



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Rock Springs Field Office
280 Highway 191 North
Rock Springs, Wyoming 82901-3447



3800 (040)
Dickie Springs Placer
Gold Exploration
Project

September 10, 2005

Dear Reader:

The Bureau of Land Management (BLM) is providing you with a copy of the Finding of No Significant Impact and Decision Record for Fremont Gold US LLC's Dickie Springs Placer Gold Exploration Project. The Decision Record identifies BLM's decision, explains the rationale for reaching the decision, and identifies measures to protect the environment (Appendix A of the attached Decision).

An environmental assessment was prepared pursuant to the National Environmental Policy Act, other regulations and statutes to fully disclose potential impacts of the proposal and the alternative of no action. The BLM released the environmental assessment to the public on June 24, 2005 for a 30 day comment period. All comments received during the review have been considered. Responses to comments can be found in Appendix B of the attached Decision. No unresolved issues remain.

The BLM wishes to thank those who provided input during the analysis process. Your input is essential in assuring all issues important to you were fully considered. Should you have questions regarding this project, please contact Kirk Rentmeister at 307-352-0258 or John MacDonald at 307-352-0238.

Sincerely,

Michael R. Holbert
Field Manager

Attachment

FINDING OF NO SIGNIFICANT IMPACT and DECISION RECORD for the Dickie Springs Placer Gold Exploration Project

BLM

Wyoming State Office — Rock Springs Field Office



September 2005

MISSION STATEMENT

It is the mission of the Bureau of Land Management to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations.

BLM/WY/PL-05/018+1990

WY-040-EA04-262

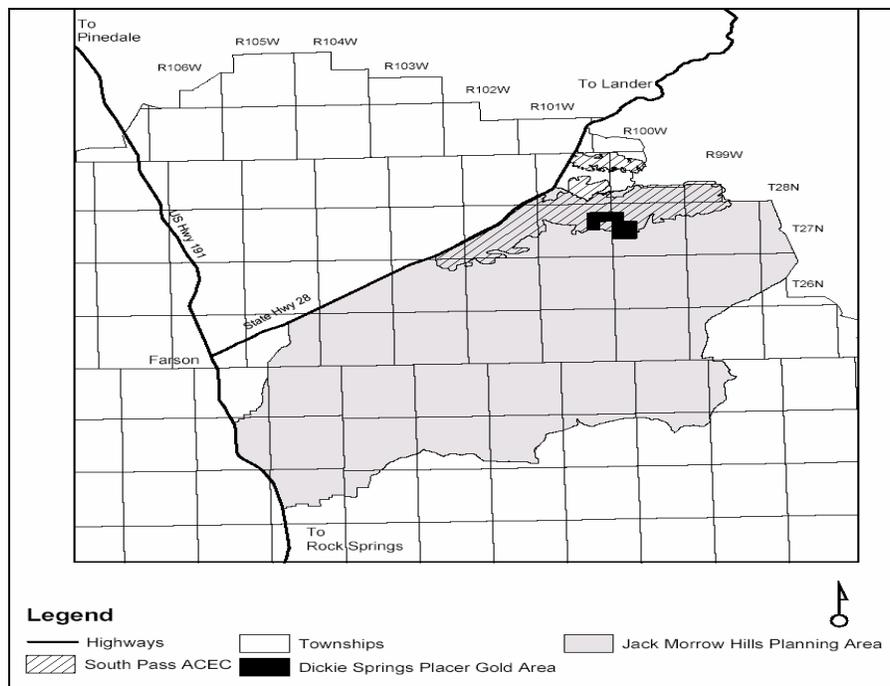
FINDING OF NO SIGNIFICANT IMPACT DECISION RECORD for the Dickie Springs Placer Gold Exploration Project

INTRODUCTION

Fremont Gold Corporation, now known as Fremont Gold US LLC (FG), notified the Bureau of Land Management (BLM) Rock Springs Field Office (RSFO) that they are proposing placer gold exploration activities on existing mining claims in the Dickie Springs area located within the administrative boundary of the field office. The area falls within the South Pass Historic Landscape Area of Critical Environmental Concern (ACEC); thus, requires approval of a plan of operations in accordance with regulations found in 43 CFR 3809.11.

The proposed placer gold exploration activities would be located on portions of sections 7, 17, 18, 19, and 20 of Township 27 North, Range 100 West, and sections 11, 12, and 14 of Township 27 North, Range 101 West, Sixth Principal Meridian, Fremont County, Wyoming. The exploration area is located in the Dickie Springs area of southwestern Wyoming, approximately 60 miles north-northeast of Rock Springs, approximately 3 miles east of the Continental Divide and 3 miles south of the Sweetwater River (Figure 1). Access to the area would be provided from Rock Springs, Wyoming via U.S. Highway 191, State Highway 28, Jack Huff (Fremont County) Road #446, and existing two-track roads.

Figure 1



The total area affected by the exploration sample pits would be approximately 13.64 acres including 1.92 acres of direct disturbance for the sample locations and another 11.68 acres of disruption of vegetation in order to move equipment in and out of the individual sample locations. For analysis

purposes, the project or analysis area encompassed the whole affected sections which entailed approximately 5,120 acres, of which approximately 4,680 acres are located on BLM-administered public lands and 440 acres on private land although the mineral estate is reserved to the United States.

Previous reconnaissance investigations of placer deposits in the area have provided mixed results due to the variable thickness of the mineralization within the host sand and gravel deposits. Earlier estimates of gold were greater than more recent estimates. The purpose of the action therefore, is to explore these claims to better delineate the mineralization in order to determine whether there is sufficient quantity and quality of gold to make extraction activities economically viable. If results show that gold exists in economic quantities, further exploration could be proposed but would be subject to an approval of a plan of operations (including public involvement and compliance with the National Environmental Policy Act) since the area lies within an ACEC.

ALTERNATIVES CONSIDERED

Proposed Action

The proposed exploration activities are located in Sections 7, 17, 18, 19, and 20 of Township 27 North, Range 100 West, and Sections 11, 12 and 14 of Township 27 North, Range 101 West, Sixth Principal Meridian, in Fremont County, Wyoming. Table 1 lists the mineral claims where exploration would be conducted. A records search by FG showed all claims are in good standing. The project location is shown in greater detail on Figure 2.

Table 1 Mineral Claims in the Exploration Area

OG Label	Serial No	Township	Range	Section
Private Surface/Federal Mineral				
OG-1	WMC254281	27N	101W	12
OG-13	WMC254289	27N	100W	18
OG-14	WMC254290	27N	100W	18
OG-16	WMC254292	27N	100W	18
OG-2	WMC254282	27N	100W	7
OG-3	WMC254283	27N	101W	12
OG-4	WMC254284	27N	100W	7
OG-6	WMC254285	27N	100W	18
OG-7	WMC254286	27N	100W	18
Federal Surface/Mineral				
SP-10	WMC259827	27N	101W	11 & 12
SP-11	WMC259828	27N	101W	12
SP-12	WMC259829	27N	100W	7
SP-17	WMC259834	27N	101W	14
SP-18	WMC259835	27N	100W	18
SP-22	WMC259839	27N	100W	18
SP-23	WMC259840	27N	100W	17
SP-25	WMC259842	27N	100W	19
SP-26	WMC259843	27N	100W	20

Private and public ownership is shown on Figure 2. Private surface ownership is held by Hellyer Limited Partnership. The public lands, and federal mineral estate under the private surface, are managed by the BLM RSFO.

The proposed placer gold sampling consists of three exploration parcels as shown in Figure 2. FG proposes up to 200 pits or trenches located in transects across existing drainage channels. These

drainage channels are primarily dry throughout the year, but may become active water transport routes during periods of extreme precipitation or spring run-off. These drainages are located between gently rolling hilltops and ridgelines, with only a minor gradient. The drainage channels are vegetated.

The North Parcel would contain an estimated 69 pits and is located in sections 7 and 18 of Township 27 North, Range 100 West, and sections 11, 12 and 14 of Township 27 North, Range 101 West. The Central Parcel would contain an estimated 107 pits and is located in section 18 of Township 27 North, Range 100 West. The South Parcel would contain an estimated 24 pits and is located in sections 17, 19 and 20 of Township 27 North, Range 100 West. Fewer pits or trenches could be dug depending upon the sample findings of those pits dug first within each parcel. Each pit or trench would be dug using a backhoe. Topsoil and associated vegetation would be segregated from the spoil material for use in reclamation. Should initial sampling in an area show that economical gold mineralization is not present, the transect (area) would likely be abandoned. Each pit would be approximately four feet square at a minimum. The thickness of the alluvial material would determine the depth of each pit. Average depth is estimated to be about eight feet. Thicker alluvial material will require a larger surface disturbance to be made, but no trench longer than 20 feet is anticipated.

Samples, approximately 100 pounds each, would be collected by hand-cutting channel samples in the vertical sidewall of each pit (see page 16 of the EA). The location and number of samples could change depending upon the consistency of the gravels, mitigating measures required and results of sampling, but total pits/trenches would not exceed 200. Sampling would begin at the head of the drainage paths where the minerals are most likely to be concentrated. Sampling would continue down these drainages following the gravel deposits. Sampling could be reduced or discontinued in a particular drainage if favorable gold bearing horizons are not encountered (gravel deposits become dispersed or inconsistent).

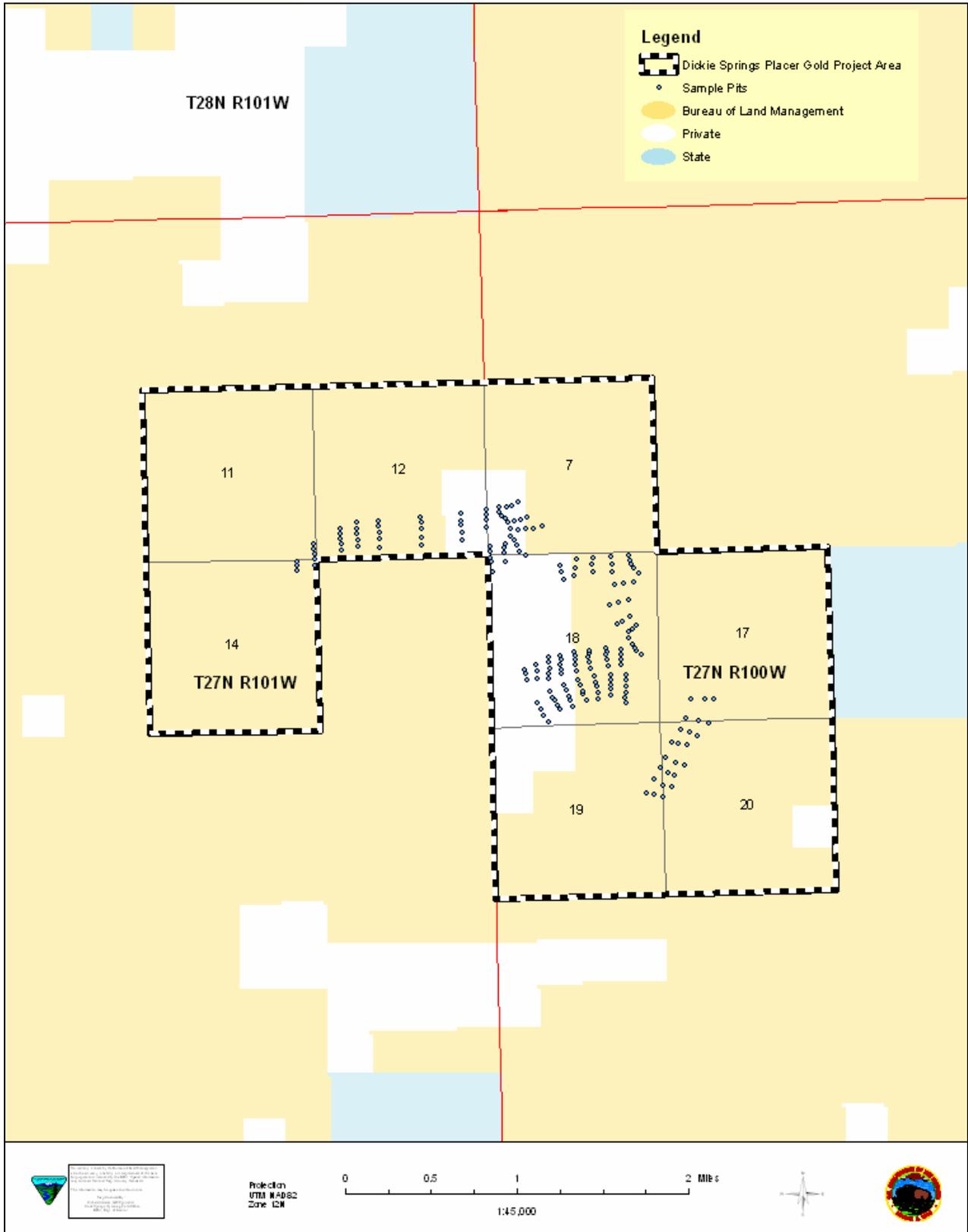
Sampling locations could be moved a reasonable distance (10-15 yards) should concerns be identified during sampling operations. Higher gold concentrations are likely to be found in the low positions of drainage paths and therefore are of particular interest. For that reason, it is important to get as close to the lowest areas as possible. Otherwise, the operator may fail to assess accurately the mineral content and value.

Two three-man crews would collect the samples. Additionally, one supervisor/geologist and one additional geologist would manage the crews, log samples and otherwise conduct the program. Equipment would consist of two rubber-tired or track-mounted backhoes, pickup trucks, and miscellaneous hand tools.

After the sample has been removed from the pit, it would be backfilled and then covered with the stockpiled topsoil. A maximum of four pits would remain open overnight at any one time due to the lag time between when the pits are opened and the sampling is completed.

Samples would be processed (concentrated) offsite using a trailer-mounted Knelson concentrator, or similar unit. The concentrator would likely be located at an existing commercial sand/gravel or cement operation in the general area, or possibly Rock Springs if necessary. In the event exploration is successful, a commercial laboratory would accomplish final assaying of the concentrates.

Figure 2 Project Area



Parcels Affected by Exploration

There are three separate parcels in the project area (refer to Figure 1 and Table 2). The North Parcel would contain an estimated 69 pits and is located in sections 7 and 18 of Township 27 North, Range 100 West, and sections 11, 12 and 14 of Township 27 North, Range 101 West. The Central Parcel would contain an estimated 107 pits and is located in section 18 of Township 27 North, Range 100 West. The South Parcel would contain an estimated 24 pits and is located in sections 17, 19 and 20 of Township 27 North, Range 100 West. The total area affected by exploration sample pits would be approximately 1.92 acres, as shown in Table 2 as well as an additional 11.68 acres affected by work paths within each parcel. A total of approximately 13.64 acres would be disturbed or affected by the exploration activity.

Table 2 Areas Affected by Exploration Sampling Pits

Range	Township	Section	Aliquot	No. Sample Pits	Affected Area (ac)	Affected Area (sq ft)
North Parcel						
101 W	27 N	12	S2	27	0.2592	11,286
101 W	27 N	11	SE	3	0.0288	1,254
101 W	27 N	14	NE	5	0.0480	2,090
100 W	27 N	7	SW	29	0.2784	12,122
100 W	27 N	18	NW	5	0.0480	2,090
Work Paths					4.3000	187,306
Central Parcel						
100 W	27 N	18	All	107	1.0272	44,726
Work Paths					5.6000	242,300
South Parcel						
100 W	27 N	17	SW	5	0.0480	2,090
100 W	27 N	19	NE	4	0.0384	1,672
100 W	27 N	20	NW	15	0.1440	6,270
Work Paths					1.8000	79,270
Total Sample Pits				200	1.92	83,600
Total Work Paths					11.68	508,879
Total Disturbance					13.64	592,479

The *Environmental Assessment for the Dickie Springs Placer Gold Exploration Project* provides a detailed description of the Plan of Operation.

No Action Alternative

Under the No Action Alternative, the proposed action would not be allowed on federal lands (surface and mineral estate); therefore, no exploration would be conducted in the area. Denying the proposed action would not prevent future proposals to sample existing mining claims in the area from consideration. Denial of the proposal would not prevent sampling operations on split estate lands if a surface use agreement has been reached (43 CFR 3908.31(d)).

Alternatives Considered but Eliminated Detailed Study

In accordance with 40 CFR 1502.14(a), several alternatives were identified and considered but were eliminated from detailed study. These alternatives and the rationale for eliminating them from detailed study are explained below:

Core Hole Drilling: After assessing this option, it was determined that this method would cause more detrimental impacts to the land area due to the size of the roads required to access the area with the needed equipment (drill rig) and would possibly necessitate road improvements. In addition, use of this method would result in unnecessary surface disturbance. Core hole drilling is used for drilling solid material (i.e., rock). Since the purpose of the action is to sample unconsolidated alluvium, use of such equipment would render the project uneconomical and therefore unfeasible. Impacts due to this alternative would be the same as the No Action Alternative.

Auger Drilling: Use of this sampling method would fail to obtain a representative sample as free gold tends to segregate to the outside of the bit and falls back into the hole. Therefore, use of this exploration alternative would not meet the purpose and need of the proposed action.

Rotary Drilling: This alternative was eliminated because the targeted alluvium material is too shallow to warrant the use of this method. It would cause more surface disturbance than a backhoe due to the need for a relatively flat surface to set up the drilling apparatus and would result in unnecessary and undue degradation, this alternative was eliminated from detailed study.

Hand-digging Pits and Trenches: This option was eliminated from detailed study because it would be too time-consuming to complete within the time frames available. A conservative estimate would be 15 employees to accomplish the same amount of work in an 8 hour day as a backhoe with an operator each day. These additional employees would need to be transported to and from the work site on a daily basis requiring additional vehicles. The cost of delaying completion of the sampling operations would likely render the proposal economically unfeasible. Thus, impacts due to this alternative would be the same as the No Action Alternative.

Elimination of One or Two Exploration Parcels: This option would not be economically nor technologically feasible as it would preclude a thorough evaluation of the resource required to assess the presence of economical gold mineralization. Should early sampling in any one parcel prove the gold is either not present or in low quantity, sampling would be stopped within that parcel. Thus, this alternative is essentially a component of the Proposed Action.

Using Drift Mining Techniques: Drift mining is not feasible in unconsolidated materials such as sand and gravels. This option was eliminated because the mineralized gravels typically are below consolidated or cemented gravels not necessarily bedrock. Drift mining is not technically feasible because the thickness of the gravel in the project area is less in most cases than the height of the opening needed to mine. A trench rather than a tunnel would result. The gold in this area is not concentrated at bedrock. It can occur anywhere from the surface to bedrock. It would be futile to use a mining method focused on the material just above bedrock when the gold may occur several feet above the bedrock. Any opening big enough for a man to work would break through the surface most of the time. Even if the gravel were thick enough, digging underneath it would cause the material to collapse immediately. Drift mining requires consolidated competent material¹. The sediments in the area are unconsolidated for the most part and do not lend themselves to this form of mining.

FINDING OF NO SIGNIFICANT IMPACT

Based upon the analysis contained in the *Environmental Assessment for the Dickie Springs*

¹ Able to maintain its form in a free-standing state.

Placer Gold Exploration Project (DS EA), the BLM has determined that the proposed placer gold exploration activities as described under the Proposed Action of the aforementioned DS EA is in conformance with the Green River Resource Management Plan and will not have a significant impact on the human environment nor limit future management decisions in the Jack Morrow Hills area. The land use plan provides for the use of the affected lands for locatable mineral exploration and development. Adverse impacts have been eliminated or reduced to those that are deemed necessary and due in order to conduct placer gold exploration operations. Therefore an environmental impact statement is not necessary.

DECISION

Based upon the analysis of the potential environmental impacts described in the *Environmental Assessment for the Dickie Springs Placer Gold Exploration Project*, released to the public on June 24, 2005, and in consideration of internal, public, industry, and governmental agency comments received during public scoping and during review of the DS EA, no unresolved issues remain after the analysis. Therefore, the BLM approves the Proposed Action alternative as described in Chapter 2 in the aforementioned DS EA. Approval of the plan of operations will allow Fremont Gold to access mining claims for the purpose of exploring for gold mineralization to determine whether it is of sufficient quality and quantity to further explore or mine. Any proposal to conduct operations beyond that approved under this action will require submittal of a new plan of operations and corresponding public involvement. Project-wide performance standards apply as reflected in Appendix A to this decision. All measures required to eliminate or reduce impacts on public lands are identified in Appendix A of this decision.

Approved Components of the Plan of Operations

This decision approves the plan of operations to conduct placer gold exploration operations (sampling) subject to the performance standards identified in Chapter 2, Proposed Action, of the DS EA and any additional measures identified during public review or agency coordination. These measures are identified in Appendix A of this decision. The DS EA is located on the internet at <http://www.wy.blm.gov/nepa/rsfodocs/dickiesprings/index.htm>.

The decision allows the exploration of up to 200 pits or trenches within the three exploration areas as defined on Figure 2 of this decision. This decision does not mandate all 200 pits or trenches be sampled. Minor variances in the location of individual pits will be allowed as long as these variances fall within the area surveyed for cultural resources.

Access to the exploration areas will be limited to the route identified in Figure 3.

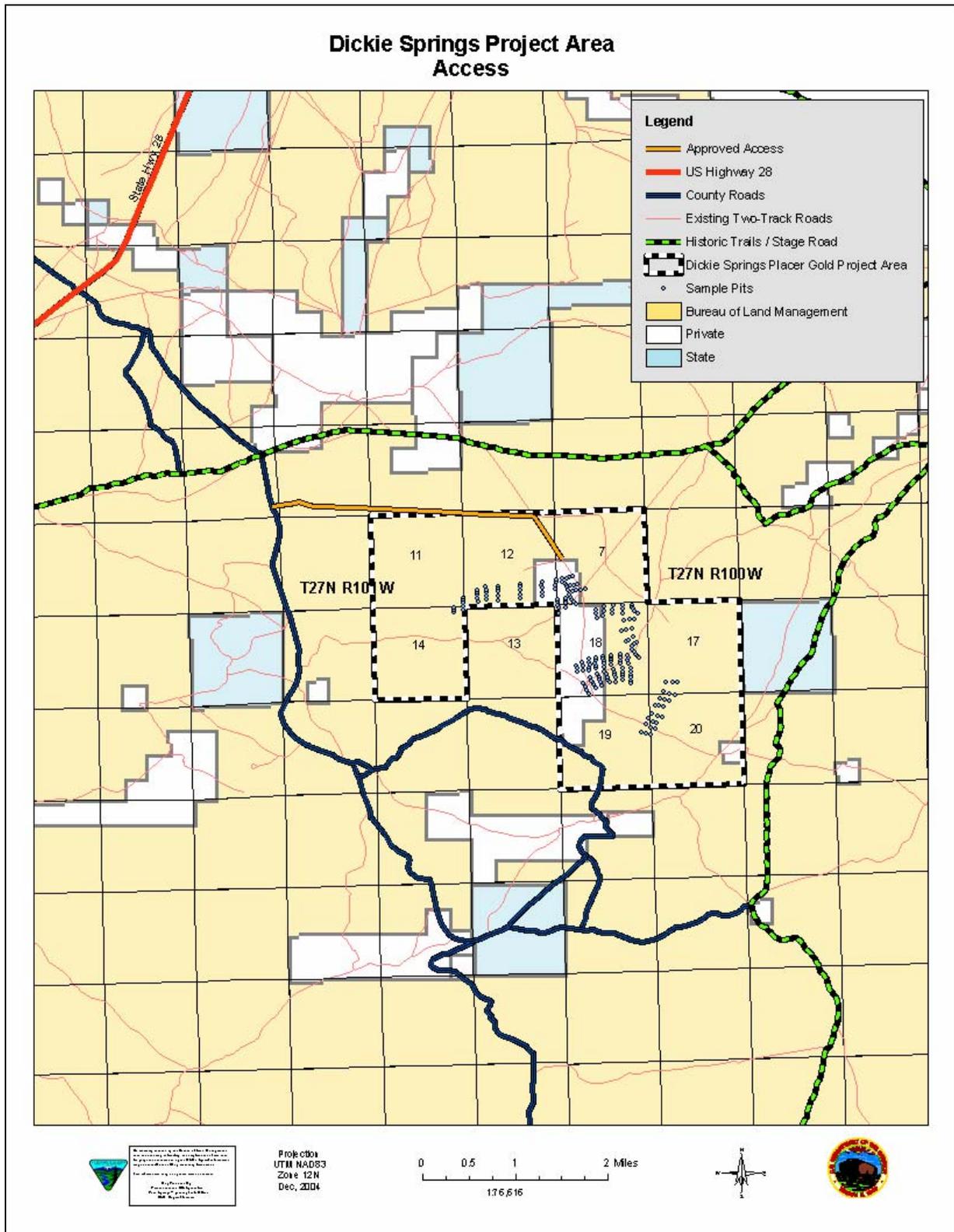
MANAGEMENT CONSIDERATION/RATIONALE FOR THE DECISION

The decision to approve the Proposed Action is based on the following factors.

1. Consistency with Resource Management Plan

The Proposed Action is in conformance with the Green River Resource Management Plan (RMP). The objective for management of locatable minerals is to provide opportunities to explore, locate, and develop mining claims while protecting other resource values. With the exception of lands withdrawn from mineral location, the planning area is open to filing of mining

Figure 3



claims and exploration for and development of locatable minerals. The public lands affected by this action have existing mining claims.

In addition, the area affected falls within the South Pass Historic Landscape Area of Critical Environmental Concern (SPHL ACEC) as shown on Map A (Land Status, ACECs, and Other Management Areas) in the Green River RMP and Figure 1 above. The management objective for the SPHL ACEC is to protect the visual and historical integrity of the historic trails and surrounding viewscape. Most of the SPHL ACEC is open to location, exploration, and development of locatable minerals including the area where the affected existing mining claims are located. Since the location of the activity falls within the SPHL ACEC, a plan of operation is required to address measures to mitigate any unnecessary or undue effects to the ACEC and the historic trails setting before any mining claim activity is allowed.

The location of these existing mining claims occurs within the area under analysis for the Jack Morrow Hills (JMH) Coordinated Activity Plan (CAP) (BLM 2004), as mandated by the Green River RMP. Interim uses of the area may occur under certain conditions (see Green River Resource Management Plan, page ROD-4 and ROD-5). Actions may be approved if the BLM determines that they would not cause significant impacts, or would not limit or prejudice the choice of management options that may be considered for the JMH CAP.

The affected mining claims pre-date and were recognized as existing rights in the Record of Decision for the Green River Resource Management Plan (page 15). Likewise, the environmental analysis for the Jack Morrow Hills Coordinated Activity Plan also recognizes these existing claims (Final EIS, refer to Map 71, Mining Claim Activity). Further regulations contained in 43 CFR 3809.420(3) require Plans of Operations to comply with land use plans if they are consistent with the mining laws. Approval of the Plan of Operations as conditioned below (item 5) results in the best compromise to allow sampling operations allowed for under the mining laws while protecting important resource values as mandated in the land use plan.

2. Placer Gold Exploration is Consistent with Historical Use of the Area

Although the area is more widely known for westward migration, placer gold exploration has occurred sporadically since 1842 (see page 38 of the EA) and continues today including small, intermittent but on-going placer gold exploration occurring within 0.50 miles of Fremont Gold's proposed operation.

3. National Policy

Mining laws including the Lode Law of 1866, the Placer Law of 1870, and the Mining Law of 1872, as amended, govern mining claim activity on all lands owned by the United States. These laws provide citizens of the United States, and corporations incorporated in the United States, or its possessions, the opportunity to explore and possibly patent valuable mineral deposits on federal lands that remain open for that purpose. FG is a corporation organized under state law in the United States and may locate and hold placer mining claims. Under these laws, if a mining claimant meets all the federal and state requirements, the claimant has the right to explore the minerals contained within the claims. The action as proposed by FG is permitted under the authority of the mining laws. The BLM has determined the action will not result in unnecessary or undue degradation of public lands.

4. Agency Statutory Requirements

This decision is consistent with all federal, state, and county authorizing actions required to implement the Proposed Action. All pertinent statutory requirements applicable to this proposal were considered. Any necessary conferencing or consultation with U.S. Fish and Wildlife Service has been completed (Appendix 2 of the EA). Compliance with Section 106 of the National Historic Preservation Act has been completed with signature of a Memorandum of Agreement in accordance with 36 CFR Part 800.6.

In addition, FG has complied with the requirement for a financial guarantee to assure adequate reclamation in accordance with 43 CFR 3809.551 through 3809.573 and other applicable state and federal laws.

