



October 24, 2013

Sally Jewell
Secretary of Interior
1849 C Street NW
Washington DC 20240

Neil Kornze
Interim Director
Bureau of Land Management
1849 C Street NW
Washington DC 20240

Dear Secretary Jewell and Director Kornze:

Pursuant to 5 U.S.C. §§ 555(e) and 555(b), WildEarth Guardians, Biodiversity Conservation Alliance, and American Bird Conservancy formally petition the Bureau of Land Management to:

- 1) Revise and/or supplement the June 2007 Final Environmental Impact Statement (“FEIS”) for the Casper Field Office Resource Management Plan revision in accordance with 40 C.F.R. § 1502.9(a) and other relevant authorities under NEPA;
- 2) Issue an order prohibiting the permitting of new roads or wellpads in the Douglas Sage Grouse Core Area, Wyoming, until such time that Sage Grouse Plan Amendments are completed for this area. This prohibition should apply to all permits involving BLM surface and/or minerals, and drilling of units involving BLM minerals, and/or all drilling on state or fee surface or minerals that involves BLM minerals through horizontal drilling.
- 3) Issue a directive applying Conditions of Approval on new oil, gas, and coalbed methane wells that are drilled pursuant to valid existing rights within the Douglas Core Area restricting new wells to currently existing, active (not plugged and abandoned) wellpads. The directive would also: a) apply seasonal timing restrictions to prevent construction or drilling activity grouse during the breeding and nesting seasons (March 15 through June

- 4) 30 of each year), b) permit access only along existing access roads at their present level of development (i.e., prohibit upgrading roads from one class to another, e.g., primitive way to constructed gravel road), and c) allow new pipelines and electrical power lines only if buried within existing rights-of-way.

As the Bureau of Land Management revises its Resource Management Plans to enhance protections for the greater sage grouse, it will be critical to ensure that agencies actually enforce the conservation measures to which agencies have committed to protect sage grouse within Priority Habitats. Regardless of whether the protections applied are adequate or not according to the science, the failure to apply committed protections unquestionably undermines the certainty that conservation measures will occur, thereby rendering it impossible for the U.S. Fish and Wildlife Service legally to rely on such measures in the context of an Endangered Species determination for the species, due in 2015.

The Douglas Core Area was designated by the State of Wyoming in by Executive Order 2008-2, and remains a Core Area under state Executive Order 2011-5. Attachments 1 and 2. The state Core Area executive orders only allow boundary changes every 5 years. The last Core Area boundary adjustment was in 2010, and therefore the boundaries of this Core Area cannot be changed or abolished by the State until 2015 at the earliest. The state Executive Order, as discussed in greater detail below, limits surface disturbance to 5%, wellpad density to 1 per square mile, and construction and drilling operations to months outside the breeding and nesting season. The State of Wyoming has been granting exceptions to these protections on a regular basis in the Douglas Core Area, and appears ready to continue to do so. It is not the Bureau of Land Management's responsibility to hold the State to its commitments on behalf of sage grouse, but the BLM has obligations of its own which mirror Core Area protections imposed under State Executive Orders, because BLM surface and mineral estates are involved, and BLM permitting responsibilities have in one way or another been triggered for much of the drilling in question. Approximately half of the Douglas Core Area is underlain by BLM-administered mineral estate (*see* Attachment 3), and thus wells involving these federal minerals either directly or indirectly require federal permitting and trigger federal sage grouse protections. This petition calls upon the BLM to live up to its obligations pursuant to federal law and policy in this regard.

Chesapeake Energy has Notices of Staking and/or Applications for Permit to Drill currently pending for seven oil and gas wells within the Douglas Core Area: the Linden 20-34-69 USA B 3H, Linden 20-34-69 USA B 1H, Linden 20-34-69 B 5H, Combs Ranch 28-33-70 USA A 5H, Combs Ranch 28-33-70 USA A 1H, York Ranch 19-33-69 USA A 6H, and York Ranch 19-33-69 USA A 3H. As of 2012, the Douglas Core Area had 15.3% surface disturbance, yet Applications for Permit to Drill were still being approved with a recommendation to merely apply timing limitation stipulations. Attachment 4. As of 2013, surface disturbance levels within

the Douglas Core Area reported to be between 15% and 22% by Chesapeake Energy. Attachment 5.

