

Testimony by Rollin D. Sparrowe  
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Daniel, WY  
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"Access Denied"

Dear Chairman Rahall:

I am pleased to present testimony concerning how the accelerated pace of energy development is affecting current and future access to wildlife and the ability of the public to enjoy them. I come to this hearing with 40 years of experience with state and federal fish and wildlife agencies and management programs in North America.

In the 1970's and 1980's, I supervised US Fish and Wildlife Service (FWS) research programs that addressed wildlife issues in the Rocky Mountains. I have tracked the progress of the most recent gas development boom in Southwest Wyoming and now live in one of the most intensive drilling areas in the Upper Green River Basin. I have been a part-time resident in the Upper Green River area since 1993 and a fulltime resident since 2003.

Before the Pinedale Anticline project was authorized in 2000, I was directly involved in planning for research on Mule Deer, Sage Grouse, and Pronghorn through the Wyoming Cooperative Fish and Wildlife Research Unit (Unit). The Unit's unique effort established pre-development baseline data on habitat use by wildlife in order to improve our ability to predict actual responses of wildlife to future development. These studies, published in peer-reviewed journals, provide strong insights into what we can expect in wildlife impacts, especially under intensive development in the Intermountain West. I spent two years chairing a citizen's group on monitoring wildlife needs for the Pinedale Anticline Project. This was part of a Federal Advisory Committee Act (FACA) chartered advisory process under the Secretary of the Interior (DOI) called the Pinedale Anticline Working Group (PAWG).

A basic premise of wildlife management is that without habitat there will be no wildlife and without wildlife there can be none of the traditional human uses that range from wildlife observation to hunting. The story is not simply the presence or absence of vegetation for food and cover; but it is also what human activity is occurring in the habitat that determines its usefulness to wildlife. Access, whether to land or wildlife, depends first upon the sustained presence of healthy wildlife and fish populations.

Since the current gas boom began in the late 1990's in the Rocky Mountains, wildlife has been largely treated as an "impediment" to energy development. This is borne out by past congressional testimony by industry and the Department of the Interior's Bureau of Land Management (BLM), by expression in media by industry associations and the Administration, and by actions in authorizing and developing major gas fields, such as Wyoming's Pinedale Anticline and Jonah, and coal bed natural gas (CBNG) fields in Montana and Wyoming. For the high profile Pinedale Anticline and Jonah fields, where formal project decision documents have recognized the high value of wildlife, BLM set forth measures for protection of wildlife. They

also promised monitoring and use of adaptive management to adjust well field operations, but little of the promised adjustment to management has taken place. These decision documents and others like them should be “contracts with the American people” to practice true multiple-use of the public's wild natural resources, but they are not.

Industry has made selective responsible efforts to reclaim areas, reduce infrastructure and disturbance, and some companies are willing to consider more actions to lessen impacts. Other companies, however, have invested in attempts to discredit research results they perceive as unfavorable to their mission. Realistically, their job is to develop gas and oil and produce as much as possible. Their associations and company lobbyists have pursued "the wildlife question" as an impediment and our government has listened to them and largely ignored the conservation community's many appeals to slow down and "do this right".

Proof that wildlife are receiving little protection lies in past and future actions by the managing federal agency, BLM. Pressures to accelerate approval of application for permits to drill (APD) and otherwise facilitate development have lead to virtual abandonment of other land management responsibilities for wildlife on many BLM trust lands. BLM resource managers have been reprogrammed to assist in processing APDs as their first, and in some instances their only, priority. Funding and staffing have been shifted away from the multiple-use mandate we expect from the agency under BLM authorizing legislation.

Of course, much of this shift has been responding to directives from the Administration and Congress, but BLM seems to "go the extra mile" in unique interpretations of policy and law. "Minerals trump everything" has been repeatedly said by BLM staff, even in public meetings, while top Administrators have extolled their great attention to "balanced development" even while directives have been issued to BLM staff stating the contrary.

Specific wildlife resources are suffering from this neglect. greater sage-grouse were recently proposed for listing as Threatened or Endangered under the Endangered Species Act and the FWS decided not to list them partly because BLM had developed a very broad National Sage-Grouse Strategy. However, eight years of experience in monitoring effects of intensive development on sage-grouse in Wyoming and Montana, plus twenty years of sage-grouse research in other states clearly indicates that current management stipulations are not adequate to protect and conserve sage-grouse. The most egregious example of this continued inadequate management is the one-quarter mile buffers around sage-grouse leks (courting sites), a measure that independent research has determined not to be effective in retaining sage-grouse on developed areas. Disturbance effects on leks and nesting occur out to three miles, yet current and proposed development by BLM continues to use quarter mile buffers and readily provides exceptions. How will failure to use this existing knowledge and adjust operations prevent listing?

