Testimony

Before the Committee on Resources,

United States House of Representatives,

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Oversight Hearing on "*ESA Decisions by Closed-Door Settlement: Short-Changing Science, Transparency, Private Property, and State & Local Economies*"

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Statement By:

Megan Maxwell

Consulting Biologist, Broomfield, Colorado

I. Introduction and Background:

On March 23, 2010 the United States Fish and Wildlife Service (USFWS) issued a Warranted but Precluded (WBP) determination for the Greater sage-grouse (sage-grouse). Loss of habitat and fragmentation due to wildfire, energy development, urbanization, agriculture, and infrastructure development were cited as the primary threats to the species (75 Fed. Reg. 13910 at 13924, 13927-28, 13931). The Bureau of Land Management (BLM) was identified as having a unique opportunity to conserve the sage-grouse through its resource management plans (RMPs) i.e. land use plans, because approximately 52% of the sage-grouse habitat is under the BLM's jurisdiction (75 Fed. Reg. 13910). Then on September 9, 2011 USFWS entered into a court-approved settlement agreement with several environmental groups which formalized a schedule for making listing determinations for 251 candidate species nationwide, including the sage-grouse. The court-approved schedule indicates that a decision on whether to list or remove sage-grouse range-wide is due by September 2015 (USFWS, "Endangered Species Act Workplan Fiscal Year 2013 to Fiscal Year 2018-MDL Packages and Other Court Settlement Agreements," at 12) and which seems to be fueling BLM's response to the WBP determination.

In response to the WBP determination to list sage-grouse as a candidate species, BLM chartered the Sage-Grouse National Technical Team (NTT) which was charged with developing policy and management actions in order to manage sage-grouse conservation and protection under its jurisdiction. *A Report on National Greater Sage-Grouse Conservation Measures* (NTT Report) was subsequently published on December 21, 2011. Then six days later, on December 27, 2011 the Department of the Interior (DOI) issued Instruction Memorandum (IM) 2012-044 to provide direction to BLM for considering sage-grouse conservation measures, identified in the NTT Report, during the land use planning/National Environmental Policy Act (NEPA) process which was already underway in accordance with the 2011 *National Greater Sage-Grouse Planning Strategy*. IM 2012-044 directs BLM to "consider *all applicable conservation measures* when revising or amending its RMPs in Greater Sage Grouse habitat. The conservation measures developed by the NTT…must be considered and analyzed, *as appropriate*…and incorporated into at least one alternative in the land use planning process." IM 2012-044 also provides for adjustments to the conservation measures in order to take into account local conditions

(Department of the Interior, Instruction Memorandum 2012-044 "BLM National Greater Sage-Grouse Land Use Planning Strategy." December 27, 2011).

On November 20, 2012 in the U.S. District Court of Idaho in a hearing on remedies following a decision made on summary judgment in *Western Watershed Project v. Salazar*, No. 4:08-CV-516-BLW, U.S. District Court of Idaho, 2011, *docket no. 131* (hereafter *WWP v. Salazar*), the court found during a three day evidentiary hearing that BLM's NTT Report represented the "best available science." Then on March 11, 2013 BLM's Assistant Director Edwin Roberson entered a declaration in the U.S. District Court of Idaho indicating that the conservation measures recommended in the NTT Report are being incorporated into 79 RMPs, across 10 states (*Western Watershed Project v. Salazar*, 2013, *Roberson declaration).* Because this declaration was made while the NEPA process was (and still is) underway to evaluate the impacts associated with implementing the conservation measures in the NTT Report on millions of acres of the public domain, and uses ranging from recreation, to grazing, to mineral and energy development, this declaration was pre-decisional and therefore contrary to the Act and its implementing regulations at 40 C.F.R. §§1502.2 (f), 1500.1(b).

II. The NTT Report

The NTT Report provides habitat management recommendations for sage-grouse priority habitat across its entire range, including prescriptive restrictions on access and use of lands within priority habitat including:

- 3% limit on surface disturbance;
- 50-70% sagebrush cover threshold;
- No surface occupancy (NSO);
- 1 disturbance per Section (640 acres);
- Right-of-Way (ROW) exclusion and avoidance areas;
- Mineral withdrawals.

