



June 26, 2015

Bureau of Land Management Director  
Attn: Protest Coordinator  
20 M Street SE, Room 2134M  
Washington, D.C. 20003

Re: Northwest Colorado Greater Sage Grouse LUPA and FEIS

Dear Sirs:

Please accept this correspondence as the appeal and protest of the above Organizations regarding the Final 2012 Greater Sage Grouse Land Use Plan Amendment and EIS ("The Plan"). The Organizations are forced to appeal the Plan given the arbitrary and capricious nature of proposed recreational usage of routes and trails in the Plan. While BLM lands allow for maintenance and expansion of routes in priority habitat areas, lands managed by the USFS are subject to a mandatory prohibition on route construction, regardless of why the construction is being undertaken. The arbitrary nature of this standard is compounded by the fact that most priority habitat is under BLM management and USFS management areas are only general habitat areas of marginal value and may not even be occupied by any Grouse at this time. The Organizations further submit that absolutely no attempt is made in the FEIS to provide a scientific basis for the management conflict, why USFS managed lands might be more valuable habitat areas or the need to address recreational usage of habitat, which has been repeatedly identified as an issue of limited concern to habitat quality. The Organizations submit that any management standards that are truly science based would not draw boundary lines for changes

in management based solely on the agency that is administering the lands. The Organizations submit that avoiding such management was one of the goals of the consolidated planning process and moving forward with such management is arbitrary and capricious as a matter of law.

The Organizations are very concerned that the Plan does not accurately reflect the priority or significance of particular threats to the Grouse that were identified in the FWS listing decision. The FWS listing decision notes that moving to a designated trail system, as BLM is already doing nationally, is one of the largest and most important protections for grouse habitat involving recreational activity. The failure to properly prioritize threats and management priorities will result in inconsistent management, which may target issues that will generate significant costs and economic impacts and generate little benefit to the grouse.

The Plan proposes many standards, the application of which is not clearly described or is described in a conflicting manner in numerous points in the Plan such as the basis for surface disturbance standards or justification of management changes to grouse habitat based solely on the land management agency managing the area. Analysis of these concerns often are combined with other standards that will clearly impact the overall access not only to habitat areas but also to recreational opportunities outside the habitat areas. These cumulative impacts are never addressed. An example of the combined impacts would be limiting usage to designated trails in priority habitat and limitations of surface disturbance to 3% or 5% of the habitat area. The Plan most commonly refers to the surface disturbance standards in terms of gas and oil development but at no point is there any limitation of the surface disturbance standards and usage of the route. Rather than specifically limiting impacts, the Plan often speaks to the availability of offsetting closures in the vicinity of the proposal area to minimize impacts. At no point is there any discussions of how these off sets would function on the ground.

Discussions of oil and gas surface disturbance standards often mention an offset being available for projects. The Organizations will note this off-set of usages will bring oil and gas development into direct conflict with recreational usage. The standards for this interaction or analysis of possible impacts simply are not provided in the Plan. The Organizations will note that often the intent of many routes is simply not determinable and will result in application of the surface disturbance standards to routes not related to oil and gas. The Organizations are assuming in these areas, designated routes would be insufficient protection but we simply are not sure this is the standard and are not able to determine how much of the planning area would be impacted by the 3% or 5% surface disturbance limitation.

The Organizations are able to support certain principals provided in the Plan, such as the use of seasonal closures around active lek sites. Restrictions of landscape level open riding areas to designated routes and trails networks in priority habitat is also acceptable to the Organizations. This designated routes standard becomes problematic when applied to areas that may be suitable for an open riding designation and are in a general habitat that may not have been occupied by the Grouse for decades. The application of these standards becomes very murky when the 3% or 5% surface disturbance standards are applied. The Plan simply must describe how all these issues will be applied on the ground and simply has not been.

Prior to addressing the specific concerns of the habitat designations, a brief summary of each Organization is needed. COHVCO is a grassroots advocacy organization of approximately 2,500 members seeking to represent, assist, educate, and empower all OHV recreationists in the protection and promotion of off-highway motorized recreation throughout Colorado. COHVCO is an environmental organization that advocates and promotes the responsible use and conservation of our public lands and natural resources to preserve their aesthetic and recreational qualities for future generations.

CSA was founded in 1970 to unite winter motorized recreationists across the state to enjoy their passion. CSA currently has 2,500 members. CSA has also become the voice of organized snowmobiling seeking to advance, promote and preserve the sport of snowmobiling through work with Federal and state land management agencies and local, state and federal legislators telling the truth about our sport.

Trail Preservation Alliance is a 100 percent volunteer organization whose intention is to be a viable partner, working with the United States Forest Service (USFS) and the Bureau of Land Management (BLM) to preserve the sport of trail riding. Throughout these comments CSA, COHVCO and The Organizations will be collectively referred to as "The Organizations". The Organizations act as an advocate of the sport and takes the necessary action to insure that the USFS and BLM allocate to trail riding a fair and equitable percentage of access to public lands.

**2b. The standard of review for economic analysis is a de novo standard as the Courts have consistently substituted their judgment regarding the accuracy of economic analysis.**

Courts have consistently held agencies to a much tighter level of review of economic analysis when compared to other issues within the agency expertise in the NEPA process as the court makes their own conclusions regarding the accuracy of review without deference to agency findings. Relevant court rulings addressing economic analysis in NEPA have concluded:

"an EIS serves two functions. First, it ensures that agencies take a hard look at the environmental effects of proposed projects. Second, it ensures that relevant information regarding proposed projects is available to members of the public so that they may play a role in the decision making process. Robertson, 490 U.S. at 349, 109 S.Ct. at 1845. For an EIS to serve these functions, it is essential that the EIS not be based on misleading economic assumptions."<sup>1</sup>

The Court then discussed the significance of economic analysis in planning as follows:

"Misleading economic assumptions can defeat the first function of an EIS by impairing the agency's consideration of the adverse environmental effects of a proposed project. See, *South La. Emtl. Council, Inc. v. Sand*, 629 F.2d 1005, 1011-12 (5th Cir.1980). NEPA requires agencies to balance a project's economic benefits against its adverse environmental effects. *Calvert Cliffs' Coordinating Comm. v. United States Atomic Energy Comm'n*, 449 F.2d 1109, 1113 (D.C.Cir.1971). The use of inflated economic benefits in this balancing process may result in approval of a project that otherwise would not have been approved because of its adverse environmental effects. Similarly, misleading economic assumptions can also defeat the second function of an EIS by skewing the public's evaluation of a project."<sup>2</sup>

The level of accuracy of the hard look at economic analysis applied by the Court in the Hughes River decision is significant as the Hughes River Court invalidated an EIS based on an error in economic contribution calculations of approximately 32%.<sup>3</sup> The Organizations submit that there is simply no economic analysis provided that addresses economic impacts to local communities from proposed management changes and there is simply no analysis of more significant impacts to USFS managed habitat that will result from more restrictive standards than those used by BLM for management of route and trail networks in habitat areas.

