

Testimony of Tom Jankovsky
Commissioner, Garfield County, Colorado
Before the
House Natural Resources Committee
Tuesday, June 4, 2013

Thank you Mr. Chairman and members of the committee.

My name is Tom Jankovsky, County Commissioner from Garfield County, Colorado. Also with me today is Dr. Rob Ramey, President of Wildlife Science International and a member of the Garfield County Greater Sage Grouse team.

I am here to discuss why local plans are more effective for endangered species conservation through our County's experience with the potential listing of the Greater Sage Grouse and its habitat.

Garfield County worked with the BLM on the NW Colorado Greater Sage Grouse Environmental Impact Statement (EIS) as a cooperating agency as one of nine counties that have Sage Grouse habitat managed by five local plans.

In these cooperating agency meetings we realized local plans were not being considered. Because we have a local plan, we engaged the BLM in the Coordination process. Congress set forth the coordination process through the Federal Land Policy Management Act (FLPMA) whereby the Secretary of the Interior shall: keep apprised of local plans; give consideration to those plans; meaningfully involve local governments; resolve inconsistencies; and, make Federal plans consistent with local plans.

Our first two Coordination meetings covered the Coordination process and significant differences between our local plan and the policies being directed through the BLM's National Technical Team (NTT) Report. Our primary concern is that the policies the BLM is attempting to put in place do not fit our unique topography and will fail, destroy our local economy and create the need for litigation.

The studies for the NTT Report were primarily from central Wyoming with miles of rolling sage brush while our topography and vegetation is quite unique characterized by high plateaus with sage brush at the ridge tops, steep drops to drainages and valley floors, with a patchwork of sage brush, conifer, aspen and pinion-juniper forests. *(See Attachment 1: Topography Differences)* As a result, conservation measures must adapt to the unique habitat through our local plan.

The map used in the EIS covers 220,000 acres of private and federal lands in our county. We questioned this map and were told that the mapping was not the responsibility of the BLM, but was provided by Colorado Parks & Wildlife (CPW) and that our plan was not acceptable because it was voluntary with no regulatory assurance.

We met with CPW who stated the map was prepared at a 50,000 ft. view. That was concerning since the map is the foundation for the policies being developed in the EIS.

We then hired Dr. Ramey and mapping experts to evaluate the basis of the science used in the NTT Report and for the creation of the CPW habitat map. We found the map was based on very coarse vegetation data, a subjective occupied range map, and a four-mile lek buffer that assumes large expanses of intact habitat.

Ultimately, this map was not reproducible. So we prepared our own map based on CPW criteria and highly accurate vegetation data. The net result reduced suitable habitat from 220,000 acres to 28,000 acres. *(See Attachment 2: Suitable Habitat Mapping Differences)*

With the refined mapping and best available science, we adopted the Garfield County GSG Conservation Plan that provides private and public land owners with land management principles, policies and BMPs that are tailor-fit to the County's unique landscape and habitat characteristics.

This plan retains regulatory assurance by mandating our policies on federal land. It is designed with an adaptive management approach and places the County at the center of decision making through Coordination. *(See Attachment 3: Coordination Diagram)* This allows all of the different federal, state and local interests to come together through one comprehensive plan in the spirit of cooperation thereby avoiding legal conflict. It is critical that agency plans be consistent with local plans.

In our third Coordination meeting with the BLM, US Fish & Wildlife Service (the Service), and CPW, we presented our plan to specifically discuss and resolve inconsistencies with the NTT Report. Lastly, we met with CPW to validate our habitat mapping which revealed a high correlation of accuracy. The intent is to work with CPW to amend the CPW map that will ultimately be used in the final BLM EIS.

Garfield County supports the Secretary's specific direction to the BLM that requires them to address "local ecological site variability" for regional / sub-regional plans. *(See Attachment 4: Instructional memorandum 2012-044)* Additionally, FLPMA requires the BLM to coordinate their efforts with local plans.

I would like to take this opportunity to request assistance from this Committee. First, the Service has withheld valuable data that supports a warranted listing. We only wish to verify their data as required under the Information Quality Act. We would appreciate this Committee's interceding on our behalf to obtain this data as soon as possible.

Second, we ask that you direct the Secretary of Interior to coordinate fully with local governments to ensure consistency between local and federal plans, more specifically local sage-grouse plans. Finally, we simply request the BLM abide by FLPMA and their own statutes and regulations to resolve policy conflicts at the local level. Then, not only would litigation be avoided, but solutions would be put in place that truly benefit the sage-grouse.

