

Government Affairs / Natural Resources



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December 9, 2016

VIA FAX (303-239-3799) and U.S. Postal Service return receipt

Ruth Welch, State Director
Colorado State Office
BLM
2850 Youngfield St.
Lakewood, CO 80215

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RE: Protest of Specific Parcels in the February 2017 Colorado BLM Competitive Oil and Gas Lease Sale

Dear Ms. Welch,

The Board of County Commissioners of San Miguel County, Colorado (hereafter, "SMC") hereby files this Protest of the Bureau of Land Management ("BLM")'s planned February 9, 2017 oil and gas lease sale¹ and Determination of NEPA Adequacy ("DNA") DOI-BLM-S010-2016-0039-DNA² pursuant to 43 C.F.R. § 3120.1-3.

PROTEST

I. Summary of Formal Protest to Sale Parcels by Serial Number (Parcel ID)

SMC formally protests the inclusion of each of the following sale parcels in the Tres Rios Field Office in San Miguel County for reasons described below in this document:

Serial #: COC 78172 (PID=7378)

- 0.05 acre within nominated Disappointment Valley ACEC still under review

Serial #: COC 78171 (PID=7792)

- 1,015 acres within nominated Gypsum Valley [expanded] ACEC still under review
- 2.2 acres within existing lease COC0098772, no expiration date (leased since 10/1/1963)

¹https://www.blm.gov/style/medialib/blm/co/programs/oil_and_gas/Lease_Sale/2017/february.Par.10079.File.dat/Feb_2017_Final_SN_posting.pdf

²https://www.blm.gov/style/medialib/blm/co/programs/oil_and_gas/Lease_Sale/2017/february.Par.65668.File.dat/DOI-BLM-oc_S010-2016-0039-DNA_FinalRJDraft_Posting.pdf

Serial #: COC 78167 (PID=7795)

- 510.7 acres within existing lease COC071757, expiration date listed as 4/30/2018
- Gunnison Sage-grouse:
 - 133.4 acres within 4-miles of a lek and within analysis area of in-progress GuSG RMP amendment
 - Colorado Parks and Wildlife (CPW) and U.S. Fish and Wildlife Service (USFWS) recommended deferral of parcels adjacent to occupied critical habitat due to the potential for indirect impacts to GuSG until BLM GuSG RMPa completed.

Serial #: COC 78168 (PID=7797)

- 0.07 acre within nominated Dry Creek Basin ACEC still under review
- 669.2 acres within existing leases COC071757 & COC071758, expiration date listed as 4/30/2018
- Gunnison Sage-grouse:
 - 0.1 acre within Occupied GuSG habitat
 - Colorado Parks and Wildlife (CPW) and U.S. Fish and Wildlife Service (USFWS) recommended deferral of parcels adjacent to occupied critical habitat due to the potential for indirect impacts to GuSG until BLM GuSG RMPa completed.

Serial #: COC 78169 (PID=7798)

- 291.0 acres within existing lease COC071758, expiration date listed as 4/30/2018
- Gunnison Sage-grouse:
 - 0.03 acre within Occupied GuSG Habitat
 - Colorado Parks and Wildlife (CPW) and U.S. Fish and Wildlife Service (USFWS) recommended deferral of parcels adjacent to occupied critical habitat due to the potential for indirect impacts to GuSG until BLM GuSG RMPa completed.

Serial #: COC 78162 (PID=7801)

- 119.2 acres within existing lease COC071754, expiration date listed as 4/30/2018
- Gunnison Sage-grouse:
 - 195 acres within existing Conservation Easement on the split estate, in opposition to the primary conservation value of conserving Gunnison Sage-grouse habitat and in opposition to a goal of the county Land Heritage program.

Serial #: COC 071865 (PID=7806)

- 160.5 acres within existing lease COC071753, expiration date listed as 4/30/2018

Serial #s: COC 78162 (PID=7801), COC 78163 (PID=7802), COC 78167 (PID=7795), COC 78168 (PID=7797), COC 78169 (PID=7798), COC 78170 (PID=7799), and COC 78165 (PID=7806)

- NEPA violation – Determination of NEPA Adequacy (DNA) is inadequate and requires additional review for Gunnison Sage-grouse.

II. Contact Information and Interests of Protesting Party:

This Protest is filed on behalf of the San Miguel County Board of County Commissioners by:

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Lynn Padgett
Director, Department of Government Affairs and Natural Resources
San Miguel County, Colorado
P.O. Box 1170
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Telluride, CO 81435

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San Miguel County has the responsibility of ensuring health, safety and welfare, including environmental health within the County. Watershed health, soil health, and protection of wildlife habitat are very important to San Miguel County. SMC BOCC has collaborated, cooperated, and coordinated with federal land agencies on federal land planning and projects. Sixty percent of the land in San Miguel County is federal public land, with another 4% being owned by the State of Colorado. Only 36% of San Miguel County consists of private land. 70.6 % of San Miguel County is a federal mineral estate.

San Miguel County has assisted in the protection of thousands of acres of private lands with important wildlife habitat values, especially Gunnison Sage-grouse (GuSG) critical habitat, during the last few decades by participating in the acquisition of conservation easements intended to preserve and protect GuSG habitat. San Miguel County has financially contributed between \$1.4 and \$1.6 million during this period for GuSG habitat conservation and improvements through the County's Land Heritage Program, co-funding of the Gunnison Sage-grouse Working Group and funding of other actions intended to provide direct benefits to GuSG recovery and resilience. SMC continues to actively participate with the stakeholder group that developed the Gunnison Sage-grouse Rangewide Conservation Plan.

San Miguel County commissioned "A Natural Heritage Assessment San Miguel and Western Montrose Counties, Colorado," prepared by the Colorado Natural Heritage Program in 2000, which identified several areas having high biodiversity as Potential Conservation Areas (PCAs).³ Citizens of San Miguel County have long recognized the need to plan for the conservation of plants and animals that are native to the San Miguel And Dolores River Basins and have demonstrated their desire to protect their significant natural heritage and natural resources by organizing the San Miguel Watershed Coalition, San Miguel Conservation Foundation, San Miguel County Open Space Commission, San Miguel County Land Heritage Program, and providing co-funding of collaborative groups such as prior mentioned Gunnison Sage-grouse Working Group, as well as Public Lands Partnership.

In addition, San Miguel County elected officials, staff and liaisons regularly and vigorously participates in public lands planning processes, including the Spruce Beetle Epidemic and Aspen Decline Management Response (SBEADMR) project; BLM Gunnison Sage-grouse Resource Management Plan Amendment process; Uncompahgre Collaborative Forest Restoration project; Alpine Ranger coalition; and others.

San Miguel County also participated in the Tres Rios Resource Management Plan process, including the ACEC nominating process, and is awaiting the correction of the Tres Rios RMP oversight that failed to analyze 15 areas that met both relevance and importance criteria for designation as ACECs.^{4,5} Similar to the Gunnison Sage-grouse Resource Management Plan Amendment process, the decision process on these potential ACECs within the Tres Rios Field Office area is on-going.

³[http://www.cnhp.colostate.edu/download/documents/2000/San Miguel and Western Montrose.pdf](http://www.cnhp.colostate.edu/download/documents/2000/San_Miguel_and_Western_Montrose.pdf)

⁴Pages U-3 & U-4;

https://www.blm.gov/style/medialib/blm/co/field_offices/san_juan_public_lands/land_use_planning/approved_lrpm.Par.83225.File.dat/App_U_ACEC.pdf

⁵https://www.blm.gov/co/st/en/BLM_Information/nepa/TRFO_NEPA/acecs.html

San Miguel County BOCC provided substantial comments for this February 2017 Lease Sale during the 30-day public review and public comment period between August and September 2016. Not all of SMC's comments were summarized or answered by the BLM in the DNA released November 7, 2017.⁶

III. Statement of Protest Reasons

A. Protest of parcels within a nominated Area of Critical Environmental Concern (ACEC) pending decision are in conflict with BLM policies.

In September 2016, several commenters on this lease sale offered comments that several parcels intersected proposed ACECs, including Rocky Mountain Wild and San Miguel County. BLM Response to these comments in this DNA⁷ included the BLM response statement:

"All of the lands that have been nominated for leasing at the February 2017 Oil and Gas Lease Sale and that are located within a proposed ACEC have been recommended for deferral from the February 2017 lease sale. The nominated lands that are located within a proposed ACEC and that have been recommended for deferral have been excluded from the parcels proposed for lease in this DNA. The portions of the nominated lands for parcels 7795, 7797, and 7794 that overlap with a proposed ACEC have been recommended for deferral due to GuSG habitat. The portions of parcel 7378 that overlapped with Disappointment Valley and Spring Creek Basin ACEC's have also been recommended for deferral. Parcel 7787 does not include lands within a proposed or existing ACEC."

San Miguel County (SMC) submitted comments September 8, 2016, which noted on page 8, that four sale parcels were within potential ACECs being considered for the designation through the ongoing Tres Rios ACEC RMP Amendment and associated Environmental Assessment (DOI-BLM-CO-S010-2016-0018-EA). The parcels identified by SMC were (by parcel ID):

- 7378
- 7792
- 7795
- 7797

BLM modified the boundaries of **Serial #: COC 78172** (PID=7378) and **Serial #: COC 78167** (PID=7795) to defer approximately 50 acres of lands within proposed ACECs between September and November 2016. However, SMC staff intersected the BLM-provided GIS files for the lease sale parcels⁸ and the proposed ACECs⁹, downloaded from BLM web pages in November 2016, and found that there is still the following acreages within proposed ACECs:

⁶https://www.blm.gov/style/medialib/blm/co/programs/oil_and_gas/Lease_Sale/2017/february.Par.65668.File.dat/DOI-BLM-co_S010-2016-0039-DNA_FinalRJDraft_Posting.pdf

⁷https://www.blm.gov/style/medialib/blm/co/programs/oil_and_gas/Lease_Sale/2017/february.Par.65668.File.dat/DOI-BLM-co_S010-2016-0039-DNA_FinalRJDraft_Posting.pdf. No page number, see Responses to Public Comments February 20178 Competitive Oil and Gas Lease Sale, BLM Response to Comments 6(b)-(c).

