



NATIONAL WILDLIFE FEDERATION®

People and Nature: Our Future Is in the Balance

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RE: PROTEST OF MONTANA BLM NOVEMBER 27, 2007 LEASE SALE PARCELS

All Protested Lease Sale Parcels

MT-11-07-26; MT-11-07-29; MT-11-07-30; MT-11-07-35; MT-11-07-36; MT-11-07-37; MT-11-07-38; MT-10-07-46; MT-11-07-50; MT-11-07-51; MT-11-07-52; MT-11-07-53; MT-11-07-57; MT-11-07-60; MT-11-07-61; MT-11-07-64; MT-11-07-71; MT-11-07-72; MT-11-07-73; MT-11-07-74; MT-11-07-75; MT-11-07-76; MT-11-07-77; MT-11-07-79; MT-11-07-81; MT-11-07-82; MT-11-07-83; MT-11-07-84; MT-11-07-85; MT-11-07-86; MT-11-07-87; MT-11-07-95; MT-11-07-96; MT-11-07-97; MT-11-07-98; MT-11-07-101; MT-11-07-103; MT-11-07-105; MT-11-07-106; MT-11-07-107; MT-11-07-108; MT-11-07-109; MT-11-07-110; MT-11-07-111; MT-11-07-114; MT-11-07-115; MT-11-07-116; MT-11-07-117; MT-11-07-118; MT-11-07-119; MT-11-07-120; MT-11-07-124; MT-11-07-125; MT-11-07-126; MT-11-07-128; MT-11-07-131; MT-11-07-133; MT-11-07-36; MT-11-07-37; MT-11-07-42; MT-11-07-45; MT-11-07-53; MT-11-07-154; MT-11-07-157; MT-11-07-65; MT-11-07-66; MT-11-07-67; MT-11-07-68; MT-11-07-69; MT-11-07-70; MT-11-07-71; MT-11-07-76; MT-11-07-77; MT-11-07-78; MT-11-07-121; MT-11-07-122; MT-11-07-123; MT-11-07-127; MT-11-07-129; MT-11-07-132; MT-11-07-134; MT-11-07-140; MT-11-07-141; MT-11-07-146; MT-11-07-147; MT-11-07-150; MT-11-07-151; MT-11-07-152; MT-11-07-158; MT-11-07-159; MT-11-07-179; MT-11-07-181; MT-11-07-213; MT-11-07-214; MT-11-07-215. (Parcels in bold denote those within ¼ mile of sage-grouse leks)

The National Wildlife Federation (Protester), pursuant to 43 C.F.R. §§ 4.450-2 and 3120.1-3, protest the inclusion of the above-listed proposed lease parcels in the upcoming November 27, 2007 Competitive Oil and Gas Lease Sale to be held by the Montana State Office of the Bureau of Land Management (BLM). Members and Affiliates of NWF visit, recreate on, and use lands on or near the parcels proposed for leasing. Our members' interests in the public lands and the wildlife resources that depend on those lands for habitat will be adversely affected if the sale of these parcels proceeds, as proposed, without adequate environmental analysis or safeguards to protect the functionality of critical wildlife habitat.

Under the statutory and regulatory provisions authorizing this lease sale, the BLM has full discretion whether or not to offer these lease parcels for sale. The Mineral Leasing Act, 30 U.S.C. § 226(a), provides that "[a]ll lands subject to disposition under this chapter which are known or believed to contain oil and gas deposits may be leased by the Secretary." (emphasis added). The Supreme Court has concluded that this "left the Secretary discretion to refuse to issue any lease at all on a given tract." *Udall v. Tallman*, 380 U.S. 1, 4 (1965); see also *Wyoming ex rel. Sullivan v. Lujan*, 969 F.2d 877 (10th Cir. 1992); *McDonald v. Clark*, 771 F.2d 460, 463 (10th Cir. 1985) ("While the [Mineral Leasing Act] gives the Secretary the authority to lease government lands under oil and gas leases, this power is discretionary rather than mandatory."); *Burglin v. Morton*, 527 F.2d 486, 488 (9th Cir. 1975). As discussed in detail below, exercise

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of the discretion not to lease lands under the governing Judith, Valley, and Phillips Resource Management Plans (RMPs) (1994), the Billings RMP (1984), the Big Dry RMP (1995), the Powder River/Big Dry RMP (2000), the Butte RMP, and Malta RMP (updates pending) for areas that support greater sage-grouse habitat, is appropriate and necessary for the following reasons:

