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**RE: GREATER GRSG PROPOSED RESOURCE MANAGEMENT PLAN AMENDMENT AND  
DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE LEWISTOWN FIELD OFFICE**

Dear Mr. Carr:

On behalf of the Montana Petroleum Association (MPA), Public Lands Advocacy (PLA) and Western Energy Alliance (Alliance), following are comments in response to the Notice of Availability of the Draft Lewistown Greater GRSG (GRSG) Resource Management Plan Amendment and Draft Environmental Impact Statement (RMPA/DEIS) published in the *Federal Register* September 18, 2013. The signatories to these comments are non-profit trade groups who represent the many facets of the petroleum industry. Our member companies have valid existing leases, current oil and gas production, and plans for future leasing, exploration, and production activities in the areas that will be directly impacted by the proposed revision of the Lewistown (LFO) RMPA/DEIS.

**1.3 PROPOSED ACTION**

*“There is an existing protest resolution decision affecting lands managed within the LFO that does not allow oil and gas leasing of nominated parcels that would require a special stipulation to protect important wildlife values, which includes PPH and PGH, or PH and GH. New leasing of areas with important wildlife values cannot occur until the BLM completes a plan amendment/EIS or a new/ revised RMP/EIS, including oil and gas leasing decisions identified in a ROD. **Because this RMPA only considers management actions for GRSG and does not address oil and gas leasing options for other wildlife resource values, oil and gas leasing will not be addressed in this RMPA/EIS.** [Emphasis Added] (The LFO RMP revision process will begin in 2013, which will address oil and gas leasing for the entire LFO planning area boundary.)*

**COMMENT:** No mention is made of the date of the protest resolution which prevents oil and gas leasing of parcels that require a special stipulation to protect wildlife, which dates back to 1988. As acknowledged on page 4 of Chapter 5 of the planning document, one of the BLM’s primary duties is to manage the federal oil and gas leasing program: *“The BLM routinely offers land parcels for competitive oil and gas leasing to allow exploration and development of oil and gas resources for public sale. Continued leasing is necessary for oil and gas companies to seek new areas for oil and gas production, or to develop previously inaccessible/uneconomical reserves.”* Since oil and gas leasing is legally a “routine” part of BLM’s land management responsibilities, we ask BLM to explain why it has allowed this longstanding “protest resolution decision” to prohibit oil and gas leasing for nearly 30 years. This

prolonged failure to act upon one of the agency's primary program responsibilities is unconscionable and demonstrates negligent leadership. The proposed action claims that an RMP revision addressing oil and gas leasing was slated to commence in 2013. It is now 2014 and no notice of intent has been published in the *Federal Register* as of the date of these comments. In our view the requirement of preparing a plan amendment for the GRSG presented a reasonable opportunity for the agency to also address oil and gas leasing. We ask BLM to explain why it did not complete a comprehensive RMP revision that encompassed not only the GRSG, but other resource uses and values, including other wildlife species as well as oil and gas leasing activities, instead of simply preparing a GRSG-specific amendment. Combining these program actions would have saved considerable time and taxpayer dollars.

Even though the LFO decided not to address oil and gas leasing in this RMPA/DEIS, the BLM's intent is quite evident. Therefore, these comments will address similar issues to those raised in comments on all other GRSG planning documents in Montana, i.e., unwarranted usage of No Surface Occupancy (NSO) restrictions throughout GRSG habitat and ill-conceived management options and Required Design Features (RDF).

## **GENERAL**

BLM has been instructed to adopt management strategies to conserve and protect GRSG and its habitat on public lands in Montana in order to demonstrate to the U.S. Fish & Wildlife Service (USFWS) that listing the species under the Endangered Species Act of 1973 (ESA) is unnecessary. However, the management strategies outlined in the RMPA/DEIS far exceed what is needed to ensure sufficient regulatory mechanisms will exist in the future. In fact, implementation of BLM's Preferred Alternative D would severely impede the agency's statutory mission and seriously compromise land users' ability to continue historic uses of public lands, which are known to generate millions of dollars in revenue to the state and local treasuries. While we support the LFO's intention to maintain site-specific flexibility when utilizing the RDFs outlined in Appendix D, we point out that many of these requirements are overly prescriptive, have no scientific basis and reflect a lack of understanding valid existing rights, operational considerations and technical feasibility. The primary reason for these excessive strategies is due to serious flaws in the data relied upon in the planning documents, which are discussed in detail below.

Lastly, we point out that despite the direction BLM field offices have received, neither the National Environmental Policy Act (NEPA) nor the ESA amend or alter the agency's statutory mission of multiple-use. Nor can the RMPA/DEIS impact valid existing rights. Among others, this process must not conflict with BLM's duties and authorities under the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. § 1701 et seq.) and the Mineral Leasing Act of 1920 (30 U.S.C. § 181 et seq.).

## **NATIONAL TECHNICAL TEAM (NTT) REPORT**

We object to BLM's reliance upon the NTT report as one of its principal guiding documents, particularly for oil and gas leasing and operations, because it failed to utilize any type of systematic cataloging and quantitative evaluation to determine the type, extent and effectiveness of mitigation measures currently employed by the oil and gas industry. Moreover, the NTT report is clearly biased as evidenced by its

assertion that oil and gas “*impacts are universally negative and typically severe,*” particularly since the NTT utilized little or no useful and site-specific data upon which to base that conclusion. In fact, this statement is predicated upon a few select studies while ignoring other data and studies that clearly demonstrate impacts from oil and gas are not universally negative and typically severe. While we acknowledge there may be temporary decreases in lek counts within close proximity to initial well construction and other activities, this cannot be construed to indicate general population declines. In reality, it has been scientifically demonstrated that the GRSG are merely temporarily displaced to other areas with less activity until the initially disturbed area returns to a less active state.

Additionally, many of the RDFs and Best Management Practices (BMP) advocated by the NTT fail to recognize valid existing rights or understand the complexity of oil and gas exploration and development as evidenced by its strategy to impose a one-size-fits-all management approach that disregards topography, local conditions, and practicality. As stated previously, we support the LFO intent to ensure the RDFs and mitigation measures are technically feasible and appropriate and that they maintain the level of flexibility required when their use is to be considered on a site-specific basis. However, in accordance with current law and regulation, it is inappropriate for the RMPA/DEIS to establish these overly site-specific requirements at a programmatic level.

The Department of Interior (DOI) has been criticized by the Western Association of Fish and Wildlife Agencies (WAFWA) for using the NTT report as BLM’s primary source of GRSG management direction. In a letter sent to the Interior Secretary on May 16, 2013, WAFWA member states made it clear they never endorsed the sole use of the NTT or any other scientific publication. Rather, they believe that a wide variety of peer-reviewed publications which collectively provide the best available science for GRSG should form BLM’s basis for conserving the species. They went on to recommend that management and regulatory mechanisms be centered upon the best available science [emphasis added] which would provide the best strategy for near- and long-term management of GRSG and provide the best opportunity for precluding a listing under ESA.

An overview of the Cooper Ornithological Society’s *Monograph: Studies in Avian Biology* (Monograph), the principal source of information relied upon by the NTT (and the USFWS in making its 2010 listing determination), was conducted by the Center for Environmental Science, Accuracy and Reliability (CESAR) in February 2012 entitled “*Science or Advocacy?*” which found:

- Significant mischaracterization of previous research;
- Substantial errors and omissions;
- Lack of independent authorship and peer review (3 of the authors of the NTT are also the authors, researchers, and editors on 3 of the most cited sources in the NTT.)
- Methodological bias;
- Invalid assumptions and analysis; and
- Inadequate data.

Similar reviews were also conducted separately by scientists commissioned by the State of Colorado who found the same exact defects. Not surprising, theirs and other comments on the Monograph were disregarded by DOI and the NTT. Related findings regarding the NTT report were made in a review

recently prepared for Western Energy Alliance in which it was discovered that *“the NTT report represents a partial presentation of scientific information to justify a narrow range of preferred conservation measures and policies that will be imposed as land use regulations by the BLM. In contrast, an objective scientific review would have led to a broadening of conservation alternatives for decision makers to choose from.”* With respect to oil and gas, *“the NTT presents a biased view of oil and gas operations by conveying that ‘impacts are universally negative and typically severe.’ The NTT then selectively presented information in support of its conclusions, while ignoring contrary information. Key assertions in the NTT report are both biased and in error, especially the frequently repeated, but erroneous assumption, that a temporary decrease in lek counts immediately adjacent to active wells is equivalent to a population decline.”*<sup>1</sup>

With respect to oil and gas activities, another major fundamental concern is that the NTT report failed to recognize that the level of disturbance associated with a well is not constant throughout its life. The highest level of surface disturbance associated with oil and gas development occurs during the construction, drilling and completion phases, which can last as little as one or two days up to a few months, depending upon the time it takes to complete the well. Once production ensues, these activities subside dramatically and only regular monitoring and maintenance of the well are required. Shortly after well completion, the operator normally begins interim reclamation to restore any impacted habitat that isn’t being utilized. This interim reclamation remains in effect until the well has been depleted. Upon conclusion of production activities, the operator will then move forward with plugging and abandonment procedures, which also includes final reclamation that will ultimately result in full reestablishment of the site and its return to productive habitat. Interior’s reliance upon the NTT report appears aimed at causing new oil and gas leasing, exploration and development in the public lands states to be essentially terminated throughout hundreds of millions of acres GRSG habitat.

We also point out that the NTT report relied heavily upon *Holloran’s 2005*<sup>2</sup> dissertation despite the fact that it failed to acknowledge the countless stipulations and mitigation measures utilized by the oil and gas industry in GRSG habitat. The focus of this study was limited to an unmitigated control area which was to be used as a basis for comparison to areas where mitigation was being employed. Holloran predicted population declines between negative 8.7 percent to negative 24.4 percent annually in Pinedale. Despite his expectation of catastrophic population decline in the unmitigated area, this forecast has been clearly refuted by the data; GRSG in the Pinedale area have thrived and are well above statewide averages.

### **USFWS GREATER SAGE-GROUSE CONSERVATION OBJECTIVES FINAL REPORT (“COT REPORT”)**

We are concerned that BLM has used the COT report as a principal basis for effects analyses and assumptions. The COT report is also widely relied upon throughout other sections of the RMPA/DEIS.