### **2c. The mandated hard look of NEPA at issues simply has not occurred in the Proposal.**

The Organizations believe a brief summary of the arbitrary and capricious standard of review that are applied by Courts reviewing the hard look of an agency in NEPA analysis is relevant to this appeal/protest, as the courts have consistently directly applied the NEPA regulations to EIS review. As a general review standard, Courts have applied an arbitrary and capricious standard

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<sup>1</sup> See, *Hughes River Watershed Conservancy v. Glickman*; (4th Circ 1996) 81 F3d 437 at pg 442; 42 ERC 1594, 26 Env'tl. L. Rep 21276.

<sup>2</sup> See, *Hughes River*, Supra note 1 at pg .

<sup>3</sup> See, *Hughes River*, Supra note 1 at pg

of review for agency actions within their expertise under NEPA. This standard is reflected as follows:

"...it required only that the agency take a "hard look" at the environmental consequences before taking a major action. *See, Kleppe v. Sierra Club*, 427 U. S. 390, 427 U. S. 410, n. 21 (1976). The role of the courts is simply to ensure that the agency has adequately considered and disclosed the environmental impact of its actions, and that its decision is not arbitrary or capricious. *See generally, Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U. S. 402, 401 U. S. 415-417 (1971)."<sup>4</sup>

The CEQ regulations note that a detailed statement of high quality information is a significant tool to be relied upon in the public comment process required for all NEPA actions. These regulations clearly state this relationship as:

"NEPA procedures must ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA."<sup>5</sup>

It is well established that NEPA regulations require an EIS to provide all information under the following standards:

"... It shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.... Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses...."<sup>6</sup>

These regulations continue and expands upon the detailed statement theory for planning purposes as follows:

"You must describe the proposed action and alternatives considered, if any (40 CFR 1508.9(b)) (see sections 6.5, Proposed Action and 6.6, Alternative

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<sup>4</sup> See, *Baltimore G& E Co v. NRDC*; 462 US 87 (1983) at pg 98.

<sup>5</sup> See, 40 CFR 1500.1(b)

<sup>6</sup> 40 CFR 1500.1

Development). Illustrations and maps can be used to help describe the proposed action and alternatives.”<sup>7</sup>

These regulations clearly state the need for the quality information being provided as part of this relationship as follows:

“The CEQ regulations require NEPA documents to be “concise, clear, and to the point” (40 CFR 1500.2(b), 1502.4). Analyses must “focus on significant environmental issues and alternatives” and be useful to the decision-maker and the public (40 CFR 1500.1). Discussions of impacts are to be proportionate to their significance (40 CFR 1502.2(b)).”<sup>8</sup>

It is the Organizations position that recreational usage of habitat areas is the highest usage of these areas for local communities. The Plan fails to provide consistent analysis or clear provisions for the management of recreational activities. The Organizations vigorously assert this level of analysis is a per se violation of NEPA requirements for a detailed statement of high quality information on the issues.

**3a. The direct conflict of agency management standards for trail and route development is arbitrary and capricious and lacks any scientific basis.**

The Organizations are vigorously opposed to the arbitrary change in the management of trails and route development in the FEIS applies that treats USFS lands are differently than lands that are under BLM management. The Organizations submit that management of this issue in this manner simply entirely lacks scientific basis and is exactly the type of arbitrary standards conflict that the cross agency planning initiative was designed to avoid. The Organizations submit that there is a wide range of research recognized as best available science that conclude recreational usage simply is not a threat to the Sage Grouse. This research is more specifically addressed in subsequent portions of the appeal. There is simply no basis for such an arbitrary boundary in the management of habitat areas in this research.

The USFS habitat areas applies the two following standard and guidelines to all habitat areas:

**"GRSG-RT-ST-065-Standard** – In PHMA and GHMA, do not conduct or allow new road or trail construction (does not apply to realignments for resource protection) except when necessary for administrative access, public safety, or to access valid existing rights. If necessary to construct new roads and trails for one

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<sup>7</sup> BLM Manual H-1790-1 - NATIONAL ENVIRONMENTAL POLICY ACT HANDBOOK – pg 78.

<sup>8</sup> BLM Manual H-1790-1 - NATIONAL ENVIRONMENTAL POLICY ACT HANDBOOK – pg 4.

of these purposes, construct them to the minimum standard, length, and number and avoid, minimize, and compensate for impacts. "<sup>9</sup>

**"GRSG-R-GL-063-Guideline** – In PHMA, new recreational facilities or expansion of existing recreational facilities (e.g., roads, trails, campgrounds), including special use authorizations for facilities and activities, should not be approved unless the development results in a net conservation gain to GRSG and/or its habitats or the development is required for visitor safety." <sup>10</sup>

The BLM applies the following standard to priority habitat areas only :

"(PHMA) Use existing roads or realignments whenever possible. If it is necessary to build a new road, and the use of existing roads would cause adverse impacts to GRSG, construct new roads to the appropriate minimum Gold Book standard and add the surface disturbance to the total disturbance in the PHMA if it meets the criteria in **Appendix H**, Guidelines for Implementation. Construct no new roads if the biologically significant unit (Colorado populations) and proposed project analysis area (Colorado MZ) is over the 3 percent disturbance cap, unless there is an immediate health and safety need, or to support valid existing rights that cannot be avoided. Evaluate and implement additional, effective mitigation necessary to offset the resulting loss of GRSG habitat. " <sup>11</sup>

"(PHMA) Allow upgrades to existing routes after documenting that the upgrade will not adversely affect GRSG populations due to habitat loss or disruptive activities. "<sup>12</sup>

The Organizations submit that such arbitrary boundary lines for significant management changes simply lacks any factual or scientific basis. At no point does the FEIS even attempt to justify the management differences that are proposed solely based on land management agencies. The arbitrary nature of the standard is compounded by the fact that USFS lands are consistently of lower quality to the Grouse and simply may not be occupied at all, further undermining any basis for more strict management of this low quality habitat.

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<sup>9</sup> See, Sage Grouse FEIS at pg 2-22.

<sup>10</sup> See, Sage Grouse FEIS at pg 2-38.

<sup>11</sup> See, Sage Grouse FEIS at pg 2-15.

<sup>12</sup> See, Sage Grouse FEIS at pg 2-15.

**3b. Landscape level research on route closures has shown them ineffective in addressing species management issues.**

The US Forest Service's Rocky Mountain Research Station has recently released extensive analysis of the effectiveness of travel management restrictions on addressing sensitive species related issues. These conclusions specifically found that travel management was not effective in addressing these issues and the species related concerns were often beyond the scope of travel management to address. The Research Station conclusions specifically stated as follows:

"Actions such as limiting grazing or closing OHV trails have historically been some of the primary tools used by land managers in southern Nevada to reduce the effects of anthropogenic stressors on species of conservation concern..... It is evident from this body of research that very little is known about the relative threats posed to, or the mitigation actions needed to protect, virtually any species, except perhaps the desert tortoise. **Too often research jumps immediately to mitigation strategies without first determining what specific factors pose the greatest threats and are the most important to mitigate. In addition, the evaluation of potential threats typically focuses upon the usual anthropogenic suspects (e.g. OHVs, livestock grazing, invasive species, and climate change) without first carefully considering which factors are most likely to pose the greatest threats.**"<sup>13</sup>

The Organizations would be remiss in not noting the relationship that the Research Stations conclusion has with the management within this Proposal.