- Demand for wildlife recreation is increasing and certain wildlife populations, particularly greater sage-grouse, are declining;
- The Billings, Butte, and Malta RMPs are currently undergoing revision, and premature leasing could unduly prejudice available alternatives;
- Other BLM planning documents are out-dated. BLM has received substantial, material new information since 2005 regarding sage-grouse population and habitat condition, the effects of oil and gas development and related disease on sage-grouse, and practices and policies for minimizing the effects of development on this and other wildlife. Existing NEPA documents, including the Judith, Valley, and Phillips Resource Management Plans (1994), the Billings RMP (1984), Powder River/Big Dry RMP (updated 2000), and Malta RMP (updates pending) RMP EIS and ROD documents, and Montana's existing Oil and Gas Leasing EIS, and RMP amendments pursuant to that EIS, do not take into account any of this material new information, and are an inadequate basis for new non-NSO leasing.
- The Montana Department of Fish, Wildlife and Parks (MDFWP), the state agency charged with management of wildlife resources, has protested leases of sage-grouse habitat elsewhere in Montana, noting that BLM land use plans and proposed lease stipulations and notices are inadequate to address MDFWP concerns, the state management plan for sage-grouse, and the latest scientific findings on likely impacts of energy development to sage-grouse habitats and populations.

About the Protesters

The National Wildlife Federation (NWF) is a national member-supported non-profit conservation, education, and advocacy organization. NWF is associated with conservation organizations in 47 states and territories, including the Montana Wildlife Federation in Montana. NWF is dedicated to conserving wildlife and other natural resources, and believes that hunting, fishing, and trapping are legitimate recreational pursuits and useful wildlife management practices. NWF works to promote responsible management of wildlife on public lands. The protesters have well-established histories of participation in BLM planning and management activities, including participation on Montana planning decisions and the planning processes. Members of NWF have visited and used BLM public lands for fishing, hunting, wildlife viewing and surveys, and other activities. Mineral development of greater sage-grouse habitat and crucial areas will harm our members' interests in the continued use of those areas and the wildlife they support, especially if development is allowed to proceed, as proposed, absent adequate study and safeguards against loss of wildlife resources.

I. Description of Affected Resources- Greater Sage-Grouse Occupied Habitat:

According to BLM sale notice data and analysis, ninety-five of the November sale parcels fall within two miles of documented greater sage-grouse leks in Rosebud, Garfield, Musselshell, Fergus, Golden Valley, Carbon, and Petroleum Counties. Of these, two parcels are within ¼ mile of a sage-grouse lek, and two parcels are within 1 mile of a sage-grouse lek.

These ninety-five parcels are only subject to Lease Stipulation "Timing 13-3" which prohibits (subject to site-specific exceptions) surface use from March 1 to June 15 within 2 miles of a grouse lek, and Lease Stipulation "Timing 13-14" (also subject to site-specific exceptions) which prohibits surface use from December 1 through May 15 within winter and spring range for sage-grouse. However neither Lease

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Stipulation Timing 13-3 or 13-14 applies to operation and maintenance of production facilities. Only two parcels are subject to Lease Stipulation "NSO 11-4" which prohibits surface occupancy within a one-quarter mile radius of grouse dancing grounds.

Unfortunately, these standard stipulations have been repeatedly demonstrated through scientific studies to be ineffective in protecting greater sage-grouse leks (dancing grounds), nesting success, and wintering populations, are not supported by any peer-reviewed scientific studies, and are inconsistent with the analysis and recommendations of the federal Fish and Wildlife Service (FWS) and MDFWP for conserving sage-grouse.

II. THE LEASING OF SAGE-GROUSE HABITAT ABSENT FULL EXAMINATION OF THE ENVIRONMENTAL CONSEQUENCES WILL VIOLATE THE NATIONAL ENVIRONMENTAL POLICY ACT

The National Environmental Policy Act, 42 U.S.C. § 4332(C), requires the BLM to take a "hard look" at the environmental consequences of their proposed actions. *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976). When offering oil and gas leases for sale without stipulations prohibiting surface occupancy—leases such as the November protested leases—the agencies must assess the environmental impacts of reasonably foreseeable post-leasing oil and gas development prior to issuance of the lease. *See, e.g., Southern Utah Wilderness Alliance*, 159 IBLA 220, 240-43 (2003); *Pennaco Energy, Inc. v. U.S. Dep't of the Interior*, 377 F.3d 1147 (10th Cir. 2004); *Conner v. Burford*, 848 F.2d 1441 (9th Cir. 1988); *Sierra Club v. Peterson*, 717 F.2d 1409 (D.C. Cir. 1983).

