

# CHAPTER 5

## CONSULTATION AND COORDINATION

### Introduction

Chapter 5 describes the public participation opportunities made available through the development of the Draft Resource Management Plan and Environmental Impact Statement (RMP/EIS) and this Proposed RMP/Final EIS. This chapter describes consultation with tribal governments. This chapter also describes the consultation that occurred and collaborative efforts with the State of Montana; Blaine, Chouteau, Fergus and Phillips Counties; and the U.S. Fish and Wildlife Service. A distribution list identifies the governmental agencies, Congressional staff, businesses and organizations that received a copy of the Draft RMP/EIS and this Proposed RMP/Final EIS.

The Draft RMP/EIS and this Proposed RMP/Final EIS were prepared by an interdisciplinary team of resource specialists, identified at the end of this chapter, from the Lewistown Field Office, Great Falls Oil and Gas Field Station, Havre Field Station, Malta Field Office, and the Montana State Office. The economic analysis was provided through a contract with Northwest Economic Associates. Technical review and support were provided by field office and state office staffs in Montana.

The State of Montana and Blaine, Chouteau, Fergus, and Phillips Counties participated in development of the Draft RMP/EIS and this Proposed RMP/Final EIS as cooperating agencies. The Central Montana Resource Advisory Council also participated, and a discussion of their involvement is included later in this chapter.

Members of the planning team have consulted formally and informally with numerous agencies, groups and individuals during the preparation of this document. Consultation, coordination, and public involvement occurred as a result of scoping and alternative development meetings, briefings and meetings with federal, state, tribal, and local government representatives, informal meetings and individual contacts.

### Public Participation Opportunities

The major public participation events, scoping and alternative development are described below. Table 5.1 contains a list of public involvement opportunities which occurred as the Draft RMP/EIS and this Proposed RMP/Final EIS were developed.

### Scoping

The scoping process identifies land use issues, conflicts, and opportunities. These issues may stem from new information or changed circumstances, the need to address environmental protection concerns, or a need to reassess the appropriate mix of allowable uses based on new information.

Scoping is the first stage of the planning process and closely involves the public with identifying issues, providing resource and other information, and developing planning criteria to guide preparation of the document.

A Notice of Intent to prepare the Draft RMP/EIS for the Upper Missouri River Breaks National Monument (Monument) was published in the Federal Register on April 24, 2002. This notice served as the beginning of BLM's formal scoping process.

The notice was followed by news releases in April and June, updates to the public (mailing list) in May and June, a newsletter in June, and a newspaper-type handout in July. All of these tools conveyed information about the planning process, scoping open houses, potential issues, and questions/answers about the Monument.

To provide ample opportunities for public participation across northcentral Montana, the BLM hosted 11 scoping open houses in July and August 2002. Over 320 people attended the open houses in:

- July 8 Winifred
- July 9 Lewistown
- July 10 Big Sandy
- July 11 Fort Benton
- July 15 Havre
- July 16 Chinook
- July 17 Cleveland
- July 18 Malta
- July 22 Hays
- August 5 Great Falls
- August 6 Billings

The BLM received 5,700 scoping comments, of which 5,300 were submitted electronically. Ten identified form-type letters or organized campaign form letters resulted in 5,100 of the total scoping comments. Scoping comments came from all 50 states, Puerto Rico, five Canadian provinces, and several foreign countries.

All scoping comments were read and about 1,700 comments were coded into 31 subject categories and 55 subcategories. These categories are guidance-based resource sections for an RMP (Washington Office IB No. 2002-056), and the subcategories are based on the comments received. Most of the coded comment letters contained several specific comments covering various categories. All of the coded comments were entered into a database and organized by category and subcategory in a 123-page comment summary. The Scoping Comment Summary is available by contacting the Lewistown Field Office.

## Alternative Development Workshops

In July 2003, as part of a continuing effort to invite public participation in planning for the Monument, a newsletter was available that included the Overall Vision and Management Goals for the Monument and a request for public comments on the Vision and Goals and ideas for the alternatives. The BLM also held 11 alternative development workshops during July in the same communities where the scoping open houses were held the previous year:

- July 14 Winifred
- July 15 Lewistown
- July 16 Big Sandy
- July 17 Fort Benton
- July 21 Havre
- July 22 Chinook
- July 23 Cleveland
- July 24 Malta
- July 28 Hays
- July 29 Great Falls
- July 30 Billings

About 350 people attended these alternative development workshops, and by year end, the public provided 7,167 comments, including seven identified form-type letters or organized campaign forms (6,237 letters/emails).

All comments were read and 2,647 specific comments were identified and coded into 64 subject categories and subcategories. The Alternative Development Comment Summary is available by contacting the Lewistown Field Office.

## Scoping and Alternative Development for the 12 West HiLine Oil and Gas Leases

The Draft RMP/EIS and this Proposed RMP/Final EIS include an analysis of 12 existing natural gas leases in the Monument. The analysis of these leases is part of the comprehensive plan for the Monument.

The BLM's decision to examine these leases is the result of a Montana Federal District Court ruling involving a suit that alleged the agency did not fully comply with the National Environmental Policy Act, the Endangered Species Act, and the National Historic Preservation Act when 3 of the 12 leases were awarded in 1999. The 3 leases involved in the suit were based on analysis in the West HiLine RMP. The ruling ordered the BLM to prepare an environmental impact statement for the oil and gas leasing program that covers the 3 leases. An additional 9 leases in the Monument are also based on the West HiLine RMP, and the BLM felt it would be most efficient to analyze all 12 of the leases in this RMP/EIS.

The first step in the oil and gas lease analysis was scoping this new issue with the public, which began with a news release and update to the mailing list (email/regular) in September 2004 to explain the issue. This was followed in October with news releases and a newsletter to the mailing list which included information about the natural gas leasing issue, frequently asked questions/answers, and a request for public comment on the development of alternatives for inclusion in the RMP/EIS.

To provide opportunities for public participation, the BLM held six public meetings in November 2004:

- November 8 Winifred
- November 9 Lewistown
- November 10 Great Falls
- November 15 Chinook
- November 16 Fort Belknap
- November 17 Billings

The format of the public meetings was informational, and the public visited with BLM resource specialists at four stations and participated in question/answer sessions. The intent was to provide enough information about the leases for the public to provide written comments on the development of alternatives. About 60 people attended these public meetings.

Since the public meetings were informational, questions and concerns were not formally recorded by the BLM; however, a comment form was provided and the public was encouraged to submit written comments at the conclusion of the meeting or by December 15, 2004.

A total of 5,700 letters, emails, and comment forms were received on this issue, of which 5,571 were a variation of two form-type letters/emails. Like the previous scoping and alternative development public comment processes, some letters/emails were as brief as a few sentences; others were several pages long. Some offered specific comments on alternatives, while others conveyed a want or an opinion. They all expressed an interest in the management of the Monument.

All public comments on the oil and gas leasing issue were read and 449 specific comments were identified and coded into 30 subject categories. The Oil and Gas

Leases Scoping Report is available by contacting the Lewistown Field Office.

**Table 5.1  
Public Involvement Opportunities**

<i>Date</i>	<i>Opportunity</i>
February 2002	Gateway Communities Workshop, Lewistown.
March 2002	Update sent to mailing list.
April 2002	Notice of Intent published in the Federal Register.
April 2002	News release issued.
May 2002	Update sent to mailing list.
June 2002	Update sent to mailing list.
June 2002	Newsletter to mailing list.
June and August 2002	Invitation sent to state, local and tribal governments to partner as cooperating agencies.
July and August 2002	Public scoping meetings held in 11 communities.
July 2002	Briefings with Blaine, Chouteau, Fergus and Phillips County Commissioners on the planning process.
August 2002	Update sent to mailing list.
November 2002	Update sent to mailing list.
December 2002	Community Based Partnership Workshop held in Lewistown.
January 2003	Newsletter sent to mailing list.
February 2003	Economic Profile Workshop held in Lewistown.
June 2003	News release issued; update and newsletter sent to mailing list.
July 2003	Alternative development workshops held in 11 communities.
February 2004	Update sent to mailing list.
June 2004	Update sent to mailing list.
September 2004	News release issued; update sent to mailing list.
October 2004	Two news releases issued; newsletter sent to mailing list.
November 2004	Oil and gas leasing public meetings in six communities.
March 2005	Update sent to mailing list.
October 2005	News release issued; availability of the Draft RMP/EIS and public meetings.
November 2005	Update sent to mailing list; schedule for 11 public meetings on the Draft RMP/EIS.
November 2005	News release issued; postponement of four public meetings.
December 2005	News release issued; extension of comment period to April 26, 2006 and postponement of all public meetings until February/March of 2006.
January 2006	Update sent to mailing list; schedule for 12 public meetings on the Draft RMP/EIS.
February 2006	News release issued; schedule for 12 public meetings on the Draft RMP/EIS.
February 2006	News release issued; rescheduling of the Winifred public meeting.
August 2006	Update sent to mailing list; information on the public comment process.

# Consultation and Coordination

## Tribal Consultation

In accordance with the National Historic Preservation Act and in recognition of the government-to-government relationship between tribes and the federal government, letters were sent to tribal governments and officials at the start of the planning process to inform them of the upcoming Monument RMP and an opportunity to partner with the BLM as a cooperating agency. While no tribes became an official cooperating agency, coordination has continued through letters, updates, and meetings which are listed below.

March 2004	Fort Belknap Community Council
April 2004	Confederated Salish and Kootenai Tribes of the Flathead Nation
May 2004	Blackfeet Tribal Council
June 2004	White Clay Society
June 2004	Chippewa-Cree Cultural Advisory Committee
July 2004	Blackfeet Tribal Council
December 2005	Chippewa-Cree Historic Preservation Officer
January 2006	Fort Peck Tribal Executive Board
March 2006	Confederated Salish and Kootenai Tribes of the Flathead Nation Tribal Preservation Dept
April 2006	Fort Belknap Community Council
April 2006	Crow Tribe
April 2006	Blackfeet Tribe, Water Rights and Historic Preservation Office

The comments received from tribal governments or tribal members regarding the Draft RMP/EIS during meetings, government-to-government tribal consultation, and letters are summarized below along with the responses to those comments. The tribal comments are shown in an italic font, while the responses are shown in a regular font.

### Blackfeet Tribe

*Comment: The Blackfeet Tribe should be consulted and notified at every step of the implementation of the Resource Management Plan, particularly in matters related to flora, fauna, and geological resources that may contain traditional paints.*

**Response:** The BLM will consult with American Indian tribes when its actions have the potential to affect areas of concern to the practitioners of traditional religions. The activities of concern are those that might degrade the visual or aesthetic nature of an area, or cause the loss of plant species or other resources important to American Indians. The BLM is required to consult with traditional religious practitioners on policies and procedures to

ensure they are considered when implementing agency actions.

Those traditional cultural properties that are at least 50 years old require consideration under the National Historic Preservation Act (NHPA). The BLM will analyze each proposed action by determining the likelihood of the presence of not only significant cultural properties, but also the potential for or the presence of traditional cultural properties. Potential impacts to traditional cultural properties subject to the NHPA and determined eligible for the National Register of Historic Places will be avoided, if possible, or mitigated.

*Comment: How are snowmobiles managed in the Monument?*

**Response:** Based on the Proclamation all motorized and mechanized vehicle use off road is prohibited, except for emergency or authorized administrative purposes. Under the Preferred Alternative in the Proposed RMP/Final EIS, 293 miles of BLM roads would be designated open yearlong and 111 miles would be designated open seasonally. Snowmobiles would have to stay on designated open roads in the Monument.

*Comment: Who manages hunting and fishing?*

**Response:** Montana Fish, Wildlife and Parks (MFWP) is responsible for fish and wildlife population management in the Monument.

*Comment: How does the plan address the management of plant and animal gathering? For ceremonial plant gathering, the plan should include minerals (paint) collection.*

**Response:** Montana Fish, Wildlife and Parks (MFWP) is responsible for fish and wildlife population management in the Monument.

Under the Preferred Alternative in the Proposed RMP/Final EIS, the personal collection of plant material (e.g., vegetation, seeds and berries) would be authorized and allowed as limited by the regulations (43 CFR 8365). It is permissible to collect reasonable amounts of commonly available renewable resources such as flowers, berries, nuts, seeds, cones and leaves (43 CFR 8365.1-5(b)(1)). Commercial collection of plant materials would not be allowed without a specific permit.

*Comment: How does the plan address the management of river flows?*

**Response:** The BLM has no jurisdiction or authority over water flows on the Missouri River. This is beyond the scope of the RMP.

**Comment:** Does the plan include a comprehensive plant and animal list?

**Response:** Appendix R, a list of wildlife species, is included in the Proposed RMP/Final EIS, and Appendix T is a list of important vegetation species found in riparian areas.

### **Chippewa-Cree Cultural Advisory Committee**

**Comment:** What are the impacts on ranching?

**Response:** Under the Proclamation, the “[l]aws, regulations, and policies followed by the Bureau of Land Management in issuing and administering grazing permits or leases on all lands under its jurisdiction shall continue to apply with regard to the lands in the monument.” Livestock grazing will continue to be governed by a number of laws and regulations that apply to grazing on all public land administered by the BLM. In addition, the BLM developed Standards for Rangeland Health and Guidelines for Livestock Grazing Management for Montana, North Dakota, and South Dakota which was approved by the Secretary of the Interior in August 1997. To protect the objects for which the Monument was designated livestock grazing will continue to be managed under the Lewistown District (Lewistown and Malta Field Offices) Standards for Rangeland Health and Guidelines for Livestock Grazing Management (BLM 1997). Livestock grazing on allotments in the Monument will continue to be allocated about 38,000 animal unit months (AUMs) of forage on an annual basis (Appendix N). Grazing applications will continue to be processed consistent with existing regulations (43 CFR 4100).

**Comment:** Is vandalism on the river a problem?

**Response:** Vandalism is not currently a significant occurrence along the river. However, a certain amount of vandalism does occur and BLM law enforcement rangers and park rangers patrol the river as a means of reducing such activity.

**Comment:** How will the management plan affect cultural properties?

**Response:** Those traditional cultural properties that are at least 50 years old require consideration under the National Historic Preservation Act (NHPA). The BLM will analyze each proposed action by determining the likelihood of the presence of not only significant cultural properties, but also the potential for or the presence of traditional cultural properties. Potential impacts to traditional cultural properties subject to the NHPA and determined eligible for the National Register of Historic Places will be avoided, if possible, or mitigated.

**Comment:** Would a Great Warrior Ironman be allowed on the river (canoe racing)?

**Response:** Special recreation permit applications for organized group activities or events may be granted, if the activity would not impact the resources or values for which the Monument was designated. Large group events would be authorized subject to restrictions to protect resources. These restrictions may include, but would not be limited to, the designation of specific roads or trails for a particular event, limitations on parking, use of campfires, sanitation requirements and the number of people involved in the event.

**Comment:** How does the plan address plant gathering (harvest of needleandthread)?

**Response:** Under the Preferred Alternative in the Proposed RMP/Final EIS, the personal collection of plant material (e.g., vegetation, seeds and berries) would be authorized and allowed as limited by the regulations (43 CFR 8365). It is permissible to collect reasonable amounts of commonly available renewable resources such as flowers, berries, nuts, seeds, cones and leaves (43 CFR 8365.1-5(b)(1)). Commercial collection of plant materials would not be allowed without a specific permit.

**Comment:** There is a need to have annual meetings with the tribes north of the Missouri.

**Response:** As part of this plan the BLM anticipates scheduling annual meetings between the BLM Lewistown Field Office’s cultural resources program and the tribal historic preservation offices or their counterparts to discuss issues of importance to the tribes and the federal agency. Additional government to government consultation meetings to discuss the Proposed RMP/Final EIS will be scheduled and to discuss any changes as a result of protests.

### **Confederated Salish and Kootenai Tribes of the Flathead Nation**

**Comment:** What percent of the Monument has received cultural resource management survey?

**Response:** Given the relative size of the Monument, site density is low (1 site per 2,168 acres). Even though only a small fraction of the Monument has been systematically inventoried for cultural sites, this low density is expected to remain constant. Most of the known cultural sites are within a fairly narrow corridor along the Upper Missouri National Wild and Scenic River. Historic sites within the Monument tend to be related to river travel and trade, as well as agriculture. Based on these site types, the probability of finding them anywhere other than along the river or in land suitable for cultivation in the uplands is low. Prehistoric sites

tend to be concentrated along the river as well. This conclusion is the result of two factors: river corridors generally have higher site densities, and the Missouri River corridor and main tributaries have received the predominant amount of cultural resource inventory and attention in the Monument (as it is now defined) since the 1960s. Not surprisingly, the few inventories that have been completed in the uplands have identified relatively few sites.

Accurately gauging the amount of inventory in the Monument is challenging. Many early reports from the 1960s and 1970s focused on the Missouri River corridor, and the archeologists' primary goal was to document archeological sites rather than complete intensive (Class III) cultural resource inventories. Many of the early inventories would be classified as Class II inventories that implement a sampling strategy. The strategy at the time, however, was based mostly on proximity to the river and landform. Without the political boundaries that we have now, they followed a geographic boundary defined by the river and associated terraces. Examples of these early surveys include the 1963 Missouri Basin Project's "Archaeological Appraisal of the Missouri Breaks Region," under the direction of Oscar Mallory; and the 1976 MSU study "Missouri River Breaks Area Archaeological and Historical Values," directed by Leslie Davis. Much of the area examined in these two reports overlapped, so the area inventoried in both studies was counted only once. Based on cultural resource inventories completed as part of Section 106 compliance work as well as Section 110 surveys, and counting Class II and Class III inventories, approximately 58,941 acres, or 16%, of the Monument have been inventoried for cultural resources. Excluding the Class II acres attributed to the Mallory and Davis inventories, approximately 30,904 acres (8.2%) have been inventoried.

*Comment: Would like to see ethnographic studies completed with local tribes.*

**Response:** The BLM has not pursued an ethnographic study that focuses just on the Upper Missouri River Breaks National Monument. Ethnographic efforts have focused on portions of the Lewis & Clark National Forest and adjacent BLM lands (see Sherri Deaver's 1995 ethnographic overview). Additional ethnographic work is being completed on BLM lands west of the Monument by the Salish and Kootenai Tribal preservation office, but does not focus on the Missouri River country. Once that work is completed the BLM will have better data to determine what scope of ethnographic work is needed for the Monument.

*Comment: What is the status and establishment of water rights on the Judith River and Arrow Creek?*

**Response:** The BLM is currently collecting hydrologic data from both the Judith River and Arrow Creek. The BLM needs to know the magnitude, timing, and frequency of flows necessary to support the outstanding water-dependent biological resources and cottonwood galleries that were the basis for the reserved water rights. Once this data collection is complete, the BLM will begin negotiations with the Reserved Water Right Compact Commission to quantify its claimed reserved right. After June 30, 2009, the Reserved Water Right Compact Commission no longer has authority to negotiate reserved water rights. The process of quantifying this reserved right then must be adjudicated through the state court system.

*Comment: For the impaired water quality streams, what are the plans to improve?*

**Response:** The Environmental Protection Agency, in administering the Clean Water Act, requires all states to identify rivers, streams, lakes, and wetlands where beneficial uses are impaired or threatened by human activity, and to schedule those waters for development of water quality restoration plans. This is known as the Total Maximum Daily Load (TMDL) process. The BLM will continue to comply with the TMDL process by addressing listed streams in the watershed planning process.

Through BLM's watershed planning process, BLM grazing allotments are assessed for rangeland health and compliance with Standards for Rangeland Health, including Standard #2: Riparian and wetland areas are in proper functioning condition; and Standard #3: Water quality meets Montana State standards. When an allotment is not meeting standards, and current livestock management is considered a factor, corrective adjustments are required. Through an existing memorandum of understanding with the Montana Department of Environmental Quality, the BLM agrees that it will participate in the development, implementation, and monitoring of water quality restoration plans and TMDLs in watershed planning areas in which BLM is a significant land manager or water user.

*Comment: The cultural resources section is general. This section emphasizes the environmental impact statement over the management plan. Recreational impacts to cultural resources are a concern. Should have more on-site location (impacts), condition, monitoring with a schedule. There is a difference between tribal cultural value and archaeological value.*

**Response:** The cultural resources sections in Chapters 3 and 4 have been revised and expanded to address and incorporate comments received on the 2005 Draft RMP/EIS. We have attempted to address recreational impacts as well, with a comparison of effects between

alternatives. As we develop our site database we intend to establish a schedule to monitor sites, basing it on site type, use categories, and evident effects.

*Comment: Do tribes exercise treaty rights, specifically hunting?*

**Response:** Montana Fish, Wildlife and Parks is responsible for fish and wildlife population management in the Monument. Even though tribal members are known to hunt on public lands within the Monument, no claims of “treaty rights” have been made regarding this activity.

*Comment: Native American Graves Protection and Repatriation Act and ARPA need to be addressed in the management plan.*

**Response:** The Native American Graves Protection and Repatriation Act Reburial Policy on BLM Lands, BLM Handbook 8120-1, Ch. II, Paragraph C3 (2006) clarifies the position of the BLM that reburial of Native American Graves Protection and Repatriation Act items on public lands may be authorized on a case-by-case basis. Lands that may be considered for reburial activities include lands withdrawn from multiple uses and mineral entry. This information is included in the Proposed RMP/Final EIS

*Comment: If human remains are disturbed, would they be reinterred at the location of discovery?*

**Response:** Direction on the treatment of human remains comes from Native American Graves Protection and Repatriation Act Reburial Policy on BLM Lands, BLM Handbook 8120-1, Ch. II, Paragraph C3 (2006). This policy clarifies the position of the BLM that reburial of Native American Graves Protection and Repatriation Act items on public lands may be authorized on a case-by-case basis. Lands that may be considered for reburial activities include lands withdrawn from multiple uses and mineral entry.

## **Crow Tribe**

*Comment: Opposed to the sale of public land.*

**Response:** The BLM will not be disposing public land in the Monument other than by exchange, and only when necessary to further the protective purposes of the Monument, block up BLM land within the Monument and enhance the values for which the Monument was designated. The sale of public land in the Monument is prohibited under the Proclamation.

*Comment: How would any proposed development be funded?*

**Response:** The BLM’s budget process includes an annual work plan for setting priorities and allocating funding based on final Congressional appropriations. This process allows for changing conditions and priorities based on resource monitoring. Funding levels affect the timing and implementation of management actions and project proposals, but do not affect the decisions made in an RMP.

## **Fort Belknap Community Council**

*Comment: What is the effect on private land and minerals?*

**Response:** The Monument includes about 375,000 acres of BLM land in northcentral Montana. Approximately 80,000 acres of private land are intermingled with the Monument. The BLM has no jurisdiction over private or state land and minerals, and these lands and minerals are not part of the Monument.

*Comment: How will mechanized use off road (game carts, mountain bikes) be managed?*

**Response:** Under the Proclamation all motorized and mechanized vehicle use off road is prohibited, except for emergency or authorized administrative purposes. All mechanized vehicles must stay on roads.

Under the Preferred Alternative in the Proposed RMP/Final EIS, non-motorized/non-mechanized game carts would be allowed off road, except in the WSAs, to retrieve a tagged big game animal. Game carts would not be allowed off road in the WSAs.

Under the Preferred Alternative, 201 miles of BLM roads would be designated closed. Some roads designated as closed could be designated as limited to mechanized (e.g., mountain bike) use through site-specific planning and environmental review.

*Comment: How will BLM manage motorized use on the river (administrative use)? Why no motorized use on the lower segment for the river?*

**Response:** Under the Preferred Alternative in the Proposed RMP/Final EIS, administrative use of motorized watercraft would occur during the seasonal restrictions. A cooperative effort among agencies operating on the river would be initiated. A Memorandum of Understanding would be developed with the goal of achieving uniform standard operating procedures designed to minimize impacts to boaters from administrative use of motorized watercraft.

The Preferred Alternative was changed to allow motorized use on the lower segment of the river. Under the Preferred Alternative in the Proposed RMP/Final EIS, the wild and scenic segments from Holmes Council

Island to Fred Robinson Bridge would have a seasonal restriction from June 15 to September 15. Motorized watercraft traveling downstream at a no-wake speed would be allowed on Thursdays through Saturdays. On Sundays through Wednesdays motorized watercraft travel would not be allowed. Personal watercraft and floatplanes would not be allowed on this segment of the river yearlong.

**Comment:** *What about hunting groups and motorized use on the river?*

**Response:** The seasonal restrictions for motorized use on the river would end on September 15. This extends the motorized restriction into the archery season, which would allow archers hunting the river about the Fred Robinson Bridge the opportunity to hunt without noise impacts from motorboats for a portion of the season.

**Comment:** *There is a concern over road access, in particular limited access through private land to tribal land. There is a concern with roads and access to fee lands.*

**Response:** Private property owners have the right to determine who can drive across their land whether it provides access to other private property, state land, or to BLM land. The BLM will respect private property rights; this document will not address access issues on or across private property. Landowner permission may be required for access to BLM roads. Some landowners are very liberal in granting permission to cross their private property and others range from very conservative to granting no permission at all.

Under the Preferred Alternative in the Proposed RMP/Final EIS, BLM roads providing motorized access to the boundary of private land would remain open for public, private landowner and administrative travel with the exception of two roads (one road is impassable and the other road is currently limited to administrative use). There are 65 miles of BLM roads providing access to private land that would be designated open yearlong and 2 miles (two roads) that would be designated closed.

**Comment:** *How will reclamation be addressed?*

**Response:** Reclamation efforts would follow standard operating procedures and Best Management Practices (Appendix K). In some areas, disturbed surfaces would be allowed to reclaim naturally. The intent of the reclamation standards would be to minimize erosion and establish native vegetation. If the reclamation effort would reduce the impacts created by previous developments that are non-functional and beyond repair, the BLM could remove and rehabilitate non-functioning reservoirs, pits and water developments in WSAs or in other areas where there is viewshed infringement.

**Comment:** *Do the airstrips have to be open? Are they crucial for farming? Would like Alternative E, close all the airstrips.*

**Response:** The Draft RMP/EIS addressed a range of alternatives for the backcountry airstrips in the Monument. This range included leaving all the airstrips open under Alternatives A and B to closing all the airstrips under Alternative E.

The airstrips are not considered crucial for farming. The airstrips are suitable for small fixed wing aircraft equipped to land on primitive backcountry airstrips. Current use of these airstrips is by local ranchers for management activities and recreational private pilots flying in to hike and/or camp.

**Comment:** *Is coyote hunting allowed?*

**Response:** There are no restrictions on coyote hunting in the Monument. However, hunters and all visitors will have to abide by the travel management plan and other guidance provided by this Proposed RMP/Final EIS.

**Comment:** *Like to see Cow Road landing closed since they (the tribe) lease the land. Either leave everything open or close it all. There is a trend in closing access to everything, including traditional use areas.*

**Response:** The BLM would coordinate with state agencies and county governments to improve public access to BLM land. Easements or fee acquisition opportunities would only be considered with willing landowners to enhance the values of the Monument and provide public access to or within the Monument, or additional public access to meet management objectives, including dispersed recreation use.

The BLM would consider building or rerouting roads as necessary for additional public access to large blocks of BLM land. The BLM would cooperate with Montana Fish, Wildlife and Parks and private landowners to improve recreation access. This may involve participation in block management programs or developing access agreements with willing private landowners.

**Comment:** *Who would maintain roads?*

**Response:** The BLM is responsible for the maintenance of BLM roads. Each road segment would be assigned to a maintenance level that reflects the appropriate management objectives. The BLM may perform maintenance or upgrades to control erosion, or if not possible, either reroute or close a road for erosion control.

**Comment:** *For management of campfires, is there a difference between ceremonial fires and campfires?*

**Response:** The Preferred Alternative was changed for campfires in the uplands. Under the Preferred Alternative in the Proposed RMP/Final EIS, the BLM would implement a Leave No Trace program and encourage the use of camp stoves, fire pans or fire mats for dispersed camping (Level 4 opportunities). For ceremonial fires, the effects could be the same as campfires, and under the Preferred Alternative the use of fire pans or fire mats would be encouraged but not required.

**Comment:** *How does the plan address medicine plant gathering?*

**Response:** Under the Preferred Alternative in the Proposed RMP/Final EIS, the personal collection of plant material (e.g., vegetation, seeds and berries) would be authorized and allowed as limited by the regulations (43 CFR 8365). It is permissible to collect reasonable amounts of commonly available renewable resources such as flowers, berries, nuts, seeds, cones and leaves (43 CFR 8365.1-5(b)(1)). Commercial collection of plant materials would not be allowed without a specific permit.

**Comment:** *How does the plan address willows from the Missouri for sweat lodge construction?*

**Response:** Under the Preferred Alternative in the Proposed RMP/Final EIS, the Monument manager could designate personal use areas for cutting Christmas trees and firewood. Under a permit, individuals could be allowed to utilize incidental material. The permit would address the specific type of material and conditions under which removal would occur.

**Comment:** *The BLM would charge for camping and boating. The tribe shouldn't have to pay to use the area.*

**Response:** Under the Preferred Alternative in the Proposed RMP/Final EIS, the BLM would implement an expanded amenity fee for overnight camping in Level 1 sites and an individual special recreation permit for boating the Missouri River. After the RMP is completed the BLM would develop a business plan to determine the actual fee amounts charged for new sites. Development of the business plan would involve the Central Montana RAC and include an opportunity for tribal and public involvement.

**Comment:** *There is a concern over museum collections.*

**Response:** Under the Preferred Alternative in the Proposed RMP/Final EIS, the BLM would authorize archaeological and historical investigations. Prehistoric sites would be evaluated and then monitored, protected or excavated based on their scientific value and what they can add to knowledge and interpretation of the Monument. Historic sites would be evaluated and then

monitored or maintained based on their historic value, the attraction they have for visitors and their use as safety shelters.

The BLM will consult with American Indian tribes when its actions have the potential to affect areas of concern to the practitioners of traditional religions. The activities of concern are those that might degrade the visual or aesthetic nature of an area, or cause the loss of plant species or other resources important to American Indians. The BLM is required to consult with traditional religious practitioners on policies and procedures to ensure they are considered when implementing agency actions.

**Comment:** *Why the designation of the Monument? Who drew the boundaries? Can it be changed? Why weren't the Little Rockies included?*

**Response:** The BLM does not have the authority to change the boundary of the Monument. The Monument was established on January 17, 2001, when President Clinton issued a Proclamation under the provisions of the Antiquities Act of 1906. The Monument contains many natural resources on BLM land in the Missouri Breaks. From Fort Benton downstream to the James Kipp Recreation Area, the Monument includes 149 miles of the Upper Missouri National Wild and Scenic River, the adjacent Breaks country, and portions of Arrow Creek, Antelope Creek, and the Judith River. The Monument also includes six wilderness study areas, the Cow Creek Area of Critical Environmental Concern, and segments of the Lewis and Clark National Historic Trail and the Nez Perce National Historic Trail. These objects, individually and collectively, in the context of the natural environment that supports and protects them, are the resources discussed throughout this document.

**Comment:** *Is there an offer of co-management of the Monument with the Tribes?*

**Response:** The BLM is the agency responsible for management of the Monument. Under the Proclamation, the Secretary of the Interior shall manage the Monument through the BLM.

**Comment:** *For the Cow Creek ACEC, this area was designated for the Nez Perce Trail and paleontological resources. The plan should have mentioned original people and tribes and values.*

**Response:** The language in the document is based on the ACEC description in the West HiLine Final RMP/EIS (1988). The Cow Creek ACEC was established "to preserve and protect portions of the Nez Perce National Historic Trail, the Lewis and Clark National Historic Trail and the Cow Island Trail," (West HiLine RMP, 36).

**Comment:** *The buffalo roads would go through the Cow Creek area. The Monument is traditional hunting and the tribes shouldn't need a hunting license.*

**Response:** Montana Fish, Wildlife and Parks (MFWP) is responsible for fish and wildlife population management in the Monument.

**Comment:** *Is this a stand alone document?*

**Response:** This Proposed RMP/Final EIS provides a comprehensive plan for managing the Monument and site-specific, detailed plans for managing transportation, visitor use, and natural gas leases in a manner that protects the objects identified in the Proclamation, while recognizing valid existing rights. The Proclamation, FLPMA, National Environmental Policy Act (NEPA), Wild and Scenic Rivers Act, and other mandates provided the direction for preparing this Proposed RMP/Final EIS.

**Comment:** *Specific comments on travel plan map were also provided that indicated roads to tribal trust land, which should be designated open.*

**Response:** This Proposed RMP/Final EIS includes several changes to the transportation plan based on suggestions concerning BLM roads that provide access to trust lands. These changes are reflected on Map 5 in the Proposed RMP/Final EIS.

## **Fort Peck Tribal Executive Board**

**Comment:** *How does the plan address fire control?*

**Response:** The BLM's response would be based on a wide range of fire management tools available and more management flexibility to respond to changing conditions. The appropriate management response to all wildland fires would be based on firefighter and public safety, while considering the natural role of fire. Fires could be managed with less than full suppression efforts and, in most cases, allowed to burn to natural barriers or roads. The cost of suppression would also be considered. Resource values, such as sage-grouse habitat, would be protected during wildland fire suppression through the knowledge of resource advisors assigned to wildland fire incidents and/or information on the location of critical resource areas available to incident commanders; however, protection for resource values would be secondary to life safety and property values.

**Comment:** *How does the plan address access?*

**Response:** The BLM would coordinate with state agencies and county governments to improve public access to BLM land. Easements or fee acquisition opportunities would only be considered with willing

landowners to enhance the values of the Monument and provide public access to or within the Monument, or additional public access to meet management objectives, including dispersed recreation use.

The BLM would consider building or rerouting roads as necessary for additional public access to large blocks of BLM land. The BLM would cooperate with Montana Fish, Wildlife and Parks and private landowners to improve recreation access. This may involve participation in block management programs or developing access agreements with willing private landowners.

## **U.S. Fish and Wildlife Service Consultation**

Federal agencies are required to comply with provisions of the Endangered Species Act of 1973, as amended. This includes a requirement to consult with the U.S. Fish and Wildlife Service (USFWS) on any action that may affect species listed as threatened and endangered or result in destruction or adverse modification of habitat designated as critical for listed species. In addition, federal agencies must confer with the USFWS on any action that is likely to jeopardize the continued existence of any species proposed to be listed or any action that may result in the destruction or adverse modification of critical habitat proposed to be designated for listed species.

