

# OFFICE OF SPECIES CONSERVATION

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June 5, 2014

Michael Carrier  
State Supervisor  
U.S. Fish and Wildlife Service  
Idaho Fish and Wildlife Office  
1387 S. Vinnell Way, Rm. 368  
Boise, ID 83709

**RE:      1) Proposed rule to list *Lepidium papilliferum* as threatened under the  
             Endangered Species Act. Docket No. FWS-R1-ES-2013-0117.  
             2) Proposed rule designating critical habitat for *Lepidium papilliferum*.  
             Docket No. FWS-R1-ES-2010-0071.**

Mr. Carrier,

The State of Idaho appreciates the opportunity to provide comments on the U.S. Fish and Wildlife Service's (Service) recent proposal to list *Lepidium papilliferum* ("slickspot peppergrass" or "LEPA") as a threatened species under the Endangered Species Act (ESA). The Office of Species Conservation (OSC), Idaho State Department of Agriculture (ISDA), and the Idaho Department of Lands (IDL) (collectively "the State") developed the following comments in response to the Service's request for specific information, and also to call into question some of the Service's determinations made within the proposed rules. The State believes in the continued conservation of slickspot peppergrass, although we do not agree that the species warrants federal protection under the ESA.

Slickspot peppergrass conservation has a long and storied history in Idaho. The interminable slickspot saga has developed a prescient storyline reminiscent of the plot in *Groundhog's Day*.<sup>1</sup> Despite the decades-long management struggle, fraught with varying petitions, proposals, and legal battles, slickspot peppergrass still persists in southwest Idaho. The one constant that both sides can agree on is that this endemic species is highly unpredictable, as shown by the large population variances from year to year.

However, the current and future conservation efforts in Idaho, along with the plant's inherent lack of predictability, are sufficient to preclude a listing under the ESA. As explained in more detail below, the ongoing and future conservation efforts within the State were not adequately considered in the Service's foreseeable future determination. Once these efforts are factored in, the species' endangerment risk falls outside of the Service's foreseeable future timeframe and, therefore, cannot be listed as threatened. Furthermore, State management of

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<sup>1</sup> GROUNDHOG DAY (Columbia Pictures 1993).

slickspot peppergrass is proven to be just as effective as federal management when dealing with ubiquitous threats like wildfire and invasive nonnative plant species.

**I. On remand the Service did not follow the District Court's guidance on appropriately defining the species' foreseeable future.**

In order to support a "threatened" determination, the Service must conclude that the species is likely to become endangered within the "foreseeable future."<sup>2</sup> Unfortunately, the ESA does not define this term, nor is there much guidance on how to determine a species' foreseeable future. This elusive task is left to the Service's discretion on a case-by-case basis. However, a foreseeable future determination must be considered reasonable, and the U.S. District Court of Idaho found that the Service's previous foreseeable future definition for slickspot peppergrass failed to meet this reasonableness standard.<sup>3</sup>

The District Court encouraged the Service, on remand, to develop a working definition of foreseeable future. In her opinion, U.S. Magistrate Judge, Candy W. Dale, even went as far as to provide the Service guidance on the type of additional information that may be necessary to develop a reasonable definition of foreseeable future for slickspot peppergrass.<sup>4</sup> Judge Dale stated that "remand may very well require additional fact-finding; the Service may decide that an expert panel needs to be reconvened to offer an opinion on what constitutes foreseeable future...."<sup>5</sup> While clearly not mandatory under the remand, this guidance is indicative of the type and extent of analysis that would support a reasonable foreseeable future definition.

Instead of heeding the Court's advice, the Service proceeded to formulate their foreseeable future definition based largely on existing information available in the 2009 Final Rule. Generally, this type of unilateral determination is not inherently troublesome since the Service is legislatively tasked and equipped to make these types of decisions. However, in this case, the Service had previously convened expert panels in 2006 and 2009 in order to assess experts' opinions on extinction timelines. The results did not prove to be illustrative because of the "widely divergent opinions on extinction probabilities."<sup>6</sup> Additionally, most of the 2009 reviewers declined to participate due to the exercise's immense level of speculation.

In the current listing proposal, the Service chose to forego convening an expert panel and unilaterally concluded the foreseeable future to be at least 50 years. The Service further predicted that the species would likely become endangered in the next 36 to 47 years based on current and historical trend data related to the major threats facing slickspot peppergrass, namely wildfire. Certainly, this constitutes a valid viewpoint, but prior agency precedent related to LEPA indicates that this represents only one opinion in a field where experts' opinions have varied greatly. By inexplicably choosing not to convene a group of experts in this latest proposal, the Service's definition is severely weakened and unreasonable considering the lack of consensus that currently exists.

Taking into account the degree of variability exhibited in 2006 and 2009, and the lack of new, superseding data and information, the Service's definition of foreseeable future is

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<sup>2</sup> 16 U.S.C. § 1552(20).

<sup>3</sup> *Otter v. Salazar*, 2012 WL 3257843, at \*40 (D. Idaho Aug. 8, 2012).

<sup>4</sup> *Id.* at \*40-41 n.10.

<sup>5</sup> *Id.*

<sup>6</sup> Endangered and Threatened Wildlife and Plants; Threatened Status for *Lepidium papilliferum* (Slickspot Peppergrass) Throughout its Range, 79 Fed. Reg. 8416, 8419 (proposed Feb. 12, 2014) ("listing proposal").

unreasonable, and; therefore, does not support a threatened determination under the ESA. In the alternative, the Service should exercise its discretionary authority to extend the listing proposal by six (6) months to allow a panel of experts an opportunity to weigh-in on the Service's prognostication that the species will become endangered within 36-47 years. Without taking such action, the Service is making a unilateral decision that contradicts previous expert findings and ignores the guidance provided by the District Court.

## **II. Current and future land management actions not analyzed in the proposed rule places the species' likelihood of endangerment beyond the foreseeable future.**

Again, the Service must determine that LEPA is likely to become an endangered species *within* the foreseeable future in order to justify a listing. If the likelihood of endangerment falls outside of this foreseeable future spectrum, then the Service simply cannot defend designating the species as threatened. Here, the Service estimates that slickspot peppergrass will likely become endangered between 36 and 47 years, which closely abuts their 50-year foreseeable future timeframe. However, after incorporating the recent land management efforts occurring within LEPA's range that were largely absent from the proposed rule, the 36-to-47-year timeframe is no longer a valid range of years. Due to the lack of consideration given to on-the-ground management actions, the Service can no longer rely on their conclusion that LEPA is likely to become endangered within the 50-year foreseeable future timeframe.

In the proposed rule, the foreseeable future is determined to be "at least 50 years."<sup>7</sup> However, the phrase "at least" is not quantifiable nor does it provide any sideboards for determining what number of years after 50 would be considered foreseeable. Thus, for the purpose of analyzing whether LEPA's risk of endangerment is within the foreseeable future, 50 years is the threshold since "at least" creates an equivocal timeframe.

### *A. The proposed rule does not adequately analyze the Rangeland Fire Protection Associations.*

The Rangeland Fire Protection Associations (RFPAs) were first established in Idaho in 2012, and consist of professionally trained ranchers with authority to provide fire suppression resources on federal land. The State and Idaho Legislature were instrumental in assisting the RFPAs with funding and start-up costs, and several more associations are expected in the coming years.<sup>8</sup> Currently, there are five RFPAs that serve more than 675,000 acres of private rangeland and 2.9 million acres of state and federal rangeland.<sup>9</sup> A large portion of slickspot peppergrass habitat exists on rangeland currently covered by these RFPAs.<sup>10</sup>

After just two years in existence, these RFPAs have already proven to be a major success. However, the proposed rule asserts that "RFPAs have not yet demonstrated their ability to address the increased frequency of fire within the range of [slickspot peppergrass]."<sup>11</sup> This is untrue. Attached is a report provided by IDL detailing the number of fires that the RFPAs

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<sup>7</sup> Id. at 8420.

<sup>8</sup> IDAHO CODE § 38-104.

<sup>9</sup> *Rangeland Fire Protection Associations*, IDAHO DEPARTMENT OF LANDS, <http://www.idl.idaho.gov/fire/rfpa/index.html> (last visited June 4, 2014).

<sup>10</sup> Map of Rangeland Fire Protection Association, attached for the Service's review and consideration as Exhibit A.

<sup>11</sup> Listing Proposal, 79 Fed. Reg. at 8426.

assisted on during the 2013 fire season.<sup>12</sup> Often, RFPAs are the first responders and responsible for suppressing initial fire starts. For example, the Three Creek and Mountain Home RFPAs, both established within LEPA habitat, provided initial attack and/or assisted on numerous fires last season that would have been far more severe without their help.<sup>13</sup> On many of these fires, the quick actions taken by the RFPAs directly prevented additional acres from burning, which likely would have included occurrences of slickspot peppergrass.

Although it is impossible to quantify the number of acres saved due to the implementation of these RFPAs, the information from 2013 illustrates the tangible progress these associations are making across their range. The associations and their members provide the BLM with local knowledge, water resources, equipment, and machinery that enable a more efficient and effective response to wildfire. Clearly, these RFPAs have demonstrated the ability to have an appreciable impact on the number and severity of wildfires within slickspot peppergrass's range.

In addition, the proposal also states that RFPAs “have not yet shown to be effective to offset the threats to the species to the point that it is not likely to become an endangered species within the foreseeable future.”<sup>14</sup> Again, 2013 RFA data was not factored into this analysis, so this determination is no longer valid. Moreover, to adequately support this claim, the Service would have to provide information describing how recent fire reduction measures within the species' range would not affect LEPA's timeline for becoming endangered. Increased fire response and suppression in slickspot peppergrass habitat, would undoubtedly alter the point at which the plant would become endangered.

*B. The proposed rule does not adequately address the benefits derived from the Paradigm Project.*

In January 2014, the Bureau of Land Management (BLM) released a draft environmental assessment (EA) of its *Paradigm Fuel Breaks Project* (Paradigm Project).<sup>15</sup> The EA outlines several alternatives, which would allow for the development of fuel breaks within the project area. These fuel breaks “provide safe and strategic areas for firefighters to engage in suppression activities as they work to prevent the loss of human life, property, and habitat for special status species.”<sup>16</sup> One of the explicit objectives of the Paradigm Project is to “[p]rotect existing native shrub habitat for slickspot peppergrass and greater sage-grouse, that would reduce the likelihood of large-scale wildfire.”<sup>17</sup>

While a record of decision for the Paradigm project has not been issued, the project still must be considered by the Service when analyzing the future threat from wildfire. Attached to our comments are several maps showing the overlap of the different alternatives and elemental occurrences (EO) of slickspot peppergrass.<sup>18</sup> The Service considered other proposed projects

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<sup>12</sup> Fire Season Summary, Rangeland Fire Protection Associations in Idaho, attached for the Service's review and consideration as Exhibit B.