5. Opportunity for Public Involvement

BLM initiated public scoping on August 10, 2004. Twenty-six comment letters were received in response. All issues, concerns, and alternatives brought forth during public scoping were considered and documented during preparation of the environmental analysis. In addition, the EA was released to the public on June 24, 2005 for a 30-day public review and comment period. Thirty-eight letters were received in response. On July 16, 2005, the BLM held a public meeting and conducted a field tour to the proposed project area to allow members of the public to view the area affected by the proposal. All comments raised during the public meeting revolved around clarification of the proposal thus no specific comments regarding the analysis were noted. Comments received during the public review have been considered. BLM responses to these comments can be found in Appendix B of this decision. In addition, the BLM prepared an erratum (Appendix C) to correct the analysis. No unresolved issues remain.

6. Application of Measures to Avoid or Minimize Environmental Impacts

Approval of the plan of operations is subject to performance standards to prevent unnecessary or undue degradation of public lands by operations authorized by the mining laws (43 CFR 3809.1(a)). The BLM has determined with application of the performance standards identified in Appendix A, no unnecessary or undue degradation of public lands will occur and all disturbance will be reclaimed in accordance with BLM policy or private landowner preference if applicable. In addition, all measures developed during the Section 106 process as reflected in the Memorandum of Agreement are incorporated as conditions of approval (see Appendix A).

APPEAL

Pursuant to 43 CFR 3809.800 (a), you may ask the Wyoming State Director to review this decision. If you request State Director review of this decision, your written request must be a single package that includes a brief written statement explaining why BLM should change its decision and any documents that support your written statement (See 43 CFR 3809.805 (a)). This decision will remain in effect during the period of State Director review unless a stay is granted by the State Director (See 43 CFR 3809.808 (a)). Requests for State Director Review must be sent to the Bureau of Land Management, State Director Review, Wyoming State Office (MS-922), 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82001. When you submit your request for State Director review, you may also request a meeting with the State Director (See 43 CFR 3809.805 (b)).

If you have requested a State Director review, you may terminate this review by filing an appeal with the Interior Board of Land Appeals (IBLA) during the 30 days immediately following the date of receipt of the original decision. If you have requested a State Director review and the State Director decides not to review the decision in your case, you may appeal to IBLA. An appeal to IBLA must be taken during the 30 day period following the date the State Director decides not to review the decision. If the State Director does not make a decision within 21 days of your request, you should consider your request for State Director review declined and you have 30 days following that 21 day period in which you may appeal the original decision to IBLA (See 43 CFR 3809.806). You may also appeal an unfavorable decision resulting from the State Director review. If appealing an unfavorable decision from a State Director's review, you have 30 days from receipt of that decision to appeal to IBLA.

You may also file an appeal directly to IBLA and bypass completely the State Director review (See 43 CFR 3809.800 (b)). If you wish to bypass State Director review and appeal directly to IBLA, your appeal must be filed within 30 days of receipt of the original decision.

Any appeal taken with IBLA must be in accordance with 43 CFR 4, Subpart E et seq. If you decide to appeal, your Notice of Appeal (NOA), must be filed in writing and in accordance with Form 1842-1 (see end of this document) at the Wyoming State Office (MS-922) , 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82001 and with the Office of the Solicitor (Department of the Interior, Office of the Field Solicitor), 755 Parfet Street Suite 151, Lakewood, Colorado 80215.

The required Statement of Reasons (SOR; see 43 CFR 4.412) may be filed with the NOA or, if not, it must be filed with the IBLA, Office of Hearings and Appeals, U.S. Department of the Interior, MS 300-QC, Arlington, Virginia 22203, within 30 days after the NOA was filed (see also required service at 43 CFR 4.413).

The decision, signed by the Field Manager, will remain in effect during the appeal unless a stay is granted. If you wish to file a petition pursuant to regulations 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, or for a stay pursuant to 43 CFR 3809.808 (b) during a State Director review, the petition for a stay must accompany your notice of appeal or your package requesting State Director review. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision shall show sufficient justification based on the following standards:

Standards for Obtaining a Stay

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

SIGNATURE

Field Manager

Date

This page left blank intentionally.

**APPENDIX A
PLAN OF OPERATIONS
PERFORMANCE STANDARDS**

This page left blank intentionally.

Performance Standards

Site Access and Vehicle Use

1. To prevent or minimize impacts to vegetation and soils FG will undertake such measures as:
 - Vehicle use will be minimized to the extent practical.
 - Offset vehicle tire tracks to avoid compacting soil and crushing vegetation.
 - Zigzagging vehicle passes where possible to minimize visual impact.
 - Using low ground pressured tire/track vehicles (i.e., ORV) to transport equipment and samples where practical.
 - Prior to the beginning of each work cycle (week) all equipment entering the area will be washed. Mitigation measures, including reclamation with native species and monitoring of the area during the bond release period to detect the presence of noxious and invasive weeds, will be conducted.
 - The edge of linear disturbances will be blended (i.e. harrowed or raked) into undisturbed areas to minimize visual impacts.
2. The BLM will monitor and modify the work paths as necessary to reduce unnecessary and undue impacts.
3. With the exception of mobile fueling and lubricating equipment to refuel the backhoes, no fuel or lubricants will be stored onsite and equipment will not be refueled less than 500 feet from any surficial water or within the swale bottoms. During refueling and lubricating, absorbent pads will be placed beneath the refueling hose to collect any spilled fuel. These pads will be collected in a container and disposed of in accordance with applicable laws and regulations. Should a fuel, oil and/or lubricant spill occur, it will be cleaned up immediately in accordance with federal, state and local laws.

Cultural/Historic Resource Protection

1. The BLM will require a pre-work meeting where FG employees and contractors will be instructed that they will be working on both private and public land and not to search for, scavenge, or remove any cultural resources found while working on the project. FG and contractors will inform their employees about relevant federal regulations protecting cultural resources. This information will be presented by a BLM Archeologist.
2. If any cultural or human remains, monument sites, objects, or antiquities subject to the *Antiquities Act of June 8, 1906*, *National Historic Preservation Act of 1966 as amended*, the *Archaeological Resources Protection Act of 1979*, and/or *Native American Graves Protection and Repatriation Act of 1990* are discovered during exploration, operations will be suspended in the immediate vicinity and the discovery immediately reported to the BLM. The BLM will evaluate the discoveries, take action to protect or remove the resource, and allow operations to proceed within ten working days after notification to the BLM of such discovery (43 CFR 3809.420 (b)(8)(ii)). The BLM will specify to FG the size of the avoidance area necessary to protect cultural resources should a discovery be made. The federal government shall have the responsibility and bear the cost of investigations and salvage of cultural values in accordance with the requirements of 43 CFR 3809.420.

3. The boundary of the exploration parcels will be staked prior to any exploration activity to ensure that the all exploration disturbance occurs within the culturally inventoried area.
4. Site 48FR5498 will be fenced off during sampling operations. The position of the fence will be determined by a permitted archaeologist. The installation and removal of the fence will be monitored by an archaeologist who meets or exceeds the qualification standards recommended by the Secretary of the Interior.
5. All surface disturbing activity within 200 feet of site 48FR5498 and site 48FR5619 will be monitored by a permitted archaeologist who meets or exceeds the qualification standards recommended by the Secretary of the Interior.
6. All vehicle traffic will stay within the area that has been culturally surveyed. Paths that the vehicles take will be minimized to as few as possible. Minimizing path disturbance will be accomplished by moving the vehicle path over slightly to avoid the previous vehicle path to the exploration pit or as directed by the BLM. The BLM will monitor and modify the vehicle paths as necessary to minimize the impact.
7. No historic trail or historic road will be used by FG for access to the project area.
8. Topsoil will be removed and placed on a tarp or fabric until such a time that the test pit is back-filled. This will prevent unnecessary and undue damage to the vegetation by the backfilling of the exploration pits and avoid an adverse impact to cultural resources. The majority of the topsoil on the tarp will then be replaced into the pit by the backhoe with the final top dressing being done by hand. Should reclamation fail to reestablish vegetation the first season, FG will meet with the BLM to determine additional measures necessary to meet reclamation standards. All activities associated with any additional reclamation measures requested by the BLM will be borne by FG.

Wildlife Protection

1. Greater sage-grouse: The proposed action is located in greater sage-grouse (*Centrocercus urophasianus*) nesting/early brood-rearing habitat. The alternate access (existing) two-track road in the project area is within ¼ mile of an active greater sage-grouse lek. Instruction Memorandum 2004-057, which updated the Green River RMP, stipulates that activities avoid this area from March 1 through March 15 between the hours of 8:00 PM and 8:00 AM.
2. Surface disturbing or disruptive activities will not occur during the greater sage-grouse nesting/early brood-rearing period from March 15 through July 15. It is assumed that these dates will sufficiently protect the other Wyoming BLM sensitive sagebrush obligate birds that may be nesting in the area such as: sage thrasher (*Oreoscoptes montanus*), sage sparrow (*Amphispiza belli*), Brewer's sparrow (*Spizella breweri*) and loggerhead shrike (*Linius ludovicianus*).
3. Elk Parturition: Most of the project area occurs within the elk (*Cervus elaphus*) parturition area. Surface disturbing or disruptive activities will be restricted May 1 through June 30 for elk parturition. Requests for exceptions to elk parturition range seasonal closure are not considered under the Green River RMP.
4. If sample pits remain open overnight, smaller pits will be covered up and access to larger pits will be restricted with equipment or other measures such as portable construction fences to eliminate the chance of wildlife falling into the pits before backfilling occurs.

Protection of Wild Horses/Livestock

1. If sample pits remain open overnight, smaller pits will be covered up and access to larger pits will be restricted with either equipment or other measures such as portable construction fences to eliminate the chance of wild horses or other animals falling into the pits before backfilling occurs.

Protection of Survey Monuments

1. To the extent practicable, all operations will protect all survey monuments, witness corners, reference monuments, bearing trees and line trees against unnecessary and undue destruction, obliteration, or damage. If, in the course the operations, any monuments, corners, or accessories are destroyed, obliterated or damaged, FG will immediately report the matter to the BLM. The BLM will prescribe, in writing, the requirements for the restoration or reestablishment of monuments, corners, bearing or line trees per the requirements of 43 CFR 3809.420 (b)(9).

Avoidance of Public Endangerment

1. There is a potential for interaction between recreationists and sampling crew. If sample pits remain open overnight, smaller pits will be covered up and access to larger pits will be restricted with either equipment or other measures such as portable construction fences to eliminate the chance of people falling into the pits before backfilling occurs.

Paleontological Resources

1. The operator shall not knowingly disturb, alter, injure, or destroy any scientifically important paleontological remains and shall immediately bring to the attention of the authorized officer any paleontological resources that might be altered or destroyed on federal lands by his/her operations and shall leave such discovery intact until told to proceed by the authorized officer. The authorized officer shall evaluate the discoveries brought to his/her attention, take action to protect or remove the resource, and allow operations to proceed within 10 working days after notification to the authorized officer of such discovery. The federal government shall have the responsibility and bear the cost of investigations and salvage of paleontology values discovered after plan of operations has been approved.

Memorandum of Agreement (Section 106 process) Measures

A Memorandum of Agreement in accordance with 36 CFR Part 800.6 has been developed and includes the following additional mitigation measures.

1. Back-filling will be concurrent to minimize the number of pits remaining open at one time.
2. Fugitive dust associated with exploration will be controlled by minimizing the dumping height of excavating equipment.
3. Sound reclamation measures will be used to promote prompt revegetation of the pits with predominately species native to the area.
4. Equipment will be covered with a natural color tarp when equipment is kept at the site and is inactive.

This page left blank intentionally.

APPENDIX B
Comment Letters and BLM Responses

This page left blank intentionally.

The BLM released the environmental assessment on June 24, 2005 for public review and comment. Thirty-eight letters were received. Comments are identified in italic and BLM's response is in regular font.

1. Dave Welch, Preservation Officer, Oregon-California Trail Association

Thanks for providing a copy of the EA for this project. The concise yet comprehensive character of the document is appreciated.

OCTA's comments remain as stated in our earlier letter. With the specified performance standards with emphasis on site restoration, the exploration project does not appear to threaten the historic landscape. However, we are very concerned about any future full scale development in the area.

Please retain OCTA in all future communications on this project.

Thank you for your comment. Please see page 10 of the EA for discussion on full scale development.

2. John Chase Maxwell

The Bureau of Land Management (BLM) is proposing to open one of Wyoming's – and the nation's – most important historic areas to gold mining.

A Canadian company, Fremont Gold, wants to explore for gold on its mining claims in the Dickie Springs area located southwest of South Pass City. The project site lies within the South Pass Historic Landscape Area of Critical Environmental Concern. This must not come to pass.

The company's exploration program would use backhoes to dig up to 200 pits or trenches less than two miles from the historic emigrant trails south of Wyoming Highway 28. Each pit would be approximately four-feet square, eight-feet deep, and no more than 20-feet long.

Because gold is more likely to concentrate in low-lying areas, the pits would be dug in drainages along the sides of the low hills. About 100 pounds of rock would be removed from each pit to determine if sufficient gold exists to justify further exploration and/or a full-scale gold mine. While the exploration project may have relatively few impacts, if sufficient gold deposits are found, the company will likely expand the operation into more intense exploration or full-scale mining.

It is critical that the BLM raise these issues and the potential disastrous effects on the area. Don't permit a foreign company to desecrate our beautiful South Pass area in Wyoming.

"No to the project, no to gold mining in the South Pass!!!"

Under the general mining laws of the United States, as long as the corporation is organized under the laws of the United States or any state or territory, irrespective of the ownership of stock of the corporation by persons, corporation, or associations who are not citizens of the United States, the corporation has the right to conduct mining, exploration and milling operations in the United States.

In Melvin Helit v. Gold Fields Mining Corp., 113 IBLA 299, 317-18 (1990) the Interior Board of Land Appeals described the status of aliens and foreign corporations as mineral patents applicants. The Code of Federal Regulations (CFR) at 43 CFR 3862.2-1 (Citizenship of corporations and of associations acting through agents) provide the proof necessary to establish the citizenship of

applicants for mining patents must be made in the following manner: In case of an incorporated company, a certified copy of its charter or certificate of incorporation must be filed. It is the BLM's Policy that the taxpayer identification number required at 43 CFR 3809.401(b)(1) (Where do I file my plan of operation and what information must I include with it?) is sufficient for proof of incorporation in the U.S.

The public lands in question are open to mineral entry and as such Fremont Gold (FG) has the right to pursue its mineral interests, so long as it complies with the Federal and state laws.

3. Joe Greig

When I read in the Lander Journal about the plan to mine gold in the South Pass area which has such significant historical importance as well as being at the center of an environmental issue, I thought, what Republican conspirator has cooked up this scheme to thwart both environmental and historical interests, seeing nothing in this landscape but dollars and cents? Well, that is a little extreme I found out, with a Canadian company making the proposal and all. Nevertheless, although my grandfather and father both mined gold in the South Pass-Atlantic City areas, the gold rush is over for this country. Its time to mine the historical and inspirational gold this area holds.

Please see the response to letter 2.

4. Catherine Ryan

Why should we allow a foreign company to be looking for gold in the U.S.A.? We would strongly protest even an American company doing so if it were searching near historic South Pass. Keep the gold for America and preserve our historic areas.

Please see the response to letter 2.

5. John Porter

Please consider these my formal comments on the Dickie Springs EA. I am greatly concerned about the damage this proposed project could do to the uniquely important South Pass area. As the BLM recognizes in its own EA, the South Pass area is "one of the most historically significant remnants of the entire system of historic emigrant trails." (p. 35) The BLM's own management objectives call for emphasis to be "given to maintaining and enhancing the visual and historic integrity" of the region. (p. 29) I fail to see how allowing this test drilling to go forward comports with that objective.

These public lands are open to mineral entry and as such the company has the right to pursue its mineral interests, so long as it complies with the Federal and state laws. The General Mining Law of 1872 states "[t]hat all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase..." This Law has been amended many times with the latest amendment dated October 1, 2003 but it has never been overturned.

Likewise, the BLM has met the intent of the National Environmental Policy Act by completion of an environmental analysis document which has determined that implementation of the exploration activities as proposed by Fremont Gold (FG) and further mitigated by the BLM will not adversely

impact BLM's ability to achieve it's management objective to maintain the visual and historic integrity of the South Pass area.

I am also concerned that the Class III inventory failed to turn up one apparently significant site and that another could not be relocated. This suggests that the cultural resources inventory may not have been sufficient. I also do not understand why oil and gas leases in the area have been suspended until the Jack Morrow Hills CAP is released but this project may be allowed to go further.

Many cultural sites in the field office were first recorded decades ago. It is often the case that the initial recording was inaccurate. The cultural consultant who completed the cultural survey for this project has met the Secretary of the Interior's qualification standards and is permitted to conduct work within the state of Wyoming on BLM lands. Further, the class III cultural resource inventory and report meet the Wyoming State Historic Preservation Office and BLM standards. In addition, field checks were conducted with interested parties. As part of their authorization to conduct exploration activities, FG will be required to follow all Federal laws and regulation regarding the protection of cultural resources. Please refer to Section 2.2.2 of the EA.

Interim criteria were established in the Record of Decision for the Green River Resource Management Plan (GRRMP ROD, page 5) to avoid premature commitments by allowing development or disturbance within highly sensitive areas for wildlife and/or areas that are sensitive for soils, vegetation, visual intrusion, etc., and to determine whether or not any management options would be prejudiced or foregone before completion of the Jack Morrow Hills Coordinated Activity Plan (CAP). This guidance is followed when reviewing proposed activities in the Jack Morrow Hills CAP planning area while the CAP is being prepared. This gold exploration project proposal was carefully reviewed with that criteria and determined not to cause a premature commitment. The activity will be temporary in nature and will not occur during crucial wildlife periods. Restoration of the area will occur immediately and no long term or irreversible affects to resources such as vegetation, visual resources or wildlife habitats are anticipated. There is existing access and no new roads will be built. Had the gold exploration project proposal met the interim criteria in the same fashion as did oil and gas leasing and some other development activities within the CAP planning area, further consideration of the exploration project would have been postponed pending the completion of the CAP. Other activities have been reviewed with the interim criteria and have also been authorized during the preparation of the CAP.

If the project is to proceed, I believe the BLM, not Fremont Gold, should be responsible for educating the project employees on the Federal regulations protecting historic and cultural resources. I am also troubled that no measures are specified to mitigate the visual impacts of having several high profile vehicles on site.

There will be a pre-work meeting where all of the company's representatives that will be working on this project will be required to attend and receive instructions. Due to the distance from the historic trails, and the fact that vehicles and other necessary equipment will be covered when not active and will not detract from the overall viewshed.

Nevertheless, I urge you to adopt the no action alternative. While the BLM may not be able to speculate about "any future actions, including full scale development," the public certainly can. Such a project would be vigorously opposed by the country's historic preservation community. Therefore, it makes no sense to allow this project to proceed, especially since your own EA provides more than adequate justification for rejecting the permit based on the need to protect the SPHL ACEC.

Thank you for your comment.

6. Paul Turley

So far the state of Wyoming has paid for any reclamation from "Gold Mines" as the mining companies have done no substantial reclamation but just left. The Dickie Springs and Jack Marrow area are very fragile and would take years to recover if at all. Protect WYOMING.

Regulations at 43 CFR 3809. 500(b) state "[i]f you conduct operations under a notice or a plan of operations. Then you must provide BLM or the State a financial guarantee that meets the requirements of this subpart before starting operations. For more information, see Sections. 3809.551 through 3809.573."

The State of Wyoming does not assume costs associated with reclamation on public Federal Lands associated with locatable minerals. FG is required to post a bond of the appropriate amount to assure reclamation.

7. Chris Pritchard PE

I write in support of examining the South Pass area for gold and minerals - responsibly. Federal laws require that public lands be utilized for multiple purposes for the public benefit - one of which is mining. For many years the mining industry has proven it can responsibly explore for and develop minerals under strict environmental and cultural rules. Yes, all past human activity is unique, but we cannot make the whole earth off limits to human encroachment. Valuable cultural areas must be maintained, but the district should not be removed from exploration because it is in the general area of what some few individuals consider unique. Let us not forget minerals are where we find them, and most often encompass a very small footprint. In addition, actual mining operations historically last only a few years, after which the area is reclaimed, returning it to previous use. If you blink, you may miss the mine. We should not say "Not in my back yard" before we know what the actual mineral resource situation is. That is why exploration is done and the permit should be approved.

I believe all Wyoming and US residents value our heritage - but we also demand consumer goods by our purchases. Both these desires must be recognized and can and do co-exist. Remember, if it cannot be grown - it must be mined. We cannot eliminate mining or we will not have resources to supply the consumer and military products that society has come to expect and depend on. Let us proceed with a responsible exploration plan that takes these multiple resources into account and if minerals are found, make decisions on a responsible mining plan at that time. We should not say NO before we have adequate information - that is not responsible or Historical American Way. Thank you for taking my comments.

Thank you for your comment.

8. Leda Pojman

Please deny the application from Fremont Gold Corp. Thank you.

Thank you for your comment.

9. Carol Coltrane

Future full scale gold mining operations in the south pass area are in my opinion a bad idea....based on 20 years of visiting Atlantic City and South Pass, greed would be the only motivation. This area is valuable because of the history. Searching for gold and the damage caused by further speculation really is in this day and age kinda silly. The emphasis should be on preserving the works of those who went before, miners, prospectors, emigrants, people of the Oregon Trail, the pony express. These are intrinsic features and can't be replaced.....leave it alone.

Thank you for your comment. As you have stated "This area is valuable because of the history." Mining began as early as 1842 in this region of Wyoming and continues to this day. Mining was the earliest use of the lands by Anglos in the South Pass Region. With out mining there would be no South Pass City or Atlantic City to visit and enjoy today.

BLM is mandated to promote mineral development on public lands open to mineral entry. These lands are open to mineral entry. Regulations at 43 CFR 3809 ensure that mineral development will be done in the least obtrusive way, in order for BLM to meet its mandate to manage public lands for multiple use.

10. Irv Sutton

I am writing to comment on the Dickie Springs placer gold exploration project. The project site is located near South Pass and just 1.4 miles from the pioneer and emigrant trails of the Oregon-California route over South Pass and lies within the South Pass Historic Landscape area of Critical Environment concern and the Jack Morrow Hills. This section of the National Historic Trails is widely regarded as one of the most significant and most pristine segments remaining on the historic trails.

Dickie Springs is also notable as the 1812 campsite of Robert Stuart, who is often credited with "discovering" South Pass on his trip according to noted trail historian Paul Henderson. Additional accounts of Stuart's presence in this area may be found in "The Discovery of the Oregon Trail", edited by Philip Aston Rollins, 1935 edition by Charles Scribner & Sons. Rollin's guide was Stuart's journals. Using modern day names, it refers to Stuart's presence in this area as traveling from the Pinedale area past Boulder, crossing Big Sandy, camping on the Dry Sandy and camping at a "good spring" southeast of South Pass. This "good spring" fits the location of Dickie Springs. His route south of the Antelope Mountains to the Muddy River's entrance into the Sweetwater River included passing south of Twin Buttes and exploring the Continental Peak area.

Dickie Springs is located almost two miles to the west of the project area. The precise location of the 1812 campsite of Robert Stuart has yet to be determined. No National Register eligible historical campsites were located within the project boundary during the cultural inventory.

I believe this area is significant historically to our National Historic Trails and should be kept from any modern development or mining activity. The proposed mining of gold has little benefit to our national security or national energy shortages. This project should not be allowed in the management program of our national lands.

Thank you for your comment.

11. Margaret Mathews

Thank you for this opportunity to comment on the Dickie Springs Placer Gold Exploration Project. While I live far from the historic emigrant trails, they are not often far from my mind. From the first time I stood in the ruts of those old trails, I have been captivated by them. I have had the opportunity to visit many trail sites in Wyoming and I believe your state is blessed to have this very rare and very special resource. I also know this places a special burden on the state's BLM to manage this extraordinary resource for the enjoyment of future generations.

Your environment assessment of this project makes it clear how special the South Pass region is. That's why I am rather baffled by the apparent willingness of the BLM to allow this "limited" project to go forward. What bothers me is that you do not seem to have taken into consideration all the thousands of people who prize this resource and who may be lucky to get one chance in their whole lifetime to see it.

Through the Section 106 consultation process, BLM has given careful consideration to the input that interested parties have provided regarding cultural resources in the area. Through this process, the Bureau has determined that the effects of this undertaking will be negligible and are temporary. The BLM manages public lands for multiple use. This action is in conformance with the Green River Resource Management Plan. The area affected by the action is open to mineral entry under the general mining laws and as such, the mining claimant has the right to pursue their mineral interests.

Consider this: Many people around the country, even around the world, spend years and even decades preparing for their one chance to explore the emigrant trails. They save their money, they research the history, they purchase maps, they spend hours pouring over information on the Internet, they dig out and study old journals and diaries, they contact experts with their questions & the experts spend time responding and then, finally, one summer, they finally have everything together to allow them to take their dream trip. They will have a few weeks, maybe a few months, to travel those trails, to see the sites they've read about, and to imagine what it was like to be an emigrant all those many years ago. Their dream is coming true and the journey will be something they remember – and talk about – their whole lives.

But imagine that that person chooses this summer for their trip. This one summer, when WY BLM has decided to allow Fremont Gold to drill test pits at Dickie Springs to search for gold. Imagine that this person, who has spent years and countless dollars preparing for this trip of a lifetime, comes around a bend in the old highway, anxiously anticipating that moment when he will cross South Pass, and there, to his left, just off the trail, are two big yellow bulldozers, an unknown number of trucks & all the attendant noise and dust that the operation is sure to kick up. That poor modern-day explorer will be slammed back into the 21st Century with a harshness that is difficult to imagine. His dream pilgrimage will have been shattered in an unconscionable way. If he's lucky, he will have another 10 or 20 or 40 days on the trails to regain some of that awe that comes from walking in those pristine ruts. But no matter what else he encounters, the sound and sight of those bulldozers and the placer gold operation near the crown jewel of his journey will never be erased. The Rock Springs BLM and FG will have been responsible for dropping a huge stain over his long-nurtured dream.

The equipment and vehicles used during this project are clearly outlined in Section 2.1.3 of Chapter 2 of the Environmental Assessment for Dickie Springs Placer Gold Exploration Project (EA). There are no bulldozers proposed to be used during sampling operations, the number of trucks will be limited at any one site. The sound may carry the 1.3 miles if the wind is blowing in that direction.

However if the day is calm or the wind is blowing in another direction the sound from the backhoe/s will be negligible. There will be no drills on site.

Visual concerns specific to the trails system were given careful consideration in the environmental analysis. The environmental analysis acknowledges numerous modern day intrusions in the area. But while there are modern intrusions into the setting (fences, powerline, ranch, cell towers, highway, two-track roads, etc.), these intrusions do not detract from what a visitor may experience. Most of these modern disturbances are visible from the trails but may go unnoticed by the casual visitor to the area.

The trails and their setting are recognized as sensitive resources. The nearest visual element of this project will be roughly 1.3 miles from the trails. At that distance even a yellow back hoe is difficult to see. As the distance grows to almost three miles for other portions of the project, the equipment will become even harder to see. Roughly one-half of the activity is in terrain hidden from view of the trails. Any given point which is visible from a trail segment is not visible from all trail segments. Even with the project in progress, the casual visitor may be able to pass through this area and not notice any project elements. Those who do will still have broad expanses and landscapes to look at, in many instances mere yards from where the project was visible. The combination of distance, scale, and topography will make this project somewhat difficult to detect.

As your EA notes: "The minimal modern intrusions make the setting of this and scrape one of the most historically significant remnants of the entire system of historic emigrant trails." (p. 35) But if you approve this project, that will not be true for at least the summer of 2005. The Historic Sites Act of 1935, as amended, states that "It is a national policy to preserve for public use historic sites, buildings, and objects of national significance for the inspiration and benefit of the people of the United States." (p. 4) Surely, that includes those people who have chosen this year to explore these magical historic emigrant trails. Don't deny them their equal rights to enjoy this site in 2005 just as people enjoyed it in 2004 or 1994.

Please refer to the responses above.

Please adopt the no action alternative so that everyone, no matter what year they finally put their dream into action, will have the right to be inspired by the lonely magnificence of South Pass.

12. Jill Anderson

In response to the Dickie Springs EA, I would like to urge the BLM to proceed no further in allowing the development and/or exploration of the area. As a former archaeologist who lived in Rock Springs – worked at WWCC, I assure you that I have interest in the area and knowledge of it and believe that the area is of too much historic and possible prehistoric significance to be compromised by even minimal exploration. I believe that not only the machinery, but the crews that operate it may have an unseen negative impact on the area. Human nature, multiplied by dozens of crews, could result in great disturbance on sites, whose value and pristineness could easily be pocketed or carelessly treated by people who are not sensitive to the unique attributes of the area. Let us work together to save this pristine area.

