



COLORADO

Department of Natural Resources

Executive Director's Office
1313 Sherman Street, Room 718
Denver, CO 80203

July 29, 2019

Filed electronically through BLM e-Planning project website protest section

Director (210)
Bureau of Land Management
Attention: Protest Coordinator

Re: Protest of the Uncompahgre Field Office Proposed Resource Management Plan (PRMP) and Final Environmental Impact Statement (FEIS) for the Bureau of Land Management (BLM) Uncompahgre Field Office (UFO), released June 2019

Please accept this protest of the BLM's UFO Proposed RMP and FEIS, submitted by the State of Colorado acting by and through its Department of Natural Resources and Division of Parks and Wildlife (Colorado). Colorado participated in the planning process as a cooperating agency on behalf of the Colorado Department of Natural Resources and two of its divisions – the Colorado Water Conservation Board (CWCB) and Colorado Parks and Wildlife (CPW) – submitting comments on the administrative draft plan in 2011 and 2012, and on the public Draft RMP and EIS in 2016. Colorado also participated in all official cooperating agency meetings and numerous additional unofficial meetings with BLM biologists and NEPA planners. CPW volunteered to assist with writing and reviewing sections of the RMP and EIS where particular expertise in wildlife, wildlife habitat, and wildlife management was needed, and in areas where other resources may have impacts on wildlife.

CPW's meetings with and comments submitted to BLM prior to 2016 did not result in substantive changes being made to the administrative drafts or to the 2016 public draft. However, the current UFO Field Office Manager and District Manager have made significant efforts to address Colorado's concerns with the 2016 Draft RMP/DEIS, and to foster a stronger, more productive relationship between CPW and the BLM. Additionally, Colorado appreciates BLM's efforts to address comments submitted by CWCB on the public Draft RMP and EIS in 2016.

CPW's concerns outlined in this protest remain despite these efforts.

This protest is filed in accordance with the requirements in 43 C.F.R. § 1610.5-2.

List of Attachments

- A. Southwick Associates. "Economic Contributions of Outdoor Recreation in Colorado: A regional and county-level analysis," Feb. 24, 2014.

- B. Department of Interior Secretarial Order No. 3362, Improving Habitat Quality in Western Big-Game Winter Range and Migration Corridors, Feb. 9, 2018.
- C. Comments on the 2016 Uncompahgre Field Office Draft Resource Management Plan/Environmental Impact Statement from Colorado Department of Natural Resources, Colorado Parks and Wildlife, and Colorado Water Conservation Board, Nov. 1, 2016.
- D. Letter from Former Colorado Governor John Hickenlooper to Acting BLM State Director Gregory Shoop regarding the December 2018 oil and Gas Lease Sale, July 17, 2018.
- E. Letter from Former Colorado Governor John Hickenlooper to Acting BLM State Director Gregory Shoop regarding the December 2018 Oil and Gas Lease Sale, Sept. 11, 2018.
- F. Letter from DNR Executive Director Dan Gibbs to BLM State Director Jamie Connell regarding the September 2019 Oil and Gas Lease Sale, Apr. 16, 2019.
- G. Letter from DNR Executive Director Dan Gibbs to BLM State Director Jamie Connell regarding the September 2019 Oil and Gas Lease Sale, June 12, 2019.
- H. U.S. Fish and Wildlife Service Biological Opinion – Revision of the Resource Management Plan for the Uncompahgre Field Office, Dec. 17, 2018.
- I. Memorandum from U.S. Fish and Wildlife Western Colorado Supervisor to BLM Uncompahgre Field Office, Gunnison Sage-grouse Project Manager, Feb. 3, 2016.
- J. E-mail from BLM to Cooperating Agencies for Gunnison Sage-grouse Rangewide RMP Amendment, June 7, 2018.

