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December 2, 2013

NEPA Coordinator  
Bureau of Land Management, Northwest Colorado District  
2815 H Road  
Grand Junction, Colorado 81506

Re: Greater Sage-Grouse Draft Land Use Plan Amendment/Draft  
Environmental Impact Statement

TransWest Express LLC (TransWest) appreciates the opportunity to comment on the Greater Sage-Grouse Draft Land Use Plan Amendment/Draft Environmental Impact Statement (Draft LUPA/EIS) for the Colorado Bureau of Land Management (BLM) Northwest Colorado District as noticed in the Federal Register on August 16, 2013 (78 FR 50054).

TransWest is the proponent of the TransWest Express Transmission Project (TWE Project), which is the subject of a separate environmental analysis led by the BLM Wyoming State Office and Western Area Power Administration (Western) as joint lead agencies. BLM and Western issued their Draft Environmental Impact Statement (TWE DEIS) for TWE Project on July 3, 2013; the Final EIS and Records of Decision are scheduled for release in 2014. Approximately 91 miles of the TWE Project's proposed corridor are in northwest Colorado, while an additional 242 miles of alternative corridors under consideration in the TWE DEIS fall within portions of the Planning Area described in the Draft LUPA/EIS. The TWE Project was designated in 2011 as a priority project by the federal "Rapid Response Team for Transmission," whose purpose is to "accelerate responsible and informed deployment of several key transmission facilities."

If approved, the LUPA would amend the existing BLM Resource Management Plans (RMPs) and the U.S. Forest Service (USFS) land and resource management plan in the Northwest Colorado District to guide the management of greater sage-grouse (GRSG) habitat on public lands administered by the BLM and USFS, including federal mineral estate. The TWE Project has undergone extensive analysis to determine impacts to GRSG and these plan amendments may affect the TWE Project siting process that has been ongoing since 2007.

TransWest's comments are divided into two sections – general comments on the four alternatives being analyzed in the Draft LUPA/EIS and specific comments concerning the analyses. For ease of reference and because BLM is the lead agency on the Draft LUPA/EIS, TransWest will generally address comments to BLM; however, TransWest requests that both BLM and USFS take all comments into consideration when coming to their respective decisions on the LUPA.

## Alternatives

BLM has failed to formulate a reasonable range of alternatives in the Draft LUPA/EIS as required under Council on Environmental Quality (CEQ) regulations at 40 CFR 1500. For instance, BLM developed Alternative C that is focused only on conservation. In contrast, the Draft LUPA/EIS does not present and analyze any alternatives developed by public lands multiple use proponents. The Final LUPA/EIS must offer an explanation as to why a resource development or multiple use alternative was not developed by BLM with input from industry. Such an alternative would allow the public to understand the full range of potential impacts to GRSG and their habitat and allow industry to present conservation measures that have proven effective in conserving GRSG while allowing responsible development to proceed. By omitting a resource development alternative in the Draft LUPA/EIS, BLM has failed to provide a reasonable range of alternatives.

For the various reasons set forth under each alternative below, the alternatives developed by BLM do not meet the CEQ requirements and together do not represent a reasonable range of alternatives. Until such time as BLM develops and analyses a reasonable range of alternatives including alternatives that balance GRSG conservation and BLM's multiple use mandate, TransWest supports the No Action Alternative (Alternative A)

### Alternative A (the No Action Alternative)

This alternative continues current management direction in accordance with the existing BLM and USFS planning documents. TransWest supports Alternative A unless and until such time as BLM develops and analyses a reasonable range of alternatives.

### Alternative B (The NTT Alternative)

The basis for Alternative B is the GRSG conservation measures in *A Report on National Greater Sage-Grouse Conservation Measures* by the National Technical Team (NTT) released in 2011. As pointed out in the scoping comment letter on the Draft LUPA/EIS by TransWest's affiliate Power Company of Wyoming LLC (PCW), the NTT (2011) report does not rely on best available science, contains numerous errors and mis-statements of facts, and evidences a bias in favor of preservation of GRSG habitat rather than conservation of habitat and responsible multiple use.<sup>1</sup> In fact, the NTT (2011) report is so fatally flawed and lacking in scientific integrity that on November 19, 2013 the Western Energy Alliance felt compelled to write to Secretary Sally Jewell of the U.S. Department of the Interior (DOI) urging the Secretary to correct the numerous flaws of the NTT (2011) report and to confirm that DOI will not rely upon the flawed document as the basis for prescriptive land use decisions that conflict with multiple uses of public lands and valid existing rights (a copy of the Western Energy Alliance letter is attached as Exhibit A).