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<sup>1</sup> Review of Data Quality Issues in A Report on National Greater GRSG Conservation Measures Produced by the BLM GRSG National Technical Team (NTT) Dated December 21, 2011. Dr. Rob Ramey, III, Wildlife International Inc. (Attachment A)

<sup>2</sup> (Holloran, M. J. 2005. Greater GRSG (*Centrocercus urophasianus*) population response to natural gas field development in western Wyoming. PhD Dissertation. University of Wyoming. Laramie, Wyoming.)

Due to a number of significant flaws, as described below, we also urge the BLM to reconsider its dependence on the COT report in the final RMPA/EIS and subsequent Record of Decision (ROD).

It must be fully acknowledged that the COT report fails to represent a comprehensive scientific review; rather, it is simply an incomplete examination of limited literature and unpublished reports that were used to “*identify conservation objectives to ensure the long-term viability of the GRSG.*” In fact, the COT report provides no original data or quantitative analyses and notably fails to review all of the available scientific literature on the GRSG. Consequently, this severely limited review simply perpetuates outdated information and assumptions.

An example of its inadequacy is the fact that the COT report’s threats analysis, population definitions, current and projected numbers of males, and probability of population persistence are heavily based upon a paper by Edward O. Garton. Notably, *Garton et al. 2011*<sup>3</sup> is the most frequently cited paper in the COT report. The same significant methodological biases and mathematical errors within the COT report<sup>4</sup> were also present in the final revisions of Garton et al. 2011. Moreover, the fact that the data and programs used in *Garton et al 2011* are not available for public review and are not reproducible, seriously compromises the scientific integrity of the COT report.

While the COT report claims “*there is an urgent need to ‘stop the bleeding’ of continued population declines*” it fails to cite hunting, which is the most well-documented source of GRSG mortality with 207,433 GRSG harvested between 2001 and 2007.<sup>5</sup> Some estimate current total GRSG populations at or near 500,000 birds.<sup>6</sup> Clearly such mortality levels should be carefully considered and properly accounted for. Instead, the COT report chose to limit its recommendations to restrictions on activities that have never been demonstrated to cause a population decline. The COT report’s recommendation to regulate nonthreatening activities combined with its disregard<sup>7</sup> of a major, actual threat to GRSG demonstrates a clear lack of scientific integrity in the COT report.<sup>7</sup>

It is also imperative to recognize that there is no evidence of any reproducible, quantitative methodology used in assigning rankings to threats in each population and GRSG management zone. The ranking of threats in the COT report appears to be entirely subjective.<sup>8</sup>

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<sup>3</sup> Edward O. Garton, John W. Connelly, Jon S. Horne, Christian A. Hagen, Ann Moser, and Michael A. Shroeder, Greater Sage-Grouse Population Dynamics and Probability of Persistence, in Greater Sage-Grouse Ecology and Conservation of a Landscape Species and its Habitats. Studies in Avian Biology (vol. 38) 293-382 (Steven T. Knick and John W. Connelly eds., 2011) (hereafter “Garton et al. 2011)

<sup>4</sup> Rob Roy Ramey, Data Quality Issues in the Greater Sage-Grouse (*Centrocercus urophasianus*) Conservation Objectives: Final Report, p.1 (October 16, 2013) (Attachment B)

<sup>5</sup> COT Report at 31; Kerry P. Reese and John W. Connelly, Harvest Management for Greater Sage-Grouse: A Changing Paradigm for Game Bird Management, in Greater Sage-Grouse Ecology and Conservation of a Landscape Species and its Habitats. Studies in Avian Biology (vol. 38) Table 7.3 p. 106 (Steven T. Knick and John W. Connelly eds., 2011).

<sup>6</sup> Broder, John M.. (2010-03-05) No Endangered Status for Plains Bird. Nytimes.com

<sup>7</sup> Id at 4

<sup>8</sup> Id at 4

Peer review of the COT report was severely inadequate. A number of the relevant peer review regulations and guidance plainly emphasize the importance of independence<sup>9</sup> and the need to avoid conflicts of interest.<sup>10</sup> Of particular importance, a peer reviewer must not have been a contributor to the work product leading to the listing of a species and the peer reviewer must not have been influenced by funding considerations. The National Academy of Sciences (NAS) considers financial interests, access to confidential information, reviewing one's own work, public statements and positions, and employees of sponsors as problems to be avoided in its conflicts policy.<sup>11</sup> The 2005 Office of Management and Budget (OMB) Bulletin directs agencies to use the NAS policy.

Additionally, peer review of the COT report failed to meet the requirements of both the DOI Manual and the NAS policy, which accentuate the need for independence and an avoidance of a conflict of interest. Nevertheless, COT report deficiencies include: authorship with three COT report team members; grant support from the USFWS and USGS; significant financial support for GRSG research (Drs. Holloran, Messmer and Reese listed over \$10 million);<sup>12</sup> authorship with NTT members; and authorship with other influential GRSG authors including Doherty, Naugle, and Knick.<sup>13</sup> The reviews of the COT report present numerous examples of failures to meet NAS and OMB guidelines.

In addition to conflicts of interest and reliance upon questionable data to assess threats, more than one reviewer cited tangible uncertainties regarding management and potential impacts on GRSG populations. In fact, *"...the majority of the reviewers found that the report fell short of meeting its stated goals in several important areas, and they identified opportunities to better achieve those goals and improve its utility for decision making..."*<sup>14</sup> Reviewers also identified an astonishing lack of reference to at least 15 relevant scientific papers.<sup>15</sup>

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<sup>9</sup> 104 Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities 59 Fed. Reg. 34270 (Jul. 1, 1994); OMB Guidance; Final Information Quality Bulletin for Peer Review 70 Fed. Reg. 2664 (Jan. 14, 2005); Memorandum for the Heads of Executive Departments and Agencies. 74 Fed. Reg. 10671 (Mar. 11, 2009), available at: <http://www.gpo.gov/fdsys/pkg/FR-2009-03-11/pdf/E9-5443.pdf> (<http://www.whitehouse.gov/sites/default/files/microsites/ostp/scientific-integrity-memo-12172010.pdf>); Performance Work Statement for Scientific, Technical and Advisory Services ([http://www.fws.gov/informationquality/peer\\_review/IDIQ\\_Performance\\_Work\\_Statement\\_17Nov2011.pdf](http://www.fws.gov/informationquality/peer_review/IDIQ_Performance_Work_Statement_17Nov2011.pdf)); Information Quality Guidelines and Peer Review ([http://www.fws.gov/informationquality/topics/InformationQualityGuidelinesrevised6\\_6\\_12.pdf](http://www.fws.gov/informationquality/topics/InformationQualityGuidelinesrevised6_6_12.pdf)).

<sup>10</sup> Policy on Committee Composition and Balance and Conflicts of Interest for Committees Used in the Development of Reports (<http://nationalacademies.org/coi/>); Final Information Quality Bulletin for Peer Review 70 Fed. Reg. 2664 (Jan. 14, 2005); Memorandum for the Heads of Executive Departments and Agencies (<http://www.whitehouse.gov/sites/default/files/microsites/ostp/scientific-integrity-memo-12172010.pdf>); Department Manual, Part 305, Chapter 3 (<http://www.fws.gov/science/pdf/DOIScientificIntegrityPolicyManual.pdf>).

<sup>11</sup> Available at: <http://www.nap.edu/openbook.php?isbn=0309059437&page=9>

<sup>12</sup> Reese listed over \$6.3 million in funding and in-kind contributions, but failed to account for precisely how much can be attributable to sage-grouse.

<sup>13</sup> Scientific Peer Review of the Sage-Grouse Conservation Objectives Draft Report, Appendix A

<sup>14</sup> Scientific Peer Review of the Sage-Grouse Conservation Objectives Draft Report at 3

<sup>15</sup> Id

Given these major flaws, we also advise BLM to reconsider its dependence on the COT report in the RMPA/DEIS. To do otherwise would be inconsistent with the ESA, the Data Quality Act (DQA) and current Presidential and Interior Department memoranda and orders.

## **ENERGY AND MINERAL DEVELOPMENT ARE LEGITIMATE USES OF PUBLIC LANDS**

Under FLPMA, BLM is required to manage the public lands on the basis of multiple use and sustained yield. 43 USC § 1701(a)(7) (2006) *"Multiple use management' is a concept that describes the complicated task of achieving a balance among the many competing uses on public lands, 'including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and [uses serving] natural scenic, scientific and historical values.' "* Norton v. Southern Utah Wilderness Alliance, 542 U.S. at 58 (quoting 43 U.S.C. § 1702(c). We recognize the difficult task the BLM and Forest Service faces to manage public lands in the planning areas for multiple-use. However, oil and gas development is a crucial part of the BLM's multiple-use mandate and the agency must ensure that oil and gas development is not unreasonably limited in the LUP.

FLPMA clearly identified mineral exploration and development as a principal or major use of the public lands. The Multiple-Use Sustained-Yield Act of 1960 specifically states: *"Nothing herein shall be construed so as to affect the use or administration of the mineral resources of national forest lands ..."* To that end, the laws require both agencies to foster and develop mineral activities, not stifle and prohibit such development. It does not appear this was one of the agencies' goals when preparing the RMPA/DEIS. Rather it is evident that the agencies are intent upon limiting what it considers to be a damaging presence on federal lands. The agencies must reconsider its view of oil and gas and mineral development when preparing the final RMPA/DEIS.

## **STATUTORY REQUIREMENTS**

### Energy Policy Act of 2005

Section 363 of the Energy Policy Act of 2005 (EPAAct) 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. The RMPA/DEIS ignores established BLM policy that states *"the least restrictive stipulation that effectively accomplished the resource objectives or uses for a given alternative should be used."* Moreover, the agencies have failed to demonstrate that less restrictive measures were considered but found insufficient to protect the resources identified. A 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 FEIS.

