

## **MEMORANDUM**

TO: City Council  
FROM: Steve Westbay  
DATE: February 21, 2012  
RE: Gunnison Sage Grouse Listing

Recently, the United States Fish and Wildlife Service (FWS) announced that a Proposed Rule would be published to list the Gunnison Sage Grouse as an Endangered Species in February 2012. However, at the Gunnison Sage Grouse Strategic Committee meeting held this past Wednesday (February 15, 2012), Mr. Dan Reinkensmeyer (FWS) noted that the Proposed Rule would not be published until possibly September 2012. This delay may be helpful for local jurisdictions to prepare for this action, but the urgency to understand the ramifications from this probable Rule is immediate.

Based on statements contained in the *Endangered and Threatened Wildlife and Plants; Determination for the Gunnison Sage-grouse as a Threatened or Endangered Species; Proposed Rule* (Federal Register, September 28, 2010), residential development, power lines, roads, agriculture, recreation activities and other functions are considered to be significant threats. This memorandum provides an overview of the *Endangered Species Act (ESA)* and summarizes consequences to the City's services and operations that may result when the Gunnison Sage Grouse is listed.

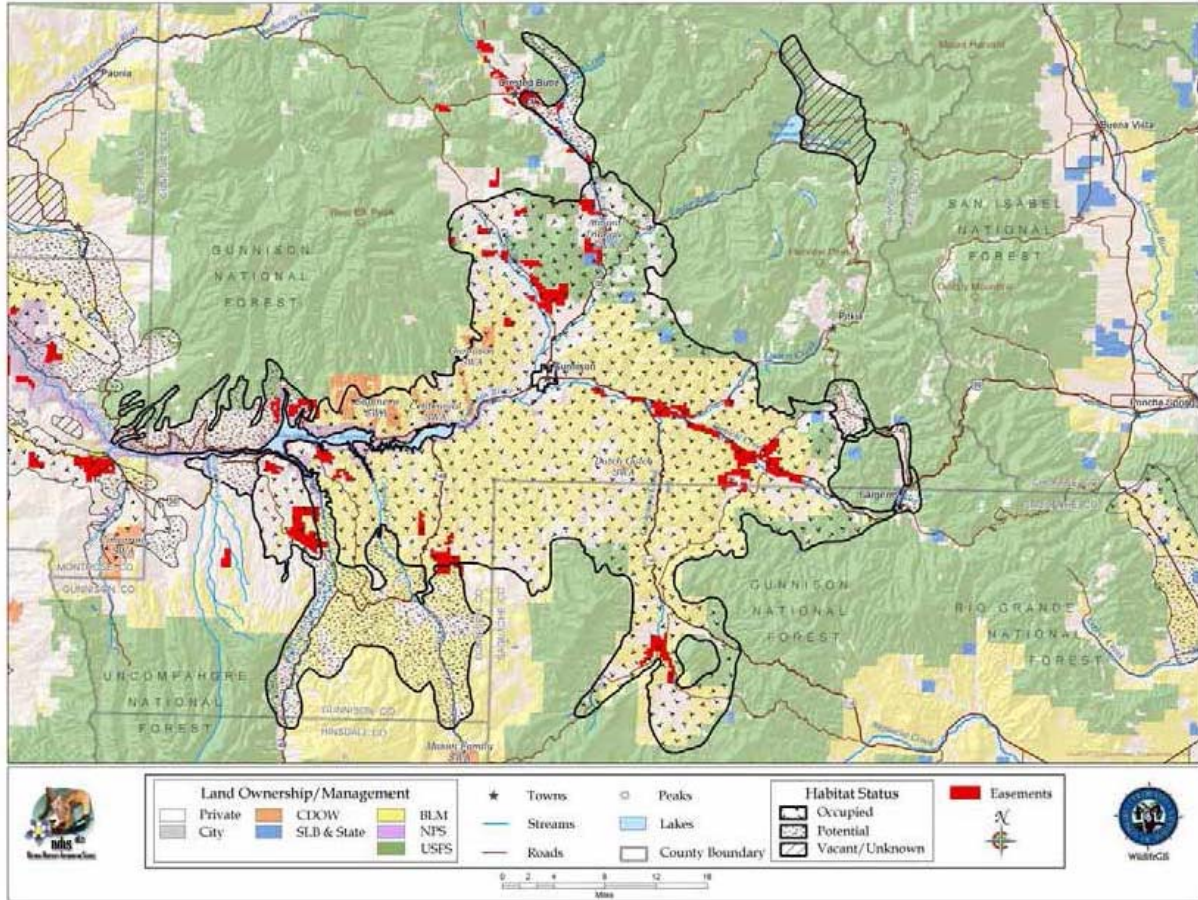
### **Listing Process**

The FWS published a rule (2010) determining that the Gunnison Sage Grouse listing is Warranted but Precluded. The *ESA* requires that species designated as warranted but precluded must be assessed annually by the FWS. The upcoming FWS decision to designate the Gunnison Sage Grouse as an Endangered Species is the next process step and will result in a Proposed Ruling. After the Proposed Ruling is published in the Federal Register, a one year review period will initiate, and expert opinions and public comment will be received. The *ESA* allows for a public hearing to be conducted if it is requested. After the Proposed Ruling review is completed the FWS will publish a Final Rule determining whether or not the Gunnison Sage Grouse is to be listed as an Endangered Species.