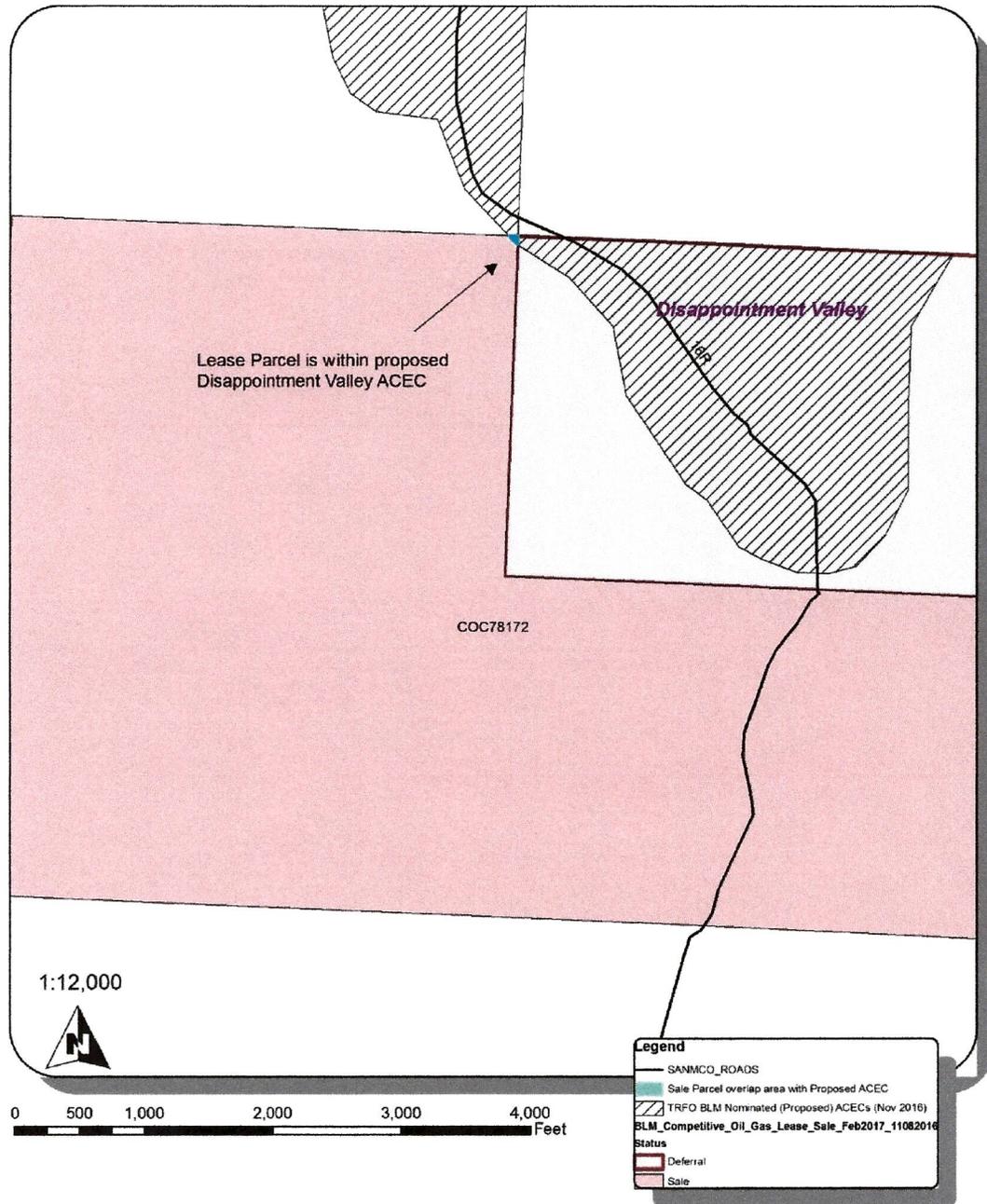
⁸https://www.blm.gov/style/medialib/blm/co/programs/oil_and_gas/Lease_Sale/2017/february.Par.44676.File.dat/BLM_Competitive_Oil_Gas_Lease_Sale_Feb2017_11082016.zip

⁹https://www.blm.gov/style/medialib/blm/co/field_offices/san_juan_public_land/land_use_planning/acec_docs.Par.77136.File.dat/nominated_ACECs.zip

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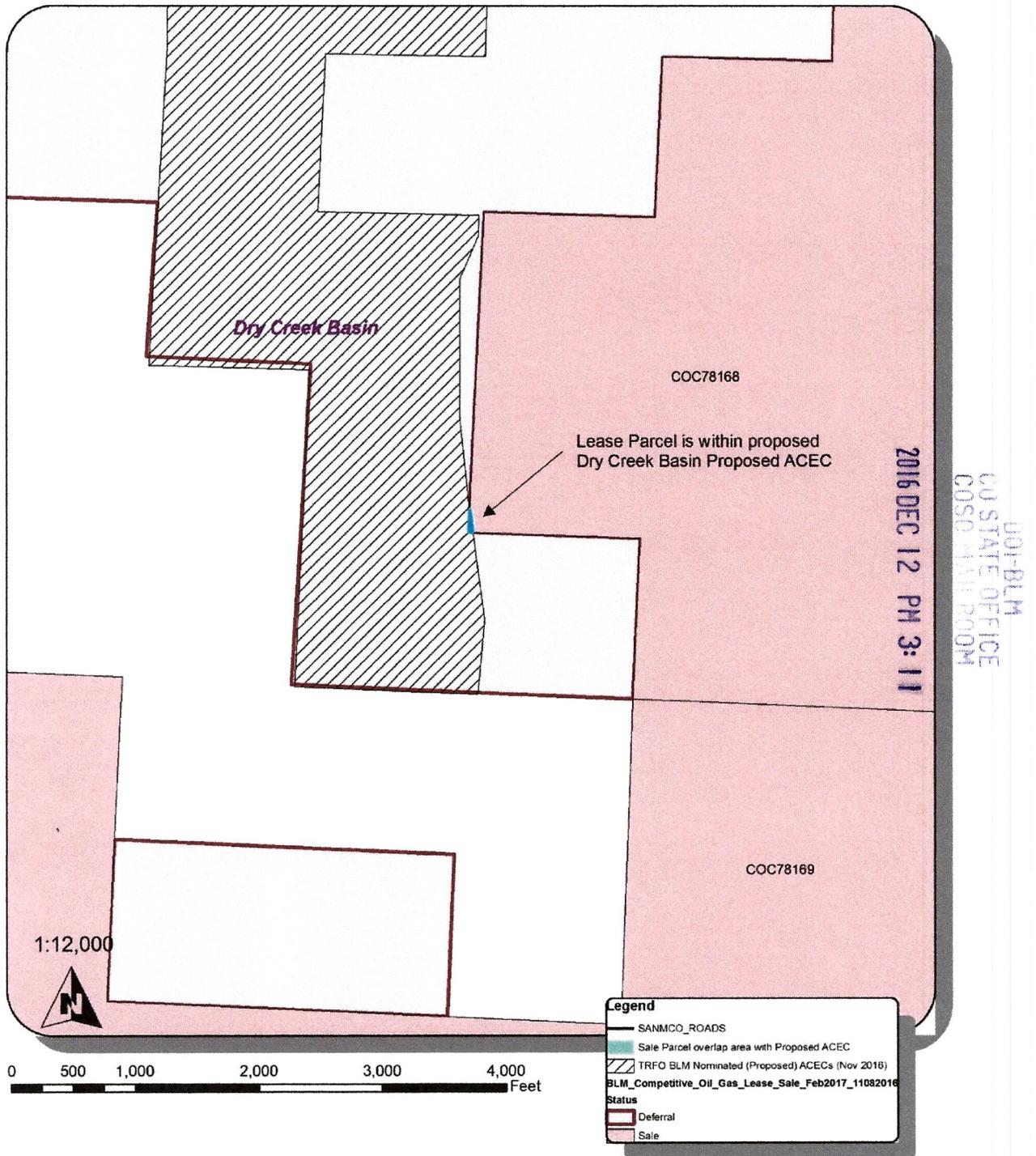
○ **Serial #: COC 78172 (PID=7378)**

- 0.05 acre within nominated Disappointment Valley ACEC still under review (see figure below).



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- Serial #: COC 78168 (PID=7797)
 - 0.07 acre within nominated Dry Creek Basin ACEC still under review (see figure below).

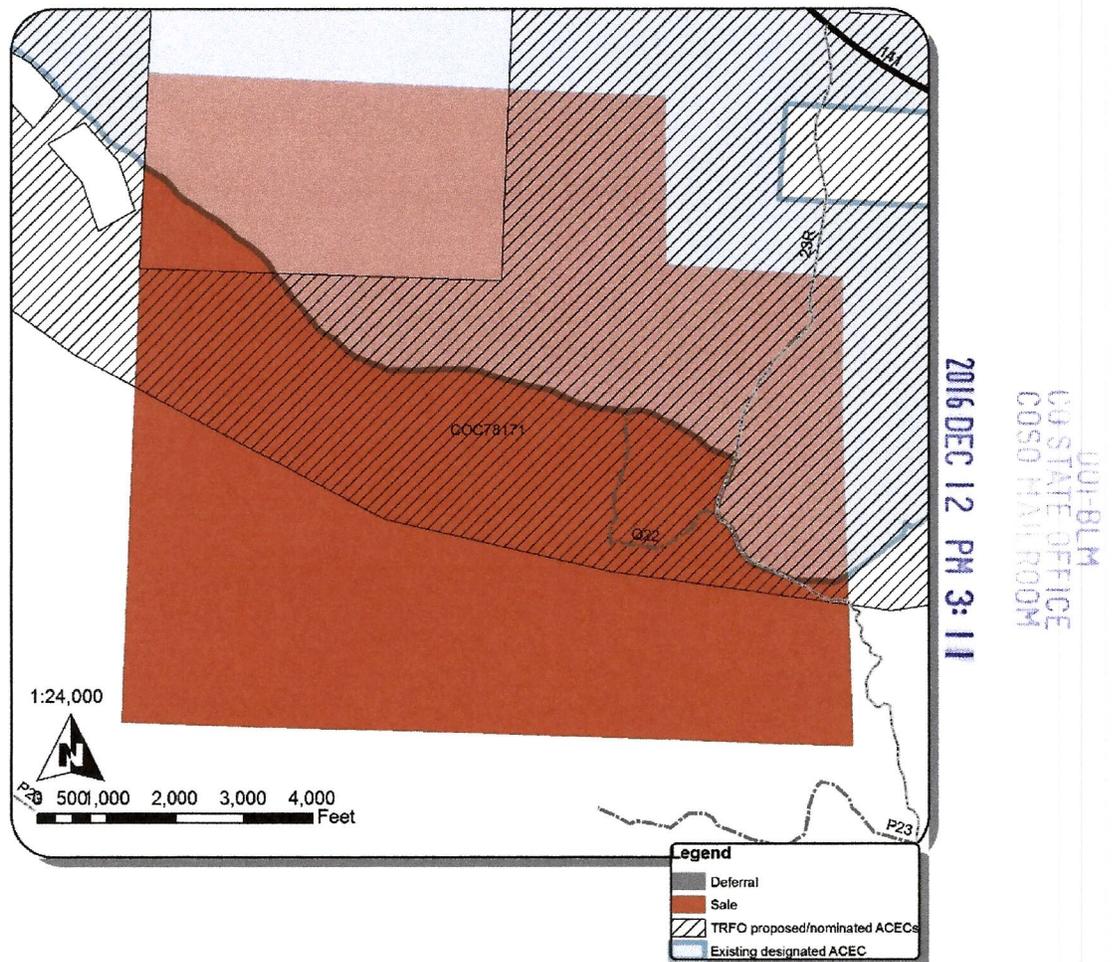


BLM should defer additional portions of these two parcels to ensure that there is absolutely no overlap between proposed ACECs and sale parcels, and to be consistent with BLM's statement that, "All of the lands that have

been nominated for leasing at the February 2017 Oil and Gas Lease Sale and that are located within a proposed ACEC have been recommended for deferral from the February 2017 lease sale.”¹⁰

B. Protest of the parcel within a nominated Area of Critical Environmental Concern (ACEC) pending decision AND also within an existing ACEC are in conflict with BLM policies.

