

April 1, 2013

Public Comments Processing
Attn: FWS-R6-ES-2012-0108
Attn: FWS-R6-ES-2011-0111
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive, MS 2042-PDM
Arlington, VA 22203

COMMENTS SUBMITTED
ELECTRONICALLY AND
VIA OVERNIGHT DELIVERY

RE: 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-ES-2011-0111; 4500030114, 78 Fed. Reg. 8, 2540 (January 11, 2013).

The Board of County Commissioners of the County of Saguache, Colorado ("Saguache County Commissioners") formally submits these comments ("Saguache County Comments") on April 1, 2013, pursuant to the Service's published instructions for submission of comments.

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 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 the proposed rule for Designation of Critical Habitat for Gunnison Sage-grouse; Docket No: FWS-R6-ES-2011-0111; 4500030114, 78 Fed. Reg. 8, 2540 (January 11, 2013) ("Proposed Rule for Designation") (collectively "Proposed Rules").

The Saguache County Commissioners have specific concerns regarding the proposed listing which deserve the full, undivided and reasoned consideration of the "FWS":

a. Initially, Saguache County has the authority to protect and promote the health, welfare and safety of the people of Saguache County, and the authority to regulate land use planning and environmental quality and protection (including wildlife of all species) in Saguache County; pursuant to these authorities the Saguache County Commissioners have duly adopted policies and regulations including the review, approval, conditioning or denial of proposed activities and uses of land and natural resources that reasonably might impact the Gunnison Sage-grouse, as well as other wildlife.

b. The Saguache County Commissioners, and Saguache County, has a long history of involvement in efforts to protect, and foster the growth, of the Gunnison Sage-grouse. As an example, in 2000, the County became a signatory and active participant in "The Poncha Pass Gunnison Sage -Grouse Conservation Plan" (Appendix A) which has as its stated purpose: "the plan is to provide for coordinated research and management across jurisdictional/ownership boundaries and to develop support that is necessary to assure the well- being of the sage grouse species." (page 1 of Appendix A).

It should be noted that signatories to the Plan include the owners of the larger ranching operations on or near Poncha Pass, the Colorado Division of Wildlife, the U.S. Forrester Service, and the Nature

Conservancy. Additionally, since 2005, Saguache County has been a participating member in the Gunnison Sage Grouse Strategic Conservation Committee, convened by Gunnison County, whose collaborative efforts have been directed at protecting and fostering the Gunnison Sage-grouse and its habitat. The wide variety of participants in the plan is merely one demonstration of the cooperation that exists in protecting and fostering the growth of the species among all stake-holders in the immediate area of Poncha Pass in Saguache County, as well as the Gunnison Basin.

In addition, Saguache County, has designated the Poncha Pass Sage Grouse Working Group Coordinator, as Sage Grouse Liaison to the County, for that population. Through all of these efforts, Saguache County has gained knowledge, working relations and capacity to help develop approaches to enhance the protection and growth of the Gunnison Sage-grouse.

c. Third, the decisions of the United States Fish and Wildlife Service will impact the citizens, and the social, economic, environmental, and historical fabric and future of the Saguache County community. This is especially concerning in view of FWS attempts to list other species, such as the Willow Fly Catcher, on the ESA, which would also have a significant impact on the citizens of Saguache County.

d. Finally, the proposed actions by Fish and Wildlife will have a significant impact on the citizens and economy of Saguache County, far beyond the effective benefits of the proposed actions.

The Saguache County Commissioners commit to participate in the comment process, and to make themselves and County staff available to the Fish and Wildlife Service during the comment and review processes.

Saguache County joins in, incorporates, and adopts the comments submitted by Gunnison County to the extent that they set forth the concerns that the proposed actions will have on the citizens and economy of the County, and as to the actions that Gunnison County, and its partners, have taken to protect and foster the habitat and population of the Gunnison Sage-Grouse within the Gunnison Basin as a whole and as these efforts are applicable to the small satellite population of sage grouse located in the Poncha Pass area of Saguache County. Saguache County Commissioners echo the legal authority cited by Gunnison County for local county governments to accomplish the purported goals of FWS in the proposed rules, without the need for listing of the species under the ESA.

Gunnison County has conducted extensive research as to the growth patterns of the Gunnison Sage-Grouse, as well as the current condition of its habitat. Saguache County believes that this information is important for consideration in the Service making a well-informed decision concerning the rangewide status and health of the species, as well as the proposed listing and habitat designation decisions. The comments of Gunnison County also point out several misinterpretations and misapplications of data and studies considered by FWS in the proposed rules. Saguache County has physically incorporated many of the studies, data and legal arguments made by Gunnison County into these comments.

The Saguache County Comments are intended to supplement those of Gunnison County and provide information and concerns that are unique to Saguache County and including the Poncha Pass area and the satellite populations.

To be clear and for ease of reading these comments, the Board of County Commissioners of the County of Saguache, Colorado formally expresses its position that the best information available does not establish that the Gunnison Basin Population, and the satellite populations of Gunnison Sage-Grouse, are facing material or imminent threats; in particular, the Board expresses its substantial disagreement with the Draft Rules as follows:

I. The Proposed Rules Fail To Recognize That The Gunnison Basin Population Of Gunnison Sage-grouse Is Stable and Growing, Healthy And Likely To Persist In The Long Term.

Gunnison County, in its comments, presents compelling evidence as to the current status of the population, both in the Gunnison Basin, as well as the range-wide population. As presented in the Gunnison comments, the population within the Basin is stable and growing.

Saguache County asserts that the Poncha Pass population has endured despite the lack of focus on this area for conservation study or measures by public lands agencies in the past 11 years as compared with the Gunnison Basin population. The County recognizes that the Poncha Pass Lek is currently not stable, and will not become so without additional actions, perhaps including transplanting additional birds from the Gunnison Basin and coordinated actions between the County and State and Federal Agencies. However, Saguache County contends that these actions can be undertaken without the implementation of the proposed rules. Saguache County emphasizes that FWS has recognized that it has been difficult to obtain an accurate count of the Poncha Pass population and the County asserts that further study is required prior to any determination concerning a listing action, or other more appropriate actions to protect the lek and surrounding habitat.

II. FWS Has Failed To Establish That The Gunnison Basin Population or Poncha Pass satellite population is Facing Material Or Imminent Threats.

III. The Fish And Wildlife Service Has Failed To Analyze Accurately The Scope Of Saguache County's Legal Authority To Address Threats To The Gunnison Sage-Grouse And Its Habitat.

IV. The Fish And Wildlife Service Has Failed To Analyze Accurately The Scope Of Saguache County's Regulations, Planning Regimes and Intergovernmental Actions To Address Threats To The Gunnison Sage-Grouse And Its Habitat.

V. FWS Has Not Recognized That The Community Has Made Comprehensive Efforts To Protect the Gunnison Sage-Grouse.

VI. The FWS Has Failed To Analyze Accurately Residential Development In Saguache County and specifically the Poncha Pass area of the County.

VII. The FWS Has Failed Has Significantly Overstated the Magnitude, Immediacy And Causes of Other Alleged Threats to The Poncha Pass Population .

VII. The Fish And Wildlife Service Has Failed To Capitalize On the Extraordinary Efforts Of The Gunnison Basin Community In Protecting The Species and Has Failed To Adequately Participate In Those Efforts.

- X. The FWS Made No Real Analysis Of Whether The Gunnison Sage-Grouse Is Endangered Or Threatened In A “Significant Portion Of The Range.”**
- XI. The FWS Analysis of the Satellite Populations Is Not Complete or Accurate.**
- XII. The Draft Rules Significantly Mis-cite or Misinterpret Studies.**
- XIII. The Proposed Rules Are Inconsistent With Previous FWS Formal And Informal Actions Regarding The Gunnison Sage-Grouse.**
- XIV. An Approval Of Either Proposed Rule, Or Both Of Them, Would Cause Actual or Imminent Injury To Saguache County.**
- XV. The Fish And Wildlife Service Is Not Providing To The Poncha Pass and Gunnison Basin Community Adequate Time To Respond To The Proposed Rules.**
- XVI. The Gunnison Sage-grouse Is Not A “Threatened Species” Under The ESA.**

Saguache County Commissioners recognize that federal courts will uphold an agency action unless that action is found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. §706(2)(A). We know also that this standard applies to court review of ESA listing decisions. See: *Am. Wildlands v. Kempthorne*, 530 F.3d 991, 997 (D.C.Cir. 2008). Under the arbitrary capricious standard, the reviewing court will determine whether the agency “considered the factors relevant to its decision and articulated a rational connection between the facts found and the choice made.” *Safari Club International, Et. Al. v. Kenneth Salazar*, F.3d , 2013 WL 765059 (C.A.D.C.) But, we know, a court will not uphold a Listing Rule unless the Listing Rule is a product of “reasoned decision making.” Our comments are intended to demonstrate to FWS that, because of mistakes in the FWS’s reasoning and because of data and studies that the FWS overlooked, and because of mistakes in the FWS’s findings, the Listing Rules do not meet the standard of reasoned decision making and that an extensive and open-minded review of the interpretation of the data and studies by the Service is not only indicated, but dictated by the requirements of the ESA and tenets of fundamental fairness for all the citizens that will be affected by the proposed rules.

It is important that the FWS be aware that the Saguache County Commissioners explicitly state that it is their intent that the Gunnison Sage-grouse continue to be healthy, robust, stable and likely to persist in the long term. To that end, the Saguache County Commissioners are suggesting throughout this comment letter that a listing under the ESA is the wrong approach for a myriad of reasons including data science, the law, and good public policy. The efforts that are currently underway to protect and enhance the Sage-Grouse population will be a far more effective and non-intrusive means of accomplishing the stated purpose of the FWS. Additional actions, such as seasonal road closures have recently been implemented towards accomplishing those goals.

To facilitate communication during the comment period, please direct correspondence to:

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I. The Proposed Rules Fail To Recognize That The Population Of Gunnison Sage-grouse Is Stable and Growing, Healthy And Likely To Persist In The Long Term.

A. The term “endangered species” “means any species which is in danger of extinction throughout all or a significant portion of its range...” 16 U.S.C. §1531(b). The term “threatened species” “means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” Id. §1532(20). The FWS has failed to establish that the Gunnison Sage-grouse meets either definition.

II. The Proposed Listing Rule fails to recognize that the Gunnison Basin Population of Gunnison Sage-grouse, including the satellite populations, is likely to persist in the long term.

1. The Gunnison Sage-grouse Rangewide Conservation Plan, April 2005, (“Rangewide Conservation Plan”) was prepared by the United States Fish and Wildlife Service, United States Forest Service, United States Bureau of Land Management, United States National Park Service, Colorado Division of Parks and Wildlife (“CPW”), Natural Resources Conservation Service, Utah Division of Wildlife Resources, and North American Mediation Associates. CPW contracted a population viability analysis (“PVA”) for the Gunnison Sage-grouse that was an appendix to the GSRCP. (GSRCP, Appendix G).

“The purpose of the Gunnison Sage-grouse PVA was to assist the CPW on evaluating the relative risk of extinction for each population under the conditions at that time (i.e. the risk of extinction if nothing changed), to estimate relative extinction probabilities ... over time ...” 78 FR 2531.

2. FWS recognized that the PVA concluded that “... populations in excess of 500 birds had an extinction risk of less than 5 percent within the next 50 years.” 78 FR 2531. FWS also recognized: “The results suggested that the Gunnison Basin Population is likely to persist long term in the absence of threats acting on it.” 78 FR 2531.

3. A more careful review of the PVA reveals that with a population in excess of 3000 birds (which is the largest initial population considered) the risk of extinction within the next 50 years is less than .5 percent. (Rangewide Conservation Plan, Appendix G., pp. 19-23) This conclusion is illustrated on the table below. (GSRSC, Appendix G., p. G-19).

4. The Rangewide Conservation Plan identified the “Target, as Long Term Average” for the Gunnison Basin Population to be 3000. (Long term average defined as a 10 year average.) From 1997 to 2012 the Gunnison Basin Population exceeded the GSRCP population objectives in all years, except for 2003 and 2004 (p. 2516). The 1997 to 2012 average (15 years) is 3884. The 2002 to 2012 average (10 years) is 4147.

5. The Poncha Pass population of the Gunnison Sage Grouse has been somewhat hard to determine, but available data indicates that there has been no significant factors impacting the immediate future viability of the lek. Additionally, the ongoing cooperative efforts of the area communities are increasing the protection of both the population and its habitat.

II. FWS Has Failed To Establish That The Poncha Pass Population Is Facing Material Or Imminent Threats.

A. The factors that FWS must analyze as the basis for making a listing determination for the species under Section 4(a) of the Act (16 U.S.C. 1531 et seq.) are:

1. The present or threatened destruction, modification, or curtailment of its habitat or range;
2. Overutilization for commercial, recreational, scientific, or educational purposes;
3. Disease or predation;
4. The inadequacy of existing regulatory mechanisms; or
5. Other natural or manmade factors affecting its continued existence.

Saguache County contends that when viewing the specifics of FWS proposed rules and quoted “supporting research” none of the above specifically cited factors have recently, currently, or prospectively affected the viability of either the range-wide or Poncha Pass satellite population of the Gunnison Sage Grouse.

III. The Fish And Wildlife Service Has Failed To Analyze Accurately The Scope of Saguache County’s Legal Authority to Address the Threats To The Gunnison Sage-grouse And Its Habitat.

A. Mandatory Obligation of FWS.

50 CFR 424.11(f) states: “The secretary (of Interior) shall take into account, in making (list determinations), those efforts, if any, being made by ... any political subdivision of a State ... to protect such species, whether by ... protection of habitat, or other conservation practices, within any area under its jurisdiction...” (Emphasis added.)

The Endangered Species Act, at Sections 4(a)(1) and 4(b)(1)(A) and 50 CFR 424.11(f) requires the Fish and Wildlife Service to consider any local regulations, programs or other specific conservation measures that positively affect a species status (i.e. efforts that reduce or remove threats).

The FWS has not fulfilled this fundamental and significant mandate. The errors that FWS committed in identifying the statutory authority of Saguache County to address threats to the Gunnison Sage-grouse and its habitat demonstrate that FWS failed to consider the factors relevant to its decision and failed to articulate a rationale connection between the facts found and the choice made.

FWS has failed to analyze accurately the scope of Saguache County's legal authority to address threats to the Gunnison sage-grouse and its habitat. Because this failure by FWS severely impacts the analysis by FWS, Saguache County provides the correct information upon which FWS should rely to correct its analysis. The Statutory authority of Colorado Counties is clearly set forth in Gunnison County Comments and is re-emphasized below:

B. Statutory Authority of Saguache County, a Colorado Statutory County.

Colorado counties have a wide range of statutory authority to draw upon to address Gunnison Sage-grouse issues. These statutory authorities include:

1. Authority regarding land use.

a. C.R.S. 30-28-101 et seq. authorizes county planning and building codes, subdivision exemption plats, cluster development, the establishment of a county planning commission, development improvement agreements, master plans, zoning plans, and other land use planning and regulatory mechanisms, including subdivision and land use regulations.

Note: "(w)henever the regulations made under authority of (the County Planning code) ... impose ... higher standards than are required in or under other statute, the provisions of the regulations made under authority of (the County Planning Code) shall govern." C.R.S. 30 -28-123.

b. C.R.S. 30-28-106(3)(a)(1) identifies, among the myriad of subjects a county comprehensive or "master" plan is authorized to review, the following:

- i. Location, character, extent of roads and rights of way;
 - ii. Location of public places and facilities;
 - iii. Location and extent of public utilities and facilities;
 - iv. The general location and extent of an adequate and suitable supply of water;
 - v. Acceptance, widening, removal, extension, relocation of public rights of way;
 - vi. Methods of assuring access to appropriate conditions for solar, wind or other alternate energy sources;
 - vii. General character, location and extent of community centers, townsites, housing developments, whether public or private, the existing, proposed or projected location of residences;
 - viii. The general location and extent of forests, agricultural areas, and "open development areas, and purposes of conservation";
 - ix. A land classification and utilization program;
 - x. Projection of population growth;
 - xi. Location of areas containing endangered or threatened species; including coordination with the United States Fish and Wildlife Services. (see: C.R.S. 30-28-106(3)(a)(xi)(b)).
- c. C.R.S. 29-20-101 et seq. (the "Local Government Land Use Enabling Act of 1974") is founded on a legislative declaration that "... in order to provide for planned and orderly development within Colorado and a balancing of basic human needs of a changing population with legitimate environmental concerns, the policy of this state is to clarify and provide broad authority to local governments to plan for and regulate the use of land within their respective jurisdictions..."