<sup>13</sup> Id.

<sup>14</sup> Listing Proposal, 79 Fed. Reg. at 8426.

<sup>15</sup> U.S. DEPT. OF THE INTERIOR, BUREAU OF LAND MGMT., PARADIGM FUEL BREAK PROJECT DRAFT ENVTL. ASSESSMENT DOI-BLM-ID-B010-2011-0060-EA (2014).

<sup>16</sup> Id. at 7.

<sup>17</sup> Id. at 8.

<sup>18</sup> Lynn Kinter, *LEPA Element Occurrences (known sites), Proposed Critical Habitat, and Paradigm Maps*, (May 8, 2014), attached for the Service's review and consideration as Exhibit C.

within slickspot peppergrass habitat, such as urban and rural development, when assessing future threats to the species.<sup>19</sup> And, just as these proposed developments were considered when analyzing the species' foreseeable future, so should proposed wildfire management projects. Unfortunately, the Service only considers the potential future detriments to the species due to proposed infrastructure, yet it does not do the same for proposals that will provide a benefit to the species. Unlike many of the analyzed proposed developments, which may or may not happen, one of the submitted alternatives within the Paradigm Project EA will be selected as the preferred alternative and will provide added protections to the species.<sup>20</sup> As a result, the Service needs to incorporate the benefits derived from the Paradigm Project into their "likely to become endangered" projection. Undoubtedly, this project will have an appreciable effect on the number and magnitude of fires within the project area and associated LEPA habitat.

*C. The Service did not consider the benefits to slickspot peppergrass associated with recent sage-grouse planning efforts in Idaho.*

The State of Idaho, the Bureau of Land Management (BLM), and U.S. Forest Service (USFS) are currently engaged in a coordinated regional effort to provide adequate conservation measures and regulatory mechanisms for sage-grouse in order preclude a listing under the ESA. As with slickspot peppergrass, the primary threats to sage-grouse habitat are wildfires and invasive species. The Idaho and Southwest Montana Subregional sage-grouse planning effort includes two co-preferred alternatives, one developed by the State of Idaho and the other by the BLM and USFS, and consists of a robust adaptive manage scheme that adequately addresses the needs of sage-grouse while maintaining predictable levels of land-use activities.<sup>21</sup> This includes a wildfire management component that focuses efforts on fire prevention, suppression, and habitat restoration. Incidentally, some of the LEPA habitat directly benefits from the protections afforded to sage-grouse through this strategy.

In recent months, the State of Idaho and federal agencies have devoted considerable time towards the development of a proposed final EIS that appropriately blends the major components of both the state and the federal alternatives, including the respective wildfire strategies. Both co-preferred alternatives prioritize allocating fire fighting resources to areas where wildfire has the highest potential of negatively impacting sage-grouse habitat. Additionally, fire prevention measures such as fuel reductions projects, strategically placed fuel breaks, and placement of water resources in or near Core and Important sage-grouse habitat will provide additional protections to the species and its habitat.

As mentioned above, additional trained and red-carded personnel and equipment, provided through the RFPAs, will assist state and federal agencies in keeping wildfires smaller in size due to quicker response and initial attack. Given the overlap of sage-grouse and LEPA habitat with multiple RPFA boundaries primarily within the West Owyhee and Southern sage-grouse conservation areas, the wildfire measures found within the co-preferred sage-grouse alternatives, coupled with the efforts of the RFPAs, would undoubtedly have a positive influence on LEPA and LEPA habitat.

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<sup>19</sup> Listing Proposal 79 Fed. Reg. at 8425.

<sup>20</sup> Exhibit C.

<sup>21</sup> IDAHO AND SW. MONTANA GREATER SAGE-GROUSE LAND USE PLAN AMENDMENT AND ENVIRONMENTAL IMPACT STATEMENT (2013).

*D. The Service's determination that the species is likely to become endangered within 36 to 47 years is no longer valid.*

In order to support their threatened determination, the Service extrapolates fire data from the previous half-century in order to predict future fire trends. In isolation, this exercise may provide an idea of what the future effects of fire on LEPA might be across its range. Obviously, the future is uncertain, and this listing proposal is essentially predicated upon an educated guess of what the future holds. However, the foundation upon which these projections are based begins to crumble under the weight of these unprecedented, landscape-scale projects occurring within the heart of slickspot peppergrass habitat.

It is overly simplistic to base a listing on the assumption that because, on average, 150 acres of habitat has burned each year for the past 50 years, that 150 acres will continue to burn each year in the future. This is no longer a valid assumption because the State and its federal partners are engaging in aggressive, proactive measures to curb the devastating effects of fire on our rangelands. The RFPAs already have a track record of success, and, fortunately, slickspot peppergrass persists in areas where it will increasingly benefit from all of the recent efforts aimed at reducing the frequency and magnitude of fires.

Additionally, once the current and future conservation measures positively impacting LEPA are considered, the species will likely no longer qualify as threatened under the Act. For example, assume the average acres of LEPA habitat burned each year is only reduced by 30 acres as a result of these conservation measures. As a result, twenty percent of the species habitat would still remain beyond the 50-year foreseeable future, which means the Service could not justify a listing. This hypothetical assumes a reduction from the Services 150 acres per year average. The 170 acres per year the Service uses to bolster its timeline is unreliable and unreasonable because it is based on a small sample size (5 years), during which Idaho experienced one of the worst fire seasons on record (2012).<sup>22</sup> Using such a short window of years to predict future trends is completely arbitrary and should not be relied upon in the proposed rule.

The benefits derived from these projects were not incorporated into the Service's calculation of when LEPA is likely to become an endangered species. Already, the species likelihood of endangerment prediction is on the threshold of the Service's foreseeable future timeframe, and until the Service incorporates these additional benefits, their conclusion that the species is threatened is no longer valid.

### **III. Livestock use should be removed from the list of threats.**

In the 2009 Final Rule, the Service considered livestock use "to be a lesser threat to the species than the primary threats posed by the altered wildfire regime and associated increase in nonnative, invasive plant species."<sup>23</sup> The analysis of livestock use in the 2009 Final Rule primarily attributes the threat to localized trampling events, specifically during the spring when

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<sup>22</sup> *Statistics*, NATIONAL INTERAGENCY FIRE CENTER, [http://www.nifc.gov/fireInfo/fireInfo\\_statistics.html](http://www.nifc.gov/fireInfo/fireInfo_statistics.html) (last visited June 4, 2014).

<sup>23</sup> Endangered and Threatened Wildlife and Plants; Listing *Lepidium papilliferum* (Slickspot Peppergrass) as a Threatened Species Throughout its Range; Final Rule, 74 Fed. Reg. 52014, 52040 (Oct. 8, 2009) ("2009 Final Rule").



soils are wet.<sup>24</sup> On the other hand, the Rule also acknowledges that livestock use can benefit LEPA by slowing the spread of cheatgrass and by reducing “the rate of speed and intensity of fires.”<sup>25</sup> In fact, at the outset, the rule states that livestock use “has the potential to result in both positive and negative effects on the species...”<sup>26</sup>

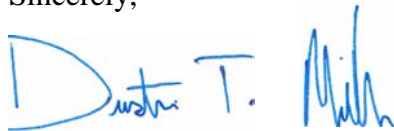
Based on the Service’s own analysis and admissions, it seems axiomatic that livestock grazing should be removed as a threat due to the fact that mechanical damage to the plant and its habitat “does not pose a significant risk to the viability of the species as a whole.”<sup>27</sup> This insignificant threat is essentially nullified when considering the associated benefits livestock use can have on slickspot peppergrass and its habitat. Therefore, livestock grazing does not appear to have a net negative effect on the species. In fact, the opposite appears to be true.

#### **IV. Conclusion**

The State of Idaho takes the conservation of slickspot peppergrass very seriously and is undertaking proactive measures to ensure that the species continues to exist on the range in southwest Idaho. With that said, ESA protections and federal management will not be the saving grace for the plant. Instead, state and federal cooperation, through such efforts as the RFPAs, the paradigm project, and the sage-grouse RMPs, will ultimately prove to be essential for LEPA’s continued existence.

By failing to analyze these comprehensive, landscape-scale conservation efforts, the Service’s estimate that slickspot peppergrass will become endangered in 36 to 47 is unreasonable and invalid. Therefore, the Service needs to withdraw their proposal listing slickspot peppergrass as threatened under the ESA. Or, in the alternative, the Service needs to convene a diverse panel of experts in order to more accurately assess when the scientific community believes the species is likely to become endangered. Finally, should the Service ultimately determine to list LEPA as threatened, livestock use should be removed from the list of threats because grazing has not been shown to be a significant threat range wide.

