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Mr. Brian Amme
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RE: NOI TO ADDRESS THE GREATER SAGE-GROUSE IN LAND MANGEMENT PLANS

Dear Sirs:

On behalf of Public Lands Advocacy (PLA), Colorado Oil and Gas Association, Colorado Petroleum Association (CPA), the Independent Petroleum Association of America (IPAA), The International Geophysical Contractors Association (IAGC), the Montana Petroleum Association (MPA), the North Dakota Petroleum Council (NDPC), the Petroleum Association of Wyoming (PAW), and the Utah Petroleum Association, following are comments addressing the BLM's Notice of Intent (NOI) to Address Sage-Grouse in Land Management Plans, published in the *Federal Register* December 9, 2011. The named associations represent both independent and major energy producers and exploration companies and have joined together to provide both agencies with these comprehensive scoping comments regarding the Notice of Intent to Address the Greater Sage-grouse in both BLM and Forest Service Land Management Plans. The decision to prepare environmental impact statements (EIS) and/or supplemental EISs to establish Sage-grouse protection measures to be employed throughout its range are of great importance to our members and to the oil and gas industry as a whole. The following scoping comments raise specific issues and concerns that need full consideration during preparation of these analyses and subsequent decision documents.

GENERAL

We acknowledge that BLM is under tremendous pressure to develop conservation measures for the Greater Sage-grouse within an exceptionally short period of time as an effort to ward off listing of the species. However, in addition to our concern that BLM is jettisoning its commitment to multiple-use of public lands, we are alarmed that the conservation measures outlined in the Report on National Greater Sage-Grouse were summarily adopted without public

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vetting and input. The purported “Platinum Standards” were established by a Sage-Grouse National Technical Team (NTT) that worked with a singular focus without benefit of others with exemplary expertise in the field, most notably the State of Wyoming which has developed a collaborative management approach to managing Sage-grouse and its habitat. It also ignored comments from the Colorado Division of Wildlife which raised concerns regarding the methods utilized.

Before moving forward with this extremely narrow and injudicious approach, we recommend that BLM rely upon efforts led by States to utilize a collaborative technical team consisting of not just federal agencies but the oil and gas industry, mining, cattlemen associations or ranchers, along with other stakeholders to formulate a sensible strategy which can clearly define and implement priority habitat selection criteria and disturbance calculation criteria. These State-derived plans must serve as the basis for all preferred alternatives since they will support State derived population goals for the birds they own.

It should be noted that for similar actions, such as the Wyoming Sage Grouse Core Area Executive Order, New Mexico Dunes Sagebrush Lizard Conservation Plan, and other species conservation plans, several years were required to finalize properly vetted documents which took into consideration the needs and views of the many stakeholders involved. Clearly, as stated throughout the December 2011 National Greater Sage-grouse Conservation Measures and Planning Strategy, it will be left to state wildlife agencies, the oil and gas industry, and other stakeholders to implement these new conservation and monitoring strategies.

As described, it is ambiguous how an analysis will be performed to determine priority habitat requirements and boundaries within federal management units. It is equally ambiguous how boundaries will be drawn and which criteria will be employed when drawing boundaries between priority, general, and associated habitat. Again, the agencies must rely upon the States to lead this effort as they are best equipped to identify not only priority habitats but also those lands which provide economic sustainability and tax revenues. It is inappropriate for the BLM and Forest Service to make such decisions. Moreover, the agencies’ intent to designate priority habitat on non-federal lands must not be made without input from the States even if it delays schedules. That the agencies intend to include non-federal lands in a 3% threshold for disturbance in priority habitats is of great concern because many of these lands already contain disturbances within sage brush habitat which will result in a severe reduction of allowable uses on federal land designated as priority habitat. We strongly urge the agencies to analyze in detail in all environmental impact statements a planning alternative which restricts surface disturbance only on federal lands.

Furthermore, we recommend that the planning documents also address the significant limitations associated with relying primarily upon lek counts as the preferred methodology to determine Greater Sage-grouse populations and the efficacy of subsequent conservation measures. Lek counts have been in use since 1952 and have been found to be a remarkably inconsistent tool when attempting to precisely estimate population sizes. Of primary concern is that the data collected are really non-random samples of sage grouse leks which fail to account for male Sage-grouse at unknown leks, ignoring the fact that males move between leks and ignores females or juveniles. Consequently, counting only males results in an unknown proportion of the total Sage-grouse populations. Therefore, we recommend the agencies utilize

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an improved approach that is more consistent, defensible and useful as a tool to accurately model population trends.