Contacts were made with the USFWS early in the planning process, and early drafts of alternatives were provided for discussion. An initial list of federally listed threatened or endangered plant, animals, or fish species or habitats present in the planning area was requested on December 2, 2003, with an update received on June 3, 2005. Three federally listed threatened wildlife species and two endangered species either occur in the Monument or use habitat found within the Monument. These include pallid sturgeon (endangered), bald eagle (threatened), black-footed ferret (endangered/experimental non-essential), Canada lynx (threatened), and piping plover (threatened).

Informal meetings were held with the USFWS to discuss issues and alternatives and the USFWS participated during interdisciplinary team meetings. A biological assessment evaluating the impacts of the Preferred Alternative on federal threatened and endangered species was submitted to the USFWS concurrently with the public release of the Draft RMP/EIS. The Proposed RMP/Final EIS includes the USFWS concurrence received in January 2006 (Appendix X). Based on a review of the Preferred Alternative in the Proposed RMP/Final EIS, and comparing all changes from the 2005 Draft RMP/EIS, there will be no adverse impacts to any species listed under the Endangered Species Act,

crucial habitat, or important prey base within or adjacent to the Monument. Based on this review and determination, there is no additional requirement or need to consult with USFWS at this time.

On August 8, 2007, the USFWS removed the bald eagle from the list of threatened and endangered wildlife. The protections provided to the bald eagle under the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act will remain in place. In addition, the bald eagle is on the BLM list of designated sensitive species.

## Central Montana Resource Advisory Council

In 1999, the Central Montana Resource Advisory Council (RAC) established the Upper Missouri River RAC Subgroup to analyze the recreational activities on the Upper Missouri National Wild and Scenic River (UMNWSR) and to make recommendations to the RAC concerning future management opportunities for the river. Over the course of 3 1/2 years, the subgroup worked with the BLM and the University of Montana to generate high quality information concerning visitor expectations, resource conditions, and the potential to align recreation use with the objectives of landowners, residents, and businesses in the area. In January and March 2002, the subgroup presented a series of recommendations concerning a variety of people management issues on the UMNWSR, and many of the recommendations were approved by the RAC (RAC 2002a, 2002b). The subgroup translated its prior work into ideas that could be incorporated in the RMP and presented their recommendations in a May 2003 report to the RAC (RAC 2003).

The RAC continued to be involved in the preparation of the RMP/EIS. RAC members attended the scoping open houses in July and August 2002, to listen to the public discussions with resource specialists concerning issues related to managing the Monument. In July 2003, the RAC assisted the BLM by facilitating a public discussion on management opportunities during a series of alternative development workshops. The RAC appointed members to attend and participate in the monthly interdisciplinary team meetings. In February, April, June, September, and December 2004, the RAC reviewed the preliminary alternative for the Draft RMP/EIS and provided recommendations to the BLM. Their participation continued through preparation of the Proposed RMP/Final EIS.

## Cooperating Agencies

In the summer of 2002, the BLM invited state, local and tribal governments to partner in a cooperating agency relationship for developing the RMP/EIS. The State of Montana and Blaine, Chouteau, Fergus and Phillips

Counties are cooperating agencies in all phases of its preparation, with BLM acting as the lead agency.

## State of Montana

The State of Montana is a cooperating agency in this planning process, guided by a February 2003 memorandum of understanding, and has been represented on the interdisciplinary planning team through a representative designated by the Governor. The state participated during regularly scheduled monthly interdisciplinary team meetings and the review of internal working documents in preparation of the Draft RMP/EIS and Proposed RMP/Final EIS.

The state submitted comments on the Draft RMP/EIS during the 180-day public comment period that ended in April 2006. The state's comments are summarized below along with the responses to those comments.

### State of Montana – Comments/Responses

#### Cultural Resources

*State of MT:* Further investigations of cultural and historic sites are necessary to develop strategies for their protection. There may also be opportunities to identify interpretive sites that would benefit the visiting public in understanding the landscape and its history. Effects on cultural and historic sites as well as Wilderness Study Areas and Areas of Critical Environmental Concern are not given adequate attention and detail in the Draft RMP/EIS.

**Response:** Baseline data for the analysis included in this document came from a search of the Montana State Antiquities Database, a review of records held in the Lewistown Field Office, and a literature review completed under a cultural resource contract. Inconsistencies regarding a number of sites have been corrected. Oil and gas parcels identified in the maps have been reviewed subsequent to the Draft RMP being produced, and one cultural property was noted within the boundaries of the parcels. Prior to development activity on oil and gas parcels a cultural resource inventory is completed either by BLM archeologists or archeologists contracted by the leasing company.

The amount of survey in the Monument has been more accurately figured than was stated in the draft. Acreages have been taken from the cultural resource site and survey atlas that is being developed. Acreages in the draft document came from the overview prepared by the cultural resource contractor. They did not calculate all survey acreage since some of the reports that they used did not have maps or were not included in the state's database. Those omissions are being corrected.

Mitigation measures tend to be site-specific. Since we do not have any adverse effects identified in this plan we have not developed mitigation measures tied to actions. Common mitigation measures include: avoidance of sites or of components of sites that have integrity or that are contributing elements of the site; project redesign; data recovery where effects to the site could not be avoided; or interpretation of the site.

The environmental consequences section of the Draft RMP/EIS and Proposed RMP/Final EIS address the impacts from the six alternatives discussed in Chapter 2. This includes the direct, indirect, and cumulative impacts.

### Vegetation – Noxious and Invasive Plants

**State of MT:** *In 2005 a new Montana State Weed Management Plan was adopted and supersedes the 2001 Plan referenced in the Draft RMP/EIS. Concern over the spread of noxious weeds is increased after the review of the Draft RMP/EIS as, again, it excludes any discussion of BLM resources and the transportation plan designates many open roads that drop into the river bottoms where noxious weed concentrations are highest. Encouraging travel in and out of the river corridor without aggressive weed management simply invites the spread of noxious weed onto the uplands within the Monument and onto neighboring properties.*

**Response:** Noxious and invasive plant management in the Monument will follow the guidelines provided in the 2001 Upper Missouri River Breaks National Monument: Guidelines for Integrated Weed Management Plan and its eventual revisions. These guidelines were developed under and refer to the State of Montana's 2001 Statewide Weed Management Plan. The 2005 update of Montana's Statewide Weed Management Plan has not changed to the extent that the 2001 BLM Integrated Weed Management Plan contradicts it or would need revision.

Under the Preferred Alternative in the Proposed RMP/Final EIS, 34 miles of BLM roads in the Upper Missouri National Wild and Scenic River (UMNWSR) would be closed to public motorized travel. Twelve additional miles would be seasonally closed to public motorized use. About 33 miles of BLM roads would be open yearlong. The majority of the closed roads are located downriver or east of the PN Bridge (Map 5, East Half Transportation Map).

### Land Ownership Adjustment

**State of MT:** *Land exchanges that would allow consolidation of State Lands to provide for more efficient management remains a goal for the Trust Lands Division of the Department of Natural Resources and Conservation. Using guidelines, land exchanges could benefit the Monument and provide equal or*

*greater/higher value to the State. Such land exchanges should be pursued and remain an option into the future.*

**Response:** The BLM is willing to work with the State of Montana to accomplish an exchange of lands in the Monument that will be a win-win situation for both the BLM and the State. Conservation easements or fee acquisition opportunities that are brought forward by private landowners will be considered if they enhance the values of the Monument and are within the BLM's staff and budgetary constraints.

### Public Access

**State of MT:** *The Draft RMP/EIS fails to commit to resolve the access issue in long-term fashion. BLM fails to analyze the private or public status of roads such as Bullwhacker, Ervin Ridge and the MaBee Road. This issue was articulated to BLM throughout the development of the Draft RMP/EIS on many occasions. Many contend these three critical roads are open for public travel and access should not be limited by landowner permission. Open, public access to the Monument should be the top priority for BLM. We maintain BLM's efforts should focus on access to major collector roads. If public access cannot be secured on these thoroughfares within the five-year window, the roads should be closed. This is necessary to prevent the privatization of a National Monument where only those people that can afford to pay for access can get it.*

**Response:** Under the Preferred Alternative, those BLM roads identify as dashed green lines show where the public may need permission from the private landowner to access BLM roads. The BLM would coordinate with state agencies and county governments to improve public access to BLM land.

Private property owners have the right to determine who can drive across their land whether it provides access to other private property, state land, or to BLM land. The BLM will respect private property rights. Landowner permission may be required for access to BLM roads. Some landowners are very liberal in granting permission to cross their private property and others range from very conservative to granting no permission at all.

Under the Preferred Alternative in the Proposed RMP/Final EIS, there would be public motorized access for 124 miles (31% of the BLM road system open); landowner permission is not required for access to these BLM roads. The BLM would coordinate with state agencies and county governments to improve public access to BLM land. Easements or fee acquisition opportunities would only be considered with willing landowners to enhance the values of the Monument and provide public access to or within the Monument, or additional public access to meet management objectives, including dispersed recreation use.

**State of MT:** *The State requests BLM adopt an interim transportation plan that reflects the changes recommended by the State within these comments. Adoption of a final plan would be delayed by five years. In the five-year interim, the State would like to see major collector roads that originate on private land remain open until access agreements are reached, or five years elapses. Smaller resource roads into the Monument, originating on private land, should be looked at on a case-by-case basis.*

*Over the next five years, BLM would have time to establish open public access into the Monument through the pursuit of easements, rights of ways, purchases or construction of alternative road segments. If open, public access is not acquired within the five-year period, then remaining "permissive open roads" should be closed.*

**Response:** The BLM is charged with the responsibility to produce and implement a final travel plan for the Monument as a part of the RMP. This is reflected in the January 2001 Proclamation for the Monument.

Under the Preferred Alternative, those BLM roads identify as dashed green lines show where the public may need permission from the private landowner to access BLM roads. Some landowners are very liberal in granting permission to cross their private property and others range from very conservative to no permission at all.

The flexibility allowed under our CFR 8340 and 8364 regulations provide BLM the tools to close or open roads on a temporary basis if necessary.

The road system could be modified if vehicle use traffic patterns or resource conditions change. Modifications to the road system would be based on the management guidance under the Preferred Alternative in the Proposed RMP/Final EIS, including the factors listed in Table 2.29, and changes would be addressed through a travel plan update with public participation and environmental review.

#### Utility and Communication Corridors

**State of MT:** *The State recommends that the D-Y Trail/Power Plant Ferry Road utility corridor be restricted to overhead utilities only. This area should be designated as critical fisheries habitat and is known to have heavy use by sauger, paddlefish and pallid sturgeon during the spawning season. The State recommends that any pipeline construction be restricted during the annual period of March 30 through July 15 to protect spawning sauger, paddlefish and pallid sturgeon.*

**Response:** The following language has been added to Chapter 2 of the Proposed RMP/Final EIS under Right-

of-Way Corridors, Avoidance Areas, and Exclusion Areas, Alternative F (Preferred Alternative): Within the DY Trail/Power Plant corridor . . . [o]verhead power and/or telephone lines would be allowed to cross the Missouri River to avoid disturbance to spawning sensitive species (sauger, paddlefish, and sturgeon).

**State of MT:** *The State recommends that if a pipeline is proposed to cross the Missouri River, it be bored under the river. Trenching should not be permitted. The State Land Board also has jurisdiction as this is a navigable river.*

**Response:** The following language has been added to Chapter 2 of the Proposed RMP/Final EIS under Right-of-Way Corridors, Avoidance Areas, and Exclusion Areas, Alternative F (Preferred Alternative): Within the DY Trail/Power Plant corridor, pipelines would be bored under the Missouri River to avoid river channel disturbance. Boring would not be allowed during the spawning season from March 30 to July 15.

#### Outfitting

**State of MT:** *The State agrees that Special Recreation Use Permits should be capped at 14 within the Monument. In addition, we recommend that SRP's be nontransferable and that the number of user days per outfitter is set at the previous five-year average. This will cap the number of outfitters, cap the growth of existing outfitting and keep the permits themselves from developing their own market.*

**Response:** Under the Preferred Alternative in the Proposed RMP/Final EIS, the number of Special Recreation Permits (SRP) would not be limited to fourteen. The BLM would provide SRPs for commercial outfitting and guiding (hunting) in the Monument consistent with 43 CFR 2932.26 and the goal of managing these lands for a variety of sustainable visitor experiences in mostly primitive and natural landscapes. Under the Preferred Alternative visitor use data would be collected and analyzed with results incorporated into future management decisions. Should visitor use levels increase or patterns of use change, it may be necessary to issue additional permits, decrease the number of permits, adjust use areas, incorporate conditions limiting net hunter/client use days or include other conditions necessary to best manage upland permits.

#### Motorized Watercraft – Data and Information

**State of MT:** *BLM should monitor motorized use outside the floating season, document existing use patterns and establish limits of acceptable change beyond which further restrictions should be considered. The Draft RMP/EIS provides little to no information concerning motorized boat use outside of the peak summer use period.*

**Response:** The BLM has limited data regarding watercraft user patterns during the hunting season. In the future BLM will focus on social research and data collection efforts during the September 1 to November 30 hunting season and, if necessary, would consider changes through activity level planning.

### Aircraft Landings

**State of MT:** *The State does not concur with the preferred alternative opening all six airstrips within the Monument. All airstrips that are inaccessible by open public roads should be seasonally closed throughout the hunting season and should remain as noncommercial in nature to help minimize the use of the airstrips. As indicated in earlier comments, BLM should not open the Left Coulee airstrip. Closing this airstrip will eliminate the need for the road to the airstrip off of Bullwhacker Road and improve the protection of the Cow Creek ACEC.*

**Response:** The use of six airstrips would mirror or compliment the seasonal type of road restriction that provides access. Opportunities to access the six backcountry airstrips via road would be available; however, the road to the Woodhawk airstrip would only be open seasonally under the Preferred Alternative in the Proposed RMP/Final EIS.

The Left Coulee landing strip is in good condition and provides recreational aircraft access to the west side of the Cow Creek ACEC (the airstrip is not within the ACEC).

### Roads (General)

**State of MT:** *During the interim five-year period, a comprehensive review of all road segments needs to be conducted. Criteria based on access and protection would be used to develop a final transportation plan. These criteria may differ across the Monument, but include big game management objectives, habitat security, game retrieval, public access and camping opportunities, public safety, and the protection of significant cultural and historic sites. The State recommends BLM bring together agency, local government, private and NGO representatives to collaborate on a final transportation plan.*

**Response:** The BLM's goal is to manage legal and physical access to and within the Monument to provide opportunities for diverse recreation activities (motorized and non-motorized) while protecting the features of the Monument.

Under the Preferred Alternative in the Proposed RMP/Final EIS, the BLM's objectives would be to retain roads to access areas commonly used for dispersed

recreation (hunting, geological areas, Level III and IV sites, and trailheads), recreation sites (fishing reservoirs, scenic overlooks and historic homesteads), gas well sites, major range improvement projects, and backcountry airstrips. About 404 miles would be open yearlong or seasonally.

The BLM would reduce the number of parallel and spur roads (172 miles) and some roads in areas with important wildlife habitat (1 mile), in areas considered unsuitable due to erosion and slope (13 miles), and in other areas (15 miles). There are 201 miles proposed for closure.

The road system could be modified if vehicle use traffic patterns or resource conditions change. Modifications to the road system would be based on the management guidance under the Preferred Alternative in the Proposed RMP/Final EIS, including the factors listed in Table 2.29, and changes would be addressed through a travel plan update with public participation and environmental review.

### Roads River Access

**State of MT:** *Dozens of roads are proposed to be designated as Open BLM Roads or Limited BLM Roads within the UMNWSR. Similar concerns can be raised concerning roads within designated Wilderness Study Areas and the Cow Creek ACEC.*

**Response:** The criteria used to develop the alternatives are included in Chapter 2 of the Proposed RMP/Final EIS (Table 2.29). These criteria were applicable to some of the BLM roads located in the Upper Missouri National Wild and Scenic River, Wilderness Study Areas, and the Cow Creek ACEC.

Under the Preferred Alternative in the Proposed RMP/Final EIS, 34 miles of BLM roads in the Upper Missouri National Wild and Scenic River (UMNWSR) would be closed to public motorized travel. Twelve additional miles would be seasonally closed to public motorized use. About 33 miles of BLM roads would be open yearlong. The majority of the closed roads are located downriver or east of the PN Bridge (Map 5, East Half Transportation Map).

There would be about 27 miles of vehicle ways in the WSAs closed to motorized traffic; about 9 miles would be open yearlong and 15 miles open seasonally. In the Cow Creek ACEC 1.8 miles of BLM roads would be open yearlong; 1.2 miles would be open seasonally and 6.3 miles would be closed.

### Roads (Definition)

**State of MT:** *The Draft RMP/EIS does not provide sufficient detail for the public to understand how the*

*transportation plan serves to protect the critical and unique features articulated in the Monument Proclamation.*

**Response:** The Proclamation states the Secretary “shall prepare a transportation plan that addresses the actions, including road closures or travel restrictions, necessary to protect the objects.”

The criteria used to develop the alternatives are included in Chapter 2 of the Proposed RMP/Final EIS (Table 2.29). These criteria are applicable to some of the BLM roads located in the Upper Missouri National Wild and Scenic River, the Cow Creek ACEC, and wildlife habitat in the Monument (several of the objects identified in the Proclamation). An example is the seasonal closure of certain roads for wildlife habitat security. For additional information see the Access and Transportation section of the Chapter 2.

**State of MT:** *Two-track, possibly pioneered, "roads" are elevated to the same status as a constructed road for the purposes of the Draft RMP/EIS. The State believes this is a fundamental mistake. It has led to designating trails as roads, created a preferred alternative with too many open roads to provide proper protection to the resources of the Monument, and has escalated divisions among local landowners and the public. As indicated in the initial comments by the State to an earlier draft, two-tracks should be designated as trails not roads. As such, BLM would have to justify upgrading a "two-track" trail to a road and this could only be done where BLM believes motorized access is important for the designated purposes of the Monument. If this approach had been taken, the preferred travel plan would have focused on public access to collector roads rather than on identification of every user created trail and thus elevating their status to a road.*

**Response:** The BLM uses the definition of a trail as a single track. A two track route is considered a resource road.

The definition of a BLM road was determined at the beginning of this project in 2002 (Transportation section of Chapter 3) and includes two-track routes under the resource road classification. The following specifications were used to determine which routes would be inventoried for the Monument transportation plan. Motorized travel is not considered cross-country (off-road) on BLM land when: (1) the motorized vehicle uses constructed roads that are maintained by the BLM (constructed roads are often characterized with cut and fill slopes); and (2) the motorized vehicle use is on clearly evident two-track routes with regular travel and continuous passage of motorized vehicles over a period of years. A two-track is where perennial vegetation is devoid or scarce, or where wheel tracks are continuous

depressions in the soil yet evident to the casual observer and are vegetated.

Under current management (Alternative A) about 15 miles of BLM roads are classified as collector roads, 34 miles are local roads, and 556 miles are resource roads. About 435 miles of the resource roads are two-track roads.

**State of MT:** *The State would like to see the number of seasonal road restrictions in the travel plan decreased from six to two or three. At this time, Fish, Wildlife and Parks does not currently recognize a need to seasonally close roads within bighorn sheep lambing ranges or sage grouse winter or nesting habitat. Removing these designations would result in only three types of seasonal road closures: Those closed from December 1 to March 31 on big game winter ranges; those closed from September 1 to November 30 for habitat security; and the closure on the Lower Bullwhacker Road across Gist Bottom, except during the hunting season until access can be secured from Lloyd Road. This would simplify the travel plan and still provide protection for wildlife during critical time periods.*

**Response:** The six seasonal road designations were based on wildlife species and the associated road system criteria displayed in Table 2.26 in the Draft RMP/EIS. Under the Preferred Alternative in the Proposed RMP/Final EIS the number of seasonal road designations would be reduced to four; closed December 1 to March 31 for big game winter range, closed September 1 to November 30 for wildlife habitat security, closed September 1 to March 31 for big game winter range and wildlife habitat security, and one road open from September 1 to November 30 to provide access for hunting opportunities.

**State of MT:** *Open road designations on State Land follow criteria established in policy which includes: "Roads on State Land should not be designated open if they require access via a private road not usable by the public." This would apply to many road segments within the Monument. Close review of Map 3 - Alternative F reveals many open road segments that either lead to a closed road crossing State Lands or in several cases are designated open on the other side of a closed road crossing State Lands. In both cases, the open designation on BLM roads could encourage trespass by motorized vehicles over closed State Lands. As open, public access is established, BLM, working with the Trust Land Division of DNRC, should develop a list of road segments that are recommended to be opened for public access across State Land and to formally seek this change in status through the State Land Board as required by State law and rule.*

**Response:** BLM roads to the boundary of state land would remain open for administrative travel including

state leaseholders. These roads would also be open for public travel, if shown to meet Monument objectives. The BLM would coordinate with state agencies on roads open to the public that lead to or from state land. About 80 miles of BLM roads provide access to state land; 59 miles would be open yearlong, 13 miles open seasonally, and 8 miles closed.

### **Roads (Specific Roads Identified)**

**State of MT:** 1) *Isolated Road Segments:* The BLM proposes to designate as open a 1/4 mile road segment in T26N, R12E, 25. This isolated road segment is within the UMNWSR corridor; is only accessible through a State Land section (T26N, R12E, 36) where the road across State Land is currently closed to public vehicular travel. It is only accessible by driving through miles of private land where land owner permission is required. What is the rationale for BLM proposing that such an isolated, 1/4 mile long road segment, that penetrates the UMNWSR, be designated as open?

2) *Unique Features:* Hole in the Wall is one of the iconic sites within the UMNWSR. The Draft RMP/EIS proposes to designate as "open" a road segment that provides river bottom access to the Hole in the Wall area. As we understand, the land owner is not restricting access at this time and some have asserted that the road is a public road. The road drops precipitously down the break into the bottom next to the river. This poses potential safety issues and runs contrary to the protection of the "Breaks" feature. Does this road segment, and many like it, significantly add to public access or does it create an incentive for the adjacent land owner to restrict access? Further, if BLM sees this as an important access point for the public, will the road be improved, will interpretative signs be developed and what efforts will be made to protect the Hole in the Wall feature?

3) *Gist Bottom:* The Draft RMP/EIS proposes to designate as open from April 1 through November 30 the Gist Bottom, which is within the UMNWSR along the river bottom and below the break at the end of Bullwhacker Road. Safety is a serious concern as the drop off of Bullwhacker Ridge to the river bottom is steep, narrow, and, due to erosion of the road banks, extremely hazardous for travel and impassable when wet. This Gist Bottom segment of the road is designated as open during June 5 to September 15, the proposed nonmotorized period on the lower river. Vehicles on the road are easily seen and heard from the river. As such, allowing motorized vehicles on the road during this time period directly conflicts with the purpose of the ban on motorized boats, to establish a remote and quiet stretch of the river for floaters.

To fulfill a short-term need for hunting access to Ervin Ridge, the State does agree that travel during the hunting

season is warranted down Bullwhacker to Gist Bottom and up to Ervin Ridge. However, as soon as possible, safe and open access to Ervin Ridge should be established off of Lloyd Road. Fish, Wildlife and Parks currently issues ewe licenses to help manage the population growth of this bighorn sheep herd. Without the continual harvest of animals from this area, habitat degradation and a disease related die-off could occur. Current surveys indicate that there are over 900 bighorn sheep in the Monument. In the long-term, only open public access to Ervin Ridge will allow sufficient hunting pressures to manage this herd.

4) *Key Access Roads:* Certain roads provide important transportation corridors and should be prioritized within the RMP. For example, in addition to the three roads mentioned under the "permissive road" comment, the State concurs with the Draft RMP/EIS in designating the Lower Two Calf Road as open and agrees that though this road crosses into the UMNWSR the importance of the road for transportation exceeds the impact to the river corridor. This is also true for the Woodhawk Bottom Road, which leads to a designated camping area and the Goat Trail boarding the Stafford WSA, which is a connecting route from the Raglan Bench area to Judith Landing.

**Response:** 1) The road would provide access to the Little Sandy recreation site. This is a local fishing hole that receives extensive use during the spring season and has been driven to for years. It is located along a "recreational" segment of the wild and scenic river. The private landowner needs to be contacted for landowner permission.

The BLM has an administrative easement across the private land to conduct maintenance work at the Little Sandy site.

2) The Hole in the Wall recreation site road provides public motorized access to the campground fence for fishermen, is used for administrative maintenance work by the BLM, and provides access to private land.

Under the Preferred Alternative in the Proposed RMP/Final EIS, BLM roads providing motorized access to the boundary of private land would remain open for public, private landowner and administrative travel with the exception of two roads (one road is impassable and the other road is currently limited to administrative use). There are 65 miles of BLM roads providing access to private land that would be designated open yearlong and 2 miles (two roads) that would be designated closed.

3) The resource spur road that goes to the Gist Homestead is closed to public motorized traffic.

Although the loop segment of the Bullwhacker Road can be challenging to drive on, it is an important BLM

resource road for big game harvest and game retrieval during the fall hunting season. Under the Preferred Alternative, this road would be seasonally open from September 1 through November 30.

4) The Lower Two Calf Road, Woodhawk Bottom Road, and Goat Trail would be open under the Preferred Alternative in the Proposed RMP/Final EIS.

**State of MT:** 1) The road on BLM leading to T23N, R17E, 36 off of the Whiskey Ridge Road is shown as seasonally open. The State recommends that this road segment section be closed, which is the current status of the BLM road. The road segment on State Land is closed and will not be opened to public use due to concerns with bighorn sheep habitat.

2) The BLM road just west of the State Land ownership, T22N, R17E, 7, is shown to be open. The State has locked the gate on this road due to problems of trespass on deeded land. The State requests that this road be shown as closed.

3) The road leading from private lands and crossing State Land on the border of the Monument, T24N, R18E, Sections 36 should be shown as closed.

4) The road on State Land, T25N, R12E, 14 should be shown as closed.

5) The BLM road segment that terminates in T26N, R12E, 25 is shown as open. The access to this 1/4 mile segment of BLM road is through a closed road on State Land and can only be accessed by crossing many miles of private land, requiring permission. The State requests that this road segment be shown as closed.

**Response:** The following changes have been made to the Preferred Alternative in the Proposed RMP/Final EIS.

1) The BLM road would be closed to the state section.

2) The BLM road is actually in R18E, not 17E. Under the Preferred Alternative, BLM roads leading to the boundary of private land would be open yearlong. However, landowner permission may be required for access to the BLM road.

3) The BLM road would be closed.

4) The road would provide access to the Little Sandy recreation site. This is a local fishing hole that receives extensive use during the spring season and has been driven to for years. It is located along a recreational segment of the wild and scenic river. Landowner permission may be required. The BLM has an administrative easement across the private land to conduct maintenance work at the Little Sandy site.

5) Under the Preferred Alternative, the BLM road leading to the boundary of private land would be open yearlong. However, landowner permission may be required for access to the BLM road.

### Roads (Camping)

**State of MT:** The State would like to see a lower impact camping solution developed as part of the travel plan. We believe that the cumulative effect of the 300 foot rule, in some areas, may result in significant and excessive off-road travel and result in resource damage. We propose a system where portions of closed roads may be opened for a finite distance, providing access to traditional camping sites. This would minimize resource damage by keeping campers on existing roads and trails to known sites. This would only occur in areas where wildlife habitat security is considered and would thus be maintained.

**Response:** The range of alternatives in the Draft RMP/EIS addressed several options for allowing vehicles to park off roads in the Monument. This range included distances from 10 feet to 300 feet and also immediately adjacent to a road. Based on the Proclamation, motorized and mechanized vehicle use is prohibited off road, except for emergency or authorized administrative purposes.

Under the Preferred Alternative in the Proposed RMP/Final EIS, outside of the WSAs, motorized or mechanized vehicles may park adjacent to a road to provide a reasonable safe distance for the public to pass. However, parking must be within 50 feet of a road. Parking would be encouraged at previously used sites. In the WSAs, motorized or mechanized vehicles may only park immediately adjacent to a vehicle way or cherry stem road.

The BLM could identify specific dispersed (Level 4) campsites in the Monument during implementation of the transportation plan. Several of these possible locations are identified are the Preferred Alternative Transportation Map (Map 5) as short open road segments.

**State of MT:** The State requests a more detailed analysis of recreational opportunities be developed through a coordinated effort with federal, State and local agencies. For example, identification of designated camping sites along the upland road system is much preferred to the proposed system of allowing off-road travel within a 300' corridor on either side of a road to find a camp site.

**Response:** Under the Preferred Alternative in the Proposed RMP/Final EIS, outside of the WSAs, motorized or mechanized vehicles may park adjacent to a road to provide a reasonable safe distance for the public

to pass. However, parking must be within 50 feet of a road. Parking would be encouraged at previously used sites. In the WSAs, motorized or mechanized vehicles may only park immediately adjacent to a vehicle way or cherry stem road.

The road system could be modified if vehicle use traffic patterns or resource conditions change. Modifications to the road system would be based on the management guidance under the Preferred Alternative in the Proposed RMP/Final EIS, including the factors listed in Table 2.29, and changes would be addressed through a travel plan update with public participation and environmental review.

### Management

**State of MT:** *The State is requesting the establishment of a Monument Coordination Committee comprised of federal, State, and local agencies. This Committee would provide a formal means of communication, oversight and direction in the operations of the Monument, but would not supersede agency authorities.*

**Response:** The BLM currently participates with these other habitat and population management agencies and many groups that achieve these types of functions. Additionally, BLM has worked throughout the RMP process with other federal, state, and local agencies, especially the Montana Fish Wildlife and Parks (MFWP). For example, much of the fish, wildlife, and recreation data that are used throughout this analysis come from MFWP. The BLM also coordinated with agencies concerning fish and wildlife habitat management to identify issues, develop planning criteria, gather relevant data, analyze the management situation, formulate alternatives, estimate effects of alternatives, understand the context of those impacts, and identify the Preferred Alternative. The BLM will continue to coordinate with these agencies to finalize the fish and wildlife habitat management aspects and conduct appropriate monitoring and evaluation of plan implementation, and will continue to rely on their unique expertise as the plan is implemented. These current practices and administrative functions do not need to be formalized in the Proposed RMP/Final EIS; these would be more appropriately addressed in cooperative agreements or memoranda of understanding.

**State of MT:** *The State strongly supports an adaptive management strategy for the operations of the Monument. However, such a strategy is only effective if BLM resources are dedicated each year to its success. This is a significant concern because BLM excludes the commitment of agency resources from consideration in the Draft RMP/EIS.*

*To implement this strategy, the following should occur:*

- 1. A baseline social and environmental survey of conditions should be made;*
- 2. Regular monitoring of social and environmental conditions should occur; and*
- 3. Limits of acceptable change should be established. This process would include triggers that when met, would indicate management actions to maintain and protect resources.*

*The Montana Department of Fish, Wildlife and Parks, BLM, other State and federal agencies, as well as local law enforcement need to coordinate their efforts in the establishment and enforcement of rules and regulation on the Wild and Scenic River and the upland areas.*

**Response:** Through implementation an adaptive management approach may be used for specific activities in the Monument, if appropriate, consistent with Secretarial Order 3270 (Adaptive Management). Adaptive management would require activity level planning, environmental review, and public involvement.

Chapter 3 in the Proposed RMP/Final EIS contains a description of the physical, biological, cultural, economic and social conditions of the Upper Missouri River Breaks National Monument (Monument). It includes a description of the resources and resource uses in the Monument, including the objects identified in the Proclamation (Appendix B) and the natural resources on BLM land in the Monument (Appendix C). The affected environment serves as the baseline of existing conditions from which the impacts of the alternatives may be analyzed.

The BLM will continue to monitor resource conditions in the Monument (e.g., riparian and upland health assessments, wilderness study areas, sage-grouse, etc.). This also includes coordinating with Montana Fish, Wildlife and Parks on wildlife populations. The BLM will review monitoring results on a periodic basis, and any management objectives or actions that may need to change or be adjusted will be open to public review and comment before decisions are made through an environmental review process. Appendix H in the Proposed RMP/Final EIS provides more information on implementation and monitoring.

### Planning/NEPA – Public Involvement

**State of MT:** *The State would like to see an improvement in the level of BLM communication with the public, the Department of Fish, Wildlife and Parks, and other agencies in soliciting input on watershed plans for livestock grazing. Reliance on watershed plans developed nearly a decade ago to address livestock grazing within the Monument contributes to underlying difficulty in understanding the overall impact of the Draft RMP/EIS.*

**Response:** The BLM does invite all of the livestock grazing permittees using the watershed, area interest groups and other resource managing agencies (state and federal) to participate at the beginning of each watershed planning effort. This invitation is done by mail or personal communications. So far, at the public's option, public involvement has remained minimal during these planning efforts. The BLM will continue inviting and encouraging public and agency involvement in our watershed planning.

## Counties

Blaine, Chouteau, Fergus, and Phillips Counties are cooperating agencies in this planning process, guided by memorandums of understanding established in November 2002. Fergus and Blaine Counties have been represented on the interdisciplinary planning team while Chouteau and Phillips Counties have relied on Fergus County for their involvement on the planning team. The counties participated during regularly scheduled monthly interdisciplinary team meetings and the review of internal working documents in preparation of the Draft RMP/EIS and Proposed RMP/Final EIS.

The counties submitted comments on the Draft RMP/EIS during the 180-day public comment period that ended in April 2006. The counties' comments are summarized below along with the responses to those comments.

