



## CENTER FOR NATIVE ECOSYSTEMS

1536 Wynkoop, Suite 302  
Denver, Colorado 80202  
303.546.0214  
cne@nativeecosystems.org  
www.nativeecosystems.org

Jerry Kenczka, Planner  
BLM Vernal Field Office  
170 South 500 East  
Vernal, UT 84078

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Dear Mr. Kenczka:

Center for Native Ecosystems and The Wilderness Society are pleased to provide supplemental comments on the draft Vernal Resource Management Plan (RMP) with regard to Areas of Critical Environmental Concern. Utah Native Plant Society's support for the following comments is limited to comments relating to native plant species. Our organizations have submitted extensive comments on the RMP and on Vernal's management of special resources generally. These comments supplement our previous comments and address circumstances that have changed since June when the last round of commenting ended.

### **Endangered Species Act listing and designation of critical habitat for Graham's penstemon have been proposed by the U.S. Fish and Wildlife Service.**

The publication of the listing proposal and proposed critical habitat designation (71 Fed. Reg. 3158-3196 (Jan. 19, 2006)) means that the BLM must conference with the Service on actions that may jeopardize the penstemon or may adversely modify the proposed critical habitat; therefore, the BLM must confer with the Service about the draft RMP. The BLM should contact the Service immediately about the draft RMP's proposed management of Graham's penstemon and incorporate the Service's recommendations for improvements in the final RMP. The BLM should reevaluate the proposed ACECs to determine whether some should be expanded or whether new ACECs should be designated in order to provide the penstemon with the special management it needs. The BLM should also reevaluate the draft RMP's proposed management provisions for ACECs containing Graham's penstemon habitat and ensure that ACEC management will further penstemon recovery.

Center for Native Ecosystems and Utah Native Plant Society hereby nominate the entire proposed Graham's penstemon critical habitat designation as described in Fed. Reg. 3158-3196 (Jan. 19, 2006) plus buffers of at least 300 feet (or the distance recommended by Dr. Vince Tepedino, if larger) as an Area of Critical Environmental Concern. Alternatively, Center for Native Ecosystems and Utah Native Plant Society hereby nominate the entire proposed Graham's penstemon critical habitat designation as described in Fed. Reg. 3158-3196 (Jan. 19,

2006) plus buffers of at least 300 feet (or the distance recommended by Dr. Vince Tepedino, if larger) as multiple Areas of Critical Environmental Concern. The BLM should evaluate both of these nominations through the RMP revision planning process. The BLM Manual explains that nominations may be made at any time:

The public has an opportunity to submit nominations or recommendations for areas to be considered for ACEC designation. Such recommendations are actively solicited at the beginning of a planning effort. However, nominations may be made at any time and must receive a preliminary evaluation to determine if they meet the relevance and importance criteria, and, therefore, warrant further consideration in the planning process....BLM Manual 1613.41

The critical habitat proposal discusses the relevance and importance of these areas. For example, the Service stated, “We consider all of the units proposed as critical habitat to contain features essential to the conservation of *Penstemon grahamii*” (71 Fed. Reg. 3171 (Jan. 19, 2006)). The Service also addressed the need for special management of these areas: “Additional conservation measures, including the designation of areas dedicated to the conservation of *P. grahamii* and its habitat, may be necessary for the species [sic] long-term conservation in the event of large-scale energy development within its occupied habitat” (71 Fed. Reg. 3168 (Jan. 19, 2006)).

We encourage the BLM to seek the expertise of Dr. Vince Tepedino in determining what buffers would be most appropriate. We are suggesting at least 300’ buffers because the Service has endorsed this size buffer for rare plant conservation in the past. For example, in designating critical habitat for the Ventura marsh milkvetch the Service wrote:

According to a comprehensive review of rare plant preserve design compiled by the Conservation Biology Institute (2000), areas to protect a rare plant species should be at a minimum 300 ft (91 m) wide but a larger area is preferred, because effects (*e.g.*, fuel management, loss of pollinators, introduction of competing exotic plants) are not absorbed by smaller areas, and the effects are likely to extend well into adjacent preserved areas. (69 Fed. Reg. 29082 (May 20, 2004))