The Local Government Land Use Enabling Act of 1974 authorizes a Colorado county to plan for and regulate the use of land, among other ways, by:

- i. “Protecting lands from activities which would cause immediate or foreseeable material danger to significant wildlife habitat and would endanger a wildlife species.” (C.R.S. 29-20-104(1)(b));
 - ii. “Regulating the location of activities and developments which may result in significant changes in population density.” (C.R.S. 29-20-104(1)(e));
 - iii. “Regulating the use of land on the basis of the impact thereon on the community or surrounding areas.” (C.R.S. 29-20-104(1)(g));
 - iv. “(P)lanning for and regulating the use of land so as to provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights.” (C.R.S. 29-20-104(1)(h)).
- d. C.R.S. 30-28-101 et seq. “empower(s) the county commissioners to plan and zone all or any part of the unincorporated territory within its jurisdiction to provide for its physical development.” *The Board of County Commissioners of Douglas County v. Homebuilders Association of Metropolitan Denver*, 929 P.2d 691, 699 (Colo. 1996).
- e. C.R.S. 35-72-101 et seq. which define the duties of the owner or occupier of any land in the state to prevent soil erosion, and the authority of a county to enforce compliance.
- f. C.R.S. 30-11-101(1)(k) authorizes a Colorado county “(t)o coordinate, pursuant to 43 U.S.C. sec. 1712, the “National Environmental Policy Act of 1969”, 42 U.S.C. sec. 4321 et seq., 40 U.S.C. sec. 3312, 16 U.S.C. sec. 530, 16 U.S.C. sec. 1604, and 40 CFR parts 1500 to 1508, with the United States secretary of the interior and the United States secretary of agriculture to develop land management plans that address hazardous fuel removal and other forest management practices, water development and conservation measures, watershed protection, the protection of air quality, public utilities protection, and private property protection on federal lands within such county’s jurisdiction.”
2. Authority regarding “areas and activities of state interest.”
- a. C.R.S. 24-65.1-101 et seq. (“1041”) which authorizes a county to designate and regulate certain areas of state interest including:
 - i. Mineral resource areas;
 - ii. Natural hazard areas;
 - iii. Areas containing or having a significant impact on, historical, natural or archaeological resources of statewide importance;
 - iv. Areas around key facilities in which development may have a material effect on the key facility or the surrounding community.
 - b. The 1041 authority also authorizes a county to designate and regulate certain activities of state interest including:
 - i. Site selection and construction of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems;
 - ii. Site selection and development of solid waste disposal sites;
 - iii. Site selection of airports;

- iv. Site selection of rapid or mass transit stations;
 - v. Site selection of arterial highways and collection highways;
 - vi. Site selection and construction of major facilities of a new public utility;
 - vii. Site selection and development of new communities;
 - viii. Efficient utilization of municipal and industrial water projects;
 - ix. Conduct of nuclear detonations;
 - x. The use of geothermal resources for the commercial production of electricity.
3. Authority regarding roads.
- a. C.R.S. 43-2-201 et seq. which define and authorize county regulation of county and certain other public roads.
 - b. C.R.S. 30-28-110(3)(a) requires that “(a)ll plans of streets or highways for public use, and all plans, plats, plots and replats of land laid out in subdivisions or building lots and the streets, highways, alleys, or other portions of the same intended to be dedicated to a public use or the use of purchasers or owners of lots fronting thereon or adjacent thereto, shall be submitted to the Board of County Commissioners for review and subsequent approval, conditional approval or disapproval. It is not lawful to record any such plan or plot in any public office unless the same bears thereon, by endorsement or otherwise, the approval of the Board of County Commissioners and after review by the appropriate planning commission.”
 - c. C.R.S. 42-4-106(1) authorizes Colorado counties to prohibit operations on roads under County jurisdiction for up to 90 days in any one calendar year for reasons including deterioration, rain, snow or climatic conditions.
 - d. C.R.S. 42-4-111(1)(v) authorizes Counties to adopt temporary or experimental regulations regarding roads to cover special conditions.
 - e. C.R.S. 30-15-401(1)(h) authorizes a Colorado county “to control and regulate the movement and parking of vehicles and motor vehicles on public property...”
4. Authority regarding landfill.
- a. C.R.S. 30-20-100.5 et seq. authorizes a Colorado county to participate with the State of Colorado in a statewide system of integrated solid waste management planning. Saguache County has utilized these statutes regarding the siting and conduct of the Saguache County Landfill.
5. Authority regarding public improvements.
- a. C.R.S. 30-20-304 et seq., through 401 et seq.; through 504 et seq.; and 601 et seq. authorize a Colorado county to acquire, construct or improve certain public improvements, including public water services, public sewer services, lands, buildings and improvements.
6. Authority regarding conservation easements.
- a. C.R.S. 38-30.5-101 et seq. which define and authorize conservation easements.

7. Authority regarding dogs.

a. C.R.S. § 30-15-101, Pet Animal Control and Licensing. The board of county commissioner of any county may adopt a resolution for the control and licensing of dogs and other pet animals which may include:

- i. Licensing that may impose reasonable conditions and fees. No registration permit or license shall be issued by any BOCC unless there is proof of rabies vaccination. Dogs below a specified age may be exempt from licensing and registration or vaccination requirements or both as long as the recommendations of the department of public health and environment are followed.
- ii. Require that dogs and other pet animals be under control at all times and define “control”, which may vary from time to time, place to place, and animal to animal, however this shall not apply to dogs working livestock, locating or retrieving wild game in season or assisting law enforcement officers or while being trained for these pursuits.
- iii. Establish a dog pound, or other animal holding facility and engage personnel to operate it and otherwise to enforce the county do control Resolution or any other Resolution concerning the control of pet animals.
- iv. Provide for the impoundment of animals which are vicious, not under control, or otherwise not in conformity with the Resolution(s).
- v. Establish terms and conditions for the release or other disposition of impounded animals.
- vi. Establish reasonable regulations and restriction for the control of dogs and other pet animals as the BOCC may deem necessary.

The county or municipality may enter into an IGA to provide control, licensing, impounding or disposition of dogs or other pet animals.

8. Authority regarding local government intergovernmental agreements.

a. C.R.S. 29-1-203 authorizes local governments to cooperate or contract with one another to provide any function, service or facility lawfully authorized.

9. Authority regarding local government intergovernmental agreements.

a. C.R.S. 29-20-105 authorizes local governments to cooperate or contract with “other units of government” for the purposes of planning or regulating the development of land “including but not limited to, the joint exercise of planning, zoning, subdivision, building and related regulations.”

C. County Authority Regarding “Plus-35’s”.

Saguache County asserts that it does have the authority to regulate activities on parcels greater than 35 acres through the building permit regulations and the Condition Use Requirements contained in the County’s Land Use Code. Saguache County has consistently reviewed activities on parcels that exceed 35 acres for effects on a wide variety of factors as set forth in its Land Use Code. The County also has the ability to exercise its legal authority to order the temporary suspension of activities that it deems to violate ordinances or policies of the County, to include the ability to seek the assistance of the District Court in enforcing such prohibitions.

IV. The Fish And Wildlife Service Has Failed To Analyze Accurately The Scope of Saguache County's Regulations, Planning Regimes and Intergovernmental Actions To Address Threats To The Gunnison Sage-Grouse And Its Habitat.

A. The Secretary of the Interior Is Required To Take Into Account Efforts Of Saguache County To Protect The Gunnison Sage-Grouse.

50 CFR 424.11(f) states: "The secretary (of Interior) shall take into account, in making (list determinations), those efforts, if any, being made by ... any political subdivision of a State ... to protect such species, whether by ... protection of habitat, or other conservation practices, within any area under its jurisdiction..."

The Endangered Species Act, at Sections 4(a)(1) and 4(b)(1)(A) and 50 CFR 424.11(f) require the Fish and Wildlife Service to consider any local regulations, programs or other specific conservation measures that positively affect a species status (i.e. efforts that reduce or remove threats).

The FWS has not fulfilled this fundamental and significant mandate. The omissions and errors of FWS in analyzing accurately the manner in which Saguache County has cast its regulatory authority to address threats to the Gunnison Sage-grouse and its habitat demonstrate that FWS failed to consider the factors relevant to its decision and failed to articulate a rational connection between the facts found and the choice made.

B. Saguache County Planning and Regulatory Regimes.

Saguache County Asserts: Saguache has adopted planning and regulatory regimes that further the conservation of wildlife, including the Gunnison Sage-grouse and Sage-grouse Habitat. The County requires a variety of land use activities to be reviewed and approved by the County Planning Commission.

1. Saguache County Land Use Code.

a. Saguache County first adopted a "Land Use Code" in 1978. Since 1978, Saguache County has had in effect, continuously, a comprehensive land use regulatory document. The most current version was revised in 2012. These regulations are revised whenever deemed necessary to provide enhanced protection to the citizens, environment, and wildlife of Saguache County.

b. The Saguache County Land Use Resolution is intended both as a comprehensive planning document and a regulatory tool. One of the comprehensive planning goals, articulated at Saguache County Land Use Code, Article 20. Purposes, Preserve Wildlife Habitat, states that a primary function of the document is: "To protect and preserve lands from land use activities and patterns of development that would cause significant net adverse effects to sensitive wildlife habitat and to discourage land uses that will impair or destroy such habitats, or their utilization by wildlife species, or that would endanger a wildlife species. It is the intent of this Resolution that private landowners do not lose reasonable use of their land or, when appropriate, receive fair compensation because of owning sensitive wildlife habitat."

The County contends that it is worth noting that amendments to the County Land Use Code are routinely forwarded to FWS for comment and expression of concerns, and FWS never responds to those requests for comments. This is especially relevant to FWS assertion that Gunnison County's regulations are not adequate, yet FWS does not provide input as to what constitutes "adequate" regulations.

2. Saguache County “State Wide Activities of Interest” Regulations.

Saguache County first adopted a “State Wide Activities of Interest Resolution” in 1990. Statutory authority for that document includes C.R.S. 24-65.1-101 et seq. (the “1041” statute). Saguache County uses its “1041” authority to regulate projects that are characterized by:

- i. Any one or a combination of the following:
 - a) Development within a mineral hazard area;
 - b) Development within a natural resource area;
 - c) Development within an area containing or having a significant impact upon historical, natural or archeological resources of statewide importance;
 - d) Areas around key facilities;
 - e) Site selection and construction of major new domestic and wastewater treatment systems;
 - f) Site selection and development of solid waste disposal sites;
 - g) Site selection of an airport;
 - h) Site selection of rapid or mass transit terminals;
 - i) Site selection of arterial highways;
 - j) Site selection and construction of a major facility of a public utility;
 - k) Site selection and development of a new community;
 - l) Efficient utilization of municipal and industrial water projects;
 - m) Nuclear detonations;
 - n) Development of a recreation development.

The “1041” Approval Process requires an intense and thorough review of numerous factors and restrictions prior to any project approval. This process included coordination with a multitude of Federal and State Agencies, including the FWS. When concerns from State and Federal agencies are received, these concerns are addressed as a condition of approval of the project. It is worth noting that this procedure normally requires at least one year, with several opportunities for the public, including the FWS, to have concerns heard and addressed.

Standards for approval include:

- a) Chapter 8, No Significant Degradation Of Terrestrial Animal Life And Habitat, which reads: “The Proposed Project shall not significantly degrade the terrestrial animal life and habitat. The determination of effects of the Proposed Project on terrestrial animal life and habitat may include but is not limited to the following considerations:
 1. Alterations in population size that threaten population viability, disrupt community dynamic, or affect ecosystem processes.
 2. Continued provision of historical access or agreed upon new access other than the historical access, for the Colorado Division of Wildlife to manage wildlife and to monitor wildlife activities.
 3. Changes to habitat and critical habitat, including calving grounds, mating grounds, nesting grounds, summer or winter range, migration routes, or any other habitat features necessary for the protection and propagation of any terrestrial animals.
 4. Changes to the terrestrial food webs.
 5. Compliance with the standards of Land Use Resolution Section 11-106: Protection of Wildlife Habitat Areas.
 6. Compliance with the terms of the 2005 Gunnison Sage Grouse Rangewide Conservation Plan.”

b) Chapter 8, NO SIGNIFICANT DEGRADATION OF TERRESTRIAL AND AQUATIC PLANTS. The Proposed Project shall not significantly degrade terrestrial and aquatic plants. The determination of effects of the Proposed Project on terrestrial and aquatic plants may include but is not limited to the following considerations:

1. Changes to the structure and function of vegetation, including species composition, diversity, biomass, and productivity.
2. Changes in advancement or succession of desirable and less desirable plant species, including noxious weeds.
3. Saguache County Regulations For Oil and Gas Operations.

The County's Oil and Gas regulation has provisions that the development of any such project shall not have a significant impact on wildlife or its habitat. Specific procedures for assessing any such impact are contained in the regulations. As with the County's other regulations governing activities that could have an impact on wildlife, input was sought from a variety of State and Federal Agencies, including FWS, prior to the adoption of these regulations. Any proposed amendments to these, as well as other land use regulations, are submitted to FWS for review and comment.

C. Gunnison Basin Sage-grouse Strategic Committee. As previously mentioned, Saguache County, both through the County Commissioners and Land Use Department, as well as private landowners, have been a full participants in this Committee which addresses not only the species population within the Gunnison Basin, and with the Poncha Pass Working Group, addresses the Poncha Pass population as well.

1. In 2005, Gunnison County created the Gunnison Basin Sage-Grouse Strategic Conservation Committee "to work with the Gunnison County Wildlife Conservation Coordinator to implement programs and measures which will aid in the preservation of the Gunnison Sage-Grouse."

The purposes of the Sage-grouse Strategic Committee are to work with the County's Wildlife Conservation Coordinator in implementing the following action measures:

- a. To work with the Wildlife Conservation Coordinator in an advisory capacity in developing a Strategic Plan for the recovery of Gunnison Sage-grouse.
- b. To implement programs and strategies which will aid in the preservation of the Gunnison Sage-grouse. This will involve coordination with the Sage-grouse Mitigation Committee, the Sage-grouse Working Group, the Bureau of Land Management, U.S. Forest Service, the Colorado Division of Wildlife, US Fish and Wildlife Service, National Park Service, Natural Resources Conservation Service, Range Wide Conservation Committee and private landowners.
- c. To assist in the review of the Gunnison County Land Use Resolution to advise as to what revisions need to be made to further protect Sage-grouse Habitat. Saguache County considers the Gunnison County Resolutions as part of the review process of its own Land Use Code.
- d. To work with the Wildlife Conservation Coordinator in assisting Gunnison County in negotiating multiple Certificate of Inclusions with the DOW's CCAA for all appropriate County property.
- e. To assist the Wildlife Conservation Coordinator in negotiating uniformity of requirements that are consistent and predictable among the various regulatory agencies.
- f. To assist the Wildlife Conservation Coordinator to ensure there is a coordinated review process of permits and projects which will occur on federal property.

g. To assist the Wildlife Conservation Coordinator in implementing a communications and education program which will provide accurate and current information regarding the potential listing of the Gunnison Sage-grouse under the Endangered Species Act.

Membership is comprised of thirteen regular members. Twelve members shall be appointed by the Gunnison County Board of County Commissioners and one member shall be appointed by the Saguache County Board of County Commissioners. Applicants to the Sage-grouse Strategic Committee will be drawn from: three at large of which one shall represent the public at-large, one shall represent the development community and one shall represent the recreation community; one appointed by the Gunnison County Board of County Commissioners to represent Gunnison County; one appointed by the Saguache County Board of County Commissioners to represent Saguache County; one nominated by High Country Citizens' Alliance; one nominated by the Bureau of Land Management; one nominated by the Gunnison County Stockgrowers; one nominated by the U.S. Fish and Wildlife Service; one nominated by the Division of Wildlife; one nominated by Natural Resources Conservation Service; one nominated by the Forest Service; and one nominated by the National Park Service. The Wildlife Conservation Coordinator shall be an ex-officio non-voting member of the committee. The Gunnison County Board of County Commissioners shall appoint one alternate for each at-large position. The other nominating entities shall recommend one member and one alternate for a two-year term. The alternates may only vote on issues before the Sage-grouse Strategic Committee if the member is absent.

V. The Fish and Wildlife Service Has Failed To Analyze Accurately The Pace of Residential Development In Saguache County, especially the Poncha Pass Area

Saguache County asserts that The FWS has overestimated the population growth and projections for both Saguache County and more specifically the Poncha Pass area of the County. The data that has apparently been used in determining rangewide populations growth and residential development greatly overestimate the pace of the development, and Saguache County Commissioners specifically question the accuracy of the data applied to determinations concerning the Poncha Pass lek and its habitat.

Saguache County further asserts that the FWS did not contact any contact with either the County Assessor or Land Use Office in making its assertions concerning the development near the Poncha Pass lek nor for information relating to the perceived threats of proposed development in that area. Therefore, Saguache County questions the source of information on which the FWS has made assumptions both to development in Saguache County and more specifically the Poncha Pass area.

Saguache County Asserts that a review of the Land Use Office records and Assessor Office records reveal that in the unincorporated area of the County there has been a **total of 24 residential buildings and 15 accessory buildings approved since 2000. Of those approvals, 5 residences and 3 accessory permits** have been issued for the Poncha Pass area. All but one of these are greater than one mile or across a highway from the known location of the Lek.

VI. The Fish And Wildlife Service Has Significantly Overstated The Magnitude, Immediacy And Causes Of Other Alleged Threats To The Gunnison Basin Population.

A. The Aldridge Study, Upon Which FWS Relies To Establish Its Analysis, Is Significantly Flawed .

B. The Present or Threatened destruction, Modification, Or Curtailment Of Its Habitat Or Range.

1. Residential Development. As stated above the number of residential permits issued in the proposed habitat area in Saguache County is 24 since 2000. Permits in the Poncha Pass area have been 5 since 2000.
2. Impact of Roads: No new roads have been developed in the area in the Poncha Pass area since 2000.

i. The FWS as Page 2498;C2 of the Proposed rule for ESA Listing states:

“The expansion of road networks also contributes to exotic plant invasions via introduced road fill, vehicle transport, and road maintenance activities (Forman and Alexander 1998, p. 210; Forman 2000, p. 32; Gelbard and Belnap 2003, p. 426; Knick et al. 2003, p. 619; Connelly et al. 2004, p. 7-25).”

Saguache County Asserts: It joins in Gunnison’s contention this subjective statement by Ms. Borthwick is not supported by any data. Further, this “personal communication” appears not to have been made available in the rule-making Record; therefore Saguache and Gunnison County has no way to determine the context of the statement. Many power distribution lines in the Gunnison Basin have little or no disturbed area around or near them. Phillips (pers. Comm. 2011), based upon an extensive demographic study, stated that the only impact he perceived due to power distribution lines was the slight possibility of a direct mortality if a grouse actually hit a line while flying. The two transmission lines in the basin are far different in potential impact.

There have been no new power distribution lines installed in the Poncha Pass area since 2000.

iii. The FWS at Page 2500;C1 of the Proposed Rule for ESA Listing states:

“Based upon those unpublished data, Braun (1998, p.8) reported that the presence of powerlines may limit Gunnison and greater sage-grouse use within 1 km (0.6 mi) in otherwise suitable habitat.”