### Cultural Resources

**Counties:** *Emphasis was put on economic development; however, I would like to state that spiritual bankruptcy is possible when tribal members and their leaders cannot travel and gather essential items for healing and prayers that have sustained their lives for years and years. These spiritual gatherings are not commercially advertised and these ways are not documented in a written form, no pictures or recordings are allowed. In addition, there was a period of time that the United States Government punished tribes for practicing their spiritual ways and much information went underground. It is important to note that when a tribe provides information regarding present spiritual practices and other indigenous ways, it is with great trepidation that this information not be exploited or misused.*

*We feel that the counties had little chance for input on cultural, local customs, tradition or economic conditions. The Native Americans were not given a chance for input on their culture and traditional customs.*

*Violation of the National Historic Preservation Act. The National Historic Preservation Act ("NHPA"), 16 U.S.C. §§ 470 470x 6, requires, among other things, that Federal agencies consult with local governments and*

*Indian tribes if there is any potential for an adverse effect on a historic property.*

*I have gone down to the tribal office and I have visited the tribal members and asked them what their thoughts are and their relationship to the land that's within the Monument and they have told me that they have hunted and fished and they have ancestral ties to that land.*

**Response:** Information gained through formal consultation with tribal governments, tribal historic preservation offices, and culture committees is treated respectfully and confidentially in matters regarding sacred practices. Tribal members continue to have access to lands in the Monument to hunt and fish and maintain ancestral practices. Based on our knowledge of the use of the area within the Monument by different tribal members, changes proposed in the Monument's travel management should not adversely affect tribal members' access.

Government-to-government consultation with tribes is an ongoing process. Chapter 5 of the document has been updated to identify the latest consultation efforts. Tribal councils, culture committees, and tribal historic preservation office staffs have been contacted to participate in this process and will continue to be involved as the document and Record of Decision are finalized. Information shared between tribal entities and the BLM in this consultation process is handled separately from public comments, yet will still affect the content of the final document. As part of this plan we are proposing to annually consult with the various tribal governments interested in the area included within the Monument. Currently that list includes the tribes associated with the Flathead, Blackfoot, Rocky Boy's, Fort Belknap, Fort Peck, Crow, and Northern Cheyenne Indian Reservations.

No known adverse effects are proposed with this document. Management strategies proposed in this document that could have the potential to affect historic properties would be mitigated through avoidance, project redesign, or data recovery to either have no effect or no adverse effect.

**Counties:** *The BLM Failed to Consider and Preserve Important Cultural Heritage. The BLM is required to preserve cultural heritage through the NEPA process. See 42 U.S.C. § 4331(b) ("[I]t is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may . . . preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice."); see also Pres. Coalition v. Pierce,*

667 F.2d 851, 858 (9th Cir. 1982) (“NEPA requires federal agencies to preserve important historic and cultural aspects of our nation’s heritage.”); 40 C.F.R. § 1502.16; 1502.8 (requiring the agency to consider effects, which “include[] ecological . . . , aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.”); 40 C.F.R. § 1508.27(b)(3), (8) (requiring the agency to consider the intensity of the impact of the action, including the “[u]nique characteristics of the geographic area such as proximity to historic and cultural resources . . .” and “[t]he degree to which the action may . . . cause loss or destruction of significant scientific, cultural, or historic resources.”). The NHPA also requires that “the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people.” 16 U.S.C. § 470(b)(2).

The DRMP/DEIS acknowledges that “[r]anching is an important part of the history, culture and economy of the study area.” DRMP/DEIS at 184. Despite this acknowledgment, the BLM does not consider the impact of its decision upon rural agricultural customs and traditions, or the culture of the individual permittees or the entire region. In fact, the only attempt the BLM has made in fulfilling its responsibility of protecting the important cultural resource of ranching is to record oral histories from long-term residents of the area. See *id.* at 141-42. Clearly, this does not fulfill the mandate to preserve this important cultural resource.

No study of the local customs, culture or traditions was done with the Counties considering the specific communities that would be affected. Ranchers, farmers, recreationists, and Native Americans all have long-standing customs, traditions and cultures in the Monument area. There is a culture and local tradition of boating and fishing that the BLM has totally disregarded in its analysis and determination. Also, the BLM disregarded the Native Americans’ culture and tradition in using certain types of trees within the Monument to build their sweat lodges and other ceremonial lodges, as well as the need of Native Americans to have access to the Monument to visit the locations of their deceased ancestors. The various cultural traditions of the area were not given the proper consideration.

**Response:** In 1992, the BLM completed a cultural resource management plan for the Upper Missouri National Wild and Scenic River that highlighted the resources along the river corridor. We are continuing to survey and monitor sites along the river since our current knowledge of the area shows a higher site density and greater probability of the area containing historic and prehistoric sites. We will continue to complete Section 110 survey away from the river to determine if that site distribution pattern changes with increased survey.

The BLM completed an overview of historic settlement along the Missouri River in 1998. This document led to the management of homesteads and other historic buildings within the Monument. We are pursuing the development of a video documenting the historic settlement in the Monument, and as part of this project we are proposing interpretive panels be placed at strategic locations along the river (i.e., boat launch sites, within homestead buildings). The video would be made available to the general public. It could be shown at the Missouri Breaks Interpretive Center in Fort Benton, and would be made available to Montana PBS for television broadcast.

Oral histories from long-term residents of the Breaks were recorded in 2003-2004. This local perspective of early agriculture in the Breaks was directed at preserving firsthand accounts of a bygone lifestyle. These firsthand accounts are an interpretive resource for explaining this aspect of the Breaks heritage and address a preservation concern raised during public scoping. These histories expand on written documentation completed by the BLM in 1998 that documented homesteads and other historic settlement along the Upper Missouri National Wild and Scenic River.

**Counties:** I do see a lack of mention about the cultural values and with the cultural values, go a step further for Native Americans, are the spiritual values.

**Response:** The Cow Creek area was identified as a sacred landscape in the Upper Missouri National Wild and Scenic River Cultural Resource Management Plan (BLM 1992), however, no formal designation or specific geographic delineation has been made as a result of that identification and no additional information has been received through consultation. Based on past and current consultation with tribes no traditional cultural properties (TCPs) have been identified in the Monument. We will not be identifying TCPs in the Monument without input from the tribes. We have added information to the Chapter 3 Special Designations section of the Proposed RMP/Final EIS regarding the Lewis & Clark and Nez Perce National Historic Trails. The Bodmer landscapes were documented in the Upper Missouri National Wild and Scenic River Cultural Resource Management Plan completed in 1992. At that time the landscapes were categorized as visual resources rather than cultural resources. No Smithsonian numbers were assigned to the landscapes since Bodmer illustrated geologic formations rather than historic sites. Historic sites that he documented have been assigned Smithsonian numbers. The BLM has no plans to nominate the Bodmer landscapes to the National Register but will continue to protect them as part of VRM Class I.

## Fish and Wildlife

**Counties:** *The prohibition on supplemental winter feeding around leks that have been occupied in the last ten years (page xii) has no scientific basis.*

**Response:** Any action which concentrates livestock will increase utilization of grasses and shrubs, decreasing cover for birds breeding or nesting near the site. Management of vegetation near leks is intended to maintain adequate breeding and nesting cover for sage-grouse. When authorized, winter feeding would be located in areas which would not impact sage-grouse. Looking at the small number of leks within and adjacent to the Monument, this removes only a small percentage of the public land from potential winter feeding.

**Counties:** *An explanation as to why no antelope crucial winter range has been depicted south of the Missouri River. Antelope routinely winter south of the river and failure to depict this fact brings into serious question the validity of the science used to support actions in the DRMP/DEIS. The BLM needs to outline the sources, methods and data collection efforts that were used to establish the boundaries of the antelope winter range and explain what range analysis and habitat relationships were performed to conclude that the habitat depicted by Map G is in fact crucial to antelope. It is well known that sage brush is a key component to the winter survival of antelope and sage brush is probably one of the most plentiful shrubs existing in the Monument. It is unclear how any portion of the vast sage brush ecosystems occurring in the Monument can be labeled as "crucial." Moreover, it is also well known that in extreme weather conditions, antelope will migrate many miles to more suitable wintering areas. During the winter of 2004, the Montana Fish, Wildlife & Parks ("FWP") noted movement of hundreds of antelope from the Winifred/north Fergus County area to the Roy/Grass Range area—a distance of 50-75 miles. The credibility of the information shown on Map G is clearly in question.*

*The depiction of elk and deer winter range (Map F), without differentiation between white-tailed deer, mule deer or elk is incomplete, inaccurate, and offers an arbitrary foundation upon which sound road closures/restriction decisions can be based.*

*The sources, methods and data were used to delineate the bighorn sheep lambing areas in the Monument as shown on Map I. Because lambing appears to occur throughout the majority of the sheep distribution area, the BLM should explain why it has shown where lambing areas are located and why the definition of lambing areas is any more critical than the establishment of elk, deer, or antelope birthing areas.*

*The sources, methods and data collection efforts, including the dates, that were used to delineate the elk*

*distribution depicted on Map E of the DRMP/DEIS, as well as an explanation of why thousands of acres of known elk territories, including Monument lands, been omitted from the map.*

**Response:** Wildlife information for areas within the Monument was compiled or provided by BLM and Montana Fish, Wildlife and Parks (MFWP) biologists in three BLM offices and two MFWP Regions. Information on populations and distribution was collected by both agencies, and concurrence was made on all distribution and habitat maps. Misunderstanding between BLM and MFWP on winter range was responsible for some of the misleading winter range delineations in the Draft RMP/EIS.

Additional inventory and consultation between agency biologists have better defined this habitat for the Proposed RMP/Final EIS. The wildlife habitat maps in Chapter 3 have been updated, including antelope winter range, elk winter range, and mule deer winter range. The maps also refer to the source of the information (Montana Fish, Wildlife and Parks).

Winter habitat does not mean areas free from snow, but any area sought out by a species where it can obtain food, get protection from severe weather conditions, and occupy with minimal chance for disturbance which may cause them to burn energy that can not be replaced.

**Counties:** *The State of Montana has a written management plan for sage grouse. The sage grouse on the Monument should be managed according to the State of Montana's plan. Currently there is only one lek on BLM land within the Monument. Leks on private land should not result in additional restrictions placed on BLM land.*

**Response:** Sage-grouse management would utilize the 2005 Management Plan and Conservation Strategies for Sage-Grouse in Montana – Final for overall guidance and direction. Where appropriate, the BLM would apply sage-grouse habitat management guidelines on BLM land. However, BLM does not control or manage private or state land.

**Counties:** *The DRMP/DEIS appears to make a sweeping generalization, devoid of verifiable science, that game animals in the Monument fair poorly if they are subjected to human disturbance, particularly during the winter months. The DRMP/DEIS fails to document any instances in the Monument where vehicle travel has adversely impacted wildlife. The DRMP/DEIS fails to document the vehicle travel densities on roads slated for closure or seasonal restrictions and therefore no valid correlation between vehicle travel and wildlife impacts are documented in the Monument.*

**Response:** Impacts from roads are well documented in the available scientific literature, in that roads impact all wildlife to some degree. The level of impact can be influenced by many factors, including type and size of road, season of use, frequency of use, type of vehicles using road, location of a road, and very important is the amount of traffic. As demonstrated by the healthy populations of elk, mule deer, and bighorn sheep, the current traffic level and location of traffic in relation to populations is not currently a major impact to population levels of these three species. It does not mean there is not an impact on these species, or that impacts from roads are not continuing to impact other species.

While potential impacts to wildlife are well documented, specific impacts within the Monument are not. Populations or distribution of the large number of non-game species, including migratory birds and designated sensitive species, within the Monument are not available, nor is the ability to document the impacts for all the species present or potentially present. The Preferred Alternative attempts to minimize existing and future impacts from all activities, while allowing for continued vehicle use to access traditional use areas of the Monument.

**Counties:** *Restrictions should not be applied to an area that wildlife "may" inhabit in the future.*

**Response:** Wildlife populations, notably game populations are managed by MFWP which, in cooperation with other agencies including BLM, designates winter or other important habitat based on its importance to the species. These habitats may or may not be occupied at any given time, but determination is based on the habitat available. These designations have no impact on private lands and convey no authority over them. Wildlife on private lands can be affected by actions on adjacent public lands, and BLM has the responsibility to limit actions on BLM lands to protect habitat for important management species. In addition, BLM may, in the future, impose new protections on newly occupied habitat for important species. Allowing expansion of these important species may prevent additional, more restrictive protections on occupied habitat in the future.

**Counties:** *Fish and wildlife mitigation measures (page xiii) should follow state or federal recovery plans. The BLM should not reference crucial habitat that is not listed in a state or federal recovery plan that has been through a valid public participation process.*

**Response:** The BLM will work with the USFWS to recover threatened and endangered species, including reintroduction efforts consistent with recovery plans and conservation strategies. This includes the Recovery Plan for the Pallid Sturgeon (USFWS 1993a).

The Draft RMP/EIS was produced using the best available resource data and scientific literature available at the time the information was compiled, although most literature citations have been omitted to reduce the size of the document. Literature often suggests the most stringent recommendations to protect all or the highest percentage of individuals of a wildlife species. However, these recommendations do not necessarily protect the majority of the species or their habitat or consider the need for multiple use management or the legal requirements that allow other activities within a defined area.

The Proposed RMP/Final EIS was produced using the best resource data and scientific literature available at the time the information was compiled.

Additional inventory and consultation among agency biologists have better defined this habitat for the Proposed RMP/Final EIS. The wildlife habitat data and maps in Chapter 3 have been updated, including sage-grouse winter range, antelope winter range, elk winter range, and mule deer winter range. The maps also refer to the source of the information (Montana Fish, Wildlife and Parks).

Much of this data has been updated with the cooperation of other agencies and as additional literature has become available. Inasmuch as a large amount of research is available on impacts to wildlife, a representative selection is cited in the Bibliography of the Proposed RMP/Final EIS.

**Counties:** *If you believe there's not the potential for losses of forage available for livestock from prairie dog towns, page 273, and this is not going to have an impact, you're wrong.*

**Response:** While prairie dogs and the other 40 BLM (Montana and Dakotas) designated sensitive species which occur or could occur within the Monument are of management importance, prairie dogs are unique as one of the few to be identified for additional protection and management. While the habitat they create is important to several other species, the location, size of town, proximity to other towns, and location in relation to topography all influence its value to other species. At the same time, the expansion of prairie dog towns into new habitat can have detrimental impacts on other important management species. Some expansions can be caused or exacerbated by drought or man-caused fire. The BLM has attempted to balance the importance of these towns with their impacts to other species and public land users. Based on location and topography, some towns have much higher value to associated species and for maintaining geographic distribution. Currently, there are just over 500 acres of prairie dog towns in the Monument. This low density of small

towns is not considered suitable habitat for black-footed ferret expansion.

Current public access to prairie dog towns within the Monument is very limited except by foot or boat, with only three of the towns being accessible by vehicle. MFWP has a closed season for shooting prairie dogs on BLM lands from March through May. Under the Preferred Alternative surface-disturbing activities could be restricted within 1/4 mile of a prairie dog town.

While BLM maintains the option for limited control of prairie dogs, criteria to do so will be restrictive. The BLM also has the option of introducing prairie dogs to areas which are determined important, or have died off due to illegal poisoning or disease. All of these actions will require separate and specific environmental review with public review. Any action to control or relocate prairie dogs would be coordinated with the MFWP Region 6 Prairie Dog Working Group to ensure continuing viability of prairie dogs in areas identified by the group as important; e.g., the town is supporting the breeding of other sensitive species, or is geographically isolated and unlikely to be re-colonized in the future. Under the Preferred Alternative, total acres of prairie dog towns will exceed the acreage at the time of the Monument designation and will likely increase whenever conditions are favorable. The exception to this is the possibility of disease die-offs, which are beyond the scope of any planning.

**Counties:** *Our clients question the utility of depicting both deer and elk winter range on the same map without being able to distinguish between deer and elk wintering areas.*

**Response:** These species have been separated in the Proposed RMP/Final EIS maps and analysis. White-tail deer habitat is year-round along riparian areas of major drainages. This species is a prolific breeder and is considered very adapted to man and his activities. Protections were not considered necessary for white-tail deer and habitat was not mapped.

**Counties:** *The BLM Has Acted Illegally in its Management of Sage-Grouse. Sage-grouse within the Monument should be managed following the plan written by the State of Montana. There is only one lek on BLM lands within the Monument. Leks on private land should not result in additional restrictions on BLM land. Most of the Sage-grouse leks are located on private land. However, the BLM has made significant changes to management for Sage-grouse on BLM land included in the DRMP/DEIS. Currently, since the Sage-grouse is not listed under the Endangered Species Act, the State of Montana has developed a Sage-Grouse Plan. The BLM's actions as listed in the DRMP/DEIS do not follow the State's plan. While the Montana plan does suggest avoiding the placement of salt near leks during breeding*

*season and avoiding supplemental winter feeding on crucial winter habitat, it does not go so far as to suggest conservative stocking levels to avoid concentrations of livestock. The RMP/EIS should follow the 2005 Management Plan and Conservation Strategies for Sage-Grouse in Montana which recognizes that "properly managed grazing can stimulate growth of grasses and forbs, and thus livestock can be used to manipulate the plant community toward a desired condition. See 2005 Management Plan and Conservation Strategies for Sage-Grouse in Montana at 55.*

*Furthermore, as stated earlier in these comments, the BLM failed to conduct the necessary economic analysis to determine the impacts of sage-grouse management on the local customs and culture, which is required by NEPA. Also, the BLM has not provided an adequate basis for its plans surrounding Sage-grouse leks so that the public could provide adequate comments. Again, there is a total lack of scientific basis and data as required by NEPA and the DQA.*

**Response:** Wildlife populations, notably game populations are managed by MFWP which, in cooperation with other agencies including BLM, designates winter or other important habitat based on its importance to the species. These habitats may or may not be occupied at any given time, but determination is based on the habitat available. These designations have no impact on private lands and convey no authority over them. Wildlife on private lands can be affected by actions on adjacent public lands, and BLM has the authority to limit actions on BLM lands to protect habitat for important management species. In addition, BLM may, in the future, impose new protections on newly occupied habitat for important species. Allowing expansion of these important species may prevent additional, more restrictive protections on occupied habitat in the future.

Any action which concentrates livestock will increase utilization of grasses and shrubs, decreasing cover for birds breeding or nesting near the site of the livestock concentration. Management of vegetation near leks is intended to maintain adequate breeding and nesting cover for sage-grouse. When authorized, winter livestock feeding would be located in areas which would not impact sage-grouse. Considering the small number of leks within and adjacent to the Monument, this removes only a small percentage of the public land from potential winter feeding.

The Proposed RMP/Final EIS was produced using the best resource data and scientific literature available at the time the information was compiled, although some literature citations have been omitted to reduce the size of the document. Much of this data has been updated with the cooperation of other agencies and as additional literature has become available. Inasmuch as a large

amount of research is available on impacts to wildlife, a representative selection is cited in the Bibliography of the Proposed RMP/Final EIS.

**Counties:** *The sources, methods and data collection efforts, including dates, that were used to delineate the deer and elk winter range depicted on Map F of the DRMP/DEIS, a description of the dates that deer/elk occupy the winter range, and an explanation of how those dates were established.*

*Defining winter range in the Missouri Breaks Region and the plains of central Montana is a highly debatable concept and does not coincide with winter range concepts defined in other mountainous regions of the West. In the Missouri Breaks/plains region, winter snows are less intense, of shorter duration on the ground, and do not force migration of animals to lower valley areas to winter as is the case in the mountainous regions. Typical winters in the Breaks are cold with occasional snows, but more typically the landscape remains mostly bare. Following a winter snow, slopes frequently blow clear and game commonly move negligible distances to feed on the open slopes. Farm crops and adjacent lands often are a key factor in determining where game animals winter.*

**Response:** Wildlife information for areas within the Monument was compiled or provided by BLM and Montana Fish, Wildlife and Parks (MFWP) biologists in three BLM offices and two MFWP Regions. Information on populations and distribution was collected by both agencies, and concurrence was made on all distribution and habitat maps. A misunderstanding between BLM and MFWP on winter range was responsible for some of the misleading winter range delineations in the Draft RMP/EIS.

Additional inventory and consultation between agency biologists have better defined this habitat for the Proposed RMP/Final EIS. The wildlife habitat maps in Chapter 3 have been updated, including antelope winter range, elk winter range, and mule deer winter range. The maps also refer to the source of the information (Montana Fish, Wildlife and Parks).

### Vegetation – Native Plants

**Counties:** *The BLM does not define “surface disturbance activities.” The BLM should define “surface disturbance activities” as an activity where heavy equipment breaks the surface of the ground in a centralized location of more than five acres and does not pertain to the maintenance of watering facilities or reservoirs. Grazing is not a surface disturbing activity. Permitting of surface disturbing activities should be handled on a case by case basis.*

**Response:** The terms “surface-disturbing activities” and “disruptive activities” have been clarified and included in the Glossary and in Chapter 2 of the Proposed RMP/Final EIS under Fish and Wildlife – Mitigation, as follows:

**Surface-Disturbing Activities:** Those activities that alter the structure and composition of vegetation and topsoil/subsoil. This includes any action created through mechanized or mechanical means that would cause soil mixing or result in alteration or removal of soil or vegetation and expose the soil to erosive processes. Some examples of surface-disturbing activities include construction of roads, well pads, trenching for pipelines, construction or reconstruction of reservoirs and pits, and facility construction. Vegetation renovation treatments that involve soil penetration and/or substantial mechanical damage to plants (plowing, chiseling, chopping, etc.) are also surface-disturbing activities.

**Disruptive Activities:** Those activities that disrupt or alter wildlife actions at key times, during important activities, or in important areas (feeding, breeding, nesting, herd movement, winter habitat). Disruptive activities are those that can result in reductions of energy reserves, health, reproductive success, or population. Some examples of disruptive activities include geophysical (seismic), well plugging or work-over operations that last 24 to 48 hours or longer, and road reclamation.

Emergency activities, rangeland monitoring, recreational activities, livestock grazing and management, and other field activities are not considered surface-disturbing or disruptive activities.

### Vegetation – Riparian

**Counties:** *The DRMP/DEIS call for monitoring by measuring stubble height; however, other BLM offices have determined that “dependence on stubble height as a monitoring tool could lead to erroneous determinations about riparian conditions.” BLM Information Bulletin No. OR-2005-159. The BLM, jointly with the Forest Service, commissioned the University of Idaho to research the validity of using stubble height as a monitoring tool. “This research determined that there is no scientifically established cause and effect relationship between a specific stubble height level and long-term riparian conditions.” Id. Clearly, the BLM cannot use stubble height monitoring and be in alignment with best available science and Data Quality Act requirements.*

**Response:** The Draft RMP/EIS discussed perennial herbaceous cover (stubble height) under Fish and Wildlife – Greater Sage-Grouse Habitat in Chapter 2. Stubble height requirements have been removed from the Proposed RMP/Final EIS in recognition that an absolute height does not take into consideration all the factors

influencing plant growth and grazing. Sage-grouse nesting habitat remains a management consideration on BLM land inside and outside of the Monument.

Although it is inappropriate to use stubble height as a long-term monitoring tool to determine trend, according to the University of Idaho study, stubble height can be used as a short-term indicator of grazing effects on meeting long-term riparian management objectives.

### **Vegetation – Noxious and Invasive Plants**

**Counties:** *I believe there should be a sharing of information with all of the weed districts within the monument area. Each of the four counties within the monument area should be involved in the decisionmaking on the weed control. The decisions made on weed control have a lasting effect on the private landowners as well. The budget in the weed management plan could be helped by using county assistance to treat infected areas as each county has the equipment, summer help, and expertise to help with the management of noxious weeds.*

*The river corridor is a big issue regarding noxious weeds in all four counties involved. There are grant monies available through both the counties and conservation districts. With the cooperation of the BLM, these grants can be very effective toward the management and control of all noxious weeds in the monument area.*

*My suggestion to improve the Monument draft management plan is to heavily involve the expertise of all four county agencies in the decisionmaking, inventory and treatment of all potential and existing noxious weeds in the monument area. Combined with the cooperative efforts of the BLM and the private landowners, the counties could help provide a wealth of resources, funding and equipment that would benefit everyone involved.*

**Response:** Noxious and invasive plant management in the Monument will follow the guidelines provided in the 2001 Upper Missouri River Breaks National Monument: Guidelines for Integrated Weed Management Plan and its eventual revisions. Cooperation with County Weed Districts, as well as other interested parties, is outlined on pages 7 and 8 of that document. It states the BLM will initiate cooperative agreements, working through the local county weed coordinator, with private landowners to create smaller more workable weed management areas. This will allow planning to be done in a more localized fashion including private, state and federal land managers.

### **Visual Resources**

**Counties:** *I am concerned about the visual management. I think that's going to hurt. Blaine County was one of them that got hit probably the hardest. We went in a lot of 3 and 4 category down to 1 and 2, and I think it's going to have an impact, economic impact on our ranchers.*

*If we didn't have a Monument we wouldn't have this Visual Resource Management that in our County of Blaine it went from twos and threes to ones and twos which as far as the farmers and ranchers are concerned is going to limit them and hurt them from building reservoirs, getting around their range land, and so forth and so on.*

*If you believe that the proposed BLM classification making 73 percent of the BLM land be under more stringent standards is not going to have an effect on the agricultural producer, then you're wrong.*

*One other concern is this visual resource management. Blaine County had one pile of acres that switched over and went from two and three up to one and two class, and this can affect our ranchers greatly.*

*Visual Resource Management Plan. Blaine County was setting in mostly three and four range. We have been upgraded to one and two. This is not going to help as far as the building any new water holes, putting any new fences in.*

*I would like to speak a little bit about the VRM classes. Like Art, most of our area was threes and fours. Now it's ones and twos. Basically what that means is the ones and twos is more restrictive of what you can do on the land.*

**Response:** The Preferred Alternative in the Proposed RMP/Final EIS includes the following clarification:

In VRM Class I areas the BLM may, if necessary, prohibit new surface-disturbing activities if such activities are not designed to meet the intent of the visual quality objectives. Maintenance of existing range improvements and other structures in VRM Class I areas would be allowed.

In the WSAs the VRM Class I designation would not prevent the construction of structures or maintenance of existing structures that would be allowed in the WSAs under the Interim Management Policy (IMP). The VRM objectives are designed to support the IMP guidelines to not impair the natural character of the existing landscape.

For new projects in VRM Class II areas the BLM would reduce the visual contrast on BLM land in the existing landscape by utilizing proper site selection; reducing soil

and vegetative disturbance; choice of color; and over time, returning the disturbed area to a seamless, natural landscape. Maintenance of existing range improvements and other structures would be allowed.

**Counties:** *The apparent justification for the new designation is that the change in designation is necessary to “comply with BLM policy for visual resources in the six WSAs.” DRMP/DEIS at 263. While the BLM is required to manage lands in wilderness study areas (“WSAs”) “in a manner so as not to impair the suitability of such areas for preservation as wilderness, this management is “subject, however, to the continuation of existing mining and grazing uses and mineral leasing in the manner and degree in which the same was being conducted on October 21, 1976.” 43 U.S.C. § 1782(c). This means that livestock operators must be allowed to continue grazing in the same manner and degree as they were in 1976. The RMP/EIS needs to recognize that.*

*Additionally, as has been pointed out above, these lands were designated as a Monument, not a wilderness. See DEIS/DRMP at 30. The designation of a wilderness must be completed pursuant to statute, and requires the approval of Congress. Id. In contrast, the designation of the Monument was forced upon the Counties over their objections. This Monument has a significant number of roads and other improvements that preclude it from being designated as a wilderness. Since Congress has not designated the Monument as a wilderness, it cannot be managed as one.*

**Response:** Under the Preferred Alternative in Chapter 2 of the Proposed RMP/Final EIS, the WSAs, portions of the wild segments of the UMNWSR, and the Bodmer landscapes would be designated as VRM Class I. The remaining portions of the Monument would be designated as VRM Class II, III, or IV as shown on Map C and in Table 2.5. The WSAs would be classified as VRM Class I and managed according to VRM Class I management objectives until such time as Congress decides to designate the area as wilderness or release it for other uses (WO IM No. 2000-096). If the WSAs are determined by Congress as not eligible, they would be managed consistent with adjacent BLM land.

The BLM’s VRM Inventory Handbook states on Page 6, paragraph 1, that “...Class I is assigned to those areas where a decision has been made previously to maintain a natural landscape. This includes areas such as wilderness areas, and other congressionally and administratively designated areas where decisions have been made to preserve a natural landscape.” Therefore, it is Bureau policy, recognizing case-by-case exceptions for valid existing rights and grandfathered uses, that all WSAs should be classified as Class I, and managed according to VRM Class I management objectives until such time as the Congress decides to designate the area

(or portions thereof) as wilderness or release it for other uses. If the WSA is released, the RMP for the area would need to be amended and appropriate VRM management objectives established (Instruction Memorandum No. 2000-96).

**Counties:** *The BLM Has Illegally Changed its Visual Management Classifications. During 2004, the BLM arbitrarily elected to conduct a new inventory for lands in VRM Class III and IV. The BLM has not provided a rationale for this re-inventory, nor has the BLM explained why it only provided a new inventory for the Class III and IV (the least restrictive VRM designations) lands. The BLM fails to report who did this inventory and offers no explanation as to how 73% of the Monument came to be classified as Class I and II—the most restrictive categories. There was no public comment on this new inventory, nor did the BLM provide scientific analysis or justification as to why this change was necessary. This drastic change in management, without adequate justification, precludes the public from being able to provide meaningful comment. Thus, the change in classification fails to meet the requirements of NEPA.*

**Response:** When a visual resource management (VRM) inventory is conducted, the evaluation of scenic quality is, in part, based upon the relationship to the natural landscape. This does not mean, however, that man-made features necessarily detract from the scenic value (BLM Handbook Manual H-8410-1, Visual Resource Inventory, page 2). Man-made features that compliment the natural landscape may enhance the scenic value. Visual resource inventories should avoid, according to the manual, any bias against man-made modification to the natural landscape. In summary, man-made features in the Monument landscape may not necessarily reduce the scenic quality rating given during the inventory. It should be noted that the VRM inventory process is informational and is not used for management decision-making, but it does provide managers with a tool for determining visual values. The four inventory classes only represent the relative value of the visual resources.

The VRM inventory determines the management classes to be used in the RMP process. The management classes, also I through IV, represent BLM’s preference for managing the Monument’s scenic values. The public’s involvement in determining VRM classes is needed in the RMP process, as well. Once the RMP is finalized and implementation is realized, the goal to establish management direction for the preservation of the scenic resources within the Monument would be achieved. Visual impacts for surface-disturbing activities in the Monument, based upon the management classifications, would be analyzed on a project-by-project basis consistent with the RMP.

The activities may include any proposal or action that would be considered “surface-disturbing.” The visual resource contrast rating system will be used during project level planning to determine whether or not proposed activities will meet VRM objectives. The contrast rating system provides a systematic means to evaluate proposed projects and determine whether these projects conform with the approved VRM objectives. The degree to which a management activity affects the visual quality depends on the visual contrast created between the project and the existing landscape. The contrast is measured by comparing elements of form, line, color, and texture to describe the visual contrast created by a project. Mitigation measures would then be identified to reduce visual contrasts, including the use of BMPs (Appendix K).

The new visual resource inventory for the previously classified VRM Class III and IV areas was completed in 2004 and used to develop the alternatives in the Draft RMP/EIS, which was available for public comment.

## Water

**Counties:** *The BLM Cannot Give Itself a Water Right That Is Appurtenant to Private Land. The BLM stated, that the “Monument Proclamation establishes a reserved water right for the Judith River and Arrow Creek.” DRMP/DEIS at 156. The courts have held that the government can assert reserved water rights to unappropriated water. See Cappaert v. United States, 426 U.S. 128, 131 (1976). However, there are several legal questions regarding the BLM’s intention to assert reserved water rights appurtenant to the Monument. First, the reserved water rights doctrine allows the federal government to claim reserved unappropriated water for the purposes of the federal reservation at the time the land was first reserved. Id. at 138. The federal government reserved water rights at the time the Missouri River was designated Wild and Scenic. It is a stretch of the imagination to believe that the reserved water rights doctrine would allow the government to redesignate its current holdings and get back in line for state water rights. Therefore, the water rights doctrine does not allow the government to claim more state water rights just because of the Monument designation when the government has already claimed reserved water rights. Second, the BLM is attempting to reserve water that is not appurtenant to its land or the Monument. The map indicates that most of the water the BLM is trying to reserve is actually appurtenant to private property. The reserved water rights doctrine does not allow the BLM to reserve water that is not adjacent or appurtenant to BLM land. Therefore, the BLM is attempting to illegally take water that it has no right to.*

*We strongly oppose the reservation of water rights within the monument, and insist you ask for its removal*

*when you write the higher authorities to have the private property removed.*

*Ranchers and farmers within the Judith River and Arrow Creek drainage basin who request water rights in the future could be impacted, as they could be denied water rights on private land, page 272. If you believe this is not going to impact private land, you’re wrong.*

**Response:** The Proclamation reserves “a quantity of water in the Judith River and Arrow Creek sufficient to fulfill the purposes for which this monument is established.” The federal reserved water rights on Arrow Creek and the Judith River will remain as discussed in Chapter 2 under Decisions Common to All Alternatives, Reserved Water Rights in the Proposed RMP/Final EIS. The federal reserved right cannot be lost over time. In fact, only congress can revoke it. Federal reserved water rights may be created when federal lands are withdrawn from the public domain (e.g., national parks, wildlife refuges, national forests). Federal reserved water rights are different from state appropriated water rights. They may apply to both instream and out-of-stream water uses; may be created without actual diversion or beneficial use (as defined by State law); are not lost by non-use; have priority dates established as the date the land was withdrawn; and are for the minimum amount of water reasonably necessary to satisfy both existing and foreseeable future uses of water for the primary purposes for which the land is withdrawn (Alaska Department of Natural Resources, 2000).

The BLM is not seeking additional reserved water rights on the mainstem of the Missouri River for cottonwoods. The BLM and the State of Montana have already entered into a compact for instream flow reservations on the 149-mile stretch of the Missouri River that comprises the Upper Missouri National Wild and Scenic River. The Proclamation reserves a sufficient quantity of water in Arrow Creek and the Judith River to support the “outstanding objects of biological interest that are dependent on water, such as a fully functioning cottonwood gallery forest ecosystem that is rare in the Northern Plains.” Although maintaining the cottonwood gallery forests on Arrow Creek and the Judith River would have positive effects on cottonwoods on the mainstem of the Missouri, the reserved water right is not an additional reservation of water for cottonwoods on the Missouri.

