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Submitted via Federal eRulemaking Portal: <http://www.regulations.gov>

Patty Gelatt
Western Colorado Field Office Supervisor
U.S. Fish and Wildlife Service
764 Horizon Drive, Building B
Grand Junction, CO 81506-3946

RE: U.S. Fish and Wildlife Service Proposed Endangered Status for Gunnison Sage-Grouse (Docket Nos. FWS-R6-ES-2012-0108)

Dear Ms. Gelatt:

Western Energy Alliance, Public Lands Advocacy (PLA), the Independent Petroleum Association of America (IPAA) and the Colorado Oil & Gas Association (COGA) submit the following comments on proposals to list the Gunnison sage-grouse (*Centrocercus minimus*) as endangered under the Endangered Species Act of 1973 (ESA) and designate critical habitat for the species to the U.S. Fish & Wildlife Service (Service).

Western Energy Alliance represents more than 400 companies engaged in all aspects of environmentally responsible exploration and production of natural gas and oil in Colorado, Utah, and across the West. PLA is a nonprofit trade association whose members include independent and major oil and gas producers as well as nonprofit trade and professional organizations that have joined together to foster environmentally sound exploration and production on public lands. IPAA represents thousands of independent oil and natural gas explorers and producers, as well as the service and supply industries that support their efforts, which will be significantly affected by federal action. Independent producers develop 95 percent of American oil and natural gas wells, produce 54 percent of American oil and produce 85 percent of American natural gas. The average independent has been in business for 26 years and employs 12 full-time and three part-time employees. In total, America's onshore independent oil and natural gas producers supported 2.1 million direct jobs in the United States in 2010. COGA is a nationally-recognized oil and gas industry trade association whose membership is comprised of operators, service and supply companies, industry vendors, and others engaged in the development of oil and gas, in Colorado and across the world. COGA's mission is to foster and promote the beneficial, efficient, responsible and environmentally sound development, production and use of Colorado oil and natural gas. We request that each of the aforementioned organizations be recognized as separate commenters in this process.

Member companies of these organizations have valid existing leases, current oil and gas production, and plans for future leasing, exploration, and production activities in the areas that will be impacted by the proposed listing or have been proposed for critical habitat designation and, therefore, a direct interest in both of the Service's proposals.

I. General Comments

We strongly oppose this listing proposal and proposed designation of critical habitat. The Service has not adequately demonstrated that the Gunnison Sage-Grouse (GUSG) meets the standard for designation as endangered because it did not use the best available scientific information in its decision and ignored or did not adequately consider several existing efforts and regulatory mechanisms to protect and preserve the species and

its habitat. The Service has failed to acknowledge the significant increases in GUSG population rangewide and must reexamine the proposed critical habitat designation, which does not comply with the Service's statutory mandate to rely on best scientific and commercial data available.

The Service has proposed this listing despite a rangewide conservation plan for the species, seven specific conservation plans for all GUSG populations, voluntary conservation agreements and easements, and efforts through the Natural Resource Conservation Service's (NRCS) Sage-Grouse Initiative. The proposed listing decision ignores, and may consequently compromise the execution or implementation of, multiple existing and planned efforts to protect and conserve the species and its habitat that have been developed by counties, landowners, local area working groups (LAWG), the States of Colorado and Utah, the Bureau of Land Management (BLM), and other stakeholders. As a result, we do not believe the Service has properly taken into account efforts to protect the species, which is required by ESA before a final listing determination can be made. We strongly recommend that the Secretary of the Interior exclude from the final critical habitat designation all lands enrolled under the GUSG CCAA and proposed CCA, lands under permanent conservation easements, or fee title ownership held by various land trust and ranchland conservation organizations with conservation measures applicable to GUSG.

Listing the GUSG under the ESA would have significant negative impacts on the activities that drive the economies of local communities in southwest Colorado and southeast Utah, including oil and natural gas and renewable energy development, grazing, ranching, agriculture, and mining. Our member companies' ability to develop oil and natural gas resources in and around GUSG habitat would be unreasonably delayed or precluded if the Service chooses to move forward with its proposed listing decision and designation of critical habitat. If carried forward, the proposed decision will jeopardize significant oil and natural gas investment which will prevent job creation and associated socio-economic benefits to local communities.

