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**PROTEST OF COLORADO BLM MAY 13, 2010 LEASE SALE PARCELS COC74384, COC74385, COC74386, COC74387, COC74388, COC74389, COC74390, COC74391, COC 74393, COC74394, COC 74395, COC74396, and COC74397.**

The National Wildlife Federation (NWF) and the Colorado Wildlife Federation (CWF), pursuant to 43 C.F.R. §§ 4.450-2 and 3120.1-3, protest the inclusion of certain proposed lease parcels in the upcoming May 13, 2010 Competitive Oil and Gas Lease Sale to be held by the Colorado State Office of the Bureau of Land Management (BLM). Members of CWF and NWF visit, hunt and fish on, and otherwise use lands on or near the public land parcels proposed for leasing. Our members' interests in the public lands and the wildlife resources that depend on those lands for habitat will be adversely affected if the sale of these parcels proceeds, as proposed, without adequate environmental analysis or safeguards to protect the functionality of critical wildlife habitat.

Under the statutory and regulatory provisions authorizing this lease sale, the BLM has full discretion whether or not to offer these lease parcels for sale. The Mineral Leasing Act, 30 U.S.C. § 226(a), provides that "[a]ll lands subject to disposition under this chapter which are known or believed to contain oil and gas deposits may be leased by the Secretary." (emphasis added). The Supreme Court has concluded that this "left the Secretary discretion to refuse to issue any lease at all on a given tract." *Udall v. Tallman*, 380 U.S. 1, 4 (1965); *see also Wyoming ex rel. Sullivan v. Lujan*, 969 F.2d 877 (10<sup>th</sup> Cir. 1992); *McDonald v. Clark*, 771 F.2d 460, 463 (10th Cir. 1985) ("While the [Mineral Leasing Act] gives the Secretary the authority to lease government lands under oil and gas leases, this power is discretionary rather than mandatory."); *Burglin v. Morton*, 527 F.2d 486, 488 (9th Cir. 1975). As discussed in detail below, exercise of the discretion not to lease lands within the Kremmling resource area that support greater sage-grouse habitat and moose, elk, and mule deer crucial winter range, is appropriate and necessary:

- Demand for wildlife recreation is increasing and certain wildlife populations, particularly greater sage-grouse, are declining, and at least two of the proposed lease parcels are still within critical sage-grouse habitat;
- The 26-year-old Kremmling RMP, as amended in 1991, is currently undergoing revision, and premature leasing could unduly prejudice available alternatives;
- The Colorado Division of Wildlife, the state agency charged with management of wildlife resources, has recommended against leasing the North Park area, and existing BLM land use plans and proposed lease stipulations and notices are inadequate to address CDOW concerns and recommended Best Management Practices; and
- BLM has received substantial, material new information regarding sage-grouse habitat condition, the effects of oil and gas development on sage-grouse, mule deer, moose, and elk, and best management practices for minimizing the effects of development on wildlife. Existing NEPA documents, including the 1984 Kremmling RMP EIS documents, the Colorado 1991 Oil and Gas Leasing EIS, and RMP amendments pursuant to that EIS, do not take into account any of this material new information, and are an inadequate basis for new non-NSO leasing.

#### **I. About the Protestors**

The Colorado Wildlife Federation (CWF) is a statewide tax exempt 501(c)(3) nonprofit, membership based, mainstream wildlife conservation organization. Formed in 1953, CWF is Colorado's oldest wildlife conservation organization. CWF's mission is to promote the conservation, sound management, and sustainable use of Colorado's wildlife and wildlife habitat through education and advocacy. CWF understands that state wildlife areas are critical to conserving Colorado's unique wildlife, hunting and fishing heritage and wildlife viewing opportunities. These wildlife-related recreation pursuits enrich the well-being of Colorado's residents and out-of-state visitors and form a substantial segment of Colorado's economy.

The National Wildlife Federation (NWF) is a national member-supported non-profit conservation, education, and advocacy organization. NWF is associated with conservation organizations in 47 states and territories, including CWF in Colorado. NWF is dedicated to conserving wildlife and other natural resources, and believes that hunting, fishing, and trapping are legitimate recreational pursuits and useful wildlife management practices. NWF works to promote responsible management of wildlife on public lands.