BLM maintains the NTT conservation measures are required to respond to the WBP determination and describes BLM's interpretation of USFWS' finding in the WBP determination that BLM lacks adequate regulatory tools to conserve sage-grouse, and therefore new regulatory mechanisms must be developed. However, throughout the WBP determination USFWS repeats over and over its inability to assess BLM's then existing regulatory mechanisms because of how the information was reported to them, and because of the uneven application and implementation across BLM offices:

> "…the BLM data call reported information at a different scale than was used for their landscape mapping. Therefore, we lack the information necessary to assess how this regulatory mechanism effects sage-grouse conservation…"(*Id.* at 13976).

USFWS also identified BLM's 2008 *Manual 6840: Special Status Species Management* as potentially having adequate regulatory protections for the sage-grouse:

> "As a designated sensitive species under BLM Manual 6840, sage-grouse conservation must be addressed in the development and implementation of RMPs on BLM lands…if an RMP contains specific direction regarding sage-grouse habitat, conservation, or management*, it represents a regulatory mechanism that has potential to ensure that the species and its habitats are protected…*

during decision-making on BLM lands…However, the information provided to us by BLM did not specify what requirements, direction, measures, or guidance has been included in the newly revised RMPs to address threats to sage-grouse and sagebrush habitat. *Therefore, we cannot assess their value or rely on them as regulatory mechanisms for the conservation of sage-grouse…Although RMPs, AMPs, and the permit renewal process provide an adequate regulatory framework, whether or not these regulatory mechanisms are being implemented in a manner that conserves sage-grouse is unclear*"(75 Fed. Reg. 13910 at 13975-77, emphasis added).

USFWS goes on to discuss how it is unable to assess fire management and invasive species management, again, because of the uneven application and implementation across BLM offices (*See Id*. at 13977). It seems clear from the above-cited sections of the USFWS' WBP determination that the agency was seeking evidence that the then current regulatory mechanisms would be implemented and documentation of the effectiveness of those mechanisms. USFWS did not say BLM's regulatory mechanisms were inadequate; nor did the agency demand that BLM develop new regulatory mechanisms. Rather the "Factor D-inadequate regulatory mechanisms" finding was made because of incomplete data given to the agency during the listing process.

The primary objective of the NTT Report is "to protect sage-grouse habitats from anthropogenic disturbances that will reduce distribution or abundance of sage-grouse" (NTT Report at 7). However this objective inappropriately assumes that anthropogenic disturbances are the primary threat to sage-grouse range-wide, are universally negative-regardless of whether impact minimization and mitigation practices are utilized, and that sage-grouse will respond positively to a decrease in anthropogenic disturbances, without providing data to support the assumption. Most importantly, the NTT Report fails to adequately address the fire and invasive species cycle –one of the main threats to sage-grouse habitat range-wide (75 Fed. Reg. 13910 at 13931-4) and the principal threat in the western part of the range.

III. Review of the NTT Report

Peer-review of the NTT Report conducted prior to its issuance suggests that it does not in fact represent the "Best Available Science" and instead consists of (NTT Peer Review Comments attached herewith):

- invalid assumptions;
- mischaracterization and misrepresentation of sources;
- omission of existing programs that benefit sage-grouse;
- personal opinion substituted in place of science;
- unachievable required design features/best management practices; and
- policy inconsistent with Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C 1701 et. seq.) and associated regulations.

The NTT Report also relies on studies which have been criticized for significant mischaracterization of previous research; substantial errors and omissions; lack of independent authorship and peer review; methodological bias; a lack of reproducibility; invalid assumptions and analysis; and inadequate data, leading to considerable flaws in the recommendations contained in the NTT Report (Maxwell 2013, hereafter Maxwell and attached herewith).

Other deficiencies present in the NTT Report and associated studies are the lack of independent authorship, methodological issues, and misleading use of citations. For example, three of the authors of

the NTT Report are also the authors, researchers, and editors of three of the most cited sources in the NTT Report. This reliance on a select and limited group of authors is highly questionable because it does not ensure objectivity or consider multiple scientific observations and conclusions, a critical component of the scientific analysis and peer-review process.

Other data quality issues range from failure to identify limiting factors, inadequate sampling, and use of inferior equipment. The significance of these deficiencies is described in detail in R.R. Ramey, *Review of Data Quality Issues in A Report on National Greater Sage-Grouse Conservation Measures Produced by the BLM Sage-Grouse National Technical Team (NTT), Dated December 21, 2011.* Unpublished Report, September 19, 2013, hereafter Ramey 2013.

