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Testimony on *"Effects of the President's FY-2012 Budget and Legislative Proposals for the Bureau of Land Management and the U.S. Forest Service Energy and Minerals on Private Sector Job Creation, Domestic Energy and Minerals Production and Deficit Reduction."*

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Mr. Chairman:

Thank you the opportunity to testify before the House Natural Resources Committee, Subcommittee on Energy and Mineral Resources. My name is Whit Fosburgh, and I am the president and CEO of the Theodore Roosevelt Conservation Partnership, a national nonprofit conservation organization (501-3c) that is dedicated to guaranteeing every American places to hunt or fish. As a lifetime hunter and angler and a long-time professional in the conservation field with experience at numerous levels of government and non-governmental organizations, I am honored to provide comments on the important issue of energy development and its potential impacts on fish, wildlife and sportsmen. The quality of life in this nation, one enjoyed by sportsmen and non-sportsmen alike, depends on a sound economy fueled in part by responsible energy production that is balanced with the needs of fish, wildlife, habitat and water.

First and foremost, the TRCP and the sportsmen's community in general support responsible energy development. We understand and appreciate the need for exploration and production of our domestic energy resources but maintain it must be done responsibly and in a way that conserves and sustains other values with those of energy production. We advocate true multiple use and sustained yield of public-lands resources, including energy production, while maintaining a fish and wildlife conservation legacy for this and future generations.

Policy changes during the last two years are positively affecting the management of public-lands energy resources and beginning to return balance to a dynamic that previously held energy as the primary value of millions of acres of our Western landscapes. Energy leasing reform announced by Secretary Salazar is a very positive step toward resolving this bias. Federal budgets for fish and wildlife programs, however, have been neglected and are inadequate. Further budget cuts would cause irreparable harm. The model for public-lands energy development is broken, and we wish to provide recommendations for fixing it based on our extensive experience working on Western energy and fish and wildlife issues.

Our energy policy must acknowledge that two-thirds of the nation's land is privately owned land and that significant access and permitting on Western public lands for energy development already has occurred there. We do not support energy policies that eliminate protections for fish and wildlife resources, reduce or eliminate public involvement in public-lands energy development, or prioritize

energy development over valuable fish and wildlife uses and values. We believe that evaluation to potential impacts from energy development should be done before leasing occurs and that the public, the owners of federal mineral interests, should have more opportunity to provide needed input on how their public lands are affected by energy development. The leasing reforms implemented by Secretary Salazar are a needed step in the right direction and will allow for a better application of multiple-use on public lands. This also applies to the Master Lease Planning part of the lease reforms which will map out where and how energy will be developed in those areas that have not already been significantly affected. We also believe that clear air, clean water, and a healthy environment are essential to our well being as a country and no shortcuts, loopholes, or other actions should diminish proper environmental reviews or limit the federal government from protecting these essential resources. Administrative actions that addressed these problems have our support as well. Overall, we believe more can be done at the planning or leasing stages for protection of fish, wildlife, water and recreation that will allow for less conflict, better multiple-use, and more certainty for the development of our public land energy resources. Finally we believe that fish and wildlife agencies need an adequate budget to manage fish and wildlife resources and that draconian cuts are not acceptable, nor is diverting funding intended for fish and wildlife programs to other uses. Having given an overview of our position l will discuss some of these issues in detail.

The TRCP is addressing problems with development of oil and gas resources on public lands in the Rocky Mountains and elsewhere. Since 1995, the conservation and sporting community has been working with officials from USDI, USDA and CEQ to address inadequate energy policies and practices. In 2001, we began discussions with former DOI Secretary Gale Norton and other officials to fix the problems in places like Wyoming and New Mexico, where development was accelerating. The rapid pace and narrow approach of development was preventing the BLM from sustainably managing wildlife and fish resources. We were especially concerned with the severe impacts on mule deer, pronghorn, elk, sage grouse, trout and other desirable fish species and the recreational opportunities they provide for tens of thousands of sportsmen every year on public lands.