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

Attachment 1: Topography Differences

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

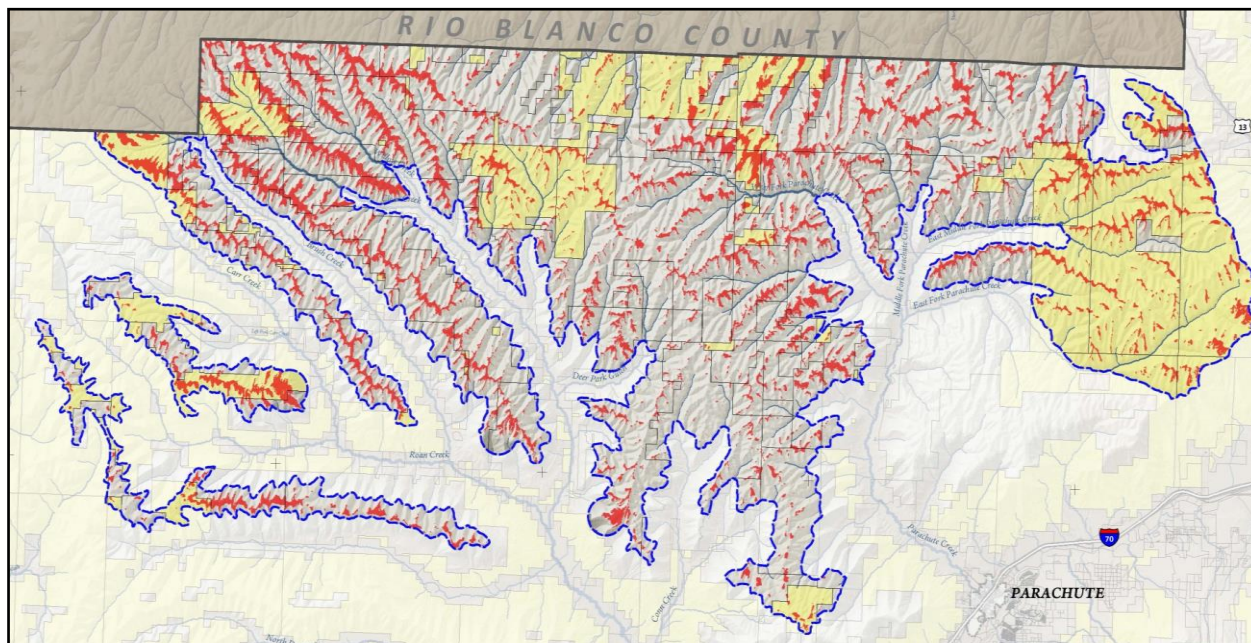
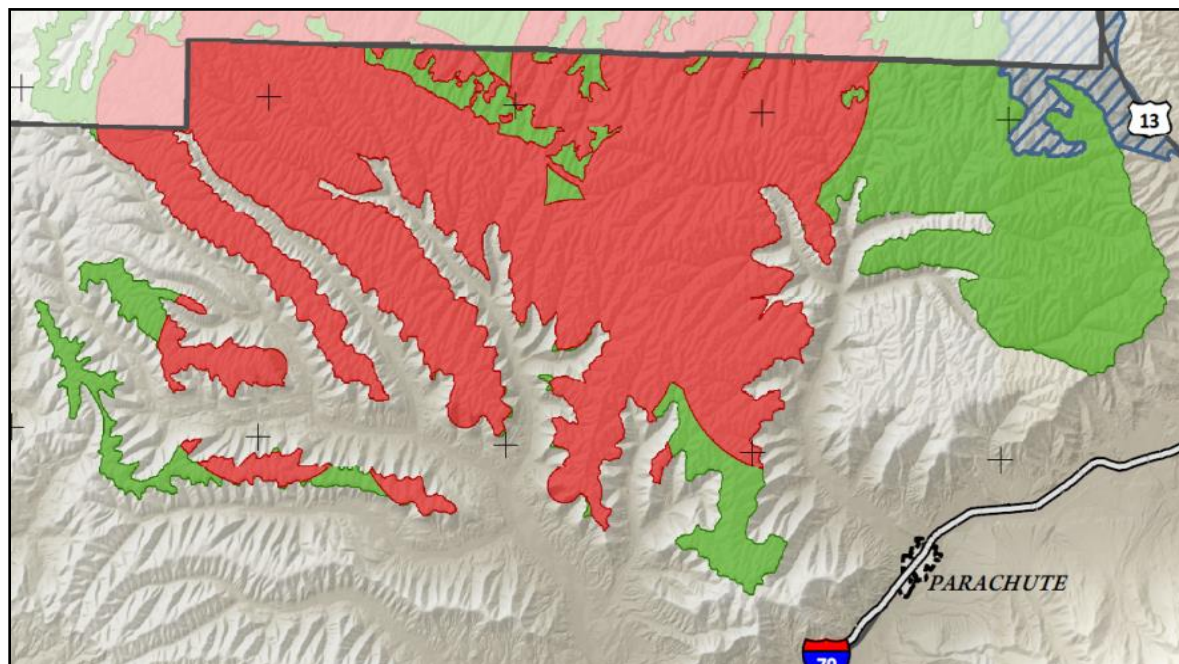
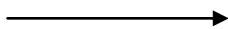


