

DATA QUALITY ACT REQUEST FOR ACTION ON THE BUREAU OF LAND MANAGEMENT BIGHORN
BASIN RESOURCE MANAGEMENT PLAN AND ENVIRONMENTAL IMPACT STATEMENT

Prepared by

Bighorn Basin Local Government Cooperating Agencies

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TABLE OF CONTENTS

1. INFORMATIONAL DEFICIENCIES 1

1.1 **REGULATION AND GUIDANCE** 2

1.1.1 The DQA (Information Quality Act)..... 2

1.1.2 FLPMA and DOI and BLM Guidance 2

1.1.3 Planning Requirements under C.F.R. § 1610.4-3 3

1.1.4 National Environmental Policy Act of 1970 3

1.1.5 Memorandum of Understanding..... 4

1.1.6 Relevant Federal Case Law 4

1.2 Definitions 5

1.2.1 “Influential Information” 5

1.2.2 “Dissemination” 5

1.3 Data Quality Challenge 6

1.3.1 Information Being Challenged 7

1.3.2 Data Inadequacy 10

1.3.3 Entities Impacted..... 10

1.3.4 Entity Filing the Complaint 10

1. INFORMATIONAL DEFICIENCIES

In reviewing the Bureau of Land Management (BLM) Draft Big Horn Resource Management Plan and Environmental Impact Statement (RMP/EIS), and maps and data disseminated by the BLM during the Bighorn Basin RMP revision process, it is clear that there are several issues with data and information presented as fact by the BLM. The hierarchy of federal requirements, as existing in statutes, rules and regulations, case law, and agency handbooks and manuals necessitates the integrity, extent, and manner in which data is used. The RMP/EIS document and planning process has used inaccurate data, presented unsubstantiated information as facts, and has underutilized existing data. It is for this reason that the Bighorn Basin Local Government Cooperating Agencies (LGCA) are submitting this document as a formal submittal to the BLM to recognize and correct factual errors as required by the Data Quality Act (DQA) of 2000 (also known as the Information Quality Act).

Inaccurate information has been distributed by the BLM that could lead to unnecessary socioeconomic and resource harm through misguided management. Several pieces of information have been disseminated that mischaracterize the existing conditions on BLM-managed lands or that state unfounded information or findings as fact.

In the planning process for the RMP/EIS the BLM has violated or not conformed with:

1. The DQA of 2000
2. The Federal Land Policy and Management Act of 1976
3. The Department of the Interior's Information Quality Guidelines (USDI 2002)
4. The BLM's Information Quality Guidelines (Bureau of Land Management 2002)
5. Guidance provided in BLM Handbook 1283-1 on Data Administration and Management {5663}
6. National Environmental Policy Act of 1970
 - a. Section 1502.22 of the CEQ Regulations regarding incomplete or unavailable information
 - b. Section. 1501.6 of the CEQ Regulations regarding Cooperating Agencies
7. Memorandum of Understanding between Park County and the BLM Regarding the Development of the RMP/EIS
8. Planning requirements under C.F.R. § 1610.4-3 regarding inventory data and information collection
9. Findings and decisions by existing Federal Court case law.

This section of the LGAC document describes key planning guidance the BLM has violated, addresses the definition and treatment of planning information as "influential," and outlines the formal submittal of this document as a data quality challenge.

We urge the BLM to comply with these requirements outlined in the DQA, FLPMA, and other direction and guidance as outlined in the BLM Manual and Handbook and codified requirements. The LGCA

submit this document not only as input to the RMP/EIS, but as a formal submittal in accordance with the DQA and associated BLM Guidelines on data challenges (BLM 2011). It is our hope that this challenge will result in the collection and use of more accurate data to better guide land management decisions.

1.1 REGULATION AND GUIDANCE

1.1.1 The DQA (Information Quality Act)

The DQA was enacted by Congress to ensure that federal agencies disseminate and use accurate information. The uncodified DQA amends the Paperwork Reduction Act of 1980 is intended to prevent harm from the dissemination of inaccurate information. Public Law 106-544 Section 515 led to the publication of DOI and BLM guidelines for data quality and integrity. DQA guidelines (FR Vol. 67 No. 36) required all federal agencies to provide the following:

- By October 1, 2002, issue its own information quality guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information that it disseminates.
- Establish administrative mechanisms to allow affected persons to seek and obtain correction of information maintained or disseminated by the agency that does not comply with OMB or agency guidelines.
- Report periodically to OMB the number and nature of complaints received by the agency regarding the accuracy of its information and how such complaints were resolved.
- Ensure that influential information, such as that used in the preparation of resource management plans, be characterized by reproducibility and transparency.