Saguache County Asserts: Unpublished data by Braun (1998. P8) was used as a basis for Braun stating that powerlines reduce sage-grouse security (Gunnison County is unsure as to what this means) and fragments habitat in linear strips up to 1km wide. The data collected by Braun was “pellet transects” which are notoriously inaccurate and really only give an indication of presence of grouse. Newer data collected by CPW likely refutes this very base statement by Braun. Saguache County believes that before the FWS attributes impacts to facilities and structures, such as powerlines, it is a requirement of the law that they use the best available scientific information. Braun’s unpublished data is not that information.

iv. The FWS at Page 2499;C3 of the Proposed Rule for ESA Listing states:

“Oregon, raptors and common ravens began nesting on the supporting poles (Steenhof et al. 1993, 275).

Saguache County Asserts: The FWS speculates that raptors nest on power poles in Gunnison Sage-grouse habitat. Saguache County is unaware of any documented raptor nests on power poles in the Poncha Pass area. FWS should provide information specific to the proposed habitat area and not attempt to “extrapolate” from studies that have no basis in local conditions or habitat characteristics.

3. Domestic Grazing And Wild Ungulate Herbivory.

i. The FWS at Page 2505;C2 of the Proposed Rule for ESA Listing states:

“We expect grazing to persist throughout the range of Gunnison Sage-grouse for at least several decades.”

ii. There is no established correlation between historical grazing and reduced Gunnison Sage-grouse numbers.

a) No research demonstrates that grazing itself is responsible for a reduction in Sage-grouse numbers (p. 2500, 3d column; but see p. 2516).

b) No established correlation between livestock densities and Grouse persistence (p. 2501, 3d column). Unproven impacts at the population level. (p. 2500, 3d column).

iii. The proposed Rule fails to recognize the current state of habitat health.

a) The 2010 and 2011 data indicate that most surveyed private, state and federal lands are within the structural habitat guidelines in the 2005 Rangewide Conservation Plan (p.2501- 2502, 2503). The FWS has failed to properly consider this grazing study, which is the best scientific information available on vegetation monitoring and demonstrates that the overall range is in good condition.

b) FWS concedes as “imprecise” sense of potential impacts from improperly managed grazing (p. 2505). The proposed Rule described trampling of soils and Sage-grouse nests by livestock (p. 2501, 2d column) and identifies elk and cattle as nest predators (p. 2520, 1st column), but fails to quantify how often this in fact happens. It also states that livestock may compete directly with Sage-grouse for rangeland resources (p. 2501, 1st column), but again fails to quantify the magnitude of any such impact. These conjectural and unquantified statements should be removed.

c) The FWS at Page 2504;C3 of the Proposed Rule for ESA Listing states:

“In 2009, all active allotments in occupied habitat had completed LHAs and all were meeting LHA objectives. Based on this information it appears that grazing is managed in a manner consistent with Gunnison sage-grouse conservation in the majority of the Poncha Pass population area.”

Saguache County appreciates FWS recognition of the public and private efforts in obtaining compliance with the LHA objectives in the Poncha Pass area and the limited, if any, impact that grazing has on the species habitat.

Saguache County does join in Gunnison County’s express concern that FWS references Laycock et al 1996 for livestock stocking rates within the range of the Gunnison Sage- grouse. This reference is 17 years out of date and likely does not reflect current stocking rates. Saguache County does not believe this data is applicable to the current rule-making.

v. The FWS at Page 2502;C3 of the Proposed Rule for ESA Listing states:

“Livestock grazing on private lands, where present, has a greater potential to impact Gunnison Sage-grouse because these areas are not required to meet agency-mandated land health standards, but we lack sufficient data to make an informed assessment of these areas.”

Saguache County Asserts: The County does not agree with this highly subjective statement, and takes umbrage to the implication that our agricultural producers are not aware of and actively involved in good management of Gunnison Sage-grouse habitats on their private lands. Private lands would not be sustainable over the many decades of use if proper management practices were not applied by the landowners.

vi. New research: The FWS at Page 2516;C2 of the Proposed Rule for ESA Listing states:

“Our review of conservation efforts indicates that the measures identified are not adequate to address the primary threat of habitat fragmentation at this time in a manner that effectively reduces or eliminates the factor contributing to this threat.”

Saguache County Asserts: FWS cite the example of the CCA providing “some protection” and the CCAA does not provide “sufficient coverage”. FWS fails to provide any information concerning what the Service would require for it to determine that “sufficient coverage” is provided. This is yet another example of the FWS not taking advantage of cooperative agreements to achieve the stated goals of the proposed rules.

The FWS has been at the Gunnison Basin Sage-grouse Strategic Committee table (members appointed by the BOCC) since 2006. They have participated in deliberations on two (stand-alone and integrated) versions of Gunnison County Sage-grouse-specific land use regulations. They have participated, through the Strategic Committee, in development of the draft CCA. They issued the CCAA permit to CPW. They participated in the development of the Gunnison Basin Sage-grouse Strategic Plan (Gunnison County BoCC, February 17, 2009) and the Gunnison County Sage-grouse Action Plan (Gunnison County BoCC, October 20, 2009). These planning documents provide guidance to Gunnison County on Gunnison Sage-grouse conservation priorities, goals and objectives. The FWS, at no time during the development of these regulations or plans by the Gunnison Basin Sage-grouse Strategic Committee, indicated that there were deficiencies in the regulations/plans and that they “were not adequate” to address identified threats to the Gunnison Sage-grouse.

vii. The FWS at Page 2535;C1 of the Proposed Rule for ESA Listing states:

“Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices.”

The recovery planning process described in the proposed rule does not include local governments.

viii. The FWS at Page 2534;C3 of the Proposed Rule for ESA Listing states:

“However, improper grazing combined with invasive plants, drought and recreational activities may result in substantial habitat loss, degradation and fragmentation across large portions of the species’ range.” (Emphasis added.)

Saguache County Asserts: They do not define what “proper” grazing is. This statement, especially when modified by the word “substantial” is unsupported by the literature and is purely subjective.

xiii. The FWS at Page 2501;C1 of the Proposed Rule for ESA Listing states:

“In particular, nest success in Gunnison sage-grouse habitat is related to greater grass and forb heights and shrub density (Young 1994, p. 38).”

Saguache County Asserts: The information cited by the FWS, Young 1994, p.38, is not supported by the more recent and complete information of Davis, 2012. Davis found that nest success did not have a strong connection to vegetation characteristics. Young did not assess temporal factors. Davis did, and found a much better relationship to nest success. The datasets also differed significantly in size. The Young study was very limited in size (30 females banded, 37 nests located over the 3 year study). The Davis study had a much larger sample size (192 hens radio-collared, 197 nests located over the 5 year study).

ix. The FWS at Page 2501;C1 of the Proposed Rule for ESA Listing states:

“The reduction of grass heights due to livestock grazing in sage-grouse nesting and brood-rearing areas has been shown to negatively affect nesting success when cover is reduced below the 18 cm (7 in.) needed for predator avoidance (Gregg et. al. 1994, p. 165).”

Saguache County Asserts: The information cited by the FWS regarding cover and predator avoidance by nesting hens (Gregg et al. 1994, p. 165) has even less relevance to Gunnison Sage-grouse nest success than Young, 1994. The Gregg study was accomplished in Oregon on Greater sage-grouse. At most, Gregg states that “land management practices that decrease tall grass and medium height shrub cover at potential nest sites may be detrimental to sage grouse populations because of increased nest predation. Certainly, we do not deny that adequate cover height is important to nesting sage-grouse hens, but applying information from greater sage-grouse in Oregon, when better information exists, is inappropriate in this rule-making.

x. The FWS at Page 2504; C3 of the Proposed Rule for ESA Listing states:

“In 2009, all active allotments in occupied habitat had completed LHAs and all were meeting LHA objectives.”

Saguache County Asserts: In other populations (cited at here was the Poncha Pass Population), BLM does not provide detailed data on Land Health Assessments, and in no submittals references sage-grouse specific habitat data. In spite of the limited information from BLM on LHA’s and no information on sage-grouse habitat, FWS accepts the submittals and states that “grazing is managed in a manner consistent with Gunnison Sage-grouse conservation in the majority of the Poncha Pass population area”. In other cases, because BLM either did not submit, or did not have LHA data, FWS could not assess the impact of public land grazing on sage-grouse habitat. In the Gunnison Basin, where extensive LHA information was submitted by BLM, and sage-grouse specific habitat data was submitted by CPW, FWS states: “All of this information indicates that grazing management has likely resulted in degraded habitat conditions for Gunnison Sage-grouse in portions of the Gunnison Basin.”

b. Gunnison County Conclusion.

i. The FWS at Page 2495;C3 of the Proposed Rule for ESA Listing states:

“Because of the loss and fragmentation of habitat within its range, no expansive, contiguous areas that could be considered strongholds (areas of occupied range where the risk of extirpation appears low) are evident for Gunnison sage-grouse (Wisdom et al., 2011, p. 469).”

The Wisdom et al. 2011 publication was a “macro-scale” assessment of sagebrush patch size that identified only two “strongholds” of sage-grouse habitat remaining in the western United States. That analysis relied exclusively on assessment of sagebrush patch size and ignored completely the other habitat needs of sage-grouse. At the scale of assessment used, it is unlikely that the Gunnison Basin, prior to human habitation, would have met Wisdom’s definition of a “stronghold”. Wisdom et al. 2011 ignores the stable to increasing condition of the Gunnison Basin Population of Gunnison Sage-grouse. In fact, his assessment, because he ignores the other habitat requirements of the grouse, can be argued to assess a factor, which by itself, may lead to population declines of Gunnison or Greater Sage-grouse.

4. Fences.

a. Review of Data.

i. The FWS at Page 2506;C1 of the Proposed Rule for ESA Listing states:

“For these reasons, fences may be another factor contributing to the decline of Gunnison Sage-grouse, both directly and indirectly.”

Saguache County Asserts: FWS provides no data that fences have had an actual impact on the rangewide population of the Gunnison Sage-Grouse.

ii. The FWS at Page 2529;C1 of the Proposed Rule for ESA Listing states:

“Similarly, since fee title properties held by conservation agencies or organizations cover only about 2 percent of rangewide occupied habitat, and protections vary widely depending on the owner or organization goals, they do not provide adequate certainty against loss and fragmentation of Gunnison sage-grouse habitat.”

Saguache County Asserts: Rebut statement that CE “...protections vary widely...” They do not. All CE’s provide a significant level of protection again habitat fragmentation and loss. Also need to note that NRCS has emphasized GUSG easements (\$9 million) for 2013. If possible, provide HPT scores (averages or % of high priority habitat) for existing easements in the Gunnison Basin (Pelletier).

iii. The FWS at Page 2508;C1 of the Proposed Rule for ESA Listing states:

“The fires created large sagebrush-free areas that were further degraded by poor post-burn livestock management (BLM 2005a, p. 13).”

Saguache County Asserts: The BLM reported (2005a, p.13) that two large, prescribed burns were considered negative to sage-grouse because of their large sizes, and were subsequent grazing was not managed appropriately. These burns were accomplished long before sage-grouse habitat guidelines were developed. The BLM also did not apparently collect any specific data on habitat conditions on the burns after guidelines were developed. The FWS then took this subjective information from BLM and

inappropriately concluded, without substantiation, that “...these areas are no longer suitable as Gunnison sage-grouse habitat.” Unsubstantiated statements such as this are throughout the proposed rule and bring into substantial question the ability of the FWS to objectively accomplish this rule making.

5. Scientific Research.

FWS states: “Gunnison sage-grouse have been the subject of scientific studies, some of which included the capture and handling of the species... (regarding one series of research) (b)etween zero and seven percent mortality of handled adults or juveniles and chicks has occurred... Over a 5 year period (2000 – 2002 and 2006-2007), 68 sage grouse were translocated from the Gunnison Basin to the Poncha Pass and San Miguel populations ... However, the translocated grouse experienced 40-50 percent mortality within the first year after release, which is double the average mortality of nontranslocated sage-grouse.” (Emphasis added.) 78 FR 2517-2518.

“(T)he CPW decided to try captive rearing of Gunnison Sage-grouse. Of 40 Gunnison Sage-grouse eggs taken from the wild, only 11 chicks (about 25 percent) survived ... In 2010, 27 captive reared-chicks were introduced to wild Gunnison Sage-grouse broods. Apparent survival of all introduced chicks was 29% ... In 2011, the same study introduced 51 captive-reared chicks to wild Gunnison Sage-grouse broods. In that case, none of the chicks survived.” 78 FR 2518.

b. Review of science.

Having acknowledged the death of at least 130 Gunnison Sage-grouse in scientific experiments (the highest documented number of deaths from any “risk” FWS considered in the Rule) (and a number of birds greater than the entire satellite population) FWS makes the remarkable statement that “short-term disturbance effects to individuals occur as does injury and mortality, but we do not believe these effects cause a threat to the Gunnison Sage-grouse population as a whole. Based on the best available information, scientific research on Gunnison Sage- grouse has a relatively minor impact that does not rise to the level of a threat to the species.” 78 FR 2519.

VII. The Fish And Wildlife Service Has Failed To Capitalize On The Extraordinary Efforts Of The Gunnison Basin Community, including the Participation of Saguache County.

A. Gunnison Basin Strategic Committee.

As noted by Corrine Knapp, “Social Context of the Decision to List the Gunnison Sage-grouse as Endangered under the Endangered Species Act (ESA)” (2003): “Almost twenty years ago, a diverse group of Gunnison Basin community members including long-term residents, biologists, and agency employees voluntarily came together to work for the conservation of a species in decline. Community-based conservation efforts, such as this one, have been lauded for their ability to build understanding about resources, make wise decisions, build local capacity, and get projects done on the ground (Wondolleck and Yaffee 2000). The Gunnison Sage-grouse efforts were first organized under the Gunnison Basin Local Working Group, founded in 1994, and later incorporated into the Gunnison Basin Sage-grouse Strategic Committee (GBSC), created in 2005, by the Gunnison County Board of County Commissioners, to implement programs and steps that would aid in the preservation of the Gunnison Sage-grouse. They have created both local and regional conservation plans (Gunnison County Sage-grouse Local Working Group 1997, Gunnison Sage-grouse Rangewide Steering Committee 2005), invested over \$30 million in direct conservation actions (J. Cochran, Gunnison County Wildlife Conservation Coordinator, personal communication) and passed county-level land use regulations.”

B. Conservation Candidate Agreements With Assurances.

1. The Proposed Listing Rule improperly discounts the protections afforded by lands already enrolled and pending enrollment in the Candidate Conservation Agreement With Assurances (“CCAA”) between the Fish and Wildlife Service and the Colorado Parks and Wildlife (“CPW”).

2. The FWS at Page 2514;C3 of the Proposed Rule for ESA Listing states: “Because the Service issues a permit to applicants with an approved CCAA, we have some regulatory oversight over the implementation of the CCAA.” (Emphasis added.)

Saguache County Asserts: In fact, the FWS issues the permit under the authority of Section 10(a)(1)(A) of the Endangered Species Act. They have final approval of all CI’s negotiated between landowners and CPW. The FWS may suspend or revoke the permit under 50 CFR 13.28(a) and/or 50 CFR 17.22/32(d)(7). This is far more than “...some regulatory oversight...” and is an overt attempt to minimize the value of the CCAA to the conservation of the Gunnison Sage-grouse by the FWS.

3. The FWS at Page 2514;C3 of the Proposed Rule for ESA Listing states: “However, permit holders and landowners can voluntarily opt out of the CCAA at any time.”

Saguache County Asserts: The FWS references the “opt out” option for landowners participating in the CCAA as a weakness of the program. The CCAA is a creation of the FWS. To then indicate that the contracts, that the FWS created and finally approves, have this weakness, is an arbitrary and capricious attempt to minimize the value of the CCAA to the Gunnison Sage-grouse.

4. The FWS at Page 2514;C3 of the Proposed Rule for ESA Listing states:

“Even assuming the acreage of all landowners who have not yet complete CIs but have expressed interest in pursuing CIS through the completion of baseline habitat reports will ultimately be covered under CIS, these properties constitute only 8.5 percent of the total private land throughout the species range.”

Saguache County Asserts: The FWS states that CCAA/CI properties are only 8.5% of the total private land throughout the species range. They do not indicate whether this calculation was based upon mapped occupied habitat, or upon proposed critical habitat. Further, they make no reference to the acreage goals, by GUSG population, that are part of the CCAA agreement, nor do they indicate why those goals were established. The CCAA agreement contains extensive discussion of why these goals were established, and this should be a significant part of the FWS’ consideration of the need to list the species.

5. The FWS at Page 2514;C3 of the Proposed Rule for ESA Listing states:

“Therefore, the CCAA/CI provides some protection for Gunnison Sage-grouse, but does not cover a sufficient portion of the species’ range to adequately protect Gunnison Sage-grouse from the threat of habitat loss and fragmentation and ensure the species long-term conservation.”

Saguache County Asserts: This conflicts with the stated purpose of the CCA: “The Conservation goal of this Agreement is to achieve the protection and management necessary to preclude listing (emphasis by Jim) by obtaining agreement for grouse habitat protection and/or enhancements on private lands.”

6. Development Of Candidate Conservation Agreement (“CCA”).

Beginning in January 2010, federal land management agencies and the Gunnison Basin Sage-Grouse Strategic Committee developed a draft Candidate Conservation Agreement (CCA) to promote conservation of the Gunnison Basin Population of Gunnison sage-grouse. The CCA addresses three categories of threats to sage-grouse habitat on federal public lands in the Gunnison Basin, as identified in the 2010 FWS status review: development, recreation, and grazing. The CCA would apply to such actions on the approximately 395,000 federal acres of occupied habitat, or roughly two-thirds of the total 590,000 acres of occupied Gunnison sage-grouse habitat in the Basin. As noted in the USFWS 2010 status review, the Gunnison Basin Population constitutes 87% of the overall population of Gunnison sage-grouse.