During the energy boom that began in the late 1990s, energy development practices and policies on public lands drastically changed. In the face of pressure to gain access and permitting to meet industry demands, fish and wildlife were determined by federal officials to be an impediment to development rather than a valuable resource to be managed in tandem with development. This approach is borne out by congressional testimony by industry, policies guiding BLM management of lands with energy potential, public statements by industry associations and the previous administration, and the authorization and development of major energy projects, such as Wyoming's Pinedale Anticline, Atlantic Rim and Jonah natural gas fields and coal-bed natural gas fields in New Mexico and Wyoming.

The 2005 Energy Policy Act further prioritized energy development over other resources and concerns through actions like the Halliburton loopholes for the Clean Water Act and Safe Drinking Water Act, the establishment of pilot offices in seven BLM offices for the purpose of expediting permits for drilling, and the establishment of "statement of adverse impacts to energy development" for actions that were perceived to delay or deny immediate approval. All led to BLM policies that fostered a "minerals trump

everything else" direction given by BLM directors to employees. This paradigm shift within the BLM led to practices that detracted from the agency's ability to manage other resources like fish and wildlife, including redirecting appropriated funding intended for fish and wildlife management to energy planning and permitting, instructing biologists and other specialists to prioritize energy above their fundamental tasks of managing fish and wildlife habitats, and reinterpreting or rewriting long-standing policies of the multiple-use, sustained-yield mandate from FLMPA and MUSYA. In a very short time, the culture of the BLM changed. Minerals development, sportsmen, the public, and fish and wildlife played second fiddle to energy development.

As previously mentioned, the TRCP and sportsmen support responsible energy development but will not sit idly by while public resources are ignored to meet the financial needs of energy companies. Public lands are held in trust for the American people and must be managed to meet the multiple needs of the citizenry – today and in the future. This includes the mineral wealth located on public lands and held in split-estate situations. Public polling consistently finds that Americans, particularly sportsmen, want development and fish and wildlife on public lands. In fact, polls show that public-lands users want the federal government to do more to protect fish and wildlife during energy development. Polling results have been consistent regardless of energy prices and the fiscal recession our country has experienced.

In 2007, the TRCP commissioned a poll of public-lands users. Results of the poll included the following:

- 85 percent wanted more protection for fish and wildlife during energy development;
- 79 percent opposed unlimited energy development;
- 90 percent wanted energy development to be adjusted to protect fish and wildlife;
- 89 percent wanted energy planning to encompass sustaining fish and wildlife resources;
- 94 percent wanted plans to be clearer for lay people and allow for better public participation;
- 91 percent supported revenues derived from energy development to be used to benefit or mitigate fish and wildlife.

Polls executed after the recession and high gasoline prices in 2008 showed similar results. A poll commissioned by Trout Unlimited and Sportsmen for Responsible Energy Development showed that 75 percent of respondents wanted more protections for fish and wildlife on public lands during energy development and 85 percent opposed limiting or eliminating the ability for the public to be involved during energy development planning and permitting. A poll done this year done by Public Opinion Strategies and FM3 (a Republican and a Democratic polling company) showed that 77 percent of respondents wanted stronger laws and enforcement for fish and wildlife protection rather than lessening restrictions (this is up from 74 percent in 2009). Clearly the American public and public-lands users and sportsmen want more to be done for fish and wildlife, even after experiencing some serious pain at the gas pump and through the hardest financial times since the Great Depression.

Because of this and the fact that policies and process used to lease and develop public energy resources did not adequately take into account fish and wildlife resources, the TRCP and sportsmen began to take action. Unlike other activities on public lands, public minerals leasing historically included little opportunity for public involvement. Lease parcels were secretly nominated by industry six to nine

months ahead of a sale, and 45 days before sale they were made available for public review. Interested or affected citizens then had 30 days to find the information on a BLM website, print sale notice, review, interpret, and decide whether to express concerns about these irretrievable commitments being made on our public lands. If concerns were great enough, the public was forced to formally protest to the BLM 15 days before the sale date. Some of these sales included hundreds of thousands of acres across numerous states.

