

**BEFORE THE OIL AND GAS CONSERVATION COMMISSION  
OF THE STATE OF COLORADO**

IN THE MATTER OF CHANGES TO THE  
RULES OF PRACTICE AND PROCEDURE OF  
THE OIL AND GAS COMMISSION OF THE  
STATE OF COLORADO

CAUSE NO: 1R

DOCKET NO: 1307-RM-01

**ORIGINAL**

**PREHEARING STATEMENT**

COMES NOW Chevron U.S.A. Inc., and its affiliates Chevron Midcontinent, L.P., and Four Star Oil & Gas Company ("Chevron"), through its attorneys, Poulson, Odell & Peterson, LLC, and, pursuant to the Commission's Amended Notice of Rulemaking Hearing relating to proposed additions and amendments to the 100 Series (Definitions), Appendix VII (Restricted Surface Occupancy Area ("RSO") Maps), and Appendix VIII (Sensitive Wildlife Habitat ("SWH") Maps) of the Rules of Practice and Procedure of the Commission (the "Proposed Rules"), hereby submits its Prehearing Statement.

**I. Statement of Standing**

Chevron owns substantial acreage in fee simple in Garfield County. Chevron also owns working interests and operates oil and gas wells in the Piceance and San Juan Basins. In addition, Chevron is the operator of the Rangely, Wilson Creek and Hiawatha fields located in Rio Blanco and Moffat Counties. Chevron's Colorado operations and property rights may be adversely affected by the Proposed Rules.

**II. Introduction**

Chevron has both procedural and substantive comments to the Proposed Rules. Procedurally, as set forth in more detail below, the Commission must carefully review, analyze and disclose all underlying data and methodologies employed by Colorado Parks & Wildlife ("CPW") to develop the SWH and RSO maps. The Commission has an independent obligation to ensure that the data and the methodologies are accurate and appropriate for their intended purpose. Substantively, Chevron is concerned that CPW's data and methodology for identifying Greater Sage Grouse ("GRSG") priority habitat is not appropriate and that CPW has not produced an accurate map.

**III. Procedural Comments**

The revisions to the RSO and SWH maps considered in this rulemaking are "fact based" rule changes. The existence of a species or its habitat in any given location is a discrete fact capable of demonstrative proof. As fact-based rule changes, the Proposed Rules must be supported by substantial factual evidence in the rulemaking record. See *Colo. Ground Water Comm'n v. Eagle Peak Farms, Ltd.*, 919 P.2d 212, 217 (Colo. 1996); *Citizens for Free Enterprise v. Colo. Dept. of Rev.*, 649 P.2d 1054, 1061 (Colo. 1982); C.R.S. §§ 24-4-103(4)(a), 106(7).

The rulemaking record must consist of "proposed rules, evidence, exhibits, and other matters presented or considered, matters officially noticed, rulings on exceptions, any findings of fact and conclusions of law proposed by any party, and any written comments or briefs filed."

C.R.S. § 24-4-103(4)(a); see also C.R.S. §§ 24-4-103(8.1)(b), 106(6). Additionally, as a general rule, "any study or other documentation utilized by an agency as the basis of a proposed rule shall be a public document . . . and shall be open for public inspection." *Id.* § 103(4)(a.5). Similarly, "all information, including, but not limited to, the conclusions and underlying research data from any studies, reports, published papers, and documents, used by the agency in the development of a proposed rule shall be a public document . . . and shall be open for public inspection." *Id.*

Taken together, these two principles require the Proposed Rules to be supported by substantial factual evidence, and that the substantial factual evidence be publicly disclosed in the rulemaking record. If an agency fails to place technical studies and data underlying a rule into the rulemaking record, it fails to allow for meaningful commentary and commits "serious procedural error." *Conn. Light & Power v. Nuclear Reg. Comm'n*, 673 F.2d 525, 530-31 (D.C. Cir. 1982); *Owner-Operator Independent Drivers Assoc., Inc. v. Fed. Motor Carrier Safety Admin.*, 494 F.3d 188, 199 (D.C. Cir. 2007); see also *Calif. Assoc. of Nursing Homes, Sanitariums, Rest Home for the Aged, Inc. v. Williams*, 4 Cal.App.3d 800, 810 (judicial review impossible where extra-record evidence forms the basis of rule).

The fact that CPW developed the revised maps in the Proposed Rules does not change the Commission's obligation under the Colorado APA to independently consider the evidence. In *California Assoc. of Nursing Homes*, the court held that the agency's adoption of another agency's rule without consideration of the underlying evidence "transgresses fundamental demands for the adoption of administrative regulations." 4 Cal.App.3d at 813-14. There is no procedural barrier to incorporation of CPW's map revisions, provided "supporting evidence is made available at a public hearing, opportunity for refutation is given, the pro and con evidence [is] considered and the evidentiary material [is] assembled in an identifiable record." *Id.*

Here, neither Chevron nor the other parties to this rulemaking know exactly how CPW created the maps on which the Commission bases the Proposed Rules. Presumably, CPW created these maps by extrapolation from raw data, but that is only speculation at this point. At a minimum, CPW must disclose in the rulemaking record, (1) the raw data that CPW gathered to support the maps (e.g., vegetation, telemetry, terrain, nest and lek sites), (2) a detailed description of the means by which that data was gathered, and (3) the modeling or other methodology employed by CPW to create the maps from the raw data. Without this information in the record, the parties will not have an adequate opportunity, required under the Colorado APA, to refute the maps or to demonstrate why alternative maps or mapping techniques are superior.

The Commission recognizes the importance of data quality and transparency in identifying species and habitat. The Commission has operated under a Wildlife Policy for more than 15 years. In that Wildlife Policy, the Commission resolved to support the efforts of its staff, industry trade associations, and environmental stakeholders to, among other things, "assemble [CPW] wildlife data and other resources available to evaluate impacts to wildlife," and to "make those data and resources available to the COGCC, the oil and gas industry, and interested members of the public." Chevron believes that the transparency embodied in the Wildlife Policy should be recognized and adhered to in this rulemaking, consistent with the Colorado APA.

#### **IV. Substantive Comments**

Several species (and the corresponding RSO and SWH maps) are of primary concern to Chevron. Most central is the GRSG and the area designated as priority habitat in the proposed amended Appendix VIII (SWH). The GRSG SWH is currently defined as "production areas."

GRSG production areas are those areas which contain 80% of nesting and brood rearing habitat for any population identified in the 2008 Colorado Greater Sage-Grouse Conservation Plan. The Proposed Rules would amend this SWH definition to read: "priority habitat (being areas of high probability of use (modeled summer or winter, or breeding) within a 4 mile buffer around leks that have been active within the least 10 years within grouse occupied range. (Colorado Greater Sage-Grouse Priority Habitat map (2012))."

Chevron does not know how exactly CPW created the GRSG Priority Habitat Map. Chevron understands through informal means that this map is premised on some raw data that is publicly available (e.g., lek sites on public lands, vegetation), and other data which is not currently publicly available (e.g., grouse telemetry data). Additionally, Chevron does not have a complete understanding of the modeling that CPW used to generate the GRSG Priority map. Chevron is aware of the general parameters CPW used in the model to create the map (e.g., vegetative cover, slope) but does not know how CPW interpreted and applied those parameters to create the map. The Commission should require CPW to disclose in the rulemaking record both the raw data and the model and/or other methodologies used to create the GRSG Priority Habitat Map. Further, Chevron requests that the Commission consider the GRSG habitat maps recently adopted by Garfield County, including the maps submitted as Exhibits A-D hereto. The maps supplied with this Prehearing Statement are based on the extensive efforts of Garfield County using the same parameters as CPW's GRSG Priority Habitat Map. This map, however, is scaled down to a two (2) meter resolution and is more reflective of actual habitat for the GRSG.

Chevron recognizes its right to demonstrate on a permit-by-permit basis that any given habitat or species is not in fact present. See COGCC Rule 1202.d.(3). An operator's right to make this showing on the back end, however, does not alleviate the Commission's burden to support the revised maps through the rulemaking record on the front end. Further, operators should not have to supply redundant proof for every well site within a given area. This is inefficient and costly for both the agency and the operator. Accuracy in the rule itself is therefore paramount in order to avoid unnecessary and wasteful consultation.

Chevron appreciates the need for and value of consultation where an oil and gas location is in fact within a habitat area. In such instances, consultation is a valuable tool for developing smart conditions of approval that protect wildlife while simultaneously allowing for oil and gas development. A course scale map that grossly overstates habitat, on the other hand, benefits no one because it does not protect wildlife. Instead, operators and the agency undergo a redundant and sometimes cumbersome process designed to show that the habitat is not present. In a best case scenario, the agency and the operator unnecessarily expend their time and financial resources. In a worst case scenario, outcomes are uncertain due to varying interpretations and applications among agency staff. As a result, an operator will have no assurance whether and when operations may commence, and the conditions that the agency will impose. This is inconsistent with fundamental principles of administrative law and denies the regulated community the regulatory certainty that the Commission is charged to provide.

Further, the maps are in effect a burden shifting mechanism whereby the burden of proof is placed on operators to prove the negative (*i.e.*, that the habitat or species is not present). There is no reason why the Commission should defer consideration of the same evidence in these proceedings if the operator can present such evidence. Chevron intends to submit evidence at the hearing supporting the accuracy of Garfield County's recently-adopted maps for GRSG (including the maps submitted herewith). Chevron can demonstrate that about 70% of its acreage in Garfield County is not suitable GRSG habitat because the vegetative cover is predominantly aspen,

oakbrush, Douglas fir, and/or mixed mountain shrubland. There are other instances where topography simply prevents impacts to the GRSG and its habitat, even when located within four (4) miles of a lek site. Chevron should not have to prove that habitat is not in fact present on an adjudicatory basis where it can do so in these proceedings.

Accuracy is also important because the maps are sometimes misconstrued by third parties (e.g., other levels of government, NGOs, etc.) and are taken as definitive and static depictions of species and habitat locations. The maps should never be treated as static depictions, because species and habitat locations change year to year. Events such as wildfires and development by other industries can impact these locations. More importantly, the maps have a very distinct purpose under the Commission's Rules, but are capable of misconstruction if one does not keep that purpose in mind. They are not intended to identify where oil and gas operations may or may not occur. Instead, the maps are intended to identify the areas stated in the 100 Series definitions, thereby triggering consultation under Rule 306.c. Consultation, in turn, allows the Commission to apply technically feasible and economically practical conditions of approval designed to avoid, minimize, and mitigate adverse impacts consistent with the Colorado Oil and Gas Conservation Act. Chevron supports the placement of conspicuous language on the maps themselves explaining their intended purpose, along with corresponding language in the SBP. Chevron also supports interagency data sharing, scientific interpretation, and regulatory coordination in decision-making relative to proposed oil and gas development.