When the Green River Resource Management Plan created the South Pass Historic Landscape ACEC, it recognized the value of the historic trails and surrounding viewscape. The ACEC is managed for multiple use including locatable minerals (please refer to the pages 33 and 34 of the Green River RMP). Performance standards are made part of the Plan of Operation to ensure this important value is protected.

13. Barbara Dobos

Thank you for allowing me to comment on the Environmental Assessment (EA) for Fremont Gold Corporation's Dickie Springs Placer Gold Exploration Project located near South Pass in Fremont County, Wyoming on over 4,000 acres of BLM-administered public lands. As the EA notes, denial of the proposal would not defer future exploration on existing mining claims and such a decision might not prevent similar operations on split estate lands. However, I believe the FGC application should be delayed or denied based on several mitigating factors:

3.8.1.4.6 Greater Sage-grouse and Sagebrush Obligates

*Through recent actions by the Wyoming Legislature and Governor Dave Freudenthal the permanent Wildlife Trust Fund was established to preserve and protect Wyoming's wildlife heritage. The Governor's office has allocated specific funding for protection of the Greater sage-grouse (*Centrocercus urophasianus*) found primarily in our high-elevation deserts composed of Wyoming big sagebrush/grass. The Wyoming Game and Fish and eight local sage-grouse working groups, one of which I am a member, are charged with developing plans to protect and enhance the sage-grouse declining populations through research, on-ground projects and education. It is our belief that state and local management can best protect the species from ESA listing by management policies similar to BLM guidelines:*

- *Preventing the need to list species under the ESA.*
- *Avoiding or minimizing adverse impacts.*
- *Addressing species through planning and management activities.*

Three active sage-grouse leks along with nesting/early brooding-rearing habitat areas were delineated near the project area (Figure 3.11, pg. 64) by BLM in conjunction with the WGFD. The action taken sets seasonal limits on those areas with sage-grouse leks and 4-mile buffer areas. Although seasonal limitations exist on the assessment area it is unlikely such minimal action will have much impact on the survival of the species in the event this mining project goes forward.

As this is an exploratory project to assess whether gold mineralization is present in economically viable quality and quantity, BLM does not have enough information to assess any future development. NEPA does not require an agency to speculate on unknown foreseeable actions (40 CFR 1508.7). If the company decides to pursue full scale mining or additional exploration, they would be required to submit a Plan of Operation which will start the NEPA process again.

The company has agreed to incorporate seasonal restrictions into their Plan of Operation to protect greater sage-grouse breeding and nesting activities.

Currently, much scientific research on sagebrush-dependent species and sagebrush obligate migratory species is in progress on both a local and national scale. I believe it is premature to approve this project before the data from BLM, WGFD, UW, other agencies, universities and professionals has been evaluated and assimilated.

The Western Association of Fish and Wildlife Agencies Directors should complete their National Sage-grouse/Sagebrush Conservation Strategy by December of 2006, giving better insight into the scope and nature of sage-grouse conservation strategies. BLM itself is working on the agencies own Sage-grouse Habitat Assessment Framework. There is also important acoustical research

examining the effects of noise from energy exploration and development on breeding behavior in the works that will address 3D seismic mapping on Federal land.

Giving some time to reviewing the research on sage-grouse and sagebrush biome would insure more responsible decision-making and management practices regarding this proposal.

The Plan of Operation incorporates the recommendations of the Western Association of Fish and Wildlife Agencies Guidelines and the recommendations of the Wyoming State Sage Grouse Plan (please refer to Section 2.2.3 of the EA).

2.1.3 Exploration Plan – exploration likely to lead to development

Although BLM alleges to not be aware of any future development proposal by FGC at this time and the EA is limited to addressing only those criteria related to exploration, it must be assumed that the intent of this exploration would be gold mining if enough commercial grade ore is present. While the total acreage directly affected by the exploration sample pits and work paths in the proposed exploration project is limited to 13.64 acres, placer gold mining involving extraction of very low-grade ore would be devastating. This technique requires as much as fifty- tons of ore to yield one ounce of gold. The likely outcome would be small mountains of tailings and residues of mine waste over a vast pristine area.

Thank you for your comment. The proposed activity is for exploration to determine whether there is economically viable mineralization within the existing mining claims.

We should explain briefly that development of any full-scale mining operation is a multi-stage process that can be terminated at any stage depending on the findings or denial of any agency having oversight. Each stage is subjected to ever-increasing scrutiny.

For example, a mining company initiates preliminary exploration using a variety of exploration techniques. In this case, FG proposes to use backhoes to take samples for analyzing to determine whether the mineral is of such quality and quantity as to warrant further investigation. This is the stage where FG is at. Depending upon the results of the assay, they may abandon the project or if the results look promising they may develop a proposal to conduct further exploration or initiate pre-feasibility stage discussed below, both of which would require completion of another environmental analysis and decision. At this point it is unknown which will occur.

If the exploration phases prove that both concentration and extent of the mineralization appear in economically viable amounts, a company may enter a pre-feasibility stage where a detailed examination of costs associated with mining, metallurgical extraction, and permitting is made. This process may entail additional sampling, testing of mining and extractive techniques, baseline analysis, and reserve studies under various market conditions. If these parameters are met in this economic analysis, the property is advanced to the final feasibility/permitting stage where the primary choice in mining and metallurgy is submitted to the numerous local, state, and Federal agencies for review. At the permitting stage another environmental analysis would be prepared and a decision made. If agency amendments are economically feasible, the mining company may proceed to development of a mine.

At this stage, the Interior Board of Land Appeals ruled 131 IBLA 257 (November 23, 1994) NEPA does not require that BLM examine the environmental impacts of mine development when it approves a plan for exploration of a mineral property. Exploration and development are not

connected actions as defined at 40 CFR 1508.25(a)(1). Mine development is not a reasonably foreseeable result of exploration and need not be examined as a cumulative impact of exploration.

2.2.3 Cultural/Historic Resource Protection

The EA addresses safeguards to cultural/historic resources as enumerated by Federal laws such as the Antiquities Act, the National Historic Preservation Act, the Archaeological Resources

Protection Act and the Native American Graves and Repatriation Act as well as salvage of paleontological resources as they relate to exploration. Should such discovery be made, taxpayers, not the operator, would bear the cost of investigations and salvage. In the event of any strip mining development all future cultural and historic materials would be irreparably and forever lost. Every effort should be made to avoid such losses.

Regulation 43 CFR 3809.420(8)(iii) states the "Federal Government shall have the responsibility and bear the cost of investigations and salvage of cultural and paleontology values discovered after a plan of operation has been approved, or where a plan is not involved." Impacts from any future actions, including full scale mining, will require a new analysis and cultural resource inventory and protection would be addressed.

3.4 South Pass Historic Landscape Area of Critical Environmental Concern

In view of the fact that the project would occur within the BLM South Pass Historic Landscape Area of Critical Concern that includes the National Historic Trails Corridor, the mining development would be devastating to the visual and historic integrity of the historic trails and their surrounding setting.

In accordance with the National Environmental Policy Act, the BLM completed an environmental analysis of the exploration proposal. Through this analysis, it is recognized that any impacts associated with this action will be temporary. With the performance standards adopted as part of the proposal including reclamation and seeding, the undertaking will not have permanent effect to the landscape.

In addition, and in accordance with the National Historic Preservation Act, the BLM has completed Section 106 consultation efforts with the Wyoming State Historic Preservation Officer and the National Advisory Council of Historic Places concerning the exploration project.

Based on these results of these efforts, the BLM has made the decision to approve the exploration activity and that it will not prevent the BLM from meeting the land use plan management objectives for the ACEC.

Impacts from any future actions proposed within the ACEC, including full scale mining, will require a new analysis and decision. Section 106 of the NHPA requires the BLM to take into account the effects of an undertaking on cultural resources eligible for and included in the National Register.

These lands are open to mineral entry. As such the public has the right to stake claims and pursue mineral development.

I believe the changing attitude of the voting public, as a whole, will result in change in governmental mining regulatory policies, including the 1872 General Mining Act that provides royalty-free minerals

from publicly owned land. Until such time, the action FGC is proposing could result in unnecessary or undue degradation of public lands, leaving few safeguards other than BLM regulations to safeguard the public interest.

Thank you for your comment. The laws and regulations governing this action are in effect and as such, BLM must operate within their mandates. Under these laws and regulations, operators are required to prevent undue and unnecessary degradation of the public lands (43 CFR 3809.415). The operator must also comply with 43 CFR 3809.420 and other performance standards specified by BLM to insure that undue and unnecessary degradation does not occur. The operator is also required to submit a financial guarantee to insure that reclamation occurs in an approved manner.

BLM Wyoming State Office and the Rock Springs Field Office are to be commended on the thorough and well-documented research provided in the EA. It is further appreciated that the public is invited to participate in this process and allowed an opportunity to express views perhaps contrary to the corporate wishes expressed by the applicant. Please continue to include me on your contact list. Thank you again for the opportunity to participate in the Dickie Spring EA process.

Thank you for your comment.

14. Henry Hudspeth

E.A. Green, though the results of 2712 test pits in 1896, estimated this area at \$0.80/CY, valued at that time to be worth \$45,600,000.00 in gold. At today's market price that would equate to a value of almost a billion dollars. The values generated from the black sands would increase this figure in the amount of an additional \$275,000,000.00. In 1976, Wyoming State geologist, J.D. Love investigated this property and projected a possible resource in excess of one billion dollars. The Dickie Springs complex, as you can see, is considerably rich in values. Had not Mr. Greene succumbed on his way to England to obtain financing, the area would have most likely been mined at the turn of the century. With today's strict reclamation planning, permitting and bonding, any mining occurrence would leave the proposed mining property in much better condition that it as present.

Now we have this handful of extreme environmentalists who are threatening all sorts of adverse lawsuits and detrimental acts to prevent the opening of a very legitimate mining operation in the Dickie Springs area. At the moment, there is nothing in the mining law to prevent the opening of a mine in this desolate area. The company proposing the current exploration has indicated it will comply with the elk calving time criterium. Other than that, they have no legal restrictions except adhering to current reclamation regulations.

Thank you for your comments. As you have stated this area has a rich mining history that continues to this day. There have been several estimates on the reserves contained in this area; some are high and some are low. Love's estimate is on the high end and makes numerous assumptions. The conclusions he makes based upon his sampling methods paint a very "rosy" picture indeed. This is precisely why FG is proposing this exploration in order to obtain their own data. There are numerous regulations that Fremont must adhere to in order to gain approval of their Plan of Operation.

15. Lesley Wischmann, Alliance for Historic Wyoming

Thank you for this opportunity to comment on the environmental assessment for the Dickie Spring Placer Gold Exploration Project. I am greatly concerned about this proposed project. As the BLM's

own environmental assessment makes clear, the "qualities of resources and the visual experience" in the South Pass region of the westward emigrant trails makes this "one of the most impressive segments of the entire trail." (p. 37). While the proposed placer gold exploration project may have seemingly minimal impacts, allowing this project to go further does not comport with the BLM's own stated policy of "maintaining and enhancing the visual and historic integrity of the historic trails and their surrounding setting." (p. 29; emphasis mine). The fact that South Pass has been declared a National Historic Landmark, the "most important category of cultural resources recognized by the Federal government," (p. 27) would seem to demand more protection than the BLM would be providing this resource were this project allowed to proceed. At a minimum, it would seem that the quality of this resource requires the BLM to conduct a full environmental impact study, as opposed to the more limited environmental assessment, before allowing this project to proceed.

Thank you for your comment. The Green River Resource Management Plan established the South Pass Historic Landscape ACEC with the objective to protect and enhance the visual and historic integrity of the historic trails and surrounding viewscape; however, it does not exclude other uses. The environmental analysis recognizes the impacts associated with this action. With the performance standards adopted as part of the proposal including reclamation and seeding, the undertaking will not have permanent effect to the landscape.

All applicable laws pertaining to protecting the National Historic Landmark have been followed. FG has adopted numerous protective measures to ensure that the integrity of the National Historic Landmark will be maintained. Please refer to the response to letter 38 with regard to the NHL.

Based on the environmental analysis, the BLM has made a finding of no significant impact. Therefore preparation of an EIS is not required.

I am also troubled that the initial Class III inventory missed a site, 48FR5619, that was apparently significant enough to be discovered by a casual subsequent visit. If the inventory missed this site, I can't help but worry whether other sites, needing and deserving of protection, might also have been missed. Likewise, the fact that another catalogued site — 48FR1276 — could not be found raises additional questions. Is it normal for a site to vanish? What efforts have been made to locate this site? What further efforts will be made? Or will it simply be assumed that the site has fallen victim to the elements?

Site 48FR5619 was actually discovered by BLM archaeologists conducting a field check of the project. The resource was found while trying to locate another site. 48FR5619 is not located within the area of the initial inventory but adjacent to it. Due to the site's location, it was necessary to evaluate the site.

Site 48FR1276 (Seminoe Cutoff of the Oregon Trail) was originally mapped decades ago. The westernmost section was mapped incorrectly. It was mapped on a modern two-track road and a wagon road which connected the Oregon Trail with the South Pass Stage Road. There is no connection between these arteries as mapped for the Seminoe. There is roughly seven tenths of a mile of gap between the two. Accordingly, there never was a piece of the Seminoe this far to the west. This road is not believed to be a wagon road as it is far too straight and may have been flat-bladed. After extensive field visits and consultations, this segment of the Seminoe Cutoff has been determined not to exist. This determination was jointly made by the BLM, Oregon-California Trails Association National Preservation Officer, Oregon-California Trails Association Wyoming Preservation Officer, and the Wyoming State Historic Preservation Officer.

The cultural consultant which completed the initial cultural survey has met the Secretary of the Interior's qualification standards and is permitted to conduct work on public lands within the state of Wyoming. Further, the class III cultural resource inventory and report meet the Wyoming State Historic Preservation Office and BLM standards. As part of their authorization to conduct exploration activities, Fremont will be required to follow all Federal laws and regulations regarding the protection and discovery of cultural resources. Please refer to Appendix A of the Decision Record for a list of approved mitigation.

I also have concerns about proposed mitigation for this project. The EA makes clear that there will be at least two backhoes present on site throughout the course of the project. This will be in addition to a number of trucks which will be present on a daily basis. These high profile vehicles will certainly create a visual, eyesore likely to "attract the attention of the casual observer" in this VRM Class II area. Shouldn't at least some provision be made to camouflage these vehicles? At a minimum, I would suggest that they be covered with non-reflective neutral covered tarps while not in use. This may not keep them from attracting any attention but, at least there won't be bright yellow eyesores out there.

Visual concerns specific to the trails system were given careful consideration in the environmental analysis. The environmental analysis acknowledges numerous modern day intrusions in the area. But while there are modern intrusions into the setting (fences, powerline, ranch, cell towers, highway, two-track roads, etc.), these intrusions do not detract from what a visitor may experience. Most of these modern disturbances are visible from the trails but are generally unnoticed by the casual visitor to the area.

The trails and their setting are recognized as sensitive resources. The nearest visual elements of this project will be roughly 1.3 miles from the trails. At that distance even a yellow back hoe is difficult to see. As the distance grows to almost three miles for other portions of the project, the equipment will become even harder to see. Roughly one-half of the activity is in terrain hidden from view of the trails. Any given point which is visible from a trail segment is not visible from all trail segments. Even with the project in progress, the casual visitor may be able to pass through this area and not notice any project elements. Those who do will still have broad expanses and landscapes to look at, in many instances mere yards from where the project was visible. The combination of distance, scale, and topography will make this project somewhat difficult to detect.

As part of the Section 106 consultation process, a mitigation measure to cover any equipment that is left on site and is inactive with a natural colored tarp to further minimize being seen by the casual observer has been added.

I am also disturbed that the BLM is allowing Fremont Gold to be the ones to inform their employees about the relevant Federal regulations protecting cultural resources. I believe this is an activity that the BLM should undertake to ensure that Fremont Gold's employees truly understand the importance of this historical treasure. In addition to a simple recitation of the Federal regulations regarding this kind of undertaking, I believe company employees need to be made aware of the special considerations that might accompany work near the trails, including the possibility that emigrants might be buried in this area. As I stood on the trails looking towards the project site, I could easily imagine a family with a sick member seeking the relative shelter of those hills to wait out the inevitable. I fear that Fremont Gold, which according to a recent article in the Lander Journal did not even anticipate that there would be controversy associated with this project, does not understand the history of this area well enough to educate their employees fully on their obligations as they work in the area.

Prior to initiation of exploration activities on the ground, BLM will conduct a pre-work meeting with representatives from FG. During this pre-work briefing, a BLM Archeologist will review the appropriate federal regulations relating to the protection of cultural resources and will address the historical significance of the South Pass area. A BLM Archeologist will not be present during all exploration activities; therefore, if there are changes in personnel working on exploration activities, it will be the responsibility of FG to inform the new employees of the cultural regulations and the historical significance of the South Pass area.

Fremont and the BLM are aware of the area's significance and Fremont will abide by all Federal laws and regulations. Refer to Appendix A of the Decision Record for a complete list of approved mitigation.

I also do not understand why this project may be allowed to go forward when all oil and gas leases have been suspended pending final approval of the Jack Morrow Hills CAP. Why is this project not included in that moratorium?

Thank you for your comment. Please refer the response to a similar comment in letter 5.

Another worry arises from the fact that, although the EA recognizes that cumulative impacts "may be individually minor but collectively significant" (p. 67), the BLM apparently is not concerned that this one project, as proposed, would increase the cumulative impacts in this area by a whopping 36%. (p. 70) This seems like an exceptionally high percentage increase for impacts by just one project, especially considering the claims that the impacts of this project will be minor.

The commenter misunderstood the text found on page 70. Within the cumulative assessment area for fluid and solid minerals, a total of 23.32 acres is currently disturbed. The Proposed Action would affect up to 13.64 acres (although direct disturbance would be less than 2 acres). Thus, this project when added to existing disturbance currently found within the specific assessment area would result in an increase disturbance of 0.27%.

Despite my numerous concerns, I do want to thank you for the comprehensiveness and quality of this EA. I believe your own thorough analysis of the project clearly shows why it should not be allowed to go forward. While I understand that the BLM considers "any future actions including full scale development" to be "speculative," (p. 10) I trust that you understand why ordinary citizens are deeply concerned about the potential for full scale mining operations. Certainly, Fremont Gold would not be undertaking these test pits without some plan to proceed with full scale mining, if the samples suggest such an operation would be profitable. If such an operation were proposed, I'm sure you understand that the public uproar would be considerable. For many of us, South Pass is too important to be compromised in any way. I believe many people would go to great lengths to prevent degradation of this important site. Therefore, it seems to make more sense to reject this project now, based on the necessary protection of significant historic sites as outlined in the EA, rather than risk a long, protracted and costly battle down the road. As noted on p. 2 of the EA, mining claimants "have the right to develop and extract the minerals....provided the activity does not result in unnecessary or undue degradation of public lands." (emphasis mine) Surely, this degradation of the SPHL ACEC is totally unnecessary. Please reject this proposed placer gold exploration project. Thank you again for considering my comments.

Thank you for your comment. Based on the environmental analysis, the BLM has determined that implementation of the exploration activities as proposed by FG, including application of numerous performance standards, will not adversely impact BLM's ability to achieve it's management

objective to maintain the visual and historic integrity of the South Pass area. Likewise, approval by BLM will allow FG to exercise their mineral-related rights in accordance with the general mining laws and other laws of the U.S which promote domestic exploration of minerals, and will not result in unnecessary and undue degradation of the public lands including the South Pass Historic Landmark ACEC.

16. Mary Lou Morrison

After reading and reviewing the assessment, from the standpoint of a resident since 1960, when I moved to Wyoming to teach art in the Casper public schools, I find this placer mining project of Fremont Gold definitely not in the interest of Wyoming.

The first question that came to mind was: how will this benefit the citizens of Wyoming and the nation, since it is my public land? I see absolutely no public benefit whatsoever. This is located in most historically and culturally significant regions of the state, in close proximity to trails and view sheds of the Westward Movement and Native American ancestral lands. That, itself, is most important. There are benefits from my public land being developed (sacrificed in too many cases) for grazing and energy development because we do eat and we need oil and gas (not in the quantity this nation thinks is necessary, but I will not go there!) But....GOLD!!!

This area is fragile and the possible disturbance/damage to sage grouse habitat is not needed. Think ahead about this project. If the BLM allows this and there is "gold in them thar hills" do we really need another gold rush in Wyoming. The BLM is having serious problems policing and protecting our last best wide open spaces from ORV's at the present time, not to mention the rampant oil and gas development that is degrading our water, land, air and wildlife habitat. Tourists do not come to Wyoming to view gold mining pits, scraped bare land and mining debris. Do you really think they will 10, 20, 30 years from now if this mining enterprise is given the go ahead?

Thank you for your comment. Please see the response to a similar comment in letter 9.

17. Ken Sosalla

I am writing to you to have you reject any gold exploration in the Dickie Springs/South Pass area of Wyoming. This area is a wealth of historical roads and trails and any exploration will disturb this fragile area. Once this area is disturbed of its pristine condition it can never be restored again.---- Just look at what happened at Rocky Ridge on the Oregon Trail.

Not only is the South Pass area significant of trail remains of the original Oregon/California Trail, it is significant in the fact that Robert Stuart traveled this area especially on the west side of the Pass and more that likely camped or watered at Dickie Springs. Stuart then traveled east into the Great Basin from there.

Also of significance is the remnants and evidence of the Rawlins/South Pass City stage road. This gold exploration will disturb that fragile part of this area also.

The Wyoming Cultural Records Office and the BLM have no records showing the location of the "Rawlins to South Pass City Stage Road." Perhaps the commenter meant the Rawlins to Washakie Stage Road. No new historic stage roads were located during the Class III cultural inventory.

I will be out there in a couple of weeks to explore and examine the area and will report back to you my findings.

The BLM would be happy to examine any information discovered concerning a Rawlins to South Pass City Stage Road.

South Pass is a unique and especially significant segment of the westward emigrant trails;

The setting of South Pass remains especially pristine;

As stated in the EA (see Chapter 3, Affected Environment), there are many modern intrusions in the area. However, the overall characteristic of the landscape remains largely intact. The proposed undertaking is small in scale and will temporarily impact those areas visible from the historic trails/stage roads. Topography and vegetation between the project and the historic trails/stage roads, along with the mitigation measures, will minimize visual intrusions. Also, please refer to the response to a similar comment in letter 11.

The designation of South Pass as both a National Historic Landscape as well as an Area of Critical Environmental Concern requires special protection from the BLM;

All applicable laws pertaining to protecting the National Historic Landmark have been followed. FG and the BLM have provided for protective measures to ensure that the integrity of the historic landmark will be protected and maintained. Please refer to the response in letter 38 with regard to the NHL.

Recently, evidence from the Paul Henderson (renowned trail historian) collection has been discovered indicating that, in 1812, famed explorer Robert Stuart camped at Dickie Springs;

Dickie Springs is located almost two miles to the west of the project area. The precise location of the 1812 campsite of Robert Stuart has yet to be determined. No National Register eligible historical campsites were located within the project boundary.

The EA lacks any mitigation for the visual intrusions of several high profile vehicles which will be on site during this operation;

As part of the National Historic Preservation Act Section 106 consultation process, FG has agreed to cover any equipment left on site and is inactive with a natural colored tarp to reduce any visual intrusion from vehicles/equipment. Given the distances involved between the project and the trails/wagon road, the casual viewer likely will not be able to distinguish the activity from other ranching/recreation activity in the area.

The inability to locate one cultural resource and the subsequent discovery of another suggests a more intensive cultural resource inventory might be needed;

Site 48FR5619 was actually discovered by BLM archaeologists conducting a field check of the project. This resource was located while trying to find another site. Site 48FR5619 is not located within the area of inventory but adjacent to it. Due to the site's location, it was necessary to evaluate the site.

Site 48FR1276 (Seminoe Cutoff of the Oregon Trail) was originally mapped decades ago. The westernmost section was mapped incorrectly. It was mapped on a modern two-track road and a wagon road which connected the Oregon Trail with the South Pass Stage Road. There is no connection between these arteries as mapped for the Seminoe. There is roughly seven tenths of a

mile of gap between the two. Accordingly there never was a piece of the Seminoe this far to the west. This road is not believed to be a wagon road as it is far too straight and may have been flat-bladed. After extensive field visits and consultations with the National Park Service, Wyoming State Historic Preservation Officer, and the Oregon-California Trails Association, this segment of the Seminoe Cutoff does not exist.

The cultural consultant has met the Secretary of the Interior's qualification standards and is permitted to conduct work within the state of Wyoming on BLM lands. Further, the class III cultural resource inventory and report meet the Wyoming State Historic Preservation Office and BLM standards. Fremont will follow all Federal laws and regulation regarding the protection and discovery of cultural resources. Please refer to Appendix A of this decision for approved protective measures.

If oil and gas leases have been suspended pending the release of the Jack Morrow Hills CAP, why should this project be allowed to go forward?; and

Thank you for your comment. Please refer to the responses to a similar comment in letter 5.

Despite the fact that the BLM cannot consider "any future actions including full scale development," the public outcry against such a project would be so pronounced that it makes little sense to approve these test pits.

When considering a proposed Plan of Operations, BLM cannot completely forbid mining either under the 43 CFR 3802 regulations L.C. Artman, 98 IBLA 164 (1987), or under the 43 CFR 3809 regulations, Southwest Resource Council, 96 IBLA 105, 120, 94 I.D. 56 (1987).

Regulations (43 CFR 3809.411(c) provide for an environmental assessment and possible environmental impact statement. Based on the environmental assessment, the BLM determined that there will not be significant impacts that require the preparation of an environmental impact statement. Approval of a Plan of Operation is not a discretionary action. The Federal government has the authority to require that the operator conduct their operations in a manner so as not to cause undue and unnecessary degradation, but so long as operations are conducted in compliance with the regulations, the government has little authority to disapprove the Plan of Operation.

Please don't let happen to the South Pass area of Wyoming what happened to Rocky Ridge on the Oregon/California Trail.

18. Becky Elliott

It was with great dismay that I read of the possibility there could be permits issued to dig for gold in the South Pass area. This upsets me, to think that this pristine area of such historical value could be over-run by cars, trucks and huge machinery. The human factor is already overwhelming in this area with the leasing to the Mormon Church. Land that is as important to many descendants who traveled that trail, but choose to honor their memories in quiet ways of remembrance.

To think that this wonderful land that so far has escaped the so called modernization of today's world will be open to more exploitation is a terrible thing to comprehend.

I hope you and your superiors will seriously reconsider this as a possibility and let this land in South Pass remain as it should, quiet and peaceful and empty.

Thank you for your comment. Please see the responses to similar comments in letter 11.

19. Pat Schroeder

I strongly object to any mining, drilling or any other destruction of any area around, near or even remotely close to South Pass. The greedy mining, oil and gas and other large companies have taken enough of our beautiful country.

God created this for all of us. Not just the big money guys. Those companies have destroyed most of it now. Can't you leave something for the rest of us? I am 63 and disabled and there are not many places left where I can go to enjoy the beauty of Wyoming.

Thank you for your comment.

20. Mary Humstone

Please consider these my formal comments on the Dickie Springs Environmental Assessment. I am greatly concerned about the damage this proposed project could do to the South Pass area. As the BLM recognizes in its own EA, the South Pass area is "one of the most historically significant remnants of the entire system of historic emigrant trails." (p. 35) The BLM's own management objectives call for emphasis to be "given to maintaining and enhancing the visual and historic integrity" of the region (p. 29). Allowing test drilling to go forward is in direct conflict with that objective.

I am also concerned that the Class III inventory failed to turn up one apparently significant site and that another could not be relocated. This suggests that the cultural resources inventory may not have been sufficient. I also do not understand why oil and gas leases in the area have been suspended until the Jack Morrow Hills CAP is released but this project may be allowed to go further.

Thank you for your comment. Please refer to responses to a similar comments in letters 5 and 15.

If the project is to proceed, I believe the BLM, not Fremont Gold, should be responsible for educating the project employees on the Federal regulations protecting historic and cultural resources. I am also troubled that no measures are specified to mitigate the visual impacts of having several high profile vehicles on site.

Nevertheless, I urge you to adopt the no action alternative. While the BLM may not be able to speculate about "any future actions, including full scale development," the public certainly can. Such a project would be vigorously opposed by the country's historic preservation community. Therefore, it makes no sense to allow this project to proceed, especially since your own EA provides more than adequate justification for rejecting the permit based on the need to protect the SPHL ACEC. Thank you for considering my views.

Thank you for your comments. Please see the response to a similar comment in letter 5.

21. Bruce Pendery et al, Wyoming Outdoor Council

Please accept the following comments on the above referenced environmental assessment (EA) on behalf of the Wyoming Outdoor Council, The Wilderness Society, Wyoming Wilderness Association, and the Sierra Club.

