



STATE OF SOUTH DAKOTA
DENNIS DAUGAARD, GOVERNOR

July 29, 2015

Jamie Connell
Bureau of Land Management State Director
5001 Southgate Drive
Billings, MT 59101

Subject: 1610 (MT930) The United States Department of Interior, Bureau of Land Management's (BLM) Proposed Resource Management Plan/Final Environmental Impact Statements (PRMP/FEIS) for the South Dakota Field Office

Dear Ms. Connell,

I am providing you my review of and recommended changes to the above referenced document. Thank you for the opportunity to offer comments.

If you have any questions please contact Bill Smith with the SD Department of Agriculture at 605.773.4351.

Sincerely,

Dennis Daugaard

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Enclosure

cc: Lori (Chip) Kimball, South Dakota Field Manager
Mitch Iverson, RMP Project Manager

**SOUTH DAKOTA GOVERNOR DENNIS DAUGAARD'S CONSISTENCY REVIEW OF AND RECOMMENDED
CHANGES TO THE PROPOSED RESOURCE MANAGEMENT PLAN/FINAL ENVIRONMENTAL IMPACT
STATEMENTS FOR THE SOUTH DAKOTA FIELD OFFICE**

I. INTRODUCTION

The Proposed Resource Management Plan/Final Environmental Impact Statements for the South Dakota Field Office seeks to revise the Resource Management Plan (RMP) for the Bureau of Land Management's (BLM) South Dakota Field Office. The RMP covers a broad range of resource issues on 274,239 surface acres and 1.72 million acres of federal mineral estates that are administered by the BLM in South Dakota. The plan also is part of the BLM's National Greater Sage-Grouse Planning Strategy and attempts to incorporate sage-grouse conservation measures.

The Federal Land Policy and Management Act requires that BLM guidance and management plans "be consistent with officially approved and adopted resource related policies and programs of other Federal agencies, State, and local governments and Indian tribes." 43 U.S.C. § 1712(c)(9); 43 C.F.R. § 1610.3-2. Accordingly, it is incumbent upon the BLM to seek consistency with the laws, policies, programs, and plans of the State of South Dakota (State) and other governments within the state. This document includes inconsistencies that the State has identified with State laws, policies, programs, and plans.

Pursuant to 43 C.F.R. § 1610.3-2, this consistency review is being submitted to the BLM for consideration prior to amending the RMP. If you do not accept these recommendations and issue a revised Programmatic Environmental Impact Statement (PEIS), then we would request the opportunity for the State to meet with the BLM to discuss these and seek resolution prior to the BLM sending a written response required by the regulations and issuing a record of decision. We also are aware that the regulations provide for 30 days to submit a written appeal if these recommendations are rejected.

II. COMMENTS AND RECOMMENDATIONS

A. The PRMP/FEIS is not consistent with South Dakota Codified Law (SDCL) 45-9-1.

SDCL 45-9-1 directs for the development of oil and gas resources of the state. SDCL 45-9-1 reads, "Purpose of chapter--Development of oil and gas resources. It is hereby declared that it is in the public interest to foster, to encourage, and to promote the development, production, and utilization of natural resources of oil and gas in the State of South Dakota in such a manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas be had and that the correlative rights of all owners be fully protected; and to encourage, to authorize, and to provide for cycling, recycling, pressure maintenance, and secondary recovery operations in order that the greatest possible economic recovery of oil and gas be obtained within the state to the end that the landowners, the royalty owners, the producers, and the general public realize and enjoy the greatest possible good from these vital natural resources."