Approximately 1,015 acres of COC 78171 (PID=7792) is within the proposed Gypsum Valley ACEC and should be **deferred** until the TRFO RMP amendment process is completed. This proposed ACEC has a boundary would expand the existing designated Gypsum Valley ACEC. Approximately 547 acres of COC 78171 is within both the existing ACEC and the proposed ACEC boundaries. Approximately 468 acres of this parcel are located outside of the existing ACEC but within the proposed, expanded version, of the ACEC. Thus, 1,015 acres of COC 78171 are technically located within a proposed ACEC that is being considered through an on-going RMP amendment process. BLM has failed in the DNA to acknowledge that there are still lands being offered for lease by the February 2017 lease sale that is within a proposed ACEC. To be consistent with BLM responses within this DNA and Colorado BLM policy, all lands within the proposed Gypsum Valley ACEC, whether they are partly within an existing ACEC or not, must be deferred from the February 2017 lease sale.



Hatched area shows all of COC 78171 within the proposed Gypsum Valley ACEC. Blue overlap is the portion of the parcel that is within both the proposed ACEC and the existing ACEC.

¹⁰https://www.blm.gov/style/medialib/blm/co/programs/oil_and_gas/Lease_Sale/2017/february.Par.65668.File.dat/DOI-BLM-oc_S010-2016-0039-DNA_FinalRJDraft_Posting.pdf. No page number, see Responses to Public Comments February 20178 Competitive Oil and Gas Lease Sale, BLM Response to Comments 6(b)-(c).

1. Discussion:

In September 2016 San Miguel County provided comments that parcel 7792 (Serial #: COC 78171) was both within an existing ACEC and also within a potential ACEC (pages 7-8). The boundary of the designated Gypsum Valley ACEC was depicted in Figure 3.6.1 (page II-143) of the final RMP, shown below. The TRFO Final Resource Management Plan (TRFO FRMP) and Record of Decision (ROD) (November 2013)¹¹ designated this ACEC by including lands within both the Big Gypsum Valley and Little Gypsum Valley Potential Conservation Areas (PCAs).

According to Appendix U¹² of the TRFO RMP (22 sites were evaluated by the “LRMP” interdisciplinary planning team for the TRFO RMP, and 19 of these were found to meet both the relevance and importance criteria required, only 4 proposed ACECs were brought forward in the Draft LRMP alternatives and listed in the Federal Register Notice, date December 14, 2007. In the Proposed LRMP, the Gypsum Valley area was analyzed for ACEC designation in Alternatives B and C. This is the boundary of the existing ACEC shown in Figure 3.6.1 (page II-143) of the final RMP.

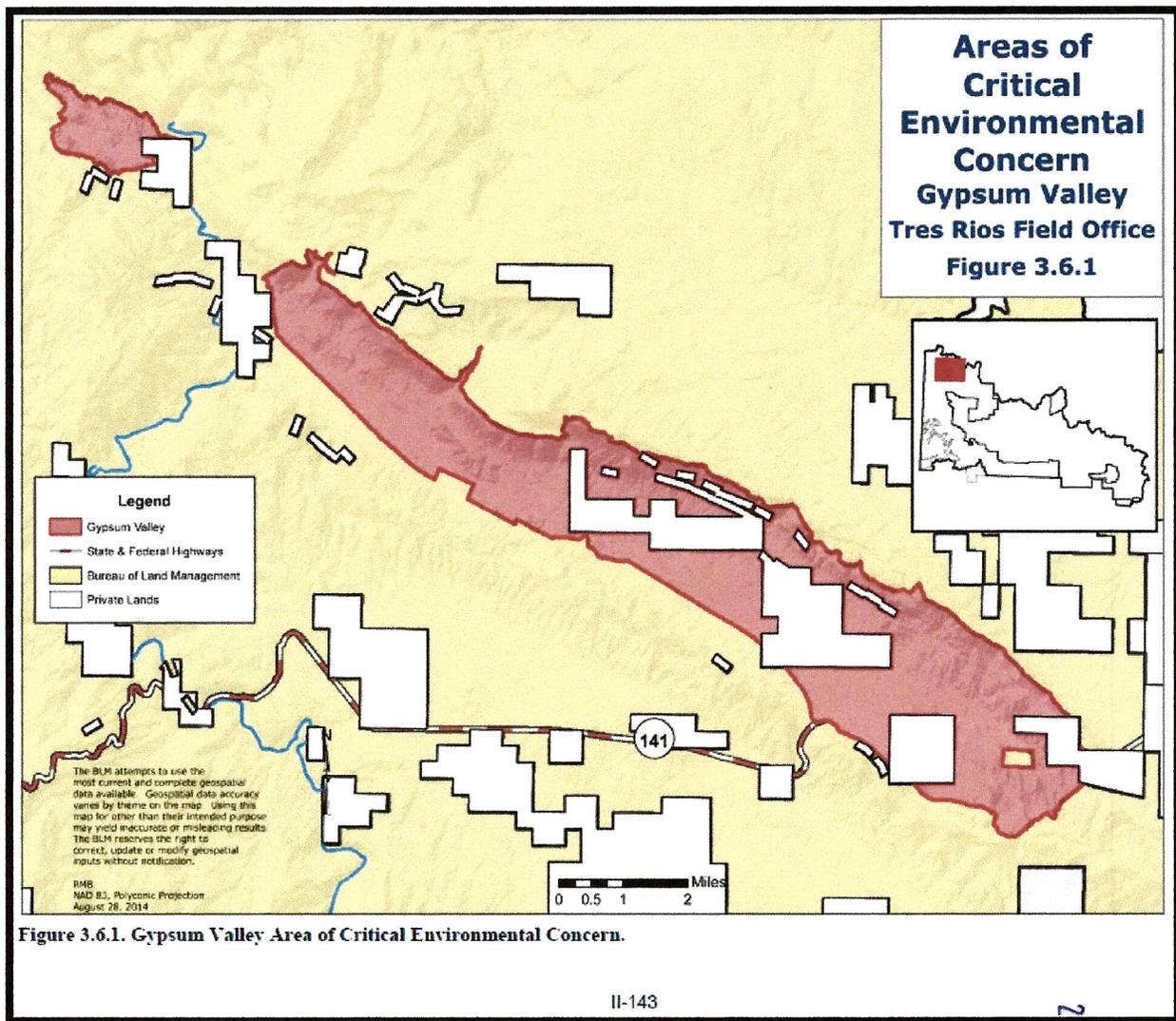


Figure 3.6.1. Gypsum Valley Area of Critical Environmental Concern.

II-143

TRFO RMP Figure 3.6.1 showing the boundary of existing designated Gypsum Valley ACEC.

¹¹https://www.blm.gov/co/st/en/fo/siplc/land_use_planning.html

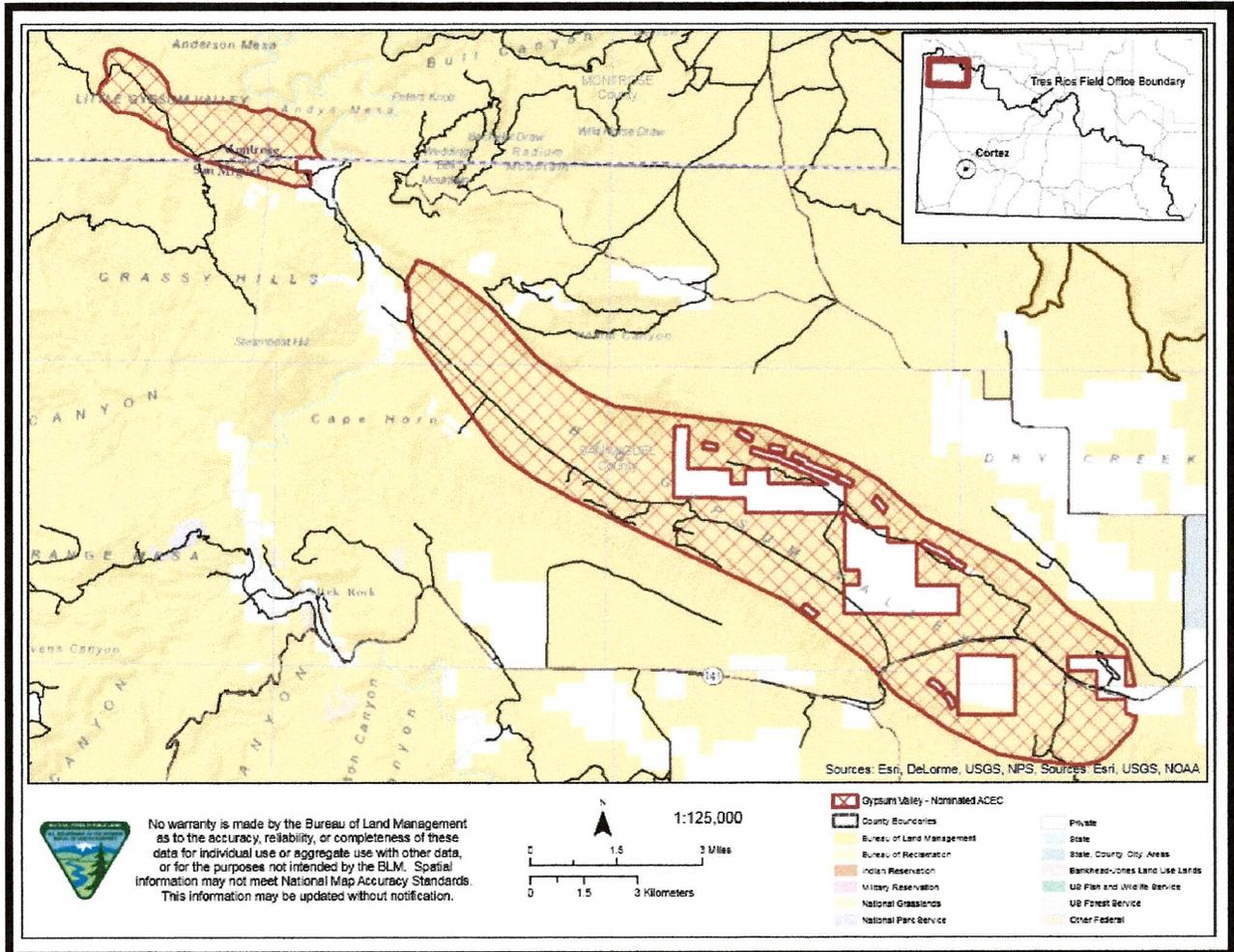
¹²Page U-3;

https://www.blm.gov/style/medialib/blm/co/field_offices/san_juan_public_lands/land_use_planning/approved_bmp/Par_83225.File.dat/App_U_ACEC.pdf

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The existing Gypsum Valley ACEC boundary was downloaded from the link on the joint Tres Rios & San Juan National Forest GIS web page in November 2016¹³. SMC staff used the XTools Pro extension to calculate acreage and got a total acreage of the existing ACEC of 17,072 acres. This is different than what is stated on the TRFO ACEC web page¹⁴ which states that the “existing Gypsum Valley ACEC consists of approximately 13,200 acres”.

The proposed Gypsum Valley ACEC boundary is an expanded version of the existing. This is obvious from a visual comparison of Figure 3.6.1 (above) and the figure provided on the TRFO ACEC web page¹⁵ (shown below):



TRFO Map showing the boundary of PROPOSED Gypsum Valley ACEC.¹⁶

The proposed Gypsum Valley ACEC boundary was downloaded from the link on the TRFO ACEC web page in November 2016¹⁷. SMC staff used the XTools Pro extension to calculate acreage and got a total acreage of the existing ACEC of 19,867 acres, which is an additional acreage of 2,795 acres compared to the existing ACEC.