The EA Does Not Consider an Adequate Range Of Alternatives

The EA only considers two alternatives, Fremont Gold's proposed action and the no action alternative. This fails to meet the requirements of 42 U.S.C. § 4332(2) (E) (requiring the Federal Government to "study, develop and describe appropriate alternatives") and 40 C.F.R. § 1508.9(b) (incorporating the requirements of section 102(2) (E) of the National Environmental Policy Act [NEPA] into the requirements for an EA).

The Council of Environmental Quality defined "reasonable alternatives" to include those that are practical or feasible from the technological and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant" (see question 2a of NEPA's 40 Most Asked Questions at <http://ceq.eh.doe.gov/nepa/regs/40/40P3.htm>). BLM uses the same standard when considering alternatives proposed by the public. Every alternative brought forth during internal and public scoping was reviewed and considered. Those alternatives that were determined to be neither technologically nor economically feasible were dropped from detailed study in accordance with 40 CFR 1502.14(a). Please refer to page 25 of the EA.

At a minimum, alternatives that require exploration with less than 200 pits should have been considered. The EA does not include information demonstrating that up to 200 pits are needed to adequately sample placer gold in the project area. It may well be that up to 50 pits would adequately sample placer gold in the project area, for example. Despite the fact that the EA provides no basis for making this determination on sampling density, the EA unambiguously states that "higher gold concentrations are likely to be found in low positions of drainage paths and therefore are of particular interest. For that reason it is important to get as close to the lowest areas as possible. Otherwise, the operator may fail to assess accurately the mineral content and value." EA at 15. Clearly, allowing fewer pits but concentrating them in lower areas was an appropriate alternative that should have been considered. See generally 43 C.F.R. § 3809.5 (the mitigation BLM is required to apply to avoid unnecessary or undue degradation of public lands means not taking parts of an action or limiting the degree or magnitude of the action and its implementation).

The BLM considered but dropped from detailed study such an alternative that would eliminate one or more exploration parcels. Based on consideration of this alternative in light of what FG proposed, the BLM felt the Proposed Action incorporated components of this alternative since if early sampling proves gold is not present in sufficient quality and quantity, it is likely that sampling in that exploration area would stop. Thus, the Proposed Action specifies up to (emphasis added) 200 pits could be sampled but does not mandate that all pits be sampled.

Likewise, the option of hand-digging pits should have been fully considered, but was eliminated from consideration. EA at 25-26. It is claimed that this method, which is far more compatible with the historic landscape in this area, "would be too time-consuming to complete within the time frames available." Id. at 25. Some information is presented to support this claim. Id. Yet the actual reason for eliminating the hand-digging option seems to be that "the cost of delaying completion of sampling operations would likely render the proposal economically unfeasible." Id. at 26. No information is presented to support this assertion. Even if more employees would be required to pursue this option, they may not require the salaries of a backhoe operator. Additionally, the elimination of the need for a backhoe might reduce costs. An option, such as hand-digging pits, that is most compatible with the historic landscape in the area and which would have fewer environmental impacts, cannot be eliminated from consideration based on unsupported assertions regarding its costs.

As stated above, reasonable alternatives are those that are economically and technically feasible using common sense. Due to the fact that the company voluntarily agreed to comply with seasonal restrictions for non-listed species and BLM's preference and the company's desire to not conduct sampling operations during the winter months resulted in a short window to conduct operations. In addition, hand-digging pits would increase the level of human activity and traffic levels at least 15 times for each backhoe and the time needed to conduct sampling operations would likely be extended well beyond this year as stated in the EA at page 25. In addition, current on-going placer gold exploration within a mile of that proposed allows use of mechanized equipment to conduct operations and has not interfered with other uses within the historic landscape ACEC.

The regulations at 43 CFR 3809.420 require the operator "use equipment, devices, and practices that will meet the performance standards in this subpart. "The operator must also prevent unnecessary and undue degradation. It is BLM's opinion that hand digging these pits would cause undue an unnecessary degradation. This is due to the fact that it would take considerably more people and vehicles to accomplish the same job as one backhoe.

In addition, hand-digging pits could be considered casual use which is not considered a Federal action. Therefore no permitting would be required.

The EA Fails to Consider Connected and Cumulative Actions and Indirect Effects

The EA improperly fails to consider the potential impacts that could come from an expanded exploration proposal or from a full-scale gold mine in the future. The environmental impact analysis is limited to the current action of digging up to 200 pits. The EA asserts that "any future actions including full scale development would be speculative." EA at 10. Yet Fremont Gold could not undertake this exploration if it did not believe there was a reasonable chance that the results of the exploration would justify future undertakings. As a fiduciary with obligations to its stockholders, Fremont Gold simply cannot spend money for recreational gold exploration activities that have no future purpose; it is pursuing a plan that must be based on a reasonable expectation that a full-scale mine that will produce revenues for the company will result from this exploration. Thus, the potential for a future full-scale mine is not speculative; it is the exact desired outcome within the corporate calculus and responsibilities of Fremont Gold.

As stated in the EA (page 10), the BLM does recognize the possibility of further exploration and/or full-scale development but at this time does not have enough information to make any prediction of what that further exploration or development would entail. The Council of Environmental Quality refers to "reasonably foreseeable actions," it does not require agencies to speculate as to unknown but possible future actions.

Concerned Citizens for Responsible Mining 131 IBLA 257 (1994) NEPA does not require that BLM examine the environmental impacts of mine development when it approves a plan of operation for exploration of a mineral property. Exploration and development are not connected actions as defined at 40 CFR 1508.25(a)(1). Mine development is not a reasonably foreseeable result of exploration and need not be examined as a cumulative impact of exploration, at 131 IBLA 257.

BLM is required to consider connected, cumulative and similar actions when determining the scope of its NEPA analysis. 40 C.F.R. § 1508.25. A connected action is one that is closely related to a proposed action and therefore should be "discussed" in the same NEPA document. The simple requirement that a connected action, such as a future full-scale mine, be "discussed" in one NEPA document does not mean that all aspects of the connected action need to be known in detail. BLM

could consider several scenarios for future mines that would allow it to meaningfully discuss this connected aspect of the current exploration project. BLM has effectively chosen to consider one such scenario (no full-scale gold mine) but has failed to even consider other, equally plausible, scenarios.

The Council of Environmental Quality defines "connected actions" as those that "automatically trigger other actions that may require environmental analysis; cannot or will not proceed unless other actions are taken previously or simultaneously, are interdependent parts of a larger action and depend on the larger action for their justification; cumulative actions when viewed with other proposed actions have significant impacts and should be discussed in the same impact statement; similar actions when viewed with other reasonably foreseeable or proposed agency actions have similarities that provide a basis for evaluating their environmental consequences together such as common timing or geography. An agency may wish to analyze these impacts in the same statement" (40 CFR 1508.25). Analyzing a future full-scale mine as part of this analysis does not qualify under these criteria.

Similarly, an EA must provide a discussion of the "environmental impacts" of an action. 40 C.F.R. § 1508.9(b). "Impacts" are synonymous with "effects" in the context of NEPA, and indirect effects are effects caused by an action occurring later in time or farther removed in distance, but which "are still reasonably foreseeable." Id. § 1508.8(b). Indirect effects "include growth inducing effects and other effects related to induced changes" Id. Given that Fremont Gold is required to pursue development of a full-scale mine if at all possible, the future construction of a gold mine is reasonably foreseeable and the current action is intended to have a growth inducing effect. Thus, this indirect effect should be considered in the EA.

Discussion of indirect impacts is limited to the Proposed Action and does not entail analyzing a full-scale mine at this stage. Please refer to the response above. Fremont Gold is under no obligation to develop a mine should sampling operations prove favorable.

The EA and Proposed Action Violates the National Historic Preservation Act

It appears BLM is asserting a "no adverse effect" claim relative to the impacts of this project on the nationally significant cultural and historic resources in this area. EA at 67. The basis for this seems to be claims that any impacts will be "minimal and temporary." Id.

Yet, BLM can only make a no adverse effect claim if the criteria for an adverse effect determination are not met under the regulations of the Advisory Council on Historic Preservation. 36 C.F.R. § 800.5(b). An adverse effect determination on historic properties must be made when an "undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register [of Historic Places] in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association." Id. § 800.5(a)(1) (emphasis added). Much of the project would be visible from the historic trails, EA at Fig. 4.1, and the project is located within the South Pass Historic Landscape Area of Critical Environmental Concern (ACEC), EA at Fig. 3.1. Clearly this project standing alone, even with efforts made to protect historic resources, "may" alter the location, setting, and feeling of the National Historic Landscape. The EA admits that the proposed action "would result in temporary, small scale impact to the characteristic landscape of the ACEC and trail setting . . ." EA at 68 (emphasis added). Thus, the impacts of this project will have an adverse effect on historic properties by definition.

The temporary and small-scale of the impacts to cultural resources created by this project do not “diminish the integrity” of any of the properties associated with the project as is required for a Federal Agency to propose a finding of adverse effect under 36 CFR Part 800.5(1).

The determination of effect is a Federal decision made “in consultation” with other parties including the State Historic Preservation Officer (SHPO). The proposed determination is subject to review by the Advisory Council on Historic Preservation if the Federal Agency and any consulting party do not agree. The Council may impose a determination at that point. The Bureau has analyzed the potential effects and has determined that they will not diminish the integrity of the resources. The opinion of the SHPO will be considered during the Section 106 consultation process but the decision remains with the Federal Government. In response to the SHPO’s objection to a proposal of no-adverse effect, the Bureau has prepared a Memorandum of Agreement according to 36 CFR Part 800.6 in order to resolve any potential impacts of this project.

The regulations implementing section 106 the National Historic Preservation Act make no provision for making a no adverse effect determination just because impacts may be temporary. If an undertaking "may" alter the location, setting, or feeling characteristics of a historic property, an adverse effect determination must be made and BLM must minimize impacts to the property. Moreover, the definition of adverse effect includes indirect alteration of historic property characteristics, and as discussed this project could have an overwhelming indirect impact on historic properties if the desired full-scale mine is constructed. The specific examples of adverse effects to historic properties provided in the regulations further emphasize that this project will have adverse impacts to historic resources. 36 C.F.R. § 800.5(a)(2)(iv) (changes in the character of physical features within a property's setting are adverse effects); 800.5(a)(2)(v) (introduction of visual or audible elements into a setting are adverse effects). Finally, a no adverse effect determination can only be made "in consultation" with the State Historic Preservation Officer (SHPO) and BLM can only "propose" such a finding. Id. § 800.5(b). As discussed below, consultation does not appear to be complete, and BLM is not treating the no adverse effect determination as a proposal.

Please refer to the response above. No actions are proposed which will diminish the integrity of the historic properties associated with this undertaking. A discussion of full scale mining is presented in Section 1.3.4 of the EA. The Section 106 consultation process has been completed with the signing of a Memorandum of Agreement between the BLM, the Wyoming SHPO, the Advisory Council on Historic Preservation and FG.

Under BLM's hardrock mining regulations, "A State environmental protection standard that exceeds a corresponding Federal standard is consistent with the requirements" of BLM's 3809 regulations. 43 C.F.R. § 3809.202(b)(3). Thus, to the extent there is a disagreement between BLM and the SHPO relative to the adverse effects determination, BLM must defer to the State's view, if it would provide greater environmental protection for historic resources.

No “State environmental protection standard” exists for cultural resources.

Another problem relative to compliance with the National Historic Preservation Act evident in the EA is that consultation with the SHPO has not been completed. Apparently consultation with SHPO is in an undefined state; it is "ongoing." EA at 36. Until consultation is complete, the Dickie Spring Project cannot be approved.

Please refer to the responses above.

Under BLM's "hardrock" mining 3809 regulations, BLM cannot approve a plan of operations until BLM "completes any consultation required under the National Historic Preservation Act" 43 C.F.R. § 3809.411(a)(3)(iii) (emphasis added). See also 43 C.F.R. § 3809.1(b) (a purpose of the 3809 regulations is to maximize coordination with state agencies to prevent unnecessary or undue degradation of public lands). Likewise, under the National Historic Preservation Act section 106 regulations, BLM "must complete the section 106 process "prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license." 36 C.F.R. § 800.1(c) (emphasis added). See also 16 U.S.C. § 470f (section 106 of the National Historic Preservation Act). Even if some level of phased consultation is permissible relative to future related actions (e.g., a full-scale gold mine), BLM must fully complete consultation for this segment of the undertaking before the Dickie Spring Project can be approved. That has not occurred. Moreover, BLM must fully involve other consulting parties and the general public in the consultation process, and that cannot be meaningfully accomplished as long as consultation with SHPO is in some undefined state of completion. See 36 C.F.R. §§ 800.6(a)(2); 800(a)(4).

Section 106 process has been completed. Consultations under Section 106 of the National Historic Preservation Act for this project have included the National Park Service (National Historic Landmarks Program and Long Distance Trails Offices), Wyoming State Historic Preservation Officer, and National Trust for Historic Preservation, Oregon-California Trails Association, Alliance for Historic Wyoming, Eastern Shoshone Nation, Northern Ute Nation, Northern Arapaho Nation, and Shoshone Bannock Nation. In accordance with the National Protocol Agreement, 36 CFR 800.6 (a) (1) and 36 CFR 800.10 (b) the BLM notified the Advisory Council on Historic Preservation of the project and the determination of effects on cultural resources. Also, please refer to the responses to National Trails System Office of the National Park Service.

Finally, this area is a National Historic Landmark, which requires special attention and protection. Specifically, it is the South Pass National Historic Landmark (NHL). BLM is required to not only plan for minimizing harm to the South Pass NHL, it must take actions to minimize harm to the area. 36 C.F.R. § 800.10(a). BLM has failed to meet this duty in the EA. Boundaries for the South Pass NHL have apparently never been established; nevertheless BLM has established the South Pass Historic Landscape (SPHL) Area of Critical Environmental Concern (ACEC), and "This landscape serves as the administrative boundary used by the [Rock Springs Field Office] when assessing effects to the NHL for the purposes of compliance with Section 106 of the [National Historic Preservation Act]." EA at 34. Despite the fact that the ACEC represents the administrative boundaries for this landscape in the absence of a specific determination, the BLM fails to minimize harm to the entire SPHL ACEC. BLM recognizes that the proposed action would result in impacts to the characteristics of the SPHL ACEC and that visitors using the SPHL ACEC may notice operations, EA at 68, yet it fails to minimize these impacts, such as by requiring that fewer pits be dug and/or that pits only be dug by hand.

Thank you for your comments. Please refer to the response in letter 38 with regard to the NHL.

The EA and Proposed Action Would Violate BLM's "3809 Regulations"

BLM's regulations at 43 C.F.R. Subpart 3809 govern surface management of hardrock mining operations. A principal purpose of these regulations is to prevent unnecessary or undue degradation of the public lands. 43 C.F.R. § 3809.1(a).

Unnecessary or undue degradation is caused by, among other things, failing to comply with Federal laws related to the protection of cultural resources. 43 C.F.R. § 3809.5 (defining unnecessary or undue degradation). See also id. §§ 3809.415 (same); 3809.420(a) (6) (same). As discussed above, BLM has failed to meet the requirements of the National Historic Preservation Act, including taking actions to minimize impacts to the SPHL ACEC. Thus, if the EA preferred alternative were implemented, BLM would be authorizing unnecessary or undue degradation of public lands.

As outlined above, the BLM has met the requirements of the National Historic Preservation Act.

BLM has also failed to recognize the two-prong obligation it operates under pursuant to the unnecessary or undue degradation clause of the Federal Land Policy and Management Act. 43 U.S.C. § 1732(b). BLM must take "any" action needed to prevent unnecessary degradation of the public lands and undue degradation of the public lands. Mineral Policy Center v. Norton, 292 F.Supp.2d 30, 41-43 (D.D.C. 2003). The unnecessary prong of this two-part standard relates to what is needed to accomplish mining operations; the undue part of the standard relates to preventing environmentally excessive impacts. Id. at 43. Here, BLM has made no attempt to determine whether it is taking any action needed to prevent impacts that may be unnecessary to accomplish mining and impacts from mining that are environmentally excessive, such as impacts to historical and cultural resources. It is treating this mandatory requirement and limitation on BLM actions and decision-making as a unitary standard rather than as a two-prong standard, both elements of which must be adhered to. This oversight must be corrected before this project can be approved.

Additionally, BLM is failing the requirement to manage the public lands for multiple use. 43 U.S.C. § 1732. This requires BLM to manage the various resources "without permanent impairment of the productivity of the land and the quality of the environment," this being determined based on the relative value of the resources involved and "not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output." Id. § 1702(c). At a minimum, BLM's failure to adequately consider and protect the historical and cultural resources in the area fails to meet this management requirement.

Regulations contain in 43 CFR 3809.5 defines unnecessary and undue degradation as conditions, activities, or practices that:

- (1) Fail to comply with one or more of the following: the performance standards in § 3809.420, the terms and conditions of an approved plan of operation, operations described in a complete notice, and other Federal and state laws related to environmental protection and protection of cultural resources;
- (2) Are not "reasonably incident" to prospecting, mining, or processing operations as defined in § 3715. 0-5 of this chapter; or
- (3) Fail to attain a stated level of protection or reclamation required by specific laws in areas such as the California Desert Conservation Area, Wild and Scenic Rivers, BLM-administered portions of the National Wilderness System, and BLM-administered National Monuments and National Conservation Areas.

The BLM has determined the performance standards are sufficient to prevent unnecessary and undue degradation (see Appendix A of this Decision). Also, please see the response to a similar comment regarding multiple use in letters 5 and 12.

The Proposed Action Does Not Conform to the Green River Resource Management Plan or the Pending Jack Morrow Hills Coordinated Activity Plan

The Green River Resource Management Plan (RMP) Record of Decision (ROD) established criteria for the Jack Morrow Hills Coordinated Activity Plan (CAP) planning area "to avoid premature commitments allowing development or disturbance . . . within the activity plan area until the CAP is completed." ROD at 5. This restriction applies even to public lands "outside the core area," such as the Dickie Spring project area, if at least one of seven stated criteria applies. One criteria limiting premature development or disturbance is if "Other sensitive areas or situations that may be identified" exist. Id. Clearly the Dickie Spring project area involves sensitive resources or situations, if for no other reason than its inclusion in the SPHL ACEC. Thus, BLM must avoid making commitments that will allow development or disturbance until after the Jack Morrow Hills CAP is finalized so as to be in conformity with the Green River RMP. 43 U.S.C. § 1732(a); 43 C.F.R. § 1610.5-3(a) (both requiring BLM to take actions that conform to the RMP).

Thank you for your comment. Please refer to responses to a similar comment in letters 5 and 12.

The EA Fails to Meet the Requirements of 40 C.F.R. § 1508.9

An EA must provide a discussion "of the environmental impacts of the proposed action and alternatives" 40 C.F.R. § 1508.9(b). The purposes of this discussion are to make a determination of whether to prepare an environmental impact statement, as well as to ensure compliance with section 102(2)(E) of NEPA. Id. §§ 1501.4(c); 1508.9(b). The EA fails to meaningfully discuss the environmental impacts of the proposed action and alternatives in at least one significant way.

Throughout the EA maps are shown of project area. See, e.g., EA at Fig. 2.1. These maps show the project area as including sections 7, 17, 18, 19, and 20 in Township 27 North Range 100 West and sections 11, 12, and 14 in Township 27 North Range 101 West. EA at 13. Left out of this definition of the project area, and thus of the impacts analysis, is section 13 in Township 27 North Range 101 West. As the maps make clear, this omission creates a "hole" right in the middle of the project area, which makes all environmental impacts analyses in the EA invalid.

As one specific example of how this constrained definition of the project area taints the EA, Figure 2.4 shows that the access roads to the project area run through section 13. Thus, dust and any number of other impacts, which certainly affect historical resources, will be similarly associated with activities in section 13 as with the sections in the formally proposed "project area." Vehicles will have to pass through section 13 every day. Ecologically, the boundaries of the project area make no sense relative to wildlife or any other resource that is mobile. Animals in the north half of section 13 will be closer to, and thus affected by, pits in section 12, more than animals in many parts of the "project area," such as most of section 11. A "project area" is defined in BLM's hardrock mining regulations as "the area of land upon which the operator conducts operations, including . . . [areas providing] other means of access by the operator." 43 C.F.R. § 3809.5. Thus, BLM was required to conduct an environmental impacts analysis that included, at a minimum, section 13, yet it failed to do so. BLM apparently left this section out of its definition of the project area because no pits will be dug there, but under both NEPA and the BLM's hardrock mining regulations, that is an insufficient basis for excluding an area from consideration and analysis.

The general mining laws provide for ingress and egress to mining claims thus, access is guaranteed. The defined project area is limited to those sections having proposed sampling locations. Regardless, section 13 was considered under most resource impact assessment areas evaluated in Chapters 3 and 4 of the EA.

An Environmental Impact Statement Must Be Prepared

Specific reasons for preparing an environmental impact statement are that the area that could be affected has unique characteristics such as historic or cultural resources, the project is likely to be highly controversial, there is a potential for the action to establish a precedent for future actions or establish a decision in principle regarding future actions, and the degree to which the project may adversely affect historic properties that qualify for or are eligible for the National Register of Historic Places. 40 C.F.R. §§ 1508.27(b)(3), (4), (6), and (8). The Dickie Spring project has all of these "intensity" factors. In addition, the "context" of the project must be considered. Id. § 1508.27(a). In this case the Dickie Spring project is located within a landscape of national and international historic significance. Unlike many cases where a site-specific project may only have significance in a local context, the Dickie Spring project presents a case where significance needs to be viewed in the context of "the world as a whole" or certainly in a national context. See id. And the context of a project must also be determined based on short- and long-term effects, and in the case of the Dickie Spring project, there is a clear potential for long-term effects since initial exploration may lead to future development.

When an agency is determining whether or not to prepare an EIS, it must take into account the characteristics as stated in your comment. The purpose of preparing the environmental assessment is to assess the potential impacts from implementation of the alternatives as the basis to determine whether an environmental impact statement is necessary. Based on the analysis presented in the environmental assessment, the BLM made a Finding of No Significant Impact determination.

Gold exploration within this area has been on-going for generations (see EA, page 38); thus, this action does not set a precedent in the area. When the South Pass Historic Landscape ACEC was established in 1997, it mandated that the ACEC would be managed for multiple use including mining claim activity and the right of claimants to work their claims as long as they are held in good standing and the claimant meets the regulatory requirements under 43 CFR 3809.

Likewise, the analysis indicates that the historical properties of the area in question will not be significantly impacted in either the short or long-term. The proximity of the project proposal in relation to a landscape of national or international historical significance is not in and of itself sufficient reason to require an environmental impact statement.

When an agency is determining whether or not to prepare an EIS, it must take into account the characteristics as stated in your comment in light of the existing situation. Visitors to the area will still have expansive landscapes to look at. At approximately 1.3 miles from the project, equipment will appear about the size of a pencil point for a pencil held at arm's length. The combination of distance, scale, and topography will make this project somewhat difficult to detect.

No cultural or historic properties will have their contributing characteristics diminished by the action. Impacts have been reduce to those deemed necessary and due to conduct the sampling operations. Based on this environmental analysis, the BLM does not feel that this activity warrants

preparation of an EIS in light of other on-going activities, multiple use mandates of this ACEC, and existing facilities located within the ACEC.

As indicated above, a principle reason for preparing an EA is to determine if a more detailed environmental impact statement should be prepared. And as shown, the existing EA is deficient in its discussion of environmental impacts, if for no other reason than that section 13 was excluded from the project area. Given the plethora of intensity and context factors present and the failure of the EA to make a valid impacts analysis, an environmental impact statement must be prepared for this project.

Thank you for your comment. The issues identified above have been previously addressed.

Furthermore, an EA that relies on mitigation to avoid a significance determination must objectively demonstrate that the mitigation measures will actually be required and that they are effective. The EA fails to do that. Many of the Performance Standards, such as stipulations for the protection of wildlife, are subject to exceptions, modifications and waivers. Thus there is no certainty they will actually be implemented. And the EA is silent on the question of the effectiveness of the Performance Standards; they are simply presented. Yet if the mitigation measures are not shown to be effective, BLM cannot rely on them to make a finding of no significant impact.

The performance standards, adopted as part of the Plan of Operation and as approved by the BLM, have been identified as best management practices designed to minimize the impact of implementation and ensure unnecessary and undue impacts do not occur. They are not necessarily actions taken to avoid a significance determination. Development of the Proposed Action took into account not only relevant performance standards found in 43 CFR 3809 regulations but also incorporated other protective measures which would minimize impacts to other resource values. These measures are designed as best management practices to assure unnecessary or undue impacts do not occur while allowing the activity to take place as mandated under the general mining laws. The performance measures would not have been identified if they were thought to be ineffective in minimizing the impact.

Consultation with the SHPO and National Park Service has Not Been Available for Public Comment

On pages 85-86 of the EA, the consultation that has occurred with the National Park Service is described. The National Park Service apparently submitted comments to the BLM, but we are only informed that "These comments are addressed in the final environmental assessment. Id. at 86. This fails to meet the requirements under the National Historic Preservation Act section 106 implementing regulations to fully enlist other consulting parties and the public in reviewing effects determinations. We are left with no information about what the National Park Service said about this project or its rationale for what it said. Thus, there is no basis for comment on the validity of the National Park Service's apparent concurrence in a no effects determination. And as noted above, consultation with the SHPO is apparently not even complete yet, so again we are left in the dark as to whether it agreed with or disagreed with any effects determinations, and what the basis is for any such determinations. Again, leaving the public in the dark relative to the views of a highly relevant consultative agency fails to meet the requirements of section 106, as well as the requirements of NEPA. Thank you for considering these comments.

Thank you for your comment. As stated above, the BLM consulted and coordinated with appropriate agencies and cooperating parties during the Section 106 process.

22. Kathleen C. Zimmerman, Senior Land Stewardship Policy Specialist, National Wildlife Federation

These comments on the Environmental Assessment for the Dickie Springs Placer Gold Exploration Project (EA) are submitted by the National Wildlife Federation (NWF). As an organization, NWF represents the power and commitment of four million members and supporters joined by affiliated wildlife organizations in 47 states and territories, including the State of Wyoming. Both NWF and its Wyoming affiliate, the Wyoming Wildlife Federation, have a long history of working to conserve the wildlife and wild places of the greater Red Desert. Many of NWF's members use the lands and resources that will be impacted by the project proposed in this EA.

Because of the unique wildlife resources found within the project area, NWF is extremely skeptical that a mining operation of any significant size can be conducted that would not result in undue and/or unnecessary degradation of these public lands. Moreover, authorization of such a project would not comply with applicable land use planning documents and the agency's legal obligations to sustain and conserve wildlife and their habitats on our public lands.

As noted in the EA, the "Steamboat elk herd is a unique component of the wildlife resources in the southwestern part of Wyoming." (EA at 54.) The majority of the project area falls within the herd's parturition habitat. (EA at 55.) Mule deer populations "may be dependent upon the springs on the north slope of the hill the project abuts." (EA at 56.) The Sublette pronghorn herd already is below population objectives. While no crucial winter range falls within the project area, spring, summer, and fall habitats for pronghorn will be impacted. (EA at 57.) The Bureau of Land Management (BLM) itself has acknowledged that "[m]aintaining the integrity of the [wildlife connectivity] area [in which the project is located] is considered paramount to sustaining viable big game herds and other wildlife populations." (Draft Environmental Impact Statement for the Jack Morrow Hills Coordinated Activity Plan at 235; Supplemental Draft Environmental Impact Statement for the Jack Morrow Hills Coordinated Activity Plan at 3-15; Proposed Coordinated Activity Plan and Final Environmental Impact Statement for the Jack Morrow Hills at 3-16.) The area impacted also encompasses three active sage grouse leks as well as nesting and early brood-rearing habitat for these birds. (EA at 63-64.) Greater sage grouse populations have been in severe decline in Wyoming and throughout their range.' BLM has designated the Greater sage grouse as a "sensitive" species? (EA at 63.) In doing so, the agency made a commitment to use "all methods and procedures which are necessary to improve the condition of special status species and their habitats to a point where their special status recognition is no longer warranted." (BLM Manual 6840 at .01.)

While the impacts on these wildlife resources from the proposed exploration project may not be severe, this exploration is intended as a precursor to a commercial gold mining operation. The nature of the exploration project indicates that any mineralization will be in the form of extremely low concentrations of gold contained within sand and gravel above the bedrock in the project area. Extraction of such "deposits" requires the removal of tons of earth in order to produce mere ounces of gold.³ Such an operation would be incompatible with BLM's obligation to sustain viable big game herds and "improve the condition" of Greater sage grouse and their habitat. For these reasons, NWF believes that any BLM approval of a plan of operations for gold exploration in the Dickie Springs area should include a caution to the mining operator that securing agency permission for a commercial mine may not be possible. NWF thanks you for the opportunity to comment on this proposed project.