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<sup>1</sup> See Letter from Power Company of Wyoming LLC to Rocky Mountain Region Project Manager et al dated March 23, 2012

BLM has an obligation to disclose responsible opposing views in the EIS. (see 40 CFR 1502.9(b)) The courts are increasingly applying this requirement to mandate the agency's consideration of opposing scientific views as well.<sup>2</sup> BLM must also rely upon best available scientific data and information in its consideration and analysis of impacts and cannot rely on stale or outdated data where more recent data is available.<sup>3</sup> Neither the Draft LUPA/EIS or the NTT (2011) report disclose opposing scientific views as to development impacts and threats to GRSG. Further, as set forth in our detailed comments below, neither the Draft LUPA/EIS nor the NTT (2011) report incorporates best available science. Therefore, BLM has failed to meet its obligations under the NEPA.

Because Alternative B does not comply with NEPA and the foundation upon which the alternative was built is not scientifically sound, BLM should not carry forward Alternative B to the Final LUPA/EIS. Should BLM choose to ignore the lack of scientific underpinnings for Alternative B and carry it forward into the Final LUPA/EIS, at a minimum, the BLM must address the following issues:

- 1) BLM must update the NTT (2011) report with current best available science;
- 2) BLM must address the issues raised in PCW's scoping letter regarding inaccurate, misleading, or unfounded "scientific" statements and conclusions in the NTT (2011) report; and
- 3) BLM must address the issues raised in the Western Energy Alliance letter (attached as Exhibit A).

#### Alternative C (The ADH Alternative)

According to BLM, Alternative C was developed based on recommendations of individuals and conservation groups for protection and conservation of GRSG and their habitat. Alternative C is not a reasonable alternative and should not have been carried forward for analysis. Alternative C is so restrictive that it fails to meet BLM's statutory obligation to manage public lands for multiple use. As is evident from Table 2-4, Alternative C is the no-resource development alternative that would, if selected, require BLM to manage for a single resource – GRSG. While the Federal Land Policy and Management Act (FLPMA) does not require BLM to manage for every resource everywhere, it does require BLM to strike a balance in the management of public lands and does not allow the BLM to manage a significant percentage of its lands within the Planning Area to the benefit of a single species. Alternative C should be dropped from further consideration.

#### Alternative D (The Preferred Alternative)

BLM presents Alternative D as the alternative that emphasizes balancing resources and resource use among competing human interests, land uses, and the conservation of natural and cultural resource values, while sustaining and enhancing ecological integrity across the landscape,

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<sup>2</sup> See Center for Biological Diversity v. U.S. Forest Service. 349 F.3d 1157 (9<sup>th</sup> Cir. 2003)

<sup>3</sup> See Northwest Ecosystem Alliance v. Rey. 380 F. Supp. 2d 1175 (W.D. Wash. 2009). Lands Council v. Powell. 395 F.3d 1019 (9<sup>th</sup> Cir. 2003)

including plant, wildlife, and fish habitat. Alternative D incorporates “adjustments” to the NTT (2011) report; however, as pointed out in our comments for Alternative B, the NTT (2011) report is so fatally flawed that it should not be used as the basis for any alternative, including Alternative D. While we commend the BLM for attempting to develop a balanced alternative, to have any credibility the alternative must first start with best available science and an unbiased view of GRSG conservation and energy and transportation development. BLM should first get the science right, then develop a new balanced alternative to replace Alternative D.

### **Specific Comments**

#### 1. Table 2-4, NTT No. 10, Alternative D

In the Draft LUPA/EIS, BLM assumes that large transmission lines (greater than 230 kV) impact GRSG and their habitat. As documented by Terry A. Messmer et al in *Stakeholder contemporary knowledge needs regarding the potential effects of tall structures on sage-grouse*<sup>4</sup> (Messmer et al. 2013) there are no peer-reviewed, experimental studies reported in the scientific literature that specifically document increased avoidance or predation on GRSG because of the construction, operation, and maintenance of tall structures, such as transmission lines; however, recent unpublished reports have begun to address this issue. A recent report (Nonne et al. 2013) from the University of Nevada at Reno discussed impacts to GRSG from the Falcon-Gondor transmission line in Nevada.<sup>5</sup> Messmer et al. (2013) summarizes the results of the study as follows:

Nonne et al. (2013) reported the results of a study that used pre- and post-construction telemetry data to assess the potential impacts of a transmission line on sage-grouse populations. They conducted a 10-year study of sage-grouse dynamics in response to a transmission line in central Nevada and reported that habitat conditions had the greatest effect on sage-grouse nest and brood success and overall survival in their study areas than did proximity to the power line. The report found “no negative effects on demographic rates (i.e., male survival and movement, female survival, pre-fledging chick survival, and nest survival) that could be explained by an individual’s proximity to the transmission line.” They found no evidence that predation increased close to the line, as nest survival and female survival were similar across all distances evaluated (Nonne et al. 2013). The role of micro-habitat structure and annual landscape-scale variation in weather in sage-grouse nest and brood site selection and nest and brood success in xeric habitats (Figure 5) has also been reported by Coates and Delehanty (2010), Kirol et al. (2012), LeBeau (2012), Guttery et al. (2013), and Robinson and Messmer (2013).

By not considering Messmer et al. (2013) and Nonne et al. (2013), the Draft LUPA/EIS fails to use best available scientific information. BLM also fails to consider and discuss opposing,

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<sup>4</sup> Messmer, T.A., Hasenyager, R., Burruss, J., Liguori, S., 2013. Stakeholder contemporary knowledge needs regarding the potential effects of tall structures on sage-grouse. *Human-Wildlife Interactions* 7(2):273-298.

<sup>5</sup> Nonne, D., Blomberg, E., Sedinger, J. 2013. Dynamics of Sage-grouse (*Centrocercus urophasianus*) Populations in Response to Transmission Lines in Central Nevada, Progress Report: Year 10.

responsible scientific views. For the Final LUPA/EIS, BLM must consider and incorporate all best available scientific information including Messmer et al. (2013) and Nonne et al. (2013).

For Alternative D, a proposed stipulation declares GRSG Preliminary Priority Habitat (PPH) a ROW Avoidance area. The proposed stipulation provides that areas identified as avoidance areas for new ROWs and for ROWs for large transmission lines (greater than 230 kilovolts) would be required to document that they would not adversely affect GRSG populations due to habitat loss or disruptive activities. As stated above, a fair reading of the best available science is that effects of large transmission lines on GRSG and their habitats are unknown; therefore, transmission line proponents should not be required to document that proposed transmission lines would not adversely affect GRSG populations due to habitat loss or disruptive activities. Further, BLM is asking project proponents to prove a negative proof, which is not scientifically achievable or valid. Should the BLM pursue this stipulation as written then it must provide additional detail on the types of information and level of detail BLM believes necessary to demonstrate that new transmission lines would not adversely affect GRSG populations. Without additional detail and a defined scientific approach, this expectation is subjective, will result in unachievable planning goals and objectives, and is arbitrary and capricious.

Any new projects within PPH would be subject to the 5% disturbance cap as described in Appendix F, Disturbance Cap Management. The Draft LUPA/EIS proposes 3% and 5% disturbance caps for various alternatives, but fails to discuss the scientific basis for the caps. The Draft LUPA/EIS also fails to provide any details as to how such caps are to be calculated. We contrast this to the Wyoming Governor's Executive Order concerning Greater Sage-Grouse Core Area Protections (Order 2011-5) which provides detail and examples of how to calculate existing and proposed disturbance. The Final LUPA/EIS should (a) discuss the scientific basis for the 3% and 5% disturbance caps and not merely recite the flawed NTT (2011) report conclusions and (b) provide detail and examples of how the disturbance caps are to be calculated.

## 2. Table 2-4, NTT No. 11, Alternative D

BLM seemingly proposes a stipulation under Alternative D to require perch deterrents on new or existing overhead facilities (we note the language of this stipulation is rather confusing and we are unsure what is meant by "Where it is not possible to evaluate new or existing overhead facilities..."). The use of perch deterrents is infeasible on large (230 kV or greater) transmission structures. Additionally, perch deterrents have been shown to be ineffective in preventing perching and little evidence exists to suggest that perching on large transmission structures is a threat to GRSG. There are no peer-reviewed, scientific studies showing that powerlines increase avian predation on GRSG and, if so, whether such predation is significant at the population level (Messmer et al. 2013). In fact, the most recent scientific evidence based on the 10-year Falcon-Gondor transmission line study is that avian predation from transmission lines does not impact GRSG populations (Nonne et al. 2013).

Messmer et al (2013) contains a discussion of the most recent and best available scientific information concerning perch deterrents and documents the ineffectiveness in eliminating raptor or corvid perching on transmission or distribution lines. We note that this report was issued after

release of the Draft LUPA/EIS but its findings must be considered and included in the Final LUPA/EIS.