### Energy Policy and Conservation Act of 2000(EPCA)

In April 2003, field offices were directed to comply with four EPCA planning integration principles:

- 1) *Environmental protection and energy production are both desirable and necessary objectives of sound land management and are not to be considered mutually exclusive priorities.*
- 2) *The BLM must ensure appropriate accessibility to energy resources necessary for the nation's security while recognizing that special and unique non-energy resources can be preserved.*
- 3) *Sound planning will weigh relative resource values, consistent with the FLPMA.*
- 4) *All resource impacts, including those associated with energy development and transmission will be mitigated to prevent unnecessary or undue degradation (BLM 2003a)."*

Under EPCA BLM is required to identify impediments to oil and gas development. It was the intent of Congress that access to energy resources be improved as indicated in EPCA and EPAct. BLM recognized the intent of the both Phases I and II of the EPCA review when it issued Instruction Memorandum 2003-233, *Integration of the Energy Policy and Conservation Act (EPCA) Inventory Results, into the Land Use Planning Process*. Consequently, BLM Field Offices are now required to review all current oil and gas lease stipulations to make sure their intent is clearly stated and that stipulations utilized are the least restrictive necessary to accomplish the desired protection. Moreover, the IM directs that stipulations not necessary to accomplish the desired resource protection be modified or dropped using the planning process.

Since the purpose of integrating the EPCA results into planning is intended to determine whether existing resource protection measures are inadequate, adequate or excessive, we recommend that BLM reevaluate its management decisions accordingly and make requisite changes to the final planning documents

Full examination of less restrictive measures must be a fundamental element of a balanced analysis and documented accordingly in the FEIS. Moreover, under EPCA BLM is required to identify impediments to oil and gas development. It was the intent of Congress that access to energy resources be improved. BLM recognized the intent of the both Phases I and II of the EPCA review when it issued Instruction Memorandum 2003-233, *Integration of the Energy Policy and Conservation Act (EPCA) Inventory Results, into the Land Use Planning Process*. Consequently, BLM Field Offices are now required to review all current oil and gas lease stipulations to make sure their intent is clearly stated and that stipulations utilized are the least restrictive necessary to accomplish the desired protection. Moreover, the IM directs that stipulations not necessary to accomplish the desired resource protection be modified or eliminated using the planning process.

## **VALID EXISTING RIGHTS**

**2.5** Management Common to All Alternatives - *Recognize valid existing rights, which include any leases, claims, or other use authorizations established before a new or modified authorization, change in land designation, or new or modified regulation is approved; existing fluid mineral leases are managed through Conditions of Approval (COAs) applied at the time the BLM and Forest Service approve an Application for Permit to Drill (APD)*

**COMMENT:** While it is correct that BLM must recognize valid existing rights, the RMPA/DEIS fails to explain what actually constitutes valid existing rights and how they relate to the new land use management alternatives considered in the planning document. We are concerned that it appears BLM has no real understanding of what constitutes valid existing rights as indicated in Table 2-6, page 2-51: *“conditions of approval (COA) would be applied to existing leases in PH and GH (345,560 acres), except with greater flexibility for site-specific modifications.”* While we support BLM’s commitment to retaining flexibility in prescribing site-specific modifications, we object to the notion that BLM can impose any COA it wishes to a previously issued lease.

Each oil and gas lease contains lease covenants made by the lessee, which can be express or implied. Implied covenants are unwritten promises that impose duties on the lessee and protect the lessor. The courts generally recognize implied covenants such as the right to produce and market, protect from drainage, to reasonably develop, further explore, to operate prudently and properly, and to explore based on economic justification. It is important for the RMPA/EIS to recognize that oil and gas leases are existing rights that cannot be modified by a land use plan, even one prescribing management actions for the GRSG. *Sierra Club v. Peterson, 717 F.2d 1409, 1411 (D.C. Cir. 1983); Solicitor’s Opinion M-36910, 88 I.D. 909, 912 (1981)*. Once BLM has issued a federal oil and gas lease without an NSO stipulation, and in the absence of a nondiscretionary statutory prohibition against development, BLM cannot completely deny development on the leasehold and all COAs must remain consistent with the terms of the lease issued.

These principles are particularly important given the fact that discussions regarding new protections for the GRSG are intended to impose debilitating restrictions on existing leases that were not anticipated at the time the leases were purchased in good faith from the federal government. Such limitations on BLM’s authority are consistent with current law and policies of the BLM and they must be clearly disclosed in the planning documents.

## **CHAPTER 1 – INTRODUCTION**

*Page 1-2 Through the land use planning process and plan amendment, the BLM will refine PPH and PGH data to (1) delineate priority habitat (PH) and analyze actions within PH areas to conserve GRSG habitat functionality, or where possible, improve habitat functionality; and (2) identify general habitat (GH) areas and analyze actions within GH areas that provide for major life history function (e.g., breeding, migration, or winter survival) in order to maintain genetic diversity needed for sustainable GRSG populations.*

**COMMENT:** Under Executive Order No. 2-2013, Montana Governor Bullock mandated the establishment of a Greater GRSG Habitat Conservation Advisory Council with a stated purpose *“to gather information, furnish advice, and provide to the Governor recommendations on policies and actions for a state-wide strategy to preclude the need to list the Greater GRSG under the Endangered Species Act (ESA), by no later than January 31, 2014.”*

The RMPA/DEIS fails to recognize Montana’s ongoing GRSG planning effort. We ask BLM to clarify its anticipated role in recognizing and/or adopting the state’s strategy as part of this RMP amendment.

Similarly the RMPA/EIS needs to explain how the final planning document will correspond with the state of Montana GRSG population management objectives.

Page 1-2 Preliminary priority habitat (PPH) is defined as “Areas that have been identified as having the highest conservation value to maintaining sustainable GRSG populations. These areas include breeding, late brood-rearing and winter concentration areas.” Preliminary general habitat is defined as “Areas of seasonal or year-round habitat outside of priority habitat.”

Page 3-18 “There are no leks on BLM-administered lands in PGH. There is much less sagebrush habitat in PGH (38 percent), compared to PPH (57 percent) for all ownerships), and fewer active leks (two) in these areas compared to PPH. Patterns of land ownership within these areas are smaller sized contiguous blocks and a lower proportion of BLM-administration in the area (11 percent PGH on BLM-administered lands compared to 19 percent PPH on BLM-administered lands).”

**COMMENT:** BLM admits in the RMP/DEIS that most GRSG activity and the highest conservation value and quality habitat are represented within PPH. Given this situation, we emphatically object to BLM’s proposal to extend the same exact set of restrictions to PGH. BLM has failed to provide thorough and concise scientific justification for this proposed action. Notwithstanding our objections to unwarranted, excessive management strategies for oil and gas leasing and development outlined in the other Montana RMPAs (Miles City, HiLine, Billings/Pompey’s Pillar), they at least separated management strategies by PH and GH. BLM needs to explain why its management focus in LFO is the same in both habitat categories.

We point out that the RMPA/DEIS separates management actions for ROWs into different categories and different levels of restrictiveness in accordance with the habitat classifications. For example Table 2-4, page 2-28 to 2-29, states:

- *PH would be managed as right-of-way (ROW) avoidance areas (233,219 acres). Where new ROWs are required, co-locate new ROWs within existing ROWs or where it best minimizes impacts on GRSG and GRSG habitat.*
- *ROWs would be allowed in GH, with appropriate mitigation and conservation measures identified within the terms of the authorization to minimize surface-disturbing and disruptive activities.*

The LFO needs to clearly explain its rationale for its unwarranted one-size-fits-all treatment of all management actions related to oil and gas activities within PH and GH.

#### **1.6.4 Issues Considered but Not Further Analyzed**

Page 1-11 *Predator control—many commenters stated that predator control was needed to protect GRSG from predation.*

**COMMENT:** While we recognize that the state Division of Fish, Wildlife and Parks (MFWP) is responsible for addressing the issue of predation, it remains a serious concern with respect to the GRSG and must not be completely ignored by the agencies in the RMPA/DEIS. We question why the agencies have

chosen to completely ignore this specific threat in its analysis since predation is a critical issue that must be fully considered directly in the Environmental Consequences and associated management actions of the RMPA/DEIS.

In Chapter 1, the RMPA/DEIS specifically identifies the COT and the NTT reports as two main references in its review of alternatives and potential management actions. Although USFWS (2010) previously recognized predation as a factor related to the decline in GRSG distribution and abundance, neither the COT report, the NTT report nor this RMPA/DEIS address the potential of predation to affect populations of GRSG in Montana. Of particular note, neither report nor this RMPA/DEIS suggest measures that could reduce predation.

BLM's decision to avoid addressing the issue of predation is clearly inappropriate because it ignores one of the most perilous threats to the GRSG while focusing on activities that have yet to be scientifically documented as posing significant risks to the survival of the GRSG, such as oil and gas activities.

## **CHAPTER 2 – PROPOSED ACTION AND ALTERNATIVES**

*Page 2-3 The proposed alternatives were formulated in response to issues and concerns identified through public scoping. The alternatives are to maintain or increase GRSG abundance and distribution by conserving, enhancing, or restoring the sagebrush ecosystem.*

**COMMENT:** The planning approach utilized by the agencies is flawed. The agencies have followed the lead of the NTT and COT reports and the demands of “conservation” groups, which assume virtually all uses would have a detrimental impact on the GRSG and its habitat and therefore must be significantly curtailed through new or augmented regulatory mechanisms. Little or no consideration has been given to the impacts associated with specific program activities, in particular oil and gas leasing, exploration and development. Rather, the RMPA/DEIS subscribes to the erroneous presumption that impacts from oil and gas activities are significant and would result in substantial impacts to the GRSG and its habitat.

As a result, the range of alternatives is deficient because all alternatives follow the basic principles of (1) avoiding the impact of an activity; (2) minimizing impacts by limiting the degree of activity; and (3) mitigating for an impact by improving or enhancing GRSG habitat as recommended in the NTT and COT reports. As such, all but Alternative A are weighted toward extreme protection measures, with minimal difference between Alternatives B, C, and D, the preferred alternative. Specifically, all the alternatives have been designed to diminish the rights of lessees, as well as future leasing and development within the study area, by relying upon sweeping land use changes that would adversely affect tens of thousands of acres of public lands and minerals and the communities that depend upon them. Therefore, we recommend that BLM develop a new Alternative that is based upon the best available science and which utilizes more appropriate management requirements than the universal closures and likely NSO stipulations that would be utilized in Alternatives B, C, and D if actual leasing decisions were to be made.

