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

RE: **U.S. Fish and Wildlife Service Draft Economic Analysis and Environmental Assessment of Proposed Critical Habitat Designation for Gunnison Sage-Grouse (Docket No. FWS–R6–ES–2011–0111)**

Dear Sir or Madam:

Western Energy Alliance, the Independent Petroleum Association of America (IPAA), the American Petroleum Institute (API), the International Association of Drilling Contractors (IADC), and the Colorado Oil and Gas Association (COGA) submit the following comments on the Draft Economic Analysis (DEA) and Environmental Assessment of the proposed critical habitat designation for the Gunnison sage-grouse *(Centrocercus minimus)* to the U.S. Fish & Wildlife Service (FWS). We request that FWS fully consider these comments before the issuance of final determinations on the listing and critical habitat designation for the Gunnison sage-grouse (GuSG).

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.

IPAA represents the thousands of independent oil and natural gas explorers and producers, as well as the service and supply industries that support their efforts, that will be the most significantly affected by the proposed actions in these regulatory actions. Independent producers drill about 95 percent of American oil and natural gas wells, produce about 54 percent of American oil, and more than 85 percent of American natural gas.

API is a national trade association representing over 540 member companies involved in all aspects of the oil and natural gas industry. API's members include producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies that support all segments of the industry. API and its members are dedicated to meeting environmental requirements, while economically developing and supplying energy resources for consumers.

IADC is a trade association representing the interests of drilling contractors, onshore and offshore, operating worldwide. IADC's mission is to advance drilling and completion technology; improve industry health, safety, environmental and training practices; and champion sensible regulations and legislation which facilitate safe and efficient drilling.

COGA is a trade association representing Colorado's oil and natural gas industry. COGA's membership is comprised of operators, service and supply companies, industry vendors, and others engaged in the responsible development of Colorado's oil and natural gas resources.

If FWS proceeds with the proposed listing, member companies of the undersigned organizations may be subjected to ESA requirements and restrictions that would impact their business operations. These companies have valid existing leases, current oil and natural gas production, and plans for future leasing, exploration, and production activities in the areas that will be impacted by the proposed listing and proposed critical habitat designation and, therefore, a direct interest in the DEA. We request that each of the aforementioned organizations be recognized as separate commenters in this process.

In general, we strongly believe the DEA is fundamentally flawed because the model used to determine baseline and incremental administration costs understates the economic impacts on future oil and natural gas activity; FWS incorrectly concludes that economic impacts from oil and natural gas development will be limited to distributive effects; and the analysis was not sufficiently informed by a direct solicitation of information from the oil and natural gas industry.

General Comments on the Listing Decision and Proposed Designation of Critical Habitat

As stated in previous comments, we strongly oppose this listing proposal and proposed designation of critical habitat. FWS has not adequately demonstrated it has met the standard for designation of the GuSG as endangered because it did not use the best available scientific information in its decision and has failed to acknowledge the significant increase in GuSG population rangewide. FWS has also ignored or did not adequately consider several existing local and state efforts and regulatory mechanisms to protect and preserve the species and its habitat.

Listing the GuSG would have significant negative impacts on the activities that drive the economies of local communities in southwest Colorado and southeast Utah, including oil, 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 FWS 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.

We would like to reiterate our previous comment that FWS' intention to designate over 1.7 million acres in Colorado and Utah as critical habitat is ill-conceived and lacks an adequate scientific basis. In general, the critical habitat designation proposed by the FWS is not based on the best scientific and commercial data available because it includes areas that may not have the biological features essential to the conservation of GuSG, including broad swaths of land that are not suitable habitat and are not critical for maintaining and recovering the species.

Specifically, FWS has not effectively justified the designation of unoccupied habitat as critical habitat. The total area proposed for critical habitat designation is nearly twice the size of the species' current occupied habitat. According to FWS, 45% of the areas proposed for critical habitat designation are currently unoccupied by GuSG. The proposal to designate over 1.7 million acres as critical habitat, including "potential" and "vacant or unknown" habitat areas, and areas that were historically occupied but are presently unoccupied, is inappropriate because these areas may contain unsuitable habitat and may not be essential to the conservation of the species. As a result, FWS has likely violated the ESA because it has not demonstrated the essential physical or biological features necessary to justify the designation of these unoccupied areas as critical habitat. See *Alaska Oil and Gas Ass'n et. al v. Salazar*, Case No. 3:11-cv-0025-RRB; (Jan. 11, 2013).