The CCA has not yet been approved.

Federal signatories will seek a conference opinion from the U.S. Fish and Wildlife Service (USFWS) in accordance with section 7 of the Endangered Species Act (ESA) regarding the CCA and its covered actions, and this process is expected to be completed by mid – 2013. With the conference opinion, so long as the federal agencies design and manage these specified activities to meet the conservation criteria outlined in the CCA, the federal agencies will have met their ESA conference requirements for those activities. If the Gunnison sage-grouse is subsequently listed under the ESA, the federal signatories will request that the USFWS confirm the conference opinion as the biological opinion, such that the federal agencies will have been their ESA consultation requirements for those covered activities.

Because the nonfederal signatories, including Gunnison County, manage activities and uses on and through federal lands, such as road maintenance and big game, they too serve a role in implementing the CCA. Fortunately, the Gunnison Basin has a long history of government- to-government cooperation to conserve the species and habitat. Nonfederal actions or actions without a federal nexus are not intended to be included in the conference opinion, however.

Although the CCA delineates overarching habitat conservation objectives on federal lands, conservation measures in the CCA are not intended to address all threats to the species and habitat. Rather, the CCA and associated conference opinion covers a wide range of activities on federal lands including development, recreation, and grazing.

Neither the CCA nor the conference opinion is a land-use plan, nor is it intended to supersede federal or nonfederal land use planning authority. Section 7 coverage does not absolve federal agencies of NEPA obligations, nor does it absolve nonfederal permittees of compliance with permit terms and conditions. For federal agencies, the CCA is a tool to screen activities on federal lands for coverage under the streamlined, programmatic conference opinion. For nonfederal signatories, this document is intended to be a statement by the federal agencies that, so long as the nonfederal signatories implement the identified conservation measures for specified actions, then no further consultation is necessary, and such covered actions are “screened out” of any further consultation requirements. For nonfederal nonsignatories who obtain permits and authorizations for activities on federal lands, including such broad stakeholder groups as right-of way/easement permit holders, recreationists, and Stockgrowers, so

long as the federal agency administering such permits implements the identified, associated conservation measures, then no further consultation on the permit is necessary.

The Strategic Committee is the Gunnison and Saguache County- appointed local working group comprised of agency officials, elected officials, commercial stakeholders, conservation organizations and members of the public. The CCA effort was facilitated by the Bureau of Land Management (BLM), coordinated with the USFWS, and included approximately 35 individuals representing federal and state agencies, two counties, and stakeholder groups.

It is intended that signatories be:

- USDA Forest Service: Gunnison Ranger District of the Grand Mesa, Uncompahgre and Gunnison National Forest
- USDI National Park Service: Black Canyon of the Gunnison National Park and Curecanti National Recreation Area
- USDI Bureau of Land Management: Gunnison Field Office
- USDI Fish & Wildlife Service: Western Colorado Field Office
- USDA Natural Resources Conservation Service, Colorado
- State of Colorado – Department of Natural Resources, Colorado Parks & Wildlife: Gunnison Service Center.
- Board of County Commissioners of Gunnison County
- Board of County Commissioners of Saguache County

7. The FWS at Page 2514;C3 of the Proposed Rule for ESA Listing states:

“Because the Service issues a permit to applicants with an approved CCAA, we have some regulatory oversight over the implementation of the CCAA.” (Emphasis added.)

Saguache County Asserts. In fact, the FWS issues the permit under the authority of Section 10(a)(1)(A) of the Endangered Species Act. They have final approval of all CIs negotiated between landowners and CPW. The FWS may suspend or revoke the permit under 50 CFR 13.28(a) and/or 50 CFR 17.22/32(d)(7). This is far more than “...some regulatory oversight...” and is an overt attempt to minimize the value of the CCAA to the conservation of the Gunnison Sage-grouse by the FWS.

8. The FWS at Page 2514;C3 of the Proposed Rule for ESA Listing states: “However, permit holders and landowners can voluntarily opt out of the CCAA at any time.”

Saguache County Asserts: The FWS references the “opt out” option for landowners participating in the CCAA as a weakness of the program. The CCAA is a creation of the FWS. To then indicate that the contracts, that the FWS created and finally approves, have this weakness, is an arbitrary and capricious attempt to minimize the value of the CCAA to the Gunnison Sage-grouse.

9. The FWS at Page 2514;C3 of the Proposed Rule for ESA Listing states: “Even assuming the acreage of all landowners who have not yet complete CIs but have expressed interest in pursuing CIs through the completion of baseline habitat reports will ultimately be covered under CIs, these properties constitute only 8.5 percent of the total private land through the species range.”

Saguache County Asserts: The FWS states that CCAA/CI properties are only 8.5% of the total private land throughout the species range. They do not indicate whether this calculation was based upon mapped occupied habitat, or upon proposed critical habitat. Further, they make no reference to the acreage goals, by GUSG population, that are part of the CCAA agreement, nor do they indicate why those goals were established. The CCAA agreement contains extensive discussion of why these goals were established, and this should be a significant part of the FWS' consideration of the need to list the species.

10. The FWS at Page 2514; C3 of the Proposed Rule for ESA Listing states: "Therefore, the CCAA/CI provides some protection for Gunnison Sage-grouse, but does not cover a sufficient portion of the species' range to adequately protect Gunnison Sage-grouse from the threat of habitat loss and fragmentation and ensure the species long-term conservation."

Saguache County Asserts: This conflicts with the stated purpose of the CCA: "The Conservation goal of this Agreement is to achieve the protection and management necessary to preclude listing by obtaining agreement for grouse habitat protection and/or enhancements on private lands."

11. The FWS at Page 2516; C3 of the Proposed Rule for ESA Listing states: "our review of conservation efforts indicates that the measures identified are not adequate to address the primary threat of habitat fragmentation at this time in a manner that effectively reduces or eliminates the factors contributing to this threat."

Saguache County Assets: Reference is to inadequacy of conservation efforts in summary of their evaluation of listing Factor A. Minimizes CCA (not enough of the range) and the CCAA (limited protection). The only threat reduction referenced is "pinion-juniper invasion". Should note that the CPW conservation action database is incomplete and has not been maintained (to my knowledge) since 2010. That database does not include land use reviews/actions. It is actually a limited, project based database.

12. The FWS at Page 2528; C3 of the Proposed Rule for ESA Listing:

"As of 2012, approximately 29,058 ha (71,084 ac) or 21 percent, of private lands in occupied Gunnison sage-grouse habitat in Colorado have been placed in conservation easements or acquired in fee title for conservation purposes (CPW 2011c, p. 11; CPW 2012b, p.6; Cochran 2012 pers. comm.). This constitutes approximately 7.6 percent of rangewide occupied habitat (379,464 ha (93,676 ac)). Approximately 7,982 ha (19,725 ac), or 2 percent, of rangewide occupied habitat are under fee title ownership by conservation agencies or organizations noted above (Table 3)."

Saguache County Asserts: Provide correct (from Pelletier) conservation easement information. Emphasize that all CE's protect against habitat loss and fragmentation, even if they don't have specific GUSG conservation requirements (most do not).

13. The FWS at Page 2529;C1 of the Proposed Rule for ESA Listing states: "Similarly, since fee title properties held by conservation agencies or organizations cover only about 2 percent of rangewide occupied habitat, and protections vary widely depending on the owner or organization goals, they do not provide adequate certainty against loss and fragmentation of Gunnison sage-grouse."

Saguache County Asserts: Rebut statement that CE "...protections vary widely..." They do not. All CE's provide a significant level of protection again habitat fragmentation and loss. Also need to note that NRCS has emphasized GUSG easements (\$9 million) for 2013. If possible, provide HPT scores (averages or % of high priority habitat) for existing easements in the Gunnison Basin (Pelletier).

14. The FWS at Page 2531;C1 of the Proposed Rule for ESA Listing states: "The lack of large expanses of sagebrush habitat required by Gunnison sage-grouse in at least six of the seven Gunnison sage-grouse populations (as discussed in Factor A), combined with the results of the PVA and current population trends suggest that at least five, and most likely six, of the seven Gunnison sage-grouse populations are at high risk of extirpation due to small population size."

Saguache County Asserts: Discusses RCP PVA. Notes that PVA results suggest that Gunnison Basin Population is likely to persist long term in the absence of threats acting on it. Notes that six of the seven GUSG populations are at high risk of extirpation due to small population size. Need to argue that PVA is still valid and that in the Gunnison Basin, the "threats" have been adequately addressed, as evidenced by the health of the population.

15. The FWS at Page 2531;C2 of the Proposed Rule for ESA Listing states: "The only population currently providing individuals to be translocated is the Gunnison Basin Population, but because of substantial population declines such as those observed between the 2001 and 2004 lek counts (Stiver et al, 2008, p. 479), questions arise as to whether this population would be able to sustain the loss of individuals required by a long-term, sustained translocation program."

The rule states (in reference to the Gunnison Basin Population)" ... but because of substantial population declines such as those observed between the 2001 and 2004 lek counts (Stiver et al, 2008, p. 479)... The referenced study is specific to the San Miguel population of GUSG. There is no reference to lek counts from the Gunnison Basin.

16. The FWS at Page 2535; C1 of the Proposed Rule for ESA Listing states: "Based on an evaluation of biotic, abiotic, and anthropogenic factors, no strongholds are believed to exist for Gunnison sage-grouse (Wisdom et. al. 2011, entire).

Saguache County Asserts: The Wisdom paper (undated, but believe it was written in 2011) was a GIS modeling exercise. Simply, it looks for large, unbroken expanses of sagebrush. It attempts to compare them with "extirpated range". The inference is that without large (much larger than ever existed in the Gunnison Basin) unbroken expanses of sagebrush, the grouse will not survive in perpetuity. Wisdom provides studies or direct correlations, specific to Gunnison Sage-grouse, that this inference is correct. We should argue that the range of the GUSG in the Gunnison Basin supports a population that exceeds the estimated carrying capacity calculated in the RCP (10 year average of 3,039 birds) (RCP P. 270) and provides the necessary habitats to support that population and even allow it to increase.

17. The FWS at Page 2523;C3 of the Proposed Rule for ESA Listing states: "Furthermore, Saguache County, which contains approximately 21 percent of the Gunnison Basin Population area, has no Gunnison sage-grouse specific LUR."

Saguache County Asserts that it is actively pursuing the development of specific land use regulations directed to address the enhanced protection of the satellite population and species habitat located within the County. Saguache has concerns that the FWS' stated finding the Gunnison County's sage-

grouse specific land use regulations are inadequate and on minimally regulate negative impacts that will continue to fragment the habitat... and the FWS unwillingness to provide direction as to what will alleviate their concerns regarding the Saguache County regulations and make them acceptable to the FWS. This is again an example of the FWS unwillingness to provide guidance to local governments in their efforts to cooperate with the FWS in achieving the stated purposes of the proposed rules.

18. The FWS at Page 2497;C2 of the Proposed Rule for ESA Listing states: "Conservation easements, if properly managed, can minimize the overall impacts to Gunnison sage-grouse".

Saguache County Asserts: All conservation easements, by definition, address habitat loss and fragmentation, regardless of specific easement management requirements or strategies.

19. The FWS as Page 2515;C2 of the Proposed Rule for ESA Listing states: "Therefore, although the pending CCA may provide some protection to Gunnison sage-grouse, depending on the conservation measures implemented, it will not cover enough of the species' range to adequately protect Gunnison sage-grouse from the threat of habitat loss and fragmentation."

Saguache County Asserts: The FWS does not address the percent of the species covered by the CCA (in excess of 88%) within seasonal habitats on public lands in the Gunnison Basin. They also minimize the impact of having a CCA in place on approximately 78% of occupied habitat on public lands (Gunnison Basin) across the range of the grouse. 22% becomes more important to the survival of the grouse than 78%.

20. The FWS at Page 2515;C2 of the Proposed Rule for ESA Listing: "However, the effectiveness of the CCA will depend largely on the conservation measures proposed and their implementation."

Saguache County Asserts: The FWS minimizes the value of the Candidate Conservation Agreement (CCA) being developed for public lands by questioning the conservation measures proposed (which they should be well aware of as they have been participants at all stages of development of the CCA, both as a member of the Gunnison Sage-grouse Strategic Committee and directly working with BLM on the document. They also argue that the CCA will not affect approximately 22 percent of rangewide occupied habitat in the six satellite populations, though those populations comprise less than 12% of the species (CPW 2012).

21. The FWS at Page 2516;C2 of the Proposed Rule for ESA Listing states: "A review of a database compiled by the CPW that included local, State, and Federal ongoing and proposed Gunnison sage-grouse conservation actions (CDOW 2009c, entire) revealed a total of 224 individual conservation efforts."

Saguache County Asserts: The CPW conservation effort database is an incomplete information source. At best it is an agency project database that tracks habitat improvement projects and other similar measureable on-the-ground projects. It does not include land use reviews, road closures, permitting actions on owner-implemented projects on private lands (unless an agency was involved).

22. The FWS at Page 2498;C1 of the Proposed Rule for ESA Listing states: "Human populations are increasing throughout the range of Gunnison sage-grouse, and we expect this trend to continue."

WE NEED TO INSERT CENSUS DATA FOR SAGUACHE

VIII. The FWS Made No Real Analysis Of Whether The Gunnison Sage- grouse Is Endangered Or Threatened In The Gunnison Basin As A “Significant Portion Of The Range.”

The FWS at Page 2535; C3 of the Proposed Rule for ESA Listing makes its only statement regarding its analysis of whether the Gunnison Sage-grouse is endangered or threatened in a “significant portion of the range”; in full, the FWS statement is:

“We also examined the Gunnison sage-grouse to analyze if any significant portion of its range may warrant a different status. However, because of its limited and curtailed range; and uniformity of the threats throughout its entire range, we find there are no significant portions of any of the species’ range that may warrant a different determination of status.”

Saguache County joins in Gunnison County’s assortment that The FWS failed to make or state its analysis of one of the most important components of a listing decision; that is, how, on what data, by what policy, and by whom, the issue of “significant portion of the range” was analyzed.

The Endangered Species Act provides for the classification (i.e. the listing) and protection of “endangered species” and “threatened species”. Where language in the Act is ambiguous and open to interpretation, the Secretaries of the Interior and Commerce (the “Secretaries”) have the discretion to provide a reasonable interpretation of that language. One such ambiguity is the meaning of the phrase “significant portion of this range” (“SPR”) found in the Act’s definitions of “endangered species” and “threatened species”.

Despite the fact that the definitions of “endangered species” and “threatened species” have been part of the Act since its enactment in 1973, prior to 2007 neither the Fish and wildlife service nor the national Marine Fisheries Service (collectively the “Services”) had adopted a regulation or binding policy defining or explaining the application of the phrase “significant portion of its ranges”, an element common to both definitions. Specifically, for the purposes of Gunnison County’s comments, the Services have never addressed in their regulations precisely what qualifies a portion of the range as “significant”.

To address this, the Solicitor of the Department of the Interior issued a legal opinion in 2007 addressing several issues including the meaning of the “SPR” phrase. (the “M-Opinion”). The M-Opinion’s conclusion regarding the interpretation of the SPR phrase was rejected by subsequent court rulings 1and the M-Opinion was withdrawn on May 4, 2011. Following withdrawal of the M-Opinion, neither agency had a policy providing a uniform interpretation of the phrase “significant portion of its range”.

On December 9, 2011, the Services published a “Draft Policy on Interpretation of the Phrase “significant Portion of its Range” in the Federal Register, Vol. 76, No. 237, December 9, 2011 (the “Draft SPR Policy”). The Draft SPR Policy summarizes the relevant court opinions and the scientific and policy tensions involved in interpreting the SPR language- The Draft SPR Policy purportedly addresses those opinions and tensions and attempts to offer an interpretation of SPR that reflects a permissible reading of the Act. Because of the deference given such policy statements by the Courts under the Chevron doctrine, in the absence of unambiguous terms requiring an opposite determination, the Draft SPR policy provides relevant guidance both on what FWS policy is proposed to be and on what is a reasonable interpretation of SPR. It is important to note that the Services have stated: “It is our intent to publish a final policy that will provide a uniform standard for interpretation of the SPR language and its role in listing determinations.

However, before it can become final the policy must go through public notice- and- comment procedures... In the meantime, the Services have an obligation to make numerous determinations in response to petitions to list...During this interim period, we will not apply this policy as a binding interpretation of the SPR language... (but) will consider the interpretations and principles contained (in the Draft SPR Policy) as nonbinding listing determinations.” 76 Fed. Reg., No. 237, p. 77002, Dec. 9, 2011.

The “decision tree” identified in the Draft SPR Policy, when distilled into a schematic, is:

1 The decisions included *WildEarth Guardians v. Salazar*, 2010 U.S. Dis. LEXIS 105253 9 (D.Ariz.) Sept. 23, 2010 concerning FWS’s 2008 Finding on a petition to list the Gunnison’s prairie dog; and in which Gunnison County was an “amicus curiae”.

STEP ONE: DETERMINE IF THERE IS A BIOLOGICAL BASIS TO DETERMINE IF THE CONTRIBUTION OF A DISCRETE PORTION OF A SPECIES IS SIGNIFICANT TO THE VIABILITY OF THE SPECIES.

The Draft SPR Policy’s definition of “significant” emphasizes the biological importance of the analyzed portion of the conservation of the species as the measure for determining whether the portion is “significant”.

Factors identified in the Draft SPR Policy to be considered are:

- G. Redundancy (having multiple populations distributed across the landscape; abundance, spatial distribution) may be needed to provide a margin of safety for the species to withstand catastrophic events; and
- H. Resiliency (abundance, spatial distribution, productivity); describes the characteristics of a species that allow it to recover from periodic disturbance; and
- I. Representation (the range of variation found in a species; spatial distribution, diversity) ensures that the species adaptive capabilities are conserved.