At the famous Pinedale Anticline in the Upper Green River Basin, winter range use by an important mule deer herd has declined over 46 percent. Deer have been displaced to previously documented less favored habitats and few deer have shifted their use to other nearby winter ranges. In addressing impacts, critics of the impacts point out that only a small portion of habitat has been directly affected. In effect, much of their winter habitat necessary needed for survival

in periods of harsh winters is now not usable because of intensive industrial activity effectively changing the ability for deer to use habitat as needed. Signs of reduced reproductive success are emerging compared to nearby herds with the latest information attributing 27% lower success due to energy development.

Hunting opportunity has declined in a large section of the Wyoming Range where those same deer migrate to and spend the summer and fall (these deer contribute animals to approximately 8 mule deer hunt units in western Wyoming). This response occurred with less than 500 wells and approximately 5,000 acres of disturbance. A proposed project being considered would add over 4,000 wells (some on the same pads and in clusters) and 12,000 acres of new surface disturbance and set aside wildlife protections in favor for year-round drilling. Local residents and newspapers have labeled this the “Pinedale Anticline Escalation Project.” BLM has suggested that the project is an unusual juxtaposition of world class wildlife with world class energy resources therefore it is not a precedent setting approach.

Yet not too far to the south near Rawlins, Wyoming, another juxtaposition of world class wildlife and energy is found, the Atlantic Rim on the eastern edge of the Red Desert. This project will affect over 140 sage-grouse leks, plus important mule deer, elk, and pronghorn herds. This is a very highly productive area that attracts hunters and is known for its numerous, trophy mule deer. The Final Environmental Impact Statement (FEIS) overtly projects that the project will greatly reduce wildlife and lead to the area being unsuitable for hunting, outfitting, and bird watching. The following statements are taken directly from the Atlantic Rim Natural Gas Project FEIS.

*“In conclusion, the impacts to the predominant recreation activities in the ARPA—hunting, pleasure driving, and wildlife viewing—would be significant. The Proposed Action would diminish the wildlife presence, degrade scenery, and introduce traffic and noise. The natural setting would be converted to an industrialized setting by development of the Proposed Action.” (page 4-102 FEIS)*

*“Cumulative impacts to hunting, the main recreation activity in the CIA, would occur because of the extensive impacts of natural gas development on wildlife. The increased road density, traffic, noise, and dust of development displace big game species. When big game species leave an area, hunters soon leave as well, because hunting success declines. Wildlife and hunters have already been displaced by existing development in portions of the CIA. Displacement of game and hunters would occur in areas as they are developed. As development spreads, so does displacement. This could have a serious financial effect on commercial big game outfitters that rely on wildlife and knowledge of the CIA for successful hunts. It would also tend to concentrate game and hunters in undeveloped adjacent areas, which would impact the quality and quantity of forage, and therefore the health of the animals. There would also be an increase in the probability of hunting accidents due to increased hunter density in these adjacent undeveloped areas.” (page 5-20 FEIS)*

Plans for extensive development include the five Rocky Mountain States of Montana, Wyoming, Colorado, Utah, and New Mexico. Vast areas of important habitat for fish and wildlife have

been, and continue, to be leased without proper predictions about how development will take place. There has been little attention to how these wide-spread projects, over millions of acres, will remove public resource values over a multi-state area. There is also concern about how "mitigation" might be pursued and applied. How development proceeds will determine whether important wildlife and their habitats and traditional uses, like hunting, can be sustained through periods of prolonged development. Where well fields started with twenty to thirty-year life of project projections, new technology and market factors now suggest a project life of 75 years for some areas. That is a long time to try to sustain fish and wildlife populations and public uses. How will the traditions of hunters be maintained if they are excluded from familiar hunting areas for decades?

We have legislation that calls for balanced and multiple-use in management for our public lands. The Multiple Use and Sustained Yield Act of 1960, the National Environmental Policy Act of 1969 (NEPA), and the Federal Land Policy and Management Act of 1976 (FLPMA) all speak clearly of our intent to manage public lands to protect scenic, scientific, historical, ecological, and environmental values to meet both present and future needs of the American people. Where more intensive uses, such as energy development, are allowed, these laws clearly say that there should not be permanent impairment of the productivity of the land and the quality of the environment. A newcomer worthy of a closer look is how the Energy Policy Act of 2005 modified the multiple-use mandate for BLM lands. Did the Congress consciously mean to roll back the multiple-use concept as those who have implemented accelerated energy development seem to have assumed?