#### **V. Reservation of Rights and Witnesses**

Chevron reserves the right to comment upon and provide additional testimony and/or exhibits at the rulemaking hearing. While GRSG priority habitat is Chevron's primary concern, Chevron reserves the right to comment upon, provide testimony, and submit exhibits relative to other aspects of the Proposed Rules including (without limitation) the RSO and SWH revisions relating to elk, pronghorn antelope, mule deer, and Golden Eagles. Pursuant to the Amended Notice of Rulemaking Hearing, Chevron may call the following witnesses to testify at the hearing on this matter: (1) Eric Petterson, Senior Biologist Project Manager, URS Corporation, and (2) Julie Justus, Regulatory Specialist, Chevron U.S.A. Inc.

#### **VI. Conclusion**

Chevron appreciates the opportunity to assist in developing the Commission's GRSG priority habitat map and to otherwise participate in this rulemaking. A transparent process and an accurate product that is reflective of actual conditions on the ground is in the interest of all involved.

Dated: August 23, 2013

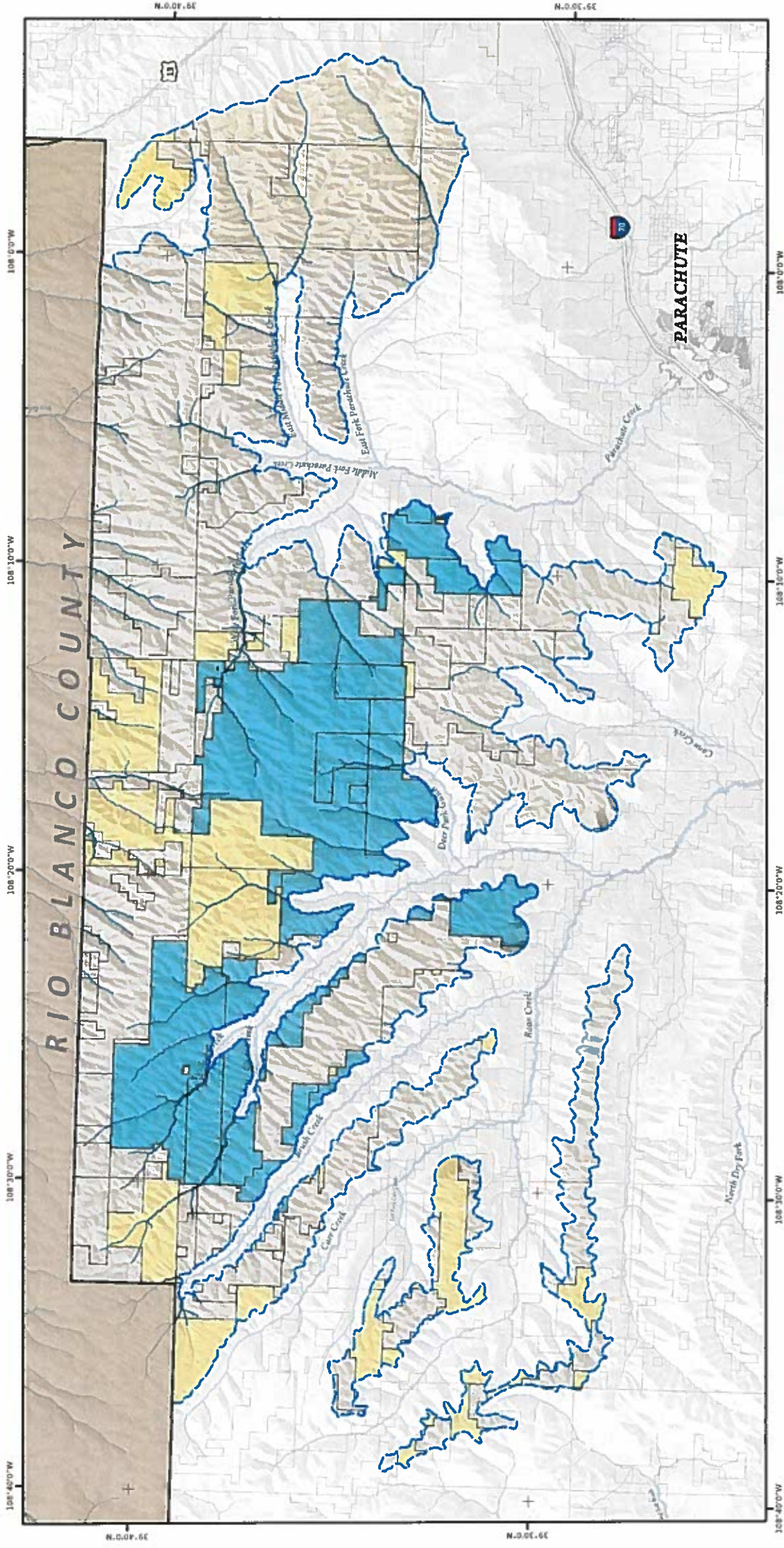
By:



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CHEVRON  
Pre-hearing Statement  
08/23/2013  
Docket No. 1307-RM-01  
Exhibit A

- Private Lands
- BLM Lands
- Chevron Lands
- Municipal Boundary
- County Boundary
- Interstate
- State Highway