In addition, Chesapeake has proposed in a published plan to locate 93 additional wellpads in the Douglas Core Area under an agreement that it has apparently reached with the State of Wyoming. See Attachment 5. This agreement would divide the Douglas Core Area into three subunits with varying degrees of exceptions to the state and BLM sage grouse protections: Area A (encompassing 9,629 acres) would have most drilling deferred for a period of three years with other drilling sought under exceptions on a case-by-case basis; Area B (19,877 acres) would allow additional drilling after site assessments with the waiver of disturbance density restrictions, and Area C (59,237 acres) would allow additional drilling with the waiver of disturbance density restrictions, wellpad density restrictions, and timing stipulations that prohibit drilling and construction activity during the breeding and nesting seasons. Attachment 5 at __. Under this plan, at least one new wellpad would be located in Area A on a lease that will expire in 2015, some 23 wellpads would be sited in Area B, and 69 new wellpads would be sited in Area C. Chesapeake also proposes offsite mitigation funding amounting to \$2.3 to 2.8 million. But it is fruitless to invest in habitat improvements, which typically require decades to take effect, when near-term drilling and construction impacts reach levels that are likely to extirpate sage grouse in the Douglas Core Area in the near term. Any BLM-permitted drilling of the aforementioned wells must therefore be limited to existing active wellpads and roads, during times allowable under seasonal stipulations, in order to minimize negative effects to sage grouse and their habitats.

Further drilling and surface disturbance limits the choice of plan amendment alternatives

This Core Area is expected to be designated as Priority Habitat by the Bureau of Land Management in its “Nine Plan” Resource Management Plan Amendments for sage grouse, which cover the Casper Field Office in which the Douglas Core Area is located. This series of Plan Amendments must by BLM policy consider the implementation of National Technical Team recommendations. The National Technical Team (“NTT”) report was drafted specifically for the RMP amendment process: “The BLM’s objective for chartering this planning strategy effort was to develop new or revised regulatory mechanisms, through Resource Management Plans (RMPs), to conserve and restore the greater sage-grouse and its habitat on BLM-administered lands on a range-wide basis over the long term.” Attachment 6 at 4. The NTT recommendations state with regard to density of disturbance,

In priority habitats where the 3% disturbance threshold is already exceeded from any source, no further anthropogenic disturbances will be permitted by BLM until enough habitat has been restored to maintain the area under this threshold (subject to valid existing rights).

....

Large-scale disturbances that impact sage grouse distribution and abundance at any level will not be permitted within priority areas (subject to valid existing rights). Other, smaller scale proposed anthropogenic disturbances will not disturb more than a total of 3% of the acreage within each priority area.

Attachment 6 at 8. Furthermore, for Leased Federal Fluid Mineral Estate, the NTT report provides recommendations to be applied at a finer scale:

Provide the following conservation measures as terms and conditions of the approved RMP:

- Do not allow new surface occupancy on federal leases within priority habitats, this includes winter concentration areas (Doherty et al. 2008, Carpenter et al. 2010) during any time of the year.

Consider an exception:

- ° If the lease is entirely within priority habitats, apply a 4-mile NSO around the lek, and limit permitted disturbances to 1 per section with no more than 3% surface disturbance in that section.
- ° If the entire lease is within the 4-mile lek perimeter, limit permitted disturbances to 1 per section with no more than 3% surface disturbance in that section. Require any development to be placed at the most distal part of the lease from the lek, or, depending on topography and other habitat aspects, in an area that is less demonstrably harmful to sage-grouse.