Colorado's interest in the UFO RMP

Colorado has an interest in protecting and preserving the natural resources of the State, including its land, air, water, and wildlife. CPW is charged with protecting, preserving, enhancing, and managing Colorado's wildlife and their environment. C.R.S. § 33-1-101. As BLM noted in the PRMP, the State has primary jurisdiction and authority to manage fish and wildlife throughout Colorado, including in the UFO planning area.¹

Colorado also has an interest in fostering a healthy, stable, and resilient economy. The planning area encompasses a vast stretch of southwestern Colorado where public land uses range from mineral development to outdoor recreation to grazing to habitat protection. Big game hunting plays a critical role in our state's economy, in particular providing essential income for the rural communities that host big game hunters, outfitters, and guides. The counties within the UFO planning area include Delta, Gunnison, Montrose, and San Miguel. The total economic contribution of big game hunting within those counties is over \$41 million annually and represents over 186,000 big game hunter user days alone.² This is a sustainable source of economic contribution only if the lands can support big game populations and quality hunting opportunities. Fishing, wildlife watching, and other forms of outdoor recreation also attract both residents and non-residents to the planning area. Conservation of the State's wildlife, including protection and recovery of threatened and endangered species, is also a priority for Colorado.

¹ PRMP/FEIS, pp. 1-5.

² Attachment A, pp. 6, 27.

These interests may be adversely affected by the UFO RMP, particularly with respect to two specific issues raised in this protest: protection of big game migration corridors and winter range; and conservation and recovery of the federally-listed Gunnison sage-grouse.

Issues being protested

- I. **Wildlife: Lack of Protection for Winter Range and Migration Corridors Necessary for CPW to Sustain Big Game Population Objectives**
- II. **Special Status Species: Inadequate Protection for Gunnison Sage-grouse**

- I. **Protection and Habitat Improvement in Winter Range and Migration Corridors**

Throughout the planning process and in Colorado's 2016 comments on the Draft RMP, CPW recommended specific goals, objectives, standards, and guidelines to maintain and enhance big game winter ranges and migration corridors. This included recommending that BLM adopt limits on road and trail densities in these habitats in order to maintain habitat effectiveness, meet CPW's big game population objectives outlined in Data Analysis Unit (DAU) plans, and maintain and enhance recreational hunting opportunities. To facilitate adopting this recommendation, CPW supplied polygons of the highest wintering densities of mule deer and elk within the UFO for consideration of additional protections from incompatible uses (such as high-intensity recreation or high-density oil and gas development) that could severely impact the habitat function of these areas. CPW also provided a map of "winter range emphasis areas" with its 2016 comments.

Along the same lines, Secretarial Order (SO) 3362, signed by Secretary Zinke on February 9, 2018, sought to improve habitat quality and protect western big game winter range and migration corridors for antelope, elk, and mule deer. The Order seeks to improve wildlife management and conservation and expand opportunities for big game hunting by improving priority habitats within important migration corridors in Colorado, as well as other western states. The Order specifically directs BLM to apply site-specific management activities to sustain local and regional big-game populations through measures such as minimizing development that would fragment winter range and primary migration corridors.³

SO 3362 was signed after the 2016 Draft RMP/DEIS for the UFO was issued, but almost a year and a half prior to the PRMP/FEIS issuance in June 2019. However, the PRMP does not reference SO 3362, specify or provide additional protections for any big game winter range or migration corridors consistent with SO 3362 and CPW's previous comments, or provide other management guidelines for minimizing development that would fragment winter range and primary migration corridors.

As reflected in Colorado's comments, the best available science demonstrates that seasonal timing limitations are not adequate to maintain big game populations in high density development areas; hence our request for stipulations limiting development density for both roads and oil and gas development to minimize development that would fragment winter range and priority habitats.⁴ Pursuant to recent conversations between CPW and BLM's Colorado State Office regarding SO 3362

³ Attachment B, p.5.

⁴ Attachment C, p.11.

implementation, BLM staff have indicated that they lack the appropriate authorization to address Colorado's desire to adopt a stipulation to address route and facility densities, but that they could address Colorado's recommendation *when RMPs are being revised or amended*. Yet, notwithstanding Colorado's repeated requests and the Secretarial Order, BLM has failed to take advantage of the UFO RMP planning process to include these stipulations.