Problems plague the management of our federal mineral estate, as evidenced by the disaster in the Gulf of Mexico last summer and facts brought to light by the investigation into the former MMS. Onshore, the BLM has experienced similar problems. In 2005, the Government Accountability Office released a report, "Oil and Gas Development: Increased Permitting Activity Has Lessened BLM's Ability to Meet Its Environmental Protection Responsibilities." The report highlighted the fact that the dramatic increase (255 percent) in permitting and approvals for oil and gas activities from 1999-2004 in six BLM field offices had caused the agency to ignore or neglect its responsibility to inspect and enforce environmental protections or ensure environmental impacts were properly mitigated. This shift in priorities basically created single-use focus for energy development at the expense of multiple use, including fish and wildlife management. This exclusionary approach created unmanageable workloads, fostered industry expectations that their interests were above all others, and gave BLM the excuse to move monies intended for fish and wildlife management to energy programs. It created bureaucrats whose only job was to process and approve permits in timeframes that made adequate review impossible. BLM biologists and other resource specialists who were supposed to be managing habitats, range resources and other valuable natural resources became office fixtures dealing with mountains of paperwork related to drilling permits. Because of promises made at higher levels and a focus on maximizing access and permitting at industry's request, the BLM had its ability to manage public lands outstripped by the demand for more permits. This led to programs like fish and wildlife management being ignored or neglected even where world-class wildlife resources were at stake. This cultural shift still is evident, although recent market downturns and recession along with new policies from the current DOI have allowed for some catching up. Thousands of permits are still approved by BLM each year, however. In FY2010, the BLM approved 4,090 wells, while only 1,480 were spudded. (Greenwire recently reported 7,200 approved APDs were available to industry as of early 2011.) Additionally, of the over 41 million acres of public lands leased by industry, development is occurring only on 12.2 million acres. A GAO report from 2008 showed that in a 20-year period from 1987 to 2007, only 6 percent of onshore leases had any development activity, and only 5 percent of the leases ever produced oil and gas. This same report reported that DOI was not doing enough to encourage diligent development, and companies allow many leases to expire (after 10 years) without attempting to develop oil or gas resources. The report concluded that changes were needed to ensure development proceeded in a timely fashion and that the American public's resources were being developed as promised.

Industry already has significant access to public lands with high and moderate potential to produce oil and gas. In fact there are less than half of all the leases in effect producing oil and gas with 22,676 leases producing oil or gas out of50,544 leases in effect, meaning only 45% of the valid leases producing energy. Public lands are a big contributor to our nation's energy demand with 114,367,122 barrels oil

and 2,825,507,717 MCF gas produced in FY 2010. This is even with the practice of companies shutting in wells that could be producing oil and gas while waiting for prices to rise to make a better profit. These numbers prove that public lands are a big contributor to our domestic energy supply even though industry has not developed 55% of the leases they currently hold. The energy lease reforms implemented by DOI will have no affect on these existing leases and should provide more certainty for industry and fish and wildlife for new leases.

The business strategy used by industry is competitive in nature and based on market forces that do not accurately reflect the access and availability that industry has to public lands. In fact, more acres are leased on high-potential producing areas than can be drilled in near future, and a limiting factor has been rig availability and investment strategies by the companies. The fact is the policies used to develop our energy resources on public lands were developed in different times and did not account for some of the concerns of today. The last significant revision of the Mineral Leasing Act was in 1987 (FOOGLRA), and much has changed since then. Also, the model used by business worked when energy resources were relatively easy to access and produce, but it does not work where significant conflict exists with other values, such as fish and wildlife resources.

Probably one of the best examples of the need for better policy and coordination concerns mule deer management. Mule deer are a Western deer species related to white-tailed deer but with very different requirements. They respond to human-caused disturbance much differently. Where white-tailed deer are generalists and highly adaptable, mule deer mostly inhabit larger Western landscapes and often rely in different seasonal habitats that allow for annual migrations from summer to winter range. Mule deer experts agree that one of the limiting factors for mule deer is available winter habitat. These winter habitats often are deemed “crucial” for survival by state game and fish agencies and have been afforded protection from disturbance for more than 40 years in many states. Energy leases that are within winter range often restrict development seasonally, restrictions not specific to energy development, as most winter ranges are closed to vehicle traffic and human activity to protect deer from unnecessary stress.

