UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
BOARD OF LAND APPEALS

National Audubon Society & Audubon Wyoming Appellants, v. Larry Claypool Deputy State Director Minerals and Lands Wyoming State Office Bureau of Land Management Respondent.	IBLA Docket No: _____ Reference No. 3100 (921 Bargsten) May 2012 Protests

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NOTICE OF APPEAL

Pursuant to 43 C.F.R. §§ 4.410, 4.411, and 4.13, Appellants National Audubon Society and Audubon Wyoming (Audubon) file this Notice of Appeal of the following adverse decision:

1) The April 30, 2012 Decision of the Wyoming State Office of the Bureau of Land Management signed by Deputy State Director Larry Claypool dismissing Audubon's protest of the decision to offer for lease the following parcels in the May 1, 2012 Competitive Oil and Gas Lease Sale held by the BLM Wyoming State Office:

   WY-1205-004, 005, 006, 007, 008, 009, 010, 011, 012, 014, 015, 020, 021, 024, 025, 026, 028, 030, 031, 035, 036, 043, 044, 048, 056, 059, 060, 061, 075, 095, 108, 109, 116, 117, 120, 122, 125, 126, 128, 133, 134, 153

2) Appellants are "adversely affected" parties within the meaning of 43 C.F.R. § 4.410(a) and have standing to pursue this appeal.

3) This Notice of Appeal is timely filed within 30 days of Appellants' receipt of BLM's Protest Decision.

Appellants thus appeal the BLM Decision dismissing their protest of the decision to offer the disputed lease parcels listed above. The protests stated claims under the National Environmental Policy Act, the Federal Land Policy Management Act and the Endangered Species Act, among other laws. A Request for Stay is being filed concurrently with this Notice of Appeal.

Respectfully submitted on May 31, 2012,

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Chief Counsel, Lands Program
Western Resource Advocates
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Boulder, Colorado 80302
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303-786-8054, fax
mike@westernresources.org, email

CERTIFICATE OF SERVICE

The undersigned certifies that the originals of Appellants' Notice of Appeal and Request for Stay were sent by certified U.S. mail to the following:

Bureau of Land Management
5353 Yellowstone Road
Cheyenne, WY 82009

Office of Hearings and Appeals
U.S. Department of the Interior
801 North Quincy Street
MS 300 QC
Arlington, VA 22203

The undersigned also certifies that a true and correct copy of the stated documents were sent to the following by certified U.S. mail, return receipt requested:

Department of Interior
Regional Solicitor
Rocky Mountain Region
755 Parfet Street, Suite 151
Lakewood, CO 80215

Although not named in the BLM's adverse decision, Appellants are also transmitting, by U.S. mail, courtesy copies of the Notice of Appeal only to the following high bidders for the disputed parcels named in the Lease Sale Results. Upon request by a bidder or counsel, Appellants will transmit a copy of the Request for Stay by either hard copy or electronic service.

VAQUERO ENERGY INC
5060 CALIFORNIA AVE STE 640
BAKERSFIELD CA 93309-0728

RED RIVER OIL AND GAS LLC
4696 S CLARKSON ST
ENGLEWOOD CO 80113-5956

ENTEK GRB LLC
535 16TH ST STE 620
DENVER CO 80202-4242

YATES PETROLEUM CORP
105 S 4TH ST
ARTESIA NM 88210-2177

FARMER KENNETH K
PO BOX 2885
CASPER WY 82602-2885

SANALI MINES & MINERALS LLC
2515 WARREN AVE SUITE 500
CHEYENNE WY 82001

KIRKWOOD OIL & GAS LLC
PO BOX 2850
CASPER WY 82602

TRUJILLO ANN M
PO BOX 1252
CHEYENNE WY 82003-1252

PAUL&LYNN SAWYER REV LVNG TRST
327 ROAD 4DT
MEETEETSE WY 82433-9724

QEP ENERGY COMPANY
1050 17TH ST STE 500
DENVER CO 80265-1050

LIBERTY PETROLEUM CORP
PO BOX 1549 NEW YORK NY
10028-0013

BASELINE MINERALS INC
518 17TH ST STE 1050
DENVER CO 80202-4113

BULLOCK VAN K
PO BOX 484
MORRISON CO 80465-0484

STONE ENERGY CORPORATION
625 E KALISTE SALOOM RD
LAFAYETTE LA 70508-2540

Andria Bronsten

Date: May 31, 2012

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National Audubon Society & Audubon Wyoming Appellants, v. Larry Claypool Deputy State Director Minerals and Lands Wyoming State Office Bureau of Land Management Respondent.	IBLA Docket No: _____ Reference No. 3100 (921 Bargsten) May 2012 Protests

REQUEST FOR STAY

1. Introduction

Pursuant to 43 C.F.R. §§ 4.410, 4.411, and 4.13, Appellants National Audubon Society and Audubon Wyoming (Audubon) file this Request for Stay in support of Audubon's appeal of the Bureau of Land Management's decision to deny Audubon's Protest of BLM's decision to offer the following parcels for lease at the May 1, 2012 Competitive Oil and Gas Lease Sale held by the BLM Wyoming State Office:

> **WY-1205-004, 005, 006, 007, 008, 009, 010, 011, 012, 014, 015, 020, 021, 024, 025, 026, 028, 030, 031, 035, 036, 043, 044, 048, 056, 059, 060, 061, 075, 095, 108, 109, 116, 117, 120, 122, 125, 126, 128, 133, 134 & 153**

These 42 parcels are referred to below as the "disputed parcels." Audubon is entitled to the requested stay because BLM's decision violated the National Environmental Policy Act, Federal

Land Policy Management Act, and agency policy.

The 42 disputed parcels each are partially or entirely located within greater sage-grouse Core Population Area habitat, as defined by BLM and the State of Wyoming. Exhibits 1A, 1B, 1E, 3C, 3E and 2K at 33-34 & Attachments 1-5. Audubon contests BLM's assertions that leasing the disputed core area parcels will not significantly impact the environment and that adequate pre-leasing environmental analysis was performed. The record establishes that BLM failed to take a hard look at significant new information, and that leasing the disputed 45,686 acres of core habitat would likely have significant impacts on the greater sage-grouse's prospects for recovery and survival, making it more likely that the pending review of the listing decision under the Endangered Species Act results in significant socio-economic and environmental impacts across Wyoming and the region.

This Request for Stay includes a procedural history, statement of facts, and argument for the requested stay under the four controlling standards.

PROCEDURAL HISTORY

1. BLM's Protest Decision summarizes the agency's review of the parcels in the May 2012 Wyoming State Office lease sale at pages 1-3.
2. On December 1, 2011, Western Resource Advocates (WRA) submitted comments on behalf of Audubon on the Environmental Assessments (EAs) prepared for BLM Wyoming's May 2012 lease sale. Audubon's comments prominently stated that they were "*Requesting Deferral of All Parcels Located within Sage-Grouse Core Areas.*"
3. BLM responded to comments submitted by Audubon and others before finalizing the EAs and sale parcels based on a Decision Record and Finding of No Significant Impact. Some of

the challenged parcels were deferred from the auction, but the disputed 42 core area parcels were not.

4. On March 1, 2012, Audubon protested the remaining 42 core area parcels which BLM proposed for leasing. Exhibit 3, Audubon Protest.
5. In a consolidated decision, BLM denied Audubon's Protest and other protests, and proceeded to offer 45,686 acres in the disputed core area parcels at the May 1, 2012 lease sale. Exhibit 2K (acreage total at 34, note 66).
6. This appeal follows.

STATEMENT OF FACTS

1. Background

The 42 disputed parcels are located in the BLM Wyoming Rawlins, Rock Springs, and Kemmerer Field Offices as follows:

- The 25 Rawlins Field Office parcels are 004, 005, 006, 007, 008, 009, 010, 011, 012, 014, 015, 020, 021, 024, 025, 026, 028, 030, 031, 035, 036, 043, 044, 048, and 153. Exhibits 1A, 1C and 3A.
- The five Rock Springs Field Office parcels are numbers 059, 060, 061, 075, and 095. Exhibits 1B, 1D and 3A.
- The eleven Kemmerer Field Office parcels are 108, 109, 116, 117, 120, 122, 125, 126, 128, 133, and 134. Exhibits 1E and 3A.

The 42 disputed parcels total approximately 47,656 acres out of the total 231,846.920 acres and 153 parcels offered at the lease sale.

The disputed parcels are located in southwest Wyoming. They overlap important sage-grouse habitat and sagebrush ecosystems. The parcels are also located in the vicinity of many existing oil and gas leases on federal and non-federal lands, and near significant levels of oil and gas drilling activity. See Exhibits 1C, 1D and 1E. The crucial importance of BLM's sage-

grouse conservation efforts in the contested lease sale is underscored by the fact that "Wyoming is home to approximately 40 percent of the entire range-wide population of greater sage-grouse. Exhibit 2L.

"The greater sage-grouse is designated as a sensitive species on BLM lands across the species' range." Exhibit 4A at 65. The biological importance of Core Population Areas to conservation underlays Wyoming's Core Area Protection strategy. Exhibit 5. Dramatic sage-grouse population declines led the U.S. Fish & Wildlife Service to determine that listing the Greater sage-grouse as threatened or endangered is warranted. See 75 Fed. Reg. 13910-14014 (March 23, 2010).

2. BLM National Planning Strategy & Technical Team Report

Commenced in 2011, BLM's comprehensive efforts to develop and implement greater sage-grouse conservation policies across the bird's range are one of the highest level species recovery efforts in the history of the western United States. "Maintaining and restoring sagebrush landscapes on public lands is the BLM's primary means of conserving sage-grouse populations and one of its most important current programs." Exhibit 2A at 1.