1.1.2 FLPMA and DOI and BLM Guidance

The BLM published its Information Quality Guidelines in response to the direction provided by the Office of Management and Budget (FR Vol. 67 No. 36) and the Department of the Interior's Guidelines (USDI 2002).

Inaccurate information used in the planning process is a violation of FLPMA. It is imperative that BLM use accurate data when plotting the future of lands in the Bighorn Basin. Further, planning requirements for the Department of the Interior are specified in the Code of Federal Regulations and include requirements for assembling and using existing data (i.e., BLM and LGCA LWC data):

§ 1610.4-3 Inventory data and information collection.

The Field Manager, in collaboration with any cooperating agencies, will arrange for resource, environmental, social, economic and institutional data and information to be collected, or assembled if already available. New information and inventory data collection will emphasize significant issues and decisions with the greatest potential impact. Inventory data and information shall be collected in a manner that aids application in the planning process, including subsequent monitoring requirements. [48 FR 20368, May 5, 1983, as amended at 70 FR 14566, Mar. 23, 2005]

Section H-1601-1 of the Land Use Planning Handbook, Appendix D, V. Data Management, A. Types of Data provides specific instruction to “use existing data to the extent possible.”

Section H-1601-1 of the Land Use Planning Handbook, Appendix G provides guidance for the use of “standardized, accurate, and reliable data and information” as they are “critical to the development of plan assessment, alternatives, impact analyses, and planning decisions.”

The BLM’s Data Administration and Management Handbook states it is the responsibility of Data Administrators to establish acceptable quality data quality levels through the use of Quality Review Teams. The LGCA has been forced to critique databases in the wake of hundreds of pages of misguided analyses based on inaccurate or incomplete baseline data—essentially in the functioning a role of a Quality Review Team. This lack of quality internal data review (as evidenced in the LGCA review of the LWCs) is unacceptable as the Handbook clearly identifies procedures for meeting data quality standards, and Metadata Content Standards (see pg, 52 of Data Administration and Management Handbook).

1.1.3 **Planning Requirements under C.F.R. § 1610.4-3**

Regulations guiding planning state:

§ 1610.4-3 Inventory data and information collection.

The Field Manager, in collaboration with any cooperating agencies, will arrange for resource, environmental, social, economic and institutional data and information to be collected, or assembled if already available. New information and inventory data collection will emphasize significant issues and decisions with the greatest potential impact. Inventory data and information shall be collected in a manner that aids application in the planning process, including subsequent monitoring requirements.

This underlines requirements for the BLM to utilize already existing information provided in BLM databases and by the LGCA regarding LWC inventories.

1.1.4 **National Environmental Policy Act of 1970**

CEQ regulation § 1502.22 directs federal agencies in the case of incomplete or unavailable information when preparing a NEPA document. The regulation states in part, that:

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

The BLM has failed to use much of the information available in BLM-maintained data bases in regards to the LWC inventory. Furthermore, with the updated LWC inventory data contained within this comment document, the BLM now has a more accurate LWC inventory and is required to consider this information and utilize it or provide a rationale its disregard. The BLM is obligated to use this data not only under NEPA but also under the RMP/EIS MOU.

The BLM has not met the spirit of Section 1501.6 in the CEQ Regulations regarding cooperating agencies. In not attending the LGCA public meetings, and diverging away from process documentation provided by the BLM (namely standards and processes identified in the contractor's scope of work), the BLM has limited information exchange and misled the LGCA. On October 6, 2008, the BLM disseminated information on the performance standards that ICF, the contractor, would prepare. This emphasis early in the NEPA process and responsibility of the BLM has not been followed. The Contractor proposal disseminated on October 6, states in part that, "Contractor will supply BLM with all intermediate and final data, documentation, metadata, and other information that leads to conclusions in the RMP/EIS." ERG has requested this data numerous times, only to be told the BLM does not have this information or that it is against ICF's policy to distribute such information (see GIS Section 2 of this document).