If BLM pursues this stipulation in Alternative D or any of the other alternatives, then justification in the form of peer-reviewed scientific literature related to the effectiveness of perch deterrents on large transmission structures to reduce raptor predation on GRSG should be cited to justify the stipulation. We are not aware of any literature or data that indicates that perch deterrents are effective at preventing perching and we generally object to the requirement that transmission towers include anti-perching devices, particularly where a project parallels existing transmission facilities using lattice structures that lack anti-perching devices.

3. Table 2-4, NTT No. 95, Alternative D

The proposed stipulation provides that only mappable stands of cheatgrass will count against the disturbance cap. BLM should define what mappable stands of cheatgrass consist of. Where cheatgrass is a minor component of the landscape or is patchy in distribution, it should not count towards the 5% standard as grouse can still utilize the landscape. BLM should define how mapped cheatgrass areas are identified and what methods should be used to map cheatgrass stands.

4. Table 2-6

Table 2-6 purports to be a table comparing alleviated threats by Alternative. BLM has identified that 881,700 acres are exclusion areas for large transmission lines while only 100,200 acres are closed for mineral leasing. The U.S. Fish and Wildlife Service identified oil and gas development as a threat to GRSG. To support Alternative D's identification of 881,700 acres as exclusion areas for large transmission lines, BLM needs to provide clear and irrefutable evidence that large transmission lines are a major threat to GRSG similar to U.S. Fish and Wildlife Service's identification of oil and gas as a threat. Science on this issue has been mixed, but the most recent monitoring and research efforts indicates that large transmission lines do not significantly impact GRSG populations (Messmer et al. 2013, Nonne et al. 2013). BLM must provide the rationale for this measure.

5. Tables 3.14 and 3.16.

Table 3.14 states that there are 52,100 miles of transmission lines greater than 115 kilovolts (kV) within GRSG Habitat within the Planning Area (17,900 miles on BLM). This number seems extraordinary considering the size of the Planning Area and equates to a density of 2.2 miles of transmission line per square mile in the Planning Area. BLM cites as a source of this information Manier et al. (2013); however, it is not possible for the reader to get from Manier et al. (2013) to the numbers in Table 3.14. According to a 2002 U.S. Department of Energy Study there is 160,000 miles of overhead transmission lines of 230 kV and above in the United States. Major transmission lines in the Planning Areas are primarily owned by three entities – Tri-State Generation and Transmission Association, Inc., Western Area Power Administration, and Xcel Energy. Tri-State Generation and Transmission Association, which covers a four state area, owns and operates more than 5,200 miles of transmission lines throughout its system. Western

Area Power Administration, which covers 15 states in the western U.S., owns and operates 17,000 miles of transmission lines. Xcel Energy is the only other major utility operating in the Planning Area. Xcel's service territory within the Planning Area is limited to areas primarily along the Interstate 70 corridor and a transmission network that primarily serves its generation facilities. In view of the above facts, BLM's calculation that there are 52,100 miles of transmission lines above 115 kV within the Planning Area seems extremely questionable.

It is also very difficult to reconcile Table 3.14 with Table 3.16. If both Tables are in fact correct, then of the 17,900 miles of transmission lines within GRSG habitat on public lands within the Planning Area, only 80 miles fall within Utility Corridors within GRSG habitat on BLM-administered lands (we note that this may include underground only corridors for pipelines as the Draft LUPA/EIS does not break out the types of utility corridors). This seems unlikely given BLM's planning process. We therefore question the accuracy of the numbers presented.

Finally, according to Table 3.16, the 80 miles of BLM Utility Corridors in GRSG habitat represents 61,500 acres. This equates to 768.75 acres per line mile – more than a section of land (640 acres) per mile. Using BLM's numbers, Utility Corridors are on average 6,342 feet wide. We note that right-of-way (ROW) widths for transmission lines typically vary from 100 feet for a 115 kV line to up to 200 feet for a 345 kV line, the largest line currently in service within the Planning Area. Underground pipeline ROWs are generally on the order of 50 feet wide. We are uncertain what type of math BLM is using to calculate Acres of Utility Corridors within GRSG habitat as listed in Table 3.16. It may be that BLM is applying an effect buffer for indirect influences as did Manier et al. (2013), but this fact is not disclosed in the Draft LUPA/EIS. The Draft LUPA/EIS therefore does not comply with CEQ regulations that provide that an EIS must identify methodologies used and the scientific and other sources relied on for conclusions in an EIS. (40 CFR 1502.24) In addition, there is no peer reviewed scientific study documenting indirect effects of transmission lines on GRSG. (see Messmer et al. (2013))

For the Final LUPA/EIS BLM should check and correct its numbers and disclose to the reader the methods and scientific studies utilized to calculate the values in Tables 3.14 and 3.16.