Dispersed motorized recreation's possible impact on elk, deer and numerous other herd animals has been extensively studied by the National Park Service in addressing winter usage of Yellowstone Park. These analyses are completely relevant to any analysis of dispersed motorized recreation on the CRVO. If there were an impact to elk and deer, the ongoing research in Yellowstone Park would have noted this impact. These analyses have repeatedly found:

"Based on these population-level results, we suggest that the debate regarding effects of human winter recreation on wildlife in Yellowstone is largely a social

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<sup>13</sup> See, USDA Forest Service, Rocky Mountain Research Station; *The Southern Nevada Agency Partnership Science and Research Synthesis; Science to Support Land Management in Southern Nevada; Executive Summary*; August 2013 at pg 38.



issue as opposed to a wildlife management issue. Effects of winter disturbances on ungulates from motorized and non-motorized uses more likely accrue at the individual animal level (e.g., temporary displacements and acute increases in heart rate or energy expenditures) than at the population scale. A general tolerance of wildlife to human activities is suggested because of the association between locations of large wintering ungulate herds and winter recreation. Habituation to human activities likely reduces the chance for chronic stress or abandonment of critical wintering habitats that could have significant effects at the population level, especially when these activities are relatively predictable.”<sup>14</sup>

The Organizations have to note that the biologists who performed the research in Yellowstone immediately acknowledged the social scientist’s position, namely that most concerns regarding wildlife management are based more on socially based user conflicts than on scientifically based findings regarding a negative impact. Another issue of higher impact to wildlife than motorized usage that must be addressed in management of recreation under a single standard would be the impacts of pedestrians with off leash dogs. There is a large body of evidence that concludes wildlife response to off leash dogs is consistently the highest levels of response.<sup>15</sup> If closures are found necessary the route should be closed to all usage as grouse have consistently exhibited similar levels of response to motorized and non-motorized travel.

**3c. Correspondence regarding the need for hunting limitations gives rise to management standards that are arbitrary and capricious should recreational access be limited.**

The Organizations will note that in correspondence dated November 20, 2012 the USFWS has specifically addressed the lack of need for closures to recreational hunting for the Greater Sage Grouse.<sup>16</sup> This correspondence is consistent with previous listing decisions cited throughout these comments. Given the position of the USFWS on this issue, the Organizations would note a directly conflicting and arbitrary management position that could result from closures to recreational access in the Plan, such as those proposed. The arbitrary nature of such management is immediately evidenced when on the ground management is reviewed. This involves two persons recreating in the habitat one riding an OHV and the other personally

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<sup>14</sup> US Park Service; White and Davis; *Wildlife response to motorized recreation in the Yellowstone Park; 2005 annual report*; at pg 15.

<sup>15</sup> CHAPTER 8 DOMESTIC DOGS IN WILDLIFE HABITATS EFFECTS OF RECREATION ON ROCKY MOUNTAIN WILDLIFE A *Review for Montana* MONTANA CHAPTER OF THE WILDLIFE SOCIETY Written by Carolyn A. Sime – Wildlife Biologist, Montana Fish, Wildlife and Parks, Kalispell; September 1999

<sup>16</sup> A copy of this correspondence is attached as Exhibit 1.

actively hunting for Grouse. The Organizations believe any management position that riding an OHV near a Sage Grouse poses more of a threat to the birds survival than actively shooting at the Grouse conflicts with best available science and would lack legal or factual basis. This position must be avoided as it is simply arbitrary and capricious, especially when the large number of OHV users are identified as hunters.

**4. The implications of changes in management standards are not sufficiently analyzed and are often contradictory.**

The Organizations are very troubled with the application of landscape level surface disturbance standards as part of the Plan. These standards will be exceptionally difficult to enforce or even calculate accurately on the ground and fail to address that often significant soil disturbance occurs on private lands adjacent to federal lands. There is no mechanism provided to address the application of these landscape level standards in areas where soil disturbance issues on federal lands will simply never address the source of the soil disturbance, which may very well be on private lands adjacent to the public lands.

While the Organizations believe accurate modeling of these standards, especially in boundary areas of habitat, will be difficult at best, this modeling must have occurred to some degree in the planning process. It is the Organizations position that the results of this modeling should have provided as part of the Plan to allow for public comment on possible impacts.

The levels of surface disturbance change significantly between Alternatives both in terms of absolute limits and areas that are going to be managed under each standard. Alternative D allows a 5% surface disturbance over all priority habitat (PPH) in comparison to 3% disturbance of priority habitat for Alternative B and a 3% surface disturbance in all designated habitat (ADH).

The impacts from this change is reflected in the Plan as follows:

"Alternative B-Construction and realignment of roads and trails would be highly limited in PPH, as would upgrades to existing roads and trails. **This alternative would also limit new construction in PPH to access valid existing rights so that any new construction that would cause the area to exceed 3 percent disturbance would require mitigation to offset the disturbance.** This alternative provides more habitat protection than Alternatives A and D but not as much as Alternative C.

Alternative C-This alternative is similar to Alternative B but expands the restrictions on construction, realignment and upgrading to ADH. In addition, this alternative would expand the 3 percent disturbance cap to the entire area within

4 miles of a lek. Generally this alternative would be the most restrictive for new construction, realignment and upgrading of roads and trails, and therefore is expected to provide the greatest benefit to terrestrial wildlife.

Alternative D-This alternative applies restrictions to priority habitat that are more flexible than those outlined in the NTT report. Other than Alternative A, this alternative is the least restrictive for new construction, realignment and upgrading of roads and trails. "<sup>17</sup>

The Organizations are not able to find any analysis for the basis of these assertions and would note that there are significant differences in the acreage of areas that are classified as priority habitat (1,576,000 acres) in comparison to all designated habitat (2,893,600 acres). <sup>18</sup> As a result of the large acreage differences in play between the standards, the Organizations believe that the 3% standard over almost 3 million acres could have far more impact than application of a 5% standard over approximately half that areas. These are comparisons that are not provided and are well outside the reach of any interested party to address in comments on the plan. As a result this information must be provided by the planners and simply has not.