NWF and CWF have a well-established history of participation in BLM planning and management activities, including participation on Colorado oil and gas lease planning decisions and the planning process for the Kremmling Resource Areas. Members of CWF and NWF have visited and used BLM public lands in North Park for fishing, hunting, wildlife viewing, and other activities, and will return to State Wildlife Areas in the future. Mineral development of greater sage-grouse habitat and core areas and mule deer, moose, pronghorn and elk crucial winter range will harm our members interests in the continued use of those areas and the wildlife they support,

especially if development is allowed to proceed, as proposed, absent adequate study and safeguards against loss of wildlife resources.

## **II. Description of the Affected Resources**

Although we appreciate the BLM's decision to defer pending additional analysis those nominated parcels affecting what it deems "core" greater sage-grouse habitat, the remaining proposed North Park leases nevertheless pose substantial and cumulative wildlife concerns that have not, to date, been adequately analyzed or mitigated. The Protestors have previously provided the BLM with data and maps illustrating the potential adverse effects of the proposed leases on various wildlife resources in Jackson County, Colorado. Attached as exhibits 1-4 to this protest are four maps illustrating the overlap between the proposed lease parcels and (1) bighorn sheep, mule deer, and pronghorn habitat and migration routes; (2) elk habitat, including calving areas and winter range; (3) greater sage-grouse habitat; and (4) moose habitat. Each of these maps was created by superimposing BLM's own lease parcel GIS data on habitat data layers obtained from the Colorado Division of Wildlife's NDIS database, as of August 2009.

### **a. The North Park Area**

The Colorado Division of Wildlife has described the parcels nominated for leasing in North Park area, located within Jackson County, Colorado, as follows:

Currently, most of this area can be described as sagebrush steppe habitat, which supports many sagebrush obligate species. The remaining portions of the lease area are in the aspen, limber pine, and lodgepole pine interface, which provide crucial habitat to species like dusky (blue) grouse and moose. . .

The proposed lease areas are within habitats classified as winter range, winter concentration areas, severe winter range, production areas and migration routes for mule deer, pronghorn antelope, and elk. Winter habitats are especially critical in North Park where deep snow depths make much of the Park unusable to big game species during winter months . . . .

The proposed leased areas are also within occupied range of the greater sage-grouse. Sage-grouse utilize these areas throughout the entire year for breeding, brood-rearing, summer and winter habitats. The greater sage grouse is listed as a species of concern in Colorado . . . Federal and state agencies as well as private individuals across the west have committed to make efforts to conserve greater sage-grouse . . . .

### **b. Greater Sage-Grouse Habitat – Parcels COC 74386, COC 74387, COC 74388, and COC 74396**

While we appreciate that BLM has agreed to defer most of the parcels which occur on greater sage-grouse habitat, overlay map 2, attached, shows that there is still at

least two parcels (74384 and 74386) proposed for lease on or immediately adjacent to a lek site, and several parcels (74386, 74387, 74388, 73489, 74391, 73492 and 74396) that occur within production areas for the North Park population of greater sage-grouse. Given the Fish and Wildlife Service's recent determination that Endangered Species Act listing of the species is warranted, and the substantial new information available regarding adverse effects of oil and gas development on grouse and the inadequacy of standard BLM stipulations, these additional parcels of grouse habitat should be deferred pending development of a comprehensive conservation strategy and new RMP.

### **c. Big Game Concentration Areas**

According to BLM sale notice data and our review of mule deer range data from CDOW, many of the sale parcels fall within or adjacent to mule deer migration routes and winter range, concentration areas, bighorn sheep migratory corridors, pronghorn winter concentration areas, moose concentration areas, and elk severe winter range and calving areas. Overlay map 1, attached, depicts the overlap of proposed lease parcels and mule deer winter range and migration corridors. The maps reflect all posted BLM addenda for this lease sale. BLM must address cumulative loss and degradation of habitat caused by development, and incorporate recent research to effectively protect big game migration routes and winter range.

### **III. The BLM will violate NEPA if it leases sage-grouse and big game habitat without fully examining environmental consequences.**

In relevant part, NEPA requires BLM to take a "hard look" at any potential environmental consequences of a proposed action so it can determine ecological effects, whether direct, indirect, or cumulative.<sup>1</sup> To give something a "hard look," the BLM could include a resource management plan.<sup>2</sup> However, the BLM must rely on "accurate scientific information" of "high quality."<sup>3</sup> Here, the BLM is relying on the Kremmling RMP, which has not been updated in 19 years. The Kremmling RMP does not contain newly-discovered information about big game, sage-grouse, or climate change. Accordingly, the BLM is relying on an outdated management plan and thus is not giving these lease parcels the proper examination that NEPA requires.