BLM's greater sage-grouse conservation website summary recognizes the importance of the species, the sagebrush ecosystem on which it depends and from which it takes its name, the urgent need for conservation, and the critical nature of the recovery program.

> The greater sage-grouse is an icon of western sagebrush ecosystems. [* * *]
>
> Greater sage-grouse conservation is urgent. Once seen in great numbers across sagebrush landscapes of the West, sage-grouse have declined in number over the past one hundred years because of the loss, degradation, and fragmentation of sagebrush habitats essential for their survival. Greater sage-grouse now occupy only about 56% of the habitat that was available to them before the arrival of settlers of European descent.
>
> Sagebrush ecosystems are home to a surprisingly abundant number of wildlife species that depend on this complex and often fragile ecosystem type. If sage grouse populations

are in trouble, it means other sagebrush-dependent species are, too. We consider our work critical to help all species that depend on sagebrush habitat.

Exhibit 2A at 1.

BLM's greater sage-grouse planning site describes 1) coordinated federal efforts to update conservation measures, and 2) the central importance of BLM Resource Management Plan (RMP) revisions or amendments to the agency's overall work to address currently inadequate regulatory mechanisms identified by USFWS.

> In March 2010, the United States Fish and Wildlife Service (USFWS) published its listing decision for the greater sage-grouse as "Warranted but Precluded." Inadequacy of regulatory mechanisms was identified as a major threat to the species in the USFWS finding on the petition to list the greater sage-grouse. The USFWS has identified the principal regulatory mechanism for the BLM as conservation measures in Resource Management Plans (RMPs).
>
> Based on the identified threats to the greater sage-grouse and the USFWS timeline for making a listing decision on this species, the BLM needs to incorporate explicit objectives and adequate conservation measures into RMPs within the next 3 years in order to conserve greater sage-grouse and avoid a potential listing under the Endangered Species Act. The planning strategy will evaluate the adequacy of BLM RMPs and address, as necessary, revisions and amendments throughout the range of the greater sage-grouse (with the exception of the bi-state population in California and Nevada and the Washington state population segment, which will be addressed through other planning efforts).
>
> [* * *] The BLM will conduct detailed environmental studies on the proposed and alternative policies, and analyze how implementation of the policies may affect the quality of the environment.
>
> **Overview of the National Planning Strategy**
>
> The BLM is developing a national strategy to preserve, conserve, and restore sagebrush habitat, the ecological home of the greater sage-grouse. The BLM will issue national policy and direction, based on local needs and information, to guide the agency's actions and raise the importance of sagebrush conservation in BLM planning efforts. At the local level, the BLM will initiate or continue to work on formal plan "amendments" for BLM RMPs to reflect new conservation measures. Greater sage-grouse habitat is addressed in as many as 98 current BLM RMPs or Management Framework Plans (the name given to an earlier generation of RMPs).

Exhibit 2B at 1 (emphasis supplied).

BLM's Planning Strategy establishes that 1) energy development is the leading threat to sage-grouse in the Rocky Mountain Region; 2) interim management is essential to conservation efforts; and 3) revisions or amendments to existing RMPs will be central to long-term conservation strategies.

> The Rocky Mountain Region (Colorado, most of Montana, North Dakota, South Dakota, northern and northeastern Utah and Wyoming) will focus on addressing the continued loss, fragmentation and degradation of greater sage-grouse habitat as a result of energy development and the accompanying infrastructure. [* * *]
>
> The BLM is developing interim management measures with the help of our state and federal partners to help ensure that sagebrush habitat is conserved in the short term until we can address conservation measures through resource management plan RMP amendments or revisions as necessary. RMPs are the BLM's basic land-use plans and provide the platform for long-term decisions effecting public land management over the next 15-25 years.

Exhibit 2B at 1 (emphasis supplied).

BLM planning documents explicitly state that recommendations based on the most recent science are already being incorporated into management decisions. "Interim measures to protect sage-grouse based on scientific research are now being implemented across BLM-managed lands and will be made a part of the BLM's land use plans governing sage-grouse habitat areas." Exhibit 2L at 1 (emphasis supplied).

The National Planning Strategy flow chart establishes the importance of the BLM National Technical Team. Exhibit 2E. Similarly, BLM's Greater Sage-grouse Range-wide Regional Breeding Density Map illustrates the importance of the populations and habitat overlapped by the 45,686 acres of disputed parcels in southwest Wyoming, as well as populations across the state border to Colorado for which Audubon's Protest raised connectivity concerns. Exhibit 1F and see Exhibit 7 at 1-2.

In the latter half of 2011, BLM convened the Greater Sage-Grouse National Technical Team to review the best available science and make management recommendations to inform the agency's sage-grouse conservation program. The Team's Report was issued in December 2011. The following excerpt from the introduction of BLM's Technical Team Report underlines its significance to the issues presented by this Appeal.

> The Bureau of Land Management (BLM) manages approximately 50% of the sagebrush habitats used by sage-grouse (Knick 2011). Therefore, management actions by BLM in concert with other state and federal agencies, and private land owners play a critical role in the future trends of sage-grouse populations. To ensure BLM management actions are effective and based on the best available science, the National Policy Team created a National Technical Team (NTT) in August of 2011. The BLM's objective for chartering this planning strategy effort was to develop new or revised regulatory mechanisms, through Resource Management Plans (RMPs), to conserve and restore the greater sage-grouse and its habitat on BLM –administered lands on a range-wide basis over the long term. The National Greater Sage-Grouse Planning Strategy Charter charged the National Technical Team to serve as a scientific and technical forum to:
>
> - Understand current scientific knowledge related to the greater sage-grouse.
> - Provide specialized sources of expertise not otherwise available.
> - Provide innovative scientific perspectives concerning management approaches for the greater sage-grouse.
> - Provide assurance that relevant science is considered, reasonably interpreted, and accurately presented; and that uncertainties and risks are acknowledged and documented.
> - Provide science and technical assistance to the Regional Management Team (RMT) and Regional Interdisciplinary Team (RIDT), on request.
> - Articulate conservation objectives for the greater sage-grouse in measurable terms to guide overall planning.
> - Identify science-based management considerations for the greater sage-grouse (e.g., conservation measures) that are necessary to promote sustainable sage-grouse populations, and which focus on the threats (75 FR 13910) in each of the management zones.
>
> [* * *]
>
> This document provides the latest science and best biological judgment to assist in making management decisions. Fortunately, recent emphasis on sage-grouse conservation has resulted in a substantial number of publications dealing with a variety of aspects of sage-grouse ecology and management, summarized in the 2010 listing petition (75 FR

> 13910), as well as Knick and Connelly (2011b). Habitat requirements and other life history aspects of sage-grouse, excerpted from the USFWS listing decision (75 FR 13910), are summarized in Appendix A to provide context for the proposed conservation measures. We have attempted to describe the scientific basis for the conservation measures proposed within each program area. Perspectives on the nature and interpretation of the available science are in Appendix B.
>
> The conservation measures described in this report are not an end point but, rather, a starting point to be used in the BLM's planning processes. Due to time constraints, they are focused primarily on priority sage-grouse habitat areas. General habitat conservation areas were not thoroughly discussed or vetted through the NTT, and the concept of connectivity between priority sage-grouse habitat areas will need more development through the BLM planning process.

Exhibit 2D at 4-5.

Key energy development findings of the BLM Technical Team Report found that "[n]egative responses of sage-grouse to energy development were consistent among studies[,]" and "[a]voidance of energy development at the scale of entire oil and gas fields should not be considered a simple shift in habitat use but rather a reduction in the distribution of sage-grouse." Id. at 19. The Report casts doubt on two of BLM Wyoming's reasons for approving the disputed core area lease parcels: the claims that 1) stipulations and mitigation measure in existing RMPs are adequate to protect sage-grouse; and 2) adaptive management or future conditions of approval will allow the agency to address unexpected adverse impacts as they become apparent. Exhibit 2K. In fact, the Report found that 1) past BLM conservation measures, such as "applying NSO or other buffers around leks at any distance is unlikely to be effective[;]" and 2) time lags ranging from 3-4 to 2-10 years after drilling commenced and lek avoidance and loss by sage-grouse. Exhibit 2D at 20.

The BLM Technical Team concluded that "the conservation strategy most likely to meet the objective of maintaining or increasing sage-grouse distribution and abundance is to exclude energy development and other large scale disturbances from priority habitats, and where valid

existing rights exist, minimize those impacts by keeping disturbances to 1 per section with direct surface disturbance impacts held to 3% of the area or less." Id. at 21. At this time, valid rights do not yet exist for the disputed parcels.

BLM Instruction Memorandum No. 2012-044 recognizes the importance and professionalism of the BLM Technical Team Report, and the need for its recommendations to be considered in the land-use planning process. Exhibit 2I. The IM states that the Report "developed a series of science-based conservation measures to be considered and analyzed through the land use planning process. This IM provides direction to the BLM on how to consider these conservation measures in the land use planning process." Exhibit 2I at 1-2.