A source of tension over what multiple-use is revolves around the reality that we have world-class wildlife resources and world-class energy resources at the same locations. The assumption seems to be that all of such areas must be developed for energy and it is too bad that wildlife will be negatively affected. What happened to the "burden of proof" that development will not preclude the ability to achieve balance in management of public lands as implied by our policies and laws? Somehow, development proceeds unless wildlife managers can demonstrate serious wildlife impacts would be inevitable. How did we shift the burden of proof from developers to wildlife managers?

We have strong guidance from the Council on Environmental Quality for mitigation that should give guidance to federal agencies during planning of development activities. They call for **(a) avoiding** the impact altogether by not taking a certain action or portions of an action; **(b) minimizing** impacts by limiting the degree or magnitude of the proposed 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; and **(e) compensating** for the impact by replacing or providing substitute resources or environments [Title 40, Sec. 1508.20 - CEQ Regulations]. From direct experience it is apparent that avoiding and minimizing, especially by giving up some development prerogative as (a) and (b) call for to protect wildlife, is not considered by BLM in authorizing development.

At the beginning of this Administration, there were several committees and task groups that held briefings and invited comments and advice about how gas and oil should be developed. My

colleagues and I provided input to every one of these inquiries on a consistent platform. The platform consisted of not opposing development, but asking for it to be done in the right way. We worked closely with the BLM Director and held two working meetings with representatives of energy companies, seeking mutual understanding of each other's needs. We filed comments on NEPA documents as development proceeded. We formed a working group and met several times in 2004 and 2005 with the Deputy Secretary at DOI and presented a lengthy list of recommended needs and changes to lessen impacts on wildlife. In return, we were assured that new Resource Management Plans (RMP's) for over 20 "fast track" planning areas would incorporate innovative changes to the development outlook. These new RMP's were to guide more wildlife friendly future development and include other actions for conservation of fish and wildlife resources. The RMP's have been delayed repeatedly and few have been released, yet drilling and production have moved full speed ahead. The promise of broad plans that look beyond individual well fields to balance habitats and wildlife through responsible development and consideration of cumulative impacts has not been realized.

Public involvement has been one of the least rewarding, most controlled, and least productive expenditures of time during intensive development. In the high profile Pinedale Anticline project, the 2000 EIS and Record of Decision (ROD) included provisions for an innovative public process that would address water, air, wildlife, and other issues about the impact of the impending large energy development on BLM managed lands. This innovative process was needed for mainly two reasons, first there was great uncertainty about how development would affect other resources and second was the fact that BLM wanted more local public input from stakeholders. The Pinedale Anticline Working Group (PAWG) was convened and set up Task Groups to focus on key resources. After about a year the process was challenged by an energy company and shut down. Intensive drilling and development continued for the next two and one half years while the Interior Department reconstructed the PAWG (PAWG II) under a FACA Charter from the Secretary. Vetting and approval of the 10 members of PAWG II took over a year. Finally in August of 2004 PAWG II had its first meeting, almost 4 years after the drilling began.

I chaired a Wildlife Monitoring Task Group under PAWG II for almost two years, evaluating on-going monitoring and research and making a variety of recommendations for changes in how development was being managed in order to lessen impacts to wildlife from drilling activity. Over 75 individuals from a wide array of backgrounds in business, biology, sociology, agriculture, environmental and hunting interests from the local community and the industry participated on seven different Task Groups. The Task Groups did the analytical work and made recommendations to PAWG II, who decided what to recommend to the BLM.

On a very fast track, these groups evaluated the EIS and ROD requirements for managing development, including mitigation and monitoring for wildlife, in what was by then a project that had been under way for several years. In general, the Task Groups found that key provisions of the EIS and ROD had not been implemented. For example, the ROD outlined an "adaptive environmental management process" that was to review wildlife data on impacts of development, and BLM was to make changes in field operations as necessary to lessen those impacts. No adaptive process has been implemented even though several high level officials at

Interior all spoke about it in various public appearances as if it were in practice and a model on how adaptive management should be done.

The dialog between PAWG II its Task Groups and BLM grew strained during 2005 over PAWG II identifying “lack of process” as inhibiting progress in working with BLM and getting orderly responses on recommendations. BLM called a special meeting at which the Field Manager reinterpreted the charge and narrowed it to only “post-decisional issues”, clarifying that each participant could exercise their right to comment through NEPA processes prior to project decisions. Months later recommendations based on two years of work on wildlife matters were rejected by BLM, and the appointments of PAWG II members were allowed to expire in spring of 2006 without notice. There was a period of several months that the advisory group for this project did not function, yet drilling continued.