Later in this document, the Service explained that the buffers themselves should be at least 300’ wide, recommending “sufficient buffering (*i.e.*, at least 300 feet) from adjacent residential development and roads” (69 Fed. Reg. 29083 (May 20, 2004)). Graham’s penstemon’s main pollinator is the wasp *Pseudomasaris vespoides*, a penstemon specialist (Lewinsohn *et al.* 2005). The Service’s listing proposal notes that in order for Graham’s penstemon to persist, other species of penstemon must also be conserved:

Because flowers of *P. grahamii* appear to be very scarce, this plant species will usually be unable to support a viable population of *Pseudomasaris vespoides*. In all likelihood, successful reproduction by *P. grahamii* must depend on the occurrence of other concurrently blooming *Penstemon* species which support and keep abundant populations of *Pseudomasaris vespoides* in the area. (71 Fed. Reg. 3164 (Jan. 19, 2006))

The BLM must therefore consider the needs of both this pollinator and those other penstemons in making management decisions concerning Graham's penstemon, including in determining what buffers might be most appropriate.

The following ACECs already being considered in the draft RMP contain portions of the proposed critical habitat: Lower Green River (all alternatives), Nine Mile (all alternatives), Four Mile Wash (Alternative C), Main Canyon (Alternative C), and White River (Alternative C). In addition, Alternative C's Bitter Creek/P.R. Spring includes a known Graham's penstemon occurrence outside of the critical habitat proposal. In reevaluating its management of Graham's penstemon, the BLM should determine whether additional prescriptions are necessary in these areas, and should consider expanding them to include other penstemon occurrences. Of the potential ACECs mentioned above, Main Canyon seems to be especially important.

In the listing proposal, the Service provided guidance about what kinds of special management may be needed to avoid jeopardy and adverse modification of critical habitat. The BLM must, at a bare minimum, actively manage Graham's penstemon habitat to avoid the following kinds of disturbance:

Generally, if a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for the *Penstemon grahamii* include, but are not limited to:

- (1) Activities that have the potential to appreciably degrade or destroy *Penstemon grahamii* habitat and its P[rimary] C[onstituent] E[lements], including current oil and gas development, future oil shale and tar sand development, road building, ORV use, herbicide use, and intensive livestock grazing;
- (2) Alteration of existing hydrology by lowering the groundwater table or redirection of sheet flow from areas adjacent to deflation hollows;
- (3) Compaction of soil through the establishment of new trails or roads;
- (4) Activities that foster the introduction of non-native vegetation, particularly noxious weeds, or create conditions that encourage the growth of non-natives. These activities could include, but are not limited to: Irrigation, supplemental feeding of livestock, and ground disturbance associated with pipelines, roads, and other soil-disturbing activities; and
- (5) Indirect effects that appreciably decrease habitat value or quality (e.g., construction of fencing along the perimeter of the critical habitat leading to cattle congregation at the fence and resultant focused disturbance, erosion, and changes to drainage patterns, soil stability,

and vegetative community composition). (71 Fed. Reg. 3171 (Jan. 19, 2006))

The BLM and SITLA have been discussing a land exchange lately that could have resulted in the BLM's disposal of habitat for Graham's penstemon. Our understanding is that the BLM no longer plans to dispose of penstemon habitat, and we strongly support the BLM in that decision. There will undoubtedly be pressure for additional exchanges in this area in the future, and the BLM must retain habitat for rare species in federal ownership. ACEC designation could help the agency retain penstemon habitat.

The BLM should take these actions for Graham's penstemon for several reasons. First, the BLM has duties toward special status species like Graham's penstemon under FLPMA and the BLM Manual. Secondly, the BLM must not contribute to the need to list species under the Endangered Species Act. The BLM has an opportunity during this plan revision to put in place the conservation measures that the penstemon requires. If the BLM does not act on this opportunity, it will most likely be forced to amend the plan almost immediately. Center for Native Ecosystems, Utah Native Plant Society, and the Colorado Native Plant Society have already secured a court-ordered settlement date requiring that the Service publish a final listing determination and final critical habitat determination by December of this year. Finally, in the past the BLM has claimed that existing leases essentially render ACECs meaningless. Proposed Endangered Species Act listing changes this equation, and provides the BLM with the ability to not just make management prescriptions for the penstemon, but also to apply them whether or not the lands have been leased because the Act trumps existing lease rights. Of course, we still believe that all resources that meet ACEC criteria should be designated and be provided with necessary management prescriptions in planning documents because leases do eventually expire.