3. USFWS Findings and Scientific Expertise

USFWS published its "warranted, but precluded" finding in the Federal Register on March 23, 2010: "We find that listing the greater sage-grouse (rangewide) is warranted, but precluded by higher priority listing actions. We will develop a proposed rule to list the greater sage-grouse as our priorities allow." Exhibit 4A at 1. The USFWS greater sage-grouse fact sheet states that "populations are predicted to decline 7 to 19 percent due to the effects of oil and gas development in the eastern part of the range [Rocky Mountain Region including Wyoming]; this decline is in addition to the 45 to 80 percent decline that is estimated to have occurred rangewide." Exhibit 4B at 2. USFWS concluded that "Energy development is a significant risk to the greater sage-grouse in the eastern portion of its range [. . .], with the primary concern being the direct effects of energy development on the long-term viability of greater sage-grouse by eliminating habitat, leks, and whole populations and fragmenting some of the last remaining large expanses of habitat necessary for the species' persistence." Exhibit 4A at 44.

The "threats" section of the USFWS greater sage-grouse species summary establishes: 1) the scale of the energy development threat to the bird's conservation and recovery, 2) oil and gas as the primary energy development threat, and 3) the fact that mitigation does not prevent habitat degradation.

> Greater sage-grouse populations are negatively affected by energy development activities (primarily oil, gas, and coal-bed methane); especially those that degrade important sagebrush habitat, even when mitigative measures are implemented. Impacts can result from direct habitat loss, fragmentation of important habitats by roads, pipelines and power lines, and direct human disturbance. The negative effects of energy development often add to the impacts from other human development, resulting in declines in greater sage-grouse populations.

Exhibit 4A at 32. See also http://www.nabci-us.org/mtg_2012-Jan/BLM%20Sage%20Grouse.pdf, slide 3 (plotting "oil and gas" as the greatest threat in the Eastern or Rocky Mountain Region).

The scale of the threat from oil and gas development is underlined by the statement in the USFWS 2010 listing decision that "12 years of coal-bed methane gas development in the Powder River Basin of Wyoming has coincided with 79 percent decline in the sage-grouse population." Exhibit 4A at 32. The USFWS finding, based on the best science available at the time of the review (post-dating the RMPs), summarizes the detrimental direct, indirect and cumulative impacts to sage-grouse from energy development. Id. BLM's Technical Team Report also relied on additional, more recent peer-reviewed science analyzing energy development impacts on sage-grouse in Wyoming. Exhibit 2D at 39-50. 53-54, 59-60, 66-67, 69-70 and 73 (Literature Cited by Report and Appendices). A significant number of these publications were dated 2009, 2010 and 2011, or after the existing RMP's relied on by BLM's NEPA analysis for the May 2012 lease sale were finalized.

> The review of relevant materials included 25 chapters of new information and or analyses contained in the peer-reviewed monograph entitled: *Ecology and Conservation of Greater Sage-Grouse: A Landscape Species and Its Habitats* which was edited by the U.S Geologic Survey for publication by the Cooper Ornithological Society in their Studies in Avian Biology Series. Thirty-eight scientists from federal, state, and

> nongovernmental organizations collaborated to produce the analyses, synthesis and findings presented in the chapters of this monograph.

Exhibit 4B at 3.

A July 9, 2009 letter by the USFWS Wyoming Field Supervisor, detailing threats from energy development, addresses the importance of protecting core areas:

> The foundation of the [Core Areas] Strategy from the Service point of view is that development in the most important sage-grouse habitats (core areas and associated seasonal habitats) is done only when no impact to the species can be demonstrated. In essence, ensuring the conservation of sage-grouse in the core areas is mitigation for the greater development flexibility outside core areas provided for by the Strategy. Therefore, <u>allowing impacts within core areas</u>, for research or other reasons, <u>destroys the function and value of the Strategy.</u>
>
> [* * *]
>
> To the Service, the recommendations of the SGIT and Executive Order 2008-2 are clear with respect to deviation from standard stipulations. That is, the burden of proof that development does not affect sage-grouse rests with the industry or proponent in question, and any research they feel is necessary to convey this, should be conducted outside of core areas. This burden of proof to show that development in core areas can be done consistent with conserving sage-grouse underlies <u>all</u> forms of development—not just wind power. The Strategy is clear on this point and is one of the key reasons for our endorsement.

Exhibit 4D at 2 (emphasis supplied).

4. BLM Response to USFWS Determination

Following the 2010 USFWS determination, BLM developed a comprehensive response to get in front of the curve. According to BLM's fact sheet on the Greater Sage-Grouse Planning Strategy:

> The BLM National Greater Sage-Grouse Planning Strategy is a planning approach that provides the framework and structure for transparent interagency and stakeholder collaboration on long-term greater sage-grouse conservation and habitat restoration.
>
> Under the planning strategy, the BLM will review its principal, existing regulatory framework for sage-grouse conservation—the land use planning process—to determine the development and implementation of new or revised regulatory mechanisms.

> The focus will be on incorporating regionally-appropriate, science-based conservation measures into BLM land use planning efforts through coordinated, cooperative stakeholder engagement.

Exhibit 2F at 1.

Developing new or revised land-use plans is a key component of BLM's strategy:

> The BLM is working in partnership with its sister agencies and the Western states to develop new or revised approaches to sage-grouse conservation through land-use plans. Working with our partners, we will use these land use plans to implement actions range-wide so we can conserve and restore the greater sage-grouse and its habitat on BLM lands over the short term and the long term.

Exhibit 2F at 2.

Accordingly, BLM recognizes the need for "new or revised regulatory mechanisms" to be grounded in "science-based conservation measures." Exhibit 2F at 1. Final decisions will be made by spring 2014, or two years from the date of the disputed May 2012 lease sale.

A general project timeline with completed and anticipated dates:

Action	Date
Notice of Intent Published in Federal Register	December 2011
60-Day Scoping Period	December 2011 to February 2012
90-Day Draft EIS Public Comment Period	January 2013 to March 2013
Publish Final EIS & Proposed RMP Amendment	Fall 2013
Issue Record of Decision & Approved Resource Management Plan Amendment	Spring 2014

Exhibit 2G at 1.

5. State of Wyoming Core Areas Strategy

The Wyoming Core Areas Strategy explicitly provides for maintaining the integrity of core areas for at least the next five years beginning in 2011:

> Management by state agencies should focus on the maintenance and enhancement of Greater Sage-Grouse habitats, populations and connectivity areas identified in Attachment A. Absent substantial and compelling information, these Core Population Areas should not be altered for at least five (5) years.

Exhibit 5 at 2.

STAY CRITERIA

The regulations provide that a petition for a stay "shall show sufficient justification based on the following standards:"

> (i) The relative harm to the parties if the stay is granted or denied,
> (ii) The likelihood of the appellant's success on the merits,
> (iii) The likelihood of immediate and irreparable harm if the stay is not granted, and
> (iv) Whether the public interest favors granting the stay[.]

43 C.F.R. § 4.219(b)(1). Based on these factors, Audubon is entitled to a stay of the BLM Protest Decision denying Audubon's Protest of the 42 contested parcels.

(1) The relative harm to the parties weighs in favor of granting the requested stay.

All of the parties involved will be adversely affected if the request for a stay is denied: Audubon, BLM, and any potentially affected bidders. When NEPA and FLPMA requirements are violated, a stay preserves the status quo until the proper environmental analyses and land planning is completed. Here, conservation of remaining sage-grouse habitat is the goal of both BLM and Audubon; and industry has much to lose if continued leasing of core areas causes USFWS to conclude that avowed conservation polices on BLM lands are too weak to qualify as "adequate regulatory mechanisms" between now and 2015. Audubon alleges that BLM's leasing decision failed to take a hard look at essential new scientific information going to the heart of the impacts of energy development on sage-grouse conservation, impacts that would follow issuance of the disputed leases.

In cases involving the preservation of the environment, the balance of harms usually favors granting a stay. See Parker v. United States, 309 F. Supp. 593, 601 (D. Colo. 1970), aff'd,

448 F.2d 793 (10th Cir. 1971) (continuing a preliminary injunction preventing logging in a national forests and holding that "the interests of the plaintiffs and the public in maintaining the status quo . . . far outweigh this desire to get the job done now."); The Wilderness Society v. Tyrrel, 701 F. Supp. 1473, 1479 (E.D. Cal. 1988) (noting that "when environmental injury is 'sufficiently likely . . . the balance of harms will usually favor the issuance of an injunction to protect the environment'") (citing Amoco Prod. Co. v. Gambell, 480 U.S. 531 (1987)). In the instant case, the balance of harms weighs heavily in favor of granting a stay.

Audubon's interests are succinctly stated by the Society's mission: "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." Exhibit 9A. Audubon Wyoming's mission "is to be a strong, unified voice for an ethic of conservation in Wyoming, focusing on birds, other wildlife and their habitats, for the benefit of present and future generations." Exhibit 9B. The vision of Audubon Wyoming is "[o]pen spaces rich in birds and other wildlife, and citizens who enjoy that richness." Exhibit 9B. Leasing these lands threatens to undermine Audubon's mission and compromise its vision.

Audubon Wyoming was a key participant in the Sage Grouse Implementation Team deliberations that crafted the Core Population Areas Strategy. Audubon was a leading advocate for BLM's current science-based planning efforts across the bird's range and Wyoming. Audubon Wyoming is dedicated to ensure that the Strategy and range-wide planning succeed. Success depends on conservative management, including strict interim protections for core areas pending implementation of new policies informed by the best available science.

Audubon members and staff visit the disputed lands for aesthetic and recreational pursuits centered on viewing, studying and appreciating the Greater sage-grouse and the overall

functioning of healthy sagebrush ecosystems. Members and staff live and work near these lands, and travel to observe sage-grouse and contribute to the specie's conservation. Without a stay, Audubon could be harmed by drilling approvals resulting in permanent environmental damage, or lease issuance that could detract from conservation efforts. Audubon is dedicated to successfully implementing conservation policies that will result in the recovery of populations and healthy habitat; and avoiding the need to list the bird under the Endangered Species Act.