BLM's Sage-grouse planning strategy purports to "*strike the appropriate balance of resource uses and resource conservation to ensure the short and long-term sustainability of Greater Sage-grouse habitat and populations.*" As such the federal agencies will attempt to incorporate consistent conservation measures as land use planning decisions into all RMPs covering occupied habitat by developing land use prescriptions to protect the species. However, the approach recommended is far from balanced because it fails to acknowledge that both the Forest Service and BLM are subject to congressionally mandated multiple-use missions. Additionally, the planning strategy is clearly designed to usurp the States' authority to manage Sage-grouse populations.

The intent is "*to maintain, enhance, or restore conditions that meet Greater Sage-Grouse life historic needs.*" Since federal agencies manage wildlife habitat resources in cooperation with States and partners in an effort to restore habitat for big game and improving habitat quality for a large variety of wildlife species, it is important for the agencies to recognize that the oil and gas industry has been an active participant in a number of such efforts.

Industry has gone to great lengths to document the effectiveness of mitigation and conservation measures it has implemented in Colorado, Montana, Utah and Wyoming in order to minimize potential impacts to the Sage-grouse. In comments submitted in 2008 to the US Fish and Wildlife Service, IPAMS (now Western Energy Alliance) and the American Petroleum Institute provided examples of conservation and mitigation measures utilized by the industry around the Greater Sage-Grouse range. PAW submitted similar comments through the Wyoming Governor's office, which in turn were submitted to the U.S. Fish and Wildlife Service. Sets of both these comments will be submitted as a supplement to these comments due to their size and will be labeled Attachments A and B, respectively. We caution, however, that such conservation and mitigation measures are situation-specific and cannot be employed broadly since local conditions and needs must be a major consideration when utilizing these actions.

SCIENTIFIC DATA

The NTT has identified Preliminary Priority Habitat (PPH), believed to have the highest conservation value to maintaining sustainable Greater Sage-Grouse populations; and Preliminary General Habitat (PGH), areas of occupied seasonal or year-round habitat outside of priority habitat. Additionally, conservation measures developed by the NTT must be considered and analyzed in at least one alternative through the land use planning process in each of the EISs.

The agencies intend to complete EISs for 68 BLM Field Office RMP amendments as well as select Forest Service (FS) management units by September 2014 in order to avoid a potential listing of the Sage-grouse under the Endangered Species Act. Due to this very short time-frame, we caution the agencies not to rush to judgment by adopting overly prescriptive conservation measures in the interest of expediency. It is crucial for the analyses to consider all relevant scientific data when developing management alternatives for each of the EISs and not to rely

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solely upon the conservation measures included in the recently published *Greater Sage-Grouse Interim Management Policies and Procedures*.

The IM states, “While these conservation measures are range-wide in scale, it is expected that at the regional and sub-regional planning scales there may be some adjustments of these conservation measures in order to address local ecological site variability...It is anticipated that plans may develop goals and objectives that differ and are specific to individual planning areas.” We support this acknowledgement that regional and sub-regional conservation measures may require divergent conservation measures in order to address local variability. However, it is our view that a minimum of sub-regional approach would be most appropriate allowing for local modification as necessary. We also support the direction that BLM FOs and Forest Service Ranger Districts do not need to apply the IM policies and procedures in states that have adopted their own conservation policies, such as Wyoming. Rather, it is crucial for the agencies to refrain from finalizing the preferred alternative until such time that it completes work with States to develop conservation policies and identify priority habitats. Again, until the birds are listed under the ESA they are the property of the states.

We urge acknowledgement and consideration of all studies and programs that have been undertaken regarding oil and gas activities and Sage-grouse viability along with other stakeholders. For example, studies have been conducted in Wyoming to determine the actual impacts of energy development on the Greater sage-grouse which can be extrapolated to other areas. A published study prepared by Hayden-Wing Associates and Taylor Environmental Consulting LLC was conducted using the most current publicly available data on lek attendance in developed oil and gas fields maintained by Wyoming Game and Fish Department and Wyoming Oil and Gas Conservation Commission. Identified below, the study has been subjected to formal peer review by a highly respected wildlife journal; and, we urge that it be utilized as an integral part of the agency’s analysis processes. In addition, we refer BLM to another published study, *Oil and Gas Development and Greater Sage Grouse: A review of Threats and Mitigation*. Copies of these studies and their findings will be forwarded to you under separate cover and are incorporated by reference into these comments as Attachments C and D, respectively. These scientific documents must be accounted for in land management planning decisions. BLM must not cherry pick its scientific evidence.