Identified conflicts with SDCL 45-9-1 include:

General Comment 1—Approximately 30% of SD's existing natural gas patch is comprised of federal property within Priority Sage-Grouse Habitat Management Areas (PHMAs). Development of known gas

resources in northwest South Dakota involves vertical drilling, and therefore, surface occupancy of developed property (horizontal drilling for known shallow gas resources is not economically feasible.) Under the 2013 draft RMP, a “No Surface Occupancy” (NSO) restriction applied to federal property within the PHMAs, but the plan included explicit “waiver” and “modification” provisions that allowed for gas development on qualified NSO parcels. Unfortunately, the waiver and modification stipulations were removed from the May 2015 PRMP/FEIS, leaving only a narrow opportunity for an “exception” if the operator can prove an action will have no direct, indirect, or cumulative effect on any sage-grouse habitat. The 2013 draft RMP threatened to hinder future gas development in SD, but the BLM’s preferred alternative under the PRMP/FEIS will likely preclude new gas development across roughly 25% to 30% of SD’s primary gas development/exploration area.

General Comment 2—South Dakota encouraged flexibility in BLM federal land management options that will protect sage-grouse while still allowing development of oil, gas, and bentonite in the northwest corner of the state. The preferred alternative under the 2013 draft RMP attained, more-or-less, reasonable balance between sage-grouse conservation and development of oil and bentonite resources; and provided limited options for development of known natural gas resources in sage-grouse habitat areas. Unfortunately, the preferred alternative under the PRMP/FEIS appears to preclude natural gas development on significant portions of existing resource areas.

General Comment 3—South Dakota recommends including appropriate Waivers, Exceptions, and Modifications (WEMs) in the final PRMP/FEIS that provide for environmentally responsible mining and gas development within Priority Sage-Grouse Habitat Management Areas (PHMAs). Unless the RMP includes reasonable WEMs for natural gas producers, future development of known resources will be greatly curtailed creating significant economic impacts at the local and state levels. This is in contravention of South Dakota Codified Laws (SDCL) 45-9-1, which encourages and promotes oil and gas resource extraction for the benefit and economic development of the state and nation.

General Comment 4—Natural gas development in southern Harding County and, potentially, in northern Butte County involves disturbance comparable in scope to other common land uses within the area. Local gas wells have a small footprint and require a limited amount of maintenance and associated travel. Arguably, natural gas development involves less impact to sage-grouse habitat than other land uses in the area. However, the current PRMP/FEIS restrictions on natural gas development within PHMAs are vastly more stringent than restrictions applied to other common land uses. The proposed PRMP/FEIS allows oil and gas development within PHMAs only according to the ominous standard of no “direct, indirect, or cumulative effects on GRSG or its habitat.” Given the comparable scope of potential sage-grouse impacts stemming from both natural gas development and other common land uses, the PRMP/FEIS should afford the same reasonable potential for future natural gas development as it affords other common land uses within PHMAs. It would be unreasonable to preclude other common land uses in the vast federal portions of the PHMAs. Likewise, it is unreasonable to preclude natural gas development in PHMAs. Please see the photo in Appendix A for an example of one of these gas wells.

General Comment 5—Reasonable Foreseeable Development (RFD) figures (oil & gas) used throughout Chapter 4 of the PRMP/FEIS are based on outdated data and inaccurate production field boundaries. Therefore, BLM’s RFD figures are not appropriate for use in assessing the economic and social impacts proposed sage-grouse protections will have on northwest South Dakota. Please see Appendix B for the RFD produced by the BLM and Appendix C for the RFD produced by the State.

Recommendations to resolve the inconsistencies with SDCL 45-9-1

Suggested Changes to Address General Comments 1 - 4—On page 49, recommend changing the third paragraph as follows: “~~No waivers or~~ Waivers and modifications to a fluid mineral lease NSO stipulation will be granted for qualified sites as outlined in Appendix E.4. The BLM Authorized Officer may grant an exception to a fluid mineral lease NSO stipulation only where the proposed action:

- ~~(i) Would not have direct, indirect, or cumulative effects on GRSG or its habitat; or~~
- ~~(ii) Is proposed to be undertaken as an alternative to a similar action occurring on a nearby parcel, and would provide a clear conservation gain to GRSG.”~~