In Wyoming in (year), the BLM deferred nearly 20,000 acres of oil and gas lease parcels in elk and mule deer habitat. "Siding with concerns raised in protests by outfitters, hunters and anglers, local residents, oil and gas field workers, and conservationists, the IBLA halted an April oil and gas lease sale in the Wyoming Range while it considers an appeal of the leasing decision."<sup>4</sup> And in Montana, the BLM deferred the leasing of mule deer winter range because of the availability of substantial new information. There, BLM deferred until it had the opportunity to complete a comprehensive NEPA analysis of the effects of additional leasing on the species. The Colorado BLM should follow suit and defer on these lease parcels until it can adequately examine the impact of leasing these parcels in sage-grouse and big game habitat.

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<sup>1</sup> 40 CFR § 1508.8.

<sup>2</sup> *Id.*

<sup>3</sup> 40 C.F.R. 1502.15.

<sup>4</sup> Earthjustice, *Wyoming Range Oil and Gas Leasing Temporarily Halted* (2006), available at <http://www.earthjustice.org/news/press/006/wyoming-range-oil-and-gas-leasing-temporarily-halted.html>.

**a. The BLM must fully examine the environmental consequences that the proposed lease parcels will have on mule deer, elk, moose, sage-grouse, and climate change.**

To meet NEPA requirements, the BLM must (1) consider new studies that have shown the adverse impacts of natural gas development on mule deer, (2) adequately protect elk winter range, (3) acknowledge the rapidly changing moose concerns in North Park, (4) defer the remaining lease parcel in sage-grouse habitat, (5) fully consider climate change impacts, and (6) fully consider fragmentation impacts. In addition to the species impacts discussed at greater length below, parcel COC 74386 may adversely impact a bighorn sheep migration corridor (see Overlay Map 1), and parcels COC 74377, 74378, 74379, 74384, 74385 may adversely affect pronghorn winter concentration areas.

**i. The BLM must consider the most updated information on mule deer.**

Leasing parcels COC74386, COC74 387, and COC74388 will adversely affect mule deer.<sup>5</sup> The BLM relies on the Kremmling RMP when making its decisions. However, the Kremmling RMP does not provide adequate protection for mule deer for two reasons: (1) it does not consider new research on the effects of natural gas development on mule deer; and (2) it does not adequately address adverse effects that human activities can have on mule deer. Moreover, there are no adequate stipulations regarding mule deer. Each of these arguments will be addressed in turn.

The Kremmling RMP and its 1991 oil and gas amendment do not adequately address substantial new relevant information regarding the effects on mule deer from levels of oil and gas development currently being proposed for those areas.<sup>6</sup> The 1991 Oil and Gas Amendments concede that “[w]inter ranges for elk, mule deer, and pronghorn antelope are crucial in maintaining wintering populations and are located on sagebrush dominant ridges and south-facing slopes at lower elevations throughout the Resource Area.” And “[m]ule deer are common in nearly all habitat types.” However, while the amendments recognize the importance of mule deer winter range, they do not take into account new studies that highlight the adverse effects of oil and gas leases on the mule deer. These studies should be implemented into BLM’s planning to protect what the amendments call “crucial” winter range.

Specifically, these studies have shown that natural gas development has a negative effect on mule deer. The Sublette Mule Deer Study, analyzing effects on mule deer from gas development in the area around Pinedale, Wyoming, shows that mule deer avoid gas field development, and that mule deer abundance declined 46% (most likely due to reduced survival rates) in areas affected by development.<sup>7</sup> The BLM’s assumption in the 1991 FEIS was that “impacts will be reduced or eliminated by the combination of timing limitation stipulations and other mitigation possible through application and enforcement of the standard lease terms and regulations.”<sup>8</sup> However, the results of the Sublette Mule Deer Study, assessing development

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<sup>5</sup> 2010 CDOW Letter about Nominated Parcels for Lease Sale.

<sup>6</sup> 2007 NWF and CDOW Protest.

<sup>7</sup> Western Ecosystems Technology 2006 Annual Report, Sublette Mule Deer Study (Phase 2) i-ii (hereinafter “mule deer report”).

<sup>8</sup> 1991 FEIS, pp. 4-5.

under the standard timing stipulations relied on by the BLM demonstrate that the BLM's assumption in the 1991 FEIS is wrong under real-world development scenarios. In fact, no NEPA document – not the decades-old RMP EIS for the Kremmling area, nor the 1991 Oil and Gas Leasing EIS – addressed the Sublette study information, which simply did not exist at that time. Thus, if there are additional questions to be answered about the meaning of the Sublette results for Colorado mule deer populations, those questions should be answered *before* leasing, not after, with full opportunity for consideration of alternative courses of action under NEPA.

