



SAGUACHE COUNTY GOVERNMENT

501 Fourth Street • P. O. Box 655
Saguache, Colorado 81149

Public Comments Processing

Attn: FWS-R6-ES-2012-0108 (species listing)
Attn: FWS-R6-ES-2011-0111 (critical habitat)
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive, MS 2042-pdm
Arlington, VA 22203

Comments Submitted
December 2, 2013
Electronically & Via
Overnight Delivery

RE: Third Set of Comments by the Board of County Commissioners of the County of Saguache, Colorado; Endangered Status for Gunnison Sage-grouse; Proposed Rule; Docket No. FWS-R6-ES-2012-0108; 4500030113, 78 Fed. Reg. 8, 2486 (January 11, 2013); and Designation of Critical Habitat for Gunnison Sage-grouse; Proposed Rule; Docket No: FWS-R6-ES2011-0111; 4500030114, 78 Fed. Reg 8, 2540 (January 11, 20103)

The Board of County Commissioners of the County of Saguache, Colorado (“Saguache County Commissioners”) formally submits this third set of comments (“Saguache County Comments, Third set”). These Saguache County Comments, Third Set, supplement but do not replace the “Saguache County Comments, April 1, 2013” (“Saguache County Initial Comments”), nor the Saguache County Comments, Second Set, of October 19, 2013.

The Saguache County Commissioners expressly state their intent and reserve their right to make further comments and to participate fully in each available component of the process of the United States Fish and Wildlife Service (“FWS”) regarding:

1. The proposed rule for Endangered Status for Gunnison Sage-grouse; Docket No: FWS-R6-ES-2012- 0108; 4500030113, 78 Fed. Reg. 8, 2486 (January 11, 2013)(“Proposed Rule for ESA Listing”), and
2. The proposed rule for Designation of Critical Habitat for Gunnison Sage-grouse: Docket No FWS-R6-ES-2011- 0111; 4500030114, 78 Fed. Reg. 8, 2440 (January 11, 2013)(collectively “Proposed Rules”).

Saguache County concurs with and joins in the “Third Set of Comments by the Board of County Commissioners of the County of Gunnison, Colorado submitted November 26, 2013”, as follows:

1. Section I. SUMMARY OF GUNNISON COUNTY COMMENTS TO DATE, in its entirety, pages 1-4.
2. Section II. AN UPDATE ON RANGEWIDE LOCAL AND COLLEGIAL EFFORTS - Saguache County is pleased to engage in the ongoing and increasingly effective collegial partnerships, and exchange of information, plans, regulations and models of conservation occurring through the County Coalition for the GuSG. For Saguache County, there are two documents recently added to the Coalition’s collection of the range-wide body of knowledge, regulations and active cross-jurisdictional, conservation partnerships in place with regard to protection of GuSG and habitat:



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- a) Guidelines and Regulations for Areas and Activities of State Interest of the County of Saguache, State of Colorado, Adopted September 28, 1990 and Updated December 4, 2012, applicable in its entirety, and speaking in particular to habitat and species conservation in “Chapter 8 - Significant Wildlife Habitat Area Regulations”. Saguache County Planning Commission will review this chapter in 2014. Attached hereto as Appendix A.
- b) Memorandum of Understanding Between The Department of the Interior, Bureau of Land Management, San Luis Valley Field Office and Saguache County Government as a Cooperating Agency, November 18, 2013. This multi-jurisdictional partnership is for the purpose of preparing an Environmental Assessment (EA) for Xcel Saguache / Poncha Pass Power Line Rebuild Project. Attached hereto as Appendix B.
- c) There are many other actions taking place regularly, and since our Second Set of comments, that further demonstrate that Saguache County is well engaged and committed to ongoing, collaborative actions, and advancing efforts referenced in earlier comment letters to U.S.F.W.S., such as:
 - i. maintaining and updating the County’s website on the GuSG providing the public with information and education on GuSG
<http://saguachecounty.net/grouse-information>;
 - ii. conducting two issues forums, by the steering committee charged with formalizing a standing Wildlife & Habitat Conservation Strategic Committee for Saguache County. These meetings including public agencies and private stakeholders; one addressed fire and habitat issues in the Sangre de Cristo mountain range, including GuSG habitat areas; the other, a meeting with the Poncha Pass Gunnison Sage Grouse Working Group.
- d) The above are in addition to the list for Saguache County, included in the compilation of counties’ GuSG related authorities and actions:
 - i. Board of County Commissioners of the County of Saguache, Colorado, Resolution 2013-LU-11, “Resolution Stating Policy Regarding Regulation of Parcels of Land”, documenting the County’s existing regulatory powers in land use matters;
 - ii. Saguache County Land Development Code, Article XX Wildlife, which addresses all species and their habitat, including avian;
 - iii. Guidelines and Regulations for Areas and Activities of State Interest of the County of Saguache, State of Colorado, Adopted September 28, 1990 and Updated December 4, 2012, commonly referred to as 1041 regulations, including, including Chapter 8 devoted specifically to wildlife concerns.
 - iv. Saguache County Conservation Activities: Road Closures BLM Roads 980, 948, 982 for lek seasons has been longstanding; also County Roads WW13 and segments of others. In process of additional road closures: UU13, PP14, Nn14, 17GG, 23YY, 24UU, 24VV, KK14, 6YY, 6UU, 5YY, YY10, 1TT
 - v. The Poncha Pass Gunnison Sage Grouse Conservation Plan
 - vi. Habitat Enhancement:
 - NRCS Sage-grouse Initiative Project
 - Lone Tree Creek Riparian Evaluation Agreement
 - BLM Dixie Harrow Project



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- vii. Research Projects:
 - Weather Station (Drought Monitoring) March, 2012 – November 2012; March, 2013 – present
 - Vehicle Monitoring System (Recreation Impact) April 2012-July 2013
- viii. Lek Monitoring:
 - Acoustic Monitoring, March to May 2012, Feb 27, 2013 – May 2013
 - Remote Camera, April through May 2012, April, 2013
 - Visual Lek Counts, March – April 2013
 - Helicopter Flight - CPW, April 26, 2013
 - Genetic Analysis

I. ADDITIONAL COMMENTS ON THE PROPOSED LISTING OF THE GUNNISON SAGE-GROUSE AS AN ENDANGERED SPECIES.

The Saguache County Commissioners continue to express substantial disagreement with the Proposed Rules and firmly reassert their position that the best information available and sound scientific data do not establish that the Gunnison Sage-grouse (GuSG) is facing material or imminent threat of extinction, as is required for a listing determination. Saguache County continues to express its reasoned opposition to the proposed listing of the GuSG as an endangered or threatened species. The “County Coalition for GuSG” (“County Coalition”) consisting of 2 States (CO, UT) and 11 Counties, are working together through a regional Memorandum of Understanding (MOU), and Conservation Agreement. This unprecedented conservation alliance has real time GuSG site-specific knowledge, experience, and demonstrated capacity to successfully continue to implement known and innovative conservation strategies for GuSG to thrive.

Gunnison County Commissioner Jonathan Houck eloquently spoke, at the Public Hearing on November 19, 2013, to how the efforts and resources applied over many years in the Gunnison Basin have achieved what is most essential to reliably assure GuSG and habitat preservation into the future - establishing and modeling a culture of stewardship. The GuSG enjoys broad community awareness across generations, and a tradition of valuing the bird and being part of its protection and its habitat care, in Gunnison County. In Saguache County, it has been our experience that the community of those in GuSG territory share in the interest to be knowledgeable about the bird, and to support GuSG in thriving.

II. SAGUACHE COUNTY ADDITIONAL COMMENTS ON PROPOSED DESIGNATION OF CRITICAL HABITAT FOR GUNNISON SAGE-GROUSE

Saguache County continues to express concerns over the breadth of the proposed occupied and unoccupied critical habitat in the Poncha Pass area in particular, as presented by FWS. It includes a significant section of Saguache County, especially in view of the limited population of GuSG that occupy the sagebrush habitat in the Northeast part of in the County.

Consideration of Trap and Transplant effort: The current trap and transplant project to augment the Poncha Pass population of GuSG, has begun in Saguache County. The Colorado Department of Parks and Wildlife completed the first of two transplants of birds trapped in the Gunnison Basin and released at Poncha Pass. The transplant project and radio tracking of the birds will assist in determining viability of



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Poncha GuSG habitat, and what additional habitat measures/mitigations may be indicated to increase the survival and stability of this small population.

