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Submitted by: Tony Frates, Utah Native Plant Society, Conservation co-chair

Proposed rule: FWS-R6-ES-2013-0081

Subject: Draft Conservation Agreement

With respect to:

Endangered and Threatened Wildlife and Plants: *Penstemon grahamii* (Graham's beardtongue) and *Penstemon scariosus* var. *albifluvis* (White River beardtongue); Critical Habitat

Comments:

These comments are in response to the above May 6, 2014 proposed rule relating to a Draft Conservation Agreement and the related reopening of the comment period relating to the original August 6, 2013 proposal to list.

The Service's August 6, 2013 proposal was well-done and appropriately outlines decades of accumulated scientific knowledge and research

We apologize for not having earlier commended the Service for the generally excellent and thorough work that was published on August 6, 2013, and which does present the best available science for these species. We commend you also for the pollinator analysis and recommended buffer zones based on observed pollinator sizes. Most of our concerns outlined below relate to what has since occurred.

The May 5, 2014 press release and other documents released by the Service has confused the public and the Service has not made a recommendation that the public can understand nor disclosed the true details behind the development of the draft conservation agreement nor even clearly outlined critical habitat designation options

The public has not been clearly informed about options that are being presented for comment. Not a single person we spoke to, including media, has had any understanding that this was an “either/or” situation in terms of acceptance of the conservation agreement versus listing. In short, many members of the public would not fully understand what they are commenting on.

Nor has the Service provided its preferred alternatives with respect to what are two completely different options in terms of the draft conservation agreement versus the listing and critical habitat designation. While alternatives are provided in the draft environmental assessment, the Service has not indicated whether those alternatives would even apply based on its potential acceptance of the draft conservation agreement.

Further the Service indicates that the PECE analysis of the draft conservation agreement would be completed by “early 2014.” “Early 2014” was already past when the May 6, 2014 proposals were made. If the draft conservation agreement did not qualify, then there would be no point in putting it out for comment. If it did qualify, then the Service should have indicated what its preferred option was. Instead, the Service plans to publish the PECE analysis with its “final determination.”

And in fact as outlined by Section 3.1.3 of the Draft Environmental Analysis, the purpose of conservation agreements in this context is to preclude the designation of critical habitat, but **not** to prevent the listing of the species. But then in Section 3.1.3 it proceeds to discuss the development of a conservation agreement never indicating that it is in lieu of listing, but then that a PECE analysis would be performed as outlined above. Section 3.1.3 then effectively muddies the very important reason as to the purpose of conservation agreements.

In the Draft Environmental Assessment the Service also makes it sound like perhaps it developed the conservation agreement. Yet it did not. SITLA, PLPCO and Uintah County paid \$50,000 to SWCA to develop that agreement with the first payment commencing in December of 2013. This lack of detail makes it impossible for a member of the public to make an informed decision as to what has really transpired. The Service then served as sort of an intermediary to a limited number of parties in perhaps trying to be cooperative and broker an agreement. The intention though of these state entities was to thwart the listing.

Further, the document is unclear as to even the issue of critical habitat designation. The vast majority of Utah's listed plant species do not have the benefit of a critical habitat designation. And the policies of the Service during the Bush-Cheney era were the opposite of what they are today (i.e. then the Service was opposed to the designation of critical habitat for plant species).

Currently there are 25 federally listed species (13 as threatened and 12 as endangered) that have a distribution that includes Utah (many of which only occur in Utah). In addition, Utah has four candidate species and two that are proposed for listing (i.e. the two species of *Penstemon* that are the subject of this rulemaking proposal).