(the “Schaffer Factors”).

Alternate Factors identified in the Draft SPR Policy are:

- 1. Abundance;
- 2. Spatial Distribution;
- 3. Productivity; and
- 4. Diversity of the Species (the “NMFS Factors”).

The Draft SPR Policy recognizes that the factors are not independent of each other, and some characteristic of a species or area may contribute to more than one factor.

- If “no” – that is, there is not a biological basis to establish that the contribution of the portion is not significant – that is the end of the inquiry.
- If “yes” – that is, there is a biological basis to establish that the contribution of the portion is significant - proceed to Step Two.

STEP TWO: ASK WHETHER – WITHOUT THAT PORTION-WOULD THE SPECIES BE SO IMPAIRED THAT THE SPECIES WOULD HAVE AN INCREASED VULNERABILITY TO THREATS TO THE POINT THAT THE OVERALL SPECIES WOULD BE IN DANGER OF EXTINCTION?

- If “no” - the portion is not significant – that is the end of the inquiry.
- If “yes” - the portion is significant then make a detailed analysis of the threats to the species in that portion to determine if the species is endangered or threatened in that portion.

STEP THREE: IS THE SPECIES ENDANGERED OR THREATENED IN THAT PORTION OF THE ENTIRE RANGE?

- If “no” – the species cannot be listed in the portion or throughout the range based on this portion.
- If “yes” – the species could be listed throughout the range based on this portion.

A. The Gunnison Basin Population; Step One. The Gunnison Basin Population Meets The Biological Basis To Establish The Schaffer Factors.

1. The Gunnison Basin Population provides redundancy.

The Gunnison Basin Population is composed of a number of subpopulations. The Gunnison Basin Working Group identified 15 “priority regions” (GBWG 2006) which they believed had a combination of natural and management boundaries and data-based similarities and differences. Colorado Parks and Wildlife (CPW) identifies five “zones” for the purposes of annual coordinated lek counts (CPW 2012). CPW researches identified six areas of the basin important for breeding Gunnison Sage-grouse (Ver Steeg 2012). The latter did not include an additional region on the west side of the basin, because the National Park Service was conducting a similar radio collar project in that region (Phillips, 2010 personal communication).

Based upon this information there is important evidence that the Gunnison Basin Population has at least five and likely more subpopulations that are distributed across the Gunnison Basin landscape, providing a significant margin of safety for the species to withstand catastrophic events.

2. The Gunnison Basin Population provides resiliency.

The Gunnison Basin Population, composed of at least five or more subpopulations (one – preceding) provides significant resilience in the face of periodic disturbances. The populations are distributed across a high mountain basin that has considerable geographic, climatic and terrain variation. Evidence of the resiliency this provides was provided in 2008 when much of the basin was covered in deep snow. The west side of the basin, with steeper more rugged terrain had areas blown free of snow by prevailing west wind, providing food for many species of wildlife, including sage-grouse, during the highest snow-fall year in recorded history. Other areas of the basin had similar terrain features, across subpopulations that provided adequate food and shelter that winter, as evidenced by the modest decline in population estimate (3,669 birds) in 2008 (CPW 2008). This estimate is likely low as deep snow prevented lek counter access to a number of leks in the basin (Seward personal communication 2008).

3. The Gunnison Basin Population provides representation.

The Gunnison Sage-grouse subpopulations of the Gunnison Basin, though filial to their natal areas, have been shown to move considerable distance to other subpopulations in the Basin (Phillips 2010, personal communication.) This demonstrates that the Gunnison Basin subpopulations communicate genetically across considerable distances in the basin, providing genetic variation and diversity within the overall

population, ensuring that the adaptive capabilities of the Gunnison Basin Population of Gunnison Sage-grouse are conserved.

The Gunnison Basin Population also meets the biological basis to establish the NMFS Factors:

1. The Gunnison Basin Population provides abundance.

The Gunnison Basin Population is currently estimated at 4,082 birds. This exceeds the Gunnison Sage-grouse Rangewide Conservation Plan (CPW 2005) population objective for the Gunnison Basin by over 1,000 birds. It is 88.3% of the total 2012 estimate of Gunnison Sage-grouse rangewide. The Gunnison Basin Population provides abundance exceeding all population goals established for the species.

2. The Gunnison Basin Population provides spatial distribution.

The Gunnison Basin Population provides significant spatial distribution. At least five populations (see discussion at A.1. and A.2) are spread across occupied habitat of at least 593,000 acres (GBRCP 2005).

3. The Gunnison Basin Population provides productivity.

In the Gunnison Basin the CPW monitors 82 leks, of which 44 were classified as active within 26 lek areas (lek complexes). One historic lek was re-classified as active, indicating that grouse are expanding into areas previously vacated. The Gunnison Basin Population is productive across the entire basin, with active leks in all subpopulations.

4. The Gunnison Basin Population provides diversity of the species.

The Gunnison Basin Population is composed of at least 5 subpopulations, and possibly as many as 15. Genetic analysis of the subpopulations began in 2012 and will continue in 2013 (Oyler-McCance 2013). The basin is diverse in habitat types and the significant number of subpopulations provides evidence of diversity of the species in the Gunnison Basin Population.

Answer: Yes. The Gunnison Basin Population is stable and growing, healthy and likely to persist in the long term. (See: Section I above).

B. The Gunnison Basin Population; Step Two. Without The Gunnison Basin Population The Species Would Be So Impaired That The Species Would Have An Overall Vulnerability To Threats?

Answer: Yes. The Gunnison Basin Population is 87% of the species rangewide. (See: Section I above).

C. The Gunnison Basin Population; Step Three. Is the species endangered or threatened in the Gunnison Basin Population portion of the entire range?

Answer: No. There are no current credible threats to the Gunnison Basin Population that would support a conclusion that the Gunnison Basin Population is endangered or threatened. (See: Sections I through IX above). A review of the PVA reveals that with a population in excess of 3,000 birds (current Gunnison Basin Population is 4,082 the risk of extinction within the next 50 years is less than .5 percent.)

1. The Gunnison Basin Population is stable and growing, healthy and likely to persist in the long term; and
2. The threats to the Gunnison Basin Population – is analyzed accurately, completely and neutrally – based on correct statements of fact, law and the best scientific and commercial data currently available – is not facing threats so that the Gunnison Sage-grouse is threatened or endangered in the Gunnison Basin.

D. Satellite Populations; Step One. Do The Satellite Populations – Individually Or Collectively – Meet The Biological Basis To Establish The Schaffer Factors:

1. Redundancy: No. The exception to this may be the San Miguel population which is composed of at least six subpopulations (RWCP 2005). That said, a number of these subpopulations are at extremely low numbers, so they likely provide little or no redundancy.
2. Resiliency: No. The FWS at Page 2531, C2, of the Proposed Listing Rule, states: “Six of the seven Gunnison Sage-grouse populations may have effective sizes low enough to induce inbreeding depression...” All of the satellite populations are at such low numbers that they would appear to have little or no resiliency in the face of periodic disturbance.
3. Representation: No. The satellite populations are extremely small and genetically at risk. It is likely that inbreeding depression has occurred and will continue to occur. Transplants from the Gunnison Basin Population have probably diluted the adaptive gene pool in these populations, therefore there is no adaptive capability to any of the satellite populations that ensures that the species’ adaptive capabilities are conserved.

Do the satellite populations – individually or collectively – meet the biological basis to establish the NMFS Factors:

1. Abundance: No. All Gunnison Sage-grouse satellite populations are extremely small, with less than 12% of the total species number occurring in the six populations combined.
2. Spatial Distribution: No. Though, in aggregate, the six satellite populations are distributed across a diverse area, individually, no populations occupies a diverse range.
3. Productivity: No. This is an aquatic species term. The satellite populations of Gunnison Sage-grouse are so small, productivity is not a consideration.
4. Diversity of the species: No. The small population sizes, inbreeding, genetic numbers and dilatation by addition of individuals from the Gunnison Basin do not provide a situation where the satellite populations individually provide significant diversity to the species.

IX. The FWS Analysis Of The Satellite Populations Is Not Complete Or Accurate.

A. FWS Cites Incomplete And Inadequate Data Regarding The Satellite Populations

1. The data relied upon by the FWS for population estimates of satellite populations is limited in longevity, inconsistent and uncertain, flawed by methodology and demonstrates that satellite populations may not be necessary for long term health of the species.
2. Population data for the Gunnison Sage-grouse is identified in the Current Distribution and Population Estimate Sections of the 2013 Proposed Rule for ESA Listing beginning at Page 2488, C3 and the 2010 Determination for the Gunnison Sage-grouse, 75 Fed. Reg. 59804, beginning at Page 59808, C3, ("2010 Determination"), which is referenced in the 2013 Proposed Rule for ESA Listing.
3. The satellite population estimate tables identified in both the 2013 Proposed Rule for ESA Listing and the 2010 Determination are limited in scope as the estimates only provide data from 2001. Gunnison County has received additional information from the Colorado Division of Parks and Wildlife ("CPW") identifying male counts and population estimates, or lack thereof, for all satellite populations from 1953-2012. This information is known as "CPW Long Term Population Estimates Data" attached hereto and incorporated herein as Appendix .
4. The CPW Long Term Population Estimates Data provides a fuller scope of valuable information as to the longevity of data and population fluctuation of satellite populations.
5. The FWS failed to review this information in consideration of the 2013 Proposed Rule for ESA Listing as this data is not identified in the 2013 Proposed Rule for ESA Listing nor is it referenced in the Literature Cited List of the 2013 Proposed Rule for ESA Listing.

Translocations of grouse from a single source, in this case the Gunnison Basin, has had to impact the genetics of all satellite populations where translocations have occurred, diluting the genetic adaptations that occurred over eons. These translocations further bring into question the importance of the satellite populations to the overall health of the species.

Poncha Pass.

1. In the 2013 Proposed Rule for ESA Listing and the 2010 Determination, the FWS identifies the following population estimates of Gunnison Sage-grouse for the Poncha Pass population:

Year	1964	1971/1972	1973-2000	2001
Estimate	0	30	Birds transplanted from Gunnison Basin (FWS notes that in 1971 and 1972 30 birds were transplanted. It is hard to	No population data (The 2010 FWS chart identifies 25 and the 2013 FWS determine whether a total of 30 birds were transplanted for those years or 30 birds were transplanted each year.)

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Estimate	44	34	39	44	44	25	25	20	15	15	15

2. Considerations of Gunnison Sage-grouse Population Estimates that the FWS relied upon for the 2013 Proposed Rule for ESA Listing for the Poncha Pass population:

a. 2012 Population Estimate. In 2012 there were an estimated 15 Gunnison Sage-grouse located in Poncha Pass.

b. Population Percentage of Whole Range. The 15 Gunnison Sage- grouse located in Poncha Pass represents .3% of the 2012 Gunnison Sage-grouse population.

c. Translocations. The FWS states at Page 2492, C3 of the 2013 Proposed Rule for ESA Listing, that the reestablishment of this population is a result of 30 birds transplanted from the Gunnison Basin in 1971 and 1972, during efforts to reintroduce the species to the San Luis Valley (GSRSC 2005, p. 94).

In 2000 24 birds were translocated, in 2001 an additional 20 birds were translocated and in 2002 seven more birds were translocated. According to the FWS, there were 51 birds translocated to Poncha Pass. The CPW states that in 2000 and 2001, not 2002, a total of 41 birds were translocated to Poncha Pass from the Gunnison Basin. (K. Griffin, CPW 3/14/ Comments)

d. Existing Data Not Considered. There is additional Gunnison Sage- grouse population data that exists for Poncha Pass the FWS did not cite nor consider for the 2013 Proposed Rule for ESA Listing. This data is found in the CPW Long Term Population Estimates Data for the years 1953 through 2000 as follows:

High Male Counts for Poncha Pass:

Year	1953-1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Count	No Data	5	1	5	9	7	8	9	9	5	5

Year	2009	2010	2011	2012
Count	4	3	3	3

Population Estimates for Poncha Pass:

Year	1953-1998	1999	2000
Count	No Data	25	5

3. Data Lacks Longevity. The population estimates for Poncha Pass that the FWS considered and as cited in the 2013 Proposed Rule for ESA Listing lack longevity as the FWS only considered the years from 2001 through 2012 and disregarded the years from 1953 through 2000.

4. Fluctuation Over Time.

a. The 2001 through 2012 population estimates for Poncha Pass relied upon by the FWS indicate a high population estimate of 44 birds and a low population estimate of 0 birds, nonexistent, in 1964. The Poncha Pass population is an introduced population. Historic records indicate that Gunnison Sage-grouse may have existed in the area at an earlier time, but the current population is completely derived from transplants from the Gunnison Basin.

Saguache County requests that it be noted that the major decline in the Poncha Pass population was associated, at least in part, with the most severe drought years in that area, along with a reduction in grazing, which is an activity believed to reduce the number of predators in the grazed area.

b. The 1953 through 2000 population estimates for Poncha Pass identified in the CPW Long Term Population Estimates Data indicate a high population estimate of 25 birds and a low population estimate of 0 birds, nonexistent, in 1964.

c. The 1953 through 2012 population estimates for Poncha Pass identified in the CPW Long Term Population Estimates Data indicate a high population estimate of 44 birds and a low population estimate of 0 birds, nonexistent, in 1964.

5. Inconsistent and Uncertain Population Data.

Conflicting data exists for the 2001 Poncha Pass population estimate between the 2013 Proposed Rule for ESA Listing which indicates 15 birds and the 2010 Determination indicates 25 birds (Page 2492 of the Proposed Rule for ESA Listing and Page 59810 of the 2010 Determination).

FWS states: "This population lies within potential pre-settlement habitat, but was extirpated prior to 1964 (Rogers 1964, p.116). Further consideration should also be given that the Poncha Pass population was extirpated prior to 1964 (Page 2492, C3 of the 2010 Determination) and currently there is a question as to whether a historical lek ever existed in this location. (CITE).

The FWS asserts that in 2000 24 birds were translocated, in 2001 an additional 20 birds were translocated and in 2002 seven more birds were translocated. According to the FWS, there were 51 birds translocated to Poncha Pass. The CPW states that in 2000 and 2001, not 2002, a total of 41 birds were translocated to Poncha Pass from the Gunnison Basin. (K. Griffin, CPW 3/14/13 Comments).

6. Genetic Population Sink.

Small populations of wildlife, including Gunnison Sage-grouse face at least three primary genetic risks: 1) inbreeding depression; 2) loss of genetic variation; 3) accumulation of new mutations (GUSG RCP 2005). The Poncha Pass population of Gunnison Sage-grouse is faced with all three genetic risks. Though the GUSG RCP does not identify how small a population of GuSG must be before it faces these genetic risks, it does state that Shaffer (1987) states that populations less than a few hundred individuals "warrant careful scrutiny" in this regard. It further states that small populations (regardless of the amount of genetic variation) are at risk of extinction because of demographic fluctuations. In other species, the general genetic "rule of thumb" is that a breeding population of less than 400 individuals is at significant risk as noted above and is for all intents, genetically extinct, or soon to become extinct.

Translocations of grouse from a single source, in this case the Gunnison Basin, has had to impact the genetics of all satellite populations where translocations have occurred, diluting the genetic adaptations that occurred over eons. These translocations further bring into question the importance of the satellite populations to the overall health of the species. In the case of the Poncha Pass population, it is entirely based upon the Gunnison Basin Population for genetic integrity and diversity. It appears to have survived at some level since introduction in the 1970's, but that is most likely an artifact of the genetic diversity and health of the Gunnison Basin Population and not due to genetic adaptation of the introduced birds, in such a short period of time.

This population genetically is not important to the survival of the Gunnison Sage-grouse as a species.

7. Application of the Draft Policy on Interpretation of the Phrase

“Significant Portion of Its Range” In the Endangered Species Act Definition of Endangered Species Act Definitions of “Endangered Species” and “Threatened Species”, 76 Fed . Reg. 76987 (December 9, 2011) by Jim Cochran, Gunnison County Wildlife Conservation Coordinator to the Poncha Pass satellite population.

a. Step One. Does the Gunnison Sage-grouse satellite population located in Poncha Pass meet the biological basis to establish the Shaffer Factors?

i. Redundancy; and
No.

ii. Resiliency; and
No.

iii. Representation.
No.

b. In the alternative, does the Gunnison Sage-grouse satellite population located in Poncha Pass meet the biological basis to establish the NMFS Factors?

i. Abundance.
No.

ii. Spatial Distribution.
No.

iii. Productivity.
No.

iv. Diversity of the Species.
No.

Therefore end analysis. The Gunnison Sage-grouse satellite population located in Poncha Pass is not considered a “Significant Portion of the Range” as defined in the Draft Policy on Interpretation of the Phrase “Significant Portion of Its Range” In the Endangered Species Act Definitions of “Endangered Species” and “Threatened Species”, 76 Fed. Reg. 76987 (December 9, 2011).

X. The Draft Rules Significantly Miscite or Misinterpret Studies.

A. Knowledge of the Gunnison Sage-grouse is extremely limited. Lek counts of Gunnison Sage-grouse populations did not begin until 1953, but early protocols lacked rigor and were inconsistent (Braun 1998). Lek counts were standardized to allow year-to-year comparisons in 1982 (Gunnison Sage-grouse Rangewide Steering Committee 2005), and current Gunnison Sage-grouse populations estimates are based on lek counts, which have been criticized for untested assumptions and inaccuracy (Gunnison Sage-grouse Rangewide Steering Committee 2005).

Since recognition of the Gunnison Sage-grouse as a separate species in 2000 (Young et al. 2000) only about a dozen peer reviewed articles have been published about this species. The majority of science that is invoked to inform decision making comes from wide ranging grouse species, especially the Greater Sage Grouse

This had led FWS to 2 significant errors in the proposed Rule:

1. FWS makes uncritical application of scientific findings from one species (e.g. Greater Sage Grouse) to the Gunnison Sage-grouse; and
2. FWS relies on Gunnison Sage-grouse studies that are flawed.