All of the above mentioned issues call into question the validity of the NTT Report as a whole. Without sound science, and sound application of the science the NTT Report is effectively a species-centric advocacy document. Of particular concern is the "one-size-fits-all" application of the conservation measures which is not the best approach to sage-grouse conservation and may overlook important opportunities to protect and enhance sage-grouse habitat. As described below, particular attention and criticism needs to focus on scale, habitat characterization, disturbance thresholds, and lack of independent peer review.

a. Scale

The NTT Report proposes conservation measures and goals that are range-wide in scale, including 70% canopy cover, 3% disturbance cap, and 15-25% canopy cover in *all* sage-grouse habitats. Recommending a "one-size-fits-all approach" is not optimal – if not completely inappropriate and counter-productive at a range-wide scale, because the distribution of sage-grouse populations is vast, encompassing different ecological zones in which there are different kinds of risks to the sage-grouse and its habitat, which must be managed differently. Additionally, sage-grouse behavior indicates sagebrush cover preference differs between seasons, and thus using a single percent cover is inappropriate. As one peer reviewer of the NTT Report states:

> "…if this document is to be effective in defining conservation measures on a range-wide basis, it must take into account the considerable large-scale variation in plant community ecology present within the range of the sage-grouse. Otherwise we are faced with species-centric generalizations of the effects of ecological processes that may or may not represent the ecological reality" (NTT Peer Review Comments at 4).

The concern related to scale and "one-size-fits-all" management contained in the NTT Report was expressed in a letter dated May 16, 2013 to Secretary Jewell from the Western Association of Fish and Wildlife Agencies (WAFWA):

> "…Simply put, we believe it would represent a setback to sage-grouse conservation…Applying a "one-size-fits-all" approach focusing solely on the NTT report is not appropriate for management of the variations that occur across the sage-grouse range... Our concern is that using the NTT, in vacuum, would undermine sage-grouse conservation range-wide."

In an effort to help inform management and conservation strategies so that they are consistent within ecological regions rather than state boundaries, WAFWA delineated seven Management Zones (MZs) based on ecological and geographical similarities (*See* USGS Report at 10); however the NTT did not recommend use of MZs as an appropriate scale in the NTT Report. The reason why "one-

size-fits-all" management is inappropriate for sage-grouse is because of their broad ecological range, variations in population traits and characteristics across their range, and the variability in habitat conditions and threats within this range. These variations make managing sage-grouse a complex task that must consider site-specific conditions and variables. Simplifying sage-grouse management by creating range-wide habitat prescriptions or percent thresholds fails to target the specific sub-regional and population scale factors which are important because the various sagebrush biomes which support sage-grouse vary, and sage-grouse have varying seasonal habitat requirements within those biomes. For example dense cover and low-growing types of sagebrush might be preferred during nesting, but significantly less dense sagebrush cover and abundance in forbs and grasses might be preferred for late brood-rearing. Additionally, it is important to consider that sagebrush may not be as densely distributed in drier regions than wetter regions as a result of natural processes. The "one-size-fits-all" approach advanced in the NTT Report completely fails to recognize this variation and complexity which is a critical flaw (See the attached map to provide context for the large area that would be subject to the NTT Report).

b. Habitat Requirements/Thresholds

To achieve its primary objective the NTT sets forth sub-objectives in the NTT Report. Two of the four sub-objectives assert that a minimum range of 50 -70% of the acreage in sagebrush cover is required for long-term persistence of sage-grouse, and that discrete anthropogenic disturbances in priority habitat must be limited to less than 3% of the total sage-grouse habitat regardless of ownership (NTT Report at 6-7). These objectives are not supported by the literature. Limiting disturbance to less than 3% of the total habitat is arbitrary. The NTT fails in its Report to show how the "one-size-fits-all" goal of 50-70% sagebrush cover in priority habitat and the 3% disturbance cap are necessary, reasonable, achievable, would actually benefit sage-grouse, and not result in unintended adverse consequences to sage-grouse or other species.

Additionally, two of the most frequently used sources with respect to vegetative habitat requirements, provide that "adequate" vegetative cover for sage-grouse, ranges from 15% to 25% sagebrush cover, greater than 10% forbs, greater than 10% grass canopy, and even smaller percentages depending on the season or ecological location (Connelly et. al. 2000, and Hagen et. al. 2007). These studies do not include data that support the NTT's conclusion that 50-70% sagebrush canopy is required by sage-grouse range-wide or within all seasonal habitats in order to persist.