Although a majority of the land on which the cottonwood galleries occur on Arrow Creek and the Judith River is private land, it states in the Proclamation that “Lands and interests in lands within the proposed monument not owned by the United States shall be reserved as a part of the monument upon acquisition of title thereto by the United States.” Even though BLM has no authority to manage for cottonwoods on the private land, if those lands were to come into ownership

of the United States, they would be withdrawn from the public domain. The BLM will consider any land acquisition proposal brought forward by a willing seller, but will not pursue the acquisition of private land unless approached by a landowner or their representative.

If the existing water rights are senior to the date of the Proclamation, no impact will occur as a result of the federal reserved water rights. The State of Montana has never allowed federal reserved rights to impact existing state based water rights.

Existing water rights junior to the date of the Proclamation may be impacted if it is determined that the water use is harming BLM's water rights. Changes to existing water rights could, and probably would, also be affected. The BLM would likely object to any expansion of the existing water rights or to changes that would alter the flow regimes in ways that would negatively impact the federal reserved water right (i.e. changing an irrigation right from summer diversion to impoundment in a reservoir during spring runoff).

Language has been added to Chapter 4 of the Proposed RMP/Final EIS under Livestock Grazing – Impacts to Livestock Grazing Common to All Alternatives, in the Water section to better explain potential impacts from the water reservation. The BLM will not know the quantity of water established by the reserved water rights until the necessary data collection is completed and then negotiations begin and are completed with the Reserved Water Right Compact Commission.

As of now, a flow regime still exists in the Judith River and Arrow Creek to support the purposes for which the Monument was created. Spring flood flows provide adequate water, lateral channel movement, and sediment yield to support the biological resources and cottonwood gallery forests. The BLM will examine water right applications to determine the potential impact and magnitude of that effect on spring pulses. Small livestock reservoirs in limited numbers and domestic wells should not pose a problem, although the reservoirs have the potential to cause a cumulative impact if too many are built. As far as irrigation claims are concerned, the basins are already over appropriated and there is not enough water for all current users. Main stem reservoirs and large irrigation developments or expansions have great potential to impact the reserved rights and will be looked at very closely.

**Counties:** *In this case, the BLM failed to “insure the professional integrity, including the scientific integrity, of the discussions and analysis in the [DEIS],” in violation of NEPA and the DQA. First, the BLM has failed to footnote and properly cite statements made in the DRMP/DEIS to the references used in its bibliography. For example, the DRMP/DEIS states, “These [cottonwood] galleries also contribute to the*

*dilution of sediments, arsenic, and nutrient loading in the Missouri River.” DRMP/DEIS at 23. Without a properly cited reference to the bibliography, it is impossible to verify the validity of the statement except through an independent literature review. Simply appending a large bibliography to the DRMP/DEIS does not make the document scientifically correct. Without proper citation of reference materials, the BLM enables the DRMP/DEIS to avoid scientific scrutiny.*

*Second, the BLM’s reservation of additional water in the Judith River and Arrow Creek drainages lacks credibility and is an affront to the scientific process. The Proclamation establishing the Monument implies that a federal reservation of water in these two river drainages is needed to “fulfill the purposes for which the monument is established.” The BLM interprets this statement to mean a protection of “a flow regime that supports the health and regeneration of cottonwood galleries, which provide a seed source for the downstream cottonwood galleries.” DRMP/DEIS at 23.*

*The BLM’s assumption that an additional reservation of water will benefit the cottonwood galleries is faulty for the following reasons:*

- *The Proclamation states that the Judith River/Arrow Creek already contain a fully functioning cottonwood gallery forest ecosystem. This statement is true. Cottonwood trees have flourished in these two drainages for hundreds of years and there are no documented studies that suggest that an additional reservation of water would be of any current or future benefit to cottonwood trees. The BLM presents no scientific evidence to argue otherwise.*
- *The vast majority of cottonwood trees growing in the two drainages are located on either private or state land. The BLM has no authority to manage the Monument for cottonwoods growing on private and state land and, in fact, the BLM has stated on numerous occasions that management parameters established for the Monument do not apply to private or state land. Yet, the impact of the proposed water reservation would be primarily on private or state land. Without a valid scientific underpinning showing that the reservation would benefit cottonwoods on the Monument, the BLM has overstepped its authority.*
- *The BLM has not documented the validity of the perceived need for water, nor has the BLM determined what quantity of water must be reserved. The BLM is just now collecting hydrological data in the two drainages, has no data on stream flow regimes, has not determined whether there is any water remaining for an additional allocation and admits that it “may have a very limited ability to*

*affect or protect stream flows in the Judith River and Arrow Creek.” DRMP/DEIS at 23 (emphasis added).*

- *The water of the Upper Missouri River that flows through the Monument was already reserved as part of the congressional designation of a segment of the river as a component of the National Wild and Scenic River System in 1976; therefore, an additional water reservation is not needed to advance cottonwood protection on the main stem Missouri River. In fact, the BLM has failed to reference or acknowledge a recent river study conducted by the Montana Natural Heritage Program (released in December, 2004) that concluded that the lack of cottonwood regeneration on the Missouri River is due to the highly episodic nature of significant flooding in the river main stem. This is caused by the regulation of water flow by upstream dams that hinder the ability of cottonwoods to be established in areas that escape spring ice flows that routinely destroy cottonwood seedlings.*

*Clearly, the BLM has failed to demonstrate how this water reservation will benefit cottonwood galleries on public land in either of the two drainages or the main stem Missouri River. Additionally, the BLM has failed to coordinate with the State of Montana to even determine whether water is available in these two drainages or whether these drainages are already over-allocated. The BLM should have first determined if water is even available for it to implement its management plan.*

**Response:** The BLM complies with the Data Quality Act by using the best data available and disclosing the source and quality of that data. The BLM’s policy addressing the requirements of the Data Quality Act is contained in its Information Quality Guidelines published in accordance with OMB guidance (Handbook 1601-1, part V.B. [http://www.blm.gov/nhp/efoia/data\\_quality/](http://www.blm.gov/nhp/efoia/data_quality/)). The BLM believes that the data used to prepare the Draft RMP/EIS, and its underlying inventories, is the best available and of adequate quality and quantity to support the analysis presented in the EIS. Additional reference citations have been added to the Proposed Final RMP/EIS to more readily provide the reader with the information sources used to prepare the RMP.

The statement “These galleries also contribute to the dilution of sediment, arsenic, and nutrient loading in the Missouri River” in Chapter 2, Decisions Common to All Alternatives, the Reserved Water Rights section of the Draft RMP/EIS, has been replaced in the Proposed RMP/Final EIS by the following language: “The flow regime in Arrow Creek and the Judith River, which includes spring pulses, must provide adequate water, lateral channel movement, and sediment yield at the

appropriate time to support the water-dependent biological resources and cottonwood gallery forests within the Monument.”

The Proclamation states that “Arrow Creek is a critical seed source for cottonwood trees for the flood plain along the Missouri.” However, this is only one of many positive attributes of maintaining the fully functioning cottonwood galleries on Arrow Creek and the Judith River.

The BLM is not seeking additional reserved water rights on the mainstem of the Missouri River for cottonwoods. The BLM and the State of Montana have already entered into a compact for instream flow reservations on the 149-mile stretch of the Missouri River that comprises the Upper Missouri National Wild and Scenic River. The Proclamation reserves a sufficient quantity of water in Arrow Creek and the Judith River to support the “outstanding objects of biological interest that are dependent on water, such as a fully functioning cottonwood gallery forest ecosystem that is rare in the Northern Plains.” Although maintaining the cottonwood gallery forests on Arrow Creek and the Judith River would have positive effects on cottonwoods on the mainstem of the Missouri, the reserved water right is not an additional reservation of water for cottonwoods on the Missouri.

Arrow Creek and the Judith River currently contain functioning cottonwood gallery forest ecosystems, and the federal reserved water right is not an “additional” reservation of water. The reserved water right is for the quantity of water necessary to sustain these forests on Arrow Creek and the Judith River. Cottonwoods on Arrow Creek and the Judith River are dependent upon flow regimes which support establishment, recruitment, and survival of seedlings to mature trees. Without a doubt, the cottonwood trees on Arrow Creek and the Judith River would benefit.

A vast majority, but not all, of cottonwood trees growing in the two drainages are located on either private or state land, and the BLM has no authority to manage for cottonwoods growing on private or state land. However, it states in the Proclamation that “Lands and interests in lands within the proposed monument not owned by the United States shall be reserved as a part of the monument upon acquisition of title thereto by the United States.” If those lands were to come into title of the United States, they would be withdrawn from the public domain. The BLM will consider any land acquisition proposal brought forward by a willing seller, but will not pursue the acquisition of private land unless approached by a landowner or their representative.

As of now, a flow regime still exists in the Judith River and Arrow Creek to support the purposes for which the Monument was created. Spring flood flows provide

adequate water, lateral channel movement, and sediment yield to support the biological resources and cottonwood gallery forests. The BLM needs to know the magnitude, timing, and frequency of flows necessary to support the outstanding water dependent biological resources and cottonwood galleries that were the basis for the reserved water rights. Once BLM has an idea what flow criteria are necessary to support the above mentioned features, the information will be utilized in the negotiation process and will be available to interested parties who are concerned about the quantification. The reserved water rights process generally takes several years to complete, and the reservation process will not be completed with the plan development phase of this plan.

The BLM is not seeking an “additional” water reservation to advance cottonwoods on the Missouri even though maintaining flow regimes in Arrow Creek/Judith would have beneficial impacts to them. The BLM is aware of the river study conducted by the Montana Natural Heritage Program since it was prepared for the BLM Lewistown Field Office.

### Land Ownership Adjustment

**Counties:** *If it was the BLM’s intention to include private property in the Monument because the land is being considered for Government purchase that bothers me. This puts private landowners at a disadvantage if they ever choose to sell their own private property. If the property is acquired by the Government the County’s tax base will be decreased. Will grazing permits be issued for this acquired property?*

**Response:** The BLM will not pursue the acquisition of private land unless approached by a landowner or their representative. Conservation easements or fee acquisition opportunities that are brought forward by private landowners will be considered if they enhance the values of the Monument and are within the BLM’s staff and budgetary constraints. Land and Water Conservation Funds may be used for land acquisitions (either fee or conservation easement). This language is found in Chapter 2 under Decisions Common to All Alternatives, Lands and Realty, Land Ownership Adjustment.

Lands acquired by the BLM will be managed consistent with adjacent BLM land. This includes the issuance of grazing permits consistent with the regulations (43 CFR 4100).

### Access, Rights-of-Way/Easements

**Counties:** *The plan should state that BLM would guarantee access to transfer oil and gas produced on private property within the Monument to the nearest distribution line.*

**Response:** Chapter 2 of the Proposed RMP/Final EIS, under Decisions Common to all Alternatives, Lands and Realty, Implementation, Rights-of-Way states in part: Applications for rights-of-way will be considered pursuant to existing policies and practices, identified transportation and utility corridors, identified avoidance and exclusion areas, valid existing rights, and as necessary for adequate and reasonable access to state or private land as well as access for utility or transportation services.

Applications for rights-of-way will also be considered for necessary and adequate access across BLM land to private and state minerals for exploration, development, and production (e.g., access roads and pipelines).

Chapter 2 of the Proposed RMP/Final EIS under BLM Road System, Alternative F (Preferred Alternative) states that BLM roads providing motorized access to the boundary of private land would remain open for public, private landowner and administrative travel with the exception of two roads (one road is impassable and the other road is currently limited to administrative use). There are 65 miles of BLM roads providing access to private land that would be designated open yearlong and 2 miles (two roads) that would be designated closed.

### Livestock Grazing

**Counties:** *Impact to Blaine County: The restrictions imposed on grazing with wildlife, VRM designations, traveling restrictions, grazing restrictions and future permitting and leasing within the monument versus outside the monument.*

**Response:** Under the Proclamation, the “[l]aws, regulations, and policies followed by the Bureau of Land Management in issuing and administering grazing permits or leases on all lands under its jurisdiction shall continue to apply with regard to the lands in the monument.” Livestock grazing will continue to be governed by a number of laws and regulations that apply to grazing on all public land administered by the BLM. In addition, the BLM developed Standards for Rangeland Health and Guidelines for Livestock Grazing Management for Montana, North Dakota, and South Dakota which was approved by the Secretary of the Interior in August 1997. To protect the objects for which the Monument was designated livestock grazing will continue to be managed under the Lewistown District (Lewistown and Malta Field Offices) Standards for Rangeland Health and Guidelines for Livestock Grazing Management (BLM 1997). Livestock grazing on allotments in the Monument will continue to be allocated about 38,000 animal unit months (AUMs) of forage on an annual basis (Appendix N). Grazing applications will continue to be processed consistent with existing regulations (43 CFR 4100).

Mitigating measures would be applied to new surface-disturbing or disruptive activities for identified/important wildlife habitat in the Monument. Mitigating measures would be applied on a case-by-case basis during activity level planning after an on-site evaluation of the project area indicates the presence of a species. Exceptions to these mitigation measures may be granted by the authorized officer if an environmental review demonstrates there would be no adverse impacts, habitat for the species is not present in the area, or portions of the area can be occupied without affecting a particular species. Exceptions would also be considered for interim and final reclamation.

Visual resource management designations do not preclude activities altogether, however they may require mitigation to maintain the character of the landscape. In VRM Class I areas the BLM may, if necessary, prohibit new surface-disturbing activities if such activities are not designed to meet the intent of the visual quality objectives. Maintenance of existing range improvements and other structures in VRM Class I areas would be allowed. In the WSAs the VRM Class I designation would not prevent the construction of structures or maintenance of existing structures that would be allowed in the WSAs under the Interim Management Policy. For new projects in VRM Class II, Class III and Class IV areas the BLM would reduce the visual contrast on BLM land in the existing landscape by utilizing proper site selection; reducing soil and vegetative disturbance; choice of color; and over time, returning the disturbed area to a seamless, natural landscape. Maintenance of existing range improvements and other structures would be allowed.

The Preferred Alternative provides for administrative access on closed roads and off road for the purpose of managing authorized uses. This includes livestock permittees building or maintaining fences and water facilities, delivering salt or supplements, moving livestock, checking wells and pipelines, or other activities directly associated with the implementation of a grazing permit or lease.

**Counties:** *Under the DRMP/DEIS grazing permits could be restricted because of prairie dog management. DRMP/DEIS at 273. The RMP/EIS should state that livestock grazing would not be reduced if prairie dog towns were allowed to expand.*

**Response:** The Draft RMP/EIS acknowledges that in localized areas forage could be consumed by prairie dogs and would therefore not be available for livestock. This, by itself, would not require an adjustment in the allocation of forage to livestock. If an adjustment in allocation is proposed it would be addressed based on the Standards for Rangeland Health analyzed in a site-specific environmental assessment.

**Counties:** *This plan should not mention anywhere that livestock grazing will be reduced or impacted unless current specific laws allow for the reduction are referenced.*

**Response:** Under the Proclamation, the “[l]aws, regulations, and policies followed by the Bureau of Land Management in issuing and administering grazing permits or leases on all lands under its jurisdiction shall continue to apply with regard to the lands in the monument.” The Proclamation did not mandate a need for an adjustment of forage allocated to livestock. Livestock grazing will continue to be managed through the Lewistown District (Lewistown and Malta Field Offices) Standards for Rangeland Health and Guidelines for Livestock Grazing Management (BLM 1997). Laws establishing the authority to adjust grazing are promulgated in the grazing regulations 43 CFR 4100 and apply to all public land administered by the BLM including the Monument. If it should happen that an adjustment in grazing is required to meet Standards for Rangeland Health or specific management goals and objective then the steps required in the grazing regulations will be followed.

**Counties:** *This plan should have language that does not allow for the reduction of livestock grazing due to restrictions that are being [imposed used]. All emphasis should be plain and in writing to protect grazing. The transfer of grazing permits to willing buyers and family members must be protected and in writing. There should be no additional grazing restrictions on Monument leases that don't apply to BLM leases outside of the Monument.*

**Response:** Under the Proclamation, the “[l]aws, regulations, and policies followed by the Bureau of Land Management in issuing and administering grazing permits or leases on all lands under its jurisdiction shall continue to apply with regard to the lands in the monument.” The Proclamation did not mandate a need for an adjustment of forage allocated to livestock. The Monument designation affirmed existing grazing regulations apply for the BLM land inside or outside of the Monument. Grazing on the BLM land is in accordance with several laws and the grazing regulations (43 CFR 4100) including provisions for the transfer of grazing privileges. Continued livestock grazing in accordance with existing regulations and recently updated grazing permits and leases as discussed in decisions common to all alternatives in Chapter 2 of the Proposed RMP/Final EIS.

**Counties:** *If you believe that adjusting livestock grazing seasons of use, use levels on a temporary or permanent basis because wildlife might move into the area, page 17 of the document, does not have the potential to affect the ag business, then you're wrong.*

**Response:** The impacts to livestock grazing are discussed in pages 271 to 276 in the Draft RMP/EIS. The overall impact of what is proposed in the RMP for the Monument on livestock grazing is not anticipated to be substantial since the RMP does not propose substantial changes in livestock grazing. Adjustments to livestock grazing may not be necessary provided Standards for Rangeland Health and management goals and objectives are being met, which is most commonly the case. On an allotment basis, there could be some changes for a few operators which would vary depending on the operation and management flexibility and how the BLM land fits in with the total ranch operation. Most of the impacts identified amount to an inconvenience and possibly increased costs of operation. All operators grazing livestock on BLM land have private land where they graze and/or feed their livestock when not authorized on the BLM land or in addition to BLM land grazing.

**Counties:** *The Draft Management Plan states that grazing in the Monument may have to be at conservative stocking levels. What does this mean?*

**Response:** A conservative stocking level is a stocking rate that would result in a moderate utilization level (or less) by livestock at the end of the grazing period for the year. A conservative stocking level would be established based on resource management goals including maintaining healthy vegetation; acceptable livestock performance; expected normal weather; and annual plant production.

**Counties:** *On page xii we oppose the language using stubble height as a range monitor. We also oppose the language at the end of the second paragraph column two..."occupied within the last 10 years." Show us the scientific data that proves this. If any habitat for any species is not occupied then there should be no restrictions. This also relates to the first sentence under designated sensitive species page xiii.*

**Response:** Stubble height requirements have been removed from the Proposed RMP/Final EIS in recognition that an absolute height does not take into consideration all the factors influencing plant growth and grazing. Sage-grouse nesting habitat remains a management consideration on BLM land inside and outside of the Monument.

The ten-year timeframe for winter habitat and historic leks is a guideline and not intended to be an absolute. In winter habitat and around leks that were used in the past and are not being used, it is important to try and understand if management is causing the habitat to not be used. If management actions cause the abandonment of leks for one year, it is not a reason to declassify the habitat altogether and for all time, since corrected management may well be enough to result in re-

establishment. Also if several mild winters don't confine sage-grouse to crucial habitat it does not mean it will not be crucial habitat when a hard winter does happen. If sage-grouse use a particular area in one year it does not lead to an automatic inclusion of that area in the habitat.

**Counties:** *The sources, methods and data that were used to delineate the sage-grouse crucial winter habitat depicted on Map J. The winter habitat of sage-grouse spans far greater areas than is depicted on Map J and confirms the notion that the sage-grouse habitat analysis is grossly incomplete and such limited documentation contributes very little, if anything, to the DRMP/DEIS management goals. Because the majority of crucial winter habitat is depicted on private or state lands, the BLM has limited ability to apply any meaningful sage-grouse habitat management on Monument land. One can only conclude that it is the BLM's intention to apply sage-grouse habitat management on federal lands adjacent to private land where most of the crucial sage-grouse habitat has been documented. Because in many cases federal allotments are not separately fenced from the private lands, there will be instances where private and federal allotments are grazed at the same time. When that occurs, there is great potential for grazing management of federal lands to affect grazing on private land. This is another example of federal management impacting private or state lands.*

**Response:** Sage-grouse winter habitat information has been updated by Montana Fish, Wildlife and Parks and is incorporated in the Proposed RMP/Final EIS and displayed on Map L. Monitoring and coordination with MFWP will continue to determine trends in sage-grouse populations and habitat. Habitat for wildlife, including sage-grouse, is a component of the Standards for Rangeland Health established in 1997 and addressed in the appropriate watershed or landscape plan if necessary (Table 2.2 in the Proposed RMP/Final EIS).

Sage-grouse management in the Monument would utilize the 2005 Management Plan and Conservation Strategies for Sage-Grouse in Montana for overall guidance and direction. Where appropriate, the BLM would apply sage-grouse habitat management guidelines on BLM land. However, BLM does not control or manage private or state land.

Mixed ownership allotments and pastures do exist in the Monument. In many of these cases, grazing management of the combined lands has been cooperative, compatible and worked well for public, state and private lands in meeting public and private goals and objectives.

**Counties:** *Surface disturbing activities should be defined by the BLM but we would recommend the following definition: "an activity where heavy equipment breaks the surface of the ground in a*

*centralized location of more than five acres and does not pertain to the maintenance of water facilities or reservoir.” Grazing is in no way considered a surface disturbing activity.*

**Response:** The terms “surface-disturbing activities” and “disruptive activities” have been clarified and included in the Glossary and in Chapter 2 of the Proposed RMP/Final EIS under Fish and Wildlife – Mitigation, as follows:

**Surface-Disturbing Activities:** Those activities that alter the structure and composition of vegetation and topsoil/subsoil. This includes any action created through mechanized or mechanical means that would cause soil mixing or result in alteration or removal of soil or vegetation and expose the soil to erosive processes. Some examples of surface-disturbing activities include construction of roads, well pads, trenching for pipelines, construction or reconstruction of reservoirs and pits, and facility construction. Vegetation renovation treatments that involve soil penetration and/or substantial mechanical damage to plants (plowing, chiseling, chopping, etc.) are also surface-disturbing activities.

**Disruptive Activities:** Those activities that disrupt or alter wildlife actions at key times, during important activities, or in important areas (feeding, breeding, nesting, herd movement, winter habitat). Disruptive activities are those that can result in reductions of energy reserves, health, reproductive success, or population. Some examples of disruptive activities include geophysical (seismic), well plugging or work-over operations that last 24 to 48 hours or longer, and road reclamation.

Emergency activities, rangeland monitoring, recreational activities, livestock grazing and management, and other field activities are not considered surface-disturbing or disruptive activities.

**Counties:** *The plan should state that no additional grazing restrictions should be placed on Monument leases that don't apply to BLM leases outside the Monument boundaries.*

*It should also state that renewal of grazing permits should be treated the same as BLM permits renewed outside the Monument.*

*There should be no additional grazing restrictions on Monument leases that do not apply to BLM leases outside the Monument. Renewal of grazing permits within the Monument should be treated the same as BLM permits held outside the Monument.*

**Response:** As established in the Proclamation, the laws and regulations addressing livestock grazing are the same whether inside or outside of the Monument.

Livestock grazing will continue to be managed through the Lewistown District (Lewistown and Malta Field Offices) Standards for Rangeland Health and Guidelines for Livestock Grazing Management (BLM 1997). Standards for Rangeland Health apply to all public land administered by the BLM. Grazing applications will continue to be processed consistent with the BLM's regulations (43 CFR 4130.1).

**Counties:** *The BLM Has Not Adequately Protected Livestock Grazing. The DRMP/DEIS fails to properly address grazing related issues, which is in violation of the Federal Land Policy and Management Act (“FLPMA”) (43 U.S.C. §§ 1701-1785), the Taylor Grazing Act (“TGA”) (43 U.S.C. §§ 315—315r), and the Public Rangelands Improvement Act (“PRIA”) (43 U.S.C. §§ 1901–1908), and any applicable regulations or policies of the Department of the Interior. These Federal mandates were implemented “to stabilize, preserve, and protect the use of public lands for livestock grazing purposes . . .” and to ensure the proper administration of such grazing. Barton v. United States, 609 F.2d 977 (10th Cir. 1979).*

*The purpose of the TGA, as explained by the Tenth Circuit, was to “establish[] a threefold legislative goal to regulate the occupancy and use of the federal lands, to preserve the land and its resources from injury due to overgrazing, and ‘to provide for the orderly use, improvement, and development of the range.’” Public Lands Council v. Babbitt, 154 F.3d 1160, 1161 (10th Cir. 1998). “One of the key issues the [TGA] was intended to address was the need to stabilize the livestock industry by preserving ranchers’ access to the federal lands in a manner that would guard the land against destruction.” Id.*

*The TGA requires the Secretary of the Interior to “do any and all things necessary to accomplish the purposes of [the TGA] and to insure the objects of such grazing districts, namely to regulate their occupancy and use, to preserve the land and its resources from destruction or unnecessary injury, [and] to provide for the orderly use, improvement and development of the range . . . .” 43 U.S.C. § 315a. PRIA defines the term “rangeland” or “public rangeland” to mean BLM administered land “on which there is domestic livestock grazing or which the Secretary concerned determines may be suitable for livestock grazing.” 43 U.S.C. § 1902(a). Additionally, the TGA requires that the BLM adequately protect grazing privileges. 43 U.S.C. §§ 315a, 315b.*

*The DRMP/DEIS states that the under the Proclamation, the “[l]aws, regulations, and polices followed by the Bureau of Land Management in issuing and administering grazing permits or leases on all lands under its jurisdiction shall continue to apply with regard to lands in the monument.” DRMP/DEIS at 103. However, in other places the DRMP/DEIS states that the*

*BLM may have to use conservative stocking levels for sage-grouse and that some grazing allotments might suffer “minor adjustments.” Id. at xii; 340.*

*Even though at first glance, the BLM indicates that grazing will continue at the current levels, a more detailed analysis indicates many instances where the BLM may negatively impact grazing under this DRMP/DEIS. These instances include statements such as:*

- *“Therefore, concentrations of livestock on leks or other key sage-grouse habitats would be avoided by using conservative stocking levels, locating salt or other supplements away from leks or crucial winter habitat, adjusting grazing seasons and locating water facilities where they would not jeopardize habitat.” DRMP/DEIS at xii.*
- *The change of 73% of the Monument to be classified as VRM Class I or II instead of VRM III or IV. Id. at 264. This classification would seem to inhibit any range improvements that are necessary for livestock grazing. Id. at 154.*

*This negative impact on grazing is in direct violation of the BLM’s duty to adequately safeguard grazing under the TGA. 43 U.S.C. § 315b. Additionally, the BLM cannot decrease stocking rates, adjust seasons of use or take other negative actions against the permit without adequate monitoring data and without consulting with the grazing permittee.*

**Response:** Continued livestock grazing, as updated in watershed plans and grazing permit renewals that implement guidelines for livestock grazing to meet Standards for Rangeland Health (Chapter 2, page 24 of the Draft RMP/EIS), is common to all alternatives. Livestock grazing will continue to be governed by a number of laws and regulations that apply to grazing on all public land administered by the BLM. In addition, the BLM developed Standards for Rangeland Health and Guidelines for Livestock Grazing Management for Montana, North Dakota, and South Dakota which was approved by the Secretary of the Interior in August 1997. To protect the objects for which the Monument was designated livestock grazing will continue to be managed under the Lewistown District (Lewistown and Malta Field Offices) Standards for Rangeland Health and Guidelines for Livestock Grazing Management (BLM 1997). Livestock grazing on allotments in the Monument will continue to be allocated about 38,000 animal unit months (AUMs) of forage on an annual basis (Appendix N). Grazing applications will continue to be processed consistent with existing regulations (43 CFR 4100). This is clarified in the Proposed RMP/Final EIS under the livestock grazing section of Chapter 2.

Conservative stocking level is a stocking rate that would result in a moderate utilization level (or less) by livestock at the end of the grazing period for the year. A conservative stocking level would be established based on resource management goals including maintaining healthy vegetation; acceptable livestock performance; expected normal weather; and annual plant production.

Minor adjustments in livestock grazing occur regularly in response to weather conditions, available water, breeding programs, marketing, etc. Minor adjustments can be adjustments in seasons of use either ahead or back 14 days or less, adjustments in stocking of less than 10% for a pasture, relocation of salt (or other attractants), or available water and other grazing management practices (43 CFR 4130.4). The means of responding to minor adjustments vary depending on the flexibility of the operation. Adjustments include meeting multiple use goals and objectives such as Standards for Rangeland Health, wildlife habitat/forage, recreation opportunities and other natural resource related goals.

Under the Preferred Alternative in the Proposed RMP/Final EIS, in VRM Class I areas the BLM may, if necessary, prohibit new surface-disturbing activities if such activities are not designed to meet the intent of the visual quality objectives. Maintenance of existing range improvements and other structures in VRM Class I areas would be allowed. In the WSAs the VRM Class I designation would not prevent the construction of structures or maintenance of existing structures that would be allowed in the WSAs under the Interim Management Policy. For new projects in VRM Class II, Class III and Class IV areas the BLM would reduce the visual contrast on BLM land in the existing landscape by utilizing proper site selection; reducing soil and vegetative disturbance; choice of color; and over time, returning the disturbed area to a seamless, natural landscape. Maintenance of existing range improvements and other structures would be allowed.

### **Oil and Gas Activity**

**Counties:** *Impact to Blaine County: the proposed rules and regulations on the drilling of leased lands, the problems to get pipelines laid, the problems getting workover rigs to and from the well sites and the VRM designations that were changed from 3 & 4s in Blaine County to 1 & 2s.*

**Response:** The 43 federal oil and gas leases in the Monument are considered to have valid existing rights based on the Proclamation that states, “The establishment of this monument is subject to valid existing rights. The Secretary of Interior shall manage development on existing oil and gas leases within the monument, subject to valid existing rights, so as not to create any new impacts that would interfere with the

proper care and management of the objects protected by this proclamation.”

The BLM’s goal is to provide reasonable oil and gas exploration and development on existing leased land without diminishing the objects of the Monument. The BLM identified Alternative F as the Preferred Alternative because it would allow development on the existing oil and gas leases while protecting the objects of the Monument. Under the Preferred Alternative, the existing lease stipulations would be strengthened by implementing reasonable conditions of approval under BLM’s authority to protect the objects in the Monument based on the Proclamation. The conditions of approval would apply to all the oil and gas lease acreage (42,805 acres) in the Monument. The conditions of approval would be applied to the Application for Permit to Drill (APD) after an onsite evaluation indicates the presence of the specific resource and after considering the waivers, exceptions and modifications detailed in Appendix O.1 of the Proposed RMP/Final EIS. The conditions of approval are consistent with the terms of the leases and based on the analysis in this document.

Based on the reasonable foreseeable development and applying the conditions of approval, there could be the potential for 34 natural gas wells drilled on federal minerals in the Monument. There could also be the potential for 21 wells within 1/2 mile of the Monument on federal minerals. Under Alternative A (Current Management) there could be the potential for 35 natural gas wells.

#### **Oil and Gas Leasing within the Monument**

**Counties:** *Impact to Blaine County: The fact that the industry is reluctant to lease any lands in or near the monument.*

**Response:** The Proclamation designating this Monument closed federal minerals to future oil and gas leasing, which may have the potential to affect the leasing of state or fee minerals. The BLM has no control over this issue as the Proclamation is an Executive Order. It has never been within the BLM’s scope or authority to revise it.

#### **Hunting**

**Counties:** *The Counties do not agree with the BLM’s statement that approximately 100 people per week use the Missouri River Breaks uplands and 300-500 people during the opening of big game season. DRMP/DEIS at 200. The BLM should explain where it got these numbers and provide any documentation to back these numbers.*

**Response:** The BLM has not focused visitor use data collection efforts on the upland areas as they have on the

Missouri River. As a result, the numbers provided are the professional estimate of field staff long familiar with the area and anecdotal information from local residents and other agencies and staffs. Additional information from Montana Fish, Wildlife and Parks is included under the Recreation section of Chapter 3 for the hunting districts that cover the Monument.

#### **Motorized Watercraft – No Change**

**Counties:** *We, since 1976, have been getting along fine, both power boaters and canoers.*

*We felt all along that boaters and floaters have gotten along since 1975 when this plan was put in, we should have left it that way.*

*The motorboat issue is another issue that we have since 1976 had the laws in place and everybody's gotten along -- canoers and floaters. Now all of a sudden we are singling out one group and saying you are not going to take a motorboat on that river upstream from a certain time to a certain time or you are not going to come down it at a no-wake speed.*

**Response:** Since 1976 visitor use has increased from approximately 2,000 boaters per year to nearly 6,000 boaters per year. Motorized craft on the river increased from 107 in 1980 to 458 in 2006. That is a 328% increase of motorized watercraft over a 26-year period. In a 2001 survey of boaters using the river between Fort Benton and the Fred Robinson Bridge, 51% of respondents said they encountered a motorized boat sometime during their trip. More significant, since the 2001 survey motorized craft on the river increased from 197 boats to 458 boats. That is a 132% increase in just five years. The increase in motorized craft makes it more difficult to protect and enhance the value of quiet and solitude, which is one of the Outstandingly Remarkable Values the BLM is directed by law to protect under the Wild and Scenic Rivers Act. The Preferred Alternative protects and enhances the value of quiet and solitude while at the same time provides a range of opportunities, motorized and non-motorized, consistent with public use and enjoyment of Monument resources.

**Counties:** *Leave the boating restrictions the way they are currently (Alternative A).*

**Response:** The BLM is directed by the Wild and Scenic Rivers Act to protect and enhance the values which caused the river to be included in the Wild and Scenic River System. This includes establishing various degrees of intensity for protection and development based on the special attributes (Outstandingly Remarkable Values – ORVs) of the area. The BLM is further directed by the Proclamation to protect objects of the Monument. One of the original 1977 management

objectives for the Upper Missouri National Wild and Scenic River was to minimize noise pollution in zones valued for their aura of quiet and solitude (A Management Plan for the Upper Missouri Wild and Scenic River, September 1977). A seasonal downstream no-wake restriction on motorized craft was implemented to achieve this objective. Since that time visitor use has increased from approximately 2,000 boaters per year to nearly 6,000 boaters per year. Motorized craft on the river increased from 107 in 1980 to 458 in 2006. That is a 328% increase of motorized watercraft over a 26-year period. In a 2001 survey of boaters using the river between Fort Benton and the Fred Robinson Bridge, 51% of respondents said they encountered a motorized boat sometime during their trip. More significant, since the 2001 survey motorized craft on the river increased from 197 boats to 458 boats. That is a 132% increase in just five years. The increase in motorized craft makes it more difficult to protect and enhance the value of quiet and solitude, which is one of the ORVs the BLM is directed by law to protect under the Wild and Scenic Rivers Act.