The general approach of the RMPA/DEIS is based on how threats to GRSG, as identified by the USFWS and its COT report, could be addressed by applicable BLM land management programs in order to

strengthen regulatory mechanisms the USFWS will be reviewing as part of their listing decision. The NTT report followed a similar process by conducting a program-by-program analysis of how each BLM program may result in impacts to GRSG or GRSG habitat. However, in each of these approaches there is no perspective provided regarding the relative importance of a land management program-specific impact. Consequently, the alternative development clearly focuses only on program level actions.

The alternatives are all designed to limit implementation of each BLM program which could be construed to pose a threat to GRSG, regardless of whether a purported threat constitutes a significant and valid risk. Hence, BLM is focused on eliminating such threats without considering the degree of impact certain uses may actually have on the species. Once again, this one-size-fits-all approach to land management is fatally flawed and needlessly extreme because it fails to take into account the scale of perceived threats when applying new highly restrictive conservation measures.

#### **2.4.1 Management Common to All Alternatives**

*Page 2-8 Existing fluid mineral leases are managed through conditions of approval (COAs). The BLM has the discretion to modify surface operations to change or add specific mitigation measures when supported by environmental analysis.*

#### **2.4.6 Preferred Alternative**

*Page 2-14 Energy and mineral development—Existing leases in the planning area would be subject to conservation measures through implementation decisions and on completion of the environmental record of review. Operating constraints would also be applied to existing leases as COAs. All mitigation/conservation measures not already required as stipulations would be analyzed in a site-specific NEPA document, and be incorporated, as appropriate, into COAs of the permit, plan of development, and/or other use authorizations.*

**COMMENT:** See our comments on valid existing rights. BLM does not have unlimited discretion to significantly modify surface operations if they would exceed the original terms of the lease regardless of whether a NEPA analysis is conducted. NEPA is simply a procedural statute; it does not provide BLM with any authority to make changes in management. We strongly advise BLM to recognize such limitations on its discretion in the final planning documents. We also point out that any attempt to change the terms of the lease as BLM has indicated above would constitute a legally challengeable action which could be taken to a court of law by the effected lessee.

#### **2.4.3 Elements Common to Alternatives B, C, and D**

*Page 2-9 RDFs are means, measures, or practices intended to reduce or avoid adverse environmental impacts...Because of site-specific circumstances, some features may not apply to some projects (e.g., a resource is not present on a given site) or may require slight variations from what is described in the RMPA/EIS (e.g., a larger or smaller protective area).*

**COMMENT:** We support the LFO's practice to maintain site-specific flexibility when contemplating the use of RDFs. However, many of the oil and gas RDFs outlined in Appendix D are overly prescriptive, have

no scientific basis, reflect a lack of understanding valid existing rights and demonstrate a profound lack of understanding of operational constraints and issues of technical feasibility. Moreover, one of the primary reasons for these excessive strategies is due to serious flaws in the data relied upon in the planning documents, which has already been discussed in detail. Also see our comments on Appendix D.

Of equal importance is that the RMPA/DEIS fails to explain what measures would be used to gauge/determine whether permanent structures are *“adequately designed or sited in a manner that does not impact GRSG.”* These measures must be disclosed.

As discussed above, the CSU which requires that *“Surface-disturbing/disruptive activities would avoid or minimize disturbance to GRSG or their habitat. Except as identified above or during emergency situations, activities would not compromise the functionality of the habitat”* is problematic both in terms of valid existing rights but also because BLM has failed to explain the procedures it would use to evaluate whether an activity *“prevents or minimizes disturbance to GRSG or their habitat.”* It is essential for the RMPA/DEIS to disclose the specific criteria that will be used to assess whether an activity *“compromises the functionality of the habitat.”* The uncertainty regarding how BLM will estimate such impacts makes it virtually impossible for a project proponent to determine the feasibility and viability of a potential project located in GRSG habitat.

## 2.5 Regional Mitigation Strategy

Page 2-14 ...*The BLM priority is to mitigate impacts to an acceptable level onsite, to the extent practical, through avoidance (not taking a certain action or parts of an action), minimization (limiting the degree or magnitude of the action and its implementation), rectification (repairing, rehabilitating, or restoring the affected environment), or reduction of impacts over time (preservation and maintenance operations during the life of the action).*

**COMMENT:** Historically, BLM’s policy placed a priority on mitigating impacts of projects on public lands to an acceptable level onsite while considering voluntary off-site mitigation by project proponents. BLM now appears to have adopted an unwarranted, far-reaching onerous policy that compels project mitigation outside a project area of impact at a regional scale to achieve the Department of Interior’s greatly expanded resource and value objectives. We object that this new policy requires both onsite and offsite mitigation through the utilization of a one-size-fits-all approach to off-site mitigation on both federal and non-federal lands on an unprecedented landscape scale.

We remind BLM that it is prohibited from creating a *“legislative rule,”* without fully complying with the Administrative Procedure Act’s notice and comment requirements. *Mission Group Kansas, Inc. v. Riley*, 146 F.3d 775, 781 (10th Cir.1998) Legislative rules *“affect individual rights and obligations.”* *Morton v. Ruiz*, 415 U.S. 199, 232 (1974). Clearly this new policy is intended to modify the rights and obligations of users of the federal lands.

## 2.6 Monitoring For the Greater GRSG Planning Strategy

Page 2-14 *Mitigation strategies, which take into account the mitigation hierarchy (avoid, minimize, restore, offset), are an important tool for ensuring the BLM meets their GRSG resource objectives while continuing to honor our multiple-use mission.*

**COMMENT:** BLM must outline in detail how it will handle monitoring the effectiveness of mitigation practices. Given the various mitigation policies being proposed through this RMPA/DEIS (Appendix B), the demonstrated effectiveness of such practices must be an integral part of any monitoring program. Of particular concern is that no provision is included for those measures which reclaim or enhance habitat either onsite or offsite related to a project. A tracking system for identifying habitat improvements must be incorporated into the implementation plan; one which does not rely exclusively or extensively on the Geographic Information Systems (“GIS”) because it would be managed by a federal agency with tight budgets and limited staff hours for database management. Given funding constraints, it is uncertain that staff or critical technology updates will be available for a new tracking database.

**2.7 Adaptive Management** *Adaptive management is a decision process that promotes flexible resource management decision making that can be adjusted in the face of uncertainties as outcomes from management actions and other events become better understood.*

**COMMENT:** The adaptive management strategy described in the RMPA/DEIS would identify “science-based” soft and hard adaptive management triggers and addresses how data from the Monitoring Framework will be used to gauge when triggers are met. When available, the agencies will consider population trend data from WAFWA and/or state wildlife agencies. More detail is needed to fully explain this proposed AM process and where it has been successfully implemented.

Similarly, it is vague as to when, how or whether new field data will be collected and tracked by the agencies. The trigger structure needs to be more fully explained in the context of when NSO, TL, CSU or other measures that may be imposed or relaxed based upon new findings. Moreover, since “hard triggers” are when agencies will take “immediate action” to stop “continued deviation” from conservation objectives, these measures would likely require subsequent NEPA analysis. These are glaring examples of regulatory over-reach that have vast implications for industry, agriculture, local communities, jobs and the economy.

## Table 2-4 Description of Alternatives A, B, C, and D

Page 2-36 - Action *Allow geophysical exploration within PH to obtain exploratory information for areas outside of and adjacent to PH areas. Allow only geophysical operations by helicopter-portable drilling methods and in accordance with seasonal timing restrictions and other restrictions that may apply.*

**COMMENT:** It is inappropriate for the RMPA/DEIS to dictate specific techniques for conducting geophysical operations. While heliportable drilling for seismic operations can be a useful tool in certain, limited situations, there are abundant and equally effective measures that allow for the same or similar impact mitigation in GRSG habitats which the RMPA/DEIS fails to even mention, much less analyze. The

following is an abbreviated list of Best Management Practices that are recommended and applied by both BLM and the geophysical industry. These techniques have proven highly effective in minimizing or in many cases eliminating impacts to sage brush/GRSG:

- Off-set tracking for all wheeled vehicles
- Smooth or non-aggressive tires (vibrators)
- Limited or no “back-tracking” on the same route(s)
- Elimination of ATVs/UHVs off-road
- Vibrating on existing roads
- On-snow or frozen ground buggy drilling/vibrating
- Hand raking of buggy/vibrator tracks visible from traveled roads

Application of a reasonable mix of the above techniques has been shown to successfully avoid impacts to sagebrush. Of particular importance is that extensive monitoring has shown that balloon tired four wheelers and foot traffic have diminutive impacts, indeed much less effect on the environment than wild horse traffic on public lands. Moreover, we question whether BLM has fully considered the safety, noise or economic ramifications of this proposal. We also question the reasoning for requiring helicopter-portable seismic exploration when seasonal restrictions will be in effect.

Page 2-36 *The following operating constraints would be applied to existing leases as COAs in PH and GH.*

**COMMENT:** With the exception of our comment on Item 14 (below), see our previous comments regarding the use of the same restrictions in both PH and GH, along with our comments on Appendix D since these measures are directly related to the RDFs contained therein. In addition, see our comments on Valid Existing Rights.

Page 2-37, (14) *Consider creating a mitigation trust account when impacts cannot be avoided, minimized, or effectively mitigated through other means.*

**COMMENT:** We categorically oppose the inclusion of compensatory mitigation or the creation of a Mitigation Trust Account in the Preferred Alternative D because it cannot be justified given the plethora of protective requirements that are in place to reduce or eliminate impacts associated with oil and gas activities on public lands. Specifically, industry is already forced to conduct multiple resource surveys on behalf of BLM as well as to comply with numerous BMPs; COAs; restrictive regulatory thresholds; NEPA analyses; along with a host of additional federal agency and state requirements. We find it unconscionable that BLM states its intention to dig even deeper while failing to disclose specific criteria, circumstances when and the purpose for compensatory mitigation. All references to compensatory mitigation should be deleted because such actions should be at the discretion of operators and on a voluntary basis.