Suggested Changes to Address General Comments 1 - 4—On page 148, Table 2-6, under Alternative D (Proposed Action), recommend changing the second paragraph as follows: “~~No waivers or modifications to a fluid minerals lease no surface occupancy stipulation will be granted. The Authorized Officer may grant an exception to a fluid mineral lease no surface occupancy stipulation in certain cases. Exceptions based on conservation gain (ii) may only be considered in (A) PHMAs of mixed ownership where federal minerals underlie less than fifty percent of the total surface, or (b) area of the public lands where the proposed exception is an alternative to an action occurring on a nearby parcel subject to a valid Federal fluid mineral lease existing as of the date of this RMP. See Appendix E.4. O&G stipulations would also apply to geothermal resources. Waivers, exceptions, and modifications are described in Appendix E.4. Locatable minerals would be open subject to GRSG BMPs (Appendix V-1, Required Design Features that would be applied as BMPs for locatable minerals, subject to valid existing rights and in coordination with the claimant)...~~”

Suggested Changes to Address General Comments 1 - 4—On page 506, recommend changing the sixth paragraph as follows: “Unavailable lands for this RMP (the NPS and the USFWS lands and minerals; see Figure 3-16) would be leased only if a state or private well is proposed or completed within the same spacing unit or if the lands are within a producing unit. These lands, consisting of properties that do not qualify for pertinent waiver, modification, or exception as outlined in Appendix E.4, would be leased with a “no-surface occupancy and no subsurface occupancy stipulation” ~~with no waiver, modification, or exception provisions.~~ No well drilling locations would be constructed on these lands nor wellbores directionally drilled under them. If federal property within Fluid minerals would be obtained by horizontal flow through geologic formations via the decrease in pressure near the wellbores on adjacent lands which would force minerals to flow due to the higher pressure gradient remaining in the federal minerals. After the issuance of a lease, it would be combined with the private or state leases in a communitization agreement, and the U.S. government would then receive revenue in proportion to the lease’s acreage interest as it bears to the entire acreage interest committed to the agreements.

Suggested Changes to Address General Comments 1 - 4—On page 59 of the appendices, Appendix E.4, under Special Status Species: Management Action 22, recommend changing paragraphs four through six as follows:

“~~Exception: The Authorized Officer may grant an exception only where the proposed action:~~ to specific requirements of this stipulation if the action, as proposed or conditioned would not compromise the habitat for sage-grouse and meets the goals for sage-grouse habitat.

- ~~(i) Would not have direct, indirect, or cumulative effects on GRSG or its habitat; or,~~
- (i) Surface disturbing/disruptive activities will prevent or minimize disturbance to Greater Sage-Grouse or their habitat. Except as identified above or during emergency situations, activities will not compromise the habitat.

(ii) Continuous noise (related to long-term operations and/or activities) would be no greater than 49 decibels at ¼ mile from the perimeter of the lek.

(iii) Temporary noise (related to installation, maintenance, one-time use, emergency operations, etc.) exceeding 49 decibels at ¼ mile from the perimeter of a lek or surface disturbing/ disruptive activities may be allowed, but only from 10 a.m. to 4 p.m. between March 15 and May 15.

(iv) Manage water developments to reduce the spread of West Nile virus within sage-grouse habitat areas.

(v) Site and/or minimize linear ROW to reduce disturbance to sagebrush habitats.

(vi) Maximize placement of new utility developments (power lines, pipelines, etc.) and transportation routes in existing utility or transportation corridors.

(vii) Power lines would be buried, eliminated, designed or sited in a manner which does not impact sage-grouse.

(viii) Placement of other high profile structures, exceeding 10 feet in height, would be eliminated, designed or sited in a manner which does not impact sage-grouse.

(ix) Remote monitoring of production facilities must be utilized and all permit applications must contain a plan to reduce the frequency of vehicle use.

(x) Maximize the area of interim reclamation on long-term access roads and well pads including reshaping, topsoiling and revegetating cut and fill slopes.

(xi) Restore disturbed areas at final reclamation to pre-disturbance conditions or desired plant community.

(xii) Permanent (longer than 2 months) structures which create movement must be designed or sited to minimize impacts to sage-grouse.