To address this issue BLM incorporated public comment with management goals and a careful analysis of visitor use patterns and trends to develop a balanced watercraft management alternative. The Preferred Alternative in the Proposed RMP/Final EIS protects and enhances the value of quiet and solitude while at the same time provides a range of opportunities, motorized and non-motorized, consistent with public use and enjoyment of Monument resources. Further, BLM was able to expand opportunities for motorized use by restructuring the seasonal restriction period to include additional days in June for motorized use not available under current management. To protect and enhance the value of quiet and solitude, under the Preferred Alternative the wild and scenic segments from Holmes Council Island to the Fred Robinson Bridge (river miles 92.5 to 149) would have a seasonal restriction from June 15 to September 15. Motorized watercraft traveling downstream at a no-wake speed would be allowed on Thursday through Saturday. On Sunday through Wednesday motorized watercraft travel would not be allowed. Personal watercraft and floatplanes would not be allowed on this segment of the river yearlong. See Chapter 2 of the Proposed RMP/Final EIS, Table 2.22, for a complete description of motorized use on the Upper Missouri River.

**Counties:** *Boating regulations currently in place should remain in place (Alternative A). Boating has been a longstanding traditional use of the local communities. If the BLM restricts motorboat use then non-motorboat use should be restricted at the same times as motorboats are present on the river. Moreover, the BLM chose more restrictive boating restrictions despite the Counties and Resource Advisory Committee recommendations that the*

*boating restrictions stay the same as they had been as the current restrictions are already onerous. Boating restrictions should be left as they are now. It was recommended by the RAC that all rules and regulations in place now be left when the monument was first formed. It was voted on once by our core team to leave them as they are now. Putting these new restrictions in place is in violation of the local customs, cultures and traditions. It is discrimination against one group of users when nowhere in the plan do we restrict non-motor boat users from using the river. Nowhere in the proclamation does it state that you have to provide a quiet river for some people.*

**Response:** The BLM incorporated public comment with management goals and a careful analysis of visitor use patterns and trends to develop a balanced watercraft management alternative. The Preferred Alternative in the Proposed RMP/Final EIS protects and enhances the value of quiet and solitude while at the same time provides a range of opportunities, motorized and non-motorized, consistent with public use and enjoyment of monument resources. Further, BLM was able to expand opportunities for motorized use by restructuring the seasonal restriction period to include additional days in June for motorized use not available under current management. To protect and enhance the value of quiet and solitude, under the Preferred Alternative the wild and scenic segments from Holmes Council Island to the Fred Robinson Bridge (river miles 92.5 to 149) would have a seasonal restriction from June 15 to September 15. Motorized watercraft traveling downstream at a no-wake speed would be allowed on Thursday through Saturday. On Sunday through Wednesday motorized watercraft travel would not be allowed. Personal watercraft and floatplanes would not be allowed on this segment of the river yearlong. See Chapter 2 of the Proposed RMP/Final EIS, Table 2.22, for a complete description of motorized use on the Upper Missouri River.

#### **Motorized Watercraft – Allow Motors**

**Counties:** *The BLM should not restrict motorboats or travel because someone does not want to hear noise. Everyone can define noise differently. Moreover, nowhere in the Proclamation is “quiet” listed.*

**Response:** The BLM is directed by the Wild and Scenic Rivers Act to protect and enhance the values which caused the river to be included in the Wild and Scenic River System. This includes establishing various degrees of intensity for protection and development based on the special attributes (Outstandingly Remarkable Values – ORVs) of the area. BLM is further directed by the Proclamation to protect objects of the Monument. One of the original 1977 management objectives for the Upper Missouri National Wild and Scenic River was to minimize noise pollution in zones

valued for their aura of quiet and solitude (A Management Plan for the Upper Missouri Wild and Scenic River, September 1977). A seasonal downstream no-wake restriction on motorized craft was implemented to achieve this objective. Since that time visitor use has increased from approximately 2,000 boaters per year to nearly 6,000 boaters per year. Motorized craft on the river increased from 107 in 1980 to 458 in 2006. That is a 328% increase of motorized watercraft over a 26-year period. In a 2001 survey of boaters using the river between Fort Benton and the Fred Robinson Bridge, 51% of respondents said they encountered a motorized boat sometime during their trip. More significant, since the 2001 survey motorized craft on the river increased from 197 boats to 458 boats. That is a 132% increase in just five years. The increase in motorized craft makes it more difficult to protect and enhance the value of quiet and solitude, which is one of the ORVs the BLM is directed by law to protect under the Wild and Scenic Rivers Act.

To address this issue BLM incorporated public comment with management goals and a careful analysis of visitor use patterns and trends to develop a balanced watercraft management alternative. The Preferred Alternative in the Proposed RMP/Final EIS protects and enhances the value of quiet and solitude while at the same time provides a range of opportunities, motorized and non-motorized, consistent with public use and enjoyment of Monument resources. Further, BLM was able to expand opportunities for motorized use by restructuring the seasonal restriction period to include additional days in June for motorized use not available under current management. To protect and enhance the value of quiet and solitude, under the Preferred Alternative the wild and scenic segments from Holmes Council Island to Fred Robinson Bridge (river miles 92.5 to 149) would have a seasonal restriction from June 15 to September 15. Motorized watercraft traveling downstream at a no-wake speed would be allowed on Thursday through Saturday. On Sunday through Wednesday motorized watercraft travel would not be allowed. Personal watercraft and floatplanes would not be allowed on this segment of the river yearlong. See Chapter 2 of the Proposed RMP/Final EIS, Table 2.22, for a complete description of motorized use on the Upper Missouri River.

#### **Motorized Watercraft – Administrative Use**

**Counties:** *Landowners should have automatic administrative use up or down stream to administer grazing permits without prior notification to the BLM. See DRMP/DEIS at xviii. The River should be no different from a road to administer an individual's lease.*

*We do not support the idea of permit holders having to get prior approval to go up or down river with a motor boat to administer these leases. We do not have to get*

*prior approval to use a closed road to administer our leases, nor should we.*

**Response:** Under the Preferred Alternative, livestock grazing permittees would be allowed upstream travel to administer their grazing permit with prior notification to the BLM. In emergency situations, verbal notification from the permittee would suffice; for planned or known livestock grazing permit administrative work, a letter of exemption would be needed prior to motoring upstream. See Chapter 2 of the Proposed RMP/Final EIS, Upper Missouri River Special Recreation management Area (SRMA), Alternative F (Preferred Alternative), Motorized Watercraft, for a complete description of motorized use on the Upper Missouri River.

#### **Transportation**

**Counties:** *Quick initial attack is the key to keeping a small fire from becoming a major incident. Roadless areas are a great concern to all the districts in this county. Within the Monument there are approximately eighty one thousand acres of private land that the responding agencies are responsible for. We recommend that all current roads and airstrips be maintained and remain open, at the very least, to the standards that they are now.*

**Response:** Travel off road and on closed roads would be allowed for any military, fire, search and rescue, or law enforcement vehicle used for emergency purposes.

#### **Aircraft Landings**

**Counties:** *Support the option of a minimum of six runways as noted in the current plan. Further that the BLM participate in with financial assistance in their budget.*

*The use of airstrips should stay as close to Alternative F as possible.*

**Response:** The Preferred Alternative recommends that six airstrips (selected to avoid clusters) would remain open to provide opportunities for recreational backcountry activities such as camping, hiking, and sightseeing. The six airstrips are Black Butte North, Bullwhacker, Cow Creek, Knox Ridge, Left Coulee, and Woodhawk. Five of the airstrips would be open yearlong while the Woodhawk airstrip would be restricted seasonally to provide wildlife habitat security during the fall hunting season (September 1 to November 30).

**Counties:** *After hearing concerns over the past couple weeks about not wanting airstrips in the monument because of poaching and wildlife and game harassment, I called our local Fish, Wildlife & parks personnel yesterday. They informed me that these people that*

*break the laws are going to do it whether we have 10 airstrips in the monument or none.*

**Response:** Under the Preferred Alternative, five of the airstrips would be open yearlong while the Woodhawk airstrip would be restricted seasonally to provide wildlife habitat security during the fall hunting season (September 1 to November 30).

Pilots using the six landing strips which would remain open have observed wildlife using these areas even during landings and take-offs. The open, grass airstrips provide feeding zones for area wildlife.

Montana Fish, Wildlife and Parks has specific regulations pertaining to the use of aircraft during the hunting season.

### **Roads (General)**

**Counties:** *All roads to State and private land must remain open for public or permissive use to access private property or State property.*

**Response:** Under the Preferred Alternative in the Proposed RMP/Final EIS BLM roads providing motorized access to the boundary of private land would remain open for public, private landowner and administrative travel with the exception of two roads (one road is impassable and the other road is currently limited to administrative use). There are 65 miles of BLM roads providing access to private land that would be designated open yearlong and 2 miles (two roads) that would be designated closed.

BLM roads to the boundary of state land would remain open for administrative travel including state leaseholders. These roads would also be open for public travel, if shown to meet Monument objectives. The BLM would coordinate with state agencies on roads open to the public that lead to or from state land. There are about 80 miles of BLM roads providing access to state land; 59 miles would be open yearlong, 13 miles open seasonally, and 8 miles closed.

### **Counties:**

- *There is a local tradition of lion hunting that is dependent upon roads being left open. Nowhere has the BLM considered this tradition.*
- *The Proclamation states that the designation of the Monument is not to increase or decrease the ability of Montana to manage fish and wildlife. However, in contrast to that stated goal, under the DRMP/DEIS the BLM is planning to close many necessary roads that allow the hunters to reach big game hunting and fishing areas. If hunters cannot reach the game, they will not be able to harvest it, which means that Montana will be less able to*

*manage the numbers of big game. The BLM has not considered how its transportation plan will negatively impact hunting.*

- *The BLM's proposed transportation plan for the Monument clearly impacts the State's ability to manage game species by the unjustifiable closing of key hunting access roads in the Monument area. Access to game hunting areas is key to game harvest and retrieval in the rugged terrain of the Monument. In fact, promotion of public access to hunting areas is a top priority for the State's game management officials and continues to be a huge public interest issue in Montana.*
- *The BLM makes broad generalizations that the proposed road closures are needed to protect the biological objects of the Monument. To enable a credible critique of the road closures or restrictions to be made by the public, the BLM must delineate the science and data used to develop the road closure plan. Additionally, for the plan to hold legitimacy, the BLM must be compelled to summarize the coordination made with the State of Montana and confirm that the State has agreed to relinquish its game management ability with respect to reduced hunter access, a diminishment that is clearly prohibited by the Proclamation and one that runs counter to public access improvements being sought by the State.*
- *By reducing hunter access to the Monument, the BLM adversely impacts the State's ability to achieve game harvest goals and significantly detracts from the BLM's ability to manage habitat. For example, the BLM's watershed plan for the Monument provides for 60 percent of the available forage to be reserved for game animals with 40 percent reserved for livestock grazing. Game harvest is a key tool in keeping game herds in balance with forage consumption goals. Reducing hunter access to the Monument compromises both the State's and the BLM's abilities to keep game animals in balance with the carrying capacity of the habitat. Access is key to game harvest success. Failure to protect this management concept forces grazing consumption goals to be born by domestic livestock and could easily result in reducing livestock AUMs.*
- *The DRMP/DEIS presents no evidence of any coordination with or concurrence by the Counties or State with regard to the advisability or scientific validity of road closures in the Monument. The BLM's stated goal to protect biological objects conflicts directly with and hinders the State's lawful mandate to manage game animals. The BLM's stated goal to provide access to the Monument to provide for diverse activities, DRMP/DEIS at xxvi, is likewise compromised.*

*In addition to the problems with the BLM's transportation plan in the DRMP/DEIS stated above, the BLM also has failed to articulate scientifically based reasons for the road closures. The BLM has provided no discernable logic for its proposed road closures. The BLM cannot delineate game animal distribution, winter range, crucial winter range/habitat and lambing areas unless either the BLM is using maps provided and approved by the State of Montana or the BLM has developed its own maps through a public participation process. However, with the current DRMP/DEIS, a reader cannot determine the methodology, science or data used by the BLM to make its determination.*

*Therefore, my clients find the current DRMP/DEIS is lacking in pertinent information to provide meaningful comments. If there is to be meaningful public comment on the transportation plan, the BLM must by more forthcoming in addressing how game distribution and key habitat areas were delineated. In addition, those areas must have been delineated through a public process.*

**Response:** The BLM's goal is to manage legal and physical access to and within the Monument to provide opportunities for diverse recreation activities (motorized and non-motorized) while protecting the features of the Monument. The criteria used to develop the alternatives are included in Chapter 2 of the Proposed Final RMP/EIS (Table 2.27).

Under the Preferred Alternative in the Proposed RMP/Final EIS the BLM's objectives would be to retain roads to access areas commonly used for dispersed recreation (hunting, geological areas, Level III and IV sites, and trailheads), recreation sites (fishing reservoirs, scenic overlooks and historic homesteads), gas well sites, major range improvement projects, and backcountry airstrips. About 293 miles would be open yearlong and 111 miles would be open seasonally. However, the majority (69%) may require permission from the private landowner before the public could travel with a motorized vehicle on these BLM roads. The BLM would reduce the number of parallel and spur roads (172 miles) and some roads in areas with important wildlife habitat (1 mile), in areas considered unsuitable due to erosion and slope (13 miles), and in other areas (15 miles). There are 201 miles proposed for closure.

Recreational activities associated with public motorized access such as hunting (includes lion hunting), sightseeing, watching wildlife, etc. would be limited to travel on 404 miles of BLM roads (67% of the existing roads). This includes 242 miles of two-track resource roads.

The Montana Fish, Wildlife and Parks (MFWP) is responsible for fish and wildlife population management. Wildlife information for areas within the Monument was

compiled or provided by BLM and MFWP biologists in three BLM offices and two MFWP Regions. Information on populations and distribution was collected by both agencies, and concurrence was made on all distribution and habitat maps. Early confusion between BLM and MFWP on winter range was responsible for some of the misleading winter range delineations in the Draft RMP/EIS. Additional inventory and consultation between agency biologists have better defined this habitat for the Proposed RMP/Final EIS. The wildlife habitat maps in Chapter 3 have been updated, including antelope winter range, elk winter range, and mule deer winter range. The maps also refer to the source of the information (Montana Fish, Wildlife and Parks).

Coordination with local units of government has occurred during development and preparation of the RMP/EIS. Area counties and the state were designated as cooperating agencies, and the tribal governments were consulted on development of the RMP. County and state representatives attended numerous RMP team meetings and participated in working groups, assisting in scoping and alternatives development for the RMP, along with providing review of internal working documents used to prepare both the Draft RMP/EIS and Proposed RMP/Final EIS. The process of coordination and consultation does not necessarily ensure, nor require, that all parties reach consensus on every aspect of the Proposed RMP. However, the process achieved its intended result by identifying potential issues and resolving points of disagreement over resource use whenever possible.

**Counties:** *The BLM's stated goal is to make the necessary road closures to protect the "objects" designated by the Proclamation. Id. at 28. However, the DRMP/DEIS fail to make any rational connection between the road closures and the protection of those objects. It seems that the BLM is using the Monument designation to manage the land more like wilderness, a designation that Congress has not approved.*

*The BLM has concluded that closing roads will benefit wildlife; however, nowhere in the DRMP/DEIS is there any scientific or local studies or data to sustain such a conclusion. In fact, the bighorn sheep herd in the affected area actually moved to an area where there was a local road that was used frequently. This herd has thrived and is now being used as a resource to start other herds because of the health of this herd. If the road bothered the bighorn sheep, they would not have moved to this area and thrived.*

*As mentioned earlier, NEPA requires that the BLM use best available science and quality data to make its decisions. City of Sausalito v. O'Neill, 386 F.3d 1186, 1213 (9th Cir. 2004). In this DRMP/DEIS the BLM has not mentioned any adequate science or data upon which*

to base its decision to manage the Monument designated lands into a wilderness like area.

Also, in addition to NEPA requiring the BLM to use best available science and quality data and to determine the impacts on the local culture and economy, the BLM is required to balance these impacts after it has done the initial analysis. Nowhere in the DRMP/DEIS does the BLM attempt to explain how it is going to balance or coordinate these impacts on the environment caused by the BLM's plan.

**Response:** The criteria used to develop the alternatives are included in Chapter 2 of the Proposed Final RMP/EIS (Table 2.29). These criteria are applicable to some of the BLM roads located in the Upper Missouri National Wild and Scenic River, the Cow Creek ACEC, and wildlife habitat in the Monument (several of the objects identified in the Proclamation). An example is the seasonal closure of certain roads for wildlife habitat security. For additional information see the Access and Transportation section of the Chapter 2.

Under the Preferred Alternative in the Proposed RMP/Final EIS the BLM's objectives would be to retain roads to access areas commonly used for dispersed recreation (hunting, geological areas, Level III and IV sites, and trailheads), recreation sites (fishing reservoirs, scenic overlooks and historic homesteads), gas well sites, major range improvement projects, and backcountry airstrips. About 293 miles would be open yearlong and 111 miles would be open seasonally. However, the majority (69%) may require permission from the private landowner before the public could travel with a motorized vehicle on these BLM roads. The BLM would reduce the number of parallel and spur roads (172 miles) and some roads in areas with important wildlife habitat (1 mile), in areas considered unsuitable due to erosion and slope (13 miles), and in other areas (15 miles). There are 201 miles proposed for closure.

Currently in the Missouri Breaks area we do not see motorized use (vehicle travel) at levels that are significantly impacting wildlife. Many of the roads receive very little traffic due to limited public access, condition of the road, and seasonal weather changes (wet spring or dry, hot summer). Under the Preferred Alternative, there would be roads designated open to public travel in wildlife habitat security areas and wildlife winter range areas.

The road system could be modified if vehicle use traffic patterns or resource conditions change. Modifications to the road system would be based on the management guidance under the Preferred Alternative in the Proposed RMP/Final EIS, including the factors listed in Table 2.29, and changes would be addressed through a travel

plan update with public participation and environmental review.

The BLM makes every effort to ensure that information it presents in the RMP/EIS is accurate. One of the reasons for public review of a Draft RMP/EIS is to provide the public and other agencies with the opportunity to identify specific information or analyses it believes to be inaccurate so it can be corrected or updated. While occasionally inaccurate information may remain undetected even after agency and public review, such accidental occurrences are usually rare and should not involve information critical to a reasoned choice among alternatives.

**Counties:** *The DRMP/DEIS offers no correlation between the roads to be closed, the habitat to be secured and the wildlife to be protected ostensibly from the impacts of vehicle disturbance on the species of concern.*

**Response:** The criteria used to develop the alternatives are included in Chapter 2 of the Proposed Final RMP/EIS (Table 2.29). Under the Preferred Alternative in the Proposed RMP/Final EIS the BLM's objectives would be to retain roads to access areas commonly used for dispersed recreation (hunting, geological areas, Level III and IV sites, and trailheads), recreation sites (fishing reservoirs, scenic overlooks and historic homesteads), gas well sites, major range improvement projects, and backcountry airstrips. About 293 miles would be open yearlong and 111 miles would be open seasonally. However, the majority (69%) may require permission from the private landowner before the public could travel with a motorized vehicle on these BLM roads. The BLM would reduce the number of parallel and spur roads (172 miles) and some roads in areas with important wildlife habitat (1 mile), in areas considered unsuitable due to erosion and slope (13 miles), and where unique geologic formations, cultural sites or riparian areas are being degraded. There are 201 miles proposed for closure.

The environmental consequences section of the Draft RMP/EIS and Proposed RMP/Final EIS address the impacts from the six transportation plans discussed in Chapter 2. This includes the direct, indirect, and cumulative impacts.

Currently in the Missouri Breaks area we do not see motorized use (vehicle travel) at levels that are significantly impacting wildlife. Many of the roads receive very little traffic due to limited public access, condition of the road, and seasonal weather changes (wet spring or dry, hot summer). Under the Preferred Alternative, there would be roads designated open to public travel in wildlife habitat security areas and wildlife winter range areas.

The road system could be modified if vehicle use traffic patterns or resource conditions change. Modifications to the road system would be based on the management guidance under the Preferred Alternative in the Proposed RMP/Final EIS, including the factors listed in Table 2.29, and changes would be addressed through a travel plan update with public participation and environmental review.

**Counties:** *The DRMP/DEIS fails to make any logical, scientific connection between the proposed road closures and restrictions and any perceived or actual benefit such road closures might have on wildlife.*

**Response:** The criteria used to develop the alternatives are included in Chapter 2 of the Proposed Final RMP/EIS (Table 2.29). Under the Preferred Alternative in the Proposed RMP/Final EIS the BLM's objectives would be to retain roads to access areas commonly used for dispersed recreation (hunting, geological areas, Level III and IV sites, and trailheads), recreation sites (fishing reservoirs, scenic overlooks and historic homesteads), gas well sites, major range improvement projects, and backcountry airstrips. About 293 miles would be open yearlong and 111 miles would be open seasonally. However, the majority (69%) may require permission from the private landowner before the public could travel with a motorized vehicle on these BLM roads. The BLM would reduce the number of parallel and spur roads (172 miles) and some roads in areas with important wildlife habitat (1 mile), in areas considered unsuitable due to erosion and slope (13 miles), and in other areas (15 miles). There are 201 miles proposed for closure.

The environmental consequences section of the Draft RMP/EIS and Proposed RMP/Final EIS address the impacts from the six transportation plans discussed in Chapter 2. This includes the direct, indirect, and cumulative impacts.

**Counties:** *If you believe that closing or seasonally closing roads to private land and working ranches is not a disruption to their business or private property rights, then you're wrong.*

**Response:** Under the Preferred Alternative in the Proposed RMP/Final EIS, BLM roads providing motorized access to the boundary of private land would remain open for public, private landowner and administrative travel with the exception of two roads (one road is impassable and the other road is currently limited to administrative use). There are 65 miles of BLM roads providing access to private land that would be designated open yearlong and 2 miles (two roads) that would be designated closed.

**Counties:** *Impact to Blaine County: The closure of roads especially private roads that was, in our opinion,*

*caused by the establishment of the monument, restricting hunting and recreation.*

**Response:** Under the Preferred Alternative in the Proposed RMP/Final EIS, BLM roads providing motorized access to the boundary of private land would remain open for public, private landowner and administrative travel with the exception of two roads (one road is impassable and the other road is currently limited to administrative use). There are 65 miles of BLM roads providing access to private land that would be designated open yearlong and 2 miles (two roads) that would be designated closed.

Under the Preferred Alternative in the Proposed RMP/Final EIS, the BLM's objectives would be to retain roads to access areas commonly used for dispersed recreation (hunting, geological areas, Level III and IV sites, and trailheads), recreation sites (fishing reservoirs, scenic overlooks and historic homesteads), gas well sites, major range improvement projects, and backcountry airstrips. About 293 miles would be open yearlong and 111 miles open seasonally (67% of the road system).

A reduction in the miles of open BLM roads would decrease the potential spread of noxious and invasive plants from motorized travel. The closure of 201 miles of unimproved, two-track resource roads could reduce the spread of weeds to other roads.

**Counties:** *The purported impact of roads on bighorn sheep is especially questionable. When the sheep were reintroduced into the Monument area, the roads and associated vehicle travel were already in place. The sheep chose wintering and lambing areas with those roads in place and have not been impacted in any way. In fact, even the Proclamation acknowledges the robust nature of this sheep herd by referring to it as "one of the premier big horn sheep herds in the continental United States."*

**Response:** Currently in the Missouri Breaks area we do not see motorized use (vehicle travel) at levels that are significantly impacting wildlife. Many of the roads receive very little traffic due to limited public access, condition of the road, and seasonal weather changes (wet spring or dry, hot summer). Under the Preferred Alternative in the Proposed RMP/Final EIS there would be roads designated open to public travel in wildlife habitat security areas and wildlife winter range areas.

The Preferred Alternative includes seasonal road restrictions for wildlife habitat security and big game winter range. The revised alternative does not include seasonal restrictions for bighorn sheep distribution or lambing.

The road system could be modified if vehicle use traffic patterns or resource conditions change. Modifications to the road system would be based on the management guidance under the Preferred Alternative in the Proposed RMP/Final EIS, including the factors listed in Table 2.29, and changes would be addressed through a travel plan update with public participation and environmental review.

**Counties:** *Historical vehicle travel on the roads subjected to closure/restriction is very low. Peak travel on these roads occurs during the fall hunting season. Tourism travel is a negligible factor throughout the year except perhaps on the main roads that are not subject to closure anyway.*

**Response:** The following specifications were used to determine which routes would be inventoried for the Monument transportation plan. Motorized travel is not considered cross-country (off-road) on BLM land when: (1) the motorized vehicle uses constructed roads that are maintained by the BLM (constructed roads are often characterized with cut and fill slopes); and (2) the motorized vehicle use is on clearly evident two-track routes with regular travel and continuous passage of motorized vehicles over a period of years. A two-track is where perennial vegetation is devoid or scarce, or where wheel tracks are continuous depressions in the soil yet evident to the casual observer and are vegetated.

A two-person seasonal inventory crew collected data on 436 miles of BLM roads (a total of 759 miles for all roads) during the summer of 2002 for the east half of the Monument, and another seasonal crew in 2004 collected additional information on 44 miles of BLM roads (a total of 81 miles for all roads) in the west half. Information on another 125 miles of BLM roads was obtained from existing data. The BLM roads in the Monument total 605 miles. Information collected for the roads included the number of lanes (two-track, single lane, etc.), surface type (natural unimproved, gravel surface, etc.), width, and improvements (culverts, cattleguards, etc.).

Limited traffic data is available for the collector roads (Cow Island, Knox Ridge, Kipp Recreation Area, and Wood Bottom). Counters were also placed on two local roads (Bullwhacker and Middle Two Calf).

**Counties:** *The BLM's prime justification for road closures appears to be from two sources. First, Canfield (1999) and Geist (1978) state that forced activity on wildlife caused by human disturbance exacts an energy deficit on animals that is greater during the winter months. While that may be true, no one has ever documented any adverse impacts from vehicle travel on wildlife in the Monument. Second, another study that presumably had marked influence on the BLM's road closure plan is a study conducted by the Wilderness Society entitled *Ecological Effects of a Transportation**

*Network on Wildlife: A Spatial Analysis of the Upper Missouri River Breaks National Monument. This study has not been validated by peer review, is parochial in nature, and is an undisguised effort by the Wilderness Society to impart roadless, wilderness style management in the Monument. The influence of this study appears to be the foundation for the rationale behind the BLM's transportation plan.*

**Response:** The 201 miles closed are mostly two-track resource roads where the closures were determined by using the criteria listed in Table 2.29 of the Proposed RMP/Final EIS. Under the Preferred Alternative in the Proposed RMP/Final EIS the BLM would reduce the number of parallel and spur roads (172 miles) and some roads in areas with important wildlife habitat (1 mile), in areas considered unsuitable due to erosion and slope (13 miles), and in other areas (15 miles). Road density was not one of the criteria. Road density is part of the analysis and discussion in the environmental consequences section of the document, Chapter 4.

#### **Roads (75% within 1/2 Mile)**

**Counties:** *A valid, scientific argument for road closures must be based on the following concepts: (1) Those objects mandated for protection by the Proclamation must all be identified and located. Wildlife are not objects. (2) Threats to those objects must be identified and validated either by study or documented past experience. Only those roads that offer documented/valid threats to specific objects should be slated for closure or seasonal restriction. Closures should be implemented only after all mitigating opportunities have been considered and/or failed. It is obvious the BLM has not followed either of these precepts.*

*The proposed closure or seasonal restrictions of two-thirds of the roads in the Monument only serves to concentrate visitor use and will compound many times the current damage to the resource. User conflicts will vastly increase, camping areas will become more concentrated, hunters will be forced into more concentrated hunting scenarios. Stress on game will be more focused than ever and hunter safety will become a significant issue. Road closures in the Monument will create significantly more problems than they will solve.*

*BLM enforcement of road closures during the hunting season will be problematic as hunters who have traditionally hunted the Monument area will not be willing to give up the hunting access they have cherished for so long. While the public may accept road closures with documented scientific and logical validity, the majority of the BLM's proposed road closures lack credibility. The BLM should anticipate a major public protest, if not civil disobedience, if the proposed transportation plan is implemented in its present form.*

Not only does the DRMP/DEIS present an incoherent transportation plan, the BLM's strategy of leaving one-third of the roads open, closing one-third of the roads, and seasonally restricting one-third of the roads is incomprehensible. Even more incredible, the roads slated for closure are identified based on the level of maintenance accorded them. For example, virtually all maintenance level I and II roads are slated for closure or seasonal restriction. The vast majority of the level I and II roads are two track roads. They do not require maintenance and in fact are best left unmaintained. Most of the use is during the hunting season when the vegetation is dead or dormant, the ground most likely frozen, and little environmental damage has ever been noted. It is essential to hunter access, game harvest success, and the ability to retrieve game that the BLM leave these two track roads open.

Revised Statute 2477 provides that "[t]he right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted." "R.S. 2477 'is but an offer of the right of way for the construction of a public highway on some particular strip of public land, and can only become fixed when a highway is definitely established and constructed in some one of the ways authorized by the laws of the state in which the land is situated.' In other words, R.S. 2477 is merely an offer from the federal government that could be accepted by actions taken locally." *Yeager v. Forbes*, 78 P.3d 241 (Wyo. 2003) (quoting *Richter v. Rose*, 962 P.2d 583 (Mont. 1998)).

The Tenth Circuit has recently ruled that (1) the burden of proving the existence of an R.S. 2477 right of way in court lies on the claimant; (2) continuous use over a specified period of time would establish an R.S. 2477 right of way in most Western States; (3) mechanical construction generally is not required; and (4) whether a route connected identifiable destinations is relevant, but not determinative, to whether it is a valid R.S. 2477 right of way. *Southern Utah Wilderness Alliance v. BLM*, 425 F.3d 735 (10th Cir. 2005). As the Department of Interior has recognized, it "must look to the particular laws of each State in which a claimed right of way is situated." *Dept. of Interior Memorandum (Departmental Implementation of Southern Utah Wilderness Alliance v. Bureau of Land Management (March 22, 2006))*.

The Department of the Interior has determined that for the proper administration of Federal lands there must be "communication and cooperation between holders or claimants of R.S. 2477 rights of way and land managers, rather than unilateral action." *Id.* In addition, the Department of the Interior has set forth guidelines to determine whether an R.S. 2477 claim is valid. *Id.* "R.S. 2477 rights of way must be 'public highways.' . . . [I]n general, a public highway is a definitive route or way that is freely open for all to use." *Id.* The right of way

must have existed before the public land was reserved for public use. *Id.* Lastly, "the establishment of a public right of way require[s] two steps: the landowner's objectively manifested intent to dedicate property to the public use as a right of way, and acceptance by the public." *Southern Utah Wilderness Alliance v. BLM*, 425 F.3d at 769. In Montana, acceptance is manifested by continuous public use over a specified period of time. See, e.g., *Parker v. Elder*, 758 P.2d 292, 293 (Mont. 1988); *State ex rel Dansie v. Nolan*, 191 P. 150, 153 (Mont. 1920). Depending on the year the road was established, the time period in Montana is either five or ten years.

The guidelines recently issued by then-Secretary Norton should be the guide for determining whether or not R.S. 2477 roads exist, and not the language put forth on page 24 of the DRMP/DEIS.

In addition, there are 81,000 acres of private land and 39,000 acres of State land within the Monument. Access to these lands cannot be closed. All roads to State and private land must remain open for public or permissive use to access private property or State property. Owners of the private land or whomever they give permission to should have unrestricted access to their private property.

Lastly, the DRMP/DEIS restricts travel by vehicle on the designated roads. The DRMP/DEIS keeps some of the roads designated as closed to vehicular traffic open to mountain biking and presumably all of the roads open to hiking. Foot traffic can have just as much, if not more, of an impact on wildlife than vehicles. The BLM cannot justify these closures.

**Response:** The BLM's vision is to manage the Monument in a manner that maintains and protects its biological, geological, visual and historic objects and preserves its remote and scenic character. The RMP will incorporate the Proclamation, multiple use and existing laws, while recognizing valid existing rights and authorizations, and providing diverse recreational opportunities.

The BLM's goal is to manage legal and physical access to and within the Monument to provide opportunities for diverse recreation activities (motorized and non-motorized) while protecting the features of the Monument. Under the Preferred Alternative in the Proposed RMP/Final EIS the BLM's objectives would be to retain roads to access areas commonly used for dispersed recreation (hunting, geological areas, Level III and IV sites, and trailheads), recreation sites (fishing reservoirs, scenic overlooks and historic homesteads), gas well sites, major range improvement projects, and backcountry airstrips. About 293 miles would be open yearlong and 111 miles would be open seasonally. A total of 81 miles of seasonally open BLM roads would be designated as big game retrieval roads during the hunting

season (September 1 through November 30). Hunters would only be able to drive on these resource roads from 10 a.m. to 2 p.m. each day to retrieve their wildlife harvest, but not as access to hunt.

The BLM would reduce the number of parallel and spur roads (172 miles) and some roads in areas with important wildlife habitat (1 mile), in areas considered unsuitable due to erosion and slope (13 miles), and where unique geologic formations, cultural sites or riparian areas are being degraded. The criteria used to develop the alternatives are included in Chapter 2 of the Proposed Final RMP/EIS (Table 2.29).

Under the Preferred Alternative 404 miles of BLM roads (67%) would be open at least part of the year for public motorized use. For administrative purposes travel would be authorized off road and on closed roads for BLM, other federal agencies, state and county agencies, lessees and permittees. Administrative purposes would be limited to those activities necessary to administer the permit or lease.

The road system could be modified if vehicle use traffic patterns or resource conditions change. Modifications to the road system would be based on the management guidance under the Preferred Alternative in the Proposed RMP/Final EIS, including the factors listed in Table 2.29, and changes would be addressed through a travel plan update with public participation and environmental review.