II. Proposed Listing Decision

Existing Conservation Efforts

We strongly disagree with the Service's conclusion that "[a]ll of the conservation efforts are limited in size and the measures provided to us were simply not implemented at the scale (even when considered cumulatively) that would be required to effectively reduce the threats to the species and its habitat across its range" (*Federal Register*, Vol. 78 No. 8, p. 2,516). In its proposal, the Service has failed to adequately consider many existing and planned efforts to protect and conserve the species and its habitat that have been developed by counties, landowners, LAWG, the State of Colorado, BLM, and other local stakeholders. The Service must take into account these types of efforts to protect the species before making a listing determination.¹ Further, the Service is required to "take into account all conservation efforts being made to protect a species" under its *Policy for Evaluation of Conservation Efforts When Making Listing Decisions* (PECE).² The PECE process requires the Service to consider both current actions that affect a species' status and certain future actions that may affect the species' status.

The listing, as well as subsequent compliance under the ESA, may obstruct or prevent entities from fully executing their efforts and plans to protect the species, potentially compromising millions of dollars of investment in conservation. These programs have already been funded and far exceed what the Service would be able to achieve if the species were listed. The listing decision may also discourage or preclude planned or future efforts, including a candidate conservation agreement (CCA) that is still being developed, additional candidate conservation agreements with assurances (CCAA), conservation easements, and other efforts.

¹ 16 U.S.C. § 1533(b)(1)(A)

² "Policy for Evaluation of Conservation Efforts When Making Listing Decisions," 68 Fed. Reg. 15100, March 28, 2003.

While the Service states that “ongoing conservation efforts are a positive step toward the conservation of the Gunnison sage-grouse, and some have likely reduced the severity of some threats to the species” (*Federal Register*, Vol. 78 No. 8, p. 2,516), the Service fails to recognize the consequences an endangered listing would have on these efforts, which could ultimately prove to be prohibitive. In fact, a study conducted by the University of Michigan School of Natural Resources & Environment demonstrates that perceived regulatory coercion prompts many landowners, who, prior to a listing may have been willing to cooperate in beneficial practices for the proposed species, to then be unwilling to cooperate in preservation efforts, and may even be likely to engage in harmful practices to the subsequently listed species.³

We urge the Service to fully consider all of the efforts, plans, regulatory mechanisms, and other actions⁴ to conserve and protect GUSG and its habitat, before finalizing its listing decision. If these efforts prove to be ineffective, then and only then would it be appropriate for the Service to initiate the listing process for the species. Please see below for a list of some, but not all, ongoing efforts, plans, and other mechanisms aimed at the long-term survival of the species and protection and enhancement of its habitat.

- State of Colorado
 - The Colorado Division of Parks & Wildlife (CPW) has spent over \$30 million to acquire conservation easements or properties with GUSG habitat by working collaboratively with private landowners, county governments and others. CPW also conducts research, closes roads to protect seasonal breeding areas, relocates GUSG for breeding purposes, and preserves and enhances habitat through other measures. CPW has also worked with BLM to close public lands during breeding times
 - In 2000, the Colorado Wildlife Commission eliminated hunting in areas occupied by GUSG
 - After the GUSG was designated as a candidate species for listing under the ESA in 2000, CPW, then the Colorado Division of Wildlife, developed a rangewide plan for the species to protect important habitats and ensure the long-term survival of the species. This plan is made up of local conservation plans for all seven GSG populations and provides for population expansions and habitat improvements
 - CPW has three dedicated biologists that provide technical assistance to private landowners for sage grouse habitat restoration and enhancement and projects or enhance sagebrush habitat
 - The Colorado Oil and Gas Conservation Commission (COGCC) may require consultation with CPW and mitigation measures when oil and gas development is proposed on private land in areas mapped as “sensitive wildlife habitat,” which includes GUSG habitat areas.
- State of Utah
 - The State has banned hunting of GUSG since 1989
 - Utah’s *Statewide Rangewide Conservation Plan* was developed by multiple state and federal agencies and is intended to supplement local plans, propose conservation measures that address threats, and ensure that the cumulative result of conserving local populations is the overall conservation of the species.
- Counties
 - Gunnison County, Colorado

³ Brook Amara, Raymond de Young, and Michaela Zint, “Landowners’ Responses to an Endangered Species Act Listing and Implications for Encouraging Conservation”, *Conservation Biology* Vol. 17, No. 6 (2003): 1638-1649, University of Michigan School of Natural Resources & Environment. Available at: <http://deepblue.lib.umich.edu/bitstream/handle/2027.42/73866/j.1523-1739.2003.00258.x.pdf?sequence=1>