(xiii) Consider use of off-site mitigation, (e.g., creation of sagebrush habitat, purchase conservation easements, or buying down grazing) with proponent dollars to offset habitat losses.

(xiv) Consider creation of a "Mitigation Trust Account" when impacts cannot be avoided, minimized, or effectively mitigated through other means. If approved by the BLM, the proponent may contribute funding to maintain habitat function based on the estimated cost of habitat treatments or other mitigation needed to maintain the functions of impacted habitats. Off-site mitigation should only be considered when no feasible options are available to adequately mitigate within and immediately adjacent to the impacted site, or when the off-site location would provide more effective mitigation of the impact than can be achieved on-site.

(# xv)) ‡ If the proposed action is proposed to be undertaken as an alternative to a similar action occurring on a nearby parcel, and would provide a clear conservation gain to GRSG.

Exceptions based on conservation gain (# xv) may only be considered in (a) PHMAs of mixed ownership where federal minerals underlie less than fifty percent of the total surface, or (b) areas of the public lands where the proposed exception is an alternative to an action occurring on a nearby parcel subject to a valid Federal fluid mineral lease existing as of the date of this RMP. (See further requirements in the WEMs preamble near the beginning of Appendix E.4.)

Modification: ~~None~~ The AO may modify the area subject to the stipulation if an environmental analysis finds a portion of the PHMA is nonessential or no longer sage-grouse habitat.

Waiver: ~~None~~ This stipulation may be waived by the AO if: 1) after consultation with the appropriate State Wildlife agency, it is determined significant portions of the PHMA have been altered to the point sage-grouse no longer occupy the site and there is no reasonable likelihood of functional habitat being restored, or 2) sage-grouse are no longer a BLM Special Status Species and are not listed as threatened or endangered by the U.S. Fish and Wildlife Service, or 3) no reasonable alternative development scenario mitigating the impacts is possible."

Suggested Changes to Address General Comment 5—Use current data provided by the State for RFD in Chapter 4 of PRMP/FEIS in assessing the economic and social impacts that proposed sage-grouse protections will have on northwest South Dakota.

- B. The PRMP/FEIS states that the BLM will follow Secretarial Order 3336 for protecting sage-grouse habitat from wildfire; however, does not identify how the BLM will do so.

SDCL Chapter 41-20A establishes the State's authority in "prevention, fire suppression, fuels mitigation and reduction, education, and training of homeowners, the public, and firefighters, along with other duties or responsibilities as may be necessary to fulfill the purpose of this chapter." While the PRMP/FEIS acknowledges that it will follow Secretarial Order 3336, it lacks essential details outlining how this will be done in concert with SDCL Chapter 41-20A.

Possible conflicts with SO 3336 include:

General Comment 6—The statement in the Introduction section of the PRMP/FEIS states that "The South Dakota RMP/EIS incorporates Secretarial Order (S.O.) 3336 and sets forth protocols to improve the BLM's ability to protect GRS habitat from damaging wildfire." The lack of consistency occurs because there are no identified S. O. 3336 protocols for wildland fire suppression in the Chapters or Appendices portions of the PRMP/FEIS.

General Comment 7—On page 474 of Chapter 3, in the third paragraph, the second sentence in the third paragraph sentence currently reads "The Eastern Montana/Dakota's District Office in Miles City provides suppression resources and management for BLM lands within Harding County in northwestern South Dakota, which is in the Northern Rockies Geographical Area." In order to be in compliance and consistent with existing interagency agreements, the sentence should read "The Eastern Montana/Dakota's District Office in Miles City provides suppression resources and management for BLM lands and Custer-Gallatin National Forest lands within Harding County in northwestern South Dakota, which is in the Northern Rockies Geographical Area". It is an important note to understand, because if BLM fire units are busy suppressing fires on forest service land in Harding County, then they may be stretched too thin to adequately suppress fires on BLM land in core sagebrush habitat areas.