It is likely that absent specific guidance, resource specialists will be predisposed to requiring compensatory mitigation whenever it suits them, without regard for need or implementation of operator committed mitigation measures. The fact that a lease has been issued by BLM is clear evidence that certain levels of impacts are acceptable. When a lease is sold and issued by BLM, it contains specific

stipulations designed to protect resource values during oil and gas operations. When the operator proposes an activity, it must comply with these stipulations. The Mineral Leasing Act, the regulations at 43 CFR 3101.1-2, as well as BLM's 1624 Manual, specify that new stipulations cannot be applied to existing leases; this includes COAs or other measures that exceed the terms of a lease. Specifically, once a lease has been issued, BLM does not have the authority to prevent development unless the lease terms prohibit surface occupancy or development would result in *"unnecessary or undue degradation,"* which could not be mitigated. Under 43 CFR 3101.2, guidance is provided detailing what authority the agency holds to modify the parameters of the stipulations in order not to compromise valid existing lease rights granted by the lease.

BLM has previously cited as its authority to address the mitigation of impacts from FLPMA §102(a)(8), *"...the public lands [will] be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource and archeological values..."* However, we remind BLM that FLPMA §102(a)(12) also directs that *"the public lands [will] be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands."* Moreover, while FLPMA §302(b) specifies *"the use, occupancy and development of public lands must be regulated by the Secretary through easements, permits, leases, licenses, or other instruments,"* the agency must also fully acknowledge the rest of this section which clearly directs that *"these instruments include, but are not limited to, long-term leases to permit individuals to utilize public lands for habitation, cultivation, and the development of small trade or manufacturing concerns."*

Compensatory mitigation directly conflicts with EPCA language which requires BLM to evaluate the extent and nature of any restrictions or impediments to the development of resources including: (B) post-lease restrictions, or delays on development for conditions of approval, applications for permits to drill, or processing of environmental permits. [See EPCA Phase II, page xxi]. We view this new requirement as a ploy for BLM to capitalize on industry's demonstrated willingness to work with the agency to ensure mutually beneficial energy projects can move forward.

BLM evidently fails to acknowledge the \$6,500 fee required for each APD, as well as the extent of industry participation in and funding for partnership programs such as habitat improvement projects, public land restoration programs, which, in nearly all cases, were all entered into on a voluntary basis. Additionally, industry routinely pays for wildlife studies and inventories, such as wetlands, cultural, wildlife, threatened and endangered species resources, and NEPA documents, in association with project permits. BLM appears intent upon ignoring industry support and participation in partnership programs and direct support for resource surveys and NEPA documents that are properly BLM's responsibility.

Because BLM is essentially establishing a new rule to require compensatory mitigation, in ways it sees fit without consideration of need or lease rights, it is evident that BLM believes it has authority to unilaterally modify its current commitments to operators with respect to APDs, leases, rights-of-way or approved projects to require compensatory mitigation. This is clearly contrary to FLPMA; further, it signals BLM is willing to arbitrarily place greater importance on aesthetic resource values over other

uses, such as minerals and other commodity development. BLM must recognize that it is required to fully consider the need for mineral development along with protection of other resource values and that in some cases the need for mineral development may actually outweigh the need for the protection of other resource values. As such, BLM must comport with EPCA which states *“public land managers [have a responsibility] to identify areas of high oil and gas potential and to evaluate the effectiveness of mitigation stipulations and conditions of approval in balancing responsible development of resources with the protection of other valuable resources in the area.”* [See Pg. xxiii]

## Table 2-6

Page 2-51 Alternative D is described as *“Similar to Alternative C, COAs would be applied to existing leases in PH and GH (345,560 acres), except with greater flexibility for site-specific modifications.”*

**COMMENT:** See our previous comments regarding the use of the same restrictions in both PH and GH. Additionally; the reference to *“greater flexibility for site-specific modifications”* requires further clarification. Statements such as this can be variously interpreted and lack transparency. Greater flexibility could be interpreted to be more stringent conditions applied as COAs.

## CHAPTER 3 – AFFECTED ENVIRONMENT

Page 3-4 The *data and information included from the BER was the most accurate available when the data was “frozen” in time for analysis purposes: however, these scenarios remain based in present knowledge. Spatial data informing the existing conditions were compiled to establish a consistent information base across the entire region (GRSG Management Area), but, in order to attain this consistently across state, ownership, and management boundaries, some local data have been omitted. There may be inconsistencies between WAFWA-level and local planning data. As such, these data provide a regional baseline, suitable for guiding regional mid- to long-term analysis scenarios (Manier et al 2013).*

**Comment:** It is unclear to which *“scenarios”* this statement applies. The omission of data to *“establish a consistent information base”* needs to be fully explained, particularly in terms of what data was omitted and how this omission of data promotes consistency.

The next to last sentence in the paragraph above, indicating that there may be inconsistencies between WAFWA-level and local planning data conflicts with the following sentence which states that *“as such”* inconsistent data provides a regional baseline for guiding regional and long-term analysis scenarios. This paragraph does not make sense and needs to be re-written. As currently written, it appears there are undefined levels of data inconsistencies and data omissions that could be important in understanding proposed management directions. This paragraph is repeated, verbatim, on pages 3-32 and 3-47 with the same lack of clarity.

Page 3-5 *Habitat loss and modification from human activities are primary causes of declining populations, particularly for species that are highly adapted to specific ecological niches.*

**COMMENT:** In the context of the above paragraph, this statement applies to all special-status species and appears to be a broad generalization. This statement must be supported by a specific reference to credible scientific literature that would support this assertion.

Page 3-8 *Recent research has shown that GRSG near Glasgow, Montana migrate up to 150 miles between seasonal habitats, making frequent stopovers in suitable rangelands (Smith 2013). There is no indication or expectation that GRSG in the planning area may be similarly migratory.*

**COMMENT:** The lack of indication or expectation that GRSG are migratory in the planning area needs to have a basis in research. BLM must provide a specific citation for this assertion. Most importantly, BLM must also explain whether, prior to studies by Smith (2013), the migratory nature of GRSG near Glasgow was known or expected.

Page 3-14 *There are 45,400 acres currently leased and undeveloped for oil and gas on BLM-administered land (PPH and PGH) within the planning area.*

**COMMENT:** This statement is unclear; BLM must clarify whether this means that all 45,400 acres are PPH and PGH.

Page 3-14 *Statewide GRSG harvest has decreased from approximately 30,000 annually historically to approximately 3,200 in 2011.*

**COMMENT:** Once again, the RMPA/DEIS fails to provide a citation for the source of this information concerning GRSG harvest data.

Page 3-18 *Chapter 3 presents historic information on GRSG leks over the period 1952 to 2012. Diagram 3-1 and 3-2 on page 3-16 appear to show cyclic variations in the numbers of leks and the numbers of large leks over the period of record.*

**COMMENT:** The discussion of GRSG trends fails to address the fact that GRSG population parameters are cyclical and that data for Wyoming (and perhaps for this planning area) indicate that major fluctuations in GRSG populations have occurred over periods of record spanning decades. *Taylor et al (2007)*<sup>16</sup> clearly establishes that long-term fluctuations in GRSG population trends in Wyoming reflect processes and precipitation regimes and other climatic influences rather than energy development activity. *Fedy and Doherty (2010)* reported that population trends of GRSG and cottontail rabbits in Wyoming were highly correlated over a long time period and large geographic area. The high correlation between two unrelated species indicates that both species respond to external cues, including weather. *Bedrosian and Craighead (2010)*<sup>17</sup> found that the overall GRSG population size in the Jackson Hole study area mirrors the statewide trend indicating that landscape variables such as weather influence population trends.

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<sup>16</sup> Taylor, R., M. Dzialak, L. Hayden-Wing. 2007. Greater GRSG populations and energy development in Wyoming. Accessed March 2013 at <http://bogc.dnrc.mt.gov/reports.asp>

<sup>17</sup> Bedrosian, B. and D. Craighead. 2010. GRSG completion report 2007-2009. Craighead Beringia South. Unpublished Report. Kelly, Wyoming.

*Taylor et al (2010)* reported that male lek attendance was synchronous, showing the same attendance trends throughout Wyoming and that population trends are likely a result of climatic influences. *Christiansen (2012)* presented data on statewide GRSG population trends in Wyoming from 1995 to 2012, showing that male attendance on leks fluctuated in synchrony, supporting the cyclical nature of GRSG populations.

The cyclical nature of wildlife populations must be fully considered when evaluating impacts (both positive and negative) on GRSG and its habitat (*Fedy and Doherty 2010*)<sup>18</sup>. For example, energy development that took place during years of a declining population cycle could lead to conclusions that development caused the decline; whereas, energy developments during years of the cycle when populations increase could correlate positively with increased levels of energy development. Population cycles in relation to energy development are not addressed in many of the studies that have been done that purport to show negative correlations with energy development and male lek attendance and habitat use.

The Baseline Environmental Report (BER) prepared by the USGS in cooperation with BLM (*Manier et al 2013*)<sup>19</sup> fails to recognize the cyclical nature of GRSG populations nor does it consider the Wyoming statewide data on male GRSG attendance on leks from 1995 to 2012 (*Christiansen 2012*), which reveal that GRSG have gone through several cycles of decline and expansion over the period of record. The synchronous nature of the population declines and expansion on a statewide basis suggest that factors such as weather play an extremely significant role in observed fluctuations in GRSG populations.

Clearly, the potential for GRSG populations in the planning area to be cyclical as a result of external factors such as weather must be better understood by comparing GRSG population parameters in the planning area with statewide data.

*Page 3-48/49 All federal fluid mineral estate acres with PPH and PGH are deemed to require special wildlife stipulations and will be deferred from leasing. The boundaries of PPH and PGH are equal to PH and GH, respectively. As such, the deferral of nominated parcels would continue in PH and GH after the ROD for this amendment is signed.*

**COMMENT:** This statement directly conflicts with the Introduction of the RMPA/DEIS, which states that oil and gas leasing is NOT addressed in the planning documents. Has BLM decided not to pursue an RMP revision or amendment to address oil and gas leasing? We oppose any proposal to defer leasing in PPH and PGH simply because it is construed to contain GRSG habitat. As we have stated throughout these comments, the basis for precluding and/or restricting oil and gas activities within GRSG habitat is scientifically unfounded. A complete deferral of leasing is contrary to BLM policy and violates existing statutes, including FLPMA and MLA. BLM must clarify this statement.