Second, the Kremmling RMP and its amendments do not adequately address the adverse effects of human activities on mule deer. “The 1991 FEIS concedes that “[t]he continual human activities and associated facilities with several producing wells could have a significant impact [on big game], depending on the type and level of activity, the habitat affected, geography, and other pertinent factors.”<sup>9</sup> At the time, however, the BLM lacked concrete data now available demonstrating just how significant that impact is at even moderate levels of development.<sup>10</sup>

Finally, adequate stipulations to protect mule deer may not exist. For example, in 2007, NWF and CDOW addressed that the BLM's standard timing stipulations did not adequately protect mule deer: “BLM has specified for these parcels Timing Limitation Stipulation CO-09, which allows no surface use from December 1 through April 30 (subject to exceptions during March and April) to protect big game winter range, but allows operation and maintenance of production facilities during the winter once initial drilling has been completed. These standard timing stipulations, while they may help to alleviate disruption of winter big game activity during the year of initial drilling, do not address loss and degradation of habitat caused by development, and recent research suggests they are ineffective at protecting mule deer populations affected by development.”<sup>11</sup>

**ii. The BLM must consider the most updated information on elk winter range.**

The lease parcels affecting elk severe winter range are COC74386, COC74387, 5637, COC74384, COC74385, COC74389, COC74390, COC74391, COC74394, COC74396. The lease parcels affecting elk winter range are COC74386, COC74387, COC74384, COC74385, COC74388, COC74389, COC74390, COC74391, COC74394, COC74395, COC74396. The lease parcels affecting elk winter concentration areas are COC74394 and COC74396.

In 2005, the BLM in Pinedale, Wyoming, was revising its RMP. The Wilderness Society requested that the BLM implement new studies on mule deer and elk. Like North Park, the Pinedale area is home to many big game animals: “The Pinedale RMA includes the Upper Green River Valley, winter habitat for over 100,000 pronghorn, mule deer, elk, bighorn sheep, moose,

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<sup>9</sup> 1991 Leasing FEIS 4-4 to 4-5.

<sup>10</sup> Frid, A. and L. M. Dill. 2002. Human-caused disturbance stimuli as a form of predation risk. *Conservation Ecology* 6(1): 11. [online] URL: <http://www.consecol.org/vol6/iss1/art11/>; Wisdom et al., 2006. Effects of off-road recreation on mule deer and elk, available at [http://www.fs.fed.us/pnw/lagrandc/starkey\\_na/PDFs\\_Preprints/ms-06\\_Wisdom.pdf](http://www.fs.fed.us/pnw/lagrandc/starkey_na/PDFs_Preprints/ms-06_Wisdom.pdf); mule deer report *supra* note 7 (“Behavioral changes may result from increased levels of traffic, noise, pollution, or human activity.”).

<sup>11</sup> 2007 NWF and CDOW Protest.

and other big game.”<sup>12</sup> The Pinedale BLM responded to studies which suggested that “the current level of development is sufficient to have a negative impact on the four wildlife species assessed -- pronghorn, mule deer, elk, and Sage-Grouse.”<sup>13</sup> Specifically for elk, relevant studies recommended that the BLM “reduce route densities below 1 mi/mi<sup>2</sup> within crucial winter range and along migration corridors.”<sup>14</sup>

In 2008, the Pinedale RMP was approved. In its traditional leasing areas, BLM prohibited surface occupancy on elk feedgrounds, except for authorized activities to maintain feedground facilities and manage wintering elk. And it prohibited unauthorized human presence within 2 miles of elk feedgrounds from November 15 through April 30. Where the feedground location is split estate (private surface ownership and federal minerals), this restriction is limited to BLM-permitted mineral activities. It also stated that “big game migration routes will be protected. Known big game migration bottleneck areas are available for oil and gas leasing with NSO restrictions, unless other protection is provided.” Moreover, “no surface disturbing or disruptive activities are permitted in big game crucial winter ranges from November 15 to April 30.” And “to minimize fragmentation and human presence in winter ranges, access to big game crucial winter ranges outside producing gas fields is limited to existing designated access routes. Exceptions could be allowed to provide reasonable access to private and state-owned lands as well as to valid existing federal oil and gas leases.” Finally, “transportation planning will be implemented to avoid creating unusable islands of wildlife habitat and proliferation of access points (usable patch size varies by species).”<sup>15</sup> The Colorado BLM should include more protection for elk in its proposed lease sales as well.