Saguache County has previously stated its specific reasoning for why the proposed designated habitat at Poncha Pass is erroneous, and is committed to implement the Habitat Prioritization Tool to best determine where to focus efforts to best conserve the GuSG and its true Poncha Pass habitat area.

We are not waiting for this to address habitat issues at Poncha Pass. As can be seen in the list of activities at Poncha Pass on behalf of GuSG and habitat, monitoring of key factors such as weather, and, habitat recovery plans/measures, such as riparian restoration projects have been underway and will continue, providing proactive, on the ground, real-time knowledge of factors such as drought. The County would again emphasize that local resources, regulatory mechanisms, established plans, local expertise, and actions in progress are best prepared to consider and address specific local factors with regard to GuSG habitat preservation and enhancement and stewardship of the GuSG population at Poncha Pass.

III. COMMENTS ON THE DRAFT ENVIRONMENT ASSESSMENT

Saguache County reiterates its position that Alternative A. No Action Alternate is appropriate.

As has been expounded in the voluminous comments of the stakeholders across GuSG range, No Action is plenty of action. All of which will be even more effective, when full focus can be turned to implementing the Conservation Agreement submitted by the County Coalition for the Gunnison Sage Grouse, with U.S.F.W.S. at that table.

Respectfully submitted -

For Saguache County, Board of County Commissioners -

Linda Joseph, Saguache County Commissioner - Chair



GUIDELINES AND REGULATIONS FOR AREAS
AND ACTIVITIES OF STATE INTEREST OF
THE COUNTY OF SAGUACHE, STATE OF COLORADO

Public Hearing

Original hearing date September 28, 1990

Updated

December 4, 2012

Chapter 8

Significant Wildlife Habitat Area Regulations

Article 1 General and Introductory Provisions

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- 8-102 Purpose and Intent
- 8-103 Definitions
- 8-104 Authority
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- 8-107 Relationship of Regulations to Other County, State and Federal Requirements

Article 2 Specific Significant Wildlife Habitats in This County Subject to Regulation

- 8-201 All Areas Designated or Regulated Must be Listed
- 8-202 Designations or Regulation of Significant Wildlife Habitats
- 8-203 Reasons for Designation
- 8-204 Descriptions of Designated or Regulated Significant Wildlife Habitats

Article 3 Permit Program for Significant Wildlife Habitat

- 8-301 Prohibition on Development in Designated Significant Wildlife Habitat Without Permit
- 8-302 Procedural Requirements
- 8-303 Application Fee
- 8-304 Applicant's Submission Requirements
- 8-305 Waiver of Submission Requirements
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- 8-401 Administration, Enforcement, and Penalties
- 8-402 Severability

Article 1 General and Introductory Provisions

8-101 Title and Citation

These various sections constituting Chapter 8 of the “Guidelines and Regulations for Areas and Activities of State Interest of Saguache County” may be cited as the “Significant Wildlife Habitat Area Regulations.”

8-102 Purpose and Intent

The purpose and intent of the regulations contained this Chapter 8 are:

- (1) To protect those areas essential for wildlife habitat.
- (2) To establish procedures and requirements for development or activity within significant wildlife habitats which will allow man to function in harmony with, rather than be destructive to, significant wildlife habitat; and
- (3) To regulate development and activities within areas of significant wildlife habitat in a manner that will minimize damage to this resource for future use.