- **Thresholds Of Energy Development and Greater Sage-Grouse Populations** – Harju, Taylor, Dzialak, Clark, Hayden-Wing, and Winstead 2010
- **Oil And Gas Development and Greater Sage Grouse (Centrocercus Urophasianus): A Review Of Threats and Mitigation Measures**
Ramey, Brown, and Blackgoat 2011

Contrary to the conclusions reached in other studies, findings contained in these studies clearly demonstrate that energy development and viable sage-grouse populations can successfully co-exist when reasonable mitigation measures are utilized during exploration, development and producing activities. As such, claims that oil and gas activities result in significant sage-grouse population decline and habitat are completely unfounded. Given that the energy industry has plainly demonstrated its long-term commitment to finding ways to diminish impacts from its operations on Sage-grouse through BLM-approved best management practices and to utilize effective mitigation measures, we urge that all analyses to focus upon management options

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that provide flexibility that would not be available if the species were listed under the Endanger Species Act.

Furthermore, numerous conservation measures and programs have already been implemented in nine states and others are in various stages of preparation in several counties and states which contain sage-grouse habitat through the Western Association of Fish and Wildlife Agencies (WAFWA). These efforts are taking into account site-specific conditions to ensure their effectiveness. Since BLM and the Forest Service are cooperating agencies in these efforts, we urge that these program efforts be carefully and fully considered in the analysis process.

Additionally, in order to implement a truly effective management strategy, a comprehensive database is essential to maintaining a record of the type, extent, and effectiveness of mitigation measures already in use by the oil and gas industry. It would also incorporate all new measures as they are developed to ascertain their effectiveness. Such a database would provide an overview of which measures are useful and which should be discarded as ineffective. Without this information, the application of adaptive management would be fallacy.

EXISTING DEVELOPMENT

The Governor of Wyoming in his Sage-grouse Executive Order 2011-5 recognizes the critical value of allowing existing land uses and landowner activities to continue in core areas (similar to PPH). He has recognized that on-going uses in important habitat areas have not resulted in the decimation of the species. At the same time, the Core Area Strategy in Wyoming is protecting 86% of the breeding birds which cover 29% of the state. We would urge that any RMP revisions in Wyoming fully recognize and integrate Sage Grouse Executive Order 2011-5 into the analysis including provisions for existing uses. This Core Area Strategy has proven effective in balancing the ability to develop Wyoming's vast energy resources and protecting sage grouse habitat. .

Additionally, in recognition of the time and money that has been expended to ensure economic viability of such projects, we urge the agencies to adopt a similar approach to Wyoming's when identifying reasonable conservation and mitigation measures in all habitat areas. The validity of recognizing current uses in developing a reasonable management strategy has been upheld by a variety of federal courts and the Department of Interior's own Interior Board of Land Appeals (IBLA). As such, we would oppose the suspension or delay of any existing projects or project proposals that occur on existing leases during preparation of the EISs. Should the agencies decide to eliminate certain existing uses, they must provide strong scientific evidence that the State's population management goals for Greater Sage-grouse cannot be met.

VALID EXISTING RIGHTS

According to IM 2012-043, under the Fluid Minerals Section, FOs are instructed to "issue *Written Orders of the Authorized Officer (43 CFR 3161.2) requiring reasonable protective measures consistent with the lease terms where necessary to avoid or minimize effects to Greater Sage-Grouse populations and its habitat.*" We support BLM's commitment to protecting valid existing rights. However, we recommend that this instruction be clarified to specify that once a lease has been issued, the lessee is entitled to access on the lease when it

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does not involve a species listed under the Endangered Species Act. In such cases it is crucial for BLM to retain on-the-ground flexibility when identifying such protective measures.

It is outside BLM's authority to attempt to impose conservation measures that would provide the same or greater restrictions on activities as would be applied under the Endangered Species Act at the expense of valid existing lease rights. If listed, management under the ESA would seek to "restore" habitat and populations with delisting as a goal. The agencies cannot unilaterally manage any state-owned species for recovery. Population management goals are the purview of the state and federal land management agencies must manage their lands accordingly. For example, the NTT Conservation report includes the recommendation not to allow new surface occupancy on federal leases within priority habitats; this includes winter concentration areas during any time of the year. Clearly, this is but one example of where BLM's approach fails to recognize valid existing rights and must be eliminated. The recognition of valid and existing leases in the analysis for each RMP is a critical aspect that cannot be ignored.