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<sup>18</sup> Bradley C. Fedy Kevin E. Doherty. Population cycles are highly correlated over long time series and large spatial scales in two unrelated species: greater GRSG and cottontail rabbits /17 September 2010 US Government 2010

<sup>19</sup> Manier, D. J. et al. Summary of science, activities, programs, and policies that influence the rangewide conservation of greater GRSG (*Centrocerus urophasianus*). U.S. Geological Survey, Open-File Report 2013–1098; available at <http://pubs.usgs.gov/of/2013/1098/>.

## CHAPTER 4 – ENVIRONMENTAL CONSEQUENCES

Page 4-7 *Factors related to the decline in GRSG distribution and abundance include habitat loss and degradation, disease and predation, chemicals and changes in land use (USFWS 2010, pg. 14).*

**COMMENT:** In addition to the need to fully consider the cyclical impacts of precipitation levels, a number of researchers have reported findings related to GRSG predation that must also be considered during BLM's planning process. *Dinkins et al (2012)* report "Depredation of nests and predation of chicks can be two of the most influential factors limiting sage-grouse productivity." *Dinkins (2013)* reported that GRSG hen survival was negatively correlated with golden eagle density. *Coates et al (2008)* report that nest predation is the primary cause of nest failure in GRSG habitat. *Webb et al (2012)* state that predation of GRSG nests was the most common cause of nest failure (84.7 percent) followed by direct predation on the female (13.6 percent). *Bui et al (2010)* report that nesting ravens are responsible for most GRSG predation.

*Dzialak et al (2011)* found that the spatial patterns of risk during GRSG nesting and brood rearing suggested a human-mediated increase in predator abundance or effectiveness as a potential cause of increased risk (i.e., predator subsidization). *Watters et al (2002)* found that Richardson's ground squirrels were the primary predators of GRSG nests with some predation by corvids (e.g., ravens) and badgers. *Baxter et al (2007)* found that non-native red fox is an effective predator on GRSG in Utah and threaten to extirpate the GRSG from the study area if not controlled. *Bedrosian and Craighead (2010)* suggested that limiting the population growth of non-native red fox in the Jackson Hole study area would benefit GRSG. *Kirol (2012)* reported that predation is a major factor contributing to GRSG chick survival. *Coates (2007)* reported that ravens and badgers were the primary predators on GRSG nests and at high population densities; ravens can substantially reduce GRSG reproduction. *Coates and Delehanty (2004)* found that raven population reductions through poisoning resulted in GRSG nesting success of 73.6 percent compared to expected nest success of 42.6 percent. *Coates and Delehanty (2010)* reported that raven abundance has increased an estimated 300 percent in the United States and as much as 1,500 percent in some parts of the western United States. *Cote and Sutherland (1997)* reported that removing predation often has a large positive effect on hatching success and post-breeding populations of target birds. *Dinkins et al (2012)* found that GRSG select nesting and brood-rearing areas with fewer avian predators.

The COT report essentially ignores the effects of predation on GRSG productivity, does not identify predators of GRSG nor does it suggest measures to lessen or mitigate effects of predation. The COT report states that predation may be significant at the local level, particularly if habitat quantity and quality are compromised. However, the USFWS did not identify predation as a significant range-wide threat in the evaluation to list the GRSG under the Endangered Species Act.

Controlling raven populations and other predators in GRSG nesting areas does not appear to be a measure identified in the COT Report or as a potential mitigation measure to increase productivity of GRSG.

Page 4-12 *Restrictions on mineral leasing would reduce impacts on the species by reducing disturbances described above.*

**COMMENT:** BLM has relied upon limited studies conducted in areas where oil and gas development has been much more intense than in the LFO area. The majority of references cited that address effects of oil and gas development on GRSG have been conducted in southeast Montana and Wyoming in the area of MZ1 where intensive development has been ongoing for decades. *Ramey et al (2011)* report that:

*Current stipulations and regulations for oil and gas development in GRSG habitat are largely based on studies from the Jonah Gas Field and Pinedale Anticline. These and other intensive developments were permitted decades ago, using older, more invasive technologies and methods. The density of wells is high, due to the previous practice of drilling many vertical wells to tap the resource (before the use of directional and horizontal drilling of multiple wells from a single surface location became widespread), and prior to concerns over GRSG conservation. These fields and their effect on GRSG are not necessarily representative of GRSG responses to less-intensive energy development. Recent environmental regulations and newer technologies have lessened effects to GRSG.*

The RMPA/DEIS must disclose the restrictions BLM intends to utilize.

Page 4-28 *No new drilling permits are anticipated in the next decade in LFO, so impacts from fluid minerals are unlikely to affect GRSG populations.*

**COMMENT:** It is unclear whether new drilling permits are unlikely because the fluid mineral resource is limited or depleted or whether this assumption is related to the protest resolution frequently cited in this document. If no new drilling permits are anticipated, it would be impossible for the numerous impacts to GRSG identified in the COT Report, BER and other GRSG/oil- and gas-related studies to be relevant to the LFO. Under the summary of alternatives in Table 4-3, it is stated that, “*Standard lease stipulations would apply to existing leases.*” However, BLM has not identified what impacts to GRSG and GRSG habitat could be expected from the application of only standard stipulations to existing leases.

Page 4-81 *Applying COAs, which include RDFs (per Appendices C and D) and conservation measures outlined in Chapter 2 (Table 2-4), to existing leases would directly impact fluid mineral leasing.*

**Comment:** If COAs are applied to existing leases, how would COAs directly affect leasing? We recognize that COAs could affect the economic viability of developing a lease; however, they would not affect the process of leasing itself.

## **CHAPTER 5 – CUMULATIVE IMPACTS**

Page 5-2 *Quantitative information is used whenever available and as appropriate to portray the magnitude of an impact.*

**COMMENT:** The tables on page 3-45 (Table 3-27 and 3-28) present acreages that are open to oil and gas leasing and acreages in PPH and PGH closed to oil and gas leasing in the planning area, MZ1, and MZ4. The footnote to the tables indicates that the information is presented for establishing baseline conditions for the cumulative effects analysis. However, Chapter 5 fails to utilize this data.

Page 5-4 *Since 1988, the LFO has been deferring nominated oil and gas parcels that require a special lease stipulation to protect important wildlife values.*

**COMMENT:** There have been no new leases issued in the LFO for nearly 30 years and no new drilling permits are anticipated to be issued for the next 10 years. Consequently, it is unclear why the purported effects of energy development on GRSG and its habitat been given such a prominent position in this RMPA/DEIS (e.g., numerous excerpts and reference to the COT and BER). This emphasis demonstrably reflects the absolute bias of the studies (NTT/COT/BER) utilized by the BLM in preparation of this RMPA/DEIS. We strongly recommend BLM revise its management proposals to take into account the very limited disposition of future of impacts from oil and gas leasing and development within the LFO.

Page 5-11 *Under all alternatives future leasing is being deferred in this RMPA. Therefore, there would be no impacts on GRSG from future oil and gas leasing.*

**COMMENT:** If no impacts to GRSG from future oil and gas leasing is anticipated and the existing level of oil and gas development has had minimal impact on GRSG populations, why has BLM over-emphasized in the RMPA/DEIS the purported effects of oil and gas development assumed to have taken place elsewhere in the western U.S.? Clearly the assumptions contained in the COT report, BER, and numerous references from the publication *Greater GRSG, Ecology and Conservation of a Landscape Species and its Habitats* (edited by Knick and Connelly 2011) DO NOT apply to the LFO. Once again, the bias against oil and gas development is confirmed by the highly exaggerated presumption of impact from future oil and gas activities in the LFO.

## **APPENDIX B – GREATER GRSG DRAFT MONITORING FRAMEWORK**

**COMMENT:** We recognize the need to monitor the implementation and effectiveness of the RMPA. However, the BLM has not provided adequate specificity regarding how this will be accomplished. The RMPA/DEIS merely describes the type of approach that will be taken to implement a monitoring framework. Without something closer to a final product, it is impossible to clearly understand and comment on such a policy. This raises substantial issues with NEPA compliance—particularly when results from the monitoring framework will lead to management changes through adaptive management.

The final sentence of Appendix B states, *“This draft monitoring framework was developed for draft environmental impact statements to describe the proposed monitoring activities for this plan. The BLM will consider public comments and collaborate with other agencies to finalize the Lewistown Field Office Greater GRSG RMPA GRSG Monitoring Plan.”* It is unclear how the commenting process will be handled; i.e., will BLM provide a Federal Register notice of availability for comment? Will public meetings be held across the state or region to receive input to from industry and interested citizens? Further, once a final

Monitoring Plan is actually created, will an amendment to the RMPA be required? Again, we have serious procedural and substantive concerns regarding how BLM intends to handle this critical issue. We are concerned that these monitoring tools are intended to be the measure of success regarding implementation of the final RMPA.

We strongly recommend that the numerous ecological sites throughout PPMAs, PPGAs, PPH and PGH that do not contain GRSG habitat for a variety of other reasons be recognized and incorporated into the initial monitoring baseline to ensure they are accounted for and not counted toward habitat disturbance. As previously discussed in these comments, the COT Report fails to meet the best available science standard of the ESA and the standards of objectivity, utility and transparency required by the Data Quality Act. For example, the “threats” identified by the USFWS were combined into three simple categories: sagebrush, non-habitat (human footprint), and energy and mining. This approach is scientifically flawed because it ignores the fact that anthropogenic disturbance is not the only factor which can cause an area not to contain GRSG habitat.

Effectiveness Monitoring: The BLM will analyze the monitoring data to characterize the relationship among the disturbance, implementation actions, and habitat condition at the appropriate and applicable geographic scale or boundary to accomplish effectiveness monitoring for the LFO RMPA/EIS.