¹³ http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5440239.zip

¹⁴ https://www.blm.gov/co/st/en/BLM_Information/nepa/TRFO_NEPA/acecs.html

¹⁵ https://www.blm.gov/co/st/en/BLM_Information/nepa/TRFO_NEPA/acecs.html

¹⁶ https://www.blm.gov/style/medialib/blm/co/field_offices/san_juan_public_lands/land_use_planning/acec_docs.Par.79345.File.dat/Gypsum_Valley_ACEC.pdf

¹⁷ https://www.blm.gov/style/medialib/blm/co/field_offices/san_juan_public_lands/land_use_planning/acec_docs.Par.77136.File.dat/nominated_ACECs.zip

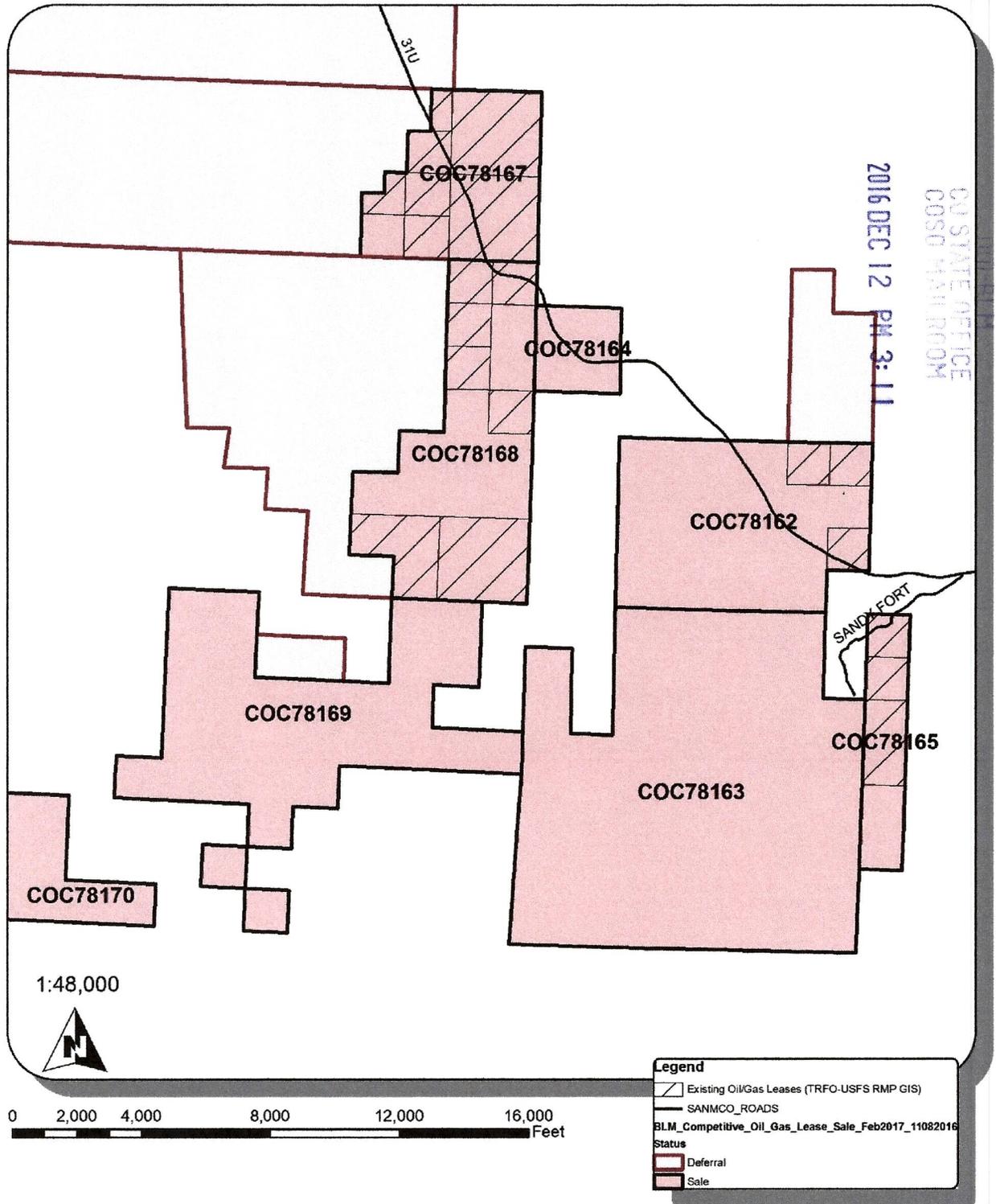
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C. Protest of parcels already leased for oil/gas.

San Miguel County staff examined the February 2017 lease sale parcels and downloaded from the TRFO approved RMP GIS, the GIS file containing “existing” Oil and Gas lease boundaries. San Miguel County commented in our September 8, 2016, comments and also provided within those comments a map of the Dry Creek Basin Area showing the overlapping boundaries of parcels identified for sale in February 2017 and parcels identified as having existing leases that do not expire until 2018. There appears to be about 1,294 acres affected. This comment was not identified by the BLM as a “substantive” comment in the DNA and BLM did not include a response in the DNA. If previous leases have not yet been terminated, the BLM would be in violation of its policies and regulations if conflicting leases are sold in February 2017.

Feb 2017 Lease Sale Serial Number	Feb 2017 Lease Sale Parcel ID (PID)	Acres overlapped by potential existing O/G Lease	Existing O/G Lease Serial Number(s)	Expiration Date(s) Listed in BLM TRFO RMP GIS
COC 78171	7792	2.2	COC 0098772	None
COC 78167	7795	510.5	COC 071757	4/30/2018
COC 78168	7797	500.5	COC 071757 & COC 071758	4/30/2018
COC 78169	7798	1.2	COC 071758	4/30/2018
COC 78162	7801	119	COC 071754	4/30/2018
COC 78165	7806	160.5	COC 071753	4/30/2018

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Map showing February 2017 Lease Sale Parcel boundaries and serial numbers with hatching where possible existing leases are located. Parcels are located within Dry Creek Basin area.

(GIS source = https://www.blm.gov/style/medialib/blm/co/programs/oil_and_gas/Lease_Sale/2017/february.Par.44676.File.dat/BLM_Competitive_Oil_Gas_Lease_Sale_Feb2017_11082016.zip, downloaded November 2016)
 And Existing Oil/Gas Lease Parcels provided by BLM and USFS as supporting GIS data for approved TRFO RMP (GIS source = http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5436149.zip)

D. Protest of DNA determination of NEPA adequacy with respect to Gunnison Sage-grouse (GuSG).

Proceeding with lease sale of parcels **COC 78167** (PID=7795), **COC 78168** (PID=7797), **COC 78169** (PID=7798), **COC 78162** (PID=7801), **COC 78163** (PID=7802), **COC 78170** (7799) and **COC 78165** (PID=7806) is in violation of the National Environmental Policy Act, which provides that:

(a) Until an agency issues a record of decision as provided in Sec. 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:

1. *Have an adverse environmental impact; or*
2. *Limit the choice of reasonable alternatives.*

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

1. *Is justified independently of the program;*
2. *Is itself accompanied by an adequate environmental impact statement; and*
3. *Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.*

40 C.F.R. § 1506.1 (emphases added). While the agency has discretion in determining where this standard applies, approving lease of the parcels at issue here will limit the choice of alternatives and prejudice the ultimate decisions in two ongoing RMP revision processes, the Gunnison Sage-grouse Rangewide Resource Management Plan Amendment (GuSG RMPa) Process, and the Tres Rios ACEC Resource Management Plan Amendment Process.

1. Lease Sale Does Not Meet BLM NEPA Adequacy Criteria.

The DNA describes the National Environmental Policy Act (NEPA) documents and other related documents that cover the proposed February 2017 Lease Sale (proposed action) as the BLM Tres Rios Field Office, San Juan National Forest Land and Resource Management Plan Final Environmental Impact Statement (RMP/FEIS) (September 2013).¹⁹

However, this is not the most recent relevant NEPA documents that this lease sale should reference. Newer NEPA documents exist that would better allow for additional review of appropriate protections for Gunnison Sage-grouse habitat from oil and gas development. This is important because not all parcels that are adjacent or within GuSG critical habitat or within 4 miles of existing leks have been recommended for deferral in the DNA. In addition, not all parcels that are adjacent or within proposed ACECs for which newer analyses and EAs are being prepared, have been deferred in the DNA.

On November 12, 2014, the U.S. Fish and Wildlife Service (USFWS) announced that it determined that the Gunnison Sage-grouse, a ground-dwelling bird found only in southwestern Colorado and southeastern Utah, required the protection of the Endangered Species Act (ESA) as a threatened species. The USFWS originally proposed to list the species as 'endangered' under the ESA in January 2013, but efforts by the two states, tribes, local communities, private landowners and other stakeholders to conserve the species and its habitat

¹⁹http://www.blm.gov/style/medialib/blm/co/field_offices/san_juan_public_lands/land_use_planning/approved_lrm.Par.81229.File.dat/TRFO%20ROD%20and%20ARMP%20508%20Compliant.pdf

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were found to have helped reduce the threats to the bird sufficiently to give it the more flexibly protected status of 'threatened.'²⁰

The supporting EIS for the Threatened Status designation of the Gunnison Sage-grouse²¹ and for the Designation of Critical Habitat for the Gunnison Sage-grouse²² is dated November 9, 2014.

These designations prompted a process for the BLM to prepare a draft Gunnison Rangewide Plan Amendment that would potentially result in multiple resource plan amendments (GuSG DRMPa) and a companion draft environmental impact statement (GuSG DEIS) which more closely analyzes planning issues, including energy and minerals actions, in order "to analyze the addition of GuSG conservation measures to several existing RMPs", including the Tres Rios RMP. These documents were released as drafts in August 2016. The BLM states, "The BLM manages approximately 40 percent of GUSG habitat across twelve counties in southwestern Colorado and southeastern Utah...The inadequacy of regulatory mechanisms in land use plans was identified as a major threat in the FWS listing decision."²³

All of these documents should have been considered and referenced by the proposed February 2017 sale. Since they were not considered certain required NEPA adequacy criterion are not met which should cause invalidation or deferral of the entire lease sale.

