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BLM Buffalo Field Office
Attention: Thomas Bills, Project Manager
1425 Fort Street
Buffalo, Wyoming 82834

Electronically to: Fort_Crk_WYMail@blm.gov

Re: Comments on the Augusta Unit Zeta Plan of Development EA

Dear Mr. Bills:

The following comments are submitted on behalf of the Wyoming Wildlife Federation (WWF), Wyoming's oldest and largest statewide sportsmen's and conservation organization. The WWF has thousands of members and supporters who live, hunt, fish, and view wildlife in Wyoming. WWF's members and supporters value the Fortification Creek for its unique elk herd, wildlife habitat, undisturbed natural vistas, and other values recognized in the existing Buffalo Resource Management Plan. As you know, the WWF is deeply concerned about the effects of Coal Bed Methane (CBM) development on the Fortification Creek area and its elk herd, and has been involved in administrative actions challenging current and past efforts to permit gas wells with adverse cumulative effects on the Fortification Creek herd.

In sum, we find that the Environmental Assessment and associated Finding of No Significant Impact (FONSI) for Lance Oil and Gas Company's Augusta Unit Zeta Plan of Development (AUEA) falls far short of meeting National Environmental Policy Act (NEPA) and associated case law benchmarks requiring federal agencies to consider all relevant matters of environmental concern. BLM fails to take a "hard look" at potential environmental impacts, and make a convincing case that no significant impact will result that was not already addressed in the EIS or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures.

In particular, the BLM has done a woefully inadequate job of recognizing and analyzing "connected" and "similar" actions as well as cumulative impacts of existing and proposed CBM activity, specifically relating to the Fortification elk herd. The BLM has also failed to recognize that the anemic mitigation measures proposed for this herd will be largely ineffectual. We strongly contend that the effects of the proposed development, in tandem with existing and proposed development in the area, clearly present significant impacts, and, thus, call for a programmatic EIS specific to the yearlong range of the Fortification

elk herd, to which this and subsequent project-level development proposals/EA's can be tiered. Specific comments follow.

The Fortification Creek Elk Herd

The Fortification elk herd is unique in many respects and highly valued by both local residents and non-residents. This herd is set apart from others, both in Wyoming and nationally, by its isolated nature, the rugged largely non-forested terrain it inhabits, its value to hunters, its sensitivity to disturbance and affinity to the area, and the fact that its current yearlong range is literally encircled by CBM development.

As recognized in the AUEA, the Fortification herd is “both locally and regionally important (Jahnke, 2006). As measured by hunting use, elk hunts in this area are destination hunts and this area is a highly sought (sic) after elk hunting area with relatively few licenses issued (sic) annually, although access is largely limited by the land ownership pattern. The effect of CBNG development on elk in the Fortification Creek area has a high public interest as gauged by the response to recent Resource Management Plan amendment scoping sessions (BLM, 2006).” AUEA - 44.

Further evidence of the herd's value to the public is provided by the Wyoming Game and Fish Department's (WGFD) annual Resident Elk Demand Index. In 2007, a Fortification resident “any elk” license was the most difficult license to draw in the state (4.07% draw success rate). A Fortification resident “any elk” license consistently ranks among the top ten most sought after licenses in Wyoming. WGFD Resident Demand Index, 2000-2008.

Indeed, the value of this herd and its integrity is recognized at the highest levels of Wyoming state government. In comments submitted to the BLM regarding the Fortification Creek Area Draft Resource Management Plan Amendment/Environmental Assessment (DRMPAEA), Wyoming Governor Dave Freudenthal asserts:

“The Fortification Creek area is an extremely delicate place that can only be protected by a series of land management allocations that hold public policy makers to account for harm before it is authorized – especially as it relates to the area's distinguishing elk herd. As coalbed natural gas leasing and development encroaches nearer to the Wilderness Study Area (WSA) and adjacent elk and other wildlife habitat, it has become increasingly apparent that significant changes on the landscape are inevitable. Irrespective of this perception of unavailability, I will not support any development in or adjacent to the Fortification Creek area that fails to take full measure of the integrity of the elk herd, other wildlife, water quality, soils, and other resources.