Of the 25 listed plant species, only *Asclepias welshii*, *Astragalus holmgreniorum*, *A. ampullarioides* and *Sphaeralcea gierischii* have had critical habitat designations which is a very low percentage of the total. In the case of *Astragalus deserticus* listed in 1999, it was concluded that a critical habitat designation was unnecessary due to its narrow distribution. In the case of listed cacti species, the Service has by policy not designated critical habitat due to fear of disclosure of habitat information (despite that normally being easy to discern). The point being made here is that the sentence:

“Critical habitat designation is required by the ESA for listed species.”

in the introductory paragraph the EA is really not clearly accurate. Nor does the Service provide a rationale or option why designation of critical habitat in this case might be preferred. Nor does it identify the alternatives that might be different for each of the two species since the species are not the same. They do not grow with one another (except for in one area where they are not technically sympatric) and grow in different habitat types. They have different land ownership patterns. Their growth patterns and life cycles are different. They are not phylogenetically similar: Holmgren places *P. grahamii* in the the Cristati section with *P. scariosus* in a far remote Glabri section (Cronquist 2014). They have very different flowering patterns and so forth. Including them together has also made perhaps some false impressions in the mind of the public that they are just variations of one another or that they are somehow the same, or they are sister species, or they are related hybrids, etc. Yet, they are not.

While both should be listed, it was the choice of the Service to combine these into one package for purposes of economy and due to where they occur. That has immeasurably added to the complexity of this proposal given the nature and extent of impacts and because they do have a very different phenology. Our position from the beginning was that *Penstemon grahamii* should proceed on its own, and quickly. In any event, the options should not necessarily simply be the same for both.

The public **does** understand, we think, that the species are being proposed for listing in light of the August 6, 2013 notice. The Service should evaluate a listing with no critical habitat versus acceptance of the draft conservation agreement *should it decide to accept the draft conservation agreement*. Our position would be that a listing without critical habitat would be vastly more preferable to acceptance of the draft conservation agreement. This would also be the case were any critical habitat to be excluded due to reasons of national security or due simply to the fact that the public does not understand what critical habitat means (and wrongly thinks that preserves of some kind are being established, which of course they are not), or if there was an agreement where some voluntary conservation measures by the state/county/private industry would be taken upon listing. Some of those reasons might, and only then, justify not designating critical habitat. In light of the fact that so many of our listed species do not have this designation, it has not been adequately explained why those do not yet these *Penstemon* species “must” have critical habitat designated.

Section 4(a)3(A)(i) of the Endangered Species Act indicates that the Service shall designate “any” habitat which is “considered” to be critical habitat and also that currently listed species “may” later receive that designation at the time of listing. So a critical habitat designation must be **considered** at time of listing but it is not **required**. Sec. 4(b)(2) indicates that areas may be excluded if the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, all things being equal and that the determination must be made on the basis of the best scientific and commercial information available.

We are very much **in favor** of the critical habitat designations as proposed for these species. We just think it would be helpful if the document more clearly communicated some of these issues to better educate the public.

The continuing legacy of Kathleen Clarke

It is remarkable that Kathleen Clarke's name would appear as a potential signatory on this the draft conservation agreement. During her tenure as BLM's national director, the BLM's Penstemon “No Listing” or “Strike Force” Team specifically sought to prevent the 2006 proposed listing for *Penstemon grahamii* and it was Clarke that signed the letter transmitting an analysis which contained intentionally obfuscated information that the Service ultimately relied on in withdrawing its proposal. The incorrect information related in part to intentionally misinterpreted slope data. The Service in fact should have known better than to have accepted the information that was then provided having had years of on-the-ground experience with the species. Plus the data presented simply didn't make sense. And perhaps it truly thought that BLM could otherwise take actions to help conserve the species without listing in combination with relying on that false information. But it needs to be made exceedingly clear that the FWS withdrew that proposal based on reasons that involved misinformation and probably also severe political pressure.



The BLM argued (Clarke 2006) that Graham's penstemon occurred mostly on steeper slopes of > 2 and < 25 degrees not suitable for oil and gas pad placement which usually occurred on slopes of < 10 degrees (don't those two ranges overlap?!). Scattered *P. grahamii* were located here (Sunday School Canyon, 5/27/06, T. Frates) at a slope of zero degrees.