Attachment 6 at 22. The NTT report provides further recommendations regarding timing restrictions for fluid minerals development on leased BLM estate:

Apply a seasonal restriction on exploratory drilling that prohibits surface-disturbing activities during the nesting and early brood-rearing season in all priority sage-grouse habitat during this period.

Attachment 6 at 22. Note that waivers of these timing measures are not recommended in the NTT report.

The BLM has an affirmative responsibility to consider the National Technical Team recommendations as it amends its Resource Management Plans throughout the range of the sage grouse. According to BLM IM 2012-44, “The conservation measures developed by the NTT and contained in Attachment 3 must be considered and analyzed, as appropriate, through the land use planning process by all BLM State and Field Offices that contain occupied Greater Sage-Grouse habitat.” It is notable that the amount of surface disturbance (greater than 15% Core Area-wide),

wellpad density caps of one pad per square-mile section, and timing limitations prescribed under the NTT recommendations would potentially be exceeded under the proposed additional drilling.

In addition, WildEarth Guardians has submitted to BLM a Sage-Grouse Recovery Alternative which directly addresses disturbance limits, wellsite density limits, and activity timing limitations. *See* Attachment 7. For sage grouse Core Areas, this document calls for a 3% disturbance cap to be implemented for each square-mile section of land, calls for a maximum of one wellpad to be permitted on each square-mile section, and would impose seasonal prohibitions on drilling and construction activities during the breeding and nesting seasons. *Id.* The fact that this is a reasonable alternative for implementation in the “Nine Plan” sage grouse amendment EIS that covers the Douglas Core Area is evidenced by its consideration in detail in the Northwest Colorado Greater Sage-Grouse Plan Amendment (it was incorporated under Alternative C). We have every expectation that BLM will fulfill its obligations under NEPA to consider this Recovery Alternative in detail in the “Nine Plan” Sage-Grouse Amendment Draft EIS currently scheduled to be released in November 2013 for Wyoming Resource Management Plans that were complete when the sage grouse amendment process began. Permitting of additional surface disturbance in the Douglas Core Area degrades the agency’s ability to adopt and fully implement this alternative through the RMP amendment process.

Approving additional drilling and construction requires supplemental NEPA analysis

Since the publication of the Casper Resource Management Plan Final EIS in June of 2007, a great deal of significant new information has come to light regarding the impacts of oil and gas development on sage grouse and their habitats, which renders the analysis contained within the programmatic EIS for the Casper RMP revision inadequate to permit additional surface-disturbing activity within the Douglas Core Area. As mentioned above, the State of Wyoming has adopted several Executive Orders establishing a sage grouse Core Area conservation strategy, and establishing geographically distinct Core Areas, of which the Douglas Core Area is one. Scientific modeling has also been published in 2013 indicating that the Core Area strategy, **if fully implemented**, has the potential to significantly slow the decline of sage grouse inhabiting these lands (presumably, if these measures are not fully implemented, sage grouse declines would be increased in magnitude). *See* Attachment 8. Other new science in 2013 has determined that for the western portion of the species’ range, 99% of active sage grouse leks were surrounded by lands with 3% or less surface disturbance. *See* Attachment 9. And a scientific study published in 2007 examined wellpad densities across Wyoming and determined that well densities greater than one wellsite per square mile were correlated with declines in sage grouse populations. *See* Attachment 10.

Finally, the U.S. Fish and Wildlife Service in 2010 issued a determination that the greater sage-grouse was ‘warranted, but precluded’ from listing under the Endangered Species Act

(Attachment 11), adding this species to the Candidate Species list which triggers additional responsibilities for the BLM. Subsequent litigation and court orders have established a deadline of 2015 for the Fish and Wildlife Service to issue a final ESA determination for this species.