The UFO PRMP indicates that BLM prefers to consider travel route density limitations during travel management planning.⁵ But route density limitations are integrally tied to other resource uses (such as oil and gas development and well pad densities), and at least for purposes of protection of winter range and migration corridors, should be considered as a package during the land allocation decisions adopted during the RMP revision process. The UFO PRMP currently includes Special Recreation Management Areas (SRMAs) and other land allocation decisions that overlap with important winter range and migration corridors identified by CPW without consideration how the functionality of these important habitats will be maintained.

Since 2008, and in comments on proposed oil and gas lease sales as recently as 2018 and 2019, Colorado has requested that BLM incorporate a stipulation that limits the density of surface facilities to no greater than one well pad per square mile (640 acres) or one linear mile of road/travel route per square mile (640 acres) for specific parcels that contain the highest priority big game winter habitats and migratory corridors.⁶ Incorporating this stipulation in the PRMP would help satisfy the intent and specific requirements outlined in SO 3362. During post-RMP project development, BLM has repeatedly indicated that density limitations on development cannot be applied when a stipulation is not included in the governing RMP. As a result, Colorado has frequently resorted to asking that relevant parcels be deferred altogether from lease sales until BLM is able to apply a stipulation that limits the density of surface facilities to no more than one well pad or travel route per mile.

At least one BLM Colorado Field Office, the Tres Rios Field Office, has recognized the need for a stipulation to limit the density of surface facilities by incorporating a Controlled Surface Use (CSU) Stipulation in their 2015 RMP revision. Even prior to SO 3362, this stipulation was added to the Tres Rios RMP to address the lack of existing mechanisms to limit the density of surface facilities post-lease when faced with development proposals and individual drilling permits.⁷

The UFO and Colorado State Director's decision not to include similar stipulations in the UFO PRMP may simply be an oversight. Regardless, Colorado protests this decision and requests that the UFO follow in the TRFO's footsteps and, in accordance with SO 3362, take advantage of this planning process to include in the PRMP CSU stipulations to limit the density of surface facilities in critical big game winter range and migration corridors.

Recommendation for resolution:

⁵ UFO PRMP Draft EIS, Chapter 3, p.3-109.

⁶ Attachments D – G.

⁷ BLM Tres Rios Field Office Approved Resource Management Plan and Record of Decision (2015), Appendix H, Stipulation 3.10.2 *Controlled Surface Use – Severe Winter Range, Winter Concentration and Mule Deer Critical Winter Range and Big Game Production Areas*, p.H-27.

Controlled Surface Use (CSU)/Site-Specific Relocation (SSR) – Big Game Severe Winter Range, Winter Concentration Areas, Production Areas and Migration Corridors

Surface occupancy or use is subject to the following special operating constraints: In order to provide for healthy ungulate populations capable of meeting state population objectives, anthropogenic activity and permanently constructed facilities shall be designed to maintain habitat function, permeability, and landscape connectivity between seasonal habitats. This includes limiting the density of permanently constructed facilities requiring daily access to one facility per square mile (640 acres) or less and limiting the density of open roads and trails designed for daily access to one linear mile per square mile (640 acres).

For the purposes of: Protecting and improving priority big game winter range and migratory habitats consistent with SO 3362, and in order to maintain reproductive success and recruitment necessary to sustain healthy big game populations capable of meeting state population objectives.

Rationale: There is an established body of evidence that timing limitation stipulations on oil and gas and other development activities are not adequate to maintain the functionality of big game habitats. Managing the concentration and intensity of development is necessary to maintain big game populations in areas subject to landscape-scale anthropogenic development. This may include requiring collocation of facilities to minimize traffic and road/trail densities.

II. Gunnison sage-grouse

Gunnison sage-grouse (*Centrocercus minimus*), a species listed as threatened under the Endangered Species Act (ESA), is present in the UFO. Portions of the Crawford, San Miguel, and Cerro Summit-Simms satellite populations of this species are included in the planning area.⁸ In addition, portions of both occupied and unoccupied critical habitat for Gunnison sage-grouse are located in the planning area.

Colorado appreciates BLM's decision to prohibit surface occupancy or disturbance in all Gunnison sage-grouse occupied critical habitat, and similarly to restrict surface occupancy where appropriate in unoccupied critical habitat with Controlled Surface Use (CSU) stipulations.⁹ These stipulations will provide important protections for critical habitat that, in the satellite population areas, is essentially irreplaceable once destroyed.

