

Testimony of Tom Jankovsky
Commissioner, Garfield County, Colorado
Before the
House Natural Resources Committee
Tuesday, April 8, 2014

Thank you Mr. Chairman and members of the committee.

My name is Tom Jankovsky, County Commissioner from Garfield County, Colorado.

I am here to discuss the issue of transparency between local, state and federal governments regarding the Endangered Species Act as it relates to the potential listing of the Greater Sage Grouse. The underpinning message to be conveyed here is that there is a serious lack of openness and fairness (transparency) in decisions being made by state and federal agencies that are hidden behind the cloak of the ESA that can have enormous impact.

Simply put, information used by these agencies used to make extraordinary decisions such as is done with the ESA should be available for review and verification by those it impacts. To operate otherwise furthers the appearance and perhaps fact that the information is inaccurate, misleading, erroneous, has no scientific basis, and is agenda driven by special interests and therefore by design is meant to remain hidden away from the light of day and objective review. Ironically, the ultimate casualty in this circumstance is the very value of the ESA and the species it is meant to protect.

At the local level, Garfield County experienced this lack of transparency issue in 2012 when we began to question the accuracy of habitat maps produced by the Colorado Department of Parks and Wildlife (CPW) intended for use by the Bureau of Land Management (BLM) in the development of the alternatives in the Greater Sage Grouse Environmental Impact Statement (EIS).

In our research, it was discovered that CPW prepared the map at a 50,000 ft. view and it was based on very coarse vegetation data, a subjective occupied range map, and a four-mile lek buffer that assumes large expanses of intact habitat. Ultimately, contrary to federal requirements, their map is not reproducible and is based on data that the agency refuses to release to the public in order that it is verified despite a Colorado Open Records Act request and offers for data sharing agreement protections. As a result, we were left to create our own habitat maps at considerable expense.

A transparent review and validation of CPW data could have resulted in a habitat map that is effective for proper bird management in Garfield County's highly unique habitat; instead, we have two radically different habitat maps where CPW's grossly inaccurate map will produce lasting extraordinary unintended socio-economic impacts to our struggling region.

To underscore this issue of a lack of transparency, the BLM has adopted policies contained in the NTT Report that lack any serious basis in science such as the so-called 3% disturbance cap on development in

habitat. This winter, our own Governor Hickenlooper wrote to the US Fish & Wildlife Service in the States formal comments, "It is our understanding that there is limited scientific evidence that supports either of the two numbers currently in play for anthropogenic disturbance (3% and 5%)...Imposing an arbitrary cap on the landscape could have catastrophic impacts on resource use."

This highlights the BLM's use tools that have little to no proven basis in science effectively as a 'national experiment' with potentially devastating impacts to the bird and human environment. Greater transparency and sharing of data may help avoid this issue.

At the federal level, we remain concerned over similar issues over the lack of transparency of data being used to make such incredible decision. For example, the currently estimated population numbers for the Greater Sage Grouse has been reported to be between 350,000 and 535,000 birds which is 70 to 107 times greater than the "minimum effective population."

Further, at the reported current rate of decline of 1.4 percent per year (nationally assumed), it would take 300 years for the population to dwindle to the minimum effective population of 5,000 birds. How can the current status warrant inclusion on the endangered species list?

In our view, there remains a fundamental breakdown in the types of information used to make decisions. For example, it has been reported that hunters bagged 207,000 birds around the range from 2001 to 2007. Additionally, 9,000 birds were harvested in Nevada alone in 2009 and 2010 which is just shy of the total number of birds currently estimated for the entire State of Colorado. Similarly, there is an evolving body of science that captures the effect of predation but is largely, if not totally dismissed as a threat to be considered; yet oil and gas development is held out as an enormous threat to habitat with very little science in the literature to back that claim.

As mentioned above, we have requested data being used by state and federal agencies to make decisions (and maps) but have been refused. I would like to take this opportunity to request assistance from this Committee for the second time. First, the Service has withheld valuable data that supports a warranted listing. We only wish to verify their data as required under the Information Quality Act. We would appreciate this Committee's interceding on our behalf to obtain this data as soon as possible.