B. The FWS at Page 2488;C2 of the Proposed Rule for ESA Listing states:

“...we use information specific to Gunnison Sage-grouse where available, but apply scientific management principles for greater sage-grouse management needs and strategies...”.

Saguache County Asserts: The FWS did not consider the most recent demographic study available (Davis, 2012) in their rule making. Not only does that study provide the most current and applicable Gunnison Sage-grouse specific demographic information, but Davis specifically states: “Although this species has many similarities with the Greater Sage-grouse, projecting the Gunnison Sage-grouse’s population viability and instituting management plans should be based on demography estimates from the Gunnison Sage-grouse and not on substitute Greater Sage-grouse estimates, as has been the case to date.”

C. The FWS at Page 2531;C3 of the Proposed Rule for ESA Listing states:

“These habitat component losses can result in declining sage-grouse populations...”, referencing Braun 1998 and Moynahan et al 2007.

Saguache County Asserts: The Braun 1998 study was not an in-depth demographic study. It was a broad-brush assessment of potential threats to greater sage-grouse. The Moynahan et al. 2007 study was specific to greater sage-grouse in Montana. Davis, 2012, in her Gunnison Sage-grouse, Gunnison Basin/San Miguel Basin specific demographic study states: “Although I expected nest success to be related to vegetation characteristics, my results did not suggest a strong connection. “ “My results indicate that temporal (time) factors were strongly related to nest success in both populations.” The Davis study, specific to Gunnison Sage-grouse, provides information that brings factors other than “habitat condition” into importance. The FWS did not consider this study, nor did it, at any point in its rule making, consider the factors this study finds important for Gunnison Sage-grouse nesting success.

D. The FWS at Page 2495;C1 of the Proposed Rule for ESA Listing states: “We rely on the status review and analysis reported on September 28, 2010, but have updated it as appropriate to incorporate new information.”

Saguache County Asserts: The information in the 2010 status review was acquired from a formal data/information call by the FWS in 2009. They did not formally ask for new information/data after 2010. The informally requested information, which resulted in a happenstance response from agencies, local governments and interested parties. It is likely that the new information used by the FWS is substantially incomplete. The rulemaking should not have been initiated until a formal data/information gathering process was initiated and completed.

E. The FWS at Page 2488;C2 of the Proposed Rule for ESA Listing states:

“...we use information specific to Gunnison Sage-grouse where available, but apply scientific management principles for greater sage-grouse management needs and strategies...”

Saguache County Asserts: The FWS did not consider the most recent demographic study available (Davis, 2012) in their rule making. Not only does that study provide the most current and applicable Gunnison Sage-grouse specific demographic information, but Davis specifically states: “Although this species has many similarities with the Greater Sage-grouse, projecting the Gunnison Sage-grouse’s population viability and instituting management plans should be based on demography estimates from the Gunnison Sage-grouse and not on substitute Greater Sage-grouse estimates, as has been the case to date.”

We do know that Colorado Parks and Wildlife (CPW) believes that Aldridge et al. overstates the impacts of human influence on nesting Gunnison Sage-grouse. They informed us that they intend to apply their more complete dataset (which includes representative areas across the basin) to the Aldridge model. Considering the known issues with the NPS dataset, we believe that the FWS must consider the CPW re-assessment as the most current and applicable science available.

XI. The Proposed Rules Are Inconsistent With Previous FWS Formal And Informal Actions Regarding The Gunnison Sage-grouse.

A. 2006 Decision. On January 18, 2000, the FWS designated the Gunnison Sage-grouse as a candidate species under the Act, with a listing priority of 5. 65 FR 82310. (“Candidate Species are plants and animals for which the Service has sufficient information on their biological status and threats to propose them as endangered or threatened under the Act, but for which the development of a proposed listing regulation is precluded by other higher priority listing activities. A listing priority of 5 is assigned to species with high magnitude threats that are non-imminent.” Fed. Reg. Vol. 75, No. 187, p.59804)

On April 11, 2006, the Service determined that listing the Gunnison Sage- grouse as a threatened or endangered species was not warranted and published the final listing determination in the Federal Register on April 18, 2006 (71 FR 19954). Consequently, the Service removed the Gunnison Sage-grouse from the candidate species list at the time of the final determination.

B. FWS Participation In The Gunnison Basin Strategic Committee.

FWS participated in approximately 44 meetings of the Gunnison Basin Strategic Committee from October 11, 2006 through June 15, 2011 (when the FWS representative was retiring from the Service).

The FWS has been at the Gunnison Basin Sage-grouse Strategic Committee table (members appointed by the BoCC) since 2006. The FWS participated in deliberations on two (stand-alone and integrated) versions of Gunnison County Sage-grouse-specific land use regulations. The FWS participated, through the Strategic Committee, in development of the draft CCA. The FWS issued the CCAA permit to CPW. The FWS participated in the development of the Gunnison Basin Sage-grouse Strategic Plan (Gunnison County BoCC, February 17, 2009) and the Gunnison County Sage-grouse Action Plan (Gunnison County BoCC, October 20, 2009). These planning documents provide guidance to Gunnison County on Gunnison Sage-grouse conservation priorities, goals and objectives. The FWS, at no time during the development of these regulations or plans by the Gunnison Basin Sage-grouse Strategic Committee, indicated that there were deficiencies in the regulations/plans and that they “were not adequate” to address identified threats to the Gunnison Sage-grouse.

XII. Additional Comments Regarding The Proposed Critical Habitat Rule.

A. The ESA seeks to protect designated species from extinction caused by human activity by preserving the ecosystems upon which the species depend. 16 U.S.C. §1531(b). The ESA instructs the Secretary to list species determined to be threatened or endangered according to enumerated criteria. Id. §1533(a)(1). For each listed species the Secretary must “designate any habitat of such species ... (as) critical habitat,” Id. §1533(a)(3)(A), which effectively prohibits all subsequent federal or federally funded or directed action likely to destroy or disrupt the habitat, Id. §1536(a)(2).

To designate critical habitat, the Secretary must use the best scientific data available to identify a geographical area that satisfies the statutory definition of critical habitat,² consider “the economic impact, and any other relevant impact,” of designating the habitat, and weigh the benefits of exclusion against those of inclusion of particular areas within the designated habitat. Id. §1533(b)(2). In addition, the Secretary must follow enumerated procedures for public notification and comment during the process of designating critical habitat. Id. §1533(b)(4)-(6).

B. This proposed Rule would designate 1,704,227 acres of critical habitat in Western Colorado and Eastern Utah. In 2012, there were 4621 Gunnison Sage-grouse rangewide; the proposal is 368 acres per bird.

C. The Fish and Wildlife Service may not render a final decision regarding designation of critical habitat until the Fish and Wildlife Service has complied with the procedural requirements of NEPA. *Catron County Board of Comm’rs v. US Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996) The 10th Circuit held that FWS must comply with NEPA

² The ESA defines “critical habitat” as “the specific areas within the geographical area occupied by the species, at the time it is listed ... on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection.” in making its critical habitat determinations. Gunnison County is in the 10th Circuit.

The FWS’s proposed action constitutes a “major federal action significantly affecting the quality of the human environment.” As such, the FWS is required to prepare a full Environmental Impact Statement (EIS), in draft and final, as part of this process and prior to any federal decision making. An EIS is

justified by the sweeping geographic scope of the proposal and is potentially significant effects on environmental resources, land use patterns, growth and development, regulating communities. It is also justified by the high degree of controversy surrounding this issue. WE MUST REQUEST PREPARATION OF EIS.

D. ESA Section 4(b)(2) mandates that all decisions to designate critical habitat take into consideration the economic impact of such designation. The Fish and Wildlife Service has not yet released an economic analysis.

The economic consequences of a critical habitat regulatory overlay in Saguache County would be severe. Saguache County Commissioners reserve the right to provide additional comments following the release of the FWS economic study.

F. The FWS should exclude from any designation of critical habitat for the Sage-grouse all lands covered by the CCAA, all federal lands covered by the proposed Gunnison Basin CCA, and all lands in the Gunnison Basin that are under Protective Conservation Status.

G. The FWS at Page 2535; C1 of the Proposed Rule for ESA Listing states:

“Based on an evaluation of biotic, abiotic, and anthropogenic factors, no strongholds are believed to exist for Gunnison sage-grouse (Wisdom et.al. 2011, entire).”

Gunnison County Asserts: The Wisdom paper (undated, but I believe it was written in 2011) was a GIS modeling exercise. Simply, it looks for large, unbroken expanses of sagebrush. It attempts to compare them with “extirpated range”. The inference is that without large (much larger than ever existed in the Gunnison Basin) unbroken expanses of sagebrush, the grouse will not survive in perpetuity. Wisdom provides studies or direct correlations, specific to Gunnison Sage-grouse, that this inference is correct. We should argue that the range of the GUSG in the Gunnison Basin supports a population that exceeds the estimated carrying capacity calculated in the RCP (10 year average of 3,039 birds) (RCP P. 270) and provides the necessary habitats to support that population and even allow it to increase.

C. Sagebrush Range.

The Service, in 2006, stated:

Rogers (1964) qualitatively discussed a decrease in sagebrush range due to overgrazing from the 1970’s until about 1934. Additional effects occurred as a result of newer range management techniques implemented to support livestock by the Bureau of Land Management (BLM), Soil Conservation Service, and U.S. Forest Service (Rogers 1964). Rogers (1964) discussed sagebrush eradication (by spraying and burning) in the 1950s, and used two examples (Uncompahgre Plateau, Flattop Mountain in Gunnison County, CO) within the current range to illustrate the large acreages (3-5,000 acres) treated, but stated that long-term effects were yet to be determined. Rogers (1964) demonstrated a much broader distribution of sage brush in Colorado than what currently exists. Rogers (1964) also presents maps that show decreases in distribution from previous literature.

Much of what was once sagebrush was already lost prior to 1958. Through the use of low-level aerial photographs, Oyler-McCance et al. (2001) documented a loss of only or 155,673 ha (20 percent) of sagebrush habitat from 1958 to 1993 within Gunnison sage-grouse range. Thirty-seven percent of the plots sampled underwent substantial fragmentation of sagebrush vegetation during that same period. Oyler-McCance et al. (2001) stated that sage-grouse habitat in southwestern Colorado (the range of Gunnison sage- grouse) has been more severely impacted than sagebrush habitat elsewhere in Colorado. However, the Gunnison Basin was not as significantly affected as other areas.

The Colorado River Storage Project (CRSP) resulted in construction of three reservoirs within the Gunnison Basin in the mid-late 1960s (Blue Mesa and Morrow) and mid-1970s (Crystal). Several projects associated with CRSP were constructed in this same general timeframe to provide additional water storage and resulted in the loss of an unquantified, but likely small, amount of sagebrush habitat. These projects provide water storage and, to a certain extent, facilitate agricultural activities throughout the range of Gunnison sage-grouse.

Riebsame et al (1996) discussed a greater rural growth rate in Colorado from the 1970s through the 1990s, compared to the rest of the U.S., which has resulted in land use conversion. They noted a pattern of private ranches shifting to residential communities within Gunnison sage-grouse habitat. The Gunnison Basin Working Group Research Sub-committee (February, 2006) cited two regions within the Basin to be of the highest priority for conservation easements due to development pressures. 71 Fed. Reg. 19957.

D. The FWS at Page 2496;C3 of the Proposed Rule for ESA Listing states:

“Nonetheless, given the large landscape-level needs of this species, we expect future habitat loss, degradation, and fragmentation from residential development, as described above. , to substantially limit the probability of persistence of Gunnison sage-grouse in the Gunnison Basin.”

Saguache County Asserts: This statement is unsupported by the evidence of a stable to increasing sage-grouse population in the basin, the lack of scientific credibility the statement is based upon, and the protections implemented by the Gunnison Community, which have allowed a healthy sage-grouse population to persist in the basin.

E. The FWS at Page 2495;C2 of the Proposed Rule for ESA Listing states:

“Sagebrush habitats within the range of Gunnison sage-grouse are becoming increasingly fragmented as a result of various changes in land uses and the expansion in the density and distribution of invasive plant species.”

Saguache County asserts that the cited studies are inaccurate or lack appropriate data concerning the specifics of Saguache County and the Poncha Pass area. As previously stated, development in the species habitat, including all range uses, has not been anywhere close to that stated in the studies and in fact there has been no significant disturbing of sagebrush habitats.

Saguache County has an extensive and effective weed control program that addresses and controls invasive plant species. The County has shared this plan with FSW and is willing to accept additional suggestions regarding the plan where FWS may believe there is inadequate protection.

F. The FWS at Page 2496;C3 of the Proposed Rule for ESA Listing states: “Furthermore, since early brood-rearing habitat is often in close proximity to nest sites (Connelly et al. 2000a, p. 971), the loss of nesting habitat is closely linked with the loss of early brood-rearing habitat.”

Saguache County Asserts: The FWS links loss of early brood rearing habitat to loss of nesting habitat. This is not substantiated in the literature. The reference the FWS provides (GSRSC 2005 p. G-15) is appropriate only in the context of population dynamics. The FWS did not prove that early brood rearing habitat is being lost. In the Gunnison Basin, we know that it is likely that early brood rearing habitat may be a limiting factor to the sage-grouse population (Phillips, 2011 Personal Communication), but the size and vigor of the population certainly does not indicate that it is a significant survival bottleneck.

1. The population growth analysis for the Gunnison area, including Saguache County, needs to be re- examined due to the economic downturn occurring after the data was gathered. The conclusions in the proposed Rules are not supportable and do not reflect the best information available.

2. The assumption that agricultural land is being converted to development due to its decreasing economic importance is outdated and should be re- evaluated. The current status of ranching militates against the magnitude and immediacy of assumed threats from exurban development.

3. Under its General Administration Policy (Part 212 Ethics, Chapter 7 scientific Integrity and Scholarly Conduct, 212 FW7), the FWS is obligated to provide robust scientific information of the highest quality.

XIII. An Approval Of Either Proposed Rule, Or Both Of Them, Would Cause Actual Or Imminent Injury To Saguache County.

A. An approval of either the proposed Rule, or both of them, would cause damage to Saguache County and its citizens, including injuries to economic, agricultural, real estate and mineral development, conservation, recreation, tourism and aesthetic interests. (See Appendix C – Letter from Fullenwider Ranches).

B. Saguache County reserves the right to make additional comments concerning the negative impact on the County until the FWS releases the results of the required economic study.

XIV. The Fish And Wildlife Service Is Not Providing Saguache County The Time Afforded By The Endangered Species Act To Respond To The Proposed Rules.

The Saguache County Commissioners formally request that the Fish and Wildlife Service Immediately initiate a request in Federal District Court Action to obtain an extension of the current September, 2013 deadline for completion of the potential listing and designation process.

The Saguache County Commissioners does not believe that FWS has provided adequate time between Publication of the Proposed Rules and The Service’s Final Determination. Saguache County requests that the Service extend the deadline for final determination to enable the following actions:

a. Provide for accurate, complete and neutral correction, analysis and dialogue regarding data in the draft Rule;

- b. Allow for explanation and correction of misstatements or misinterpretations of authority in the draft Rule;
- c. Allow the Service to review the beneficial consequences of historic and current actions of Saguache and Gunnison Counties related to the protection of the Gunnison Sage-Grouse and its habitat;
- d. Complete of the Gunnison Basin CCA;
- e. Enroll additional properties under the CCAA;
- f. Have the Fish and Wildlife Service initiate an analysis of “significant population segments”; and
- g. Allow for comments to be informed by each “cost analysis” and required NEPA analysis.

XV. The Fish And Wildlife Service Is Failing To Capitalize On The Opportunity To Export Gunnison Basin Efforts To Other Communities.

- A. The FWS at Page 2523;C3 of the Proposed Rule for ESA Listing states:

‘Further, Saguache County, which contains approximately 21 percent of the Gunnison Basin Population areas, has no Gunnison sage-grouse specific LUR.’

Gunnison County Asserts: Saguache County is aggressively pursuing adoption of land use regulations to protect Gunnison Sage-grouse and their habitats. Their efforts are being hindered by the FWS’ stated finding the Gunnison County’s sage-grouse specific land use regulations are inadequate and on minimally regulate negative impacts that will continue to fragment the habitat... and the FWS unwillingness to provide direction as to what will alleviate their concerns regarding the Gunnison County regulations and make them acceptable to the FWS.

- B. Statutory Coordination Model.

1. C.R.S. 30-11-101 (1)(k) states: To coordinate, pursuant to 43 U.S.C. sec. 1712, the "National Environmental Policy Act of 1969", 42 U.S.C. sec. 4321 et seq., 40 U.S.C. sec. 3312, 16 U.S.C. sec. 530, 16 U.S.C. sec.1604, and 40 CFR parts 1500 to 1508, with the United States secretary of the interior and the United States secretary of agriculture to develop land management plans that address hazardous fuel removal and other forest management practices, water development and conservation measures, watershed protection, the protection of air quality, public utilities protection, and private property protection on federal lands within such county's jurisdiction.

2. The Board of County Commissioners of Gunnison County holds itself available immediately, in the short term, and long term to participate in agreements pursuant to C.R.S. 30-11-101(1)(k) and applicable federal law to ensure that Gunnison County fosters the necessary Gunnison County planning and land use regimes and efforts.

XVIII. The Gunnison Sage Grouse Is Not a “Threatened Species” Under the ESA.

Congress passed the ESA in 1973 “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, (and) to provide a program for the conservation of such endangered species and threatened species.” 16 U.S.C. §1531(b). “The term ‘endangered species’ means any species which is in danger of extinction throughout all or a significant portion of its range...” Id. §1532(6).