**COMMENT:** BLM must discuss how it will handle monitoring the effectiveness of mitigation practices. Given the various mitigation policies being adopted through this RMPA/DEIS (Appendix D), the relative effectiveness of such practices must be an integral part of any monitoring program. Of particular concern is that no provision is included for those measures which reclaim or enhance habitat either onsite or offsite related to a project. A tracking system for identifying habitat improvements must be included in the implementation plan, one which does not rely exclusively or extensively on the Geographic Information Systems (“GIS”) because it would be managed by a federal agency with tight budgets and limited staff hours for database management. Given funding constraints, it is uncertain that staff or critical technology updates will be available for a new tracking database.

#### **APPENDIX D REQUIRED DESIGN FEATURES AND BEST MANAGEMENT PRACTICES FOR GREATER GRSG HABITAT FOR ALTERNATIVE D**

*Required Design Features (RDFs) are a suite of features that would establish the minimum specifications for certain activities (i.e., water developments, fluid mineral development, and fire and fuels management) to help mitigate adverse impacts. In general, the design features are accepted practices that are known to be effective when implemented properly at the project level. However, their applicability and overall effectiveness cannot be fully assessed until the project-level when the project location and design are known.*

**COMMENT:** Appendix D largely consists of design features enumerated in the NTT report which are ostensibly needed to protect GRSG in both PPH and PGH. We object to the statement that they are considered “*minimum specifications*” because in many cases they go far above and beyond what may be necessary. Moreover, as stated previously, many of these measures reveal a profound lack of understanding of oil and gas operational procedures and appear to be a “wish list” designed to make the

pursuit of future oil and gas activities as unattractive as possible, both from both the operational and technical perspectives. We object to their use because in most cases, no scientific data or documentation have been provided or even cited that substantiate any of these RDFs have ever even been proven effective. Absent sufficient scientific evidence, these measures simply represent matters of opinion rather than scientific facts. As stated earlier in these comments, the NTT relies upon an unproven one-size-fits-all approach that fails to take into account local conditions, including unique habitat and threats and socio-economic factors. Consequently, the NTT RDFs are repeatedly needlessly restrictive, scientifically unfounded and ignore specific cause and effect mechanisms. Further, they were designed without any benefit of tracking and testing of the effectiveness of currently required BMPs and mitigation measures. Furthermore, many the RDFs ignore that a variety of valid existing rights are held throughout the planning area. It is crucial for BLM to acknowledge these rights and honor them, regardless of the RDFs selected for implementation. The agencies must also acknowledge they have no legal authority to require implementation of these measures on existing lease holdings.

We recommend that BLM reexamine the RDFs and mitigation measures to ensure they are technically feasible, appropriate and retain an adequate level of flexibility when their use is contemplated for use on a site-specific basis. Prior assessment of RDFs on a “site-specific basis” is also vital and applying them only when “reasonable” makes sense and is appropriate. Since some of these design features may prove effective only in certain instances, we recommend they be incorporated as “preferred” or “suggested”, rather than “required.” BLM must acknowledge that site-specific circumstances will typically dictate whether certain design features are technically feasible, economic, or appropriate. Therefore, instead of utilizing a list of rigid RDFs, we recommend the agencies keep a list of practical best management practices (BMP) that can be applied based upon site-specific circumstances as appropriate.

With respect to split estate lands, the BLM must specify measure to be implemented to protect the rights of private landowners. Intrinsicly, the RMPA/DEIS needs to incorporate proper mechanisms for working with landowners and lessee’s in order to avoid unnecessary delays in proposed activities. Additionally, clearly defined parameters must be incorporated into each monitoring and mitigation plan, i.e., scope, requirements, costs and timing. We recommend that BLM work with operators, other land users as well as the MFWP in order to establish a reasonable and workable monitoring program. Additionally, in order to avoid conflict and confusion, the monitoring program must be well-defined before it is required for project activities.

The following comments are relevant for RFDs in both PH and GH.

- *“Locate roads to avoid important areas and habitats.”*

**COMMENT:** This requirement is vague and ambiguous. Clarification of what is meant by “important areas” and “habitats” is necessary. Further, preferences of landowners must be major factors in any such decisions.

- *Coordinate road construction and use among ROW or SUA holders.*

**COMMENT:** Not all users may be able to coordinate activities on roads. Some authorization holders may pre-date others and activities may not coincide among users. We recommend modifying this RDF as follows: *“Coordinate road construction and use among right-of-way or special use authorization holders consistent with rights granted.”*

- *Construct road crossings at right angles to ephemeral drainages and stream crossings.*

**COMMENT:** Any crossings of ephemeral drainages or streams will likely be subject to Sections 404 and 401 of the Clean Water Act. Therefore, this requirement must be reworded as follows to include these sections: *“Construct road crossings at right angles to ephemeral drainages and stream crossings subject to the requirements of Section 404 and 401 of the Clean Water Act.”*

- *Establish trip restrictions or minimization through use of telemetry and remote well control (e.g., Supervisory Control and Data Acquisition).*

**COMMENT:** We understand why BLM may believe this is a good practice; however, this technology is not always feasible due to the limited economic conditions associated with lower performing wells. The economics associated with some leases may also be a factor that would not allow telemetry to be installed. Consequently, this requirement must be subject to operational considerations and economic viability. The agencies must also consider the fact that remotely monitoring a site does not always adequately identify all operational considerations. In order to conduct safe and effective oil and gas operations, certain on-site inspection and maintenance activities are crucial and must be regularly conducted. We recognize that it may be warranted to place limitations on access to well locations during critical seasons for certain activities, such as construction activities (e.g. well pads, roads, pits) or limiting the number of trips allowed. However, basic maintenance and operation activities are vital to maintaining safe, effective, and environmentally sound operations.

- *“Do not issue rights-of-way or special use authorizations to counties on newly constructed energy development roads, unless for a temporary use consistent with all other terms and conditions included in this document.”*

**COMMENT:** These special use authorizations are typically written to the user of the roads. The county may take authority for the road later, but not typically at issuance. Requiring *“all other terms and conditions be included”* is too broad. We recommend modifying this measure to read *“Ensure rights-of-way or special use authorizations on newly constructed roads are issued using only appropriate terms and conditions included in this document.”*

- *“Use dust abatement on roads and pads.”*

**COMMENT:** This RDF needs to be rewritten to specify what type of dust abatement will be required, i.e., chemical applicants or water.

- *“Close and rehabilitate duplicate roads.”*

**COMMENT:** Careful consideration of what constitutes “*duplicate roads*” is essential. An agency may believe a road to be a duplicate when actually it may not be the case for other land users or landowners in the vicinity. We recommend revising this RDF as follows: “*Close and rehabilitate duplicate roads only after careful consideration of current and future use of the road by permit holders and landowners in the vicinity.*”

- *Cluster disturbances, operations (fracture stimulation, liquids gathering, etc.), and facilities.*

**COMMENT:** Clustering disturbances is not always feasible due to surface limitations, landowner preferences, and safety considerations. While clustering may make sense in certain situations, it is simply not achievable in every case. We recommend inserting “*to the extent possible*” at the beginning of this RDF.

- *Use directional and horizontal drilling to reduce surface disturbance.*

**COMMENT:** See our previous comments on direction and horizontal drilling.

- *Apply a phased development approach with concurrent reclamation.*

**COMMENT:** The term “*phased development*” is unacceptably vague and requires clarification because it is subject to a variety of interpretations. We oppose phased development which only allows certain portions of a leasehold or unit to be developed over time until that portion is plugged or abandoned before proceeding to another portion of the leasehold or unit. This approach is infeasible since the life of a well is generally long-term. Moreover, it would constitute a clear violation of existing lease terms, particularly since this terminology has never been utilized on the federal lease form.

BLM is required to ensure that leased federal minerals are fully developed and that production on non-federal leases does not drain federal minerals. Given the extent of non-federal mineral ownership within certain parts of the planning area, a phased development constraint could easily result in a situation where production on non-federal leases drains federal minerals. With these concerns in mind, we recommend that the “*phased development approach*” be removed altogether.

- *Place liquid gathering facilities outside of priority areas. Have no tanks at well locations within priority areas (minimizes perching and nesting opportunities for ravens and raptors and truck traffic). Pipelines must be under or immediately adjacent to the road (Bui et al. 2010).*

**COMMENT:** This requirement is unclear and will lead to operational confusion. Placing liquid gathering facilities inside priority areas would reduce truck traffic, which would be more advantageous to the GRSG. Further, if liquid gathering or trucking is not allowed inside priority areas, there would be no way to remove liquid production from the lease. This RDF conflicts with standard operational practices, is not feasible and must be eliminated.

- *Design or site permanent structures which create movement (e.g., a pump jack) to minimize impacts to Greater GRSG.*

**COMMENT:** This requirement lacks scientific justification. Since neither the NTT nor COT reports have identified any scientific data that correlate movement and distances relative to GRSG response, we recommend this RDF be eliminated.

- *Cover (e.g., fine mesh netting or use other effective techniques) all drilling and production pits and tanks regardless of size to reduce GRSG mortality.*

**COMMENT:** Fine mesh netting is not practical and needs to be eliminated from this RDF because it is not only extremely difficult to deploy, it is also difficult to maintain. We suggest a more flexible approach. It is unclear why tanks are included.

- *Control the spread and effects of non-native plant species (Evangelista et al. 2011) (e.g., by washing vehicles and equipment).*

**COMMENT:** This RDF does not explain how this objective would be implemented. Where would wash areas be located and how would the runoff associated with them be managed? Can the fluid and associated substances be hauled off, injected or disposed of at a facility onsite and are special permits required? This RDF attempts to address concerns regarding a perceived problem but fails to fully consider the ramifications of such a requirement. What solution does the BLM intend to utilize for the general public or recreationalist crossing public lands on motorized and non-motorized forms of transportation and how this issue will be enforced?

- *Use only closed-loop systems for drilling operations and no reserve pits.*

**COMMENT:** Closed loop systems for drilling operations are utilized in sensitive areas where they are technically feasible and economically viable for the operator. However, many drilling rigs are not equipped for closed loop drilling. Also, even if a closed system were available on a drilling rig, some type of pit will be needed for drilling cuttings. This RDF must be revised to provide the flexibility to allow this as an option where feasible. We also note that this requirement conflicts with the previous RDF which calls for netting pits.

