



The High Lonesome Ranch

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FAX

To Helene Henchman

From Scott Grant

Date 2/12/12

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*File -
Mineral Lease Protest*

BY FACIMILLE

Helen Hankins, Colorado State Director
Colorado Bureau of Land Management
2850 Youngfield Street
Lakewood, Colorado 80215-7093
Telephone 303-239-3700
Information Center 303-239-3600

FAX Number 303-239-3799.

Re: Protest of Parcel 6186 of May 2012 Federal Mineral Lease Sale

INTRODUCTION

On the behalf of The High Lonesome Ranch (hereinafter referred to as "HLR" or "Protestors") I respectfully protest the inclusion lease parcel 6186 from the proposed lease sale on lands administered by the Bureau of Land Management ("BLM") within the state of Colorado and request that these parcels be withdrawn from the May 10, 2012 lease sale. This protest is filed pursuant to 43 C.F.R. §§ 4.450-2 and 3120.1-3.

HLR protests the inclusion of all lands privately owned by HLR contained in Parcel 6186 (approximately 280 acres). Our concerns lie with the impacts that will be cause to HLR private land activities including HLR energy development, failure to follow BLM policies on split estate lands, failure to follow BLM mineral leasing guidelines, failure to conduct adequate on-site inventories of resources and other values that may be impacted, failure to follow National Environmental Policy Act and Federal Land Policy and Management Act requirements, and failure to consider alternatives that would adequately address scoping comments and concerns submitted by HLR on December 28, 2011..

This parcel contains lands owned by the HLR that play critical role in the future of HLR energy and private land development and management. Leasing would irretrievably and unlawfully commit these private lands to development inconsistent with larger landscape level activities, thereby causing unnecessary and undue degradation of private lands.

Therefore, Protestors request that the BLM defer (withdraw) the privately owned HLR surface lands contained within Parcel 6186 until the agency has fully complied with applicable law and address our concerns outlined below.

PROTESTER

The High Lonesome Ranch operates approximately 35,000 mixed use acres in Western Colorado. The mixed uses of our lands include operating a Guest and Dude Ranch, fishing and hunting programs, conference facilities for public and governmental agencies focusing on conservation topics, real estate development as well as a cattle company to name a few.

We are especially concerned with the ability of the HLR to develop its own mineral resources and the impacts to its private land recreation and future management of HLR lands. Parcel 6186 is on top of Douglas Pass and is the top of numerous watersheds (headwaters). The HLR private lands included in this parcel contain the only relatively "flat" area within the parcel and therefore it is very likely that development of adjacent mineral estate will be attempted from HLR lands. We are well aware of the split-estate management of federal minerals but in this case there seems to be a situation that would impact beyond what is necessary and due for the development of the federal mineral estate underneath HLR lands. We also are concerned with current habitat management and the fate of wildlife and other natural resources and the recreational opportunities these lands provide HLR clients, staff, and the general public.

Background

Parcel 6186 was previously considered for leasing in two (2) lease sales – August 2011 and May 2011. The parcel had different parcel numbers for each lease sale – 6003 (August 2011) and 5841 (May 2011). It appears from the documentation available that the parcel was first nominated for the May 2011 lease sale and therefore it is on this information we base our concerns.

The HLR was notified via courtesy letter on December 13, 2011 that there were lands privately owned by HLR scheduled to be included in the May 2012 lease sale. This letter was, according to a records search at HLR, the first time it was known to HLR that its privately owned surface lands were being considered for leasing by BLM. Upon receiving the letter and reviewing the information on the BLM website, it was found that parcel 6186 was partially owned by HLR (approximately 280 acres). It was also learned from a CO State Office BLM press release that BLM was taking public comments on the lease sale until January 4, 2013. HLR submitted written comments of our concerns on January 3, 2011. Sometime (unknown due to lack of appropriate date from BLM within EA) the BLM attached Appendix G to the EA for the lease sale which contained responses to the written comments provided by the public – HLR's concerns were summarily dismissed by BLM and leasing of parcel 6186 including the HLR privately owned portions moved forward. HLR met with Meeker FO Manager Kent Walter and Meeker Supervisory Natural Resource Specialist Paul Kelley on February 28, 2011 to discuss our concerns and were told that we could exercise our rights to formally protest if we believed it was warranted.

Issues/Concerns for Protest

BLM states in the EA completed for the lease sale (DOI-BLM-CO-110-2011-0178-EA) that parcel 6186 was deferred from leasing from the August 2011 lease sale but that proper evaluation of issues and impacts were conducted in DOI-BLM-CO-110-2011-056-EA where parcel 6186 was labeled as parcel 6003.

A total of 33 parcels are being considered for the May 2012 Colorado Competitive Oil and Gas Lease Sale. Fourteen of these parcels were previously considered for either the May

2011 or August 2011 lease sale and have already been analyzed in an environmental assessment. (Page 3, DOI-BLM-CO-110-2011-0178-EA)

The EA also states that BLM had conducted analysis for inclusion of parcels deferred from previous sales in order to meet with public entities who were concerned about implementation of the energy lease reforms of 2010 (as specified in IM-WO-2010-039).

Parcels that were deferred from the May or August 2011 lease sales (to allow time for the BLM to meet with proponents of Master Leasing Plans) and carried over to the May 2012 lease sale were given new parcel numbers. The BLM met with the proponents on August 9, 2011 and September 7, 2011. (Page 3, DOI-BLM-CO-110-2011-0178-EA).

The EA does not include any other documentation of how it made the determination of whether the parcels met or did not meet the criteria for IM-WO-2010-039 therefore we can only assume that this information was not part of the decision making for parcel 6186 and BLM is out of compliance with direction from IM-WO-2010-039.

The EA also states that no further analysis was completed on parcel 6186;

No further discussion or analysis of these parcels is contained in this EA. (Page 3, DOI-BLM-CO-110-2011-0178-EA).

BLM requested, as previously documented, from the public comments and concerns on lease sale DOI-BLM-CO-110-2011-0178-EA. Also as previously stated (and attached to this protest) HLR submitted concerns within the 30 day comment period (on January 3, 2012). This was the first time HLR expressed any concern on parcel 6186 and therefore it is premature on BLM's part to make the assumption that they have completed all necessary analysis.

HLR has not granted BLM permission to complete any inventories or assessment on the HLR private lands portions of parcel 6186 and the use of 10 meter DEM for screening and analysis of on-the-ground conditions are subject to inaccuracies. Nor did BLM request from HLR any information that we may have on resource inventories or research currently being conducted on HLR lands.

We believe there is new information that can be obtained via on-the-ground assessments and that we submitted valid and new concerns during the comment period and by BLM's own admission, no "further discussion or analysis" was completed on parcel 6186. HLR is also conducting a review of all HLR owned lands and establishing baseline assessments for future ranch management and energy development that could yield valuable information appropriate for consideration into any analysis or determination of impacts to surface from leasing of federally owned minerals under HLR owned lands.

Parcel 6186 (previously 6003) was also deferred from the August 2011 lease sale (per DOI-BLM-CO-110-2011-056-EA) for the BLM to complete additional analysis on primitive recreation, including hunting;

Parcel 6005 along with portions of parcels 6003, 6004, 6006, and 6007, will be deferred from the current lease sale. These areas provide unique opportunities for solitude and primitive types of recreation and will be further analyzed by WRFO to determine their suitability for future oil and gas leasing. (page 36)

The same EA also identifies the reason it believes that additional analysis is warranted;

Overall, oil and DOI-BLM-CO-110-2011-0056-EA gas field development may provide the public with additional access to existing recreational opportunities, depending on the location of development and the type of access being provided. Conversely, development in areas deemed suitable for solitude and primitive types of recreation may be detrimental to these values and ultimately remove opportunities for this type of recreation.

Per DOI-BLM-CO-110-2011-0178-FA, no additional evidence is produced that BLM undertook this analysis to solitude and primitive recreation on parcel 6186, in fact BLM stated, as previously noted, and that no additional analysis or discussion was completed for parcel 6186 for this (May 2012) lease sale. We contend that HLR provides both solitude and primitive recreation on the HLR privately owned portions of parcel 6186 and therefore analysis and impact assessment is warranted. HLR has a very active recreation program on the HLR lands and this action could significantly impact these programs and values. Furthermore, if BLM thought it warranted to remove the parcel from the August 2011 lease sale for further analysis, it must still have those same concerns since no evidence was provided that their concerns were alleviated -- in fact no additional analysis was conducted. Based on these concerns, leasing the private portion of parcel 6186 violates NEPA requirements and is not warranted at this time.

In DOI-BLM-CO-110-2010-0267-EA the BLM deferred parcel 6186 (parcel 5841) due to conformance with direction from Secretarial Order 3310, which directed BLM to address the Lands with Wilderness Characteristics (LWC) mandate from the Federal Land Policy and Management Act.

Parcels 5841, 5843, 5844, and 5846, and 5866 (8,663.05 acres) are deferred due to Secretarial Order 3310 and WO-IM-2011-034, which provide new guidance on how to identify and manage lands with wilderness characteristics. Both documents were signed and issued on December 23, 2010, after the closing of the 30 day public comment period for this EA. Subsequent to the issuance of the Order, the BLM WRFO has identified 30 areas that possess the potential to meet the criteria for lands with wilderness characteristics. The above five (5) parcels are either wholly or partially within these areas and will be deferred until the WRFO can further assess these areas. These five parcels are currently planned to be included in the August 2011 oil and gas lease sale and the BLM WRFO has begun analyzing these parcels in more detail in regards to the new policy in DOI-BLM-CO-110-2011-0056-EA, which will be available for public comment beginning 2/18/2011.

In reviewing DOI-BLM-CO-110-2011-056-FA and DOI-BLM-CO-110-2011-056-EA there is no written evidence that this was completed. Additionally, in a February 28, 2012 meeting with Kent Walter, White River BLM Manager, he stated to us that the LWC screening would not apply to private lands only BLM administered surface lands. Therefore, there has been no analysis of the impacts to the characteristics of parcel 6186, the HLR own portion, and it is unknown to BLM what HLR plans for the management of the lands contained in parcel 6186 would be managed for. In fact,

HLR has considered doing an assessment of its private lands, which include parcel 6186, to see if there are characteristics and qualities to manage as backcountry and/or primitive lands with high recreation value.

The HLR has a robust research program, led by Dr. Cristina Eisenberg, which is focusing on aspen ecology, mountain lions, black bears, elk, mule deer, and other natural resources. We believe that there is significant information that could have been obtained and useful from HLR, but BLM never approached HLR and requested information.

HLR has also explored other avenues for the surface use of parcel 6186, including developing primitive cabin sites, which would sell for thousands of dollars per acre and bring significant revenues (hundreds of thousands) to the HLR. Leasing and subsequent development would cause significant economic impacts and also change the way the HLR would manage the property. BLM stated that there were no Socio/Economic impacts by the proposed action and did not complete any analysis of the potential impacts to HLR. We believe this is in error, and request BLM complete such analysis before making a decision to lease the private HLR lands contained within parcel 6186.

HLR believes that there were viable alternatives not explored in the EA. Just because nominations include private lands with public lands, it does not mean that BLM cannot modify the lease parcel based on coordination with the private landowner, in this case the HLR, and other concerns with surface disturbance with leasing. BLM could have separated the private lands in parcel 6186 from the public lands and allowed leasing to move forward with adequate analysis of each section. Just as the HLR has to respect the fact that are federal minerals underneath HLR private lands in parcel 6186 and that leasing is dependent on BLM approval, the BLM cannot discount the rights and management of the private landowner. BLM has ignored this obligation by failing to reach out to HLR in a timely fashion to provide information that would have been useful in the EA BLM completed for this lease sale and other viable alternatives could have been developed from this knowledge.

We also believe that BLM is erring in leasing this parcel while it is revising the White River RMP for oil and gas development. In conversations with Kent Walter, White River BLM manager on February 28, 2012, he stated that BLM is close to releasing to the public the draft RMP revision and it will address how energy development will take place on the lands administered by the White River BLM. He also stated that it would not address mineral leasing, only development and would be like a "large master development plan." From this information and PLPMA requirements, we believe leasing parcel 6186 would preclude viable alternative and management actions that the RMP amendment would address. We also believe that this approach violates the spirit of IM-WO-2010-117 and IM-WO-2007-165 (Split-estate) which directs BLM to address leasing and coordination on split-estate lands during the RMP process. By relying on the existing RMP and not addressing the issue raised by HLR in the soon-to-be-released RMP oil and gas amendment, BLM is violating PLPMA.

Finally, HLR is developing a strategy for the development of privately owned minerals on HLR lands and beginning to coordinate with energy companies on a "landscape level" approach to energy development in and around HLR properties. This approach will allow for a balance between energy development and other values including natural resource values, recreation, and private land management. HLR will make every effort to coordinate and collaborate in this

effort. HLR has developed its own surface use agreements and standards along with addressing access issues across HLR lands to public lands for energy development. By leasing parcel 6186 at this time, BLM would be creating a coordination problem with other HLR energy activities and creating unneeded conflict.

Conclusion

HLR believes that leasing parcel 6186, particularly the HLR owned private lands, is pre-mature and respectfully file this formal protest of the lease parcel inclusion into upcoming lease sales. We believe that BLM did not satisfy the required "hard look" requirement of NEPA and new information was and is available that will lead to viable alternatives or other protections (stipulations). This includes failing to provide documentation of the analysis of primitive recreation and solitude, lands with wilderness characteristics, and other natural resource and recreation values. HLR believes BLM is violating FLPMA and precluding viable alternative and also not following direction given by DOI and BLM in the Secretarial Order and other Instruction Memorandum identified. HLR also believes that there will be significant impacts to HLR private land resources that should have been addressed, but were absent or inadequate in the EA's used by BLM to justify this lease sale and the inclusion of parcel 6186.

Request for Action

HLR requests that parcel 6186 (or at least the HLR owned private lands) be deferred from this and any upcoming, lease sale until our concerns have been adequately addressed.

We thank BLM for attention to our concerns and requests and look forward to continued coordination and collaboration on energy and natural resource management on the landscape surrounding the HLR. Please contact me if you have any questions or need clarification.

Respectfully submitted on the 12th day of March, 2012 via facsimile.



Scott Stewart
General Manager
The High Lonesome Ranch
Direct: 970.208.9302
Cell: (303) 947-0578
Fax: 970.283.5227
P.O. Box 88
0275 County Road 222
DeBeque, CO 81630
[sstewart@thehighlonesomeranch.com](mailto:ssewart@thehighlonesomeranch.com)

CC: P. Vahldiek
CC: BLM - Kent Walter
CC: BLM - Jim Cagney
CC: BLM - Helen Hankins
CC: BLM - Bob Abhey



COLORADO LAW

Clinical Programs
Robert & Laura Hill Clinical Suite
Wolf Law Building :: 404 UCB
Boulder, Colorado 80309-0404
303.492.8126 :: fax 303.492.4587

UNIVERSITY OF COLORADO LAW SCHOOL

FAX TRANSMITTAL FORM

To
Helen Hankins
Karen Zurek
Colorado State Office
Bureau of Land Management
US Dept. of the Interior
2850 Youngfield Street
Lakewood, CO 80215

From Michael Soules
Elizabeth Joyce

Phone: 303.492.2635
Fax: 303.492.4587

Date Sent: 3/12/2012
Number of Pages (incl. cvr.): 21

Message: via fax: 303 239-3799

Attached 20 pages - protest of May 2012 oil and gas lease sale.

CONFIDENTIALITY NOTE: The information contained in this facsimile transmittal sheet and document(s) that follow are for the exclusive use of the addressee and may contain confidential, privileged and non-disclosable information. If the recipient of this facsimile is not the addressee, or a person responsible for delivering this facsimile to the addressee, such recipient is strictly prohibited from seeing, photocopying, distributing or otherwise using this facsimile transmission, or its contents in any way. If the recipient has received this facsimile in error, please call us immediately and return the facsimile transmission to us via the United State Postal Service. Thank you.



Clinical Programs
Robert & Laura Hill Clinical Suite
Wolf Law Building : : 404 UCB
Boulder, CO 80309-0404
303.492.8126 :: fax 303.492.4587

UNIVERSITY OF COLORADO LAW SCHOOL

March 12, 2012

Helen Hankins, State Director
Karen Zurek, Chief, Fluid Minerals Adjudication
Colorado State Office
Bureau of Land Management
United States Department of the Interior
2850 Youngfield Street
Lakewood, Colorado 80215

VIA FACSIMILE 303-239-3799

Protest of Colorado BLM May 10, 2012 Lease Sale Parcels

**Parcels COC75297, COC75298, COC75299, COC75300, COC75302, COC75303,
COC75304, COC75305, COC75306, COC75307, COC75308, COC75309, COC75310,
COC75311, COC75312, COC75313, COC75314, COC75315, COC75316, COC75317,
COC75318, COC75319, COC75320, COC75321, COC75322, COC75324, COC75325,
COC75326, COC75327, COC75328, COC75329, COC75330**

The National Wildlife Federation protests the inclusion of the above-listed parcels in the May 10, 2012 Competitive Oil and Gas Lease Sale to be held by the Colorado State Office of the Bureau of Land Management (BLM). Pursuant to 43 C.F.R. §§ 4.450-2 and 3120.1-3, interested parties may make a timely protest to the decision to offer leases for sale, and the State Director must make a final sale determination based upon the issues raised.

Leasing the above parcels will violate the National Environmental Policy Act's mandate that an agency take a "hard look" at the environmental impacts of its actions, fully consider the cumulative effects of such actions, and consider significant new information available to the agency. The listed parcels are potential habitat for greater sage-grouse and big game species that rely on these areas for continued survival. These parcels should be deferred from the May 10, 2012 Competitive Oil and Gas Lease Sale.

About the Protestor

The National Wildlife Federation (NWF) is a nation-wide, member-supported non-profit organization aimed at conservation, education, and advocacy. NWF is affiliated with conservation organizations in 47 states and territories, and is dedicated to conserving wildlife and its habitat nationwide. NWF is especially concerned with federal management of public lands.

Members of NWF visit, recreate on, and use lands on or near the parcels proposed for leasing, and intend to maintain connections with the area. These members' interests in the public lands and the wildlife supported by those lands will be adversely impacted if the above-listed parcels are included for sale as currently proposed. Development of sage-grouse priority areas and crucial big game habitats will impair the long-term outlook for those populations, and harm NWF's interests in sustainable ecosystems.

NWF has an established history of participation in BLM planning and management decisions. NWF has participated in past oil and gas lease sale decisions on BLM lands in Colorado. Additionally, NWF contributed to planning decisions for the Little Snake Resource Area. Specifically, NWF was involved in the scoping and planning process for the Little Snake Resource Management Plan released in October, 2011. *See, e.g.*, NWF Comments to the Proposed Little Snake Resource Management Plan and Final Environmental Impact Statement (Sept. 13, 2010).

I. Description of the Affected Resources

The Little Snake Field Office and the White River Field Office border each other in northwest Colorado. Combined, about 60% of the two management areas are currently under mineral lease. The affected section of northwest Colorado proposed for leasing in May 2012 also coincides with important wildlife habitat, providing year round habitat for sage-grouse and big game. Parts of this area provide protection at critical times of the year, including breeding, nesting, and wintering sites for sage-grouse, and summer and winter range for elk and mule deer.

A. Little Snake Field Office

The Little Snake Office administers 1.3 million acres, of which 1.1 million acres overlie federal mineral estate. The Little Snake Field Office initially nominated seven parcels to be available in the May 2012 oil and gas lease sales. The final sale notice deferred three parcels,

and a portion of a fourth, citing concerns for heightened sage-grouse protections. The Little Snake Office is offering four parcels for lease sale, totaling 1591 acres of federal mineral estate.

The Little Snake Office released an Environmental Impact Statement in August 2010. Little Snake Field Office, U.S. Dept. of the Interior, *Little Snake Proposed Resource Management Plan and Final Environmental Impact Statement* (Aug. 2010) (hereinafter, "Little Snake EIS"). It also released a Resource Management Plan in October, 2011, following a public scoping process. Little Snake Field Office, U.S. Dept. of the Interior, *Little Snake Record of Decision and Approved Resource Management Plan* (Oct. 2011) ("Little Snake RMP"). Prior to the release of the final sale notice, the Little Snake Office released a statement of compliance for this oil and gas lease sale. Little Snake Field Office, U.S. Dept. of the Interior, *Documentation of Land Use Plan Conformance and NEPA Adequacy*, DOI-BLM-CO-N010-2012-005-DNA ("Little Snake DNA").

B. White River Field Office

The White River Field Office oversees 1.7 million acres of federal mineral estate available for leasing. The White River Office is currently offering 33 parcels for lease in the May 2012 Competitive Lease Sale, totaling approximately 29,161 acres. The White River Office released an Environmental Assessment prior to this sale. White River Field Office, U.S. Dept. of the Interior, *Environmental Assessment for the May 2012 Oil and Gas Lease Sale*, DOI-BLM-CO-110-2011-0178-EA (Dec. 2011) ("White River EA"). The Office also held a public comment period from December 5, 2011, to January 4, 2012, during which it received comments expressing concern over the failure to adequately protect wildlife resources. White River EA at 4. The White River EA is subject to the 1997 White River Resource Management Plan. White River Field Office, U.S. Dept. of the Interior, *White River Record of Decision and Approved Resource Management Plan* (July 1997) ("White River RMP").

C. Greater Sage-Grouse Habitat

Sage-grouse populations have been declining throughout their range over the last fifty years. While the greater sage-grouse has also declined in Colorado, the most abundant population in the state remains centered in the northwest corner of the state. Colo. Greater Sage-grouse Steering Committee, Colo. Div. of Wildlife, *Colorado Greater Sage-Grouse Conservation Plan* (2008).

Habitat loss, fragmentation and degradation are considered among the primary reasons for these declines. See, e.g., Stiver *et al.*, *Greater Sage Grouse Conservation Strategy*, Western Association of Fish and Wildlife Agencies (2006); Connelly *et al.*, *Conservation Assessment of Greater Sage-grouse and Sagebrush Habitats*, Western Association of Fish and Wildlife Agencies (2004). As sagebrush obligate species, sage-grouse are dependent upon the sagebrush steppe habitat for food, cover, breeding rituals, nesting sites, chick-rearing, and winter survival. Connelly *et al.* (2004) at 93-103. Sagebrush steppe has been increasingly degraded and fragmented due to multiple human activities, including energy development, agriculture and ranching activities. Stiver *et al.* at 215.

Grouse are highly site-specific, and often return to the same lek sites year after year. Connelly *et al.* at 98. During spring, male activity is heavily concentrated around leks, and the majority of females nest within 4 miles of lek sites. *Id.* at 101. Females prefer medium height sagebrush for nesting areas, and nest success is positively correlated with understory grass height as well. *Id.* at 117. As chicks mature through the summer, females generally disperse to wetter areas up to several miles away from early chick rearing sites. *Id.* at 94. Sage-grouse typically winter in even taller (i.e., older) sagebrush stands. *Id.* at 127. Winter habitat selection may vary depending on the severity of the year. *Id.* at 130.

Studies in Wyoming have demonstrated lower nesting success around leks that have been disturbed from oil and gas development. David L. 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* (2006). Leks within developed areas showed lower male attendance than leks on the perimeter. *Id.* Nesting and chick rearing females avoid habitat edges and areas within 0.6 miles of oil and gas development. Matthew J. Holloran, *Greater Sage-Grouse Population Response to Natural Gas Field Development in Western Wyoming* (2005); Cameron L. Aldridge and Mark S. Boyce, *Habitat-based Approach for Endangered Greater Sage-Grouse* (2007). Typically, nesting and chick rearing females are located within 4 miles of lek sites. Stiver *et al.* (2006). Sage-grouse also avoid otherwise suitable winter habitat once they have been developed, even when timing limitations have been applied. Kevin E. Doherty *et al.*, *Greater Sage-Grouse Winter Habitat Selection and Energy Development* (2008). The adverse effects of development are not always immediately clear, however. Heavily

disturbed leks typically become inactive within 3-4 years of disturbance; however, up to 10 years may pass before negative effects can be detected. *Id.*

Moreover, there is an increasing body of research that indicates that traditional methods for controlling development of sage-grouse habitat are insufficient for protecting the long term health of the species. Previously, a 0.25 mile buffer around leks and limited seasonal disturbance were considered sufficient protection, but recent data has shown these measures to be inadequate to prevent disturbance to grouse populations within oil and gas development. *See, e.g., Holloran (2005); Brett L. Walker et al., Greater Sage-Grouse Population Response to Energy Development and Habitat Loss (2007).* Walker further suggests that even an increased buffer is unlikely to conserve sage-grouse populations, but may help maintain sufficient numbers so eventual restoration is possible. *Id.*

1. Little Snake Parcels COC75312, COC75313, COC75318, COC75322

Despite mounting evidence that sage-grouse populations continue to decline, four parcels (totaling 1500 acres) within the Little Snake RMP are offered for sale that contain medium and high priority sage grouse habitat. Each parcel is subject to several use stipulations, discussed below. These stipulations, which are laid out in the Little Snake RMP, fail to protect the sage-grouse:

LS-102 Timing Limitation to protect nesting greater sage-grouse. Controlled Surface Use only between March 1-June 30 within a 4 mile radius of the perimeter of a lek. Surface disturbing activities only need to avoid nesting and brood rearing habitat within that radius.

LS-107 Medium Priority Habitat Controlled Surface Use. A 5 percent surface disturbance limitation applies to the parcel. Disturbance is to be determined by the operator, and only applies to activity conducted by the operator, not surrounding areas or existing disturbance. The operator must also submit a Plan of Development for approval prior to commencing disturbance. New disturbance is permitted after the operator reclaims the area previously disturbed.

LS-108 High Priority Habitat Controlled Surface Use. A 1 percent surface disturbance limitation applies to the parcel. Disturbance is to be determined by the operator, and only applies to activity conducted by the operator, not surrounding areas or existing disturbance. The operator must also submit a Plan of Development for approval prior to commencing disturbance. New disturbance is permitted after the operator reclaims the area previously disturbed.

2. White River Parcels COC75307, COC75310, COC75316, COC75329, COC75327

These parcels are managed by the White River Office, and fall within mapped sage-grouse habitat. These parcels do not contain any restrictions based on sage-grouse conservation. The BLM recommended that Parcel COC75329 be deferred in its initial sale notice, *see* White River EA at 34, but this parcel was not deferred. These parcels should be deferred at least until the White River Office completes its new RMP, incorporating the latest known data about sage-grouse and considering the heightened concern about keeping the sage-grouse off the endangered species list.

COC75327 is subject to WR-TL-10 to protect greater sage-grouse winter concentration areas. This precludes development activity from December 16-March 15. It does not apply to operation and maintenance of production facilities. This stipulation also does not protect the habitat itself from disturbance.

3. White River Parcels COC75307, COC75298, COC75299, COC75302, COC75303, COC75304, COC75306, COC75325, COC75308, COC75317, COC75321, COC75320, COC75328, COC75324, COC75326, COC75309, COC75314, COC75315, COC75310, COC75316, COC75317, COC75311, COC75319

The remaining parcels are scattered throughout the White River management area. They all contain stipulation CO-34, alerting the lessee that the parcel contains possible habitat for threatened, endangered, or special status species. This notice is placed on parcels to comply with the inter-agency consultation requirements of the Endangered Species Act. *See* 16 U.S.C. § 1536. The stipulation provides that the BLM “may recommend modifications” to development proposals in the future to further conservation goals, and “may require modifications” if jeopardy to listed species is shown to be likely after consultation with the United States Fish and Wildlife Service. However, the stipulation gives no indication what those modifications might be. These parcels should be deferred until more analysis is complete and it is clear what resources may be at issue, and how those resources are to be managed.

D. Big Game Habitat

Additionally, the areas proposed for leasing contain vital habitat used by mule deer and elk as fawning and calving grounds and winter range; these types of areas play important roles in maintaining healthy big game populations. Changes to big game populations have occurred in the last ten years, and research indicates that oil and gas development negatively impacts populations.

The mule deer population in the White River management area has declined from over 4600 animals in 1990 to just over 1100 animals in 2004; the long-term management objective for the herd is 13,000 animals, a goal that is likely "unrealistic and unreachable . . . without substantial habitat manipulation." National Wildlife Federation, *Population Status and Trends of Big Game and Greater Sage-Grouse Along the Colorado/Wyoming State Line* (January 2011) at 12. Research on mule deer suggests that deer avoid oil and gas development, an effect that increases as development increases. Hall Sawyer *et al.*, *Influence of Well Pad Activity on Winter Habitat Selection Patterns of Mule Deer* (2009). Results indicate that timing limitations alone are insufficient to forestall negative impacts on big game. Hall Sawyer *et al.*, *Winter Habitat Selection of Mule Deer Before and During Development of a Natural Gas Field* (2006). Management practices should focus on reducing overall disturbance, to minimize direct disturbance of animals as well as habitat loss. Emphasis should be placed on utilizing technologies that require less surface disturbance. Sawyer (2009).

1. **White River Parcels COC75307, COC75297, COC75300, COC75303, COC75306, COC75325, COC75308, COC75317, COC75321, COC75320, COC75328, COC75324, COC75326, COC75305, COC75330, COC75327**

These parcels contain timing restrictions for big game summer or winter range. These restrictions do not go far enough to protect habitat and prevent negative impacts on big game species because they allow continued degradation of habitat and construction of structures that will result in avoidance behaviors. Stipulations are as follows:

WR-TL-09 to protect critical habitat for deer and elk summer range. This precludes development activity from May 15-August 15, while allowing development the rest of the year. This stipulation only kicks in, however, after more than 10% of the habitat displays direct and indirect effects of development activity. It does not apply to the operation and maintenance of production facilities. Waivers may be allowed if activity can be conditioned to reduce

interference, adequate compensation is negotiated to offset impacts, or monitoring data shows that wildlife use of the area has changed.

WR-TL-08 to protect big game severe winter range. This precludes development activity from December 1-April 30, while allowing development the rest of the year. It does not apply to the operation and maintenance of production facilities. Waivers may be allowed if activity can be conditioned to reduce interference, adequate compensation is negotiated to offset impacts, or monitoring data shows that wildlife use of the area has changed. Additionally, waivers may be granted for the last 2 months of the 5 month period in mild winters.

WR-TL-07 to protect elk production areas. This precludes development activity from May 15-June 30, while allowing development the rest of the year. It does not apply to the operation and maintenance of production facilities. Waivers may be allowed if activity can be conditioned to reduce interference, adequate compensation is negotiated to offset impacts, or monitoring data shows that wildlife use of the area has changed.

LS-101 Timing Limitation to protect wintering big game species. Crucial winter habitat will be closed to surface disturbing activities from December 1 to April 30. This stipulation still allows disturbance activities for the remainder of the year.

2. White River Parcels COC75309, COC75314, COC75315, COC75310, COC75316, COC75317, COC75311, COC75319

These parcels surround the Jensen State Wildlife Area and are managed by the White River Field Office. While the White River EA recommended deferring the portions of these parcels that fall within the State Wildlife Area because of biologically important fawning and calving grounds, the portions that fall outside the State Wildlife Area are still being offered for lease sale. White River EA at 40. The EA fails to discuss the impact of development and fragmentation of most of the land surrounding this important habitat, and the timing limitations imposed are inadequate to protect game populations. Stipulations include WR-TL-07 (elk production areas), and WR-TL-09 (protect deer and elk summer range).

STATEMENT OF REASONS

II. Leasing The Listed Parcels Will Violate The National Environmental Policy Act.

The BLM has dual objectives to meet through its management of the land under its control: access to minerals and multiple, sustained use. Under the Mineral Leasing Act, the

BLM has discretion to withdraw parcels from disposition. The National Environmental Policy Act (NEPA) imposes procedural considerations that the BLM must satisfy prior to agency action. The BLM has not met the necessary requirements for the above-listed parcels.

The Little Snake RMP relies on timing and disturbance limitations that are not likely to protect the long-term survival of sage-grouse populations. It also does not adequately consider the cumulative impacts of the decision to lease these parcels. The White River RMP is out-of-date, and also does not provide sufficient protections for sage-grouse or big game. Additionally, the BLM has not considered new information regarding the status of sage-grouse prior to offering these parcels for lease sale.

The above listed parcels contain important wildlife habitat. Because leasing these parcels has the potential to limit future opportunities to conserve sage-grouse populations, and may impact the health of big game populations, these parcels should be deferred from the May 2012 lease sale.

A. The BLM Has Discretion To Withdraw These Parcels From Leasing.

The BLM is responsible for managing the surface and subsurface use and mineral rights on certain federal lands. Under the Mineral Leasing Act of 1920 (MLA), 30 U.S.C §§181 *et seq.*, and the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§1701, *et seq.*, the BLM makes mineral resources available to the public on federal land. While part of that goal is to meet the "present and future energy needs of the American people," 43 U.S.C. §1702(c), FLPMA also requires protection of ecological and other values, and requires that lands be managed for multiple use and sustained yield. 43 U.S.C. §§ 1701(a) (7)-(8).

As one method of meeting the goal of energy development, the BLM identifies and offers for sale oil and gas leases four times each year. Ninety days before the quarterly sale date, the BLM finalizes and publishes a list of available parcels for sale. Concerned parties have thirty days to file a protest of sale; the BLM then reviews protests and has discretion to withdraw protested parcels from the final sale. 43 C.F.R. §§ 4.450-2, 3120.1-3.

Under the MLA, the BLM has broad discretion in leasing federal land: "[a]ll lands subject to disposition. . . *may* be leased by the Secretary." 30 U.S.C. § 226(a) (emphasis added). This provision gives the BLM the "discretion to refuse to issue and lease at all on a given tract." *Udall v. Tallman*, 380 U.S. 1, 4 (1965). Likewise, Interior Board of Land Appeal (IBLA) decisions recognize "plenary authority over oil and gas leasing" and discretion in decision

making. *Penroc Oil Corp.*, 84 IBLA 36, 39 (1984). Therefore, the BLM is not obligated to conduct lease sales on any particular parcel, and has discretion to withdraw protested parcels from the May 2012 Competitive Lease Sale.