Thank you for your time and assistance in this matter. We appreciate this opportunity and would be more than happy to answer any questions this Committee may have.

Attachment 1: Topography Differences

Pinedale, Wyoming Region &
primary basis for science in NTT
Report →

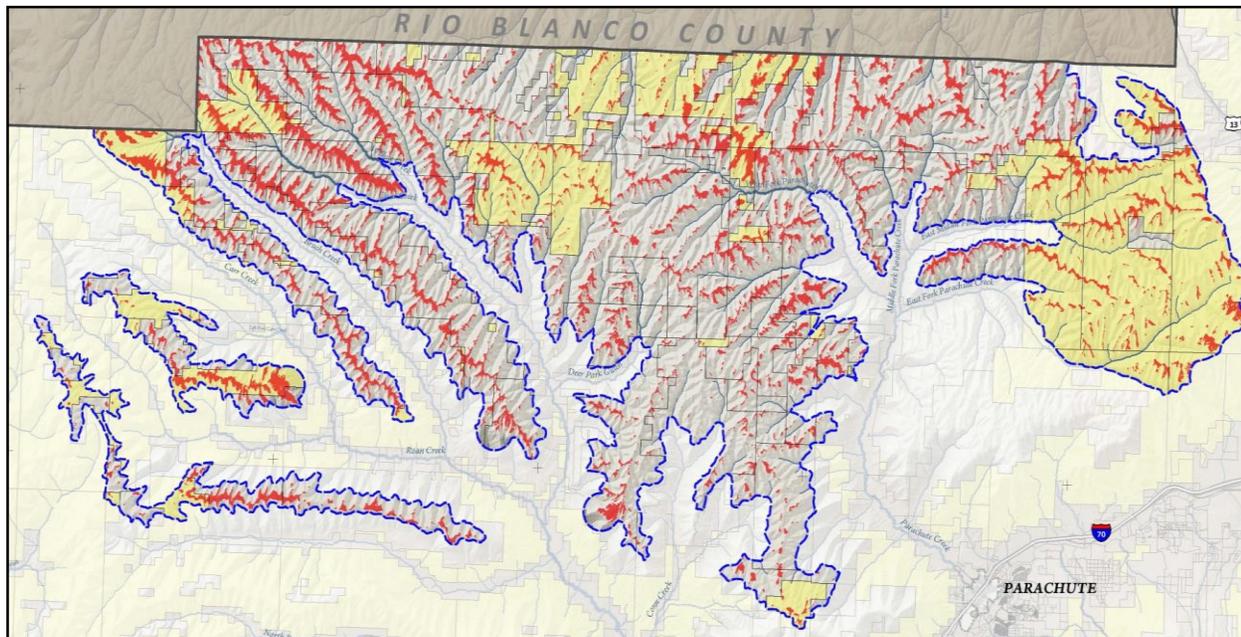
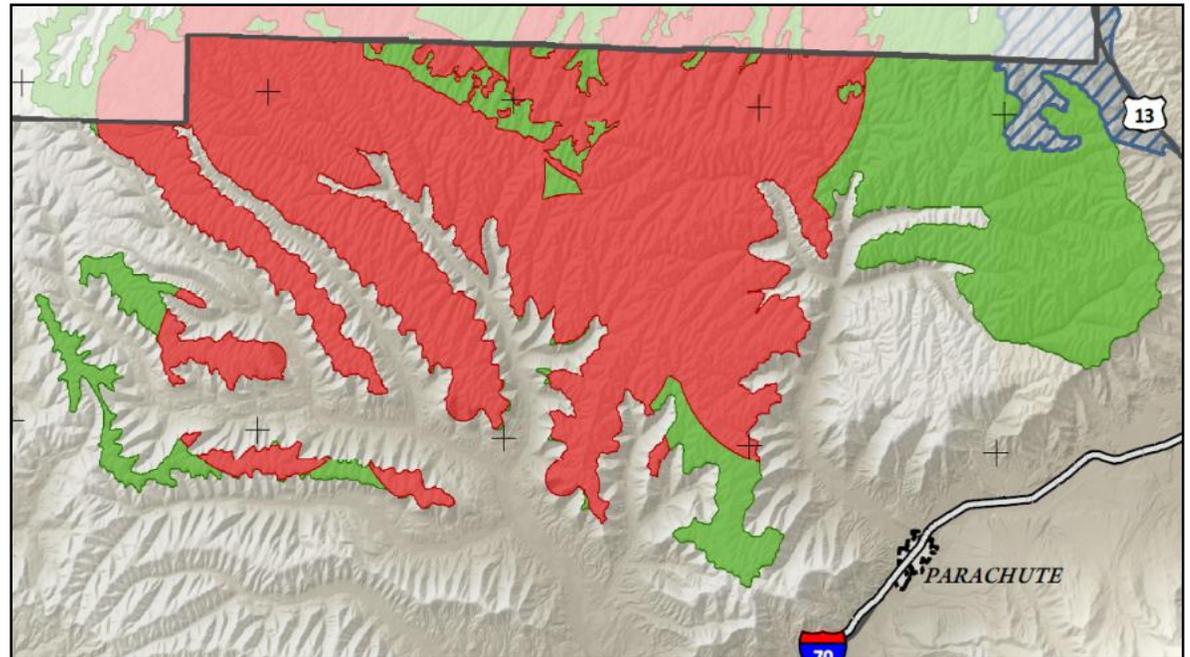


