-10% due to the nature of the birds and assuming none of the leks outside the core area go inactive. Also, the above number could change when we have better habitat data. This is just breeding information not winter or summer habitats.

07/27/2008 10:11:11 AM

Exhibit E

Sent out
on 4.21.08
Pdf → 6.6.08

DAVE FREUDENTHAL
GOVERNOR



STATE CAPITOL
CHEYENNE, WY 82002

Office of the Governor

April 17, 2008

U.S. Fish and Wildlife Service
Wyoming Field Office
Attn: Brian Kelly, Field Supervisor
5353 Yellowstone Road, Suite 308A
Cheyenne, WY 82003

Dear Brian:

As you are aware, the Governor's Sage Grouse Implementation Team recently completed its work to develop the outer contours of what has come to be described as a "core population area strategy" to conserve greater sage grouse populations in Wyoming. Governor Freudenthal has asked me to forward the Team's letter, which outlines its recommendations, together with the initial maps of sage grouse "core areas" that were identified primarily using the Wyoming Game and Fish Department's lek database for your consideration. While your office was a participant on the Implementation Team, he thought it necessary to allow you and your office the opportunity to provide an independent evaluation of the approach set forth in the letter and maps.

To be clear, the Governor recognizes that management of the sage grouse continues to be a matter of state jurisdiction and responsibility. He is quite confident that the state currently maintains robust sage grouse populations, but is keenly aware that the species has been petitioned for listing under the Endangered Species Act (ESA). Irrespective of your regulatory duties under the auspices of the ESA, in the spirit of the Memorandum of Agreement between your agency, the Wyoming Game and Fish Department and the Governor's Office, he asked me to seek your professional evaluation of both the strategy and maps before he initiated formal action.

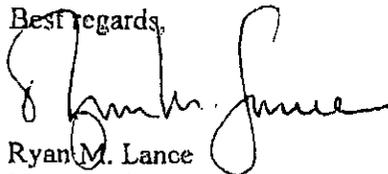
You will note that the letter from the Implementation Team is relatively general. However, it is the Governor's view that the rough outline of the "core population strategy" is sufficiently defined to allow you to provide your thoughts -- especially considering that the strategy was derived following the state's careful study of the WAFWA Conservation Assessment and Strategy -- two documents that have previously been reviewed and endorsed by the U.S. Fish and Wildlife Service. In terms of the maps, while we expect some refinement with the ongoing mapping exercise, the identified core areas are generally consistent with the maps set forth in the Conservation Assessment and Strategy. And finally, the population estimates, while rough, were developed to be conservative to provide all of us with a greater degree of flexibility and comfort as we proceed forward.

To be specific, the Governor would like to hear your thoughts on the following:

1. Is the sage grouse "core population area strategy" a sound policy that should be moved forward?
2. If the answer to question 1 is "yes" and understanding that more refinement is forthcoming, are the core population areas set forth on the enclosed maps generally consistent with the U.S. Fish and Wildlife Service's understanding of the most important sage grouse habitats?

Thank you for your time and consideration of the Implementation Team's approach to conserving the sage grouse while protecting other uses of state, federal and private lands. The Governor looks forward to your thoughts.

Best regards,



Ryan M. Lance
Deputy Chief of Staff

- Cc:
- Don Simpson, Acting BLM State Director
 - Harv Forsgren, Regional Forester
 - Rick Cables, Regional Forester
 - Terry Cleveland, Director – Wyoming Game and Fish Department
 - Bob Budd, Chair – Governor's Sage Grouse Implementation Team
 - Lynn Boomgaarden, Director – Office of State Lands and Investments

Exhibit F
04-722903
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04-011-00



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
5353 Yellowstone Road, Suite 308A
Cheyenne, Wyoming 82009

In Reply Refer To:
ES-61411/WY.36/WY10523

MAY - 7 2008

Mr. Ryan M. Lance
Deputy Chief of Staff
Office of the Governor
State Capitol
Cheyenne, Wyoming 82002

Dear Mr. ~~Lance~~ ^{RYAN}:

Thank you for your letter of April 17, 2008, regarding the proposed strategy developed by the Governor's Sage Grouse Implementation Team (Implementation Team) for the conservation of the greater sage-grouse in Wyoming. Specifically you requested of us: (1) whether the "core population area strategy" was a sound policy that should move forward, and (2) whether or not the core population areas currently identified for Wyoming are consistent with the U.S. Fish and Wildlife Service's (Service) understanding of the most important sage-grouse habitats in the State.

The Service does indeed believe the "core population area strategy", as outlined in the Implementation Team's correspondence to the Governor, is a sound framework for a policy by which to conserve greater sage-grouse in Wyoming. The Service commends the State for its leadership role in developing this long-term, science-based vision for the conservation of greater sage-grouse. In the 10 months since the Governor convened his sage-grouse summit, and during which time the Implementation Team conducted its work, the Service believes Wyoming has led by example. We have recently become aware of other states and agencies pursuing approaches similar to that developed in Wyoming.

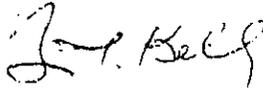
Your request to the Service was, in part, cast under the auspices of our recently signed Memorandum of Agreement to ensure the necessary conservation to preclude the need to list species of greatest conservation need. The Service believes the "core population area strategy" can achieve this goal for greater sage-grouse. However, as you know and as the Implementation Team discussed, for the strategy to be effective, the state, federal and private landowners in the state must implement this strategy. To this end, the Service is poised to assist the State in the development of a state-wide programmatic Candidate Conservation Agreement with Assurances for private landowners, which, although voluntary, could incent landowners to adopt the strategy. Likewise, if federal agencies are willing, the state-wide

Conservation Agreement approach can also integrate federal properties. As you know federal properties in Wyoming contain a good share of the key habitat in the State and the inclusion of those properties in the proposed strategy will be a key to its success.

The Service agrees that the core areas as currently defined by the Implementation Team are among the most important sage-grouse habitats in the State. Our only reservation is that the core population areas reflect breeding areas only. Core population areas need to include all seasonal habitats for those key populations, including migratory corridors, and must be identified and appropriately managed. The Implementation Team discussed this at length and implicitly acknowledged it in their recommendations to the Governor. In this regard, the Service again commends the State's leadership to fund and conduct the appropriate state-wide mapping in order to complete this important phase of the strategy. Thus, we strongly encourage the Implementation Team to ensure that all seasonal habitats to sustain the core population areas are identified and incorporated into the strategy, and associated maps, once the State's mapping project is complete.

Thank you for the opportunity to provide feedback on the proposed core population approach for greater sage-grouse in Wyoming. The effective implementation of the proposed strategy should help ensure the long-term viability of state-managed populations of greater sage-grouse in Wyoming. We look forward to continuing in our participation with Wyoming in greater sage-grouse conservation. If you have any questions regarding the information provided here please do not hesitate to contact me at 307-772-2374, extension 234, or Pat Deibert of my staff at extension 226.

Sincerely,



Brian T. Kelly
Field Supervisor
Wyoming Field Office

cc: BLM, Acting State Director, Cheyenne, WY (D. Simpson)
USFS, Regional Forester (H. Forsgren)
USFS, Regional Forester (R. Cables)
WGFD, Director, Cheyenne, WY (T. Cleveland)
Governor's Sage Grouse Implementation Team, Chair, Lander, WY (B. Budd)
Office of State Lands, Director, Cheyenne, WY (L. Boomgaarden)