A recent evaluation and report of how mule deer have been addressed in federal land use planning and major energy projects of the greater Green River Basin of southwestern Wyoming, northwestern Colorado and northeastern Utah showed that of the 10.2 million acres of mule deer crucial winter range on BLM and FS lands, 2.4 million acres already have been leased for development. More than 15,000 wells have been drilled in this winter habitat, mostly outside of the critical winter season. But how long these protective measures will continue to be applied to mule deer crucial winter range is unknown. Recent statements from industry indicate that these measures intended to protect deer and other wildlife are perceived as unnecessary and impediments to development. Requests for relief from these stipulations have increased in recent years. In Wyoming, where the bulk of requests for an exception, modification or waiver to wildlife protective restrictions were processed, 83 percent of requests were approved in an 18-month period in 2007-2008. Fewer requests were made in Colorado and Utah, but they were approved at a rate of 95-100 percent in the same time period. These protective stipulations were not intended to be enforced and granted as standard practice. State game and fish agencies and

BLM offices indicate that requests for relief are becoming harder to reject and pressure is mounting for major modifications or elimination of winter protection policy for big game and sage grouse.

At the Pinedale Anticline in western Wyoming, the BLM has granted thousands of wells to be drilled during the winter season, and the results on the deer herd have been staggering. As of the latest monitoring report in 2010, the wintering population of the segment of the deer herd that winters within the project area has dropped by 60 percent from levels that were documented before development began (approximately 6,000 deer used to winter on the mesa before development, now approximately 2,000 deer do so). This reduction is well documented and has occurred with less that 3 percent of the surface (habitat) being disturbed and under 1,000 wells. Additionally, most of this development occurred with only limited winter drilling, but the BLM ignored the science and data available and authorized, in 2008, unlimited winter drilling and more than 4,000 additional wells. This pressure, along with proposed development on important migratory and fawning habitats, could further reduce this renowned mule deer herd. The BLM promised to use adaptive management on this project, but recent official responses by BLM managers indicated they are opting not to adjust development operations, even though evidence of unacceptable impacts is well documented. This is probably the most egregious example of how wildlife has been pushed aside for the sake of energy development and a result of past policies and existing culture within the BLM. Furthermore, the "Pinedale model" is showing up in proposals in other important habitat such as Colorado's Piceance Basin.

One should not discuss problems with past public-lands energy development policy and management without mentioning sage grouse. Sage grouse are sagebrush obligates that require large tracts of quality sagebrush habitats to persist. Science and experience have shown that sage grouse do not do well in areas developed for energy. In Wyoming's Powder River Basin, research has shown that more than 80 percent of leks (breeding grounds) were significantly impacted by development. In addition, the standard practice of quarter-mile buffers has been proven to be ineffective at maintaining local leks.

States like Wyoming recognized the need to do something different, and through the leadership of former Governor Dave Freudenthal, Wyoming instituted a strategy to preserve sage grouse "core" areas to balance development with wildlife. This effort has received much attention and has the potential to protect important sage grouse habitats and populations. It is being replicated by other states. Even though the BLM was part of Wyoming's core strategy, it was slow to agree to coordinate on federal public lands (the Wyoming strategy and executive order signed by the governor only applied to state lands), and to date no similar policy is in place for conservation of core habitats on BLM lands. Also with significant amounts of core sage grouse habitats already leased for development, how effective these efforts will be for sage grouse conservation if they apply only to future leasing is unclear. In Wyoming, where more than 50 percent of the remaining sage grouse populations reside and the best habitat remains, 14 million acres of sage grouse habitat (47 percent) and 6.2 million acres of designated core sage grouse habitat (40 percent) already were leased as of 2008. In fact, the Wyoming BLM continued to lease areas within core habitats while the core conservation strategy was being developed – while they served on the sage grouse implementation team. In one area of southern Wyoming called the Atlantic Rim, the BLM authorized development of a coal-bed methane project of more than 300,000 acres that

included some of the region's best sage grouse habitat and more than 80 active sage grouse leks with the acknowledgement that sage grouse would be significantly impacted or eliminated. (This took place during the FWS review of Endangered Species Act listing petitions, which I will mention next).