Each of these new developments constitute significant new information since the publication of the Casper RMP FEIS which must be considered pursuant to NEPA before additional surface-disturbing activities may be permitted by BLM within the Douglas Core Area. The level of surface disturbance currently found in the Douglas Core Area is above the 3% benchmark which characterizes almost all active sage grouse leks in the western half of its range. The disturbance density in the Douglas Core Area presently stands at 15.3% or more, well above the 5% threshold assumed by the state to be the safe limit of surface disturbance in the state Core Area policy and BLM Instruction Memorandum WY-2012-019. Thus, any additional surface disturbance approved in this Core Area would have a significant direct and cumulative negative impact on sage grouse habitats and the viability of their populations in this area. For these reasons, the BLM must amend the Casper RMP to consider stronger sage grouse protections within Core Areas prior to approving additional surface disturbance.

In 2004, the BLM adopted its published its National Sage-Grouse Habitat Conservation Strategy (“Strategy”).¹ Among other commitments, this policy binds the BLM to “use the best available science and other relevant information to develop conservation efforts for sage-grouse and sagebrush habitats.” Strategy at 7. BLM must fully consider the science when analyzing potential impacts of additional wellpad or road construction in the Douglas Core Area prior to any further approvals.

Additional drilling and construction would violate BLM Instruction Memoranda

In addition to violating Wyoming’s Core Area policy, further drilling of the Douglas Core Area also is inconsistent with BLM policy. BLM IM 2012-019 states in relevant part, “Pending completion of ongoing land use planning revisions and amendments, BLM WY FOs must consider and evaluate the following sage-grouse habitat conservation measures related to timing, distance, disturbance, and density for proposed projects both within and outside of core areas as appropriate.” These include, “For authorization of new proposed actions within sage-grouse core areas, including where there are valid existing rights, FOs must consider an alternative that would limit activities to an average of no more than one oil and gas and/or mining location per 640 acres **and** no more than 5 percent habitat disturbance (related to all programs or applicable sources of ‘disturbance’ – see Disturbance Density Calculation Tool (DDCT) Manual within the core areas using the DDCT.” IM WY-2012-19 at 6, emphasis added. Goals inside Core Areas include “To not exceed an average of one oil and gas or mining location per 640 acres within the

¹ Available online at http://www.blm.gov/pgdata/etc/medialib/blm/wo/Planning_and_Renewable_Resources/fish_wildlife_and.Par.9151.File.dat/Sage-Grouse_Strategy.pdf; site last visited 3/13/13.

DDCT area identified using the DDCT, and total surface disturbance including existing disturbance and any proposed activity disturbance within the DDCT area should not exceed 5 percent disturbance of core sage-grouse habitats (See Policy Statement 4).” IM WY-2012-19 at 6.

Furthermore, this IM specifies that disruptive activities within Core Areas be limited: “For actions other than those taken for human health and safety, regulatory compliance or emergency, BLM FOs must determine if any activity proposed in sage-grouse nesting, brood-rearing or WCA habitat is “disruptive” by determining if the activity would require people and/or the structure or activity to be present in these habitats for a duration of more than 1 hour during any one 24 hour period during the applicable season in a site-specific area.” IM WY-2012-19 at 5. For Core Areas, “All necessary timing, distance, disturbance and density restrictions will be considered across all FOs within appropriate NEPA compliance documentation for new projects under consideration. BLM WY FOs may vary somewhat in their application of these restrictions when that variance is based on locally collected scientific data and information, and such information is included in project-specific NEPA analysis (including analysis and rationale that support existing Records of Decision).” IM WY-2012-19 at 7. There is a loophole where BLM may vary from these standards, “variance or determinations that do not apply the measures located in this policy IM may be necessary where BLM is required to comply with other non-discretionary statutes and regulations (*i.e.*, valid existing rights, oil and gas “drainage”, etc.).” IM WY-2012-19 at 7. This loophole would appear not to apply here, as the agency is free to apply Conditions of Approval to any drilling on currently existing leases, in order to protect sage grouse. Additional drilling in the Douglas Core would apparently also violate the following admonition: “Activities would be consistent with the strategy where it can be sufficiently demonstrated that no declines to core populations would be expected as a result of the proposed action.” IM WY-2012-19 at 10. In this case, surface disturbance already exceeds thresholds where significant impacts occur, and additional surface disturbance would only exacerbate these impacts to sage grouse.