It is unclear whether BLM has considered the impact that additional truck traffic hauling fluids out of the area could have on GRSG habitat. It must also be recognized that additional truck traffic may require road upgrades, which could defeat the purpose of the RDF. It may be more reasonable to install GRSG-safe fences in the majority of instances.

- *Restrict pit and impoundment construction to reduce or eliminate threats from West Nile virus (Doherty 2007).*
- *Remove or re-inject produced water to reduce habitat for mosquitoes that vector West Nile virus. If surface disposal of produced water continues, use the following steps for reservoir design to limit favorable mosquito habitat*

**COMMENT:** See previous comments on WNV.

- *Limit noise to less than 10 decibels above ambient measures (20-24 dBA) at sunrise at the perimeter of a lek during active lek season (Patricelli et al. 2010, Blickley et al. In preparation).*

**COMMENT:** We strongly object to ambient noise levels being set at a range of 20 to 24 dBA. This ambient noise range was determined from average noise readings of studies conducted in national parks and wilderness areas, as well as minimum noise readings taken in the Pinedale area in Wyoming. Importantly, this noise level has not been proven to be representative of average ambient noise on multiple-use lands outside of wilderness and national parks and is not scientifically supported anywhere, much less NV. Of concern is that this requirement would be difficult, if not impossible, to achieve. As such, any reference to 20 to 24 dBA as an ambient noise level must be disregarded and removed.

- *Require noise shields when drilling during the lek, nesting, broodrearing, or wintering season.*

**COMMENT:** This requirement is unacceptably broad. Noise shields can take any number of shapes and forms. It is important to realize that noise shields cannot be used at a site without being engineered for safety factors, such as wind load. They must be carefully anchored, potentially with a foundation, to meet wind load requirements depending upon the material used to build the shield. Additionally, larger well pads may be needed to accommodate the configuration of a shield. It is also important to consider the attenuation of noise from a site to receptors such as leks, nesting, and brood rearing. Also, simply stating that noise shields are required during wintering seasons is excessive and unjustifiable if drilling is occurring in areas where noise attenuation is not an issue. This RDF needs to be completely revised to provide more operational direction and flexibility.

- *Locate new compressor stations outside PH and design them to reduce noise that may be directed towards PH.*

**COMMENT:** This RDF was poorly conceived. There are many considerations when siting compressor stations, such as the engineering and design constraints inherent to the functionality of gathering systems. With regard to directing compressor station noise away from priority habitat, proximity to other receptors, such as homes, must also be considered. Additionally, this requirement must be revised to account for technical feasibility, as well as landowner preferences if private land is involved.

- *Restore disturbed areas at final reclamation to the pre-disturbance landforms and desired plant community.*

**COMMENT:** If the disturbance is on private land, this RDF must be subject to the preference of the landowner.

- *Implement irrigation during interim or final reclamation for sites where establishment of seedlings has been shown or is expected to be difficult due to dry conditions.*

**COMMENT:** We recommend that BLM revise this RDF to reflect that irrigation needs to be done in a manner that will prevent vegetation from being unable to withstand drought conditions after the irrigation has been removed. Also, it is unclear whether the impact of irrigation activities on GRSG and its habitat been considered.

## CONCLUSION

In conclusion, we understand BLM's effort to develop a statewide strategy which demonstrates to the USFWS that regulatory certainty for protection of the GRSG is in place, which would obviate the need to list the species. However, the agency has failed to utilize common-sense measures to conserve and protect the species and its habitat while allowing critically important economic activity to continue in the planning area. It is, therefore, imperative for BLM to ensure this plan takes into account the best available science when devising a realistic and practical land use strategy. This has not been achieved. As discussed in these comments, BLM has been instructed to rely upon the recommendations of the NTT and COT reports which failed to take an unbiased approach to developing a rational strategy for conservation of the GRSG, particularly with respect to oil and gas leasing and development activities.

To summarize, the NTT and COT reports are flawed because they have:

- Failed to use the best available science;
- Relied only upon select scientific information which supported its preconceived conclusions;
- Grossly misrepresented of the impact of oil and gas operations on GRSG;
- Relied upon disproportionate influence from a small group of specialist "advocates;"
- Demonstrated clear bias against voluntary conservation;
- Promoted unnecessarily restrictive recommendations;
- Failed to accurately define priority habitat; and
- Failed to obtain credible peer review.

We strongly urge BLM to adopt the management procedures and processes that are state-of-the-art, scientifically valid management approaches that will be given a chance to work. To that end, we recommend that BLM develop a new Alternative based upon the best available science and which utilizes more appropriate management requirements than the universal closures and likely NSO stipulations that would be utilized in Alternatives B, C, and D if actual leasing decisions were to be made.

We appreciate this opportunity to provide you with our comments and concerns. Please do not hesitate to contact Claire Moseley at 303-506-1153 if you would like to discuss our views in greater detail.

Sincerely,



David A. Galt  
Montana Petroleum  
Association



Claire M. Moseley  
Public Lands Advocacy



Kathleen Sgamma  
Western Energy Alliance

Attachments – Under Separate Cover

Attachment A - Review of Data Quality Issues in A Report on National Greater GRSG Conservation Measures Produced by the BLM GRSG National Technical Team (NTT) Dated December 21, 2011. Dr. Rob Ramey, III, Wildlife International Inc.

Attachment B - Rob Roy Ramey, Data Quality Issues in the Greater Sage-Grouse (*Centrocercus urophasianus*) Conservation Objectives: Final Report, p.1 (October 16, 2013)

Attachment C: Ramey, R.R., L.M. Brown, and F. Blackgoat. 2011. Oil and gas development and Greater Sage-Grouse (*Centrocercus urophasianus*): A review of threats and mitigation measures. The Journal of Energy Development 35(1):49-78.)

Cc: The Honorable Max Baucus  
The Honorable John Tester  
The Honorable Steve Daines  
The Honorable Sally Jewel, Secretary of Interior  
Neil Kornze – Acting BLM Director  
Jamie Connell – Acting BLM Deputy Director  
Kate Kitchell – Acting Montana BLM State Director

## **ADDITIONAL LITERATURE CITED**

Baxter, R.J., K.D. Bunnell, J.T. Flinders, D.L. Mitchell. 2007 Impacts of predation on Greater Sage-Grouse in Strawberry Valley, Utah. Transactions of the 72nd North American Natural Resources Conference. Predator-Prey Workshop. Portland, Oregon.

Baxter, R.J., R. L. Larson, and J.T. Flinders. 2013. Survival of resident and translocated Greater Sage-Grouse in Strawberry Valley, Utah: A 13-year study. *Journal of Wildlife Management* 77(4):802-811.

Bedrosian, B. and D. Craighead. 2010. Sage-Grouse completion report 2007-2009. Craighead Beringia South. Unpublished Report. Kelly, Wyoming.

Bui, T. 2009. The effects of nest and brood predation by common ravens (*Corvus corax*) on Greater Sage-Grouse (*Centrocercus urophasianus*) in relation to land use in western Wyoming. Master of Science Thesis. University of Washington.

Bui, T, J.M. Marzluff, and B. Bedrosian. 2010. Common raven activity in relation to land use in western Wyoming: Implications for Greater Sage-Grouse reproductive success. *The Condor* 112(1): 65-78.. The Cooper Ornithological Society.

Cote, I.M. and W. J. Sutherland. 1997. The effectiveness of removing predators to protect bird populations. *Conservation Biology* 11(2):395-405.

Coates, P.S. 2007. Greater Sage-Grouse (*Centrocercus urophasianus*) nest predation and incubation behavior. Ph.D. Dissertation. Idaho State University.

Coates, P.S. and D. J. Delehanty. 2010. Nest predation of Greater Sage-Grouse in relation to microhabitat factors and predators. *Journal of Wildlife Management. Management and Conservation Article*.

Coates, P.S., J. W. Connelly, and D. J. Delehanty. 2008. Predators of Greater Sage-Grouse nests identified by video monitoring. *J. Field Ornithology* 79(4):421-428.

Dzialak, M.R., C.V. Olson, S. M. Harju, S. L. Webb, J.P. Mudd, J.B. Winstead, and L.D. Hayden-Wing. 2011. Identifying and prioritizing Greater Sage-Grouse nesting and brood-rearing habitat for conservation in human-modified landscapes. *PLoS ONE* 6:10. [www.plosone.org](http://www.plosone.org).

Dinkins, J. B. 2013. Common raven density and Greater Sage-Grouse nesting success in southern Wyoming: Potential conservation and management implications. All Graduate Theses and Dissertations. Paper 1700. <http://digitalcommons.usu.edu/etd/1700>

Dinkens, J.B., M.R. Conover, C.P. Kirol, and J.L. Beck. 2012. Greater Sage-Grouse (*Centrocercus urophasianus*) select nest sites and brood sites away from avian predators. *The Auk* 129(4):600-610.

Kirol, C.P. 2012. Quantifying habitat importance for greater sage-grouse (*Centrocercus urophasianus*) population persistence in and energy development landscape. Master of Science Thesis. University of Wyoming.

North Dakota Game and Fish Department. (2013). Management plan and conservation strategies for Greater Sage-Grouse in North Dakota, Prepared by Aaron C. Robinson, North Dakota Game and Fish Department, Bismarck, North Dakota.

Ramey, R.R., L.M. Brown, and F. Blackgoat. 2011. Oil and gas development and Greater Sage-Grouse (*Centrocercus urophasianus*): A review of threats and mitigation measures. *The Journal of Energy Development* 35(1):49-78.

Ramey, R.R. 2013a. Data quality issues in the U.S. Fish and Wildlife Service's Greater Sage-grouse (*Centrocercus urophasianus*) Conservation Objectives: Final Report (Dated 2013). Unpublished Report. Wildlife Science International, Inc.

Taylor, R., M. Dzialak, L. Hayden-Wing. 2007. Greater sage-grouse populations and energy development in Wyoming. Accessed March 2013 at <http://bogc.dnrc.mt.gov/reports.asp>

Webb, S.L., C.V. Olson, M.R Dzialak, S.M. Harju, J.B. Winstead, and D. Lockman. 2012. Landscape features and weather influence nest survival of a ground-nesting bird of conservation concern, the Greater Sage-Grouse, in human-altered environments