Typical topography and
vegetation in Garfield County,
CO in the Plan Area of the
Greater Sage-Grouse
Conservation Plan



Attachment 2: Suitable Habitat Mapping Differences

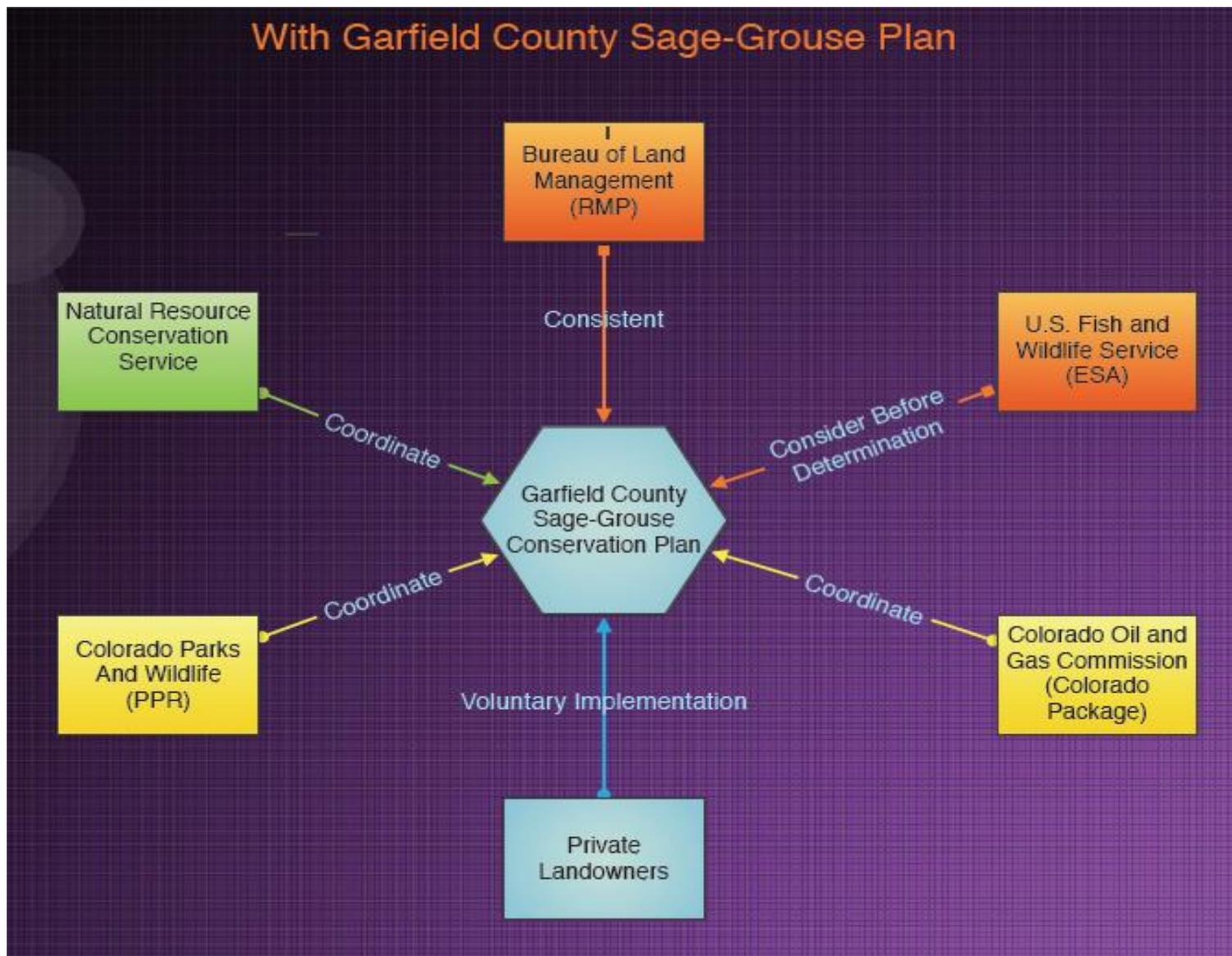
Colorado Parks & Wildlife Map:
220,000 acres of Greater Sage-Grouse Habitat (PPH & PGH)