There remains a question in this matter as to whether IM WY-2012-19 applies, or whether the national IM-2012-043 is the applicable management. Under IM-2012-043,

The BLM field offices do not need to apply the conservation policies and procedures described in this IM in areas in which (1) a state and/or local regulatory mechanism has been developed for the conservation of Greater Sage-Grouse in coordination and concurrence with the FWS (including the Wyoming Governor’s Executive Order 2011-5, Greater Sage-Grouse Core Area Protection); and (2) the state sage-grouse plan has subsequently been adopted by the BLM through the issuance of a state-level BLM IM. If BLM programs are not addressed in the adopted state Greater Sage-Grouse plan then program direction will default to the policies and procedures set forth in this WO IM.

Under IM 2012-019, BLM must “consider and evaluate the following sage-grouse habitat conservation measures related to timing, distance, disturbance, and density for proposed projects

both within and outside of core areas as appropriate.” IM 2012-019. However, under Wyoming Executive Order 2011-5,

Surface disturbance **will be limited** to 5% of suitable sage-grouse habitat per an average of 640 acres. The DDCT process will be used to determine the level of disturbance.

....

Activity (production and maintenance activity exempted) **will be allowed from July 1 to March 14** outside the 0.6 mile perimeter of a lek in core areas where breeding, nesting and early brood-rearing habitat is present.

EO 2011-5 at 8, emphasis added. Furthermore, specific stipulations with regard to oil and gas development include the following:

Well pad densities **not to exceed** an average on one pad per square mile (640 acres) and suitable habitat disturbed **not to exceed** 5% of suitable habitat within the DDCT.

EO 2011-5 at 12, emphasis added. There is no provision in the state Executive Order allowing for “consider[ing] and evaluat[ing]” these measures; these measures under state policy are to be implemented. The question therefore arises whether IM WY-2012-019 actually implements the state policy. If BLM’s interpretation is that WY-2012-019 actually does implement the state policy, then the BLM’s obligation with regard to the sage grouse protections contained within IM WY-2012-019 must extend beyond “consider and evaluate” and include the affirmative duty to implement these measures. The implementation of these measures would preclude the agency from permitting additional surface-disturbing activities inside the Douglas Core Area.

If, on the other hand, BLM’s interpretation is that IM WY-2012-019 requires nothing more than “consider[ing] and evaluat[ing]” the Wyoming Governor’s Executive Order, then WY-2012-019 fails to satisfy the criterion in IM 2012-043 that requires that “the state sage-grouse plan has subsequently been adopted by the BLM through the issuance of a state-level BLM IM.” In this case, IM WY-2012-019 is superseded by IM 2010-43, which directs that BLM through its interim management of public lands “should seek to maintain, enhance, or restore conditions for Greater Sage-Grouse and its habitat.” This IM requires for new rights-of-way that the right-of-way siting and development must maintain or enhance sage grouse habitat, or be subjected to a review process that escalates to the State Office and the National Policy Team (with USFWS concurrence) until it does. For oil and gas development on existing leases where permits were not in process within 90 days of the publication of IM 2012-043 (which applies to all actions in the Douglas Core Area), IM 2012-043 requires BLM to

design future conditions or restrictions to minimize adverse effects to Greater Sage-grouse and its habitat (e.g., Best Management Practices (BMP), noise limitations, seasonal restrictions, minimization of habitat fragmentation, improved reclamation standards, proper siting/designing infrastructure, restoring habitat) prior to permit approval. These measures may be in addition to and more protective or restrictive than

the stipulations and restrictions identified in approved LUPs, when reasonable (43 CFR 3101.1-2), supported by science, and analyzed through the NEPA process.

Id. BLM must also

Consider suspending non-producing leases in instances where mitigation would not adequately protect the integrity of Greater Sage-Grouse habitat until the BLM amends or revises the LUPs. Consistently apply protective measures to split estate lands. 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.