### **Pariette cactus Endangered Species Act listing is under review by the Service now.**

Center for Native Ecosystems and Utah Native Plant Society are involved in settlement negotiations with the Service now on our petition to list Pariette cactus (*Sclerocactus brevispinus*) under the Endangered Species Act. Before we petitioned, we requested the Service's files on the cactus, but they were slow to respond and we felt we could not wait to submit our petition. After our petition was received, the Service responded to our request. Their files document that the BLM's Jean Nitschke-Sinclear advocated for the cactus's protection for years. Her tireless efforts are to be applauded, and it is extremely unfortunate that the Service did little in response. While the cactus's current plight may rest on the shoulders of the Service rather than the BLM, the Vernal RMP may present the last chance to salvage what is left of its habitat. The BLM must ensure that the Pariette Wetlands ACEC is designated as No Surface Occupancy (as the Service required in the Castle Peak Biological Opinion, even though the BLM ignored this). Furthermore, the BLM must expand the Pariette Wetlands ACEC to include all known occurrences of Pariette cactus. The BLM should consult with the Service on what other measures may be necessary for Pariette cactus given its potential listing independent of Uinta Basin hookless cactus. Similarly, the BLM should consult with the Service on necessary management for *Sclerocactus wetlandicus*, which may be listed in conjunction with Pariette cactus. The BLM has temporarily deferred drilling in Pariette Wetlands ACEC, but has not

systematically addressed Pariette cactus's needs, and has not committed to prohibiting drilling and other disturbances in its habitat.

Center for Native Ecosystems and Utah Native Plant Society hereby nominate for ACEC designation all known occurrences (including all occurrences discovered prior to the adoption of the final Vernal RMP) of Pariette cactus that are outside the current boundaries of the Pariette Wetlands ACEC, plus buffers of at least 300' (or the distance recommended by Dr. Vince Tepedino, if larger). We suggest that the BLM could accomplish this by either expanding the existing Pariette Wetlands ACEC or by designation of one or more new ACECs.

Again, the BLM must not contribute to the need to list species under the Act, and must ensure that its actions will not jeopardize listed species. Because of Pariette cactus's unusual status of being listed under Uinta Basin hookless cactus listing while at the same time being considered for independent listing, both of these apply, and the BLM's proposed management of Pariette Wetlands ACEC and adjacent areas in the draft RMP may fail both of these tests. Just like Graham's penstemon, the Vernal RMP will be key to Pariette cactus's future.

### **An interagency effort to conserve endemic plants of the Uinta Basin is underway.**

The Vernal RMP will largely determine the fate of not just Graham's penstemon and Pariette cactus, but of the whole Uinta Basin's rare flora. In November interested parties began meeting to discuss basin-wide conservation of rare plants in the face of increasing oil and gas drilling. The BLM's Ron Bolander and Bob Specht both attended. The BLM is to be commended for participating in this effort, and we strongly encourage the agency to incorporate recommendations that result from this in its land use planning.

At the November meeting, participants prioritized the following suites of Uinta Basin endemics for conservation: Green River Shale endemics (*Schoenocrambe suffrutescens*, *Schoenocrambe argillacea*, *Penstemon scariosus* var. *albifluvis*, *Penstemon grahamii*, *Lepidium barnebyanum*, *Cryptantha barnebyi*), Pariette Draw/Myton Bench cacti (*Sclerocactus brevispinus*, *Sclerocactus wetlandicus*/*Sclerocactus glaucus*), and Horseshoe Bend area milkvetches (*Astragalus equisolensis* and *Astragalus duchesnensis*). The BLM should consider whether ACECs should be designated, expanded, or granted enhanced management prescriptions for these species. Most of these species have special status, and the BLM must not contribute to the need to list them, either.