**iii. The BLM must consider the most updated information on moose winter range.**

The lease parcels affecting moose concentration areas are COC74386, COC74387, COC74385, COC74397, COC74390, COC74393, COC74395. The lease parcels in moose priority habitat are COC74386, COC74387, COC74385, COC74389, COC74397, COC74390, COC74391, COC74393, COC74394, and COC74395. The lease parcels affecting moose winter range are COC74386, COC74387, COC74389, COC74397, COC74390, COC74391, COC74393, COC74394, and COC74395.

The Kremmling RMP and its 1991 oil and gas amendments do not provide any protection for moose. The original Kremmling RMP stated that “Moose Shiras moose were reintroduced in North Park near Rand during the winter of 1977 and 1978 in a cooperative effort between the U.S. Forest Service and Colorado Division of Wildlife. Current management of moose is the responsibility of these two agencies. BLM administered lands are located within the expected lo-year moose distribution area; however, *no current management of these lands as moose habitat*

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<sup>12</sup> Wilderness Society, *Wildlife at a Crossroads: Energy Development in Western Wyoming, Effects of Roads on Habitat in the Upper Green River Valley* (2005), available at <http://wilderness.org/content/wildlife-crossroads-wyoming%20>.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> BLM Record of Decision / Approved RMP, available at [http://www.blm.gov/wy/st/en/programs/Planning/rmps/pinedale/rod\\_armp.html](http://www.blm.gov/wy/st/en/programs/Planning/rmps/pinedale/rod_armp.html) (last visited Apr. 27, 2010).

*is occurring.*” (Emphasis added). The 1991 oil and gas amendments did not even discuss moose.

The inadequacy of the Kremmling RMP and its amendments in their approach to moose is an issue because the moose population in Colorado has changed substantially in the last few decades, especially in North Park. “Moose have wandered into Colorado occasionally, but there was no breeding population until animals were introduced to North Park from Utah and Wyoming in 1978 and 1979.”<sup>16</sup> Moreover, “*In Colorado, moose are most often found in North Park, but have been sighted in Middle Park, Rocky Mountain National Park, South Park, near Leadville, near Gunnison, near Yampa, northwest of Creede, south of Fraser, near Colorado Springs, and in Golden, west of Denver.*”<sup>17</sup> (Emphasis added). “The habitat of the original introduced herd in North Park was willow and lodgepole pine at an elevation of 2,700 to 2,850 m (8,850-9,350 ft). Since then, animals from this population have been reported in several adjacent areas, including Middle Park, the upper reaches of the Laramie and Cache la Poudre rivers, and Rocky Mountain National Park. Other sightings have been reported in South Park, near Leadville, near Gunnison, near Yampa, and west of Denver.”<sup>18</sup>

**iv. The BLM should defer the remaining lease parcels on sage-grouse habitat.**

The BLM is deferring most of the parcels affecting sage-grouse habitat. “The BLM has begun developing management alternatives to amend the 1984 Kremmling Resource Management Plan (RMP). The management alternatives will analyze impacts to wildlife, including sage-grouse. The BLM is aware of recent information discussing the effectiveness of sage-grouse habitat protection and mitigation measures. The BLM also received recommendations from the Colorado Division of Wildlife (CDOW) regarding sage-grouse habitat protection. As a result, the BLM is deferring portions of specific parcels within sage-grouse habitat (Attachment B). As BLM develops management alternatives, further consultation will be needed with stakeholders and other agencies (i.e. CDOW) to ensure consistency, analyze future management options, and ensure the effectiveness of mitigation measures.”

Given the reasons that the BLM itself provides for deferring *most* of the parcels, the BLM should defer *all* of the parcels on sage-grouse habitat. The same concerns still exist for the current lease parcels affecting sage-grouse as the concerns for the parcels that the BLM deferred. Accordingly, the BLM should defer the remaining parcels affecting sage-grouse as well. If it chooses not to do so, the BLM should provide an adequate explanation for its choice to not defer the remaining parcels.

**v. The BLM should fully consider the impacts of oil and gas development on climate change.**

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<sup>16</sup> Colorado Division of Wildlife, *Moose* (2008), available at <http://wildlife.state.co.us/WildlifeSpecies/Profiles/Mammals/Moose.htm>.

<sup>17</sup> *Id.*

<sup>18</sup> Colorado Division of Wildlife, *Moose*, available at <http://ndis.nrel.colostate.edu/wildlifesp.aspx?SpCode=051042> (last visited Apr. 27, 2010).