8-103 Definitions

- (1) “Applicant” means any individual, partnership, corporation, association, company, or other public or corporate body, including the federal government or federal entity, and includes any political subdivision, agency, instrumentality, or corporation of the state.
- (2) “Development” means any construction or activity which changes the basic character or the use of land on which the construction or activity occurs.
- (3) “Nonconforming use” means a use in existence at the time of the adoption of these Regulations, which use, were it a new use, would be one for which a permit is required under these Regulations.
- (4) “Significant wildlife habitat” means those areas containing, or having significant impact upon, those wildlife habitats in which the wildlife species, as identified by the Division of Wildlife of the Department of Natural Resources, could be endangered by development, and includes those essential elements of a wildlife habitat which, if altered or eliminated, would impair or destroy the area’s capability to sustain a wildlife species.
- (5) “Wildlife” means wild vertebrates, mollusks, crustacean and fish; animals or their progeny, which were once domesticated but have escaped human control, temporarily or permanently, e.g., horses, burros, goats; dogs, and cats are not considered wildlife.
- (6) “Wildlife habitat” means a geographical area containing those elements of food, water, cover, space and general welfare in a combination and in quantities adequate to support a species for at least a portion of the year. A particular area need not be occupied by a particular wildlife species in order to be considered habitat for those species. Wildlife habitat may include those areas which were historically occupied and are still suitable for occupancy, are presently occupied, or are potentially suitable for occupancy but not historical range, i.e., mountain goat habitat in Colorado.

8-104 Authority

These Regulations are adopted pursuant to inter alia, Sections 24-65.1-101, et seq., and Sections 29-20-101, et seq., C.R.S. 1973.

8-105 Applicability

- (1) These Regulations apply to applications for permits to engage in development in all designated or regulated significant wildlife habitat areas within this County.
- (2) Any person seeking to engage in development in any designated or regulated significant wildlife habitat area in this County shall obtain a permit pursuant to these Regulations before seeking any other permit, rezoning, or other action by this County.

8-106 Nonconforming Uses

- (1) The provisions of this Chapter shall not apply to any nonconforming use existing on the date the area is designated or subjected to these Regulations, provided that, when such a nonconforming use shall be discontinued for six months or more or a nonconforming structure is damaged or destroyed to the extent of at least fifty (50) percent of the appraised value, any reuse, reconstruction, or replacement of such structure shall be deemed a new use and shall be subject to the provisions of these Regulations.

8-107 Relationship of Regulations to Other County, State and Federal Requirements

- (1) Nothing in these Regulations shall be construed as exempting an applicant for a permit from any other requirements of this County or other state or federal laws and regulations.
- (2) To the extent that the requirements of these Regulations differ from any other applicable requirements, the more restrictive requirements shall apply.

Article 2 Specific Significant Wildlife Habitats in This County Subject to Regulation

8-201 All Areas Designated or Regulated Must be Listed

All areas within this County that are subject to regulation or designation under this Chapter are listed and described in Section 8-204. Any and all property not so listed has not been designated or required under this Chapter.

8-202 Designation or Regulation of Significant Wildlife Habitats

This body having considered the intensity of current and foreseeable development pressures, applicable Guidelines for Identification and Designation adopted and issued by the Colorado Land Use Commission, and Guidelines for Identification, Designation and Administration of Significant Wildlife Habitats, published by the Colorado Division of Wildlife, it is the order of this body that the significant wildlife habitats described in Section 8-204 below are designated as areas of state interest and that the significant wildlife habitats described in Section 8-204 below are subject to these Regulations hereby adopted by this County.

8-203 Reasons for Designation

The significant wildlife habitats described in Section 8-204 are hereby designated as matters of state interest for the reasons stated in Section 8-102 of this Chapter.

8-204 Descriptions of Designated or Regulated Significant Wildlife Habitats

This County hereby declares that the following areas shall be designated as significant wildlife habitats in order to meet the purposes and intent of these Regulations.

- (1) The significant wildlife habitat(s) shown on the following described map(s) provided by the Colorado Division of Wildlife was designated or subjected to these Regulations on September 28, 1990_ Map filed in Office of Clerk and Recorder.
Book 464, Page 875.
An official copy of the map(s) shall be filled in the office of the Land Use Department and available for public inspection.
- (2) One copy of all maps of designated significant wildlife habitats in this County shall be sent to the Colorado Division of Wildlife.

Article 3 Permit Program for Significant Wildlife Habitat

8-301 Prohibition on Development in Designated Significant Wildlife Habitat Without Permit

- (1) No person may engage in development in a designated significant wildlife habitat in this County without first obtaining a permit pursuant to these Regulations.
- (2) No person shall apply for a rezoning, a building permit or any other requirement of this County for development in a designated significant wildlife habitat without first obtaining a permit pursuant to these Regulations.