### **The Vernal Field Office has moved forward with the destruction and disposal of a 5,000+ acre white-tailed prairie dog complex.**

The BLM has moved forward with the terribly ill-advised Uintah County Recreation Park project, which will destroy much of the Sunshine Bench white-tailed prairie dog complex for the construction of a motorized vehicle park and shooting range, and will then give this land to Uintah County. This is the single worst project we have seen proposed for a 5000+ acre white-tailed prairie dog complex, and it epitomizes the BLM's utter disregard for the white-tailed prairie dog ecosystem. We believe that the construction happening on the park now is illegal, and are looking into the process that the BLM used to authorize construction before the Notice of

Realty Action even ran. We do not believe that Uintah County has developed a prairie dog management plan, which was one of the stipulations of both the ROD and the Temporary Use Permit that the County is operating under now. It is baffling how the BLM could construe the construction of four separate race tracks as a “minimum impact” activity that “will not cause appreciable damage or disturbance to the public lands”.

This project demonstrates that the white-tailed prairie dog complexes of the Vernal BLM desperately require special management attention. If a large complex like Sunshine Bench, which the existing RMP prioritized for protection and ferret reintroduction, can be destroyed and donated to the County so that they can run a money-making concession on it, it is entirely possible that other important complexes will be lost as well. The Castle Peak project also will contribute to further industrialization of the Myton Bench complex, and probably will ensure that the mountain plover has been extirpated from Utah. The BLM must consider expanding the preferred alternative’s Coyote Basin ACEC to encompass additional complexes and subcomplexes. The BLM must also consider strengthening the management prescriptions for white-tailed prairie dog ACECs given that the Field Office has chosen to dispose of the Sunshine Bench complex and has completely fragmented the entire Myton Bench complex.

### **Drilling is moving into the Coyote Basin black-footed ferret reintroduction area.**

We also are seeing more drilling proposals in the Coyote Basin ferret reintroduction area, and we urge the BLM to use the RMP process to actively plan for how to avoid conflicts between ferrets and drilling. The BLM must know how the ferret recovery program has struggled, and Utah has made very important contributions to its progress. By adopting necessary management prescriptions now for ACECs in Coyote Basin, Kennedy Wash, Snake John, Shiner, and other potential ferret reintroduction areas, the BLM could help ensure the long-term viability of the Utah reintroduction site.

### **A new sage grouse study highlights the impacts of drilling.**

Holloran (2005) concludes that the impacts of drilling on sage grouse are even more severe than Connelly et al. (2000) projected. Without active management for large blocks of unfragmented sagebrush habitat, sage grouse may be extirpated from the basin as well. The BLM should consider designating ACECs for any sage grouse leks that may not yet be affected by oil and gas drilling.

### **Other forms of energy development may be on their way.**

Designating ACECs now may also help the BLM site oil shale, tar sands, or wind developments outside of sensitive areas. The BLM should consider where these development pressures are likely to occur and protect sensitive resources in those areas via this RMP revision.

### **Conclusion**

For the foreseeable future, oil and gas drilling will be one of the main uses of the Vernal Field Office’s lands. If the other natural resources of the Uinta Basin are to persist, the Vernal BLM

must actively manage for their conservation in the face of drilling pressure. Designating Areas of Critical Environmental Concern is one potentially significant way that the BLM can achieve that goal. FLPMA requires that the BLM give priority to the designation of ACECs in the planning process, and we do not believe that the Vernal BLM has done that yet. We strongly encourage the Field Office staff to take another look before adopting the final RMP, and do their best to save those plants, animals, and places that make the Uinta Basin so special.

Sincerely,



Erin Robertson  
Staff Biologist

on behalf of:

Suzanne Jones, Regional Director  
Four Corners States Regional Office  
The Wilderness Society  
1660 Wynkoop, Suite 850  
Denver, CO 80202  
(303) 650-5818 Ext. 102

Nada Culver  
Senior Counsel, Public Lands Campaign  
BLM Action Center  
1660 Wynkoop, Suite 850  
Denver, CO 80202  
(303) 650-5818 Ext. 117

Tony Frates  
Conservation Committee Co-Chair  
Utah Native Plant Society  
P. O. Box 520041  
Salt Lake City, UT 84152

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