The BLM does not have the authority to make binding determinations on the validity of R.S. 2477 right-of-way claims. The BLM may, however, make informal, non-binding determinations for its own land use planning and management purposes. A non-binding determination that the right-of-way exists is required before completing consultation with states or counties on any proposed improvements to a claimed R.S. 2477 right-of-way, i.e., any work beyond routine maintenance. A non-binding determination may also be appropriate before taking action to close or otherwise restrict the use of a claimed R.S. 2477 right-of-way. Such determinations must be based on the particular laws of each state in which a claimed right-of-way is situated.

Under the Preferred Alternative in the Proposed RMP/Final EIS, BLM roads providing motorized access to the boundary of private land would remain open for public, private landowner and administrative travel with the exception of two roads (one road is impassable and the other road is currently limited to administrative use). There are 65 miles of BLM roads providing access to private land that would be designated open yearlong and 2 miles (two roads) that would be designated closed.

BLM roads to the boundary of state land would remain open for administrative travel including state

leaseholders. These roads would also be open for public travel, if shown to meet Monument objectives. The BLM would coordinate with state agencies on roads open to the public that lead to or from state land. There are about 80 miles of BLM roads providing access to state land; 59 miles would be open yearlong, 13 miles open seasonally, and 8 miles closed.

#### **Roads (Definition)**

**Counties:** *The need for any road closures to protect wildlife in the Monument is highly suspect. The FWP is required by law to manage game species throughout Montana. At no time has the FWP enjoined the BLM to close roads in the Monument area because of the adverse impact vehicle travel has had on wildlife.*

**Response:** Currently in the Missouri Breaks area we do not see motorized use (vehicle travel) at levels that are significantly impacting wildlife. Many of the roads receive very little traffic due to limited public access, condition of the road, and seasonal weather changes (wet spring or dry hot summer). Under the Preferred Alternative, there would be roads designated open to public travel in wildlife habitat security areas and wildlife winter range areas.

Montana Fish, Wildlife and Parks (MFWP) is responsible for fish and wildlife population management. The State of Montana is a cooperating agency with BLM for preparing the management plan for the Monument. As a cooperating agency MFWP has provided the BLM wildlife habitat data and input on the transportation plan.

The road system could be modified if vehicle use traffic patterns or resource conditions change. Modifications to the road system would be based on the management guidance under the Preferred Alternative in the Proposed RMP/Final EIS, including the factors listed in Table 2.29, and changes would be addressed through a travel plan update with public participation and environmental review.

**Counties:** *The one agreement we thought we had was to leave all roads to State and private land open for administrative travel or private land access. Although it states this is Alternative F, the narrative of page 200 reads totally different, only allowing private landowner access. This was changed after the preliminary draft was returned from Washington DC after the Secretary of the Interior viewed the document. It was done without the input from the counties. After questioning the BLM it was stated it was never their intent to write it the way we had requested or the way we thought the interpretation meant. When the counties researched the draft that the BLM State Director and the Secretary of the Interior saw it was clearly the way the counties had suggested. By rewriting the language the BLM closed roads we had left open in the first draft.*

*We also feel scientific data was not used in closing roads. You cannot use data that indicates impacts of vehicle traffic to wildlife that was done in mountainous regions as our area is totally different and vehicle traffic does not have the same effect on wildlife in the Breaks. This was brought up in one of our meetings by a staff member of the BLM from Malta.*

**Response:** Under the Preferred Alternative in the Proposed RMP/Final EIS, BLM roads providing motorized access to the boundary of private land would remain open for public, private landowner and administrative travel with the exception of two roads (one road is impassable and the other road is currently limited to administrative use). There are 65 miles of BLM roads providing access to private land that would be designated open yearlong and 2 miles (two roads) that would be designated closed.

BLM roads to the boundary of state land would remain open for administrative travel including state leaseholders. These roads would also be open for public travel, if shown to meet Monument objectives. The BLM would coordinate with state agencies on roads open to the public that lead to or from state land. There are about 80 miles of BLM roads providing access to state land; 59 miles would be open yearlong, 13 miles open seasonally, and 8 miles closed.

The criteria used to develop the alternatives are included in Chapter 2 of the Proposed Final RMP/EIS (Table 2.29). Under the Preferred Alternative in the Proposed RMP/Final EIS the BLM's objectives would be to retain roads to access areas commonly used for dispersed recreation (hunting, geological areas, Level III and IV sites, and trailheads), recreation sites (fishing reservoirs, scenic overlooks and historic homesteads), gas well sites, major range improvement projects, and backcountry airstrips. About 293 miles would be open yearlong and 111 miles would be open seasonally. Most of the seasonal restrictions are based on wildlife habitat security and big game winter range. The BLM would reduce the number of parallel and spur roads (172 miles) and some roads in areas with important wildlife habitat (1 mile), in areas considered unsuitable due to erosion and slope (13 miles), and in other areas (15 miles). There are 201 miles proposed for closure.

Currently in the Missouri Breaks area we do not see motorized use (vehicle travel) at levels that are significantly impacting wildlife. Many of the roads receive very little traffic due to limited public access, condition of the road, and seasonal weather changes (wet spring or dry hot summer). Under the Preferred Alternative, there would be roads designated open to public travel in wildlife habitat security areas and wildlife winter range areas.

The road system could be modified if vehicle use traffic patterns or resource conditions change. Modifications to the road system would be based on the management guidance under the Preferred Alternative in the Proposed RMP/Final EIS, including the factors listed in Table 2.29, and changes would be addressed through a travel plan update with public participation and environmental review.

**Counties:** *We have roads on both sides of the river that are going to private land that are closed. Art and I fought all along. We thought that--in fact, if you will read Alternative F it states that all roads to private lands, State private lands, are open for private-land access and administration.*

*Well, then when you go back and look at the narrative it says private-land-owner access, so if you own a piece of land down there you are the only one that's going to be able to go down there. It's private landowner. Art and I fought for private-land access. If you wanted to give your nephew or your niece permission to go down and go fishing you ought to have that right as a private landowner.*

**Response:** Under the Preferred Alternative in the Proposed RMP/Final EIS, BLM roads providing motorized access to the boundary of private land would remain open for public, private landowner and administrative travel with the exception of two roads (one road is impassable and the other road is currently limited to administrative use). There are 65 miles of BLM roads providing access to private land that would be designated open yearlong and 2 miles (two roads) that would be designated closed.

**Counties:** *One of the things I hope to see changed is the restriction of access to private property within the boundaries. It's written in there, and I hope to get this changed, that it's for private access only, administrative access only, which means to me, if I've got a piece of land down there in the Breaks, that I cannot let my best friend come in and hunt.*

**Response:** Under the Preferred Alternative in the Proposed RMP/Final EIS, BLM roads providing motorized access to the boundary of private land would remain open for public, private landowner and administrative travel with the exception of two roads (one road is impassable and the other road is currently limited to administrative use). There are 65 miles of BLM roads providing access to private land that would be designated open yearlong and 2 miles (two roads) that would be designated closed.

**Counties:** *Pages 100 and 121 state that private property within the Monument can only be accessed by the landowner for administrative if the only access to their land is through BLM land. Unrestricted access to their*

private property should be given to the landowner or whomever he gives permission.

**Response:** All 605 miles of BLM roads would be available for motorized travel associated with activities necessary to administer BLM permits and leases. For additional information, see the Exceptions for Travel Off Road and on Closed Roads section under the Preferred Alternative in the Proposed RMP/Final EIS.

On the 201 miles of closed BLM roads, there could be disability/accessibility permits issued for a specific closed road on a case-by-case basis. Individuals with disabilities could request a permit to travel on the 201 miles of closed BLM roads consistent with the Rehabilitation Act of 1973. Such access would be considered on a case-by-case basis by the Monument manager. If the need arises, the BLM could identify specific designated closed roads as access for individuals with disabilities.

Game retrieval would be permissible on 81 miles of seasonally closed roads from September 1 through November 30 during the hunting season. For additional information see the Access and Transportation section of Chapter 2.

#### **Roads (Specific Roads Identified)**

**Counties:** More specific problems with BLM's transportation plan include:

The BLM is planning to close or seasonally restrict almost all Level 1 and Level 2 roads because these roads are lowly maintained roads. The reason these roads are not maintained is because the roads do not need maintenance. If these roads were graded it would actually disturb the topsoil and hurt the road instead of improving the road. These roads are not maintained; however, that does not mean these roads are not necessary. The BLM needs to reconsider which Level 1 and Level 2 roads are being closed. The following roads should be left open:

- 23N, R22E: Remove restrictions on Heller Bottom Road and leave open.
- T22N, R16E: Leave open.
- T21N, R16E: Leave open.
- T22N, R16E: Leave spur road open west and east of Claggett to get people off county road for safety issues.
- T22N, R17E: Remove restrictions on roads in Sections 4, 5, 6, and 9 accessing private property.
- T22N, R17E: Remove restriction on road in Section 1 from Whiskey Ridge accessing state land.
- T22N, R18E: Open road in Section 4.
- T22N, R18E: Open road in Section 2.
- T23N, R19E: Open road accessing private property in Section 7.

- T23N, R20E and 21E: Remove restriction on road starting in T23N, R20E, Section 13.
- T23N, R21E: Open road to private property in Section 9.
- T23N, R21E: Remove restriction on DeWeese Road.
- T23N, R22E: Open road going up river from Woodhawk Bottom in Section 19.
- T22N, R22E: Remove restrictions on road to the south of Heller Bottom Road. There are too many restrictions that are nonenforceable on the same road.
- T22N, R22E: Open the long road that starts in Section 7.
- T22N, R22E: Open roads that start in sections 21 and 22.
- T21N and 22N, R22E: All roads except those specifically listed herein or otherwise already designated by the BLM as being open should remain closed except for the purpose of game retrieval.
- T22N, R21E: Leave the long road starting in Section 11 open.
- T21N, R21E: Open road in Section 27.
- T21N, R21E: Remove restriction on road starting in Section 26.
- T20N, R22E: Remove restriction on road in Section 2. There are open roads all around it. Open the end of this road for game retrieval.
- T20N, R22E: Open road to east starting in Section 2, through private land into Section 1 and Section 6, T20N, R23E.
- T21N, R23E: Leave roads open in Sec. 30.
- T20N and 21N, R22E and 23E: Leave all other closed roads open for game retrieval.
- The Bull Creek Road: This road should be listed on the transportation map as it is a petitioned county road. It begins at a point on the Missouri River on the east side of Bull Creek running thence in a north easterly direction following the presently traveled road until it unites with the Landusky and Zortman Road.

**Response:** Under the Preferred Alternative in the Proposed RMP/Final EIS, the BLM's objectives would be to retain roads to access areas commonly used for dispersed recreation (hunting, geological areas, Level III and IV sites, and trailheads), recreation sites (fishing reservoirs, scenic overlooks and historic homesteads), gas well sites, major range improvement projects, and backcountry airstrips. About 293 miles would be open yearlong and 111 miles would be open seasonally. Of the 404 miles designated open, 335 miles are resource roads that would be included under a Level 2 maintenance category. This level is assigned to roads where the management objectives require the road to be opened for limited traffic. Typically, these roads are passable by high-clearance vehicles and include two-track roads.

The BLM would reduce the number of parallel and spur roads (172 miles) and some roads in areas with important wildlife habitat (1 mile), in areas considered unsuitable due to erosion and slope (13 miles), and in other areas (15 miles). There are 201 miles proposed for closure. All closed roads are included under a Level 1 maintenance category. This level is assigned to roads where minimum maintenance is required to protect adjacent lands and resource values. These roads are no longer needed and are closed to traffic. The objective is to remove these roads from the transportation system.

Under the Preferred Alternative, BLM roads providing motorized access to the boundary of private land would remain open for public, private landowner and administrative travel with the exception of two roads (one road is impassable and the other road is currently limited to administrative use). There are 65 miles of BLM roads providing access to private land that would be designated open yearlong and 2 miles (two roads) that would be designated closed.

In response to specific roads:

- *23N, R22E: Remove restrictions on Heller Bottom Road and leave open.*

The Heller Bottom road would be open yearlong.

- *T22N, R16E: Leave open.*

The BLM roads leading to the boundary of private land would be open yearlong. Several spur roads in this area would be closed.

- *T21N, R16E: Leave open.*

The BLM roads in this area would be open yearlong.

- *T22N, R16E: Leave spur road open west and east of Claggett to get people off county road for safety issues.*

The BLM roads leading to the boundary of private land would be open yearlong. Several spur roads in this area would be closed.

- *T22N, R17E: Remove restrictions on roads in Sections 4, 5, 6, and 9 accessing private property.*

The BLM roads leading to the boundary of private land would be open yearlong.

- *T22N, R17E: Remove restriction on road in Section 1 from Whiskey Ridge accessing state land.*

The BLM road leading to the boundary of the state section would be closed due to erosion problems.

- *T22N, R18E: Open road in Section 4.*

The BLM road to the boundary of private land would be open yearlong. The spur road would be closed.

- *T22N, R18E: Open road in Section 2.*

The BLM road would be closed.

- *T23N, R19E: Open road accessing private property in Section 7.*

Two of the BLM roads in this section would be open yearlong and one spur road would be closed.

- *T23N, R20E and 21E: Remove restriction on road starting in T23N, R20E, Section 13.*

The BLM road would be open yearlong.

- *T23N, R21E: Open road to private property in Section 9.*

The BLM road to the boundary of private land would be open yearlong.

- *T23N, R21E: Remove restriction on DeWeese Road.*

The DeWeese road would be open to the cherry stem road in the Woodhawk WSA. The cherry stem road would be open seasonally; closed from September 1 to November 30 for wildlife habitat security. However, this road would be available for big game retrieval.

- *T23N, R22E: Open road going up river from Woodhawk Bottom in Section 19.*

A portion of the BLM road would be open yearlong to provide access to the river.

- *T22N, R22E: Remove restrictions on road to the south of Heller Bottom Road. There are too many restrictions that are nonenforceable on the same road.*

The Two Calf road would be open yearlong but several spur roads would be closed.

- *T22N, R22E: Open the long road that starts in Section 7.*

The BLM road would be open seasonally; closed from September 1 to November 30 for wildlife habitat security. However, this road would be available for big game retrieval.

- *T22N, R22E: Open roads that start in Sections 21 and 22.*

The BLM road to the boundary of private land would be open yearlong. The other BLM road in Section 21

would be closed. Some spur roads would be open yearlong in section 22 to provide vehicle camping opportunities.

- *T21N and 22N, R22E: All roads except those specifically listed herein or otherwise already designated by the BLM as being open should remain closed except for the purpose of game retrieval.*

Several changes occurred in this area for the Proposed RMP/Final EIS. All BLM roads that would be open seasonally would also be available for big game retrieval.

- *T22N, R21E: Leave the long road starting in Section 11 open.*

There are no BLM roads in section 11. However, a state road that is closed leads to a BLM road in section 15 that would be open seasonally.

- *T21N, R21E: Open road in Section 27.*

There are no BLM roads in section 27. However, the BLM road in section 34 leading to the boundary of private land would be open yearlong.

- *T21N, R21E: Remove restriction on road starting in Section 26.*

The BLM road would be open seasonally; closed from September 1 to November 30 for wildlife habitat security. However, this road would be available for big game retrieval.

- *T20N, R22E: Remove restriction on road in Section 2. There are open roads all around it. Open the end of this road for game retrieval.*

Several changes occurred in this area for the Proposed RMP/Final EIS. All BLM roads that would be open seasonally would also be available for big game retrieval.

- *T20N, R22E: Open road to east starting in Section 2, through private land into Section 1 and Section 6, T20N, R23E.*

The BLM road would be open yearlong.

- *T21N, R23E: Leave roads open in Sec. 30.*

The BLM road would be closed (spur road) and the road to section 19 would be open yearlong.

- *T20N and 21N, R22E and 23E: Leave all other closed roads open for game retrieval.*

The BLM roads that are open seasonally (closed during the hunting season – September 1 to November 30) would be available for big game retrieval. The BLM roads closed yearlong would not be available for big game retrieval.

The Bull Creek road in Blaine County is now shown as a county road. For additional information see Map 5 for the Preferred Alternative transportation plan in the Proposed RMP/Final EIS.

*Counties: We had very little input in regard to road closures as it was done around a round table with a marker closing roads without the consideration of the impacts it might impose on the local citizens, customs, cultures and traditions.*

*If necessary, Fergus County will assert our rights under R.S. 2477 to open these roads.*

**Response:** Coordination with local units of government has occurred during development and preparation of the RMP/EIS. Area counties and the state were designated as cooperating agencies, and the tribal governments were consulted on development of the RMP. County and state representatives attended numerous RMP team meetings and participated in working groups, assisting in scoping and alternatives development for the RMP, along with providing review of internal working documents used to prepare both the Draft RMP/EIS and Proposed RMP/Final EIS. The process of coordination and consultation does not necessarily ensure, nor require, that all parties reach consensus on every aspect of the Proposed RMP. However, the process achieved its intended result by identifying potential issues and resolving points of disagreement over resource use whenever possible.

Under the Preferred Alternative in the Proposed RMP/Final EIS, the BLM's objectives would be to retain roads to access areas commonly used for dispersed recreation (hunting, geological areas, Level III and IV sites, and trailheads), recreation sites (fishing reservoirs, scenic overlooks and historic homesteads), gas well sites, major range improvement projects, and backcountry airstrips. About 293 miles would be open yearlong and 111 miles would be open seasonally.

The BLM would reduce the number of parallel and spur roads (172 miles) and some roads in areas with important wildlife habitat (1 mile), in areas considered unsuitable due to erosion and slope (13 miles), and in other areas (15 miles). There are 201 miles proposed for closure.

Under the Preferred Alternative BLM roads providing motorized access to the boundary of private land would remain open for public, private landowner and administrative travel with the exception of two roads (one road is impassable and the other road is currently

limited to administrative use). There are 65 miles of BLM roads providing access to private land that would be designated open yearlong and 2 miles (two roads) that would be designated closed. For additional information see Map 5 for the Preferred Alternative transportation plan in the Proposed RMP/Final EIS.

The BLM does not have the authority to make binding determinations on the validity of R.S. 2477 right-of-way claims. The BLM may, however, make informal, non-binding determinations for its own land use planning and management purposes. A non-binding determination that the right-of-way exists is required before completing consultation with states or counties on any proposed improvements to a claimed R.S. 2477 right-of-way, i.e., any work beyond routine maintenance. A non-binding determination may also be appropriate before taking action to close or otherwise restrict the use of a claimed R.S. 2477 right-of-way. Such determinations must be based on the particular laws of each state in which a claimed right-of-way is situated.

### **Roads (Legal)**

**Counties:** *The BLM Cannot Close County and Private Access Roads. The DRMP/DEIS propose road closures or seasonal restrictions for almost two-thirds of the current traditional roads being used in the Counties. DRMP/DEIS at 100, 172-73. These road closures and seasonal restrictions directly affect local traditions, and the custom and culture of the communities. The BLM did not conduct the required analysis under NEPA on how these road closures would impact the local culture and traditions or the economy. Most importantly, the BLM cannot legally close a public road.*

**Response:** The county commissioners for Blaine, Chouteau, Fergus, and Phillips Counties have identified county roads that provide public access routes to or within the Monument along with documentation to verify the designations. For additional information see the Transportation section of Chapter 3 including Table 3.19 that identifies the county roads.

Private property owners have the right to determine who can drive across their land whether it provides access to other private property, state land, or to BLM land. The BLM will respect private property rights. Landowner permission may be required for access to BLM roads. The BLM has no jurisdiction over county or private roads.

Under the Preferred Alternative in the Proposed RMP/Final EIS, BLM roads providing motorized access to the boundary of private land would remain open for public, private landowner and administrative travel with the exception of two roads (one road is impassable and the other road is currently limited to administrative use). There are 65 miles of BLM roads providing access to

private land that would be designated open yearlong and 2 miles (two roads) that would be designated closed.

The environmental consequences section of the Draft RMP/EIS and Proposed RMP/Final EIS address the impacts from the six alternatives discussed in Chapter 2. This includes the direct, indirect, and cumulative impacts.

### **Fire Use and Suppression**

**Counties:** *The plan should state that if heavy equipment is needed to fight a fire and is requested by the incident commander the BLM should authorize this. This would be especially for protection of life and property.*

*With regard to fire management (page xv), the BLM should state that heavy equipment could be used if requested by the fire coordinator (incident commander).*

*In the plan on page xv, language needs to be inserted second column after the first paragraph . . . “secondary to life safety and property values.” The use of heavy equipment can be used to fight fires if requested by the incident commander.*

*The key to minimizing loss of life and property is to have all available resources at the Incident Commander's disposal. The IC of such a scene needs to have the authority to call on all resources, be they mechanical, hand, or aircraft, on all incidents whether on private or public lands. Along with this has to come the authority to allow at the IC's discretion in the use of this equipment off road as well.*

*We feel that we need language written within the Draft Plan as follows: Mechanical equipment can be used on BLM, State, and private land within the Monument boundaries at the request of the incident commander in charge of the fire. Firefighting teams and the EMS personnel have access to all the roads, water, airstrips, and trails within the Monument at all times of the year and our fire department and EMS need to be reimbursed for expenses we incur with Monument use.*

**Response:** Incident commanders do not have carte blanche authority in any situation, but are required to work under the direction of the local decision-maker, whether county commissioner, DNRC land manager, Monument manager, or BLM field manager. Often decision-making authority is delegated to a fire management officer or fire warden, but it is not relinquished completely. When a fire goes to extended attack and an incident management team assumes command of the fire, the extent and limitations of the incident commander's authority and responsibilities are specified in the delegation of authority document, signed by all parties. This situation applies to all lands in the state, whether federal, state, or private.

**Counties:** *The responding agencies were established well before the Monument was. The operating budgets of these districts did not take into account the Monument and the increase in use of this remote area. Some kind of reimbursement will need to be addressed to the responses that are human caused in this area.*

**Response:** Reimbursement for fire suppression activities in the Monument is governed by the Cooperative Fire Management Agreement between the BLM, National Park Service, U.S. Fish and Wildlife Service, U.S. Forest Service, Bureau of Indian Affairs, and Montana Department of Natural Resources and Conservation (a/k/a the 6-Party Agreement), initial attack agreements and memoranda of understanding (MOUs) signed between BLM, MT DNRC and counties that fall within the Monument. Assistance provided by any cooperating agency during initial attack in the first burning period (generally the first 8-12 hours) is not reimbursable, unless a responsible party for a human-caused fire is identified and charged for suppression costs. When initial attack response on BLM land is documented by rural fire departments, the activities are counted as an in-kind match towards the 10 percent match required for federally funded Rural Fire Assistance.

During extended attack, requested resources are reimbursed by the managing agency according to pre-existing contracts and prevailing practices. Federal managers have no authority to prohibit local and county resources from fighting a fire within the local agency's jurisdiction; however, their suppression costs are not reimbursable unless the local resources are specifically requested and assigned to the fire suppression effort by the managing agency.

Emergency medical services and search and rescue operations occur under the authority of the county sheriff. The BLM often assists in such activities when so requested by the sheriff, but holds no authority to conduct such operations independently. The BLM has no authority or mechanism to reimburse such activities whether they occur within the Monument or not.

## Economics

**Counties:** *Livestock grazing is lumped together with rights-of-way for roads, utility lines and communication sights as needing careful management to protect the Monument resources. DRMP/DEIS at 387. Loss of grazing would have a major impact on local economies and should not be analyzed bunched together with other uses.*

**Response:** While on page 387 in the Scoping Issues Appendix of the Draft RMP/EIS livestock grazing is mentioned together with other aspects of the Monument

as needing careful management to protect Monument resources, it is analyzed separately in the RMP/EIS and is not bunched together with other uses. There are separate livestock grazing sections of Chapter 3, Affected Environment and Chapter 4, Environmental Consequences in which grazing is analyzed.

**Counties:** *I think there's been too much emphasis put on protection of wildlife. That's going to affect the ranchers and the extraction industry.*

**Response:** Reductions in natural resource development under the Preferred Alternative should be limited to reduced natural gas production, with few implications for the local tax base and schools. As detailed in the Economics section of Chapter 4, changes to ranching operations are expected to be minor and to not reduce livestock numbers or Animal Unit Months (AUMs). While it is expected that local tax revenue from natural gas operations will decrease slightly under the Preferred Alternative (compared to current management), total natural gas revenue to local governments and schools could decline by approximately \$1,100. Compared to current management, under the Preferred Alternative revenue to Blaine County government and school districts may decline by \$4,700, while revenue to Fergus County government and school districts may actually increase by \$3,600. Natural gas revenues to other counties do not change in the Preferred Alternative (compared to current management).

Regarding property values, the Preferred Alternative has been revised to leave roads to private lands open yearlong, so there should be no access-related effects on private property values. Oil and gas may still be developed on private lands. The Monument designation itself may have reduced the feasibility of oil and gas development on private lands due to the withdrawal of adjacent federal from leasing. However, both of these effects are due to the Monument designation and not the proposed alternatives.

However, the Preferred Alternative may result in BLM land acquisitions from willing private sellers. The BLM is not anticipating large private land acquisitions, however. In the event of BLM land acquisitions, it is possible that the Payment in Lieu of Taxes (PILT) payments to the counties would not increase. Therefore the counties could lose revenues equivalent to the property tax revenues from acquired acreage. Private lands intermingled with the Monument are primarily grazing lands, and property taxes on grazing lands within the study area in 2005 were approximately \$1.40 per acre according to the Montana Department of Revenue. The tax effects of BLM land acquisitions could thus be approximately \$1.40 per acquired acre.

**Counties:** *Economic Impact of Reduced Livestock Grazing. The DRMP/DEIS notes that ranching is "a*

very important part of the study area economy,” DRMP/DEIS at 194, and that there are instances where the alternatives could affect grazing. DRMP/DEIS at 340. However, the DRMP/DEIS makes no attempt to quantify any potential impacts to grazing. Equally important, the DRMP/DEIS does not provide any sort of comparison of the economic costs among the alternatives with regard to the impacts on grazing. Instead, the economic analysis only shows a comparison of the economic impacts from changes in natural gas exploration and development. See DRMP/DEIS at 341.

Additionally, the DRMP/DEIS notes that “some individuals with grazing allotments within the Monument may have to make minor adjustments in their operation in response to some of the directions in the alternatives.” *Id.* at 340. The DRMP/DEIS fails to consider how these supposedly “minor adjustments in [ranchers’] operations” would impact the economic viability of those holding permits to graze on the Monument. The DRMP/DEIS notes that the protection of sage-grouse habitat under Alternatives B through F could “increase costs and/or reduce income to the permittee.” *Id.* Yet, the BLM makes no effort to quantify the costs or reduction in income.

While the BLM has not overtly cut Animal Unit Months (“AUMs”) in its DRMP, changes in the way ranchers are required to operate could have the same effect. The DRMP/DEIS notes that there could be short-term losses in the forage available to livestock, yet makes no attempt to provide any meaningful data on the amount of forage that could be lost and the associated costs to the ranchers holding permits. Finding alternative sources of forage to compensate for a change in management could result in significant costs to permittees. These effects should have been quantified.

The BLM must consider the economic and historic contributions of ranching and livestock grazing to the local economy and balance that against the harm that will be caused to the economy if that grazing is affected. This point is punctuated by Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking (August 13, 2002)).

Additionally, as outlined previously, the Monument contains 81,000 acres of private land. The BLM has indicated its intent to purchase land from “willing sellers.” By increasing restrictions on livestock grazing on the Monument, the BLM would be making it more difficult for ranchers to operate a viable ranching operation, and thereby effectively forcing these ranchers to sell their private property within the Monument. Such an action would decrease the tax base for the local communities and result in severe economic hardship. Yet, the BLM fails to provide any economic analysis of its acquisition plans.

**Response:** The number of AUMs harvested annually is not expected to change due to the Preferred Alternative, nor is the number of cattle in the Monument. The potential restrictions on livestock grazing outlined in the Livestock Grazing section of Chapter 4 are primarily based on the Standards for Rangeland Health and Guidelines for Livestock Grazing Management, and are applicable on all BLM grazing lands, not just those located in the Monument. Management guidance in the alternatives that is specific to the Monument is the Visual Resource Management (VRM) classification and the necessity to protect objects of the Monument. However, while the VRM classification may result in some limitations on proposed new livestock facilities, no restrictions on current operations, including maintenance of existing facilities, are expected. Furthermore, there are no anticipated impacts of grazing on the proper management and care of the objects of the Monument, so no restrictions on grazing are expected to be necessary to protect the objects of the Monument. Therefore, there are no foreseen restrictions on grazing that would make it more difficult for ranchers to operate their ranches under current procedures.

**Counties:** *The BLM Failed to Adequately Consider the Economic Impacts.* Under NEPA, the BLM, when preparing an EIS, must include an adequate economic analysis. See, 40 C.F.R. §§ 1508.8 and 1508.14. This economic analysis must take into consideration the impacts on the communities that will be affected by the action. Federal courts have upheld the necessity of an economic analysis to require, where economic analysis forms the basis of choosing among alternatives, that the analysis not be misleading, biased or incomplete. *Seattle Audubon Society v. Lyons*, 871 F. Supp. 1291, 1324 (W.D. WA 1994). One court has noted, “In some instances environmental costs may outweigh economic and technical benefits and in other instances they may not. But NEPA mandates a rather finely tuned systematic balancing analysis in each instance.” *Sierra Club v. Sigler*, 695 F.2d 957, 978 (5th Cir. 1983).

In *Laub v. United States Dep’t of Interior*, 342 F.3d 1080, 1087 (9th Cir. 2003), this circuit held that “NEPA’s implementing regulations require an EIS to include the economic effects of a federal action.” See also *Stop H-3 Ass’n v. Dole*, 740 F.2d 1442, 1461 (9th Cir. 1984) (“an EIS must assess and discuss the secondary (socio-economic) effects of the project in question”). The BLM failed in this regard. The DRMP/DEIS in this case failed to properly include and assess the impacts on the local economies that would be affected with regard to the effect of: (1) the increased burden on county emergency services, (2) loss of outfitters, (3) reduced livestock grazing, (4) private property within the Monument, and (5) changing Visual Resource Management classes. The economic study was not complete or accurate. In addition, the BLM did not

*consult with the Counties for impacts to county or local communities.*

*Has the economic impacts of this been considered? The impacts to the local ranchers and the local economy need to be studied and carefully considered.*

**Response:** Under NEPA (40 C.F.R. §§ 1508.8 and 1508.14) the BLM is required to estimate the direct and indirect economic effects resulting from the range of alternatives being considered. Although there is no specific Congressional directive in NEPA to analyze in an EIS what economic impacts would be to individual industries, communities, and schools, if there are large impacts then these should be analyzed. However, the draft economic analysis determined that, with the exception of natural gas development, the Preferred Alternative would not significantly change resource use in the Monument and would therefore have little impact on other industries. The Proposed RMP/Final EIS provides additional information regarding the impact of the Preferred Alternative.

As far as impacts to local communities and schools, the Proposed RMP/Final EIS endeavors to analyze economic impacts on as local a level as possible. Impacts to the oil and gas industry are expected to be the only measurable source of negative economic impact, and these are now presented by county (in the Draft RMP/EIS these were presented for the entire five-county study area). Potential positive impacts of the Preferred Alternative are discussed qualitatively and may include increases in property values and tourism revenue.

The local component of school funding is based on enrollment, local property values, and royalties and taxes on oil and gas production. There are no anticipated changes to population due to the Preferred Alternative, so there is no expected impact to local school funding due to changes in enrollment. Regarding private property values, the Preferred Alternative has been revised so that most roads to private and state lands will remain open year-round, so there should be no transportation-related effects on private property values. Additionally, there should be little to no effect on the value of ranch properties as there are no expected effects of the Preferred Alternative on the number of AUMs or livestock in the Monument.

Compared to current management (Alternative A), the Preferred Alternative is expected to result in two fewer natural gas wells being developed in Blaine County and one more well being developed in Fergus County. As a proportion of royalties and local oil and gas production taxes goes to the county, the reduction in production will result in less Blaine County revenue and more Fergus County revenue. As noted in the Economics section of Chapter 4, total county oil and gas revenues in the study area are expected to decline by \$1,900 and total school

district revenues are expected to increase by \$800. Due to two fewer wells being drill in Blaine County, revenues to this county are expected to decline by \$3,600 and school district revenues by \$1,100.

**Counties:** *The economic potential will not continue in gas and oil production. Blaine County depends on that resource immensely.*

*Oil and gas. Virtually Fergus County has been missing the boat on oil and gas leasing. Now last week we had a company in our vault checking out areas to lease and they are leasing up a large chunk of land around Winifred and I went down and I asked them. I said, "Are you going to lease any of the private acres within the Monument?" and my answer was, "No. We were told not to go anywhere near the Monument," so I guess in a nutshell I think this Plan has a potential to cause a severe economic impact to the County and to the local landowner.*

*Economic Impact of Private Property within the Monument. The inclusion of private lands within the Monument has also had negative impacts to those holding private property in the Monument, and those economic impacts will be more severe under the BLM's proposal. Gas companies, who periodically lease private lands in the area for exploration or test drilling, have become hesitant to lease these private lands within the Monument due to the risk of frequent road blocks and the possibility of litigation. The BLM has failed to provide any economic analysis of how private property owners in the Monument will be affected by the loss of gas leases on private property within the Monument or how the Counties will be affected by reduced property values.*

*The DRMP/DEIS states, "None of the direction would affect property values and the property tax base or change revenue to local entities." DRMP/DEIS at 340. This statement is false. First, the local communities, and particularly the small local school districts, are heavily dependent on mineral leasing, oil and natural gas production dollars, and taxation of land. Alternatives C through F would all negatively impact natural gas exploration and development (see DRMP/DEIS at 341), thereby decreasing the tax revenue for the Counties.*

**Response:** The RMP/EIS estimates the number of current and future production wells under each management alternative. The economic analysis then addresses the effects of the management alternatives on the local economy and estimates the effects on local output, income, employment, and tax revenues to all levels of government (see the Economics section of Chapter 4). Under the Preferred Alternative, total tax revenue impacts to local county governments and school districts is estimated to decline by \$1,100 (county revenue is expected to decrease by \$1,900 while school

district revenue is expected to increase by \$800 since the number of wells in Fergus County is actually expected to increase under the Preferred Alternative).