The Purpose section of the GuSG DRMPa states, "*This RMP amendment provides a framework for conserving and assisting with the recovery of the GuSG and for conserving and restoring habitat upon which the species depends on BLM-administered public lands across the range of the bird.*" The Need section of this document states, "*The BLM conducted land use plan evaluations in accordance with its planning regulations, which require that RMPs 'shall be revised as necessary based on ..., new data, new or revised policy...(43 CFR 1610.5-6).'*"²⁴

San Miguel County finds that the 2013 NEPA document used as the basis for the February 2017 lease sale does not meet NEPA Adequacy Criteria #2 or #3 found in the DNA.²⁵

Specifically, NEPA Adequacy Criteria #2 is "***2. Is the range of alternatives analyzed in the existing NEPA document(s) appropriate with respect to the new proposed action (or existing proposed action), given current environmental concerns, interests, and resource values?***" NEPA Adequacy Criteria #3 is "***3. Is existing analysis adequate in light of any new information or circumstances (such as rangeland health standards assessment; recent endangered species listings, updated list of BLM sensitive species)? Can you reasonably conclude that new information and new circumstances would not substantially change the analysis of the new proposed action?***"²⁶

A. San Miguel County believes that the listing of the GuSG and designation of critical habitat is a new circumstance that requires modification of the TRFO RMP/FEIS. The fact that the BLM is conducting the

²⁰[https://www.fws.gov/mountain-](https://www.fws.gov/mountain-prairie/pressrel/2014/11122014_ServiceProtectsGunnisonSageGrouseAsThreatenedUnderESA.php)

[prairie/pressrel/2014/11122014_ServiceProtectsGunnisonSageGrouseAsThreatenedUnderESA.php](https://www.fws.gov/mountain-prairie/pressrel/2014/11122014_ServiceProtectsGunnisonSageGrouseAsThreatenedUnderESA.php)

²¹https://www.fws.gov/mountain-prairie/species/birds/gunnisonsagegrouse/GUSGFinalListingRule_11202014.pdf

²²https://www.fws.gov/mountain-prairie/species/birds/gunnisonsagegrouse/GuSGCriticalHabitat_11202014.pdf

²³Page I; [https://eplanning.blm.gov/epl-front-office/projects/lup/39681/78597/89605/2016-](https://eplanning.blm.gov/epl-front-office/projects/lup/39681/78597/89605/2016-0811_GUSG_Draft_RMP_Amendment_ePlanning.pdf)

[0811_GUSG_Draft_RMP_Amendment_ePlanning.pdf](https://eplanning.blm.gov/epl-front-office/projects/lup/39681/78597/89605/2016-0811_GUSG_Draft_RMP_Amendment_ePlanning.pdf)

²⁴Page iii; [https://eplanning.blm.gov/epl-front-office/projects/lup/39681/78597/89605/2016-](https://eplanning.blm.gov/epl-front-office/projects/lup/39681/78597/89605/2016-0811_GUSG_Draft_RMP_Amendment_ePlanning.pdf)

[0811_GUSG_Draft_RMP_Amendment_ePlanning.pdf](https://eplanning.blm.gov/epl-front-office/projects/lup/39681/78597/89605/2016-0811_GUSG_Draft_RMP_Amendment_ePlanning.pdf)

²⁵http://www.blm.gov/style/medialib/blm/co/programs/oil_and_gas/Lease_Sale/2017/february.Par.58526.File.dat/TRFO-DNA-Comment-Period.pdf

²⁶Page 5; http://www.blm.gov/style/medialib/blm/co/programs/oil_and_gas/Lease_Sale/2017/february.Par.58526.File.dat/TRFO-DNA-Comment-Period.pdf

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GuSG DRMPa/DEIS process and recommending a preferred alternative that would amend the TRFO RMP seems to point to that need. San Miguel County also does not agree that the range of alternatives analyzed in the 2013 TRFO RMP/FEIS is appropriate with respect to the proposed action and its clear intersection with GuSG critical habitat.

For example, the stipulation of No Surface Occupancy (NSO) is only applied to lands within occupied GuSG habitat or within 0.6-mile of "a newly identified lek" in the TRFO RMP/FEIS. Controlled Surface Use (CSU) is applied to unoccupied habitat in the TRFO RMP/FEIS.²⁷ However, the range of alternatives considered in the GuSG DRMP/DEIS includes having the stipulation of No Surface Occupancy being applied to all BLM lands within 4-miles of a lek. These documents analyze all BLM lands within occupied, unoccupied or a 4-mile buffer of a lek as the decision area.

The 2005 Gunnison Sage-grouse Rangewide Conservation Plan²⁸ and the presence of occupied critical habitat more than 4 miles from leks within the San Miguel Basin show that GuSG is found occupying habitat and using seasonal habitat 6 or more miles away from leks.²⁹ The occupied habitat within the Dry Creek Basin area, San Miguel Basin GuSG population, shown below is beyond the 4-mile lek buffer, is between 6- and 6.25-miles from leks. The TRFO should allow for additional review of appropriate protections for Gunnison Sage-grouse habitat from oil and gas development within at least a 6-mile buffer of leks within the San Miguel Basin.

- B. The TRFO RMP/FEIS fails to analyze oil and gas leasing impacts and stipulations within several proposed Areas of Critical Environmental Concern (ACECs) . Several parcels nominated for the February 2017 lease sale are adjacent and/or intersect areas still being considered for designation through the ongoing Tres Rios ACEC RMP Amendment and associated Environmental Assessment (DOI-BLM-CO-S010-2016-0018-EA).³⁰ The GuSG DRMPa/DEIS states, "Two of the proposed ACECs (Dry Creek Basin and Northdale) meet the relevance and importance criteria for GUSG conservation."³¹ Parcels that have not been recommended for deferral are within these potential ACECs.
- C. The TRFO RMP/FEIS also predates the new alternative B analysis within the GuSG DRMPa/DEIS which analyzes an ACEC for all GUSG Occupied and Unoccupied Habitat. This proposed ACEC overlaps the Dry Creek Basin and Northdale ACECs mentioned above.
- D. Lease stipulations described on pages H-20-H22 of Appendix H of the TRFO RMP/FEIS³² describes several stipulations that apply to leases that may impact Gunnison Sage-grouse, and that should have been applied to the Dry Creek Basin area parcels to protect Gunnison Sage-grouse. San Miguel County disagrees with the BLM's statements of NEPA adequacy in the DNA because stipulations have not been attached to these parcels in conformance with the Tres Rios RMP/EIS; therefore the DNA is inadequate. The NEPA documents referenced in the DNA did not consider the impacts to GuSG of leases without the stipulations in the final TRFO RMP/FEIS.

²⁷ Appendix H;

http://www.blm.gov/style/medialib/blm/co/field_offices/san_juan_public_lands/land_use_planning/approved_lmp.Par.5798.File.dat/App_H%20Oil%20and%20Gas%20Leasing%20Stipulations.pdf

²⁸ <http://cpw.state.co.us/learn/Pages/GunnisonSagegrouseConservationPlan.aspx>

²⁹ Page J-5;

<http://cpw.state.co.us/Documents/WildlifeSpecies/SpeciesOfConcern/GunnisonSageGrouse/ConsPlan/AppendixJSGHabitatUse03.pdf>

³⁰ https://eplanning.blm.gov/epl-front-office/projects/lup/63796/78512/89495/ACEC_Amendment_Map_8x11_20160229.pdf

³¹ Page I-13; [https://eplanning.blm.gov/epl-front-office/projects/lup/39681/78597/89605/2016-](https://eplanning.blm.gov/epl-front-office/projects/lup/39681/78597/89605/2016-0811_GUSG_Draft_RMP_Amendment_ePlanning.pdf)

[0811_GUSG_Draft_RMP_Amendment_ePlanning.pdf](https://eplanning.blm.gov/epl-front-office/projects/lup/39681/78597/89605/2016-0811_GUSG_Draft_RMP_Amendment_ePlanning.pdf)

³² http://www.blm.gov/style/medialib/blm/co/field_offices/san_juan_public_lands/land_use_planning/approved_lmp.Par.5798.File.dat/App_H%20Oil%20and%20Gas%20Leasing%20Stipulations.pdf

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2. Lease Sale conflicts with BLM Gunnison Sage-grouse Habitat Management Policy.

Additional evidence that the listing of the Gunnison Sage-grouse and designation of critical habitat invalidates the approved TRFO RMP/FEIS is provided by statements in BLM IM 2014-100, Gunnison Sage-grouse Habitat Management Policy on BLM-Administered Lands in Colorado and Utah.³³

IM 2014-100³⁴ states that “The BLM’s policy is to manage GuSG seasonal habitats and maintain habitat connectivity to support sustainable GuSG populations and/or GuSG population objectives as determined in coordination with the FWS and State fish and wildlife agencies.”

Both U.S. Fish and Wildlife (USFWS) and Colorado Parks and Wildlife (CPW) recommended deferral of parcels COC 78167 (PID=7795), COC 78168 (PID=7797), and COC 78169 (PID=7798) until the BLM GuSG RMPa is completed because of adjacency to occupied critical habitat and because of potential for indirect impacts to GuSG.

BLM should defer these parcels in coordination with USFWS and CPW, as requested by those agencies for the purpose of GuSG conservation and habitat protection.

IM 2014-100 states “Habitat protection is crucial for the conservation and protection of this species. The BLM will focus any type of development in non-habitat areas. Disturbance will be focused outside of a 4-mile buffer around leks. The BLM intends that little or no disturbance occurs within the 4-mile buffer, except for valid existing rights, and except where benefits to the GuSG are greater compared to other available alternatives.”

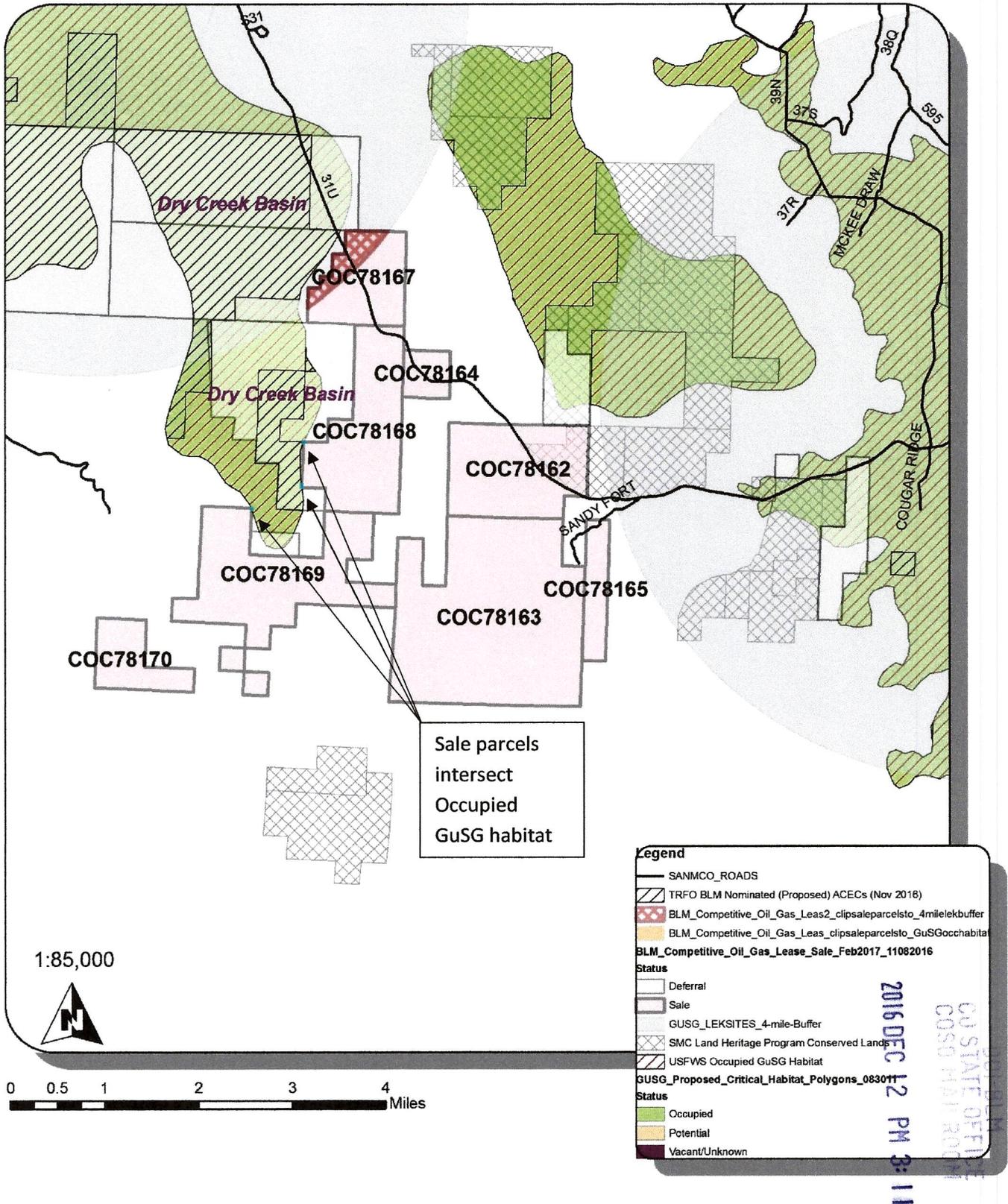
Lease parcel COC 78167 (PID=7795) contains approximately 133.4 acres that are within 4-miles of a lek and is within the ongoing GuSG RMPa decision area. Lease parcels COC 78167 (PID=7795), COC 78168 (PID=7797), COC 78169 (PID=7798), COC 78162 (PID=7801), COC 78163 (PID=7802), and COC 78165 (PID=7806) are located in close proximity to occupied habitat and are within 6-miles of Dry Creek Basin and Miramonte Reservoir area leks. These parcels contain important habitat that may provide connectivity and reduce habitat fragmentation. Lease parcels **COC 78168** (PID=7797) and **COC 78169** (PID=7798) still intersect occupied GuSG habitat.