1.1.5 Memorandum of Understanding

The memorandum of Understanding between Park County and the BLM states that, "The BLM will utilize the park County input and proposals to the maximum extent possible, consistent with legal requirements and its responsibility as lead agency," and that, "The BLM will ensure that input from Park County is appropriately incorporated into the draft and final EISs." Therefore the BLM is legally obligated to appropriately consider input from Park County, submitted here on behalf of the LGCA. This is true for all content within this entire DEIS comment document but also the LWC data and analysis provided by the LGCA.

The BLM has been remiss in providing several final GIS analysis files and metadata to ERG and the LGCA (see GIS Section 2). Section G of the MOU states, "Parties to this MOU will have access to all information relevant to the fulfillment of their responsibilities under this agreement."

1.1.6 Relevant Federal Case Law

Numerous resource areas in the RMP/EIS have inaccurate or missing information. This violates Administrative law requirements for information accuracy. In regards to air quality, fire, grazing data, wildlife information and other resource areas, the BLM has not included appropriate information to take a "hard look" at potential environmental impacts and provide accurate information. An exhaustive list of applicable case law is not included here, but following two cases provide important administrative precedent:

- **Regarding accurate information--**Earth Island Institute v. U.S. Forest Service, 351 F.3d 1291, 1299-1300 (9th Cir. 2003)--This decision was based on agency decision to ignore relevant data and pertains directly to the LGCA's LWC inventory and need for it to be incorporated into baseline data and analyses.

- **Regarding information and scientific basis--** River Runners for Wilderness v. Martin , 574 F.3d 723, 747 (9th Cir. 2009)--This decision outlines agency responsibility for accurate scientific analysis an high quality information. This is relevant to the numerous citations in this comment document about inaccurate baseline information (e.g. LWC inventory), inaccurate statements of fact (e.g., sweeping, unsupported generalizations about mule deer population trends).

1.2 DEFINITIONS

1.2.1 “Influential Information”

For the purposes of the RMP/EIS, all baseline information presented is considered to be “influential.” The DOI (USDI 2002) states the following about “influential” information:

The DOI defines “influential” information as:

...the information will have or does have a clear and substantial impact on important public policies or important private sector decisions.

The BLM (Bureau of Land Management 2002) defines “influential” information as:

...that which is expected to have a genuinely clear and substantial impact at the national level major public and private policy decisions as they relate to federal public lands and resources issues. The accuracy of this information is significant due to the critical nature of these decisions.

Indeed the BLM’s revised RMP/EIS has important implications for both public policy and private sector decisions if for nothing else than in regards to energy policy and oil and gas production. Wyoming ranks second and sixth in proved reserves of natural gas and crude oil, respectively. Such high ranking clearly has implications for national energy supply and has an important influence on national energy policies and decisions made within the private energy sector.

- Influential information will be produced with a high degree of transparency about data and methods.
- The DOI will:
 - Use the best available science and supporting studies conducted in accordance with sound and objective scientific practices, including peer-reviewed studies where available.
 - Use data collected by standard and accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies the use of the data).

1.2.2 “Dissemination”

The DOI (USDI 2002) provides a definition of dissemination:

5. Information means any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition includes information that the Department disseminates from a web page, but

does not include the provision of hyperlinks to information that others disseminate. This definition does not include opinions where Departmental presentation makes it clear that what is being offered is someone's opinion rather than fact or the Department's views.

6. Government information means information created, collected, processed, disseminated, or disposed of by or for the Federal Government.

7. Information dissemination product means any book, paper, map, machine-readable material, audiovisual production, CD-ROM, electronic document, web page, or other documentary material, regardless of physical form or characteristic, the Department disseminates to the public.

8. Dissemination means Department-initiated or sponsored distribution of information to the public (see 5 CFR 1320.3(d) (definition of "Conduct or Sponsor"). Dissemination does not include distribution limited to: government employees or Department contractors or grantees; intra- or inter-agency use or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law. This definition also does not include distribution limited to: correspondence with individuals or persons, press releases, archival records, public filings, subpoenas or adjudicative processes.

Several forms of information have been disseminated during the planning process. All maps of LWCs, visual aids and printed materials presented during public meetings and all information contained within the RMP/EIS is considered to be disseminated information.