The above-cited RMPs, EISs, and their amendments do not adequately address substantial new relevant information regarding sage-grouse, and the effects on those species from levels of oil and gas development currently being proposed for those areas. The BLM cannot legally avoid analysis of environmental consequences by insisting that lease issuance is a mere paper transaction without on-the-ground consequences. Regardless of the fact that additional federal actions will precede commercial drilling, the issuance of a lease (particularly without stipulations allowing the BLM to preclude surface disturbance) commits the leased parcel to development and conveys legal rights to the purchaser. *See* 43 C.F.R. § 3101.1-2. Following lease, land management agencies' ability to prevent impacts to other resources is limited to those "reasonable measures" that are "consistent with lease rights granted." *Id.* Where, as here, the lease right allows surface occupancy, a significant commitment of resources is made at the time of lease issuance. This is an action with readily foreseeable on-the-ground consequences. *See Conner*, 848 F.2d 1441; *Sierra Club v. Peterson*, 717 F.2d 1409, 1413 (D.C. Cir. 1983).

As the Tenth Circuit Court of Appeals recently clarified, *Park County Resource Council v. United States Dept. of Agriculture*, 817 F.2d 609 (10th Cir. 1987) does not excuse the BLM from its obligation to analyze these consequences prior to leasing. *Pennaco Energy, Inc. v. United States Dept. of the Interior*, 377 F.3d 1147, 1162 (10th Cir. 2004). *Park County* may allow the agency to forego preparation of an Environmental Impact Statement if and when it has prepared an extensive environmental assessment covering the leases in question. This, however, is not the case; the November 2007 parcels have had no NEPA documentation prepared for them save out-of-date RMP documents that do not (and cannot) account for significant new developments and information, including increased recreational demand, greatly increased levels of mineral development, and declining populations of greater sage-grouse and new scientific information regarding the species' vulnerability to adverse effects from mineral development. Nor does reliance on RMP documents alone suffice for the core NEPA function of adequate consideration of alternatives. *See Pennaco Energy*, 377 F.3d at 1162 (explaining that documents such as "Determinations of NEPA Adequacy" cannot satisfy NEPA's "hard look" standard). Because none of the

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November 2007 lease parcels are entirely No Surface Occupancy ("NSO") leases, leasing, which confers specific rights to develop that the BLM and Forest Service cannot readily deny, is a concrete federal action with readily foreseeable environmental effects, and cannot legally go forward without NEPA analysis. See 43 C.F.R. § 3101.1-2.

With respect to sage-grouse, the BLM is in possession of substantial and material new information about the current condition of habitat and wildlife populations, the impacts of oil and gas drilling on the habitat, and recommended management measures for reducing the adverse effects of development on wildlife population. Comments submitted by MDFWP and FWS in April 2007 to the SEIS on Montana's Statewide Oil and Gas amendment, and 2007 comments supporting MDFWP's protest of prior lease sales regarding impacts to sage-grouse constitute substantial new information, and are summarized in part below:

Summaries of significant findings as submitted by MDFWP to Montana BLM, April 2007:

Breeding Activities: (Holloran 2005)