BLM has an interest in complying with the law by adequately analyzing impacts and adhering to its own goals for conserving the greater sage-grouse and its habitat. Short-sighted decisions to allow yet more leasing and development in Core Population Areas under outdated RMPs could be fatal to recovery efforts even as BLM invests significant resources in formulating new management policies based on the best available science. BLM's interest in promoting mineral production from the public lands is contingent on first complying with NEPA, FLMPA and other governing law and policy, and by conducting adequate analysis and land use planning to assure that energy development is environmentally sound. *See* 43 U.S.C. § 4332(C) (federal agencies must prepare environmental review prior to embarking upon major federal actions that may significantly harm the environment); 40 C.F.R. §§ 1500-1508 (same); 43 U.S.C. § 1701(a)(8) & (12) (BLM must manage the public lands for multiple use "in a manner which recognizes the Nation's need for domestic sources of minerals . . . in a manner that will protect the quality of . . . ecological, environmental values."). BLM's credibility is best served by following the law and not making uninformed commitments, such as issuing leases that may not be appropriate for future development because of the potential for unacceptable environmental impacts to at-risk species. A stay pending a decision on the merits of the appeal maintains the status quo and ensures that no irreversible environmental damage occurs until BLM takes a hard

look at whether additional leasing of core area habitat is advisable until BLM has considered the best available science. See e.g., Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350 (1989) (citing Kleppe v. Sierra Club, 427 U.S. 390, 410 n.21 (1976)).

Although not parties to the appeal at this time, the bidders will benefit from a stay because they had knowledge that the disputed leases were allegedly offered in violation of federal law, and awareness that the Protest decision could be appealed. Market conditions are unfavorable to major investments to explore new natural gas fields for the time being. Exhibit 10. The bidders will benefit from clarification about whether lease issuance should proceed before they expend funds and effort to pursue potentially unacceptable development proposals. Thus, a stay will prevent bidders from diverting scarce resources and allow them to focus on other projects until this matter is resolved. Before obtaining leases, the bidders are entitled to know whether updated sage-grouse conservation measures will replace those in existing RMPs. If issuance of any of the disputed leases proceeds after a decision on the merits and further analysis on remand, bidders will then be able to make better-informed decisions on the costs and timing of any future development proposals. Until then, they face significant unknown risks and uncertainty.

Finally, the Western Governors' Wildlife Council Report to Governors (December 2011) recognized that: "If the sage-grouse is fully listed under the Endangered Species Act (ESA), the economic impacts to states and communities that have sage-grouse habitat could be severe." Exhibit 6 at 2. This is consistent with the statement in the State of Wyoming Greater Sage-Grouse Core Area Protections Executive Order 2011-5 (June 2, 2011) that "the listing of the Greater Sage—Grouse could have a significant adverse effect on the economy of the state of Wyoming, including the ability to generate revenues from slate lands[.]" Exhibit 5 at 1.

Accordingly, if approval of new leases in core areas contributes to a decision to fully list the bird under the ESA, that outcome could be far more detrimental to energy development than deferring the disputed leases at this key time. However, BLM's existing analysis did not consider the potential for its decision to push the bird to a listing.

For these reasons, granting the requested stay is in the best interests of the parties. Premature lease issuance or permitting could result in permanent environmental damage to the detriment of Audubon's mission, uninformed resource allocations BLM and industry, serious setbacks to ongoing sage-grouse conservation planning, and unnecessary controversy. Final decisions on BLM sage-grouse planning will be made by 2014, and two years is the blink of an eye in comparison to the millions of years it took for oil and gas deposits to form.

(2) Audubon is likely to succeed on the merits.

1. NEPA requires that BLM make informed decisions by taking a hard look at the environmental impacts of its decisions.

a. NEPA Overview

NEPA required informed decisions but does not compel the most environmentally protective outcome -- so long as the agency adequately analyzes the potential impacts of the proposed action. NEPA "require[s] agencies to consider environmentally significant aspects of a proposed action." Utahns for Better Transp. v. U.S. Dep't of Transp., 305 F.3d 1152, 1162 (10th Cir. 2002). "NEPA does not, however, require agencies to elevate environmental concerns over other appropriate considerations; it requires only that the agency take a 'hard look' at the environmental consequences before taking a major action." Citizens' Comm. to Save Our Canyons v. Krueger, 513 F.3d 1169, 1178 (10th Cir. 2008) (citation and internal quotation marks omitted).

Otherwise stated, "NEPA dictates the process by which federal agencies must examine environmental impacts, but does not impose substantive limits on agency conduct." Utah Envtl. Cong. v. Russell, 518 F.3d 817, 821 (10th Cir. 2008). NEPA guards against "uninformed – rather than unwise – agency action." Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 351 (1989).

In this case, BLM decided to approve the lease sale based on the EAs, FONSIs and Decision Record, based on its conclusion that the proposed action would not "significantly affect[ ] the quality of the human environment." 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.4. See Utah Envtl. Cong. v. Bosworth, 443 F.3d 732, 736 (10th Cir. 2006). Here, Audubon contends that BLM's decision was uninformed by analysis of key new information that became available after existing RMPs and their sage-grouse conservation policies were finalized, and that an EIS may have been proper.

b. Significant new information was disregarded by BLM.

Neither the BLM Field Offices nor the Wyoming State Office adequately considered important new science that was commissioned or compiled by BLM and USFWS in recent publications including BLM's 2011 Technical Report, BLM's 2011 range-wide planning strategy, and the USFWS 2010 listing decision. See Facts supra. BLM's greater sage-grouse policies and ongoing range-wide planning strategy are inconsistent with the decision to allow additional leasing of Core Area habitat at this time. "The BLM's primary objective for greater sage-grouse is simple: We want to conserve and restore sagebrush habitat on a range-wide basis in the short term for the long term." Exhibit 2B at 1 (emphasis added).

Issued on December 27, 2011, BLM's National Instruction Memorandum No. 2012-044 summarized the urgent need for review of existing management policies, recognizes that existing

RMPs are inadequate to achieve the agency's conservation goals for the species, and establishes the clear conservation goal to avoid an ESA listing.

> Over 50 percent of the Greater Sage-Grouse habitat is located on BLM-managed lands. In its [March 2010] "warranted but precluded" listing decision, FWS concluded that existing regulatory mechanisms, defined as 'specific direction regarding sage-grouse habitat, conservation, or management' in the BLM's Land Use Plans (LUPs), were inadequate to protect the species. The FWS is scheduled to make a new listing decision in Fiscal Year (FY) 2015.
>
> The BLM has 68 land use planning units which contain Greater Sage-Grouse habitat. Based on the identified threats to the Greater Sage-Grouse and the FWS timeline for making a listing decision on this species, the BLM needs to incorporate explicit objectives and desired habitat conditions, management actions, and area-wide use restrictions into LUPs by the end of FY 2014. The BLM's objective is to conserve sage-grouse and its habitat and potentially avoid an ESA listing.

Exhibit 2I at 1 (emphasis supplied). See also Facts supra at 12 (citing Exhibit 2F).

In light of this comprehensive planning effort, BLM needs to take a hard look at the best and most recent science in interim leasing decisions covering core area habitat. Inadequate and uninformed regulatory mechanisms could result in a full listing under the Endangered Species Act in 2015. The record establishes that such a determination would be more likely if BLM Wyoming continues to approve new leases in core areas under now-outdated RMPs with sage-grouse provisions uninformed by the best available science. See Facts supra at 5-7 & 11-13. Therefore, BLM must analyze the extent to which the challenged decision could contribute to adverse impacts to conservation goals, including a potential listing and the environmental and socio-economic impacts of that outcome.

The USFWS Greater Sage-Grouse Fact Sheet clearly states the Service's position on the need to protect core areas from energy development: "Protective measures and strategic siting of energy developments away from core sage grouse habitats are needed to reduce this threat into the future." Exhibit 4B at 2. The USFWS acknowledged that a significant body of new scientific information became available between 2005 and 2010.

> Since our 2005 status review, a significant amount of new science is available concerning the status of the species and the effects of different land uses on the species' survival, including new information obtained from the Cooper Ornithological Society Monograph chapters the Service received in pre-publication form in 2008 and 2009. This information contained extensive scientific analysis that integrated the species' ecology with existing land uses and clearly documented that certain factors occurring on the landscape result in population declines and population extinctions.

Exhibit 4C at 1.

USFWS recognizes energy development as one of the main contributing factors to habitat fragmentation, and a leading overall threat to the grouse.

> **Energy Development:**
> Greater sage-grouse populations are negatively affected by energy development activities (primarily oil, gas, and coal-bed methane), especially those that degrade important sagebrush habitat, even when mitigative measures are implemented. Impacts can result from direct habitat loss, fragmentation of important habitats by roads, pipelines and powerlines, and direct human disturbance. The negative effects of energy development often add to the impacts from other human development, resulting in declines in greater sage-grouse populations.
>
> Population declines associated with energy development results from abandonment of leks, decreased attendance at the leks that persist, lower nest initiation, poor nest success and chick survival, decreased yearling survival, and avoidance of energy infrastructure in important wintering habitat. Energy exploration and development is projected to increase over the next 20 years.

Exhibit 4B at 1 (emphasis supplied).

The importance of core areas is attested to by BLM, USFWS, the State of Wyoming, and Audubon, among other stakeholders. BLM's decision to approve new leasing for energy development in such areas violated NEPA because it was uninformed by the best available science.

c. BLM violated NEPA's "hard look" requirement by failing to analyze significant new information or follow prescribed procedures.