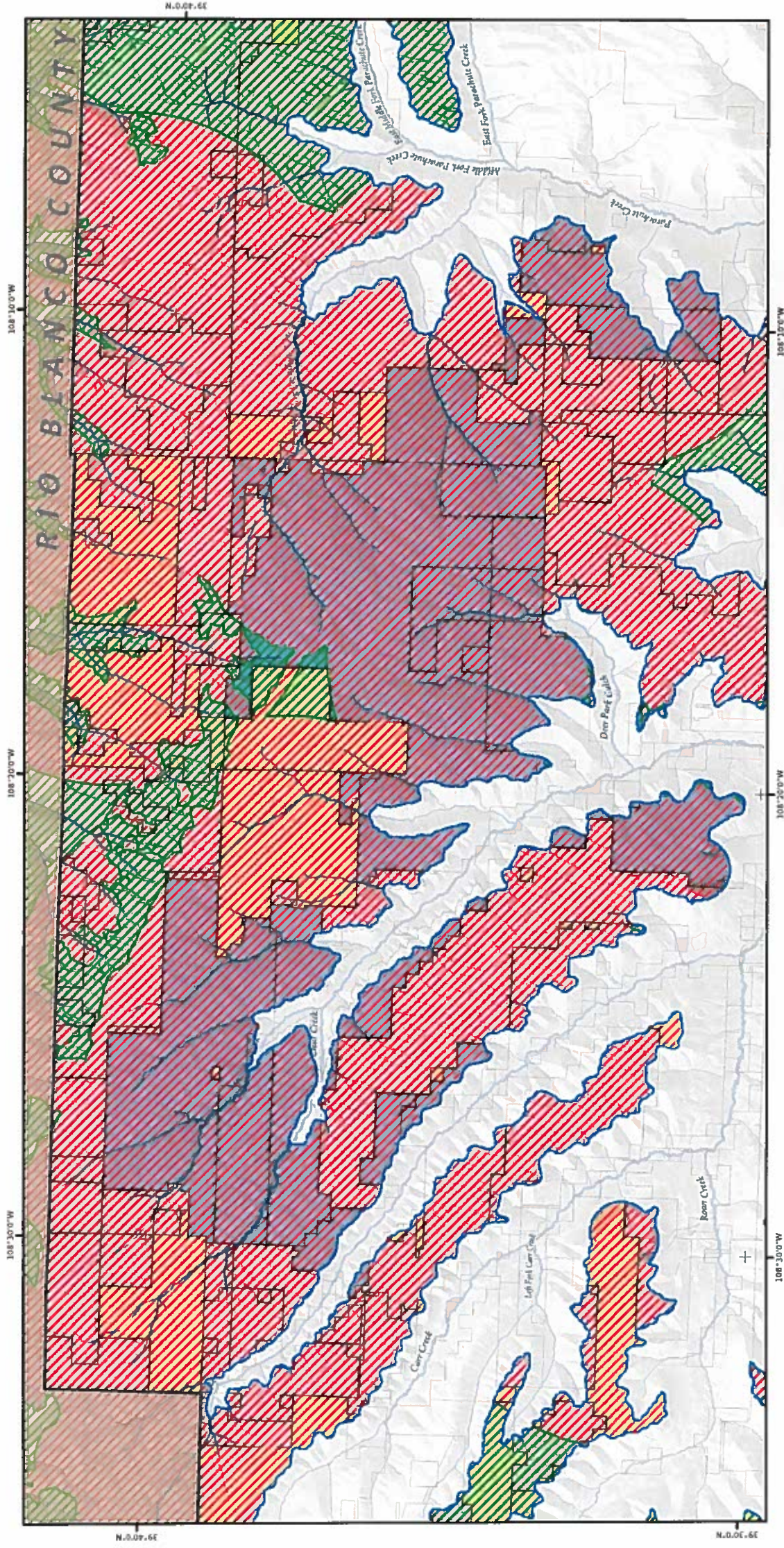
**Chevron Corporation**

**URS**










**Modeled Habitats  
for Greater Sage Grouse**

**Chevron Lands in the PPR**





CHEVRON  
Pre-hearing Statement  
08/23/2013  
Docket No. 1307-RM-01  
Exhibit B

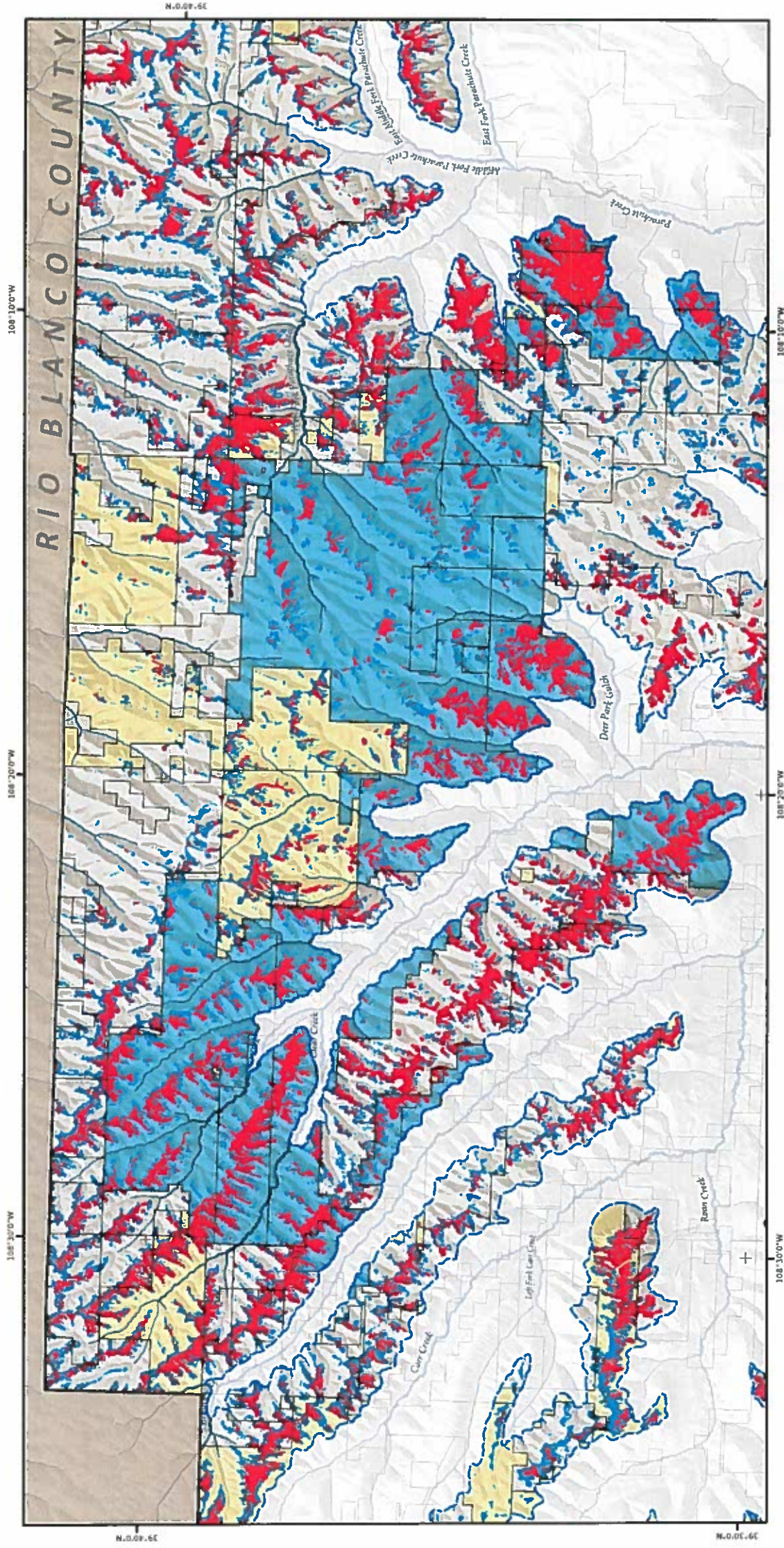
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-  Preliminary General Habitat
-  Private Lands
-  BLM Lands
-  Chevron Lands
-  Municipal Boundary
-  County Boundary
-  Interstate
-  State Highway



**Modeled Habitats  
for Greater Sage Grouse**

**CPW Priority &  
General Habitats**





CHEVRON

Pre-hearing Statement

08/23/2013

Docket No. 1307-RM-01

Exhibit C

Chevron Corporation

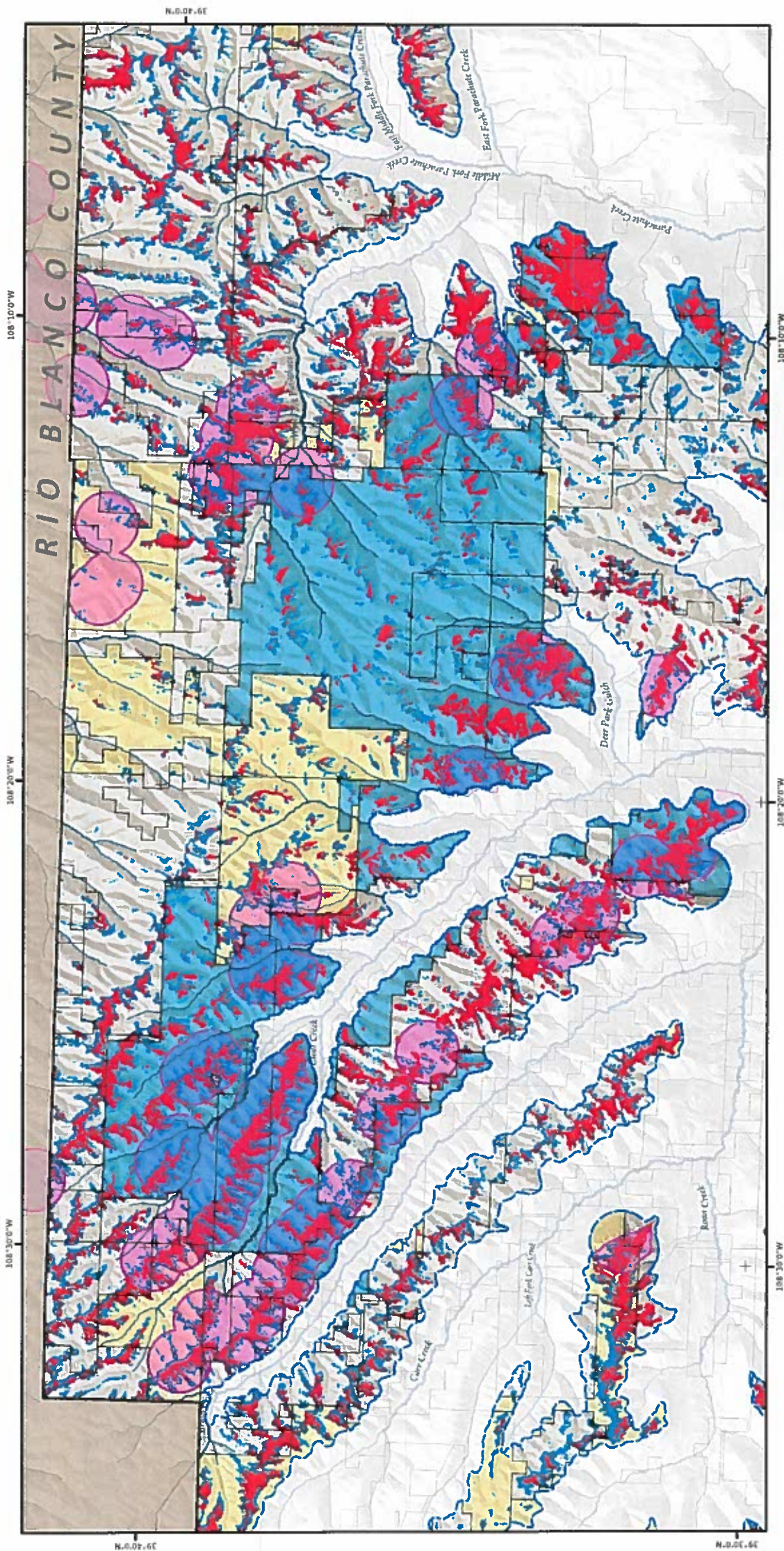
Modeled Habitats for Greater Sage Grouse

Modeled Habitat

URS

URS





**CHEVRON**  
Pre-hearing Statement  
08/23/2013  
Docket No. 1307-RM-01  
Exhibit D

**Chevron Corporation**

**Modeled Habitats  
for Greater Sage Grouse**

**Modeled Habitat &  
COGCC RSO**

**Analysis Area Boundary**

**Private Lands**

**BLM Lands**

**Chevron Lands**

**Priority Habitat**

**General Habitat**

**Greater Sage-grouse**

**Restricted Surface Occupancy**

**Municipal Boundary**

**County Boundary**

**Interstate**

**State Highway**

**URS**



BEFORE THE OIL AND GAS CONSERVATION COMMISSION  
OF THE STATE OF COLORADO

RECEIVED

AUG 23 2013

COGCC

IN THE MATTER OF CHANGES TO THE RULES OF ) CAUSE NO. 1R  
PRACTICE AND PROCEDURE OF )  
THE OIL & GAS CONSERVATION COMMISSION OF )  
THE STATE OF COLORADO ) DOCKET NO. 1307-RM-01

ORIGINAL

**PREHEARING STATEMENT OF THE COLORADO  
PETROLEUM ASSOCIATION**

The Colorado Petroleum Association (CPA), by and through its undersigned attorneys, respectfully submits the following Prehearing Statement in accordance with the Amended Notice of Rulemaking Hearing dated August 1, 2013 pertaining to additions and amendments to the Rule 100 series (Definitions), Appendix VII (Restricted Surface Occupancy Area maps), and Appendix VIII (Sensitive Wildlife Habitat maps).

The CPA adopts, endorses and joins in the direct testimony, witnesses and exhibits proffered by Chevron U.S.A. and its affiliates in the captioned rulemaking. The CPA will identify additional witnesses and demonstrative exhibits, if necessary, after reviewing and evaluating the submittals of the staff and other parties to this proceeding.

Dated: August 23, 2013.

By: /S/ John Paul Seman Jr.  
John Paul Seman, Jr. Reg. No. 18137  
Attorney At Law  
1660 Lincoln Street, Suite 1460  
Denver, CO. 80264  
Phone: 720-377-0703  
Fax:  
Email: jseman@jps-law.net

Attorney for Colorado Petroleum Association



## **CERTIFICATE OF SERVICE**

I, hereby certify that on this 23th day of August, 2013, I e-mailed one PDF copy and arranged for hand-delivery one original with thirteen (13) true and correct copies of the above and foregoing PREHEARING STATEMENT OF THE COLORADO PETROLEUM ASSOCIATION PERTAINING TO ADDITIONS AND AMENDMENTS TO THE RULE 100 SERIES (DEFINITIONS), APPENDIX VII (RESTRICTED SURFACE OCCUPANCY AREA MAPS), AND APPENDIX VIII (SENSITIVE WILDLIFE HABITAT MAPS), addressed to the following:

Robert J. Frick, Hearings Manager  
Docket No. 1307-RM-01  
Colorado Oil and Gas Conservation Commission  
1120 Lincoln Street, Suite 801  
Denver, CO 80203  
E-Mail: Robert.Frick@state.co.us

With an electronic copy, in portable document format (pdf), sent to:  
DNR\_COGCC.Rulemaking@state.co.us

/S/ Veronica Marlin

BEFORE THE OIL AND GAS CONSERVATION COMMISSION  
OF THE STATE OF COLORADO

RECEIVED

AUG 23 2013

COGCC

IN THE MATTER OF CHANGES TO THE RULES )  
OF PRACTICE AND PROCEDURE OF THE OIL )  
& GAS CONSERVATION COMMISSION OF THE )  
STATE OF COLORADO )

Cause No. 1R

Docket No. 1307-RM-01

ENCANA OIL & GAS (USA) INC.  
COMMENTS TO RULEMAKING

ORIGINAL

Encana Oil & Gas (USA) Inc. ("Encana"), by and through its undersigned attorneys, respectfully submits the following comments to the Colorado Oil and Gas Conservation Commission's ("COGCC" or "Commission") proposal to update to the configuration of wildlife maps that provide for Restricted Surface Occupancy Areas (RSO), Sensitive Wildlife Habitat (SWH) areas and definitions in the 100-series of the COGCC Rules.