⁴ These actions are documented in a number of resources, including the Western Governors Association’s *Special Report to the Western Governors, Inventory of State and Local Governments’ Conservation Initiatives for Sage-Grouse* (December 2012 Update). Available at: <http://www.westgov.org/initiatives/wildlife/sage-grouse-and-sagebrush-conservation>

- Levies a 1% sales tax that funds the purchase of conservation easements, which generates approximately \$300,000 annually
- The “Gunnison County Strategic Plan” is designed specifically for GUSG and includes an inventory of areas for habitat protection
- Employs annual road closures and other land use provisions to protect local populations of GUSG
- Utilizes a "Habitat Prioritization Tool" for all land use applications to reduce impacts to high priority GUSG habitat
- Established the *Gunnison County Wildlife Conservation Program*, a county department that primarily addresses GUSG conservation, in coordination with federal and state agencies and private landowners
- Since 2000, has collected an additional fee for waste deposited in the county landfill to support a mitigation fund, which funds projects that benefit GUSG, including conservation easements
- Along with BLM and USFS, closes twelve County roads at 16 closures points annually to all motorized travel to protect GUSG during their breeding season
- Land Use Resolution (Sec 11-106) is used to sustain and enhance existing populations of GUSG.
- San Miguel County, Colorado
 - Has a conservation easement initiative for landowners
 - Uses codified land use restrictions to limit development in GUSG habitat
 - Land use code states that it is the policy of the county to identify and protect wildlife habitats, to encourage land use patterns that avoid disruptions, and to prohibit dogs in and adjacent to wildlife habitat areas.
- San Juan County, Utah
 - The San Juan County Gunnison Sage-grouse Local Working Group designated a GUSG priority conservation and study area that includes lands enrolled in a Conservation Reserve Program near Monticello in 1997
 - The San Juan County Gunnison Sage-grouse Conservation Plan is used to propose conservation strategies to address these threats to the local populations of GUSG.
- Candidate Conservation Agreement (CCA)
 - In 2010, CPW, Gunnison County, Saguache County, BLM, U.S. Forest Service (USFS), National Park Service, NRCS, and the Service began developing a CCA for GUSG in the Gunnison Basin that will provide for the implementation of conservation measures for GUSG on Federal lands, covering 397,267 acres of occupied habitat on Federal lands in the Gunnison Basin, which is 67% of occupied habitat in the Gunnison Basin, approximately 78% of rangewide occupied habitat on Federal lands, and approximately 42% percent of total rangewide occupied habitat.
- Candidate Conservation Agreements with Assurances (CCAA)
 - As of 2012, 14 landowners have completed Certificates of Inclusion (CI) for their properties, enrolling a total of 32,619 acres.
- Conservation Easements
 - Approximately 71,000 acres of private lands in occupied GUSG habitat in Colorado have been placed in conservation easements or acquired in fee title for conservation purposes
 - The Nature Conservancy recently purchased 1,080 acres northeast of Monticello in partnership with the Utah Division of Wildlife Resources.
- Local Area Working Groups
 - Several LAWGs are dedicated to protecting and conserving GUSG. These groups include: the Rangewide Steering Committee, San Juan County Working Group, San Miguel Basin Local Working

Group, Gunnison Basin Sage-grouse Strategic Committee, Crawford Area Local Working Group, Dove Creek Local Working Group, Piñon Mesa Gunnison Sage-grouse Partnership, and Poncha Pass Local Working Group.

Clearly, significant efforts are already underway to conserve, protect, and recover the GUSG throughout its range. In its decision, the Service has failed to adequately consider the cumulative impact to the species and the combined habitat coverage of these efforts. The Service has also failed to recognize that existing efforts and measures are still proving themselves as effective means of preservation and protection of GUSG and its habitat.

Adequacy of Existing Regulatory Mechanisms

We challenge the Service's finding that inadequate regulatory mechanisms on federal and private lands pose a threat to the species throughout its range. The BLM and the U.S. Forest Service (USFS) are fully implementing several regulatory mechanisms available to conserve GUSG and their habitats on federal lands through restrictions in applicable Resource Management Plans (RMP) and Land and Resource Management Plans (LRMP), and other National Environmental Policy Act (NEPA) processes, including grazing and oil and gas permitting. On private lands, several counties have adopted regulations aimed at ensuring the long-term survival of the species and protection of its habitat (see above).