First, although BLM applied the sage-grouse screen (per IM WY-2010-013), its decision was not informed by the new scientific findings and recommendations from BLM's "Report on National Greater Sage-Grouse Conservation Measures" prepared by BLM's Sage-grouse

National Technical Team and dated December 21, 2011 (Technical Team Report). BLM's Protest Decision affirmed leasing of core areas despite the fact that its analysis was uninformed by the scientific recommendations of the Technical Team Report. Exhibit 2K. BLM neither coordinated review with USFWS nor considered the best new science cited above, much of which was conducting in Wyoming, documenting the negative impacts of oil and gas activity on sage-grouse conservation.

Second, BLM's Protest Decision refers to coordination with USFWS for "implementation decisions (such as offering and issuing oil and gas leases)[.]" Exhibit 2K at 34. However, the record available to Audubon does no establish that such coordination occurred, or that USFWS approved leasing the disputed core area parcels. The apparent lack of coordination with BLM's sister agency, which will make a new listing determination in 2015, supports the requested stay.

d. BLM disregarded scientific information that seven of the disputed parcels are among the most valuable remaining sage-grouse habitat.

BLM failed to adequately consider the need to protect habitat in the seven disputed parcels located within the smallest areas (25% polygons) that encompass the highest breeding density areas, contain the contain highest density of leks, and are important conservation focus areas for sage-grouse. See Exhibits 1F, 3C and 7. The seven disputed parcels in the bird's highest breeding density areas are listed in the table attached as Exhibit 3A (and mapped in Exhibits 1A, 1B and 3C): parcels 005, 006, 007, 020, 024, 031 and 036.

BLM's Protest Decision characterized the breeding density map as "coarse scale" data that it rejects in favor of exclusive reliance on Wyoming's Core Area Population Map. Exhibit 2K at 35. The best available science, as discussed below, establishes that all "core areas" are not of equal habitat value – and that the 25% areas identified by the Breeding Density Map identify the

most valuable remaining habitat. Contrary to BLM's Protest Decision, the agency commissioned the scientific reports regarding breeding densities. The authors stated that one of the deliverables of the study is "GIS databases delineating high breeding densities of sage-grouse for use by conservation planners." Exhibit 7 at 4. The relevance of the data and urgency of using it to inform conservation strategies are evidenced by the statement that "[m]apping important landscapes for sage-grouse represent a proactive attempt to identify a set of conservation targets to maintain a viable and connected set of populations before the opportunity to do so is lost." Id. at 11.

Using scientific methodology, the Regional Breeding Density map identifies important range-wide focal areas having high density occurrences of greater sage-grouse. The maps show areas that contain 25, 50, 75, and 100 percent of nesting sage-grouse, based on lek locations and spring censuses. According to the peer-reviewed report prepared for BLM, the 25% "[b]reeding density areas contain 25% of the known population within 3.9% (2.92 million ha) of the species range[.]" Exhibit 7 at 2. This BLM Report was relied on and cited in BLM's Interim Management Policies and Procedures. Exhibit 2H at 2 and note 1. The paper concluded that "[m]apping important landscapes for sage-grouse represent a proactive attempt to identify a set of conservation targets to maintain a viable and connected set of populations before the opportunity to do so is lost." Id. at 11 (emphasis supplied). Thus, the seven 25% breeding density parcels are among the top 4% "cream of the crop" for sage-grouse habitat – the highest biological value based on documented usage by 25% of known populations. To comply with NEPA, BLM must consider the special biological importance of the seven 25% parcels.

e. BLM's decision was uninformed by the crucial importance of conservation efforts in Wyoming and the hugely significant potential impacts of a full ESA listing.

Leasing large acreage of important sage-grouse habitat, prior to the completion of regional conservation planning efforts, could push the species towards a full listing and must therefore be avoided. The importance of Wyoming's populations and the energy development threat was the focus of a leading 2011 peer-reviewed paper which noted that "Wyoming contains 64% of the known sage-grouse population and more active leks than all the other states combined within our study area. Conservation success in Wyoming will depend on leasing and permitting policy decisions because this state has the highest risk of development." Exhibit 8 at 505. The authors emphasized the importance of Wyoming in concluding that "[s]uccessful implementation [of conservation strategies] in one state, such as Montana, will not be sufficient to compensate for losses in important places like Wyoming." Id. at 516. This paper was considered by the BLM Technical Team Report that BLM Wyoming rejected in its Decision denying Audubon's Protest. Protest Decision at 6-7 (discounting relevance of Technical Team report to leasing of disputed Core Area parcels); and 34 (responding to Audubon Protest).

Pending final decisions on RMP amendments and the regional planning process that apply the recommendations of the Technical Team Report, BLM should proceed with caution and avoid uniformed decisions to lease additional core areas. BLM's Protest Decision concedes that "[t]he conservation measures in the NTT Report must be considered and analyzed through the BLM's land use planning process[.]" Audubon concurs with the need to analyze and implement the Report's recommendations through the planning process. BLM's refusal to consider the conservation measures from the report in the context of proposed leasing of core areas necessitates remand. Waiting for completion of RMP revisions or amendments could be too late to avoid significant impacts to sage-grouse conservation and Wyoming's economy, if leasing the 45,686 acres of disputed core area parcels triggers a listing decision.

Absent additional analysis, BLM's attempt to approve leasing of core areas, including seven parcels in the highest value habitat, would undercut the objective of range-wide planning:

> The BLM's objective for chartering this planning strategy effort is to develop new or revised regulatory mechanisms, through RMPs, to conserve and restore the greater sage-grouse and its habitat on BLM-administered lands on a range-wide basis over the long-term.

Exhibit 2M at 1.

BLM's interim guidance "promotes sustainable Greater Sage-Grouse populations and conservation of its habitat while not closing any future options before the planning process can be completed." Exhibit 2H at 1. Interim guidance emphasizes achieving three guiding principles for greater sage-grouse habitat consistent with BLM's National Strategy:

> [E]mphasis for protecting and managing Greater Sage-Grouse habitat incorporates the following principles:
>
> 1) Protection of unfragmented habitats;
> 2) Minimization of habitat loss and fragmentation; and
> 3) Management of habitats to maintain, enhance, or restore conditions that meet Greater Sage-Grouse life history needs.

Id. at 1.

Leasing core areas would appear to undercut each of the principles, as well as the instruction that local managers to "seek to maintain, enhance, or restore conditions for Greater Sage-Grouse and its habitat." Id. at 1. If BLM proceeds, its decision should be fully informed by analysis of the potential for significant impacts to sage-grouse conservation, and the potential that further leasing could doom programmatic conservation efforts from the start.

The BLM Technical Team Report recognizes that "Anthropogenic habitat impacts and lack of regulatory mechanisms to protect against further losses provided the basis for warranting listing under the Endangered Species Act (ESA) in 2010 (75 FR 13910)." Exhibit 2D at 4. BLM certified that the Report "provides the latest science and best biological judgment to assist

in making management decisions." Id. at 5. As such, the Report cannot be ignored by NEPA documents for the May 2012 auction or subsequent lease sales. Historic sage-grouse declines resulted from impacts that were individually small and isolated, but will eventually become the straw that breaks the camel's back – unless BLM learns from past mistakes.

Approximately four months before the publication of the BLM Technical Team Report, Audubon and 17 other conservation groups wrote Interior Secretary Ken Salazar to urge conservation interim guidelines.

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

Exhibit 3D at 1-2 (emphasis original). Long before the May 2012 lease sale and environmental review documents, this letter put BLM on notice of the need to "[r]efrain from leasing inside core areas unless those leases contain appropriate, science-based stipulations that have been demonstrated to adequately protect sage-grouse populations and habitat from the impacts of development." Id. at 5.

Relying on hypothetical or not-yet-determined post-leasing mitigation measures (Exhibit 2K at 5) is no substitute for analyzing the best science before approving leases. Wyoming and neighboring states already contain hundreds of thousands of acres of valid leases in sage-grouse habitat. It would be irresponsible and reckless to compound the problem by authorizing additional leasing of core habitat at this time.

Uninformed leasing decisions will inhibit BLM's ability to ensure full and adequate protections. Leasing proposed for core areas must be informed by the best available science, and

subject to comment and suggestions by interested public, private, other agency, and NGO stakeholders. As programmatic planning proceeds, existing RMPs are uninformed by much significant new scientific information regarding sage-grouse conservation, population trends, habitat conditions, or state-of-the-art conservation measures.

f. BLM violated NEPA by not analyzing an alternative that would defer *all* core area parcels.

BLM's EAs failed to consider a reasonable alternative that would have deferred leases in all core area habitats until final programmatic decisions and RMP updates in 2014 – or at least until interim standards reflected the best available science. BLM states that the "no action" alternative of deferring all parcels satisfied NEPA, and further suggests that it could have adopted a "hybrid alternative" that incorporating Audubon's request. BLM's argument fails: hybrids of alternatives can sometimes be incorporated into a final decision, but refusing to specifically analyze an eminently reasonable conservation alternative comprises the basic NEPA principle of ensuring informed decisions.

BLM's Technical Team Report provides abundant support for this alternative. The Report documents the threat posed by oil and gas development, which underlies the recommendation to "[p]ropose lands within priority sage-grouse habitat areas for mineral withdrawal." Exhibit 2D at 14. The Minerals section summarizes various categories of threats to grouse from:

> 1) direct disturbance, displacement, or mortality of grouse;
>
> 2) direct loss of habitat, or loss of effective habitat through fragmentation and reduced habitat patch size and quality; and
>
> 3) Cumulative landscape-level impacts."