Sadly however it would appear that the Penstemon “No Listing” Team is alive and well and embedded now within the government of the state of Utah. Kathleen Clarke has made no apologies for the behavior of the BLM under her directorship simply labeling them as “philosophical differences” rather than breaches of protocol and law/regulation. And she has made it very clear that she does not “believe” in the scope of the Endangered Species Act as it was written and intended.

At an energy summit held in 2012, Ms. Clarke stated that perhaps the most damaging thing that Richard Nixon did to this country was to sign into law the Endangered Species Act. She further stated that it may have been well-intentioned to protect “. . . large species that are important to us, but we find ourselves today protecting beetles, and little lizards, and insects and all kinds of miscellaneous species that I don't think we ever envisioned would receive the protection or the attention that was graced upon the Endangered Species Act."

Her understanding is stunningly incorrect. It is the “little” things that support the “large species.” And plant species were always an integral, targeted portion of the world's living organisms that were clearly intended to be part of the Endangered Species Act from the very beginning. Accordingly plant species from Utah have been listed under the Act going back as far as 1979. This is not a recent development.



Source: <http://www.vernalutah.org/uintah-county/uintah-county-energy-summit/item/36-kathleen-clarke-director-of-utah-public-lands>
Kathleen Clarke, Director of Utah Public Lands, at Energy Summit September 2012

As a result of this bias and lack of scientific knowledge, Kathleen Clarke and the current administration would in fact likely oppose **any** plant species proposed to be recognized with a formal status under the Endangered Species Act that involved habitat anywhere within the state of Utah. It is simply against their policy and personal belief system. Clarke, and Utah's so-called Public Lands Policy Coordination Office, the Governor, SITLA and others will take every measure possible to stop a listing, no matter what the science indicates (and will then refer to that science as “bad science” and by saying it over and over, until they hope others will believe it to be true). Energy companies and their lobbyists and organizations like the Western Energy Alliance would also of course never support the listing of a species that occur anywhere near their expected areas of operation. And it should come as no surprise that very significant campaign contributions have been spent by companies in energy related industries


supporting Governor Herbert, and that companies like Newfield who operate with relative impunity in the Uinta Basin have a direct and open line to his office, with access that others in the state that he also represents do not.

www.newfield.com/in-the-news.aspx

Utah Gov. Tours Newfield

Utah Gov. Gary Herbert visited Newfield's offices in Pleasant Valley on April 27, 2011 and Talked about His Support for Oil and Gas Development on Federal Lands

(By Steve Puro, Uintah Basin Standard)



Gov. Gary Herbert visited the oil fields of the Uintah Basin on Wednesday and made a stop at Utah's No. 1 producer of crude oil - Newfield Production Co.

Others joining the governor were U.S. Rep Jason Chaffetz, state Sen. Kevin Van Tassell, state Rep. Kraig Powell, commissioners from Uintah and Duchesne counties and other elected officials throughout the region.

Utah Governor G. Herbert with Newfield Daryl Howard tour Monument Butte Water Treatment Facility.

Herbert met with Newfield employees prior to the beginning of the company's annual clean up day. In his remarks, he referred to the "ripple effect" that work by Newfield has in creating new jobs in related industries.

"What happens here with Newfield is of significant importance to the Basin area and to our state's economy," the governor said.

Herbert identified all the workers as stewards of the land. On their days away from work, he said, they all enjoy a high quality of life provided by the ecologically friendly practices they employ on the job.


"There is an ability for us to have an appropriate balance where we access in environmentally sensitive ways our natural resources and still take care of the environment," he said. "I applaud the efforts here. You are producing 22,000 barrels of oil a day and reducing the ozone impact by producing more and impacting less."

Source: <http://www.newfield.com/in-the-news.aspx>

One example of a campaign event arranged for by Newfield and the Western Energy Alliance that occurred in Denver, Colorado follows:

s3.documentcloud.org/documents/370520/fund-raising-and-events-western-energy-alliance.pdf

PLEASE JOIN UTAH GOVERNOR GARY HERBERT



Hosted by: Newfield Exploration
Western Energy Alliance

Reception: Friday, January 20, 2012
Round table at 10 a.m. - noon
Lunch served at 11:30 a.m.