**5a. Route closures will impact a wide range of uses resulting in greater negative economic impacts.**

The Organizations are very concerned about any loss of routes and trails in areas that are to be designated habitat for the Grouse. The availability of these routes and trails for all recreational usage provides significant economic contributions to the many small municipalities in the vicinity of the habitat area. The high levels of recreational usage of these routes compounds risks of negative economic impacts from the loss of other economic activities on these lands. Economic impacts to non-recreational activities has already been identified as a significant concern, which was clearly articulated by the Western Governors Association in 2011 as follows:

"The economic impacts of placing sage-grouse on the endangered species list would be severe, since much of the West's grazing of rangeland, natural gas, oil, coal and wind resources coincide with sage-grouse habitat."<sup>19</sup>

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<sup>17</sup> LUPA at pg 463.

<sup>18</sup> LUPA at pg 42.

<sup>19</sup> Western Governors Association; *Policy Resolution 11-9; Sage-grouse and Sagebrush Conservation*; July 11, 2011 at pg 2.

Significant restrictions on access would clearly impact activities for which concern has already been voiced by the Western Governors Association. In addition to the priority economic concerns identified by the Western Governors Association, the Organizations would add economic impacts from losses of recreational usage of public lands as an additional element to be addressed as a significant concern. The dispersed trail network in the habitat areas provides significant access for all users of the areas, not just those seeking a motorized experience.

**5b. Trail based recreation is an economic mainstay for many local economies.**

Many small communities in the vicinity of Grouse habitat are heavily dependent on recreational activities and tourism for survival of the community, after more traditional income sources like the mining and timber industries have left these areas. US Forest Service research indicates that a multiple usage trail network is an effective tool for the development and maintenance of local economies. This research specifically concluded:

**"Recreation and tourism economies are the mainstay for rural counties with high percentages of public land. Actions by public agencies to reduce or limit access to for recreation have a direct impact on local pocket books. Limiting access by closing roads, campgrounds, RV parking, and trails for all or one special interests group will impact surrounding communities. Visitors to public lands utilize nearby communities for food, lodging and support facilities."**<sup>20</sup>

While the development of a recreational trail network can be a significant benefit to local communities, the converse of this is also true as the loss of an existing recreational trail network can create significant negative economic impacts. The scope of losses from large route closures has been the basis for several studies. The findings of this research are consistent with the concerns regarding closures of routes voiced in these comments. **In 1999 a joint study of University of Wyoming and US Department of Agriculture found that 72% of economic benefits from winter recreation would be lost with a seasonal closure of the Yellowstone Park to motorized recreation.**<sup>21</sup> The high levels of economic impact to communities from closures is the result of the wide range of user groups that use a trail network to obtain their primary recreational experience. The Organizations vigorously believe large scale closures in Grouse habitat areas would have a similar impact on the local communities as those experienced by

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<sup>20</sup> Humston et al; USFS Office of Rural Development; *Jobs, Economic Development and Sustainable Communities Strategizing Policy Needs and Program Delivery for Rural California*; February 2010 at pgs 51-52

<sup>21</sup> David Taylor; *Economic Importance of the Winter Season to Park County Wyoming*; University of Wyoming Press; 1999 @ pg 2.

the communities adjacent to Yellowstone Park. These must be avoided or at least analyzed in the FEIS. These impact simply have not been addressed.

### **5c. Dispersed trail networks are multiple use resources.**

The Organizations believe that a brief discussion of what an OHV recreational user is will clarify why multiple use trails are of such concern when addressing economic impacts. Forest Service research indicates that families are the largest group of OHV users. This research found that almost 50% of users were over 30 years of age and highly educated. 11.4% of OHV users are 51 years of age or older.<sup>22</sup> Women were a large portion of those participating in OHV recreational activities.<sup>23</sup> This research indicates that OHV recreationalists are frequently a broad spectrum outdoor enthusiasts, meaning they may be using their OHV for recreation one weekend but the next weekend they will be walking for pleasure (88.9%), using a developing camping facility (44.7%), using a Wilderness or primitive area (58.1%) fishing (44.6%) or hunting (28.4%).<sup>24</sup>

As noted by the Forest Service research, motorized access to public lands is a key component of any recreational activity. This is completely consistent with the Organizations experiences for all recreational activities as most users do not have access to non-motorized means of game retrieval or do not have sufficient time to hike long distances to gain access to their favorite fishing hole or dispersed camping site. The wide range of recreation utilizing the dispersed trail network again weighs heavily in favor of caution of maintaining recreational access to areas that are to be designated Grouse habitat.

### **5d. Recently released research from the Western Governors Association finds recreational activity on public lands is largest economic contributor to western states.**

In 2012, the Western Governors Association ("WGA") released the conclusions of multiple year research regarding the economic impacts of recreation to western states economies. Given the scale of these findings, the Organizations believe recreational usage would now be added to the priority concerns identified previous by the WGA. Recreation is the largest economic contributor to western state economies from public lands, which position is summarized in the report as follows:

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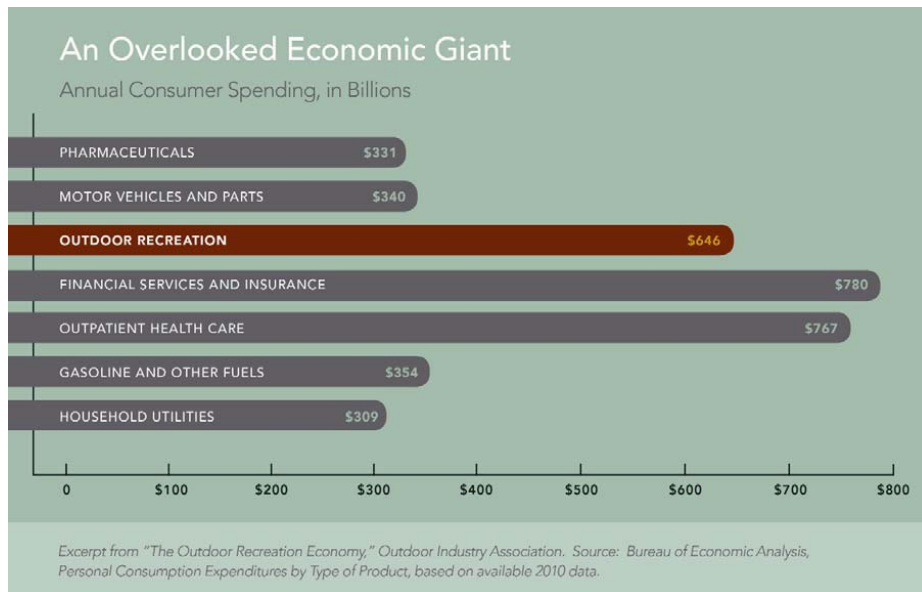
<sup>22</sup> Cordell et al; USFS Research Station; *Off-Highway Vehicle Recreation in the United States and its Regions and States: A National Report from the National Survey on Recreation and the Environment (NSRE)* February, 2008; pg 56.

<sup>23</sup> *Id* at pg 56.

<sup>24</sup> *Id* at pg 41-43.