General Comment 8— Page 63 of Chapter 2, bullet point 7, under the "Highlights of Management Actions Common to All Alternatives," reads "The State of South Dakota Division of Wildland Fire will continue to provide suppression responsibilities in cooperation with local and rural fire departments. The BLM Eastern Montana/Dakotas District Office in Miles City, Montana will continue to provide suppression responsibilities within Harding County". This statement appears to be inconsistent with research found in the "South Dakota Game, Fish and Parks Sage-grouse management plan for South Dakota 2014-2018" which depicts that the majority of critical sage grouse habitat is in Butte County. Given that Butte County also contains the most BLM surface acres in the state, would not the PRMP/FEIS take into account the future impact of SO 3336 and its impact on State and local fire department forces trying to suppress fires in Butte County? Historically, the Montana/Dakotas BLM has refused to plan for or permanently staff any operational fire equipment such as engines, helicopters or SEATs in Butte County or under the operational control of the South Dakota Field Office. If BLM fire units in Miles City, MT are deployed to fires activity farther west in Montana on a regular basis, how is enhanced protection to BLM surface acres for protection of core sagebrush habitat going to happen in Butte or Harding County in South Dakota, unless the BLM plans to increase staffing levels in South Dakota outside of

Harding County? The PRMP/FEIS is silent on this future resource management issue. As written, it appears that an increased fire suppression work load will fall upon local and state fire resources in Butte County to comply with future S.O. 3336 protocols.

Recommendations to resolve the inconsistencies with SDCL Chapter 41-20A

Suggested Changes to Address General Comment 6 through 8—The PRMP/FEIS needs to identify protocols regarding compliance with S.O. 3336 and how these will not place an increased burden on State and local fire suppression efforts.

- C. The PRMP/FEIS currently uses data provided by the State to depict sage-grouse core areas and the State wants the BLM to continue to collaborate with the State to ensure that the BLM continues to use the most up-to-date sage grouse data. The concern here is that Record of Decision and future BLM implementation plans may not have this same level of collaboration with the state in the future.

General Comment 9—The preferred alternative of the PRMP/FEIS draft adopted the State’s sage-grouse core area as a Priority Habitat Management Area (PHMA) for sage-grouse. The State supports this inclusion as the state developed core area has been used extensively for BLM planning purposes across the sage-grouse range. This was a change from previous versions of the RMP and improves consistency in the planning process with other western states. The State’s core area is subject to change as additional data are acquired. The State, in cooperation with South Dakota State University, will be conducting a 2-year sage-grouse research project beginning in 2015. Data collected during this project could be useful in refining South Dakota’s sage-grouse core area. The State is committed to notifying and sharing changes to the sage grouse core area as they become available.

General Comment 10—Sage-grouse lek locations outside of PHMA are protected under certain provisions of the RMP. The State sage-grouse plan has several strategies related to sage-grouse population monitoring through spring lek surveys. The State will provide sage-grouse lek survey data to the BLM, including locations of new leks, to assure BLM has an updated and complete inventory for management implementation.

Recommendations to ensure that BLM sage-grouse core areas remain consistent with the State’s sage-grouse core areas

Suggested Changes to Address General Comments 9 & 10—As stated in the State’s sage-grouse plan, the State will continue to collaborate with the BLM on management of sage-grouse. As new research findings and management recommendations emerge, the State will work in cooperation with the BLM to assure operational plans align with emerging information. It is our expectation that the BLM will cooperate with the State in this effort.