In 2010, the FWS determined that sage grouse were "warranted but precluded" for listing under the ESA as a threatened species. This means that enough evidence exists to list the species, but because of federal resources or higher-priority species, the service will not move forward with listing at this time. Now a candidate species, sage grouse are one step closer to listing (and thereby complicating energy development activities) and will be evaluated annually to determine whether their status will be changed. In its review, the FWS identified energy development as a real threat to habitat and noted that the BLM did not have "adequate regulatory mechanisms" to prevent a listing. The FWS has basically identified what the BLM must do to prevent a listing, and adjusting how it manages energy development is at the top of the list. Worth noting is that the TRCP and sportsmen do not want an ESA listing and have initiated many actions to prevent a listing from occurring, as it would undoubtedly affect hunters first because most states would immediately stop hunting these game birds. In 2008, TRCP along with some our conservation partners asked the DOI to undertake an evaluation of the current management actions being done by BLM during energy development and make adjustments for the benefit of the sage grouse. This was done outside of the ESA process and through a rule making request, which would have given DOI great flexibility to accommodate the needed changes based on the science while coordinating with the energy industry and other affected stakeholders. Unfortunately, DOI ignored our request and now sage grouse futures lie in the more restrictive ESA process.

The problems with mule deer and sage grouse are important to this testimony because they offer examples of how BLM policy for energy development has affected fish and wildlife resources and therefore sportsmen. Significant new information and science are available regarding these two species to better balance wildlife with energy development during project planning, but unfortunately this science has not been embraced by the BLM and often is ignored or discounted because energy development is prioritized. Instances exist of adjacent BLM offices not treating the same science the same way and, more than once, not even recognizing that new information was available during its analysis. Ironically, much of the recent research on mule deer and sage grouse has been funded in part by the BLM, and the BLM participates in numerous technical working groups for these two species. In the most extreme case, long-term research projects on the Pinedale Anticline that began in the late 1990s were abandoned in 2008 for less-rigorous "monitoring," and BLM stated that there "is not enough information" to do things differently. Having been extensively involved in this project, the TRCP was only able to conclude that the BLM and industry did not like the results of the research; therefore, they ensured it did not continue. Even more perplexing is that BLM managers now state that this information cannot be used in future attempts to address the impacts to grouse and deer. This is not how science should be used in management or how we should be managing public lands and resources.

The development of National Environmental Policy Act documents to deal with proposals from industry has become a primary function of many BLM offices that manage energy development. Much time and effort are spent over many years to accommodate industry's desire to develop their leases, detracting

from other functions of BLM employees. Given the "energy first" culture that exists in many offices, the goal is to build a defendable NEPA document and subsequent decision, after which the BLM moves on to the next document. The BLM also has allowed commitments made in the decision documents to go unmonitored and are all too eager to modify decisions or complete new NEPA documents at industry's request. Land use plans are altered, ignored or reinterpreted to meet the demands of lease holders, and employees find themselves constantly attending planning meetings, processing permits or writing NEPA documents. All of this activity benefits energy development and takes away from other important duties like managing fish and wildlife habitats.

BLM policies also significantly affect state wildlife agencies' workloads and duties. These agencies have the legal authority for management of fish and wildlife within their borders, with the exception of species listed under ESA and migratory birds. Western states have very little property of their own and have to rely on public lands, FS or BLM, to provide habitat to meet state-set population objectives. Coordination between state and federal agencies is essential for proper management, and often states serve as cooperating agencies during federal energy development activities and planning. The recent boom in development activities has overwhelmed state agencies, and they are struggling to keep up with the workload. State employees are tied up in endless meetings, embroiled in controversial decisions regarding development in sensitive wildlife habitats and neglect duties enable proper management of species for the public's benefit. States also are being pressured to support development in winter range and other important habitats. Because of the non-regulatory relationship the states have with federal agencies, recommendations for addressing impacts to fish and wildlife do not have to be followed, and therefore increased impacts are experienced during development. State agencies feel the impact of political or economic pressures from their governors and can be made to feel helpless when deals are struck at high levels within states. Additional resources to deal with the increased workload have been slow in coming, and recent budgets in many states leave even less resources for the future.