Thank you for your comments. The Plan of Operation incorporates recommendations of the Western Association of Fish and Wildlife Agencies Guidelines and the recommendations of the Wyoming Sage Grouse Conservation Plan. The elk parturition and connectivity habitats were

identified as a result of the planning process. Additionally, FG proposed conducting sampling operations after the parturition period. These measures and small amount of disturbance from the sampling activity will result in no adverse impact to elk.

Throughout discussions with Fremont Gold about the proposed exploration activity, the BLM has emphasized that any future activities would require a new plan of operation and would be subject to a new environmental analysis process which would include public involvement.

1 See Protest of the July 2004 Proposed Coordinated Activity Plan/Proposed Green River Resource Management Plan Amendment and Final Environmental Impact Statement for the Jack Morrow Hills filed by Clait E. Braun (incorporated herein by this reference).

2 Sensitive species are those species that:

(1) could become endangered in or extirpated from a State, or within a significant portion of its distribution; (2) are under status review by the FWS and/or NMFS; (3) are undergoing significant current or predicted downward trends in habitat capability that would reduce a species' existing distribution; (4) are undergoing significant current or predicted downward trends in population or density such that Federal listed, proposed, candidate, or State listed status may become necessary; (5) typically have small and widely dispersed populations; (6) inhabit ecological refugia or other specialized or unique habitats; or (7) are State listed but which may be better conserved through application of BLM sensitive species status.

BLM Manual 6840 (Glossary of Terms at 8).

3 THREE MILLION TONS of waste rock are produced for every ton of gold that mining companies extract in the United States. With a near surface open pit gold deposit, as little as two grams per ton (a gram is .03215. of an ounce) might be economic. See, e.g., <http://www.kengerbino.com/12guidelines.html>.

23. Gregg Arthur, Wyoming Game and Fish Department

The staff of the Wyoming Game and Fish Department has reviewed the Environmental Assessment for the Dickie Spring Placer Gold Exploration Project within the Rock Springs Field Office area. We offer the following comments.

Terrestrial Considerations:

Elk parturition areas occur in T27N, R100W, sections 18 and 19, and T27N, R101 W, sections 13 and 14. These parturition areas lie less than one-mile from the majority of proposed sample pits and the primary and secondary access roads, as described in the EA. Increased human activities associated with placer mining would very likely cause displacement or abandonment of these crucial habitats. We concur with timing stipulations as described within the EA and request that they be strictly enforced, should development proceed.

A sage-grouse strutting ground is located in T27N, R100W, SW of section 5, and is approximately one-mile from the Alternate access road as described in the EA. Most, if not all, of the sagebrush and mixed sagebrush bitterbrush draws within the project area appear to contain suitable nesting sites for sage-grouse. These draws contain sagebrush with canopy cover of approximately 10-20% and have an herbaceous understory that is typically selected by sage-grouse hens for nesting sites. Extant habitats also provide good escape cover for young chicks.

Therefore, we recommend the following stipulations be applied to all sagebrush habitats within the project area. Implementation and enforcement of these stipulations would also minimize impacts to other sagebrush obligate bird, mammal, and reptile species.

Recommended timing/occupancy stipulations for sage-grouse habitat:

Sage-grouse leks: 1) Avoid surface disturbance or occupancy within mile of the perimeter of occupied sage-grouse leks. 2) Avoid human activity between 8:00 p.m. and 8:00 a.m. from March 1 - May 15 within mile of the perimeter of occupied sage-grouse leks.

Sage-grouse nesting/early brood rearing habitat: Avoid surface disturbing activities, geophysical surveys, and organized recreational activities (events), which require a special use permit, in suitable sage-grouse nesting and early brood-rearing habitat within two miles of an occupied lek or in identified sage-grouse nesting and early brood-rearing habitat outside the two-mile buffer from March 15 - July 15.

Sage-grouse winter habitat: Where it has been designated, avoid human activity in sage-grouse winter habitat from November 15 - March 14.

Since use of the primary and alternative access roads could impact one or both of these important wildlife habitat types and periods of wildlife use, we recommend no activity occur within the project area from March 1 - July 15. Use of either road could create conflicts with one or both sets of stipulations. In addition, existing private mining claims/operations appear to be situated within nesting habitat for sage-grouse.

*We recommend the area of disturbance be minimized to the extent possible where sample pits are to be dug within sagebrush and mixed sagebrush/bitterbrush draws and recommend adding sagebrush (*Artemesia tridentata vaseyana* and *A. arbuscula*) and bitterbrush (*Purshia tridentata*) to the seed mix for reclamation, using a viable seed source.*

Aquatic Considerations:

We are concerned with this type of project because of possible future negative affects to the aquatic resources of the Sweetwater River drainage. However, if the mitigation and monitoring requirements outlined in the EA are followed, we do not expect any impacts to the aquatic environment.

Thank you for the opportunity to comment.

Thank you for your comments. The Plan of Operation has already incorporated these protective measures.

24. Amy Cole, Sr. Program Officer & Regional Attorney, National Trust for Historic Preservation

On behalf of the National Trust for Historic Preservation (National Trust), we appreciate the opportunity to comment on the Environmental Assessment for the Dickie Placer Gold Exploration Project (Dickie EA). Although we commend the Bureau of Land Management (BLM) (BLM) for examining the exploratory project, the National Trust remains concerned about possible full-scale mineral development and its adverse impacts on the integrity of the South Pass National Historic Landmark (South Pass NHL) and South Pass Historic Landscape area of critical environmental concern (SPHL ACEC).

Thank you for your comment. Please refer to the responses to a similar comments in letters 13 and 21.

The National Trust was chartered by Congress in 1949 as a private non-profit organization to “facilitate public participation” in historic preservation, and to further the purposes of Federal historic preservation laws. 16 U.S.C. § 461, 468. With the strong support of our 250,000 members members around the country, including over 400 members in the State of Wyoming, the National Trust works to protect significant historic sites and to advocate historic preservation as a fundamental value in programs and policies at all levels of government. In addition to our headquarters in Washington, D.C., the National Trust operates 25 historic sites open to the public, and has eight regional and field offices throughout the country, including our Mountains/Plains Office in Denver, which is responsive to preservation issues in Wyoming.

We commend BLM for preparing an EA for this exploratory project. However, we raise the following concerns about the Dickie EA and BLM’s lack of analysis regarding the impacts associated with mineral development in the area. We offer recommendations for improving BLM’s stewardship responsibility with respect to this exploration project and future development.

South Pass is clearly an area significant to our national heritage. Over the years, Congress has designated the trails that traverse through South Pass – Oregon, California, Pony Express, and the Mormon Pioneer – as National Historic Trails. In 1961, South Pass was designated as a national historic landmark, and in 1997, to further protect the South Pass’ historic trails and the visual integrity of the trails and surrounding area, BLM designated 53,780 acres (BLM land) as an ACEC. Green River RMP Record of Decision (1997) at 33 [hereinafter Green River ROD]. In the Dickie EA, BLM reiterates the South Pass NHL’s significance to heritage, stating “[t]he scenic vista of the South Pass is among the most important historic landscapes because South Pass served as the primary gateway to the West along the Oregon, Mormon Pioneer, Pony Express, and California National Historic Trails.” Dickie EA at 30.

South Pass NHL’s boundary, although undetermined, is encompassed at a minimum by the South Pass ACEC. BLM should not dismiss its management responsibility of the South Pass NHL or larger South Pass ACEC simply because the NHL boundary has not been clearly demarcated. See Dickie EA at 37 (stating that “it is not possible to determine if the project lies within the South Pass NHL”). Instead, as stated in the Green River ROD management objectives for the South Pass ACEC, BLM will “protect the visual and historical integrity of the historic trails and surrounding viewscape.” Green River ROD at 33. It is important that BLM take a close look at what mineral development, beyond just exploration, means to the visual integrity and viewscape of the South Pass NHL and ACEC. If the lack of a boundary is a problem in making important management decisions, even with the boundaries identified for the South Pass ACEC, we strongly recommend that BLM work quickly to designate sufficient boundaries in coordination with the National Park Service and other appropriate agencies, landowners and interested groups.

The lack of a formal boundary is not an issue for assessment of impacts in this case. The EA clearly recognizes the exceptional importance of the South Pass National Historic Landmark and measures are taken to assure that the project will not create any lasting intrusions which would affect the qualities which contribute to the eligibility of the landmark. The Bureau is initiating efforts in fiscal year 2006 to study the establishment of possible formal boundaries for the South Pass National Historic Landmark. This effort will be done in cooperation and consultation with the NPS National Historic Landmarks Program, NPS Long Distance Trails Office, private land owners in the area and others.

The National Trust remains extremely concerned about future impacts to the integrity of the South South Pass NHL, and more specifically, BLM’s failure to discuss or analyze the impacts of full mineral development, which would physically alter the landscape. The proposed exploratory pits are

as close as 1.3 miles from historic trails, and the majority of the project is actually inside of the South Pass ACEC boundary (The Green River ROD states that the viewshed of the South Pass ACEC has a 6-mile wide corridor along the Oregon, Mormon Pioneer, and California trails, and a 2-mile wide corridor along the Lander Cutoff. Green River ROD at 33. A substantial portion of the proposed exploration would occur within that 6-mile wide viewshed corridor, which raises questions about potential alterations in the landscape). Dickie EA at 37. Despite the location of the exploratory project, BLM contends that it does not have to examine the potential impacts of full scale development because they are too speculative. *Id.* at 10. Further, BLM attempts to deemphasize the proximity of the exploratory project to South Pass' historic trails by reiterating that the South Pass NHL does not have identified boundaries. See *id.* at 37. However, it seems reasonably foreseeable that the location of the exploratory pits could be the location of full development. In which case, proposed development could be within the ACEC boundary and as close as 1.3 miles. Given the invasive process of gold mining, it seems improbable that BLM could allow for full mineral development without leading to devastating impacts on the South Pass NHL's landscape. Therefore, we believe BLM must take a "hard look" at the cumulative impacts associated with potential full scale development, especially given the exploratory development's location relative to the historic trails' landscape and its adjacency to two operating, smaller mines in the same watershed, .25 and .7 miles away. Dickie EA at 40.

Thank for your comments. Please refer to the responses to similar comments in letters 13 and 21. Neither of the existing two placer mining operations is visible from any portion of the Emigrant Trail system.

Additionally, we believe that BLM should initiate a discussion as to whether full scale development would be in contradiction to BLM's statutory mandates – Federal Land Policy and Management Act (FLPMA) and the National Historic Preservation Act (NHPA) – in light of the proximity of the proposed exploratory activities to, and within, the South Pass NHL and ACEC. FLPMA requires that the Secretary "take any action necessary to prevent unnecessary or undue degradation of the lands," when reviewing a proposed plan of operation for a valid mining claim. 43 U.S.C. § 1732(b). FLPMA's plain meaning "vests the Secretary of the Interior with the authority-and indeed the obligation-to disapprove of an otherwise permissible mining, would unduly harm or degrade the public land." *Mineral Policy Center v. Norton*, 292 F. Supp.2d 30, 42 (D. D.C. 2003). FLPMA also mandates that ACECs, like the South Pass ACEC, must be managed with the priority priority of protecting the identified characteristics. Approval of mining activities, regardless of their their impacts to areas of critical environmental concern, would contradict the plain meaning and purpose of Section 1712(c)(3) of FLPMA, which requires BLM to "give priority to the designation and protection of areas of critical environmental concern." 43 U.S.C. § 1732(c)(3) (emphasis added). Given FLPMA's requirements, it seems timely that BLM begin to examine whether full scale development, based on the location of the proposed Dickie Springs exploration project, triggers "unnecessary or undue degradation" issues and/or whether it is compatible with the South Pass ACEC designation.

As stated above, it is inappropriate for BLM to consider any future activity. If any future action is proposed, it will be considered in light of all Federal laws, regulations, policies, land use plans, etc.

Furthermore, BLM has a higher obligation to protect the South Pass NHL in accordance with the NHPA. Under Section 110(f) of the NHPA, an agency shall,

prior to the approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark. . . , to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to

such landmark, and shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment.

Thank you for your comments. Please refer to the responses to similar comments in letters 21 and 26.

16 U.S.C. § 470h-2(f). We believe that decisions made in the Dickie EA begin to set the tone for future development, as well as foreclose on BLM's management options. This is particularly disconcerting with respect to the proximity of the exploration to the South Pass historic trails. BLM should be proactive about how it would manage potential full scale development for the protection and preservation of the South Pass NHL. Such a conversation would be appropriate in the context of the Dickie EA.

Thank you for your comment. Please refer to response to a similar comment in letters 13 and 21.

Finally, questions about future management of the South Pass NHL and ACEC and the proposed Jack Morrow Hills Coordinated Activity Plan/Green River Resource Management Plan Amendment (Jack Morrow Hills CAP) persist. For instance, it is unclear what areas would be withdrawn from mineral exploration and development if/when the Jack Morrow Hills CAP is finalized. In general, the decisions in the Jack Morrow Hills CAP, which has not been finalized, have useful management restrictions with regard to future lands withdrawn from mineral development.

We strongly recommend that BLM produce a supplemental EA that outlines the potential barriers associated with full-scale mineral activities, assuming the exploratory development discovered gold within the proposed exploratory area, as part of its cumulative impacts discussion. As mentioned above, full-scale development within the proposed exploratory area is reasonably foreseeable, despite BLM's contention that such future development is too speculative. Dickie EA at 10. Also, BLM should take steps to outline its management responsibilities with regards to full mineral development, especially relating to BLM's obligation to ensure that necessary actions are taken to prevent "unnecessary or undue degradation" of the South Pass NHL and ACEC, and its significant contributing resources.

Thank you for your consideration of our comments.

Thank you for your comment. Responses to each of your recommendations have been provided above. Please refer to responses to letter 21.

25. John Corra, Director, Wyoming Department of Environmental Quality

These comments regarding the Environmental Assessment for the Dickie Spring Placer Gold Exploration Project in Fremont and Sweetwater Counties are specific to this agency's statutory mission within State government which is protection of public health and the environment. In that regard these comments are meant to, in association with all other agency comments,' assist in defining the Official State Position:

There are two Water Quality Division (WQD) permits that may apply to the project. Any or all of them may apply depending on the eventual scope of the project.

Discharge Permit. Any discharges to "waters of the state" must be permitted under the Wyoming Pollutant Discharge Elimination System (WYPDES) program. This program is part of the federal Clean Water Act, but is administered by the WQD. Coverage is required for discharges from

cofferdam dewatering, discharges from hydrostatic pipeline testing, or discharge of other waste waters to waters of the state. For clarification waters of the state include rivers, streams, dry draws, wetlands, lakes, reservoirs, and even stock ponds. This permit will require some sampling and will incorporate effluent limits for any constituents of concern. Roland Peterson (307-777-7090) can provide additional information.

Storm Water Associated with Construction Activities. This permit is required any time a project results in clearing, grading, or otherwise disturbing one or more acres. The disturbed area does not need to be contiguous. The permit is required for surface disturbances associated with construction of the project, access roads, construction of wetland mitigation sites, borrow and stockpiling areas, equipment staging and maintenance areas, and any other disturbed areas associated with construction. A general permit has been established for this purpose and either the project sponsor or general contractor is responsible for filing a Notice of Intent (NOI) and complying with the provisions of the general permit. The NOI should be filed no later than 30 days prior to the start of construction activity. Please contact Barb Sahl at 307-777-7570.

Section 404. While not a state permit, this project may require a section 404 permit from the US Army Corps of Engineers. Any time work occurs within waters of the US a 404 permit may be required. Please contact the Corps (307-772-2300) for specific information regarding jurisdiction and requirements.

These are the permits most likely to affect the project. The Department of Environmental Quality would like to see the NEPA analysis and resulting project address any potential effects to surface water quality that may occur as a result of existing or proposed construction practices in riparian areas. Also, every effort to prevent erosion of any kind should be taken. Any sediment created by the project can enter and affect the water quality of the receiving water.

We appreciate the opportunity to comment in this process and look forward to working with you in the future.

Thank you for your comments. Please refer to the sections 3.12 and 4.8 of the EA. The operator must comply with all state and Federal laws as provided for at 43 CFR 3809.420(a)(6).

26. Phil Noble, Director, Wyoming State Parks and Cultural Resources

Thank you for the opportunity for the Department of State Parks and Cultural Resources to comment on the Environmental Assessment (EA) for the Fremont Gold Corporations' Dickie Springs Placer Gold Exploration Project.

The document has been reviewed by personnel from State Parks and Historic Sites as well as the State Historic Preservation Office (SHPO) and the following constitutes this agency's comments on the proposed project with particular emphasis on those issues that we feel will have an "adverse affect" to the historic sites and cultural resources of the region.

UNDERTAKING

Fremont Gold is proposing to excavate 200 sampling pits within three separate sub-areas for possible future mining activities. These sampling pits will be excavated using a backhoe and will vary in size. According to the June 13, 2005 BLM Cultural Resources report, disturbance of all 200 test pits will be approximately 1.92 acres. The pits will be accessed by improved roads within the project area. No new access roads will be constructed.

The Environmental Assessment (EA) of the Dickie Springs Gold Exploration project was received by SHPO on June 27, 2005. The EA states, "the total area directly affected by the exploration sample pits and work paths within sampling areas would be approximately 13.64 acres."

Historic Properties Affected

The Seminole Cutoff of the Oregon Trail (48FR1276), was determined to lie within the project area as derived from the records of the State of Wyoming Cultural Records Office and the BLM. The records may not be accurate as no evidence of the Seminole Cutoff exists in the area of direct project effect. The BLM notes that representatives Dave Welch and Don Hartley of the Oregon California Trails Association believe that the segment should be dropped from the records, which depict the Seminole Trail in the project area. Mary Hopkins stated the Cultural Records Office would not drop this site from our state records until a decision has been made by the National Park Service. The discrepancies in identifying the Seminole Cutoff on the ground should be clarified.

On July 27, 2005, the NPS National Trails System Database Administrator contacted the Wyoming Cultural Records Office (WYCRO) and requested that the mis-mapped westernmost segment of the Seminole Cutoff be removed from the WY SHPO records. WYCRO has agreed to remove this mis-mapped segment. While the NPS does have administrative responsibilities for the National Historic Trails System, the actual management of the resource is the responsibility of the land owner or in this case the Federal government.

Native American historic properties have been found to exist within the area of potential effect. Two sites are culturally significant to the tribes. On May 25 and June 1, consultation was conducted with members of the Northern Arapaho, the Eastern Shoshone, and the Northern Ute tribes. Native American representatives determined these sites to be of traditional religious and cultural importance and asked that the proposed undertaking occur in the drainage bottom and that the site areas be avoided completely.

Site 48FR1638 is within 1/4 mile of the southernmost plan of development for the test units and was comprised of one cairn and ten stone circles. The June 27, 2005 EA submitted by the BLM states that 48FR1638 is located several hundred feet from the proposed project and would not be affected as long as project personnel did not visit the site. The EA does not note the suggestion made by the Native American representatives to move the sample pit into a nearby drainage bottom.

Site 48FR1638 is located outside the exploration parcels approximately 858 feet from the closest proposed sampling pit. This is outside the area of direct effects for the project but within the radius specified by the Tribes for initiating contact and consultation. The Plan of Operation is stipulated that all surface disturbing activity within 200 feet of the site would be monitored by a BLM permitted archaeologist. One duty of the cultural resources monitor is to ensure that the site is not visited by project personnel. Due to the distance of site 48FR1638 to the closest exploration parcel moving of sample pits is unnecessary.

The second site, 48FR5619, is also significant to the tribes. Members of the Northern Arapaho, Eastern Shoshone, and Northern Ute tribes requested that the undertaking occur in the drainage bottom with the site area being completely avoided. The BLM notes that "due to the distance of the exploration area to the site boundary, a monitor will be stipulated to protect the site from the disturbance." Discussion of this site and possible effects were not included in the consultant's Class III survey report that was received by SHPO on June 13, 2005. According to the project map submitted in the consultant's report, there are a series of sample test pits, which have not been moved into the drainage area as recommended by the Native American representatives.

Site 48FR5619 was discovered by BLM cultural resource specialists during a field review of the project in April 2005. Because the site was not discovered by or recorded by the cultural consultant, it was not included in the private consultant's Class III inventory report, dated December 2004. Discussion of the site and possible effects from the undertaking where, however, included within the site form and within the SHPO consultation letter. In addition, the project map submitted with the cultural consultants Class III inventory meets BLM and SHPO standards of a 1:24000 scale. Due to the scale, the project exploration sample pit appears to be on the ridges but when the scale is enlarged, the sample pit do actually occur within the drainage bottoms as requested by the Tribes and agreed to by the BLM and Fremont.

The June 27, 2005 EA submitted by the BLM notes that site 48FR5619 is located a few feet from the proposed project and the site would be monitored for potential impacts. The BLM also notes that it "agreed to reexamine the site once boundaries for the project have been re-staked and if the project did overlap the site that protective measures would be applied." The report does not note the suggestion made by the Native American representatives to move the sample pit into the nearby drainage bottom.

The re-staking of the project boundary was to ensure that the concern the Tribes expressed regarding avoidance of the site was properly addressed. Site 48FR5619 is approximately 55 feet from the closest proposed sampling pit. Figure 2.1 of the EA shows the approximate locations of the sampling pits. The location and number of sample pits could change depending on gravel within the soils and mitigation measures. BLM has stipulated that the Tribal recommendations be followed and that the site will not be impacted or affected. The site will be avoided and no sampling units will be allowed within its boundaries. This measure was acceptable to all Tribal elders who visited the location.

The existence of the site was unknown until roughly six months after completion of the Class III fieldwork. Hence the site was not discussed in that report. The site was recorded by BLM personnel in late May of 2005 and was included within the consultation documentation.

The undertaking will create visual intrusions for the Point of Rocks to South Pass Stage Road (48SW3868) and the Oregon, California, Mormon, Pioneer, and Pony Express Trails. The BLM believes the undertaking to be temporary and not adverse due to distance, the small nature of activity, and the stipulations that will be added to the approval document.

The settings analysis for the Point of Rocks to South Pass Stage Road indicates that less than 13% of the sample pits would be visible from the stage road. Of the 13% that may be visible, the distance between the sample pits and the stage road is more than 2 miles. The settings analysis is a statistical tool based upon a 30 meter digital elevation model and does not recognize vegetation or topographical features that could obstruct the view of the operations.

According to the BLM, Open Camp 48FR5498 will be fenced off and monitored for potential discoveries of buried resources.

Fencing of sites and monitoring of earth-disturbing activities are standard cultural resource protection measures.

SHPO Analysis:

The BLM has made a determination of no adverse effect based on their position that the proposed effects of the undertaking within the South Pass National Historic Landmark "will be temporary and

are not considered adverse." Therefore, they concluded the exploratory test pits will not adversely affect the historic properties and consequently they have arrived at a Determination of No Adverse Effect.

The threshold for what constitutes an adverse effect is determined by the Assessment of Adverse Effects, 36 CFR § 800.5 (a)(1), which states "consideration shall be given to all qualifying characteristics of a historic property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance, or be cumulative."

The regulations do not distinguish between temporary and permanent, but simply whether or not the characteristics that qualify the historic properties for the National Register are being adversely affected. In this case, the answer is yes. The undertaking will adversely affect the integrity of setting, which is virtually pristine within the South Pass National Historic Landmark. The South Pass National Historic Landmark and other historic properties will be adversely effected in accordance with 36 CFR § 800.5 (a)(2)(V), because construction of the test pits will introduce visual, atmospheric and audible elements that will diminish the integrity of the properties significant historic features." Throughout the BLM's "Norwest Corporation, Dickie Springs Placer Gold Exploration" cultural resources report, the BLM notes that they have assessed the potential for adverse effects and have attempted to create stipulations that would define the undertaking as a "no adverse effect" to the South Pass National Historic Landmark.

Regulations focus upon whether the impacts will diminish the integrity of contributing elements of location, design, setting, materials, workmanship, feeling, and association. The distances involved combined with the reclamation measures make it clear that the pits will be invisible to the casual observer. The equipment used to conduct sampling will also be difficult to see and will be, in essence, indistinguishable from ranching and recreation equipment used in the area. Hence, there will be no introduction of new visual elements to the setting. Accordingly there will be no diminishment of the setting. Under 36 CFR 800.5 (3) (b), it states "The agency official, in consultation with the SHPO, may propose a finding of no adverse effect when the undertaking effects do not meet the criteria of paragraph (a)(1) of this section or the undertaking is modified or conditions are imposed, such as...to avoid adverse effects." The Section 106 consultation process has been completed with signature of the Memorandum of Agreement between the BLM, the Wyoming SHPO, the Advisory Council on Historic Preservation and Fremont Gold.

Furthermore, the BLM has completely disregarded the second sentence in the regulations wherein the undertaking's effects should be considered within the context of future effects. "Adverse effects may include reasonably foreseeable effects" occurring later in time, be further removed in distance or be cumulative. By not acknowledging the future potential adverse effects of a mine, the BLM has not applied the Criteria of Adverse Effects in a "good faith effort" of realistically assessing the undertaking's effects. The test pits have the potential to reveal mineral resources for future large scale mining activities.

Thank you for your comment. Please refer to the responses to similar comments in letters 13 and 21.

State Historic Preservation Office Recommendation:

The historic properties at the South Pass National Historic Landmark exhibit unencumbered vistas and view sheds. In our opinion, 200 test pits will constitute an adverse effect. Therefore, we object to the Determination of No Adverse Averse Effect. The SHPO must disagree with the BLM's

Determination of Effect. The BLM has not considered reasonably foreseeable effects; that mineral discoveries derived from the test pits will result, unequivocally, in a mine.

The Section 106 consultation process has been completed with the signing of a Memorandum of Agreement between the BLM, the Wyoming SHPO, the Advisory Council on Historic Preservation and Fremont Gold.

State Parks and Historic Site Analysis and Recommendation:

The proposed Dickie Springs Placer Gold Exploration project represents a potential serious adverse effect to the historic, environmental and aesthetic values of the Dickie Springs area and the larger South Pass Historic Landscape. Fremont Gold's proposed test pit locations are far to (sic.) close to the California, Oregon, Mormon, and Pony Express Trails, as well as the Historic South Pass and South Pass City. The potential risk to the intrinsic values of these cultural resources outweigh any short term (and at this time, speculative) economic gain to be realized by letting this project go forward as proposed.

South Pass City is a testimony to what can happen when short term economic gain is chosen over preservation of heritage and cultural values. Within a half mile radius of South Pass City there are over 50 mine shafts, pits and excavations. Over 100 years of old toxic tailing piles are still being removed by the Abandoned Mine Lands Division of the Department of Environmental Quality. Abandoned mine shafts remain open and un-remediated resulting in present day hazards. The cumulative gold extracted from this region was nominal relative to the long term environmental and cultural resource impacts extending to present time. It is our hope not to repeat this history.

South Pass City is roughly 10 miles from the Dickie Springs Gold Exploration Project and is not in the setting of this project. South Pass City Historical District is a mining district and those abandoned mines are part of the contributing elements of that important historical resource. The community developed in conjunction with the use of those mines. The State of Wyoming requires FG to post a bond in a sufficient amount to assure reclamation.

In conclusion, it is the position of the Department of State Parks and Cultural Resources that, as presented in the Environmental Assessment, the potential impacts emanating from the exploration for gold and the predictable impacts resulting from future large scale mining which could very well result from this exploration presents a substantial risk to the many overlapping historic and cultural resource values in the South Pass Area.

27. Erik Molvar, Biodiversity Conservation Alliance

The following are the comments of Biodiversity Conservation Alliance on the Dickie Spring Placer Gold Exploration Program. We incorporate by reference our detailed comments on the Jack Morrow Hills CAP EIS, as well as the Citizens' Wildlife and Wildlands Alternative and Special Values of the Jack Morrow Hills report (previously submitted to the Rock Springs Field Office through the Jack Morrow Hills SEIS process), into these comments. Please address all issues raised in those comments within the context of the Dickie Spring placer mining project.

Comments received on the Jack Morrow Hills planning effort will be addressed in the Record of Decision for that action. Protests will be responded to following the protest procedures in 43 CFR 1610.5-2.

In general, we are concerned about impacts to the following resources that would likely accrue should the project move forward as described:

NEPA Compliance and Public Participation

This project is a major Federal action which will have a significant impact on the human environment, therefore requiring a full EIS with it attendant full public participation requirements and longer comment periods. It is important to note that the JMH CAP EIS offers little analysis of this sort of project to tier to, and in the absence of programmatic analysis, the EIS must be that much more thorough. The Rock Springs BLM is making a habit of releasing the EA together with the FONSI and DR for projects, which does not allow public comment on the range of alternatives analyzed, does not allow the public a hard look at the project while it is under consideration (scoping notices lack sufficient detail to give the public and public-interest groups a detailed look at the proposed development, thereby denying meaningful public participation in violation of NEPA). The BLM must absolutely present their NEPA documentation for this project to the public, and allow a comment period, before it issues a decision.