IM 2012-043. This direction should also lead BLM to suspend additional surface-disturbing activities, and also suspend non-producing leases, because additional construction and drilling cannot fail to have significant impacts on sage grouse and their habitat inside the Douglas Core Area, given the fact that Core Area thresholds of disturbance have already been exceeded by such a large margin.

As a part of this Petition, we ask BLM to clarify whether IM WY-2012-019 is intended to fully implement the State of Wyoming policy, or whether instead IM 2012-43 applies in this case.

BLM must not permit actions that preclude the adoption of alternatives under consideration in RMP revisions or amendments. Pursuant to NEPA regulations,

Until an agency issues a record of decision ... no action concerning the proposal shall be taken which would:

- (1) Have an adverse environmental impact; or
- (2) Limit the choice of reasonable alternatives.

40 C.F.R. § 1506.1(a). The NEPA implementing regulations further specify,

While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

- (1) Is justified independently of the program;
- (2) Is itself accompanied by an adequate environmental impact statement; and

(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

40 C.F.R. § 1506.1(c). It is important to note that the existing Casper RMP does not address sage grouse Core Area protections in any way. Therefore, the level of protection for sage grouse inside the Douglas Core Area has not been properly set by BLM.

Alternatives under development in the “Nine Plan” sage grouse amendment EIS would maintain surface disturbance levels at or as close as possible to 3 to 5% surface disturbance within Core Areas and/or project DDCT areas and allow no more than one wellpad per square mile calculated using a DDCT tool. These thresholds have already been crossed, or would be crossed, with additional wells, roads, pipelines, and/or electrical rights-of-way permitted inside the Douglas Core Area. Additional surface disturbance would foreclose the BLM’s opportunities to maintain levels of surface disturbance (and potentially wellpad densities and construction and drilling impacts on breeding and nest sage grouse as well) as close to prescribed thresholds as possible. Permitted activities that may exceed these thresholds and impact sage grouse inside the Core Area should therefore not be permitted until an appropriate level of protection is considered and adopted through amendment of the Casper RMP.

Additional drilling violates BLM’s obligations regarding Special Status Species conservation

The greater sage grouse has long been a BLM Sensitive Species in Wyoming, and as of 2010 is also a Candidate Species under the Endangered Species Act. For special status species, including Sensitive Species and Candidate Species, BLM must:

Identify strategies and decisions to conserve and recover special status species. Given the legal mandate to conserve threatened or endangered species and BLM’s policy to conserve all Special Status Species, land use planning strategies and decisions should result in a reasonable conservation strategy for these species. Land use plan decisions should be clear and sufficiently detailed to enhance habitat or prevent avoidable loss of habitat pending the development and implementation of implementation-level plans. This may include identifying stipulations or criteria that would be applied to implementation actions.

BLM Land Use Planning Handbook H-1601-1, Appendix C at 5. The policy for candidate species states that the "BLM shall carry out management, consistent with the principles of multiple use, for the conservation of candidate species and their habitats and shall ensure that actions authorized, funded, or carried out do not contribute to the need to list any of these species as threatened/endangered." BLM Manual 6840.06. Under BLM Sensitive Species policy, the agency is charged with “Ensuring that BLM actions are not likely to jeopardize the continued

existence of any endangered species or threatened species or destroy or adversely modify designated critical habitat.” BLM Manual 6840.1(E)(3). BLM must further “Developing and implementing agency land use plans, implementation plans, and actions in a manner consistent with conservation and/or recovery of listed species.” BLM Manual 6840.1(E)(5).