2008 Freudenthal comments, DRMPA – (emphasis provided by the Governor).

Clearly, this area and this elk herd have value which merits far more analysis than the short-shrift analysis provided in the AUEA.

Connected/Similar Actions and Cumulative Impacts

While the AUEA appears to do a serviceable job of analyzing elk impacts within the Augusta Unit Zeta project area itself, it ultimately fails to adequately consider the cumulative effects to the Fortification elk herd. The Augusta Unit Zeta POD represents just the first of other developments that could effectively eliminate effective and security habitat in the Fortification herd's southern yearlong range.

Through the preparation of the AUEA and associated FONSI, the BLM has effectively chosen to authorize development throughout the southern yearlong range. Several other POD EA's within the southern yearlong range are currently being prepared (BLM, personal communication). The AUEA does not consider the effects of these upcoming actions, although the BLM is fully aware that they are pending. The unacceptable and irresponsible piecemeal analysis presented in this EA is likely to be repeated throughout the herd's southern range if this EA is allowed to set a precedent.

Continuing RMP Amendment and Exclusion of Southern Yearlong Range

The AUEA is being presented for public comment while the preparation of the Fortification Creek Area Draft Resource Management Plan Amendment/Environmental Assessment (DRMPA) is still ongoing. One important issue raised by several groups and individuals in comments on this Plan Amendment protested the exclusion of the elk southern yearlong range from the DRMPA's Fortification Creek Planning Area (FCPA) and thus in the DRMPA's analysis of impacts. As noted in the DRMPA:

“The WGFD had developed boundaries for the elk yearlong range (defined by the core use area for the herd) and elk crucial range (the crucial winter range and calving range, combined). The boundaries for both the elk yearlong range and elk crucial range extend south beyond the limits of the FCPA. For purposes of analysis, the yearlong and crucial ranges within the boundaries of the FCPA will be the analysis area for the elk.” DRMPA 4-46.

As we have argued before, this limit is both arbitrary and inconsistent with the requirement to insure the professional and scientific integrity of NEPA documents. 40 C.F.R. § 1502.24. Further, recent GPS telemetry data on collared Fortification herd elk (after a successful effort to collar elk south of Fortification Creek) indicate much more use of the southern yearlong range than anticipated. DRMPA 3-27 and BLM personal communication. We request the use of this new and ongoing GPS Data in BLM management decisions, as well as reasonable and timely access to this data in order to make informed comments on this action and other impending actions.

Particularly given this new data, the exclusion of nearly 36% of the herd's yearlong range (acres provided by Buffalo BLM staff) from meaningful analysis does not appear justified by any scientific methodology. Particularly egregiously, the brief cumulative impacts discussion, AUEA 71 and DRMPA 4-69, fails to provide any detailed information, analysis, or quantitative assessment of effects of continued CBM development within the southern portion of the herd's yearlong range, or its effects within the herd unit as a whole. Sacrificing and ignoring nearly half the elk herd's range,

without justification, while ostensibly including the herd and its integrity as a critical issue, DRMPA 1-6, is neither consistent nor rational.

It must be noted that, of 38 GPS collared elk, ten (over 25%) were located within the project area March 2008-present, AUEA – 70, indicating that use of this area is much higher than was predicted in the DRMPA.

The BLM continues and exacerbates this mis-step by excluding the AUEA project area (and the rest of the southern yearlong range) from consideration as part of a phased development proposal contained within the DRMPA in a dismissive manner: **“Though impacts to elk and other resources would be similar, this alternative was not considered in detail because the planning issues associated with the FCPA do not apply to this project area.”** AUEA – 37, emphasis added.

Mitigation

The BLM proposes standard mitigation measures within crucial winter and parturition ranges, AUEA – 71, but proposes no additional mitigation measures in yearlong range, although the sensitivity of this herd to disturbance and its affinity to the area is recognized throughout the AUEA, DRMPA, and BLM’s 2007 Environmental Report: Coalbed Natural Gas Effects of the Fortification Creek Elk Herd (Elk ER).

Additionally, as noted above, the AUEA notes that, of 38 GPS collared elk, ten were located within the project area prior to Lance Oil and Gas construction and drilling activities on non-federal minerals. Of these elk, only five have returned, reinforcing the BLM discussion below, AUEA, p. 70, that elk may return, albeit at 50% of the previous levels. This discussion fails to recognize, though, that the research cited (Hayden-Wing Associates 1990) was based on forested environments.