- Male lek attendance declined as distance from leks to drilling rigs, producing wells and haul roads decreased and as densities of those infrastructure facilities increased. Effects were detectable out to various distances (3 – 6.2 km) depending on the disturbance variable. These observations were similar to that reported for sage-grouse associated with energy development in Alberta (Aldridge and Brigham 2003) and Colorado (Remington and Braun 1991).
- Well densities exceeding 1 producing well every 283 ha (1 well/699 acres) appeared to negatively influence male lek attendance.
- Main haul roads within 3 km of leks negatively influenced male lek attendance largely through increased traffic volume.
- Male attendance decreased with traffic volume of < 12 vehicles per day and leks became inactive when volume exceeded 75 vehicles per day.
- Naugle et al. (2006 – northeast WY)
- Among leks of known status in 2004-2005, only 34% remained active within CBNG fields, compared to 83% of leks adjacent to or outside CBNG fields.
- From 2000-2005, leks in CBNG fields had 11-55% fewer males per active lek than leks outside CBNG development. All known remaining leks with ≥ 25 males occurred outside CBNG fields in 2005.
- Findings show that CBNG development is having negative effects on sage-grouse populations over and above those of habitat loss caused by wildfire, sagebrush control, or conversion of sagebrush to pasture or cropland. Moreover, the extent of CBNG development explained lek inactivity better than power lines, pre-existing roads, or West Nile virus mortality.
- Research findings show a lag effect, with leks predicted to disappear, on average, within 4 years of CBNG development. Regardless of other stressors, 22 of 24 lek complexes (92%) did not go inactive until after CBNG development came into the landscape.
- Leks typically remained active when well spacing was ≥ 500 acres (1.3 wells per section), whereas leks typically were lost when spacing exceeded 4.2 wells per section.

Summary Statement: During the breeding season, male sage-grouse are sensitive to disturbance during both the exploratory and production phase of oil and gas development. Levels of sensitivity as measured by the distance at which no change in male attendance was detectable, vary by factor but are significant at distances of less than 3 km. In the Powder River Basin, impacts to lek activity included an observed 50% decrease in the

number of active leks within developed gas fields as well as a 50% reduction in the average number of males present on remaining leks. There was a discernable time lag between development and observed declines. Changes in numbers were likely an artifact of both distribution shifts in attendance as well as changes in survival and recruitment rates. Existing stipulations that restrict surface occupancy within .4 km (.25 mile) of an active lek are insufficient to maintain populations within developed oil and gas fields. Current well-spacing of 32 – 64 ha (80 – 160 acres) appear to be several times greater than breeding sage grouse populations can tolerate.

Supports utilizing a minimum 1.6 km (1 mile) buffer of no surface occupancy around existing leks and preferably, utilize a minimum 3 km (1.8 mile) buffer. Recognize that development activities within 3 km will have negative impacts on sage grouse populations.

Nesting and Brood Rearing

Holloran and Anderson 2005, Holloran 2006:

- Sage-grouse nest locations are spatially related to lek locations and a 5 km buffer included 64% of known nests.
- The substantial number of females nesting > 5 km from a lek could be important for population viability.
- Observed lek to nest distances was not related to lek size.
- Closest known lek to nest distance was greater for successful nests than destroyed nests.
- Nests located ≤ 1 km from another known nest tended to have lower success probabilities.
- Nesting females strongly avoided areas with high well densities but adult females can exhibit strong nest site fidelity. Mean annual survival rates for females suggest that 5 to 9 years may be required to realize ultimate nesting population response to development activities.

Lyon and Anderson 2003:

- Female sage-grouse disturbed by natural gas development during the breeding season had lower nest initiation rates.

Schroeder and Robb 2003:

- Nest distribution patterns may change as a result of habitat alteration and fragmentation and the 5 km buffer should be considered relevant only for contiguous sagebrush habitats.

Aldridge and Boyce 2007.

- Sage-grouse chick survival decreased as well densities increased within 1 km of brooding locations. These brood-rearing areas acted as habitat sinks where recruitment was poor.
- Low nest success (39%) and low brood survival (12%) characterized sage-grouse vital rates in habitat fragmented by energy development in southern Alberta.

Summary Statement: Female sage-grouse are spatially grouped around a lek or lek complex during the nesting season. Females tend to move away from leks in selecting nest locations and to an extent, those movements appear to improve their rates of nest success. However, females in developed habitat moved twice as far as females in undisturbed habitat and exhibited lower rates of nest initiation. Females also select locations that segregate their nests from those of adjacent hens and the probability of successfully hatching those nests increases when that distance is ≥ 1 km. When females have suitable and contiguous nesting habitat to select from, slightly over 60% of nests occur within 5 km of the lek. This strategy of mutual avoidance reduces nest densities

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and therefore reduces probability of detection by nest predators. However, land use practices that fragment sagebrush habitat and reduce the amount of suitable nesting cover may lead to increased densities of nesting birds and lower rates of nest success. Even if 5 km buffers are employed around existing leks, increased development and production activity in the zone beyond that buffer will impact the remaining 40% of nesting hens and potentially compromise the success of those birds nesting within that 5 km buffer based on the density dependent factors noted above. Stipulations restricting seasonal surface use within 2 miles of an active lek during the breeding and nesting period (1 March – 15 June) are inadequate to maintain sage-grouse populations within developed habitat.