The greater sage grouse is a Candidate Species under the Endangered Species Act, designated as such in a “Warranted, but Precluded” finding issued by the U.S. Fish and Wildlife Service in 2010. Attachment 11. Despite the existence of the State of Wyoming’s Core Area strategy, which was implemented in 2008, the lack of sufficient regulatory mechanisms to conserve sage grouse and their habitats was identified by the U.S. Fish and Wildlife Service as a primary threat leading to their warranted but precluded finding in 2010. 75 FR 13910. In this determination, energy development in particular was called out as one of the key factors “contributing, individually and collectively, to the present and threatened destruction, modification, and curtailment of the habitat and range of the greater sage-grouse.” According to the U.S. Fish and Wildlife Service’s Conservation Objectives Team report,

The Wyoming Executive Orders apply to all regulatory actions governed by the State of Wyoming, and as such, constitute substantial regulatory mechanisms that contribute to the conservation of sage-grouse. These efforts demonstrate the potential for successfully ameliorating the primary threats to sage-grouse and their habitat through the development and implementation of sufficient regulatory mechanisms.

Attachment 12 at 11. This “potential for successfully ameliorating the primary threats” is wholly dependent on the actual implementation of these measures. A final listing decision is expected in September of 2015, pursuant to court order, at which time BLM must have implemented plan revisions that not only are scientifically sound but also being implemented rigorously.

The BLM must deliver certainty that Core Area conservation measures will actually be implemented, and the ongoing drilling in the Douglas Core Area undermines this certainty. Approving additional surface-disturbing activities inside a Core Area that already is above 15% surface disturbance sends a message that the 5% disturbance limit in state and federal policy is not being enforced in any way. When making its 2015 determination on whether Endangered Species listing is necessary, or alternately whether current conservation measures are sufficient to maintain or recover the sage grouse, the U.S. Fish and Wildlife Service will be weighing the effectiveness of Core Area conservation in Wyoming. According to the U.S. Fish and Wildlife Service’s Policy for Evaluating Conservation Efforts (“PECE Policy”), “We will make this evaluation based on the certainty of implementing the conservation effort and the certainty that the effort will be effective.” 68 Fed. Reg 15113. Unfortunately, by continuing to approve surface-disturbing industrial activities in the Douglas Core Area, which already has far exceeded its maximum threshold for surface disturbance of 5%, BLM signals to the U.S. Fish and Wildlife Service (and others) that not only is there no certainty that this conservation effort will be implemented, but instead is establishing a record of certainty that implementation will not always occur.

Further surface in the Douglas Core Area amounts to undue degradation under FLPMA

Greater sage grouse populations in northeast Wyoming are already in trouble. A population viability analysis for the nearby Buffalo Field Office has already determined that the Powder River sage grouse population, of which the Douglas Core Area is a part, is one West Nile virus outbreak away from “functional extinction” if current levels of drilling continue. See Attachment 13. Wyoming Game and Fish data indicate that while average lek counts of males are down statewide since 2007, number of active leks remains stable throughout most of Wyoming but is declining significantly for the northeastern Wyoming sage grouse population. Attachment 14. This population also has the problem that Core Areas encompass a much lower proportion of the population than elsewhere. For example, in the Buffalo Field Office, encompassing the majority of the Powder River population, designated Core Areas encompass less than 29% of the population. Buffalo RMP Revision DEIS at 1127. Clearly, this part of the state is not in a position of being able to sustain the loss of another sage grouse population, particularly a population that inhabits one of the designated Core Areas.

In 2004, BLM published its National Sage-Grouse Habitat Conservation Strategy (“Strategy”).² According to this policy,

“The Federal Land Policy and Management Act (1976) (FLPMA) provides the basic authority for BLM’s multiple use management of all resources on the public lands. One of the BLM’s many responsibilities under FLPMA is to manage public lands for the benefit of wildlife species and the ecosystems upon which they depend. . . . Consistency and coordination in identifying and addressing threats to sage-grouse and sagebrush habitat in context of the multitude of programs that BLM manages is required. Addressing these threats throughout the range of the sage-grouse is critical to achieving the mandate of FLPMA and threat reduction, mitigation, and elimination to sage-grouse and sagebrush habitats.”