8-302 Procedural Requirements

- (1) The procedures concerning permit applications, notice and conduct of permit hearings, review of Permit Authority decisions and issuance and content of permits to engage in development in any designated significant wildlife habitat shall comply with the provisions set forth in Chapter 2, the Permit Regulations adopted by this County.
- (2) Any person seeking to engage in development in any designated significant wildlife habitat shall apply for a permit from the Permit Authority on the appropriate form prescribed by these Regulations, at Exhibit B, and maintained in the office of the County Department of Community Development.

8-303 Application Fee

- (1) Not later than ten (10) days following receipt of a completed application for a permit to engage in development in any designated significant wildlife habitat, the Permit Authority shall determine and set a fee in an amount necessary to cover the costs incurred in the review and approval or disapproval of the permit application, including all hearings conducted therefore, and shall notify the applicant in writing of said fee and its amount. Not later than ten (10) days following his receipt of such notice, the applicant shall present to the Permit Authority nonrefundable certified funds in the amount set. Until the fee is paid to the Permit Authority, the application for permit shall not be further processed, and each day said fee is late will extend all other deadlines the same.

8-304 Applicant's Submission Requirements

Applicants seeking to engage in development in a designated significant wildlife habitat shall submit to the Permit Authority, as a minimum, five (5) copies of the following documents and information:

- (1) Completed application form.
- (2) Legal description of the proposed development site.

- (3) Index map showing the general location of the proposed development site and its relationship to surrounding topographic and cultural features (a standard U.S.G.S. quadrangle map would usually be adequate for an index map).
- (4) Topographic map or maps showing the location, nature and density of the proposed development or land use change.
- (5) Description of the nature, density and intensity of the proposed development, activity, or land use change in sufficient detail to allow analysis of the effects of the proposed development, activity, or land use change upon significant wildlife habitat and to evaluate the effectiveness of any proposed mitigating measures or programs.
- (6) A plan of operations, which shall contain the applicant's analysis of the effects of the proposed development, activity or land use change upon wildlife species (identified by the Division of Wildlife of the Department of Natural Resources) within the designated significant wildlife habitat. The plan shall demonstrate how the applicant will meet the applicable will avoid conflict with these needs. Where conflicts are unavoidable, the applicant shall present proposals to minimize the extent and degree of the conflict, including compensation through replacement or enhancement of habitat on an alternative site.
 - (a) Production Areas. These include areas necessary for pre-nuptial activities, breeding, young-bearing and rearing, i.e., spawning beds, nursery streams, and protected shoal areas for fish; permanent shallow water for amphibians; strutting, booming and dancing grounds and calling perches, nesting places, and protective young-rearing cover for birds; breeding grounds, calving and fawning areas, den trees, burrows, and young-rearing cover for mammals.
 - (b) Principal Feeding Areas. These include areas containing the natural foods of a wildlife species of sufficient quantity and quality and readily available to sustain a normal population.
 - (c) Summer Range. Summer ranges relatively free of human disturbance are highly important to the survival of some species, especially those requiring extended periods of time for young-rearing.
 - (d) Winter Ranges. Winter ranges of sufficient quality and quantity are critical for two reasons: (1) they are frequently so restricted in area that they limit the size of an animal population over its entire range; and (2) these ranges are often in proximity to human populations and human activities so that the species involved are adversely affected, or the species may adversely affect real and personal property.
 - (e) Concentration Areas. Areas where high density of wildlife species at certain times of the year makes them highly susceptible to development and activities of man. Examples of concentration areas include staging areas for waterfowl, sandhill cranes and deer; roosting areas for a number of birds; colonies of such colonial species as swallows, herons and beaver; and mass dens of snakes.
 - (f) Shelter Areas. Those physical or natural features in their habitats which provide escapement from their enemies and adverse weather conditions. Included here are such things as rough terrain for many species of wildlife; rocky bottoms and shorelines and aquatic vegetation in and adjacent to water for protection of fish, amphibians, and aquatic oriented species of terrestrial wildlife.
 - (g) Water and Minerals. A permanent water supply in sufficient quantity and quality is necessary to support most wildlife species. In addition, some species have special mineral needs. Continuous stream flows and conservation pools in reservoirs are essential to the survival of fish. Stable water levels in lakes and reservoirs are highly desirable for fish, amphibians and many forms of terrestrial wildlife. High quality water, free of pollutants, is essential to the survival of fish, amphibians and many birds, as well as to the food organisms upon which they depend.