Supports utilizing a 6.9 km (4 mile) buffer around leks to protect nesting and brood rearing habitat for a minimum of 70% of the nesting hens associated with a lek from March 1 through June 30. This protection should apply to both initial development and subsequent annual development and maintenance operations.

Winter Habitat Use (Naugle et al. unpub. report 2006):

- In NE WY, predictive winter habitat use models based on vegetation and topographic features were strongly correlated with observed sage-grouse locations ($R^2 = 0.96$).
- Sage-grouse select for large intact and relatively flat expanses of sagebrush as winter habitat and avoid more rugged terrain and conifer habitat. Given that severe winter conditions (deep snow, low temperatures) could force birds into more rugged terrain, topographic variables should be considered in regions outside the PRB.
- After controlling for vegetation and topography, the addition of a variable quantifying the extent of energy development showed that sage-grouse avoid energy development in otherwise suitable habitat. At 80 acre well-spacing birds were found only in the highest quality winter habitat that may not be available in all wintering locations.
- Avoidance of CBNG in winter and the high likelihood of lek loss in spring threaten to severely impact populations along the Montana/Wyoming border where models classify only 13% of area as high quality winter habitat.

Summary Statement: Sage grouse are sensitive to energy development associated with winter habitat. Recent advances in modeling efficiencies provide a tool to assess important winter habitat and the spatial relationship between known leks and potential winter habitat. Sage grouse in this region can be nonmigratory when suitable seasonal habitats occur in reasonable juxtaposition while other population segments must move greater distances (and across jurisdictions) when those habitats are unavailable. In some cases, this dissimilar distribution pattern may involve birds using the same lek complex or a shared winter range. Seasonal restrictions will not be effective at mitigating infrastructure development if the level of development is moderate to intense and overlays important winter habitat.

West Nile Virus: (Naugle 2004)

- West Nile virus (WNV) mortalities in radio-marked sage-grouse each year since 2003 (2-25% per yr) show that disease is a new and likely permanent stressor to sage-grouse populations. Mortality from WNV may have population-level impacts because female survival plays a vital role in population growth. Mortality events from WNV in 8 of 11 states since 2003 support the need to conserve the sage-grouse across their remaining range to reduce the risk of impacts from disease.

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- Research shows that CBNG ponds pose a threat to sage-grouse because they provide habitat for mosquitoes that spread WNV. Landscapes with the highest mosquito densities also harbor the highest infection rates in *Cx. tarsalis*, the species of mosquito that spreads the disease. Larval *Cx. tarsalis* were produced at similar rates in CBNG and natural sites, whereas CBNG ponds produced *Cx. tarsalis* over a longer time period than agricultural irrigation.

Inference: West Nile Virus should be considered endemic across the northern Great Plains portion of the range of greater sage-grouse. The presence of this disease has added another stressor to sage grouse population dynamics. The prevalence of the disease and associated level of mortality in sage-grouse appears to vary considerably from year to year based on environmental conditions. However, CBNG ponds do provide a much more consistent set of conditions favorable to the spread of WNV even in years of low natural precipitation. Conservation actions need to consider the relationship between CBNG and WNV and attempt to mitigate those conditions favorable to WNV. Supports reducing potential of CBNG ponds to produce late summer mosquito populations that vector WNV.

It is key that the BLM take the above-information into account before leasing parcels in occupied sage-grouse habitat in Montana. The recent decision of the Interior Board of Land Appeals in Center for Native Ecosystems, has confirmed the need to complete additional analysis before leasing, stating that "whether more NEPA analysis based on new information is required depends on the nature of the NEPA analysis already completed, and the nature of the information available at the time of the agency action." 170 IBLA 331, 346 (2006). Based on the lack of analysis of new information on protection of white-tailed prairie dogs and their role as prey for black-footed ferret reintroduction in the existing RMPs, the IBLA found that the BLM was required to complete NEPA analysis prior to issuing leases. We contend it must here too for sage-grouse.