I. General Statement: Overall, Encana supports the Commission's rulemaking and agrees that the current effort to update the wildlife maps that illustrate Restricted Surface Occupancy Areas (RSO), Sensitive Wildlife Habitat areas (SWH) (collectively, "Maps") is necessary. Encana does, however, have concerns with several issues related to the maps and concerns with the lack of data and analysis supporting the maps. Encana requests that the Commission review the following comments and incorporate such comments into the final versions of the Maps and definitions in the 100-series COGCC rules.

II. Statement of Basis for Comments: As set forth in Encana's Pre-Hearing Statement, Encana's identified the following policy, factual, and legal issues:

1. Whether the Rulemaking is properly positioned and/or titled to address the need for consultation by Colorado Parks and Wildlife in additional and/or expanded areas within the State of Colorado
  - a. This factual issue is addressed below in Section III, Part A.
2. Whether the Rulemaking has accounted for the Bureau of Land Management's utilization of the sensitive wildlife habitat, priority habitat, and restricted surface occupancy maps and the potential impact of such utilization on oil and operations within the State of Colorado.
  - a. This factual issue is addressed below in Section III.
3. Whether the Rulemaking is supported by adequate evidence.
  - a. This legal issue is supported by the Administrative Procedure Act which provides, in part, that an agency action will be held unlawful if the action is, among other things, "arbitrary and capricious, a denial of statutory right, contrary to constitutional right...in excess of statutory jurisdiction... [or] unsupported by substantial evidence when the record is considered as a whole, or otherwise contrary to law." C.R.S. § 24-4-106(7). Further, rules that involve scientific or technical issues must be justified on such scientific or technological bases. C.R.S. § 24-4-103(4)(c).



b. Specifically, Encana requests the following:

- i. An explanation of the basis for the changes for each species for which updates are proposed.
- ii. An explanation of the Map Update Metrics table that includes species not specifically addressed in the Executive Summary or Proposed Changes to COGCC 100-series Rules.
- iii. An explanation and/or definition of the types of habitat that the Maps are based on and what those definitions mean in the context of the Colorado Parks and Wildlife rules, or other applicable federal rules.
- iv. A description of the new data that has been utilized by the COGCC or the CPW to update the Maps.

4. Whether the effective date of the Rules is feasible for compliance.

- a. This legal issue was raised in order to preserve the question regarding when the rules would go into effect, specifically in light of the upcoming Bureau of Land Management's Northwest Colorado Greater Sage-Grouse Draft Land Use Plan Amendment and Environmental Impact Statement, which Encana respectfully requests that this Commission and Colorado Parks and Wildlife be actively involved with.

Encana believes that these issues, as well as the comments set forth below, could be addressed and resolved prior to the conclusion of the September rulemaking hearing on this matter. Encana, however, reserves its right to challenge the proposed rulemaking and any adopted Maps or Commission rules that may be legally insufficient or otherwise not adopted in accordance with applicable law.

### III. Specific Comments

#### 1. Greater Sage-Grouse:

- a. Concern: Encana has several concerns over the Commission's proposed rule change to the definition of "Greater sage-grouse priority habitat." Much of this acreage covers Encana's operations on the western slope and will have a significant impact on those operations.

The Commission's definition is different, and will be used differently, than that of the Bureau of Land Management ("BLM") and the U.S. Fish and Wildlife Service ("USFWS"). While the COGCC's utilization of the Greater sage-grouse priority habitat map requires site-specific consultation and may result in spatial and or temporal avoidances, the BLM and USFWS designated Greater sage-grouse priority habitat may include more rigid surface disturbance thresholds or other prohibitions, without site specific consideration. This distinction is crucial because the BLM will use state wildlife maps in its recently released Northwest Colorado Greater Sage-Grouse Draft Land Use Plan Amendment and Environmental Impact Statement.

Further, significant acreage included in the COGCC's Greater sage-grouse priority habitat map is not actually suitable Greater sage-grouse habitat because of the topography in the Piceance Basin. For example, the identified "priority" habitat includes valley bottoms and forested areas that are not in fact Greater sage-grouse habitat. *Please see attached illustrative*

maps as *Exhibit 1*. While the proposed map is appropriate for triggering consultation with the state, it would impose significant, unnecessary restrictions if utilized by the BLM or USFWS without flexibility.

The same concern exists as the USFWS considers a potential Greater sage-grouse listing and habitat designation under the Endangered Species Act. If USFWS uses the proposed COGCC consultation map, it would impose protections in areas that are not Greater Sage-grouse habitat.

b. Request: Encana requests that the COGCC amend the Greater sage-grouse definition in the proposed changes to COGCC 100-series rules to "Greater sage-grouse Habitat Consultation Buffer." Encana also recommends that the COGCC explicitly state that the proposed Greater sage-grouse habitat map is used to trigger consultation with CPW and should not be used by other local, state or federal agencies to apply strict restrictions or calculate threshold disturbance because some areas captured are not Greater sage-grouse habitat.<sup>1</sup>

c. Proposed Changes:

i. COGCC Current Proposed Definition: Greater sage-grouse priority habitat (being areas of high probability of use (modeled summer or winter, or breeding) within a 4 mile buffer around leks that have been active within the last 10 years<sup>1</sup> within grouse occupied range. (Colorado Greater Sage-Grouse Priority Habitat map (2012)).

ii. Encana Proposed Alternative Definition: Greater sage-grouse Habitat Consultation Buffer (being areas of high probability of use (modeled summer or winter, or breeding) within a 4 mile buffer around leks that have been active within the last 10 years within grouse occupied range. (Colorado Greater Sage-Grouse Priority Habitat map (2012)).

2. Bighorn Sheep:

a. Concern: Encana has concerns over the COGCC significantly expanded habitat of bighorn sheep. The expanse of the bighorn sheep habitat significantly impacts Encana's operations in the Piceance Basin. The 2008 mapped RSO and SWH for bighorn sheep was almost completely contained within federally owned surface acreage designated as "No Surface Occupancy" by the BLM or USFS due to greater than 40% slope. (*Please see attached illustrative maps as Exhibit*

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<sup>1</sup> For reference, sage-grouse National Technical Team Report Definition: "Priority sage-grouse habitats are areas that have the highest conservation value to maintaining or increasing sage-grouse populations. These areas would include breeding, late brood-rearing, winter concentration areas, and where known, migration or connectivity corridors. These areas have been, or will be identified by state fish and wildlife agencies in coordination with respective BLM offices. Priority habitat designations must reflect the vision, goals and objectives of this overall plan if the conservation measures are to be effective....Manage priority sage-grouse habitats so that discrete anthropogenic disturbances cover less than 3% of the total sage-grouse habitat regardless of ownership." (page 7)



2.). Due to the thin distribution of the NSO acreage, the minerals under the NSO surface were technically able to be developed with existing technology. The proposed wildlife map for bighorn sheep increases the expanse of the habitat on non-NSO acreage by over 15,000 acres over three of Encana's federal units. This increase has the potential to impact the economics and operational efficiency in this area that was previously not impacted by these possible wildlife limitations.

b. Request: Encana requests that the COGCC and CPW provide specific information regarding how the Maps were generated as they relate to the habitat and winter range of Bighorn Sheep and what the COGCC and CPW determined were the mitigating or aggravating factors that caused such a significant change in the habitat area as shown on the Maps.

IV. Witnesses: If necessary, Encana is prepared to present one or two Encana representatives to testify to the comments set forth herein and the impact of the rulemaking to Encana's operations within the State of Colorado.

V. Exhibits: If necessary, Encana is prepared to submit any exhibits in support of its position at the September hearing or if specifically requested by the Commission.

VI. Conclusion: Encana requests that many of the points set forth in these comments should be addressed prior to the conclusion of the rulemaking and the formal adoption of any of the COGCC proposed maps illustrating the Sensitive Wildlife Habitat Area, the Restricted Surface Occupancy Area, and the definitions of the 100-series of the COGCC rules. Encana, however, reserves the right to amend, delete and/or supplement the issues and comments identified herein. As an oil and gas operator in the State of Colorado, the Rules will have a direct effect on the activities of Encana. Thus, Encana respectfully requests the Commission not adopt the Maps and revised definitions in the above-captioned rulemaking as presented by the Commission, but adopt revised Maps and definitions that incorporate and utilize Encana's comments submitted in this filing.

DATED this 23<sup>rd</sup> day of August, 2013.

RESPECTFULLY SUBMITTED,

Encana Oil & Gas (USA) Inc.