Federal agencies are not immune to resource shortages. The BLM has increased its energy program budgets as it increased the priority for energy development without commensurate increases in fish and wildlife program budgets. A slight increase was implemented in order to process more permits more quickly, mainly through the pilot energy offices, but no increase was requested to deal with mitigation of impacts from energy development or maintain functional fish and wildlife programs within offices where energy development boomed. The result has been neglect of long-standing fish and wildlife programs, high turnover of employees because of the nature of the energy workload, and a loss of important habitat management plan implementation at local levels. Future requests will be much harder to achieve, and any cuts to existing fish and wildlife programs will be much more pronounced. Add on the fact that renewable energy development will increase energy workloads further and many experienced fish and wildlife biologists are retiring rather than change jobs to administrative roles, the future is not bright.

Until now I have discussed problems with previous policies and budgets, but now I want to focus on some of the benefits of responsible fish and wildlife management of our public lands. The American system of public lands is unique, found nowhere else in the world. A fundamental American value, it was

left to us by our predecessors and held in trust for future generations. FY 2010 saw more than 58 million visitors to BLM lands with a resulting benefit of $7.4 billion dollars to the economy. Most of these visits were to enjoy scenery, hunt, fish, camp, watch wildlife or have other great outdoor experiences. Americans and people from all over the world come year after year to experience our public lands, and they bring the economic benefits with them. This sustainable economic engine is dependent on healthy environments, clean air, clean water and abundant fish and wildlife. In 2010 in Wyoming, Colorado and Utah, more than 2.2 million hunters and anglers bought licenses, providing license revenues of more than $1.2 billion dollars back to those states. This figure does not include the federal match generated through the Pittman-Robertson and Dingell-Johnson acts or revenue from expenditures on food, hotels, equipment, or other purchases made by these hunters and anglers. Nationwide it is estimated that 1.2 million jobs are provided annually by the outdoor industry, many hunting and fishing related. These jobs and economic benefits are sustainable, provide growth in hard times, and allow people to reconnect with nature. Federal policies and budgets significantly affect our ability to continue these benefits.

Some places in this country are valuable or special and should not be developed. These “special places” have values that could not be replaced or mitigated if development took place. Places like the Rocky Mountain Front in Montana, Valle Vidal in New Mexico and Wyoming Range in Wyoming provide unique experiences for hunters and anglers and critical habitats for fish and wildlife. In the past decade, these areas have been threatened through lease nominations and sales and other development proposals. Previous policy prevented the BLM from identifying all but congressionally designated lands or previous administrative withdrawn areas during land use planning development. Local campaigns or legislation have been required to deal with threats to these areas, many of which have very little energy development potential or would be very difficult to develop because of their landscapes. We promote the identification and protection of these places to balance fish and wildlife values with areas that have been and will be developed for energy development. Not all lands are suitable for development; nor is development compatible with other uses in all areas.

We also promote responsible development when energy development takes place. Acknowledging that some places will be developed more than others and some may become industrial zones, most lands can be developed while concerns about fish, wildlife and recreation are addressed. As stated previously, sportsmen want to see energy development balanced with fish and wildlife resources. The TRCP and our conservation-sportsmen partner organizations have developed a set of recommendations, revised in 2011, that can help achieve balance during energy development. The “FACTS for Fish and Wildlife” comprise 25 specific recommendations in five targeted areas – Funding, Accountability, Coordination, Transparency and Science. The FACTS recommendations accompany this testimony. If the FACTS are employed, conflicts with sportsmen-conservation groups can be reduced, and we can expand development of our domestic energy resources.

Finally, I delivery this testimony to ensure a bright future for fish and wildlife, voice concerns about past policies and budget allocations, and express interest in working with Congress to address these important issues as we determine future energy policy. Sportsmen want some certainty that Western fish and wildlife resources can be sustained at levels that provide quality hunting and fishing

opportunities – ones of which we can be proud. We want a system of public lands that provides energy AND fish and wildlife, not one that provides energy OR fish and wildlife. We believe recent policy changes by the Obama administration take a positive step toward that goal, but we still have concerns about successful implementation and benefits on the ground. We also are concerned that future cuts to fish and wildlife budgets in our federal natural resources agencies could have drastic consequences for hunting and fishing, along with other important uses of our public lands.