In addition, the 70% canopy cover goal disregards the importance of healthy understories required for sage-grouse to survive and rear broods, and fails to consider the fact that not all sagebrush habitats are suitable; without healthy understories a sagebrush dominated landscape may in fact be unsuitable to support sage-grouse. This is a significant omission that must be addressed in order for the conservation measures to be scientifically sound. As the NTT Report stands now, omitting discussion of understory health will result in unintended, adverse consequences to sage-grouse and the sagebrush ecosystem, including increased risk of fire (*See* Maxwell at 5-6).

In addition to the potential for increased fire resulting from inadequate management of understory vegetation, there is substantial scientific authority showing the importance of understory to sage-grouse. Grass height and cover are important for adequate nesting habitat. Early brood-rearing habitats are best when they contain abundant forbs and insects for foraging, with a 14% sagebrush canopy cover (Connelly et. al. 2000).

In a report published by the United States Geological Survey (USGS) at the request of the BLM, and in response to the WBP determination, USGS indicates that habitat fragmentation "generally begins to have significant effects on wildlife when suitable habitat becomes less than 30 to 50 percent of the landscape" (Manier et al 2013 at 26, hereafter USGS Report). The corollary is that non-suitable habitat, does not have a significant effect on wildlife until it reaches 50-70% of the landscape, which directly contradicts the NTT Report's 70% cover threshold.

The USGS Report further calls into question the sagebrush cover objective in the NTT Report with this statement:

> "The natural variation in vegetation, the dynamic nature of sagebrush habitats, and the variation in the habitats selected by sage-grouse across a landscape imply that characterizing habitats *using a single value or narrow range of values, for example, 15- to 25-percent sagebrush-canopy cover in breeding habitat [Citation omitted], is insufficient to describe sage-grouse habitat requirements.* The differing seasonal habitat requirements of sage-grouse dictate that multiple vegetation attributes, across the landscape and in particular sites, are important, reinforcing emphasis that combinations of shrub overstory and herbaceous understory, which are both important as habitat components during different seasons, are important in combination and across scales" (USGS Report at 24, internal citation omitted).

The 3% disturbance cap is not supported by the data either, and instead represents the authors' opinions in the cited studies. Outside review of the studies indicate that three of the sources cited in favor of a 3% disturbance cap (Johnson et al. 2011; Naugle et al. 2011a, b; and Walker et al. 2007), only represented partial review of the available literature while omitting important factors and other studies, and utilized weak and/or flawed study parameters (*See* Ramey 2013).

Interestingly, the scientific validity of the 70% cover goal and 3% disturbance threshold were called into question by Department of the Interior (DOI) employees during the preparation of the NTT Report, yet the team chose to recommend the arbitrary thresholds anyway (italics used for emphasis):

> "...Science says 30 – 50% in non-sagebrush cover is okay (see quote below [underlined]), but the NTT Report says 3% in anthropogenic features is the NTT recommended maximum... Am I missing something, is it worded poorly, *or is this a misapplication of professional judgment and science*…The report now makes this scientifically-based assertion: <u>Within priority habitat, a minimum range of 50-70% of the acreage in sagebrush cover is required for long-term sage-grouse persistence (Aldridge et al. 2008, Doherty et al. 2010, Wisdom et al. 2011</u>). That leaves an allowance of 30 - 50% in non-sage-brush cover. So how was the 3% maximum cap on surface anthropogenic features derived based on "professional judgment"? (see footnote) *3% is a long way from 30 – 50%?...*" (Email correspondence from Jim Perry to Raul Morales and Dwight Fielder, December 22, 2011. Information was obtained from a FOIA response by Department of the Interior, Bureau of Land Management, and Office of the Solicitor to a request by Idaho Governor Otter's office, hereafter FOIA Response).

Mr. Perry goes on to state through email correspondence "The NTT bullet points above [regarding 3% anthropogenic disturbance caps] need to be removed from the report as it conflicts with science" (FOIA Response, December 22, 2011).

The USGS Report further challenges the NTT Report's broad assertion that disturbance negatively impacts sage-grouse and sagebrush habitats in all instances, and instead acknowledges that:

> "[t]hough the presence and distribution of suitable sagebrush habitats is limited at landscape scales, precluding the need for disturbances to intact sagebrush communities …maintenance of healthy sagebrush communities includes some localized disturbance in many regions" (USGS Report at 79, internal citation omitted).