Id. at 18.

The Report further documents significant adverse impacts from energy development:

> There is strong evidence from the literature to support that surface-disturbing energy or mineral development within priority sage-grouse habitats is not consistent with a goal to maintain or increase populations or distribution. None of the published science reports a positive influence of development on sage-grouse populations or habitats. Breeding populations are severely reduced at well pad densities commonly permitted (Holloran 2005, Walker et al. 2007a). Magnitude of losses varies from one field to another, but findings suggest that impacts are universally negative and typically severe. [. . .]
>
> Avoidance of energy development at the scale of entire oil and gas fields should not be considered a simple shift in habitat use but rather a reduction in the distribution of sage-grouse (Walker et al. 2007). Avoidance is likely to result in true population declines if density dependence, competition, or displacement of birds into poorer-quality adjacent habitats lowers survival or reproduction (Holloran and Anderson 2005, Aldridge and Boyce 2007, Holloran et al. 2010). High site fidelity in sage-grouse also suggests that unfamiliarity with new habitats may also reduce survival, as in other grouse species (Yoder et al. 2004).

Id. at 19 (emphasis supplied).

The Report specifically addresses long-term studies in the Pinedale Anticline Project Area establishing displacement of populations, cumulative impacts, and significant time lags between initial development and documented impacts. Id. at 20. "[A]pplying NSO or other buffers around leks at any distance is unlikely to be effective." Id. Rather than relying on timing restrictions, "we recommend excluding mineral development and other large scale disturbances from priority habitats where possible, and where it is not limit disturbance as much as possible." Id. at 21. (emphasis supplied).

For the unleased Core Population Area parcels subject to this Appeal, excluding mineral development is still possible. Because BLM declined to analyze the "defer leasing in all core areas" alternative advocated by Audubon and supported by a vast body of scientific research, Audubon is entitled to prevail on its alternatives claim.

BLM is obligated to follow its own polices that direct it to proceed cautiously to avert the need for a listing by furthering the goal of maintaining and enhancing sage-grouse populations

and habitat. This conclusion is further buttressed by the two alternatives in the Technical Team Report regarding unleased federal fluid mineral estate: Alternative A would "Close priority sage-grouse habitat areas to fluid mineral leasing;" and B would do the same subject to considering an exception in stated circumstances not met by the instant leasing proposal. Exhibit 2D at 22. Even for geophysical exploration, the Report recommends only allowing helicopter-portable drilling methods (no ground disturbance in important habitat) with additional restrictions for any activity proposed for priority sage-grouse habitat areas. Id. The Technical Team Report and recommendations offers no support for BLM's decision to authorize new leasing of core areas at this time, based on the existing record.

g. BLM's decision did not analyze connectivity issues between Wyoming and Colorado habitat and populations.

Connectivity is a major priority of the BLM Technical Team Report, which stressed the necessity of achieving the objective to: "Conserve, enhance or restore sage-grouse habitat and connectivity (Knick and Hanser 2011) to promote movement and genetic diversity, with emphasis on those habitats occupied by sage-grouse." Exhibit 2D at 9. The Report stresses the importance of limited motorized travel in important habitat to currently designated routes, and avoiding the creation of new rights to construct yet more roads in additional to the potential for additional routes being proposed in association with currently valid existing rights. Exhibit 2D 11-12. Of course, oil and gas development relied on new routes to access wellpads and infrastructure.

In response to Audubon's concerns about connectivity between the Rawlins FO core area parcels and grouse populations across the border in North Park, Colorado, BLM punted. The Protest Decision states that BLM Wyoming is exclusively concerned with "'connectivity areas' within the State of Wyoming[.]" Exhibit 2K at 39 (emphasis supplied). Rather than fostering

informed decision-making, this statement reveals that BLM was content to ignore potentially significant impacts of the decision outside Wyoming. As such, the decision violates NEPA's hard look requirement.

17 of the disputed core area parcels (8 through 18, 24 through 27, 31 and 35) are located in a sensitive area southwest of Rawlins. These parcels are already surrounded by existing development pressures from natural gas fields, as well as proposed new transmission lines and a 1,000 turbine wind farm. These cumulative impacts on the landscape make the deferral of leasing these parcels even more critical for sage-grouse conservation efforts. In addition, deferral of the core area parcels south of Rawlins is essential to ensuring continued connectivity between Colorado and Wyoming sage-grouse populations. See Exhibits 3B at 1-2 and 3E. Additional fluid mineral leasing in this core habitat would further contribute to habitat fragmentation separating the Wyoming and Colorado populations. Genetic diversity of the remaining birds is at stake. Additional declines in the Wyoming population could result in the demise of the northern Colorado population. According to Audubon biologist and Director of Science, Alison Holloran:

> The proposed development due to the sales will also put at risk not only the Wyoming grouse population but also Colorado's North Park grouse population as the area serves as a genetic connection between the two populations. If this area is developed, it will not only negatively influence the Wyoming grouse population but could also negatively impact an already greatly compromised Colorado population of grouse. Any development in the area would compromise the critical habitat needed by Greater Sage-grouse (as determined by the Core Areas designation) and therefore both Wyoming and Colorado populations.

Exhibit 3B at 2-3.

USFWS emphasized the importance of maintaining "essential migration routes outside core areas wherever possible." Exhibit 4D at 3 and see 4B at 7 (roads as barriers to migration corridors). In sum, BLM did not take account of expert opinion and science regarding connectivity issues between Wyoming and Colorado sage-grouse populations and habitat,

h. BLM violated NEPA by failing to adequately analyze the potential for direct, indirect and cumulative impacts to sage-grouse conservation.

A landmark federal court ruling regarding BLM management and the Greater sage-grouse was decided on September 28, 2011 – after the EA and unsigned FONSI were drafted. Western Watersheds Project v. Salazar, Case No. 4:08-CV- 516-BLW (D. Idaho 2011). Western Watersheds remanded the Pinedale, Wyoming and Craters of the Moon, Idaho RMPs for violations of NEPA and FLPMA. The deficiencies in the Pinedale RMP involved both energy development and grazing analysis in the remanded RMP.

The court found that:

> The data presented in the Pinedale EIS, discussed at length above, at least raises a serious question that the sage grouse population, along with its habitat, is in decline in the Pinedale Field Office. The Pinedale EIS concludes that "[i]mpacts on wildlife would likely occur under all alternatives because of substantial loss of vital, high-value habitats." *EIS* at 4-294.
>
> Two factors in this loss of habitat, identified by the EIS, are energy development and grazing. *Id.*

Slip Op. at 30.

Western Watersheds also relied on inadequate cumulative impacts analysis.

> The EIS was faced with substantial energy development not only in the Pinedale Field Office but also in the adjoining Kemmerer Field Office. *See 72 Fed. Reg. 58113* (2007) (providing notice of draft EIS for Moxa Arch Area Infill Gas Development Project in the Kemmerer Field Office covering 475,808 acres). Yet there was no cumulative impact analysis of that development.

Slip Op. at 31-32.

BLM's response was to characterize the Western Watershed case as irrelevant because none of the disputed parcels are located in the Pinedale FO. Exhibit 2K at 39.

However, the section cited above concerns 475,000 acres of new energy development in the Kemmerer FO, the site of eleven of the disputed parcels in this appeal. More to the point, the Pinedale area in western Wyoming experienced high levels of energy development which the lease and active well maps (Exhibits 1C, 1D and 1E) indicate could be possible for the fields and formations targeted by the disputed parcels. If BLM wants to make an informed decision regarding energy development in sage-grouse habitat, it would welcome the chance to analyze what can be learned from the experience in Pinedale and the federal court decision remanding the RMP. As with the instant parcels, when leasing and development were initially authorized in Pinedale, BLM insisted that lease stipulations and adaptive management would adequately mitigate impacts. Western Watersheds indicates that BLM still has much to learn, but the Protest Decision suggests BLM Wyoming may be the proverbial horse than can be brought to water, but not forced to drink.

Audubon's Protest also argued that BLM also needed to consider reasonably foreseeable cumulative impacts to sage-grouse habitat from major wind energy and transmission projects, as well as oil and gas. Exhibit 3 at 10-11. The "South of Rawlins" core area parcels are in close proximity to the proposed Chokecherry and Sierra Madre (CCSM) Wind Farm Project and associated TransWest Express transmission line. Those projects will impact sage-grouse and habitat, and strain the carrying capacity of the landscape. In offering qualified support for those projects to the extent sage-grouse issues are adequately addressed, Audubon's comments on the Chokecherry Sierra Madre DEIS stated:

> If CCSM and TransWest are approved, no additional energy development should be allowed on this landscape. The cumulative impacts of additional operations would be

> unacceptable. This applies to both 1) additional wind farms and associated transmission, and 2) oil and gas drilling and associated road, pipeline and related infrastructure.

Exhibit 3 at 10 (citing Audubon-WRA et al CCSM DEIS comments at 5). See also Exhibit 3B at 2 (Audubon expert concluding that additional energy development on top of the wind farm "could present unacceptable risks for local populations and habitat.")

The BLM Technical Team Report recognizes threats associated with new power lines or other Right-of- Ways (ROWs) associated with valid existing rights, recommends taking advantage of opportunities to "remove, bury, or modify existing power liens within priority sage11 grouse habitat areas", and states that "[d]eaths resulting from collisions with powerlines were an important source of mortality for sage-grouse" in an Idaho study." Exhibit 2D at 13. Given the expectation that both a major wind farm and transmission line will be impacting sage-grouse and habitat in the Rawlins area, BLM needs a better informed and more complete cumulative impacts analysis including other energy development in the vicinity affecting southern Wyoming and northern Colorado populations.