Typical topography and
vegetation in Garfield County,
CO in the Plan Area of the
Greater Sage-Grouse
Conservation Plan



Attachment 2: Suitable Habitat Mapping Differences

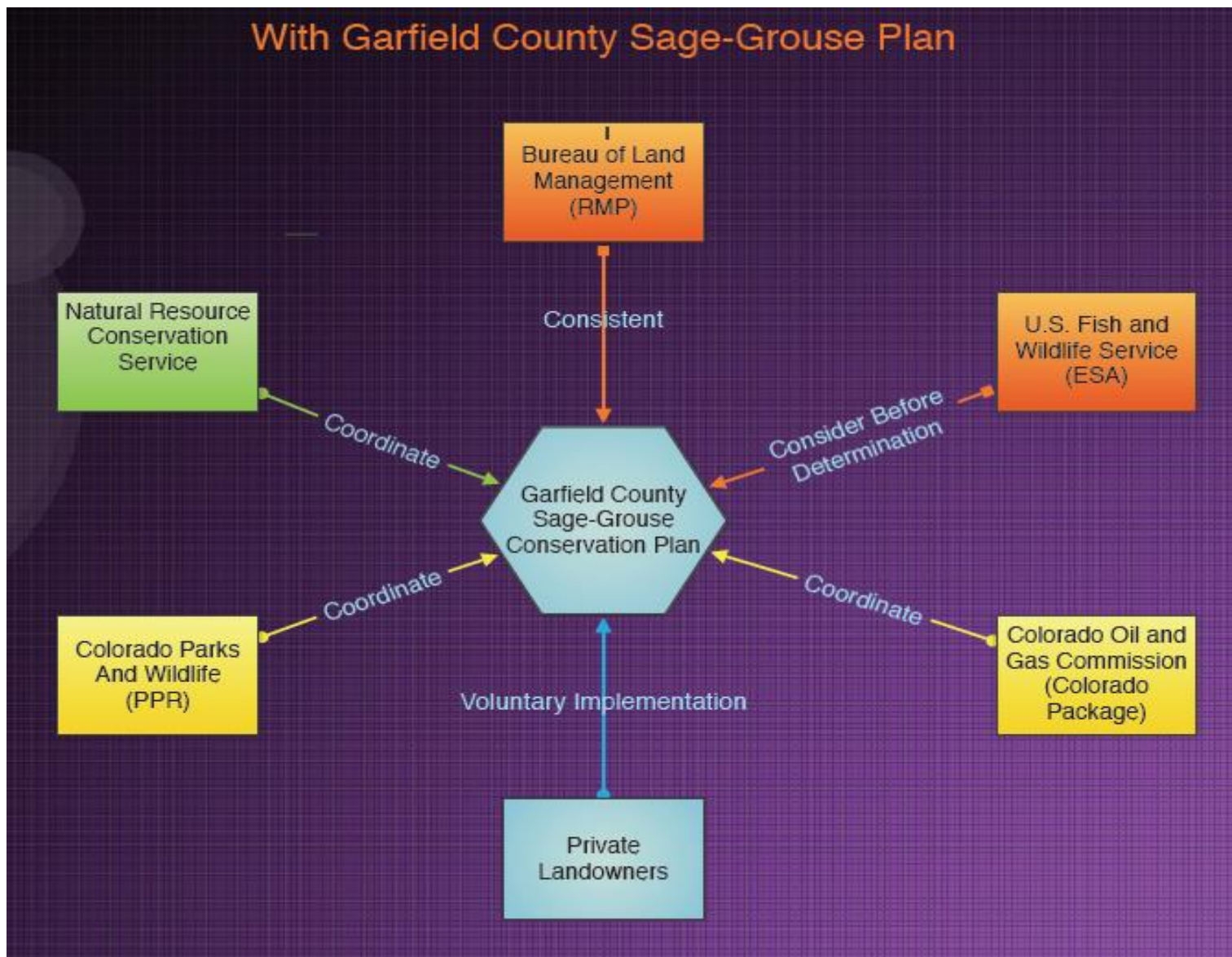
Colorado Parks & Wildlife Map:
220,000 acres of Greater Sage-Grouse Habitat (PPH & PGH)



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



Attachment 3: Coordination Diagram



Attachment 4: BLM Instructional Memorandum 2012-044

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Manual/Handbook Sections Affected: None.

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

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

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

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

High-resolution habitat mapping

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

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

Conservation measures are tailored to local circumstances

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

Voluntary conservation efforts on private land

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

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

Annual Review and adaptive management

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

Consistency with the Information Quality Act

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

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

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

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