1001 17th Street
Suite 2000
Denver, CO 80202

Co-Host: \$5,000
Sponsor: \$2,500
Attend: \$1,000

Please RSVP to: Liv Moffat at liv@garyherbert.com
or by calling 801.718.3388

Please make contribution payable to: **Herbert for Governor**

Please note that corporate, PAC and personal contributions are welcome. There are currently no state limits on contributions to statewide candidates in the State of

Source: <http://s3.documentcloud.org/documents/370520/fund-raising-and-events-western-energy-alliance.pdf>

This fund-raising event in 2012 was co-sponsored by the Western Energy Alliance, a trade group, and Newfield Exploration, an energy company. This occurred while Newfield awaited bureau approval of a 5,700 well project near Vernal, Utah.



Example of oil and gas pad impacts of a single well (Newfield), Leland Bench area, 5/6/2006 (T. Frates)

The state's closed door policy and catering to energy interests

Utah state lands management is conducted in a very non-transparent manner where the public is frequently shut out from participation. SITLA will for example carefully choose who to invite to participate in projects where it is seeking public input. During the meetings it organized in Washington County with respect to the South Block, it manipulated and controlled when and where topics related to endangered plant issues could be even be discussed. It does not invite comment on rare plant issues unless those plant species have a federal status. It does not even check the Utah Natural Heritage Program database for potential conflicts in connection with rare plant species as a general rule even though conflicts could often be avoided due to simple awareness.

Another example that involves parties signatory to the conservation agreement includes Uintah County's Mike McKee (as well as Kathleen Clarke) in connection with a meeting held March 27, 2012 in Vernal that has been well-publicized. At this "open meeting" energy representative and lobbyists were allowed but not the general public. Colorado Common Cause was ultimately able to determine based on a records request that purpose of the meeting was in fact to create a political and legal strategy to support a "Bush-era" oil shale lands on western public lands. The National Oil Shale Association was also involved (Loomis 2012).

Kathleen Clarke should have recused herself from any involvement with this draft conservation agreement yet is a signatory as is Mike McKee. This is highly disturbing.

The lack of transparency in developing the draft conservation agreement

As referred to previously, we feel that it was incorrect for the Service to indicate that it developed (along with others) a draft conservation agreement when in fact that agreement was initiated by SITLA, PLPCO and Uintah County. SITLA has proudly indicated that it spent \$50,000 on an environmental consultant (SWCA) who drafted the agreement and it considers that to be a minimal cost to potentially eliminate Section 7 consultations. SWCA has also been providing population counts to the Utah Natural Heritage Program and to the Service. Essentially this situation is not dissimilar to a individual hiring their own real estate appraiser. SWCA's loyalties and obligations are to SITLA and other state agencies. They were essentially hired to be part of a "no listing" team. During the course of early communication of developing that agreement and identifying conservation areas, energy companies were allowed to pick and choose which conservation areas were or were not acceptable. Washington, DC energy lobbyists were also allowed to participate. This is rather incredible given that scientists and organizations who could have provided important information were not only not consulted during this process but in fact were excluded from it. It is also rather incredible given the past petition and three lawsuits (including one to compel the BLM to provide a FOIA response which contained the Penstemon Strike Force and "no listing" team details) which is then why *P. grahamii* had to again be re-considered for listing based on Judge Miller's June 2011 decision.

So given this backdrop and the fact that Kathleen Clarke has again significantly involved herself into this matter, this time as a state employee, we find it utterly incredible that the Service even entertained and spent its valuable time working on this incredibly flawed approach and especially given the restrictions and behavior of the state during the negotiations; although, we appreciate that the Service had to consider the idea and we would all like to see the state of Utah become a more collaborative and enlightened partner. This however will take time and has not yet occurred.