Garfield County Map: 28,000
acres of Greater Sage-Grouse
Suitable Habitat



Attachment 3: Coordination Diagram



Attachment 4: BLM Instructional Memorandum 2012-044

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240
<http://www.blm.gov/>
December 27, 2011

In Reply Refer To:
1110 (230/300) P
EMS TRANSMISSION 12/27/2011
Instruction Memorandum No. 2012-044
Expires: 09/30/2013

To: All Field Officials
From: Director
Subject: BLM National Greater Sage-Grouse Land Use Planning Strategy
Program Areas: All Programs.

Purpose: This Instruction Memorandum (IM) provides direction to the Bureau of Land Management (BLM) for considering Greater Sage-Grouse conservation measures identified in the Sage-Grouse National Technical Team's - *A Report on National Greater Sage-Grouse Conservation Measures* (Attachment 1) during the land use planning process that is now underway in accordance with the 2011 *National Greater Sage-Grouse Planning Strategy* (Attachment 2).

This IM supplements direction for Greater Sage-Grouse contained in WO IM No. 2010-071 (*Gunnison and Greater Sage-Grouse Management Guidelines for Energy Development*), the BLM's 2004 *National Sage-Grouse Habitat Conservation Strategy* and is a component of the 2011 *National Greater Sage-Grouse Planning Strategy* (Attachment 2). It is also consistent with WO IM No. 2011-138 (*Sage-Grouse Conservation Related to Wildland Fire and Fuels Management*).

In March 2010, the U.S. Fish and Wildlife Service (FWS) published its decision on the petition to list the Greater Sage-Grouse as "Warranted but Precluded." 75 Fed. Reg. 13910 (March 23, 2010). Over 50 percent of the Greater Sage-Grouse habitat is located on BLM-managed lands. In its "warranted but precluded" listing decision, FWS concluded that existing regulatory mechanisms, defined as 'specific direction regarding sage-grouse habitat, conservation, or management' in the BLM's Land Use Plans (LUPs), were inadequate to protect the species. The FWS is scheduled to make a new listing decision in Fiscal Year (FY) 2015.

The BLM has 68 land use planning units which contain Greater Sage-Grouse habitat. Based on the identified threats to the Greater Sage-Grouse and the FWS timeline for making a listing decision on this species, the BLM needs to incorporate explicit objectives and desired habitat conditions, management actions, and area-

wide use restrictions into LUPs by the end of FY 2014. The BLM's objective is to conserve sage-grouse and its habitat and potentially avoid an ESA listing.