The BLM must address the impacts of drilling before conducting lease sales, because a lease sale is an irretrievable commitment of resources: at the time of sale, legal rights are transferred to the purchaser pursuant to 43 C.F.R. § 3101.1-2. The stipulations placed upon a lease at the time of sale determine the development activity allowed on the parcel, and subsequent input from the agency may not restrict the rights already granted to a purchaser. 43 C.F.R. § 3101.1-2. The BLM suggests that in-depth analysis is not required until the developer submits a project plan prior to development. Little Snake DNA at 4. But NEPA requires that an agency must analyze impacts *before* the resource is committed. *New Mexico ex rel. Richardson v. BLM*, 565 F.3d 683 (10th Cir. 2009) (oil and gas lease without a No Surface Use Stipulation an irretrievable commitment of resources). Furthermore, an agency must examine reasonably foreseeable impacts at the “earliest practicable point,” *Id.* at 718; *see also Southern Utah Wilderness Alliance*, 159 IBLA 220 (2003) (post-leasing considerations must be addressed prior to sale).

Over 38 million acres are leased for oil and gas development; 12 million acres are now producing. *See* www.blm.gov/wo/st/en/info/newsroom/Energy_Facts_07/statistics.html. This suggests that land is being unnecessarily subject to leasing, and that the impacts of leasing are potentially much greater than is currently known. Given the BLM’s discretion to withhold parcels from leasing, a more balanced approach would be to decline to lease new lands until resources have been utilized on land already leased. This would enable the BLM to more realistically understand the impacts of development on lands already subject to lease before jeopardizing the health of additional public lands.

B. The Little Snake RMP Contains Insufficient Protections For Grouse And Fails To Adequately Consider The Cumulative Impacts Of This Leasing Decision.

NEPA establishes that an agency must take a “hard look” at the environmental consequences of proposed agency action. *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976). A “hard look” requires an agency to address the cumulative impacts of its actions, which are the “incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.” 40 C.F.R. § 1508.25(c). The agency must provide more than “mere conclusory

statements" in support of its analysis. *New Mexico* 565 F.3d at 707; see also *Highway J Citizens Group v U.S. Dept. of Transp.*, Case No. 05-C-0212, 2010 WL 1170572 at *2 (E.D. Wis. Mar. 23, 2010) (agencies "cannot simply list cursory comments or other information and then assert a conclusion; rather, they must demonstrate the path of their reasoning from whatever data they rely on").

When an agency undertakes a specific action pursuant to an RMP, a challenge to the EIS used to create the RMP is appropriate when the challenge concerns a NEPA violation. *Kern v. BLM*, 284 F.3d 1062 (9th Cir. 2002). Unlike a challenge to a broad plan created under National Forest Management Act (or its equivalent, FLPMA), the concrete action such as a timber sale or gas lease "show[s] an imminence of harm. . . and a completeness of action by the agency." *Id.* at 1070.

The Little Snake DNA states that leasing the Little Snake parcels is in compliance with the Little Snake RMP because it "[a]llows for the availability of federal oil and gas estate. . . for exploration and development." Little Snake DNA at 3. But the Little Snake RMP includes a second mandate as well: to "maintain, improve, and restore (where needed) healthy ecosystems and habitat to support viable populations." Little Snake RMP at 11.

The DNA further alleges that "BLM is not required to undertake a site-specific environmental review. . . when it previously analyzed the environmental consequences of leasing the land." Little Snake DNA at 4 (citing *Colorado Environmental Coalition*, IBLA 96-243 (1999)). The DNA also states that the cumulative impacts are substantially unchanged from those identified in a previous NEPA analysis, and therefore does not require further scrutiny. *Id.* at 5. Despite these contentions, the Little Snake RMP is inadequate to justify the decision to lease these parcels. The EIS used to create the RMP fails to satisfy NEPA requirements because it fails to adequately address the cumulative impacts of its management guidelines.

Compared to the previous RMP, the current Little Snake RMP implements a new management approach for sage-grouse habitat. While it does adopt a larger buffer around lek sites, it relies primarily on Controlled Surface Use timing stipulations to protect the grouse's nesting and winter habitat. It designates medium and high priority sage-grouse habitat and establishes a 5% or 1% allowable disturbance rate in those areas, respectively. Little Snake RMP at 18-21.

Timing limitations do not control overall habitat disturbance in priority habitats; rather, they require changes in activity at certain times of the year. The timing limitation applied to the Little Snake parcels establishes nesting buffers to protect areas used during summer by females and chicks. The stipulation allows for Controlled Surface Use (instead of the more protective No Surface Use) within the 4 mile perimeter of a lek, and only requires that surface disturbing activities avoid nesting habitat, which is defined as sage brush of a certain height. Little Snake RMP at 18. Under this stipulation, a developer could leave intact sagebrush stands around a lek, while destroying all other grass and forb cover within that perimeter.

Although the 1 or 5% disturbance limits are intended to minimize development disturbance, these stipulations only apply to disturbance caused by the operator in possession of the parcel. *Id.* Thus, any disturbance on surrounding properties, or already in existence on the parcels at the time of sale, is excluded from the disturbance quantification. The BLM has not quantified what the level of actual habitat disturbance might be if these measurements were included in analysis. The failure to do so violates NEPA's cumulative impacts requirement. *Cf.* 40 C.F.R. § 1508.25(c).

Moreover, although the Little Snake RMP outlines a method for existing lease holders to comply with the standards, the sage-grouse protections are not mandatory for existing leases. Little Snake RMP at 18. Finally, the lease stipulations allow waiver of conditions if habitat meets certain criteria; however, the BLM does not quantify how often, or over how large an area, these waivers may be granted. *Id.* at 18-19.

The BLM's analysis of the cumulative effects of the management guidelines described above falls short of NEPA's "hard look" requirement. The EIS acknowledges that waivers may directly impair nesting sage-grouse. Little Snake EIS at 88. In the three-paragraph discussion of cumulative impacts to sage-grouse, the EIS concludes that surface use "could remove or degrade sagebrush, fragment sage-grouse habitat . . . and reduce reproduction and survivability." *Id.* at 236. It suggests that conservation measures that encourage contiguous habitat "would reduce incremental impacts." *Id.* Citing difficulties of quantifying habitat disturbance in areas of mixed ownership and existing leases, the EIS only suggests that habitat disturbance will be controlled over time because "more and more federal leases will be subject to the mandatory disturbance ceilings as leases expire in medium and high priority habitats and more and more of the RMPPA will be subject to mandatory disturbance stipulations over time." *Id.* at 234.

The cumulative impacts analysis in the Little Snake EIS provides no quantification of the amount of habitat currently degraded, or of the time line or extent of existing leases that will turn back over into federal control. The analysis likewise has no estimate of existing grouse population numbers in the area, or the impact that leasing to the extent allowed will have on the grouse population. Finally, it provides no estimate of the impact on sage-grouse of the rolling habitat degradation/reclamation cycle that the disturbance limitations will create, as habitat is continually disturbed and reclaimed. In short, it provides "mere conclusory statements" rather than an analysis that allows any reasonable conclusions to be drawn about the reasonable foreseeable impacts. This violates NEPA.

In a letter to the BLM dated July 21, 2011, the USFWS expressed its concern over the criteria established for the Little Snake RMP. The USFWS stressed that timing limitations are insufficient protections for sage-grouse habitat. Furthermore, the USFWS stated it has "yet to demonstrate that sage-grouse populations can be maintained in the face of intensive energy development" which these proposed leases would allow.

In the same letter, the USFWS supported the "No Surface Occupancy" around lek sites; however, the agency also expressed concern that too many of the guidelines established under the RMP were vague, subject to exceptions, and allow development on too broad of a scale. The USFWS recommended strengthening the high and medium priority habitat guidelines, to limit disturbance to 1% in medium priority habitat, and to close high priority habitat to development completely. The USFWS stressed that allowing seasonal development of these areas—as the May 2012 lease sale would do—will lead to "significant and long lasting effects" on sage-grouse populations.

C. The White River Plan Is Outdated And Does Not Adequately Protect Sage-Grouse Or Big Game.

The "hard look" analysis mandated by NEPA requires that agencies supplement environmental impact statements when there is significant new information to be considered. *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 72 (2004) (citing 40 C.F.R. § 1502.9). An agency "must be alert to new information that may alter the results of its original environmental analysis, and continue to take a 'hard look' at the environmental effects of [its] planned actions." *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 557 (9th Cir. 2000). Thus, an agency cannot merely rely on the fact that planning documents have been completed in

the past when faced with significant new information likely to alter the consequences of its past conclusions.

An agency may prepare an EA in place of an EIS when considering an action that has the potential to significantly impact the environment; however, an EA must provide "sufficient evidence and analysis" to determine whether an EIS must be prepared or whether a Finding of No Significant Impact is appropriate. 40 C.F.R. § 1508.9(a). An EA may be deficient if it fails to include a cumulative impacts analysis, and does not tier off of an EIS that does. *Kern*, 284 F.3d at 1076; see also *Klamath-Siskiyou Wildlands v. BLM*, 387 F.3d 989 (9th Cir. 2004) (EA that tiers off an EIS must still provide specific analysis for cumulative impacts). Whether an agency must prepare additional NEPA analysis based on new information "depends on the nature of the NEPA analysis and the nature of the information available at the time of the agency action." *Center for Native Ecosystems*, 170 IBLA 331, 346 (2006).

Finally, while developing an EIS, an agency may not "limit the choice of reasonable alternatives" open to it in the future. 40 C.F.R. § 1506.1. An agency must be aware that "interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives." *Id.* §1506.1(c). Of particular relevance for interim actions are the BLM's own guidelines for situations in which the status of a species is under review. The BLM requires managers to "manage species proposed for listing as threatened or endangered and proposed critical habitat with the same level of protection provided for listed species and designated habitat." BLM Manual Section 6840.06B.

1. The White River EA Does Not Adequately Address Sage-Grouse Impacts.

The White River EA acknowledges that the protested parcels lie in mapped sage-grouse habitat, but claims that these areas are "minimally suited" as habitat because of shrub encroachment. White River EA at 31. The EA does not discuss the possibility of conserving and reclaiming these parcels to make them suitable for sage-grouse expansion. It further states that Parcel COC75329 may contain sage-grouse, and that there would be no effect on the population if this parcel were deferred. *Id.* This parcel was not deferred, but the EA does not discuss the impact on grouse if the parcel were offered for sale. These parcels should be withdrawn from sale because the BLM did not fully consider the impact that developing these parcel would have on sage-grouse.

When discussing Parcel COC75329, the BLM recommended that it be deferred because the White River RMP “does not have adequate stipulations to protect the species.” *Id.* By this simple statement, the BLM recognized that its RMP is based on out-of-date sage-grouse data and should not be used to support leasing of potential sage-grouse habitat until a thorough analysis has been completed. As discussed above, an increasing amount of research indicates that past approaches to sage-grouse management have been inadequate for maintaining grouse populations.

2. The White River EA Does Not Protect Critical Habitat For Big Game.

At the time of the White River RMP, population data for big game herds was not available; now, however, the BLM has substantial new information that the White River EA failed to adequately consider. Parcels containing big game habitat should be deferred until this information is considered and addressed in the planning process.

Parcels available in the May 2012 lease sale are subject to timing restrictions, prohibiting surface use during the summer or winter months for either breeding grounds or severe winter range. Both types of areas play a critical role in the health of a population. As the White River EA concedes, numerous studies reflect the inadequacies of timing limitations to reduce big game avoidance of important areas. White River EA at 39. But the White River EA relies on the BLM’s continued “encouragement” of clustering development to minimize disturbed areas. Through such action, the BLM “believes serious impacts to big game abundance and distribution can be largely averted.” *Id.* In light of the recent research indicating negative impacts from oil and gas development, these aspirational statements do not provide adequate analysis of the impacts that this proposed management scheme will have on big game populations.

Moreover, the stipulations do not contain any other provisions for the protection of the habitat itself. The EA fails to address the impact on big game if the habitat were to degrade. Finally, these stipulations allow waivers if the proposed development activity could be conditioned to avoid interference. The White River EA does not describe what acceptable conditions might be. Winter habitat, in particular, plays its most important function during the most severe seasonal demands, which may not occur every year. If habitat degrades because of seasonal use, or because of waivers granted based on recent big game use patterns, big game populations may experience dramatic decreases in populations in the more severe years.

Parcels available for sale surround the Jensen State Wildlife Area on roughly three sides, and border its boundaries. Colorado Parks and Wildlife recommended that all parcels bordering or adjacent to the State Wildlife Area be deferred because of vital fawning and calving grounds on the State Wildlife Area. White River EA at 149. While NWF is glad to see that the BLM deferred the portions of parcels overlying the State Wildlife Area, big game access to this important area will potentially be cut off if development occurs in such close proximity. These parcels should therefore be deferred.

In sum, the White River Office has significant new information pertaining to sage-grouse and big game that was not available at the time its RMP/EIS was developed. The EA prepared prior to this sale fails to adequately address the impacts of this action, and fails to provide sufficient protections for sage-grouse and big game habitats. Since the White River RMP is currently under revision, the BLM must act not "limit the choice of reasonable alternatives." 40 C.F.R. § 1506.1. Offering leases that allow surface occupancy violates this objective, and allows for continued habitat degradation and loss. These parcels should be deferred from the May 2012 lease sale.

D. The BLM Has Failed To Account For New Information Regarding Sage-Grouse.

Greater sage-grouse is currently listed as a "Sensitive Species" for the Colorado BLM, requiring special attention to conservation measures. BLM Policy requires the agency to provide guidance for the conservation of special status 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." BLM Manual § 6840.01.

Additionally, the USFWS is reconsidering the listing status of sage grouse. The decision to list sage-grouse as "not warranted" in 2005 was remanded for agency reconsideration for failure to consider best science available. *Western Watersheds Project v. USFWS*, 535 F.Supp.2d 1173 (D. Id. 2007). The USFWS subsequently listed the sage-grouse as "warranted but precluded" in 2010. 75 Fed. Reg. 13910 (March 23, 2010). The agency is currently reviewing this determination, and intends to have a final listing determination by 2015. Although this designation was upheld after being challenged, the court specifically limited the finding based on the fact that USFWS has expressed a discrete timeline for resolution of the

listing. *Western Watersheds Project v. USFWS*, Case No. 4:10-CV-229-BLW, 2012 WL 369168 at *17 (D. Id. Feb. 2, 2012).

The USFWS has identified inadequate regulatory measures as one of the main threats facing the sage-grouse. See 75 Fed. Reg. 13910. Additionally, the BLM's treatment of sage-grouse in its past RMPs has been found to be inadequate for long-term conservation. *Western Watersheds Project v. Salazar*, Case No.4:08-CV-516-BLW, 2011 WL 4526746 (D. Id. Sept. 28, 2011). Since the BLM currently manages over fifty percent of existing sage-grouse habitat, the BLM is in a position to greatly impact the future trajectory of the population. Bureau of Land Mgmt., U.S. Dept. of the Interior, Instruction Memorandum 2012-044 (Dec. 27, 2011). The BLM recognizes that it "needs to incorporate explicit objectives and desired habitat conditions, management actions, and area-wide use restrictions." *Id.* Furthermore, while acknowledging that individual plans may reach differing conclusions, the agency "*must consider* all conservation measures developed by the Sage-Grouse National Technical Team." *Id.* (emphasis added).

In light of this judicial and agency action, the BLM has committed to reviewing and revising all of its RMPs to reflect a more conservative approach to sage-grouse management. 76 Fed. Reg. 237 (Dec. 9, 2011). According to the BLM's planning strategy, the RMPs will incorporate "consistent objectives and conservation measures for the protection of greater sage-grouse and its habitat. . . in order to avoid potential listing under the Endangered Species Act." *Id.* The BLM states that such measures will be incorporated by September 2014, and includes both the Little Snake and the White River RMPs as subject to revision. *Id.* As part of this evaluation, the BLM is also conducting an ongoing public scoping comment period.

The BLM issued interim management guidelines to be followed until all management areas have completed RMP revisions that take into account updated information and issues. Bureau of Land Mgmt., U.S. Dept. of the Interior, Instruction Memorandum 2012-043 (Dec. 22, 2011). These guidelines indicate that field offices should "seek to maintain, enhance, or restore conditions" for the sage-grouse and its habitat. *Id.* at 2. Additionally, new leases must require lessees to minimize impacts to sage-grouse habitat, and avoid closing any future options. *Id.*

The White River Office is currently in the revision process for its new RMP; therefore, it is still operating under its 1997 RMP. As discussed above, NEPA imparts an ongoing responsibility to recognize and consider newly developed significant information that bears on management decisions. The status of the sage-grouse has drastically changed since the time the

White River RMP was drafted; furthermore, the White River EA conducted prior to this sale fails to adequately incorporate the BLM's strict guidelines outlined in the interim guidelines. These parcels should be deferred until this analysis is complete.

The Little Snake Office released a new RMP in October 2011. The revised RMP does incorporate some stricter occupancy and timing guidelines for new leases than the previous RMP. However, the RMP does not go far enough to provide protection against long term habitat degradation and population loss. The Little Snake Office states that the RMP is valid in light of new information or circumstances. Little Snake DNA at 4. However, the DNA does not address or even mention the current review of sage-grouse status or the impending review of the Little Snake RMP for sage grouse criteria. Furthermore, it fails to consider the explicit guidelines of the Sage-Grouse National Technical Team (NTT) as required by the interim guidelines. These parcels should be deferred until the BLM has the opportunity to address these more protective standards for sage-grouse.

Interim guidelines state that the BLM "must consider and analyze" the requirements laid out by the NTT, subject to a "hard look analysis." IM 2012-044. The NTT emphasizes that "management priorities will need to be shifted and balanced to maximize benefits to sage-grouse habitats and populations in priority areas." Sage-Grouse National Technical Team, *A Report on National Greater Sage-Grouse Conservation Measures* (Dec. 21, 2011) (hereafter, "NTT Report") at 6.

The NTT identifies priority habitat as all breeding, late breed rearing, winter concentration, and migration or connectivity corridors. *Id.* at 7. It recommends that 3% or less of priority habitat be subject to "discrete anthropogenic disturbances. . . regardless of ownership." *Id.* This is defined to include all anthropogenic disturbance, including power lines, roads, and preexisting disturbance. The NTT recommends limiting, or preferably banning, all disturbance in priority areas because "surface-disturbing energy or mineral development within priority sage-grouse habitats is not consistent with a goal to maintain or increase populations or distribution." *Id.* at 19. Furthermore, it states that buffers and timing limitations are not substitutes for total limits on disturbance because such measures do not prevent the effects of infrastructure on grouse populations. *Id.* at 20-21.

Parcels offered for lease under the Little Snake RMP include limitations on medium and high priority sage-grouse habitat, a distinction that NTT does not recognize. The Little Snake

RMP establishes a 1% or 5% allowable disturbance rate in high and medium priority habitat that may not adequately limit disruption of breeding, and relies on timing restrictions on surface use which may still result in significant habitat degradation.

While the NTT requires that all anthropogenic disturbances regardless of cause or ownership be factored into the 3% limitation, the lease stipulations applied to the parcels for sale in May 2012 only limit disturbance to oil and gas development disturbance caused by the operator. Additionally, these stipulations only apply to the new leases, and disregard disturbance on any surrounding properties. The stipulations also rely on timing limitations for nesting buffers to protect areas used during summer by females and chicks. The stipulation allows for Controlled Surface Use (instead of No Surface Use) within a 4 mile perimeter of a lek, and only requires that surface disturbing activities avoid nesting habitat, which is defined as sage brush of a certain height.

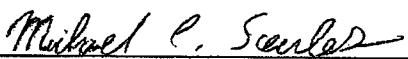
The BLM should defer from leasing the parcels mentioned above that are within sage-grouse habitat. By failing to defer these parcels, the BLM violated NEPA's requirement to consider "new information that may alter the results of its original environmental analysis." *Friends of the Clearwater*, 222 F.3d at 557. The BLM has failed to incorporate, or even consider, most of the guidelines established by the NTT regarding management of sage-grouse in either the Little Snake or White River decision documents. By offering these parcels for lease sale without adequate consideration, the BLM ignored its guidelines for interim management of sage-grouse, which emphasize management for avoidance of listing. It likewise ignored its own management manual, which encourages treating potentially listed species the same as listed species. These parcels should be deferred from leasing until the BLM complies with the mandates of NEPA.

Request for Relief

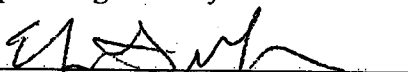
National Wildlife Federation requests that the BLM withdraw oil and gas leases on the above listed parcels from the May 2012 sale. Deferring these parcels will protect wildlife and its habitat, and will best achieve the BLM's mixed mandate of development of our mineral resources while maintaining multiple use and sustained yield.

Respectfully submitted on this 12th day of March, 2012,

BY:



Michael C. Soules
Michael.Soules@Colorado.Edu
Supervising Attorney



Elizabeth M. Joyce
Elizabeth.Joyce@Colorado.Edu

Natural Resources Clinic
University of Colorado Law School
Wolf Law Building, UCB 404
Boulder, CO 80309-0404
(303) 492-5897
(303) 492-4587

On Behalf of the National Wildlife Federation:

Michael A. Saul, Associate Counsel
National Wildlife Federation
2260 Baseline Road, Suite 100
Boulder, CO 80302
(303) 441-5166 (telephone)
(303) 786-8911 (fax)
saul@nwf.org
www.nwf.org



ROCKY MOUNTAIN WILD

1536 Wynkoop, Suite 303
Denver, Colorado 80202
303.546.0214
<http://rockymountainwild.org>

U.S. DEPT. OF INTERIOR
BUREAU OF LAND MGMT.
COLORADO STATE OFFICE DENVER
2012 MAR 12 PM 3:13

Helen Hankins
State Director
Bureau of Land Management
Colorado State Office
2850 Youngfield Street
Lakewood, Colorado 80215-7093

March 12, 2012

Re: Protest of the Bureau of Land Management's Notice of Competitive Oil and Gas Lease Sale of Parcels with High Conservation Value

Dear Director Hankins:

In accordance with 43 C.F.R. §§ 4.450-2; 3120.1-3, Rocky Mountain Wild, Sierra Club, and San Luis Valley Ecosystem Council ("Protesting Parties") protest the May 10, 2012 sale of the following parcels.

I. Protested Parcels

COC75297	COC75298	COC75299	COC75302	COC75304
COC75307	COC75312	COC75313	COC75316	COC75317
COC75318	COC75322	COC75327	COC75328	COC75330

II. Protesting Parties

Rocky Mountain Wild is a non-profit environmental organization based in Denver and Durango, Colorado, that works to conserve and recover the native species and ecosystems of the Greater Southern Rockies using the best available science. RMW was formed in July 2011 by the merging of two organizations, Center for Native Ecosystems (“CNE”) and Colorado Wild, and is the legal successor to both parties. Colorado Wild has worked for over a decade to protect, preserve, and restore the native plants and animals of the Southern Rocky Mountains.

Both CNE and Colorado Wild have a well-established history of participation in Bureau of Land Management (“BLM”) planning and management activities, including participation in Colorado BLM oil and gas leasing decisions and the planning processes for the various Colorado BLM Field Offices (“FO”). RMW continues the work of each organization to save endangered species and preserve landscapes and critical ecosystems. It achieves these goals by working with biologists and landowners, utilizing GIS technology to promote understanding of complex land-use issues, and monitoring government agencies whose actions affect endangered and threatened species. Its members include approximately 1200 outdoor enthusiasts, wildlife conservationists, scientists, and concerned citizens across the country.

RMW’s staff and members visit, recreate on, and use lands on or near the parcels proposed for leasing. Our staff and members enjoy various activities on or near land proposed for leasing, including viewing and studying rare and imperiled wildlife and native ecosystems, hiking, camping, taking photographs, and experiencing solitude. Our staff and members plan to return to the subject lands in the future to engage in these activities, and to observe and monitor rare and imperiled species and native ecosystems. We are collectively committed to ensuring that federal agencies properly manage rare and imperiled species and native ecosystems. Members and professional staff of RMW are conducting research and advocacy to protect the populations and habitat of rare and imperiled species discussed herein. Our members and staff value the important role that areas of high conservation value should play in safeguarding rare and imperiled species and natural communities, and other unique resources on public land.

Our members’ interests in rare and imperiled species and ecosystems on BLM lands will be adversely affected if the sale of these parcels proceeds as proposed. Oil and gas leasing and subsequent mineral development on the protested parcels, if approved without response to public comments made under the National Environmental Policy Act (“NEPA”), consultation required by the Endangered Species Act (“ESA”), and appropriate safeguards to minimize negative impacts, is likely to result in a greatly increased risk of significant harm to rare and imperiled species and native ecosystems. As a result, BLM’s decision to lease the protested parcels is not based on the best available science and will result in significant harm to rare and imperiled species and native ecosystems. The proposed leasing of the protested parcels will harm our members’ interests in the continued use of these public lands, and the rare and imperiled species

they support. Therefore protestors have legally recognizable interests that will be affected by the proposed action.

Since 1892, the Sierra Club has been working to protect communities, wild places, and the planet itself. We are the largest grassroots environmental organization in the United States. And our founder, John Muir, appears on the back of the California quarter.

San Luis Valley Ecosystem Council is a 501C3 non-profit corporation, which was incorporated in 1998 by a group of citizens concerned about impacts to public lands around the San Luis Valley. We believe in the power of education, stewardship, community involvement and public advocacy. Our mission is to protect and restore the biological diversity, ecosystems, and natural resources of the Upper Rio Grande region, balancing ecological values and human needs

Matthew Sandler, Staff Attorney for Rocky Mountain Wild, is authorized to file this protest on behalf of the Protesting Parties.

III. Acknowledgment

The Protesting Parties would like to take this opportunity to thank BLM for placing more focus on environmental consequences earlier in the leasing process. We acknowledge that this shift in BLM's process has resulted in deferral of parcels prior to leasing. We hope that BLM's Colorado offices will continue to implement the mandates of Instructional Memorandum ("IM") 2010-117 to ensure that wildlife is conserved for future generations. Additional pre-leasing analysis in the Environmental Assessment ("EA") and focusing on a specific sub-region of the state in this lease sale both contribute to more informed decision-making and more efficient use of limited BLM and stakeholder resources. We would also like to thank BLM for continuing to post GIS shape files during the various stages of the leasing process.

History:

RMW has actively participated in the RMP revision process for the Little Snake field office ("LSFO"). We commented on the Environmental Impact Statement and gave feedback at every opportunity. RMW has concerns about the greater sage-grouse mitigation measures within the LSFO RMP and protest the parcels within this lease sale that overlap with sage-grouse habitat. BLM is currently in the process of updating a range of RMPs that manage sage-grouse habitat and RMW believes that leasing parcels in sage-grouse habitat should be deferred until this analysis and amendment process is complete. RMW commented on both the LSFO DNA and the WRFO EA for this lease sale. We hereby incorporate the information contained in those documents in this protest.

IV. Affected Resources

Oil and gas and development authorized through the proposed leasing of the protested parcels is likely to have significant negative impacts on the greater sage-grouse, Columbia sharp-tailed grouse, white-tailed prairie dog, black footed ferret, and other sensitive species. Leasing of

the protested parcels is also likely to have significant impacts on lands of high conservation value. (See Attachment 1, RMW's internal screen results)

A. Imperiled Species

1) Greater Sage-Grouse:

Parcels COC75312, COC75316, COC75317, and COC75318 are in greater sage-grouse brood areas according to data from Colorado Parks and Wildlife ("CPW"). Parcel COC75322 is in greater sage-grouse high priority habitat according to 2007 LSFO BLM data. Parcels COC75312, COC75313, COC75318, COC75322, COC75328, COC75329 and COC75330 are within 4 miles of a greater sage-grouse lek based on COGCC 2008 data. Parcels COC75312, COC75313, COC75316, COC75318, and COC75322 are in medium priority greater sage-grouse habitat according to LSFO BLM 2007 data. Parcel COC75322 is within greater sage-grouse potential core areas based on CDOW data. Parcels COC75312, COC75313, COC75318 and COC75322 are within greater sage-grouse production area according to CPW 2011 data. Parcels COC75297, COC75298, COC75299, COC75302, COC75304, COC75312, COC75316, COC75317, COC75318, COC75327, and COC75330 are within greater sage-grouse winter range based on CPW 2011 data. (See Attachments 4a, 4b, and 4c – maps of lease sale parcels overlap with sage-grouse habitat). Parcels COC75297, COC75298, COC75299, COC75302, COC75304, COC75307, COC75316, COC75317, COC75328, COC75329, and COC75330 **do not** contain any stipulations aimed at protecting the sage-grouse habitat within the parcels. With all the work BLM is proposing to accomplish with the goal of ensuring better regulatory protections for the greater sage-grouse, in order to avoid endangered species listing, it is irresponsible for BLM to be leasing these parcels. None of these parcels contain adequate stipulations addressing the greater sage-grouse.

The greater sage-grouse (*Centrocercus urophasianus*) is a unique species of grouse found only in sagebrush dominated habits of western North America. This species, first described by Meriwether Lewis near the confluence of the Marias and Missouri rivers in Montana in 1805 (Schroeder et al. 2004, Exhibit 2), is the largest grouse in North America, and the second largest grouse in the world. Greater sage-grouse were once widely distributed across western U.S. and Canada, numbering in the hundreds of thousands. Greater sage-grouse have long been the subject of fascination because of their elaborate courtship displays, in which large numbers of males gather on display grounds (known as leks) to perform a "strutting display" for watching females. Males lift and fan their pointed tail feathers, erect their head plumes, inflate air sacs on their chests, strut about, and produce a series of interesting sounds including "wing swishes", "air sac plops" and a whistle. Females observe these displays and select the most attractive males to mate with. Only a small number of males are selected by most of the females for breeding. The same lek may be used by grouse for decades. Observing the courtship ritual of the greater sage-grouse is one of the most captivating wildlife watching experiences in North America. The greater sage-grouse is also one of 19 upland game birds in the United States, which bring in significant hunting revenue and provide recreation for millions of licensed hunters. Finally, the greater sage-grouse has become the symbol for conserving sagebrush ecosystems, increasingly valued for their wide-open spaces, abundant wildlife, opportunities for

recreation and hunting, and central place in defining the character of western landscapes and people. The greater sage-grouse is an icon of a vanishing western landscape.

Over the past century, human activities have caused heavy loss, fragmentation and degradation of sagebrush, such that sagebrush ecosystems are among the most threatened habitats in North America (*see* Knick et al. 2003, Ecology and Conservation of Greater Sage-Grouse: A Landscape Species and Its Habitats, Monograph chapters for publication in *Studies in Avian Biology*, Cooper Ornithological Society, 2009, at <http://sagemap.wr.usgs.gov/monograph.aspx>). Loss and degradation of native habitats has impacted much of the sagebrush ecosystem and its associated wildlife (*see* Knick et al. 2003, Exhibit 3; and Connelly et al. 2004). Greater sage-grouse have declined dramatically as a result of loss of suitable sagebrush habitat to meet seasonal requirements for food, cover and nesting (*see* Ecology and Conservation of Greater Sage-Grouse: A Landscape Species and Its Habitats, Monograph chapters for publication in *Studies in Avian Biology*, Cooper Ornithological Society, 2009, at <http://sagemap.wr.usgs.gov/monograph.aspx>)

The underlying cause of greater sage-grouse population declines is the loss of suitable sagebrush habitat from a variety of causes (*see* Ecology and Conservation of Greater Sage-Grouse: A Landscape Species and Its Habitats, Monograph chapters for publication in *Studies in Avian Biology*, Cooper Ornithological Society, 2009, at <http://sagemap.wr.usgs.gov/monograph.aspx>). Human land use has altered landscapes used by greater sage-grouse in most parts of their range (Knick et al. 2003, Connelly et al. 2004, Connelly and Knick 2009, Chapter 1 in: Ecology and Conservation of Greater Sage-Grouse: A Landscape Species and Its Habitats, Monograph chapters for publication in *Studies in Avian Biology*, Cooper Ornithological Society, 2009, at <http://sagemap.wr.usgs.gov/monograph.aspx>). Loss and degradation of sagebrush habitat and concomitant declines in greater sage-grouse populations have been attributed primarily to agriculture, human development, altered fire regimes, and exotic plant invasions.

Oil and gas development is widespread and increasing across the eastern portion of the sage-grouse range, (including Wyoming, Utah and Colorado). Oil and gas development currently impacts 8% of sagebrush habitats (*see* Chapter 21 in Ecology and Conservation of Greater Sage-Grouse: A Landscape Species and Its Habitats, Monograph chapters for publication in *Studies in Avian Biology*, Cooper Ornithological Society, 2009, at <http://sagemap.wr.usgs.gov/monograph.aspx>). In addition, exploration and development of wind, solar and geothermal energy is increasing rapidly in many parts of the sage-grouse range. For example, new corridors proposed for energy transmission would affect another 2% of the current sagebrush distribution.

Nearly all of the threats to sagebrush habitat and greater sage-grouse populations are likely to continue to increase into the foreseeable future. Given that greater sage-grouse have been extirpated from half of their historic range and experienced rangewide population declines of 65% or more (Garton et al. 2009), the future survival of the greater sage-grouse as a viable species in the wild is very much in doubt.

In early 2010 the U.S. Fish and Wildlife Service made a determination that greater sage-grouse did meet the definition of a threatened or endangered species (i.e. the species is threatened with extinction throughout all or a significant portion of its range within the foreseeable future) but elected to place the species on the Candidate list instead of proceeding with formal threatened or endangered species listing immediately.

It is now widely agreed that the most effective way to ensure against further declines of greater sage-grouse is to establish large greater sage-grouse refuges set aside from energy development. Expert comments on the LSFO Proposed RMP recommended that BLM establish large greater sage-grouse refuges through the RMP planning process, either through use of phased development to allow for long-term deferral of energy development across areas of key habitat, or through designation of ACECs (*See* expert comments to the RMP from CDOW, USFWS, Clait Braun and Environmental Protection Agency (EPA)). The final RMP fails to accomplish this outcome. The BLM Washington Office recently issued greater sage-grouse interim management policies and procedures in Instructional Memorandum 2012-043.¹ The Interim Management Policies and Procedures call for more protections for the greater sage-grouse than the LSFO RMP. The policies and procedures in the interim management document are based on "A Report on National Greater Sage-Grouse Conservation Measures" dated December 21, 2011, and produced by the Sage-grouse National Technical Team.² This document represents the best available science on greater sage-grouse management and conservation.