The best interests of the species are really not at the center of the draft conservation agreement and should be rejected for numerous compelling reasons including the fact that this approach will simply encourage the state to continue to in essence wait until the end of a very lengthy, costly process and then usurp it by coming in at the last minute with a hastily prepared (in relative terms) document simply to accomplish its "no listing" objectives. It simply doesn't want anything more to be listed under the Endangered Species Act ever again. And especially not something as lowly as a plant species. That is its mission and goal here. Its bullying behavior should not be condoned by the Service agreeing to a document that will be terminated should either species be listed. That is not in the nature of a proper conservation agreement and for that reason alone should be rejected.

The state's lack of a scientific approach to natural resource issues

We see claim after claim from the state (and energy companies and their lobbyists) about "bad science" when in fact that represents their normal operating procedures and often in an office environments that involve a threat of termination if views are expressed contrary to those of the upper administration or management. This does not encourage an atmosphere of creative thinking nor collaboration.

It is hard to know where to even start in providing specific examples, so this will be confined to only a few.

The Leavitt area saw the gutting of the Utah Department of Natural Resources biologists (Wilkinson 1996).

Motivated by legislative budgets, the DWR eliminated both of its Utah Natural Heritage Program botanists from early in 2010 to the summer of 2011. Only relatively recently has that program, which was initially started by The Nature Conservancy as with equivalent programs that exist throughout the rest of the country, been resurrected, but only with the help of the federal government and now with a different state employer (Utah State University). Even when DWR was provided with the opportunity for funding via the federal government, it refused to accept that funding and restart the botany portion of the UNHP. DWR continues to be unengaged and disinterested in rare plant issues of any kind.

DWR has still not made good on its promise to return beaver to Red Butte Canyon where their sad and inappropriate removal has worsened flooding problems and degraded Red Butte Canyon's uniquely rich habitat. (See: Beavers at <http://redbuttecanyon.net/beavers.html> for more information.) It continues to introduce non-native animals in ill-advised places such as its irresponsible introduction last year of Mountain goats into the La Sal Mountains for the purpose of big game hunting and despite the fact that no non-DWR scientists could be found that agreed with that introduction. It does not want nor seek scientific input that is not internal.

The state's Division of Oil, Gas & Mining regulations have still not been modernized and which instead continue to encourage endangered species listings (Everitt 2007). And Earth Day 2013 in Utah brought us that division's poster contest with the theme, "Where would we be without oil, gas & mining?" which was not very favorably received as an appropriate topic for Earth Day by most members of the general public and is really quite contrary to the purpose of Earth Day.

The recent widely publicized decision to change the state's official tree, while a relatively trivial matter, was equally handled with a complete and utter disregard for the facts and for science. Of course, the state can decide to designate any tree that it wants as the state tree. It should make changes though for the right reason and not misinform the public as it did. Almost all of the reasons that the Governor gave were factually wrong and in the end we have a state tree that is more iconic of Colorado than of Utah and even though the entire movement started because, purportedly, some 4th graders thought it was terrible that the "Colorado" Blue Spruce was the Utah state tree. In short, Utah again appears as a state that is something less than highly intelligent. Plants can have all sorts of common names such as the Utah Juniper which does not occur solely in Utah. Utah's official state designation of the "Blue Spruce" was several years prior to Colorado's. It has a scientific name and it does occur in Utah. And so forth. But the lawmakers proposing the bill nor the Governor nor his advisers wanted to listen to any of these facts.

Many Utah legislators continue to scoff at the idea of climate change and simply do not understand the science behind the increasing temperatures that have been made worse by our activities. Drastic changes are likely in store on the very near horizon. The next century will not be like the last.

And when the state has seemingly occasionally made strides to become more responsible for its natural resources, it has then not always lived up to its promises. A rather stunning example of that involves another signatory to the draft conservation agreement.

