April 2, 2013

Submitted via Federal eRulemaking Portal: http://www.regulations.gov

Patty Gelatt
Western Colorado Field Office Supervisor
U.S. Fish and Wildlife Service
764 Horizon Drive, Building B
Grand Junction, CO 81506–3946

RE: U.S. Fish and Wildlife Service Proposed Critical Habitat Designation for Gunnison Sage-Grouse (Docket Nos. FWS–R6–ES–2011–0111)

Dear Ms. Gelatt:

Western Energy Alliance, Public Lands Advocacy (PLA), the Independent Petroleum Association of America (IPAA) and the Colorado Oil & Gas Association (COGA) submit the following comments on proposals to list the Gunnison sage-grouse *(Centrocercus minimus)* as endangered under the Endangered Species Act of 1973 (ESA) and designate critical habitat for the species to the U.S. Fish & Wildlife Service (Service).

Western Energy Alliance represents more than 400 companies engaged in all aspects of environmentally responsible exploration and production of natural gas and oil in Colorado, Utah, and across the West. PLA is a nonprofit trade association whose members include independent and major oil and gas producers as well as nonprofit trade and professional organizations that have joined together to foster environmentally sound exploration and production on public lands. IPAA represents thousands of independent oil and natural gas explorers and producers, as well as the service and supply industries that support their efforts, which will be significantly affected by federal action. Independent producers develop 95 percent of American oil and natural gas wells, produce 54 percent of American oil and produce 85 percent of American natural gas. The average independent has been in business for 26 years and employs 12 full-time and three part-time employees. In total, America's onshore independent oil and natural gas producers supported 2.1 million direct jobs in the United States in 2010. COGA is a nationally-recognized oil and gas industry trade association whose membership is comprised of operators, service and supply companies, industry vendors, and others engaged in the development of oil and gas, in Colorado and across the world. COGA's mission is to foster and promote the beneficial, efficient, responsible and environmentally sound development, production and use of Colorado oil and natural gas. We request that each of the aforementioned organizations be recognized as separate commenters in this process.

Member companies of these organizations have valid existing leases, current oil and gas production, and plans for future leasing, exploration, and production activities in the areas that will be impacted by the proposed listing or have been proposed for critical habitat designation and, therefore, a direct interest in both of the Service's proposals.

I. General Comments

We strongly oppose this listing proposal and proposed designation of critical habitat. The Service has not adequately demonstrated that the Gunnison Sage-Grouse (GUSG) meets the standard for designation as endangered because it did not use the best available scientific information in its decision and ignored or did not adequately consider several existing efforts and regulatory mechanisms to protect and preserve the species and

its habitat. The Service has failed to acknowledge the significant increases in GUSG population rangewide and must reexamine the proposed critical habitat designation, which does not comply with the Service's statutory mandate to rely on best scientific and commercial data available.

The Service has proposed this listing despite a rangewide conservation plan for the species, seven specific conservation plans for all GUSG populations, voluntary conservation agreements and easements, and efforts through the Natural Resource Conservation Service's (NRCS) Sage-Grouse Initiative. The proposed listing decision ignores, and may consequently compromise the execution or implementation of, multiple existing and planned efforts to protect and conserve the species and its habitat that have been developed by counties, landowners, local area working groups (LAWG), the States of Colorado and Utah, the Bureau of Land Management (BLM), and other stakeholders. As a result, we do not believe the Service has properly taken into account efforts to protect the species, which is required by ESA before a final listing determination can be made. We strongly recommend that the Secretary of the Interior exclude from the final critical habitat designation all lands enrolled under the GUSG CCAA and proposed CCA, lands under permanent conservation easements, or fee title ownership held by various land trust and ranchland conservation organizations with conservation measures applicable to GUSG.

Listing the GUSG under the ESA would have significant negative impacts on the activities that drive the economies of local communities in southwest Colorado and southeast Utah, including oil and natural gas and renewable energy development, grazing, ranching, agriculture, and mining. Our member companies' ability to develop oil and natural gas resources in and around GUSG habitat would be unreasonably delayed or precluded if the Service chooses to move forward with its proposed listing decision and designation of critical habitat. If carried forward, the proposed decision will jeopardize significant oil and natural gas investment which will prevent job creation and associated socio-economic benefits to local communities.

II. Critical Habitat Designation

The Service's intention to designate over 1.7 million acres in Colorado and Utah as critical habitat is ill-conceived and lacks an adequate scientific basis. In general, the critical habitat designation proposed by the Service is not based on the best scientific and commercial data available because it includes areas that may not have the biological features essential to the conservation of GUSG, including broad swaths of land that may lack any present or foreseeable need for special management for the species. In addition, the proposed designation fails to exclude areas where the relative benefits of exclusion outweigh the relative benefits of inclusion, particularly areas with conservation easements, CCA, CCAA, or other voluntary conservation measures.