Oil and gas development authorized by the leasing of the protested parcels will have significant impacts on greater sage-grouse. A number of the protested parcels are located within a four mile buffer around occupied greater sage-grouse leks. Some of the parcels directly overlap with greater sage-grouse leks. In addition, a number of the protested parcels are within greater sage-grouse core areas. (Information on overlap between protested parcels and the above types of sage-grouse habitat was obtained from a GIS overlay of the parcels proposed for leasing and sage-grouse habitat as mapped by the Wyoming Game and Fish Department).

RMW has voiced our concerns with the sage-grouse protective measures in the 2011 LSFO RMP. (See Attachment 2, Letter to Secretary Re: Colorado's Resource Management Plans and BLM's Greater Sage-Grouse National Planning Process)

2) White-tailed Prairie Dog:

Parcel COC75307 overlaps with an active white-tailed prairie dog colony according to CPW data. This parcel does not have any stipulations aimed at protecting this sensitive species. We ask that BLM consider the conservation strategies outlined in the Colorado Division of Wildlife White-tailed Prairie Dog Conservation Strategy document.³ The white-tailed prairie

¹ Found at:

http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2012/IM_2012-043.html

² Found at:

http://www.blm.gov/pgdata/etc/medialib/blm/wo/Information_Resources_Management/policy/im_attachments/2012.Par.52415.File.dat/IM%202012-044%20Att%201.pdf

³ Found at: <http://wildlife.state.co.us/WildlifeSpecies/GunnisonsWhitetailPrairieDogConsStrategy.htm>

dog is listed as a BLM Species of Concern. The Colorado Natural Heritage Program has given the white-tailed prairie dog a G4/S4 ranking. Due to the imperiled status of this species we ask that BLM avoid proposing parcels that overlap with active colonies. BLM should defer leasing this parcel until the appropriate stipulations have been attached to ensure development does not contribute to further population declines.

3) Black-Footed Ferret:

Parcels COC75328 and COC75330 contain black-footed ferret release sites based on COGCC data. "The black-footed ferret is considered the rarest mammal in North America, and one of the rarest in the world." Wolf Creek Work Group, Colorado Division of Wildlife, BLM, Wildlife Service: "A Cooperative Plan for Black-footed Ferret Reintroduction and Management 1 (Oct. 2001). The Wildlife Service listed the ferret as endangered in 1967, and in 1979 the species was declared extinct. Ferrets are dependent on prairie dog colonies for food and habitat, and "[i]t is generally believed that it was the reduction of the prairie dog population that brought the black-footed ferret to the brink of extinction."

Remnant populations were discovered in the 1980s. In 1985, the Wildlife Service and the Wyoming Game and Fish Department "decided to remove all native black-footed ferrets from their habitat [in the wild] in an effort to save the species." In 1991, the Wildlife Service began reintroducing ferrets bred in captivity to a handful of sites in the wild. In 2001, more than three dozen ferrets were released in Utah's Coyote Basin and Colorado's Wolf Creek Black-Footed Ferret Management Area. This marked the first such release in Colorado and the ninth wild release since recovery operation began. According to a 2006 Wildlife Service memo, 189 ferrets have been released in northwestern Colorado since 2001. The Wildlife Service noted that the first "wild born ferret, along with the minimum of 13 known ferrets within the [Wolf Creek Management Area], at the end of 2005, indicates that we are beginning to see some success from our cooperative reintroduction effort."

Biologists have identified mineral development as a significant threat both to prairie dogs and to the black-footed ferrets that depend on them. In response to a 2003 leasing proposal located in the nearby Utah ferret reintroduction area, the Wildlife Service expressed concern that "approval of the parcels for leasing 'would have direct, indirect, and cumulative impacts on the habitat, and preclude future conservation efforts.'" *Center for Native Ecosystems* ("CNEP"), 170 IBLA 331, 339 (2006). The parcels being leased are very close to the parcels brought in front of the IBLA in the *Center for Native Ecosystems* case. BLM should defer leasing these parcels until its affects on the black-footed ferret have been fully analyzed.

4) Columbian Sharp-Tailed Grouse:

Columbian sharp-tailed grouse, once considered the most abundant gallinaceous bird in the intermountain region (Bendire 1892), currently occupies less than 10% of its former range (Bart 2000). The CSTG has the smallest population size and most restricted distribution of the 6 subspecies of sharp-tailed grouse in North America (Miller and Graul 1980). Numerous factors have been implicated in the decline of CSTG. Foremost is the loss and degradation of habitats

due to conversion of native rangelands to croplands, excessive grazing by livestock, herbicide treatments, fire suppression, invasion of non-native plants, removal of trees and shrubs in riparian areas, invasion of conifers, urban development and energy development. Much of the habitat that remains has been altered both structurally and floristically.⁴ The impacts have been so extensive in some areas that the few remaining unaltered habitats are often too small and widely spaced to support viable grouse populations⁵ The Columbian sharp-tailed grouse is a BLM sensitive species and a state species of concern. Northwestern Colorado is part of 1 of 3 metapopulations that retain 95% of the remaining CSTG in North America.⁶

CNE's GIS screening of the lease sale parcels indicates that the Parcels COC75312, COC75313, COC75316, and COC75318 contain Columbian sharp-tailed grouse overall range and winter range according to 2011 CPW data. Parcel COC75318 contains Columbian sharp-tailed grouse production area based on 2011 CPW data. Production area is defined as, "An area that includes 90% of sharp-tailed grouse nesting and brood rearing habitat. This is mapped as a buffer zone of 2 km (1.24 miles) around dancing grounds." Only Parcels COC75312 and COC75318 have timing limitation stipulations attached to them. This timing limitation is not sufficient to protect this grouse. Activities occurring during the other times of the year will negatively effect this species in the future. No surface occupancy stipulations should have been attached to these parcels to protect the Columbian sharp-tailed grouse. The other two parcels in Columbian sharp-tailed grouse habitat have no protections for this species. These seasonal habitat types are limiting for Columbian sharp-tailed grouse, and population declines could result from loss and degradation of these habitats.

Available data on Columbian sharp-tailed grouse movements in relation to leks, supports the use of a protective buffer. In Colorado, several studies find that 82—92% of females nest within 1.25 miles of the lek where they breed.⁷ In addition, two studies report that 78% of females raised broods within 0.6 miles of their nest.⁸ Females show fidelity to leks and nesting

⁴ Hoffman, R. W. (Technical editor) 2001. Northwest Colorado Columbian sharp-tailed grouse conservation plan. Northwest Colorado Columbian Sharp-tailed Grouse Work Group and Colorado Division of Wildlife, Fort Collins, Colorado., (found at: http://wildlife.state.co.us/NR/rdonlyres/885ED192-3228-41B7-9880-4BF83CB5A61D/0/ColumbianSharptailedGrouseConsPlan2001_NWCO.pdf)

⁵ United States Department of the Interior. 2006. Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Columbian sharp-tailed Grouse as Threatened or Endangered. 71:67318-67325.

⁶ Hoffman, R.W and A.E. Thomas. 2007. Columbian sharp-tailed grouse (*Tympanuchus phasianellus columbianus*): a technical conservation assessment. [Online]. U.S.D.A. Forest Service, Rocky Mountain Region. Available: <http://www.fs.fed.us/r2/projects/scp/assessments/columbiansharptailedgrouse.pdf>. [accessed 8 April 2007].

⁷ Giesen, K.M. 1997. Seasonal movements, home ranges, and habitat use by Columbian sharp tailed grouse in Colorado. Special Report 72. Colorado Division of Wildlife, Denver, CO.

Collins, C.P. 2004. Ecology of Columbian sharp-tailed grouse breeding in coal mine reclamation and native upland cover types in northwestern Colorado. Thesis. University of Idaho, Moscow, ID.

Boisvert, J.H., R.W. Hoffman, and K.P. Reese. 2005. Home range and seasonal movements of Columbian sharp-tailed grouse associated with Conservation Reserve Program and mine reclamation. *Western North American Naturalist* 65:36-44.

⁸ Collins, C.P. 2004. Ecology of Columbian sharp-tailed grouse breeding in coal mine reclamation and native upland cover types in northwestern Colorado. Thesis. University of Idaho, Moscow, ID.

Boisvert, J.H., R.W. Hoffman, and K.P. Reese. 2005. Home range and seasonal movements of Columbian sharp-tailed grouse associated with Conservation Reserve Program and mine reclamation. *Western North American Naturalist* 65:36-44

areas, suggesting protection of these areas is important for long-term persistence.⁹ In addition 96% of radio-marked males remained within 1.25 miles of the lek upon which they were captured from spring through summer¹⁰. Males attend dancing grounds in the fall also, starting in mid- to late-September¹¹ (Hoffman and Thomas 2007). These studies suggest that loss or degradation of habitat or disturbance within 1.25 miles of a lek may result in negative impacts on Columbian sharp-tailed grouse populations. Though there is little research focusing specifically on the impacts of oil and gas development on the Columbian sharp-tailed grouse, the species is a lekking species that is sympatric with greater sage-grouse in most of its range (Apa 1998) and in Colorado (Hoffman and Thomas 2007). Thus, this species may experience impacts similar to those of oil and gas development on greater sage-grouse. For other sage-grouse species it has been shown that siting energy development facilities within 3.9 miles of a lek results in measureable impacts on sage-grouse leks and breeding habitat.¹²

Studies on greater sage-grouse have also demonstrated the importance of protecting all of the seasonal habitats required by the species from negative impacts of oil and gas development, including not only breeding and nesting habitat around leks, but also brood rearing and winter habitat¹³. In response to research on the impacts of oil and gas on greater sage-grouse, the BLM has widely recognized that the stipulations applied to the lease parcels at issue here (a ¼ mile NSO buffer around leks and seasonal timing limitations on disturbance), are insufficient to mitigate impacts of oil and gas development on greater sage-grouse, and has begun to implement more stringent lease stipulations and protective measures to ensure the conservation of greater sage-grouse populations. These measures include limitations on the density of energy development structures, clustered development, 0.6 mile buffers around greater sage-grouse leks, seasonal limitations on disturbance in breeding and nesting habitat and winter habitat etc.¹⁴ Similar lease stipulations should be applied to the leases at issue here, to protect Columbian sharp-tailed grouse populations from further decline. At a minimum BLM should add a special lease stipulation to the parcel stating that BLM reserves the authority to implement restrictions greater than a ¼ mile buffer and seasonal timing limitations, to protect Columbian sharp-tailed grouse, if future scientific analysis suggests such measures are necessary. BLM should defer the parcels in Columbian sharp-tailed grouse habitat until proper stipulations have been attached.

⁹ Boisvert, J.H., R.W. Hoffman, and K.P. Reese. 2005. Home range and seasonal movements of Columbian sharp-tailed grouse associated with Conservation Reserve Program and mine reclamation. *Western North American Naturalist* 65:36-44

¹⁰ Boisvert, J.H., R.W. Hoffman, and K.P. Reese. 2005. Home range and seasonal movements of Columbian sharp-tailed grouse associated with Conservation Reserve Program and mine reclamation. *Western North American Naturalist* 65:36-44

¹¹ Hoffman, R.W. and A.E. Thomas. 2007. Columbian sharp-tailed grouse (*Tympanuchus phasianellus columbianus*): a technical conservation assessment. [Online]. U.S.D.A. Forest Service, Rocky Mountain Region. Available: <http://www.fs.fed.us/r2/projects/scp/assessments/columbiansharptailedgrouse.pdf>. [accessed 8 April 2007].

¹² Naugle et al., ENERGY DEVELOPMENT AND GREATER SAGE-GROUSE, (See attachment 6)

¹³ Naugle et al., ENERGY DEVELOPMENT AND GREATER SAGE-GROUSE,

¹⁴ For example, see the protective measures applied to high and medium priority greater sage-grouse in the proposed Little Snake Field Office RMP at http://www.blm.gov/pgdata/etc/medialib/blm/co/field_offices/little_snake_field/rmp_revision/final_docs.Par.82555.File.dat/04_LS-FEIS_Vol-I_Chapter-2.pdf

V. Statement of Reasons:

The Determination of Nepa Adequacy (“DNA”) for leasing the LSFO parcels asserts conformance with the 2011 LSFO RMP. The DNA also tiers to the 1991 Colorado Oil and Gas Leasing & Development Final Environmental Impact Statement Plan Amendment. Both of these documents fail to adequately assess and analyze the environmental impacts of leasing the protested parcels.

a. The Decision is Inconsistent with BLM IM 2009-071, BLM CO IM 2010-028, and IM 2012-043:

BLM is not adhering to the policies announced in BLM IM 2009-071 and BLM CO IM 2010-028. BLM IM 2009-071 directs that when necessary to maintain sustainable sage-grouse populations across the broader landscape within the state, field managers will implement an appropriate combination of the following actions in “priority habitat”. BLM IM 2009-071 declares that within “priority habitat”, BLM should “Withhold from sale or defer the sale of parcels, in whole or in part, that industry has proposed for oil and gas or geothermal leasing in priority habitat as supported by analysis under the National Environmental Policy Act (NEPA) of the impacts of leasing on sage-grouse, and in RMP revisions and amendments, analyze one or more alternatives that would exclude priority habitat from energy development and transmission projects.” BLM CO IM 2010-028 explains “For the purposes of this IM, “core habitat” refers to those areas of highest conservation value as identified by BLM Colorado and CDOW and may include previously identified core, key or priority habitat designations. BLM has failed to properly implement the mandates of these IMs throughout the environmental analysis of the currently proposed leasing.

BLM has not given the habitat within these parcels the conservation value that is necessary. This habitat fulfills the IMs definitions of “core habitat” and “priority habitat” and should be protected as such. BLM should withhold from leasing the proposed parcels due to the affect leasing and subsequent development will have on the greater sage-grouse. The NEPA analysis should have also analyzed alternatives that would exclude priority habitat from energy development and transmission projects. BLM failed to consider the range wide affects of leasing this parcel. The analysis that supported BLM’s decision is not consistent with the level of inquiry required by these IMs. Since BLM failed to properly follow these IMs and conduct the proper analysis prior to making that decision, it is arbitrary, capricious, and an abuse of discretion.

i. IM 2012-043

The policies and procedures identified in this IM are designed to minimize habitat loss in Preliminary Priority Habitat (PPH) and Preliminary General Habitat (PGH) and will advance the BLM’s objectives to maintain or restore habitat to desired conditions by ensuring that field offices analyze and document impacts to PPH and PGH and coordinate with states and the Fish and Wildlife Service (CPW) when issuing the decisions described below. PPH are areas that include breeding, late brood-rearing, and winter concentration areas. PGH comprises areas of occupied seasonal or year-round habitat outside of priority habitat. Although it seems CO BLM

and CO Parks and Wildlife have not finalized the PPH and PGH maps, CPW has data regarding habitat that fall into the PPH and PGH classifications.¹⁵ This information is known by CO BLM and also provided in RMW's internal GIS screen. (see attachment 1)

IM 2012-043 emphasizes that development should be conducted in a way that either maintains or improves habitat for the greater sage-grouse, and are listed as follows:

- 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. (Policy/Action: Greater Sage-Grouse Interim Management Policies and Procedures, 2011).

However, in the Resource Management Plan, the stated goal is to, "Maintain, improve, and restore (where needed) healthy ecosystems and habitat to support viable populations of native fish, plants, and wildlife species, while reducing habitat loss and fragmentation" (LSFO RMP at 11). The LSFO DNA, or the WRFO EA has supporting language outlining how habitat will be improved, rather than protected or maintained. Of particular importance to the greater sage-grouse is vegetation protection and restoration. The current goals relating to sagebrush (LSFO RMP, Vegetation, B and C, p. 15) outline objectives to "initiate restoration and rehabilitation of sagebrush habitat". Stronger language is included in the interim management document, which states,

- Promote the maintenance of large intact sagebrush communities;
- Limit the expansion or dominance of invasive species, including cheatgrass;
- Maintain or improve soil site stability, hydrologic function, and biological integrity; and
- Enhance the native plant community, including the native shrub reference state in the State and Transition Model, with appropriate shrub, grass, and forb composition identified in the applicable ESD where available.(Integrated Vegetation Management, IM 2012-043)

The LSFO RMP lacks specific stipulations or guidance regarding restoring vegetation. This leasing should be conducted pursuant to the dictates of the new IM and not under the weaker protections in the RMP. Further steps, such as confirming the presence of new populations of vertebrate and invertebrate species, should also be considered.

In addition, the goal of the BLM's National Greater Sage-Grouse Conservation Measures and Planning Strategy is to, "Maintain and/or increase sage-grouse abundance and distribution by conserving, enhancing, or restoring the sage-brush ecosystem upon which populations depend in cooperation with other conservation partners" (IM 2012-043). This language is present in IM 2012-043, as stated above, but not in the RMP for Little Snake (2011). The best available science outlines that enhancing and restoring the current habitat, along with protection of what remains, is critical to supporting the greater sage-grouse. In addition, "None of the published science reports a positive influence of development on sage-grouse populations or habitats" (p. 19, National Greater Sage-Grouse Conservation Measures/Planning Strategy 2011). It is critical,

¹⁵ See attachment 3 – Letter to CO State Director Re: Colorado BLM's Implementation of Instruction Memorandum 2012-043—Greater Sage-Grouse Interim Management Policies and Procedures

therefore, that all of the possible effects of solid and liquid mineral leases are considered Prior to leasing these parcels.

The interim plan document goes further and states, "In addition to considering opportunities for onsite mitigation, the BLM will consider whether it is appropriate to condition the lease with a requirement for offsite mitigation that the BLM, coordinating with the respective state wildlife agency, determines would avoid or minimize habitat and population-level effects" (Leasable Minerals, IM 2012-043). This same stipulation for both on-site and off-site mitigation efforts for leasable mineral areas is missing from the current Little Snake RMP. The emphasis that there are far-reaching effects from oil and gas drilling besides what occurs directly on site (such as air quality, water quality, noise, human disturbance) is critical in order to better protect Greater Sage-Grouse populations and habitat. The impacts of oil and gas drilling, while well-researched, are still largely unknown. The current research, as stated by the Sage-Grouse Technical Team, is that "... noise and human activity associated with energy development during the breeding season (Remington and Braun 1991, Holloran 2005, Kaiser 2006, Bickley and Patricelli *in review*)" (p.19, Greater Sage-Grouse Conservation Measures/Planning Strategy 2011). This suggests that many impacts to the greater sage-grouse population are not felt at the immediate development site, but rather off-site. Proceeding with caution by requiring on-site and off-site mitigation techniques will promote the return of native plant and animal species. The proposed leasing does not consider these factors.

Lastly, under "All Other Proposed Authorizations" in IM 2012-043, in areas where greater sage-grouse populations have been substantially diminished, and where few birds remain, include actions in the authorization (e.g., siting/designing infrastructure, hastened habitat restoration) that will minimize habitat loss and promote restoration of habitat when development activities cease. This language, which highlights the need for extra attention in areas where greater sage-grouse populations are small, is not included in the RMP (LSFO 2011). It is very important that these points be taken into account in the lease sale in order to uphold the goals of maintaining and restoring greater sage-grouse populations. Maintaining small populations of the greater sage-grouse allows for the species to re-colonize an area. As outlined by the Sage-Grouse Technical team, the effects of oil and gas drilling are likely to impact even the most established, well-populated lekking and winter habitat areas (p. 19-21, Greater Sage-Grouse Conservation Measures/Planning Strategy 2011). Therefore, small populations of the greater sage-grouse should be considered more, not less, vulnerable to the effects of nearby development.

IM 2012-043 states,

Unless the BLM determines, in coordination with the respective state wildlife agency, that the proposed lease and mitigation measures would cumulatively maintain or enhance Greater Sage-Grouse habitat, the proposed lease decision must be forwarded to the appropriate BLM State Director, State Wildlife Agency Director, and FWS representative for their review. If this group is unable to agree on the appropriate mitigation for the proposed lease, then the proposed decision must be forwarded to the Greater Sage-Grouse National Policy Team with the addition of the State Wildlife Agency Director, when appropriate, for its review. If the National Policy Team and the State Wildlife Agency Director are unable to agree on

the appropriate mitigation for the proposed lease, the National Policy Team will coordinate with and brief the BLM Director for a final decision in absence of consensus.

BLM failed to document if a determination regarding the mitigation measures was made with the state wildlife agency. Neither the WRFO or the LSFO followed this mandate of IM 2012-043. In fact, parcels COC75297, COC75298, COC75299, COC75302, COC75304, COC75307, COC75316, COC75317, COC75328, COC75329, and COC75330 **do not** contain any stipulations aimed at protecting the sage-grouse habitat within the parcels. Leasing these parcels without this level of scrutiny is arbitrary, capricious, and in violation of the law. Other state offices have been deferring parcels in greater sage-grouse habitat. Nevada BLM recently deferred 33 parcels that are within sage-grouse habitat.¹⁶ Idaho BLM also recently deferred a wind project due to its potential effects on greater sage-grouse.¹⁷ Colorado BLM should also follow the Washington Office guidance and defer leasing parcels in important greater sage-grouse habitat. The protested parcels should be deferred until the above listed requirements are met.

b. BLM Failed to Consider Significant New Information:

The LSFO DNA and WRFO EA failed to determine if the existing NEPA analysis is valid in light of any new information or circumstances. IM 2012-043 and the “Report on National Greater Sage-Grouse Conservation Measures” dated December 21, 2011, produced by the Sage-grouse National Technical Team present new information and circumstances. This new information and circumstances should cause BLM to re-analyze certain parcels to determine if they are still appropriate for leasing.

None of the NEPA documents, to which the leasing is tied, address significant new information now available on the greater sage-grouse. An “agency must be alert to new information that may alter the results of its original environmental analysis, and continue to take a ‘hard look at the environmental effect of [its] planned action, even after a proposal has received initial approval.’” *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 557 (9th Cir. 2000) (quoting *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 374 (1989)).

In order to satisfy the “hard look” requirement, the BLM must supplement its existing environmental analyses when new circumstances “raise[] significant new information relevant to environmental concerns” *Portland Audubon Soc’y v. Babbitt*, 998 F.2d 705, 708 (9th Cir. 2000). Agencies are required to “prepare supplements to either draft or final environmental impacts statements if . . . there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R. § 1502.9(c)(1)(ii) (2009). The Supreme Court has held that a supplemental EIS must be prepared if “new information is sufficient to show that the remaining action will ‘affect[] the quality of the human environment’ in a significant manner or to a significant extent not already considered” *Marsh v. Or. Natural Res. Council*, 490 U.S. 390, 374 (1989); see 42 U.S.C. § 4332(2)(C)

¹⁶ See http://www.blm.gov/nv/st/en/info/newsroom/2012/march/blm_defers_parcel.html

¹⁷ See http://www.blm.gov/id/st/en/info/newsroom/2012/March-2012_News/idaho_blm_defers_final.html

(2009). In a recent Utah case, the court held that the "Utah BLM ignored significant new information when it decided to lease the sixteen parcels at issue without first conducting a supplemental NEPA analysis." *So. Utah Wilderness Alliance v. Norton*, 457 F. Supp. 2d 1253, 1267 (D. Utah 2006). The analysis relied upon failed to reflect significant new information regarding the wilderness characteristics of the parcels at issue. *Id.* Further, in *Center for Native Ecosystems*, the Interior Board of Land Appeals held that once the BLM has identified existing NEPA documents, it is the responsibility of the relevant field office reviewers to determine whether there were "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." *Center for Native Ecosystems*, 170 IBLA 331, 346 (2006) ("CNE 1").

The BLM has failed to consider recent research on greater sage-grouse that is directly relevant to analyzing the likely impacts of the proposed leasing and subsequent development on greater sage-grouse. The findings of the Technical Report constitutes significant new information that call into question the conclusions of the past NEPA documents to which the proposed leasing and development is tiered. The findings of the Technical Team were available to BLM at the time of the preparation of the DNA documents for the proposed action, but were not considered. We demonstrate that these findings are directly relevant to analysis of the impacts of the proposed leasing and development on the greater sage-grouse. The findings of the Technical report are contrary to information presented in the NEPA documents to which the proposed leasing is tiered, and suggest that the proposed action will have significant impacts on greater sage-grouse that have not been adequately considered in the NEPA documents at issue here. None of the NEPA documents to which the leasing is tiered, adequately address this significant new information. The BLM must address this significant new information in order to comply with NEPA.

c. The BLM Failed to Consider the Best Available Science in its EA:

The decision is based on information in the EA that does not represent the best available science regarding the greater sage-grouse. The BLM is required to operate under the best available science standard when implementing projects. *42 U.S.C. §4332*. NEPA regulations require the BLM to "insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements" (40 CFR 1502.24). The BLM NEPA Handbook also directs the BLM to "use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed" (BLM NEPA Handbook, page 55).

The BLM tiered the DNA and EA for this lease sale to documents that failed to consider the best available science. These documents are outdated and do not represent the best available science that should be used in assessing the impacts of energy development on greater sage-grouse.

d. The Decision Fails to Adequately Analyze the Direct, Indirect, and Cumulative Affects of Leasing These Parcels:

NEPA dictates that BLM take a “hard look” at the environmental consequences of a proposed action and the requisite environmental analysis “must be appropriate to the action in question.” *Metcalf v. Daley*, 214 F.3d 1135, 1151 (9th Cir. 2000); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989). In order to take the “hard look” required by NEPA, BLM is required to assess impacts that include: “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, *whether direct, indirect, or cumulative.*” 40 C.F.R. § 1508.8 (emphasis added). “[C]umulative impact analysis must be timely. It is not appropriate to defer consideration of cumulative impacts to a future date when meaningful consideration can be given now.” *Kern v. US. Bureau of Land Management*, 284 F.3d 1062, 1075 (9th Cir. 2000). The BLM failed to adequately analyze potential direct, indirect, and cumulative impacts of the proposed leasing on the greater sage-grouse.

“In determining the scope of the required NEPA analysis, an agency must consider not only the proposed action, but also three types of related actions – ‘connected actions’, similar ‘actions’, and ‘cumulative actions’. 40 C.F.R. 1508.25(a). “Cumulative actions” are those” which when viewed with other proposed actions have cumulatively significant impacts.” *Id. at 1508.25 (a)(2)*. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts. 40 C.F.R. 1508.27 (b)(7). It is not appropriate to defer consideration of cumulative impacts when meaningful consideration can be given now. *See; Neighbors of Cuddy Mountain v. United States Forest Service*, 137 F.3d 1372, 1380 (9th Cir. 1998); *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1312-1313 (9th Cir. 1990)

The new science discussed previously must be considered when making determinations about the direct, indirect, and cumulative affects of leasing. Without a proper consideration of how energy development will affect the greater sage-grouse the NEPA analysis supporting this action is insufficient. BLM failed to analyze how this development (coupled with past development) will affect the population size, breeding success, movement corridors, and other necessary ecological factors affecting the greater sage-grouse. This affects analysis must be predicated on the scientific findings and determinations contained in the “Report on National Greater Sage-Grouse Conservation Measures.”

BLM also fails to analyze the affect of leasing these parcels based on the fact that much of the surrounding land has already been leased. (*See* attachment 5: BLM Colorado May 2012 Lease Sale parcels and Existing Leased Parcels). Some of these parcels represent the last unleased area within a large contiguous chunk of leased land. The ecological value of these currently unleased areas is compounded by the diminishing quality of their surroundings. Failure to analyze the affect on the environment based on this cumulative and compounding factor is a violation of NEPA.

- e. **The BLM has failed to adequately analyze the effectiveness of the lease stipulations and other mitigation measures in the Environmental Assessment and DNA, and the determination that lease stipulations and other mitigation measures will prevent significant impacts to greater sage-grouse is arbitrary and capricious:**

A complete discussion of steps that can be taken to mitigate adverse environmental impacts is an important ingredient of the NEPA process. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351 (1989). “Without such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects.” *Id.* In recognition of the importance of a discussion of mitigation measures, Council on Environmental Quality (CEQ) regulations “require that the agency discuss possible mitigation measures in defining the scope of the EIS, 40 CFR § 1508.25(b), in discussing alternatives to the proposed action, § 1502.14(f), and consequences of that action, § 1502.16(h), and in explaining its ultimate decision, § 1505.2(c).” *Id.* at 352. When a proposed action will result in impacts to resources, the Agency is obligated to describe what mitigating efforts it could pursue to off-set the damages that would result from the proposed action. *See 40 C.F.C. § 1502.16(h) (2009)* (stating that an EIS “shall include discussions of . . . [m]eans to mitigate adverse environmental impacts”).

“Mitigation must ‘be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated.’” *Carmel-by-the-Sea v. U.S. Dep’t of Transp.*, 123 F.3d 1142, 1154 (9th Cir. 1996). (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 353 (1989)). The Ninth Circuit explained that fair evaluation requires agencies to “analyze[] the mitigation measures in detail [and] explain how effective the measures would be. A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA.” *Nw. Indian Cemetery Protective Ass’n v. Peterson*, 764 F.2d 581, 588 (9th Cir. 1985), *rev’d on other grounds*, 485 U.S. 439 (1988).

In *Davis v. Mineta*, the Tenth Circuit found that federal agencies did not comply with NEPA when they relied on the possibility of mitigation measures in issuing a FONSI. According to the court, “[m]itigation measures may be relied upon to make a finding of no significant impact only if they are imposed by statute or regulation, or submitted by an applicant or agency as part of the original proposal. As a general rule, the regulations contemplate that agencies should use a broad approach in defining significance and should not rely on the possibility of mitigation as an excuse to avoid the EIS requirement.” *Davis v. Mineta*, 302 F.3d 1104, 1125 (10th Cir. 2002)

The BLM must evaluate the effectiveness of the mitigation measures used on these parcels with the best available science. “The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” *40 C.F.R. § 1500.1(b) (2009)*. “For this reason, agencies are under an affirmative mandate to ‘insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements[,] identify any methodologies used and . . . make explicit reference by footnote to the scientific and other sources relied upon for conclusions[.]’” *Env’tl. Def. v. U.S. Army Corps of Eng’rs*, 515 F. Supp. 2d 69, 78 (D.D.C. 2007) (citing *40 C.F.R. § 1502.24 (2009)*). If there is scientific uncertainty NEPA imposes the mandatory duties to: (1) disclose the scientific uncertainty; (2) complete independent research and gather information if no adequate information exists unless costs are exorbitant or the means of obtaining the information are not known; and (3) evaluate the potential, reasonably foreseeable impacts in the absence of relevant information. *See 40 C.F.R. § 1502.22 (2009)*. The BLM determined that the proposed action will not result in significant impacts to greater sage-grouse. This determination is predicated on the assumption that lease stipulations will prevent significant adverse impacts to

greater sage-grouse. However, parcels COC75297, COC75298, COC75299, COC75302, COC75304, COC75307, COC75316, COC75317, COC75328, COC75329, and COC75330 do not contain any stipulations aimed at protecting the sage-grouse habitat within the parcels. Further, BLM should have consulted with the Department of Parks and Wildlife regarding the sufficiency of the mitigation measures attached to some parcels in sage-grouse habitat. *see* IM 2012-043. Failure to analyze the effectiveness of the mitigation measures for the protested parcels is arbitrary, capricious, and in violation of the law. The leasing of the parcels in the LSFO is an as applied example of the inadequacies of their RMP. The stipulations contained in that RMP will not protect the greater sage-grouse. The NEPA analysis supporting the LSFO RMP is inadequate and should be re-initiated in order to fully analyze the RMP's effects on the environment, and specifically, on the greater sage-grouse. (*See* attachment 2) The National sage-grouse RMP amendment process that is now underway should be used as a means to correct the deficiencies within the LSFO RMP. The protested parcels should be deferred until that analysis is complete.

f. The BLM failed to Prevent Undue and Unnecessary Degradation to greater sage-Grouse Populations and Has Failed to Meet its Obligations Under BLM Manual 6840:

The BLM has a duty under the Federal Land Policy and Management Act ("FLPMA") to prevent unnecessary and undue degradation to the lands under its management. "In managing the public lands the [Secretary of Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." 43 U.S.C. § 1732(b). The use of the imperative language "shall" makes clear that Congress intended to leave the Secretary no discretion in administering the Act. *NRDC v. Jamison*, 815 F. Supp. 454, 468 (D.D.C. 1992). "The court in *Mineral Policy Ctr. v. Norton* [found] that in enacting FLPMA, Congress's intent was clear: Interior is to prevent, not only unnecessary degradation, but also degradation that, while necessary . . . is undue or excessive." *Mineral Policy Ctr. v. Norton*, 292 F. Supp. 2d 30, 43 (D.D.C. 2003). In addition, that court held that "FLPMA, by its plain terms, vests the Secretary of the Interior with the authority – and indeed the obligation – to disapprove of an otherwise permissible . . . operation because the operation though necessary . . . would unduly harm or degrade the public land." *Id.* at 49.

The purpose of Section 6840 of the BLM Manual is to provide policy and guidance for the conservation of BLM special status species and the ecosystems upon which they depend on BLM-administered lands. BLM special status species are:

- (1) species listed or proposed for listing under the Endangered Species Act (ESA), and
- (2) species requiring special management consideration to promote their conservation and reduce the likelihood and need for future listing under the ESA

The objectives of the special status species policy are:

- A. To conserve and/or recover ESA-listed species and the ecosystems on which they depend so that ESA protections are no longer needed for these species.
- B. To initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA. [see exhibit 10].

The greater sage-grouse is a BLM sensitive species that is to be managed to promote its conservation and minimize the need for listing under ESA, in accordance with BLM's special status species policy (BLM Manual 6840).

Allowing development in occupied greater sage-grouse habitat is a violation of FLPMA and the BLM manual. This development is going to hinder the chances of this population's rebound. The FWS has announced that this species is likely to become extinct in the foreseeable future. BLM is acting arbitrarily and capriciously by leasing these parcels.