By: 

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Gregory J. Nibert  
Beatty & Wozniak, P.C.  
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## CERTIFICATE OF SERVICE

I hereby certify that on this 23<sup>rd</sup> day of August, 2013 the foregoing document entitled **ENCANA OIL & GAS (USA) INC. COMMENTS TO RULEMAKING** was filed and served as follows:

Original and 13 copies delivered for filing to:

Robert Frick, Hearings Manager  
Docket No. 1307-RM-01  
Oil and Gas Conservation Commission  
1120 Lincoln Street, Suite 801  
Denver, CO 80203

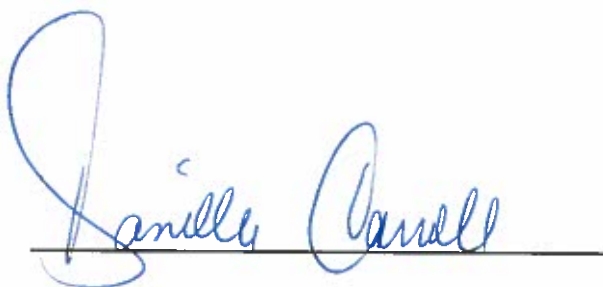
**VIA COURIER SERVICE**

Electronic copy to Robert Frick:

Robert.Frick@state.co.us

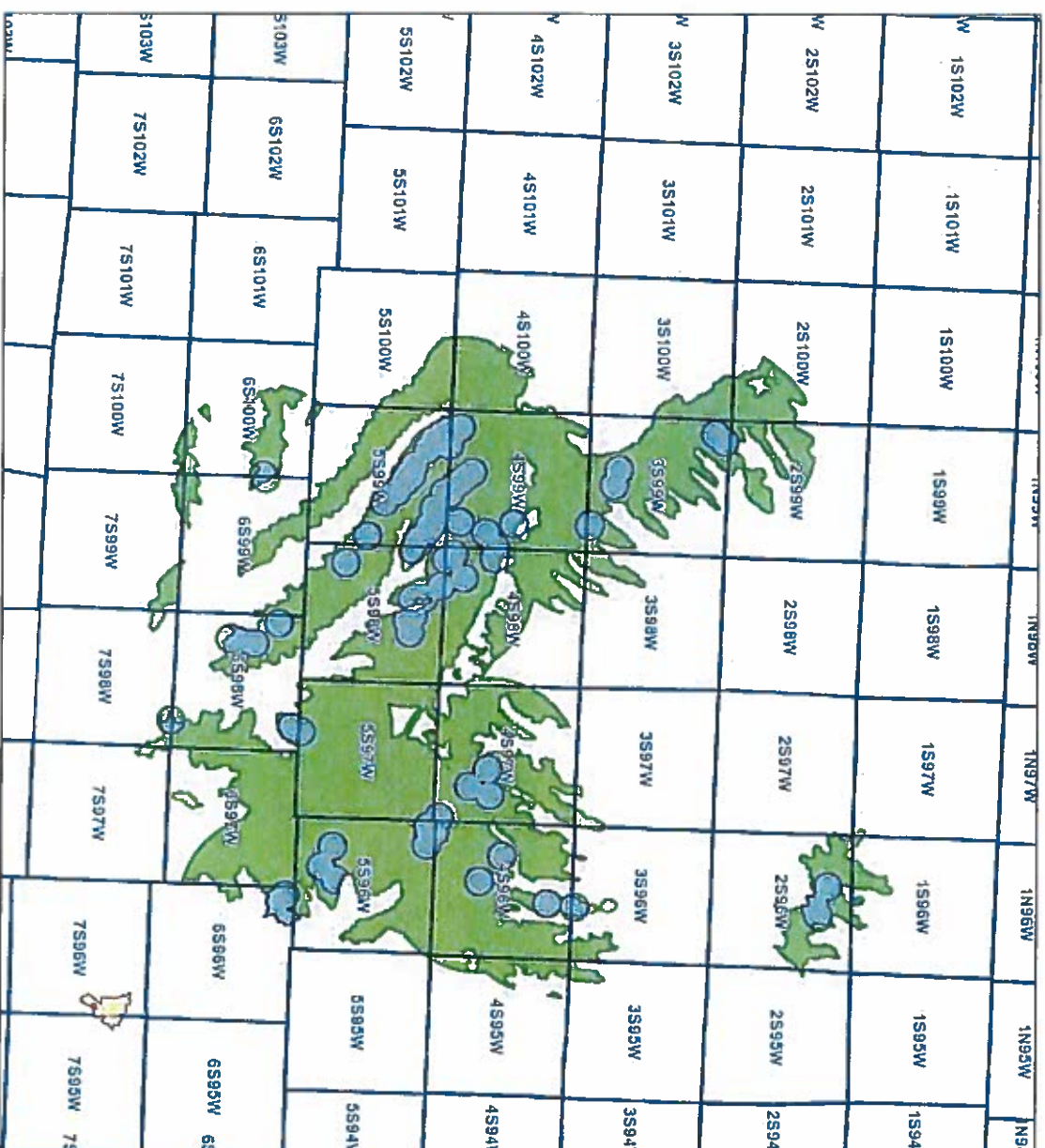
Electronic copy to the COGCC:

DNR\_cogcc.rulemaking@state.co.us

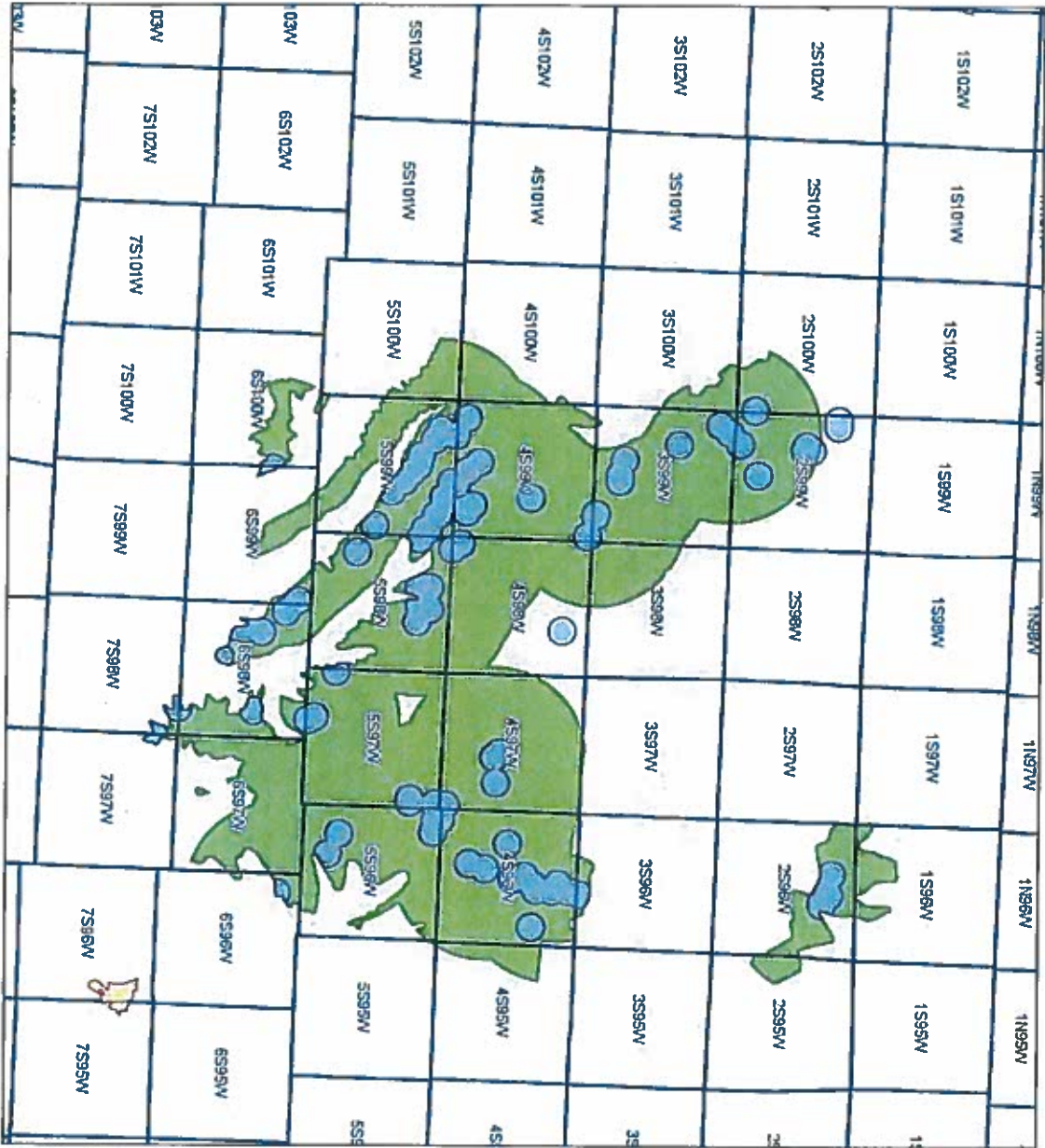
A handwritten signature in blue ink, reading "Danielle Canell", is written over a horizontal line.



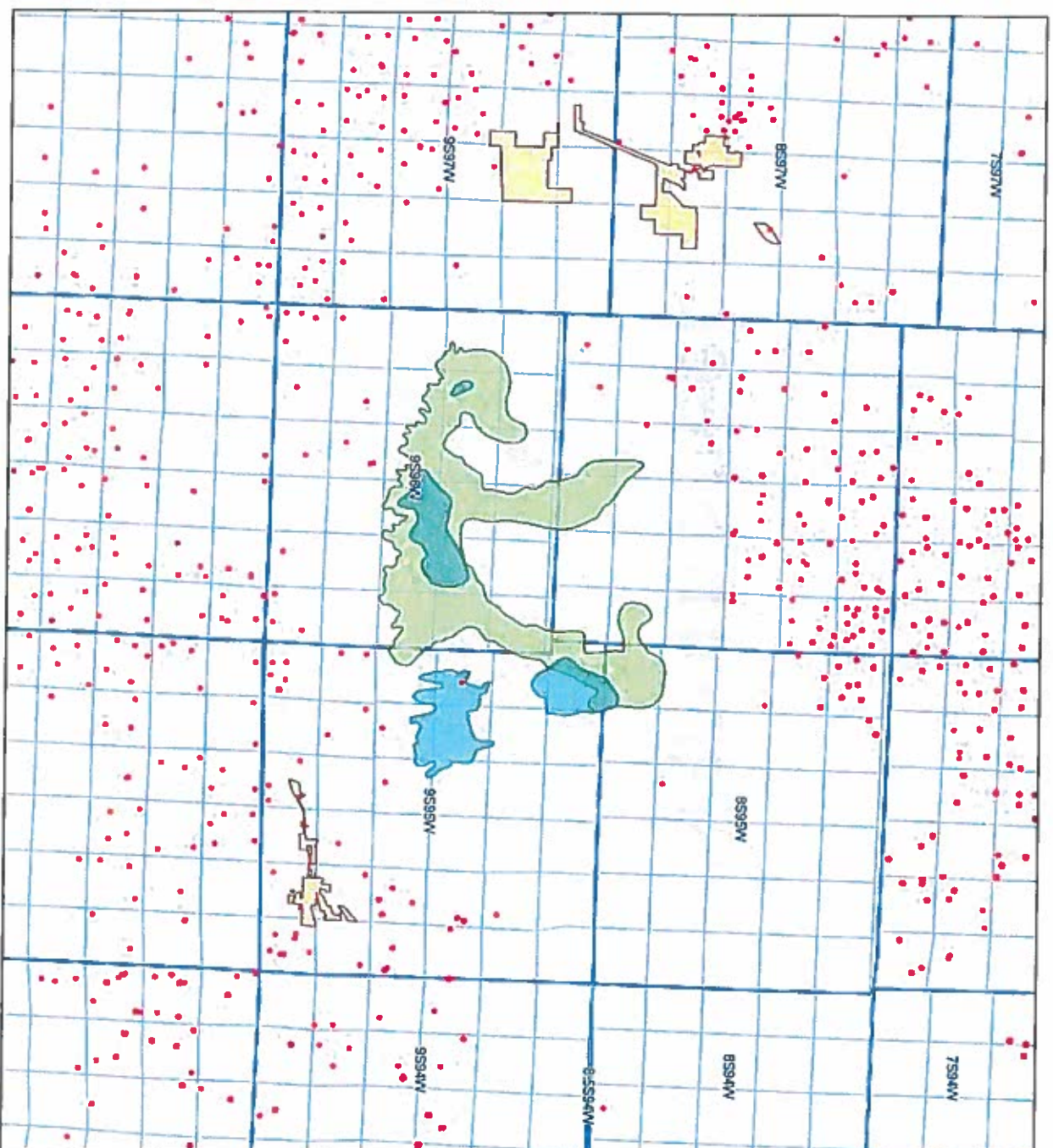
# 2013 Proposed NW Colorado Greater Sage-grouse Data



