



November 19, 2013

The Honorable Sally Jewell
Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Re: Systemic Problems and Scientific Flaws with Influential Documents on Greater Sage-Grouse and Peer Review Thereof

Dear Secretary Jewell:

Western Energy Alliance (the Alliance) is writing to express its serious concerns with scientific documents disseminated by the Department of the Interior (DOI) including, *A Report on National Greater Sage-Grouse Conservation Measures* by the National Technical Team (NTT Report); and the *Greater Sage-Grouse Conservation Objectives Final Report* (COT Report).¹ These reports are meant to be highly influential pending a decision on the listed status of greater sage-grouse (GSG) under the Endangered Species Act (ESA). They are also frequently cited sources in land use planning amendments currently being revised by the Bureau of Land Management (BLM) and U.S. Forest Service that will affect oil and natural gas exploration and production in eleven western states for decades.

Never before has such a wide-ranging and numerous species been seriously considered for listing under the ESA. GSG populations could approach 500,000 throughout eleven western states and two Canadian provinces. Their sagebrush habitat is the most common lowland vegetation in the intermountain West. Many of the reports relied upon to justify onerous management prescriptions for GSG have been prepared by a small group of interested and well-funded personnel that often co-author papers together and review one another's work, thereby failing to meet the most basic of scientific standards.

Western Energy Alliance represents over 430 member companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in the West. The Alliance has a real interest in ensuring documents like the NTT and COT Reports: (1) represent the best available science and adhere to high standards of quality, objectivity, transparency and integrity under presidential and DOI memoranda and orders and the Data Quality Act; (2) comport with the agencies' statutory multiple-use mandates and preserve valid existing rights; and (3) adequately consider the extensive state and local GSG conservation efforts already in place.

¹ Similar concerns have been raised with regards to the Greater Sage-Grouse Monograph and Knick et al. 2013, among others.

The Alliance has gone to great lengths to obtain relevant information about how peer review for the NTT and COT Reports have been conducted, by whom, and to what effect. What little information the U.S. Fish and Wildlife Service (FWS), BLM and the U.S. Geological Survey (USGS) have released was the result of three Freedom of Information Act (FOIA) requests; two FOIA follow-up letters; one FOIA appeal; two Data Quality Act challenges; and two FOIA lawsuits brought by the Alliance.

This foot dragging on the part of DOI falls far short of the high degree of transparency required by the Data Quality Act requirements to “ensure public confidence and trust,”² and uphold the “highest level of integrity....”³ The Alliance has requested nothing more than what DOI should already have provided the public.⁴ From the documentation the Alliance has fought to receive, we have serious concerns with the integrity of peer review process and the NTT and COT Reports themselves.

Scientific Flaws with the NTT Report

BLM convened the NTT to develop new or revised regulatory mechanisms for incorporation into Resource Management Plans (RMP) to conserve GSG and its habitat on BLM lands on a long-term, range-wide basis. The NTT Report fails to make use of the latest scientific and biological information available and to acknowledge lower impact technologies and mitigation currently in use by the oil and natural gas industry such as detailed in Ramey, Brown, and Blackgoat⁵ and in a presentation to the NTT by BLM staff. In addition, the NTT report asserts that impacts from oil and natural gas development are “universally negative and typically severe”⁶ but provides no scientific data to support that mistaken assertion.

Nothing in the NTT Report documents actual population-level declines in GSG. Rather, supposed declines are in reality localized effects on lek attendance indicating displacement of the species, not mortality. Three of the authors of the NTT Report are also authors, researchers, and editors on three of its most frequently cited sources. Such a

² Ken Salazar, Secretary of the Interior, *Order No. 3305: Ensuring Scientific Integrity within the Department of the Interior*, (Sep. 29, 2010), available at: <http://www.doi.gov/news/pressreleases/upload/Sec-Order-No-3305.pdf>.