VI. Federal Land Policy Management Act

a. BLM Must Prevent Unnecessary or Undue Degradation

The BLM has a duty under the Federal Land Policy and Management Act ("FLPMA") to prevent unnecessary and undue degradation to the lands under its management. "In managing the public lands the [Secretary of Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." 43 U.S.C. § 1732(b). The use of the imperative language "shall", makes clear that Congress intended to leave the Secretary no discretion in administering the Act. *NRDC v. Jamison*, 815 F. Supp. 454, 468 (D.D.C. 1992). "The court in *Mineral Policy Ctr. v. Norton* [found] that in enacting FLPMA, Congress's intent was clear: Interior is to prevent, not only unnecessary degradation, but also degradation that, while necessary . . . is undue or excessive." *Mineral Policy Ctr. v. Norton*, 292 F. Supp. 2d 30, 43 (D.D.C. 2003). In addition, that court held that "FLPMA, by its plain terms, vests the Secretary of the Interior with the authority – and indeed the obligation – to disapprove of an otherwise permissible . . . operation because the operation though necessary . . . would unduly harm or degrade the public land." *Id.* at 49.

Leasing the protested parcels as proposed will result in unnecessary and undue degradation to rare and imperiled species and their habitat, including the greater sage-grouse, white-tailed prairie dog, Colombian sharp-tailed grouse and other sensitive species.

b. BLM Must Mitigate Adverse Effects

The BLM must mitigate the adverse effects on the aforementioned imperiled species in order to comply with the "unnecessary and undue degradation" standard of FLPMA. The BLM has failed to minimize adverse impacts of oil and gas development on the aforementioned species.

c. Consistency

The BLM is violating FLPMA because it is not being consistent with the policies of state, tribal, and other agencies in its conservation policies regarding greater sage-grouse, white-tailed prairie dog, and Colombian sharp-tailed grouse. FLPMA requires the BLM to seek to "be consistent with officially approved and adopted resource related policies and programs . . . of other federal agencies, State and local governments and Indian tribes." 43 C.F.R. § 1610.3-2; *see*

43 U.S.C. § 1712(c)(9). The proposed leasing is not consistent with COGCC Regulations and other state, local and federal policies and programs.

VII. Endangered Species Act

The U.S. Fish and Wildlife Service has announced that the greater sage-grouse will receive Endangered Species Act protection. Leasing parcels in occupied greater sage-grouse habitat is a violation of BLM's duty to manage its land for multiple uses. One reason for the listing determination was a lack of regulatory mechanisms to protect this species. BLM's actions in leasing occupied habitat for energy development further demonstrates the agencies lack of protective mechanisms. This leasing is going to further contribute to the need to list the species. It is clear through FWS' comments to the LSFO RMP that they don't believe the mitigation measures attached to the protested parcels are adequate.¹⁸ This criticism by a sister agency should have been considered. It is clear the BLM CO is not acting in line with the Washington Office mandates or the clear FWS guidance. Until this leasing can be conducted in a way that complies with these suggestions and directives, leasing of these parcels should be deferred.

a. Duty to Conserve and Duty to Engage in Recovery Planning

In addition to consultation requirements, federal agencies are bound by two affirmative obligations under the ESA. Section 7(a)(1) states that federal agencies shall "seek to conserve [listed] species and shall utilize their authorities in furtherance of the purposes of [the] Act." 16 U.S.C. § 1536(a)(1). A number of courts have held that the duty to conserve imposes an independent duty upon agencies to give the conservation of a listed species top priority. *Carson-Truckee Water Conserv. Dist. v. Watt*, 549 F. Supp. 704 (D. Nev. 1982) citing *TVA v. Hill*, 437 U.S. 153, 184 (1978); *Bensman v. U.S. Forest Serv.*, 984 F. Supp. 1242, 1246 (D. Mont. 1997). The ESA also states that the Secretary "shall develop and implement plans for the conservation and survival [of listed species] unless he finds that such a plan will not promote the conservation of the species." 16 U.S.C § 1533(f)(1).

VIII. BLM has Discretion to Not Lease

Under the statutory and regulatory provisions authorizing this lease sale, the BLM has full discretion over whether or not to offer these lease parcels for sale. The Mineral Leasing Act of 1920 ("MLA") 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." 30 U.S.C. § 226(a) (2009) (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 *Wyo. 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 y."); *Burglin v. Morton*, 527 F.2d 486, 488 (9th Cir. 1975).

¹⁸ FWS comments on the proposed Little Snake Field Office RMP at <http://rockymountainwild.org/site/wp-content/uploads/FWS-Comments.pdf>

Submitting a leasing application vests no rights to the applicant or potential bidders. The BLM retains the authority not to lease. "The filing of an application which has been accepted does not give any right to lease, or generate a legal interest which reduces or restricts the discretion vested in the secretary whether or not to issue leases for the lands involved." *Duesing v. Udall*, 350 F.2d 748, 750-51 (D.C. Cir. 1965), *cert. den.* 383 U.S. 912 (1966); *see also Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1230 (9th Cir. 1988); *Pease v. Udall*, 332 F.2d 62, 63 (9th Cir. 1964); *Geosearch v. Andrus*, 508 F. Supp. 839, 842 (D.C. Wyo. 1981).

The arguments set forth in detail above demonstrate that exercise of the discretion not to lease the protested parcels is appropriate and necessary. BLM must withdraw the protested parcels from the lease sale until BLM has met its legal obligations to conduct an adequate NEPA analysis by meeting all the requirements outlined in this protest, upheld the requirements of the Endangered Species Act, and met the requirements of all Instructional Memorandum and other BLM regulations is a proper exercise of BLM's discretion under the MLA. The BLM has no legal obligation to lease the protested parcels and is required to withdraw them until the agencies have complied with the applicable law.

IX. Conclusion & Request for Relief

The Protesting Parties therefore requests that the BLM withdraw the protested parcels from the May 2012 lease sale.

Sincerely,


MATTHEW SANDLER

Staff Attorney
Rocky Mountain Wild
1536 Wynkoop St. Suite 303
Denver, CO 80202
Tel: (303) 546-0214 ext. 1
Email: matt@rockymountainwild.org

On behalf of:

Alan Apt
RMC-Sierra Club
Wilderness Chair

Christine Canaly, Director
San Luis Valley Ecosystem Council
P.O. Box 223
Alamosa, CO 81101
(719) 589-1518 (office)

Attachments:

Attachment 1: RMW GIS Screen

Attachment 2: Letter to Secretary Re: Colorado's Resource Management Plans and BLM's Greater Sage-Grouse National Planning Process

Attachment 3: Colorado BLM's Implementation of Instruction Memorandum 2012-043— Greater Sage-Grouse Interim Management Policies and Procedures

Attachment 4a,b,c: Map of BLM Colorado Lease Sale May 2012 Impact On Greater Sage-Grouse

Attachment 5: BLM Colorado May 2012 Lease Sale parcels and Existing Leased Parcels

Parcel Serial Number	Original Parcel Acres	BLM Field Office	Species/Habitat Value	Acres Habitat Affected
COC75297	638	WHITE RIVER	Citizens Proposed Wilderness 2009	4
COC75297	638	WHITE RIVER	Citizens Proposed Wilderness SRCA 2010	1
COC75297	638	WHITE RIVER	Wildland Network Design Core Heart of the West - Wild Utah update	638
COC75297	638	WHITE RIVER	Greater Sage-grouse Historic Habitat CPW 2011	638
COC75297	638	WHITE RIVER	Greater Sage-grouse Overall Range CPW 2011	115
COC75297	638	WHITE RIVER	Greater Sage-grouse Winter Range CPW 2011	115
COC75297	638	WHITE RIVER	Master Lease Planning Area BLM CO TWS/CWF/RMW 2011	638
COC75297	638	WHITE RIVER	Mule Deer Migration Corridors CPW 2011	638
COC75297	638	WHITE RIVER	Mule Deer Winter Concentration CPW 2011	579
COC75297	638	WHITE RIVER	Networks of Conservation Areas L3 (External) CNHP 2010	638
COC75297	638	WHITE RIVER	Riparian Landcover GAP	71
COC75297	638	WHITE RIVER	American Wigeon Habitat Modeled SWREGAP	3
COC75297	638	WHITE RIVER	Black Bear Overall Range CPW 2011	638
COC75297	638	WHITE RIVER	Elk Overall Range CPW 2011	638
COC75297	638	WHITE RIVER	Elk Summer Range CPW 2011	67
COC75297	638	WHITE RIVER	Elk Winter Range CPW 2011	638
COC75297	638	WHITE RIVER	Mallard Habitat Modeled SWREGAP	3
COC75297	638	WHITE RIVER	Mountain Lion Overall Range CPW 2011	638
COC75297	638	WHITE RIVER	Mule Deer Migration Patterns CPW 2011	32
COC75297	638	WHITE RIVER	Mule Deer Overall Range CPW 2011	638
COC75297	638	WHITE RIVER	Mule Deer Summer Range CPW 2011	217
COC75297	638	WHITE RIVER	Mule Deer Winter Range CPW 2011	638
COC75297	638	WHITE RIVER	Northern Leopard Frog Habitat Modeled SWREGAP	3
COC75297	638	WHITE RIVER	Northern Pintail Habitat Modeled SWREGAP	3
COC75297	638	WHITE RIVER	River Otter Habitat Modeled SWREGAP	638
COC75297	638	WHITE RIVER	Wolf Habitat Modeled SWREGAP	638
COC75298	1,677	WHITE RIVER	Wildland Network Design Core Heart of the West - Wild Utah update	1,677
COC75298	1,677	WHITE RIVER	Greater Sage-grouse Historic Habitat CPW 2011	1,677
COC75298	1,677	WHITE RIVER	Greater Sage-grouse Overall Range CPW 2011	882
COC75298	1,677	WHITE RIVER	Greater Sage-grouse Winter Range CPW 2011	882
COC75298	1,677	WHITE RIVER	Master Lease Planning Area BLM CO TWS/CWF/RMW 2011	1,676
COC75298	1,677	WHITE RIVER	Mule Deer Critical Winter Range CPW 2011	167
COC75298	1,677	WHITE RIVER	Mule Deer Migration Corridors CPW 2011	1,014
COC75298	1,677	WHITE RIVER	Mule Deer Winter Concentration CPW 2011	1,677
COC75298	1,677	WHITE RIVER	Riparian Landcover GAP	348
COC75298	1,677	WHITE RIVER	Black Bear Overall Range CPW 2011	1,677
COC75298	1,677	WHITE RIVER	Elk Overall Range CPW 2011	1,677
COC75298	1,677	WHITE RIVER	Elk Winter Range CPW 2011	1,677
COC75298	1,677	WHITE RIVER	Mallard Habitat Modeled SWREGAP	-

COC75298	1,677	WHITE RIVER	Mountain Lion Overall Range CPW 2011	1,677
COC75298	1,677	WHITE RIVER	Mule Deer Overall Range CPW 2011	1,677
COC75298	1,677	WHITE RIVER	Mule Deer Winter Range CPW 2011	1,677
COC75298	1,677	WHITE RIVER	River Otter Habitat Modeled SWREGAP	1,677
COC75298	1,677	WHITE RIVER	Wolf Habitat Modeled SWREGAP	1,677
COC75299	455	WHITE RIVER	Citizens Proposed Wilderness SRCA 2010	-
COC75299	455	WHITE RIVER	Wildland Network Design Core Heart of the West - Wild Utah update	455
COC75299	455	WHITE RIVER	Greater Sage-grouse Historic Habitat CPW 2011	455
COC75299	455	WHITE RIVER	Greater Sage-grouse Overall Range CPW 2011	453
COC75299	455	WHITE RIVER	Greater Sage-grouse Winter Range CPW 2011	453
COC75299	455	WHITE RIVER	Master Lease Planning Area BLM CO TWS/CWF/RMW 2011	455
COC75299	455	WHITE RIVER	Mule Deer Migration Corridors CPW 2011	455
COC75299	455	WHITE RIVER	Mule Deer Winter Concentration CPW 2011	455
COC75299	455	WHITE RIVER	Networks of Conservation Areas L3 (External) CNHP 2010	7
COC75299	455	WHITE RIVER	Riparian Landcover GAP	26
COC75299	455	WHITE RIVER	American Wigeon Habitat Modeled SWREGAP	8
COC75299	455	WHITE RIVER	Black Bear Overall Range CPW 2011	455
COC75299	455	WHITE RIVER	Elk Overall Range CPW 2011	455
COC75299	455	WHITE RIVER	Elk Winter Range CPW 2011	455
COC75299	455	WHITE RIVER	Mallard Habitat Modeled SWREGAP	11
COC75299	455	WHITE RIVER	Mountain Lion Overall Range CPW 2011	455
COC75299	455	WHITE RIVER	Mule Deer Migration Patterns CPW 2011	5
COC75299	455	WHITE RIVER	Mule Deer Overall Range CPW 2011	455
COC75299	455	WHITE RIVER	Mule Deer Winter Range CPW 2011	455
COC75299	455	WHITE RIVER	Northern Pintail Habitat Modeled SWREGAP	8
COC75299	455	WHITE RIVER	River Otter Habitat Modeled SWREGAP	455
COC75299	455	WHITE RIVER	Wolf Habitat Modeled SWREGAP	455
COC75302	271	WHITE RIVER	Wildland Network Design Core Heart of the West - Wild Utah update	271
COC75302	271	WHITE RIVER	Greater Sage-grouse Historic Habitat CPW 2011	271
COC75302	271	WHITE RIVER	Greater Sage-grouse Overall Range CPW 2011	271
COC75302	271	WHITE RIVER	Greater Sage-grouse Winter Range CPW 2011	271
COC75302	271	WHITE RIVER	Master Lease Planning Area BLM CO TWS/CWF/RMW 2011	271
COC75302	271	WHITE RIVER	Mule Deer Critical Winter Range CPW 2011	141
COC75302	271	WHITE RIVER	Mule Deer Migration Corridors CPW 2011	220
COC75302	271	WHITE RIVER	Mule Deer Winter Concentration CPW 2011	271
COC75302	271	WHITE RIVER	Riparian Landcover GAP	6
COC75302	271	WHITE RIVER	Black Bear Overall Range CPW 2011	271
COC75302	271	WHITE RIVER	Elk Overall Range CPW 2011	271
COC75302	271	WHITE RIVER	Elk Winter Range CPW 2011	271
COC75302	271	WHITE RIVER	Mountain Lion Overall Range CPW 2011	271
COC75302	271	WHITE RIVER	Mule Deer Overall Range CPW 2011	271
COC75302	271	WHITE RIVER	Mule Deer Winter Range CPW 2011	271

COC75302	271	WHITE RIVER	River Otter Habitat Modeled SWREGAP	271
COC75302	271	WHITE RIVER	Wolf Habitat Modeled SWREGAP	271
COC75304	160	WHITE RIVER	Wildland Network Design Core Heart of the West - Wild Utah update	160
COC75304	160	WHITE RIVER	Greater Sage-grouse Historic Habitat CPW 2011	160
COC75304	160	WHITE RIVER	Greater Sage-grouse Overall Range CPW 2011	160
COC75304	160	WHITE RIVER	Greater Sage-grouse Winter Range CPW 2011	160
COC75304	160	WHITE RIVER	Master Lease Planning Area BLM CO TWS/CWF/RMW 2011	160
COC75304	160	WHITE RIVER	Mule Deer Migration Corridors CPW 2011	160
COC75304	160	WHITE RIVER	Mule Deer Winter Concentration CPW 2011	160
COC75304	160	WHITE RIVER	Riparian Landcover GAP	21
COC75304	160	WHITE RIVER	Black Bear Overall Range CPW 2011	160
COC75304	160	WHITE RIVER	Elk Overall Range CPW 2011	160
COC75304	160	WHITE RIVER	Elk Winter Range CPW 2011	160
COC75304	160	WHITE RIVER	Mountain Lion Overall Range CPW 2011	160
COC75304	160	WHITE RIVER	Mule Deer Overall Range CPW 2011	160
COC75304	160	WHITE RIVER	Mule Deer Winter Range CPW 2011	160
COC75304	160	WHITE RIVER	River Otter Habitat Modeled SWREGAP	160
COC75304	160	WHITE RIVER	Wolf Habitat Modeled SWREGAP	160
COC75307	2,562	WHITE RIVER	White-tailed Praire-dog Colony Active CDOW	21
COC75307	2,562	WHITE RIVER	Greater Sage-grouse Historic Habitat CPW 2011	2,562
COC75307	2,562	WHITE RIVER	Greater Sage-grouse Overall Range CPW 2011	148
COC75307	2,562	WHITE RIVER	Master Lease Planning Area BLM CO TWS/CWF/RMW 2011	2,562
COC75307	2,562	WHITE RIVER	Mule Deer Critical Winter Range CPW 2011	2,562
COC75307	2,562	WHITE RIVER	Mule Deer Severe Winter Range CPW 2011	2,479
COC75307	2,562	WHITE RIVER	Mule Deer Winter Concentration CPW 2011	2,562
COC75307	2,562	WHITE RIVER	Riparian Landcover GAP	583
COC75307	2,562	WHITE RIVER	White-tailed Prairie Dog Overall Range CPW 2011	1,516
COC75307	2,562	WHITE RIVER	Black Bear Overall Range CPW 2011	361
COC75307	2,562	WHITE RIVER	Elk Overall Range CPW 2011	2,562
COC75307	2,562	WHITE RIVER	Elk Resident Population Area CPW 2011	2,562
COC75307	2,562	WHITE RIVER	Elk Winter Range CPW 2011	2,562
COC75307	2,562	WHITE RIVER	Mountain Lion Overall Range CPW 2011	2,562
COC75307	2,562	WHITE RIVER	Mule Deer Overall Range CPW 2011	2,562
COC75307	2,562	WHITE RIVER	Mule Deer Winter Range CPW 2011	2,562
COC75307	2,562	WHITE RIVER	River Otter Habitat Modeled SWREGAP	637
COC75307	2,562	WHITE RIVER	Wolf Habitat Modeled SWREGAP	2,562
COC75312	40	LITTLE SNAKE	Aquatic Designated Cutthroat Trout Habitat COGCC 2008	7
COC75312	40	LITTLE SNAKE	Bald Eagle Winter Forage CPW 2011	40
COC75312	40	LITTLE SNAKE	Bald Eagle Winter Range CPW 2011	40
COC75312	40	LITTLE SNAKE	Columbia Sharp-tailed Grouse Winter Range CPW 2011	-
COC75312	40	LITTLE SNAKE	Greater Sage-grouse Core: Portion of 100% not in 75% Core Doherty Audubon	40

COC75312	40	LITTLE SNAKE	Greater Sage-grouse Lek Sites 4 Mile Buffer COGCC 2008	40
COC75312	40	LITTLE SNAKE	Greater Sage-grouse Leks 4 Mile Buffer TWS	40
COC75312	40	LITTLE SNAKE	Greater Sage-grouse Production Area CPW 2011	40
COC75312	40	LITTLE SNAKE	Wildland Network Design Core Heart of the West - Wild Utah update	40
COC75312	40	LITTLE SNAKE	Colorado River Cutthroat Trout Watershed CDOW 2010	40
COC75312	40	LITTLE SNAKE	Columbian Sharp-tailed Grouse Overall Range CPW 2011	40
COC75312	40	LITTLE SNAKE	Ecoregion Portfolio TNC 2001	40
COC75312	40	LITTLE SNAKE	Elk Linkage Modeled SREP/CNE 2009	40
COC75312	40	LITTLE SNAKE	Elk Winter Concentration Area CPW 2011	40
COC75312	40	LITTLE SNAKE	Greater Sage-grouse Brood Area CPW 2011	40
COC75312	40	LITTLE SNAKE	Greater Sage-grouse Historic Habitat CPW 2011	40
COC75312	40	LITTLE SNAKE	Greater Sage-grouse Medium Priority Habitat LSFO BLM 2007	40
COC75312	40	LITTLE SNAKE	Greater Sage-grouse Overall Range CPW 2011	40
COC75312	40	LITTLE SNAKE	Greater Sage-grouse Winter Range CPW 2011	40
COC75312	40	LITTLE SNAKE	Mule Deer Critical Winter Range CPW 2011	40
COC75312	40	LITTLE SNAKE	Mule Deer Linkage Modeled SREP/CNE 2009	22
COC75312	40	LITTLE SNAKE	Mule Deer Winter Concentration CPW 2011	40
COC75312	40	LITTLE SNAKE	Black Bear Overall Range CPW 2011	40
COC75312	40	LITTLE SNAKE	Elk Overall Range CPW 2011	40
COC75312	40	LITTLE SNAKE	Elk Summer Range CPW 2011	40
COC75312	40	LITTLE SNAKE	Elk Winter Range CPW 2011	40
COC75312	40	LITTLE SNAKE	Mountain Lion Overall Range CPW 2011	40
COC75312	40	LITTLE SNAKE	Mule Deer Overall Range CPW 2011	40
COC75312	40	LITTLE SNAKE	Mule Deer Summer Range CPW 2011	40
COC75312	40	LITTLE SNAKE	Mule Deer Winter Range CPW 2011	40
COC75312	40	LITTLE SNAKE	Wolf Habitat Modeled SWREGAP	40
COC75313	1,199	LITTLE SNAKE	Aquatic Designated Cutthroat Trout Habitat COGCC 2008	338
COC75313	1,199	LITTLE SNAKE	Bald Eagle Winter Forage CPW 2011	1,199
COC75313	1,199	LITTLE SNAKE	Bald Eagle Winter Range CPW 2011	1,199
COC75313	1,199	LITTLE SNAKE	Citizens' Proposed BLM Areas of Critical Environmental Concern White River Field Office CNE 2007	1
COC75313	1,199	LITTLE SNAKE	Columbia Sharp-tailed Grouse Winter Range CPW 2011	744
COC75313	1,199	LITTLE SNAKE	Greater Sage-grouse Lek Sites 4 Mile Buffer COGCC 2008	1,199
COC75313	1,199	LITTLE SNAKE	Greater Sage-grouse Leks 4 Mile Buffer TWS	1,199
COC75313	1,199	LITTLE SNAKE	Greater Sage-grouse Production Area CPW 2011	95
COC75313	1,199	LITTLE SNAKE	Wildland Network Design Core Heart of the West - Wild Utah update	1,199
COC75313	1,199	LITTLE SNAKE	Colorado River Cutthroat Trout Watershed CDOW 2010	1,199
COC75313	1,199	LITTLE SNAKE	Columbian Sharp-tailed Grouse Overall Range CPW 2011	1,199
COC75313	1,199	LITTLE SNAKE	Ecoregion Portfolio TNC 2001	1,199

COC75313	1,199	LITTLE SNAKE	Golden Eagle Active Nest Sites COGCC 2008	79
COC75313	1,199	LITTLE SNAKE	Greater Sage-grouse Historic Habitat CPW 2011	1,199
COC75313	1,199	LITTLE SNAKE	Greater Sage-grouse Medium Priority Habitat LSFO BLM 2007	1,197
COC75313	1,199	LITTLE SNAKE	Greater Sage-grouse Overall Range CPW 2011	95
COC75313	1,199	LITTLE SNAKE	Mule Deer Critical Winter Range CPW 2011	121
COC75313	1,199	LITTLE SNAKE	Mule Deer Winter Concentration CPW 2011	121
COC75313	1,199	LITTLE SNAKE	Riparian Landcover GAP	86
COC75313	1,199	LITTLE SNAKE	Black Bear Overall Range CPW 2011	1,199
COC75313	1,199	LITTLE SNAKE	Elk Overall Range CPW 2011	1,199
COC75313	1,199	LITTLE SNAKE	Elk Summer Range CPW 2011	1,199
COC75313	1,199	LITTLE SNAKE	Elk Winter Range CPW 2011	1,199
COC75313	1,199	LITTLE SNAKE	Mountain Lion Overall Range CPW 2011	1,199
COC75313	1,199	LITTLE SNAKE	Mule Deer Overall Range CPW 2011	1,199
COC75313	1,199	LITTLE SNAKE	Mule Deer Summer Range CPW 2011	1,199
COC75313	1,199	LITTLE SNAKE	Mule Deer Winter Range CPW 2011	138
COC75313	1,199	LITTLE SNAKE	River Otter Habitat Modeled SWREGAP	216
COC75313	1,199	LITTLE SNAKE	Wolf Habitat Modeled SWREGAP	1,199
COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Aquatic Designated Cutthroat Trout Habitat COGCC 2008	419
COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Bald Eagle Winter Forage CPW 2011	2,329
COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Bald Eagle Winter Range CPW 2011	2,329
COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Columbia Sharp-tailed Grouse Winter Range CPW 2011	34
COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Wildland Network Design Core Heart of the West - Wild Utah update	2,329
COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Colorado River Cutthroat Trout Watershed CDOW 2010	2,329
COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Columbian Sharp-tailed Grouse Overall Range CPW 2011	2,329
COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Ecoregion Portfolio TNC 2001	1,771
COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Elk Linkage Modeled SREP/CNE 2009	865

COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Elk Production Area CPW 2011	33
COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Greater Sage-grouse Brood Area CPW 2011	1,785
COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Greater Sage-grouse Historic Habitat CPW 2011	2,329
COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Greater Sage-grouse Medium Priority Habitat LSFO BLM 2007	-
COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Greater Sage-grouse Overall Range CPW 2011	1,787
COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Greater Sage-grouse Winter Range CPW 2011	939
COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Mule Deer Linkage Modeled SREP/CNE 2009	2,329
COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Riparian Landcover GAP	246
COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	American Wigeon Habitat Modeled SWREGAP	1
COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Black Bear Overall Range CPW 2011	2,329
COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Elk Migration Patterns CPW 2011	13
COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Elk Overall Range CPW 2011	2,329
COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Elk Summer Range CPW 2011	2,329
COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Elk Winter Range CPW 2011	2,329
COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Mallard Habitat Modeled SWREGAP	20

COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Mountain Lion Overall Range CPW 2011	2,329
COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Mule Deer Overall Range CPW 2011	2,329
COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Mule Deer Summer Range CPW 2011	2,329
COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Northern Pintail Habitat Modeled SWREGAP	1
COC75316	2,329	LITTLE SNAKE/ WHITE RIVER	Wolf Habitat Modeled SWREGAP	2,329
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Aquatic Designated Cutthroat Trout Habitat COGCC 2008	444
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Bald Eagle Winter Forage CPW 2011	2,128
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Bald Eagle Winter Range CPW 2011	2,128
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Colorado State Wildlife Areas CDOW 2010	14
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Wildland Network Design Core Heart of the West - Wild Utah update	2,128
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Colorado River Cutthroat Trout Watershed CDOW 2010	2,128
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Columbian Sharp-tailed Grouse Overall Range CPW 2011	2,128
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Ecoregion Portfolio TNC 2001	115
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Elk Linkage Modeled SREP/CNE 2009	1,857
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Elk Production Area CPW 2011	1,309

COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Greater Sage-grouse Brood Area CPW 2011	398
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Greater Sage-grouse Historic Habitat CPW 2011	2,128
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Greater Sage-grouse Overall Range CPW 2011	398
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Greater Sage-grouse Winter Range CPW 2011	65
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Mule Deer Linkage Modeled SREP/CNE 2009	2,128
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Riparian Landcover GAP	274
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Wildland Network Design Low Use SREP	34
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	American Wigeon Habitat Modeled SWREGAP	32
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Black Bear Overall Range CPW 2011	2,128
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Elk Migration Patterns CPW 2011	50
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Elk Overall Range CPW 2011	2,128
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Elk Summer Range CPW 2011	2,128
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Elk Winter Range CPW 2011	2,128
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Mallard Habitat Modeled SWREGAP	42
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Mountain Lion Overall Range CPW 2011	2,128

COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Mule Deer Overall Range CPW 2011	2,128
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Mule Deer Summer Range CPW 2011	2,128
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Northern Leopard Frog Habitat Modeled SWREGAP	1
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Northern Pintail Habitat Modeled SWREGAP	32
COC75317	2,128	LITTLE SNAKE/ WHITE RIVER	Wolf Habitat Modeled SWREGAP	2,128
COC75318	152	LITTLE SNAKE	Aquatic Designated Cutthroat Trout Habitat COGCC 2008	2
COC75318	152	LITTLE SNAKE	Bald Eagle Winter Forage CPW 2011	152
COC75318	152	LITTLE SNAKE	Bald Eagle Winter Range CPW 2011	152
COC75318	152	LITTLE SNAKE	Columbia Sharp-tailed Grouse Winter Range CPW 2011	152
COC75318	152	LITTLE SNAKE	Columbian Sharp-tailed Grouse Production Area CPW 2011	99
COC75318	152	LITTLE SNAKE	Greater Sage-grouse Core: Portion of 100% not in 75% Core Doherty Audubon	152
COC75318	152	LITTLE SNAKE	Greater Sage-grouse Lek Sites 4 Mile Buffer COGCC 2008	152
COC75318	152	LITTLE SNAKE	Greater Sage-grouse Leks 4 Mile Buffer TWS	106
COC75318	152	LITTLE SNAKE	Greater Sage-grouse Production Area CPW 2011	3
COC75318	152	LITTLE SNAKE	Wildland Network Design Core Heart of the West - Wild Utah update	152
COC75318	152	LITTLE SNAKE	Colorado River Cutthroat Trout Watershed CDOW 2010	152
COC75318	152	LITTLE SNAKE	Columbian Sharp-tailed Grouse Overall Range CPW 2011	152
COC75318	152	LITTLE SNAKE	Ecoregion Portfolio TNC 2001	152
COC75318	152	LITTLE SNAKE	Elk Linkage Modeled SREP/CNE 2009	152
COC75318	152	LITTLE SNAKE	Elk Winter Concentration Area CPW 2011	106
COC75318	152	LITTLE SNAKE	Greater Sage-grouse Brood Area CPW 2011	135
COC75318	152	LITTLE SNAKE	Greater Sage-grouse Historic Habitat CPW 2011	152
COC75318	152	LITTLE SNAKE	Greater Sage-grouse Medium Priority Habitat LSFO BLM 2007	135
COC75318	152	LITTLE SNAKE	Greater Sage-grouse Overall Range CPW 2011	152
COC75318	152	LITTLE SNAKE	Greater Sage-grouse Winter Range CPW 2011	135
COC75318	152	LITTLE SNAKE	Mule Deer Linkage Modeled SREP/CNE 2009	152
COC75318	152	LITTLE SNAKE	Potential Conservation Areas L4 (External) Lower Biodiversity Significance CNHP 2010	36
COC75318	152	LITTLE SNAKE	Riparian Landcover GAP	11
COC75318	152	LITTLE SNAKE	Black Bear Overall Range CPW 2011	152

COC75318	152	LITTLE SNAKE	Elk Overall Range CPW 2011	152
COC75318	152	LITTLE SNAKE	Elk Summer Range CPW 2011	152
COC75318	152	LITTLE SNAKE	Elk Winter Range CPW 2011	152
COC75318	152	LITTLE SNAKE	Mountain Lion Overall Range CPW 2011	152
COC75318	152	LITTLE SNAKE	Mule Deer Overall Range CPW 2011	152
COC75318	152	LITTLE SNAKE	Mule Deer Summer Range CPW 2011	152
COC75318	152	LITTLE SNAKE	Wolf Habitat Modeled SWREGAP	152
COC75322	200	LITTLE SNAKE	Bald Eagle Winter Forage CPW 2011	200
COC75322	200	LITTLE SNAKE	Bald Eagle Winter Range CPW 2011	200
COC75322	200	LITTLE SNAKE	Greater Sage-grouse Core: Portion of 75% not in 50% Core Doherty Audubon	160
COC75322	200	LITTLE SNAKE	Greater Sage-grouse High Priority Habitat LSFO BLM 2007	40
COC75322	200	LITTLE SNAKE	Greater Sage-grouse Lek Sites 4 Mile Buffer COGCC 2008	191
COC75322	200	LITTLE SNAKE	Greater Sage-grouse Leks 4 Mile Buffer TWS	80
COC75322	200	LITTLE SNAKE	Greater Sage-grouse Potential Core Areas CDOW	40
COC75322	200	LITTLE SNAKE	Greater Sage-grouse Production Area CPW 2011	40
COC75322	200	LITTLE SNAKE	Elk Winter Concentration Area CPW 2011	200
COC75322	200	LITTLE SNAKE	Greater Sage-grouse Historic Habitat CPW 2011	200
COC75322	200	LITTLE SNAKE	Greater Sage-grouse Medium Priority Habitat LSFO BLM 2007	39
COC75322	200	LITTLE SNAKE	Greater Sage-grouse Overall Range CPW 2011	130
COC75322	200	LITTLE SNAKE	White-tailed Prairie Dog Overall Range CPW 2011	9
COC75322	200	LITTLE SNAKE	Black Bear Overall Range CPW 2011	176
COC75322	200	LITTLE SNAKE	Elk Overall Range CPW 2011	200
COC75322	200	LITTLE SNAKE	Elk Summer Range CPW 2011	200
COC75322	200	LITTLE SNAKE	Elk Winter Range CPW 2011	200
COC75322	200	LITTLE SNAKE	Mountain Lion Overall Range CPW 2011	200
COC75322	200	LITTLE SNAKE	Mule Deer Overall Range CPW 2011	200
COC75322	200	LITTLE SNAKE	Mule Deer Summer Range CPW 2011	200
COC75322	200	LITTLE SNAKE	Mule Deer Winter Range CPW 2011	40
COC75322	200	LITTLE SNAKE	Wolf Habitat Modeled SWREGAP	200
COC75327	1,290	WHITE RIVER	Area of Critical Environmental Concern BLM 2006	4
COC75327	1,290	WHITE RIVER	Bald Eagle Roost Sites CPW 2011	-
COC75327	1,290	WHITE RIVER	Bald Eagle Summer Forage CPW 2011	374
COC75327	1,290	WHITE RIVER	Bald Eagle Winter Forage CPW 2011	379
COC75327	1,290	WHITE RIVER	Bald Eagle Winter Range CPW 2011	379
COC75327	1,290	WHITE RIVER	Colorado Pikeminnow Designated Critical Habitat FWS 1967	1
COC75327	1,290	WHITE RIVER	Wildland Network Design Core Heart of the West - Wild Utah update	1,049
COC75327	1,290	WHITE RIVER	Bald Eagle Winter Night Roost Sites COGCC 2008	-
COC75327	1,290	WHITE RIVER	Greater Sage-grouse Historic Habitat CPW 2011	1,290
COC75327	1,290	WHITE RIVER	Greater Sage-grouse Overall Range CPW 2011	297
COC75327	1,290	WHITE RIVER	Greater Sage-grouse Severe Winter Range CPW 2011	204
COC75327	1,290	WHITE RIVER	Greater Sage-grouse Winter Range CPW 2011	204