Thank you for your comments. With regard to preparation of an EIS, please refer to response to a similar comment in letter 21.

Public participation concerning this project has been extensive. BLM initiated public scoping on August 10, 2004. Twenty-six comment letters were received in response. All issues, concerns, and alternatives brought forth during public scoping were considered and documented during preparation of the environmental analysis. In addition, the EA was released to the public on June 24, 2005 for a 30-day public review and comment period. On July 16, 2005, the BLM held a public meeting and conducted a field tour to the proposed project area to allow members of the public to view the area affected by the proposal. All comments raised during the public meeting revolved around clarification of the proposal thus no specific comments regarding the analysis were noted. Comments received during the public comment period have been considered.

Scenic and Historical Resources

The BLM notes that there are seven sites within the project area eligible for inclusion on the National Register of Historic Places. The Oregon Trail is a National Historic Trail, and according to the National Trails System Act of 1978, "National historic trails shall have as their purpose the identification and protection of the historic route and its historic remnants and artifacts for public use and enjoyment." NTSA at Section 3.3. Sites eligible for the National Register of Historic Places which are associated with the Oregon Trail should also be eligible for protection as "high potential historic sites" under the Act. High potential historic sites are defined as "those historic sites related to the route, or sites in close proximity thereto, which provide opportunity to interpret the historic significance of the trail during the period of its major use. Criteria for consideration as high potential sites include historic significance, presence of visible historic remnants, scenic quality, and relative freedom from intrusion." 16 U.S.C. 1251 sec. (1). "Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, may be permitted by the Secretary charged with the administration of the trail. Reasonable efforts shall be made to provide sufficient access opportunities to such trails and, to the extent practicable, efforts be made to avoid activities incompatible with the purposes for which such trails were established." 16 U.S.C 1246 (c).

Thank you for your comments. Please refer the responses to similar comments in letters 15, 21, and 26.

Robert Stuart (1812) was the first explorer of European descent to discover South Pass, according to the research of Paul Henderson, a noted trail historian. Material was received from the North Platte Valley Museum in Gering, NE. See Attachments 1 and 2. This research indicates that Stuart's campsite on October 22, 1812 was likely at Dickie Spring, which is just over the hill from the project area. This makes Dickie Spring a significant historic site which must itself be protected, and impacts to its setting must be disclosed by BLM in order to satisfy "hard look" requirements.

Thank you for your comment. Please refer to the response to a similar comment in letter 10.

This project will likely result in significant impacts to viewsheds of historic trails and Wilderness Study Areas, notably Oregon Buttes, Whitehorse Creek, and Honeycomb Buttes. In order to take a hard look, the NEPA document should include a computer-aided model based on topography which shows the land area from which the disturbance from the project will be visible.

Thank you for your comment. Please refer to the response to a similar comment in letter 11. Wilderness Study Areas (WSA) are managed from the boundary in, ... not the boundary out. The project is located 4 miles from the nearest WSA.

The project should be consistent with maintaining the full scenic integrity of the South Pass Historic Landscape and the historic trails that pass through it, and the strongest possible protection measures should be emplaced to prevent project impacts from becoming visible eyesores for travelers along the Oregon/California/Mormon/Pony Express trails. These trails are protected by the NHPA, which specifies that the setting of the historical property must be protected, not just the historic property itself. It is critically important to note that in terms of the pristine character of the trail; ruts and the pristine character of the surrounding setting, the South Pass Historic Landscape is unique and outstanding in being one of the few segments of this National Historic Trail that provides the original trail in the same scenic setting as the original emigrants would have experienced it 150 years ago. This makes the South Pass area perhaps the most important segment of this, the nation's most significant Historic Trail. It is important to note that emigrants and explorers would have used the entire South Pass Area as a travel corridor.

Regulations focus upon whether the impacts will diminish the integrity of contributing elements of location, design, setting, materials, workmanship, feelings, and association. The distances involved combined with the reclamation measures and the performance standards outlined in Appendix A of the Decision Record present appropriate measures to ensure that the activities of this project will not be readily apparent to the casual observer on a national trail.

The BLM has asserted that this project would be invisible from the Oregon/Mormon/ California/Pony Express trail segments. This assertion turns out to be completely false. Rock Springs BLM employees themselves tested this hypothesis through field visits, and found that several of the pits are in fact completely visible from significant segments of the trail. We submit Attachment 3, the BLM's Fremont Gold: Did the Visual Analysis Model Work? to these comments, and incorporate this document into our comments by reference. This document demonstrates unequivocally that pits for the project are visible from the historic trail. Attachment 3 at unnumbered 2 and 4; see also photographs. The document concludes that BLM's visual analysis model "is not good science" and did not meet the BLM's "rigorous standards we use for our settings analysis tied to consultations," and refutes it through ground-truthing. Attachment 3 at unnumbered 1. The document concludes that "A series of pits of the size modeled would have some visual impacts to the setting of the trail." Id. at unnumbered 10. Because we have incorporated this document by reference into these comments, the BLM must by law explicitly respond to the concerns raised in this document because it has been submitted as public comment by an interested party.

The EA does not assert that the project is “invisible” from the historic trails. Section 4.1.1 of the environmental assessment clearly indicates that portions of the project area are within the line-of-sight from the trails. The aforementioned document was prepared to show how the settings analysis model is used to determine the visibility of a project from specific locations. The referenced field check of the model did, in fact, confirm that elements of the project are within the line-of-sight from some segments of the trails. However, the same field check, using highly visible and oversized tarps (combined tarps used actually covered 0.15 acres which vastly exceeds [over 15 times as large as] the 0.0096 acres required for the “typical sample pit as proposed by FG) to establish this photographically also clearly indicates that the real project will be difficult to see by a casual observer. Please refer to Table 2.2 in the EA for specific disturbances associated within each affected section.

Due to the visibility of some of the diggings from the National Historic Trail segments, we have significant concerns that this project will in fact cause significant impacts to the setting of the Oregon Trail and consequently to the South Pass Historic Landscape ACEC. With this in mind, it is impossible for BLM to issue a Finding of No Significant impact, and an EIS must by law be prepared before the project may proceed.

Thank you for the comment. Please refer to the response above and to the response to similar comment in letter 26.

The BLM’s EA also makes no effort to analyze the visual impact of vehicle traffic moving to and from the diggings on the setting of the South Pass NHL ACEC. This failure constitutes a violation of NEPA’s “hard look” requirement. This is in itself a significant impact. In addition, where will vehicles, both heavy equipment and those used to convey workers to the site, be parked? Will these parking areas also be visible from the Oregon Trail? If so, what would be the visual intrusions to visitors seeking a frontier-era experience along the Oregon Trail?

Thank you for your comment. Section 2.1.3 of the EA describes vehicle use within and access to the project. Vehicle parking will be within the project area. Also refer to the responses to comments regarding visual intrusions in letter 11.

The EA makes no effort to analyze the visibility of the proposed diggings from the Honeycomb Buttes and Oregon Buttes Wilderness Study Areas, or from citizens’ proposed additions to these WSAs. The failure to determine if these activities would mar the viewshed of these pristine areas and degrade the wilderness experience of those seeking solitude and primitive and unconfined recreation with their bounds is both astounding and a violation of NEPA’s “hard look” requirements.

Please refer to the responses above.

Because the diggings would be visible from the Oregon Trail and possibly also from proposed wilderness areas, the color of the heavy equipment becomes a critical factor. Will the backhoes be bright yellow or some other bright color, increasing their visual impact? Will BLM require the Operator to paint them Slate Green to at least try to blend them into the landscape to the extent possible? The BLM has failed to evaluate a full range of reasonable alternative mitigation measures regarding the color of the machinery.

In addition, what, if any, tarps and flagging would be used by the Operator? Would these be of highly visible colors, or would camouflage coloration be required?

The spoil piles, heavy equipment, traffic to and from the site, and bright-colored tarps and flagging would each be expected to create a major visual intrusion visible from the Oregon Trail, thus resulting in significant impacts to the human environment requiring a full-blown EIS.

Thank you for your comment. Please refer to the response to a similar comment in letters 11 and 15.

Impacts to Archaeological Sites

In addition, there is also the question of direct impacts of digging hundreds of pits in a landscape rich in archaeological and historical sites. Damage to artifacts in place is a strong possibility, potentially leading to major impacts. Given the national importance of the historical resources in play, the entire area should be intensively surveyed for such sites, with full mitigation (i.e., full recovery and cataloguing of all sites) before gold digging is allowed to proceed.

Thank you for your comments. A Class III Cultural Resource Inventory was conducted within the entire exploration area by a BLM permitted archaeologist. Of the eleven cultural sites located within the area of potential effect, none will be adversely affected. Please refer to Appendix A of this Decision Record for approved performance standards. Section 3.4.4 of the EA contains the discussion of the cultural resources identified within the area of potential effect.

Responsibilities under the NHPA

BLM has identified three sites eligible for the National Register of Historic Places that would be in or immediately near the diggings. BLM notes that surface disturbance may occur within 200 feet of sites 48FR5498 and 48FR5619. EA at 23. One of these sites would be only feet from the disturbance. It is important to note that the National Historic Preservation Act protects not only these sites but also their settings. It is impossible to envision how major industrial activity within feet, or indeed within the viewshed, of an eligible site could fail to result in significant impacts to the settings of these sites. Thus, with the significant impacts to the settings of NRHP-eligible sites, this project results in significant impacts to the human environment, once more precluding a FONSI. We are also concerned that all NRHP-eligible sites within the project area have not yet been identified.

Thank you for your comment. Please refer to the responses to similar comments in letters 11, 15, 21, and 26.

There is no indication in the EA that the BLM has conducted a Section 106 review, as is required by the National Historic Preservation Act (NHPA). Section 106 of the NHPA requires BLM to take into account the effects of its actions on all affected historic resources eligible for or on the National Register of Historic Places, and to provide the federal Advisory Council on Historic Preservation (Advisory Council) a reasonable opportunity to comment, prior to making its decisions. 16 U.S.C. § 470f. Congress enacted the NHPA for the explicit purpose of preserving, in the public's interest, "historic properties significant to the Nation's heritage [which] are being lost or substantially altered, often inadvertently." 16 U.S.C. § 470. The Section 106 process carries out Congress' purpose for the NHPA by requiring Federal agencies to seek ways to avoid, minimize, or mitigate adverse effects on historic resources. 36 C.F.R. § 800.1(a).

BLM's approval of the Dickie Spring project requires compliance with Section 106, because an undertaking funded or licensed by a Federal agency triggers Section 106, especially where, as here, the record clearly indicates the presence of significant cultural resource values and sites within the proposed project area. 16 U.S.C. § 470(f). The Advisory Council's regulations define undertaking to include "project activit[ies] or program[s] funded in whole or in part under the direct

or indirect jurisdiction of a Federal agency, including . . . those requiring a Federal permit, license, or approval. . . .” 36 C.F.R. § 800.16(y) (emphasis added); see also 16 U.S.C. § (7)(B)2. BLM’s EA, which covers federal management on federal lands under federal jurisdiction, unquestionably triggers NHPA and the Advisory Council’s regulations, and therefore requires a Section 106 review of the proposed project area prior to granting approval.

Industrial mining use inherent to the EA would unquestionably have an adverse effect on historic properties present in the project area. Federal regulation provides that,

[a]n adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling, or association.

To achieve compliance with the NHPA, BLM should have determined how the project will adversely affect the identified and unidentified historic properties eligible for or on the National Register, and provide methods to avoid or mitigate such effects.

It is not possible to consult upon unidentified properties.

The Section 106 regulations also confirm that the “[p]hysical destruction of or damage to all or part of the Property,” “[a]lteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation, and provision of handicapped access, that is not consistent with the Secretary’s standards for the treatment of historic properties (36 CFR part 68) and applicable guidelines” or the “[c]hange of the character of the property’s use or of physical features within the property’s setting that contribute to its historic significance” results in an “adverse effect” on historic properties. 36 C.F.R. § 800.5(a)(2)(i-ii, iv). The project could provide for road closures near sites eligible for the National Register; such stipulations could mitigate adverse effects. Therefore, a thorough review of the impacts on historic and cultural resources must be done prior to approval of the project. Motor vehicle use, by providing access to illegal off-route travel, could result in permanent damage to eligible sites.

Thank you for your comments. The BLM has provided for site protection without having to draw attention to the location of said sites via road closure. Also, please refer to responses in letters 15 and 26.

The Advisory Council’s regulations regarding timing of the Section 106 process require BLM to complete its obligations before approval of the project. The regulations, with respect to timing of Section 106, state:

[Completion of a Section 106 review] does not prohibit agency officials from conducting or authorizing nondestructive project planning activities before completing compliance with section 106, provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking’s adverse effects on historic properties.

² The 1992 Congressional amendments make clear that an undertaking can be an approval, clarifying a controversial distinction between license and approval.

36 C.F.R. §800.1(c) (emphasis added). In the instant case, the implementation of the Dickie Springs project, without even the consideration of alternative plans of development that would avoid archaeological sites, would foreclose future alternatives to close routes adjacent to archaeological and cultural sites and their settings. Further, the regulations instruct Federal agencies to initiate Section 106 early in an undertaking's planning to ensure that "a broad range of alternatives may be considered during the planning process for the undertaking." *Id.* (emphasis added). This has not been done in the EA (see Range of Alternatives section of these comments).

These regulations apply directly to the Dickie Springs project, which authorizes surface-disturbing activities. BLM's discretion may be insufficient to fully protect special resource values if site-specific analysis is deferred to some later, unspecified time.

The BLM began consulting with interested parties in as far back as August of 2004. The more formal consultation letters with SHPO and other consulting parties regarding Dickie Springs began in January 2005, after long discussions as well as field visits with consulting parties and SHPO staff. Discussions and field visits during the spring of 2005 included the National Park Service, the Advisory Council on Historic Preservation, Eastern Shoshone Nation, Northern Ute Nation, Northern Arapaho Nation, and the Shoshone Bannock Nation. The Section 106 consultation process has been completed which resulted in the signing of a Memorandum of Agreement between the BLM, the Wyoming SHPO, the Advisory Council on Historic Preservation and Fremont Gold. The BLM has sufficiently provided for the protection of cultural resources.

Because of the known presence of cultural resources on these lands, BLM must conduct a Section 106 review prior to approval of this project. Approval of this project constitutes an irreversible and irretrievable commitment of resources inasmuch as once archaeological resources are destroyed by vehicles or heavy equipment or looted by prospectors, it is very difficult to put it back into its original condition, particularly with regard to fragile archaeological artifacts which may lie just below the surface of the soil. Allowing this project to proceed for the disputed lands without first conducting Section 106 review forecloses BLM's ability to preserve cultural and historic values in violation of the mandates of the NHPA.

The Section 106 consultation process was completed prior to signing the Decision Record for this project.

BLM Must Comply with BLM's Stewardship Responsibilities under Section 110 of the NHPA

*Federal agencies have special stewardship responsibilities with respect to historic resources on land that is under the agency's "jurisdiction or control." Section 110(a) of the NHPA requires that federal agencies "shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency." 16 U.S.C. §470h-2(a)(1). All historic properties under Federal jurisdiction or control must be "managed and maintained in a way that considers the preservation of their historic, archaeological, . . . and cultural values. . ." 16 U.S.C. §470h-2(a)(2)(B), and those properties must be "identified, evaluated, and nominated to the National Register." *Id.* § 470h-2(a)(2)(A); see *id.* §470h-2(a)(2)(E)(ii).*

The EA at hand violates BLM's stewardship responsibilities under Section 110 of the NHPA because the proposed action does not adequately protect identified cultural and historic properties, and traditional religious and cultural properties. In 1992, Congress specifically amended Section 110 to increase Federal agencies' proactive, ongoing responsibility to locate, inventory, and nominate properties to the National Register, as well as assume the responsibilities for preserving historic properties. See 16 U.S.C. § 470h-2(a) (as amended 1992). Section 110 requires Federal

agencies to adopt and utilize cultural resource management programs. *Id.* BLM adopted an agency-wide Cultural Resource Management Program (CRMP), which includes four manuals. The CRMP has three main components – identification, protection, and utilization. See BLM Manuals 8100 – Cultural Resource Management Plan; 8110 – Identifying Cultural Resources; 8120 – Protecting Cultural Resources; and 8130 – Utilizing Cultural Resources for Public Benefit. These four manuals direct BLM field offices to carry out their responsibilities under Section 110 of the NHPA.

Here, BLM's action to open up the fragile SPHL ACEC to minerals exploration contravenes its stewardship responsibilities found in Section 110 and BLM's national directives. The proposed area has several identified cultural resources, but BLM has not adequately surveyed the parcels resources for their eligibility on the National Register. Approval of the project will foreclose BLM's ability to provide for stewardship protection, especially with respect to historic resources and traditional religious and cultural properties, in contravention of BLM's stewardship responsibilities under Section 110 of the NHPA.

Thank you for your comments. Implementation of this project does not prohibit or in anyway constrain activities of the Bureau under Section 110 of the NHPA. Completion of the cultural survey for the project area was previously addressed in the response for "Impacts to Archeological Sites" section above. You may also refer to responses in letters 15 and 26.

BLM Must Consult with SHPO on Impacts to Important Archaeological Sites

In addition, BLM must consult with the Wyoming State Historic Preservation Officer ("SHPO"), as is required by the NHPA and the Wyoming State Protocol (which carries out the Nationwide Programmatic Agreement between the Advisory Council, BLM, and the National Association of State Historic Preservation Officers). As BLM noted, important archaeological sites are present in the project area.

The known presence of sites potentially eligible for the National Register triggers BLM's affirmative obligation to conduct Section 106, as is discussed above, and to consult with the SHPO in accordance with the implementing regulations and the Wyoming State Protocol. 36 CFR § 800.2(c)(1). The Wyoming Protocol requires BLM to seek SHPO comments on eligibility and effect for "[u]ndertakings that adversely affect[] National Historic Landmarks or National Register eligible properties." Wyoming State Protocol at 6-7. There is no indication that this consultation was never performed for the Dickie Springs project and the identified historic properties and TCPs. This failure to comply with required procedures violates the NHPA.

*The known presence of these sites triggers Section 106 of the National Historic Preservation Act, which requires, inter alia, consultation with the State Historic Preservation Officer. 36 CFR § 800.2(c)(1). This consultation must be performed before the Dickie Springs project can be approved. The procedural nature of Section 106 reinforces the importance of strict adherence to the binding process set out in the ACHP's NHPA regulations: "While Section 106 may seem to be no more than a 'command to consider,' . . . the language is mandatory and the scope is broad." *United States v. 62.20 Acres of Land, More or Less*, 639 F.2d 299, 302 (5th Cir. 1981). The goal of the Section 106 process is not to generate paperwork, but rather to provide a mechanism by which governmental agencies may play an important role in "preserving, restoring, and maintaining the historic and cultural foundations of the nation." 16 U.S.C. § 470.*

Section 106 of the NHPA requires BLM to take into account the effects of its actions on all affected historic resources eligible for or on the National Register of Historic Places, and to provide the

federal Advisory Council on Historic Preservation (Advisory Council) a reasonable opportunity to comment, prior to making its decisions. 16 U.S.C. § 470f. Congress enacted the NHPA for the explicit purpose of preserving, in the public's interest, "historic properties significant to the Nation's heritage [which] are being lost or substantially altered, often inadvertently." 16 U.S.C. § 470. The Section 106 process carries out Congress' purpose for the NHPA by requiring Federal agencies to seek ways to avoid, minimize, or mitigate adverse effects on historic resources. 36 C.F.R. § 800.1(a).

The preamble to the current NHPA regulations also make clear that a destruction of a site and recovery of its information and artifacts is adverse. It is intended that in eliminating data recovery as an exception to the adverse effect criteria, Federal agencies will be more inclined to pursue other forms of mitigation, including avoidance and preservation in place to protect archeological sites. 65 Fed. Reg. 77689, 77720 (Dec. 12, 2000) (Protection of Historic Properties - Final Rule; Revision of Current Regulations) (discussing intent of § 800.5(a)(2)(iii)). See Chevron U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 837, 844 (1984) (We have long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer.) See 36 C.F.R. § 800.5 (broadly defining adverse effect to include direct, indirect, and cumulative effects).

BLM's approval of the Dickie Spring project requires compliance with Section 106, because an undertaking funded or licensed by a Federal agency triggers Section 106. 16 U.S.C. § 470(f). The Advisory Council's regulations define undertaking to include "project activit[ies] or program[s] funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including . . . those requiring a Federal permit, license, or approval. . . ." 36 C.F.R. § 800.16(y) (emphasis added); see also 16 U.S.C. § (7)(B).³ BLM's approval of a project, covering federal lands under federal jurisdiction, unquestionably triggers the Advisory Council regulations, and therefore requires a Section 106 review of the proposed project area prior to granting this approval. Regarding timing, The agency official must complete the section 106 process 'prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license.' This does not prohibit agency official from conducting or authorizing nondestructive project planning activities before completing compliance with section 106, provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking's adverse effects on historic properties. 36 CFR § 800.1(c). Therefore, BLM's approval of the project falls within the definition of an undertaking requiring Section 106 review – especially when, as here, the record establishes the presence of significant cultural resource values and sites on the proposed project area.

The project would unquestionably have an adverse effect on historic properties present in the project area. Federal regulation provides,

An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. 36 CFR § 800.5(a)(1).

Thank you for your comments. The Section 106 consultation process has been completed.

³ The 1992 Congressional amendments make clear that an undertaking can be an approval, clarifying a controversial distinction between license and approval.

South Pass Historic Landscape ACEC

Under FLPMA, all permitted activities must conform to the applicable land-use plan. In this case, the Green River RMP (“GRRMP”) is the controlling land-use plan, as the Jack Morrow Hills Coordinated Activity Plan has yet to be completed. The Dickie Spring placer project falls within the South Pass Historic Landscape Area of Critical Environmental Concern (ACEC) under the GRRMP. The Green River RMP provides that development activities are allowed provided they are shielded by intervening topography from the historic trails. However, under the Green River RMP, “Off-road vehicle travel is limited to existing roads and trails in these areas that are shielded by topography.” GRRMP at 33. This management would be carried forward in all three alternatives of the Jack Morrow Hills CAP. JMH SFEIS at 2-45, 2-58, 2-75.

Furthermore, the area was established as Class II Visual resource management, requiring that “All management actions will be designed and located to blend into the natural landscape and not to be visually apparent to the casual viewer.” GRRMP at 33. There are several two-track vehicle routes which are open to visitation by casual observers. The opening of substantial pits would be not only visually apparent to such casual visitors but an obvious eyesore. It is important to note that this provision applies explicitly to areas that are shielded from view by visitors along the historic trails, as BLM claims the diggings from the Dickie Spring project would be.

Thank you for your comments. Physical access to the project will be via county roads and existing two-track roads which is permissible under the Green River Resource Management Plan. Please refer to the response above under the section entitled “Scenic and Historic Resources” above.

Impacts to Streams

The scoping notice notes that some prospect pits and trenches would be dug in the midst of or across intermittent and ephemeral stream channels. If a rainstorm were to initiate stream flows while pits were open, major sedimentation impacts would occur, extending into downstream perennial stream reaches. Each pit in a drainage channel or floodplain must be accompanied by temporary, low-impact stormwater diversion mechanisms to keep streamflows from passing through the diggings. Special measures will be needed to make sure that erosion and sedimentation in stream channels do not increase after in-channel pits are abandoned and rehabilitated.

The proposed action must comply with state and Federal regulations (see 43 CFR 3809.420 (a)(6)).

The potential for adverse effects resulting from flow events due to severe weather during the time that the pits are open was considered but deemed to be negligible concern for the following reasons.

- The pits will be located near ephemeral channels miles above any perennial waters and should only flow if there is a major storm event.
- The size, location, and open time of the pits suggest that the volumes of water that might be encountered under all but the most extreme conditions would be contained within the pits themselves. The short time that the pits are slated to be open and rapid reclamation will help to reduce the potential for any such event to occur.
- Instillation of individual storm water diversion structures above each pit would require additional time and surface disturbance. Because of the proximity of

the pits to each other, individual stormwater diversion structures could end up diverting water onto freshly reclaimed sites. By reducing the time that each pit is open, the concentration of overland flows and the footprint of the operation, the overall erosive potential would be less than if individual erosion diversion structures were installed.

Portions of the project area are an aquifer recharge area, as shown in The Special Values of the Jack Morrow Hills, incorporated into these comments by reference. The BLM has made no attempt to analyze the impacts of this project on the quantity or quality of aquifer recharge, in violation of NEPA's hard look requirements.

Changes in water quality and quantity are not expected as a result of the Proposed Action. Any detectable effects would most likely be in the vicinity of the sample pits and be expressed as increased local retention of groundwater. Regional flows should not be affected.

The area of proposed disturbance is relatively small and isolated. Being located in the upper region of the Sweetwater River watershed allows for filtering and capture of sediments prior to reaching perennial waters. The generally course grained alluvial soils, combined with the proposed reclamation suggest that changes to groundwater flow will be local and minor. Nothing is being added to the soil. Surface flow patterns are not to be altered.

Impacts to Wildlife

A full field survey of the project area for WGFD and BLM sensitive species should have been conducted as part of the NEPA analysis, in order to satisfy NEPA baseline information and hard look requirements. The project should have then been designed to avoid impacts to important habitats identified by survey efforts. BLM Sensitive Species are on these lists because they are in danger of a trend toward extinction, indexed by a trend toward ESA listing. It's high time for the BLM to start doing something about the decline of sensitive species before they require listing under the ESA.

Sage Grouse

BLM's own analysis indicates that sage grouse populations are declining throughout the planning area, and would be expected to continue to decline under all three alternatives. See JMH SFEIS at 4-54. According to BLM, "Many of these alterations [disturbance of roads, increased access, and associated displacement caused by human presence] favor predators, thereby increasing predation of species such as greater sage-grouse." JMH CAP SFEIS at 4-60.

The alternate access route to the site is within ¼ mile of an active sage-grouse lek. EA at 23. The BLM has proposed a mitigation measure preventing vehicle traffic along this route during certain hours between March 1 and March 15. The BLM has failed to provide any evidence whatsoever that this mitigation measure will have a significant ameliorative effect or that it will prevent significant impacts to sage grouse breeding activities. Breeding activities in sage grouse last from March through May, and I have personally witnessed breeding activity on an active lek in the Baggs vicinity on May 13 of this year. In light of the fact that sage grouse populations have declined 90% from their 1953 levels in the Jack Morrow Hills planning area, it is completely irresponsible for BLM to allow vehicular travel within ¼ mile of a sage grouse lek during the breeding season. We have significant concerns that major impacts will result to sage grouse breeding at this lek by vehicle traffic that occurs outside the March 1 to March 15 period.

Because the area is also covered under the nesting and early brood-rearing stipulation, the work will not begin until July 16th and will end before the March 1 which is the start of the breeding stipulation.

Elk

BLM's own analysis indicates that "Activities in desert-type terrain tend to displace wildlife, particularly big game species by distances of more than 3 miles because extended sight distances and lack of security cover." JMH SFEIS at 4-55. BLM also noted,

Kuck et al. (1985) showed that persistent disturbance weakened the tendency of elk to return to the disturbed area and that selection of lower quality habitat occurred. However, abandonment of the traditional calf-rearing habitat did not result in abandonment of calves or a difference in survival rates between control and disturbed groups. The study also found that there were no data to suggest that elk habituated to mining noises.

JMH CAP SFEIS at 4-55. BLM also noted elk avoidance of roads, particularly in areas having little hiding cover and dominated by shrubs rather than trees. Id. The sensitivity of calving areas to mining disturbance was also noted by BLM:

Locatable mining activity on existing claims in and around northern parturition areas has the potential to decrease the usability of these areas for calving and fawning. This particularly applies to activities that might occur in or near aspen stands associated with deer and elk parturition areas...

JMH CAP SFEIS at 4-62. The EA indicates that surface disturbing activities will not be allowed during the calving season in calving habitat. EA at 24. However, the EA is silent on whether vehicle traffic in the absence of surface disturbance, which would create significant impacts to calving elk, would be allowed. The mitigation measures, in order to be effective, must also forbid vehicle travel associated with the project in calving habitat during the calving season.

The proposed project area appears to include a sensitive calving area for the Steamboat Mountain elk herd. Allowing activities to occur while elk are present on the calving range would lead to unacceptable levels of impact: Lactation places extreme physiological demands on ungulates, which means that parturient cows must have access to the highest-quality forage during this period. Displacement of the animals onto marginal ranges in this period would depress calf survivorship and recruitment to the population. All activities should be moved out of sensitive elk calving habitats, and roads through such habitats should not be used by project vehicles during the crucial season. In addition, the construction of new roads should not be allowed in the context of this project.