Colorado is concerned, however, that BLM has not provided further protections to these fragile populations through other resource allocations and management decisions. When the species was listed in 2014, the U.S. Fish and Wildlife Service (Service) identified the inadequacy of federal regulatory mechanisms, including BLM's RMPs, as a primary threat to the species. 79 Fed. Reg. 69192, 69282 (Nov. 20, 2014). The Service noted that if an RMP contains specific direction regarding Gunnison sage-grouse habitat, conservation, or management, that specific direction "is an enforceable regulatory mechanism" applicable to permitting and other decision making for activities within the RMP planning area. *Id.* (noting that the UFO is one of the six RMPs under which BLM manages Gunnison sage-grouse habitat in Colorado). The Service also noted that all of these RMPs, when undergoing revisions, should include

⁸ UFO PRMP, Chapter 3, p.3-62.

⁹ UFO PRMP, Appendix B, NSO 31, p. B-32, and CSU-29, p.B-73.

various measures “such as spatial buffers, seasonal limitations, and other site-specific restrictions on land use activities in important Gunnison sage-grouse habitat.” *Id.* at 69283.

Similar to a process successfully undertaken for greater sage-grouse, BLM announced in May 2014 that it would embark upon development of a landscape-level RMP amendment specifically targeted at conservation of Gunnison sage-grouse on BLM-administered public lands. *Id.* Pending the outcome of that rangewide process, however, the Service found that the BLM RMPs in existence at the time of listing “generally lack[ed] specific land use allocation decisions, stipulations, and enforceable measures” to ensure adequate conservation of the species on public lands. *Id.* The stipulations in the PRMP prohibiting or limiting surface occupancy in critical habitat do much to improve the previous UFO RMP. But in order for the species to recover and be de-listed, BLM can and should do more. Indeed, the RMPs governing Gunnison sage-grouse and habitat should provide for a higher level of protection than the ones ultimately adopted for the un-listed greater sage-grouse.

Additional action to protect Gunnison sage-grouse is required because of BLM’s duty under § 7(a)(2)-(3) of the ESA to ensure that its actions do not jeopardize the continued existence of the species or destroy or adversely modify critical habitat, and also under § 7(a)(1), which requires federal agencies to utilize their authorities in furtherance of the purposes of the ESA by “carrying out programs for the conservation of endangered species and threatened species.” 16 U.S.C. § 1536(a). This duty is reflected in the Biological Opinion prepared by the Service in consultation with BLM on the PRMP.¹⁰ Under the section entitled “Conservation Recommendations,” the Service notes that § 7(a)(1) “directs Federal agencies to utilize their authorities to further the purposes of the ESA” by carrying out discretionary agency activities that ensure conservation of listed species.¹¹

BLM has now abandoned the effort to develop a rangewide RMP amendment for Gunnison sage-grouse conservation.¹² Accordingly, the Field Offices must take on BLM’s duty to conserve Gunnison sage-grouse. The Endangered Species Act defines the terms conserve, conserving, and conservation as “to use and the use of all methods and procedures which are necessary to bring any federally listed species to the point where the measures provided pursuant to the Act are no longer necessary.” 16 U.S.C. § 1532(3). As noted above, all federal agencies are directed to conserve threatened and endangered species under the ESA.

In accordance with this direction (and while a Rangewide Gunnison Sage-grouse Plan was still on the table), the Service sent a memo to BLM/UFO stating that, “because Gunnison sage-grouse satellite populations are small, generally declining, and highly imperiled, BLM’s management direction should explicitly prohibit any additional impacts to the bird and its habitat in these satellite populations.”¹³ Prevention of further impacts is not enough, however: in addition, “the satellite populations will require habitat restoration to increase the amount of available habitat.” *Id.* Thus, Colorado urges the UFO to include clearly described and prioritized targets for sage-grouse habitat restoration in the PRMP.

The Service also recommended, and we agree, that

¹⁰ Attachment H; Colorado requests that the Biological Opinion be included as an Appendix to the PRMP/FEIS.