Lack of Outreach to the Oil and Natural Gas Industry

To our knowledge, in the development of this DEA, FWS and its consultant, Industrial Economics Inc., did not contact industry trade associations or oil and natural gas companies to gather information about the economic impact of the proposed designations on future development. This is particularly concerning given that FWS must include a robust analysis of the economic impacts to the oil and natural gas industry due to the proposed critical habitat designation. Before making its final determinations regarding the designation of critical habitat, we urge FWS and its consultants to solicit additional information from companies and industry trade associations, including the signatories of this comment letter, in order to fully understand the economic impact associated with the designation of critical habitat in Colorado and Utah.

Baseline and Incremental Administrative Costs are Understated

This DEA forecasts baseline administrative impacts associated with mineral and fossil fuel extraction of $430,000 and incremental impacts of $1.1 million, at present value over 20 years (DEA at 5-17). The model for both baseline and incremental costs understates these impacts because it does not include development on future BLM leases or any development on fee or state acreage. The estimated present value administrative impacts do not capture the impacts of ancillary and additional costs borne by oil and natural gas companies, including delays or mitigation. For example, moving a rig to and from a well pad to accommodate seasonal timing limitations for GuSG is a major cost that is not factored into the FWS analysis.

Incorrect Assumptions about Distributive Effects of Oil and Natural Gas Development

The DEA concludes that economic impacts from oil and natural gas development will be limited to "distributive" effects in that "current lease sites [within critical habitat] would experience impacts as the result of lost production, but other lease sites would experience the benefits of new production" (DEA at 5-14). We strongly disagree with this conclusion and believe it renders the DEA fundamentally unsound. While operators are likely to move operations to other areas rather than forego production entirely, FWS wrongly assumes that operators have the ability to do so in all circumstances. There are several geological, economic, and administrative factors that come into play when determining to move development to substitute areas. In addition, the DEA fails to account for the loss of investment in the lease that could not be developed, including lease, exploration, environmental, infrastructure, and other costs.

By making this conclusion, FWS incorrectly assumes that companies can quickly redeploy capital to nearby leases; can feasibly move drill sites to alternative locations on the same lease that are not impacted by critical habitat designations; currently hold adjacent or nearby acres that will not be subject to section 7 consultations; and can feasibly access target geologic formations from other locations. The DEA also wrongly concludes that companies can feasibly lease federal parcels nearby simply because "currently leased area within the proposed designation represents only a small percentage of land available for oil and natural gas production" and that "critical habitat represents 1.2 percent of all BLM acres leased for oil and natural gas development in the State of Colorado, and less than 0.05 percent in Utah." (DEA at 5-14). Here, FWS has not recognized that nearby parcels may be held by other companies or are closed to future leasing due to a number of considerations, and that parcels that are available may be subject to No Surface Occupancy or other restrictive stipulations that could effectively prevent oil and natural gas activity.

For these reasons, we strongly object to FWS' conclusion that most substitute locations "would experience the benefits of new production" (DEA at 5-14), effectively making up for lost production from abandoned leasehold within areas designated as critical habitat, and that "oil and gas production and associated benefits are assumed to be redistributed to other locations, with no net change at the national level" (DEA at 5-19). As such, we believe the analysis is flawed and request that FWS revise the DEA to reflect the constraints operators may face when considering alternative development locations that are not encumbered by the regulatory burden associated with section 7 consultations.

FWS forecasts baseline impacts of only $9.7 million and incremental impacts of $3.8 million in present value terms over 20 years (assuming a discount rate of 7 percent) for *all* economic activities that would be affected by the listing and critical habitat designation. *78 FR 57607.* These projections clearly do not reflect the annual loss of economic activity associated with oil and natural gas extraction in the event that companies completely forego production due to listing and critical habitat designation. If baseline and incremental impacts are combined, this amounts to annual impacts of approximately $290 million and 79 jobs in Colorado and $400,000, 11 jobs, and $120,000 in tax revenue in Utah (DEA at 5-16). Due to the flawed assumptions described above, we strongly believe that the total baseline and incremental impacts for all economic activities, including fossil fuel extraction, are vastly understated. Since the critical habitat designation exceeds the $100 million threshold for an economically significant regulation as defined by Executive Order 12866, a more thorough economic analysis must be conducted and then reviewed by the Office of Management and Budget.

Conclusion

The above-named trade associations appreciate the opportunity to submit comments to the FWS on this matter and request that our comments and recommendations are given serious consideration. We continue to strongly oppose the agency's proposal to list the GuSG as endangered under the ESA as well as the proposed designation of critical habitat. Based on the reasons listed above, the DEA is fundamentally flawed because it fails to properly incorporate the economic impact from lost oil and natural gas production into its forecasts of baseline and incremental impacts. As such, we request that FWS correct this economic analysis before moving forward with a final determination for this listing and critical habitat designation.

Sincerely,

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