Mineral resources on private land intermingled with the Monument may have been affected by the withdrawal of adjacent federal lands in the Monument from leasing. If the withdrawal of adjacent lands results in private parcels being too small for feasible natural gas development and these parcels would have been otherwise developable, then impacts may be felt on private lands intermingled with and surrounding the Monument. However, this effect is due to the Monument designation and not the proposed alternatives.

Rights-of-way requirements are common to all alternatives.

In the Reasonable Foreseeable Development (RFD) analysis conducted by the BLM, three RFD fee wells (privately owned land with federal mineral rights) were identified. All three wells would be allowed under each alternative.

**Counties:** *Economic impact of changing Visual Resource Management classes. Additionally, the DRMP/DEIS fails to contain any analysis of the economic impacts of changing the Visual Resource Management (“VRM”) classes. Under alternatives B through F, the percent of acreage in the most restrictive VRM, Class I, would increase from 16 to 30 percent, or a 14 percent increase. DRMP/DEIS at 262-64. This would mean that “[a] total of 30 percent of the Monument may not be authorized for surface disturbing activity.” Id. at 264. Under the preferred alternative, Alternative F, 73 percent of the Monument would be in the two most restrictive classes, a 25 percent increase over current management, and under Alternatives C and D, 100 percent of the Monument would be in the most restrictive classes. Id. at 262-64. The change in the VRM designations would increase costs to livestock producers, who could be forced to forego range improvements in many instances or install more costly range improvements in other instances. Decreasing the number of range improvements that could be installed could decrease forage availability and increase other management costs. Yet, the BLM fails to provide any economic analysis that these changes would have, and instead characterizes these changes as “only an inconvenience to livestock grazing facility installation.” Id. at 276.*

**Response:** The VRM classifications are not expected to require changes to current operations. As discussed in the Livestock Grazing section of Chapter 4, routine maintenance of existing structures will not be affected by the VRM classifications so long as maintenance does not substantively change the design or surface area of a structure. New surface-disturbing projects, however,

may require modifications that reduce the visual impact of the project on the landscape. Such modifications may increase the cost of new range improvement projects. While the number of affected improvements and potential cost increases are not known, the total impact on ranchers is likely limited since existing operations are not affected.

**Counties:** *It is widely recognized that grazing permits have value which is capitalized into the value of a ranch. See L. Allen Torell & John P. Doll, Public Land Policy and the Value of Grazing Permits, 16 W. J. AG. ECON. 174, 175 (1991). Increasing restrictions on livestock grazing on the Monument decreases the value of the permit, and thereby the value of the ranch to which the permit is attached which, in turn, could impact property tax values. Moreover, the preference right itself is often subject to taxation. See Frank J. Falen & Karen Budd-Falen, The Right to Graze Livestock on the Federal Lands: The Historical Development of Western Grazing Rights, 30 IDAHO L. REV. 505, 511 (1993-1994). A decrease in the value of the preference right will therefore decrease the amount of taxes that are generated.*

**Response:** As noted in the Livestock Grazing section of Chapter 4, the total number of AUMs harvested and livestock on the Monument is not expected to change under the Preferred Alternative. VRM classifications may lead to minor increases in costs to implement new range improvement projects, but since current ranching operations could continue without restriction, the effects of VRM regulations on property values is expected to be limited. Furthermore, grazing lands are taxed at a very low property tax rate (an average of \$1.40 per acre in 2005 throughout the study area), so any potential reductions in property values would have limited tax revenue repercussions.

**Counties:** *Economic impact of the increased burden on county emergency services. The BLM’s RMP would place an increased burden on county emergency services. As indicated in the DRMP/DEIS, the local county sheriffs’ departments conduct emergency services on the Monument. DRMP/DEIS at 27. However, the BLM did not provide any economic analysis of the additional economic burden to local governments for providing county emergency services to the Monument under the different alternatives.*

**Response:** The Draft RMP/EIS alternatives do not directly increase the burden on county emergency services. Local governments currently provide emergency services within the Monument and they would continue to do so under the Proposed RMP/Final EIS alternatives. If visitation to the Monument were to increase, then the use of local emergency services within Monument would likely increase. As the effect of each proposed alternative on Monument visitation is

unknown, it is not possible to estimate the associated effect on demand for local emergency services. Furthermore, as stated in the Preferred Alternative (see the Recreation section of Chapter 2) user fees levied by the BLM could be used to compensate local jurisdictions for emergency services provided on the Monument.

**Counties:** *Economic impact of loss of outfitters. The BLM's RMP restrictions could result in a loss of outfitters using the Monument area. Loss of outfitters due to restrictions would have a negative impact on county economies. Most of the current outfitters are local residents. Restriction of the outfitters will affect county economies in two ways. First, fewer outfitters will result in a direct loss of employment/income for those individuals, which in turn will affect the economy of the counties and local communities. Second, fewer outfitters will result in fewer visitors to the area, resulting in a loss of income for local businesses. The BLM failed to consider these impacts.*

**Response:** The number of special recreation use permits issued for the Missouri River would be limited in the Preferred Alternative. However, as indicated on page 301 of the Draft RMP/EIS, limiting the special recreation use permits only affects the number of commercial operators on the river and in the uplands and does not limit the number of commercial trips and user days. Therefore commercial operators with permits may run as many trips on the river or in the uplands as demand allows, so the number of visitors recreating with commercial outfitters should not be affected. Additionally, existing outfitters with special recreation use permits will retain their permits and should not be negatively affected. However, if visitor use levels increase or patterns of use change in the future, it may be necessary for the BLM to adaptively manage by such actions as issuing additional permits, decreasing the number of permits, adjusting use areas, or incorporating conditions limiting visitor use days.

Although some roads and airstrips would be closed and motorized boating restricted, it is not known if the change in access will affect visitor numbers as access will continue throughout the year in areas of the Monument. Additionally, by closing some areas to motorized use, additional non-motorized recreational opportunities are created.

The Preferred Alternative in the Proposed RMP/Final EIS would close 201 miles of BLM roads, of which most are either spur roads (averaging less than 1/2 mile in length) or are parallel roads. An additional 111 miles would be restricted to seasonal use. Despite these road closures, under the Preferred Alternative, approximately 86% of the Monument would be within one mile of an open (yearlong or seasonally) road. The effects of road closures on visitor numbers are unknown as road

closures may negatively affect motorized users, but may benefit non-motorized recreationists.

Additionally, although the Preferred Alternative would close four airstrips and seasonally restrict use of one airstrip, five airstrips would remain open yearlong. While actual use numbers are not available, the number of visits is limited. Closing four airstrips would only negligibly affect visitor use numbers. Finally, the transportation plan was created with an emphasis on retaining motorized access to recreation sites, which should limit the effects on access for motorized recreationists.

### **Private Land**

**Counties:** *Impact to Blaine County: With the inability to lease for oil and gas, the chance of less AUMs and the inability to use the lands surrounded by BLM lands for recreational purposes due to access also public access through public lands to private lands, the land values will go down. The chance of resale for ranching is zero. The federal government is the only choice left and the chance of increased PILT payments to the counties is also zero.*

**Response:** About 80,000 acres of private land are intermingled with the Monument. The BLM has no jurisdiction over private, and these lands are not part of the Monument.

Applications for rights-of-way will be considered for reasonable access to private land and as necessary for adequate access across BLM land to private minerals for exploration, development, and production (e.g., access roads and pipelines). BLM roads providing motorized access to the boundary of private land would remain open for public, private landowner and administrative travel with the exception of two roads (one road is impassable and the other road is currently limited to administrative use). There are 65 miles of BLM roads providing access to private land that would be designated open yearlong and 2 miles (two roads) that would be designated closed.

Livestock grazing will continue to be governed by a number of laws and regulations that apply to grazing on all public land administered by the BLM. In addition, the BLM developed Standards for Rangeland Health and Guidelines for Livestock Grazing Management for Montana, North Dakota, and South Dakota which was approved by the Secretary of the Interior in August 1997. To protect the objects for which the Monument was designated livestock grazing will continue to be managed under the Lewistown District (Lewistown and Malta Field Offices) Standards for Rangeland Health and Guidelines for Livestock Grazing Management (BLM 1997). Livestock grazing on allotments in the

Monument will continue to be allocated about 38,000 animal unit months (AUMs) of forage on an annual basis (Appendix N). Grazing applications will continue to be processed consistent with existing regulations (43 CFR 4100).

Public lands held by the federal government are not included in the property tax base for the counties. As a result, counties forego tax revenue which they would have received if the land were privately owned. To reimburse the counties for these monies, the U.S. Congress passed Public Law 94-565 in 1976 that allows compensation for foregone property tax revenues to each county. This compensation, Payments in Lieu of Taxes (PILT), is the payment made by the federal government every fiscal year to each county in order to offset lost property tax revenues (BLM 2003c). The amounts authorized and appropriated by Congress are usually less than the payments based on the formulas based on Public Law 94-565.

**Counties:** *All four counties within the Monument request BLM to write to the State Director and Secretary of the Interior with assistance from the President if necessary to remove all the private property from the Monument.*

**Response:** The Upper Missouri River Breaks National Monument is one of many monuments managed by BLM that has privately owned land adjacent to or intermingled with public land. The BLM has much experience in managing scattered land ownership patterns throughout the West and have sought to be a good neighbor to private landowners. The proclamations for these monuments have been careful to specify that the private land is not part of them. In the majority of cases, the intermingled land ownership has not been an issue for landowners or for BLM. The BLM has no jurisdiction over private land and recognizes that private land is not part of the Monument.

**Counties:** *It is simply illegal and wrong for the BLM to continue with a designation of area for the Monument that includes 81,000 acres of private land.*

*This continued practice by the BLM and this DRMP/DEIS, which includes the private land, has the potential to cause the Counties damages. This designation has the potential to lessen the value of private property and decrease the Counties' tax revenue. In addition, this designation could be used as a means of extortion because the BLM could condition a necessary permit or special use on acquiring private property. The BLM said it is only interested in willing seller transactions. How can it be "willing" when the BLM can use its position in either subtle or not so subtle means to pressure ranchers or other land owners into selling their private land that has been included in the designation?*

**Response:** About 80,000 acres of private land are intermingled with the Monument. The BLM has no jurisdiction over private land, and these lands are not part of the Monument.

The BLM will not pursue the acquisition of private land unless approached by a landowner or their representative. Conservation easements or fee acquisition (i.e., campsite) opportunities that are brought forward by private landowners will be considered if they enhance the values of the Monument and are within the BLM's staff and budgetary constraints.

BLM roads providing motorized access to the boundary of private land would remain open for public, private landowner and administrative travel with the exception of two roads (one road is impassable and the other road is currently limited to administrative use). There are 65 miles of BLM roads providing access to private land that would be designated open yearlong and 2 miles (two roads) that would be designated closed. Applications for rights-of-way will be considered for reasonable access to private land and as necessary for adequate access across BLM land to private minerals for exploration, development, and production (e.g., access roads and pipelines).

**Counties:** *The people in our state are looking at places to lease gas mainly, and when I ask them if they were looking at leasing private land within the monument, their answer was no, that they were told not to go near the monument.*

**Response:** About 80,000 acres of private land are intermingled with the Monument. The BLM has no jurisdiction over private land or private minerals, and these lands and minerals are not part of the Monument. The oil and gas lease stipulations and conditions of approval discussed in the RMP/EIS only apply to federal minerals. These restrictions do not apply to private minerals adjacent to or intermingled with federal minerals.

Applications for rights-of-way will be considered for reasonable access to private land and as necessary for adequate access across BLM land to private minerals for exploration, development, and production (e.g., access roads and pipelines).

**Counties:** *The BLM should write to the State Director and Secretary of the Interior, with assistance from the President if necessary, to remove all 81,000+ acres of private property from the Monument.*

**Response:** The Monument was established on January 17, 2001, when President Clinton issued a Proclamation under the provisions of the Antiquities Act of 1906. About 80,000 acres of private land are intermingled with the Monument. The BLM has no

jurisdiction over private land, and these lands are not part of the Monument. The BLM does not have the authority to adjust the boundary of the Monument.

The BLM will not pursue the acquisition of private land unless approached by a landowner or their representative. Conservation easements or fee acquisition (i.e., campsite) opportunities that are brought forward by private landowners will be considered if they enhance the values of the Monument and are within the BLM's staff and budgetary constraints.

**Counties:** *Protected objects or interests on private land should be removed from consideration in the plan. See, e.g., DRMP/DEIS at 384 (Judith River).*

**Response:** The list of objects was revised to exclude any reference to private land and the text was clarified that the objects and management only applies to BLM land.

### Social

**Counties:** *No study was done with the counties considering specific communities, local customs, culture and traditions that would be affected.*

**Response:** The description of social effects to local populations (as well as all other populations) has been expanded in Chapters 3 and 4 of the Proposed RMP/Final EIS and now focuses more on local culture and lifestyles.

### Management

**Counties:** *We should leave it as close to Alternative A as possible. We then can start obtaining dollars to build roads around the private lands and to police the monument with the rules and regulations that we have in place now. We cannot predict the future and there is no sense in making rules and regulations for something none of us can predict.*

*We have to remove the private and state lands from within the monument. We have to keep livestock grazing within the monument as it is outside the monument. We have to keep roads open to the public into private and state lands. We have to keep the river as it is in Alternative A. We must keep all management and restrictions that are under both state and federal programs the same. This would be like wildlife management, sage grouse management, oil and gas spacing, etc. We must keep our American Indian cultures, customs and traditions honored and respected. Alternative A should be followed as closely as possible, with the exception of the management of airstrips, which should be managed as closely as possible to Alternative F.*

*Fergus County believes we need to stay as close as possible to Alternative A unless we note otherwise. We strongly believe the 81,000 private acres should be removed from the monument. We insist you write a letter to the State Director and to the Secretary of the Interior and ask them, with the support of the President, to remove these acres.*

**Response:** About 80,000 acres of private land are intermingled with the Monument. The BLM has no jurisdiction over private land or private minerals, and these lands and minerals are not part of the Monument. This is addressed in Chapter 1 in the RMP/EIS and on the maps included with the document. The brochure for the Monument and the Upper Missouri River Boaters' Guide also include information on respecting private land and property rights and that landowner permission is required for access to private property.

Under the Preferred Alternative in the Proposed RMP/Final EIS, BLM roads providing motorized access to the boundary of private land would remain open for public, private landowner and administrative travel with the exception of two roads (one road is impassable and the other road is currently limited to administrative use). There are 65 miles of BLM roads providing access to private land that would be designated open yearlong and 2 miles (two roads) that would be designated closed.

Under the Proclamation, the "[l]aws, regulations, and policies followed by the Bureau of Land Management in issuing and administering grazing permits or leases on all lands under its jurisdiction shall continue to apply with regard to the lands in the monument." Livestock grazing will continue to be governed by a number of laws and regulations that apply to grazing on all public land administered by the BLM. In addition, the BLM developed Standards for Rangeland Health and Guidelines for Livestock Grazing Management for Montana, North Dakota, and South Dakota which was approved by the Secretary of the Interior in August 1997. To protect the objects for which the Monument was designated livestock grazing will continue to be managed under the Lewistown District (Lewistown and Malta Field Offices) Standards for Rangeland Health and Guidelines for Livestock Grazing Management (BLM 1997). Livestock grazing on allotments in the Monument will continue to be allocated about 38,000 animal unit months (AUMs) of forage on an annual basis (Appendix N). Grazing applications will continue to be processed consistent with existing regulations (43 CFR 4100).

### Planning/NEPA

**Counties:** *Not once during the process did we analyze the counties land use plans to see if the decisions being*

made were in violation of these plans. We do not believe the plans were even distributed to the core team members.

**Response:** The BLM reviewed all applicable county land use plans, including that provided by Fergus County, and considered them during preparation of the Draft RMP/EIS. One of the reasons the counties were asked to be cooperating agencies was so they could identify where the RMP alternatives were inconsistent with their respective county plans and work to resolve those inconsistencies. If the county representative did not mention a specific inconsistency between the RMP and their local plan during the team discussions or review of preliminary drafts, the BLM presumed none were present.

### Planning/NEPA - Analysis

**Counties:** *The BLM Failed to Use the Requisite Scientific Information and Objectivity. The Data Quality Act (“DQA”) requires the BLM to meet basic informational quality standards. 66 Fed. Reg. 49719. This standard of quality requires that the data used and published by the BLM meet four elements: (a) quality; (b) utility (referring to the usefulness of the data for its intended purpose); (c) objectivity (the data must be accurate, reliable, and unbiased); and (d) integrity. Id.*

*In addition to the DQA, NEPA imposes an affirmative duty on federal agencies to “insure the professional integrity, including scientific integrity, of the discussions and analysis in [an EIS].” City of Sausalito v. O’Neill, 386 F.3d 1186, 1213 (9th Cir. 2004) (quoting 40 C.F.R. § 1502.24); see also Earth Island Inst. v. United States Forest Serv., 351 F.3d 1291, 1302 (9th Cir. 2003) (claim will succeed “if Plaintiffs are able to convince the district court that the agency unreasonably relied upon inaccurate data”); Utahns for Better Transp. v. United States Dep’t of Transp., 305 F.3d 1152, 1182 (10th Cir. 2002). The impact analysis under NEPA is supposed to be objective and unbiased. The BLM Land Use Planning Handbook states the following:*

*A successful land use planning effort always employs rigorous standards for maintaining, managing, and applying data and derived information. Standardized, accurate, and reliable data and information are critical to the development of plan assessments, alternatives, impact analyses, and planning decisions. . . .*

*The data and resultant information for a land use plan must be carefully managed, documented, and applied to withstand public, scientific, and legal scrutiny, and at the same time, facilitate the efficient development and operation of the Bureau’s mapping and data management systems such as GIS. For these reasons, the corporate data used in plans require a high level of*

*consistency, standardization, and established quality control procedures.*

*Id. at Appendix G, p. 1 (emphasis added).*

*The BLM Failed to Consider All Relevant Information. “The policy behind NEPA is to ensure that an agency has at its disposal all relevant information about environmental impacts of a project before an agency embarks on the project.” Salmon River Concerned Citizens v. Robertson, 32 F.3d 1346, 1356 (9th Cir. 1994); see also Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 371 (1989) (finding purpose of NEPA is to focus “government and public attention on the environmental effects of proposed agency action”); Provo River Coalition v. Pena, 925 F. Supp. 1518, 1526 (D. Utah 1996) (“The purpose of NEPA is to require agencies to compile and consider all relevant information before taking action which might have significant environmental effects.”).*

*All the decisions in the Draft Resource Management Plan need to be based on sound scientific data.*

**Response:** The BLM complies with the Data Quality Act by using the best data available and disclosing the source and quality of that data. The BLM’s policy addressing the requirements of the Data Quality Act is contained in its Information Quality Guidelines published in accordance with OMB guidance (Handbook 1601-1, part V.B. [http://www.blm.gov/nhp/efoia/data\\_quality/](http://www.blm.gov/nhp/efoia/data_quality/)). The BLM believes that the data used to prepare the Draft RMP/EIS, and its underlying inventories, is the best available and of adequate quality and quantity to support the analysis presented in the EIS. Additional reference citations have been added to the Proposed Final RMP/EIS to more readily provide the reader with the information sources used to prepare the RMP. While references were cited in comments submitted prior to release of the Draft RMP/EIS, the BLM has no record of these references being delivered to the Lewistown Field Office. The articles provided by the Wilderness Society after the 2005 Draft RMP/EIS was released were made available to the staff specialists for their analyses and added to the administrative record.

**Counties:** *NEPA also requires that cumulative impacts be considered. 40 C.F.R. § 1508.7. Cumulative impacts are “the impact[s] on the environment which result[] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions . . . .” Id. “A proper consideration of the cumulative impacts of a project requires some quantified or detailed information; . . . [g]eneral statements about possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided.” Klamath-Siskiyou Wildlands Center v. Bureau of Land Mgmt., 387 F.3d*

989, 993 (9th Cir. 2004). *The cumulative impacts analysis “must be more than perfunctory.” Id.*

*The relevant information or impacts that the BLM failed to consider include but is not limited to:*

- *The historical and current information detailing the cultural heritage of ranching in the impacted area;*
- *The impacts of layers and layers of regulation (Wild and Scenic River designation, Wilderness Study Area designation, the neighboring CM Russell Wildlife Refuge designation) that already exists in addition to the Monument designation that all negatively effect the historic, cultural, economic, and social environment attached to the area;*
- *The impacts on bighorn sheep that have thrived under the current management scheme that includes the roads being used and maintained; and*
- *Information on the difference between foot and vehicle traffic—the BLM assumes that vehicle traffic negatively impacts wildlife, but does not consider the effects of foot traffic or mountain biking.*

**Response:** As noted at the beginning of Chapter 4, the cumulative impacts assessment prepared for each resource, accounts for past, present, and reasonably foreseeable future actions that are relevant to determining the significant adverse impacts. The impact due to past actions is inherently part of the existing resource conditions described in Chapter 3. The geographic scope of the environmental effects analysis, including cumulative effects, addresses impacts to the resources and objects of the Monument; however, the analysis is not limited to actions occurring within the Monument, but includes all actions occurring within and outside the Monument that have the potential to create significant impacts. The impact analysis also considers the effect of actions occurring within the Monument that may extend outside the Monument.

**Counties:** *The BLM is required to analyze direct and indirect effects and their significance in its EIS. 40 C.F.R. § 1502.16. Direct effects are those “which are caused by the action and occur at the same time and place.” 40 C.F.R. § 1508.8. Indirect effects are those “which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” Id. “Effects include ecological . . . , aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.” Id.*

**Response:** Chapter 4 of the EIS addresses both direct and indirect impacts on resources affected by management actions under the Preferred Alternative.

## Planning/NEPA – Budget/Staff

**Counties:** *The DRMP/DEIS is an Unfunded Mandate. The requirements imposed on state and county governments and private property owners by the DRMP/DEIS violate the Unfunded Mandates Reform Act (“UMRA”), 2 U.S.C. § 1501 et seq. A federal mandate is defined as “any provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments” or which “would impose an enforceable duty upon the private sector.” 2 U.S.C. § 658(5)(A), (6), (7)(A). The DRMP/DEIS is such a mandate. The DRMP/DEIS would require additional services, such as county emergency services, to be provided by the Counties, would require ranchers to take additional actions to manage livestock grazing on the Monument, and would impose a number of enforceable restrictions on natural gas operators.*

*The UMRA requires that, “before promulgating any general notice of proposed rule making that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation in any 1 year),” the agency must prepare a written statement assessing the qualitative and quantitative costs and benefits on State and local governments and the private sector. 2 U.S.C. § 1532(a)(2). This assessment must include the extent to which Federal financial assistance is available to carry out the mandate. Id.*

*The BLM has failed to adequately outline the quantitative and qualitative economic impacts on the private sector. Similarly, the economic analysis is completely devoid of any quantitative or qualitative costs or benefits to the Counties, the State and other local governments from imposition of the DRMP/DEIS. The economic analysis section does note that the costs of managing the Monument may change under the RMP; however, there is no assessment of any impact to the Counties, the State or the local governments. In fact, the only real quantitative assessment is of the change in output, employment and labor for the regional economy from natural gas operations under the different alternatives. DRMP/DEIS at 341. Clearly, this fails to meet the requirements of the UMRA.*

*The UMRA additionally requires that the agency estimate the future costs of complying with the federal mandate, as well as any disproportionate budgetary effects upon State or local governments or particular segments of the private sector. 2 U.S.C. § 1532(a)(3). Nowhere in the DRMP/DEIS does the BLM provide such an estimate. As stated in the section on economic analysis, the costs of complying with the DRMP/DEIS would significantly impact the local tax base (due to decreases in ranch values, decreased revenue from*

natural gas operations, and a decrease in the tax base due to BLM land acquisitions). This would, in turn, significantly impact the Counties, local communities, and school districts, whose budgets are already struggling to meet the requirements of the No Child Left Behind Act. Furthermore, the BLM failed to provide an analysis of the budgetary impact to the Counties of having to provide increased emergency services on the Monument.

The Act further requires the agency to provide a description of the extent to which the agency has consulted with elected representatives of State, local, and tribal governments, a summary of the representatives' comments and concerns (submitted either orally or in writing), and the agency's evaluation of those comments and concerns. 2 U.S.C. § 1532(a)(5). While the DRMP/DEIS does outline, in some respects, the extent to which these governments were involved in the preparation of the DRMP/DEIS, it does not summarize the comments that these agencies provided. See, e.g., DRMP/DEIS at 2, 343-51. For example, the DRMP/DEIS notes that Montana Governor Judy Martz, at the request of Secretary Norton, developed a task force to provide recommendations to the Secretary of the Interior. *Id.* at 2. The DRMP/DEIS then notes that the task force made nine recommendations, which the BLM considered and decided were outside the BLM's authority. *Id.* Although the BLM explains the reasons for its rejection of the recommendations, it does not provide any summary of the substance of the recommendations. Thus, the BLM has again failed to meet the requirements of the Act.

Finally, the UMRA requires that the BLM "enable officials of affected small governments to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates" and "inform, educate, and advise small governments on compliance with the requirements." 2 U.S.C. § 1533(a). While the Counties were included as cooperating agencies in the development of the DRMP/DEIS, the BLM has completely ignored the concerns of these local governments, thereby preventing them from providing meaningful input into the process. For example, the BLM has completely ignored the concerns of local communities regarding the impacts of the alternatives on school funding. Additionally, the BLM has failed to adequately "inform, educate, and advise" these governments of the burdens that will be imposed on them through the adoption of the DRMP/DEIS.

**Response:** The Unfunded Mandates Reform Act of 1995 applies to federal statutes and regulations on state, local, and tribal governments. The BLM prepares resource management plans based on FLPMA and the regulations for the development, approval, maintenance, amendment and revision of resource management plans. The decisions in resource management plans guide

future land management actions and subsequent site-specific implementation decisions. Resource management plans are not federal statutes or regulations subject to the Unfunded Mandates Reform Act.

Fees associated with a special area permit to boat the Missouri River could be used to support county emergency services. The cost of the permit would be established through a business plan based on the cost of operating the permit system, special costs related to management of the area, comparability with other agencies and similar special areas, and fairness and equity among all users. Development of the business plan would address the disbursement of any fees and would involve the Central Montana RAC and an opportunity for public involvement.

The economic analysis in the Proposed RMP/Final EIS includes additional information on the economic conditions in the local area and the potential impacts from implementing the alternatives.

The State of Montana is a cooperating agency in this planning process, guided by a February 2003 memorandum of understanding. The State of Montana has been represented on the interdisciplinary planning team through a representative designated by the Governor. Blaine, Chouteau, Fergus, and Phillips Counties are also cooperating agencies in this planning process, guided by memorandums of understanding established in November 2002. Fergus and Blaine Counties have been represented on the interdisciplinary planning team while Chouteau and Phillips Counties have relied on Fergus County for their involvement on the planning team. Representatives from the state and counties have been involved in numerous interdisciplinary team meetings and reviews of internal working documents during preparation of the Draft RMP/EIS and Proposed RMP/Final EIS. A description of the cooperating agencies' involvement in the preparation of the RMP/EIS, including comments on the Draft, is included in Chapter 5 of the Proposed RMP/Final EIS.

The Governor's Task Force recommendations were considered during the development of the RMP/EIS and are now summarized in Appendix D of the Proposed RMP/Final EIS along with an explanation of how the recommendations were addressed.

#### **Planning/NEPA – Public Involvement**

**Counties:** *One of the most contentious issues that we had to face with being on the core team, was the motorboat use on the Missouri River. So what we did, we debated that thing I don't know how many hours and everything and couldn't come to a consensus on it and so we took a vote. And the first vote that we took was more*

or less to leave the restrictions in place as they are right now.

Through the course of it, it was either a month or two and this vote was made by the core team which is a couple of commissioners and a RAC member and several BLM staff members. So then what happened in a month or two, the BLM boss at the time who was the director of the Lewistown Field Office came in and gave a presentation to us of why he thought we needed to have some restrictions on the lower Missouri. And it was debated again, not nearly to the extent it was the first time, but we took a second vote on it. And the second vote then flip-flopped. So consequently the restrictions of no motorboat use going downstream from September 5th to -- or from June 5th to September 15th was put in place.

**Response:** The collaborative process evolves continuously. The discussions and alternatives surrounding many issues have changed numerous times throughout this planning process. The nature of these discussions and alternatives can be impacted by new information (either public information or internal information) law, policy, management direction, budget constraints or staff availability.

**Counties:** I was put on the Task Force appointed by Governor Martz, and on that Task Force for you folks in this area some of the members that you may or may not know, some of you definitely know. Joe McConnell was on it. Carol Kienerberger was on it, Commissioner out of Phillips County, and Matt McCann was on it right from this area.

We had like seven or eight people on that and we went through each and every issue of this Monument and every vote came out seven to nothing against the Monument. We sent that in to Secretary of Interior with the blessings of the County, the State Legislature, and the Tribal Council. It didn't get anything done. I mean it didn't do a bit of good.

**Response:** This Monument was created via a Proclamation and came to the BLM with the weight of law. It has never been within the scope of BLM's authority to revise the Proclamation as recommended by joint legislative resolutions, county commission preferences, petitions, or the recommendations developed by the Governor's Task Force in 2001. Those actions are non-binding expressions of opinion or preference that did not place BLM in a position to revise the Proclamation.

**Counties:** The most frustrating was when the preliminary draft, this draft right here, was sent to the State Director and to Washington, D.C. for review was changed when it returned before the public had a chance to review it. I am talking about on page 151 of the

preliminary draft it states, and I quote, all roads leading to State and private lands would be open for administrative and private landowner access, end quote.

On page 108 of the preliminary draft, the narrative, chapter 2, says exactly the same. The transportation map that I have a copy of that went with the preliminary draft reflected those exact wordings. In the current draft, Alternative F, on page 121, has the exact wording but when you read the narrative, page 100, it states, all roads leading to State and private lands would be open for administrative and private landowner access. Therefore you closed roads we had previously had open. What a huge change one word -- one word can make.

**Response:** Chapter 2 of the Proposed RMP/Final under BLM Road System, Alternative F (Preferred Alternative), has been revised to state: BLM roads providing motorized access to the boundary of private land would remain open for public, private landowner and administrative travel with the exception of two roads (one road is impassable and the other road is currently limited to administrative use). There are 65 miles of BLM roads providing access to private land that would be designated open yearlong and 2 miles (two roads) that would be designated closed.

The Preferred Alternative also states that BLM roads to the boundary of state land would remain open for administrative travel including state leaseholders. These roads would also be open for public travel, if shown to meet Monument objectives. The BLM would coordinate with state agencies on roads open to the public that lead to or from state land. There are about 80 miles of BLM roads providing access to state land; 59 miles would be open yearlong, 13 miles open seasonally, and 8 miles closed.

**Counties:** We were upset when the BLM added three additional members to the core team, all from the environmental side, when the Plan was nearly complete. We were told that they would not influence your decision.

**Response:** During the RAC's March 2005 meeting, the council discussed at length their participation in preparing the Draft RMP/EIS. During that meeting a motion was made and consensus was reached to have one RAC member from each of the three categories participate on the planning team as the draft was going through internal reviews. The three selected RAC members were invited to participate in the April, May and June team meetings. The participation from two members was sporadic. In July 2005, the Draft was sent to the printer and in October 2005, it was sent to the public.

**Counties:** The core team voted to leave boating restrictions as they were only to have it changed two

*months later when the BLM boss came in and said he thought that we needed restrictions on the lower section of the river. Art and I were told if we wanted to change this back to gather public support through the comment period.*

**Response:** The collaborative process evolves continuously. The discussions and alternatives surrounding many issues have changed numerous times throughout this planning process. The nature of these discussions and alternatives can be impacted by new information (either public information or internal information) law, policy, management direction, budget constraints or staff availability.

**Counties:** *We must give local input a weighted vote.*

*The four counties that are in the boundaries of the Monument believe that the citizens that live in or in close proximity to the Monument should carry more weight with their comments than other interested parties.*

*The BLM should review all public comments, especially comments from the Counties who the BLM are required to consult with, and address those comments through substantive and real changes so that the DRMP/DEIS is improved, compliant with the pertinent law, and less likely to be challenged.*

*In regard to the Federal Land Policy and Management Act the affected citizens are to be given the opportunity to participate in rulemaking, decision making and the planning process. I think it was fairly evident by the local citizens that they are not happy. Therefore more emphasis needs to be put on their comments versus the thousands of comments you will receive from out of area and out of state, the majority of whom have probably never been to the area. In the Intergovernmental Cooperation Act it states all federal agencies are to consider local viewpoints during the planning stages of any federal project. We can name a lot of instance in this plan where that was not done. To name a few: economic impacts, roads, county emergency services, private property, reduced grazing (or the potential from increased restrictions). Other comments can be found in the five bullets under Subsection C #III of the Karen Budd-Falen comments submitted on behalf of the counties.*

**Response:** Our planning regulations require the BLM to consider each comment thoroughly and equally to see if it provides new information, corrects a factual error in the draft, helps formulate a new alternative or revises an alternative considered in the draft. Our planning regulations do not allow us to enlarge or diminish the value of any comment based on the commenter's location, livelihood, ability to travel, economic status, philosophical disposition or any other criterion.

By their very proximity, local residents have easier access to citizen participation opportunities such as scoping and alternative formulation meetings. Without exception, local residents were prominent at every scoping meeting, alternative formulation meeting, Draft RMP/EIS meeting and any other public participation opportunity involving this planning effort. Local residents also find it easier to stop by the Lewistown, Havre or Malta BLM offices to discuss their concerns or ideas directly with planning team members. Those citizens living in northcentral Montana are also most familiar with the planning area and usually provide the most specific comments which can be carried forward into the planning process. The planning effort surrounding this Monument has provided multiple and equitable opportunities for public involvement throughout northcentral Montana, the region, state and nation.

**Counties:** *I would direct the BLM to send the four counties a letter stating what they believe a cooperating status means. I would also like the Secretary of Interior's stance on this issue. What you have done I believe is in direct violation with what I have understood a cooperating agent agreement to be.*

**Response:** In November 2002, the BLM and Chouteau, Blaine, Fergus and Phillips counties signed a memorandum of understanding (MOU) enlisting the counties as cooperative agencies and defining the roles and responsibilities for these partners (and the BLM) throughout the planning process. Being a cooperating agency grants a special status to the counties and engages their full participation in the planning process. The MOU acknowledges the high level of interest the counties have in this management plan and the capability and familiarity the counties bring to the planning process. It also ensures the working relationship meets the purposes and intent of FLPMA and NEPA.