No surface disturbing or disruptive activities will be allowed from March 15 through July 15 for elk parturition. In addition, the company has agreed to not access this area during the calving period from May 1 – June 30. There will no new road constructed as part of this project.

Mountain Plovers

The project area has been mapped as primary habitat for mountain plover, as mapped in The Special Values of the Jack Morrow Hills, incorporated into these comments by reference. Yet an assessment of potential impacts to mountain plover is absent from BLM's impacts analysis, in violation of NEPA. See EA at 61-65, 79-81.

The BLM is unaware of any known mountain plover sighting in or near the project area. This area has too much topographic relief to be suitable for mountain plover. Please refer to Map 17 in the Jack Morrow Hills CAP Final EIS. BLM is not aware of the "Special Values" map to which you refer.

Birds of Prey

We are also concerned about the welfare of nesting raptors. All activities should be kept a minimum of 2 miles away from raptor nest sites during the nesting season. Disturbance, whether from the passage of vehicles or humans on foot, leads to temporary nest abandonment, which can in turn lead to overheating or cooling of eggs and desiccation and hypothermia in chicks, resulting in death and nest failure.

Numerous field trips to the project area and surrounding land indicate there are no active raptor nests within one mile of the project area with the exception of the one nest southwest of the project which is blocked from view by topographic relief.

Impacts to Pygmy Rabbit

Pygmy rabbits are obligate residents of sagebrush stands that are tall with dense canopy cover (Green and Flinders 1980, Katzner 1994). Fragmentation of tall sage habitats can reduce the size, stability and success of pygmy rabbit populations because these animals are reluctant to cross open habitats (Katzner 1994). Tall sage makes up 7.62% of the JMH planning area (Powell 2003); this relative scarcity of this habitat type indicates the need for concrete measures to map and study the impacts of each alternative on the tall sagebrush resource.

We have recently learned that large, old sagebrush habitats of the type preferred by pygmy rabbits are present in the project area. We are concerned about impacts the project will have on pygmy rabbits, both direct habitat loss and through fragmentation of continuous stands of old sagebrush which might impede dispersal of pygmy rabbits. Pygmy rabbits are present in the Jack Morrow Hills planning areas in westward-flowing drainages like the Pacific Creek watershed. There are two locations of pygmy rabbit presence documented and mapped in The Special Values of the Jack Morrow Hills, a document which BCA submitted to BLM as part of the JMH CAP EIS process. We incorporate this Special Values report by reference into these comments.

The BLM has failed utterly to recognize the potential presence of pygmy rabbits, a BLM Sensitive Species and proposed for listing under the Endangered Species Act, in its Dickie Springs EA. See EA at 61 through 65 and 79 through 81. This failure violates NEPA "hard look" requirements.

The pygmy rabbit was not addressed under this EA because there is no potential habitat for the rabbit in, or within approximately one mile of the project area. The sagebrush in this area is short (1/2 meter or less), sparse and the substrate is a granitic gravel. These conditions are not conducive to pygmy rabbit occupation.

The Dickie Spring Project Precludes Alternatives under the JMH CAP

BLM has noted that "Actions may be approved if the BLM determines that they would not cause significant impacts, or would not limit or prejudice the choice of management options that may be considered for the JMH CAP." EA at 3. BLM's analysis of its legal obligation are almost, but not quite, correct. In fact, the operative criterion is whether significant impacts would occur or if the choice of alternatives would in fact be prejudiced, not whether the BLM makes such a determination

or not. Thus, an erroneous BLM determination that there are no significant impacts or that alternatives would not be prejudiced would not prevent a violation of FLPMA if these assertions were not true.

For Alternative 2 in the JMH CAP EIS, "There would be no adverse effects from locatable mineral development, mineral material sales, coal leasing, or coal and sodium exploration because the entire planning area would be closed to or withdrawn from these activities...." JMH CAP SFEIS at 4-68. The BLM must therefore prevent adverse effects from this project in order to avoid prejudicing the selection of Alternative 2 under the JMH CAP.

Thank you for your comment. Please refer to response to similar comments in letter 5.

Range of Alternatives

The range of alternatives is "the heart of the environmental impact statement." 40 C.F.R. § 1502.14. NEPA requires BLM to "rigorously explore and objectively evaluate" a range of alternatives to proposed federal actions. See 40 C.F.R. §§ 1502.14(a) and 1508.25(c). Formulation of alternatives during the NEPA disclosure and study process is at the heart of Congress' choice of NEPA as the procedural method that guides Federal agencies' management of the public lands. See *Natural Resources Defense Council v. Hodel*, 865 F.2d 288, 299 (D.C. Cir. 1988) (citing *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976)). In fact, NEPA requirements state that "no action concerning the proposal should be taken which would: (1) Have an adverse environmental impact; or (2) Limit the choice of reasonable alternatives." 40 C.F.R. § 1506.1(a). *Catron County v. U.S Fish and Wildlife Service*, 75 F.2d 1429 (10th Cir. 1996)(partial NEPA compliance is not enough.) NEPA regulations also require agencies to address appropriate alternatives in Environmental Assessments. 40 C.F.R. § 1508.9, with specific reference to section 102(2)E of NEPA. In addition, the law requires consideration of a range of mitigation measures. See *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1122-1123 (9th Cir. 2002) (and cases cited therein) (stating that agencies must develop and analyze environmentally protective alternatives in order to comply with NEPA).

Section 102(2)(C) of NEPA requires an agency to present alternatives to the proposed action and Section 102(2)(E) requires the agency to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(C) and (E) (1994); see 40 C.F.R. § 1501.2(c); *Biodiversity Associates, IBLA 2001-166* at 6; *Wyoming Outdoor Council*, 151 IBLA 260, 272 (1999); *Howard B. Keck, Jr.*, 124 IBLA 44, 53 (1982); *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228-29 (9th Cir. 1988, cert. Denied, 489 U.S. 1066 (1989)).

This basic, fundamental requirement that is the touchstone of every NEPA document has not gone unnoticed on the Federal judiciary in sending back environmental studies that fail to meet this requirement. See e.g., *Calvert Cliffs Coordinating Comm., Inc. v. United States Atomic Energy Comm'n*, 449 F.2d 1109, 1114 (D.C. Cir. 1971) (detailed EIS required to ensure that each agency decision maker has before him and takes into account all possible approaches to a particular project . . . which would alter the environmental impact and the cost-benefit balance); *Natural Resource Defense Council v. Callaway*, 524 F.2d 79, 93 (2d Cir. 1975); ("The duty to consider reasonable alternatives is independent from and of wider scope than the duty to file an environmental statement."); *Simmons v. United States Army Corps of Engineers*, 120 F.3d 664, 660 (7th Cir. 1997) ("The highly restricted range of alternatives evaluated and considered violates the very purpose of NEPA's alternative analysis requirement: to foster informed decision making and full public involvement."); *Alaska Wilderness Recreation & Tourism v. Morrison*, 67 F.3d 723, 729 (9th Cir. 1995) ("The existence of a viable but unexamined alternative renders an environmental

impact statement inadequate."); Dubois v. U.S. Dept. of Agric., 102 F.3d 1273, 1288 (1st Cir. 1996) (EIS invalid because agency did not consider alternative of using artificial water storage units instead of a natural pond as a source of snowmaking for a ski resort); Libby Rod & Gun Club v. Poteat, 457 F. Supp. 1177, 1187-88 (D. Mont. 1978), rev'd in part on other grounds, 594 F.2d 742 (9th Cir. 1979) (Army Corps violated NEPA in an EIS for a hydroelectric dam by only cursorily addressing the alternatives of meeting the Northwest's energy needs through other sources or conservation.); Northwest Env't Defense Center v. Bonneville Power Admin., 117 F.3d 1520, 1538 (9th Cir. 1997) ("An agency must look at every reasonable alternative, with the range dictated by the nature and scope of the proposed action.")

The failure to look at the full range of reasonable alternatives is related to BLM's duty in any environmental analysis to develop, study, analyze and adopt mitigation measures to protect other resources. The ability to adopt mitigation measures is quite broad. See 43 C.F.R. § 3101.1-2. This is particularly true given that BLM, pursuant to FLPMA, must manage public lands in a manner that does not cause either "undue" or "unnecessary" degradation. 43 U.S.C. § 1732(b). Put simply, the failure of BLM to study and adopt these types of mitigation measures – especially when feasible and economic – means that the agency is proposing to allow this project to go forward with unnecessary impacts to public lands, in violation of FLPMA.

In particular, Federal agencies must explore alternatives to proposed actions that will avoid or minimize adverse effects on the environment, 40 C.F.R. § 1500.2(3), alternative kinds of mitigation measures, 40 C.F.R. § 1508.25(c)(3), alternatives that would help address unresolved conflicts over the use of available resources (e.g. roadless areas and/or potential wilderness), 40 C.F.R. § 1501.2(c), and other reasonable courses of action, 40 C.F.R. § 1508.25(c)(2). The requirement to consider such less damaging alternatives helps agencies meet NEPA's primary purpose of promoting "efforts which will prevent or eliminate damage to the environment and biosphere..." 42 U.S.C. § 4321. These requirements are affirmed in BLM policy: "BLM officials may not so narrow the scope of a planning/NEPA document as to exclude a reasonable range of alternatives to the proposed action..." USDI Instruction Memorandum No. 2001-075, emphasis added. The IBLA has established that the elimination of reasonable alternatives without sufficient analysis does not satisfy NEPA, and noted that "While we could speculate about the BLM's rationale for dismissing...alternatives, we should not be required to fill in the blanks for BLM. The record should speak for itself." Biodiversity Associates, IBLA 2001-166, at 7 (2001). Such objective evaluation is gravely compromised when agency officials bind themselves to a particular outcome or foreclose certain alternatives at the outset.

Thank you for your comment. Please refer to responses to similar comments in letter 21.

While Federal law requires that claimants be allowed to access their mining claims on public lands, it is important to note that these laws do not guarantee unlimited access according to the wishes of the claimant, nor does Federal law abridge or circumscribe the agency's discretion in placing reasonable restrictions on such access to protect other forest resources. It is incumbent on the BLM to carefully evaluate various potential access and surface use restrictions for the Dickie Spring claims, and to select an alternative that allows exploration while minimizing impacts to other resources in the South Pass ACEC.

You are correct that unlimited access is not guaranteed. However, the operator will be using an existing state highway, county road, and two-track roads to enter their claims, which as been determined to be the least impacting.

*In its alternatives, the BLM should have evaluated in detail and selected a Non-Motorized Access alternative. Prospectors plied their trade throughout the South Pass mining district for years without the use of motor vehicles, throughout the heyday of mining in this region in the 1860s. Indeed, the BLM has noted in its EA that placer miners in the Oregon Gulch/Dickie Springs area were able to do quite well without the use of such heavy equipment as backhoes. A restriction of off-road access to nonmotorized means is in accordance with traditional methods historically used in the area, a reasonable restriction that would protect other resource values, and a restriction founded in sound legal precedent. In *Clouser v. Espy*, the courts upheld a Forest Service restriction requiring the claimant to access claims both inside and outside wilderness areas by pack mule only. In its ruling, the court resoundingly rejected the claimant's argument that such a restriction violated Federal mining laws:*

In light of the broad language of [Organic Administration Act §] 551's grant of authority, [Organic Administration Act §] 478's clarification that activities of miners on national forest lands are subject to regulation under the statute, and this substantial body of case law, there can be no doubt that the Department of Agriculture may adopt reasonable rules and regulations which do not impermissibly encroach upon the right to the use and enjoyment of [mining] claims for mining purposes.

*Clouser v. Espy, 42 F.3d (9th Cir. 1994) at 1522. The BLM shares similar authority to its sister agency. In addition, the denial of a road permit to access a mine inholding within the Absaroka-Beartooth Wilderness and requirements to use foot, horse, or helicopter to access the claim, was recently upheld in the District Court findings in *Johnson v. United States* (see attached ruling).*

The Green River Resource Management Plan allows use of motorized vehicle traffic on existing roads until designated in the area affected by the proposal.

*The BLM must evaluate alternatives that disallow the use of heavy equipment for "exploration" at the Dickie Spring placer claims, because such heavy-handed exploration methods would be destructive to the historic, water, and wildlife values of the area. The feasibility of exploration through traditional nonmotorized means (i.e., pick-and-shovel) should have been rigorously evaluated. This may increase the timeframe and/or expense of the project, or may not, but it would certainly have the beneficial impact of creating far more local jobs than the applicant's proposed action. See EA at 25. These methods were the primary means of exploration and even full-scale production during the long-gone days when placer mining made a significant contribution to the local economy, and they still work today. In *United States v. Richardson*, both District and Circuit Courts upheld the Forest Service's ability to prohibit "destructive" exploration methods, noting "the Forest Service may require the locator of an unpatented mining claim on National Forest Lands to use nondestructive methods of prospecting." *United States v. Richardson*, 599 F.2d 290 (9th Cir. 1979) at 291. The court based its ruling on the "interrelationship of Federal statutes concerning the national forests and mining on public lands [, namely] Rule 5.2, 30 U.S.C. § 26, 30 U.S.C. § 612, 16 U.S.C. § 551, and 16 U.S.C. § 478." *Id* at 291-292 (footnotes omitted). This ruling is reinforced in *United States v. Weiss*, in which the courts ruled that:*

Thank you for your comment. Please refer to responses to similar comments in letter 21.

While prospecting, locating, and developing of mineral resources in the national forests may not be prohibited nor so unreasonably circumscribed as to amount to a prohibition, the Secretary of Agriculture may adopt reasonable rules and regulations which do not impermissibly encroach upon the right to the use and enjoyment of [mining] claims for mining purposes.

United States v. Weiss, 642 F.2d (9th Cir. 1981) at 296, 299. Therefore it would be eminently appropriate to evaluate and select an alternative forbidding use of backhoes, trucks, and ATVs, and other motorized equipment in association with prospecting activities in the vicinity of Dickie Spring.

In this case, the BLM has full authority to prevent surface-disturbing activities altogether in big game parturition areas. See EA at 3. Why was this alternative not evaluated?

Thank you for your comment. Please refer to responses to similar comments in letter 21. Regulations contained in 43 CFR 3809.420 (7) provide protection for listed species. The company has voluntarily agreed to abide by BLM's seasonal restriction to protect elk calving. Also refer to the response for the section "Elk" above.

It appears that the proponents of this project have selected an unnecessarily high-impact method to accomplish their stated goal of sampling for gold-bearing gravels. It would seem that the same ends could be accomplished by simply digging the pits by hand.

Since the proposed gold exploration is taking place in the South Pass Historical Landscape, it would seem to be eminently appropriate to require the operators to dig the prospect pits the old-fashioned way, without the aid of backhoes or other heavy equipment. Another alternative would be requiring the use of hand-tools and drift mining for exploration purposed. A drift mine portal is about 4 feet by 4 feet, a much smaller surface impact than could be achieved with a backhoe. Drift mining techniques have been practiced for over a century with excellent results all across the West; it is a standard technique for gold exploration and recovery. Walls of each vertical shaft should be lined with lumber to prevent shaft collapse. The reasonableness of this alternative can be seen in the fact that many prospectors used it successfully, with a fairly minimal cash outlay. BLM has noted (incorrectly) that such drift mines would collapse in unconsolidated soils. This is false; in fact drift mining presupposes the presence of unconsolidated soils in order to be effective. Shafts are stabilized with timber covering 100% of the shaft roof and walls. This method was used by POW camp escapees in Nazi-held territories to implement the Great Escape during World War 2; in this case, the tunnels were built in completely unconsolidated sand with much less structural integrity than soils in the project area. Large-scale application of this method would entail more manpower but less costly machinery time; more employment opportunities would result, with a beneficial effect for the local economy. To date BLM has not provided sufficient information to rule out drift mining as a reasonable alternative for implementing the Dickie Spring project; failure to evaluate this reasonable alternative in detail (see EA at 26) would violate NEPA's range of alternatives requirements.

Thank you for your comments. Please refer to responses to similar comments in letter 21.

Pacing of Exploration

BLM should require that a "phased exploration" strategy be employed by the proponents of this project, under which only 1 prospect pit could be open at any given time. This management scheme would require each prospect pit to be re-filled and reclaimed immediately after the sample is removed, and before digging could commence on the next prospect pit. This sequential digging and reclamation of prospect pits would ensure that at no time would many dozens of scars from the operations be visible, and also minimizes the sedimentation impacts to intermittent streams and the perennial streams that receive their waters should a downpour flood multiple pits. Given the advantages of sequential prospecting, and the complete lack of disadvantages (the operator will need to clean up each pit at some point anyway), allowing multiple pits to be open at any given time would constitute unnecessary and undue degradation under FLPMA. Despite these advantages,

and the fact that such a plan would be reasonable and feasible as an alternative, it is apparent that this reasonable alternative was not considered in the Dickie Spring EA. See EA at 25-26.

Thus far, BLM has provided no data to support the spurious claim that this alternative would increase the cost of exploration to the point that it would become infeasible. See EA at 10. Indeed, none of the costs of exploration (cost per hour of labor, running equipment, etc.) inherent to the project would change between digging one pit at a time or digging all pits at once. Ultimately, costs would appear to be identical under both scenarios. If BLM is to legally avoid consideration for this otherwise unreasonable alternative, it must provide documentation and analysis to support its claims of greater expense.

Thank you for your comments. Please refer to responses to similar comments in letter 21.

An EIS Must be Prepared

*In light of the sensitive wildlife, historical, and recreation resources at stake in this project and its highly visible and significant impacts to the human environment, an EIS must be prepared prior to proceeding to a decision on this project. The National Environmental Policy Act (“NEPA”) is our nation’s basic charter for the protection of our environment and it “contains ‘action forcing’ provisions to make sure that Federal agencies act according to the letter and spirit of the Act.” 40 C.F.R. § 1500.1. The Council on Environmental Quality (“CEQ”) was created under NEPA to promulgate regulations “to tell Federal agencies what they must do to comply with the procedures and achieve the goals” of NEPA. *Id.**

*The purpose of NEPA is to “promote efforts which will prevent or eliminate damage to the environment.” 42 U.S.C. § 4331. NEPA’s fundamental purposes are to guarantee that: (1) agencies take a “hard look” at the environmental consequences of their actions before these actions occur by ensuring that the agency has and carefully considers “detailed information concerning significant environmental impacts,” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989); and (2) agencies make the relevant information available to the public so that it “may also play a role in both the decision making process and the implementation of that decision.” *Id.* NEPA emphasizes that “coherent and comprehensive up-front environmental analysis” to ensure an agency “will not act on incomplete information, only to regret its decision after it is too late to correct.” *Blue Mountain Biodiversity Project v. Blackwood*, 161 F.3d at 1216 quoting *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989); see also *Foundation on Economic Trends v. Heckler*, 756 F.2d 143, 157 (D.C. Cir. 1985) (emphasis in original) (“The NEPA duty is more than a technicality; it is an extremely important statutory requirement to serve the public and the agency before major federal actions occur.”).*

Federal agencies must prepare an environmental impact statement (EIS) for all “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). An EIS must identify and evaluate the environmental impacts of the agency’s action as well as propose alternative actions. See 42 U.S.C. § 4332(C); see also 40 C.F.R. § 1500 et seq. NEPA requires Federal agencies to analyze the direct, indirect, and cumulative impacts of the action. 40 C.F.R. §§ 1508.7, 1508.8.

*An agency may first prepare an Environmental Assessment (EA) to determine whether the project may significantly affect the environment and requires a full EIS. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1508.9; see also *LaFlamme v. F.E.R.C.*, 852 F.2d 389, 397 (9th Cir. 1988) (evidence regarding the significance of the impacts need not be conclusive in order to compel the preparation of an EIS); *National Parks & Conservation Ass’n v. Babbitt*, 241 F.3d 722, 730 (9th Cir. 2001) (EIS*

required if project “may have a significant effect”). Significance is based upon the “intensity” and “context” of the action. 40 C.F.R. § 1508.27. “Context” refers to the geographic and temporal scope of the agency action and the interests affected. *Id.* § 1508.27(a). In the instant case, the project would cover over 119,000 acres, a vast expanse of public land, and includes a wilderness study area, an area set aside for its natural qualities and outstanding opportunities for primitive and unconfined recreation. “Intensity” addresses the severity of the impacts. *Id.* § 1508.27(b). In this case, impacts major diggings and vehicle travel through an undeveloped landscape of prime historical importance. Factors relevant to intensity include the presence of “uncertain impacts or unknown risks,” whether the action is “related to other actions with individually insignificant but cumulatively significant effects,” and whether the project “threatens a violation” of other laws. *Id.* at § 1508.27(b).

From the “context” standpoint identified above, the Dickie Springs exploration project area encompasses 5,120 acres of which 4,680 acres are managed by the BLM and the remaining 440 acres are private land. The project area does not include a Wilderness Study Area, the closest of which is 4 miles from the project area. In terms, of the “intensity” of this project, the environmental assessment acknowledges modern day intrusions in the area. But while there are modern intrusions into the setting (fences, powerline, ranch, cell towers, highway, two-track roads, etc.), these intrusions do not generally detract from what a visitor may experience.

If an EIS is not required, the Federal agency must provide a “convincing statement of reasons” why the project’s impacts are insignificant and the issuance of a Finding of No Significant Impact or “FONSI” is appropriate. 40 C.F.R. §§ 1501.4, 1508.9, 1508.13; Blue Mountain, 161 F.3d 1208, 1211-12 (9th Cir. 1998), cert. denied, 527 U.S. 1003 (1999) quoting Save the Yaak Comm. v. Block, 840 F.2d 714, 717 (9th Cir. 1988).

The purpose of preparing the environmental assessment is to assess the potential impacts from implementation of the alternatives as the basis to determining if an environmental impact statement is necessary. Based on the analysis presented in the environmental assessment, the BLM has made a Finding of No Significant Impact determination.

Conclusion

Please respond to these concerns prior to reaching a decision for this project, which should take the form of an EIS based on the importance and sensitivity of the historical, cultural, wilderness, and wildlife resources affected by the proposed project. Please allow public comment on the NEPA analysis before reaching a decision on an alternative to implement, to allow the public to meaningfully participate in the NEPA process. We would like to be served with hardcopy documentation of all analyses, NEPA documentation and future correspondence regarding this project.

Literature Cited

Green, J.S., and J.T. Flinders. 1980. Habitat and dietary relationships of the pygmy rabbit. J. Range Manage. 33:136-142.

Katzner, T.E. 1994. Winter ecology of the pygmy rabbit (Brachylagus idahoensis) in Wyoming. M.S. Thesis, Univ. of Wyoming, 125 pp.
Powell, J.H. 2003. Distribution, habitat use patterns, and elk response to human disturbance in the Jack Morrow Hills, Wyoming. MS Thesis, Univ. of Wyoming, 52 pp.

To review the attachments, please refer to the end of this Appendix.

28. Jere Krakow, National Trails System Office, National Park Service

The National Historic Trails, Salt Lake City office of the National Park System appreciates the opportunity you provided us to participate in the development of this EA, and to comment again on the final document. Your office has satisfactorily addressed the bulk of the comments we provided during our initial review of the draft EA. Your discussions of the historic significance of South Pass and the issues surrounding the South Pass National Historic Landmark are particularly thorough. In all, the document presents a fair discussion of the project and related cultural resources concerns.

However, there remains one apparent point of disagreement regarding the relevancy of the Mining in the Parks Act of 1976 (16 U.S.C. §1908) to this project in particular and surface mining in general. Because this statute contains specific direction regarding the potential impact of surface mining in national historic landmarks, it should have been included in the authorities section of the EA. Nonetheless failure to do so does not negate the legal duties that this statute places on the Secretary of the Interior. Specifically, with respect to proposed mining activities that could impact national historic landmarks like South Pass, the Mining in the Parks Act states:

- (a) *Whenever the Secretary of the Interior finds on his own motion or upon being notified in writing by an appropriate scientific, historical, or archeological authority, that a district, site, building, structure, or object which has been found to be nationally significant in illustrating natural history or the history of the United States and which has been designated as a natural or historical landmark may be irreparably lost or destroyed in whole or in part by any surface mining activity, including exploration for or removal or production of minerals or materials, he shall notify the person conducting such activity and submit a report thereon, including the basis for his finding that such activity may cause irreparable loss or destruction of a national landmark, to the Advisory Council on Historic Preservation, with a request for advice of the Council as to alternative measures that may be taken by the United States to mitigate or abate such activity.*

Although the South Pass National Historic Landmark does not at present have established boundaries, your office has designated the South Pass Area of Critical Environmental Concern to serve as de facto boundaries for the landmark. The exploration project is within the ACEC. It seems clear that the Mining in the National Parks Act should be addressed in section 1.3 (Relationship to Statutes, Regulations, or Other Plans) of the Environmental Assessment.

The limited exploration project described by the EA, in and of itself, does not appear to pose serious long-term conflicts with the Landmark or the four national historic trails that cross the Continental Divide at South Pass. However, though the occurrence of economically viable placer gold deposits at South Pass seems unlikely, this project could potentially open the door to a commercial-scale mining project there or, at best, lead to additional proposals for small-scale testing in the area. Both of these possibilities are of continuing concern. We urge the Bureau of Land Management to use every tool at your disposal to protect the historic trail resources of South Pass. Thank you once again for your consideration of our comments.

In completing the Section 106 process under National Historic Preservation Act, BLM has consulted with the National Park Service and other entities as noted in previous responses to other letters. As you have noted, the South Pass National Historic Landmark does not at present have established boundaries and although we manage the ACEC to protect important historic features, there is no official boundary designation in the register. This creates a disconnect with determining

how the Act applies in this situation. The Act also states where a natural or historic landmark “may be irreparably lost or destroyed in whole or in part by any surface mining activity...” The analysis in the EA did not identify that resources in the ACEC would be irreparably lost or destroyed in whole or in part. Thus no further action under this act was determined needed.

However we did identify this Act as part of Chapter 5 Consultation and Coordination and provided a summary of our consultation and findings. This section states” In accordance with the National Protocol Agreement, 36 CFR 800.6(a) (1) and 36 CFR 800.10(b) and the Mining in the Parks Act, on May 4, 2005, the BLM notified the Advisory Council on Historic Preservation of the project and the determination of effects on cultural resources. On May 25, 2005, NPS comments were received by the BLM in response to the EA. These comments are addressed in the final environmental assessment.” We will continue to coordinate with the Park Service as this project proceeds and on future mining activity should it occur.

29. Amy Lawrence, Wyoming State Historical Society

I wish to register a strong objection to allowing the Fremont Gold to test for a placer gold exploration near Dickie Springs. WY, for the following reasons:

First: Dickie Springs is within the South Pass Historic Landscape, an area which was critical to the exploration and settlement of the West. Historians estimate that 400,000 people migrated to the American West in the mid and late 19th century, seeking land, money and adventure. South Pass was a major corridor in the movement, which is considered one of the greatest mass migrations in the known history of the world. Thus, the South Pass corridor is a vital part of the history not only of Wyoming, but of the United States and the world as well..

The BLM agrees that the South Pass corridor is a vital part of the history of the United States.

Second: Although the BLM's mitigation measures will be in place to "ensure a minimum long time impact," this historic landscape would be forever changed and irreplaceable Historic Emigrant Trails would be impacted, to the detriment of Wyoming historical preservation and economy. Isn't the "viewscape" considered an important part of a historical site?

Thank you for your comment. Please refer to response to a similar comment in letter 11.

Third: Why? What would be the benefit to Wyoming and its people? Is this placer gold considered vital to our economy or national safety? Isn't placer mining particularly damaging to the environment? Would Wyoming reap any real benefit, or is this just another example of extracting wealth from the "colony" of Wyoming?

Thank you for your comments. These public lands are open to mineral entry and as such the company has the right to pursue its mineral interests, so long as it complies with the Federal and state laws. The General Mining Law of 1872 states: “That all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase....”. This Law has been amended many times with the latest amendment dated October 1, 2003 but it has never been overturned.

Likewise, the BLM has met the intent of the National Environmental Policy Act by completion of an environmental analysis document which has determined that implementation of the exploration activities as proposed by Fremont Gold and mitigated by the BLM will not adversely impact BLM’s

ability to achieve it's management objective to maintain the visual and historic integrity of the South Pass area. Please refer to responses in letters 9 and 14.

Aren't there currently numerous laws and resolutions in place which would prevent full scale development of this area? If so, how would such exploration benefit the Fremont Gold Company if they cannot develop the site? Do they have plans place for the development of gold extraction? Have you seen these plans? Do they reflect deliberate attempts to ignore or sidestep present regulations?