### **Critical Habitat Designation**

When a Final Rule to list a species is published, the FWS is obligated to take several actions. The FWS has one year to officially designate "critical habit." A map (below) from the *Gunnison Sage-grouse Rangewide Conservation Plan* (April 2005), depicts "occupied" and "potentially" occupied habitat; there are no maps designating critical habitat. While the *Endangered Species Act* requires that critical habitat be designated within one year, in practice this action can take several years to complete.

The Colorado Division of Parks and Wildlife (CDPW) and Gunnison County are working on a GIS map model to designate critical habitat based on the species-dependent functions such as nesting, lek sites, and brood rearing habitat.



This GIS model may or may not be used by the FWS to fulfill the *Endangered Species Act* habitat designation requirement. It is anticipated that Tenderfoot Mountain (“W Mountain”) will be designated as critical habitat. Additionally, upland sage brush lands to the north of Gunnison Rising may also be designated as critical habitat. In fact, the majority of upland sage bush habitat in the lower Gunnison basin will likely be designated as critical habitat.

### **Recovery Plan**

Development of an *Endangered Species Recovery Plan* is another FWS action required under the *Endangered Species Act*, after the Final Rule is published. The FWS has a policy to complete a Recovery Plan within three years but the average time of completion is about six years. The Recovery Plan must include site-specific management actions; measurable criteria for judging when and how well a species is recovering; and, an estimate of costs and resources needed to achieve the goal of recovery.

A Recovery Plan may be developed by FWS staff, private contractor, or the FSW may appoint a Recovery Team to develop the plan. Local jurisdictions, organizations, and citizens are considered essential by FWS policy to be included in the Recovery Plan development and implementation. The FWS has direct oversight and control of the Recovery Plan.

### ***Species Protection and Permits***

Once listed, Section 9 of the *Endangered Species Act* makes it unlawful for any person, including private and public entities to “take” individuals of an endangered species. “Take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. “Harm” is further defined to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding or sheltering. Under this “Harm Rule,” significant habitat modification that results in the impairment of a species’ essential behavioral patterns may constitute a violation of the Section 9 Take prohibition. The *ESA* provides for civil penalties of up to \$25,000 per violation, criminal penalties of up to \$50,000 and one year imprisonment per violation.

The *Endangered Species Act* contains a provision to allow activities that are defined as a Take prohibition under the *ESA* to occur. In order to circumvent the Take prohibition, a *Habitat Conservation Plan (HCP)* must be developed and approved by the FWS. The *HCP* is intended to ensure that there is adequate mitigation of the effects of the proposed action. It is the City staffs’ understanding that an *HCP* may only be approved by an Environmental Assessment (EA), determining a Finding of No Significant Impact (FONSI). A FONSI determination results in the issuance of an Incidental Take Permit. However, the Incidental Take Permit may be revoked at any time.

A *HCP* can address one specific activity or it may be a comprehensive document covering multiple activities across a large geographic area. In general, a comprehensive *HCP* provides for more cohesive administration, but as previously noted they can take years to be approved. Until a comprehensive *HCP* is approved, major activities in critical habitat are required to obtain an individual *HCP*.

At the present time the Bureau of Land Management (BLM) is working with the FWS to develop a *Candidate Conservation Agreement (CCA)*. A *CCA* is similar to an *HCP* but it is developed prior to the listing designation. The *CCA* being developed by the BLM is intended to address agriculture grazing permits, recreation, development and biological functions, but it will only control activities on BLM lands within the basin.

### ***Conclusion***

Development activity and utility services within the Gunnison basin will be affected when the Gunnison Sage Grouse is listed. The degree of impact upon development activity within the city limits is not known at this point in time. Mapping and designation of Critical Habitat will help to answer how development activities in the city limits will be affected.

It is anticipated that the City’s electric services outside the city limits will be directly impacted by the listing action. Additionally, the listing will likely affect improvements at the Hartman Rocks Base Area and Cranor Hill. Listing may also affect the VanTuyl Ranch, Wastewater Treatment Plan, and the Taylor Canyon Park.

The implications of the Gunnison Sage Grouse listing to City service functions are not fully understood, but the community will learn more in the upcoming months. Due to the significant

unknowns regarding this matter, it is recommended that the City remain actively involved in this issue. City involvement should coincide with County efforts. After listing occurs, development activity and service activities within critical habitat areas will be regulated by the FWS under an *Endangered Species Recovery Plan* and approved *Habitat Conservation Plan*; at best this will be very onerous if all the terms are established by the FWS without community involvement.