The BLM's reliance on an RMP that has not been updated since 1991 means that the BLM needs to consider the wealth of new information on climate change that has emerged in the last 19 years. The BLM addresses climate change in its Documentation of NEPA Adequacy (DNA). The BLM recognizes that "since the RMP was approved, on-going scientific research has identified the potential impacts of "greenhouse gases" (GHG) and their effects on global atmospheric conditions." The BLM also acknowledges the impact of greenhouse gases: "[t]hrough complex interactions on a global scale, these GHG emissions are believed by some to cause a net warming effect of the atmosphere primarily by decreasing the amount of heat energy radiated by the Earth back into space."

However, the BLM concludes that "[w]hile there is new information concerning the contribution of greenhouse gas emissions to climate change, the information is not significant in relation to the environmental effects of this action. Therefore, no additional NEPA analysis is needed for this action." To reach this conclusion, the BLM contends that climate change information "remains in its formative phase" so "it is not yet possible to know with certainty the net impact to climate from GHGs." And that "while any leasing and future development may involve some future contribution of GHGs, these contributions would not have a significant effect on a phenomenon occurring at the global scale believed by some to be due to over a century of human activities." Furthermore, "no emission generating activities can occur without further BLM approval. If the parcels are proposed for development subsequent to lease issuance, operations that may be considered sources of GHG emissions could be made subject to any condition of approval addressing greenhouse gas emissions that BLM may develop through future NEPA analysis at either the plan or development project level designed specifically to reduce GHG emissions."

Despite the Colorado BLM's position, the Montana, North Dakota, and South Dakota BLMs have delayed all lease sales because of climate change concerns.<sup>19</sup> The BLMs in these states made this decision on April 8, 2010, after this proposed lease sale was drafted, because they recognized that they needed to complete "reviews under the National Environmental Policy Act. BLM said the extra reviews will allow it to provide assurances to industry so it can move forward with greater certainty in leasing parcels and developing oil and gas resources." Moreover, there is a pending lawsuit against the New Mexico BLM for it not addressing climate change concerns. "BLM officials and industry observers said a nationwide approach is inevitable as the Obama administration tries to reconcile energy demands with climate change worries. 'We are working on addressing it nationally,' said BLM spokeswoman Celia Boddington. 'That discussion is already underway.'"<sup>20</sup> The BLM here should follow other state BLMs' examples and defer lease parcels until adequate research can be completed. The BLM's reliance on a decades-old RMP cannot possibly provide adequate climate change guidance.

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<sup>19</sup> Noelle Straub, NY Times: *BLM Suspends Some Oil and Gas Lease Sales to Review Warming Impacts* (2010), available at <http://www.nytimes.com/gwire/2010/04/09/09greenwire-blm-suspends-some-oil-and-gas-lease-sales-to-r-83918.html>.

<sup>20</sup> Matthew Brown, Associated Press: *Feds consider oil and gas lease changes over climate worries* (2010), available at [http://www.missoulian.com/news/state-and-regional/article\\_d167a318-4a30-11df-b834-001cc4c002e0.html](http://www.missoulian.com/news/state-and-regional/article_d167a318-4a30-11df-b834-001cc4c002e0.html).

**vi. The BLM should fully consider the impacts of oil and gas development on fragmentation of wildlife habitat.**

The Kremmling RMP, on which the BLM relies, does not offer any suggestions, guidelines, or management considerations for how to deal with habitat fragmentation caused by oil and gas development. However, countless research studies show that habitat fragmentation adversely affects wildlife. And one recent study shows that oil and gas development has a direct effect on habitat fragmentation. Accordingly, the BLM must take into account the effects of oil and gas development on wildlife habitat fragmentation.

A 2008 fragmentation study considering the impact that oil and gas development had on wildlife habitat fragmentation concluded that the BLM should consider habitat fragmentation when managing oil and gas.<sup>21</sup> Habitat fragmentation “from roads and other human infrastructure has been identified as one of the greatest threats to biological diversity worldwide.”<sup>22</sup> Accordingly, the fragmentation study was conducted because “[i]ncreasingly, studies are demonstrating many of the negative effects on wildlife specific to oil and gas development . . . . These negative effects range from direct removal of habitat to long-term displacement of species from preferred habitat. Direct effects can be measured by calculating the physical dimensions of the development feature (e.g., roads or well pads). Indirect and cumulative effects on wildlife are often assessed through analysis of habitat fragmentation.”<sup>23</sup>