"The Get Out West Advisory Group identified successfully managing the West's recreation assets as a key factor in facilitating positive outdoor recreation experiences for the region's citizens and tourists and for local economic development and job creation in communities around these places."<sup>25</sup>

This research also compared recreational contributions to many other economic activities that were present in western states. These conclusions were summarized as follows:



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The WGA economic impact analysis also highlighted 35 recreational opportunities throughout the western states. The overwhelming majority of these highlighted recreational locations involved the use of a dispersed trail network as part of the recreational experience. While many of these opportunities are outside areas to be designated habitat, analysis of these highlighted locations clearly evidences the critical role that the dispersed trail network plays in all recreational activities.

The WGA research did identify other activities as larger economic contributors to western states, but these activities were not connected to public lands or small municipalities such as those impacted by the habitat designation. Western Colorado communities are simply not known as banking, health care or insurance centers of the western states. They are however

<sup>25</sup> Western Governors Association; *Managing the Regions Recreational Assets*; Report of the Get Out West Advisory Group to the Western Governors' Association; June 2012 - pg 1.

<sup>26</sup> Western Governors Association; *A Snapshot of the Economic Impact of Outdoor Recreation*; prepared by Outdoor Industry Foundation; June 2012 at pg 1.

known for their exceptional recreational opportunities. The Organizations believe these findings warrant clear management standards that properly balance economic impacts from closures with benefits to the Grouse from the management standards. Failure to properly measure and balance all recreational interests will have profound effects on recreational access to public lands and will result in significant negative economic impacts to all communities that will do little to benefit the Sage Grouse.

**5e. Dispersed motorized recreation contributes almost \$1 billion a year to the Colorado economy.**

Recreational usage of public lands is a significant portion of the Colorado economy, especially in the smaller mountain communities which have already lost more traditional sources of revenue, such as timber, farming and mining. In 2012, COHVCO commissioned an economic impact study to determine the economic impacts of OHV recreation on the Colorado economy. A copy of this economic impact study is attached for your reference. **This study found that almost 1,000,000,000 dollars of positive economic contribution and 10,000 jobs resulted from OHV recreation to the State economy.**<sup>27</sup>

| <b>Direct Impact</b>  | <b>NW CO</b> | <b>SW CO</b>  | <b>Cntrl CO</b> | <b>NC CO</b> | <b>East CO</b> |
|-----------------------|--------------|---------------|-----------------|--------------|----------------|
| Direct sales          | \$28,290,700 | \$77,828,161  | \$101,974,816   | \$49,225,045 | \$14,458,423   |
| Jobs                  | 332          | 1,100         | 1,297           | 639          | 184            |
| Labor Income          | \$13,579,699 | \$30,274,949  | \$45,595,139    | \$21,241,172 | \$6,445,483    |
| Value added or GRP    | \$17,062,037 | \$40,246,751  | \$57,673,570    | \$27,495,641 | \$8,264,186    |
| State and Local tax   | \$1,422,904  | \$4,515,047   | \$5,417,621     | \$2,679,690  | \$803,708      |
| Federal tax           | \$274,985    | \$781,945     | \$837,600       | \$528,728    | \$112,494      |
| <b>Other Activity</b> |              |               |                 |              |                |
| Indirect Sales        | 15,029,394   | \$51,820,687  | \$55,614,367    | \$18,889,621 | \$13,935,630   |
| Jobs                  | 128          | 463           | 463             | 181          | 100            |
| Labor Income          | \$4,623,048  | \$15,453,087  | \$17,559,193    | \$4,725,241  | \$4,865,225    |
| Other Prop Income     | \$9,190,579  | \$30,021,789  | \$33,618,200    | \$10,555,900 | \$8,337,045    |
| State and Local tax   | \$757,059    | \$2,523,671   | \$2,539,796     | \$873,167    | \$592,312      |
| Federal Tax           | \$146,306    | \$401,852     | \$392,669       | \$172,284    | \$82,905       |
| <b>Total Activity</b> |              |               |                 |              |                |
| Sales                 | \$43,320,094 | \$129,648,848 | \$157,589,184   | \$68,114,666 | \$28,394,053   |
| Jobs                  | 460          | 1,564         | 1,760           | 819          | 284            |

<sup>27</sup> COHVCO Economic Contribution Study of Off Highway Vehicle Use in Colorado - 2012; Lewis Burger Group; pg 15.

|                     |               |              |              |              |              |
|---------------------|---------------|--------------|--------------|--------------|--------------|
| Labor Income        | \$18,202,7474 | \$45,728,036 | \$63,154,332 | \$25,966,413 | \$11,310,708 |
| Other Prop Income   | \$26,252,616  | \$70,268,540 | \$91,291,770 | \$38,051,541 | \$16,601,231 |
| Sales and Local tax | \$2,179,964   | \$7,038,718  | \$7,957,417  | \$3,552,857  | \$1,396,020  |
| Federal tax         | \$421,291     | \$1,120,798  | \$1,230,269  | \$701,012    | \$195,400    |

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**Over \$827,000,000 of this economic impact and almost 4,887 jobs result from motorized recreation in the Colorado areas proposed to be designated as habitat.** <sup>29</sup>

**In addition to this direct positive economic impact to Colorado communities, OHV recreation accounted for over \$22 million in tax revenue to state and local municipalities.** <sup>30</sup> These are tax revenues that motorized recreational users of the forest pay with little objection to obtain the benefits of their sport, and are used to address a wide range of needs for the local municipal government. Given current economic conditions, our Organizations believe these positive economic impact numbers must be meaningfully addressed in all government activities.

**5f. Colorado Parks and Wildlife identifies the significant positive impacts to the Colorado economy from hunting and fishing in Grouse habitat areas.**

In 2008, Colorado Parks and Wildlife commissioned a study to determine the economic contributions to the Colorado economy from hunting and fishing. A discussion of these impacts is provided as a part of these comments in order to allow for full understanding and analysis of the significant impacts that are associated with the dispersed trail network in the areas to be designated as habitat. Closures of dispersed trail networks are frequently of significant concern to those who use the dispersed trail networks for hunting and fishing activities.

The CPW report identified that hunting and fishing provided over \$1.8 billion to the Colorado economy in 2008. <sup>31</sup> For many hunters and fisherman, motorized access on the dispersed trail network is a key component of their hunting and fishing experience as the average hunter does not have access to teams of horses to remove elk from inaccessible areas or days to hike into their local fishing area. These access related expenditures are encompassed in the CPW economic impact calculation as analysis includes expenditures for trucks, campers, recreational

<sup>28</sup> COHVCO Economic Contribution Study of Off Highway Vehicle Use in Colorado - 2012; Lewis Burger Group; pg 17.

<sup>29</sup> See, *Id* at ES-6.

<sup>30</sup> See, *Id* at pg ES-5.

<sup>31</sup> See, Colorado Division of Wildlife; *Final Report; The Economic Impacts of Hunting, Fishing and Wildlife Watching in Colorado*; Sept 26, 2008; at pg Exec Summary at pg 1.



vehicles, boats and other motorized equipment.<sup>32</sup> Access related expenditures that can only be fully utilized for hunting and fishing with the existence of a dispersed trail network.

