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U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

March 7, 2013

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The Honorable Ken Salazar
Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

The Honorable Daniel M. Ashe
Director
U.S. Fish & Wildlife Service
1849 C Street, N.W.
Washington, D.C. 20240

Dear Secretary Salazar and Director Ashe:

In 2011 the Administration and environmental groups entered into a litigation settlement that set a deadline to make a listing decision on the sage-grouse under the Endangered Species Act (“ESA”) by 2015. Since that time, the Department of the Interior (“Department”) and its agencies have been actively moving forward with conservation efforts for the sage-grouse. This potential listing of the sage-grouse could restrict grazing, farming, mining and energy production on as much as 160 million acres throughout eleven Western states. There continues to be concerns that the Department’s work on this listing is being driven by deadlines negotiated by litigious groups and not based on sound science or current data.

First, as referenced in the September 21, 2012 letter to the Department from 11 members of Congress, there are significant concerns about the Bureau of Land Management’s (“BLM”) actions surrounding BLM Instruction Memoranda Nos. 2012-043 and 2012-044 and the implementation and planned enforcement of the National Technical Team Report, A Report on National Greater Sage-Grouse Conservation Measures, (“NTT Report”). That letter highlighted some of the apprehensions expressed by state agencies about the handling of this NTT Report, and the Department’s intentions surrounding the development, implementation, projected enforcement of the NTT Report, and associated activities with the Report’s use by U.S. Forest Service (“USFS”), the U.S. Fish and Wildlife Service (“Service”), the National Resources

Conservation Service (“NRCS”), and the U.S. Geological Service (“USGS”) relating to sage-grouse.

In addition to concerns expressed by the states, over the past two months, significant critical comments raised by several scientific reviewers of the NTT Report have come to my attention. These comments are deeply troubling, particularly as the Department appears to be relying heavily on the NTT Report in BLM’s and USFS’s National Environmental Policy Act (“NEPA”) process for sage-grouse conservation in multiple sub-regional areas.

For example, one scientific reviewer observed that the report “suffers from a one-size fits all approach that lacks context.” Another observed that it “seems a strange blend of policy loosely backed by citations, with no analysis of the science,” and that requirements called for in the NTT Report appear not to have any “rational scientific basis.” Another reviewer wrote regarding proposed conservation/habitat that the “[I]ack of consideration of space, and particularly . . . time is a critical mistake that to me renders this document problematic, if not dangerous.” The seriousness of these and multiple other questions about the NTT Report will require more detailed answers than have been provided to the Committee to this point.

Second, the Administration’s 2011 ESA multi-species-settlement, negotiated behind closed doors, essentially handed over prioritization of endangered species listings to special interest groups, and as a result, the Department, BLM, the USFS and the Service have set in motion an unprecedented number of decisions between now and 2015. This includes a multi-state sub-regional sage-grouse Environmental Impact Statement (“EIS”) in June 2013, and a September 2013 deadline for final listing decision relating to a “bi-state distinct population segment” of greater sage-grouse in Nevada and California. Several other sub-regional EISs are also apparently underway.

There are as many as 98 separate planning strategies under consideration in 68 various areas in several states, and the Service has set dozens of self-imposed deadlines to publish and finalize proposed planning strategies. It is concerning that this significant project, which describes as its strategic vision to *preclude* the need to list sage-grouse, has instead become the latest example of the Department’s agenda being driven by litigation, closed-door settlements and court deadlines, rather than guided by sound science and the best available data and information.

A thorough response on behalf of the Department of the Interior is important for the Committee to carry out its oversight responsibilities. Through this letter, I request the Department’s cooperation in providing the following information and documents no later than March 22, 2013.

1. How much money has the Department spent through December 2012 on the Sage-grouse Conservation Measures? In your response, please provide a breakout of the total

expenditures, by sub- agency, office, or other unit of the department, for FY 2009, FY 2010, 2011, 2012 and 2013.

2. How many full time equivalent employees are assigned to these projects? In your response, please provide a breakout of the FTEs by sub-agency, office or other unit of the department.
3. Does the NTT report adequately and accurately reflect the scientific findings in each of the various regions where a regional management plan is being considered?
4. In January 2005, the FWS announced that sage-grouse did not warrant listing under the ESA based upon best available science. (see: <http://www.fws.gov/mountain-prairie/species/birds/sagegrouse/archives/PressRelease01072005.mht>). Please describe in detail what additional or differing data and science the Department and/or any of its sub-agencies or offices utilized to support the March 2010 finding that greater sage-grouse warrants listing. (see: <http://www.fws.gov/mountain-prairie/species/birds/sagegrouse/PressReleaseDOI03052010.pdf>).
5. Please provide a list of all authorizations or permitted activities that have been submitted or proposed to BLM for approval, but have not yet been approved, from FY 2009 to FY 2013, including the dates of submittal, a description of the authorization, location, and the reason for any failure to approve or delay whether or not related to the sage-grouse planning process.
6. Please provide the dates and locations of all upcoming public meetings that BLM has scheduled in 2013 and 2014 relating to sage-grouse EIS drafts or final documents, and all public and internal deadlines requiring decisions by BLM, the U.S. Fish and Wildlife Service, the Forest Service, or other bureaus of the Department relating to sage-grouse in 2013 and 2014.