Ultimately, the study made several conclusions, including: (1) substantial scientific research is available indicating that the roads, well pads, and associated activities cause direct, indirect, and cumulative impacts on wildlife;<sup>24</sup> (2) analysis of the issue must incorporate spatial measures such as (but not limited to) road density or distance to nearest road or well pad;<sup>25</sup> and (3) habitat fragmentation and negative impacts on wildlife occur at low well-pad densities and increase most rapidly at low well-pad densities.<sup>26</sup> It also made recommendations for the BLM to take to comply with NEPA, including: (1) conduct a spatial analysis of the impacts on wildlife of all proposed oil and gas development alternatives;<sup>27</sup> (2) assess the habitat fragmentation effects of oil and gas development for maximum well-pad development densities;<sup>28</sup> and (3) include oil and gas field development options that leave areas of threatened habitats undeveloped.<sup>29</sup>

Given the amount of research that shows the adverse effects of (1) oil and gas development on habitat fragmentation, and (2) habitat fragmentation on wildlife, BLM should consider fragmentation effects. The Kremmling RMP and its amendments do not address how to

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<sup>21</sup> Wilbert et al., *Analysis of Habitat Fragmentation from Oil and Gas Development and its Impact on Wildlife: a Framework for Public Land Management Planning* (2008), available at <http://wilderness.org/files/Oil-Gas-Fragmentation-Scoping-Brief.pdf>.

<sup>22</sup> *Id.* at 6 (citing Wilcove, 1987).

<sup>23</sup> *Id.* (citing Colorado Department of Wildlife et al. 2008, Wyoming Game and Fish Department 2004, Confluence Consulting 2005, Holloran 2005, Sawyer et al. 2006, Berger et al. 2006).

<sup>24</sup> *Id.* at 22.

<sup>25</sup> *Id.* at 23.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 24.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 25.

minimize fragmentation in oil and gas development, and BLM could potentially violate NEPA if it just relies on the outdated RMP without considering fragmentation.

**b. Because the BLM does not fully examine the environmental consequences to leasing many of its parcels, the BLM's proposed lease sale is currently in violation of NEPA.**

The BLM's proposed lease sale is currently in violation of NEPA because it does not fully examine environmental consequences. Despite the BLM's contentions, (1) the BLM is not exempt from site specific analysis, (2) the existing NEPA documents do not adequately analyze a reasonable range of alternatives to the proposed lease sale, and (3) the Kremmling RMP and its amendments are not current or valid for the proposed lease sale.

**i. The BLM is not exempt from site specific analysis.**

Under *Kleppe v. Sierra Club*, 437 U.S. 390, 410 n.21 (1976), BLM is required to take a hard look at the environmental consequences of their proposed actions. BLM states that this lease is substantially the same action and at the site specifically analyzed in an existing document. It states that “[a]ccording to the Tenth Circuit Court of Appeals, site specific NEPA analysis is not possible absent concrete proposals.” And that “the Interior Board of Land Appeals has decided that BLM is not required to undertake a site-specific environmental review prior to issuing an oil and gas lease when it previously analyzed the environmental consequences of leasing the land... (Colorado Environmental Coalition Et AL., IBLA 96-243, decided June 10, 1999).”

However, as the Tenth Circuit Court of Appeals recently clarified, *Park County Resource Council v. United States Dept. of Agriculture*, 817 F.2d 609 (10th Cir. 1987) does not excuse the BLM from its obligation to analyze these consequences prior to leasing. *Pennaco Energy, Inc. v. United States Dept. of the Interior*, 377 F.3d 1147, 1162 (10th Cir. 2004). *Park County* may allow the agency to forego preparation of an Environmental Impact Statement if and when it has prepared an extensive environmental assessment covering the leases in question. This, however, is not the case; the May 2010 parcels have had no NEPA documentation prepared for them save out-of-date RMP documents that do not (and cannot) account for significant new developments and information since 1991 (the date of the Kremmling Oil and Gas Leasing amendments), including increased recreational demand, greatly increased levels of mineral development, and declining populations of greater sage-grouse and new scientific information regarding the species' vulnerability to adverse effects from mineral development.

**ii. A reasonable range of alternatives to the Proposed Action was not adequately analyzed in existing NEPA documents.**

BLM states that “the alternatives analyzed in the 1984 RMP and 1991 RMP Amendment included a broad range of alternatives which, in our judgment, adequately address current environmental concerns, interests, and resource values.” However, reliance on RMP documents alone does not suffice for the core NEPA function of adequate consideration of alternatives.<sup>30</sup>

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<sup>30</sup> See *Pennaco Energy*, 377 F.3d at 1162 (explaining that documents such as “Determinations of NEPA Adequacy” cannot satisfy NEPA's “hard look” standard).