Since fall of 2006, PAWG III has been reconstituted and has started meeting again. I worked with them in public forums in Pinedale for several months, and checked on past recommendations for action to help wildlife and found little progress. I concluded that I saw no change in the likelihood of their work having an impact on wildlife resources and declined to serve again.

Honest public processes that an agency allows to work without trying to control them can be an effective way for citizens to be involved in matters they care about. Our energy efforts have had more positive experience with an alternative approach to citizen involvement in New Mexico than found in Wyoming. There, a difficult issue of balancing the needs of the lesser prairie chicken (LPC), a candidate for listing for protection under the ESA, has been addressed by a citizen-lead group that sets its own agenda and is not controlled by BLM. Progress has included taking some lands off the development list to sustain core LPC habitats and setting development limitations on other lands. While much more work is still needed, success has been a product of working free from control by BLM.

Since the election last Fall new proposals in Wyoming and surrounding states to lease important wildlife habitats, historic sites, sensitive river bottoms, and close to private home sites have engendered protests by state wildlife agencies, landowners, hunters, anglers, outfitters, local labor unions, wildlife groups and wildlife organizations. Crucial habitats for mule deer, sage-grouse, moose, elk, pronghorn and other wildlife are already leased on millions of acres of public land in the West. With mounting evidence of negative impacts on wildlife, and the long awaited RMP's, which are still being written, this shotgun approach to more leasing can only be about transferring control of public lands to energy companies. On the Pinedale Anticline, for example, where current proposals call for thousands of new wells and major surface disturbance, new leasing is planned even though hundreds of permits to drill already exist and are not being used. Leasing conveys certain property rights to companies that render future options few and hard to implement by BLM. Why would we continue to give up options to better manage development in the future?

How does all this affect the future of access by America's hunters and anglers? When President Theodore Roosevelt set aside the forest reserves that became the core of the National Forest System and formed the roots of multiple-use philosophy and management, he did so with the

firm resolve that they be protected from excessive single uses - whether timber, mining, oil drilling or commercialized recreation. His goal was that the people would continue to be able to use their public lands for many purposes. What has occurred in less than a decade has been a freight train of rapid development that has assumed that getting access to gas and oil was first priority and maintaining access to quality outdoor experiences (like hunting and fishing) and protection of our cultural heritage are secondary. Many promises about seeking balanced development have been made, including by the President, but what has happened on the ground has not been balanced and wildlife and wild places are losing more than our government will admit and, most importantly, losing more than is necessary.

The public land managed by BLM, where the first and strongest wave of development has occurred, has gotten caught in the conflicting agency mandates - develop on the one hand and protect on the other. Laws passed by Congress to clarify how that clear mandate might be implemented are reinterpreted each time a new push, like oil and gas development, comes along. It is highly appropriate that the Congress investigate this and make sure that balance is being pursued.

Top officials at DOI suggest that what has happened on the Pinedale Anticline and Jonah Fields in the Upper Green River Basin are anomalies. To the contrary, what is happening in the huge Powder River Basin of Montana and Wyoming, Red Desert of Wyoming, Roan Plateau, Piceance Basin, North Park, and Book Cliffs of Colorado and Utah and San Juan and Permian basins in NM have the same footprint. That footprint includes 1) little or no baseline data upon which to plan development to avoid critical wildlife habitats, 2) decisions made to concentrate development in critical habitats, even where those values are known, and 3) few constraints on the scope and pace of development. The prognosis is leading in the same direction as occurred in the Upper Green River area where leases are sold, development starts, and we wait to see what happens and then try to fix problems later. Would we conduct a business this way and expect success?

America's public land users include local communities and people who travel from thousands of miles away from all over the globe. They come for wildness, solitude, a chance to hike, fish, hunt, watch wildlife, and photograph their experiences and take their memories back home. Many come time after time and it becomes a traditional part of their family lives. Wildlife, whether to hunt, watch or just know it exists, is a public resource value that many people hold dear and many community economies depend on. A future for public lands that includes development done the way it has been so far will remove many of those public resource values and reduce the quality of public enjoyment of our public lands.

This, Mr. Chairman, is how energy development is affecting access to quality hunting and fishing on public lands.

# Federal Mineral Leases in the Rocky Mountain West TRCP Energy Initiative Focus States