¹¹ Attachment H, p.25.

¹² Attachment J.

¹³ Attachment I.

- Noise impacts should be limited across all sage-grouse habitats from March 1-July 15, to 10 dBA above ambient with maximum noise levels at approximately 30 dBA, (based on recommendations from Patricelli *et al.* 2013); and
- Across all program areas, BLM should reserve the ability to implement additional area closures to prohibit activities that may conflict with the conservation of Gunnison sage-grouse. This would have particular relevance for authorizing or amending any rights-of-way (ROW) within occupied or unoccupied habitat where a more restrictive measure should be applied when and where population levels drop below a certain point or if habitat impacts exceed a certain threshold.

Finally, and critically, Colorado requests that, consistent with the recommendation in the Service's Biological Opinion, BLM include in the PRMP the criteria developed for the Northwest Colorado Greater Sage-grouse RMPA with respect to waivers, exceptions and modifications within NSO-designated areas. These criteria require, among other things, agreement between BLM's District Manager and CPW and written justification for granting any exceptions or modifications.¹⁴ As mentioned above, land use restrictions for Gunnison sage-grouse habitat should be at least as strong or stronger than those for an unlisted species like the greater sage-grouse.

Colorado did not include these recommendations during the comment period on the Draft RMP because we were not alerted until June 2018 that the planning process for a rangewide RMP for Gunnison sage-grouse conservation had been postponed indefinitely.¹⁵ But now that it is up to the Field Offices to amend their RMPs to conserve Gunnison sage-grouse, Colorado respectfully requests that these measures, recommended by the agency with jurisdiction over management of listed species, be adopted by the UFO, and protests their absence from the PRMP.

Recommendations for resolution:

Replace the standard Exceptions, Modifications, and Waivers in NSO-31 with criteria similar to those cited in the Biological Opinion at p. 28, mirroring the standards in the Northwest Colorado Greater Sage-grouse RMPA (as amended in 2019).

Work with CPW to establish and include clearly described and prioritized targets for sage-grouse habitat restoration in the UFO.

Limit noise impacts across all Gunnison sage-grouse habitats from March 1-July 15, to 10 dBA above ambient with maximum noise levels at approximately 30 dBA.

Reserve the ability to implement additional area closures to prohibit activities that may conflict with the conservation of Gunnison sage-grouse. This would have particular relevance for authorizing or amending any rights-of-way (ROW) within occupied or unoccupied habitat where a more restrictive measure should be applied when and where population levels drop below a certain point or if habitat impacts exceed a certain threshold.

The Cooperating Agencies' Role

¹⁴ Attachment H, p.28.

¹⁵ Attachment J.

In addition to these issues, Colorado wishes to express its concern that the cooperating agencies were not given an opportunity to review and comment on the final PRMP – specifically, the final version of Alternative E. The cooperators were given one day to preview the final version of the PRMP before it was released to the public, triggering the 30-day protest period. In the year that passed between the time that the cooperators saw the first draft of Alternative E in 2018 and its final rollout in June 2019, substantial changes were made to Alternative E, including the elimination of Ecological Emphasis Areas and other changes that appear to favor energy resource development. During that same time period, the Service completed the Biological Opinion for the PRMP, which Colorado had to request from the Service, as BLM did not include it with the PRMP/FEIS.

This abrupt rollout has damaged the good will that the UFO staff had been developing post-2016 and made it challenging for the cooperating agencies to review and digest the contents of the final PRMP and FEIS. This process is not consistent with the MOUs signed between the cooperators and the BLM, which require the BLM/UFO to provide the cooperating agency with “meaningful opportunities for participation.” Moreover, it is inconsistent with the purpose of the cooperating agency relationship, which is intended to result in better decisions by fostering trust and cooperation between various federal, state, and local governments. We hope that future RMP planning processes in Colorado show greater respect for the input and needs of the cooperating agencies.

Thank you for your attention to our concerns. We greatly appreciate BLM’s partnership with Colorado in managing lands and wildlife for multiple uses while conserving imperiled species and habitat.

Sincerely,



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