2008 NW Colorado Greater Sage-grouse Data

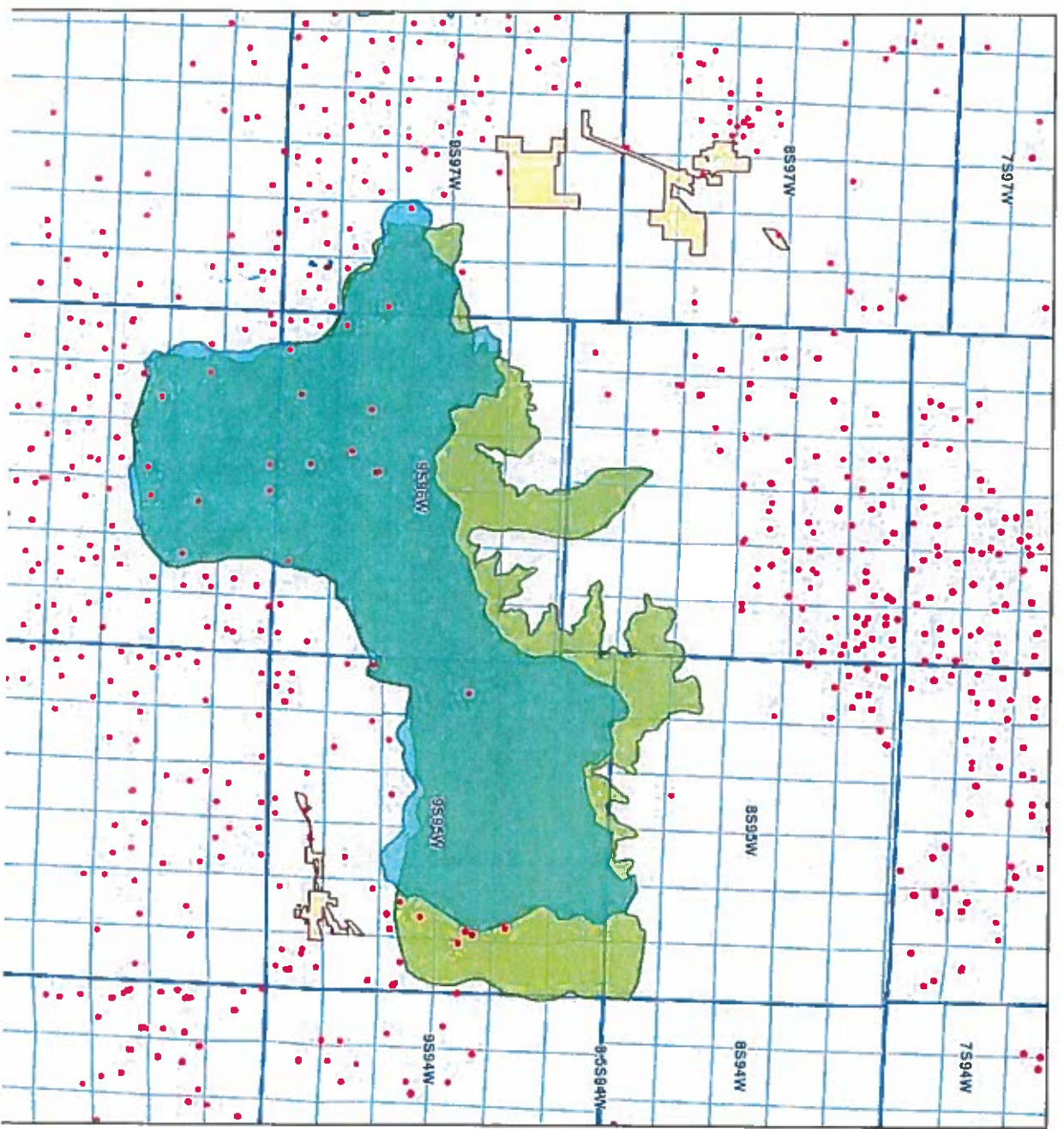


## 2008 Bighorn Sheep RSO/SWH (9S96W)

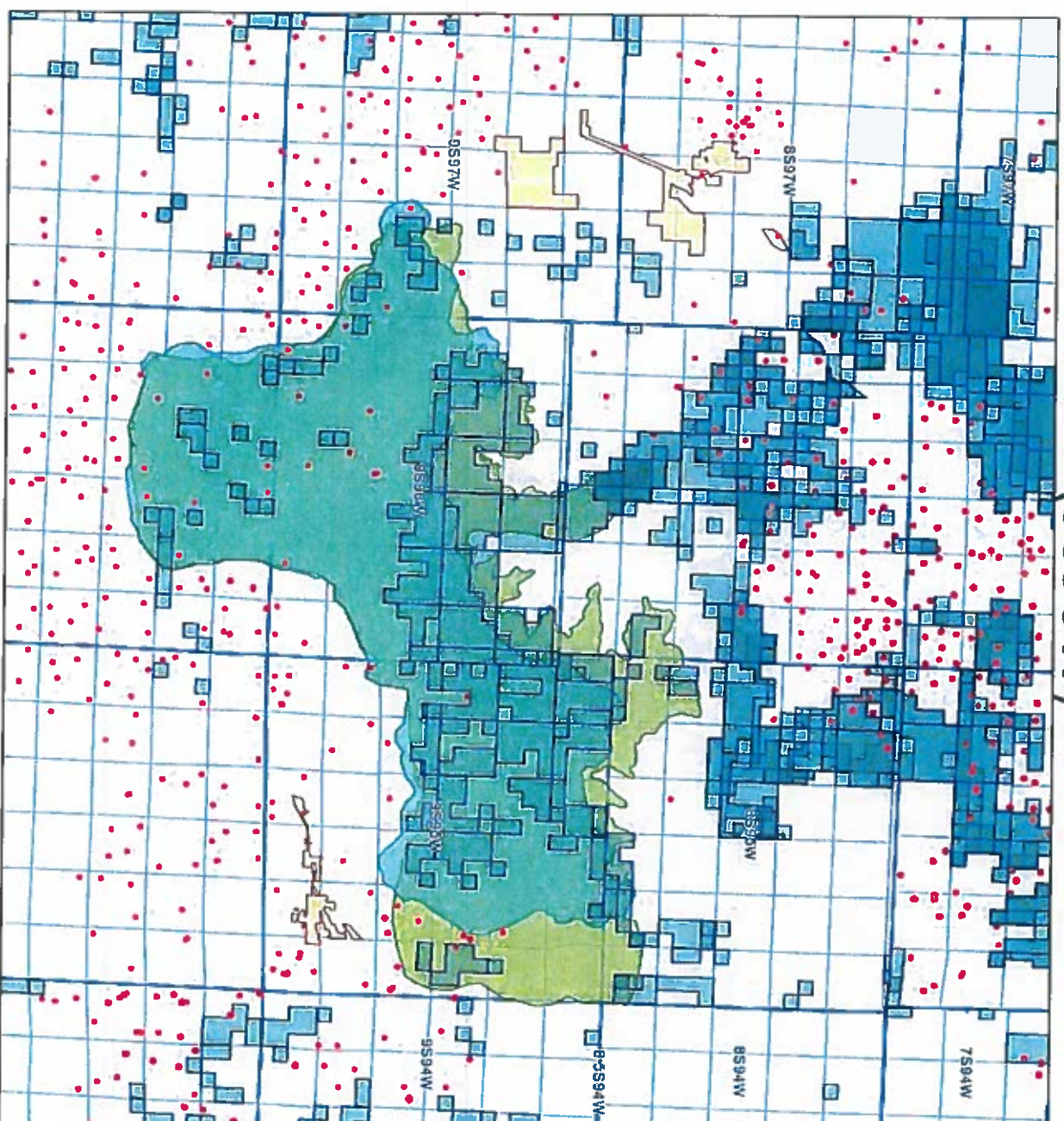




# 2013 Proposed Bighorn Sheep RSO/SWH (9S96W)

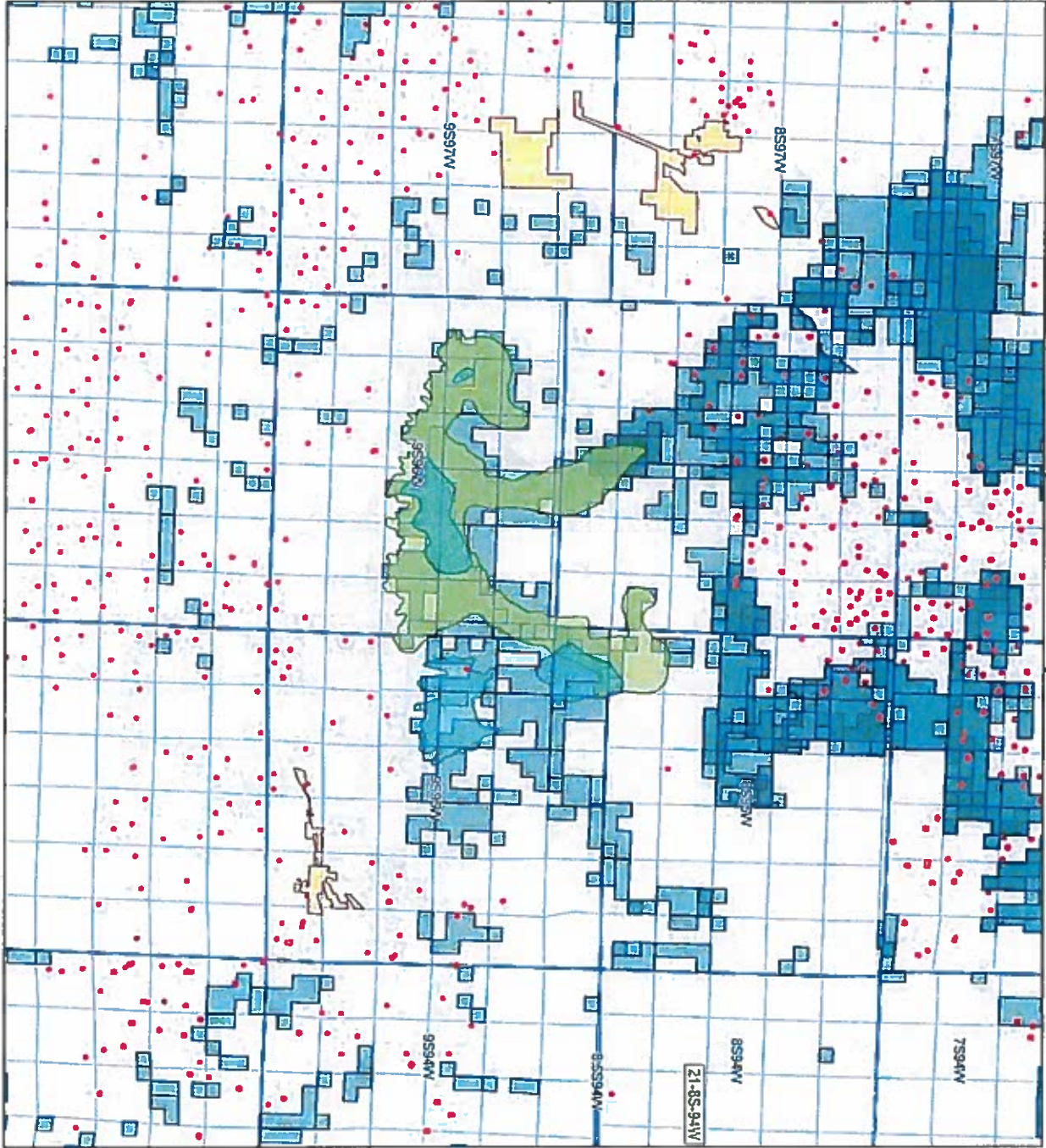


# 2013 Proposed Bighorn Sheep RSO/SWH with Federal NSO (9S96W)



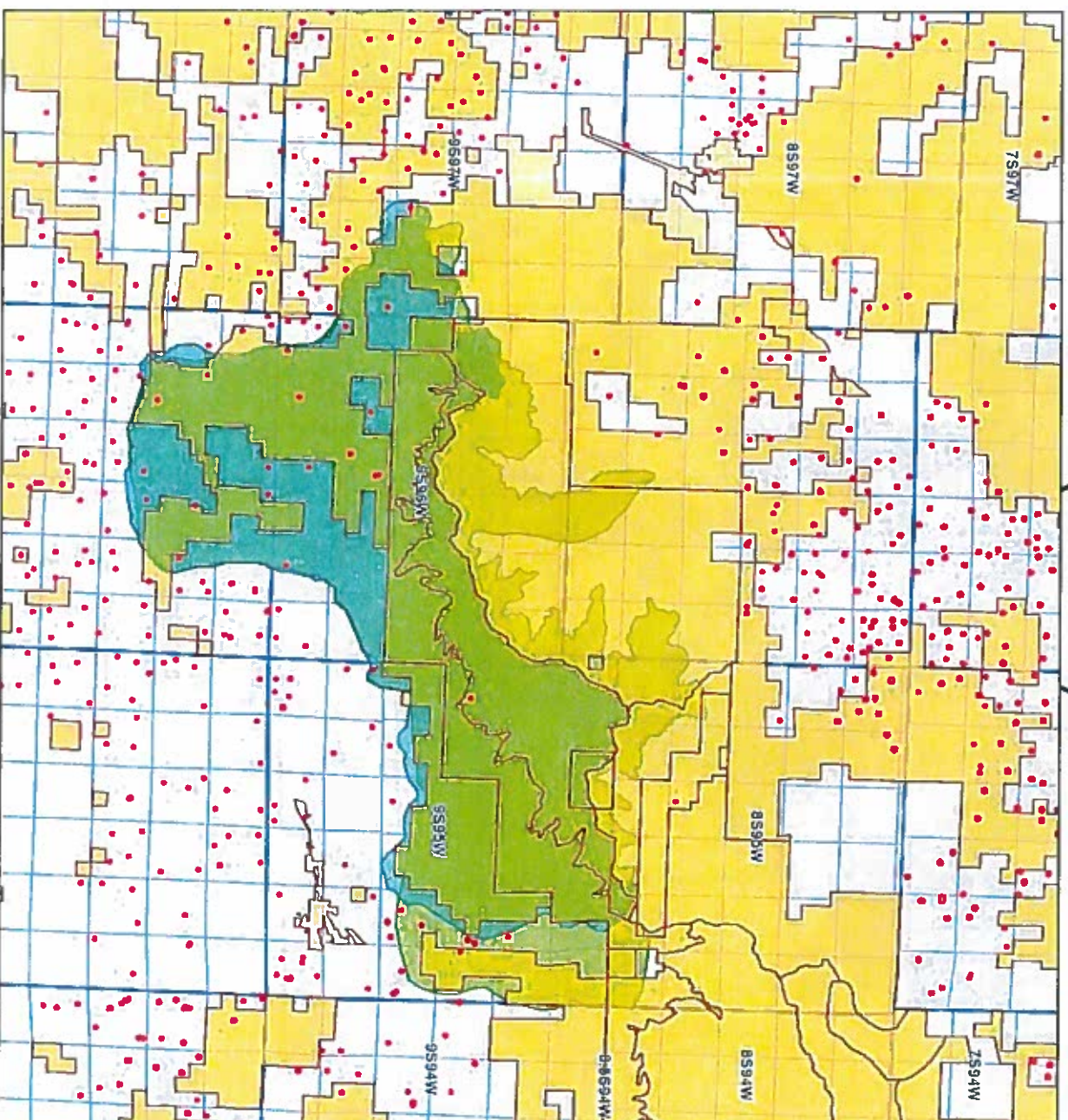


2008 Bighorn Sheep RSO/SWH with Federal NSO  
(9S96W)



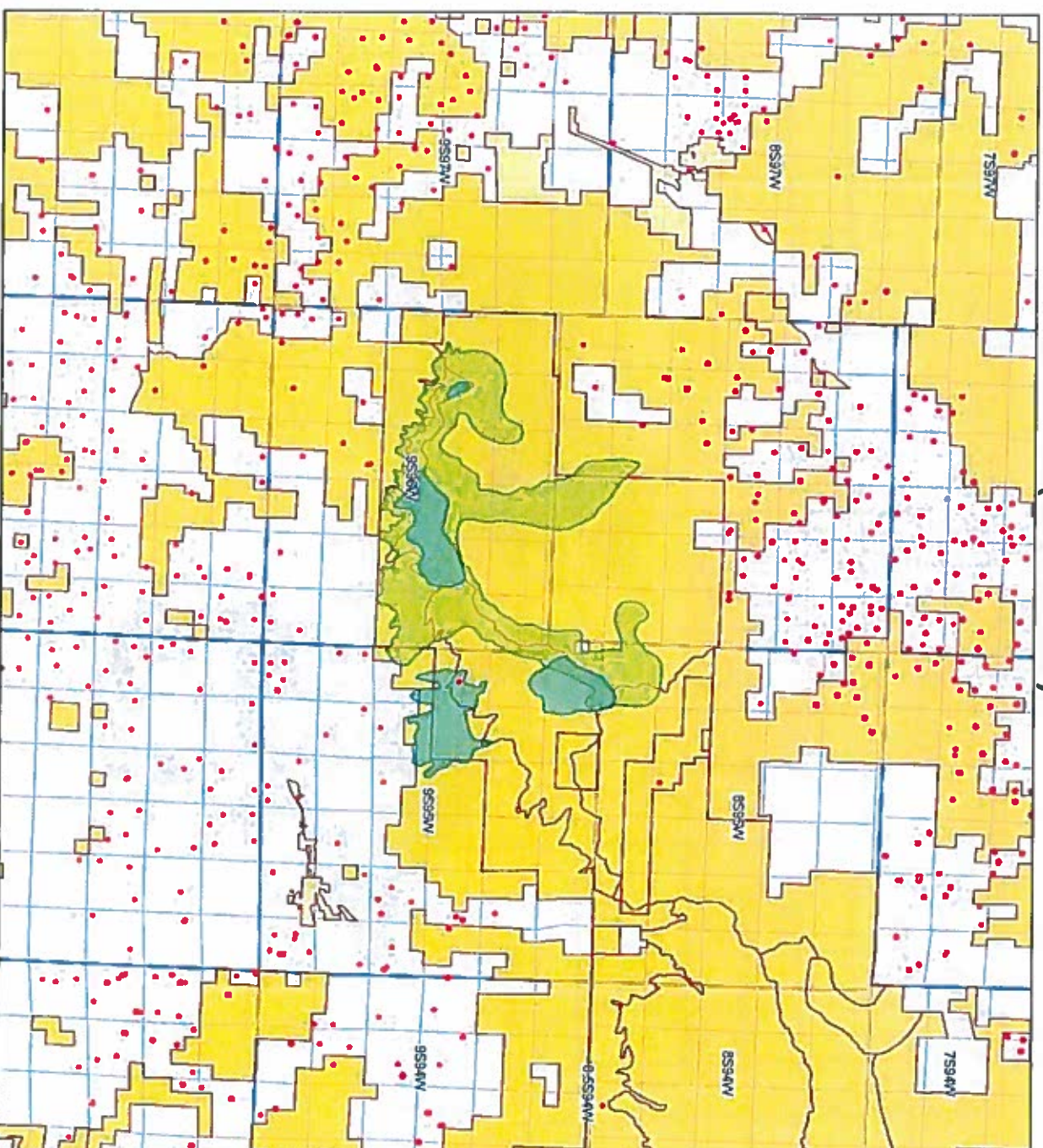


# 2013 Proposed Bighorn Sheep RSO/SWH with Federal Surface (9S96W)





# 2008 Bighorn Sheep RSO/SWH with Federal Surface (9S96W)





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AUG 23 2013

COGCC



August 22, 2013

Robert Frick  
Hearing Manager  
Docket No. **1307-RM-01**  
Oil and Gas Conservation Commission  
1120 Lincoln Street, Suite 801  
Denver, CO 80203

ORIGINAL

**RE:     *Prehearing Statement regarding proposed changes to 100-Series Rules that define reference maps of "Restricted Surface Occupancy Areas" (RSO) and "Sensitive Wildlife Habitat" (SWH) as they pertain to Garfield County***

Dear Mr. Frick:

Pursuant to COGCC's Notice of Rulemaking Hearing, the Garfield County Board of County Commissioners (the Board) is writing to provide our prehearing statement to outline our primary comments and concerns regarding proposed changes to 100-Series Rules that define reference maps of "Restricted Surface Occupancy Areas" (RSO) and "Sensitive Wildlife Habitat" (SWH) as they pertain to Garfield County.