Please provide the following documentation by March 22, 2013:

7. All documents, including internal memoranda, related to the implementation and enforcement of Instruction Memoranda Nos. 2012-043 and 2012-044.
8. All documents, including internal memoranda and any letters sent to state agencies or state officials or employees, or any non-governmental organizations related to any state program being exempt from compliance with Instruction Memoranda Nos. 2012-043 and 2012-044.
9. All drafts of Instruction Memoranda Nos. 2012-043 and 2012-044, including any drafts sent for review to the Office of the Solicitor, any state agencies, or any non-governmental organizations.
10. All documents, including internal memoranda and drafts, related to the creation, implementation, enforcement and/or rescinding, of Nevada State BLM Instruction

Memoranda 2012-056, 2012-057, and 2012-058.

11. All documents, including internal memoranda related to the establishment and the authority to establish the National Technical Team.
12. All documents, including internal memoranda and letters recommending appointment, related to the selection and appointment of National Technical Team members.
13. All documents, including internal memoranda, drafts, and peer reviewer comments related to the implementation and enforcement of the National Technical Team Report.
14. All documents, including internal memoranda, related to BLM's decision to develop six alternatives included in the Sub-Regional Sage-grouse Environmental Impact Statement.
15. All documents, including internal memoranda, related to analyses of socio-economic impacts relating to the sage-grouse.

An attachment to this letter provides additional information about responding to the Committee's request, including definitions and instructions for compliance. A complete written response to all items should be received no later than March 22, 2013. Please contact Machalagh Carr, Counsel, Office of Oversight and Investigations, with any questions regarding this request, or to make arrangements for the production.

Sincerely,



Doc Hastings
Chairman

Responding to Committee Document Requests

A. Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, recorded notes, letters, notices, confirmations, receipts, checks, envelopes, presentations, pamphlets, brochures, interoffice and intra office communications, electronic mails (e-mails), notations of any type of conversation, telephone call, voice mail, phone mail, meeting or other communication, diaries, analyses, summaries, messages, correspondence, circulars, opinions, work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and electronic, mechanical, and electric records or representations of any kind, and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, discussions, releases, personal delivery, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this document request. The singular includes the plural. The masculine includes the feminine.
4. As used herein, “referring” or “relating” means and includes “constituting,” “pertaining,” “evidencing,” “reflecting,” “describing,” or “having anything to do with,” and in each instance, directly or indirectly. These terms mean, without limitation, any reference or relationship which either (a) provides information with respect to the subject of the inquiry, or (b) might lead to individuals who, or documents which, might possess or contain information with respect to the subject of the inquiry.

B. Instructions

1. In complying with this document request, you are required to produce all responsive documents, materials, or items that are in your possession, custody, or control, whether held by you or your past or present agents, employees, representatives, subsidiaries, affiliates, divisions, partnerships, and departments acting on your behalf. You are also required to produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the

temporary possession, custody, or control of any third party. No records, documents, data or information called for by this request shall be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization, or individual denoted in this document request has been, or is also known by any other name than that herein denoted, the document request shall be read also to include them under that alternative identification.
3. Each document produced shall be produced in a form that renders that document capable of being printed or copied.
4. Documents produced in response to this document request shall be produced together with copies of file labels, dividers, envelopes, or identifying markers with which they were associated when this document request was served. Documents produced to this document request shall also identify to which paragraph from the document request such documents are responsive. Moreover, please include with your response, an index identifying each record and label (preferably by bates stamping) the documents. The Committee prefers, if possible, to receive all documents in electronic format.
5. It shall not be a basis for refusal to produce documents that any other person or entity also possesses documents that are non-identical or identical copies of the same document.
6. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer back-up tape), state the form in which it is available and provide sufficient detail to allow the information to be copied to a readable format. If the information requested is stored in a computer, indicate whether you have an existing program that will print the records in a readable form.
7. If compliance with the document request cannot be made in full, compliance shall be made to the extent possible and shall include a written explanation of why full compliance is not possible.
8. In the event that a document is withheld, in whole or in part, based on a claim of privilege, provide the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter of the document; (d) the date, author, and any recipients; and (e) the relationship of the author and recipients to each other. Claims of privileges are considered under Committee on Natural Resources Rule 4(h) and, similar to all common-law privileges, are recognized only at the discretion of the Committee.

9. If any document responsive to this document request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
10. If a date or other descriptive detail set forth in this document request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
11. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon location or discovery subsequent thereto.
12. Production materials should be delivered to:

Committee on Natural Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington D.C. 20515