The NTT Report recommends several "one-size-fits-all" regulatory prescriptions (i.e. four mile buffers, 3% percent disturbance threshold, and Best Management Practices), and makes no allowance for recommendations to include local level sage-grouse conservation plans which are tailored to local conditions, including unique habitat and threats, and socio-economic conditions. Local conditions and local efforts are factors which should be considered when designing a conservation strategy to better ensure effectiveness. For example, requiring surface use restrictions in an area where fire and invasive species are the primary threats may not benefit sage-grouse as much as fire suppression and invasive species eradication mechanisms.

c. Failure to Incorporate or Recognize Current Regulatory and Conservation Measures

The lack of discussion related to current state and local level sage-grouse plans, and other conservation efforts that are protective in nature represents a departure from the notion that states are the experts in managing and regulating wildlife within their boundaries. An example of the NTT's failure to consider existing conservation and regulatory efforts is demonstrated by the omission of the State of Wyoming's EO 2008-2 in the NTT Report. The WBP determination recognized this EO for providing "substantial regulatory protection for sage-grouse in previously undeveloped areas on Wyoming State lands" (75 Fed. Reg. 13910 at 13974). These protections would also apply to energy development and permitting on all lands located within the State; however they were not mentioned anywhere in the NTT Report. One of the NTT's main conservation strategies is to prevent future energy development in priority habitat (NTT Report at 21). For this reason, the NTT's failure to consider current protections that are recognized in the WBP decision to "ameliorate threats" to sage-grouse (from new energy development) once fully implemented, is inappropriate.

Significant literature exists regarding the importance of voluntary conservation measures by private citizens and industries, and other voluntary incentive based programs with respect to the recovery of ESA species, yet the NTT seems ardent in continuing "command and control" management, which has largely failed, as evidenced by the few species that have been de-listed (*See*, Ramey 2013; USGS Report).

On the other hand, USFWS in its March 2013 report titled *Greater Sage-grouse (Centrocercus urophasianus) Conservation Objectives: Final Report* (hereafter COT Report)recommends that state conservation plans/strategies be deferred to when they are effective, and that proactive measures be taken by federal agencies to initiate voluntary incentive based programs (COT Report at 33-36)

The NTT Report provides no discussion of current regulatory mechanisms available to BLM including the considerable provisions contained in Manual 6840: *BLM's Special Status Species Management* and the unnecessary and undue degradation provisions under §302(b) of FLPMA and associated regulations.

The NTT Report fails to explain or analyze how existing conservation measures put in place pursuant to Manual 6840, FLPMA §302(b) are either adequate or inadequate to conserve sage-grouse, nor does it explain the need for an entirely new regulatory approach. If the inadequacies are a result of failure or uneven implementation of conservation measures, the NTT inappropriately discards an existing agency policy and on-the-ground efforts (assuming BLM followed its own policy) without ever justifying the changes advanced in the NTT Report. Further, if BLM failed to implement conservation efforts pursuant to Manual 6840 or other regulatory mechanisms, it could be considered "agency action unreasonably delayed," and BLM should be compelled to implement its own policy (*WWP v. Salazar*, "the Court found that the Craters EIS violated NEPA and FLPMA by failing to adequately address…BLM's own Special Status Species Policy…" at 2).

In addition, the NTT Report's conservation measures are inappropriate because both the USFWS and USGS have published new data and recommendations, which post-date and in some cases conflict with the recommendations in the NTT Report.

d. Legal Issues

The NTT Report is fraught with substantial legal and scientific flaws, which again, were recognized by DOI employees and discussed in internal emails questioning the legality of some of the conservation measures recommended in the NTT Report:

> "…But, does the NTT really want to recommend something that is blatantly illegal?"(FOIA Response, email correspondence from Dwight Fielder, December 21, 2011)

Peer Review of the NTT Report also recognized misrepresentation of sources:

> "This seems a strange blend of policy loosely backed by citations, with no analysis of the science." (NTT Peer Review Comments at 2)

Regrettably, DOI decision-makers did not heed warnings like this from DOI staff and peer reviewers and proceeded with publishing the NTT Report knowing that there were significant internal concerns about the report.

The NTT Report creates policies that assume that sage-grouse conservation is the highest and best use of the land (*See* NTT Report at 6-7), while subordinating other interests, without adequate analysis of the economic impacts these policies will have on communities, small businesses, and industry, and ultimately creates a species-centric policy on BLM lands, which is contrary to the multiple use and sustained yield provisions under FLPMA (43 U.S.C. §1712(c)). DOI employees who were involved with developing the NTT Report recognized some of these flaws in internal emails between them:

> "…Overall, the NTT Report conservation measures (planning prescriptions) are complete game-changers for any actions within the Priority Habitats where there are valid existing rights and showstoppers for those actions where there are no valid existing rights…" (FOIA Response, email correspondence from Jim Perry, December 20, 2011).