In August 2011, the BLM convened the Sage-Grouse National Technical Team (NTT), which brought together resource specialists and scientists from the BLM, State Fish and Wildlife Agencies, the FWS, the Natural Resources Conservation Service (NRCS), and the U.S. Geological Survey (USGS). The NTT met in Denver, Colorado in August and September 2011, and in Phoenix, Arizona in December 2011, and developed a series of science-based conservation measures to be considered and analyzed through the land use planning process. This IM provides direction to the BLM on how to consider these conservation measures in the land use planning process.

In order to be effective in our ability to conserve Greater Sage-Grouse and their habitat, the BLM will continue to work with its partners including: the Western Association of Fish and Wildlife Agencies (WAFWA), FWS, USGS, NRCS, U.S. Forest Service (USFS), and Farm Services Agency (FSA) within the framework of the Sagebrush Memorandum of Understanding (2008) and the *Greater Sage-Grouse Comprehensive Conservation Strategy* (2006).

Policy/Action: The BLM must consider all applicable conservation measures when revising or amending its RMPs in Greater Sage Grouse habitat. The conservation measures developed by the NTT and contained in Attachment 1 must be considered and analyzed, as appropriate, through the land use planning process by all BLM State and Field Offices that contain occupied Greater Sage-Grouse habitat. While these conservation measures are range-wide in scale, it is expected that at the regional and sub-regional planning scales there may be some adjustments of these conservation measures in order to address local ecological site variability. Regardless, these conservation measures must be subjected to a hard look analysis as part of the planning and NEPA processes.

This means that a reasonable range of conservation measures must be considered in the land use planning alternatives. As appropriate, the conservation measures must be considered and incorporated into at least one alternative in the land use planning process. Records of Decision (ROD) are expected to be completed for all such plans by the end of FY 2014. This is necessary to ensure the BLM has adequate regulatory mechanisms in its land use plans for consideration by FWS as part of its anticipated 2015 listing decision.

When considering the conservation measures in Attachment 1 through the land use planning process, BLM offices should ensure that implementation of any of the measures is consistent with applicable statute and regulation. Where inconsistencies arise, BLM offices should consider the conservation measure(s) to the fullest extent consistent with such statute and regulation.

The NTT-developed conservation measures were derived from goals and objectives developed by the NTT and included in Attachment 1. These goals and objectives are a guiding philosophy that should inform the goals and objectives developed for individual land use plans. However, it is anticipated that individual plans may

develop goals and objectives that differ and are specific to individual planning areas.

Through the land use planning process, the BLM will refine Preliminary Priority Habitat and Preliminary General Habitat data (defined below) to: (1) identify Priority Habitat and analyze actions within Priority Habitat Areas to conserve Greater Sage-Grouse habitat functionality, or where possible, improve habitat functionality, and (2) identify General Habitat Areas and analyze actions within General Habitat Areas that provide for major life history function (e.g., breeding, migration, or winter survival) in order to maintain genetic diversity needed for sustainable Greater Sage-Grouse populations. Any adjustments to the NTT recommended conservation measures at the local level are still expected to meet the criteria for Priority and General Habitat Areas.

Preliminary Priority Habitat (PPH): Areas that have been identified as having the highest conservation value to maintaining sustainable Greater Sage-Grouse populations. These areas would include breeding, late brood-rearing, and winter concentration areas. These areas have been/are being identified by the BLM in coordination with respective state wildlife agencies.

Preliminary General Habitat (PGH): Areas of occupied seasonal or year-round habitat outside of priority habitat. These areas have been/are being identified by the BLM in coordination with respective state wildlife agencies.