COC75327	1,290	WHITE RIVER	Master Lease Planning Area BLM CO TWS/CWF/RMW 2011	1,290
COC75327	1,290	WHITE RIVER	Mule Deer Critical Winter Range CPW 2011	1,209
COC75327	1,290	WHITE RIVER	Mule Deer Linkage Modeled SREP/CNE 2009	731
COC75327	1,290	WHITE RIVER	Mule Deer Severe Winter Range CPW 2011	1,159
COC75327	1,290	WHITE RIVER	Mule Deer Winter Concentration CPW 2011	1,209
COC75327	1,290	WHITE RIVER	Networks of Conservation Areas L3 (External) CNHP 2010	311
COC75327	1,290	WHITE RIVER	Riparian Landcover GAP	215
COC75327	1,290	WHITE RIVER	River Otter Overall Range CPW 2011	3
COC75327	1,290	WHITE RIVER	American Wigeon Habitat Modeled SWREGAP	-
COC75327	1,290	WHITE RIVER	Elk Overall Range CPW 2011	1,290
COC75327	1,290	WHITE RIVER	Elk Winter Range CPW 2011	1,290
COC75327	1,290	WHITE RIVER	Geese Foraging Area CPW 2011	42
COC75327	1,290	WHITE RIVER	Geese Production Area CPW 2011	42
COC75327	1,290	WHITE RIVER	Geese Winter Range CPW 2011	42
COC75327	1,290	WHITE RIVER	Great Blue Heron Foraging Area CPW 2011	315
COC75327	1,290	WHITE RIVER	Mallard Habitat Modeled SWREGAP	3
COC75327	1,290	WHITE RIVER	Mountain Lion Overall Range CPW 2011	1,290
COC75327	1,290	WHITE RIVER	Mule Deer Highway Crossing CPW 2011	32
COC75327	1,290	WHITE RIVER	Mule Deer Overall Range CPW 2011	1,290
COC75327	1,290	WHITE RIVER	Mule Deer Winter Range CPW 2011	1,290
COC75327	1,290	WHITE RIVER	Northern Leopard Frog Habitat Modeled SWREGAP	-
COC75327	1,290	WHITE RIVER	Northern Pintail Habitat Modeled SWREGAP	-
COC75327	1,290	WHITE RIVER	River Otter Habitat Modeled SWREGAP	152
COC75327	1,290	WHITE RIVER	Wolf Habitat Modeled SWREGAP	1,290
COC75328	2,537	WHITE RIVER	Bald Eagle Inactive Nestsite CDOW 2009	13
COC75328	2,537	WHITE RIVER	Bald Eagle Nest Sites CPW 2011	13
COC75328	2,537	WHITE RIVER	Bald Eagle Winter Forage CPW 2011	2,436
COC75328	2,537	WHITE RIVER	Bald Eagle Winter Range CPW 2011	2,501
COC75328	2,537	WHITE RIVER	Black-footed Ferret Release Sites COGCC 2008	161
COC75328	2,537	WHITE RIVER	Citizens' Proposed BLM Areas of Critical Environmental Concern White River Field Office CNE 2007	171
COC75328	2,537	WHITE RIVER	Citizens' Proposed BLM Areas of Critical Environmental Concern White River Field Office CNE 2007	1
COC75328	2,537	WHITE RIVER	Citizens Proposed Wilderness 2009	1,896
COC75328	2,537	WHITE RIVER	Citizens Proposed Wilderness SRCA 2010	1,896
COC75328	2,537	WHITE RIVER	Greater Sage-grouse Core: Portion of 100% not in 75% Core Doherty Audubon	21
COC75328	2,537	WHITE RIVER	Greater Sage-grouse Lek Sites 4 Mile Buffer COGCC 2008	587
COC75328	2,537	WHITE RIVER	Greater Sage-grouse Leks 4 Mile Buffer TWS	262
COC75328	2,537	WHITE RIVER	Wildland Network Design Core Heart of the West - Wild Utah update	2,537
COC75328	2,537	WHITE RIVER	Elk Severe Winter Range CPW 2011	1,917
COC75328	2,537	WHITE RIVER	Elk Winter Concentration Area CPW 2011	2,158
COC75328	2,537	WHITE RIVER	Golden Eagle Active Nest Sites COGCC 2008	7

COC75328	2,537	WHITE RIVER	Greater Sage-grouse Historic Habitat CPW 2011	2,537
COC75328	2,537	WHITE RIVER	Master Lease Planning Area BLM CO TWS/CWF/RMW 2011	2,537
COC75328	2,537	WHITE RIVER	Mule Deer Critical Winter Range CPW 2011	807
COC75328	2,537	WHITE RIVER	Mule Deer Linkage Modeled SREP/CNE 2009	1,083
COC75328	2,537	WHITE RIVER	Mule Deer Severe Winter Range CPW 2011	794
COC75328	2,537	WHITE RIVER	Mule Deer Winter Concentration CPW 2011	807
COC75328	2,537	WHITE RIVER	Riparian Landcover GAP	316
COC75328	2,537	WHITE RIVER	White-tailed Prairie Dog Overall Range CPW 2011	148
COC75328	2,537	WHITE RIVER	Elk Migration Patterns CPW 2011	27
COC75328	2,537	WHITE RIVER	Elk Overall Range CPW 2011	2,537
COC75328	2,537	WHITE RIVER	Elk Winter Range CPW 2011	2,537
COC75328	2,537	WHITE RIVER	Mountain Lion Overall Range CPW 2011	2,537
COC75328	2,537	WHITE RIVER	Mule Deer Overall Range CPW 2011	2,537
COC75328	2,537	WHITE RIVER	Mule Deer Summer Range CPW 2011	2,421
COC75328	2,537	WHITE RIVER	Mule Deer Winter Range CPW 2011	2,537
COC75328	2,537	WHITE RIVER	Wolf Habitat Modeled SWREGAP	2,537
COC75330	2,403	WHITE RIVER	Bald Eagle Winter Forage CPW 2011	2,403
COC75330	2,403	WHITE RIVER	Bald Eagle Winter Range CPW 2011	2,403
COC75330	2,403	WHITE RIVER	Black-footed Ferret Release Sites COGCC 2008	12
COC75330	2,403	WHITE RIVER	Citizens' Proposed BLM Areas of Critical Environmental Concern White River Field Office CNE 2007	99
COC75330	2,403	WHITE RIVER	Citizens' Proposed BLM Areas of Critical Environmental Concern White River Field Office CNE 2007	24
COC75330	2,403	WHITE RIVER	Citizens Proposed Wilderness 2009	2,349
COC75330	2,403	WHITE RIVER	Citizens Proposed Wilderness SRCA 2010	2,401
COC75330	2,403	WHITE RIVER	Colorado State Wildlife Areas CDOW 2010	-
COC75330	2,403	WHITE RIVER	Ferruginous Hawk Active Nest Sites COGCC 2008	43
COC75330	2,403	WHITE RIVER	Greater Sage-grouse Core: Portion of 100% not in 75% Core Doherty Audubon	90
COC75330	2,403	WHITE RIVER	Greater Sage-grouse Lek Sites 4 Mile Buffer COGCC 2008	742
COC75330	2,403	WHITE RIVER	Greater Sage-grouse Leks 4 Mile Buffer TWS	343
COC75330	2,403	WHITE RIVER	Wildland Network Design Core Heart of the West - Wild Utah update	2,403
COC75330	2,403	WHITE RIVER	Elk Severe Winter Range CPW 2011	561
COC75330	2,403	WHITE RIVER	Elk Winter Concentration Area CPW 2011	2,403
COC75330	2,403	WHITE RIVER	Golden Eagle Active Nest Sites COGCC 2008	38
COC75330	2,403	WHITE RIVER	Greater Sage-grouse Historic Habitat CPW 2011	2,403
COC75330	2,403	WHITE RIVER	Greater Sage-grouse Overall Range CPW 2011	-
COC75330	2,403	WHITE RIVER	Greater Sage-grouse Winter Range CPW 2011	-
COC75330	2,403	WHITE RIVER	Master Lease Planning Area BLM CO TWS/CWF/RMW 2011	2,403
COC75330	2,403	WHITE RIVER	Riparian Landcover GAP	119
COC75330	2,403	WHITE RIVER	White-tailed Prairie Dog Overall Range CPW 2011	4
COC75330	2,403	WHITE RIVER	Elk Migration Patterns CPW 2011	22
COC75330	2,403	WHITE RIVER	Elk Overall Range CPW 2011	2,403

COC75330	2,403	WHITE RIVER	Elk Winter Range CPW 2011	2,403
COC75330	2,403	WHITE RIVER	Mountain Lion Overall Range CPW 2011	2,403
COC75330	2,403	WHITE RIVER	Mule Deer Overall Range CPW 2011	2,403
COC75330	2,403	WHITE RIVER	Mule Deer Summer Range CPW 2011	2,403
COC75330	2,403	WHITE RIVER	Mule Deer Winter Range CPW 2011	2,403
COC75330	2,403	WHITE RIVER	Pronghorn Overall Range CPW 2011	-
COC75330	2,403	WHITE RIVER	Pronghorn Winter Range CPW 2011	-
COC75330	2,403	WHITE RIVER	Wolf Habitat Modeled SWREGAP	2,403

**Rocky Mountain Wild * Colorado Environmental Coalition * The Wilderness Society *
National Wildlife Federation * Audubon Colorado * Wild Earth Guardians**

January 9, 2011

Secretary Ken Salazar
United States Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 200240

Via U.S. Postal Service and e-mail (exsec@ios.doi.gov)

Re: Colorado's Resource Management Plans and BLM's Greater Sage-Grouse National Planning Process

Dear Secretary Salazar:

The undersigned conservation organizations have a long-standing interest in the conservation of the greater sage-grouse in Colorado. We are pleased that the Bureau of Land Management (BLM) is working to amend Resource Management Plans (RMPs) in order to conserve the greater sage-grouse on BLM lands across the West. There is an urgent need for BLM to develop and implement substantive conservation measures between now and 2015, when the U.S. Fish and Wildlife Service (FWS) will again consider whether the greater sage-grouse needs the protection of the Endangered Species Act (ESA).

There are five Resource Management Plans that outline the regulatory framework for sage-grouse conservation on BLM lands in Colorado. The Little Snake Plan was finalized on October 17, 2011. The remaining plans are currently under revision. The Final Little Snake RMP, and the draft RMPs issued through the remaining planning processes to-date, do not contain adequate regulatory mechanisms to conserve greater sage-grouse. Implementation of these plans as they currently stand will increase the need to protect the greater sage-grouse under the Endangered Species Act. It is imperative that sage-grouse conservation measures in all five Colorado RMPs be substantially improved through the national planning process.

The Little Snake Field Office (LSFO) has the distinction of being home to not only the largest greater sage-grouse population in Colorado, but also part of the most important population in the eastern half of the species' range, the Wyoming Basin regional population. Greater sage-grouse habitat in the LSFO includes a small area that supports an especially high abundance of breeding birds per unit area, relative to the entire eastern range of sage-grouse.¹

The final LSFO RMP includes protections for greater sage-grouse that are an improvement over those outlined in any other final RMP to-date in Colorado. However, these measures are far

¹ http://rockymountainwild.org/site/wp-content/uploads/Doherty_2008.pdf

from adequate regulatory mechanisms to conserve this important population, as evidenced by concerns expressed by both state and federal wildlife agencies, referenced throughout this letter.

Major concerns about the proposed LSFO plan include the following:

- 1. The plan does not set any high-priority habitat aside from development.**
- 2. The plan does not adequately protect greater sage-grouse from the impacts of oil and gas development.**
 - a. The plan relies on voluntary measures to protect habitat on existing oil and gas leases.**
 - b. The surface disturbance caps and other measures proposed to limit the impacts of oil and gas development are inadequate.**
- 3. The plan does not include measures to protect greater sage-grouse from impacts of activities other than oil and gas development.**
- 4. Provisions for monitoring and adaptive management are insufficient.**

1. The plan does not set any high-priority habitat aside from development.

The U.S. Fish and Wildlife Service (FWS) and Colorado Parks and Wildlife (CPW)² have both recommended that high priority habitat in the Little Snake Field Office be set-aside from development and managed as protected core areas. FWS comments on the proposed plan state that, "For high priority habitats, we recommend avoiding energy development and similar activities, and instead, managing them as protected core areas."³ CPW further emphasizes this, stating that, "...establishment of large greater sage-grouse refuges ...may ultimately prove to be the only effective means of conserving greater sage-grouse populations in areas of extensive oil and gas development." CPW goes on to recommend that the LSFO preserve options for establishment of future refuges by retaining unleased minerals, and avoiding the re-leasing of minerals in high priority habitats.⁴ The final LSFO plan fails to set-aside high priority sage-grouse habitat from development, or preserve options to set-aside core areas in the future.

2. The plan does not adequately protect greater sage-grouse from the impacts of oil and gas development.

The final RMP proposes to protect large blocks of unfragmented sage-grouse habitat from the impacts of oil and gas development through application of Controlled Surface Use stipulations (CSUs) in high and medium priority sage-grouse habitats.⁵ These CSUs limit oil and gas surface disturbance to 1% in high priority habitat on new leases, 5% in high priority habitat on existing

² Colorado Division of Wildlife was recently re-named and is now Colorado Parks and Wildlife

³ FWS comments on the proposed RMP at <http://rockymountainwild.org/site/wp-content/uploads/FWS-Comments.pdf> (page 4 paragraph 1, *see also* page 2 paragraph 2)

⁴ CPW comments on the draft RMP at http://rockymountainwild.org/site/wp-content/uploads/CPW_Comment_LSFO_DRMP.pdf (page 7 paragraph 6, *see also* pages 5 and 7)

⁵ High priority habitats include core areas and portions of winter range, medium priority habitats include winter range and sage-grouse breeding habitat/areas within a 4 mile radius of leks located outside of core areas. *See* LSFO Final RMP/ROD pg. 2-17.

leases, and 5% in medium priority habitat on both new and existing leases. This will be mandatory on new leases and voluntary on existing leases. Operators on existing leases will be offered exceptions to big game and sage-grouse timing stipulations as an incentive to agree to the voluntary surface disturbance limits. Operators will also be required to submit a Plan of Development with a strategy to keep large blocks of sage-brush undisturbed. Finally, surface occupancy associated with oil and gas activities is prohibited within 0.6 miles of sage-grouse leks on both new and existing leases.⁶ This proposal is unlikely to prevent unacceptable impacts to greater sage-grouse for the reasons outlined below, increasing the likelihood that the species will require the protection of the ESA in 2015.

a. The plan relies on voluntary measures to protect habitat on existing oil and gas leases.

Roughly 56% of the high priority habitat and 46% of the medium priority habitat on BLM lands in the LSFO is under existing leases, which are protected only by *voluntary* 5% surface disturbance caps (See Map 1).^{7,8} There is a risk of unacceptable harm to greater sage-grouse if operators choose not to opt-in to the voluntary 5% surface disturbance caps, particularly in high priority habitat.⁹ There is substantial uncertainty regarding whether operators will opt-in, and the FWS typically does not consider voluntary measures to be adequate regulatory mechanisms that would be sufficient to prevent listing under the Endangered Species Act.

Based on the management guidelines outlined in the proposed RMP, The Wilderness Society's Center for Landscape Analysis (CLA) used GIS spatial technology to model the potential distribution of oil and gas development under the proposed plan, assuming industry would not opt into voluntary surface disturbance restrictions.^{10,11} The findings of this analysis demonstrate the inadequacy of the *voluntary* sage-grouse conservation measures in the LSFO RMP. CLA found that the densest areas of oil and gas development will include the highest priority sage-grouse habitat in the LSFO. In addition, the CLA analysis projects that, under BLM's RMP, if developers do not comply with the *voluntary* surface disturbance limits, there will be 28 active leks with more than 12 well pads within 2 miles, a threshold of development above which the rate of inactivity of leks has been demonstrated to double.¹² Thus, if operators do not opt-in to

⁶ LSFO Final RMP/ROD, pages 2-16 through 2-22, and 2-28 through 2-29

⁷ 56% of the high priority habitat on BLM land within the LSFO is under existing leases (roughly 329,774 acres leased out of 185,786 total acres). Roughly 46% of the medium priority habitat on BLM land within the LSFO is under existing leases (roughly 332,083 acres leased out of roughly 719,175 total acres). Calculations are based on acreage leased as of December 2009.

⁸ <http://rockymountainwild.org/site/wp-content/uploads/existing-leases-in-LSFO-gsg-priority-habitat1.pdf>

⁹ CPW comment letter on the proposed RMP at http://rockymountainwild.org/site/wp-content/uploads/CDOW_Comment_LSFO_RMP.pdf: "Voluntary application of the 5% surface disturbance limitation to sage-grouse core areas, as proposed in the revised draft RMP, enhances the risk that sage-grouse populations will be significantly harmed by future oil and gas development in these areas..." (page 2, paragraph 3)

¹⁰ <http://rockymountainwild.org/site/wp-content/uploads/LSFO-RMP-oil-and-gas-buildout-scenario.pdf>

¹¹ The sage-grouse protections in the final RMP are identical to those in the proposed RMP that were analyzed by CLA.

¹² Recent research in Wyoming showed that the rate of inactivity of leks doubled when there were greater than 12 well pads within 2 miles of the lek (1 well per 640 acres). Further, even when such wells were clustered in a

the voluntary disturbance caps, oil and gas development allowed under the final RMP could result in extirpation or decline of 28 of the roughly 129 active leks within the LSFO, including leks in areas that support some of the highest densities of breeding birds in northwest Colorado (See Map 2).¹³

BLM's rationale for making the disturbance caps voluntary on existing leases, is that a valid existing lease conveys rights of development to the lease holder that prohibit BLM from adding a stipulation to an existing lease after the lease is issued.¹⁴ However, BLM has broad authority and responsibility to add mitigation measures as conditions of approval on existing leases (when supported by scientific analysis), even when such measures are more stringent than the stipulations on the lease.¹⁵ Thus, protections on existing leases should be mandatory.

Finally, FWS is concerned that granting oil and gas operators exceptions from Seasonal Timing Limitations, in exchange for adhering to the surface disturbance caps, may put greater sage-grouse populations at risk.¹⁶

b. The surface disturbance caps and other measures proposed to limit the impacts of oil and gas development are inadequate.

Surface disturbance will be limited to 1% in high priority habitat on new leases, 5% in high priority habitat on existing leases, and 5% in medium priority habitat on both new and existing leases. The surface disturbance caps are mandatory on new leases. However, even if made mandatory on both new and existing leases, 5% surface disturbance caps are inadequate.

Both FWS and CPW are concerned that the application of 5% surface disturbance caps is unlikely to prevent declines. FWS firmly states that, "...the Service believes that the 1 and 5 percent surface disturbance factors may be too high to provide a high likelihood of long-term conservation of these sage-grouse populations. We recommend a disturbance factor closer to 1 percent for medium priority habitats for sage-grouse. For high priority habitats, we recommend avoiding energy development and similar activities and, instead, managing them as protected core areas." CPW warns that "...5% surface disturbance limitations will be inadequate to protect greater sage-grouse core areas from the effects of oil and gas development."¹⁷ Instead, CPW recommends that BLM be more conservative and limit surface disturbance to 1% in high priority habitat.¹⁸

pattern that maintained open areas, leks experienced a 55% decline in abundance. See Doherty 2008 at http://rockymountainwild.org/site/wp-content/uploads/Doherty_2008.pdf

¹³ <http://rockymountainwild.org/site/wp-content/uploads/predicted-well-density-and-gsg-leks1.pdf>

¹⁴ LSFO Final RMP/ROD pg. 2-17

¹⁵ See Yates Petroleum Corporation, 174 IBLA 144 (September 30, 2008); and William P. Maycock, et al., 177 IBLA 1 (March 16, 2009)

¹⁶ Id. at 3 (page 4, paragraph 3)

¹⁷ Id. at 9 (page 2 paragraph 2), see also Id. at 9 (pgs. 3-6)

¹⁸ Id. at 9 (page 2, paragraph 1); Id. at 4 (page 6, paragraph 2)

The stated intent of the 5% surface disturbance cap is to average no more than one oil and gas well per 160 acres within a project area.¹⁹ This translates to roughly 50 wells per 32.2 square kilometers (or 4 wells per square mile), a threshold at which the rate of inactivity of leks was demonstrated to jump by greater than five times in Wyoming oil and gas fields.²⁰ Application of the 5% surface disturbance cap will not prevent well densities from exceeding a threshold that has been demonstrated to compromise sage-grouse populations.

Further, both the 1% and 5% disturbance caps are likely to be ineffective, because they do not apply to all surface disturbances. Oil and gas related ROWs owned by a third party, central facilities, and existing and new disturbance from non-oil and gas related activities do not count towards the surface disturbance limits. In addition, the surface disturbance limits are applied to individual oil and gas leases, many of which are very small, rather than to biologically meaningful units of sage-grouse habitat (e.g. sage-grouse core areas).²¹ This is likely to allow a level of cumulative surface disturbance and energy structure density in high priority sage-grouse habitat that exceeds documented thresholds of tolerance for the species. FWS recommends that disturbance factor threshold approach consider the environmental baseline, existing disturbance, and all other direct, indirect and cumulative impacts, including rights-of-way and other non-oil and gas activities.²²

The plan prohibits surface occupancy within 0.6 miles of leks.²³ While this is an improvement from the 0.25 mile buffer around leks in the original LSFO RMP, which has been repeatedly shown to be inadequate, research suggests that oil and gas development can have significant negative impacts, even when wells are not placed within 0.6 miles of a lek.²⁴ The 0.6 mile buffer will not limit the impacts of oil and gas facilities on leks and nesting habitat, to a level that is compatible with maintaining and increasing the greater sage-grouse population in the LSFO.

3. The plan does not include measures to protect greater sage-grouse from impacts of activities other than oil and gas development.

The final RMP does not include any specific measures to protect greater sage-grouse from the impacts of non-oil and gas related activities (e.g. transmission lines, wind energy developments, mining, etc.), even in high priority sage-grouse habitats. The 0.6 mile lek buffer and surface

¹⁹ LSFO Final RMP/ROD pg. 2-19

²⁰ http://rockymountainwild.org/site/wp-content/uploads/Doherty_2008.pdf

²¹ *Id.* at 4 (page 6, paragraph 4)

²² *Id.* at 3: "Any habitat loss in sage-grouse range, whether we attribute those impacts to oil and gas pads, oil and gas rights-of-way, or recreation projects, is habitat loss for sage-grouse. Rights-of-way, in particular, have the potential to significantly affect sage-grouse populations, habitats, and connectivity. To be effective, the disturbance factor threshold approach should consider the environmental baseline, existing disturbance, and all other direct, indirect, and cumulative impacts. This applies to both existing and new lease development." (page 4, paragraph 4)

²³ The 0.6 mile surface occupancy buffer is mandatory and applies to both new and existing oil and gas leases.

²⁴ *E.g.*, Walker, B.L., D.E. Naugle, and K.E. Doherty. 2007. Greater sage-grouse population response to energy development and habitat loss. *Journal of Wildlife Management* 71:2544-2654; and Holloran, M.J. 2005. Greater sage-grouse (*Centrocercus urophasianus*) population response to natural gas field development in Wyoming. Dissertation, Department of Zoology and Physiology, University of Wyoming, Laramie, Wyoming.

disturbance restrictions apply only to oil and gas development activities. The final RMP includes language stating that BLM *may* hold non-oil and gas related development to a higher standard in high and medium priority habitats. It states that BLM *may* require avoidance or additional mitigation, and that BLM may not approve projects in high and medium priority habitats.²⁵ The FWS comments on the proposed plan suggest that the FWS does not consider this type of language to be an adequate regulatory mechanism, as it does not provide a high degree of certainty regarding what specific measures are likely to be implemented in the future to protect sage-grouse from the likely adverse effects of a variety of potentially harmful activities.²⁶

4. Provisions for monitoring and adaptive management are insufficient.

The proposed plan does not establish an effective monitoring and adaptive management process with performance based standards. The plan does not spell out triggers for adaptive management, and clearly specify the consequences that will result if triggers are reached.²⁷ Monitoring and adaptive management are not required or adequately funded.

It is clear that the LSFO plan does not currently include adequate regulatory mechanisms to conserve greater sage-grouse.

The five Colorado RMPs within the range of the greater sage-grouse must be amended to include adequate protections for greater sage-grouse populations.

It is critical that the Little Snake RMP be amended through the national planning process, to address the concerns outlined above, in order to provide adequate regulatory mechanisms to protect the largest population of greater sage-grouse in Colorado.

Similarly, the Kremmling, Colorado River Valley, White River and Grand Junction Field Offices have not yet incorporated adequate regulatory mechanisms for greater sage-grouse through their ongoing planning processes. For example, the greater sage-grouse protections in the preferred alternatives of the draft Kremmling and Colorado River Valley Resource Management Plans have some improved protections when compared with existing plans, but still fail to provide adequate regulatory mechanisms to address threats to greater sage-grouse populations.

We feel that the national planning process provides an important opportunity to implement meaningful protections to ensure long-term conservation of greater sage-grouse in Colorado. We ask that all five Colorado field offices be included in one of the regional EISs that will be

²⁵ LSFO Final ROD pgs. 2-18 and 2-21

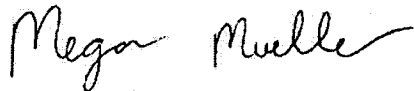
²⁶ *Id.* at 3: "The proposed approach should also evaluate and address the impacts to grouse of other non-oil and gas activities (e.g. recreation, rights-of-way, etc.), existing and proposed, that are occurring within grouse habitat, since some of these activities can have similar or greater impacts on sage-grouse (i.e. what is the cumulative impacts of all activities on sage-grouse persistence). The proposed RMP states that the BLM *may* require additional mitigation for these sorts of activities. However, there are no clear or firm strategies provided to ensure that this would occur." (page 5, paragraph 1)

²⁷ *Id.* at 3 (page 3, paragraph 1), and *Id.* at 7 (page 2 paragraph 3)

prepared as part of the national planning process, and that all five RMPs be amended through the national planning process to include adequate protections to maintain and increase greater sage-grouse distribution and abundance in Colorado.

We thank you for your sincere effort to improve management of greater sage-grouse, and welcome the opportunity to visit further with you and your key personnel.

Sincerely,



Megan Mueller
Senior Conservation Biologist
Rocky Mountain Wild
1536 Wynkoop Street, Suite 303
Denver, CO 80302
303-454-3346
megan@rockymountainwild.org

On behalf of:

Luke Shafer
West Slope Campaign Coordinator
Colorado Environmental Coalition

Nada Culver
Director and Senior Counsel, BLM Action Center
The Wilderness Society

Michael Saul
Associate Counsel
National Wildlife Federation

Ken Strom
Director
Colorado Audubon

Mark Salvo
Wildlife Program Director
Wild Earth Guardians

cc:

U.S. Department of Interior

Steve Black, Counselor to the Secretary of the Interior

David Hayes, DOI Deputy Secretary

Michael Bean, DOI Counselor to Assistant Secretary for Land and Minerals Management

Marcilynn Burke, DOI Acting Assistant Secretary for Land and Minerals Management

Ned Farquhar, DOI Deputy Assistant Secretary for Land and Minerals Management

U.S. Fish and Wildlife Service

Noreen Walsh, Deputy Regional Director Mountain Prairie Region (Region 6)

Pat Deibert, National Sage-grouse Coordinator Mountain Prairie Region (Region 6)

U.S. Bureau of Land Management

Robert Abbey, Director

Mike Pool, Deputy Director of Operations

Dwight Fielder, Division Chief of Fish, Wildlife and Plant Conservation

Johanna Munson, Eastern Region Project Manager

Jessica Rubado, National Greater Sage-Grouse Coordinator

Don Simpson, Wyoming State Director/Eastern Regional Management Team Leader

Helen Hankins, Colorado State Director

Robin Sell, Colorado Conservation Biologist

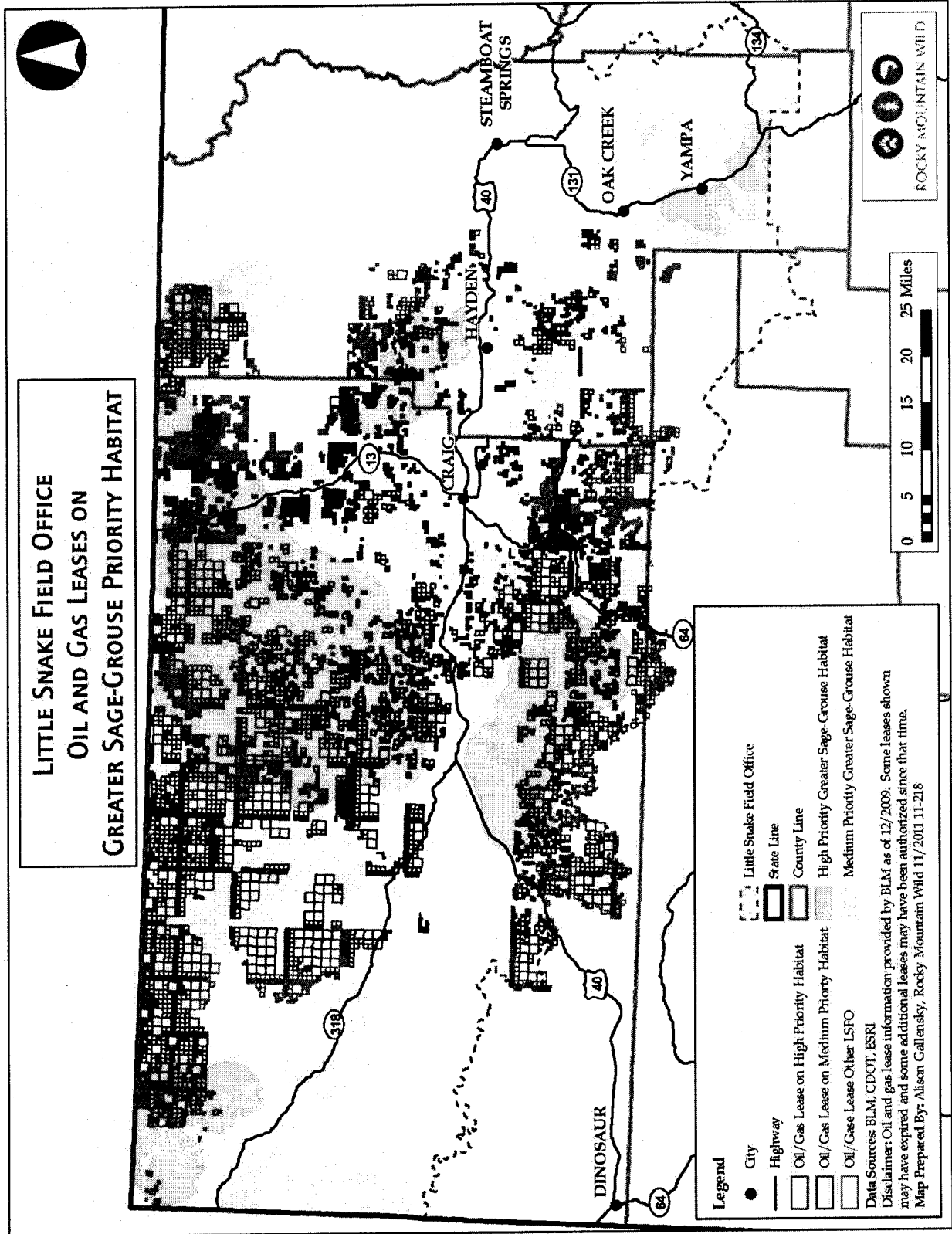
Colorado Parks and Wildlife

Jeff Ver Steeg, Assistant Director for Wildlife Programs

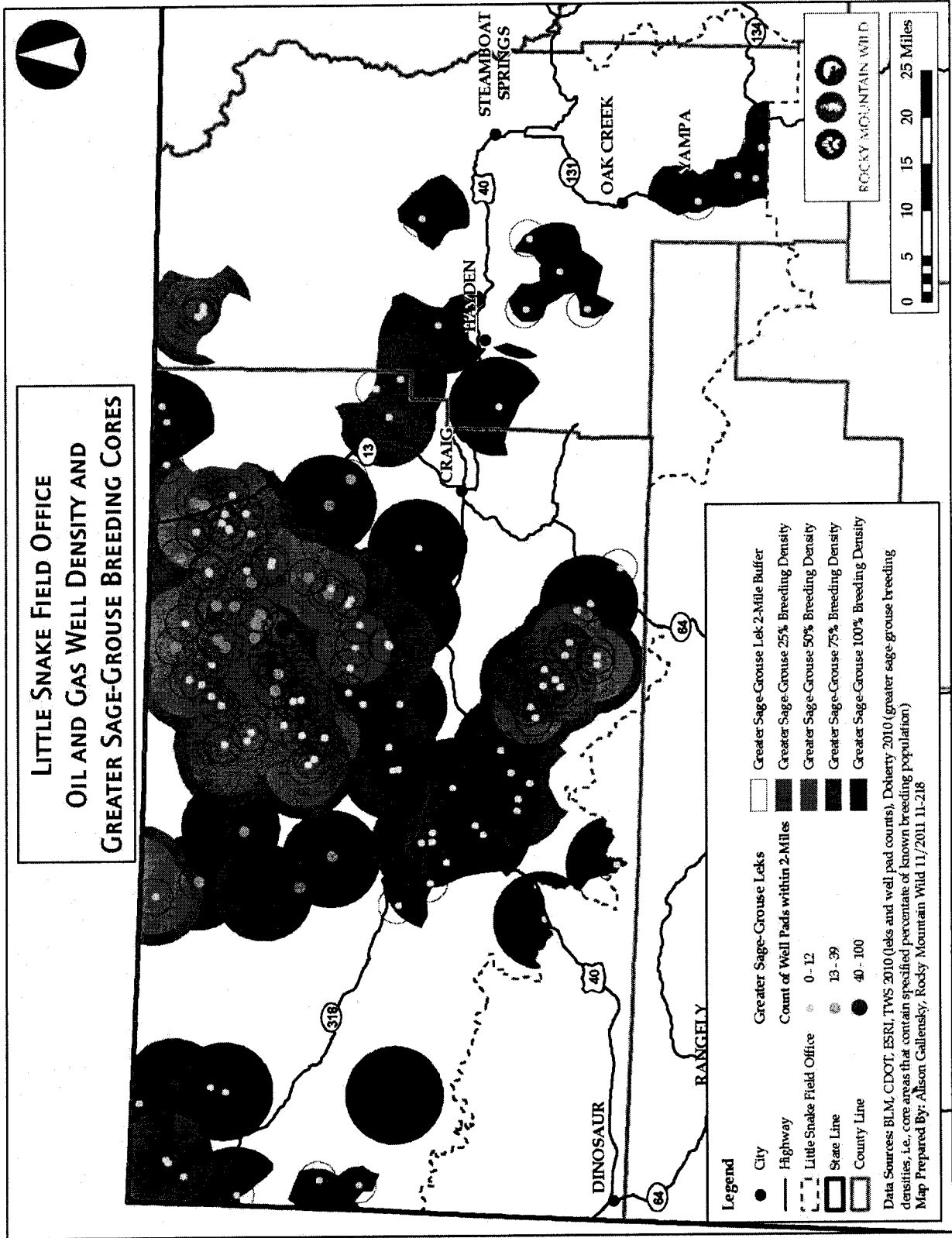
Dr. Anthony Apa, Sage-Grouse Research Biologist

Kathy Griffin, Statewide Sage-grouse Conservation Coordinator

Map 1: The majority of high and medium priority habitat on BLM lands in the LSFO is under existing oil and gas leases, and thus protected only by *voluntary* 5% surface disturbance caps.