As cooperating agencies, the counties are full partners in the collaborative planning process and their participation and capabilities were extremely valuable in the preparation of this management plan. The BLM and the planning team considered all of the input offered by the counties; however, some of their comments dealt with topics beyond the scope of BLM's authority (the size of the Monument, boundaries, adjacent private land) and were not carried forward into the management plan. All other comments offered by the counties were carried forward through the collaborative planning process.

However, the very nature of a collaborative process does not assure any partner on the planning team that his/her agenda for these public lands will mirror the Preferred Alternative. That does not mean substantive comments offered by the counties, or any other interest, were not seriously considered.

The management direction recommended via a collaborative planning process (that must consider all comments) seldom mirrors the specific comments from any one individual or organization. As a result, that individual or organization often feels dissatisfied with the public process or that the management decisions have already been made. That is not the case. The BLM's planning process carefully considers the specific information provided by each individual and organization while working toward management decisions that must consider the collective body of specific information provided by all individuals and organizations.

**Counties:** *Violation of the National Environmental Policy Act. The National Environmental Policy Act ("NEPA") requires the BLM to coordinate with local governments. One of the purposes of the regulations implementing NEPA is to "[e]mphasize[] cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document." 40 C.F.R. § 1501.1(b). During the scoping process, the BLM is required to "[i]nvite the participation of affected Federal, State, and local agencies." 40 C.F.R. § 1501.7(a)(1). Pursuant to NEPA, the BLM was supposed to cooperate with the Counties, as well as other state and local governments, to use all practicable means and measures to "create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." 42 U.S.C. § 4331(a). The BLM has not fulfilled this legal mandate.*

*NEPA also requires that the individual county and state land use plans and ordinances be evaluated and discussed in the EIS. 42 U.S.C. § 4332(c). If there are any inconsistencies between the local plans and the proposed action, the agencies were supposed to try and attempt to resolve those inconsistencies prior to implementation. 40 C.F.R. §§ 1506.2(d), 1506.2. Again, the BLM seemed to ignore inconsistencies with local plans. The BLM's actions to ignore local governments are a violation of NEPA.*

*Violation of the Federal Land Policy and Management Act. In addition to the public participation required by NEPA, Congress has created public participation procedures for developing land and resource management plans under the Federal Land Policy and Management Act ("FLPMA"). See 43 U.S.C. § 1712(f) ("The Secretary shall allow an opportunity for public involvement and by regulation shall establish procedures, including public hearings where appropriate to give Federal, State, and local governments and the public adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands").*

*Additionally, Congress directed the Secretary to establish comprehensive rules to assure third party involvement in agency decision making. 43 U.S.C. § 1701(a)(5). "Public involvement" is defined as: the opportunity for participation by affected citizens in rulemaking, decisionmaking, and planning with respect to public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance.*

*43 U.S.C. § 1702(d) (emphasis added). In this case, while the BLM has put on a pretense of cooperating with the Counties, the BLM's actual cooperation with the Counties has been lacking.*

*Violation of the Resource Conservation Act. The Resource Conservation Act of 1981, 16 U.S.C. § 3451 et seq., requires that the agencies cooperate and coordinate with local governments. Again, this has not been done in the process leading up to the proposed decision.*

*Violation of Presidential Executive Orders. By executive order, the President has required the Department of the Interior to carry out "the programs, projects, and activities of the agency" in a manner that "facilitates cooperative conservation" and "properly accommodates local participation in Federal decision making." Executive Order 13352 (Facilitation of Cooperative Conservation (August 26, 2004)). "Cooperative conservation" is defined as "actions that relate to use, enhancement, and enjoyment of natural resources, protection of the environment, or both, and that involve collaborative activity among Federal, State, and local and tribal governments, private for profit and nonprofit institutions, other nongovernmental entities and individuals." Id.*

*In addition, Presidential Executive Order 12866 states that "[t]he American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves the health, safety, environment, and well being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of state, local and tribal governments; and regulations that are effective consistent, sensible, and understandable." Executive Order 12866 (Regulatory Planning and Review (1993)). Pursuant to this Executive Order, the agencies were supposed to seek input from local governments, minimize the regulatory burdens and to harmonize federal regulatory actions with related state, local and tribal regulatory functions. Again, the*

agencies have not met the requirements in this Executive Order.

Furthermore, Presidential Executive Order 12630 requires that federal government actions which may result in a taking of private property must undergo a takings analysis prior to implementation. Executive Order 12630, 62 Fed. Reg. 48,445 (Governmental Actions and Interference with Constitutionally Protected Property Rights (1988)) (stating that “governmental actions that may have significant impact on the use of value or private property should be scrutinized to avoid undue or unplanned burdens on the public fisc”). The BLM has failed to complete a takings analysis.

*Violation of Intergovernmental Cooperation Act.* The Intergovernmental Cooperation Act (“ICA”), 31 U.S.C. §§ 6501-6506 and companion Executive Order 12372, require all federal agencies to consider local viewpoints during the planning stages of any federal project. 31 U.S.C. § 6506(c). The obligation of the BLM to consider local government concerns is a legally enforceable right. *City of Waltham v. United States Postal Serv.*, 11 F.3d 235, 245 (1st Cir. 1993). Injunctive relief is available in those cases where the federal agencies have failed to comply with the ICA. *City of Rochester v. United States Postal Serv.*, 541 F.2d 967, 976 (2nd Cir. 1976). The consideration of local government plans and policies must occur on the record. Federal agencies have an affirmative duty to develop a list of factors which support or explain an agency’s decision to act in disharmony with local land use plans. *Village of Palatine v. U.S. Postal Service*, 742 F. Supp. 1377, 1397 (N.D. Ill. 1990). The BLM has failed to adequately consider local viewpoints on the Monument and the concerns of the Counties impacted by the Monument.

*Violation of the Soil and Water Resources Conservation Act.* The Soil and Water Resources Conservation Act, 16 U.S.C. §§ 2001 et seq., requires that the agencies cooperate and coordinate with local government. Again, this has not been done in the process leading up to the proposed decision.

*The BLM Failed to Coordinate with the Counties.* In this case, while the BLM has put on a pretense of cooperating with local governments, the BLM’s cooperation with local governments has been largely illusory. In 2001, Secretary Norton asked for input from local officials in developing management plans for Clinton’s monument designations. DRMP/DEIS at 2. In response, Montana Governor Judy Martz appointed a seven-member task force of local officials to provide recommendations. *Id.* These officials submitted their recommendations to the BLM in August of 2001. *Id.* While the BLM claims that most of these recommendations were not within the BLM’s authority, nowhere in the DRMP/DEIS does the BLM elaborate on what recommendations these local officials provided,

nor does the BLM provide any substantive response to the local officials’ concerns. The Ninth Circuit has recognized that “there must be good faith, reasoned analysis in response” to public comments. *California v. Block*, 690 F.2d 753, 773 (9th Cir. 1982). Without this information, it is impossible to tell to what extent the BLM has actually considered the concerns of local governments.

In 2002, the BLM and the Counties entered into a Memorandum of Understanding (“MOU”), giving the Counties cooperating agency status in the planning process. MOU at § 1, ¶ 2. Despite this “special status,” the Counties have had little ability to impact the outcome of the DRMP/DEIS. Collectively, the Counties only had two votes on the BLM’s thirty-plus member ID Team, and the Counties’ positions on issues were often lost in the lengthy deliberations. In some cases, the BLM blatantly ignored the Counties’ positions. For example, the BLM ignored a recommendation by the representative of the four counties to leave the boating restrictions as they presently exist. In a meeting debating the issue, the BLM planning team initially reached a general agreement to leave the boating restrictions as they existed. This agreement was later rejected by the BLM due to the thousands of public comments (mostly form letters), that the BLM received on the issue. Thus, the BLM has allowed the voices of those far away from the Monument to take precedence over the voices of the local governments.

The MOU states that the “the BLM will incorporate, to the maximum extent possible, the comments, recommendations and/or data submitted by the Counties in the RMP and EIS.” MOU at § III, ¶ 6. Nowhere in the DRMP/DEIS does the BLM outline what comments, recommendations, or data the Counties submitted, nor does the BLM explain to what extent, if any, the BLM actually incorporated the Counties’ comments, recommendations, and data. In the case that the Counties’ recommendations were not incorporated (as it is believed they were not), there is no explanation as to why the BLM chose to disregard them. At a minimum, the BLM should have documented the Counties’ positions on the issues so that federal decision-makers and the public could adequately determine whether, and to what degree, the Counties’ input was considered.

The MOU also states that the Counties would receive all drafts of the RMP and EIS. MOU at § 3, ¶ 9. However, the BLM did not go to the Counties with various proposals to be included in the DRMP/DEIS to officially ascertain the Counties’ positions on any given issue. The failure to provide these documents to the Counties prior to releasing them to the public contradicts the requirements of the MOU and further supports the argument that the BLM’s “cooperation” with the local governments was illusory.

**Response:** Throughout the preparation of the Draft RMP/EIS and Proposed RMP/Final EIS, the documents were reviewed at various levels within the BLM and by the cooperating agencies to ensure they were in compliance with the various laws, policies and guidelines applying to federal lands.

In November 2002, the BLM and Chouteau, Blaine, Fergus and Phillips counties signed a memorandum of understanding (MOU) enlisting the counties as cooperative agencies and defining the roles and responsibilities for these partners (and the BLM) throughout the planning process. Being a cooperating agency grants a special status to the counties and engages their full participation in the planning process. The MOU acknowledges the high level of interest the counties have in this management plan and the capability and familiarity the counties bring to the planning process. It also ensures the working relationship meets the purposes and intent of FLPMA and NEPA.

As cooperating agencies, the counties are full partners in the collaborative planning process and their participation and capabilities were extremely valuable in the preparation of this management plan. The BLM and the planning team considered all of the input offered by the counties; however, some of their comments dealt with topics beyond the scope of BLM's authority (the size of the Monument, boundaries, adjacent private land) and were not carried forward into the management plan. All other comments offered by the counties were carried forward through the collaborative planning process.

### Planning/NEPA – Regulations

**Counties:** *The DRMP/DEIS represents a significant planning document that will affect and establish how the Monument is managed. However, the DRMP/DEIS does not consider numerous applicable laws. Some have been mentioned above. In addition, the DRMP/DEIS failed to include and analyze:*

- (1) *Small Business Regulatory Flexibility Act, 5 U.S.C. §§ 601 -612, and the Small Business Regulatory Enforcement Fairness Act of 1996 (P.L. 104 - 121) (also known as the Regulatory Flexibility Act or RFA or Reg Flex);*
- (2) *Executive Order 13211 (Energy Effect Analysis);*
- (3) *Executive Order 12630 (Takings Analysis);*
- (4) *Executive Order 12898 (Civil Justice Reform Analysis);*
- (5) *Executive Order 13132 (Federalism Analysis); and*
- (6) *Executive Order 12898 (Environmental Justice Analysis).*

*The BLM's failure to exclude and properly analyze several applicable Executive Orders and other laws in its DRMP/DEIS reveals a serious flaw in the DRMP/DEIS. Until the BLM fully and properly includes and then fully*

*analyzes such, the DRMP/DEIS will be flawed, incomplete, and ineffective.*

**Response:** The acts cited are generally only applicable to the development of new or revised regulations. They are not applicable to the preparation of resource management plans by the BLM under the existing planning regulations at 43 CFR subpart 1610. The requirement to address the effect of actions on low income or minority populations (environmental justice) is addressed under the Social sections of Chapters 3 and 4 in both the Draft and Final EIS.

**Counties:** *The National Environmental Policy Act Analysis Is Insufficient. The National Environmental Policy Act ("NEPA") is considered to be the United States' national charter for environmental responsibility. NEPA establishes an environmental policy that requires federal agencies to do environmental planning and requires that the decision makers within the federal agencies take environmental factors into account when making their decisions. 42 U.S.C. § 4321; 40 C.F.R. § 1500.1. NEPA is primarily a procedural statute (See Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519 (1978); Oregon Environmental Council v. Kuzman, 817 F.2d 484, 492 (9th Cir.1987)) and establishes a process by which federal agencies must study the environmental impacts and effects of actions before such actions are taken. NEPA applies to any federal action. 40 C.F.R. § 1501.4. NEPA exists to ensure a process, not a result. Northwest Environmental Defense Center v. Bonneville Power Administration, 117 F.3d 1520 (9th Cir.1997) (quoting Inland Empire Public Lands v. United States Forest Service, 88 F.3d 754, 758 (9th Cir.1996)). NEPA's procedures are designed to (1) ensure that an agency will have detailed information on significant environmental impacts when it makes its decision; and (2) guarantee that this information will be available to a larger audience. Id. Any action taken without observance of the procedures required by NEPA will be set aside. Save the Yaak Committee v. Block, 840 F.2d 714, 717 (9th Cir.1988). When a federal action is proposed, the NEPA process is triggered. 40 C.F.R. § 1501.4.*

**Response:** The BLM believes that the Draft RMP/EIS and the Proposed RMP/Final EIS meet the requirements of NEPA and the Council on Environmental Quality regulations to identify issues, develop alternatives, and analyze and disclose potential impacts.

## Plan Distribution

Since initial scoping, the BLM has maintained a mailing list (regular and email) of individuals, businesses, organizations, and federal, state, tribal, and local government representatives interested in development of the Monument RMP.

The Proposed RMP/Final EIS is available for public review at the following locations: Montana State Office (Billings, Montana), Great Falls Oil and Gas Field Station (Great Falls, Montana), Havre Field Station (Havre, Montana), and Lewistown Field Office (Lewistown, Montana). It is also available on the BLM web site at [http://www.blm.gov/mt/st/en/fo/lewistown\\_field\\_office/um\\_rmp\\_process.html](http://www.blm.gov/mt/st/en/fo/lewistown_field_office/um_rmp_process.html).

Printed copies of the document have been distributed to the government agencies, business, and organizations listed below. The Proposed RMP/Final EIS, either on CD or in printed format, was also mailed to individuals who requested a copy.

## **Federal Government**

Nez Perce Nat'l Historic Trail/Bear Paw Battlefield  
US Army Corps of Engineers - Omaha District  
US Dept Energy - Office of Environmental Mgmt  
US Dept of Justice  
US Environmental Protection Agency  
US Fish and Wildlife Service  
US Geological Survey  
USDA Farm Service Agency  
USDA Forest Service  
USDA Natural Resources Conservation Service  
USDI Bureau of Indian Affairs  
USDI Bureau of Land Management  
USDI Bureau of Reclamation  
USDI CMR National Wildlife Refuge  
USDI Field Solicitor's Office  
USDI National Park Service

## **State Government**

Colorado State Forest Service  
Idaho Public Utilities Commission  
Montana Aeronautics Division  
Montana Bureau of Mines and Geology  
Montana Dept Environmental Quality  
Montana Dept Nat Resources & Conservation  
Montana Dept of Transportation  
Montana Environmental Quality Council  
Montana Fish Wildlife & Parks  
Montana Governor Brian Schweitzer  
Montana Office of Indian Affairs  
Montana Office of the Lieutenant Governor  
Montana Public Service Commission  
Montana State Historic Preservation Office  
Montana Travel Montana  
North Dakota Public Service Commission  
Wyoming Public Service Commission

## **County/Local Government**

Blaine County Commission  
Blaine County Conservation District

Blaine County Extension Service  
Blaine County Library  
Blaine County Sheriff  
Cascade County Conservation District  
Chouteau County Commission  
Chouteau County Conservation District  
Chouteau County Extension Service  
Chouteau County Planner  
Chouteau County Sheriff  
City of Chinook Mayor  
City of Fort Benton  
City of Havre Mayor  
City of Malta Mayor  
Fergus County Commission  
Fergus County Extension Service  
Fergus County Planner  
Fergus County Sheriff  
Havre Public Library  
Hill County Commission  
Lewistown City Manager  
Lewistown City Planner  
Lewistown Public Library  
Petroleum County Commission  
Phillips County Commission  
Phillips County Extension Office  
Phillips County Library  
Phillips County Sheriff  
Phillips County Supt of Schools  
Valley County Commission  
Winifred Public Schools  
Winifred Rural Fire Dept

## **Tribal Government**

Blackfeet Cultural Program  
Blackfeet Planning & Development  
Blackfeet Tribal Council  
Buffalo Chasers Society  
Chippewa-Cree Business Committee  
Chippewa-Cree Cultural Committee  
Chippewa-Cree Tribal Council  
Chippewa-Cree Tribal Office  
Confederated Salish & Kootenai Tribes  
Crow Tribal Council  
Crow Tribal Cultural Affairs Dept  
Fort Belknap Environmental Protection Office  
Fort Belknap Indian Community Council  
Fort Belknap Tribal Planning Department  
Fort Hall Reservation  
Fort Peck Tribal Water Office  
Fort Peck Tribes  
Little Shell Tribe of Chippewa Indians of MT  
Northern Cheyenne Cultural Committee  
Northern Cheyenne Tribe  
Rocky Boy's Natural Resources Department  
Three Affiliated Tribes of Fort Berthold Reservation  
Turtle Mountain Band of Chippewa Indians  
White Clay Society  
Wind River Reservation

## **Congressional**

Congressman Denny Rehberg  
Senator Max Baucus  
Senator John Tester

## **Businesses**

3 Rivers Canoes  
5B OG Company Inc  
ABN Ranch  
Adventure Bound Canoe & Shuttle Company  
Anchor Ranch  
Arco Oil & Gas Company  
Armells Creek Outfitting  
Arnaud Outfitting  
Aspen Youth Alternatives  
Bailey Land and Livestock  
Baker OG Development LLC  
Ballard & Associates Inc  
Bar OK Ranch - Fairfield Textiles  
Barnard Brothers  
Barnard Energy LLC  
Bear Paw Development Corp  
Bear Paw Energy Inc  
Bear Paw Mountain Outfitters  
Big Flat Electric Cooperative Inc  
Billings Rod & Gun Club  
Black Hawk Resources  
Black Ranch Inc  
Blazek Brothers Inc  
Blue Ribbon Flies  
Borderline Outfitters  
Britt Minerals Inc  
Brown and Darlington  
Canoe Montana/Montana River Expeditions  
Casino Creek Concrete  
Chase Hill Outfitters  
Choctaw II OG LTD  
Coppedge Ranch Inc  
Cow Creek Outfitters  
Dale & Shirley Robertson Shuttles  
Derks Bros Grain & Cattle Inc  
Devon Louisiana Corp  
Dickinson Ranch  
E-7 Grain & Livestock  
Eagle Butte Farm Inc  
Eightmile Bench Farm  
Elenburg Exploration Inc  
Encana Energy Resources Inc  
Encore Operating  
Ensign Operating Company  
Entranco Inc  
Eric H Nelson Attorney at Law  
Evers Ranch Corporation  
Explorations Inc  
Express Pipeline Partnership  
Faber Ranch Inc

Faith Drilling Inc  
Faunawest Wildlife Consultants  
Fergus Electric Cooperative Inc  
Fidelity Exploration & Production Company  
First Trust Co of Montana  
Florentine Films  
Gasvoda and Sons  
Gasvoda Bros Livestock  
Glacier Sea Kayaking  
Good Ridge Resources Inc  
Gough Shanahan Johnson & Waterman  
Graig Intl Inc  
Great Northern Boot Co  
Hamilton Res Management  
Hancock Enterprises  
Havre Answering Service  
Havre Pipeline Company  
Hawk I'm Your Sister  
Heggem Ranch  
Helena Orthopedic Clinic  
Hicks & Sons Inc  
Hill County Electric Cooperative Inc  
IEF 3 & 4 Even Corp  
Inside Energy  
Integrated Planning Services  
IX Ranch Co  
J B Brown Operating Co  
J Sugar Company Inc  
Jireh Consulting Services  
Joe Klabzuba Partnership  
John's Shuttle Service  
Johnson Ranch  
Joy Global Inc  
Judith River Farm  
Kaiser Francis Oil  
Kilroy Company of Texas Inc  
Kinney Consulting Services LLC  
Klabzuba Oil & Gas Inc  
L S Adventures  
Laneer Res LTD  
Lanning Family Trust  
LBR Ranch Inc  
Leave No Trace Inc  
Lewis & Clark Canoe Expeditions  
Lewis & Clark Trail Adventures  
Lewistown News-Argus  
Little Rockies Outfitting  
Lost Creek Outfitting  
M & E Outfitters  
Macmillan Judith River Ranch  
Macum Energy Inc  
Magic Cir Energy Corp  
Main Energy Inc  
Marks Oil Inc  
Matador Ranch  
McLaughlin Insurance Services  
McNamara Family LTD Partnership  
MDU Resources Group Inc  
Mid-Rivers Telephone Coop Inc

Milk River Outfitters  
Missouri Breaks River Company  
Missouri River Canoe Co  
Mitchell Ranch  
Montana Breaks Outfitting  
Montana Guide Service  
Montana Hunt and Fish Inc  
Montana Oil Journal  
Montana Prairie Adventures  
Montana Ranchers Hunts  
Montana River Outfitters  
Montana Wilderness Outfitters  
Morgan Expl LLC  
Morrison-Maierle  
N Hanging 5 Ranch  
Natural Gas Week  
Nevada Power Company  
Nichols Oil Company  
North Wind Environmental  
Northern Rockies Outfitter  
Ocean Energy Resources Inc  
Orr Family Trust  
Our Montana Inc  
P Brian Rogers MD Inc PS  
Paul Mirski and Associates  
Permits West Inc  
Peterson Ranch & Feed Lot  
PIC Technologies Inc  
Pinwheel J Ranch  
Pioneer Lodge  
Pitot OG LLC  
PN Ranch  
Portage Environmental  
Practiceworks Inc  
Prairie Kraft Specialties  
Public Lands Access Assn Inc  
Public Lands News  
Range Watershed Restor Foresters  
Redbone Outfitters  
Redrock Drilling  
River Odysseys West  
Sand Creek Ranch  
Sandtana Inc  
Saroc Inc  
Sawtooth Oil Company  
Schneider G OG LLC  
Smiling Gulch Ranch  
Starwest Adventures  
Swca Environmental Consultants  
Tetra Tech Inc  
Texaco  
Textana USA  
Timco Investments Inc  
T-K Production Company  
Toklan OG Corporation  
Triangle Telephone Cooperative  
Two Calf Company  
Ugrin Alexander Zadick & Higgins PC  
Unit Petroleum Company

Upper Missouri River Guides  
Upper Missouri River Keelboat Co  
Virgelle Valley Ranch Inc  
Virgelle Ventures  
Western Star Realty Inc  
Whiskey Ridge Lodge Inc  
Whiskey Ridge Outfitters  
White Cliff Tours  
Wickens Outfitting  
Wild Rockies Tours  
Wilderness Inquiry  
Williston Basin Interstate Pipeline  
Wolf Spirit Expeditions  
Wood River Ranch

## **Organizations**

Acoustic Ecology Institute  
Aircraft Owners and Pilots Association  
Alliance for the Wild Rockies  
American Assn State Geologists  
American Bird Conservancy  
American Birding Association  
American Farm Bureau  
American Fisheries Society  
American Forest and Paper Association  
American Hiking Association  
American Horse Protection Association  
American Motorcyclist Assoc  
American Petroleum Institute  
American Recreation Coalition  
American Rivers  
American Sheep Industry Association  
American Sportfishing Association  
American Trails  
American Wildlands  
American Wind Energy Association  
Association for the Preserv of American Wild-Lands  
Audubon Society  
Backcountry Horsemen  
Beartooth Fat Tire Society  
Big Sandy Conservation District  
Bikenet  
Blue Ribbon Coalition  
Bolle Center for People & Forests  
Boone and Crockett Club  
Bowhunting Preservation Alliance  
Brazos Valley MTB Assoc  
Capital Trail Bike Riders  
Capital Trail Vehicle Association  
Cascade County 4-Wheelers  
Center for Biological Diversity  
Central Montana Resource Advisory Council  
Central Montana Trail Users  
Central Montana Wildlands Association  
Colorado River Basin Salinity Control Forum  
Comm for Access to Public Lands/Handicapped  
Congressional Sportsmen's Foundation  
Defenders of Wildlife

Ducks Unlimited  
 Earth Justice Legal Defense Fund  
 Ecosystems Alert (HOTA)  
 Edison Electric Institute  
 Flathead Wildlife Inc  
 Forest Policy Center  
 Fort Benton Chamber of Commerce  
 Fort Benton Economic Dev Comm  
 Foundation for North American Wild Sheep  
 Friends of the Missouri Breaks Monument  
 Gallatin Wildlife Association  
 Garden Club of America  
 Geothermal Energy Association  
 Geothermal Resource Council  
 Great Divide Cycling Team  
 Great Falls Chamber of Commerce  
 Great Northern Outdoor Club  
 Greater Yellowstone Coalition  
 Havre Chamber of Commerce  
 Havre Rifle and Pistol Club  
 Helena Bicycle Club  
 Howard County Bird Club  
 Humane Society of the United States  
 Hunters Anglers Assn  
 Independent Petroleum Assn of Mtn States  
 Indian Butte Cooperative State Grazing District  
 International Assn of Fish and Wildlife Agencies  
 International Mountain Bicycling Association  
 Interstate Mining Compact Commission  
 Interstate Natural Gas Association of America  
 Izaak Walton League  
 Last Chance Audubon Society  
 Lewistown Chamber of Commerce  
 Low Impact Mtn Bicyclists of Missoula  
 Magic City 4-Wheelers  
 Malta Chamber of Commerce  
 Malta Trap Club  
 Medicine River Canoe Club  
 Mineral Policy Center  
 Missouri River Cons Dist Council  
 Missouri River Stewards  
 Montana 4 X 4 Association  
 Montana Agricultural Center & Museum  
 Montana Agriculture Development Council  
 Montana Association of Counties  
 Montana Audubon  
 Montana Big Open Inc  
 Montana Board of Oil and Gas Conservation  
 Montana Bowhunters Assn  
 Montana Chamber of Commerce  
 Montana Chapter the Wildlife Society  
 Montana Ecosystems Defense Council  
 Montana Environmental Information Center  
 Montana Farm Bureau  
 Montana Farmers Union  
 Montana Geological Society  
 Montana Horseshoe Outfitters  
 Montana Native Plant Society- Clark Fk Chptr  
 Montana Night Riders

Montana Outfitters & Guides Assn  
 Montana Petroleum Association  
 Montana Pilots Association  
 Montana River Action Network  
 Montana Seaplane Pilots Association  
 Montana Trail Vehicle Riders Assn  
 Montana Trails Association  
 Montana Trappers Association  
 Montana Trout Unlimited  
 Montana Wilderness Association  
 Montana Wildlife Federation  
 Montana Woolgrowers Assn  
 Montanans for Multiple Use  
 Mountain States Legal Foundation  
 Mule Deer Foundation  
 National Assn of Conservation Districts  
 National Association of Counties  
 National Audubon Society  
 National Cattlemen's Beef Assn  
 National Conf State Hist Preservation Officers  
 National Fish and Wildlife Foundation  
 National Mining Association  
 National OHV Conservation Council  
 National Parks Conservation Assn  
 National Rifle Assn of America  
 National Shooting Sports Foundation  
 National Trust for Historic Preservation  
 National Wild Turkey Federation  
 National Wildlife Federation  
 Natural Resource Defense Council  
 Nature Conservancy  
 North American Grouse Partnership  
 North Blaine Co Cooperative State Grazing District  
 Northern Montana Oil & Gas Assn  
 Northern Plains Resource Council  
 Northwest Mining Association  
 Orion the Hunters Institute  
 Our Montana Inc  
 Outdoor Industry Association  
 Peregrine Fund  
 Pheasants Forever  
 Phillco Economic Growth Council  
 Plains Crazy Road & Trail Club  
 Political Economy Research Center  
 Pope and Young Club  
 Predator Conservation Alliance  
 Private Lands/Public Wildlife Council  
 Public Employees for Env Responsibility  
 Public Interest Research Group  
 Public Lands Access Assn  
 Public Lands Council and Grazing Districts  
 Public Lands Foundation  
 Quail Unlimited  
 Rails to Trails  
 Recreational Boating and Fishing Foundation  
 Republicans for Environmental Protection  
 River and Plains Society  
 Rocky Mountain Elk Foundation  
 Rocky Mountain Mineral Law Foundation

Ruffed Grouse Society  
 Russell Country Sportsmen's Association  
 Sci - First for Hunters  
 Sierra Club  
 Skytruth  
 Snowy Mountain Development Corp  
 Society for American Archaeology  
 Society for Range Management  
 Society of American Foresters  
 Square Butte Grazing Association  
 St Joseph's Church  
 Surgical Associates of Spartanburg, PA.  
 Swan View Coalition  
 The Ecology Center  
 The Wilderness Society  
 Theodore Roosevelt Conservation Partnership  
 Tread Lightly Inc  
 Trout Unlimited - Westslope Chapter  
 Upper Missouri Trust  
 Walleyes Unlimited of Montana  
 Western Electricity Coordinating Council  
 Western Governors' Association  
 Western States Land Commissioners Assn  
 Western Utility Group  
 Wild Canid Research Group  
 Wild Rockies Field Institute  
 Wilderness Watch  
 Wildlands CPR  
 Wildlife Habitat Enhancement Council  
 Wildlife Management Institute  
 Wildlife Society  
 Yellowstone River Parks Assoc  
 Yellowstone Valley Audubon  
 Yellowstone Valley Cycling Club

**Zane Fulbright**

Education  
 Professional Discipline  
 Years of Experience  
 Responsibility

B.A. History, M.A. History  
 Archaeologist  
 14  
 Cultural Resources

**Lou Hagener**

Education  
 Professional Discipline  
  
 Years of Experience  
 Responsibility

B.S. Range Science  
 Rangeland  
 Management/Ecosystem  
 Management  
 30  
 Vegetation/Rangeland  
 Management/Grazing

**Kay Haight**

Education  
 Professional Discipline  
 Years of Experience  
 Responsibility

High School Graduate  
 Secretary  
 30  
 Editorial Assistant

**Kenny Keever**

Education  
 Professional Discipline  
 Years of Experience  
 Responsibility

B.S. Plant Protection  
 Invasive Species  
 7  
 Vegetation – Noxious and  
 Invasive Plants

**Gary Kirpach**

Education  
 Professional Discipline  
  
 Years of Experience  
 Responsibility

B.S. Forest Management  
 Zone Fire Management  
 Officer  
 29  
 Fire Management

**Chad Krause**

Education  
  
 Professional Discipline  
 Years of Experience  
 Responsibility

B.S. Geological Engineering,  
 Hydrogeology Option  
 Hydrologist  
 3  
 Vegetation – Riparian, Water

**Jerry Majerus**

Education  
 Professional Discipline  
 Years of Experience  
 Responsibility

B.S. Forestry, M.S. Forestry  
 Land Use Specialist  
 24  
 Project Manager

**Dale Manchester**

Education  
 Professional Discipline  
 Years of Experience  
 Responsibility

B.S. Petroleum Engineering  
 Petroleum Engineer  
 24  
 Natural Gas and Reasonable  
 Foreseeable Development

**List of Preparers**

**Core Team**

**Wade Brown**

Education	B.S. Wildland Recreation Management
Professional Discipline	Supervisory Outdoor Recreation Planner
Years of Experience	17
Responsibility	Visitor Uses, Services and Infrastructure

**Craig Flentie**

Education	B.S. Technical Journalism/ Mass Communication
Professional Discipline	Public Affairs Specialist
Years of Experience	30
Responsibility	Public Involvement

**Joanne Maycox**  
 Education A.A. Theatrical Arts  
 Professional Discipline Forestry Technician / Data Administrator  
 Years of Experience 27  
 Responsibility Database Management

**Jim Mitchell** (retired)  
 Education B.A. Geology  
 Professional Discipline Geologist  
 Years of Experience 29  
 Responsibility Geology and Paleontology

**Loretta Park**  
 Education High School Graduate  
 Professional Discipline Realty Specialist  
 Years of Experience 24  
 Responsibility Lands and Realty

**Kaylene Patten**  
 Education B.S. Education  
 Professional Discipline Facilitator/GIS Specialist  
 Years of Experience 21  
 Responsibility GIS Maps

**Jody Peters**  
 Education B.S. Wildlife & Fisheries Science, Range Science Minor  
 Professional Discipline Wildlife Biologist (Management)  
 Years of Experience 18 (Wildlife), 4 (Range Management)  
 Responsibility Wildlife, Fisheries, Threatened and Endangered Species

**Bruce Reid**  
 Education B.S. Forestry  
 Professional Discipline Forester  
 Years of Experience 22  
 Responsibility Forestry

**Rod Sanders**  
 Education B.S. Wildlands Recreation Management  
 Professional Discipline Outdoor Recreation Planner  
 Years of Experience 16  
 Responsibility Wilderness Study Areas and Upland SRPs

**Josh Sorlie**  
 Education B.S. Soils  
 Professional Discipline Soil Scientist  
 Years of Experience 4  
 Responsibility Soils

**Joan Trent**  
 Education B.A. Psychology, M.En. (Environmental Science)  
 Professional Discipline Sociologist  
 Years of Experience 29  
 Responsibility Social Conditions

**Clark Whitehead** (retired)  
 Education B.S. Forest Management  
 Professional Discipline Outdoor Recreation Planner  
 Years of Experience 40  
 Responsibility Access and Transportation

**Barbara Wyse**  
 Education M.S. Economics  
 Professional Discipline Natural Resource Economics  
 Years of Experience 3  
 Responsibility Economics

### Interdisciplinary Team and Support

Engineering	Carl Patten
Engineering	Ken Koncilya
Fire Management	Steve Knox
Fish and Wildlife	Fred Roberts
GIS	Gary Warfield
Planning Coordination	Jim Beaver
Printing	Kathy Ives
Rangeland Management	Vinita Shea
Recreation	Jon Collins
Website	Mary Apple

### Management Team

State Director	Gene Terland
Associate State Director	Howard Lemm
Field Manager, Lewistown	June Bailey
Associate Field Manager, Lewistown	Scott Haight
Assistant Field Manager, Fire	Gary Kirpach
Assistant Field Manager, Resources	Willy Frank
Monument Manager	Gary Slagel