Sincerely,



Dustin T. Miller

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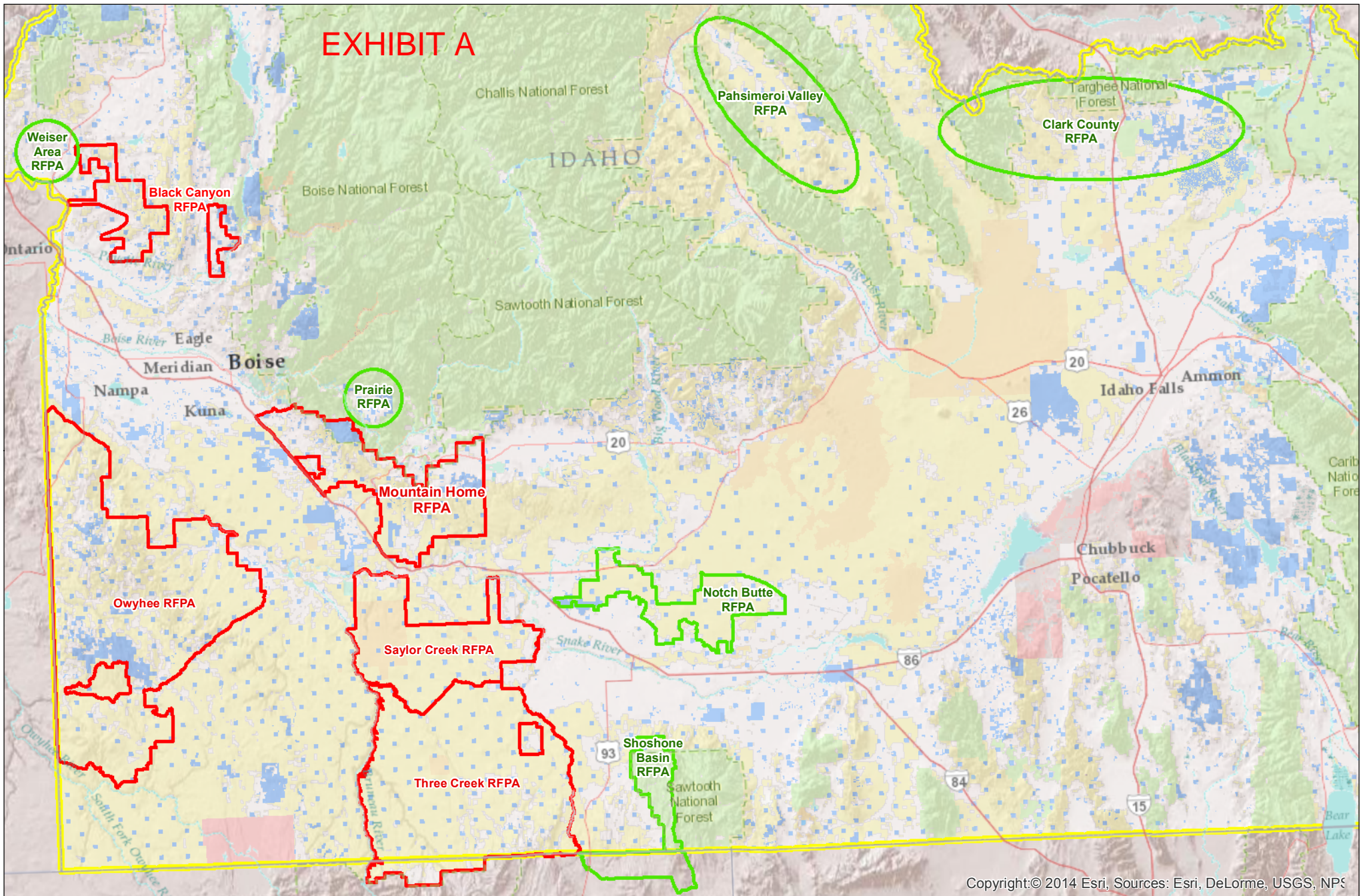
<sup>24</sup> Id.

<sup>25</sup> Id. at 52039.

<sup>26</sup> Id. at 52037.

<sup>27</sup> Id. at 52027.

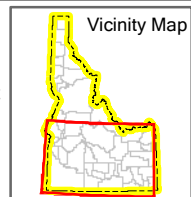
# EXHIBIT A



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## Legend

- Proposed RFPA
- Existing RFPA
- Idaho Boundary
- IDL Endowment Ownership
- Other State Lands
- Private
- Bureau of Land Management
- US Forest Service
- Other Federal Ownership
- Tribal Lands



## Rangeland Fire Protection Association

5/1/2014

0 10 20 40 60 Miles



Map Notes and Data Sources  
IDL Ownership current as of map date  
Ownership current as of 2013  
Current unprotected private land current as of map date

Disclaimer:  
This map has been compiled using the best information available to the Idaho Department of Lands at the time and may be updated and/or revised without notice. In situations where known accuracy and completeness is required, the user has the responsibility to verify the accuracy of the map and the underlying data sources.



## Rangeland Fire Protection Associations in Idaho

This year has been a great success for all four Rangeland Fire Protection Associations (RFPAs), Mountain Home, Owyhee, Saylor Creek, and Three Creek. While they were critical in helping suppress numerous fires, the relationships that developed along the way were just as important. This is a testament to the commitment and dedication that the members from all RFPAs and the Boise and Twin Falls U.S. Department of Interior Bureau of Land Management (BLM) Districts put in to making it successful. Membership knowledge of the rangeland was invaluable. They know access routes, water resources, fences, old burn scars, etc., which helped BLM resources arrive on scene quickly, make sound decisions, and actively engage in suppressing these fires. There were numerous times the RFPAs were ready and willing with tractor disks, dozers, and other equipment to lend a hand in the suppression efforts. Strong leadership is a key factor in making an RFPA a success. The leadership in all four RFPAs run very good programs and maintain good communication with the Idaho Department of Lands (IDL), the BLM and their association membership.

The RFPAs played a vital role in actively suppressing and limiting acres burned on the fires listed below (Table 1: 2013 RFPA Statistics from Twin Falls District BLM and Table 2: 2013 RFPA Statistics from Boise District BLM). However, their intelligence and logistical support was just as important. Without their knowledge of the best access routes and available water sources for these fires, we might not have had the same success.

There was one event in particular that paints a picture of the successful impact that the RFPAs had this fire season:

In early August an aggressive thunderstorm moved through the Three Creek and Saylor Creek RFPA areas. The storm was ultimately responsible for starting 21 fires from Clover Crossing (near the Bruneau Desert) to Richfield, Idaho, a distance of over 75 miles.

One of the first communications from the BLM engines in the field to dispatch was a request to contact the Three Creek and Saylor Creek RFPAs to see what assets they had available. They could see that this was going to be a multiple start event, and that the BLM would not have enough equipment to respond to all of the starts by themselves. In addition, the partnership that had grown so quickly over the previous few months led to a high confidence level between the two entities in each other's fire fighting abilities.

RFPA members were already en route, with a grader, 2 dozers, a tractor and disk, and a water tender. They also played a major role in providing intelligence and logistical assistance to the Incident Commanders. Before the storm had passed it had caused 9 of the 21 starts within the RFPA areas alone.

The RFPA members immediately tied in with the BLM and together they strategically assigned appropriate resources to each fire, providing each fire with the resources needed to fight the fire in an aggressive but safe and professional manner. When the smoke had settled all fires had been

caught, ranging in size from a few acres to 4000 acres. The true testimony to this effort occurred 24 hours later, when a 60 mile per hour wind hit that same area, and all of the fires had been controlled well enough that they all held despite the wind.

This is a great example of the fact that the RFPA effort is truly about the partnership between the RFPAs and the BLM, and not about the RFPAs themselves.

Each RFPA differs by their membership and the intricacies of the ground that they protect, but they each have stories of their experience and success from this fire season.

Table 1: 2013 RFPA Statistics from Twin Falls District BLM

2013 Twin Falls District RFPA Statistics						
Date	Fire Name	Size(ac.)	RFPA Association	# of Members	Role/Equipment Provided	Comments Regarding Impact
11-Jun	Black Butte	412	Three Creek	1	Logistics (Routes & Water Sources)	Provided Intel on access & water sources
12-Jun	Bruneau	4913	Three Creek	1	Logistics (Routes & Water Sources)	Provided Intel on access & water sources
20-Jun	Blue Gulch	0.14	Saylor Creek	1	Suppression with shovel	Assisted BLM in Initial Attack (IA)
27-Jun	Pasadena Valley	2	Saylor Creek	1	Tractor w/ Disk	Assisted BLM in IA
1-Jul	*Pointe	2948	Saylor Creek & Three Creek	5	Logistics (Routes & Water Sources)Tractor w/Disk, Dozer	Without RFPA equipment, the BLM would have had to use more indirect suppression tactics allowing more vegetation to burn (9 fires started on 7/1 on the Twin Falls District).
1-Jul	*South Pointe	152	Saylor Creek & Three Creek	5	Logistics (Routes & Water Sources)Tractor w/Disk, Dozer	
5-Jul	Pot Hole	9	Saylor Creek	2	Tractor w/ Disk	Reported the fire to dispatch and lined the fire with the disk, allowing BLM to direct resources to the additional 5 fires that started that day.
7-Jul	Three Mile	11	Three Creek	1	Logistics (Water Sources)	Provided Intel on water sources
16-Jul	Horse Butte 2	5681	Saylor Creek & Three Creek	9	Logistics (Routes & Water Sources)Tractor w/Disk, Dozer, Grader	This fire was located within preliminary priority Sage Grouse habitat. The RFPA's quick response and equipment availability played a major role in minimizing the number of acres burned. This was one of 7 fires to start on the Twin Falls district this day.

16-Jul	Browns Gulch	4936	Saylor Creek	5	Tractor w/ Disk, Water Tender	Assisted BLM in IA
16-Jul	Big Pilgrim	55	Saylor Creek	2	Tractor w/Disk	Assisted BLM in IA
27-Jul	Balanced Rock	304	Saylor Creek & Three Creek	8	2 Tractors w/ Disk	Quick response at 0100 and equipment availability greatly assisted with another multiple start event.
27-Jul	Simplot	293	Saylor Creek & Three Creek	8	4 Tractors w/ Disk	
27-Jul	Sheepshead	2301	Three Creek	3	Logistics (Water Sources), Water Tender	
28-Jul	Flint Mesa	352	Saylor Creek	2	Tractor w/ Disk	Assisted BLM in IA
31-Jul	Coonskin	4378	Three Creek	5	Logistics (Water Sources), Dozer, Grader	4 of 13 fires on the Twin Falls District that started on 7/31. RFPA contribution allowed BLM resources to focus on fires with higher potential. A significant wind event occurred on 8/1 and all fires held, due to hard work and good communication by all parties involved.
31-Jul	Crows Nest	959	Three Creek	3	Logistics, Tractor w/ Disk	
31-Jul	*Buck Flat	637	Saylor Creek & Three Creek	8	Logistics, Tractor w/ Disk, 2 Dozers, Grader	
1-Aug	*Buck Flat 2	18	Saylor Creek & Three Creek	8	Logistics, Tractor w/ Disk, 2 Dozers, Grader	
* Signifies fires were relatively close to one another, resources were shared between the fires.						