³ *Memorandum on Scientific Integrity from the Administration of Barack H. Obama for the Heads of Executive Departments and Agencies*, Fed. Reg. 10671 (Mar. 11, 2009), available at: <http://www.gpo.gov/fdsys/pkg/FR-2009-03-11/pdf/E9-5443.pdf>. (“Obama Memorandum on Scientific Integrity”)

⁴ See, e.g. Office of Management and Budget (OMB), *Final Information Quality Bulletin for Peer Review*, 70 Fed. Reg. 2664 (Jan. 14, 2005). (OMB Peer Review Bulletin).

⁵ Ramey, Brown and Blackgoat, *Oil and Gas Development and Greater Sage Grouse (Centrocercus urophasianis): A Review of Threats and Mitigation Measures*, *The Journal of Energy and Development*, Vol. 35, No. 1 (2011).

⁶ NTT Report at 19.

conflict of interest does not meet the most basic scientific standards for impartiality and independence and should not stand.

The NTT Report has been used to support a four-mile buffer around active leks. This buffer size is far greater than necessary and relies upon suspect data, assumptions, and modeling. Such buffers have already been refuted in the Pinedale Planning Area where the GSG population increased despite intensive energy development even in areas that were developed prior to widespread use of directional drilling and clustered development. Such extensive buffers will render huge swaths of the West inaccessible to productive uses of the land, harming local and state economies and hampering American energy development.

The NTT Report has also been used to support anthropogenic disturbance caps of less than five percent and total disturbance caps of less than 30 percent without any scientific data that they are: (1) scientifically defensible; (2) achievable; (3) would result in stable GSG populations; (4) would not result in irreparable harm to other species; and (5) would not unnecessarily have a negative effect on local economies.

Issues with Peer Review of the NTT Report

To date, DOI has not released sufficient information for the Alliance to ascertain whether peer review of the NTT Report was conducted in accordance with appropriate standards and methods. From what information the Alliance has received, the October 11, 2011 cover letter to reviewers sets a disturbing tone. Former Nevada Department of Wildlife Director Ken Mayer requested reviews on the NTT Report, “[W]e are not asking for a strict scientific review....” he said. Furthermore, DOI has failed to disclose the identities of the reviewers, again violating basic standards of government transparency.

Despite the failure to provide sufficient information about the reviewers, we note some telling observations nevertheless:

- “The current report lacks sufficient rationale or scientific justification to lead readers directly from the research or literature citation to the recommended action.”
- “This document suffers from a 1-size fits all approach that lacks context....[W]hen combined with very prescriptive direction, it may lead to strong opposition....”
- “This seems a strange blend of policy loosely backed by citations, with no analysis of science. Because there is no iteration of the rational scientific basis for the very prescriptive strategies, I would anticipate strong blowback....”
- “...the NTT report would likely be susceptible to considerable criticism from industry or other partners concerning the proposed conservation measures...”
- “Lack of consideration of space, and particularly (in this document) time is a critical mistake that, to me, renders this document problematic, if not dangerous.”

Scientific Flaws with the COT Report

FWS convened the COT Report to develop rangewide conservation objectives for GSG both to inform the upcoming 2015 listing decision under the ESA and to inform stakeholders on the degree to which threats need to be reduced or ameliorated to conserve GSG. The COT Report provides no original data or quantitative analyses. It fails to provide a comprehensive and unbiased review and perpetuates outdated information and beliefs. The COT Report also places undue reliance on the database NatureServe, which comes with a glaring disclaimer about the accuracy of the data.⁷ While the COT Report states, “there is an urgent need to ‘stop the bleeding’ of continued population declines” it fails to mention the most well-documented sources of GSG mortality: some 207,433 GSG were harvested by hunters between 2001 and 2007 and a 500-year drought event adversely impacted GSG and many other species in the West. At the same time, the COT Report proposes to regulate activities with little to no scientific support that they cause populations declines.

Issues with Peer Review of the COT Report

Again, from the limited information the Alliance received, peer review of the COT Report was inadequate. Among other deficiencies, certain reviewers lacked independence and appeared to have real conflicts of interest. Some reviewers had lucrative contracts to study GSG including direct grants from the USFWS and USGS. Many had been co-authors with those they were tasked to review. The whole point of peer review is to ensure the integrity of a scientific study through the evaluation of impartial, third-party scientists; that integrity is abolished when the same scientists writing the study are themselves reviewing it, and when both are further monetarily dependent on the very agency that is supposedly asking for an impartial review.