The AUEA also neglects to substantially discuss or quantify the impacts during the (post-drilling and construction) production phase, noting only that the elk are likely to return in some number once development and drilling are completed. The AUEA fails to meaningfully analyze the impacts posed by the production phase of the proposed development, which includes well visitations of 2-3 visits per week in summer and up to 4 visits per week in winter in crucial winter and parturition range. AUEA – 12.

In addition, and most disturbingly, the EA proposes to allow 20 diesel generators – operating throughout crucial elk range – until electricity can be provided to the wells. Generators are “projected to be in operation for 24 months”. AUEA – 13.

While the BLM has ostensibly analyzed the effects of roads and well disturbance associated with the development phase, it has not adequately analyzed the effects of near-daily visitation in crucial ranges during the production phase and has most certainly not analyzed the effects of diesel generators operating in crucial ranges.

The only other apparent mitigation measures proposed in the AUEA are items defining thresholds when “it would be a concern”, AUEA – 70, and recommendations that the

operator submit monthly reports “that in conjunction with monitoring the collared elk will enable elk responses to be evaluated for possible adaptive management alternatives development.” AUEA – 71. No definition of these potential adaptive management alternatives are available within the document.

The affinity of this herd to the Fortification Creek area, its sensitivity to disturbance, and its isolated nature have been noted repeatedly in various BLM planning documents, including most recently the AUEA, the DRMPA, and the Elk ER. Put quite simply, impacts to this herd cannot be mitigated by off-site means, and the mitigation measures proposed in the AUEA, as they are, present no real benefit to the Fortification herd.

Fee Mineral Impacts

The AUEA appears to use the rationale that impacts from fee mineral development in the Augusta Unit Zeta abrogate the BLM of its responsibilities to manage for multiple use, and from its responsibilities toward the Fortification elk herd. Mixed surface and fee mineral ownership, as is the case in the project area, does not decrease the BLM’s responsibilities to manage for all resources.

Incursion into Fortification Herd Yearlong and Crucial Ranges

The Proposed Action represents the first federally-endorsed incursion into both the yearlong range of the Fortification elk herd and crucial ranges. In fact, 100% of this proposed development lies within both crucial winter range and crucial parturition range. AUEA - 44. Analysis of potential impacts and mitigation falls short on several fronts.

As you are aware, we and other groups have been party to several administrative actions challenging BLM’s decisions to develop just outside the yearlong range.

It should be duly noted that, in Wyoming Outdoor Council, et al. IBLA 2007-142 & 2007 – 246, the Interior Board of Land Appeals, throughout the decision document, held for the BLM’s decisions approving the Michelena, Mooney Draw, Carr Draw V Addition 1, Meadow Draw A, and Hollcroft-Stotts Draw PODs was based primarily on the fact that development was to occur outside v. inside the elk yearlong range (see IBLA emphasis in italics throughout the decision document). Clearly, the IBLA expected a higher level of analysis to occur if or when CBM activity intruded into yearlong and crucial ranges. We do not see that higher level of analysis within this document, nor do we see a reduction of impacts to the level of insignificance as required by section 102(2)(C) of NEPA.

Again and finally, we feel that this analysis falls far short of NEPA requirements to effectively and responsibly analyze the impacts of the proposed action, as well as those that are inextricably connected to it. Had the BLM and particularly CBM operators seen fit to cooperate in an effort to analyze and mitigate impacts to this elk herd up-front some years ago through unitization and responsible analysis and mitigation efforts in the Fortification Creek area, particularly in respect to the Fortification elk herd, we would not be continuing what appears to be a long term drama with no end in sight. The ultimate solution, in our minds is to take a responsible look at this situation, through the preparation of a programmatic EIS covering the Fortification herd’s yearlong range, with

subsequent development of program level EA's tiered to that EIS. Until that step is achieved, no development should be allowed on federal surface or minerals within the yearlong range.

Thank you for the opportunity to comment.

Sincerely,

Mark Winland
Board of Directors
Wyoming Wildlife Federation