- (h) Movement Corridors. Many species of wildlife have daily and seasonal movement patterns along more or less established corridors. These may be between seasonal ranges; to reach spawning areas; or between nesting, resting, roosting, feeding and watering areas. Concentrating of animals along such corridors increase the likelihood of conflict between wildlife and humans. Many of these corridors offer the only means for wildlife movements, or their uses become so traditional that disruption or interferences could be disastrous for the species involved.
- (i) Buffer Zones. Some species of wildlife are intolerant to disturbance from human activities during portions of the year. In order to protect these species, buffer zones with no, or limited, human related disturbances are necessary during those seasons when these species occupy specific areas.
- (j) Special Habitat Needs. Some wildlife species have very specific habitat needs, without which they cannot survive. Therefore, reduction of such needs beyond certain limits, or a complete destruction of these habitat features could cause a species to be reduced in number or perish. For example, sagebrush is essential to the survival of sage grouse; wild turkeys need roost trees meeting certain requirements; catfish will only spawn when water temperatures are within certain limits; and black footed ferrets are limited to ranges occupied by prairie dogs.
- (k) Shoreline Vegetation. Vegetation along stream banks and the shorelines of lakes is extremely important to aquatic wildlife and aquatic related forms of terrestrial wildlife. Such vegetation controls water temperatures, provides food and shelter and protects banks from excessive erosion which damages or destroys wildlife habitats.

8-305 Waiver of Submission Requirements

- (1) The Permit Authority may waive any part but not all of the submission requirements imposed by these Regulations upon petition of the applicant that full compliance with the submission requirements would be unreasonably burdensome for the applicant and that the proposed development will have an insubstantial impact on the surrounding area. Such a waiver may be granted, after due consideration by the Permit Authority, upon a written determination that the information to be submitted is sufficient for the Permit Authority to arrive at a permit decision in full compliance with the law and these Regulations, that the proposed development will have an insubstantial impact on the surrounding area, and upon written concurrences by the Director of the Colorado Division of Wildlife. The Division of Wildlife shall provide a written response to the Permit Authority within 30 days after receiving a copy of such petition for waiver of submission requirements from the Permit Authority.
- (2) The petition shall be considered and the decision rendered by the Permit Authority as a public hearing held in compliance with the provision of Section 2-301 of the Permit Regulations adopted by this County.
- (3) In the event the waiver request is denied, the applicant shall provide the required additional information on or before five (5) days prior to the date set for hearing of the application itself. If the applicant fails to provide such information, the Permit Authority may in its discretion vacate the public hearing on the application itself and require complete reapplication, or may continue the hearing in accordance with Section 2-303 of the Permit Regulations adopted by this County.

8-306 Approval of Permit Application

- (1) The Permit Authority shall approve an application for a permit to develop within a designated significant wildlife habitat only if the proposed development complies with these Regulations (except

to the extent waived pursuant to Section 8-305) and all other relevant guidelines and regulations and meets all of the following criteria:

- (a) The development is compatible with the significant wildlife habitat as designated;
 - (b) The development is designed and will be administered, controlled and regulated to allow man to function in harmony with, rather than be destructive to, the significant wildlife habitat as designated;
 - (c) The applicant has presented and is capable of administering a program to meet the specific habitat needs of species identified by the Division of Wildlife of the Department of Natural Resources within the significant wildlife habitat as designated.
 - (d) The development has been approved by the Division of Wildlife of the Department of Natural Resources.
- (2) The Permit Authority shall deny the permit if the proposed development does not meet all of the criteria in Section 8-306 (1).

Article 4 Administration, Enforcement, and Penalties

8-401 Administration, Enforcement, and Penalties

The provisions of these Regulations and any permit issued hereunder shall be administered and enforced according to the provisions of the Administrative and Permit Regulations adopted by this County.

8-402 Severability

If any section, clause, provision, or portion of these Regulations should be found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, the remainder of these Regulations shall not be affected thereby and is hereby declared to be necessary for the public health, safety, and welfare.

