AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

AgendaTitle:
Correspondence; US Fish and Wildlife Service; Gunnison Sage-grouse, Request to Extend 9/30/13 Deadline

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: FWS and MOU Group

Term Begins: **Term Ends:** **Grant Contract #:** n/a

Summary:
Board signature on letter to the FWS requesting extension of the September 30, 2013 deadline of the proposed ESA listing of the Gunnison Sage-grouse

Fiscal Impact: none

Submitted by: County Attorney's Office **Submitter's Email Address:** bwiseman@gunnisoncounty.org

Finance Review: ○ Required ● Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ● Required ○ Not Required

Comments:

Reviewed by: ATrezise Discharge Date: 6/14/2013 Certificate of Insurance Required Yes ○ No ●

County Manager Review:

Comments:

Reviewed by: MBirnie Discharge Date: 6/14/2013

● Consent Agenda ○ Regular Agenda ○ Worksession Time Allotted:

Agenda Date: 6/18/2013 Follow Up Agenda Date: N/A

Revised April 2013

June 18, 2013

Mr. Daniel M. Ashe, Director
US Fish and Wildlife Service
1849 C Street NW, Room 3331
Washington, DC 20240-0001

Ms. Noreen Walsh, Regional Director
Region Six - United States Fish and Wildlife Service
P.O. Box 25486
Denver Federal Center
Denver, CO 80225 -0486

Re: Gunnison Sage-grouse; Request To Extend Deadline

Dear Director Ashe and Regional Director Walsh:

The eleven Colorado and Utah counties participating in the County Coalition for the Gunnison Sage Grouse ("Coalition") request that the United States Fish and Wildlife Service ("USFWS") exercise its authority under the Endangered Species Act ("ESA"), 16 U.S.C. §1533(b)(6)(A)-(B), to have the Secretary of the Interior extend the current September 30, 2013 deadline for the USFWS to a final determination as to whether or not the Gunnison Sage Grouse ("GuSG") should be listed under the ESA and critical habitat designated. A copy of the Memorandum of Understanding forming the Coalition is attached for your information.

The September 30, 2013 deadline is the result of a Stipulated Settlement Agreement that the United States District Court for the District of Columbia approved in Misc. Action No. 10-377 (EGS), MDL Docket No. 2165, on September 9, 2011. Section Seven of the Court approved Stipulated Settlement Agreement provides that the defendant USFWS "shall make a final listing determination in accordance with the statutory deadlines provided in 16 U.S.C. § 1533(b)(6)(A)-(B)."

Section 16 U.S.C. § 1533(b)(6)(A)-(B) of the ESA provides in subsection (6)(A) that "Within the one-year period beginning on the date on which general notice is published in accordance with paragraph (5)(A)(i) regarding a proposed regulation the Secretary shall publish in the Federal Register – (i) If a determination as to whether a species is an endangered species or a threatened species, or a revision of critical habitat, is involved, either – (I) a final regulation to implement such determination, (II) a final regulation to implement such revision or a finding that such revision should not be made, (III) notice that such one – year period is being extended under subparagraph (B)(i), or…" Subparagraph (B)(i) states that "If the Secretary finds with respect to a proposed regulation referred to in subparagraph (A)(i) that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination or

revision concerned, the Secretary may extend the one-year period specified in subparagraph (A) for not more than six months for purposes of soliciting additional data."

It is the considered position of the Coalition, whose members have filed written comments in response to the USFWS proposed rules published on January 11, 2013 in the Federal Register regarding the proposed listing of the GuSG under the ESA and the related designation of critical habitat, that the comments submitted in response to the proposed rules clearly demonstrate that there is "substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination" that the ESA requires. Such submitted written comments include comments from the Coalition counties as well as the entities identified in the attachment to this letter.

These written comments clearly establish that the Secretary has a valid basis to extend the one year period for making a final listing determination and critical habitat designation for the GuSG under the ESA for a period of six additional months. This additional time period would allow the USFWS to receive and evaluate additional data from both supporters and opponents of the proposed listing and designation of critical habitat for the GuSG under the ESA.

Section 4(b)(2) of the ESA and relevant court case law require that a draft economic analysis and draft environmental analysis of the impacts associated with the proposed designation of critical habitat must be published and public comment solicited before a rule designating critical habitat can be finalized. Under the ESA the Secretary may exclude an area from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless the best scientific data supports a determination that failure to designate such critical habitat will result in the species' extinction. It is our understanding that the USFWS does not currently expect to publish a draft economic analysis or draft environmental analysis for public comment until July 2013. If that is the case, the current deadline of September 30, 2013 will give the public and the agency less than three months to provide and analyze the comments received on the draft economic analysis and draft environmental analysis. Such a brief time period appears to be grossly inadequate given the nature and extent of each required economic analysis.

The Coalition counties understand and appreciate the nature and extent of the challenges confronting the USFWS in rendering its final decisions on whether or not to list the GuSG under the ESA and to designate critical habitat for the species. We therefore respectfully request that the USFWS urge the Secretary of the Interior to exercise her statutory discretion under the ESA and extend the one year period for issuing a final determination in this matter for a period of six months beyond the current deadline of September 30, 2013. Please feel free to contact David Baumgarten, County Attorney, Gunnison County, 970-641-5300, email: dbaumgarten@gunnisoncounty.org, should you wish to further discuss the Coalition's request. Your attention to this matter is appreciated.

Please note: Nothing in this letter is, or shall be construed to be, a waiver by any signatory of any right or objection, procedural or substantive, regarding each proposed rule.

FOR THE BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY, COLORADO

By: _____

Paula Swenson, Chairperson

FOR THE BOARD OF COUNTY COMMISSIONERS OF SAGUACHE COUNTY, COLORADO

By: _____

Linda Joseph, Chairperson

FOR THE BOARD OF COUNTY COMMISSIONERS OF DOLORES COUNTY, COLORADO

By: _____

Douglas R. Stowe, Chairperson

FOR THE BOARD OF COUNTY COMMISSIONERS OF MONTEZUMA COUNTY, COLORADO

By: _____

Steve Chappell, Chairperson

FOR THE BOARD OF COUNTY COMMISSIONERS OF DELTA COUNTY, COLORADO

By: _____

C. Doug Atchley, Chairperson

FOR THE BOARD OF COUNTY COMMISSIONERS OF MONTROSE COUNTY, COLORADO

By: _____

Ronald D. Henderson, Chairperson

FOR THE BOARD OF COUNTY COMMISSIONERS OF HINSDALE COUNTY, COLORADO

By: _____

Cindy Dozier, Chairperson

FOR THE BOARD OF COUNTY COMMISSIONERS OF MESA COUNTY, COLORADO

By: _____

Steven Acquafresca, Chairperson

FOR THE BOARD OF COUNTY COMMISSIONERS OF SAN MIGUEL COUNTY, COLORADO

By: _____

Joan May, Chairperson

FOR THE BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO

By: _____

F. Mike Fedel, Chairperson

FOR THE BOARD OF COUNTY
COMMISSIONERS OF
SAN JUAN COUNTY, UTAH

By: _____
Bruce Adams, Chairperson

Encls: Executed GuSG County Coalition MOU