Table 2: 2013 RFPA Statistics from Boise District BLM

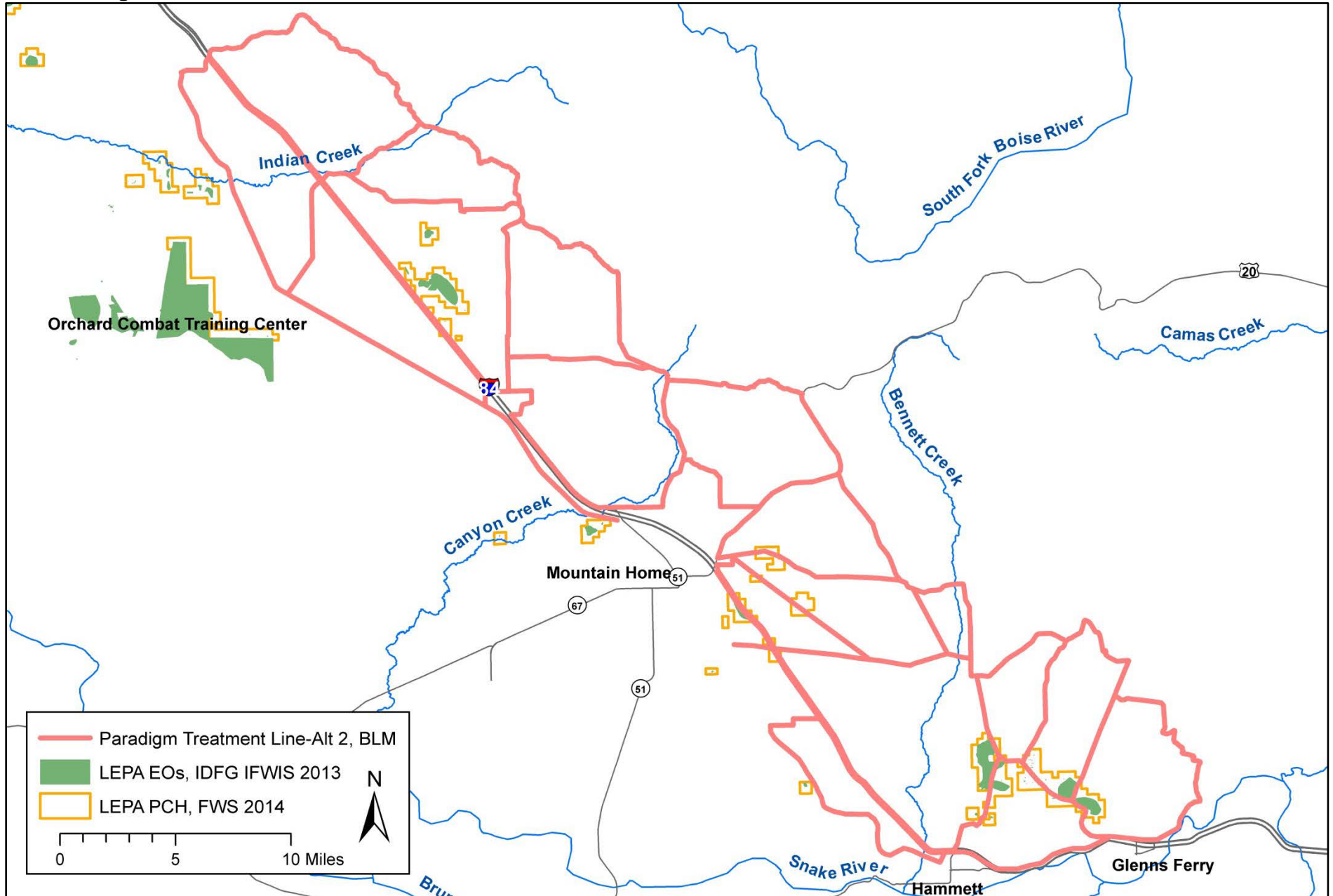
2013 Boise District RFPA Statistics						
Date	Fire Name	Size(ac.)	RFPA Association	# of Members	Role/Equipment Provided	Comments Regarding Impact
10-Jun	Cold	5	Mt. Home		2 Engines	Reported the fire and were first on scene, knocking the fire down
17-Jun	East Lock	182	Mt. Home		1 Engine	Assisted BLM in Initial Attack (IA)
18-Jun	Moon	567	Mt. Home		3 Engines, 1 Dozer	Suppressed a lot of the fire
4-Jul	MM111	331	Mt. Home		Engines	Assisted BLM in IA
22-Jul	Dumpy	4	Mt. Home		Water Tender	Supported BLM engines
8-Aug	Pony Complex	147591	Mt. Home		Engines, Dozers, Water Tenders	Heavily involved in IA on an evening with 10+ fire starts
4-Jul	Deep	162	Owyhee		Grader, IA	Arrived first on scene
30-Jul	Bonjour	1174	Owyhee		Logistics (Routes & Water Sources), Firefighters	Provided Intel on access and water sources was critical to success of suppression efforts
13-Aug	Tank	426	Owyhee		Logistics, Firefighters	Assisted BLM in IA
14-Aug	Sugga	11	Owyhee		Logistics (Routes & Structure Locations)	Provided Intel on access & structure locations
22-Aug	West Glass	0.1	Owyhee		Sole Response	Extinguished the fire without BLM assistance, and made the proper notifications
22-Aug	Cow	23	Owyhee		Firefighters	Reported the fire and assisted BLM in IA
1-Jul	RA#5	0.25	Owyhee		BOD provided Air Attack for RFPA fire	RFPA was able to handle it without assistance (fire on private lands only)

## EXHIBIT C

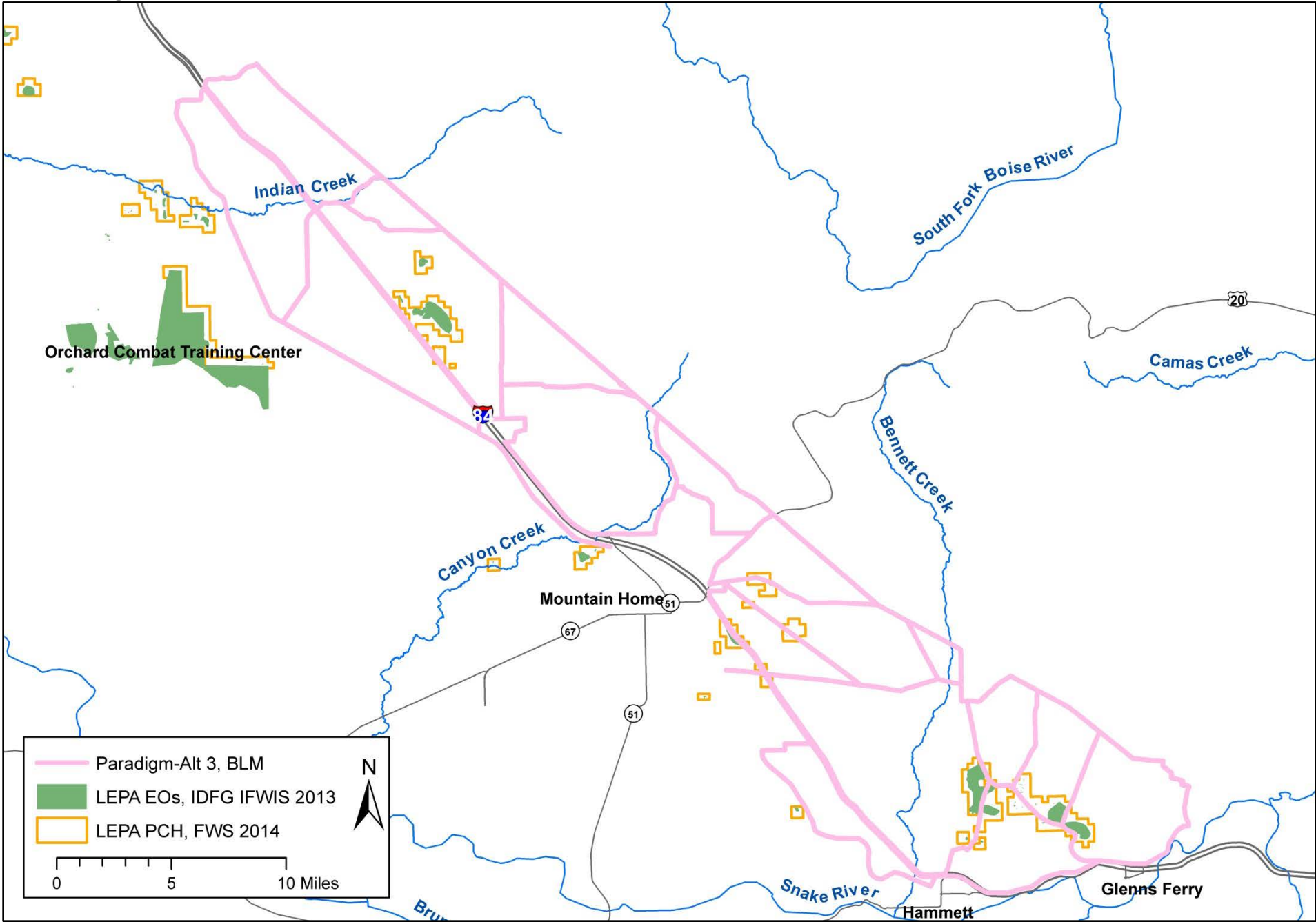
### LEPA Element Occurrences (known sites), Proposed Critical Habitat, and Paradigm maps

Compiled by Lynn Kinter, 8 May 2014, from IDFG, FWS, & BLM data. Due to the sensitive nature of rare plant locations, please do not distribute publicly.