PPH and PGH data and maps have been/are being developed by the BLM through a collaborative effort between the BLM and the respective state wildlife agency, and are stored at the National Operations Center (NOC). These science-based maps were developed using the best available data and may change as new information becomes available. Such changes would be science-based and coordinated with the state wildlife agencies so that the resulting delineation of PPH and PGH provides for sustainable populations. In those instances where the BLM State Offices have not completed this delineation, the Breeding Bird Density maps developed by Doherty 2010[1] As LUPs are amended or revised, the BLM State Offices will be responsible for coordinating with the NOC to use the newest delineation of PPH and PGH. To access the PPH and PGH data, please use the following link: \\blm\dfs\loc\EGIS\OC\Wildlife\Transfers\GREATER_SAGE_GROUSE_GIS_DATA. will be used. The NOC will establish the process for updating files to include the latest PPH and PGH delineations for each state. This information will assist in applying the conservation measures identified in Attachment 1 below.

Timeframe: This IM is effective immediately and will remain in effect until LUPs are revised or amended by the end of FY 2014.

Budget Impact: This IM will result in additional costs for coordination, NEPA review, planning, implementation, and monitoring.

Background: Following a full status review in 2005, the FWS determined that the Greater Sage Grouse was “not warranted” for protection. Decision documents in

support of that determination noted the need to continue and/or expand all efforts to conserve sage-grouse and their habitats. As a result of litigation challenging the 2005 determination, the FWS revisited the determination and concluded in March 2010 that the listing of the Greater Sage-Grouse is warranted but precluded by higher priority listing actions.

In November 2004, the BLM published the *National Sage-Grouse Habitat Conservation Strategy*. The BLM National Strategy emphasizes partnerships in conserving Greater Sage-Grouse habitat through consultation, cooperation, and communication with WAFWA, FWS, NRCS, USFS, USGS, state fish and wildlife agencies, local sage-grouse working groups, and various other public and private partners. In addition, the *Strategy* set goals and objectives, assembled guidance and resource materials, and provided comprehensive management direction for the BLM's contributions to the ongoing multi-state sage-grouse conservation effort.

In July 2011, the BLM announced its *National Greater Sage-Grouse Planning Strategy* (Attachment 2). The goal of the *Strategy* and this IM is to review existing regulatory mechanisms and to implement new or revised regulatory mechanisms through the land use planning process to conserve and restore the Greater Sage-Grouse and their habitat. The Gunnison Sage-Grouse, bi-state population in California and Nevada and the Washington State distinct population segments of the Greater Sage-Grouse will be addressed through other policies and planning efforts.

Manual/Handbook Sections Affected: None.

Coordination: This IM was coordinated with the office of National Landscape Conservation System and Community Partnership (WO-170), Assistant Director, Renewable Resources and Planning, (WO-200), Minerals and Realty Management (WO-300), Fire and Aviation (WO-400), BLM State Offices, FWS and state fish and wildlife agencies.

Contact: State Directors may direct questions or concerns to Edwin Roberson, Assistant Director, Renewable Resources and Planning (WO-200) at 202-208-4896 or edwin_roberson@blm.gov; and Michael D. Nedd, Assistant Director, Minerals and Realty Management (WO-300) at 202-208-4201 or mike_nedd@blm.gov.

Signed by: Authenticated by:
Mike Pool Ambyr Fowler
Acting, Director Division of IRM Governance, WO-560

Attachment 5: Key differences that make the Garfield County Greater Sage Grouse Plan a more effective conservation tool than those proposed by federal agencies.

High-resolution habitat mapping

The habitat mapping provided by State and Federal agencies in 2012 for Greater Sage-Grouse in the Plan Area was at a landscape level that did not accurately address the unique topography of the Roan Plateau, or provide planning information at resolution accurate enough for County to use in the Plan, and for relevant land-use planning activities potentially occurring within the Plan area, including protection of sage grouse habitat. Because of the significant implications on land use and ongoing land management, the Board of County Commissioners deemed that most accurate delineation of habitat was deemed necessary. This habitat mapping process followed the latest and most relevant peer-reviewed habitat mapping process available for mapping large and diverse areas, using the highest resolution data available (with a two-meter resolution, as compared to the one kilometer, landscape-level resolution used by the agencies).