A number of laws, regulations, directives and guidance stress the importance of independence⁸ and the need to avoid conflicts of interest.⁹ For example, The National Academy of Sciences (NAS) considers financial interests, access to

⁷ “All documents and related graphics provided by this server and any other documents which are referenced by or linked to this server are provided “as is” without warranty as to the currentness, completeness, or accuracy of any specific data....”

⁸ See USFWS *Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities; Performance Work Statement: Scientific, Technical and Advisory Services; Information Quality Guidelines and Peer Review*; see also OMB *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*; OMB Peer Review Bulletin; and [Obama Memorandum on Scientific Integrity](#).

⁹ The National Academies *Policy on Committee Composition and Balance and Conflicts of Interest for Committees Used in the Development of Reports*, (May 12, 2003); OMB Peer Review Bulletin; *Memorandum on Scientific Integrity from the Office of Science and Technology Policy for the Heads of Executive Departments and Agencies*, (Dec. 17, 2010); DOI Manual, Part 305, Chapter 3.

confidential information, reviewing one's own work, public statements and positions, and employees of sponsors in its conflicts policy. OMB directs agencies to use the NAS policy. The DOI Manual defines conflicts of interest as, "[A]ny personal, professional, financial, or other interests that conflict with the actions or judgments of those covered by this policy when conducting scientific and scholarly activities or using scientific and scholarly data and information because those interests may: (1) Significantly impair objectivity; or (2) Create an unfair competitive advantage for any person or organization, or (3) Create the appearance of either (1) or (2)."

Despite the problems detailed above, some of the reviewers of the COT Report pointed out serious deficiencies. For example, reviewers identified at least 15 relevant scientific papers that should have been cited, and failure to use the latest state and local habitat maps. One reviewer noted that it was questionable how scientific sources were used to establish risks and that there were limited (if any) direct relationships between habitat characteristics and population change. A lack of transparency in the threats analysis was a common theme.

Reviewer 3 could not replicate the results of the threats analysis with the information provided. Reviewer 4 pointed out that direct relationships between habitat characteristics and population change were limited if not entirely lacking. "We have a poor empirical basis for understanding most potential impacts on sage-grouse...[T]his severely limits our ability to predict the response of sage-grouse populations to changes in their habitats," said Reviewer 4. He also found statements about predation to be speculative and without empirical basis. Reviewer 5 remarked that conclusions in the threats analysis were based upon findings stemming from professional opinion. Reviewers also cited generalities, uncertainties, and questions regarding whether recommendations were feasible or practicable. One reviewer noted the COT Report should be seen as a tool rather than an absolute.

Conclusion

The issues raised herein are just a sample of the many shortcomings of these documents. We urge you to rectify DOI's lack of transparency regarding peer review on the NTT and COT Reports as well as the information the Alliance requested of the USGS. Second, we request you provide direction to your agencies on correcting the lack of scientific integrity in the studies being used to make major listing decisions, and ensure they meet the standards required by the ESA, the Data Quality Act, and presidential and DOI memoranda and orders. Third, please confirm that DOI will not rely upon these flawed documents in determinations on the listed status of GSG under the ESA or for the basis of prescriptive land use decisions that conflict with multiple uses of public lands and valid existing rights. Finally, we urge you to consider the many successful local, state and federal conservation measures already in place to protect the GSG as the basis for a more flexible and adaptive

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approach to GSG conservation that recognizes the mitigation measures oil and natural gas companies are already employing to protect the GSG.

We appreciate your prompt attention to these requests. If you have any questions or would like to discuss this matter, please contact me directly at KSgamma@westernenergyalliance.org or (303) 623-0987. Thank you.

Sincerely,



Kathleen M. Sgamma
Vice President of Government & Public Affairs

cc: Governors and Congressional delegations of
Colorado, Idaho, Montana, Nevada, North Dakota, Utah, and Wyoming
Dan Ashe, Director, FWS
Neil Kornze, Principle Deputy Director, BLM
Suzette Kimball, Acting Director, USGS