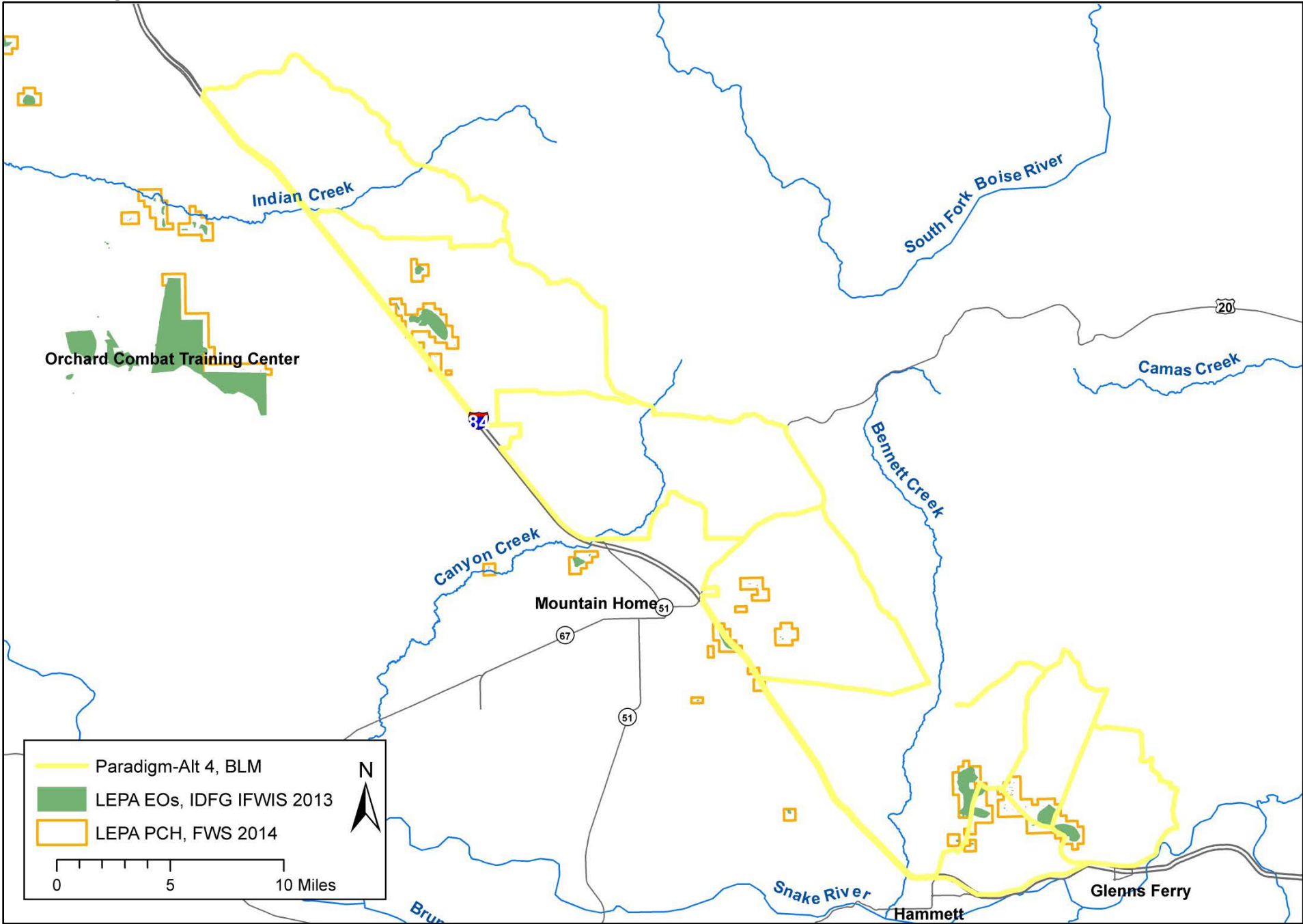
#### BLM Paradigm Alternative 2



BLM Paradigm Alternative 3

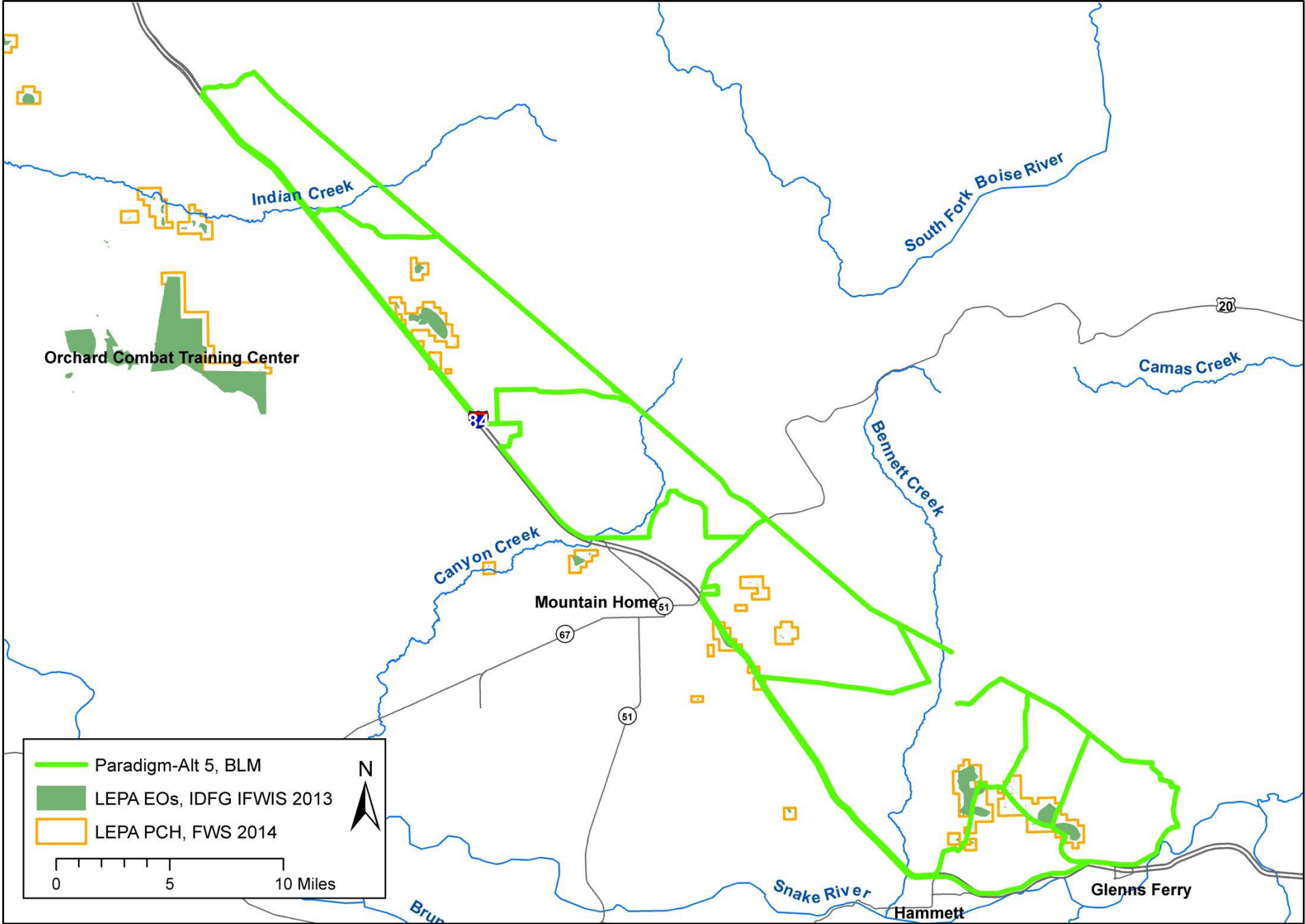


BLM Paradigm Alternative 4

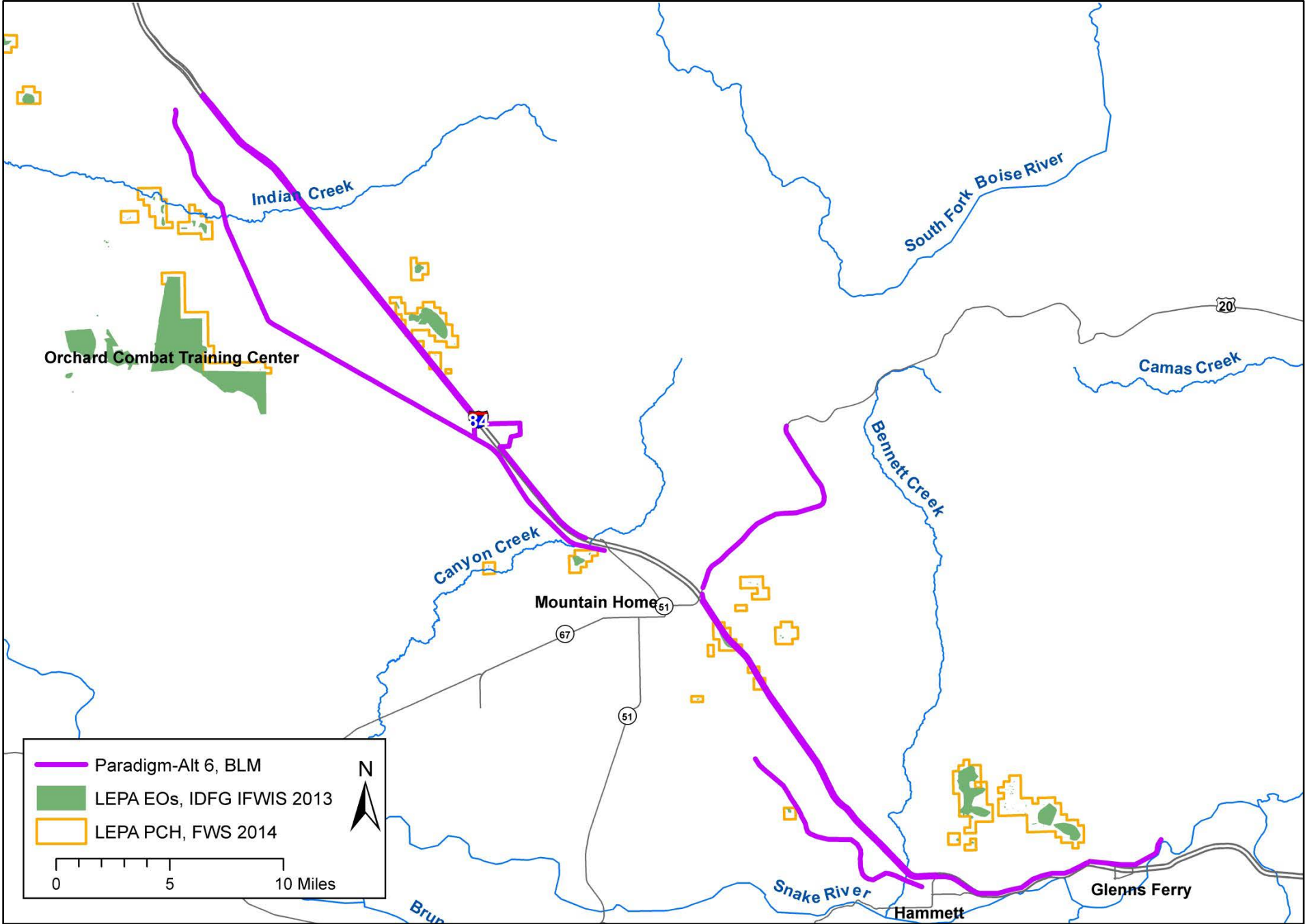




BLM Paradigm Alternative 5



BLM Paradigm Alternative 6





# STATE OF IDAHO

## DEPARTMENT OF AGRICULTURE

C.L. "BUTCH" OTTER  
Governor  
CELIA R. GOULD  
Director

June 4, 2014

Public Comments Processing  
Atten: FWS-R1-ES-2013-2013-0117  
Division of Policy and Directives Services  
4401 N. Fairfax Drive  
MS 2042-PDM  
Arlington, VA 22203

**RE: Comments on Threatened Status for *Lepidium papilliferum* (Slickspot Peppergrass) Throughout its Range**

Dear Sir/Madam:

The Idaho State Department of Agriculture (ISDA) appreciates the opportunity to provide comments to the U.S. Fish and Wildlife Service (USFWS) on the Reconsideration of Final Rule and Request for Comments on *Lepidium papilliferum* (Slickspot peppergrass) as a threatened species throughout its range under the Endangered Species Act of 1973 (ESA).