Neither the data, nor FWS policy, nor the law supports a conclusion that the Gunnison Sage-grouse is an “endangered species.” Saguache County also contends that the Gunnison Sage-grouse does not meet the definition of a “threatened species”.

“The term ‘threatened species’ means any species which is likely to become an endangered species with the foreseeable future throughout all or a significant portion of its range.” 16 U.S.C. §1532(20). A listing of the Gunnison Sage-grouse as “threatened” would not be warranted because the best available data and science does not establish a “likely” risk of the Gunnison sage-grouse becoming endangered within the “foreseeable” future.

The word “likely” is not defined in the ESA or by regulation. FWS most recently has interpreted the statutory reference to “likely” as having its “ordinary meaning” or “dictionary definition.” *Safari Club International, et al. v. Salazar*, F.3d, 2013 WL 765059 (C.A.D.C.), Br. Of Appellees at 45-46. Black’s Law Dictionary defines “likely” to mean “probable...(i)n all probability...”

The term “foreseeable” is not defined in the ESA or by regulation. FWS determines what constitutes the “foreseeable” future on a case-by-case basis. See, e.g. 12-month Finding on a Petition to List the Siskiyou Mountains Salamander and Scott Bar Salamander as Threatened or Endangered, 73 Fed. Reg. 4380, 4381 (Jan. 24, 2008) (defining the foreseeable future as 40 years).

Given the risk of less than ½ of one percent, over the next 50 years, of extermination of the Gunnison Sage-grouse, there is not sufficient current data or science available to establish that it “likely” that the Gunnison Sage-grouse will become an endangered species (e.g. a species which is in danger of extinction throughout all or a significant portion of its range) within the foreseeable future.

SAGUACHE COUNTY CONCLUSIONS AND REQUESTS:

The Saguache County Commissioners offer the following summary conclusions and requests for the consideration of the FWS as related to the proposed rules:

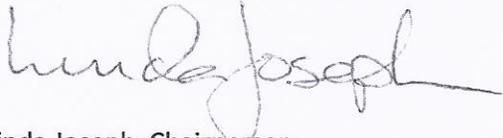
1. The FWS should request of the District Court in *WildEarth Guardians v. Salazar*, 10-MC-00377 (D.DC.2001), that additional time be authorized for the Service making a final decision on the proposed rules. This would permit the FWS a reasonable time period to consider submitted comments, including those submitted following the release of the required economic impact study, prior to making a well-reasoned decision on the proposed rules.
2. That an Environment Impact Study be conducted as required under the ESA prior to making a decision on the proposed rules.
3. That FWS thoroughly review and provide deliberate consideration to the alternatives to the proposed listing as presented in these comments as well as those presented in the submissions of other Colorado and Utah Counties regarding the proposed rules.

4. Adequately review the suggestions that the FWS made good faith errors in interpreting studies and data relied on in the issuance of the proposed rules and that such error may have resulted in a misapplication of the requirements of the ESA.
5. Review Saguache County's contention that the Poncha Pass satellite population is not genetically required or important to the survival of the species on a range-wide basis and may not be a "historical" lek based on any clear scientific evidence. Further it is unlikely that the lek will be naturally supplemented by the population of the Gunnison Basin regardless of a decision to make a critical habitat designation.
6. Saguache County is again, as it has on a consistent basis, requesting input from FWS concerning its current Land Use Regulations as to how they can be made more responsive to the protection of the Gunnison Sage Grouse and other species.
7. The disproportional effect that the proposed rules will have on the citizens of Saguache County, both as related to historical, social and economic factors if the proposed rules are enacted. This is especially of concern in view of FWS proposed listing of the Willow Fly Catcher which would also affect a significant amount of public and private land in the County.
8. The best available scientific and commercial data, including data endorsed by FWS, establishes that the vast majority of the Gunnison Sage-grouse population will remain for the next fifty years at a minimum; this defeats the agency's decision to list the Gunnison Sage-grouse as endangered and forecloses any attempt to list it as threatened. Therefore a determination of no action is appropriate.

April 1, 2013

Respectfully submitted,

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF SAGUACHE COUNTY, COLORADO

A handwritten signature in cursive script that reads "Linda Joseph".

Linda Joseph, Chairperson

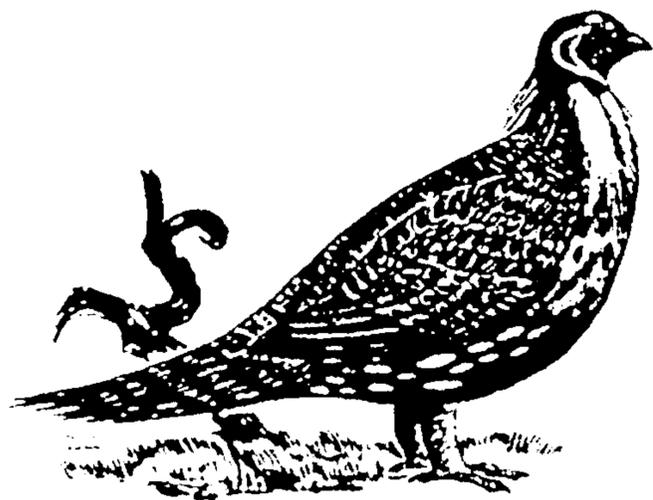
A handwritten signature in cursive script that reads "Jason Anderson".

Jason Anderson, Commissioner

A handwritten signature in cursive script that reads "Ken Anderson".

Ken Anderson, Commissioner

THE PONCHA PASS
GUNNSION-SAGE GROUSE
CONSERVATION PLAN



FINAL

MARCH 21, 2000

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I. PREAMBLE

Sage grouse in southwestern Colorado occur in eight highly fragmented populations scattered in six different counties. These sage grouse have recently been recognized as a separate species with less than 4,000 breeding individuals. Because of fragmentation, distribution and limited size of each population there is concern that this species will become a candidate for federal endangered or threatened status with the United States Fish and Wildlife Service (USFWS). Biologists and concerned parties involved with efforts on the discreet populations have been sharing information on attempts to develop effective strategies to maintain and improve sage grouse populations.

The Poncha Pass Gunnison Sage Grouse Work group is a local level multi-interest group including affected landowners, land use agencies (Bureau of Land Management (BLM)) and the Colorado Division of Wildlife (CDOW). The common goal of the group is to develop a plan to preserve and enhance Gunnison sage grouse populations and habitats, while respecting private landowner rights, maintaining local control and incorporating economic, social and cultural values. The work group exists to help coordinate and support local efforts to achieve this goal over a five year period.

II. THE PLAN AND ITS PURPOSE

This document establishes a process and a framework that will guide management efforts directed at improving sage grouse habitat and reversing the long-term decline of the Gunnison Sage Grouse in the Poncha Pass area. Central to this process is the idea of landowner and agency involvement in determining appropriate management activities designed to meet jointly developed goals and objectives. This plan guides that effort

The purpose of the Poncha Pass Sage Grouse Conservation Plan (the plan) is to provide for coordinated research and management across jurisdictional/ownership boundaries and to develop support that is necessary to assure the well being of the sage grouse species. Designed to be dynamic, the plan will be flexible enough to include new information and issues, as well as results from previous conservation efforts. It will also be designed to ask questions and collect data necessary to develop solutions for future resource management decision making

subpopulations scattered throughout southwest Colorado. It was decided that each subpopulation would need a separate plan with local input of prime importance. In the San Luis Valley one subpopulation remained in the Poncha Pass area. In August 1997 the first meeting of the San Luis Valley sage grouse group brought together landowners, resource agencies, environmental groups and interested publics. At a later meeting this group decided a conservation plan was needed for the Poncha Pass sage grouse.

This plan will consist of two main sections. The first part, the Conservation Assessment, describes sage distribution and factors that influence or affect sage grouse. The second part, the Conservation Strategy, outlines the goals and objectives, conservation actions, an implementation plan and monitoring requirements.

V. CONSERVATION ASSESSMENT

A. Area Boundary

The area used and potentially used by Gunnison sage grouse in the Poncha Pass area is in Saguache county south of the Chaffee county boundary on the north, extending south for about six miles on either side of U.S. Highway 285. It is bounded on the east and west by the Rio Grande National Forest Boundary and on the south by the east-west section boundary 4 miles north of the east-west border of township 47N and 46N. The area within this boundary encompasses about 17,280 acres (27mi. sq.) Of which ~ 11,520 acres (18 mi. sq.) are managed by the Bureau of Land Management, 640 acres (1mi. sq.) by the Colorado State Board of Land Commissions, and 5,120 (8 mi. sq.) acres are privately owned. Most of the area is managed for domestic livestock grazing, wildlife, recreation, and watershed values. Less than 10,000 acres are believed to be used at present by sage grouse due, primarily, to the presence of U.S. Highway 285 and three power lines west of 285 that bisect the area from northwest to southwest. (Figure 1)

Delineation of the boundary was based on known use sites and sage grouse observations, as well as the presence of sagebrush-dominated habitats. Substantial areas of rural dwellings, power lines and U.S. 285 are included within the boundary. While this was necessary to include all areas with potential for habitat development to benefit an expanded Gunnison sage grouse population, no inference on future changes in present land uses are inferred by the boundary delineated. Participation in this plan on the part of landowners is strictly voluntary.

Lek Habitat

Suitable habitats for display do not superficially appear to be limited anywhere in the Poncha Pass area. However, numbers of males on known active leks are low, probably because of small population size. This does not appear to be related to quality of lek sites but instead may be related to the reduced amount and quality of total sagebrush-dominated habitats at those sites. Sites presently used for display are in native rangeland with taller (>20 in.) sagebrush in near proximity to display sites. Presence of taller sagebrush (mountain big sagebrush) with a lack of taller coniferous shrubs/trees and other obstructions appears to be critical for continued use of these sites by displaying male sage grouse.

Nesting Habitat

In general, sage grouse hens select sites for nesting with taller, more dense sagebrush (>20 in., >25% canopy cover). These sites are frequently at slightly higher elevations (upper edge of the occupied habitat) where moisture allows greater and more robust grass and forb cover (>25 and 8% respectively, >6 in. total herbaceous height). Nests are typically at the base of taller (>20 in.) sagebrush plants.

Early Brood Habitat

The description of this habitat at hatch is identical to nesting habitat with hens moving their young chicks (<5-10 days of age) into areas dominated by forbs and grasses (including hay fields) with <20% live sagebrush canopy cover. Hens select drainage channels in the sagebrush type that have abundant forbs and moisture that provide insects for the chicks. Grass and forbs dominate at all known use sites with a definite preference for live sagebrush escape cover (>20 in. in height).

Late Brood Habitat

Hens with older broods prefer moist drainage channels and edges of hay fields. Forbs and grasses dominate at preferred use sites with some live sagebrush and other deciduous shrubs, (Gambel Oak). Shrub cover is important for escape while most foraging is on forbs.

Fall Habitat

Sage grouse of all ages and gender continue to use habitats identical to those used by broods in July and August until plants become desiccated (several successive killing frosts) heavily grazed, or harvested (hay fields). Taller sagebrush (>20 in.) with more canopy cover (>20%) becomes more important. Use increases on north and west facing slopes and diets change gradually from a high proportion of forbs to a high proportion of sagebrush. Drainage channels and edges of hay fields continue to be

Presently, sage grouse are known to occur in Saguache County about 4 miles north of the east-west border of township 47N and 46N north to about 5 miles from the top of Poncha Pass on the east side of U.S. Highway 285 to the U.S. Forest Service boundary.

There is currently one known lek site within the Poncha Pass area. Leks have been monitored sporadically for the past 7 years by the CDOW. During the last several years the population appears to be in a sharp decline.

Gunnison sage grouse presently have no federal status with the U.S. Fish and Wildlife Service, Bureau of Land Management, or U.S. Forest Service. Recent scientific research indicates a decline in population numbers for the Gunnison species in southwestern Colorado. Therefore, there is a potential that the U.S. Fish and Wildlife Service will list this species as threatened or endangered.

Population Monitoring

Counts of male prairie grouse on leks provide managers with an estimate of minimum population size. Studies of sage grouse across western North America indicate there are about 2 females for each male in the spring population. Thus, if the number of males is known, it is possible to calculate a minimum population size. It is important to recognize that a count will not represent all males in the population and that any calculated population estimate will be lower than the actual population size.

Area and District personnel of the CDOW were requested, starting in the 1950's, to document sage grouse presence and general trends within specific areas. Thus, locations of active leks and counts of males on leks were recorded. Generally, only accessible leks were counted and intensive searches for new or relocated leks were not made because of manpower and equipment priorities. Searches and counts were sporadic as firm procedures were not in place. Consequently, lek count data prior to 1991 reflect only general trends in the sage grouse population. Procedures changed in the mid 1990's and now follow standard protocols (Appendix A). At Poncha Pass, lek searches were first done in 1991 and 2 lek sites were found. Surveys were intensified starting in 1997. In 1999 only one lek was found containing 5 males.

Population Size

Intensive fieldwork during the spring and summer of 1999 has shown that the population is critically low. It is estimated that the maximum population is between 10 and 20 birds and a possible minimum of only six birds with only one male. There is a

strong possibility that this population will disappear unless another reintroduction is undertaken.

Population Goals

A reasonable and desired minimum spring population goal for the Poncha Pass area would be to have at least 2 active leks with an average of 10 males per lek for a total counted male population of 20 birds. If this number represented 75% of the males in the population there should be 27 males in the population and 54 females (2 X # males) for a total of 81 grouse. It is estimated that the maximum sustainable population under optimum conditions might be 180 grouse.

VI. CONSERVATION STRATEGY

A. Objectives

Using the population goal outlined above as a target, the Poncha Pass Gunnison sage grouse work group developed general objectives. These general conservation objectives were developed from issues or factors that have been identified or have yet to be identified as contributing to the declining population size of sage grouse or affecting the quantity or quality of sage grouse populations in the Poncha Pass area.

The purpose of these general conservation objectives is to guide the identification of conservation actions. These objectives are also useful to explain the overall thrust of the conservation strategy. Three dominant themes or categories emerged which helped frame these general objectives. These three objectives are:

1. Discover through field research and monitoring, issues that positively or negatively affect the well being of sage grouse and incorporate this information in management actions to their benefit.
2. Protect and improve sage grouse habitat, as appropriate, by reduction, prevention and/or mitigation of habitat fragmentation.
3. Identify and manage physical disturbances to reduce adverse effects to sage grouse

1. Factors that affect sage grouse

Many factors can affect the well being of sage grouse (see "Issues that affect sage grouse populations and their habitat" below). These issues can be categorized as

Land Planning/Mitigation

- fragmentation
- loss of topsoil & productivity
- changes in land uses
- people and pet encroachment
- recognition of private landowners rights
- mining & exploration
- recreational uses
- hunting
- travel management

Land Treatments

- timing, intensity and duration of livestock/big game grazing
- affects of land treatments on winter habitat
- poor management of land treatments
- fire management
- lack of habitat management/need for habitat management

Utilities

- power lines
- roads
- fence designs
- pipelines

*Unknown Issues, yet to be discovered.

B. Conservation Actions

Introduction

The backbone of the Sage Grouse Conservation Plan is its goals and objectives, which together establish a framework for developing conservation actions. Conservation actions are designed to be consistent with the plan's goals and also to meet one or more objectives. These actions also address issues that affect sage grouse, and/or their habitat. Due to the interrelationship of the habitat components, resource values, and issues, many actions may apply to more than one objective. However, to avoid duplication, these actions have been listed under the objective where the link is most direct. Any additional actions identified at a later date will be analyzed by the Poncha

An important part of the progress report and meeting will be to discuss and document any exceptions to, or deviations from planned accomplishments. Inadequate funding may preclude the completion of an action in a given period. In this instance, an adjustment to the implementation sequence would be needed. What is important, is to show continual progress toward accomplishing the goals in the plan.

Monitoring, Evaluation and Adaptation

Monitoring data will be gathered and used to evaluate progress in meeting the goals and objectives of this plan. Monitoring will be coordinated to insure that data collected will provide the needed information to assess the on-the-ground management actions and to measure progress in resolving biological issues, resource problems and conflicts that adversely affect the bird. This coordination will include appropriate consultation and cooperation with rangeland users to include mining and exploration, general public, landowners, academia, private organizations and local, State, and Federal agencies. Direct involvement by interested parties in the collection of data, and in subsequent evaluations based on these data, will add to the credibility of monitoring results.

It is important that all field monitoring information can be easily accessed by those interested in reviewing the data. Monitoring the response of the Gunnison sage grouse population to conservation actions will be measured by total number of active leks, and total number of males counted in the Poncha Pass area. The number of active leks and total males will reflect winter survival, as well as chick production in the previous year. Changes in habitat quality which result from the implementation of planned actions will be monitored using techniques applicable to the specific project or action.