ECONOMIC ANALYSIS

BLM is required under 43 CFR § 1610.4-4 (g) to analyze the level of dependence of local communities on resources from public lands during land use planning. As such, the BLM Land Use Planning Handbook (H-1601-H) and Instruction Memorandum No. 2002-167 each specifically address the requirement for a social and economic analysis for land use planning. Factors required to be analyzed include: demographic, economic, social and fiscal conditions and land use patterns. In addition, existing conditions and trends, as well as the impacts to conditions and trends associated with each alternative must be assessed along with the income and employment associated with all economic sectors, community infrastructure, state and local revenues and expenditures, and land use patterns.

Simply because these analyses will focus upon protection of Sage-grouse does not lessen the importance of a sound, comprehensive economic impact analysis. The BLM must analyze the potential economic impacts that additional restrictions on oil and gas operations, and other uses of the public lands, such as grazing and recreation activities, will have upon local and regional economics. Such an analysis must be prepared on a local, planning level, rather than focusing on a single national or regional analysis. Only with site-specific economic impact analysis will BLM have the tools to adequately assess which management strategy is most viable and it will allow public lands users and local and state governments understand the potential economic consequences of additional restrictions.

REASONABLY FORESEEABLE DEVELOPMENT SCENARIO

Since the EISs will amend existing or proposed land use plans, it will be necessary for Reasonably Foreseeable Development scenarios (RFD) to be prepared as a means of projecting the effects of future oil and gas activities within the study areas. We remind BLM that in accordance with established policy and case law, the RFD scenario is simply an analysis tool and cannot be used to establish limits or thresholds on existing or future development. The requirement for an RFD was incorporated into the BLM's Land Use Planning Handbook H-1624 as an analysis tool to allow the agency to accurately analyze the cumulative impacts of

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reasonably foreseeable development during the planning process. It is not a planning decision and it is not to be used to establish a limit on development.

Given the limited time frame available to the BLM to analyze and implement Sage-grouse amendment to the identified Resource Management Plans and Land and Resource Management Plans, we strongly recommend that the agency tier to existing RFDs from the last round of completed planning documents in Wyoming, Utah and Colorado. While several of Colorado and Montana RMPs have yet to be finalized and implemented, many have already completed preparation of their planning RFDs, which should be used as part of the Sage-grouse amendment process. In so doing, BLM will have the benefit of local information and expertise rather than attempting to prepare an additional regional RFD.

LEAST RESTRICTIVE STIPULATIONS REQUIRED

Section 363 of the Energy Policy Act of 2005 requires federal land management agencies to ensure that lease stipulations are applied consistently and to ensure that the least restrictive stipulations are utilized to protect many of the resource values to be addressed. Therefore, even though the analyses will be developing conservation strategies for the Sage-grouse, BLM is required to adhere to BLM policy that requires "*the least restrictive stipulation that effectively accomplishes the resource objectives or uses for a given alternative should be used.*" In addition, it is also necessary to clearly demonstrate that less restrictive measures were considered but found insufficient to protect the Sage-grouse. A simple statement that there are conflicting resource values or uses does not justify the application of restrictions. Discussion of the specific requirements of a resource to be safeguarded, along with a discussion of the perceived conflicts between it and oil and gas activities must be provided. Clearly, an examination of less restrictive measures must be a fundamental element of a balanced analysis and documented accordingly in the EISs.

We are concerned that the protection measures included in the Interim Guidance is, in many cases, overly restrictive, particularly for a game species that is currently unlisted. In fact, it appears that certain conservation measures exceed those required to protect candidate species. Moreover, it appears BLM is attempting to ward off listing of the Sage-grouse by recommending constraints that exceed those implemented for listed species. Again, Greater Sage-grouse are owned by the states and BLM must manage toward the State's population management goals.

Under ESA of the Section 7 consultation requires a biological opinion to be prepared in order to determine whether special constraints need to be imposed. Under BLM's Interim Strategy, restrictions would be imposed on a regional basis which would preclude the possibility of negotiation of best practices and other tools available to mitigate impacts. The planning strategy must not disregard the protocols established under the ESA.