Scientists have concluded that grazing on public lands is low on the list of threats to the flowering plant that grows in wet areas of southwest Idaho's sagebrush steppe desert. Yet Slickspot peppergrass' listing would have more impact on ranchers on public lands than any other group. Fire and the spread of invasive species like cheatgrass have done more to move *L. papilliferum* toward ESA listing than any other factor. Related to USFWS' Slickspot reconsideration, ISDA has important questions about USFWS accounting for numerous issues as elaborated below.

**BLM wildfire reduction efforts**

In its estimates of habitat impacted by wildfires, USFWS anticipates that 80 to 90 percent of the remaining *L. papilliferum* habitat will be affected by wildfires within approximately the next 36 to 47 years. However, ISDA questions USFWS' estimate of the timeframe within which *L. papilliferum* is likely to become endangered and the premise that "this projection makes reasonable use of the best science data available to predict the effects of wildfire on the species over time." Current U.S. Bureau of Land Management (BLM) fuel break projects have the potential to reduce the negative impacts created by wildfires on *L. papilliferum* habitat, yet it appears that USFWS did not fully consider current and planned activities in the subject areas, like fire breaks, which will reduce and limit the large acreages considered to be impacted by wildfire. Additionally, with the USFWS' NEPA documents, project proposals are designed to reduce and limit the large acreages from being impacted by wildfire. Future wildfire prevention projects, which are designed and will be implemented in the very near future, will actually reduce the threat and the percentage of large acreage wildfires impacting LEPA in some of the subject areas. A very good example of this is the BLM Paradigm Project in Boise District BLM in Boise, Idaho. The fuel break projects currently being analyzed and proposed in the Paradigm Fuel Break Project Environmental Assessment (EA #DOI-BLM-ID-B010-2011-0060-EA) in which the BLM will protect existing native shrub habitat for Slickspot peppergrass and greater sage-grouse, will reduce the likelihood of large-scale wildfire,

increase suppression options and help to keep fires compartmentalized. USFWS must take these project proposals into consideration in their projections for the foreseeable future and analyze how these fuel break projects will actually protect existing native shrub habitat for Slickspot peppergrass and reduce the current rate of habitat impact by wildfires.

### **Wildfire prevention partnerships**

Idaho Rangeland Fire Protection Associations (RFPAs) are groups in which local ranchers and farmers are trained and organized to respond more rapidly for initial attack when wildfires occur, resulting in better success rates of stopping fire or reducing the rate of spread until agency firefighters arrive on the scene. In USFWS' October 8, 2009 final rule listing of *L. papilliferum* as a threatened species, no RFPAs existed in Idaho. Since that final rule, and following the August 8, 2012 Memorandum Decision and Order vacating the October 8, 2009 final listing rule, a number of ranchers in southwestern Idaho have formed several RFPAs, allowing the ranchers to assist in fighting range fires in some of the most fire-prone areas of the state which contain Slickspot peppergrass habitat. With additional RFPAs, it is anticipated that the frequency of large acreage wildfires occurring in Slickspot peppergrass habitat will be significantly reduced in size. Currently, there are several RFPAs in existence in the Mountain Home area, Three Creek area, and Saylor Creek area, with numerous others in the process of being formed in other counties within the state. ISDA believes that RFPAs and their positive effects in reducing the size of the wildfires in Slickspot peppergrass habitats have not been taken into serious consideration and analyzed adequately in the *L. papilliferum* listing rule.

### **Wildfire prevention is a statewide priority**

Wildfire prevention and suppression is not just a goal related to *L. papilliferum* habitat. Wildfire prevention is a statewide imperative, and communities and officials across the state and region are continually dedicating resources towards this objective. ISDA questions if USFWS has taken into consideration other state plans aimed at fire prevention and habitat preservation, like the Idaho and Southwestern Montana Greater Sage-Grouse Draft Land Use Plan Amendment and Environmental Impact Statement. Under the Governor's Alternative E (Alternatives D & E currently have been identified as the co-preferred alternatives), page 2-76 of the Draft EIS states in part: "Alternative E focuses primarily on management for the threats of wildfire, invasive species ..." Page 2-77 of the draft EIS further claims that "Alternative E provides guidance to reduce wildfire response time, create fuel breaks, and improve wildfire suppression baseline." Page 2-84 of the Draft EIS in Table 2-12 also identifies a plan for fuel breaks and gives direction to "complete and implement a strategy that identifies the location and extent of fuel breaks that provides adequate defensible space for firefighters." The Idaho and Southwestern Montana Greater Sage-Grouse Draft Land Use Plan Amendment and Environmental Impact Statement addresses in several locations aggressive measures to attack and reduce severe wildfires.

### **Biological control of invasive plants**

USFWS does not adequately consider biological and innovative controls for one of the greatest threats to *L. papilliferum*: invasive plant species. It is well known that cheatgrass (*Bromus tectorum*) is a non-native species responsible for the rapid spread of wildfire in southern Idaho (within Slickspot peppergrass habitat range) as well as through the western parts of the United States. An unpublished paper by Jennifer K. Balch, of the Penn State geography department, shows that fires occurred four times as often in cheatgrass landscapes in the West as in all other types of ground cover combined. The paper, which has been accepted by the journal *Global Change Biology*, says that cheatgrass was a factor in nearly 25 percent of the 50 largest Western fires in the 1990s. In fact, in the Federal Register, USFWS identifies *L. papilliferum*'s primary threats as invasive nonnative plant species (e.g., cheatgrass (*Bromus tectorum*)).

USFWS itself states that invasive species and wildfire are the greatest threats to *L. papilliferum*. ISDA has significant reservations, then, as to why reductions in grazing were given such weight in the reconsideration. More than identification of a problem is the exploration and consideration of a solution. U.S. Forest Service



research, conducted by ecologist Susan Meyer, has demonstrated in field trials that the fungal pathogen known commonly as Black Fingers of Death is very effective in eliminating the cheatgrass carryover seed bank that can come back to haunt a restoration seeding after apparently successful control. "Currently Black Fingers of Death is the most promising biocontrol organism we have, because it can kill dormant cheatgrass seeds," said Meyer. The black fingers fungus, which like cheatgrass is native to the Eurasian steppe, attacks the cheatgrass seeds before they germinate. Robust cheatgrass plants can cover a square yard with as many as 25,000 seeds. "If we can get that down to 300 seeds, we consider that a successful bio-control," Dr. Meyer said. The black fingers fungus does its work in early spring, before the plants' seeds are spread. That gives scientists a fighting chance in trying to restore native bunchgrasses and shrubs like sagebrush and shadscale, the bristly ground cover of most of the high deserts. In addition to *P. semeniperda*, ISDA questions if USFWS has also taken into consideration recent ongoing research of ACK (*Pseudomonas spp.*), also known as Battalion Pro, a naturally occurring soil bacteria which after a single application on test plots, has killed up to 50 percent of cheatgrass, medusahead (*Taeniatherum caput-medusae*) and jointed goatgrass (*Aegilops cylindrical*) within three years, and has allowed the native vegetation to increase. Has USFWS take these ongoing research projects into consideration on the future control of one of *L. papilliferum*'s primary threats of invasive nonnative plant species cheatgrass (*Bromus tectorum*) in their reconsideration of the definition of "foreseeable future" of *L. papilliferum* when one of the specie's primary threats could very likely be significantly reduced as a threat to the species in the very near future?

The decision related to Slickspot peppergrass has the potential to have lasting and significant negative impacts on communities and economies across Idaho. It is imperative that USFWS adequately consider numerous factors that will play an important role in the future of *L. papilliferum*. Wildlife fire prevention efforts, organization of community-based RFPAs, and even modest mitigation of invasive non-native species will all have a significant impact on *L. papilliferum* habitat. Additionally, were the NEPA documents and these other factors discussed during BLM's conferencing with the USFWS under Section 7 of the ESA to ensure conservation of the species and adherence to the Slickspot peppergrass Conservation Agreement between the two agencies?

ISDA would like to thank the USFWS for the opportunity to provide comments on the Reconsideration of Final Rule and Request for Comments on *Lepidium papilliferum* as a threatened species throughout its range under the Endangered Species Act of 1973 and would request that these comments be taken into consideration.

Sincerely,



Celia Gould  
Director

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April 24, 2014

Public Comments Processing  
Attn. FWS-R1-ES-2010-0071  
Division of Policy and Directives Management  
U.S. Fish and Wildlife Service  
4401 N. Fairfax Drive  
MS 2042-PDM  
Arlington, VA 22203

**RE:     Designation of Critical Habitat for *Lepidium pappilliferum*  
Request for Comments**

Dear Sir/Madam:

Thank you for the opportunity to comment on revised proposed rule for designation of *Lepidium pappilliferum* (slickspot peppergrass) critical habitat.

Idaho Department of Lands' (IDL) mission is to manage State Endowment Trust Lands (Endowment Lands) in a manner that will maximize long-term financial returns to the Beneficiary Institutions. The IDL mission is a constitutional mandate overseen by the State Board of Land Commissioners (Land Board). Endowment Lands are not managed for the public at large and should not be referred to as "public lands" or "open space," either specifically or in a generic sense. These are working lands producing revenue for the Beneficiary Institutions. Assets are managed to provide a perpetual stream of income to the beneficiaries by:

- Maximizing long-term financial return at a prudent level of risk,
- Protecting future generations' purchasing power, and
- Providing a relatively stable and predictable payout to the Beneficiary Institutions.

As part of IDL's mission to maximize long-term financial returns to public schools and other beneficiaries, IDL must maintain unrestricted access and ensure IDL's continued ability to use existing roads and trails to access these lands, and conduct management activities and lease administration.

The proposed critical habitat ruling for *L. papilliferum* has the potential to negatively impact the ability of IDL to achieve its mission, by reducing the current economic activities of state endowment trust lands and limiting future opportunities for activities, and/or exchange. IDL was extremely disappointed to see

the revised critical habitat proposal reaffirming the Draft Economic Analysis (DEA) dated September 23, 2011, and we reiterate our concerns over this economic analysis below.

We also previously commented that the DEA grouped “State lands” into the same category as “Federal land managed by the BLM”, “public lands”. State of Idaho endowment trust lands managed by the Idaho Department of Lands are specifically not public lands, and are subject to vastly different mandates and missions.