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³³https://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2014/IM_2014-100.html

Note: Despite an expiration date of 9/30/2015, BLM staff Roger Sayre communicated on 12/9/2016 that this IM is believed to still be in effect.

³⁴https://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2014/IM_2014-100.html



Showing parcels that should be deferred/withdrawn from the February 2017 lease sale until the GuSG RMPa process is completed. These parcels are in violation of NEPA, IM 2014-100 and contain parcels intersecting occupied GuSG habitat and the GuSG RMPa decision area; parcels CPW and USFWS requested deferral of; a parcel having private land with a perpetual conservation easement for GuSG habitat, and parcels violating other regulations and BLM policies.

For the San Miguel Basin Gunnison Sage-grouse subpopulation, 30% of the occupied habitat for this subpopulation is within BLM surface estate, and 63% of the occupied habitat is subject to BLM management of the mineral estate. Habitat protection by BLM is critical to the conservation and protection of this species within the San Miguel Basin subpopulation.

IM 2014-100 instructs the BLM field offices to incorporate conservation measures as part of the GuSG RMPa process:

“Land Use Planning

The BLM proposes to incorporate objectives and conservation measures for the protection of GUSG and its habitat into approved Resource Management Plans (RMP) through a GUSG range-wide plan amendment process.

As part of this GUSG range-wide planning process, the BLM will consider alternative(s) that:

- *Close fluid mineral (oil and gas or geothermal) leasing, and consider land allocations following expiration of oil and gas and geothermal leases with a full range of alternatives, including a scenario where the lands will not be re-offered for lease in occupied GUSG areas;*
- *Exclude new energy development and rights-of-way (ROW);*
- *Reduce or make lands unavailable to livestock grazing (consistent with WO-IM-2012-169) in GUSG occupied habitat;*
- *Include consideration of regional mitigation strategies and appropriate mitigation measures (avoid, minimize, and/or compensate) to reduce or eliminate impacts to GUSG populations;*
- *Address other factors that may pose a threat to GUSG populations, including recreation management, vegetation treatments, and invasive plant management; and*
- *Consider citizen-based alternatives, as appropriate.*

Through this range-wide plan amendment process, BLM Colorado and Utah FOs should consider and evaluate GUSG habitat conservation measures related to timing restrictions, buffer distances, percentages of allowable surface-disturbing activities, noise and desired density levels or other development constraints consistent with the GUSG RCP (including subsequent updates), current peer reviewed sage-grouse research, conservation summaries based on research or as developed in conjunction with State fish and wildlife agencies and the FWS to meet local population objectives. At a minimum, FOs will analyze and implement conservation measures that prohibit or limit energy and discretionary mineral development within four miles of active leks, and minimize surface disturbance and disruptive activities in all occupied habitat, where appropriate. “

IM 2014-100 also states that the BLM field offices will:

“BLM FOs will:

- *Work within multiple programs including recreation, hazardous fuels, fire management, Public Domain forestry, range management, and wildlife to accomplish GUSG habitat conservation. When permitting or authorizing activities, FOs will consider, analyze and incorporate appropriate GUSG management strategies, best management practices (BMPs), and mitigation actions (avoid, minimize, and compensate) through NEPA analysis or other regulatory processes. FOs will continue to implement appropriate BMPs through the permitting process in all program areas. BMPs could include those identified at the local, state or national level for oil and gas development in GUSG habitat (see also RCP (Appendix L), fire (WO-IM 2013-128), and grazing guidelines (RCP 2005)).*
- *Continue coordination with the FWS and State fish and wildlife agencies on appropriate site-specific habitat or population-level management strategies (RCP 2005). This will include but is not limited to, considering, prioritizing and implementing management prescriptions and strategies outlined in the RCP and local GUSG conservation plans, as well as all subsequent updates as appropriate. The BLM will work with FWS and State fish and wildlife agencies to determine the best available science for implementation of this IM and, if appropriate, will revise the IM accordingly.*
- *Implement a 0.6-mile no surface disturbance/no surface occupancy buffer radius (RCP 2005) around all active leks for project-level implementation such as fences or sagebrush habitat treatments. Any sagebrush removal or treatment should be prohibited within this buffer unless implemented to maintain or enhance the lek (RCP, Appendix I).*

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- *Per the RCP (Appendix I), the BLM should manage all sagebrush habitat within a 4-mile radius of an active lek as GUSG breeding habitat (lekking, nesting, early brood rearing). To complement protections within the 0.6-mile buffer (described above), breeding habitat should be managed to minimize disturbance to GUSG during critical seasonal time periods and minimize the footprint of any project, habitat fragmentation across the landscape, and cumulative effects on the associated population (see RCP, Appendix L). The following specific disturbance guidelines (see RCP, Appendix I) should be analyzed and applied to all ongoing program authorizations where appropriate:*
 - *Prohibit surface disturbing activities and disruptive activities within four miles of active leks from March 1 through June 30 (RCP 2005), subject to valid existing rights and emergency repairs of ROWs.*
 - *Avoid surface disturbance within mapped winter habitat for GUSG (if not mapped, within four miles of active leks); if surface disturbance cannot be avoided, prohibit said activity from December 1 through March 15 (RCP 2005).*
- *Include requirements to new Special Recreation Permits (SRP) to avoid disturbing leks during the breeding season. SRPs for hunting (other wildlife species), bird watching, and other activities should include appropriate timing restrictions to minimize disturbance to GUSG during critical seasonal periods such as the breeding, late brood-rearing and winter-use periods.*
- *Evaluate the need, and implement where appropriate, seasonal or permanent road or trail closures in occupied habitat through travel management planning and associated NEPA analysis for BLM authorized routes. Avoid construction of new roads or ROWs within four miles of active leks."*
- *Analyze the impacts to GUSG when renewable energy (e.g., wind, solar, biomass) development and associated infrastructure (e.g., transmission lines) is proposed in or adjacent to sagebrush habitat, and avoid occupied habitat where warranted. Manage areas within four miles of active leks as ROW avoidance areas.*
- *Avoid routing above-ground transmission or distribution lines within the occupied habitat.*
- *In response to a Plan of Operations, evaluate the impacts of non-discretionary activities managed under 43 CFR 3809 (those actions authorized under the 1872 mining law) on local GUSG populations, and clearly describe those effects that cannot be mitigated through the regulatory process. Through the NEPA process, analyze potential impacts of discretionary mining activities and mitigation approved under 43 CFR 3400 (such as coal management), 43 CFR 3500 (non-energy leasable materials), and exploration or extraction of other solid minerals wherever possible.*
- *Incorporate adequate reclamation standards designed to re-establish suitable GUSG seasonal habitats (RCP 2005, Appendix H) for all surface-disturbing activities within occupied GUSG habitat. Incorporate native seed mixtures in restoration efforts. Wherever possible, native seed mixtures should include a minimum of three native grasses, two native forbs, and one native sagebrush species. Use desired non-persistent, non-native vegetation in rehabilitation only where other options have been proven unsuccessful.*
- *Monitor all restoration activities for success in meeting short- and long-term vegetation objectives and reclamation standards, including potential weed infestations following the principles outlined in the BLM Assessment, Inventory, and Monitoring Strategy. Conduct follow-up treatments to eliminate weeds as identified through monitoring. If vegetation objectives are not being met, adjust restoration actions accordingly to improve the success of achieving desired GUSG habitat objectives.*

In addition, to other violations, the February 2017 lease sale does not attach stipulations that conform to IM 2014-100 or that are in conformance with the existing TRFO RMP/FEIS.

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For the reasons outlined in this protest, the BLM should withdraw the listed parcels from the February 2017 lease sale.

Sincerely,



Lynn Padgett
Director, Department of Government Affairs and Natural Resources
San Miguel County, Colorado
P.O. Box 1170
333 W. Colorado Ave
Telluride, CO 81435

Attachment: San Miguel County Comment Letter, Sept. 8, 2016

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BOARD OF COMMISSIONERS

ART GOODTIMES

AMY LEVEK

JOAN MAY

September 8, 2016

Tres Rios Field Office
Attn: February 2017 Lease Sale
29211 Highway 184
Dolores, CO 81323
Email: blm_co_leasing_info@blm.gov

Ms. Connie Clementson, Field Manager
Tres Rios Field Office
Attn: February 2017 Lease Sale
29211 Highway 184
Dolores, CO 81323
cclementson@blm.gov

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Dear Connie,

Thank you for the opportunity to provide comments during the 30-Day Public Review on your February 2017 quarterly lease sale. San Miguel County appreciates the opportunity to coordinate with the BLM Tres Rios Field Office and to provide BLM with our best available information regarding our county concerns for the protection of wildlife, hydrologic, visual, and other sensitive resources during the BLM's oil and gas leasing and/or development. San Miguel County is offering comments on the February 2017 lease sale parcels that intersect San Miguel County. We did not examine parcels outside of our jurisdiction.