Memorandum of Understanding
Between
The Department of the Interior, Bureau of Land Management,
San Luis Valley Field Office and
Saguache County Government
as a Cooperating Agency



I. Introduction

This Memorandum of Understanding (MOU) establishes a cooperating agency relationship between the Bureau of Land Management's San Luis Valley Field Office ("BLM") and Saguache County Government ("Cooperator") for the purpose of preparing an Environmental Assessment (EA) for the Xcel Saguache/Poncha Pass Power Line Rebuild Project. The BLM is the lead federal agency for development of the Environmental Assessment for the Xcel Saguache/Poncha Pass Power Line Rebuild Project. The BLM acknowledges that the Cooperator has special expertise applicable to the project as defined at 40 CFR 1508.26. This MOU describes responsibilities and procedures agreed to by the Saguache County Government as a Cooperating Agency and the BLM ("the Parties").

The cooperating agency relationship established through this MOU shall be governed by all applicable statutes, regulations, and policies, including the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (in particular, 40 CFR 1501.6 and 1508.5), the BLM's planning regulations (in particular, 43 CFR 1601.0-5, 1610.3-1, and 1610.4), and the Department of the Interior Manual (516 DM 2.5) and Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) .

II. Purpose

The purposes of this MOU are:

- A. To designate Saguache County Government as a Cooperating Agency in the preparation of the Environmental Assessment for the Xcel Saguache/Poncha Pass Power Line Rebuild Project.
- B. To provide a framework for cooperation and coordination between the BLM and the Cooperator that will ensure successful completion of the EA in a timely, efficient, and thorough manner.
- C. To recognize that the BLM is the lead agency with responsibility for the completion of the EA.
- D. To describe the respective responsibilities, jurisdictional authority, and expertise of each of the Parties in the planning process.

III. Authorities for the MOU

A. The authorities of the BLM to enter into and engage in the activities described within this MOU include, but are not limited to:

1. National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
2. Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

B. Regulations implementing the above authorities:

1. Council on Environmental Quality regulations (40 CFR 1501 et seq.)
2. Bureau of Land Management planning regulations (43 CFR 1601 et seq.)

C. The authorities of Saguache County Government to enter into this MOU include, but are not limited to:

1. SAGUACHE County Authority.

IV. Roles and Responsibilities

A. BLM Responsibilities:

1. As lead agency, the BLM retains final responsibility for the content of all Administrative records, and NEPA studies, which includes the Draft Environmental Assessment. The BLM's responsibilities include determining the purpose of and need for the project, selecting alternatives for analysis, identifying effects of the proposed alternatives, selecting the preferred alternative, and determining appropriate mitigation measures. In meeting these responsibilities, the BLM will follow all applicable statutory and regulatory requirements.
2. To the fullest extent consistent with its responsibilities as lead agency, the BLM will consider the comments, recommendations, data, and/or analyses provided by the Cooperator in processing the EA, giving particular consideration to those topics on which the Cooperator is acknowledged to possess jurisdiction by law or special expertise.
3. To the fullest extent practicable, after consideration of the effect such releases may have on the BLM's ability to withhold this information from other parties, the BLM will provide the Cooperator with copies of documents underlying the EA relevant to the Cooperator's responsibilities, including technical reports, data, analyses, comments received, working drafts related to environmental reviews, and the draft EA.

B. Cooperating Agency Responsibilities:

1. Saguache County Government is a Cooperating Agency in this EA process and is recognized to have special expertise in the following areas:
 - a. County planning, zoning, roads & bridge, and permitting.
 - b. County interests, demographics, and historical values.
2. The Cooperator will provide information, comments, and technical expertise to the BLM regarding those elements for the EA, and the data and analyses supporting them, in which they have jurisdiction or special expertise or for which the BLM requests their assistance. In particular, the Cooperator will provide information on the following topics:
 - a. County planning, zoning, roads & bridge, and permitting
 - b. County interests, demographics, and historical values
 - c. Other such information that is relevant to the project or data needs.
3. Within the areas of the special expertise, the Cooperator may participate in any of the activities that includes, but are not limited to: providing guidance on public involvement strategies, identifying data needs, identifying effects of alternatives, suggesting mitigation measures, and providing written comments on working drafts of the EA.