#### 6. Section 4.4.2

Under Habitat Fragmentation (p. 506), BLM asserts that habitat fragmentation could lead to substantial population declines. While fragmentation will have an effect on the species, whether it leads to substantial population declines depends on the scale of the fragmentation, whether the surface-disturbing activities that lead to the fragmentation are permanent or short term, and whether connectivity is maintained between habitat patches. BLM should clarify this point in the Final LUPA/EIS.

Under Habitat Degradation (p.506), BLM assumes "...that habitat next to roads that are impacted by dust and dust suppression activities would have some lower level of understory next to the impacted habitat." BLM needs to provide a citation from peer reviewed scientific literature supporting this claim that GRSG habitat quality is impaired by dust, or omit the statement.

Concerning Impacts from Lands and Realty Management on Greater Sage-Grouse (p. 508), BLM cites three papers to support the claim that grouse avoid tall structures. None of these three papers experimentally evaluated the impacts of tall structures on GRSG. Messmer et al. (2013), which reviewed these three papers, documents that there is no evidence of avoidance or increased predation associated with tall structures, including transmission lines. BLM should modify this citation to acknowledge the uncertainty and to include literature (Nonne et al. 2013, Messmer et al. 2013) which documents that there is no evidence of avoidance or increased predation associated with tall structures.

With regard to Disruption Impacts (p. 509-510), Messmer et al. (2013) documents that there is no evidence of avoidance or increased predation associated with tall structures, including transmission lines. Nonne et al. 2013 also documents no evidence of increased mortality or decreased survival from predation or harassment associated with transmission lines. BLM should remove statements of increased harassment or predation associated with large overhead transmission lines and should appropriately cite the most recent science on the issue.

BLM asserts that “[s]urface disturbance during construction removes vegetation and important habitat components for GRSG and, in most cases, renders the habitat unsuitable.” (p. 509) This is a broad statement that leads the reader to believe that ROW construction renders all habitat in the area as unsuitable. The Falcon-Gondor study demonstrated that lek attendance trends actually increased as leks got closer to the transmission line. The Falcon-Gondor study also did not show any negative trends associated with nest survival, pre-fledgling survival, or female survival, thus indicating that the transmission line did not negatively influence GRSG habitats or populations. (Nonne et al. (2013)) The statement should be modified to read “...may render the habitat unsuitable within the limits of disturbance.”

BLM asserts that “[n]oise and an increase in human presence during construction may displace GRSG into lower quality habitat and may disrupt breeding and nesting.” (p. 509) This assertion should be qualified by stating that potential construction impacts due to human presence and noise to nesting and breeding GRSG can be reduced by establishing and implementing timing stipulations or other appropriate mitigation measures during construction.

BLM asserts that “[d]irect mortality may occur when GRSG collide with ... guy wires.” (p. 510) The Falcon-Gondor study radio-tracked 376 greater sage-grouse and documented mortality for 87 GRSG. None of those mortalities were due to collision with the Falcon-Gondor Transmission Line. (Nonne et al. (2013)) This would indicate that the potential for GRSG collision with transmission lines is low. Such evidence should be presented in the Final LUPA/EIS analysis of impacts. There is a much higher potential for direct mortality due to collisions with fencing located within GRSG habitat, but the impacts can be reduced through the use of fence and guy wire markers. BLM should clarify that this risk of direct mortality can be minimized and mitigated through the application of appropriate marking technologies where warranted.

Under Alternative C, BLM proposes to manage All Defined Habitat (ADH) as an exclusion area for new ROW projects. (p. 511) However, as BLM points out, “not all habitats within mapped priority and general GRSG ranges are capable of supporting GRSG populations.” (p. 507)

There is simply no rationale for managing all ADH as a ROW exclusion area (see our comments above on Alternative C).