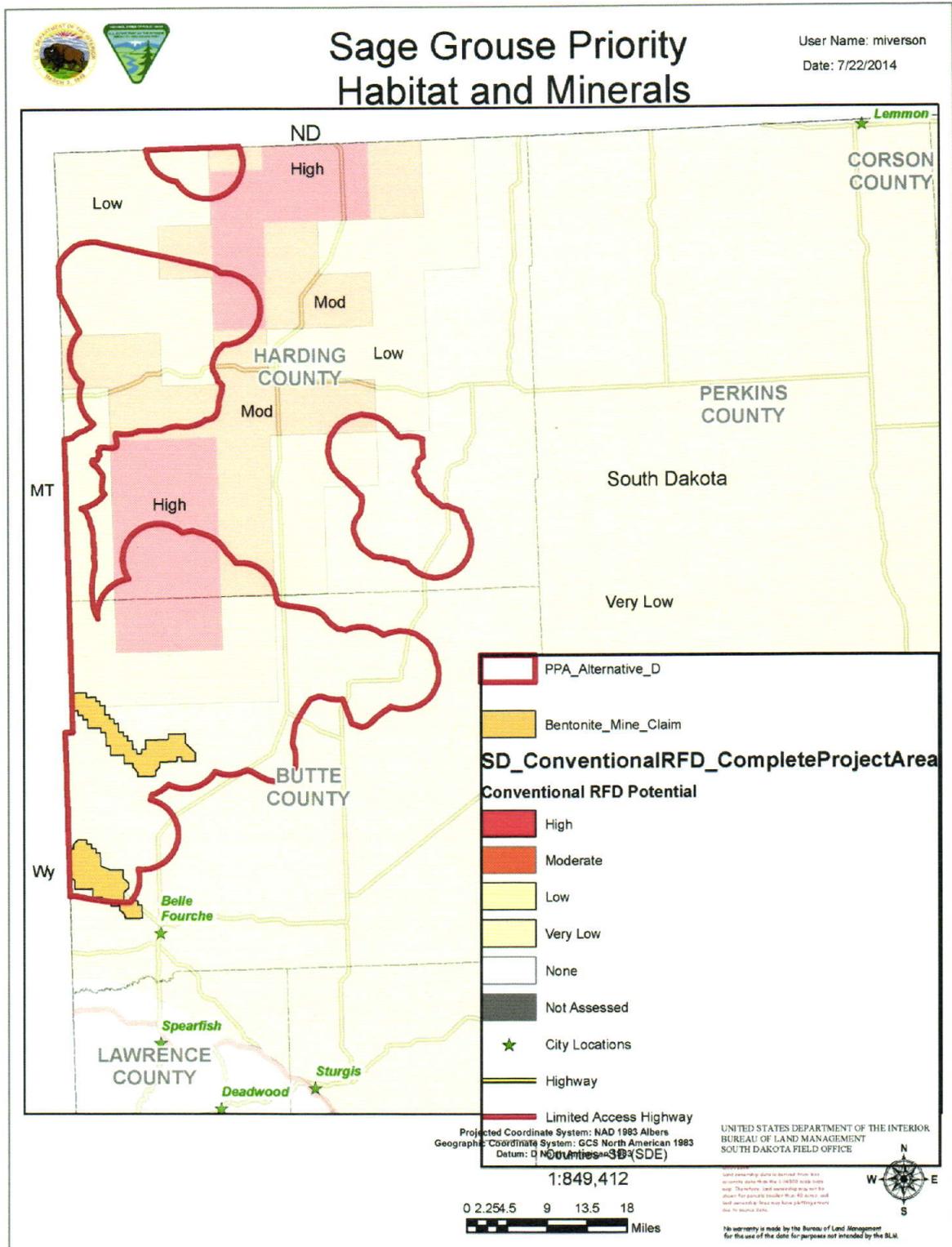
III. CONCLUSION

The PRMP/FEIS was developed to cover a broad range of resource issues on 274,239 surface acres and 1.72 million acres of federal mineral estates that are administered by the BLM in South Dakota. While the PRMP/FEIS attempted to address multiple resource issues, there are a number of inconsistencies with state laws and plans that should be addressed.

APPENDIX A - A TYPICAL EXAMPLE OF A NATURAL GAS WELL SITE IN NORTHWEST SOUTH DAKOTA



APPENDIX B – BLM RFD FOR OIL AND GAS DEVELOPMENT USED IN THE PRMP/FEIS



APPENDIX C – STATE OF SOUTH DAKOTA RFD FOR OIL AND GAS DEVELOPMENT