BLM conceded that the cumulative impacts analysis in the EA was limited to oil and gas. But informed decision-making requires analyzing major renewable projects that will also impact sage-grouse. Many of the existing oil and gas leases are in sage-grouse core area habitat as mapped in Exhibits 1C, 1D and 1E. The high density of active wells west and northwest of these disputed parcels illustrates the potential for significant drilling and associated energy development impacts of the disputed leases are issued.

A stay is warranted for the disputed core area parcels in light of new information establishing the potential for significant direct, indirect and cumulative impacts of the leasing decision in the context of other reasonably foreseeable impacts.

2. BLM violated the multiple-use, sustained-yield mandate and unnecessary

and undue degradation provisions of FLPMA (43 U.S.C. §§ 1712(c)(1), 1732(a) & (b); and 43 C.F.R. § 1601.0-2).

BLM's Protest Decision defended Audubon's FLPMA claims by asserting that leasing the disputed parcels "will not constrain the BLM's ability to complete the RMP sage-grouse amendments or select from a reasonable range of alternatives in those RMP EISs[.]" Exhibit 2K at 35. Audubon concedes that the Decision conforms to existing RMPs, but BLM is cannot credibly deny that leasing 45,686 acres of core areas would neither undermine the conservation goals of the RMP amendments or prevent BLM from selecting an alternative that better protects all currently unleased core area lands in the final RMP decisions. BLM is on thin ice in arguing that additional leasing of core areas will not jeopardize healthy sagebrush ecosystems and the wildlife that depends on them.

BLM's denial notwithstanding, sustained yields of sage-grouse are clearly threatened by the agency's insistence that a two-year deferral of additional oil and gas leasing in core habitat cannot be considered because the agency must favor energy development-related economic activity, even at this critical point in sage-grouse conservation efforts. BLM's position is out of touch with current market conditions for natural gas. Historically low commodity prices and the supply glut contribute to basically ensure that drilling would likely not be economical until at least two years into the future. Exhibit 10.

Unlike some prevailing views of ten years ago, the Rocky Mountain region is no longer a crucial supply region when it comes to meeting the nation's demand for natural gas. A 2012 report estimated that, although the Rocky Mountain region is one of five major shale gas basins in the continental U.S., it contains only an estimated 6% percent of US resources. Exhibit 11 at 8. An informed analysis of 2012 facts regarding supply, geography and prices for natural gas establishes that deferring leases until 2014 would not impact energy development levels from

federal public lands in Wyoming.

(3) Audubon and the resources they seek to protect are likely to suffer irreparable harm if the stay is not granted.

Audubon and other commenters and protesters argued that BLM's cumulative impacts analysis was inadequate under NEPA. In response, BLM effectively stated that it could not even assume that approved parcels would be leased, let alone developed and entirely deferred analysis of potential impacts to future NEPA documents:

> Absent a definitive development proposal it is not possible to conduct a more specific impact and/or cumulative effects analysis. As stated in Section 1.3 of the draft EA, BLM cannot determine at the leasing stage whether or not a nominated parcel will actually be leased, or if leased, whether or not the lease would be explored or developed or at what intensity (spacing) development may occur. As further stated in Section 1.3 of the EA, "additional NEPA documentation would be prepared at the time an APD(s) or field development proposal is submitted. This environmental documentation would provide site-specific analysis for the proposed action to address questions like those presented in the comment."

Public comments and Agency Response at 53.

BLM's response misses the point: lease issuance itself opens the door to development proposals that will impact sage-grouse conservation goals; and additional pre-leasing analysis of how future development might impact these resources and influence the looming USFWS listing decision is needed.

U.S. Supreme Court precedent establishes that Audubon's allegations of imminent and severe environmental impacts entitle them to a stay. See Amoco Production Co., 480 U.S. at 531. The Supreme Court has also held that an irreversible commitment of resources (which is made by issuing a federal oil and gas lease) irreparably impairs the interests of environmental plaintiffs. "It is axiomatic that if the Government, with preparing an adequate impact statement, were to make an 'irreversible commitment of resources,' a citizen's right to have environmental factors taken into account by the decision maker would be irreparably impaired." New York v.

Kleppe, 429 U.S. 1307, 1312 (1976). The D.C. Court of Appeals has described the immediate and irreparable harm stemming from NEPA violations. "The NEPA duty is more than a technicality; it is an extremely important statutory requirement to serve the public and the agency before major federal actions occur. If plaintiffs succeed on the merits, then the lack of an adequate environmental consideration looms as a serious, immediate, and irreparable injury." Foundation on Economic Trends v. Heckler, 756 F.2d 143, 157 (D.C. Cir. 1985).

Accordingly, Audubon has a right to ensure NEPA and FLPMA compliance to ensure informed decisions. A stay will simply maintain the status quo until a final decision on the merits of this appeal. Conservation Law Foundation v. Watt, 560 F. Supp. 561, 581 (D.C. Mass. 1983) (describing the nature of the irreparable injury resulting from a leasing decision in the context of issuing a preliminary injunction). Across the twelve-state range of the sage-grouse in the United States, BLM regional coordinators and state and field offices are working diligently to achieve the agency's conservation goals and balance them with other concerns including energy development. Significant funds have been targeted to allow BLM to pursue sage-grouse planning on a regional scale. Granting the stay for the disputed parcels is in the public interest given the importance of affected populations and habitat, and the central importance of Wyoming to overall recovery efforts.

Although site-specific NEPA would be required on individual APDs proposed subsequent to leasing, lease issuance is the point at which the adequacy of pre-leasing NEPA analysis and FLPMA compliance must be determined. According to this Board:

> The BLM has a statutory responsibility under NEPA to analyze and document the direct, indirect and cumulative impacts of past, present and reasonably foreseeable future actions resulting from Federally authorized fluid minerals activities. By law, these impacts must be analyzed before the agency makes an irreversible commitment. In the fluid minerals program, this commitment occurs at the point of lease issuance.

WOC, 153 IBLA at 388-389 (emphasis supplied). Because BLM loses the opportunity to prohibit surface disturbing activities on the leasehold (except for NSO leases) after leasing, the Board granted WOC's request for a temporary stay pending BLM compliance with NEPA and FLPMA. Id. at 389.

By issuing a lease, BLM loses the right to say "no" to oil and gas operations and quite possibly to impose adequate environmental safeguards or data collection requirements. In denying the BLM's request for reconsideration in WOC, this Board explicitly held that NEPA requirements must be satisfied prior to leasing. "NEPA mandates that those impacts must nevertheless be acknowledged and appropriately considered before the leasing decision is made." WOC (On Reconsideration) 157 IBLA 264.

This is consistent with Tenth Circuit precedent. In the landmark decision involving the Otero Mesa grasslands in New Mexico, the Tenth Circuit held that BLM violated NEPA by failing to analyze site-specific impacts at the leasing stage. New Mexico ex rel. Richardson v. Bureau of Land Management, 565 F.3d 683, 718-19 (10th Cir. 2009). New Mexico v. BLM confirms that leasing constitutes an irretrievable commitment of resources, because of oil and gas regulations entitling the leaseholder to drill. 565 F.3d at 718. New Mexico v BLM applies to the instant appeal, where evidence of drilling near the disputed leases makes future impacts from such development reasonably foreseeable. Exhibits 1C, 1D and 1E (plotting existing leases and active wells near the disputed May 2012 lease parcels); and see Exhibit 3B at 2-3 (Audubon Expert Comments discussing cumulative impacts of existing and proposed energy development, stating risk to Colorado sage-grouse population, and concluding that the "cumulative impacts of additional [oil and gas] operations in both areas would be unacceptable.")

Conservation Law Foundation is also on point. Plaintiffs challenged a number of oil and gas leases on the grounds, *inter alia*, that the EIS was inadequate. The court granted the requested preliminary injunction based on its assessment of the irreparable harm that could occur absent an order maintaining the status quo:

> It is true that the parties will continue to have access to the administrative and judicial process in order to press their claims, but such future access cannot effectively remedy violations of statutes and regulations that impose duties upon the Secretary *specifically with respect to* the decision to conduct Lease Sale 52. Correction of those violations, if it is to have any meaning at all, must precede the sale.

Id. at 581 (emphasis original).

Because lease issuance uninformed by adequate impacts analysis could result in irreparable harm, Audubon is entitled to the requested stay.

(4) The public interest favors granting the stay because it is best served by informed decision-making regarding the potentially significant impacts that could follow issuance of the disputed leases.

The stay request is in the public interest. BLM failed to comply with the plain terms of NEPA and FLPMA. "The policies underlying NEPA 'weight the scales in favor of those seeking the suspension of all action until the Act's requirements are met[.]'" Save our Ecosystems v. Clark, 747 F.2d 1240, 1250 (9th Cir. 1984) (citation omitted). Preservation of the environment against unnecessary and undue degradation is clearly in the public interest.

> The preliminary injunction would serve the public by protecting the environment from any threat of permanent damage. ... While granting the preliminary injunction would inconvenience defendants and those parties holding specific interests in the lands at issue, denying the motion could ruin some of the country's great environmental resources—and not just for now but for generations to come.

National Wildlife Fed'n v. Burford, 676 F. Supp. 271, 279 (D.D.C. 1985), *aff'd*, 835 F.2d 305 (D.C. Cir. 1987). See Wyoming Outdoor Council v. Butz, 484 F.2d 1244, 1250 (10th Cir. 1973) (public has an "overwhelming" interest in "preserving the character of the environment").