#### Clear and definitive structure

It was noted in comments submitted in response to the proposed ruling, that the general and sometimes conflicting language of the proposed listing document makes it difficult to determine the full economic impact of a final decision and resulting action. The uncertainty of the proposed rule is translated to the economic analysis, and therefore requires the concern to be repeated. As in the proposed rule registry, the Service notes that

*Livestock use poses a secondary threat to *Lepidium papilliferum*, primarily through mechanical damage to individual plants and habitat...The current livestock management conditions and associated conservation measures address this threat such that it does not appear to pose a significant risk to the species at this time<sup>1</sup>.*

Similar to the proposed rule, it is confusing that livestock grazing is identified as one of the four major use types analyzed, despite the above statement regarding its status as a secondary threat for which current measures mitigate any significant impact the use may have.

The DEA states repeatedly that management activities are not likely to change as most of the proposed Critical Habitat occurs under land managed by the BLM which is already operating under a Conservation Agreement (CA) with the FWS. The CA stipulates “Avoid issuing new authorizations or renewals in or adjacent to slickspot peppergrass habitat if negative impacts are expected ...<sup>2</sup>” This one clause alone indicates the high degree of uncertainty that adjacent landowners or permittees must base their decisions.

Any BLM decision that would reduce grazing permits has a direct effect upon the IDL’s grazing program because IDL’s unfenced parcels are managed in conjunction with the BLM for the following reasons and with these conditions:

- 1) BLM honors IDL AUMs on state ground.
- 2) State ground that is not fenced and IDL lessee is the same entity as BLM permittee, then IDL manages grazing according to the BLM allotment plan.
- 3) If IDL chooses not to manage according to BLM allotment plans, then IDL is required to separate state parcels by fencing out federal land (turn on/off dates, terms and conditions, livestock numbers).
- 4) If IDL lessee does not possess a BLM permit or if they possess a BLM permit but wishes to manage differently than BLM permit/allotment plan, state land would need to be fenced separately.

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1. 2011 Proposed Critical Habitat Rule, 76 FR 27186

2 : Industrial Economics Inc. Sept 2011. “Economic Analysis of the Critical Habitat Designation for Slickspot Peppergrass” Draft Report. Exhibit 3-1

- 5) If IDL lessee is not a permittee of the BLM, IDL lessee can be trespassed if livestock is found on federal land.
- 6) If IDL lessee is a permittee of BLM but does manage according to BLM permit, the entity can be trespassed while livestock is on federal land if state parcels are not fenced.

As a result of the uncertainty associated with the Critical Habitat proposal, the Idaho Department of Lands must assume there is at least the potential that BLM would directly eliminate grazing (banning) or indirectly eliminate grazing (requiring additional fencing or limited turnout). Therefore, IDL would not be able to lease the endowment trust lands at their current value.

The economic analysis itself provides an insufficient structure to create relevant information. As noted in more detail below, the structure of the cost analysis differs and is incompatible with the benefit analysis, bringing to question the utility of the document in making an informed decision. Without the ability to compare both costs and benefits of the proposed rule, the economic impact analysis provides little utility to the decision making process.

#### Area of critical habitat designation

A major assumption of the economic analysis is that the proposed ruling designating 57,756 acres (revised to 61,301 acres) is sufficient to conserve and recover the species population of slickspot peppergrass, which is derived directly from the proposed rule. If the acreage denoted in the proposed rule is the amount necessary to sustain a viable population, then the economic analysis appears to be in direct conflict with this assumption. Throughout the document, the authors note:

*The primary reason critical habitat is unlikely to generate economic impacts beyond administrative costs of consultation is that approximately 85.8% of the proposed critical habitat is Federal land managed by the BLM, which is a party to a binding Conservation Agreement<sup>3</sup>*

The assumption that BLM is the primary land manager of the area identified as critical habitat under the proposed rule, and that sufficient conservation measures have already been taken, begs the question as to what is the true size of critical habitat necessary to conserve and restore a viable and sustainable population of slickspot peppergrass? If as the economic impact study suggests, no additional conservation measures would be necessary due to BLM's dominance in critical habitat acreage, is 57,756 (revised to 61,301 acres) acres the necessary area or is it only the federal lands, now revised at 52,898 acres (86.3%)?

The proposed rule designates 57,756 (revised to 61,301 acres) acres as critical habitat, but yet clearly states that any activities with a Federal nexus that may affect those areas outside of the critical habitat are also subject to review. This statement suggests then that the designation has implications beyond the lands identified within the ruling and therefore does not reflect the true potential economic impact. The economic analysis should look at the full potential impact of the proposed ruling, which in its current wording should include all areas of element occurrence (EO) to which projects with a federal nexus *could* occur.

As noted in the economic analysis, the Service is considering excluding private lands from the proposed rule due to an opinion of insignificant marginal benefit. This opinion is based on the fact that:

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3. Industrial Economics Inc. Sept 2011. "Economic Analysis of the Critical Habitat Designation for Slickspot Peppergrass" Draft Report. ES-5



*monitoring has been limited, data is generally lacking on privately-owned lands, and any activities that would trigger the benefits of consultation on critical habitat under a Federal nexus are highly unlikely<sup>4</sup>*

While only 4.5% of the total area identified as critical habitat within private lands, the exclusion of private lands still brings into question the basis and rationale for the critical habitat area and acreage. As noted below, 4.5% is a small fraction of the total acreage, however given the proximity to urban areas; it is our opinion that the proposed rule is more likely to create economic impacts to private and state endowment lands.

#### BLM land management nexus

Throughout the DEA, the economic consultants separate BLM management from state endowment lands management. However, due to the ownership pattern, and common co-management of BLM and state endowment lands by lessees/permittees, these public lands are strongly linked. Regulations and policies proposed on BLM lands directly affect state endowment lands. These impacts may differ significantly from state endowment lands not co-mingled with BLM land and therefore there is a nexus of impact. The economic impacts of these linkages are discussed below; however the intent of this comment is to point out that the consultants incorrectly assume the relationships across land ownership within the study area.

#### Opportunity costs

The DEA authors admit that in future instances where projects on private lands may have a federal nexus, the study underestimates the potential administrative costs due to the small percentage (<5%) of proposed critical habitat that overlaps private lands. The flaw in this statement is that the costs associated with this over-lap are simply administrative. The larger cost, which is not discussed in the study, is the opportunity cost that the proposed ruling would have on both private and state endowment lands. The proposed ruling of critical habitat directly impacts the value of private and state endowment lands by reducing the use potential of those lands and/or significantly increasing the costs associated with developing uses. Although additional costs may not materialize until potential projects come forward, this opportunity cost is very real and should be recognized, regardless of current economic trends.

In addition, the designation would automatically trigger consultation on projects funded with federal dollars, and likely decrease the chances of securing federal dollars for proposed projects, because of the critical habitat listing. While it may be difficult to predict what potential projects and funding may arise within the study area, it should at a minimum be recognized as a potential cost within the analysis.

#### Land Valuations

Similar to the comments regarding opportunity costs, the proposed ruling is likely to impact state endowment lands directly through land valuations. Lower land values associated with federal restrictions decrease the ability of the IDL to undertake land exchanges. As IDL's constitutional mandate is to sustainably maximize the long-term revenues to the endowments, it is likely that IDL would seek to transition lands located within the proposed critical habitat area for lands where potential revenue generating activities would not be encumbered by additional requirements. The critical habitat listing

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4. 2011 Proposed Critical Habitat Rule, 76 FR 27202

reduces the value for which IDL could either exchange lands or sell lands through public auction. This impact should be captured in both the baseline and proposed rule analysis.

#### Impact to private and municipal entities

The main focus of the economic analysis is on the administration costs associated with the proposed rule. However, the analysis fails to quantify or even identify any costs associated with the designation to private entities and local jurisdictions. While both the proposed rule and economic analysis state that it is unlikely that further conservation measures will be needed, this is not a guarantee. Further actions, if warranted would impact current land users and potentially prohibit uses within designated areas. These regulatory mandates increase operational costs for permit holders, which need to be considered.

In addition, we are of the opinion that the proposed area is more, not less likely to have development projects occur. As noted previously, the proposed designation areas are located within urbanized counties of the state. While it is true that no *current* economic activity levels are anticipated on private and municipal ground, it is not unreasonable to assume that the potential for infrastructure and private development is more likely to occur near urban centers and major state highways. The designation is likely to increase costs associated with project approval, or deter potential projects that would otherwise occur (opportunity costs). Even if this cost does not vary between the baseline and the proposed rule, it should be recognized.

#### Benefits

The authors of the study note and rightly so, that it is often difficult to quantify the benefits of habitat conditions into an economic or financial measure. However, the very limited and non-measurable nature of the benefits section of the report makes it impossible to provide conclusions as to the costs versus benefits of approving the proposed critical habitat designation. Without an ability to examine costs versus benefits, it is not possible to make a determination as to the net impact of the proposed rule.

In addition to its brevity, the benefits analysis does not make sufficient connectivity between slickspot peppergrass habitat and the greater ecosystem. To assess even at a biological level, the study should consider any connectivity or relationships that slickspot peppergrass habitat conservation may or may not have. Without any qualitative assessment, it is inappropriate to make statement such as:

*Conservation measures for species and habitat may result in improved environmental quality, which in turn may have collateral human health or recreational benefits<sup>5</sup>*

Not only does this statement not have any merit as an analytical conclusion, it is contrary to the proposed ruling itself, which states that recreation can have a direct impact<sup>6</sup>.

The authors also provide an example of potential benefits that have no bearing on any of the uses listed as a major threat. The report states:

*For example, a section 7 consultation may result in avoiding the use of pesticides or herbicides within the habitat area. A reduction in the release of chemicals may benefit water quality and*

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5 Industrial Economics Inc. Sept 2011. Draft Report. 2-10

6 2011 Proposed Critical Habitat Rule, 76 FR 27193

*may also provide collateral benefits of preserving habitat for other species occupying these areas<sup>7</sup>.*

Although this is just an example, it has no relevance to any of the proposed activities or those considered to have a significant impact on critical habitat. The example does nothing more than to point out a potential relationship between pesticide use and water quality, and points out the lack of content in quantifying the proposed benefits.

Finally, the analysis and summary of the economic benefits of critical habitat designation for slickspot peppergrass does not provide even a structural basis for cost-benefit analysis. Where the cost analysis is based on the determination of the economic impacts associated with listing of critical habitat versus non-listing, the benefits section provides information related to “those associated (benefit) with the primary goal of species conservation and benefits that derive from the habitat conservation measures to achieve this primary goal”.