CANDIDATE CONSERVATION AGREEMENTS

For many years the U.S. Fish and Wildlife Service has worked with partners to help them develop Candidate Conservation Agreements (CCAs). CCAs have primarily been developed by Federal agencies to cover Federal lands; and several have resulted in conservation efforts that made listing unnecessary. The primary goal of a CCA is to guide conservation measures and

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efforts in order to make listing unnecessary for the covered species. Even if the species covered by a CCA ends up being listed in the future, the robustness of the CCA in providing for the conservation of the covered species provides considerable certainty to all involved parties. This is because the Conference Opinion associated with the Incidental Take Statement (which covers relevant Federal agency actions associated with implementation of the CCA, including activities by non-Federal property owners on Federal lands) could be adopted as a Biological Opinion. It should be noted that this would be possible only if the agreed-upon actions are properly implemented and no significant new information or changes in conditions have occurred. Consequently, we recommend that BLM defer to existing CCA's when amending the RMPs in order to provide continued certainty to CCA participants rather than developing a whole new set of conservation measures.

PREDATION

Predation is a significant factor in managing Sage-grouse habitat. A paper, based upon 3 years of research, was recently published in *Ecological Processes*, a SpringerOpen Journal, titled *Landscape Features and Weather Influence Nest Survival of a Ground-Nesting Bird of Conservation Concern, the Greater Sage-Grouse, in Human-altered Environments* (Attachment E) has identified several methods for conserving Sage-grouse but points out that there is a specific lack of understanding of the relationship between energy development and nest and brood failure. Consequently, more research is needed before determining what mitigation measures would be most effective. Another recent paper, *Identifying and Prioritizing Greater Sage-Grouse Nesting and Brood-Rearing Habitat for Conservation in Human-Modified Landscapes* (Attachment E), published in the journal PLoS ONE (Attachment F) recommended that constraints on human activity be focused in specific areas rather than applied on a regional scale. Importantly, mitigation measures should be utilized primarily in areas of high habitat value. As such, mitigation should aim for a specific percent reduction in the risk of nest failure by contemplating constraints on infrastructure or water management activity within a given distance of a high probability of occurrence of nesting habitat. It is critical for a distinction to be made between low-performance habitat for nesting and brood rearing and high-performing habitat. Nevertheless, we recognize that measures to avoid or minimize the creation of new anthropogenic risk factors in high-performance habitat are needed along with steps to reduce existing risk factors that render a habitat low-performance such as burying utility lines, removing utility poles, and discouraging the use of facilities by avian predators would reduce predator density and effectiveness. In all, we strongly recommend that the agencies work closely with the oil and gas industry in developing site-specific measures that achieve the desired result of lowering predation risk in developed areas.

CONCLUSION

Fundamentally, we do not support preparation of RMP amendments or supplements for integrating new management standards for Sage-grouse. It is our belief that the standards developed by the NTT are based upon inherently flawed scientific assumptions which have no factual basis and will severely impede the benefits of multiple-use activities on public lands in the West. Having made that position clear, we recognize that BLM and the Forest Service are following management direction to conduct these new analyses. Therefore, it is crucial for the agencies to work closely with State governments and stakeholders to ensure that all new federal management strategies take into account local State expertise as well as socio-

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economic priorities within these areas. We also urge BLM to recognize the measures already in place to reduce impacts to Sage-grouse populations and habitat when developing these new management standards. Finally, it is important for all new standards to be formulated and implemented at the local level rather than applying them on a region-wide basis.

We appreciate this opportunity to provide you with our views, concerns and recommendations. Please do not hesitate to contact us if you would like to discuss our comments in greater detail.

Sincerely,



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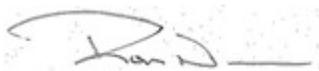


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ATTACHMENTS:

Attachment A - *Thresholds of Energy Development and Greater Sage-Grouse Populations*
Harju, Taylor, Dzialak, Clark, Hayden-Wing, and Winstead 2010

Attachment B - *Oil and Gas Development and Greater Sage Grouse (Centrocercus Urophasianus): A Review of Threats and Mitigation Measures*
Ramey, Brown, and Blackgoat 2011

Attachment C - 2008 Comments of IPAMS/API Endangered and Threatened Wildlife and Plants; Initiation of Status Review for the Greater Sage-Grouse (*Centrocercus urophasianus*) as Threatened or Endangered

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Attachment D - 2008 Comments of PAW Endangered and Threatened Wildlife and Plants; Initiation of Status Review for the Greater Sage-Grouse (*Centrocercus urophasianus*) as Threatened or Endangered