Thirteen parcels lie within San Miguel County: **7378, 7792, 7793, 7794, 7795, 7797, 7798, 7799, 7801, 7802, 7804, 7805, and 7806.**

We appreciate the prior deferral of parcels **7793, 7794, and 7804**. We also appreciate the partial deferral of parcels **7795, 7797, 7798, and 7801**. We appreciate these were recommended for deferral, "to allow for additional review of appropriate protections for Gunnison Sage-Grouse habitat from oil and gas development."¹

During our review of the United States Department of the Interior Bureau of Land Management Determination of NEPA Adequacy DOI-BLM-CO-S010-2016-0039-DNA

¹Page 5:

http://www.blm.gov/style/medialib/blm/co/programs/oil_and_gas/Lease_Sale/2017/february.Par.58526.File.dat/TRFO-DNA-Comment-Period.pdf

Tres Rios February 2017 Oil and Gas Lease Sale² (hereafter, "DNA") we identified the following concerns:

I. Lease Sale Does Not Meet BLM NEPA Adequacy Criteria.

The DNA describes the National Environmental Policy Act (NEPA) document and other related documents that cover the proposed February 2017 Lease Sale (proposed action) as the BLM Tres Rios Field Office, San Juan National Forest Land and Resource Management Plan Final Environmental Impact Statement (RMP/FEIS) (September 2013).³

However, this is not the most recent relevant NEPA documents that this lease sale should reference. Newer NEPA documents exist that would better allow for additional review of appropriate protections for Gunnison Sage-Grouse habitat from oil and gas development. This is important because not all parcels that are adjacent or within GuSG critical habitat or within 4 miles of existing leks have been recommended for deferral in the DNA. Also, not all parcels that are adjacent or within proposed ACECs for which newer analyses and EAs are being prepared have been deferred in the DNA.

On November 12, 2014, the U.S. Fish and Wildlife Service (USFWS) announced that it determined that the Gunnison Sage-grouse, a ground-dwelling bird found only in southwestern Colorado and southeastern Utah, required the protection of the Endangered Species Act (ESA) as a threatened species. The USFWS originally proposed to list the species as 'endangered' under the ESA in January 2013. However, efforts by the two states, tribes, local communities, private landowners and other stakeholders to conserve the species and its habitat were found to have helped reduce the threats to the bird sufficiently to give it the more flexible protected status of 'threatened.'⁴

The supporting EIS for the Threatened Status designation of the Gunnison Sage-grouse⁵ and the Designation of Critical Habitat for the Gunnison Sage-grouse⁶ is dated November 9, 2014.

These designations prompted a process for the BLM to prepare a draft Gunnison Rangewide Plan Amendment that would potentially result in multiple Resource Plan Amendments (GuSG DRMPa) and a companion draft environmental impact statement (GuSG DEIS) which more closely analyzes planning issues, including energy and minerals actions, in order "to analyze the addition of GuSG conservation

²[http://www.blm.gov/style/medialib/blm/co/programs/oil and gas/Lease Sale/2017/february.Par.58526.File.dat/TRFO-DNA-Comment-Period.pdf](http://www.blm.gov/style/medialib/blm/co/programs/oil%20and%20gas/Lease%20Sale/2017/february.Par.58526.File.dat/TRFO-DNA-Comment-Period.pdf)

³http://www.blm.gov/style/medialib/blm/co/field_offices/san_juan_public_lands/land_use_planning/approved_lrmp.Par.81229.File.dat/TRFO%20ROD%20and%20ARMP%20508%20Compliant.pdf

⁴https://www.fws.gov/mountain-prairie/pressrel/2014/11122014_ServiceProtectsGunnisonSageGrouseAsThreatenedUnderESA.php

⁵https://www.fws.gov/mountain-prairie/species/birds/gunnisonsagegrouse/GUSGFinalListingRule_11202014.pdf

⁶https://www.fws.gov/mountain-prairie/species/birds/gunnisonsagegrouse/GuSGCriticalHabitat_11202014.pdf

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measures to several existing RMPs", including the Tres Rios RMP. These documents were released as drafts in August 2016. The BLM states, "The BLM manages approximately 40 percent of GUSG habitat across twelve counties in southwestern Colorado and southeastern Utah...The inadequacy of regulatory mechanisms in land use plans was identified as a major threat in the FWS listing decision."⁷

All of these documents should have been considered by the DNA, and referenced by the proposed February 2017 sale. Since they were not considered certain required NEPA adequacy criterion are not met which should cause invalidation or deferral of the entire lease sale.

The Purpose section of the GuSG DRMPa states, "*This RMP amendment provides a framework for conserving and assisting with the recovery of the GuSG and for conserving and restoring habitat upon which the species depends on BLM-administered public lands across the range of the bird.*" The Need section of this document states, "*The BLM conducted land use plan evaluations in accordance with its planning regulations, which require that RMPs 'shall be revised as necessary based on ..., new data, new or revised policy...(43 CFR 1610.5-6).'*"⁸

San Miguel County finds that the 2013 NEPA document used as the basis for the February 2017 lease sale does not meet NEPA Adequacy Criteria #2 or #3 found in the DNA.⁹

Specifically, NEPA Adequacy Criteria #2 is "***2. Is the range of alternatives analyzed in the existing NEPA document(s) appropriate with respect to the new proposed action (or existing proposed action), given current environmental concerns, interests, and resource values?***" NEPA Adequacy Criteria #3 is "***3. Is existing analysis adequate in light of any new information or circumstances (such as rangeland health standards assessment; recent endangered species listings, updated list of BLM sensitive species)? Can you reasonably conclude that new information and new circumstances would not substantially change the analysis of the new proposed action?***"¹⁰

A. San Miguel County believes that the listing of the GuSG and designation of critical habitat is a new circumstance that requires modification of the TRFO RMP/FEIS. The fact that the BLM is conducting the GuSG DRMPa/DEIS process and recommending a preferred alternative that would amend the TRFO

⁷Page I; https://eplanning.blm.gov/epl-front-office/projects/lup/39681/78597/89605/2016-0811_GUSG_Draft_RMP_Amendment_ePlanning.pdf

⁸Page III; https://eplanning.blm.gov/epl-front-office/projects/lup/39681/78597/89605/2016-0811_GUSG_Draft_RMP_Amendment_ePlanning.pdf

⁹http://www.blm.gov/style/medialib/blm/co/programs/oil_and_gas/Lease_Sale/2017/february.Par.58526.File.dat/TRFO-DNA-Comment-Period.pdf

¹⁰Page 5; http://www.blm.gov/style/medialib/blm/co/programs/oil_and_gas/Lease_Sale/2017/february.Par.58526.File.dat/TRFO-DNA-Comment-Period.pdf

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RMP seems to point to that need. San Miguel County also does not agree that the range of alternatives analyzed in the 2013 TRFO RMP/FEIS is appropriate with respect to the proposed action and its clear intersection with GuSG critical habitat.

For example, the stipulation of No Surface Occupancy (NSO) is only applied to lands within occupied GuSG habitat or within 0.6-mile of "a newly identified lek" in the TRFO RMP/FEIS. Controlled Surface Use (CSU) is applied to unoccupied habitat in the TRFO RMP/FEIS.¹¹ However, the range of alternatives considered in the GuSG DRMP/DEIS includes having the stipulation of No Surface Occupancy being applied to all BLM lands within 4-miles of a lek. These documents analyze all BLM lands within occupied, unoccupied or a 4-mile buffer of a lek as the decision area.

The 2005 Gunnison Sage-grouse Rangewide Conservation Plan¹² and the presence of occupied critical habitat more than 4 miles from leks within the San Miguel Basin show that GuSG is found occupying habitat and using seasonal habitat 6 or more miles away from leks.¹³ The occupied habitat within the Dry Creek Basin area, San Miguel Basin GuSG population, shown on Map 1 that is beyond the 4-mile lek buffer, is between 6- and 6.25-miles from leks. The TRFO should allow for additional review of appropriate protections for Gunnison Sage-Grouse habitat from oil and gas development within at least a 6-mile buffer of leks within the San Miguel Basin.

- B. The TRFO RMP/FEIS fails to analyze oil and gas leasing impacts and stipulations within several proposed Areas of Critical Environmental Concern (ACECs). Several parcels nominated for the February 2017 lease sale are adjacent and/or intersect areas still being considered for designation through the ongoing Tres Rios ACEC RMP Amendment and associated Environmental Assessment (DOI-BLM-CO-S010-2016-0018-EA).¹⁴ The GuSG DRMPa/DEIS states, "Two of the proposed ACECs (Dry Creek Basin and Northdale) meet the relevance and importance criteria for GUSG conservation."¹⁵ Parcels that have not been recommended for deferral are within these potential ACECs.

- C. The TRFO RMP/FEIS also predates the new Alternative B analysis within the GuSG DRMPa/DEIS which analyzes an ACEC for all GUSG Occupied and

¹¹Appendix H;

http://www.blm.gov/style/medialib/blm/co/field_offices/san_juan_public_lands/land_use_planning/approved_lrmp.Par.5798.File.dat/App_H%20Oil%20and%20Gas%20Leasing%20Stipulations.pdf

¹²<http://cpw.state.co.us/learn/Pages/GunnisonSagegrouseConservationPlan.aspx>

¹³Page J-5;

<http://cpw.state.co.us/Documents/WildlifeSpecies/SpeciesOfConcern/GunnisonSageGrouse/ConsPlan/AppendixJSGHabitatUse03.pdf>

¹⁴https://eplanning.blm.gov/epl-front-office/projects/lup/63796/78512/89495/ACEC_Amendment_Map_8x11_20160229.pdf

¹⁵Page I-13; https://eplanning.blm.gov/epl-front-office/projects/lup/39681/78597/89605/2016-0811_GUSG_Draft_RMP_Amendment_ePlanning.pdf

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Unoccupied Habitat. This proposed ACEC overlaps the Dry Creek Basin and Northdale ACECs mentioned above.

- D. Lease stipulations described on pages H-20-H22 of Appendix H of the TRFO RMP/FEIS¹⁶ describes several stipulations that apply to leases that may impact Gunnison sage-grouse and that should have been applied to the Dry Creek Basin area parcels to protect Gunnison sage-grouse. San Miguel County disagrees with the BLM's statements of NEPA adequacy in the DNA because stipulations appear to have not been attached to these parcels in conformance with the Tres Rios RMP/EIS; therefore the DNA is inadequate. The NEPA documents referenced in the DNA did not consider the impacts to GuSG of leases without the stipulations in the final TRFO RMP/FEIS.

II. Incomplete Exhibits in the DNA.

Incomplete exhibits within the February 2017 Lease Sale DNA complicate the review of the document and creates a question for San Miguel County if stipulations are readily apparent to potential bidders and if successful bidders will be required to adhere to stipulations where there were incomplete description and documentation within the DNA. Specifically,

- **Exhibit CO-56** seems to be missing from the DNA; and
- **Exhibit 3.10.3** seems to be missing from the DNA.

III. Summary of parcels that should be deferred or made Not Available for Lease in the February 2017 oil and gas lease sale.