7. Table 4.2

Concerning Infrastructure/Anthropogenic threats, BLM's criteria to permit disturbances are unreasonable and not developed using a sound understanding of GRSG ecology. Demonstration that populations are stable or increasing is difficult given the annual variability and cyclic nature of GRSG populations. GRSG populations are highly susceptible to weather patterns and other stochastic variables that cannot be controlled. Additionally, population size of GRSG is difficult or impossible to estimate using lek attendance data or other simple census data. Habitat-based criteria demonstrating conservation or improvement of habitat conditions would be superior to the stable or increasing population criteria in that conservation and improvement of habitat provides the resources that GRSG require to maintain stable or increasing populations. BLM should modify the criteria for permitting disturbances by considering conservation measures designed for stable or improving habitat quality or quantity. The demonstration of stable or increasing population is the responsibility of the BLM and Colorado Parks and Wildlife, not the project proponent.

8. Table 5.1

Table 5.1 lists Past, Present, and Reasonably Foreseeable Projects, Plans, or Actions that Comprise the Cumulative Impact Scenario. There are a number of errors in this table based on a rather cursory review, for instance:

- a. While the Draft LUPA/EIS correctly identified that a Record of Decision has been issued for the Chokecherry and Sierra Madre Wind Energy Project (Rawlins BLM Field Office), it incorrectly states that the project consists of over 100,000 wind turbines. The project has been authorized for up to 1,000 wind turbines.
- b. Foote Creek Rim Wind Farm is described as consisting of "several thousand wind turbines". According to the BLM's website, "[s]ince development of the original 69-turbine project, several subsequent phases have been constructed, and the project now totals 183 turbines with a generating capacity of 134.7 megawatts." This falls far short of the "several thousand wind turbines" cited in the Draft LUPA/EIS.
- c. The Zephyr 500 kV Transmission Line is on indefinite hold and should be removed from the list of reasonably, foreseeable future actions. (personal communication with the Wyoming Infrastructure Authority)

While these errors may not lead to a different analysis or conclusion, they do go to the credibility of the document. BLM should carefully review and update Table 5.1 and correct any errors for the Final LUPA/EIS.

**Summary**

Given the issues identified above regarding the scientific validity of the information presented regarding GRSG ecology, as well as the inaccuracies in the information presented on infrastructure, corridors, and cumulative projects, TransWest questions the credibility of the Draft LUPA/EIS document. TransWest requests that BLM critically examine the Draft LUPA/EIS prior to issuing a Final LUPA/EIS that will have a significant impact on the future use and management of public lands within the Planning Area. While TransWest supports conservation of GRSG and appreciates the delicate balancing act BLM must perform to meet its legal obligation of multiple use management while not contributing to the potential listing under the ESA of the GRSG, we do not believe that the alternatives and measures presented in the Draft LUPA/EIS strike that balance. However, by revisiting the Draft LUPA/EIS and incorporating the best available scientific information, TransWest is confident that BLM can achieve the proper balance of conservation and multiple use management.

Sincerely,

A handwritten signature in blue ink, appearing to read "Garry L. Miller", with a long, sweeping horizontal stroke extending to the right.

Garry L. Miller  
Vice President, Land and Environmental Affairs

**EXHIBIT A**

WESTERN ENERGY ALLIANCE LETTER

TO

THE HONORABLE SALLY JEWELL

SECRETARY, U.S. DEPARTMENT OF THE INTERIOR

NOVEMBER 19, 2013



November 19, 2013

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

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

Dear Secretary Jewell:

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

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

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

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

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

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

### **Scientific Flaws with the NTT Report**

BLM convened the NTT to develop new or revised regulatory mechanisms for incorporation into Resource Management Plans (RMP) to conserve GSG and its habitat on BLM lands on a long-term, range-wide basis. The NTT Report fails to make use of the latest scientific and biological information available and to acknowledge lower impact technologies and mitigation currently in use by the oil and natural gas industry such as detailed in Ramey, Brown, and Blackgoat<sup>5</sup> and in a presentation to the NTT by BLM staff. In addition, the NTT report asserts that impacts from oil and natural gas development are “universally negative and typically severe”<sup>6</sup> but provides no scientific data to support that mistaken assertion.

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

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

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

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

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

<sup>6</sup> NTT Report at 19.

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

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

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

#### **Issues with Peer Review of the NTT Report**

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

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

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

### **Scientific Flaws with the COT Report**

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

### **Issues with Peer Review of the COT Report**

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

A number of laws, regulations, directives and guidance stress the importance of independence<sup>8</sup> and the need to avoid conflicts of interest.<sup>9</sup> For example, The National Academy of Sciences (NAS) considers financial interests, access to

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

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

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

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

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

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

### **Conclusion**

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

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

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

Sincerely,



Kathleen M. Sgamma  
Vice President of Government & Public Affairs

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