1.3 DATA QUALITY CHALLENGE

The Data Quality Guidelines BLM website states that:

A request for correction of information covered by these guidelines should first be filed with the office that disseminated the information. That office has sixty (60) days within which to respond. If any member of the public wishes to challenge that office's response, they may do so in writing to:

Assistant Director, Information Resources Management
Bureau of Land Management
1849 C Street, NW
Washington, DC 20240

Or by e-mail: Information_Quality_Guidelines@blm.gov
(BLM 2011)

Please consider this document a formal submittal as a challenge in full accordance with the DQA (FR Vol. 67 No. 36) and Information Quality Guidelines (Bureau of Land Management 2002; USDI 2002). It includes several instances of inaccurate or unsubstantiated information and inadequate documentation of methodologies and assumptions used in analyses in the documents have been distributed by the BLM Worland and Cody Filed Offices.

In the Information Quality Guidelines, the DOI (USDI 2002) has outlined information quality challenge and review procedures that described four elements to be included when challenging information:

1. Specific reference to the information being challenged.
2. Statement specifying why the complainant believes the information fails to satisfy the standards in the BLM, the DOI or OMB guidance.
3. How a complainant is affected by the challenged information. The complainant may include suggestions for correcting the challenged information, but that is not mandatory.
4. The name and address of response of the person filing the complaint. This information is used at the complainant's request for the purpose of responding to the challenge initiated by the individual. The address of response need not be the complainant's home address but should be the address that the BLM will use to respond to the complaint.

1.3.1 Information Being Challenged

We ask that this document be considered in its entirety, but specific examples of incorrect or inaccurate data, include Lands with Wilderness Characteristics (LWC) inventory, acreages of cheatgrass, mule deer information, and numerous GIS maps included in the RMP/EIS.

1.3.1.1 *Lands with Wilderness Characteristics Inventory*

Section 201 of the Federal Land Policy and Management Act (FLPMA) directs the Bureau of Land Management (BLM) to inventory for LWCs. Prior to the RMP Revision, the Cody and Worland Field Offices of the BLM inventoried for LWCs. The LGCA directed Ecosystem Research Group (ERG) to conduct a confirmation inventory of LWCs.

In the confirmation inventory several data sets were used to identify things that detract from wilderness character. ERG used BLM GIS data for information pertaining to roads, range improvements, oil and gas fields. Data from other agencies, such as the Wyoming Pipeline Authority and the Wyoming Oil and Gas Commission, was used to inventory for structures within the BLM defined LWCs. The BLM was remiss in not considering readily available in-house data and other readily available data sources for structures when designating their LWCs. The BLM's resource specialist objections to the LWC designations were documented on the signature sheets and apparently ignored during the designation process.

The LGCA/ERG LWC confirmation inventory found that almost 20% of the 3.2 million acres of BLM lands in the Bighorn Basin were erroneously identified as having wilderness characteristics. In this area, the BLM has identified 56 areas comprising a total of 571,000 acres. Within this area there are numerous developments that detract from wilderness characteristics that were not identified in the BLM's inventory, including:

- 634 miles of roads, of which 518 miles are two track,
- 442 reservoirs,

- 296 miles of fence,
- 569,273 acres of active allotments,
- 154 range improvements,
- 10 miles of water pipeline,
- 17 water wells,
- 8 oil fields,
- 68 miles of oil and gas pipeline,
- 8 active oil and gas wells,
- 59 plugged and abandoned oil and gas wells, and
- 248,315 acres (43%) that have oil and gas leases.

The full results of the LGCA/ERG confirmation inventory are displayed in Appendix A. The discrepancies between the LGCA/ERG and BLM's inventories are too numerous to itemize in this document beyond those items noted in the list above and the reporting included in Appendix A. For illustration sake, we present the Whistle Creek LWC as an example of the types of discrepancies and oversights in the BLM's inventory data. The LGCA/ERG LWC maps clearly document the locations of man-made structures detracting from wilderness characteristics in the Whistle Creek LWC along with a narrative description on an inventory form that documents the structure types and amounts that detract from wilderness characteristics. The form also includes "yes or no" check boxes for "naturalness", "solitude", and "primitive or unconfined recreation". The LGCA/ERG LWC Inventory documented 27.59 miles of two track roads, 11.66 miles of graded dirt roads, 4.57 miles of unknown roads, a boundary shared with an existing oil and gas field, 4.41 miles of oil and gas pipeline, 0.84 miles of power lines, 40.43 miles of fence, 2 exclosures, 32 reservoirs, 2 stock tanks, 0.64 miles of water pipeline, and 14 gates. The BLM inventory did not capture any of these developments in their inventory. The LGCA/ERG LWC Inventory did not find wilderness characteristics in the Whistle Creek LWC.