If uninformed and premature lease issuance pushes the greater sage-grouse closer to a listing and possible extinction, it will be contrary to the public interest expressed in NEPA, FLPMA and ESA. BLM's sage-grouse planning efforts are intended to balance competing interests and maximize the chances of achieving conservation goals. Audubon's interest in healthy sagebrush ecosystems and sage-grouse populations could be fatally compromised absent a stay. The health of Wyoming's economy is also tied to sage-grouse conservation, especially in the crucial period between now and USFWS's looming listing decision. Audubon has the right to ensure that the potentially significant environmental impacts of lease issuance are thoroughly analyzed. See 40 C.F.R. § 1500.1(b) ("NEPA procedures must ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken") (emphasis supplied). Protecting the public interest by requiring BLM to follow NEPA, FLPMA and ESA is at the heart of Audubon's request for a stay.

Any new leasing of core areas must be subject to rigorous analysis of relevant new information, including the 2011 BLM Technical Team Report and 2010 USFWS finding. Conservation goals and the best available science on the impacts of energy development to Wyoming's dwindling sage-grouse populations and habitat must be analyzed *before* leases are issued.

CONCLUSION & REQUEST FOR RELIEF

Audubon acknowledges the efforts of BLM Wyoming to improve pre-leasing environmental analysis and apply certain sage-grouse screens to parcels in core area habitat. However, the challenged decision was uninformed by adequate consideration of five key aspects of the issue: 1) BLM's objectives for sage-grouse conservation and recovery; 2) BLM's Technical Team Report; 3) BLM's ongoing range-wide planning strategy to incorporate the best

science into management decisions; 4) BLM's stated commitment to update or revise existing RMPs and adjust interim management in light of the looming 2015 decision by USFWS; and 5) the USFWS position on additional leasing of core areas.

BLM was aware of the new science on sage-grouse biology and the crucial importance of core area protection from energy development threats to meeting conservation goals, but the agency chose not consider the best available science in its decision. The record raises serious questions as to whether an informed analysis would conclude that leasing is consistent with range-wide planning efforts and the central importance of Wyoming to overall sage-grouse recovery. Much significant and relevant new information was provided to BLM, but the agency generally denied the information's relevance in opting against expanding its analysis.

Audubon is entitled to the requested stay, and the Board should remand the disputed core area lease parcels to ensure informed decisions that comply with NEPA and other applicable law.

Respectfully submitted on May 31, 2012.

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LIST OF EXHIBITS TO REQUEST FOR STAY

Exhibit 1: BLM Maps

Exhibit 1A BLM Map of Rawlins Field Office May 2012 Parcels, including Sage-grouse Core Areas, Leks, Nesting and Winter Sitings (labeled "Map 3" to Rawlins FO EA) http://www.blm.gov/pgdata/etc/medialib/blm/wy/information/NEPA/og/2012/05may.Par.28015.File.dat/RFO-HistoricRaptors.pdf (viewing web versions of maps allow magnifying the image for greater clarity and resolution)

Exhibit 1B BLM Map of Rock Springs Field Office May 2012 Parcels, including Sage-grouse Core Areas, Leks, Nesting and Winter Sitings (labeled "Map 3" to Rock Springs FO EA)

Exhibit 1C BLM Map of Rawlins Field Office May 2012 Parcels, including September 2011 Oil and Gas Leases and Active Wells (labeled "Map 1" to Rawlins FO EA)

Exhibit 1D BLM Map of Rock Springs Field Office May 2012 Parcels, including September 2011 Oil and Gas Leases and Active Wells (labeled "Map 1" to Rock Springs FO EA)

Exhibit 1E BLM Map of Kemmerer Field Office May 2012 Parcels, including September 2011 Oil and Gas Leases and Active Wells (attachment to Kemmerer FO EA)

Exhibit 1F BLM Greater Sage-Grouse Range-wide Regional Breeding Density Thresholds map (2010), http://www.blm.gov/wo/st/en/prog/more/sagegrouse/documents_and_resources/greater_sage-grouse0.html

Exhibit 2: BLM Documents

Exhibit 2A BLM Sage-Grouse and Sagebrush Conservation summary (website homepage) http://www.blm.gov/wo/st/en/prog/more/sagegrouse.html

Exhibit 2B Rocky Mountain Region Greater Sage-Grouse Planning Process Strategy summary (November 2011) http://www.blm.gov/wo/st/en/prog/more/sagegrouse/eastern.html

Exhibit 2C BLM's Notice of Intent To Prepare Environmental Impact Statements and Supplemental Environmental Impact Statements To Incorporate Greater Sage-Grouse Conservation Measures Into Land Use Plans and Land

Management Plans (December 9, 2011), https://www.federalregister.gov/articles/2011/12/09/2011-31652/notice-of-intent-to-prepare-environmental-impact-statements-and-supplemental-environmental-impact

Exhibit 2D A Report on National Greater Sage-Grouse Conservation Measures (BLM Sage-Grouse National Technical Team, December 21, 2011) ("BLM Technical Team Report")

Exhibit 2E National Planning Strategy flow chart http://www.blm.gov/wo/st/en/prog/more/sagegrouse/documents_and_resources/greater_sage-grouse.html.

Exhibit 2F BLM National Greater Sage-Grouse Planning Strategy (fact sheet) http://www.blm.gov/or/news/files/sage-grouse_fact_sheet.pdf

Exhibit 2G BLM Sage-grouse Planning Documents and Resources http://www.blm.gov/wo/st/en/prog/more/sagegrouse/documents_and_resources.html

Exhibit 2H BLM Instruction Memorandum No. 2012-043, Greater Sage-Grouse Interim Management Policies and Procedures (December 22, 2011) http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2012/IM_2012-043.html

Exhibit 2I BLM Instruction Memorandum No. 2012-044, BLM National Greater Sage-Grouse Land Use Planning Strategy (December 27, 2011) http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2012/IM_2012-044.print.html

Exhibit 2J BLM WSO Competitive Oil and Gas Lease Sale Results: Date of Sale: May 1, 2012

Exhibit 2K BLM Protest Decision

Exhibit 2L The BLM's Balancing Act: Managing the Needs of People and Sage-grouse on Public Lands http://www.blm.gov/wo/st/en/prog/more/fish__wildlife_and/sage-grouse-conservation/energy.html

Exhibit 2M Bureau of Land Management National Greater Sage-Grouse Planning Strategy Charter (August 22, 2011), http://www.blm.gov/pgdata/etc/medialib/blm/wo/Communications_Directorate/public_affairs/sage-grouse_planning/documents.Par.2415.File.dat/Final%20Signed%20GSG%20Planning%20Strategy%20Charter.pdf

Exhibit 3: Audubon Protest (and lettered Exhibits to Protest)

Exhibit 3A Spread sheet

Exhibit 3B Expert Comments of Alison Holloran, Audubon Rockies Director of Science: Regarding Proposed May 2012 BLM Wyoming State Office Oil & Gas Lease Sale

Exhibit 3C Audubon Map, WY BLM Lease Sale, Highlighting Parcels Within Core Areas and Within 25% Breeding Polygons (May 2012)

Exhibit 3D August 27, 2011 letter to Secretary Ken Salazar, re: Conservation community's interest in range-wide conservation of Greater Sage-Grouse

Exhibit 3E Audubon Map, WY BLM Lease Sale, Highlighting Parcels Southwest of Rawlins (May 2012)

Exhibit 4: United States Fish & Wildlife Service documents

Exhibit 4A 12-Month Findings for Petitions to List the Greater Sage-Grouse (Centrocercus urophasianus) as Threatened or Endangered: Notice of 12-month petition findings (March 23, 2010) (excerpt pages 1-72) http://ecos.fws.gov/docs/federal_register/fr5934.pdf

Exhibit 4B USFWS Greater Sage-Grouse Fact Sheet http://www.fws.gov/mountain-prairie/species/birds/sagegrouse/FactSheet03052010.pdf

Exhibit 4C Questions and Answers for the Greater Sage-Grouse Status Review, http://www.fws.gov/mountain-prairie/species/birds/sagegrouse/03052010Q&A.pdf

Exhibit 4D July 9, 2009 USFWS letter by FWS Wyoming Field Supervisor Brian Kelly to Steve Ferrell

Exhibit 5 State of Wyoming Executive Order 2011-5, Greater Sage-Grouse Core Area Protection (June 2, 2011)

Exhibit 6 Western Governors' Wildlife Council Report to Governors: Inventory of State and Local Governments' Conservation Initiatives for Sage Grouse (December 2011)

Exhibit 7 Mapping breeding densities of greater sage-grouse: A tool for range-wide conservation planning (September 2010))

Exhibit 8 Energy Development and Conservation Tradeoffs: Systematic Planning for Greater Sage-Grouse in their Eastern Range (Kevin E. Doherty, David E. Naugle, Holly E March 1, 2011)
http://www.nature.org/ourinitiatives/urgentissues/smart-development/publications/doherty-greater-sage-grouse-publication.pdf

Exhibit 9 Audubon

Exhibit 9A National Audubon Society Mission

Exhibit 9B Wyoming Audubon Vision

Exhibit 10 Natural-gas glut might slow U.S. drilling boom, AP (April 9, 2012)

Exhibit 11 Fact-Based Regulation for Environmental Protection in Shale Gas Development The Energy Institute, University of Texas at Austin (February 2012) (Excerpted pages 1 & 8)
http://www.energy.utexas.edu/images/ei_shale_gas_reg_summary1202.pdf