Population Estimates

It is clearly evident that the proposed listing decision fails to take into account increases in overall GUSG population. While six smaller populations declined between 2001 and 2012, the total rangewide population actually increased. The Gunnison Basin population, which supports more than 80% of all GUSG, increased by over 500 birds in this time period (*Federal Register*, Vol. 78 No. 8, p. 2,491). The population growth in the Gunnison Basin correlates directly with county, state, and federal efforts to preserve and enhance habitat, despite increasing housing and urban development. According to the Service, 49% of the land area within occupied GUSG habitat in Gunnison County has at least one housing unit within a radius of 0.9 miles (*Federal Register*, Vol. 78 No. 8, p. 2,491), yet the Gunnison Basin population has significantly increased over the last decade.

CCA and CCAA

We are extremely disappointed that the Service has discounted the GUSG CCAA between the Service and CPW and a pending CCA because it is believed they do not cover a sufficient portion of the species' range to adequately protect GUSG from the threat of habitat loss and fragmentation. In our view, the proposed listing decision is flawed because the Service has failed to properly characterize the positive impact of CCAs and CCAAs on the long-term survival of the species. These agreements, while voluntary, are binding contracts that result in real, sustainable conservation of the species and protection of its habitat, and ought to be regarded as such by the Service.

Overstated Impact of Oil and Gas Development on GUSG

While the Service has found that oil and natural gas development does not present a threat to the long-term persistence of the species at this time, it generally overstates the impact of oil and gas development on GUSG populations and habitat and fails to account for the numerous mitigation and protection measures undertaken by oil and gas operators. Operators are required to or voluntarily take a number of different actions that successfully avoid, minimize, and mitigate impacts to GUSG populations and habitat. These actions include but are not limited to: drilling multiple wells on a single pad; minimizing roads; locating pads and other infrastructure on existing

disturbances; noise reduction; remote telemetry; advanced and interim reclamation; central collection facilities and liquids gathering systems; 3D seismic to limit disturbance from exploration; erosion controls; offsite mitigation; surveys and monitoring; citing of roads, pipelines, and powerlines to avoid habitat; advanced seeding techniques to restore sagebrush; simultaneous drilling, completion, and production to concentrate activities in a small area; and timing and seasonal operation limitations.

The COGCC requires a number of management restrictions specifically for GUSG, including buffers around leks and restricted surface occupancy. In areas within four miles of a GUSG lek, oil and gas operators are required to consult with CPW to identify measures to avoid, minimize, and mitigate impacts to GUSG and its habitat.

On federal lands, BLM may restrict operations to ameliorate impacts from development to the species and its habitat through a series of stipulations on leases or conditions of approval (COA) on Applications for Permit to Drill (APD), including no surface occupancy restrictions, controlled surface use, and timing limitations. BLM has also deferred leasing all oil and gas parcels nominated for leasing in occupied GUSG habitat in Colorado since 2005.

Unfortunately, the Service has failed to factor any of these actions or operating requirements into its discussion of oil and gas development and its impact in the proposed listing decision. Further, the Service has not factored in any of these actions and their positive impact on GUSG populations or habitat in its prediction that *“additional development within occupied habitat would negatively impact those populations by causing additional actual and functional habitat loss and fragmentation”* (Federal Register, Vol. 78 No. 8, p. 2,512).

We also recommend that the Service fully recognize the significant shortcomings involved when making conclusions about GUSG populations based on lek counts. The net effect on sage grouse populations in relation to oil and gas development is not clearly identified or supported by data. Many studies regarding the effects of oil and gas development on sage-grouse that are referenced in the proposed listing decision evaluate outdated technology and minimal mitigation by operators compared to what is now required.

Conclusion

The above-named trade associations appreciate the opportunity to submit comments to the Service on this matter. Based on the reasons listed above, we strongly oppose the agency’s proposal to list the GUSG as endangered under the ESA as well as the proposed designation of critical habitat, and request that both proposals be revoked immediately. Please contact Spencer Kimball at 720-289-3478 or Claire Moseley at 303-506-1153 should you have questions about our comments or recommendations.

Sincerely,



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