A. The BLM Must Analyze New Scientific Information and Legal Developments Not Available at the Time of Preparation of the Governing RMPs and EIS

The governing EIS for any of the above-cited pre-2005 RMPs contain essentially no *current* analysis of the effects of energy development on greater sage-grouse. The very general analysis of oil and gas impacts in those EIS and RMPs are out-of-date and should be updated to take account of new factual developments and new scientific information. BLM should analyze the relationship between levels of oil and gas development that have substantially increased since the issuance of the cited RMPs, and increased levels of demand for wildlife recreation. NEPA also requires BLM to take into account the substantial new scientific information and analysis available regarding energy development impacts to wildlife habitat and effective measures for mitigating those impacts, particularly the best-available information.

In the governing Montana RMPs and EIS, BLM assumes the effectiveness of a one-quarter mile NSO zone in protecting sage-grouse leks from disturbance, and of the 2-mile timing stipulation for breeding habitat. New research from Wyoming and Montana, and the analysis and recommendations of the MDFWP and the USFWS to Montana BLM, indicate that the quarter-mile NSO, and 2-miles timing stipulations are ineffective.

For example, BLM here should have taken into account recent scientific research regarding impacts of oil and gas development on greater sage-grouse behavior, nesting success, and population viability. The

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MDFWP, particularly in its extensive comments on the draft supplement to the Montana Statewide Oil and Gas EIS and amendment of the Powder River and Billings RMP, has provided BLM with extensive information regarding, and analysis of, the recent scientific literature on sage-grouse conservation and its implications for land management and energy development.

In addition the greater sage-grouse has been added to the Montana BLM sensitive species list, imposing additional obligations on BLM to take measures to conserve the species. BLM sensitive species policy requires the agency to now "provide policy and guidance ... for the conservation of [sage grouse] and the ecosystems upon which [it] depend[s]." BLM Manual § 6840.01. The Manual requires "conservation" of sensitive species, where "conservation" is defined as "the use of all methods and procedures which are necessary to improve the condition of special status species and their habitats to a point where their special status recognition is no longer warranted." Manual at 6840.01. Based on current sage-grouse research the proposed November sage-grouse habitat leasing represents a failure to use all such methods and procedures. Although sensitive species do not receive the statutory protections of the Endangered Species Act due listed threatened and endangered species, the Manual sets the minimum level of protection for BLM sensitive species at that of candidate species. To protect candidate species, the BLM is required to implement management plans that conserve candidate species and their habitats and to ensure that actions authorized, funded, or carried out by the BLM do not contribute to the need for the species to become listed. Manual at .12. Therefore, the minimum requirement for the greater sage-grouse is to ensure that they do not become listed under the ESA. Furthermore, the BLM's goal is to improve the status of such species to the point where their special status recognition is no longer warranted. Taking conservation actions before listing is warranted or designation of critical habitat is necessary is considered to be "in the interest of the public." Manual at 6840.22. Extensive research demonstrates the inadequacy of the scientifically unjustified standard mitigation measures (1/4-mile no surface occupancy, limited seasonal avoidance of nesting habitat) proposed for the November lease sale to protect breeding sage-grouse populations. See Matthew J. Holloran, Greater Sage-Grouse Population Response to Natural Gas Field Development in Western Wyoming 73 (2005);

In particular, as the FWS has repeatedly noticed, Holloran's research indicates that the standard stipulations BLM relies on (0.25 mile no surface occupancy around leks, seasonal limitations on initial drilling within 2 miles of leks) are insufficient to maintain sage-grouse breeding populations within gas fields. This new scientific information must be considered both in pre-leasing analysis (and the development of effective mitigation measures) and in the RMP revision process. The following analysis and comment was provided by the FWS to the BLM in a letter dated April 27, 2007 from R. Mark Wilson of the Ecological Services Division of the USFWS in Helena:

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Recent research in Wyoming and Montana has revealed significant negative effects of oil and gas development and production on sage-grouse populations. Between 1990 and 1995, prior to CBNG development in the Powder River Basin of Wyoming, male attendance at breeding leks (a standard index of sage-grouse populations) fell by over 80% (Naugle et al, 2006a). After CBNG development began, attendance at leks located within developed fields was 46% lower than attendance outside of developed fields. Within CBNG fields only 40% of leks remained active over the 4 year study while outside of CBNG fields 80% of leks remained active. In addition, leks located at the edge of development had the highest lek attendance, indicating that development was displacing birds into areas that were yet undeveloped. While displacement is often considered by the public to be preferable to mortality, at the population level it is detrimental to both the displaced population and the receiving population due to increases in density-dependant sources of mortality, decreases survival and reproduction, and potentially increases susceptibility and transmission of disease. The effects measured in this study should be taken as a minimum effect of the development as time lags in sage-grouse reaction to landscape changes are considerable (Hollaran 2005). The duration of the study reported by Naugle et al (2006a) may not have been long enough to detect the extent of the full effect of CBNG development. In fact, given the rapid decline reported by Naugle et al (2006a,b) and Hollaran (2005) we believe that there is a high probability that sage-grouse will be entirely lost from fully developed areas they studied.

Another recent report by Naugle et al (2006b) showed that wintering greater sage-grouse in the Powder River Basin avoided CBNG developed areas in otherwise suitable winter habitat. The data indicate that sage-grouse habitat selection occurs at a very large scale, on the order of "numerous square miles" of intact habitat rather than the smaller parcels of intact habitat usually left over after energy development. Naugle et al (2006b) concluded that risk of loss of the northern Powder River Basin population was high if plans to develop CBNG there proceeds. The work of Naugle et al (2006a,b) and Hollaran (2005) are supported by additional studies from Wyoming (Lyon and Anderson 2003) and Alberta, Canada (Aldridge and Brigham 2003) each showing significant adverse effects of oil and gas development on greater sage-grouse, conversely, to our knowledge there are no examples of studies showing maintenance of healthy sage-grouse populations in the presence of dense (=greater than 1 well per section) oil and gas development and production.

Your sister agency, the Wyoming BLM, in analyzing effects on sage-grouse from coalbed methane development in the Atlantic Rim area, has acknowledged the significance of some of this new research: Naugle et al. (2006) found that leks along the edge of CBNG development had higher lek attendance than leks within the developed area. The hypothesis that sage-grouse avoid developed areas is supported by the finding that active leks and leks with moderate to large numbers of males were often found adjacent to CBNG fields but rarely within CBNG. In contrast, inactive leks and leks with few males were often found within CBNG fields. One of the most striking patterns discovered was that, of leks counted in either 2004 or 2005, no medium or large-sized leks occurred within CBNG development; all remaining leks in CBNG have 20 or fewer males. Summary statistics for well and power line variables calculated from GIS layers around active and inactive leks indicate that active leks typically are twice as far from wells, one-half times as far from power lines, have one-third the density of wells, one-half the density of power lines, and generally have less development (wells and power lines) within 3.2 kilometers (km) of the lek complex. In addition, a significantly higher proportion of lek complexes are inactive in CBNG areas compared to

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areas on the edge of or outside CBNG (excluding lek complexes of unknown status and those destroyed by agriculture or mining). Atlantic Rim Coalbed Methane Development FEIS at 4-76; see also David E. Naugle *et al.*, Sage-grouse Population Response to Coal-bed Natural Gas Development in the Powder River Basin: Interim Progress Report on Region-wide Lek-count Analyses 8-9 (2006). Further analysis of the Powder River Basin sage-grouse study makes clear that the standard BLM sage-grouse measures (prohibiting surface infrastructure within 0.25 miles of leks, timing restrictions on drilling during the breeding season) are insufficient to protect breeding populations (Brett L. Walker *et al.*, Greater sage-grouse population response to energy development and habitat loss, *Journal of Wildlife Management-In Press*).

B. The BLM Must Take Into Account New Information and Advice from the Montana Dept. of Fish, Wildlife and Parks

We are particularly concerned by what appears to be BLM's failure to take into account the recommendations of the MDFWP regarding the potential leasing of sage-grouse habitat within Montana. Issuance of these leases would fall far short of the specific recommendations from MDFWP regarding development in sage-grouse habitat. To protect breeding and nesting habitat, MDFWP staff recommend that drilling and operation not occur within four miles of sage-grouse leks between March 1 and June 30. Regarding one type of energy development, coal bed natural gas (CBNG), the MDFWP in their comments regarding the Montana SEIS to BLM in April 2007 requested that "*Plans of Development (PODs) that include development in crucial sage grouse habitat shall include information that CLEARLY demonstrates the proposal will not displace sage-grouse from the crucial habitat areas. The most recent science on sage-grouse shows that CBNG development does displace sage-grouse so it does not seem possible to proceed with development in crucial habitats without displacement.*"