Garfield County (the County) is located in the Piceance Basin, and is host to about a quarter of the current oil and gas development activity in Colorado, based on recent well permit applications and operating drill rigs. As such, rules promulgated by the Colorado Oil and Gas Commission (COGCC) have a significant affect in our county and therefore need to be evaluated thoughtfully in order to avoid any unintended consequences.

As part of the Bureau of Land Management's efforts to revise their Resource Management Plans and the specific Environmental Impact Statement for the Greater Sage Grouse for Northwest Colorado, the Board has been actively engaged in evaluating habitat maps provided by the Colorado Parks and Wildlife (CPW) to better define the habitat for the Greater Sage Grouse on both public and private land. As you are aware, Colorado Parks & Wildlife (CPW) creates the maps to be relied upon by COGCC for their use in their permitting processes and ultimate decision making for a wide variety of species including the Greater Sage Grouse.

We understand CPW intends to recommend its *Preliminary Priority Habitat Map* (included as *Exhibit A* attached hereto) for the Greater Sage Grouse as the map proposed to COGCC to serve as the Sensitive Wildlife Map for that species. This Preliminary Priority Habitat Map (PPR Map) is essentially a combination of three primary components: 1) a habitat model of NW Colorado completed by Dr. Mindy Rice, 2) the application of a four-mile buffer established around an active lek, and 3) CPW's internal "Occupied Range" Map. As explained to the County by CPW staff on September 5, 2012 in a County Coordination meeting, this PPR Map was generated at a 50,000-foot level as a map to be used in the BLM's recently released Draft NW Colorado Greater Sage Grouse EIS and not intended for specific "on-the-ground" land use management.

The County has analyzed the PPR Map and found it to be problematic if it is used for localized land use decisions. First, the habitat model designed by Dr. Mindy Rice was done so using vegetation data on a 1-kilometer scale (0.6 mile grid cells). In doing so, it inaccurately typed large amounts of vegetation that do not include any vegetation communities known to support Greater Sage Grouse such as juniper-pinon, fir, and aspen groves. Furthermore, numerous other criteria that are known to directly influence suitable greater sage-grouse habitats were excluded from the habitat model, including slope parameters, relevant landforms, percent canopy cover, etc. Again, this model approach is too coarse to be used as an effective local habitat management tool.

Second, in addition to the foregoing, CPW has applied an arbitrary four-mile buffer (eight-mile diameter) around active leks. (The four mile distance is believed to be the distance from the lek where 80% of the hens will nest.) However, this distance also assumes the birds will be in their commonly understood habitat as is commonly found to be true in large expanses of gently rolling sage brush communities in Wyoming, Montana, etc. Garfield County does not have these same expanses of rolling sage brush communities; conversely, the habitat is severely fragmented in a scattered patchwork of sage brush on hill tops intermixed with large areas of non-habitat vegetation communities such as aspen, conifer, pinion-juniper, etc. Moreover, the area in Garfield County also contains slopes (in excess of 30%) that are not known to support Greater Sage Grouse. So, the County opposes an arbitrary application of a four-mile buffer around an active lek because it captures thousands of acres of non-habitat where development and activity could / should occur without requiring any involvement from government agency oversight.

Third, CPW's PPR Map is based on the agency's "Occupied Range" map which appears to be an internal map maintained primarily by research staff and updated based on field-observations over time. This is problematic because the data used to inform this map is specific to individual professional opinion which may vary from time to time depending on individual field personnel and is not reproducible. In recent discussions with CPW staff, it became apparent that these opinions stray far from data that is cited in the literature from CPW biologists as to the accepted criteria for what defines habitat and where the Greater Sage Grouse are commonly located within that habitat.

In response to this, the County recently spent considerable resources to hire a consulting team to produce a highly accurate Suitable Habitat Map which is attached as *Exhibit B* to this letter. This map is a result of creating two distinct models (a weighted overlay model and a fuzzy overlay model). These models were driven by criteria developed from an exhaustive literature search using CPW's own researcher criteria (including slope, distance to forest, canopy cover, landforms and vegetation community). In addition, the Garfield County habitat model utilized a vegetation dataset

that maps existing vegetation communities with a much higher degree of accuracy, based on performing a supervised image classification process on 2-meter cell resolution color-infrared photography. More than that, in recent meetings with CPW to validate our mapping, it became clear that our mapping had a high degree of correlation to relevant / recent bird location data points collected by CPW's Dr. Brett Walker. In doing so, our model captured 92 percent of the bird locations within 100 meters of our habitat model. It should also be understood; the County's Suitable Habitat map was created with a transparent process and is reproducible. To the contrary, after considerable effort, we found that the CPW PPR Map is not reproducible and is based on data that the agency refuses to release to the public in order that it be verified.

The net result proved that CPW's proposed PPR Map has inaccurately mapped large areas of non-habitat (juniper-pinion, fir, and aspen groves) on the Roan Plateau in Garfield County as priority habitat. As understood in terms of acres, while CPW has mapped approximately 220,000 acres as priority habitat in their PPR Map, Garfield County's Suitable Habitat map identifies only 59,093 acres of suitable habitat. This is a 73% reduction in habitat in Garfield County. Put another way, CPW's PPH map was developed with such a broad brush approach, it erroneously captured approximately 160,907 acres of land that does not have Greater Sage Grouse habitat characteristics supported by relevant peer-reviewed literature and 'data-verified' field observations. By doing so, it will have the practical effect of requiring a land owner to consult with CPW on projects that are clearly cited in areas of non-habitat.

The Board requests that the COGCC not include CPW's PPR Map for the Greater Sage-Grouse in the Sensitive Wildlife Map for Garfield County; rather, the COGCC should incorporate Garfield County's Suitable Habitat Map (included as *Exhibit B* attached hereto) as it is based on reproducible best available science as described above for lands within Garfield County. This is precisely the position the Board has taken with the BLM in its drafting of the Northwest Colorado EIS on the Greater Sage Grouse as it also relies on maps provided by CPW. The County wants to remain consistent with its position that no matter what agency (federal or state) that is charged with managing Greater Sage-Grouse and its habitat in Garfield County, it does so using the best possible data and does so consistently.

In recent meetings with high-level agency staff from both CPW and CPGCC, CPW explained that the Wildlife Sensitive Maps are used solely for the purpose of consultation so that specific activity can be reviewed on a 'site-by-site' basis in the field and that the maps are not used as a blanket restriction area or non-surface occupancy (NSO) area. The Board agrees with that approach so long as the COGCC uses Garfield County's Suitable Habitat Map for that purpose rather than CPW's PPR Map.

The proposed red-line definition of Sensitive Wildlife Habitat for Greater Sage Grouse is flawed as it is "lek-centric" using an arbitrary four-mile buffer around leks rather than defining habitat in terms of vegetation types and land form (topography) which are criteria that are commonly cited in peer reviewed and published literature. To be clear, the Board does not support the use of an arbitrary four-mile buffer in Garfield County because it will capture large random areas of non-habitat such as juniper-pinion, dark timber, and aspen stands on slopes that far exceed literature based criteria for habitat where birds do not commonly exist. Garfield County recommends the following definition as a replacement:



**Suitable Habitat.** Suitable Habitat includes all seasonal habitats (including lekking, nesting, brood rearing/summer and winter habitats) Specifically, Suitable Habitat includes:

- Sagebrush cover is strongly selected from 10 to 50%, with suitability diminishing above and below the range
- Cover of Mixed Mountain Shrubs is not more than 20%, excluding fringe/transitional habitat zones
- Distance to nearest Forest is over 100 meters
- Distance to Shrubby Woodlands is over 50 meters
- Grass/forb dominated habitats (with >10% sagebrush cover) within 20 meters of sagebrush habitat
- Prefer slopes typically less than 20%, but allow for occupation on slopes up to 30%

In summary, the Board does not support the COGCC using CPW's PPR Map for Greater Sage Grouse in the Sensitive Wildlife Maps for the reasons stated above. Instead, the Board requests that the COGCC use the County's Suitable Habitat Map for Greater Sage Grouse in Garfield County as it is based on reproducible best available science. Additionally, if the County's map is incorporated, the Board supports the use of that map for consultation purposes only. Finally, the Board supports the current way the COGCC uses the Restricted Surface Occupancy Area Map for the areas within Garfield County.

Thank you for the opportunity to provide input to the rulemaking process. We look forward to providing you with testimony during the upcoming hearings in Denver and coordinating our efforts so that your planning documents (ie. the wildlife maps and their use) are consistent with those of Garfield County.

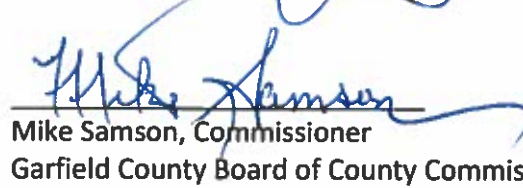
Very truly yours,



\_\_\_\_\_  
John Martin, Chairman  
Garfield County Board of County Commissioners



\_\_\_\_\_  
Tom Jankovsky, Commissioner  
Garfield County Board of County Commissioners



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Mike Samson, Commissioner  
Garfield County Board of County Commissioners

**Cc:**        *Andrew Gorgey, Garfield County Manager*  
              *Frank Hutfless, Garfield County Attorney*  
              *Representative Bob Rankin*  
              *Fred A. Jarman, Director, Community Development Department*  
              *Kirby Wynn, Garfield County Local Government Designee*

**Attachment(s)** *Exhibit A: CPW's Preliminary Priority Habitat Map*  
                      *Exhibit B: Garfield County Suitable Habitat Map*