As the authors state numerous times throughout the DEA, it is unlikely that any additional conservation measures would result from passing of the proposed critical habitat rule, the benefits noted in the report are those associated with the baseline. There are, therefore, no benefits associated with the passing of the proposed rule, as demonstrated by the report. Even the small administrative costs reported by the analysis team appear to be far greater than the potential benefits, which the authors report as zero.

*Absent changes in land management or slickspot peppergrass conservation measures, no incremental economic benefits are forecast to result from designation of critical habitat<sup>8</sup>.*

#### Cost of proposed ruling

Although beyond the scope of the economic analysis, the Service should also consider the cost and benefits of processing the proposed listing. As the authors of the economic analysis are a private consulting firm, costs were incurred to prepare the report, which were likely close to those administrative costs derived from the report (\$161,000). The cost of Service staff time to process the proposed rule and the time that state and federal agency staff have spent reviewing and providing comments to the proposed rule should also be considered in quantifying administrative costs. The economic analysis states that the passing of the proposed rule provides no net benefit, either economical or environmental. In light of the conclusions regarding insignificant benefits, it would seem that the proposed rule has a negative net impact once the costs of administering the proposed rule are factored in.

For further details see attachments 1 and 2 regarding quantification of potential costs associated with the proposed ruling.

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7 Industrial Economics Inc. Sept 2011 Draft Report. 4-14

8 Industrial Economics Inc. Sept 2011 Draft Report. ES-5

Thank you again for the opportunity to review and comment on the proposed designation of critical habitat for slickspot peppergrass. IDL looks forward to working with you in the future. Please contact Kurt Houston at (208) 334-0200 if you have questions or need more information.

Sincerely,



Kurt Houston  
Operations Chief, South

Attachments:

1. Economic Impact of Proposed Slickspot Peppergrass Critical Habitat Ruling on Idaho State Endowment Rangeland
2. Economic Impact of Proposed Slickspot Peppergrass Critical Habitat Ruling on Idaho State Endowment Potential Renewable Energy Projects

## Attachment 1

### Economic Impact of Proposed Slickspot Peppergrass Critical Habitat Ruling on Idaho State Endowment Rangeland

#### Summary

Many Idaho Department of Lands (IDL) grazing leases are held by adjacent Bureau of Land Management (BLM) permittees. As a result of the Critical Habitat listing there is a high probability that BLM would directly eliminate grazing (banning) or indirectly eliminate grazing (requiring additional fencing or limited turnout). Therefore, IDL would not be able to lease the endowment trust lands at their current value.

The total number of state endowment land potentially impacted by the proposed ruling is approximately 62,200 acres. Grazing is the primary leased use and rangeland the primary asset type of all lands identified in the analysis. The potential revenues associated with a ban on grazing within the impact areas have a net present value of \$883,346. In addition, as most of the costs associated with additional conservation measures would be borne by the lessee in terms of reduced production potential and carrying capacity, the net present value of future rents is likely to be impacted indirectly through the proposed ruling. A conservative estimate based on published literature suggests that a 6% decrease in asset value could result from the proposed critical habitat ruling for slickspot peppergrass. Should the critical habitat rule pass, these values would be reduced in comparison to comparable lands outside of the impact areas.

Area of Impact	Acres	AUMs	2014_rent	Asset Value Loss	NPV
Critical Habitat	42,060	4,396	\$30,288	\$1,514,160.00	\$491,294
Elemental Occurrence	20,137	3,508	\$24,170	\$724,932.00	\$392,052
<b>Total</b>	<b>62,197</b>	<b>7,904</b>	<b>\$54,459</b>	<b>\$2,239,092.00</b>	<b>\$883,346</b>

#### **Methodology**

##### *General Assumptions*

Based on the original FWS register and economic analysis, the potential for consultation is not actually limited to defined critical habitat areas, but all areas containing elemental occurrences of slickspot peppergrass (SSPG). The economic analysis must therefore consider both those lands impacted by the critical habitat listing, and those where elemental occurrences are recognized. Therefore, the above stratifies costs into two tiers, within critical habitat and those where elemental occurrences are recognized.

##### *Spatial Identification*

Geographically and managerially, state endowment lands are linked to federal permit lands and allotments. State endowment lands that would be considered “impacted” by the listing were identified



using two methods. The first was to identify those endowment lands that would be impacted directly either by their location within the proposed critical habitat area or by containing an elemental occurrence. The second method was a two step process, first to identify those sections of federal ownership which were within the critical habitat area or contained an elemental occurrence. The second step identified those endowment lands that intersected, were contained within, or adjacent to the identified federal sections. The assumption of this identification was that the state endowment lands were either subject to federal management (contained within the section or intersected) or are used in combination with federal permits (adjacent to).

#### *Fiscal Impact*

As noted in the comments submitted to FWS regarding the proposed critical habitat rule, grazing was identified as a major use type for analysis, despite recognition of existing conservation efforts. In reviewing both existing CCAAs and the BLM's CA, similar existing conservation components are currently considered in management of state endowment lands. Therefore no additional costs to the Department would result from the listing and are not considered in the analysis. The above information contains those revenues associated with identified grazing leases and the assessed value of those lands. The net present value represents the potential revenue losses that could occur should grazing be banned from areas identified by the proposed ruling. The asset value loss provides a quantification of the potential loss in land value to Endowment lands should the proposed ruling pass.

The net present value represents the revenue stream of future rents over a twenty year time period from current grazing leases. A 3% rate of return is assumed and a 1% annual increase in rental rates. This rate assumption is based on the ten year average AUM rate determined for the period 2001-2010. The time period is consistent with the assumed time period for analysis within the economic impact study.

Assessed values are based on the Idaho Department of Land's annual mass appraisal information. The estimated assessed value is an approximation that does not take into consideration those factors or attributes associated with each parcel, except for size. A per-acre assessed value is applied to each lease-parcel to obtain an individual assessed value. The assessed value is based on comparable private rangeland values and therefore represents only the land values associated with grazing as the primary use. Higher values are likely associated with other uses, such as commercial, energy, industrial, or residential development.

## Attachment 2

### Economic Impact of Proposed Slickspot Peppergrass Critical Habitat Ruling on Idaho State Endowment Potential Renewable Energy Projects

#### Summary

IDL had a study completed analyzing State Endowment lands to determine which parcels would be best suited for solar power. Of, approximately 2.5 million acres of Endowment land, 356,000 acres were determined to be Class 4 or 5 with 5 being the best. The study took into account: solar radiation analyzed per hour over the year, slope of the land, parcel size, species of concern, proximity to transportation, proximity to transmission, water resources, and proximity to military operating areas. The total number of state endowment lands potentially impacted by the proposed ruling is approximately 62,200 acres of which 1,200 acres are identified as commercially prime solar power lands or Class 4 and 5. Wind power generation is another potential use identified for state endowment lands in the area, but unlike solar power, a thorough analysis has not been completed by IDL at this point in time.

The potential revenues associated with a ban on renewable energy activities within the impact areas have a value of \$625,200 or a return on asset of 87% for potential utility scale solar power facilities. Over a 25 year period, which is typical for power purchase agreements, lost revenue would equate to \$15,630,000 with no annual adjustments figured in. Current IDL lease agreements utilize a three percent annual increase for rent and megawatt fees. The cost of a solar power lease that must be forgone is \$21,875,558.59 for megawatt fees, alone, over the 25 year life of the lease with 3% annual increases.

Not considered in this assessment is the revenue lost by IDL's inability to lease lands adjacent to the solar power facility to transmission line companies servicing the solar power facility. Any restrictions applied to endowment lands or surrounding federal lands which would prevent the siting of transmission lines that would service the solar power facility, in effect, would render the 1,200 acres useless for renewable energy projects, although the land would maintain minimal value for grazing purposes.

Area of Impact (Solar)	Acres	Yearly Rent (3.5% of \$600 Land Value)	Annual Installation Fee (\$3G/MW)	Total Opportunity Costs Over 25 Years
Critical Habitat	1,200	\$25,200	\$600,000	
<b>Total Opportunity Costs Over 25 Years (With 3% Annual Increases)</b>		<b>\$918,773.46</b>	<b>\$21,875,558.59</b>	<b>\$22,794,332.05</b>

#### **Methodology**

##### *General Assumptions*

As an example of the potential size of a utility scale solar power facility, the California Valley Solar Ranch was used for footprint comparison purposes. The actual facilities, solar photovoltaic panels, etc. sit on 1,500 acres of a 4,700 acre parcel. The additional acreage is used for conservation purposes.

*The California Valley Solar Ranch is a 250-megawatt photovoltaic solar electric system. The site includes the following:*

- *Ten solar PV arrays (groups of solar photovoltaic panels)*
- *Electrical equipment*
- *A generation tie- line*
- *A substation*
- *A switchyard and transmission line upgrade project (constructed by PG&E)*

*In addition, the Solar Ranch project includes a visitor center, an operation and maintenance building and a water tank to help enhance SR 58 community firefighting preparedness ([www.californiavalleysolarranch.com](http://www.californiavalleysolarranch.com)).*

For comparison purposes, the Idaho Department of Lands reduced the comparison acreage to 1,200 acres and the size of the potential utility scale power facility to 200MW of capacity to reflect the reduction in available acreage. All other components would, comparatively, extrapolate to this scenario.

#### *Spatial Identification*

Geographically and managerially, state endowment lands are linked to federal permit lands and allotments. State endowment lands that would be considered “impacted” by the listing were identified using two methods. The first was to identify those endowment lands that would be impacted directly either by their location within the proposed critical habitat area or by containing an elemental occurrence. The second method was a two step process, first to identify those sections of federal ownership which were within the critical habitat area or contained an elemental occurrence. The second step identified those endowment lands that intersected, were contained within, or adjacent to the identified federal sections. The assumption of this identification was that the state endowment lands were either subject to federal management (contained within the section or intersected) or are used in combination with federal permits (adjacent to).

#### *Fiscal Impact*

The above information contains those revenues associated with potential solar power leases and the assessed value of those lands. The Yearly Rent and Annual Installation Fee represent the potential revenue loss that could occur on annual basis should renewable energy projects be banned from areas identified by the proposed ruling. These numbers are based on current rates and appraisals.

The opportunity costs represent the revenue stream of future rents over a twenty five year time period for a potential solar power lease with annual increases figured in at 3% for land rent and a 3% increase per year per megawatt of capacity. For the purposes of this analysis gross revenue could not be assessed.