Map 2: Number of well pads predicted within 2 miles of active greater sage-grouse leks, under the LSFO Management Plan, assuming 0% compliance with voluntary surface disturbance restrictions. Leks with > 12 wells within 2 miles are at risk, including leks that support high densities of breeding birds.



February 02, 2012

VIA FIRST-CLASS MAIL

Ms. Helen Hankins
Director, Colorado State Office
Bureau of Land Management
2850 Youngfield Street
Lakewood, CO 80215-7093

Re: Colorado BLM's Implementation of Instruction Memorandum 2012-043—Greater Sage-Grouse Interim Management Policies and Procedures

Dear Director Hankins:

We are writing to call your attention to several key requirements of Instruction Memorandum (IM) 2012-043. As you know, this IM contains policies and procedures for managing Greater sage-grouse and their habitat during the range-wide planning process.

First, the IM requires the BLM to map "priority preliminary habitat" (PPH) and "general preliminary habitat" (GPH) for sage-grouse and manage those habitats according to the procedures outlined in the IM. **We believe strongly that until PPH and GPH are mapped, the BLM must manage all Greater sage-grouse habitat in Colorado as PPH.** This will ensure that habitat most critical to recovering the species is protected from ongoing and proposed actions (such as oil and gas leasing) that were identified as threats in the U.S. Fish & Wildlife Service's March 2010 finding. This will also further the overarching purpose of the IM: to "promote[] sustainable Greater sage-grouse populations and conservation of its habitat *while not closing any future options* before the planning process can be completed." IM 2012-043 (emphasis added).

Second, on a related note, the BLM must work proactively with Colorado Parks & Wildlife to finalize the PPH and GPH maps as soon as possible. Only once those maps are finalized can the BLM fully implement the IM's policies and procedures. Additionally, the BLM must make the final maps and associated GIS data available to the public in a timely fashion and on a central website location, as it has done for the Idaho and southwestern Montana sub-region.¹ Please note that because the habitat maps have not been finalized for Colorado and several other states in the region, the public is unable to review and comment on them during the current scoping periods for the range-wide planning process. As a consequence, we have formally asked the Interior Department for additional time to review and comment on the habitat maps once they are released to the public.

Finally, the BLM must follow the policies and procedures of the national IM and not the preexisting state-level IM concerning the management of sage-grouse (IM CO-2010-028). While the national IM authorizes states to follow state-level IMs in limited circumstances, those circumstances do not exist in Colorado. Consequently, Colorado BLM must at all times comply with the national IM.

¹ http://www.blm.gov/pgdata/etc/medialib/blm/id/wildlife/sensitive_species/sg_scoping_meeting.Par.31240.File.dat/ID_PPH_508.pdf.

Thank you for your time. Please let us know if you have any questions about our letter. We appreciate the BLM's regional efforts to range-wide planning and look forward to continuing to work with you in these important efforts.

Sincerely,

Megan Mueller, Senior Conservation Biologist
Rocky Mountain Wild
1536 Wynkoop Street, Suite 303
Denver, CO 80302
(303) 454-3346
megan@rockymountainwild.org

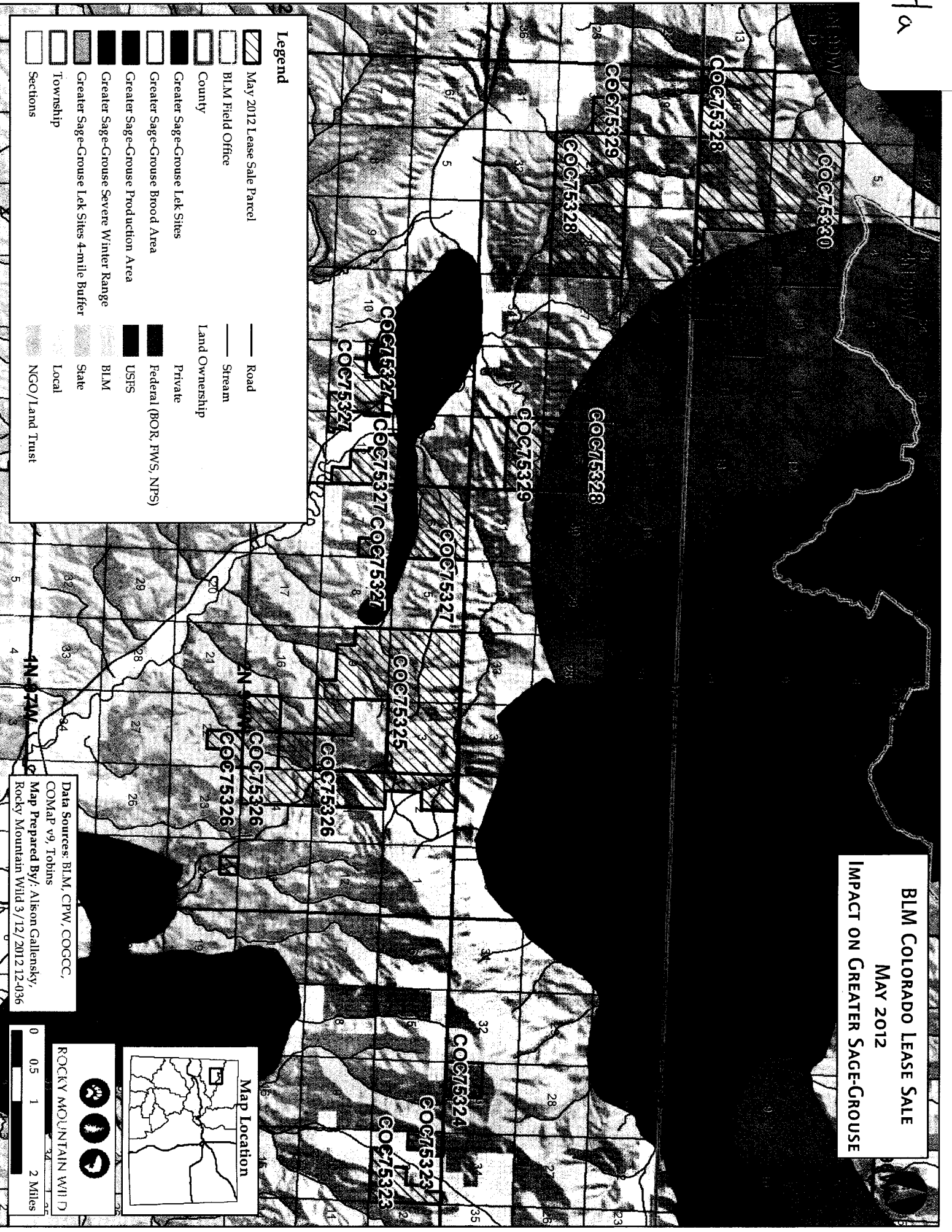
Brian Rutledge, Vice President (Rocky Mountain Region)
National Audubon Society (Rockies)
105 W. Mountain Avenue
Ft. Collins, Colorado 80524
(970) 416-6931
brutledge@audubon.org

Luke Schafer, West Slope Campaign Coordinator
Colorado Environmental Coalition
529 Yampa Avenue
Craig, CO 81625
(970) 824-5241
luke@ourcolorado.org

Nada Culver, Director and Senior Counsel, BLM Action Center
The Wilderness Society
1660 Wynkoop Street, Suite 850
Denver, CO 80202
(303) 650-5818 ext. 117
nada_culver@twc.org

cc: Jessica Rubado, National Sage-Grouse Coordinator, BLM
Johanna Munson, Eastern Region Project Manager, BLM
Dave Stout, Kremmling Field Office
Wendy Reynolds, Little Snake Field Office
Kent Walter, White River Field Office

BLM COLORADO LEASE SALE
MAY 2012
IMPACT ON GREATER SAGE-GROUSE



Legend

	May 2012 Lease Sale Parcel		Road
	BLM Field Office		Stream
	County	Land Ownership	
	Greater Sage-Grouse Lek Sites		Private
	Greater Sage-Grouse Brood Area		Federal (BOR, FWS, NPS)
	Greater Sage-Grouse Production Area		USFS
	Greater Sage-Grouse Sewere Winter Range		BLM
	Greater Sage-Grouse Lek Sites 4-mile Buffer		State
			Local
			NGO/Land Trust

Data Sources: BLM, CPW, COGCC,
COMat v9, Tobins
Map Prepared By: Alison Gallensky,
Rocky Mountain Wild 3/12/2012 12-036

Map Location

ROCKY MOUNTAIN WILD



BLM COLORADO LEASE SALE
MAY 2012
IMPACT ON GREATER SAGE-GROUSE



ROCKY MOUNTAIN WILD
 0 0.5 1 2 Miles
 Data Sources: BLM, CPW, COGCC,
 COMAP v9, Tobins
 Map Prepared By: Alison Gallensky,
 Rocky Mountain Wild 3/12/2012 12-036

Map Location

Legend

- May 2012 Lease Sale Parcel
- BLM Field Office
- County
- Greater Sage-Grouse Lek Sites
- Greater Sage-Grouse Brood Area
- Greater Sage-Grouse Production Area
- Greater Sage-Grouse Severe Winter Range
- Greater Sage-Grouse Lek Sites 4-mile Buffer
- Township
- Sections
- Road
- Stream

Land Ownership

- Private
- Federal (BOR, FWS, NPS)
- USFS
- BLM
- State
- Local
- NGO/Land Trust

4c

BLM COLORADO LEASE SALE MAY 2012 IMPACT ON GREATER SAGE-GROUSE



ROCKY MOUNTAIN WILD

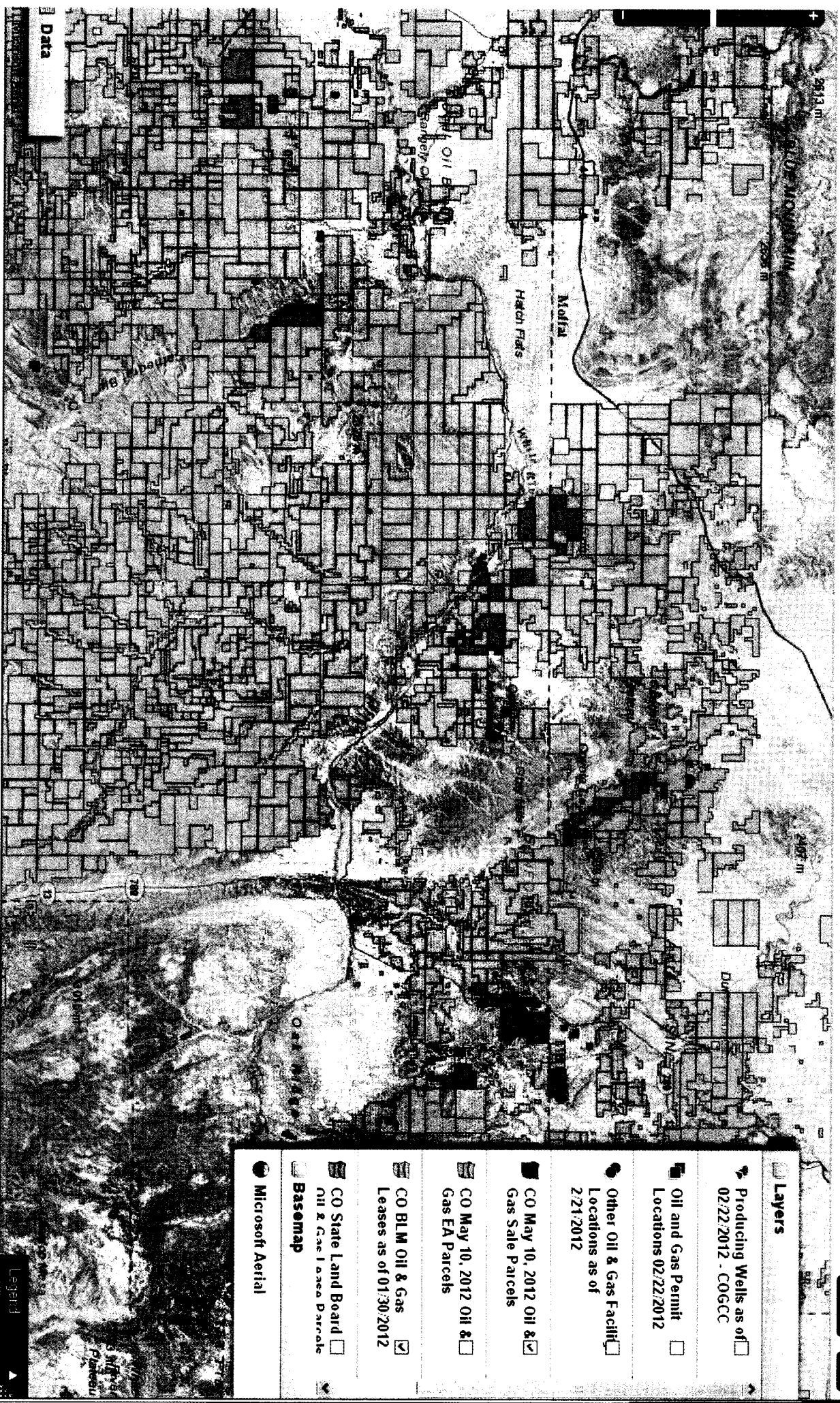
0 0.5 1 2 Miles

Map Location

Data Sources: BLM, CPW, COGCC,
COMAP v9, Tobins
Map Prepared By: Alison Gallensky,
Rocky Mountain Wild 3/12/2012 12-036

Legend

- May 2012 Lease Sale Parcel
 - BLM Field Office
 - County
 - Greater Sage-Grouse Lek Sites
 - Greater Sage-Grouse Brood Area
 - Greater Sage-Grouse Production Area
 - Greater Sage-Grouse Severe Winter Range
 - Greater Sage-Grouse Lek Sites 4-mile Buffer
 - Township
 - Sections
 - Road
 - Stream
- Land Ownership**
- Private
 - Federal (BOR, FWS, NPS)
 - USFS
 - BLM
 - State
 - Local
 - NCCO/Land Trust





FAX

To: Helen Hankins, COLORADO BLM DIRECTOR

From: Cathy Purves, TU

RE: May 2012 BLM CO Lease Protest

#Pages: *26 including cover*

FAX NUMBER: 303-239-3799

Helen,

Please accept the following protest comments to the May 2012 lease sale.

Trout Unlimited: America's Leading Coldwater Fisheries Conservation Organization
250 N 1st Street, P.O. Box 64, Lander, WY 82520
(307) 332-6700 • Fax: (307) 332-9299 • www.tu.org



March 9, 2012

Sent via Fax to 303-239-3799 and U.S. Postal Service Return Receipt

Helen M. Hankins
State Director
Colorado BLM State Office
2850 Youngfield Street
Lakewood, CO 80215

RE: Protest of Specific Parcels offered in the May 2012 Colorado BLM Competitive Oil and Gas Lease Sale

Specific Protest to Parcel Numbers COC 75300 and COC75311

Dear Director Hankins,

Trout Unlimited respectfully protests, pursuant to 43 C.F.R. §§ 4.450-2 and 3120.1-3, the Bureau of Land Management's (BLM) lease sale offering of Parcels COC 75300 and COC75311 (hereinafter referred to as the "Parcels") in Colorado's scheduled May 1, 2012 Competitive Oil and Gas Lease Sale. Trout Unlimited (TU) protests the offering of these Parcels for following reasons:

- 1) The BLM failed to consider and analyze site specific impacts of oil and gas development in its EA. This is a violation of the National Environmental Impact Act (NEPA, 42 U.S.C. § 4321, et seq.). Where oil and gas impacts to fish and wildlife resources are reasonably foreseeable, "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."¹ Here, site-specific impacts are reasonably foreseeable at the leasing stage because "considerable exploration ha[s] already occurred on adjacent land, [and] a natural gas supply [is] known to exist beneath the parcels."² Accordingly, the BLM was required – but failed – to consider and analyze site-specific impacts to fish and wildlife resources in its EA.³
- 2)

¹ BLM Handbook H-1624-1.

² *New Mexico ex rel. Richardson v. Bureau of Land Management*, 565 F.3d 683, 718-19 (10th Cir.2009) (HEREINAFTER *Otero Mesa*).

³ Parcel COC 75300 was initially analyzed and deferred in the EA for the May 2011 Lease Sale. The BLM did not analyze this parcel further in the EA for the May 2012 Lease Sale. Instead, it referred back to the previous EA. Accordingly, throughout this document, TU refers generally to the initial EA conducted for Parcel COC75300 and the May 2012 EA for Parcel COC75311.

Trout Unlimited: America's Leading Coldwater Fisheries Conservation Organization
250 N 1st Street, P.O. Box 64, Lander, WY 82520
(307) 332-6700 • Fax: (307) 332-9299 • www.tu.org

-
- 3) The BLM's consideration of the direct, indirect and cumulative impacts to wild and native fish and their watersheds, wildlife, and recreational opportunities, as required by the National Environmental Policy Act, is either outdated, inadequate, or lacking a discussion of significant new information that has become available since preparation of the Resource Management Plan ("RMP") now in effect for the area being leased. Site-specific impacts and significant new information regarding climate change, renewable energy development, water quality and quantity impacts, and their relationship to land use planning should be considered by the agency prior to leasing.
 - 4) The BLM should not lease parcels within the White River Resource Areas while revision of the RMP is ongoing.
 - 5) The BLM has not adequately considered the new oil and gas leasing reforms allowed under the Instruction Memorandums (IM) 2010-117 and IM 2012-39, both which provide opportunities for the BLM to adjust stipulations and update critical wildlife habitat data.
 - 6) The BLM does not adequately protect Colorado River cutthroat trout or its habitat through stipulations and/or other measures in the Lease Sale as required by the Colorado River Cutthroat Trout Conservation Agreement and the 1997 RMP.
 - 6) The BLM does not adequately analyze water quality and quantity impacts associated from disturbances to surface waters and groundwater in the EA.
 - 7) The BLM fails to consider the irrevocable commitment of a lease sale and thus, the natural resources which potentially will be impacted by oil and gas development through the sale of these parcels.
 - 8) The BLM does not consider the impacts to watersheds and river drainages from climate change factors as required by NEPA.

I. Interests of the Protesting Party

TU is a private, non-profit conservation organization that has more than 150,000 members nationwide dedicated to conserving, protecting and restoring North America's trout and salmon fisheries and their watersheds. Since 1959, TU has dedicated staff and volunteers working toward the protection of sensitive ecological systems necessary to support robust native and wild trout and salmon populations in their respective ranges. TU recognizes that the value of public lands is unparalleled in providing habitat to coldwater fisheries, drinking water and wildlife habitat. TU's expanding sportsmen's conservation program recognizes the importance of protecting public lands for the survival and restoration of wildlife and fisheries. TU's sportsmen's program is not limited to anglers; TU recognizes that many people who fish on public lands also hunt. TU believes that actions taken on public lands are ultimately reflected in the quality of fish and wildlife habitat and populations.

In Colorado, Colorado TU has nearly 10,000 members and 23 state chapters whose members actively utilize and enjoy the resources of the many rivers, lakes and watersheds located on Colorado's BLM and US Forest Service lands. Attributes of these lands and watersheds include clean water, clean air, fishing, hunting, and wildlife viewing opportunities. TU protests the sale of these lease parcels on the basis that oil and gas development activities during exploration, development and production have

the potential to adversely affect coldwater fisheries, surface waters, groundwater resources, air quality, and wildlife habitat. TU believes that an inadequate environmental review of the lease parcels places our federal lands in jeopardy. Our members, including those members in Meeker, Rangely, and Rio Blanco County, as well as other non-members who hunt, fish, recreate, and do business in and around these lease sale areas will be adversely affected based on the lack of adequate environmental review prior to authorizing these lease parcels for sale.

II. Applicable Statutory, Regulatory and Executive Requirements

A. The BLM Failed to Analyze Site-Specific Impacts Resulting from Offering the Parcels for Lease.

The BLM should not offer the Parcels COC75300 and COC75311 for lease because it failed to analyze site-specific impacts of oil and gas drilling on the Lake Creek and Coal Creek parcels, and the surrounding air and watersheds. Under NEPA, an agency must apply a "fact specific inquiry" into whether or not to conduct site-specific analysis at the RMP stage, the leasing stage, or the application for permit to drill (APD) stage of oil and gas development.⁴ The inquiry is two-pronged. The BLM must (1) assess "all 'reasonably foreseeable' impacts . . . at the earliest practicable point, and (2) [its assessment] must take place before an 'irretrievable commitment of resources' is made."⁵ Importantly, the BLM must tie "[e]ach of these inquiries . . . to the existing environmental circumstances, not to the formalities of agency procedures."⁶ Here, the circumstances dictate that the BLM should analyze site-specific impacts before leasing the offered parcels.

First, issuing an oil and gas lease without an NSO stipulation – as the BLM is proposing to do here – constitutes an irretrievable commitment of resources.⁷ Pursuant to BLM regulations, a lessee cannot be prohibited from surface use of a leased parcel once its lease is final:

A lessee shall have the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold subject to: Stipulations attached to the lease; restrictions deriving from specific, nondiscretionary statutes; and such reasonable measures as may be required by the authorized officer to minimize adverse impacts to other resource values, land uses or users not addressed in the lease stipulations at the time operations are proposed.

43 C.F.R. § 3101.2. Accordingly, offering Parcels COC75300 and COC75311 for lease constitutes an irretrievable commitment of the resources and the BLM is required to analyze reasonably foreseeable site specific impacts.

The site-specific impacts from oil and gas drilling on the offered parcels are reasonably foreseeable here. The BLM's repeated statements that it cannot address site-specific impacts at the

⁴ *Otero Mesa*, 565 F.3d 683, 717-18 (10th Cir. 2009).

⁵ *Id.* at 718, citing *Pennaco Energy, Inc.* 377 F.3d at 1072 (10th Cir. 2004); 40 C.F.R. §§ 1501.2, 1502.22.

⁶ *Id.*

⁷ *Otero Mesa*, 565 F.3d at 718; see also *Sierra Club v. Peterson*, 717 F.2d 1409, 1414 (D.C. Cir. 1983) ("[O]nce the land is leased the Department no longer has the authority to preclude surface disturbing activities even if the environmental impact of such activity is significant.") (emphasis in original).

leasing stage⁸ are simply false. The White River resource area and surrounding areas are well acquainted with gas development and the potential problems associated with such development. There is a history of substantial gas development within the Field Office resource area and estimating the kind and order of magnitude of the impacts likely to occur to the environment is not difficult. Environmental impacts within this resource area are not unidentifiable as the EA states. Site-specific impacts are reasonably foreseeable at the leasing stage where "considerable exploration has already occurred on [adjacent land, and] a natural gas supply [is] known to exist beneath the parcel."⁹

Here, both factors are present. Over 6,000 wells have been drilled on BLM lands within the White River Field Office, including close to 100 pads within the East Douglas ACEC in drainages neighboring Parcel COC75300. Pipelines, processing plants and other infrastructure have been developed further down the Douglas Creek watershed. In addition, numerous wells have been drilled on parcels adjacent and nearby Parcel COC 75311 in the Milk and Coal Creek watersheds. Based on the significant development that has already occurred on adjacent parcels and within the same gas plays, the method and manner of development on the offered Parcels can be projected and foreseen.¹⁰ Indeed, the Reasonable Foreseeable Development scenario (RFD, unknown date) recognizes the significance of the increase in drilling activities in the WRFO by stating the WRFO has experienced a "three-fold" increase in oil and gas drilling activity between 1997 (when the RMP was released) and 2006 and that aggressive drilling and development is being planned for the future of this resource area. The RFD also states that 1.6 million acres are currently under federal oil and gas leases, although the EA offers a differing statement. Accordingly, the BLM failed to meet NEPA requirements because it did not analyze such impacts before offering the Parcels for lease.

The disturbance to critical habitat values is the underlying factor in determining environmental harm. By implementing stricter stipulations at the leasing stage, much of this harm can be mitigated. Much is now known about how energy development impacts fish and wildlife resources, yet the EA fails to acknowledge these impacts. The only citation to impacts to mule deer is a 2006 study completed by Hall Sawyer; since 2006, considerable new information exists which the BLM has failed to consider in their analysis and the EA. This includes 2012 documentation of wildlife impacts discussed below.

The lack of mitigation adequacy in the establishment of timing limitations is another area of research that deserves more attention than that which was given in the EA. Had BLM further included Hall Sawyer's study on the effectiveness of timing limitations, the data would illustrate that no longer are timing limitations being considered as successful mitigation stipulations. This is new research that has come from extensive study within oil and gas development fields in Wyoming, and as such, standard stipulations that BLM routinely and traditionally imposes must be adjusted and updated to better reflect the current science. The use of insufficient timing stipulations from an outdated stipulation document no longer protects resource conditions in 2012.

⁸ See e.g. May 2011 and 2012 EAs at pp. 4 ("Since the lease itself causes no surface disturbance, these standards will be addressed in subsequent environmental analyses required for specific lease development."); 6 ("While it is not possible to accurately quantify potential GHG emissions in the affected area as a result of making the proposed tracts available for leasing, some general assumptions however can be made."); 7 ("Since it is unknown if the parcels would be developed, or the extent of the development, it is not possible to reasonably quantify potential air quality impacts through dispersion modeling at this time.").

⁹ *Otero Mesa*, 565 F.3d at 718.

¹⁰ See *Otero Mesa*, 565 F.3d at 718 (holding that impacts were reasonably foreseeable before leases were offered based on the method and manner of development on adjacent parcels).

Timing stipulations only speak to the stress or displacement factors discussed earlier, and then only partially. Instituting timing limitation is a temporary fix and while a timing stipulation prevents surface use, the stipulation definitions provided in Appendix F specifically allows "routine operations and maintenance of facilities". In other words, stipulations only apply during the exploration and development stage of energy development. The production stage, which may take place for an additional 30-40 years in the life of an ordinary well, continues to impact big game and other wildlife through the constant year-round presence of vehicles, roads, noise, and human presence; this further stresses deer and elk during the winter. New timing stipulations being applied in the neighboring LSFO more accurately reflects current management trends and should be applied with these lease parcels.

Timing limitations do not account for loss of habitat once an area can be accessed and disturbed after the timing limitations expire. Current science supports the recommendation of NSO stipulations in critical winter range. Critical winter ranges contain the important cover, forage, and security that assure the survival of mule deer and elk herds, even in the worst of winters. Any direct habitat loss to these important lands compromises the ability of populations to survive when snowpack is at a maximum and temperatures are coldest. Research by wildlife biologist Hall Sawyer, among others, on the impacts of oil and gas developments over a 10 year period on mule deer in western Wyoming is clear: a 46% decline in use on critical winter range and a 60% decline in population abundance is directly attributable to the impacts from energy development and relaxing the timing restrictions (emphasis added).¹¹

Another impact to deer and elk from development on crucial winter range is the result of direct habitat loss and fragmentation. The EA failed to provide a significant review of habitat impacts likely to occur due to leasing parcels in critical and severe big game habitat. Further, while it is fairly easy to quantify direct habitat impacts (loss of vegetation, surface disturbance, etc.), indirect impacts become more difficult to document. In a study, again by Sawyer, on the Pinedale Anticline in western Wyoming, it was found that winter habitat selection and distribution patterns of mule deer were affected by well pad development. Changes in habitat selection and use by mule deer were immediate and little to no acclimation to these well pads was evidenced after 10 years of monitoring.¹² Because critical and/or severe winter habitat is limited in size, it becomes even more important to limit any type of development within these critical areas.

In summary, in the context of federal mineral development, the issuance of leases without an NSO stipulation is the point of irreversible and irretrievable commitment of resources.¹³ And while the EA attempts to acknowledge the presence of important fish and wildlife habitat located within these Parcels, the BLM fails to attempt to assess with any specificity how oil and gas development will impact the trout populations or other coldwater fish populations, surface waters, groundwaters, and other wildlife habitat on the offered Parcels. Accordingly, the BLM has failed to meet its requirements under NEPA, and TU's protest should be upheld.

B. The BLM's Analysis is Inadequate Because it Relies on Outdated Information

¹¹ Sawyer, Hall, R. Nielson. 2010. "Mule Deer Monitoring in the Pinedale Anticline Project Area: 2010 Annual Report". Presented to the Pinedale Anticline Planning Office, Pinedale, Wyoming.

¹² (Sawyer, Hall, et al. 2006. "Winter Habitat Selection of Mule Deer Before and During Development of a Natural Gas Field". *Journal of Wildlife Management* 70:396-403; Sawyer, H., et al. 2009b. "Influence of well pad activity on the winter habitat selection patterns of mule deer." *Journal of Wildlife Management* 73:1052-1061

¹³ *Wyoming Outdoor Council v. United States Forest Service*, 165 F.3d 43,49 (D.C. Cir. 1999)

In issuing its Finding of No Significant Impacts (FONSI), the BLM is relying on a land management document that is outdated (the White River RMP was issued in 1997) and that is in the process of being amended. Its reliance on this document is insufficient to satisfy NEPA. At the time of the original RMP, no one anticipated or planned for the rapid development of oil and gas resources in the areas containing the offered parcels. Accordingly, NEPA requires that the BLM supplement its environmental analyses of the proposed leases in order to satisfy NEPA's requirement that it take a "hard look" at the environmental consequences.¹⁴

As an initial matter, NEPA requires that a federal agency decision, such as a decision by the BLM to offer parcels for fluid mineral lease, be based on all relevant factors and be supported by the facts in the record¹⁵. An agency decision is arbitrary and capricious if:

The agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs contrary to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. Colorado Env'tl. Coalition v. Dombeck, 185 F.3d 1162, 1167 (10th Cir. 1999) (quoting Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co., 463 U.S. 29, 43 (1983)).

The "fundamental objective" of NEPA is to ensure that a federal agency "will not act on incomplete information only to regret its decision after it is too late to correct."¹⁶ Therefore, "[i]f there remains a 'major federal action' to occur, and if ... new information is sufficient to show that the remaining action will 'affect the quality of the human environment' ... to a significant extent not already considered, a supplemental EIS must be prepared."¹⁷ Specifically, an "agency must be alert to new information that may alter the results of its original environmental analysis, and continue to take a 'hard look' at the environmental effects of [its] planned actions."¹⁸

Here, the BLM has failed to "be alert to new information that may alter the results of its original environmental analysis" conducted in the 1997 RMP, and therefore has failed to "take a 'hard look' at the environmental effects of its planned actions."¹⁹ The nature and technology behind oil and gas drilling in the Piceance Basin and adjacent landscapes has changed significantly since the RMP was issued in 1997. The advent of directional drilling has caused changes in infrastructure, density of wells, the water quantity used in the drilling and completion process, and resulting water quality, among other factors. All of these changes affect our air, water, fisheries and wildlife resources. In addition, information with respect to the impacts climate change may have in these areas is available.

¹⁴ See *Pennaco Energy, Inc. v. U.S. Dep't of the Interior*, 377 F.3d 1147, 1153 (10th Cir. 2004) (upholding IBLA's decision to affirm a protest of oil and gas leases where the documents relied on did not "specifically discuss [extraction methods] that were not contemplated uses [in a 20 year old RMP]" and finding that the BLM "violated NEPA by failing to undertake additional site-specific environmental reviews before deciding to offer the parcels for oil and gas leasing").

¹⁵ *Pennaco Energy, Inc.*, 377 F.3d at 1156.

¹⁶ *Southern Utah Wilderness Alliance v. Norton*, 457 F. Supp.2d 1253, 1261 (D. Utah 2006) (quoting *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 374 (1989)) (citation omitted).

¹⁷ *Id.* at 1264 (quoting *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371(1989)).

¹⁸ *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 557 (9th Cir. 2000).

¹⁹ *Id.*

Accordingly, NEPA mandates that the BLM supplement its environmental analyses so that it can take a hard look at this new information before irretrievably committing public lands for mineral exploration and development. The BLM has failed to do so here.

NEPA's implementing regulations underscore an agency's duty to be alert to, and to fully analyze, potentially significant new information. "[I]f there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, a supplemental EIS must be prepared for an old EIS so that the agency has the best possible information to make any necessary substantive changes in its decisions regarding the proposal." Council on Environmental Quality, *NEPA's Forty Most Asked Questions*, available at <<http://www.nepa.gov/nepa/regs/40/40p3.htm>> (last visited Oct. 22, 2007) (citing 40 C.F.R. § 1502.9(c)).

Because the BLM relied solely on its outdated RMP and failed to supplement its environmental analysis, the BLM did not satisfy NEPA. The Parcels should be withdrawn from the lease sale and the BLM should consider and analyze the significant new information that directly relates to the impacts of oil and gas development on fisheries in the area.