The CPW analysis also identified spending on hunting and fishing in the Colorado counties that are impacted by designations of habitat as follows:

| County       | Direct Expenditures <sup>1</sup><br>(\$ in thousands) | Total Impact <sup>2</sup><br>(\$ in thousands) | Jobs <sup>3</sup> |
|--------------|---|--|-------------------|
| Moffat       | 18,450  | 31,170   | 325               |
| Rout         | 27,980  | 45,630   | 528               |
| Jackson      | 9,710   | 14,020   | 144               |
| Larimer      | 89,070  | 154,830  | 1,739             |
| Grand        | 28,680  | 49,270   | 566               |
| Eagle        | 38,860  | 67,640   | 908               |
| Pitkin       | 14,250  | 24,850   | 327               |
| Mesa         | 43,980  | 76,100   | 813               |
| Garfield     | 31,700  | 54,420   | 579               |
| Rio Blanco   | 17,890  | 30,040   | 305               |
| Summit       | 29,170  | 51,800   | 708               |
| <b>TOTAL</b> | <b>349,740</b>  | <b>599,770</b>                                 | <b>6,942</b>      |

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The Organizations believe that economic impacts from possible reductions in hunting and fishing activity in areas to be designated as habitat must also be accounted for in the development of management standards for the habitat. As clearly identified by CPW, these economic contributions are significant and access is a key component of the hunting and fishing experience for most users. Management clarity and consistency of analysis of impacts is a critical portion of any analysis of management alternatives. These simply have not been discussed in the Plan.

**6a. Decisions regarding the lack of impact of motorized recreation on the Greater Sage Grouse must be accounted for in habitat management.**

<sup>32</sup> See, *Id* at Section 3 pg 10.

<sup>33</sup> See, Colorado Division of Wildlife; *Final Report; The Economic Impacts of Hunting, Fishing and Wildlife Watching in Colorado*; Sept 26, 2008; at pg Exec Summary at section 4 pg 16 & 17.

As noted in the status proposal for the Gunnison Sage Grouse, there is significant overlap in research between the Greater Sage Grouse and Gunnison Sage Grouse. The USFWS Greater Sage Grouse status decision clearly states:

"Gunnison sage-grouse and greater sage-grouse (a similar, closely related species) have similar life histories and habitat requirements (Young 1994, p. 44). In this proposed rule, we use information specific to the Gunnison sage-grouse where available but still apply scientific management principles for greater sage-grouse (*C. urophasianus*) that are relevant to Gunnison sage-grouse management needs and strategies...."<sup>34</sup>

As previously noted in these comments, listing decisions relative to both the Greater and Gunnison Sage Grouse have explicitly found that recreational usage of Sage Grouse habitat is a low priority threat to the habitat. While the FWS findings cited above do not specifically identify dispersed motorized recreation, they provide an extensive discussion of possible motorized recreational impacts prior to concluding that recreation has a minimal impact on the sage grouse. The 2010 USFWS listing decision again stated that adoption of a designated trail system for recreational purposes is of significant benefit to the sage grouse. The 2010 USFWS listing decision discussed changes to designated trails on USFS lands as follows:

"As part of the USFS Travel Management planning effort, both the Humboldt-Toiyabe National Forest and the Inyo National Forest are revising road designations in their jurisdictions. The Humboldt-Toiyabe National Forest released its Draft Environmental Impact Statement in July, 2009. The Inyo National Forest completed and released its Final Environmental Impact Statement and Record of Decision in August 2009 for Motorized Travel Management. **The ROD calls for the permanent prohibition on cross country travel off designated authorized roads.**"<sup>35</sup>

Clearly, if the designated route system that was being adopted by these Forests was insufficient for the protection of Sage Grouse habitat, such a position would have been clearly stated in this discussion given the large body of research that exists for the management of the Sage Grouse. This position weighs heavily in favor of maintaining recreational access and must be analyzed in the FEIS. It simply has not been mentioned.

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<sup>34</sup> See, status proposal at pg 2488

<sup>35</sup> See, *12-month findings for petition to list the Greater Sage Grouse (Centrocercus urophasianus) as threatened or endangered*. Fed Reg. (March 5, 2010) at pg 92.

**6b. Two recently released texts support FWS positions regarding the minimal risk recreational usage of habitat areas poses.**

Two recently released texts from nationally acknowledged grouse experts have specifically addressed the management of Greater Sage Grouse habitat and included extensive discussions of all possible threats to Grouse.<sup>36</sup> The Organizations believe it is significant to note that the Sandercock text simply never addresses possible motorized recreational concerns in habitat areas. The Knick and Connolly text discusses OHV recreation in a very general manner in two paragraphs of a text that totals 646 pages.<sup>37</sup> This discussion only addresses trends in usage of OHVs. This limited analysis is significant as these are resources one would expect to include significant discussions of OHV recreational impacts on the Grouse if these were significant concerns regarding OHV recreation creating possible impacts on the Grouse. The silence of these resources on this issue must be construed as a determination that this usage is a minimal threat to the species.

While these texts do not significantly address motorized recreation, the texts do specifically confirm access to public lands is a major issue for grouse management. The Connolly text specifically states:

**"Many people live in these locations primarily because of access to public lands for recreation." <sup>38</sup>**

The Organizations must note the texts identification that living in an area primarily for access to public lands supports the Organizations concerns regarding the type of impacts that must be balanced in the creation of management standards for habitat areas.

The Organizations are aware there is a significant body of peer reviewed research for the management of the Grouse. The Organizations believe any concerns regarding dispersed recreation on the Grouse would have been identified in the current body of research summarized in these texts. The Organizations believe the minimal discussion of this issue clearly supports the position that was taken in the 2010 Greater Sage Grouse listing decision, mainly that dispersed recreation is a minimal threat to the Grouse. As the benefits of a

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<sup>36</sup> See, Sandercock et al; Ecology, *Conservation and Management of the Grouse*; University of California Press 2011; see also ST Knick and JW Connolly (editors) Greater Sage Grouse; *Ecology and conservation of a landscape species and its habitats*. Studies in Avian Biology (vol 38), Univ of California Press, Berkeley CA.

<sup>37</sup> See, Knick and Connolly at pg 216.

<sup>38</sup> See, Knick and Connolly at pg 216.

designated or existing trail system are approved in the listing decision and the minimal threat of impacts from motorized recreation is simply not discussed in two recent texts from National experts on the Grouse, the Organizations believe restricting travel to existing routes in Grouse habitat is a logical, scientifically based and credible starting point for addressing motorized access to critical habitat areas. Again, a detailed statement of the hard look of NEPA does not support or justify the proposed restrictions or the arbitrary nature of the management boundaries that are differentiated entirely based on the agency managing the areas.