The inability of the state to keep its promises, and the difficulties of working with SITLA

In 1983, Kevin Carter was stationed in Cedar City with the State Lands and Forestry. Working cooperatively with UNPS (and in connection with a contact that we initiated), the state ultimately agreed to take some proactive action in connection with the federally listed plant species, *Arctomecon humilis*, which solely occurs within a roughly five to eight mile radius around St. George. This was against the backdrop of Project Bold and perhaps the state was more willing to do something than it might have been otherwise at the time of first contact. After agreeing to take some voluntary actions, in a letter dated October 5, 1983 to the Galen Buterbaugh, U.S. Fish & Wildlife Service in Denver, Mr. Carter stated on behalf of the state: "We feel a need to demonstrate that we can effectively manage lands on a 'School Trust' basis and still consider and protect other environmental factors. We feel that we will be able to manage and provide as much protection to this endangered species as any federal agency could provide."

But when SITLA was later established by the state in 1994, the promises and commitments outlined in the October 5, 1983 letter and attachments (which were formally approved) were then considered null and void. So only some 10 years later, the state of Utah commitments that had been made were gone and the prior collaborative efforts rendered moot.

SITLA of course continues to manage lands on a "school trust" basis yet neither it nor some other agency of the state could undertake to keep up with the commitments made in 1983. The state did not live up to its 1983 commitments, and much of that bearclaw poppy habitat has now been lost forever as result.

And clearly the statement made by Mr. Carter turned out in the end to be false. *Arctomecon humilis* has not yet become extinct throughout most of its range because it has continued to be a federally listed species under the Endangered Species Act and thankfully the ESA and the FWS do still exist, and they do still honor the promises that they have made. So clearly the state could not in the end manage it as well as any federal agency could. Rather than protect it on White Dome, SITLA instead put a road directly through some of the best remaining otherwise highly impacted habitat. And it is true that it paid for plant surveys (so that it could justify its South Block real estate development activities primarily, and only because it and another species were federally listed and not out of any other concern for any other rare plant species, nor that its actions might cause something to go extinct) and it is selling some of the land at market prices only to The Nature Conservancy, but it has refused to sell or otherwise preserve land which may well contribute significantly to the extinction of *Astragalus holmgreniorum* (a federally listed species).

Finally it is rather disconcerting so have someone ask for proactive collaboration and that is signatory to the draft conservation agreement and yet refer to your proposed listings at the same time as a "**disease.**" In the section 6d of the Director's Report in SITLA's January 23, 2014 meeting minutes (at which meeting signatory Mike McKee was also present), that reference is made under the heading "Cardinal Principles for Any CCA" with the wording "**The cure cannot be worse than the disease.**" Along with other comments including the "**CCA evaporates if there is a listing.**" And "SITLA oil shale (**Red Leaf/Tomco**) released for development" with "No more than 15 year term" and under "CCA negotiations" the notations: "SITLA, **oil shale miners have identified "NO" zones** to be

excluded from CAs; **100% surface disturbance allowed**" with the overall to "remove uncertainty of Section 7 consultation for federal permits, at minimal cost."

SITLA's intentions and objectives should be understood loud and clear. Despite being required to use sound resource management principles under UCA 53C-5-101(2), only dollar signs are its concerns as a land managing entity. As Director Carter has said time and again, scenic and recreational values do not generate revenues for the trust. Nor, in a very short-sighted way do scientific, educational nor environmental health (including ours) and similar values using this logic. Of this, our future school children might not be so proud. We can only hope that they will be required to take courses in science-based disciplines, and will provide more effective, well-rounded future leadership.

It is also illuminating that neither SITLA nor Uintah County signed on to the 2007 conservation agreement. They have not acted proactively.

Until legislation and policies and regulations change this mentality and approach, it is difficult to imagine how cooperation and collaboration can be easily accomplished.

The disinformation and fear campaign

Given the foregoing, when the Governor Herbert makes statements that these findings are "arbitrary and capricious" and are based on weak assumptions (Maffly 2013), or Kathleen Clarke who signed one of the all-time classic truly bad science memos from the BLM as national director (Clarke 2006) specifically with respect to *P. grahamii* tries to make similar assertions, those comments need to be understood in the appropriate context of their personal philosophies and agendas, the entities that funds their agendas and campaigns, what they are supportive of for political purposes, and what they believe and don't believe in with respect to environmental quality and other issues, including this nation's laws. And it needs to also be clearly understood they are not receiving their advice from scientists that are knowledgeable about the ecosystems and plant life in Utah's Uinta Basin. When someone like Red Leaf energy lobbyist Jeff Hartley makes the incredibly outrageous and irresponsible comments that he did to an interim natural resources committee earlier this year, and tries to blame the FWS for shutting down energy production, and testifies that these species "are not rare and that there are four species of cousin penstemon with identical DNA" (Maffly 2013) then one must understand the incredible depth of deception, disinformation and fear that some energy companies and their lobbyists as well as state officials are willing to stoop to in order to get their way. And to quite literally cause fear and panic.