C. Lease Sales Should Be Stayed During Revision of Resource Management Plan and Oil and Gas Leasing RFD EIS

The BLM currently is in the midst of amending the White River RMP and the White River Oil and Gas Leasing RMP. BLM's reliance on outdated documents and science resources in making its present leasing decisions places the current and future resources and landscape at risk. In addition to the increased presence of oil and gas drilling activities, there is also an increase in a variety of types of energy development. The 1997 RMP does not account for the additional and cumulative direct and indirect impacts that will occur with the onset of multiple resource uses and the infrastructure needed to employ such activities. And while the BLM continues to state that leasing does not cause impacts, we are reasonably sure that with the experience the BLM now has gained since 1997 on energy development and the impacts to our natural resources, a more educated prognosis for such impacts from leasing actions may be calculated.

The current White River RMP does not address substantial new relevant information regarding oil and gas impacts to surface waters, groundwaters, air quality, climate change, and fish and wildlife resources. As the expansion of leasing and extracting oil and gas resources spreads across the White River landscape and into neighboring BLM resource areas, new impacts have arisen that were not considered in the old RMP. Impacts to water quality, sensitive fish species, sage grouse, mule deer, and air quality associated with oil and gas development are all new material information and the 1997 recommended management measures for reducing the adverse effects of development do not adequately address these issues. Thus, the BLM must withdraw Parcel COC75300 and temporarily defer Parcel COC75311 until the Final RMP and Record of Decision for the White River field office is completed.

As the Tenth Circuit Court of Appeals has now repeatedly clarified, *Park County Resource Council v. United States Dept. of Agriculture*²⁰ does not excuse the BLM from its obligation to analyze these consequences prior to leasing²¹. *Park County* may allow the agency to forego preparation of an

²⁰ *Park County Resource Council v. United States Dept. of Agriculture*, 817 F.2d 609 (10th Cir. 1987)

²¹ *Pennaco Energy, Inc. v. United States Dept. of the Interior*, 377 F.3d 1147, 1162 (10th Cir. 2004).

Environmental Impact Statement if and when it has prepared an extensive environmental assessment covering the leases in question. This, however, is not the case; previous Parcels from the May 2011 and August 2011 lease sale and some of the May 2012 lease parcels have had no NEPA documentation prepared for them save the RMP documents that do not (and cannot) account for significant new developments and information since the date of their respective RMPs, including increased recreational demand, greatly increased levels of mineral development, air quality impacts, and declining populations of Greater sage-grouse and other sensitive species and, especially, new scientific information regarding the species' vulnerability to adverse effects from mineral development.

The most recent 2009 Tenth Circuit case law makes clear beyond any doubt that, whenever practicable, assessment of all reasonably foreseeable impacts must occur prior to issuance of oil and gas leases permitting surface disturbance. "Looking to the standards set out by regulation and by statute, assessment of all 'reasonably foreseeable' impacts must occur at the earliest practicable point, and must take place before an 'irretrievable commitment of resources' is made."²² As we have demonstrated earlier in our comments, the Court of Appeals for the Tenth Circuit plainly concluded in *Otero Mesa*, that "issuing an oil and gas lease without a NSO stipulation constitutes such a commitment."²³ Under such circumstances, NEPA requires an analysis of the site-specific impacts of an oil and gas lease prior to its issuance.²⁴

With respect to sage-grouse and mule deer, BLM is in possession of new and substantial material 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 populations. It is key that the BLM take this information into account before leasing these May 2012 parcels.

In fact, the BLM has previously acknowledged in Colorado and in Montana the necessity for further review prior to leasing certain parcels. In Montana a moratorium was placed in 2010 on further leasing until updated environmental information can be obtained. In Colorado's own White River Field Office, the BLM deferred a lease parcel in the May 2008 lease sale in order to provide the opportunity for further consultation and because the White River RMP Oil and Gas RMP was underway (See Colorado BLM Lease Sale Notice Documentation of Land Use Plan Conformance and NEPA Adequacy, DNA, May 2008). Additionally, the BLM has withdrawn sage-grouse habitat within the White River resource area from the February 7, 2007 lease sale for further analysis,²⁵ and by amending the November 2007 lease sale to defer Gunnison Sage Grouse occupied habitat from leasing, (See Colorado BLM Lease Sale Notice of Addendum, October 5, 2007).

And more recently, the Colorado BLM in its pre-leasing NEPA documentation for the May 2010 sale elected to exclude priority sage-grouse habitat from leasing under similar circumstances:

The BLM has begun developing management alternatives to amend the 1984 Kremmling Resource Management Plan (RMP). The management alternatives will analyze impacts

²² *New Mexico ex rel. Richardson v. Bureau of Land Management*, Nos. 06-2352, 06-2353, 06-2354 (10th Cir. April 28, 2009), 2009 WL 1119662 at *26 (citations omitted).

²³ *Id.*

²⁴ *Id.*

²⁵ Bureau of Land Management Colorado State Office, Decision: February 8, 2007 Competitive Oil & Gas Lease Sale Protest of Parcels COC70761 and COC70762 is Upheld.

to wildlife, including sage-grouse. The BLM is aware of recent information discussing the effectiveness of sage-grouse habitat protection and mitigation measures. The BLM also received recommendations from the Colorado Division of Wildlife (CDOW) regarding sage-grouse habitat protection. As a result, the BLM is deferring portions of specific parcels within sage-grouse habitat (Attachment B). As BLM develops management alternatives, further consultation will be needed with stakeholders and other agencies (i.e. CDOW) to ensure consistency, analyze future management options, and ensure the effectiveness of mitigation measures.²⁶

The 2007 Final Oil & Gas RMP/EIS Analysis of the Management Situation (AMS) states that riparian areas in the WRFO are in small amounts, consisting of about 1% of the resource planning area (Chapter 2; p. 2-48). These areas are considered by the BLM as extremely valuable in terms of providing important habitat components and watershed attributes for fish and wildlife. The AMS also mentions a thorough riparian inventory was lacking in the RMP and as of 2007, such an inventory has not been completed. Based on this information, TU feels that the Final EA did not provide an adequate analysis as to the impacts that potentially would occur from oil and gas development activities in riparian areas. We feel that it is irresponsible for the BLM to continue to offer lease parcels in areas that threaten the small isolated occurrences of high value riparian areas. Until such an inventory is completed and a comprehensive analysis is available on riparian impacts, BLM should withdrawal any lease parcels located in riparian areas. In particular, Parcels COC75300 and COC75311 must be permanently withdrawn due to the importance the riparian habitat has for CRCT populations and expansion habitat.

Further discussion in the AMS indicates that quality and critical big game habitat is also in jeopardy (Chapter 2, p. 2-59). Parcels located in the Douglas Creek drainage, where Parcel COC75300 is located, if leased and developed, would significantly jeopardize big game and fish habitat. Habitat conditions for big game and other species appears to be at serious risk of overutilization and increasingly poor quality shrub components in critical big game range further stress big game herds. The EA failed to discuss the potential impacts on loss of quality and quantity of critical habitat, though a brief discussion on the presence of critical habitat was offered. Further, the Final EA did not address these issues in their response to our concerns regarding the AMS evaluation. As is happening in Wyoming, so is happening in Colorado: as more and more oil and gas activities expand into critical habitat, big game populations begin to concentrate in lesser quality habitats, which in turn affect conditions of the soils, plants, watersheds, and eventually negatively reflect on functioning big game populations.

III. Applicable Regulatory Instruction Memorandums

A. The BLM EA Does Not include Consistent Conformance with the BLM's Instruction Memorandum 2010-117 for Consideration of New Information

On May 17, 2010, the BLM issued the Instruction Memorandum (IM) No. 2010-117 titled "Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews". This IM was effective immediately and required the BLM State and Field Offices to establish a process that was designed to ensure a more orderly, effective, timely and environmentally responsible leasing of oil and gas resources on Federal lands (see IM Purpose). This includes examining resource management decisions adequacy

²⁶ BLM Kremmling Field Office, Documentation of Land Use Plan Conformance and NEPA Adequacy, available at http://www.blm.gov/pgdata/etc/medialib/blm/co/information/nepa/kremmling_field_office/2010CompletedNEPA.Par.51510.File.dat/DOI-BLM-CO-120-2010-0026-DNA_May_2010_Oil_&_Gas_Lease_Sale_Final.pdf

to determine whether the RMPs adequately protect important resource values in light of changing circumstances, updated policies, and new information (IM Section I-A). To that IM, the Colorado State BLM Office issued in March 2011 the Colorado's Oil and Gas Leasing Reform Implementation Strategy. TU has serious concerns with the lack of reference or implementation to the 2010-117 IM in the May 2012 EA.

1. Lease Stipulation Review Requirement. The WRFO currently imposes setback stipulations for streams and riparian areas that are not adequate, are inconsistent among field offices, and do not differentiate between waters containing sensitive fish and wildlife species and those waters that do not contain such species. TU believes the stipulations on the lease parcels offered in the May 2012 sale are not effective for water quality protection and are an extremely narrow measure of protection for streams. The State's Oil and Gas Leasing Reform Implementation Strategy (or "SIS") specifically addresses the requirement to review statewide stipulations for consistency in current RMP revisions. The SIS also states that an edge-matching exercise across field or district office boundaries and state boundaries will be completed. However, we find the BLM has not implemented the edge-matching exercise for this lease sale, or for any of the previous lease sales that have occurred since the release of the IM 2010-117 and the Colorado SIS.

The neighboring Little Snake Field Office (LSFO) has recently implemented new stipulations in their revised RMP/ROD of October 2011. Of particular interest are the new quarter-mile buffer stipulations for all perennial waters. Because the IM allows for the field offices, district offices, and state office to revise and implement new stipulations based on adequacy and edge-matching reviews, TU requests that the WRFO implement the same buffer setback stipulations as those implemented by its neighboring field office.

Based on the status of current and future energy development impacts to our public land resources, we are concerned that the stipulations which have been in effect since the late 1990's are in many cases, no longer protective enough for today's high intensity level of development. As mentioned earlier, NEPA's implementing regulations further underscore an agency's duty to be alert to, and to fully analyze, potentially significant new information. "[i]f there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, a supplemental EIS must be prepared for an old EIS so that the agency has the best possible information to make any necessary substantive changes in its decisions regarding the proposal."

The SIS addresses opportunities and challenges in processing the lease parcel nominations and in particular the standardizing of lease stipulations between Field Offices. We agree with the BLM that the benefits to creating standardized stipulations will provide a more unified vision for management considerations, mitigation opportunities and industry expectations, but will require considerable more up-front workloads for all involved. The BLM referenced a CSC (or Committee for Stipulation Consistency) in 2010 yet no reference to this CSC review is presented in the EA. This is of high concern to TU since the SIS specifically requires that edge-matching stipulations along field office boundaries be ensured and supported. Further, the SIS states that any stipulations that are inconsistent between field office boundaries will be flagged for corrective action. In our pre-EA review we requested the WRFO implement such buffers based on the LSFO stipulations; the BLM did not respond to our request in their response comments; in fact, our concerns appeared to be ignored.

The IM allows for the development of new lease stipulations where current ones may be inadequate and it also allows for revised lease stipulations. It is our contention that the leasing stage of

the entire oil and gas development process is the most important stage of the process. It is here that the BLM can ensure some level of viable protection measures that is based on past experience and case studies while seeking additional means for further protecting the resource. Knowing the impacts that will occur with the issuance of oil and gas leases and consequential development should account for a higher degree of stipulations and mitigation applications than that which occur currently and have been applied over the course of the last 20-30 years. We are particularly interested in strengthening the setback or buffer stipulations for streams and riparian areas. The leasing stage is the place and time to do this. Seeking stronger setbacks does not hinder oil and gas developments, especially when these setbacks potentially prevent future listings of sensitive species through stronger protection measures.

2. Site Visits. Site visits for the proposed lease parcels are required under the IM and the SIS. The EA is vague in its discussion of site visits and TU questions whether site visits to Parcel COC75311 were conducted during the winter or at an earlier time that allowed a more thorough review of parcel locations, impacts to resource areas including water and fisheries improvement projects, erosion issues, and vegetation conditions. Further, site visits are to be conducted by the Interdisciplinary Team which should include state wildlife agency personnel.

While TU agrees with the Colorado's SIS discussion for a clear sense of order and thoroughness in the new leasing reform process the Colorado BLM has stated it has thus far implemented. However, we feel the BLM has failed to implement the required components outlined in its SIS, other than offering the leases in a new coordinated timing process. We feel that there is much more the BLM could implement from the IM in order to better protect the resources within each field office. Strengthening the lease stipulations is but one of the directives the IM calls for. Reviewing the adequacy of the dated RMPs is another example. Implementing more coordinated and collaborative lease parcels reviews among all agencies and conducting more unified site visits are two additional ways in which the BLM could strengthen their leasing reform process. Because it is clear the Colorado BLM has yet to implement the IM to its fullest measure, the review process for leasing analysis has not been initiated in the manner required. Thus, TU requests the deferral and withdrawal of the Parcels until the leasing analysis is completed in a more thorough manner.

B. The BLM Does Not Include Conformance with the BLM's Instruction Memorandum 2012-039 for Consideration of Important Wildlife Habitat Mapping Information

The EA fails to mention that a review of critical habitat and migration corridors has been conducted, as required under the new IM 2012-039. This IM (*"Identification and Uniform Mapping of Wildlife Corridors and Crucial Habitat Pursuant to a Memorandum of Understanding with the Western Governors' Association"*) was issued December 21, 2011 and is to provide guidance to all BLM field offices in identifying wildlife corridors and crucial habitat, using the newly developed Western Wildlife Crucial Habitat Assessment Tool (CHAT). This multi-dimensional effort is designed to coordinate information about priority habitat areas existing across political jurisdictions in specific regions of the West. The timeframe for implementing the use of CHAT is immediate, according to the IM.

Critical elk and mule deer range constitutes the best habitat lands that Colorado's big game populations need to survive. Because of limited abundance, particularly to mule deer, impacts from loss of critical habitat, and/or unique qualities, the irreplaceable and sensitive nature of these critical habitats makes them unsuitable for oil and gas development and NSO stipulations that preclude all surface disturbances should apply. Implementing the CHAT program would further ensure that the BLM

is performing appropriate and consistent up-to-date habitat analysis for Wyoming's dwindling critical habitat.

Research by Hall Sawyer (2008; 2009) on the importance of maintaining mule deer migration routes becomes particularly important in their proximity to gas fields. Distinguishing between high use areas (which may concentrate deer on key forage habitat and create slow movement through an area) and lower-use areas (which provides faster corridor movement and connectivity between high use areas) can provide opportunities for better pad and road development structure, avoiding fragmentation and ensuring deer have safe access between areas.²⁷

In another study in the Atlantic Rim area of south-central Wyoming, Sawyer found that sustaining migratory populations of mule deer requires the maintenance and protection of suitable seasonal ranges and maintaining functional uses of migration routes.²⁸ Many of these lease parcels occur in critical big game habitat and the use of timing limitations is the only stipulation applied toward the protection of these important areas. TU contends that the EA did not perform a thorough review as required by NEPA.

C. BLM Should Not Tier Environmental Analysis to an Outdated RMP and Oil and Gas Leasing RFD or an RMP Undergoing Amendments

The BLM has reviewed the nominated parcels against the current RMP and the 1997 RFD document for this sale. Tiering the EA to an outdated RMP provides insufficient analysis since the 1997 WRFO RMP lacks specific information on the impacts from energy development from the 1990's era. Much of the WRFO RMP is based on data previous to 1995. Relying on the impacts discussion and reasonably foreseeable development scenarios are limited in sufficient detail in the dated RMP and cannot be used to support the EA and its Finding of No Significant Impact (FONSI). Some impacts from oil and gas leasing and development are major and thus significant. Mitigation options and stipulations associated with the dated RMPs are not adequate for the level of development that is occurring within the WRFO resource area. In this case, TU is requesting that BLM defer these parcels until it can take a hard look, as NEPA mandates, before leasing commitments are made which cannot be retrieved.

By tiering the lease parcels to the RMP, the EA states that the subsequent issuance of oil and gas leases is consistent with the Biological Assessment and Biological Opinion (BA/BO) completed for the RMP, therefore no further consultation with the US Fish and Wildlife Service (USFWS) is required. We take issue with that assumption based on the increased level of sensitive and threatened species in WRFO area and the date of the BA/BO. In addition to the sensitive nature and recognition of the Colorado River cutthroat trout (CRCT) by the BLM, USFWS, and the CPW, other species remain threatened or sensitive in the area include Bald Eagles, numerous raptors, sage grouse, and the black-footed ferret.

The EA has relied on generic land use planning documents and a deferral of site-specific NEPA

²⁷ Sawyer, Hall, M. Kauffman. 2008. "Identifying Mule Deer Migration Routes Along the Pinedale Front". Report prepared for the Wyoming Wildlife and Natural Resources Trust. May 2008; Sawyer, H. et al. 2009. "Identifying mule deer migration routes to and from the Pinedale Anticline Project Area". Report prepared for University of Wyoming School of Energy Resources, Laramie, WY. November 2009

²⁸ Sawyer, Hall. 2007. "Final Report for the Atlantic Rim Mule Deer Study". Prepared for Anadarko Petroleum, BLM, and the Wyoming Game and Fish Department. April 2007.

analysis to the APD stage to satisfy its pre-commitment to NEPA. By placing heavier weight on the APD stage, the BLM has dismissed any consequences to its obligation to maintain resource integrity and habitat protection. Instead, the BLM has chosen to use the APD to leverage mitigation. This level of analysis by omission is inappropriate and TU asks the BLM to reevaluate the EA and provide a stronger site-specific analysis of the Parcels in question.

III. BLM State Director is Obligated to Protect Native Fish and Cutthroat Trout Watersheds

A. Background Information on the Colorado River Cutthroat Trout

The Colorado River cutthroat trout (*Oncorhynchus clarkii pleuriticus*) is the only native trout found in the upper portion of the Green River basin. The CRCT is a subspecies of cutthroat that originally ranged throughout Colorado, Wyoming, Utah, New Mexico and quite possibly Arizona in the coldwater stream reaches of these states.²⁹ Due largely to impacts created by humans, CRCT populations have decreased in the last 150 years and now occupy less than eight percent of their original range (from an estimated 21,386 miles of historically occupied habitat to 3,022 miles of currently occupied habitat)³⁰.

In more recent years, CRCT have been pushed into higher elevation streams by the same cast of problems that plague most native trout in the West: introductions of non-native trout, habitat degradation, excessive fish harvest, and fragmentation of stream habitat. Most recent estimates cite that 314 populations of CRCT exist in the eight occupied river basins within CRCT's historic range, down from the estimated 318 populations provided in 1996 by Michael Young and colleagues from the U.S. Forest Service³¹.

A Colorado River Cutthroat Trout Conservation Team was formed in 1999 and consists of fisheries and other resource professionals from Wyoming, Colorado, Utah, the Departments of Agriculture and Interior, and the Ute Indian Tribe. The establishment of the CRCT Conservation Team has led to a more complete assessment of the CRCT's population status, abundance and distribution, giving rise to new information not available when the BLM completed previous Resource Management Plans for the White River resource area. Also, since completion of the WRRMP, the US Forest Service and the BLM has recognized CRCT as a sensitive species, and the State of Colorado has designated the CRCT as a species of special concern³².

The BLM, through its Colorado State Director, is a participant in the CRCT Conservation Team and a signatory to the Team's Conservation Agreement, which obligates the BLM to ensure implementation of CRCT conservation actions detailed in the Team's Conservation Strategy. This includes protecting potential cutthroat trout habitat. BLM State offices in Montana and Utah have taken aggressive measures recently by increasing buffer stipulations as a means to help promote the long-

²⁹ Behnke, Robert, *Trout and Salmon of North America* (2002)

³⁰ Hirsch, Christine, L., et al, *Colorado River Cutthroat Trout Conservation Agreement Status Report, Range-wide Status of CRCT* (2005)

³¹ Haak, Amy, et al., "Developing a Diverse Conservation Portfolio for Colorado River Cutthroat Trout". TU. July 2011.

³² CRCT Conservation Team, *Conservation Agreement and Strategy for Colorado River Cutthroat trout [Oncorhynchus clarkii pleuriticus] in the States of Colorado, Utah and Wyoming*, p. 3 (June 2006) (the "Conservation Agreement").

term recovery of CRCT and help reduce the trend towards federal listing. Colorado is the latest state to implement stronger buffer stipulations to protect CRCT habitat with the LSFO ROD (October 2011). Prior to that latest stipulation addition, Montana and Utah federal agencies (3 BLM offices in Montana and 1 USFS office; 1 USFS office in Utah) have implemented stronger buffers including one-quarter mile buffer setbacks or stronger for perennial and cutthroat trout watersheds. TU has repeatedly cited these examples of neighboring federal agencies strengthening their resource protection measures for fish and wildlife in our comments to the EAs prepared for several Colorado lease sales, including the last set of comments submitted on January 3, 2012 for this May 2012 lease sale. However, the BLM failed to respond to these examples.

The Conservation Strategy recommends that population monitoring be conducted at least once every five years (CRCT Coordination Team 2006) and currently the Team is compiling the results of the 2006-2010 survey results, now due to be released at the end of this year. BLM's response to our submitted EA review comments (requesting an internal update based on BLM's partnership with the CRCT Team) first dismisses any discussion of the Parcel COC75300, stating it was outside the scope of this EA since it had previously been reviewed in an EA for a sale conducted a year ago. Since that parcel (previously referred to as Parcel 6156) was deferred pending further environmental review, the BLM chose not to include any further discussion, though this parcel (now referred to as COC75300) is included in this May 2012 sale. The BLM used dated RMP stipulations as reasoning that the buffer stipulations were adequate for CRCT.

Further, the updated CRCT Regionwide Assessment is available for internal agency use by BLM as a resource reference on new CRCT status assessment. In contacting Team members with the CRCT Team about the status of the Rangewide Assessment update, TU was told the data was readily available to use among the agencies under circumstances such as a status review for an EA, though the document will not be published until later this year. TU requests that the BLM review the data and update the information on CRCT populations within the WRFO.

Strategies for conserving this sensitive species calls for securing and enhancing individual populations of CRCT. One of the most challenging needs for CRCT is the reestablishment of large, interconnected habitat areas where fluvial and adfluvial populations can exist free of non-native trout species. Headwater streams typically provide habitat for CRCT populations and these stream reaches are typically small with stream widths less than 15 feet and depths less than three feet. Due to the small stream reaches, any degradation or catastrophic event will have immediate and long-term consequences to the fisheries population, and typically result in total fish loss. Such an event was witnessed in a tributary of LaBarge Creek in the 1970's by the Wyoming Game and Fish Department, when an oil spill into the stream killed all the CRCT. This population never recovered³³.

CRCT populations are not tolerant of sediment loads which can occur with road traffic, construction activities, sudden weather events, spills, steep slopes, etc. Such erosion events can cover eggs from spawning, literally wiping out the following year's age class of fish. Oil and gas leasing means an increase in roads, truck traffic, construction activities, toxic spill potential, and loss of water due to dewatering of streams for a variety of activities including dust suppression. Colorado has a history of hazardous spills or discharges into coldwater streams from accidents ranging from diesel truck turnovers to accidental discharge of hazardous fuels. In fact, since 2000, a total of 3,966 spills and releases have

³³ Binns, Allan. Wyoming Game and Fish Internal Report. 1977.

occurred statewide as reported by oil and gas operators to the COGCC. And since 2010, those spills and contamination events have dramatically increased in numbers (COGCC on line).

B. Specific Threats to Colorado River Cutthroat Trout in the White River resource drainage from the Lease Sale of Parcels COC75300 and COC75311.

Several important coldwater fisheries streams have the potential to be impacted by the sale of these Parcels. Lease Parcels COC75300 (Lake Creek) and COC75311 (Coal Creek) are located in habitat containing sensitive fisheries. The BLM sensitive species policy requires the agency to "provide policy and guidance ... for the conservation of [sage grouse] and the ecosystems upon which [it] depend[s]."³⁴ 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."³⁵

The 1997 RMP directs the BLM to do much more to protect CRCT streams and watersheds than what the BLM is currently stating they have to do. On page 2-35 of the RMP under the heading of "Colorado River ", the following management direction is given:

"Channel and riparian conditions on streams occupied by Colorado River cutthroat trout will be improved from poor to fair condition within five years, and to good condition within 10 years of approval of this Record of Decision", and further on....

(page 2-36) "...BLM authorized land uses that adversely affect long term riparian, channel, or aquatic conditions associated with Colorado River cutthroat trout fisheries will be prohibited."

The WRFO currently imposes setback stipulations that are not adequate, are inconsistent among field offices in Colorado and do not differentiate between waters containing sensitive fish and wildlife species and those waters that do not contain such species. Setbacks provide a buffering and protection element that has been widely proven in the scientific literature as beneficial not only to fish but a host of other diverse terrestrial and semi-aquatic species. We have supplied ample science-based studies and references in our May 2012 EA review (January 3, 2012 submitted EA comments). The stipulations on the Parcels are not effective for water quality protection and are an extremely narrow measure of protection for streams.

1. Permanent Removal of Lease Parcel COC75300 on Lake Creek

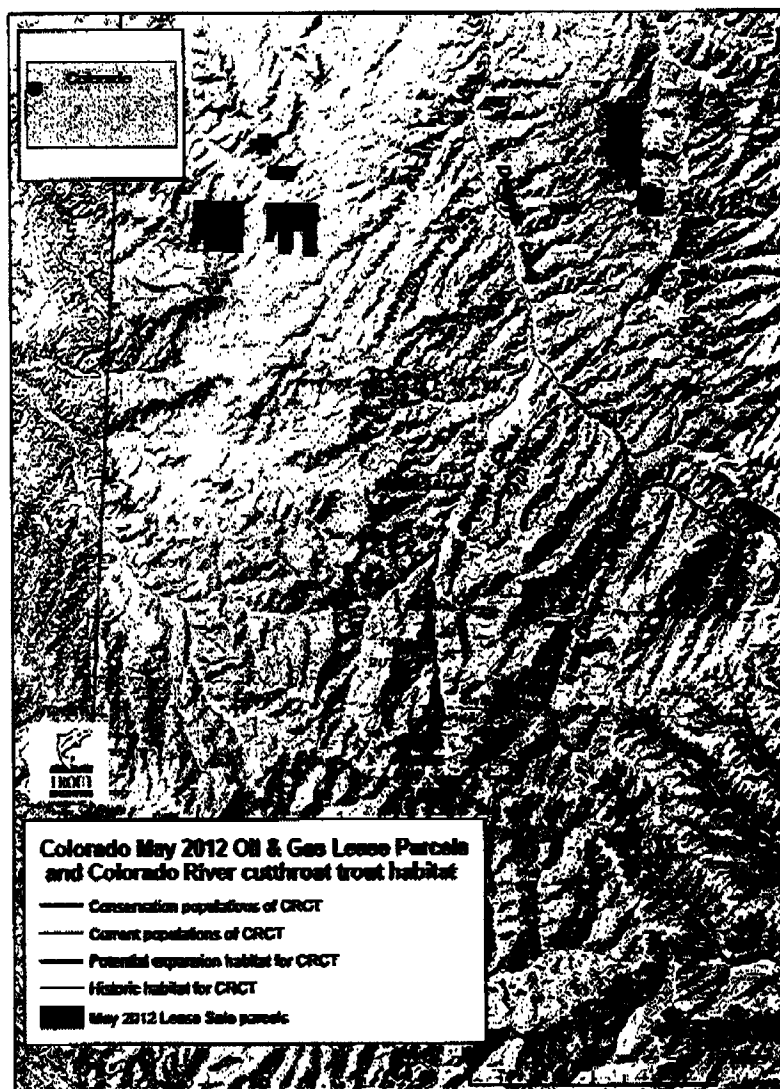
TU is recommending that the BLM permanently withdrawal Lease Parcel COC75300 from all further lease sales. The area this parcel is located within contains significant historic, current and potential CRCT habitat (see Map 1). Lake Creek, identified in the AMS (Table 2-14; p. 2-51) as functioning at risk (or FAR), is a perennial stream containing one of only several populations of CRCT in the lower White River Basin. New information on CRCT populations in Lake Creek has become available since the 1997 RMP which the BLM refers to in citing the adequacy of lease stipulations for this drainage.

³⁴ BLM Manual § 6840.01

³⁵ Ibid.

According to the Colorado Parks and Wildlife (CPW), it's possible that hybridized fish occupy the lower reaches of Lake Creek while pure fish occupy the headwaters (2012 personal communication). This scenario occurs elsewhere in the White and Yampa River Basins. Since genetic integrity is unknown, the conservative approach would be to afford this population full protection (i.e., to treat it as genetically pure until it's been proven otherwise). Because these CRCT evolved in a relatively low-elevation system and in some level of isolation, it's conceivable that they possess unique characteristics. As earlier stated, an update to the Colorado River Cutthroat Trout Conservation

White River BLM FO May 2012 Lease Parcels-Douglas Pass



Map 1. Lake Creek Parcel COC75300 located in Colorado River cutthroat trout habitat.

Agreement of 2006 (of which BLM is a signatory) and the Region-wide Assessment is expected to be available this year. This Assessment provides valuable data on the current status of CRCT Agreement populations and updated management guidelines, goals and objectives. TU recommends that in addition to permanently removing this area from further leasing, no leasing occur in any CRCT watersheds until the Assessment can be incorporated into the RMP revision.

In addition to Lake Creek's status as an important stream for CRCT populations, the Right Fork of Lake Creek exists within this drainage and is experiencing mass wasting while maintaining a small but viable CRCT population. This drainage, as described in the AMS, receives heavy sediment loads based on significant slopes, poor soil types, and minimum riparian vegetation. The BLM manages this area as sensitive fisheries and there is significant potential for improvements to this fishery. In addition, the surrounding area (referred to as the Lake Creek/Soldier Creek complex) is substantially unleased and remains an important wildlife area as well.

According to the COGCC (2012) there are only three total wells located in the Lake/Soldier Creek complex. One is drilled and abandoned while the other two are plugged and abandoned. No other well activity exists in this area and the Lake/Soldier Creek complex contains only approximately 10 leases. Due to the predominately undeveloped and isolated location of this area, withdrawing this Parcel would meet the objectives of the 1997 RMP in maintaining conservation measures for the protection of the CRCT habitat

There is a lack of strong stipulations and mitigation components attached to this lease (or any of the stream or riparian associated lease parcels) that would prevent further mass wasting and harm to this fishery. Without adequate buffers to protect the watershed and soils, any resource damage which directly impacts CRCT populations place these sensitive fish species at risk. Protecting the remaining conservation populations is extremely important but is not likely to be enough to insure the long-term viability of this species across its range. Given the limited extent and highly fragmented nature of the remaining populations, it is necessary to restore connectivity between isolated populations to provide opportunity for movement to new streams when events such as fire or floods make existing habitat unsuitable.

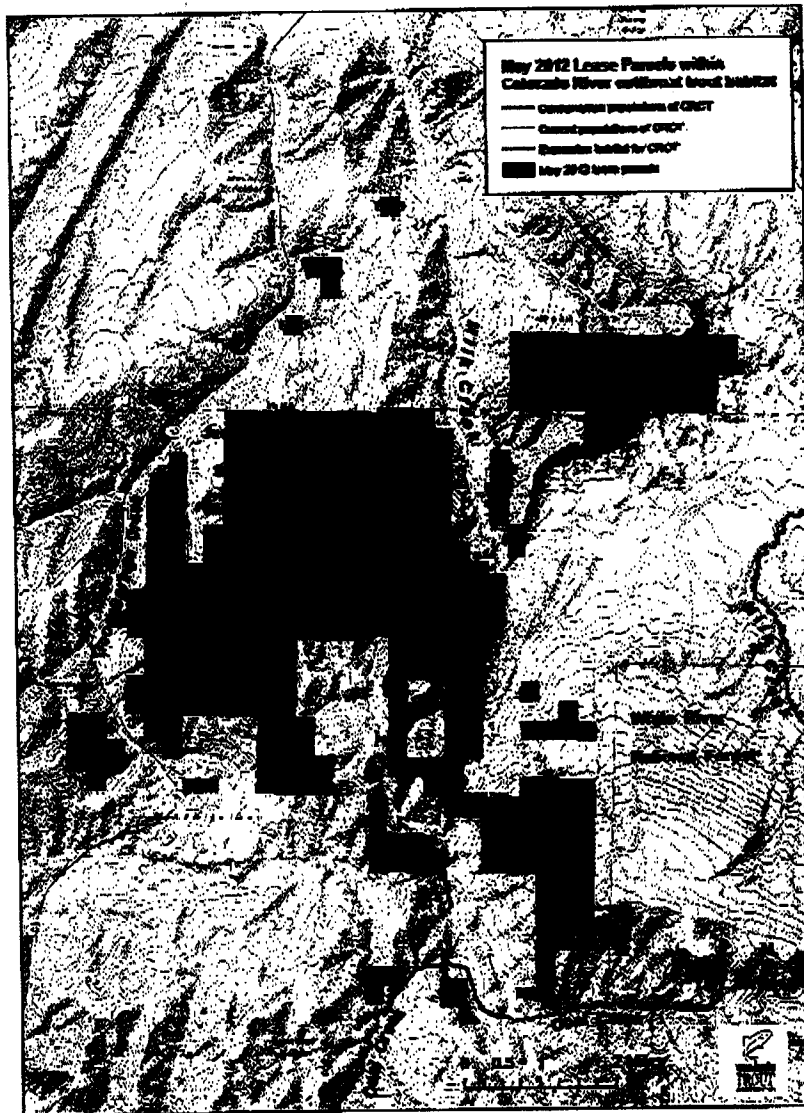
2. Defer Lease Parcel COC75311 on Coal Creek

TU requests that Parcel COC75311 be deferred until further analysis is completed and stronger buffer stipulations can be applied. This Parcel (consisting of 2 small parcels within and adjacent to Coal Creek) is located in sensitive native cutthroat trout and coldwater fisheries habitat and in CRCT potential habitat (see Map 2). Occupied by CRCT in some stretches, it is also identified as important potential cutthroat habitat by CPW and TU. Rainbow and brown trout occupy lower reaches and in the further lower reaches, flannelmouth and bluehead sucker (both sensitive native Colorado River fish). Since oil and gas operations could potentially have negative impacts from surface and below surface disturbances to all coldwater fish species, TU remains concerned about the lack of adequate analysis in the EA to these species.