**6c. Restricting travel to existing routes would provide significant benefit for the Grouse with minimal economic risk in critical habitat areas.**

The Organizations are intimately familiar with designations of routes under the Forest Service's Travel Management Rule. The Organizations would support limitations of travel to existing routes in habitat areas of the Grouse as part of a habitat designation. Any permanent closures of habitat areas would be opposed as this position would conflict with best available science and USFWS listing decisions on the Grouse. As previously noted in the Greater Sage Grouse listing decision, a designated route system appears to be a significant benefit to maintaining sage grouse habitat and sage brush health. The Organizations believe these designations would be highly complied with if properly implemented, as most users are very familiar with requirements to stay on designated routes for travel as this is the common standard for dispersed route travel on public lands.

While the designation of travel routes is basically completed for Forest Service lands in the areas proposed to be designated habitat for the Grouse, the designation process remains on going for many areas that are under BLM management. This has resulted in large portions of the actively used habitat not being currently subject to a requirement that travel is limited to existing routes. The Organizations believe that restricting all travel to existing routes in habitat areas would provide significant benefit to the Grouse and the sage brush the grouse depends on for habitat, when compared to the current open area designations. The Organizations believe such a change could provide significant benefit to the Grouse with very little risk of negative economic impacts to local communities as recreational access and opportunities could be maintained. The Organizations believe the significant benefits that can be achieved for the Grouse at minimal costs weighs heavily in favor of meaningful analysis of limiting travel to existing routes as a method to preserve public access to the habitat areas for recreational usage. This alternative is simply never addressed in the FEIS or again justify management boundaries that are proposed to differentiate standards based solely on the agency managing the area.

#### **6d. Use of seasonal route closures to avoid lek areas would minimize economic impacts.**

As part of the travel management process, seasonal limitations on use of designated routes are frequently made to avoid wildlife habitat areas or to avoid sensitive areas at a particular times of the year for a particular species, such as spring closures of routes in elk calving areas. These seasonal closures have been found to be highly effective in limiting impacts on wildlife during these sensitive periods and maintaining public access to these areas for the rest of the year when the species has moved from the area. In the case of elk calving areas, elk simply do not use calving areas in the summer as the elk traditionally move to higher areas for grazing purposes. As the elk have moved from these areas, use of routes in the area creates little to no risk of negative impacts to the animals.

Similar to elk, research indicates that sage grouse habitat and needs varies greatly over the course of a year.<sup>39</sup> The habitat designation decision notes this highly seasonal mobility as follows:

"Gunnison sage-grouse make relatively large movements on an annual basis. Maximum Gunnison sage-grouse annual movements in relation to lek capture have been reported as 18.5 km (11.5 mi) (GSRSC 2005, p. J-3), and 17.3 km (10.7 mi) (Saher 2011, pers. comm.), and individual Gunnison sage-grouse location points can be up to 27.9 km (17.3 mi) apart within a given year (Root 2002, pp. 14-15). Individual Gunnison sage-grouse have been documented to move more than 56.3 km (35 mi) to wintering areas in the Gunnison Basin in Colorado (Phillips 2011, pers. comm.). **While it is likely that some areas encompassed within these movement boundaries are used only briefly as movement areas, the extent of these movements demonstrate the large scale annual habitat requirements of the species.**"<sup>40</sup>

Given the high levels of mobility displayed by the Grouse throughout the year, closing routes in all habitat areas would be problematic from an economic perspective. The overwhelming body of grouse research surrounds impacts and activities of the grouse in their lek areas, where

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<sup>39</sup> See, Connolly JW, ET Rinkes and CE Braun. 2011. *Characteristics of Greater Sage Grouse habitats; a landscape species at micro- and macroscales*. pg 69-83 in ST Knick and JW Connolly (editors) *Greater Sage Grouse; Ecology and conservation of a landscape species and its habitats*. Studies in Avian Biology (vol 38), Univ of California Press, Berkeley CA.

<sup>40</sup> See, Endangered and Threatened Wildlife and Plants; *Endangered Status for Gunnison Sage-Grouse*; 78 Fed. Reg. 2486 (Jan. 11, 2013) at pg 2543. (hereinafter referred to as the "status proposal").

population concentrations are highest and where the highest response to disturbance is identified. Research also indicates that lek areas are annually used for long periods of time by the same group of Grouse.<sup>41</sup> Discovery of new lek locations is a rather rare occurrence and discovery of single new lek sites was of enough significance to warrant noting in the status decision.<sup>42</sup> As researchers appear to have identified almost all lek areas in the habitat areas, this will make identification of routes around active leks in the habitat areas a management tool that could be quickly used to gain significant benefits to the Grouse, when used in conjunction with a seasonal closure to mitigate impacts on an actively used lek area.

Research indicates that seasonal closures for the protection of leks is a highly effective tool, which the status decision specifically notes as follows:

"The BLM and Gunnison County have 38 closure points to minimize impacts to Gunnison sage-grouse within the Basin from March 15 to May 15 each year (BLM 2009, p. 40). **While road closures may be violated in a small number of situations, road closures are having a beneficial effect on Gunnison sage-grouse through avoidance or minimization of impacts during the breeding season.**"<sup>43</sup>

The Organizations believe that seasonal closures of routes will also only be effective if the nesting areas are seasonally closed to other uses as well. Clearly closing a route to address concerns regarding its proximity to leks and nesting areas will not be effective if grazing, lek viewing and other activities identified as similar or higher risk activities for the habitat areas are continued.

### **7. Recreational closures alone are insufficient to address habitat concerns.**

As extensively noted in both the status and habitat proposals, there are a wide range of activities that are negatively impacting the Gunnison Sage Grouse, many of which are higher priority threats than recreational usage of the habitat areas. The following provisions are included in these comments to highlight some areas and activities that must also be addressed if large scale route prohibitions are found to be required. It has been the Organizations experience with other endangered or threatened species that often isolation of a single usage to address impacts from a wide range of usages creates significant public opposition as users being restricted believe they are being singled out arbitrarily. Management decisions isolating

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<sup>41</sup> See, status proposal at pg 2488-2495.

<sup>42</sup> See, status proposal at pg 2494.

<sup>43</sup> See, status proposal at pg 2532 .

single uses frequently fail and generate significant public opposition for future management of the issue. This public support will be critical as there are high levels of private lands in some habitat areas.

The need to address a wide range of issues is supported in the status decision as closures of recreational access alone is insufficient to address habitat degradation, as the status decision specifically notes as follows:

"Based on modeling results demonstrating the effects of roads on Gunnison sage-grouse (Aldridge *et al.* 2011, entire—discussed in detail in Factor A), implementation of even the most restrictive travel management alternatives proposed by the BLM and USFS will still result in further degradation and fragmentation of Gunnison sage-grouse habitat in the Gunnison Basin."<sup>44</sup>

The Organizations vigorously believe that if access to any area is to be closed for recreational purposes, other higher priority threats must also be prohibited in that area, as research indicates recreational closures simply will never be sufficient to address the wide range of activities that degrade habitat areas. The Organizations are vigorously opposed to any decisions to rely on a single activity to address the wide range of habitat issues, in light of the research that indicates prohibitions of that activity will simply never address the habitat issues contributing to the Grouse's decline.