Statements made by Kevin Carter of SITLA are another attempt by a signatory of this agreement to instead downplay the threats and asks you to ignore all of the information that has been accumulated on these species to date:

"Given current status and current threats, both species are likely to be viable in the near future (100 years)"

"No one thinks that PESCAL [White River] and PEGR [Grahams] are currently unstable. PEGR has such a large range that it is likely to persist in the future" (see June 30, 2014 SITLA comments posted in connection with this rulemaking)

Viable in what sort of deteriorated habitat? Viable but extinct in most of its range as a result of the

Oklahoma panhandle effect which the Basin already resembles and increasingly surrounded by invasive species? Viable despite a policy of non-stop Utah human species population growth with no long term plan in site which will cause exponential degradation to the state in general? Viable despite the thousands upon thousands of additional abandoned oil and gas pads and associated roads that will then exist by that time, and oil shale that has been scraped off with the removal of entire fragile ecosystems and other endemic species that will be lost forever and which contrary to the SITLA mentality cannot simply be revegetated at a time when there will be even more severe droughts than those of the recent past?

And in fact critical native pollinators of various kinds (bee, butterflies, more) are known to be in a range wide decline. As go the pollinators, so will go the plants. Our native plant species in general throughout the state in many places are in fact in a high degree of decline (in some areas, particularly valley and wetland/wet meadow habitats, a massive decline) due to invasive species (e.g. the entire Wasatch Front) and habitat loss (ditto). Further, Graham's has exhibited some very unstable behavior and has suffered during the recent extended drought in the Uinta Basin. It has been well-documented in the period from roughly 2004 to 2007 that the species had extremely low flower production throughout that period (causing Red Butte Garden to not even be able to complete planned breeding studies in some years). What few plants did flower had their flowers consumed by an unknown source. Red Butte Garden scientists even placed cages over plants over plants in a study area to see if that would help (see picture below) with the herbivory as shown below (and reportedly it did not).



Caged *P. grahamii* plants trying to flower, Red Butte Garden's Seep Ridge Rd. study area, 5/27/06 (T. Frates)

Accordingly the range wide seedling recruitment during that period and following was excessively low. And it is already low because roughly only about 50% or less of the adult population seems to flower even in “normal” years. And the number of seeds produced by those plants is very low per fruit. This makes Graham's extremely vulnerable. While cumulative plant counts over the course of 35 years number is reportedly in the vicinity of 40,000, in fact the total adult population currently in existence may be as few as 20,000 plants. The scattered, small, low density populations (in the case of

Graham's) could easily start to disappear leading to extinction throughout a significant portion of its range. So coupled with increasing average annual temperatures which is well-documented, less rainfall and unprecedented levels of yet more ground disturbance, roads, dust, inappropriate livestock grazing, and other impacts, it is indeed possible that Graham's could become extinct in the next 25 years which is why long term thinking is needed that matches the long term proposals for energy development in the basin (Eneft for example has 30 year plans as indicated in its comments).



An example of fugitive dust created by significant amounts of continuous large vehicle/truck traffic that interferes with pollination and creates obstacles for pollinators generally, 5/6/2006 (T. Frates), Pariette Draw Rd., Leland Bench area.