1. FLPMA

In enacting FLPMA in 1976, Congress directed the Secretary of the Interior to consider a broad range of resource issues, land characteristics, and public needs and values in determining how public lands should be managed. FLPMA directs BLM to manage public lands for multiple uses and to consider a wide range of resource values including the need to protect wildlife and quality of the environment. Section 102(a)(8) requires BLM to manage the public lands in a "manner that will protect the *quality* of scientific, scenic, historical, ecological, environmental…values" (U.S.C. 1701(a)(8), emphasis added), while Section 102(a)(7) establishes multiple use and sustained yield land management directives and requires the Secretary to develop "… goals and objectives [that are] established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law" (U.S.C. 1701(a)(7)). In defining the term "multiple use" FLPMA Section 103(c) directs the Secretary to ensure:

> "…the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources…to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values." (43 U.S.C § 1702(c)).

Therefore, under the multiple use and sustained yield requirements, BLM must strike an appropriate balance between potentially competing interests while considering the needs for *all* species, and land management objectives. This balance is to be achieved in the Section 102 land use planning process and the resulting RMPs. FLPMA does not authorize the subordination of any of these uses in preference for a single land use such as sage-grouse habitat conservation. Thus applying an emphasis on one resource, sage-grouse, across 47 million acres of sage-grouse habitat is not consistent with FLPMA; BLM must consider how the sage-grouse centric management contained in the NTT Report is appropriate in the context of other special status species, especially the habitat prescriptions and, fire and invasive species management.

IM 2012 –044, the implementing mechanism for the NTT Report, asserts that:

> "When considering the conservation measures in (the NTT Report) 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" (emphasis added).

The "one-size fits-all" habitat prescriptions is not consistent with FLPMA's specific directive pertaining to protecting *quality* of environmental and ecological values described above because it assumes what is good for northeastern Montana is good for western Nevada, despite their ecological differences.

1. NEPA

The principle of informed decision-making is the primary purpose of NEPA, and is intended to be used as a tool during the planning and decision-making process. As such, an EIS should not be used to justify decisions that have already been made and "*[a]gencies shall not commit resources prejudicing selection of alternatives before making a final decision*" (40 C.F.R. §§1502.2(f), emphasis added). Nevertheless, BLM has already decided to incorporate the NTT conservation measures into 79 of its RMPs prior to issuance of the Final EIS documents (*See WWP v. Salazar*, *Roberson Decl.*). BLM's failure to include consideration and detailed analysis of conservation measures other than those in the NTT Report represents a pre-determined decision by BLM to implement the NTT conservation measures without giving proper and detailed analysis to alternative conservation measures or policy including the specific directives contained in Manual 6840, which seems odd in light of the decision made in *WWP v. Salazar* where the Court found that BLM violated NEPA and FLPMA by disregarding existing BLM policy.

IV. Conclusion

The technical and policy flaws contained in the NTT Report are considerable and must be addressed before it is fully implemented as the "one-size-fits-all" approach will produce misguided land management policies that will not benefit sage-grouse range-wide. Such policies will not provide the best approach to sage-grouse habitat conservation and enhancement because sage-grouse conservation measures must be custom-tailored to reflect site-specific conditions. In some situations – especially in the case of the invasive species, fuel and fire-management, the NTT Report does not adequately address the primary threat to sage-grouse habitat in the western part of the range (e.g., the invasive species – wildfire cycle), which is currently an under-managed problem on public lands. The failure to address this problem in the NTT Report could result in ecologically devastating consequences, while broad application could conflict with FLPMA and other laws.

Attachments:

NTT Peer Review Comments

Maxwell, M. *BLM's NTT Report: Is It the Best Available Science or a Tool to Support a Pre-Determined Outcome?*, Northwest Mining Association (2013).

BLM Planning Units and Sage-Grouse Occurrence Map

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U.S. Fish and Wildlife Service, *Greater Sage-grouse (Centrocercus urophasianus) Conservation Objectives: Final Report.* U.S. Fish and Wildlife Service, Denver, CO. February 2013; available at http://www.fws.gov/mountain-prairie/species/birds/sagegrouse/COT/COT-Report-with-Dear-Interested-Reader-Letter.pdf