A. Dry Creek Basin Area Parcels (See Map 1)

- Parcels **7795**, **7797**, and **7798** still intersect occupied critical Gunnison sage-grouse (GuSG) habitat within the important Dry Creek Basin area and should be deferred. This is evident when examining parcel boundaries and habitat boundaries at appropriate scales of 1:2,000-1:20,000.
- Parcel **7795** is within 4 miles of a GuSG lek. All parcels within 4 miles of a GuSG lek should be deferred. Please see additional discussion of lek buffers and critical habitat buffers elsewhere in our comments.
- Parcel **7801** intersects private land and occupied GuSG habitat that is also within a Conservation Easement or soon planned to be encumbered by a conservation easement for the purpose of GuSG protection (see Map 1). It is adjacent to the State Land Board's Hamilton Mesa Stewardship Trust land being managed for GuSG as well as completed and planned conservation easements on private lands surrounding the Hamilton Mesa Stewardship Trust land totaling several thousand acres. Based on the numerous references in BLM, U.S. Fish and Wildlife Service (USFWS) reports, plans, environmental impact statements and environmental assessments, and the

¹⁶http://www.blm.gov/style/medialib/blm/co/field_offices/san_juan_public_lands/land_use_planning/approved_l_rmp.Par.5798.File.dat/App_H%20Oil%20and%20Gas%20Leasing%20Stipulations.pdf

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2005 Gunnison Sage-Grouse Rangewide Conservation Plan about the importance of private land conservation for the future success of satellite GuSG populations including the need for habitat connectivity and reducing surface disturbance; this split estate area should have a stipulation of No Surface Occupancy or preferably be made Not Available for Lease. San Miguel County agrees with comments submitted on June 8, 2016, for this lease sale requesting for any lands within conservation easements, that BLM contacts each entity before leasing, and evaluate in its NEPA document an alternative that places an NSO stipulation on the portions of parcels within the identified conservation easement boundaries.¹⁷

- Parcels **7795, 7797, 7801, 7802, and 7805** intersect the Dry Creek Basin State Wildlife Area. Colorado Parks and Wildlife (CPW) previously recommended these parcels be deferred during the scoping period for this lease sale, stating *"Oil and gas development on the surface of these parcels within the SWA is inconsistent with CPW's current and future planned management of Dry Creek Basin SWA. We recommend that the BLM analyze these parcels with respect to the proposed ACECs."* CPW further stated, *"Even with the protection provided by SWA NSO stipulation 3.13.1, development of lands adjacent to Dry Creek Basin SWA could have detrimental impacts to the SWA and what it provides in the way of Gunnison sage-grouse (GUSG) habitat, big game migration corridors, and big game wintering areas."* CPW also stated, *"Parcel 7795, 7797, 7798, 7801, 7802, 7805 and 7806 are in the heart of a major migration corridor for both mule deer and elk. Deer and elk use this corridor to travel seasonally from the high country in the National Forest around Lone Cone SWA to their wintering areas in Dry Creek Basin. Dry Creek Basin SWA was acquired, in part, to protect this migration corridor and adjacent wintering area for big game. We recommend deferring sale of these parcels to protect this migration corridor and the use of Lone Cone and Dry Creek Basin SWAs by big game."*¹⁸
- It is unclear if the Dry Creek Basin SWA stipulation contained in Exhibit 3.13.1 will actually result in a No Surface Occupancy requirement. Portions of parcels **7795, 7797, 7801, 7802, and 7805** within the Dry Creek Basin area have been given this stipulation in the DNA. The DNA language reads *"State Wildlife Areas - No surface occupancy is allowed on the lands described below: In state wildlife areas that have federal mineral estate underlying them. NSO and other mitigations would be determined by the Managing Agencies in cooperation with CPW."*¹⁹ These parcels should entirely be deferred to allow for the other pending RMPa/DEIS and the TRFO ACEC EA to finish their processes. If not deferred they must have a clear NSO stipulation. Stating

¹⁷Page 4; Letter from CPW to TRFO dated 6/8/2016, RE: COLORADO PARKS AND WILDLIFE SCOPING COMMENTS FOR BLM'S FEBRUARY 2017 LEASE SALE PARCELS, TRES RIOS FIELD OFFICE

¹⁸Page 2; Letter from CPW to TRFO dated 6/8/2016, RE: COLORADO PARKS AND WILDLIFE SCOPING COMMENTS FOR BLM'S FEBRUARY 2017 LEASE SALE PARCELS, TRES RIOS FIELD OFFICE

¹⁹Page 69;

http://www.blm.gov/style/medialib/blm/co/programs/oil_and_gas/Lease_Sale/2017/february.Par.58526.File.txt/TRFO-DNA-Comment-Period.pdf

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that an NSO is allowed and would be determined by the managing agencies (BLM) is not a clear mandate of an NSO stipulation.

- Portions of parcels **7797** and **7795** not already recommended by BLM in the DNA for deferral intersect and/or are adjacent to the nominated Dry Creek Basin Area of Critical Environmental Concern (ACEC). These entire parcels should be deferred until a Record of Decision is published by Tres Rios Field Office on the in-progress Tres Rios ACEC RMP Amendment and associated Environmental Assessment (DOI-BLM-CO-S010-2016-0018-EA).

Deferral of all of the land within the portions of Parcels **7795, 7797, 7798, 7801, 7802, and 7805** not already recommended for deferral is necessary due to the NEPA inadequacy for this DNA (see Map 1). However, it would also benefit mule deer and elk which use this area as a major migration corridor, migratory birds, raptors, Gunnison Prairie Dog, Biological Soil Crusts, riparian/stream/waterbody/wetland areas and will mitigate potential issues for slopes and situations requiring controlled surface occupancy and timing limitations. The land within these parcels should not have human structures, in order to also leave open options for working to expand or enhance GuSG habitat through treatment of pinon-juniper encroachment or riparian habitat enhancements in the future. Additional access roads and traffic within the Dry Creek Basin area would have a negative impact on the San Miguel GuSG population.

B. Parcel without Federal Oil & Gas Mineral Ownership (See Map 1)

- The portion of Parcel **7798** comprised of the S ½ SE 1/4, Township 43N, Range 15W, N.M.P.M. is shown on the BLM 2001 Dove Creek Mineral Management Status 1:100,000-Scale Map as having a non-federal (private) mineral estate.²⁰ The same portion of Parcel 7798 is shown on the BLM 2009 Dove Creek Mineral Management Status 1:100,000-Scale Map as having "Other" mineral estate.²¹ Federal oil and gas mineral ownership is generally inferred to exist where land is depicted as having federal mineral ownership in either the "All minerals," "Oil and gas only", or "Oil, gas, and coal only" categories.

C. Parcel within Designated Gypsum Valley Area of Critical Environmental Concern (ACEC) (See Map 2)

- Parcel **7792** should be deferred from the lease sale and made permanently Not Available for Lease. This parcel is in the designated Gypsum Valley Area of Critical Environmental Concern and contains known occurrences of the globally imperiled *Cryptantha gypsophila* (Gypsum Valley cat's-eye or cat-eye).

²⁰Dove Creek Mineral Management Status Surface Management Status 1:100,000-Scale Topographic Map (Department of the Interior, 2001)

²¹Dove Creek Mineral Management Status Surface Management Status 1:100,000-Scale Topographic Map (Department of the Interior, 2009)

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The Tres Rios RMP describes the sensitivity of this ACEC in a manner that is not conducive to surface occupancy: *"this ACEC is subject to many ground-disturbing management activities (including off-road vehicle use, livestock grazing, and oil and gas development) that could disturb many acres; because the relevance values are subject to competition from invasive plants (brought in on the extensive road network within this ACEC), which could quickly become established on the many acres affected by the many ground-disturbing management activities associated with this ACEC; because this ACEC contains three occurrences of a G1 ranked species (Lecanora gypsicola), five occurrences of a G2 ranked species (Gypsum Valley cat-eye), three occurrences of an S1 ranked species (nodule cracked lichen Acarospora nodulosa var. nodulosa), and an occurrence of S1 ranked Nealley's dropseed, all of which are highly vulnerable to disturbance and extinction; because of the significance of the habitat within this ACEC since the ACEC contains such a large portion of the entire range, much of the total known habitat, and many of the total documented occurrences of Gypsum Valley cat-eye, which means that management actions within this ACEC could have a significant effect on the long-term viability of that species; because the gypsum soils habitat for Gypsum Valley cat-eye and the gypsum rim lichen is easily disturbed and highly erosive; because this site has a biodiversity rank of B1 for outstanding biodiversity significance; and because this area is easily accessible (highly eroded and relatively flat topography)."*²²

D. Parcels within potential Areas of Critical Environmental Concern

- Parcels 7378, 7792, 7795, and 7797 should be entirely deferred from the lease sale. These parcels fall within potential ACECs being considered for designation through the ongoing Tres Rios ACEC RMP Amendment and associated Environmental Assessment (DOI-BLM-CO-S010-2016-0018-EA) (See Maps 1 and 2).
- Any reliance on lease stipulation Exhibit CO-34, "Endangered Species Act Section 7 Consultation Stipulation" is inadequate to protect the sensitive species and fragile surface conditions in these areas.

IV. Conclusion.

San Miguel County recognizes the importance of developing oil and gas resources located on federal public lands within this county. It is important to us that oil and gas resources be leased and/or developed in an environmentally sensitive and responsible manner. We appreciate the opportunity to be actively involved in the BLM's lease sale processes. We are very concerned that this lease sale is premature due to several ongoing planning amendment processes that are giving

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²²Page U-15:

http://www.blm.gov/style/medialib/blm/co/field_offices/san_juan_public_lands/land_use_planning/approved_Irmp.Par.83225.File.dat/App_U_ACEC.pdf

attention to and analyzing new information for Gunnison sage-grouse and areas found to meet the ACEC criteria.

San Miguel County believes that the NEPA adequacy criteria was not met by this DNA with respect to GuSG and potential ACECs. We found what appear to be technical defects with unclear mineral rights ownership, missing exhibits, and stipulations that did not match the stated basis of the DNA, the TRFO RMP/FEIS. We strongly recommend deferral of this sale, or at least all parcels near, adjacent, and intersecting GuSG critical habitat, and within at least a 6-mile buffer of leks within the San Miguel Basin. We strongly recommend deferral of parcels near, adjacent, and intersecting current ACEC boundaries, and potential ACEC boundaries to allow for appropriate analysis and potential alternations of proposed ACEC boundaries.

We strongly recommend deferral of all of parcel **7801** within or planned to be placed in a conservation easement. At a minimum, we request that the BLM contact each entity prior to leasing, and evaluate in its NEPA document an alternative that places an NSO stipulation on the portions of any parcels within conservation easement boundaries.

We appreciate the opportunity for early review of upcoming lease sales for potential surface conflicts with wildlife and state park resources.

We have included Maps 3 and 4 to show how much of the Dry Creek Basin and Gypsum Valley areas are within existing leases, in areas considered to have moderate to high hydrocarbon potential, and yet have resulted in little to no oil or gas development. This suggests that the existing leases are more than enough to satisfy any demand for leases. We question the need for additional leases, considering the potential impacts to wildlife, habitat, and sensitive areas. Important big game migration corridors, winter concentration areas or calving areas for deer and elk exist on parcels **7797, 7798, 7801, 7802, 7805, and 7806**.

San Miguel County strongly urges the BLM to examine Dry Creek Basin and other areas discussed by Colorado Parks and Wildlife and others in their scoping and DNA comments on this lease sale and prepare a Master Leasing Plan (MLP). We believe that the four criteria listed in BLM IM No. 2010-117²³ exist within some of the areas scoped by this DNA, especially Dry Creek Basin, and thus an MLP appears to be actually required. San Miguel County further urges the BLM to require oil and

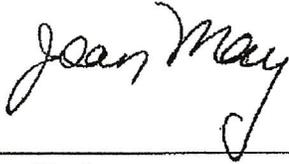
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²³http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2010/IM_2010-117.html

gas lessees to submit a Field wide Development Plan prior to initiating the BLM's Application for Permit to Drill (APD) for any oil or gas lease tracts within San Miguel County.

Sincerely,

SAN MIGUEL COUNTY
BOARD OF COUNTY COMMISSIONERS



Joan May, Chair

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