An extensive network of never ending roads creates habitat fragmentation, increases access to area, and also directly causes plant mortality as it did here to *P. grahamii*, 5/27/2006 (T. Frates), Sunday School Canyon

White River penstemon on the other hand exists in an even smaller range and while cumulative counted plants total roughly 12,500, its extant adult population may be less than 10,000 with one-third of that number existing in one location on BLM managed lands. It in fact may be even more immediately imperiled than Graham's as a result (if it were to lose that one high density occurrence for example). It has reportedly not been as badly impacted as Graham's during the drought, but it is still in a precarious status.

So we believe that Mr. Carter is very much wrong in his comments.

That the “non-federal parties lose any incentive to protect the species” via listing, also stated by Carter in his June 30, 2014 comments posted on behalf of SITLA, is a very sad commentary on the part of the state and county. Why would they lose incentive?

Did the state lose the incentive to act as the result of the federal listing of *Arctomecon humilis*? Or were they rather in fact incentivized to try to do something?

Under UCA 53C-2-202 (Endangered and threatened plant species), Carter could then, and is authorized by statute to “make determinations concerning the management, protection, and conservation of plant species officially designated as endangered or threatened under the federal Endangered Species Act of 1973, as amended, on trust lands.” Funding in the past has been provided only when species had a federal status through the state's mitigation fund. The state should therefore welcome this listing.

The inadequacy of the conservation agreement and the conservation team

We see no little to no (and actually mainly negative) benefits to the species on federal lands as result of this agreement.

The 15 year term is way too short.

The termination clause that the agreement ends if either species is completely unacceptable.

The emphasis on restoration/salvage rather than habitat preservation is wrong.

Inadequate buffer zones with respect to conservation areas – although we understand that the conservation area boundaries are different than the critical habitat boundaries, but given buffer zone recommendations that have been made they should still likely be bigger.

All of the threats as outlined by Judge Miller's decision including invasive species are not being addressed and involve future and unclear actions.

The lack of any mandatory funding is not acceptable. (Carter states in his June 30, 2014 that significant funding is available; so why wasn't some mandatory funding included in the Draft Conservation Agreement? Yet it can gamble away \$50,000 on an environmental consultant.)

The expected duties and the conservation team approach as outlined in the document is grossly inadequate. That team cannot possibly assess the outlined percentages and do clearance surveys (as but one example). They are not going to be able to oversee restoration plans. Even monthly meetings (rather than meeting at least once a year) would likely not be even close to enough. And to essentially not involve anyone from the outside that isn't a party to the agreement and given how the state tends to interact with the outside world despite the potential option to do so, is not of much comfort.

The Colorado Natural Heritage Program, the Utah Natural Heritage Program and the Uinta Basin Rare Plant Forum (inclusive of The Nature Conservancy, Utah Native Plant Society and Red Butte Garden) should all have played an active role both in developing the agreement and have been part of any proposed conservation team (which would still nonetheless need funded staff).

Other state agencies should be engaged including State Lands and Forestry, the Division of Wildlife Resources and the Division of Oil, Gas & Mining.

Concepts with respect to salvage and transplantation are naive and will not work.

Colorado groups/stakeholders have not been adequately included nor concerns addressed.

The state of Utah state lacks the sheer will, commitment of resources and legislative authority to implement this agreement and no action is being taken to solve that problem in the long term.

Accepting this agreement would also set an extremely bad precedent for the future.

If state/private lands were being placed under conservation easements along with multiple ACEC's on federal lands and other actions involving protections that might be more permanent, then there might be something to realistically consider and provided that the termination clause was removed, but only as a way to reduce the amount of critical habitat to be designated and to facilitate compliance.

The Service should REJECT the draft conservation agreement and list these two species as soon as possible

Listings would lead to recovery plans, additional federal funding for research and other projects, the likelihood of the establishment of some semi-protected areas whether ACEC's or others, improved management through the elimination of grazing on its habitat, and the avoidance of habitat impacts when possible through consultation. If listed, these species will be on the radar for a much longer term to coincide with the 30 year activity projected by many of the energy companies, and that is only appropriate to ensure the survival of these species. When the worst of the energy impacts is over (if/when that occurs), then it can be determined whether the species (on an individual basis) have recovered to the point where listing is no longer necessary.

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