These practices and professional opinions are neither incorporated in the stipulations and lease notices accompanying the proposed lease sale, nor considered in the governing RMPs and EIS. Stipulation NSO 11-4 imposes an inadequate NSO limitation of only 0.25 miles, far short of either the recommendations of independent scientists or MDFWP. Similarly, the nesting season timing stipulation 13-3 provides generally for the relocation of surface-disturbing activities out of grouse habitat during nesting season. Not only has the BLM not adopted MDFWP's recommendations, it has never even had the opportunity to consider them, under NEPA, as an alternative. The last applicable NEPA analysis predates this major new research showing that the timing and spacing measures it relies on to prevent grouse decline are demonstrably inadequate. Failure to consider this research and its implications for management prior to leasing violates the BLM's NEPA duty to take a "hard look" at the environmental consequences of its actions.

III. LEASING SAGE-GROUSE HABITAT WITHOUT A NO SURFACE OCCUPANCY STIPULATION WILL IMPROPERLY CONSTRAIN THE ALTERNATIVES AVAILABLE TO BLM IN REVISING THE BILLINGS, MILES CITY, MALTA, BUTTE AND OTHER RESOURCE MANAGEMENT PLANS

The BLM is currently in the process of amending the Billings, Malta, Miles City, and Butte Resource Area Resource Management Plans (RMPs). Council on Environmental Quality NEPA regulations dictate that when a federal agency is in the process of developing such decision documents, it may not take actions that would "limit the choice of reasonable alternatives." 40 C.F.R. § 1506.1; see also 40 C.F.R. § 1502.2(f). Although these regulations obviously do not prohibit any activity within a planning area during RMP revision, in this case, given new information, serious potential concerns regarding an important and

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un-analyzed resources, it would be entirely inappropriate to foreclose alternatives including no surface occupancy (NSO) or limited surface spacing for sage-grouse by issuing non-NSO leases at this time. CEQ regulations explain that "[i]nterim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives." 40 C.F.R. § 1506.1(c). Leasing within the Miles City, Butte, Billings, and Malta Resource Areas without NSO stipulations for sage-grouse, and contrary to the recommendation of the wildlife agency charged with managing wildlife populations, would improperly prejudice any ultimate decision on the RMP by foreclosing the preservation of some or all sage-grouse core habitat areas without surface-disturbing oil and gas development. By approving oil and gas leasing while considering their impacts on other resources, including alternatives to protect those resources from the potential damage caused by oil and gas development, the BLM will foreclose the selection of alternatives, including important mitigation measures. Such action undermines the efforts of both the agency and the public in participating in the lengthy planning process for amendment or revision of a resource management plan. We are particularly concerned that the BLM's proposed leasing of sage-grouse "crucial areas," will completely undermine BLM's ability to adopt RMPs that could incorporate the sage-grouse conservation strategies recommended by MDFWP.

We note that the BLM, in its process for revising the Montana statewide oil and gas EIS, states that a key wildlife issue identified during scoping was to address impacts to terrestrial wildlife species, "...especially sage grouse." To accomplish this, the BLM must defer leasing parcels of sage-grouse habitat which allow any surface occupancy so long as sage-grouse are considered a "sensitive" species, unless regulations and stipulations dictating energy exploration, development, infrastructure, operation, and maintenance are consistent with the best available scientific understanding, analysis and professional advice on practices most likely to maintain viable sage-grouse populations on these Montana landscapes. Anything less is a violation of NEPA and the BLM's own regulations.

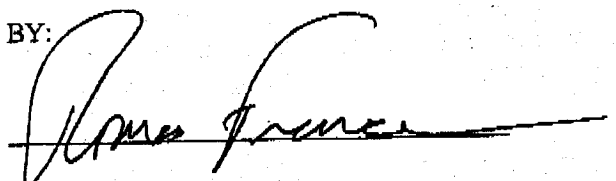
REQUEST FOR RELIEF

For the foregoing reasons, we request that you withdraw oil and gas leases located within sage-grouse habitat from the November lease sale.

Respectfully submitted on this 13th day of November, 2007.

On Behalf of the National Wildlife Federation.

BY:



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