Further, downstream sediment and any potential contamination events would impact the two Colorado River native fishes, and since the BLM is currently engaged with state and other organizations in the Upper Colorado River Basin Native Fishes Keystone Initiative, TU believes a thorough analysis of

this watershed is warranted.³⁶ Special requirements for mitigation impacts to Colorado River fish must

White River BLM FO Lease Parcels-May 2012 Sale-Milk Creek



Map 2. Location of Parcel COC75311 (formerly 6169 on this map) within the Coal Creek watershed.

³⁶ *Native Fish Conservation in the Colorado River Basin*. Annual Report #2009-0076-000. By Dan Dauwalter, et al. Trout Unlimited. Spring 2010.

be employed and stronger stipulations than those which are attached to this Parcel must be included.

Our research indicates that the stronger the buffer setback, the better the protection. The CRCT Conservation Agreement requires that potential CRCT habitat be protected as much as current and conservation habitat parameters. Further, the 1997 RMP not only requires protective stipulations for any threatened, endangered, and sensitive species, but consultation with USFWS. We respectfully request the BLM to remove this Parcel until further analysis is completed.

C. BLM Must Consult with U.S. Fish and Wildlife Service as Required for Sensitive Species

TU has noted in previous comments to the BLM's environmental analyses for lease sales (May 2011 EA) that appropriate consultations with the U.S. Fish and Wildlife Service (USFWS) have been missed. Though the BLM responded they are not obligated to consult with USFWS because they have qualified wildlife biologists responding to these lease reviews, we respectfully disagree.

The WRFO RMP of 1997 is very specific in its requirements for consultation for affected species. This includes not only threatened and endangered species, but sensitive species as well. The RMP states on page 2-36 (Implementation: Special Status Species):

BLM will continue to consult with the USFWS on federally authorized actions that may affect listed or proposed threatened or endangered species. Project-specific conservation measures derived through the consultation process will be applied to BLM-permitted actions such as COAs through BLM's various permitting processes. NSO, TL and CSU stipulations associated with black-footed ferret, bald eagle, Colorado River cutthroat trout, ferruginous hawk, and northern goshawk (see Appendix A), will be applied where appropriate, to all use authorizations and leasing processes.

IV. Water Quality and Quantity Resources Were Not Adequately Analyzed

The EA is negligent in not addressing the implementation of protective measures and stipulations for water resources. In addition to not implementing protective stipulations based on the environmental consequences presented in the EA, there was a disturbing lack of significant discussion of the importance of the water quality and watersheds and associated drilling impacts to the CRCT and coldwater fisheries. Further, the EA stipulations do not provide any defined buffer limitations. Lack of a defined buffer is unacceptable. It assumes that despite poor and fragile soil conditions, steep and wasting slopes, heavy sedimentation, and poor revegetation potential in many of these lease parcel areas, that the BLM will make certain that industry will not harm this habitat by a written assurance. Though the EA states there are "no specific lease stipulations for water resources" (p. 14), the conditions of the geologic and geographic features indicate substantial harm can come to these resources from oil and gas development.

This statement in the EA is of particular concern as rapid expansion of oil and gas development includes the use of new energy extraction technology. As the use of horizontal drilling and hydraulic fracturing (fracing) increase across the WRFO, threats to surface waters and groundwater associated with natural gas development increase. There is a high level of growing concern among the public and within the scientific community. The EA lacks any of these concerns in their review of the lease parcels. Gas well development of any type creates surface disturbances which threaten water quality. The

release of contaminants produced from deep groundwater such as brines is not assessed. Nor is there a full discussion of the potential threats posed by produced waters and their release or discharge to either the surface area or groundwater areas. The BLM has yet to assess or understand the overall costs and benefits of extracting these resources, as is evident in the EA analysis.

In a recent study evaluating the threats to surface waters from natural gas development³⁷, EntrekIn and her associates found that gas wells are often close to surface waters and could impact these surface waters by elevated sediment runoff from pipelines, roads, contamination from introduced chemicals or the resulting wastewater, and affecting the alteration of streamflows from changes in surface geography. Based on the review of the number and proportion of violations associated with natural gas development as reported to state regulatory agencies, sediments and contaminants associated with drilling are making their way into surface waters. This has been demonstrated in Colorado through the COGCC reports of 3,966 spills and contamination incidents caused from oil and gas development. In addition, water withdrawal from surface and groundwaters for use in drilling operations may compound water use and conditions.³⁸

The minimum the BLM should do is to increase the buffer zones for water resources. By implementing increased buffers up to one-quarter of a mile or more, sedimentation and potential contaminants can be minimized. There are significant science-based studies that support increased buffer zones around riparian and stream habitats. We have supplied a detailed discussion of the importance of strong buffers in our January 2012 EA comments. The value of Colorado's water resources should not be placed at risk; implementing specific stipulations at the leasing stage rather than imparting mitigation parameters at the APD stage offers more consistent and uniform protections. It also provides industry with a set of known parameters for leasing in sensitive areas.

TU was pleased to note the lease stipulations attached under the LSFO NSO conditions. Implemented in October 2011, the LSFO RMP understands the value of water quality and quantity. In addition to attaching a quarter-mile buffer to perennial streams, the LSFO also increased stipulations to protect fragile soils. We have provided numerous examples in our earlier comments of other BLM resource areas that are now implementing stronger buffer zones in riparian and stream settings. The IM 2010-117 requires each state office and adjoining state offices to edge-match stipulations across field offices and districts. Because of this requirement and based on the additional growing trend of other federal agencies to increase watershed buffers, TU requests that the BLM defer leasing any parcels until the updated RMP is complete.

IV. Air quality Analysis Was Not Adequately Reviewed

Recent studies and documented violations of ozone NAAQS in the neighboring state of Wyoming undercuts BLM's apparent assumption that operation of the Clean Air Act and air quality standards will always prevent NAAQS violations. There are more than 25,000 active oil and gas wells in Colorado and at least 6,000 in the WRFO. In addition, Colorado has recently reviewed air quality and

³⁷ EntrekIn, Sally, et al. *Rapid expansion of natural gas development poses a threat to surface waters*. In *Front Ecol Environ* 2011; 9(9): 503-511, doi:10.1890/11053. Published on line October 6, 2011. The Ecological Society of America. www.frontiersinecology.org.

³⁸ *Ibid.*

ozone emissions and found new disturbing increases in air quality hazards.³⁹ This study (published in the *Journal of Geophysical Research, Atmospheres*) found that oil and gas operations released nearly two times as much methane into the atmosphere in 2008 as the state [of Colorado] realized. Exceeding the EPA value by a significant rate, questions about Colorado's air emission exceedences from oil and gas development must be further analyzed.

Accordingly, this new information on air quality and ozone flatly contradicts the central assumption relied on for BLM's assertion that existing environmental analyses satisfy NEPA. BLM should defer leasing the disputed parcels pending the completion of quantitative regional air quality analysis of the air quality impacts of oil and gas development in the WRFO.

V. Executive Order 13443 Mandates Consideration of Wildlife and Outdoor Recreation

On August 16, 2007, President Bush signed Executive Order 13443, which directs federal agencies to "[m]anage wildlife habitats on public lands in a manner that expands and enhances hunting opportunities, including through the use of hunting in wildlife management planning."⁴⁰ The Executive Order further requires that agencies "[e]valuate the effect of agency actions on trends in hunting participation and, where appropriate to address declining trends, implement actions that expand and enhance hunting opportunities for the public."⁴¹

If the parcels being offered at the lease sale are ultimately explored or developed for fluid mineral production, wildlife, wildlife habitats, and hunting participation will undoubtedly be affected. Impacts associated with oil and gas development on big game habitat (including crucial and severe winter range, summer production and parturition areas) and migration corridors, as well as on sage grouse populations are well documented in scientific literature. The BLM has not fully analyzed these and other impacts to wild and native fish in conjunction with the lease sale, other than a brief mention of the importance of hunting in the WRFO. Lack of specific recreation and economic data as it affects the public lands use in the WRFO is lacking.

In fact, the Executive Order directs federal agencies not only to evaluate and consider impacts to wildlife and habitat, but also to "facilitate the expansion and enhancement of hunting opportunities and the management of game species and their habitat."⁴² The record is absent of any evidence that the BLM considered the mandates of Executive Order 13443 in deciding to offer parcels at this lease sale. Although Executive Order 13443 states that it does not create any substantive right enforceable at law, the BLM should nonetheless consider the requirements of the order and perform all review necessary to comply with its mandates prior to offering the parcels at the lease sale.

VI. Irretrievable Commitment of Resources at Leasing Phase

TU's leasing concerns are amplified by the BLM's practice of vesting development rights at the time of lease issuance, regardless of specific resource concerns that might arise between the time of leasing and the time of actual development. This practice can lead to situations where the agency is

³⁹ www.eenews.net/Greenwire. "Study Ignites Fresh Concerns about Drilling Emissions". Gayathri Vaidyanathan, reporter. February 14, 2012.

⁴⁰ Executive Order 13443, *Facilitation of Hunting Heritage and Wildlife Conservation*, § 2(c) (Aug. 16, 2007)

⁴¹ *Id.* § 2(a).

⁴² *Id.* § 1

precluded from imposing necessary stipulations for protection of resources because such stipulations are perceived to infringe on the vested rights of the lessee.

Under the BLM's regulations governing fluid mineral leases, a lessee has the "right" to use the leased lands subject only to stipulations contained in the lease, restrictions deriving from nondiscretionary statutes, and "such reasonable measures as may be required by the authorized officer."⁴³ The regulations go on to state, however, that the additional reasonable measures can only be imposed if "consistent with lease rights granted." A phrase often heard from agency personnel when considering the addition of new stipulations to an existing lease is that the agency's "hands are tied" because the new stipulations are viewed as impermissibly encroaching the vested right of the lessee to develop. In other words, the BLM irretrievably and irreversibly commits resources at the point of leasing, making it extremely difficult or impossible to impose additional stipulations at a future date⁴⁴ This is supported by the BLM's Handbook for Planning for Fluid Mineral Resources, which states, "In the fluid minerals program, [the point of irreversible] commitment occurs at the point of lease issuance."⁴⁵

Because of the practice of vesting development rights at the time of lease issuance, TU is concerned that should a site-by-site analysis reveal that a particular parcel is not appropriate for surface occupancy, or other types of impacts, that the BLM's hand would be tied, and the agency would be unable to effectively protect the resource. TU recognizes that the Colorado State Office of the BLM does not have authority in the context of this lease sale to alter the existing practice of irretrievably committing resources at the time of lease issuance. TU highlights this practice in this protest, however, to underscore the importance of ensuring that the BLM has taken an adequate hard look at existing and new information prior to offering parcels of public land for mineral leasing.

VII. New Information Regarding Climate Change Requires Additional NEPA Analysis Prior to Leasing

As applicable federal law, implementing regulations and memoranda, and court precedent make clear, the BLM must analyze the impacts arising out of new significant information not previously available when original NEPA documents were drafted. With respect to this lease sale, new information has become available regarding the reality of climate change in Colorado, and the associated impacts on fish and wildlife and their habitats. Such information was not included in the BLM's previous land management planning NEPA analyses. The EA offers slight reference which effectively dismisses any discussion of the impacts from warming temperatures to the environment, claiming there is a lack of adequate analysis which prevents any identification of reasonably foreseeable climate change impacts from green house gas emissions. TU takes issue with that singularly identified source of climate change factors, and believes the BLM has more responsibility in analyzing climate change issues on a cumulative basis, as required by NEPA.

The EA should include updated references on the impacts to watersheds and habitat based on recent and numerous studies rather than claiming that the level of difficulty in evaluating any climate change impacts prevents analysis. The Department of Interior's 2009 issuance of Secretarial Order No.

⁴³ 43 C.F.R. § 3101.1-2

⁴⁴ *Pennaco Energy, Inc. v. U.S. Dep't of Interior*, 377 F.3d 1147, 1160 (10th Cir. 2004).

⁴⁵ U.S. Dep't of Interior, Bureau of Land Management, *Handbook H-1624-1, Planning for Fluid Mineral Resources*.

3289⁴⁶ has provided the BLM with specific obligations for addressing adaptations and mitigation to BLM land use plans. The BLM's reliance on upon land use plans that authorize leasing but do not analyze the cumulative impacts of climate change constitutes a violation of NEPA and additional analysis is required before the irrevocable commitment of leasing is made.

Leading climate models indicate that Colorado will likely warm anywhere from 1.9 degrees Centigrade to 4 degrees Centigrade within the next fifty years⁴⁷. Although there remains uncertainty as to the effects of a warmer climate on precipitation, there is no question that Colorado has experienced a series of droughts in recent years.

Colorado is particularly vulnerable to climate change because of the semi-arid climate of the region. It is estimated by the US Bureau of Reclamation that the runoff of the Colorado River Basin (which these parcels are located within) is projected to decrease anywhere from 5 percent to 20 percent by 2050 because of climate change.⁴⁸ In addition, the US Bureau of Reclamation has estimated that since 2003, the 10-year average consumptive use of water in the Colorado River Basin has exceeded the 10-year average supply.⁴⁹ The BLM has concluded in a 2008 environmental analysis on oil shale development⁵⁰, that due to the water consumption required by oil shale development the communities in western Colorado who depend on an agricultural-based economy will be transformed to an industrial economy.

Numerous studies completed on climate change and impacts to watersheds include those produced by the Department of Interior, US Geological Survey, and the US Forest Service. In addition, TU has produced a series of reports on climate change and impacts to coldwater fisheries that provide management direction for dealing with climate change results in addition to those impacts associated from air emissions. In a US Forest Service report that discusses aquatic ecosystems, fish populations, and climate change implications⁵¹, proactive efforts are identified that may help trout populations adapt to climate change, and where transitions of aquatic ecosystems are impaired, other alternatives may need facilitating. In another report by the Department of Interior⁵², a study which examined the influence of a changing climate on the persistence of native trout and grayling in 11 western states observed changes from summer temperature increases, earlier winter flooding events, increase in wildfires, and drought. For CRCT populations in the Upper Colorado River drainages, the analysis revealed a moderate to high risk situation from wildfire and flooding.

⁴⁶ Secretarial Order No. 3289. Department of Interior: September 14, 2009. *Addressing the Impacts of Climate Change on America's Water, Land, and other Natural and Cultural Resources*.

⁴⁷ See Intergovernmental Panel on Climate Change, Working Group I, *Climate Change 2007: The Physical Science Basis: Summary for Policy Makers*(2007) available at: http://ipcc-wg1.ucar.edu/wg1/docs/WG1AR4_SPM_Approved_05Feb.pdf.

⁴⁸ "Oil Shale 2050: Data, Definitions, & What You Need to Know About Oil Shale in the West." Western Resource Advocates report. March 2012. www.westernresourceadvocates.org

⁴⁹ U.S. Bureau of Reclamation

⁵⁰ U.S. Department of the Interior. Bureau of Land Management. *Oil Shale and Tar Sands Final Programmatic Environmental Impact Statement (PEIS)*. September 2008.

⁵¹ Rieman, Bruce, et al. *Climate Change, Aquatic Ecosystems, and Fishes in the Rocky Mountain West: Implications and Alternatives for Management*. US Dep't. Agriculture/US Forest Service. General Technical Report RMRS-GTR-250. November 2010.

⁵² U.S. Dep't. Interior & U.S. Geological Survey. "The Potential Influence of Changing Climate on the Persistence of Salmonids of the Inland West." Open-File Report 2010-1236. In cooperation with Trout Unlimited and the US Forest Service.

Because CRCT and other trout species require cooler and colder water temperatures to survive, any changes toward warmer water, changes in stream flow, and the increasing frequency and intensity of other disturbances (such as oil and gas development) are among the factors associated with climate change that are likely to impact native trout populations in the western U.S. TU conducted a study that evaluated three native cutthroat subspecies and their risk to climate change factors associated with increased summer temperatures, uncharacteristic winter flooding, and increased wildfires.⁵³ Results indicated that 29% of CRCT populations will be at high risk from one or more of these three factors. These risk factors are equally likely to be compounded by other habitat degradation factors such as oil and gas development, increased water usage to a growing population, and introduction of other salmonids and/or hybridization.

The above studies are readily available documents that the EA fails to consider, including its own internal reports on energy development, water use and climate change. Internal discussions and reports by BLM on climate change and its impacts to NEPA decisions have been developed since the initiation of the Rapid Ecoregional Assessment (REA) in 2010⁵⁴. REAs have been conducted for the Colorado Plateau area (2010) and a report issued that included a review of the management options, resource and conservation elements and the change agents (including oil, gas, and mining) potentially affecting the region. The WRFO should have included a discussion on the information provided from the Colorado Plateau Task 1 Final Memorandum (September 2010) that provides guidance to BLM management actions.

The BLM's planning documents for this May 2012 lease sale simply do not contain meaningful analysis of climate change. For the agency to continue to lease parcels for fluid minerals exploration and development without taking climate change into account is not only irresponsible, but also a violation of NEPA. TU requests the lease parcels be withdrawn until further analysis is completed.

VIII. Conclusion

TU has respectfully submitted our arguments in this protest as to why we feel the EA did not provide a required hard look, violated NEPA and provided insufficient reasoning for allowing the lease parcels to be proposed for the lease sale. We have requested that the BLM permanently remove one parcel (COC75300) and defer the other parcel (COC75311) until stronger setback buffers can be implemented that would provide better stream, fish, and habitat protection. The point of the EA is to provide an upfront assessment as to what can be expected in terms of environmental impacts and to appropriately mitigate using the most current and best available information. We have offered example after example of other BLM and US Forest Service offices in Colorado, Utah, and Montana where stream setbacks for sensitive fisheries have been expanded to .25 mile or greater. We have provided BLM with their own internal documentation that allows them to change, revise, and adopt new lease stipulations. Yet we are continually dismissed in our comments and concerns, with the BLM providing little feedback and constructive discussion in the Final EA.

Instead, the BLM has chosen on many occasions to dismiss the public's comments with the argument that the BLM cannot determine at the leasing stage whether a nominated parcel will actually

⁵³ Williams, Jack, et al. "Potential Consequences of Climate Change to Persistence of Cutthroat Trout Populations." North American Journal of Fisheries Management 29:533-548, 2009.

⁵⁴ BLM Climate Change program: Rapid Ecoregional Assessments. www.blm.gov/wo/st/er/prog/more/climatechange/involve. Accessed March 9, 2012.

be sold or developed, and thus they are unable to estimate whether a significant environmental impact will occur. The dismissive quality of this EA to the public's concerns is unacceptable and violates a basic trust premise between the public and the stewards of our public lands. TU has submitted timely and supportive research in reviewing and responding to the preliminary leasing EAs. Nevertheless, the release of this Final EA demonstrates BLM's unwillingness to seek ways for applying stronger mitigation parameters while still allowing areas to be responsibly leased. As we have reiterated numerous times, leasing is a major federal action, despite BLM's attempts to dispute that claim; simultaneously, the BLM informs the public that once a lease is sold, they are barred from prohibiting surface disturbances (unless there is a NSO) as it would violate the lease holder's contractual rights.

We feel that the BLM has violated the most fundamental timing precept should they move forward and lease these parcels: look before you leap.⁵⁵ By relying on the programmatic EIS of an outdated RMP, and by deferring site-specific NEPA analysis to the APD stage, the BLM has unlawfully disconnected the point at which BLM surrenders surface use rights from the point at which BLM prepares the requisite site-specific NEPA analysis.

Sincerely,



Cathy Purves
Science & Technical Advisor
Trout Unlimited
250 North 1st Street
Lander, WY 82520
307-332-6700 ext. 10
cpurves@tu.org



Aaron Kindle
Colorado Field Coordinator
Trout Unlimited
1536 Wynkoop #102
Denver, CO 80202
303-868-2859
akindle@tu.org

⁵⁵ *Metcalf v. Daley*, 214 F.3d 1135, 1143-45 (9th Cir. 2000) (agency violated NEPA by entering into a contract that "surrender[ed]...the Government's right to prevent activity in the relevant area").



THE
WILDERNESS
— SOCIETY —

Central Rockies Regional Office
1660 Wynkoop Street Suite 850
Denver, CO 80202
Ph. 303) 650-5818
Fx. 303) 650-5942

Fax TO: BLM CO SO Fax No. (303) 239-3499

Fax FROM: TWS

Date: 03/12/12

Number of Pages: (10) including cover page

Protest of Four (4) Parcels Being Offered in
BLM CO's May 2012 Oil and Gas Lease Sale



March 12, 2012

VIA FAX ((303) 239-3799)

Ms. Helen Hankins
 Director, Colorado State Office
 Bureau of Land Management
 2850 Youngfield Street
 Lakewood, CO 80215-7093

Re: **Protest of the Bureau of Land Management's Decision to Offer Four (4) Parcels in Colorado's May 2012 Oil and Gas Lease Sale**

Pursuant to 43 C.F.R. §§ 4.450-2 and 3120.1-3, The Wilderness Society ("TWS") protests the Bureau of Land Management's decision to offer four parcels in the Colorado State Office's May 2012 oil and gas lease sale. Those parcels are assigned the following numbers in the Sale Notice:

	PARCEL NUMBER	FIELD OFFICE
1	COC75328	White River
2	COC75329	White River
3	COC75330	White River
4	COC75300	White River

STATEMENT OF INTERESTS

TWS protects wilderness and inspires Americans to care for our wild places. TWS represents more than a half million members and supporters nationwide, all of whom have a great interest in the protection and enhancement of the natural values and recreational opportunities provided by our public lands. TWS commented on the draft environmental assessment ("EA") prepared by the BLM for the May 2012 lease sale, and also participated in an August 2011 site visit with the BLM to several of the sale parcels.

STATEMENT OF REASONS

Parcels COC75328, COC75329 and COC75330 overlap with the Pinyon Ridge Citizen's Wilderness Proposal ("CWP") area, and parcel COC75300 is located in key habitat for Colorado River cutthroat trout. The BLM last inventoried Pinyon Ridge in 1997, and concluded that it had "too many ways, livestock developments, and other evidence of humans" to contain wilderness characteristics. See Attachment. Since then, the BLM has issued new guidance on conducting wilderness inventories. See Instruction Memorandum (IM) 2011-154. The 1997 inventory does not comply with that guidance. Nor does the Final EA contain essential information about Pinyon Ridge that was acquired during a recent field office-wide wilderness screen, as required by the National Environmental Policy Act ("NEPA"). Consequently, the BLM must defer the Pinyon Ridge parcels from the lease sale to ensure compliance with IM 2011-154 and NEPA. Additionally, the BLM must defer parcel COC75300 because there are not adequate measures in place to ensure the protection of Colorado River cutthroat trout.

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I. LEASING PARCELS IN THE PINYON RIDGE CWP WOULD VIOLATE IM 2011-154.

FLPMA requires the BLM to inventory and consider lands with wilderness characteristics during the land use planning process. 43 U.S.C. § 1711(a); see also *Ore. Natural Desert Ass'n v. BLM*, 531 F.3d 1114, 1119 (9th Cir. 2008). IM 2011-154 contains mandatory guidance on implementing that requirement. Because the BLM has not complied with IM 2011-154, it must defer the Pinyon Ridge parcels from the lease sale.

A. The 1997 Inventory of Pinyon Ridge Does Not Comply With IM 2011-154.

The BLM cannot rely on the 1997 inventory of Pinyon Ridge, because it does not comply with IM 2011-154. Under IM 2011-154, an area has wilderness characteristics when it possesses the requisite (1) size; (2) naturalness; and (3) outstanding opportunities for solitude or a primate and unconfined type of recreation. IM 2011-154 Att. 1 at 4-6. In the 1997 inventory, the BLM determined that Pinyon Ridge met the criteria for size and outstanding opportunities for solitude. Attachment. However, it concluded that Pinyon Ridge had "too many ways, livestock developments, and other evidence of humans" to satisfy the "naturalness" criterion. *Id.* Because that conclusion is inconsistent with IM 2011-154, the 1997 inventory is no longer valid.

IM 2011-154 defines "naturalness" as the "degree to which an area generally appears to have been affected primarily by the forces of nature with the imprint of people's work substantially unnoticeable." *Id.* at Glossary. The BLM must "[a]void an overly strict approach to assessing naturalness." *Id.* at 6. "Some human works are acceptable so long as they are substantially unnoticeable." *Id.* at 6-7. Human works that "may be considered substantially unnoticeable" include "fencing, spring developments, barely visible linear disturbances, and stock ponds." *Id.* at 5.

It is apparent that the presence of "ways" and "livestock developments" heavily influenced the BLM's 1997 finding that Pinyon Ridge lacked "naturalness." Those features, however, are generally "acceptable" and "may be considered substantially unnoticeable" under IM 2011-154. Moreover, the mere presence of "ways" is not a sufficient basis for rejecting an area's "naturalness." See *id.* at Glossary ("A way maintained solely by the passage of vehicles is not a road."). Thus, the 1997 inventory embodies the very sort of "strict approach" to assessing "naturalness" prohibited by the IM.

B. BLM Must Update Its Wilderness Inventory for Pinyon Ridge.

As explained above, the BLM lacks a wilderness inventory for Pinyon Ridge that comports with IM 2011-154. Consequently, the BLM must update its inventory for Pinyon Ridge. Doing so is required by IM 2011-154, which states that "[r]egardless of past inventory, the BLM must maintain and update as necessary, its inventory of wilderness resources on the public lands." *Id.* at 1. The IM lists several circumstances that normally require wilderness inventory updates, including when wilderness characteristics are identified as an issue during the NEPA process and when a proposed action may impact wilderness characteristics.

Both of those circumstances exist here. First, as explained in the Final EA, "the public identified a number of concerns including . . . Pinyon Ridge Citizen's Wilderness Proposal . . ." Final EA at 4.

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Second, the lease sale may impact wilderness characteristics, because as the BLM concluded in the Final EA, oil and gas development "may be detrimental" to those characteristics. *Id.* at 56. Thus, because the lease sale may impact wilderness characteristics, which was identified as an issue in the Final EA, the BLM must defer the Pinyon Ridge parcels in order to update its wilderness inventory.

II. LEASING PARCELS IN THE PINYON RIDGE CWP WOULD VIOLATE NEPA.

NEPA requires the BLM to supply information that forms the bases of its decisions. 42 U.S.C. § 4332; see also 40 C.F.R. § 1502.22 (requiring disclosure of "information relevant to reasonably foreseeable adverse impacts" when that information is "essential to a reasoned choice among alternatives" and is readily obtainable); *Skull Valley Band of Goshute Indians v. Davis*, 728 F. Supp. 2d 1287, 1298 (D. Utah 2010) (same). Here, the BLM has failed to provide critical information about Pinyon Ridge gathered during a recent screening of the field office for wilderness characteristics.

According to the Final EA,

[I]n December of 2010, the WRFO began the process of identifying and inventorying potential lands with wilderness characteristics within its administrative boundaries. The first step in this process was to conduct a GIS analysis to identify 5,000 acre roadless parcels. . . . The identification of the 5,000 acre parcels was accomplished by running a query using all roads within WRFO as polygon boundaries. All the polygons created by road boundaries were then queried to identify those that were a minimum

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5,000 acres or greater. Those polygons greater than 5,000 acres in size were identified for refined analysis.

The refined analysis was accomplished by visually comparing the remaining individual polygons with aerial imagery, as well as oil and gas, pipeline, powerline, transportation and roads layers to determine if they meet other minimum standards for lands with wilderness characteristics. They were also examined as to whether or not they could be modified (reduced in size) and still meet the minimum standard. This process was conducted by WRFO staff with extensive on-the-ground local knowledge of the resource area to aid in verifying the suitability of individual polygons to be considered as lands with wilderness characteristics. This process resulted in the identification of 30 individual polygons, totaling 251,500 acres, potentially containing lands with wilderness characteristics that were proposed for an intensive, on-the-ground field inventory.

Final EA at 55-56. Yet, the Final EA contains no information on why Pinyon Ridge did not satisfy the screen—what factors supported the BLM's conclusion, whether routes in Pinyon Ridge satisfy the IM's definition of "road" or other pertinent information. In sum, the BLM has not provided any specific information about the results of its screening of Pinyon Ridge for wilderness characteristics. Because that information is essential to evaluating whether and under what conditions the Pinyon Ridge parcels should be leased, the Final EA violates NEPA.

III. THE SALE NOTICE LACKS ADEQUATE PROTECTIONS FOR THE FISH AND WILDLIFE VALUES OF PARCEL COC75300.

Last September, the BLM conducted site visit to parcel COC75300 with representatives from the conservation community, industry and the Colorado Division of Wildlife. The meeting was informative, and TWS continues to appreciate the BLM's willingness to hold that site visit. However, as fully explained in the protest filed by Trout Unlimited, the Sale Notice does not provide adequate protections for Colorado River cutthroat trout. Consequently, the BLM should defer parcel COC75300 from the lease sale until stronger protections are adopted.

CONCLUSION

For the foregoing reasons, the BLM must defer the protested parcels from the May 2012 lease sale.

Sincerely,

Nada Culver
Director and Senior Counsel, BLM Action Center
The Wilderness Society
1660 Wynkoop Street, Suite 850
Denver, CO 80202
303-650-5818 Ext. 117

Ti Hays
On Behalf of The Wilderness Society
1660 Wynkoop Street, Suite 850

Ms. Helen Hankins

March 12, 2012

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Denver, CO 80202

303-650-5818 Ext. 131

Attachment

ATTACHMENT



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Colorado State Office
2850 Youngfield Street
Lakewood, Colorado 80215-7076

November 23, 1998

Dear Interested Citizen:

For the past two years the Bureau of Land Management (BLM) in Colorado conducted roadless reviews of approximately 188,000 acres of public lands in six areas on the western slope. These areas were identified by the Colorado Environmental Coalition as containing wilderness characteristics; however, they were not identified by BLM as wilderness study areas in the wilderness inventory completed in 1980. The recently completed study determined that 167,000 acres in the six areas were roadless.

In February 1998, we asked for public comments on the existing uses and values within these areas and on the adequacy of existing management. This information was collected to assist BLM in determining whether current land use planning decisions were still appropriate for management of these areas or whether additional information or plan amendments were needed. We have completed our analysis of comments received and the findings are enclosed.

The foundation of our current management of these areas is the Resource Management Plan (RMP). Some of our plans were completed over 10 years ago, and in some cases may not fully address current uses. After consultation with the field managers, on-the-ground tours, and review of the hundreds of public comments, it was evident that each area is unique and it was not possible to use a single approach for future management prescriptions.

Nearly 3,000 citizens in local communities, western slope, front range, and people from all over the country, participated in this process. Some people donated their time to assist with field reviews, some offered written opinions. All input was carefully considered since this issue is clearly of statewide interest and importance. Public interest was not limited to the local communities that are adjacent to these roadless areas. People throughout Colorado come to visit these public lands and they have an interest in how they will be managed. When it comes to Colorado's public lands the continental divide does not separate the community of public lands users.

Should future proposed actions conflict with potential wilderness values in other areas, BLM will consider the specifics of each area and make appropriate determinations based on the nature of the proposed action, currency of planning documents, and inventory data.

I appreciate the public comments received and the continued interest of the Northwest Resource Advisory Council. We will continue to collaborate with the public throughout all planning processes and welcome your continued interest and participation in management of Colorado's public lands.

Sincerely,



Ann J. Morgan
State Director

Enclosure

PINYON RIDGE review area contains 19,965 roadless acres and is located 30 air miles northwest of Meeker in Moffat and Rio Blanco Counties.

Background

The Pinyon Ridge area is located between the towns of Meeker and Rangely. Pinyon Ridge is the dominant feature running more or less along the western edge for about eight miles, and dropping nearly a thousand feet to the valley below. The remainder is made up of a mixture of dense stands of pinyon and juniper, rolling grassy meadows, steep rock outcrops and gullies, and one rock arch formation.

The area is used principally for grazing and hunting. There are eight undeveloped oil and gas leases comprising about 40 percent of the area or 8,000 acres. These leases will all expire by the year 2006 unless production occurs. There is interest in additional leasing but there are no active development proposals. Current management would permit additional leasing. The area is open to mining claims, but the potential for locatable minerals is low. Most of the area is open to off-highway vehicle use between May 1 and October 1 and limited to existing routes only during the remainder of the year.

Decision

Do not amend the RMP. Continue to manage for multiple uses as identified in the RMP, including oil and gas development. Commit to developing a travel management plan within three years that changes the off-highway vehicle designation from "existing" to "designated routes" and that closes routes not needed. Do not conduct regular maintenance or activities that would change the status of the routes until after the transportation plan is completed.

Rationale

The RMP was completed in 1997 and the wilderness inventory for the area was updated as a part of that plan. The updated inventory identified the area as having outstanding opportunities for solitude, therefore changing the findings of the original 1980 inventory. However, the conclusion identified the area as containing too many ways, livestock developments, and other evidence of humans to qualify as a wilderness study area. The findings in the RMP were protested by the Colorado Environmental Coalition but upheld by the BLM Director.

TRANSACTION REPORT

P. 01

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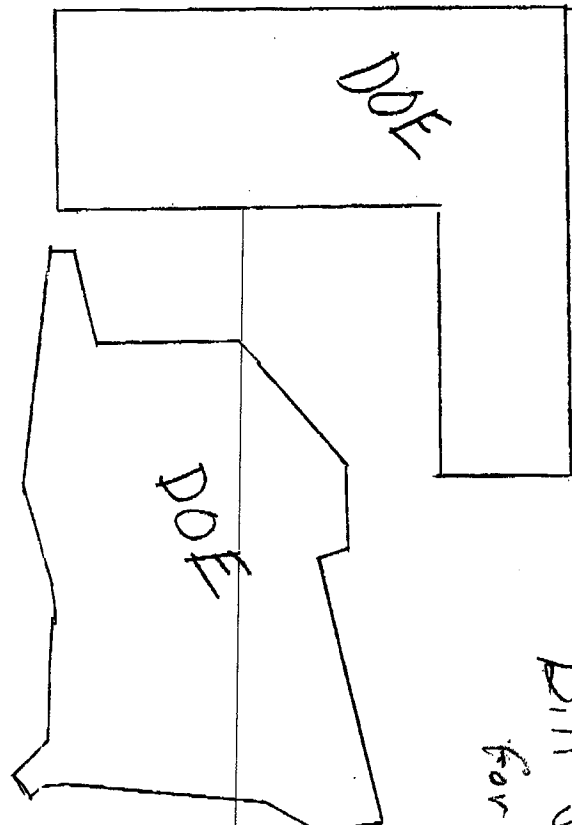
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Bill Jackson
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