Strategy at 4. Among other commitments, this policy binds the BLM to “use the best available science and other relevant information to develop conservation efforts for sage-grouse and sagebrush habitats.” Strategy at 7. The National Sage-grouse Habitat Conservation Strategy was followed in 2011 by the same agency’s National Greater Sage-grouse Planning Strategy (“Planning Strategy”). This strategy recognizes that inadequacy of regulatory mechanisms (including BLM’s regulatory mechanisms) contributed to the USFWS finding that the greater

² Available online at http://www.blm.gov/pgdata/etc/medialib/blm/wo/Planning_and_Renewable_Resources/fish_wildlife_and.Par.9151.File.dat/Sage-Grouse_Strategy.pdf; site last visited 10/13/13.

sage grouse warranted ESA listing, and that Resource Management Plans were the BLM's principal regulatory mechanism. According to this policy,

Based on the identified threats to the greater sage-grouse and the USFWS's timeline for making a listing decision on this species, the BLM needs to incorporate explicit objectives and adequate conservation measures into RMPs within the next three years in order to conserve greater sage-grouse and avoid a potential listing under the Endangered Species Act.

Planning Strategy at 1.

By law, the BLM must "take any action necessary to prevent unnecessary or undue degradation of the lands." 43 U.S.C. § 1732(b). BLM's obligation to prevent unnecessary or undue degradation is not discretionary; it is mandatory.

"The court finds 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 Center v. Norton, 292 F.Supp.2d 30, 43 (D.D.C. 2003) (emphasis added). The BLM has a statutory obligation to demonstrate that BLM-permitted oil and gas development will not result in unnecessary or undue degradation. As a result of BLM's affirmative obligations to prevent further losses of the greater sage grouse as a BLM Special Status Species and to prevent BLM-permitted activities from contributing to the need to list the species under the Endangered Species Act, the approval of additional surface disturbing activities in violation of agency commitments constitutes undue degradation of sage grouse habitats.

Conclusions

Fore the foregoing reasons, it is imperative that the department of Interior and Bureau of Land Management grant this Petition and cease the approval of additional surface-disturbing activities, including oil and gas permitting, within the Douglas Core Area. Granting this petition will enable the BLM to follow its own policy guidance, maintain the greatest degree of flexibility to adopt sage grouse conservation measures in the forthcoming sage grouse Resource Management Plan amendment, maximize the opportunity for the sage grouse population in the Douglas Core Area to be maintained or even allowed to recover, and establish that the federal government is firmly committed to enforcing its sage grouse protection package. On the other hand, continuing to permit surface-disturbing industrial activities inside the Douglas Core Area would establish a record that the federal government's sage grouse protection measures cannot be relied upon to be enforced, an outcome that will preclude these measures from being considered adequate protections that are a viable alternative to listing under the Endangered Species Act.

Please provide a response to this Petition within 60 days of its receipt.

Respectfully yours,



Erik Molvar

signing on behalf of

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List of Attachments

Attachment 1 – Wyoming Executive Order 2008-2

Attachment 2 – Wyoming Executive Order 2011-5

Attachment 3 – Map of mineral ownership in the Douglas Core Area

Attachment 4 – Letter from WGFDD Deputy Director John Emmerich to ___ regarding drilling permit approvals for Chesapeake Energy

Attachment 5 – Chesapeake Energy proposed plan for future drilling in Douglas Core Area

Attachment 6 – BLM Sage-Grouse National Technical Team report

Attachment 7 – Sage-Grouse Recovery Alternative

Attachment 8 – Copeland et al. 2013

Attachment 9 – Knick et al. 2012

Attachment 10 – Walker et al. 2007f

Attachment 11 – 2010 USFWS determination finding the greater sage grouse ‘warranted, but precluded’ for ESA listing

Attachment 12 – USFWS Conservation Objectives Team report

Attachment 13 – Buffalo Field Office sage-grouse population viability analysis.

Attachment 14 – Sage grouse lek attendance and lek persistence data presented by Tom Christiansen, WGFD, at the September 2013 Sage Grouse Implementation Team meeting, Cheyenne, Wyoming.