Unjustified Proposed Designation of Unoccupied Areas as Critical Habitat

The Service does not effectively justify the designation of unoccupied habitat as critical habitat. The total area proposed for critical habitat designation is nearly twice the size of the species' current occupied habitat. According to the Service's *Federal Register* notice, GUSG currently occur in seven isolated populations in Colorado and Utah, totaling 937,676 acres and that 45% of the areas proposed for critical habitat designation are currently unoccupied by GUSG, which includes over 442,000 acres of private land. The proposal to designate over 1.7 million acres as critical habitat, including "potential" and "vacant or unknown" habitat areas that are outside the geographical area occupied by the species at the time of listing, and areas that were historically occupied but are presently unoccupied, is inappropriate and decidedly overly-expansive. These areas may contain unsuitable habitat at present or in the future and may not be essential to the conservation of the species. Consequently, designating these areas as critical habitat would unreasonably preclude or prevent economic activities, including oil and natural gas development, without corresponding benefits to the preservation and recovery of GUSG populations.

We believe that the polygons used to determine these areas do not adequately depict the actual physical and biological conditions on the ground, because the Service "*lack[s] the detailed habitat data throughout the range of the species*" (*Federal Register*, Vol. 78 No. 8, p. 2,548). As a result, the Service has likely violated the ESA because it did not demonstrate the essential "*physical or biological*" features necessary to justify the designation of these unoccupied areas as critical habitat. See *Alaska Oil and Gas Ass'n et. al v. Salazar*, Case No. 3:11-cv-0025-RRB; (Jan. 11, 2013).

Pending Economic Impacts Analysis

The Service is required to consider economic impacts in the critical habitat designation of GUSG.[1] In its upcoming economic impacts analysis, we strongly urge the Service to recognize the economic and social importance of existing and future oil and natural gas development, as well as associated infrastructure in southwest Colorado and southeast Utah. The designation of 1.7 million acres of land as critical habitat, which includes areas with high potential for oil and gas development, will needlessly present a major impediment to development and prevent associated job creation, economic development in local communities, and important revenue sources including severance taxes and state and federal royalties.

Advances in exploration and production technologies may reveal that areas proposed for critical habitat designation that are currently regarded as having no or low potential for oil and gas development could actually have much higher potential for oil and gas development in the future. Accordingly, we recommend that the Service perform a more thorough analysis of the oil and gas potential in the proposed area, in addition to the added regulatory burden of designating thousands of acres as critical habitat and associated socio-economic effects before finalizing any critical habitat designations.

We are also very concerned that the Service may employ a new methodology to analyze the economic impacts of designating critical habitat by using a baseline rather than a coextensive approach, as proposed in a recent Service rulemaking (Docket No. FWS-R9-ES-2011-0073). We are particularly concerned that the Service may utilize this methodology for the designation of critical habitat for GUSG as a "test-case." We remind that the Service cannot legally use new critical habitat economic analysis before it is finalized and published in the *Federal Register*.

Exclusions

The Service has noticeably proposed to designate areas as critical habitat with CCAAs, a proposed CCA, conservation easements, and other measures applicable for GUSG. Excluding an area from potential critical habitat designation is one of the key incentives for entities to pursue these types of measures. Under section 4(b)(2) of the Endangered Species Act, the Service may exclude an area from designated critical habitat based on economic impact, impacts to national security, and other relevant impacts (*Federal Register*, Vol. 76 No. 144, p. 45,100). The Service has also based critical habitat exclusions on voluntary conservation measures like conservation easements, CCAs, and CCAAs. We strongly recommend that the Secretary of the Interior exclude from the final critical habitat designation all lands enrolled under the GUSG CCAA and proposed CCA, lands under permanent conservation easements, or fee title ownership held by various land trust and ranchland conservation organizations with conservation measures applicable to GUSG. Given the economic criticality of the area proposed as critical habitat for GUSG, we also recommend that entities engaging in voluntary conservation efforts which have proven to be effective on private lands or leased public lands be granted exclusions in order to continue economic activities in those areas.

[1] 16 U.S.C. § 1533(b)(2)

Pre-Determined Exclusion Areas

According to the proposed listing decision, *"[t]he scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed sites. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical and biological features in the adjacent critical habitat."*(*Federal Register*, Vol. 78 No. 8, p. 2,557). We strongly recommend that the Service publish in the *Federal Register* the specific areas to be exempted before finalizing the proposed critical habitat designations so counties, the States of Colorado and Utah, and other entities can identify and determine the adequacy of those exclusions.

Conclusion

The above-named trade associations appreciate the opportunity to submit comments to the Service on this matter. Based on the reasons listed above, we strongly oppose the agency's proposal to list the GUSG as endangered under the ESA as well as the proposed designation of critical habitat, and request that both proposals be revoked immediately. Please contact Spencer Kimball at 720-289-3478 or Claire Moseley at 303-506-1153 should you have questions about our comments or recommendations.

Sincerely,

Spencer Kimball	Claire Moseley	Dan Naatz	Andrew Casper
Western Energy Alliance	PLA	IPAA	COGA