Note that the BLM's LWC inventory and maps have been presented during public meetings and should be considered influential data. The DQA and associated agency guidelines dictate that the total of the LWC inventories be corrected.

1.3.1.2 *Conflicting/Incorrect Brome Inventories*

Section 3.4.4 states that in 2007, "...the WFO estimated that approximately 57,000 acres in the field office were infested with nonnative annual bromes." The 57,000 acre figure contradicts information from Table 3-22 of the RMP/EIS that presents acres for nonnative annual bromes at 37,505 for BLM surface estate and 46,875 for BLM mineral estate. The discrepancy seems to lay in the GIS data provided by the BLM.

A GIS layer entitled 'WFO_Invasive_NonNative' totals 57,413 acres which approximates the 57,000 acres presented in Vegetation section 3.4.4, but not incorporated in Table 3-22. See Vegetation Resources in this comment document for further discussion.

1.3.1.3 *Mule Deer*

The BLM, in their discussion of mule deer in the RMP/EIS, states the following as fact without proper support (pg. 3-97):

(b)ecause of seasonal dependence on woody plant communities, mule deer are generally declining in numbers due to a decline in habitat quality and quantity.

It is unclear how the BLM can make a statement such as the preceding without providing evidence? Not only does the statement need supporting data and scientific literature, but an explanation that this is the only variable negatively affecting mule deer. Data requested for inclusion in the final RMP/EIS include:

- How many acres of sagebrush have been lost to dry and irrigated farming?
- Of lands still in sagebrush, how has the coverage and age class distribution of sagebrush changed due to fire suppression?

Additionally, the causes of mule deer declines are multi-fold, variable, and sometimes uncertain (Ballard et al. 2001; deVos et al. 2003; Unsworth et al. 1999). For instance, Gill et al. (1999) suggest that declines in Colorado were most attributable to competition from increasing elk populations, loss of vegetation productivity to over-grazing by deer in the 1940s, and loss of habitat to farmland conversion. The Oregon Department of Fish and Wildlife (2011) concluded that the decline of mule deer in Oregon is attributable to several factors in addition to habitat quality/quantity changes, including severe winters and drought, changing predator-prey relationships, and changing grazing and forest management practices. For further commentary, see mule deer comments in the Wildlife Resources section.

1.3.1.4 *GIS Maps*

There are several maps included in the RMP/EIS that are not reproducible from BLM baseline data or appear to conflict with the BLM's GIS data. Please refer to GIS Section 2 for the types of metadata and processes needing documentation for reproducible results. ERG found several discrepancies in GIS data. If the datasets are being highly manipulated then this should be reflected in the methods and analysis in the RMP/EIS. No such documentation of methodology is found in the RMP/EIS. Among the conflicts, are:

- **Travel Management:** Blank records in the GIS attribute table for Alternative D. RMP/EIS vs. GIS acres do not match.
- **Mineral Constraints:** Alternative D Mineral Constraints is missing all records for the "Standard Constraints".

- **Withdrawals:** Alternative A GIS files are contain blank records in the GIS attribute tables. Acres do not match RMP/EIS.
- **Rights-of-Way Avoidance and Exclusion:** GIS file contained overlapping areas resulting in conflicting management in the same areas. Also results in incorrect acres.
- **Recreation Management Areas:** Both Alternative A and D GIS files do not show a complete data set of all RMAs included in the RMP/EIS.
- **Geothermal Constraints:** Contain overlapping polygons resulting conflictions in management in those areas and double counting of acres in GIS.

1.3.2 Data Inadequacy

The information in Section the information fails to satisfy the standards in the BLM, the DOI or OMB guidance. It fails to meet standards simply because it either: (1) inaccurately portrays wilderness conditions and fails to incorporate relevant readily available data, (2) incorrectly states facts without proper scientific support, (3) conflicts with other information found within the RMP/EIS or, (4) is not supported by existing BLM databases.

1.3.3 Entities Impacted

The Bighorn Basin LGCA represent thousands of constituents that will be impacted by inaccurate data being used in the planning process. Impacts include socioeconomic, recreational, and cultural impacts as identified in relevant sections of this document.

1.3.4 Entity Filing the Complaint

Bighorn Basin LGCA
c/o Keith Grant
Big Horn County Commission
P.O. Box 31
Basin, WY 82410