Monitoring will be research and science driven with the objective being to add to the scientific knowledge of the Gunnison sage grouse. This body of research will be shared with other working groups, land managers both public and private, and academics

Evaluations initiated by CDOW, USFWS, land management agencies, working group members and other parties affected by our actions may be conducted anytime during the implementation of this plan. The goal of evaluation is to determine whether progress is occurring and if progress is not occurring, to identify adjustments to the plan or its implementation. Monitoring and research will be coordinated by the CDOW's sage grouse researcher

Conservation Actions Relating to Research	When	Who
Use research specific to Gunnison sage grouse and apply to the San Luis Valley.	Ongoing	CDOW/BLM
Initiate research to investigate ways to minimize raptor use of power lines and fencepost for perches in predation of sage grouse.	Ongoing	BLM/CDOW
Initiate research to determine the success of the proposed sage grouse transplant.	2000	CDOW
Publish Gunnison Sage Grouse research in scientific journals.	2001	CDOW, other qualified researchers.
Determine how present land management in the Poncha Pass area is affecting sage grouse and sage grouse habitat.	Ongoing	BLM/CDOW
Carefully design, collect and distribute research data on physical disturbances to minimize negative impacts to sage grouse.	Ongoing	BLM/CDOW

Conservation Actions Relating to Monitoring	When	Who
Monitor vegetation in seasonal critical areas every two years and report trends.	Starting 2000	BLM
Monitor sage grouse populations in current and transplanted populations yearly and report trends.	Ongoing	CDOW
Monitor habitat improvement projects to insure they are meeting the habitat requirements.	As Needed	Working Group
Monitor changes in sage grouse habitat caused by land use changes.	As Needed	Working Group
Construct and monitor one or more exclosures in sage grouse habitat to determine vegetative potential.	2001	BLM

Conservation Action Related to Information, Education and Coordination	When	Who
Develop and distribute information about the value and importance of sage grouse and sage grouse habitat through the use of presentations, information brochures, videos, press releases, field trips, with an emphasis on youth education.	Winter 2000	Working Group
Coordinate the management of sage grouse habitat with all parties including agencies, private landowner and non-governmental organizations.	Ongoing	Working Group
Provide maps to public land agencies, Colorado Division of Wildlife, Saguache County, interest groups and landowners.	Ongoing	BLM/CDOW
Facilitate County/Agency interaction by designating a sage grouse contact person to interface with county planning.	Feb. 2000	Jeff Shook
Create an annual progress report.	Yearly	CDOW

Conservation Actions Related to Permanent Habitat Loss	When	Who
Encourage clustering, density credits, development right transfers, land exchanges, etc. to prevent loss of sage grouse habitat.	Ongoing	Working Group
Encourage the County to offer incentives to developers who protect and enhance sage grouse habitat.	Ongoing	Working Group
Develop a list of incentives programs and who offers them which could be used to prevent the loss of sage grouse habitat.	Ongoing	Working Group
Discourage land treatments known to be negative for sage grouse.	Ongoing	Working Group
Develop conservation agreements with private landowners.	Ongoing	Working Group
Monitor and encourage appropriate planning and zoning issues.	Ongoing	Working Group

VII. GLOSSARY

Big Sagebrush - As referred to in this plan, includes the following species of sagebrush: *Artemisia tridentata* tridentata- Basin big sagebrush, *A. t. vaseyana* - Mountain big sagebrush.

Genetic bottleneck- Populations of animals may undergo fluctuations or have low numbers because of biological constraints. These constraints usually relate to low genetic diversity caused by a founder effect@ (small number of individuals in the initial population), inbreeding (few reproducing individuals), and deleterious genetic mutation. All of these factors could effect egg production, egg fertility, hen quality, male quality, survival of young, etc. and ultimately lead to population extinction.

Black Sagebrush - *Artemisia nova*

Canopy Cover - The percentage of ground covered by a vertical projection of the outermost perimeter of the natural spread of foliage of plants. Small openings within the canopy are included.

Ecological Site - A kind of land which differs from other kinds of land, in its potential natural community and physical site characteristics and thus differs also in its ability to produce vegetation and in its response to management.

Ecological Status - The present state of vegetation and soil protection of an ecological site in relation to the potential natural community (PNC) for the site. The vegetation rating is an expression of the relative degree to which the kinds, proportions and amounts of plants in a community resemble that of the potential natural community. The four ecological status classes correspond to 0-25, 26-50, 51-75, or 76-100% similarity to the PNC and are called early seral, mid seral, late seral and PNC, respectively. Soil status is a measure of present vegetation and litter cover relative to the amount of cover needed on the site to prevent accelerated erosion.

Habitat – The environment in which an organism or biological population usually lives or grows

Haplotype - A single genetic marker found in blood, tissues, and feathers, usually associated with mitochondrial DNA analysis.

Integrated Weed Management - a strategy using a comprehensive, interdisciplinary approach to weed management. The purpose of integrated weed management (IWM)

VIII. LITERATURE CITED

Rogers, G. E. 1964. Sage Grouse investigations in Colorado. Colorado Game, Fish, and Parks. Tech. Publ. 16. 132pp.

SIGNATURE PAGE

By signing below, the following parties have agreed to implement the Poncha Pass Gunnison Sage Grouse Conservation Plan to the best of their organizational ability.

<u>Jerry A. Apker</u>	2-17-00
Jerry Apker, Area Wildlife Manager, Area 17 Monte Vista Colorado Division of Wildlife	DATE
<u>Thomas Goodwin</u>	2/22/0000
Thomas S. Goodwin, District Ranger/Field Office Manager U.S. Forest Service\USDI Bureau of Land Management	DATE
<u>Chuck Warner per S. Cowe</u>	2/21/00
Chuck Warner, Nature Conservancy	DATE
<u>Stanley Crowe</u>	2/21/00
Stanley Crowe, /LD Ranch	DATE
<u>Ed Oliver</u>	2-21-00
Ed Oliver, Oliver Ranches	DATE
<u>Gerald H. Grey</u>	2-21-00
Gerald Grey, Fullenwider Ranch Inc.	DATE
<u>Roy Oliver</u>	2-21-00
Roy Oliver, President San Luis Valley Cattleman's Association	DATE
<u>Mike Oliver</u>	
Mike Oliver, Chairman, Saguache County Commission	DATE
<u>Bill McClure</u>	3-7-00
Mike McClure, Saguache County Commissioner	DATE
<u>Joe W. Alexander</u>	3/7/00
Joe Alexander, Saguache County Commissioner	DATE
<u>Jeff Shoop</u>	2/21/00
Members of the Public	DATE
Members of the Public	DATE

B:11

APPENDIX A

INSTRUCTIONS FOR GROUSE LEK COUNTS

THE GROUSE LEK AND ROUTE FORMS ARE INTENDED TO STANDARDIZE THE DATA WE COLLECT. PLEASE FOLLOW THE STEPS OUTLINED BELOW.

- 1) CONDUCT ALL COUNTS BETWEEN 30 MINUTES BEFORE SUNRISE AND 2 HOURS AFTER SUNRISE.
- 2) OBTAIN A MINIMUM OF 3 COUNTS AT 5 MINUTE INTERVALS OF EACH LEK ON EACH DATE COUNTED. A COUNT OF FEMALES, MALES, AND UNKNOWN BIRDS IS ALWAYS PREFERABLE TO A FLUSH COUNT. HOWEVER, SOMETIMES THAT TYPE OF COUNT IS NOT ALWAYS POSSIBLE. IF WHEN YOU ARRIVE AT THE LEK, IT IS APPARENT THAT YOU WILL NOT BE ABLE TO COUNT ALL OF THE BIRDS (DUE TO WEATHER CONDITIONS, LOCATION OF THE LEK IN RELATION TO THE TOPOGRAPHY OR VEGETATION, ETC) THEN YOU SHOULD FLUSH THE BIRDS, OBTAIN A TOTAL BIRD COUNT, AND MOVE ON TO THE NEXT LEK.
- 3) TIME OF YEAR VARIES STATEWIDE AND FROM SPECIES TO SPECIES. THE FOLLOWING ARE SUGGESTED TIME FRAMES BY SPECIES. IDEALLY, YOU SHOULD VISIT THE LEK 4 TIMES. HOWEVER, IF YOU ARE ONLY ABLE TO MAKE 1 COUNT FOR A GIVEN LEK BE SURE YOUR VISIT COINCIDED WITH PEAK LEK ATTENDANCE.

SAGE GROUSE: MID-MARCH TO MID-MAY DEPENDING ON YOUR LOCATION.
MOUNTAIN SHARP-TAILED GROUSE: MID-APRIL TO MID-MAY.
PLAINS SHARP-TAILED GROUSE: LATE MARCH TO MID-MAY.
PRAIRIE CHICKENS: LATE MARCH TO MID-MAY.

PLEASE FILL OUT THE FORM AS COMPLETELY AS YOU CAN. IF THE LEK IS AN ESTABLISHED (KNOWN) LEK, IS IT ACTIVE OR INACTIVE? IF THE LEK IS NEW, PLEASE PROVIDE THE UTM COORDINATES AND SPECIFY METHOD OF DETERMINATION (GPS UNIT OR MAP). FOR ALL LEKS PLEASE PROVIDE THE COUNTY, USGS QUAD, AND LAND STATUS.

IF YOU GO TO A LEK AND ARE UNABLE TO COUNT OR DO NOT SEE BIRDS, PLEASE FILL OUT A FORM W/THE DATE AND OTHER PERTINENT INFORMATION. THIS IS IMPORTANT INFORMATION ON TIME OF PEAK LEK ATTENDANCE.

IT IS IMPORTANT TO FILL OUT THIS FORM EACH TIME YOU VISIT A LEK SITE, REGARDLESS OF WHETHER YOU OBSERVE BIRDS OR NOT!!! IF YOU ARE UNABLE TO LOCATE BIRDS AT A KNOWN LEK, INDICATE IN THE COMMENTS WHETHER YOU SEARCHED THE SURROUNDING AREA TO ASCERTAIN IF THE LEK SITE CHANGED LOCATIONS. THANK YOU!

THE COMMENTS SECTION IS THERE FOR USE AS NECESSARY. IF YOU NEED ADDITIONAL SPACE, PLEASE USE THE SPACE BELOW.

All forms should be returned to the Area Biologist. They will review the information, compile the data, and forward it to Lyn Stevens. The data is incorporated into a statewide database.

1999 GROUSE LEK SURVEY FORM

SPECIES: _____ DATE: _____
 LEK NAME: _____ DISTRICT/COUNT AREA: _____
 OBSERVER(S): _____
 LEK STATUS: _____

IF THE LEK IS ESTABLISHED (I.E. KNOWN LEK SITE), IS IT _____ ACTIVE OR INACTIVE ?

IS THE LEK _____ NEW?

_____ UTM Y (NORTHING) _____ UTM X (EASTING)

UTM COORDINATES DETERMINED BY _____ GPS _____ MAP

USGS QUAD _____

COUNTY _____ LAND STATUS: _____ PUBLIC

PRIVATE

TIME	TOTAL MALES	TOTAL FEMALES	TOTAL UNKNOWN	TOTAL BIRDS

HIGH COUNTS:

MALES _____ UNKNOWN _____
 FEMALES _____ FLUSH COUNT * _____
 TOTAL BIRDS _____

* THE FLUSH COUNT IS ONLY NECESSARY WHEN BIRDS ARE FLUSHED INADVERTENTLY OR THE OBSERVER IS UNABLE TO OBSERVE BIRDS ON THE LEK AND OPTS TO FLUSH THE BIRDS TO OBTAIN A COUNT. FLUSH COUNTS SHOULD BE DONE ONLY AS A LAST RESORT.

COMMENTS: USE AS NECESSARY (WEATHER, BEHAVIOR, PRESENCE/ABSENCE OF PREDATORS, OTHER DISTURBANCES TO BIRDS, ETC.) :

FULLENWIDER RANCHES, INC.
P.O. Box 125
Villa Grove, CO. 81155

March 13, 2013

Saguache County Land Use Commission

Re: Letter of Opposition to the Listing of Poncha Pass Area as Critical Habitat for the Gunnison Sage Grouse and the rules and regulations that will follow.

To whom it may concern;

We are writing this letter to express our strong opposition to the listing of the Poncha Pass area as critical habitat for the Gunnison Sage Grouse and any actions by Saguache County and the State of Colorado to support this listing and propose rules and regulations on private property as an effect of the proposed listing. As property owners of an existing Ranch within the proposed area we would feel that we must express our concern with this listing and any restrictions upon private property that would go along with such. Here are a few of our observations.

1. Over the past ten or more years local land owners and organizations, working with state and federal groups have worked to protect the Sage Grouse and avoid any federal designation as a threatened or endangered species. Significant effort and money to prevent the loss of birds has been expended with little effect.
2. The US Fish and Wildlife lists a host of factors that threaten the bird, but state that the principle threat is habitat loss, degradation and fragmentation (primarily due to residential expansion, exurban commercial development, and the associated infrastructure such as roads and power lines).
3. Not much has changed in the area with few homes being built. Roads have not been improved or expanded. Fences have not been changed. Lots smaller than the state allowed 35 acres have not been subdivided or sold, and agricultural activity remains at the same level or less than when the birds were introduced to the area.
4. The only persons we ever see bothering or trying to find the birds are biologists from working groups trying to study the birds in order to protect them.

This leaves us to believe that the if the studying of the birds does not affect them negatively and the other listed factors have not changed, the only factors left to

threaten the Gunnison Sage Grouse are those controlled by Mother Nature, such as the extended drought and predation. The extended drought has affected the sage brush making it smaller and less dense. There are a few hawks and eagles in the area but the main predator is the coyote. While some argue that the coyotes do not kill and eat sage grouse we know for a fact that they are opportunistic animals which will eat anything even eggs in order to survive. Yes we believe Mother Nature will continue to decimate these birds which have proven to be ill equipped to survive in the modern world.

Anytime the government (at any level) takes an action which impacts private property rights it's a serious concern. Any rules and regulations associated with the listing of the Poncha Pass area could in effect strip local property owners of their rights to use and manage their own properties and may make it impossible to keep operating our property as a ranch. It has been operated by the same family as a ranch since it was homesteaded in 1872. It may also make it impossible to sell the property as a working ranch thus erasing over 100 years of hard work for the entire family. To sum it up the rules and regulations which come along with the listing could take so many rights away from the lawful owners of the private property that you could describe it as taking the property for the use of the government and public without just compensation to the owners.

What you may not know is that many of the larger land owners in the Poncha Pass area are already working to establish Conservation easements on much of their properties. It just takes time to work through the process and all the Federal Rules for such.

Once again we express our opposition to the listing of the Poncha Pass area as critical habitat for the Gunnison Sage Grouse.

Respectfully

Gerald Gray
Alma Gray
Wesley Moores
Gail Moores

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ARTICLE XX
WILDLIFE

XX.1. Purpose and Intent

The purpose and intent of the regulations contained in these paragraphs are:

- XX.1.1. To protect those areas essential for wildlife habitat.
- XX.1.2. 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.
- XX.1.3. To regulate development and activities within areas of significant wildlife habitat in a manner that will minimize damage to this resource for future use.

XX.2. Definitions

- XX.2.1. "Wildlife" means wild vertebrates, mollusks and crustaceans, and any species introduced or released by the division of Wildlife.
- XX.2.2. "Wildlife habitat" means the region or environment containing those elements, necessary for the survival and health of a wildlife species, and consisting of principle feeding areas, winter range, summer range, shelter/security areas, concentration areas, production areas, movement corridors, areas providing essential minerals and water, and special habitat needs.

XX.3. Applicability

These Regulations apply to applications for permits to engage in development in all designated significant wildlife habitat areas within the unincorporated territory of this County.

Any person seeking to engage in development in any designated or regulated significant wildlife habitat area in the unincorporated territory of this County shall obtain a permit pursuant to these Regulations before seeking any other permit, rezoning, or other action by this County.

XX.4. All Areas designated or Regulated must be listed

All areas within this County that are subject to regulation or designation under this Article are listed and described in Section 5 of this Article. Any and all property not so listed has not been designated or regulated under this Article.

XX.5. 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.

- XX.5.1. The significant wildlife habitats shown as areas where development would have a Moderate, High, or Very High Impact on wildlife as defined by the Colorado Division of Wildlife on its Significant Wildlife Habitat Overlay Map for Saguache County.
- XX.5.2. An official copy of the maps shall be filed in the office of the Saguache County Land Use Administrator and available for public inspection.

XX.6. Prohibition on Development in Designated Significant Wildlife Habitat without Permit

- XX.6.1. No person may engage in development in a designated significant wildlife habitat in this county without first obtaining a permit pursuant to these Regulations.
- XX.6.2. No person may 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.

XX.7. Procedural Requirements

- XX.7.1. 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 Article IV.
- XX.7.2. 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, and maintained in the office of the Saguache County Land Use Administrator.

XX.8. 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:

- XX.8.1. Completed application form.

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- XX.8.2. Legal description of the proposed development site.
- XX.8.3. 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).
- XX.8.4. Topographic map or maps showing the location, nature and density of the proposed development or land use change.
- XX.8.5. 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.
- XX.8.6. 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 habitat needs listed below by the identified wildlife species and 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.
 - XX.8.6.1. 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, caving and fawning areas, den trees, burrows, and young-rearing cover for mammals.
 - XX.8.6.2. 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.
 - XX.8.6.3. Summer Ranges: 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.
 - XX.8.6.4. 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

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involved are adversely affected, or the species may adversely affect real and personal property.

- XX.8.6.5. Concentration Areas: Areas where high density of wildlife species at certain times of the year makes them highly susceptible to developments and activities of man. Examples of concentration areas include staging areas for waterfowl, sand hill 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.
- XX.8.6.6. Shelter Areas: Those physical or natural features in their habitats, which provide escape 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.
- XX.8.6.7. 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.
- XX.8.6.8. 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. Concentrations 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 interference could be disastrous for the species involved.
- XX.8.6.9. 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.
- XX.8.6.10. 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

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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.

XX.8.6.11. 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.

XX.9. Waiver of Submission Requirements

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.

XX.9.1. 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 concurrence 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.

XX.9.2. The petition shall be considered and the decision rendered by the Permit Authority at a public hearing held in compliance with the provision of Article IV, Section 3.3 of this regulation.

XX.9.3. 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 Regulations adopted by this County.

XX.10. Approval of Permit Application

The Permit Authority shall approve an application for a permit to develop within a designated significant wildlife habitat (with reasonable conditions, if any, in the

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discretion of the Permit Authority) only if the proposed development complies with all of the following criteria:

- XX.10.1. The development is compatible with the significant wildlife habitat as designated;
- XX.10.1.1. The development is designed and will be administered, mitigated, controlled and regulated to allow the development to function in harmony with, rather than be destructive to, the significant wildlife habitat as designated;
- XX.10.1.2. 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; and
- XX.10.1.3. The development adopts the recommendations of the Division of Wildlife of the Department of Natural Resources.
- XX.10.2. The Permit Authority shall deny the permit if the proposed development does not meet all of the criteria in Section 10.