Several of the wide range of factors identified as habitat concerns are noted here as these issues would also have to be addressed with closures to address the decline of the Sage Grouse, many of which are not related to recreational activities. Dogs are a factor that significantly impairs habitat quality as noted in the status decision:

"Domestic dogs accompanying recreationists or associated with residences can disturb, harass, displace, or kill Gunnison sage-grouse. Authors of many wildlife disturbance studies concluded that dogs with people, dogs on leash, or loose dogs provoked the most pronounced disturbance reactions from their study animals (Sime 1999 and references within). The primary consequences of dogs being off leash is harassment, which can lead to physiological stress as well as the separation of adult and young birds, or flushing incubating birds from their nest."<sup>45</sup>

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<sup>44</sup> See, status proposal at pg 2526.

<sup>45</sup> See, status proposal at pg 2532.

This concern is well documented as a significant wildlife management issue for many species.<sup>46</sup> The Organizations would be very opposed to any management standards for habitat areas that precluded motorized travel but continued to allow access for pedestrians with dogs as the listing decision specifically identifies similar levels of concern for these uses.

Grazing is also another usage of habitat areas that poses a similar level of threat to the habitat as roads. This concern is summarized in the listing decision as follows:

"Livestock management and domestic grazing have the potential to degrade Gunnison sage-grouse habitat. Grazing can adversely impact nesting and broodrearing habitat by decreasing vegetation available for concealment from predators. Grazing also has been shown to compact soils, decrease herbaceous abundance, increase erosion, and increase the probability of invasion of exotic plant species (GSRSC 2005, p. 173)."<sup>47</sup>

The Organizations must also note that lek viewing is currently not a significant issue for the Sage Grouse, however the Organizations believe that access to the lek area for viewing would create similar if not higher levels of disturbance to the Grouse when compared to a person simply passing through the area. The Organizations believe that if all recreational trail access is fully closed in an area then these activities should be prohibited as well.

The Organizations must again note that the above activities are not singled out due to heightened concerns for the activities but rather to briefly identify many of the usages that would need to be prohibited in a habitat area if the decision was made to permanently close the area to trail usage. While these additional restrictions would create economic concerns, the Organizations believe these economic impacts would be balanced by the fundamental fairness of treating similar threats to the Grouse in a similar manner. It has been the Organizations experience that arbitrarily permitting some uses while prohibiting others often fosters significant frustration from the public and develops little public support for conservation efforts. Given the high levels of habitat areas that are in private lands, the Organizations believe public support will play a critical role in any long term recovery efforts for the Grouse.

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<sup>46</sup> See, CHAPTER 8; DOMESTIC DOGS IN WILDLIFE HABITATS EFFECTS OF RECREATION ON ROCKY MOUNTAIN WILDLIFE *A Review for Montana* MONTANA CHAPTER OF THE WILDLIFE SOCIETY Written by Carolyn A. Sime – Wildlife Biologist, Montana Fish, Wildlife and Parks, Kalispell September 1999.

<sup>47</sup> See, status proposal at pg 2505.



## **8. Conclusion**

The Organizations believe that the protection of any endangered or threatened species is a critical part of federal land management. The Organizations are also aware that proper identification of the threats and issues causing any species to be endangered is critical to developing low cost effective plans for the protection of that species. However, these issues have not been properly or meaningfully analyzed in the Plan. The Organizations are forced to appeal the Plan given the arbitrary and capricious nature of proposed recreational usage of routes and trails in the Plan. While BLM lands allow for maintenance and expansion of routes in priority habitat areas, lands managed by the USFS are subject to a mandatory prohibition on route construction, regardless of why the construction is being undertaken. The arbitrary nature of this standard is compounded by the fact that most priority habitat is under BLM management and USFS management areas are only general habitat areas of marginal value and may not even be occupied by any Grouse at this time. The Organizations further submit that absolutely no attempt is made in the FEIS to provide a scientific basis for the management conflict, why USFS managed lands might be more valuable habitat areas or the need to address recreational usage of habitat, which has been repeatedly identified as an issue of limited concern to habitat quality. The Organizations submit that any management standards that are truly science based would not draw boundary lines for changes in management based solely on the agency that is administering the lands. The Organizations submit that avoiding such management was one of the goals of the consolidated planning process and moving forward with such management is arbitrary and capricious as a matter of law.

The Organizations are very concerned that the Plan does not accurately reflect the priority or significance of particular threats to the Grouse that were identified in the FWS listing decision. The FWS listing decision notes that moving to a designated trail system, as BLM is already doing nationally, is one of the largest and most important protections for grouse habitat involving recreational activity. The failure to properly prioritize threats and management priorities will result in inconsistent management, which may target issues that will generate significant costs and economic impacts and generate little benefit to the grouse.

The Plan proposes many standards, the application of which is not clearly described or is described in a conflicting manner in numerous points in the Plan such as the basis for surface disturbance standards or justification of management changes to grouse habitat based solely on the land management agency managing the area. Analysis of these concerns often are combined with other standards that will clearly impact the overall access not only to habitat areas but also to recreational opportunities outside the habitat areas. These cumulative impacts are never addressed. An example of the combined impacts would be limiting usage to

designated trails in priority habitat and limitations of surface disturbance to 3% or 5% of the habitat area. The Plan most commonly refers to the surface disturbance standards in terms of gas and oil development but at no point is there any limitation of the surface disturbance standards and usage of the route. Rather than specifically limiting impacts, the Plan often speaks to the availability of offsetting closures in the vicinity of the proposal area to minimize impacts. At no point is there any discussions of how these off sets would function on the ground.

Discussions of oil and gas surface disturbance standards often mention an offset being available for projects. The Organizations will note this off-set of usages will bring oil and gas development into direct conflict with recreational usage. The standards for this interaction or analysis of possible impacts simply are not provided in the Plan. The Organizations will note that often the intent of many routes is simply not determinable and will result in application of the surface disturbance standards to routes not related to oil and gas. The Organizations are assuming in these areas, designated routes would be insufficient protection but we simply are not sure this is the standard and are not able to determine how much of the planning area would be impacted by the 3% or 5% surface disturbance limitation.

The Organizations are able to support certain principals provided in the Plan, such as the use of seasonal closures around active lek sites. Restrictions of landscape level open riding areas to designated routes and trails networks in priority habitat is also acceptable to the Organizations. This designated routes standard becomes problematic when applied to areas that may be suitable for an open riding designation and are in a general habitat that may not have been occupied by the Grouse for decades. The application of these standards becomes very murky when the 3% or 5% surface disturbance standards are applied. The Plan simply must describe how all these issues will be applied on the ground and simply has not been.

Please feel free to contact Scott Jones at 518-281-5810 or by mail at 508 Ashford Drive, Longmont, CO 80504 for copies of any documentation that is relied on in these comments or if you should wish to discuss any of the concerns raised in this protest/appeal further.

Respectfully Submitted,



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