Because none of the lease parcels are entirely No Surface Occupancy (“NSO”) leases, leasing, which confers specific rights to develop that the BLM and Forest Service cannot readily deny, is a concrete federal action with readily foreseeable environmental effects, and cannot legally go forward without NEPA analysis.<sup>31</sup>

**iii. The information or circumstances upon which the Kremmling RMP and its amendments were based does not remain valid to the proposed action.**

BLM states that “the information or circumstances of the 1984 Kremmling Resource Management Plan and 1991 RMP Amendment remain valid and germane to the Proposed Action.” However, the BLM acknowledges that new studies more adequately address the effectiveness of sage-grouse habitat protection and mitigation. The BLM also accounts for the new information regarding riparian and wetland values, as well as potential impacts of greenhouse gases. Furthermore, the current lease sale is being proposed under a RMP and a 1991 leasing EIS that, with regard to energy development and mule deer, fail to take into account, or consider alternatives based on, significant new research demonstrating the effects of natural gas development on mule deer or elk. Finally, the BLM relies on a RMP that does not even acknowledge moose, and the moose population has greatly changed since the creation of the RMP. Many of the lease parcels affect moose winter range, moose priority habitat, and moose concentration areas, as shown on the attached Overlay Map 4.

**IV. The BLM Should Defer Leasing of Parcels Affecting Management of State Wildlife Areas**

Parcels COC 74386 and COC 74387 are adjacent to the Richard and Lake John State Wildlife Areas. These areas along the North Platte river offer the public deer, elk, antelope, and bird hunting opportunities and access to coldwater stream fishing, as well as wildlife viewing and hiking. Although the proposed leases are not within the SWA itself, BLM does not appear to have addressed the potential cumulative effects on the SWA from adjacent oil and gas development. Although the 1991 leasing EIS does not examine the effects of oil and gas development on the SWA, two inferences can be drawn. First, overall development in North Park, particularly oil and gas development, has likely increased the importance of the big-game habitat within the SWA. Second, increasing development in the vicinity of the SWA will necessarily lead to degradation of the habitat and increased competition among animals for remaining, accessible forage. These effects will result from big-game avoidance of oil and gas operations and from increased concentration of big game within remaining, relatively unaffected areas. Further, the stipulations contained in the current, proposed lease parcels adjacent to the park are clearly inadequate to protect the park from these cumulative impacts. As discussed above, recent studies, as well as testimony by the CDOW, demonstrates that the proposed

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<sup>31</sup> See 43 C.F.R. § 3101.1-2.

Timing Limitation Stipulations (TLS) are insufficient to protect SWA habitat from the consequences of development on adjacent lands.

Although we are aware the Colorado BLM has questioned the applicability of the Sublette study to Colorado topography, and raised questions as to whether the decline in abundance reflects reduced survival or change in distribution, what is incontrovertible is that no NEPA document – neither the current Kremmling RMP and EIS, nor the BLM 1991 Oil and Gas Leasing EIS, nor the “Determination of NEPA Adequacy” – addressed this information, which simply did not exist at that time. If there are additional questions to be answered about the meaning of the Sublette results for Colorado big game populations, those questions should be answered before leasing, not after, with full opportunity for consideration of alternative courses of action under NEPA. We believe that the Colorado BLM should follow the example of its Montana counterpart, given the availability of substantial new information, and defer the leasing of big game winter habitat as well as areas affecting management of State Wildlife Areas until such time as BLM has the opportunity to complete a comprehensive NEPA analysis of the effects of additional leasing on wildlife and recreation.

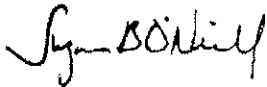
## REQUEST FOR RELIEF

For the foregoing reasons, we request that you withdraw oil and gas leases located within greater sage-grouse habitat, elk winter and calving areas, important moose habitat, and adjacent to State Wildlife Areas, from the May lease sale. We also request an opportunity to meet with you and agency staff to discuss this matter further.

Respectfully submitted on this 28th day of April, 2010.

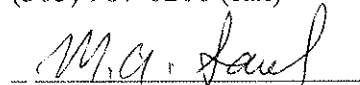
On Behalf of the Colorado Wildlife Federation and National Wildlife Federation.

BY:



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