C. Responsibilities of the Parties:

1. The Parties agree to participate in the NEPA process in good faith and make all reasonable efforts to resolve disagreements.
2. Each Party agrees to fund its own expenses associated with the NEPA process.
4. The Parties agree to carefully consider whether proposed meetings or other activities would waive the Unfunded Mandates Reform Act exception to the Federal Advisory Committee Act (2 U.S.C. 1534(b) and 5 U.S.C App.).

V. Other Provisions

- A. Authorities not altered. Nothing in this MOU alters, limits, or supersedes the authorities and responsibilities of any Party on any matter within their respective jurisdictions. Nothing in this MOU shall require any of the Parties to perform beyond its respective authority.
- B. Financial obligations. Nothing in this MOU shall require any of the Parties to assume any obligation or expend any sum in excess of authorization and appropriations available.
- C. Immunity and Defenses Retained. Each Party retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

D. Conflict of interest. The Parties agree not to utilize any individual or organization for purposes of, environmental analysis, or Cooperator representation, including officials, employees, or third party contractors, having a financial interest in the outcome of the this project. Questions regarding potential conflicts of interest should be referred to BLM HQ or Field Ethics Counselors for resolution.

E. Documenting disagreement or inconsistency. Where the BLM and the cooperator disagree on substantive elements of the project (such as designation of the alternatives to be analyzed or analysis of effects), and these disagreements cannot be resolved, the BLM will include a summary of the Cooperator's views in the Draft EA and the Proposed Final EA. The BLM will also describe substantial inconsistencies between its proposed action(s) and the objectives of local government land use plans and policies.

F. Management of information. [Select version 1 or 2]

The Cooperator acknowledges that all supporting materials and draft documents may become part of the administrative record and may be subject to the requirements of the Freedom of Information Act (FOIA) and other federal statutes. The BLM acknowledges that the Cooperator's handling of these materials may be impacted by state statute or local ordinance. The Parties agree that the BLM at its discretion may withhold from the cooperator those documents that would otherwise be available for public release under state statute or local ordinance.

H: Coordination with a third party NEPA contractor, HDR Engineering, which serves as the BLM's contractor for: public involvement, data collection, environmental analysis, and EA preparation. Cooperators may communicate with the contractor only through the BLM's representative. The Cooperator acknowledges that the BLM retains the exclusive responsibility to authorize modifications to the contract with HDR Engineering and that the Cooperator is not authorized to provide technical or policy direction regarding the performance of this contract.

VI. Agency Representatives

Each Party will designate a representative to coordinate between the Cooperator and the BLM during the NEPA process. Each Party may change its representative at will by providing written notice to the other Party.

VII. Administration of the MOU

A. Approval. This MOU becomes effective upon signature by the authorized officials of the BLM and at least one Cooperator.

B. Amendment. This MOU may be amended through written agreement of all Signatories.

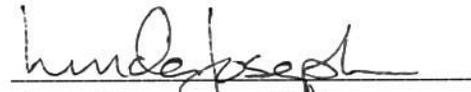
C. Termination. If not terminated earlier, this MOU will end when the Decision Record for the Xcel Poncha Pass Power Line Rebuild Project is approved by the BLM. Any party may end its participation in this MOU by providing written notice to the other Party.

VIII. Signatures

The Parties hereto have executed this MOU on the dates shown below.

Saguache County Government
501 Fourth Street
PO Box 655
Saguache, CO 81149

Date: 11/18/2013

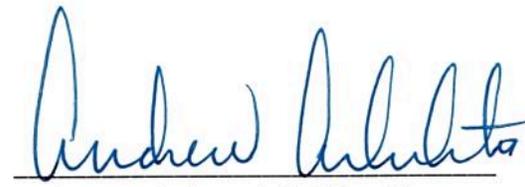


<Insert Name> <Insert Title>

LINDA JOSEPH, Commissioner, CHAIR

Bureau of Land Management
San Luis Valley Field Office
46525 Hwy 114
Saguache, CO 81149

Date: 11/18/2013



Andrew Archuleta, Field Office Manager

Agency Representatives

Bureau of Land Management

Primary Representative: Leon Montoya, Project Manager

Backup Representative: Paul Tigan, Assistant Field Office Manager

Cooperator

Primary Representative: Linda Joseph

Backup Representative: Weardi Maez