The sage-grouse habitat in Garfield County is naturally fragmented, as a result of topography and the patchy nature of sagebrush, non-sagebrush shrubs, meadows, aspen, and conifers in the Plan area. Expanses of contiguous sagebrush, necessary to support a large stable population (as described by the Fish and Wildlife Service in their 2010 candidate determination notice), do not exist in Garfield County. Additionally, the sage-grouse population inhabiting Garfield County is a peripheral population located on the far southeastern edge of the species range. As a result, the stewardship of the population requires detailed knowledge of local conditions, including accurate mapping of its habitat.

Conservation measures are tailored to local circumstances

Rather than rely on one-size-fits-all regulatory prescriptions, such as four mile buffers and three percent anthropogenic disturbance thresholds proposed by the BLM's National Technical Team (NTT), the County has taken a more effective approach: tailoring conservation measures to address specific threats to sage grouse and local circumstances that are unique to Garfield County (i.e. predation and a naturally fragmented habitat). The significance of this strategy to sage grouse conservation is that it allows for a more efficient allocation of conservation effort by focusing on threats that matter most in *this* sage grouse population.

Voluntary conservation efforts on private land

In contrast to the NTT report, where the proposed conservation measures assume that private land management is inferior to federal land management, and requires a regulatory "command and control" approach, the Garfield County Plan recognizes and builds upon the importance of voluntary conservation by private landowners. The importance of voluntary conservation on private land is recognized by many scholars of the Endangered Species Act, including the current Deputy Assistant

Secretary of Fish and Wildlife and Parks, Michael Bean, who has authored multiple papers on the subject.

Annual Review and adaptive management

Recognizing that local governments can be more nimble than federal agencies, the Garfield County Plan includes a required annual coordination review with the federal and state agencies that have habitat or species responsibilities within the Plan Area. (A review may also be initiated based on important new information.) This review process will evaluate the availability and condition of habitats, direct and indirect impacts, conservation measures, policies and best management practices being implemented by each agency for their effectiveness and applicability to the Plan Area. Also incorporated in this coordination review is any new scientific information and, if warranted, modifications to the best management practices, policies, and conservation incentives within the Plan. The County will also initiate meetings with private property owners in the Plan Area for the purpose of analyzing their conservation efforts and effectiveness, as well as any new scientific data. The annual coordination review will ensure that Plan updates are timely, adaptive, and based on the best available scientific and commercial data.

Consistency with the Information Quality Act

The Garfield County Plan ensures that sage-grouse habitat management decisions shall be made based on the best available scientific information that is applicable to sage-grouse habitat in Garfield County. The scientific information used will be consistent with standards of the Information Quality Act (Quality, Objectivity, Utility and Integrity), as determined by the County. In contrast to the interpretation of the Act by some federal agencies, this means that the data collected by state and federal agencies, or used in published scientific research relied upon by those agencies, must be provided to the County.

The Garfield County Plan acknowledges that many of the purported "universal" negative impacts of fluid mineral development, an important economic activity on the Roan Plateau and Piceance Basin, are based upon outdated information and/or overstated. In fact, none of the studies cited in the NTT report can definitively point to an actual population decline rather than temporary displacement of sage grouse from areas immediately affected by current fluid mineral development. Instead, the extraction of fluid minerals in Garfield County (and increasingly elsewhere) is accomplished using increasingly advanced technologies, more efficient operations, avoidance of important habitat, more effective mitigation measures, and interim habitat restoration, than in the past. As a result, surface disturbances that potentially affect sage grouse tend to be minimal and temporary in nature. The fast pace of these technological developments and more efficient operations has meant that the primary literature on the impacts of fluid mineral extraction on sage grouse in Wyoming is inconsistent with current practices used in Garfield County. It is anticipated that the more advanced technologies under development will continue to allow the efficient extraction of resources while further avoiding or minimizing impacts to sage grouse and other species.

A balance of harms approach ensures responsible stewardship of natural and human resources in Garfield County

In contrast to the approach proposed in the NTT report, that focuses solely on the welfare of sage grouse, the Garfield County Plan requires that the balance of impacts to other species and to human welfare must be weighed prior to approval and implementation.