Please refer to the response to your third comment above. The Interior Board of Land Appeals has ruled 131 IBLA 257 (November 23, 1994) NEPA does not require that BLM examine the environmental impacts of mine development when it approves a plan for exploration of a mineral property. Exploration and development are not connected actions as defined at 40 CFR 1508.25(a)(1). Mine development is not a reasonably foreseeable result of exploration and need not be examined as a cumulative impact of exploration. If the company decides to pursue full scale mining or additional exploration, they would be required to submit a Plan of Operation which would start the NEPA process again. Also, the response to a similar comment can be found in letter 13.

The Tourist business is an important part of Wyoming's economy, and many of these visitors come to visit our visit historic sites, including the emigrant/trapper/stock trails that crisscross our state. Neither tourists nor residents would enjoy seeing heavy dirt moving equipment and dust or mining equipment instead of the seemingly endless vistas of our prairies.

Thank you for your comment. Please refer to the responses in letters 9, 12, and 14.

The vestiges of our historic trails and pioneer life are rapidly disappearing, and this appears to be just one more deliberate effort to erase a significant historic site which is blocking so-called "progress."

Thank you for your comment. Please refer to responses in letter 11.

Isn't protecting our land and resources a major assignment of the BLM? In that sense I am petitioning you to protect the South Pass corridor from this intrusion.

30. Brian Kelly, Field Supervisor, U.S. Fish and Wildlife Service

Thank you for the opportunity to review the Environmental Assessment for the proposed Dickie Spring gold exploration project located in sections 7, and 17-20 in T27N,R100W, and sections 11, 12, and 14 in T27N, R101 W in Fremont County, Wyoming. The U.S. Fish and Wildlife Service (Service) provided scoping comments for this project in our letter of September 7, 2004. We have reviewed the Environmental Assessment (EA) and are providing the following comments.

Page 59, Section 3.14.3, Other Mammals, and Page 61, Wyoming Sensitive Wildlife Species:

*The EA does not discuss the pygmy rabbit (*Braclaylagus idahoensis*) or the potential effects of this project on the species. As you know, the Service has reviewed the April 21, 2003, petition to list the pygmy rabbit under the Endangered Species Act of 1973 (Act), as amended, 16 U.S.C. 1531 et seq', and has concluded on May 20, 2005, that the petition does not contain substantial scientific information to move ahead toward a year long review. However, the Service strongly recommends that the Bureau of Land Management (Bureau) analyze the project area for potential effects to*

pygmy rabbits and their habitats and to provide this information to the Service for review. This smallest of the Leporidae family occurs in portions of many western states including southwestern Wyoming where they have been confirmed to occur in isolated populations in Lincoln, Uinta, Sweetwater, Sublette and Fremont counties. Pygmy rabbits are sagebrush obligate species, primarily found in dense western big sagebrush (Artemisia tridentate ssp.) communities preferably where at least two other species of sagebrush and forbs occur as well. Conversion of sagebrush grasslands, habitat fragmentation and overgrazing are considered potential threats to pygmy rabbits. Project planning measures that retain large tracts of suitable habitat and corridors to adjacent habitat will aid in the conservation of this species.

The pygmy rabbit was not addressed under this EA because there is no potential habitat for the rabbit in, or within approximately one mile of the project area. The sagebrush in this area is short (1/2 meter or less), sparse and the substrate is a granitic gravel. These conditions are not conducive to pygmy rabbit occupation.

Page 59, Section 3.14.4, Raptors:

The EA indicates that no raptor nests are known to occur within the project area. Page 64, paragraph 2 and page 6S, paragraph 2 of the EA both indicate that seasonal limitations/restrictions on surface disturbing and disruptive activities have been implemented from March 15 to July 15 for greater sage-grouse and that other sagebrush obligates species will also benefit from this protective measure. The Service commends the Bureau for protecting greater sage-grouse and other sagebrush obligate avian species. We encourage you to implement this protective measure throughout the project area and within 1-mile of the perimeter to protect potentially unknown raptor nests. If this protective measure is not feasible across the entire area as indicated above, we encourage you to conduct a current raptor survey to determine the status of raptors in the area and provide protective measures for active nests.

We appreciate your efforts to ensure the conservation of endangered, threatened, and candidate species, migratory birds and sensitive species.

Thank you for your support of our minimization measures for wildlife. Numerous field trips to the project area and surrounding land indicate there are no active raptor nests within one mile of the project area with the exception of the one nest southwest of the project blocked from view by topographic relief.

31. Marian Doane, Darci Jones, Friends of the Red Desert

Please accept the following comments on the above referenced environmental assessment (EA) on behalf of the Friends of the Red Desert, a coalition of citizen's, businesses, ranchers and conservation organizations that have come together to protect portions of the Red Desert.

First: The Proposed Action Does Not Conform to the Green River Resource Management Plan or the Pending Jack Morrow Hills Coordinated Activity Plan

The Green River Resource Management Plan (RMP) Record of Decision (ROD) established criteria for the Jack Morrow Hills Coordinated Activity Plan (CAP) planning area "to avoid premature commitments allowing development or disturbance . . . within the activity plan area until the CAP is completed." This restriction applies even to public lands "outside the core area," such as the Dickie Spring project area. Therefore, the BLM is obligated to avoid making commitments that will allow

development or disturbance until after the Jack Morrow Hills CAP is finalized to be in accordance to the Green River RMP.

Thank you for your comment. Please refer to responses in letter 5.

Second: The EA Does Not Consider an Adequate Range Of Alternatives

The EA only considers two alternatives, Fremont Gold's proposed action and the no action alternative. This fails to meet the requirements of the National Environmental Policy Act [NEPA] for an EA.

At a minimum, alternatives that require exploration with less than 200 pits should have been considered. The EA does not include information demonstrating that up to 200 pits are needed to adequately sample placer gold in the project area. The EA unambiguously states that, "higher gold concentrations are likely to be found in low positions of drainage paths and therefore are of particular interest. For that reason it is important to get as close to the lowest areas as possible. Otherwise, the operator may fail to assess accurately the mineral content and value." EA at 15. Allowing fewer pits but concentrating them in lower areas was an appropriate alternative that should have been considered.

The option of hand-digging pits was not fully considered, but was eliminated from consideration. EA at 25-26. It is claimed that this method, which is far more compatible with the historic landscape in this area, "would be too time-consuming to complete within the time frames available." Id. at 25. An option, such as hand-digging pits, that is most compatible with the historic landscape in the area and which would have fewer environmental impacts, should not be eliminated from consideration based on unsupported claims regarding its costs.

The option of hand-digging the exploration pits would require either a greater number of workers present, or workers being in the area for a longer amount of time. Both of these options would significantly increase the disturbance to wildlife. Please refer to the response to similar comments in letter 21.

Third: The EA Fails to Consider Connected and Cumulative Actions and Indirect Effects

The EA improperly fails to consider the potential impacts that could come from an expanded exploration proposal or from a full-scale gold mine in the future. The environmental impact analysis is limited to the current action of digging up to 200 pits. The EA asserts, "any future actions including full scale development would be speculative." EA at 10. We do not believe that Fremont Gold is here to explore this section of Twin Mounds and then leave without trying to build a full-scale gold mine. It is reasonable and foreseeable that Fremont Gold will want to move this operation into a full-scale mining project. BLM is required to consider connected, cumulative and similar actions when determining the scope of its NEPA analysis and full scale mining should be one of those impacts.

Please refer to the response to similar comments in letter 21.

Fourth: The EA and Proposed Action Violates the National Historic Preservation Act

It appears BLM is asserting a "no adverse effect" claim relative to the impacts of this project on the nationally significant cultural and historic resources in this area. EA at 67. The basis for this seems to be claims that any impacts will be "minimal and temporary." Id. Clearly this project standing

alone, even with efforts made to protect historic resources, “may” alter the location, setting, and feeling of the National Historic Landscape. The EA admits that the proposed action “would result in temporary, small scale impact to the characteristic landscape of the ACEC and trail setting” EA at 68. Thus, the impacts of this project will have an adverse effect on historic properties by definition.

A no adverse effect determination can only be made “in consultation” with the State Historic Preservation Officer (SHPO) and BLM can only “propose” such a finding. Id. § 800.5(b). BLM is not treating the “no adverse effect” determination as a proposal and the consultation with the SHPO has not been completed. Apparently consultation with SHPO is in an undefined state; it is “ongoing.” EA at 36. Until consultation is complete, the Dickie Spring Project cannot be approved. BLM must fully complete consultation for this segment of the undertaking before the Dickie Spring Project can be approved.

Please refer to the response to similar comments in letter 21.

Also, BLM must fully involve other consulting parties, such as the Northern Arapahoe and the Eastern Shoshone Tribes, and the general public in the consultation process, and that cannot be meaningfully accomplished as long as consultation with SHPO is in some undefined state of completion.

The Eastern Shoshone and Northern Arapahoe tribes have not been consulted in this project. This area consists of their ancient hunting grounds and thus have the right to be involved in all decisions to this landscape. All parties that are affected by this project should be at the table for negotiations and the Native Americans have evidence of using this area for over 12,000 years. During the JMH FEIS the tribes from the Wind River Indian Reservation asked the Rock Springs BLM to engage them in any plans for these lands. This has not been done for this EA.

Native American Tribes have been consulted including the Eastern Shoshone, Northern Ute and Northern Arapaho elders who visited the project area and provided comments to BLM regarding their concerns. Please refer to Section 3.4.4 and pages 84-85 of the EA.

Finally, this area is a National Historic Landmark, which requires special attention and protection. Specifically, it is the South Pass National Historic Landmark (NHL). BLM is required to not only plan for minimizing harm to the South Pass NHL; it must take actions to minimize harm to the area. Boundaries for the South Pass NHL have apparently never been established; nevertheless BLM has established the South Pass Historic Landscape (SPHL) Area of Critical Environmental Concern (ACEC), and “This landscape serves as the administrative boundary used by the [Rock Springs Field Office] when assessing effects to the NHL for the purposes of compliance with Section 106 of the [National Historic Preservation Act].” EA at 34. BLM recognizes that the proposed action would result in impacts to the characteristics of the SPHL ACEC and that visitors using the SPHL ACEC may notice operations, EA at 68, yet it fails to minimize these impacts, such as by requiring that fewer pits be dug and/or that pits only be dug by hand.

Thank you for your comments. Please refer to responses to similar comments in letters 21 and 26.

Therefore: An Environmental Impact Statement Must Be Prepared

Specific reasons for preparing an environmental impact statement are that the area, that could be affected, has unique characteristics such as historic or cultural resources, the project is likely to be highly controversial, there is a potential for the action to establish a precedent for future actions or

establish a decision in principle regarding future actions, and the degree to which the project may adversely affect historic properties that qualify for or are eligible for the National Register of Historic Places. The Dickie Spring project is located within a landscape of national and international historic significance. Unlike many cases where a site-specific project may only have significance in a local context, the Dickie Spring project presents a case where significance needs to be viewed in the context of "the world as a whole" or certainly in a national context. At Dickie Springs there is clear potential for long-term effects since initial exploration may lead to future development. This must be in the BLM's plan. They cannot ignore the probability of a full-scale gold mine in the area in the near future.

Given the plethora of intensity and factors present and the failure of the EA to make a valid impact analysis, an environmental impact statement must be prepared for this project.

Thank you for your cooperation in this matter. I know you will do the correct thing and prepare a complete EIS for this project.

(Some of these FRD comments have been adapted, with permission, from a document written by Attorney; Bruce Pendery, with the Wyoming Outdoor Council, for their protest to the Dickie Springs Placer Gold Exploration Project EA.)

Since the letter states they adopted comments from Wyoming Outdoor Council, please refer to the responses to comment letter 21.

32. Tom Bell

I wish to comment on the Dickie Springs Placer Gold Exploration Project.

First of all, the EA, even though it is only supposed to cover an exploration project, falls far short of being adequate. The implication of the whole matter is that there is enough gold to warrant a mine. Otherwise why go to the expense of exploring. Therefore, an EIS to fully reveal the kind and extent of a mine and the resulting destruction of the land surface and the implications of activity resulting in unacceptable disturbance to elk and sage grouse and their habitat is now called for. An EIS should fully develop the resulting consequences of a mine on the known populations of both elk and sage grouse in the area. I respectfully call for an Environmental Impact Statement.

Thank you for your comments. Please refer to the responses to a similar comments in letter 13 and 23.

The historical significance of this area is unquestioned. Rock solid protection of the whole South Pass complex should have been put in place long ago. I think it is incumbent on the Federal government to take a leadership role in developing and working for that protection. Certainly, the citizenry also has a role and a responsibility but the government is the land managing agency. A gold mine will do absolutely nothing to enhance the viewscape and the historical significance.

The BLM recognized the historical significance of the South Pass area when the Green River Resource Management Plan created the South Pass Historic Landscape ACEC, which recognized the value of the historic trails and surrounding viewscape. The ACEC is managed for multiple use including locatable minerals. Performance standards are made part of the Plan of Operations to ensure this important value is protected. Please refer to section 3.4 of the EA for discussion on the objectives outlined within the GRRMP on the establishment of the ACEC and Appendix A of the Decision Record which addresses performance standards.

The Bureau is initiating efforts in fiscal year 2006 to study the establishment of possible formal boundaries for the South Pass National Historic Landmark. This effort will be done in cooperation and consultation with the NPS National Historic Landmarks Program, NPS Long Distance Trails Office, private land owners in the area and others.

The Secretary of the Interior and her Department may have declared the sage grouse is not eligible for listing as an endangered species but now we know the truth. The true science to make that determination was skewed and subverted to fit the politics. The science shows grouse populations are dangerously low and declining. Yet, there are no apparent efforts to protect the grouse where they appear to be healthy. The Dickie Springs area is a good case in point. In addition, just a few miles away there is the Pacific Creek energy exploration project. If approved, it will be carried on in the heart of what little remains of prime sage grouse habitat in the whole Green River Basin. The consequences will be very bad for what appears to be a healthy but already declining grouse population. There is no way to mitigate the effects of such development. The grouse slips further and further toward extinction.

The Dickie Springs area also appears to be an important elk calving area. I read in the papers that the U.S. Fish and Wildlife Service wants to reduce elk populations in northwest Wyoming. At the same time, the gradual attrition of important elk areas by energy developments and now a gold project here have a devastatingly cumulative effect on elk populations.

All of these concurring developments need to be researched and the public informed of the consequences. An EIS of the gold project is imperative.

Thank you for your comment. The BLM shares your concern for the greater sage-grouse and elk. However, the BLM has determined that the applicant committed measures (performance standards as proposed) are sufficient to prevent any long-term adverse impacts. It should be recognized that under the mining regulations, only listed species (threatened or endangered) require protective measures. In this case; however, the company agreed to conservation measures beyond those required under the Endangered Species Act.

33. Bill Spillman

This is meant to express opposition to the planned exploration of the South Pass- Dickie Springs area for gold resources. The first point is that this place is one in which my ancestors came across on their way to Oregon and is of immeasurable worth and concern to me that it not become another sacrificed area in BLM's unprecedented give away on going in the Red Desert. Testing could be done with much less than 200 pits, but even then, until United States mining laws are rewritten and royalties paid on production become much more in line with fair recompense to the citizens of the USA, there should be no attempt to either explore or develop this area. Besides the inherent value of the scenery, wildlife habitat, cultural values to indigenous tribes, and protection of the immigrant trails can be addressed and completely protected according to the desires of the citizens of both Wyoming and the USA there should be no exploration and no development.

Thank you for your comments. Please refer to responses to similar comments in letters 5, 9, 15, 21, and 26.

I know personally that there are sage grouse leks and wildlife habitat that will be impacted detrimentally, despite the opinions of the BLM biologists who get paychecks based on their accommodation to development interests. Please consider this a formal protest to the proposed allowance of exploration for placer gold in the above area, as there are many issues and mitigations

that need addressed before the BLM ramrods this through. There has not been nearly enough time allowed for public comment on the proposal.

Please refer to the responses to similar comments in letters 13, 21, and 23. BLM used the most current data available to prepare the environmental analysis.

Appeal procedures are identified in the Decision Record.

34. Rob Hellyer, Hellyer Limited Partnership

We appreciate the opportunity to comment publicly on the Dickie Springs gold exploration.

As you know we are the private landowners affected by this action. Approximately 35% of the exploration will take place on fee land. Perhaps 90-100% of the associated traffic will cross fee land and 100% of the livestock forage is based on our private land, State leases and Federal grazing permit. This permit binds all the private, State and Federal land in the Continental Peak Allotment into a cohesive and successful operation. Hence, an action that affects a portion of the ranch effects the entire ranch.

Our ranch is a creature of the multiple use concept which we embrace not only in grazing but hunter access programs, as well as recreational, educational, and historical programs. Our interaction with energy companies in the allotment has been limited but positive.

When we first learned of the Fremont Gold proposal, unfortunately secondhand, we told the officers we would not support or oppose their endeavor. We further said that the associated publicity and controversy would have a negative and costly affect on our operation. This has already proved to be true.

As you are aware, when the surface estate of the lands you now own were patented under the Stock Raising Homestead Act, the Federal government reserved the minerals and ingress/egress to those minerals to the government. These lands are open for mineral entry. The operator must comply with the regulations at 43 CFR 3814.1(b) and (c) and must also comply with all other state and Federal laws.

That said – we are unable to comment favorably at this time because of serious discrepancies between the EA, statements by Fremont Gold, and field trips to the area. The EA uses small numbers such as 4 x 4 and averages of 8 feet deep. Prior to the most recent field trip the small number was the standard. At the informational meeting held last Saturday at the RS Field Office the pits were described by the Company as maybe 4 x 10 and upon further discussion at the rest area the pits were described as possibly 10 x 20 and we've been told they [pits] may blend together to form trenches and furthermore could potentially go to bedrock even if it was 30 feet down. The underestimations of disturbance in the EA are cause for concern.

The operator must comply with the Plan of Operation as approved by the BLM. The program described by the Plan of Operation dated June 28, 2004 and the EA is an exploration plan for alluvial deposited gold mineralization. There are some unknowns associated with this type of exploration activity. These include the exact depth of the gravel (alluvial) material, the exact location of the mineralization, and the consistency of the mineralization. An approval to explore entitles the claimant to conduct exploration for the mineral using sound techniques as described in the Plan of Operation which includes comprehensive reclamation following exploration.

The activities described in the Plan of Operation and the EA are consistent. The plan states on page 3-1 that “[t]he proposed gold placer sampling will consist of up to 200 backhoe dug pits or trenches.... Each pit will be approximately four feet square at minimum. The depth of the alluvial material will determine depth of each pit. Average depth is estimated to be about 8 feet. Thicker alluvial material will require a larger surface disturbance to be made, but no trench longer than 20 feet is anticipated.”

The typical pit shown in Figure 2.3 of the environmental assessment depicts a pit that is 18’ wide. It is labeled as a “typical” back-sloped pit to explain that this is not any particular pit but rather, it represents back-sloping in an 8’ deep pit. Pit length is not provided on Figure 2.3.

It is anticipated, as stated in the plan and EA, that pits will not exceed 20’ either in length or width. This is not an absolute and is not stated as such. Many pits will be smaller than the typical shown in Figure 2.3. Thicker deposits of gravels will require deeper pits to assess the mineral resource. The terminology of pits versus trench was used in the EA to simply convey that some excavations will be elongated—warranting the term “trench” rather than “pit”.

We are further concerned that the EA does not adequately address the relationship between the water sources, our ranch, and the country as a whole. Our operation lives on dependable water. Actions that may temporarily affect shallow water ground flows beneath our reservoir are a cause for concern.

Thank you for your comment. Please refer to the responses to a similar comment in letter 27 (see section titled "Impacts to Streams").

We are also concerned that the reclamation will be hurried by factors beyond everyone's control. We suggest that after September 15 each individual pit be fully reclaimed (not just pushed in) as sampling is completed. The project will encounter snow, cold, rain, or all three. It would be unfortunate if these pits were unintentionally open and/or unseeded for the winter months. From our experience, it will get wet in September and by the third week in October all dependable daily driving becomes unpredictable.

The Plan of Operation calls for reclamation to occur as soon as sampling and the shoring is removed from an individual pit. The material would be placed back in the hole with the backhoe and compacted with the backhoe as it is filled with the material then the topsoil will be spread evenly and with the aid of the backhoe and hand shovels and finished with a garden rake. After the topsoil, including salvaged vegetation, is redistributed, the approved seed mix will be broadcast over the disturbance. BLM believes that this will accomplish the reclamation goals. Each site will again be visited in the spring and fall of 2006, and again in the spring of 2007 to evaluate revegetation efforts. The site will continue to be inspected until the area is at a condition comparable to predisturbance conditions and meets the reclamation bond release standards.

35. Earline Hittle

Please consider these my formal comments on the EA. It seems to me that to allow Fremont Gold to dig test pits looking for traces of gold is very poor use of an important historic site that is located on public land.

The area is essentially pristine and as such it is worth much more to the public than it will be if many test pits are dug. Even if gold is found does the world gold market really need more gold to sell at low prices by Kmart and Walmart?

*Even if the test pits are reclaimed it will be impossible to remove the traces of them because the land in this high country" desert would not heal for many years, if ever.
It is much more important to preserve the integrity of the area for its historic and cultural value and to continue to inventory the site for additional discoveries of significance.*

Thank you for your comment. Please refer to responses to similar comments in letters 5, 13, 21, 26, and 27.

36. Andrew Blair

It was a pleasure to meet with all of you up at Dickie Springs the other day. I found the trip and tour to be very educational in a variety of ways. I look forward to working with you all for years to come. I am writing these comments to you as a private citizen not as a representative of the Wyoming Outdoor Council.

I have to come down on the side of not endorsing Fremont Gold's operations at Dickie Springs. I came to this conclusion for a variety of reasons. These include protection of crucial wildlife habitat, protection of historic landscapes, and the concerns of the local surface-owner. I understand that the aim of the project is to provide for these concerns but in my discussions with others they call into question Fremont Gold's ability to follow through with these promises. For instance, the surface owner said that the first time he had heard about the 10'x20' pit size option was at the briefing on South Pass. This seems to have caused him to think that the size of the proposed impacts will be significantly larger than projected. Others on the tour questioned Fremont Gold's motives and the lack of any significant gold in the area. This has lead me to think that this effort on the part of Fremont Gold will not be fruitful for them or the surface owner.

I hope these comments are helpful. I wish I had more particulars that I could offer up to you. Thanks again for the enjoyable tour.

Thank you for your comment.

37. Larry Krause

I apologize for the informality of this letter but I see comments must be post marked by today.

I have lived in Riverton most of my 53 years and have spent considerable time hunting, fishing, riding, etc. in the South Pass area. This area is unique in its history, wildlife, and especially the unchanged landscape and solitude this area provides. Also, the short growing season would make it very difficult to reclaim.

For these reasons I would oppose any commercial mining operations, including the exploratory pits in this area.

Thank you for your comment.

38. Bruce Davis, Fremont Gold US LLC

Fremont Gold US LLC (Fremont) appreciates the opportunity to comment on the Environmental Assessment (EA) for Fremont's Dickie Springs Placer Gold Exploration Project dated June 24, 2005.

Fremont would like to commend the BLM for the thorough and comprehensive document they prepared. The document clearly identifies Fremont's exploratory goals and objectives as well as the affected environment and possible impacts. Fremont submits the following comments:

Section 1.3.4 Full Scale Development

On page 10 of the EA, the BLM states correctly that the action being reviewed and analyzed under the EA is an action to explore for the presence of economically mineable gold mineralization. Any actions beyond exploration will be a separate action and will be evaluated on the merits of that proposal. At this point in the BLM process the only item for review is Fremont's request for an exploration permit. It is premature and speculative to propose an analysis beyond the exploration permit. The flow chart located on page 11 of the EA illustrates the point clearly.

Section 2.1.3 Sampling and Reclamation of Exploration Activity

Page 20 of the EA discusses successful reclamation being dependent on salvaging adequate volumes of topsoil. It further refers to salvaging a minimum of 24" where deeper soils are encountered. Fremont endorses the salvaging of the topsoil resource where encountered during exploration. However, it should be noted that if the mineral resource is located within the top 24", this material will be managed in a manner to allow for adequate sampling of the resource.

Thank you for your comments.

Section 3.4.3 South Pass National Historic Landmark

Fremont has a concern that by administrative action the boundary lines of the South Pass Historic Landscape Area of Critical Environmental Concern (ACEC) are being made to coincide with an undefined boundary of the South Pass National Historic Landmark (NHL). Only the Secretary of the Interior can by administrative action define the boundary of the NHL.

The BLM and the Wyoming State Historic Preservation Officer have agreed, through a consensus determination that the South Pass Historic Landscape ACEC is the administrative boundary for the South Pass National Historic Landmark for Section 106 consultation purposes. This process has been in effect since the 1980s for Section 106 compliance. Using this administrative boundary does not preclude a formal boundary being approved by the National Park Service.

The history of the NHL is complicated. In a release dated January 20, 1961 from the National Park Service, Secretary of the Interior Seaton recommended the site "...as being eligible for Registered National Historic Landmark status..." This release came about from an initial memorandum to the Secretary of the Interior dated September 22, 1960 from the Chairman of the Advisory Board on National Parks, Historic Sites, Buildings, and Monuments who concurred with the recommendation given by the National Park Service in a document entitled – Statement on "Overland Migrations West of the Mississippi River," a sub-theme of "Westward Expansion and Extension of the National Boundaries to the Pacific 1830-1898." This statement recommended several sites which included South Pass, Wyoming ". . . for classification of exceptional value in illustrating and commemorating the history of the United States." The Secretary of the Interior has only stated the

site as being "eligible" for National Historic Landmark status. Fremont has not been able to locate the official certificate signed by the Secretary of the Interior which established South Pass as a NHL. Fremont is submitting a Freedom of Information Act (FOIA) request to obtain this certificate.

Records show that although no formal boundary exists for the South Pass National Historic Landmark, it was designated and is documented in the National Register of Historic Places. However, the South Pass ACEC is managed for those values that could be considered as part of a NHL. Thus, should an official boundary be designated, it could match that of the ACEC. BLM's management focus as described in the Green River Resource Management Plan (RMP), is on the resource values and not on potential designation. Also, on April 12, 1965, the Wyoming State Director requested a plaque and certificate recognizing South Pass as a registered NHL. This was received on July 9, 1965. A second plaque was issued for South Pass in 1973. Thus, there is some recognition that the Landmark is within the ACEC. Please refer to Section 3.4.3 for further discussion.

On page 35 of the EA the boundary lines for the affected environment for the South Pass NHL is assumed to be the same as the boundary lines for the affected environment for the South Pass ACEC. The NPS website states that there is no boundary for the South Pass NHL, therefore, the boundary associated with the discussion on affected environment for South Pass NHL can not be the same as that discussed in the South Pass ACEC section. They are not one in the same.

This wrong designation leads the reader to assume that the South Pass NHL boundary has been established formally as being the same as the South Pass ACEC boundary which is not the case. This relationship was administratively established by the BLM as part of the Green River Resource Management Plan and has not been formally confirmed. The original report from the National Park Service, "Overland Migrations West of the Mississippi River" which was reviewed by the Secretary of the Interior in recommending the site be eligible for NHL status, described South Pass, Wyoming as:

This was the long looked for crossing of the Continental Divide on the Oregon and California Trail, and as such was one of the great landmarks on the Trail. It also is the easiest passage of the Rocky Mountains, and was famous in the days of transcontinental animal-drawn transportation.

This describes the area where the Continental Divide crosses the Emigrant Trail, not the 57,954 acres which encompasses the South Pass ACEC. This boundary greatly exceeds what was originally proposed as the South Pass site.

The EA states on page 35, "The project area is mostly located within the SPHL ACEC, which is the BLM's administrative boundary for the NHL within the RFSO." Fremont does not believe that the BLM has the authority to "administratively" designate a boundary for the South Pass NHL and cannot affirmatively state that the proposed project is within the South Pass NHL boundary. The steps necessary in order to designate a boundary are stated in 36 CFR Part 65.8 (d).

Through the consensus process the Wyoming State Protocol (Section VII B-C) and the regulations for the National Historic Preservation Act (36 CFR Part 800.4(c)(2)), the SHPO and the BLM routinely consult upon the boundaries and composition of cultural resources as part of its eligibility determination. The use of the SPHL ACEC as the administrative equivalent for the South Pass NHL has been previously agreed-upon through that process and has standing for completion of the Section 106 process. The comments from the SHPO on the use of the previous determination of the boundary were not objected to in the consultation completed for this undertaking, hence reaffirming their concurrence with this determination.

(1) When a boundary is proposed for a National Historic Landmark for which no specific boundary was identified at the time of designation, NPS shall provide notice, in writing, of the proposed boundary to:

- the owner(s);*
- the appropriate State official;*
- the chief elected local official;*
- the Members of Congress who represent the district and State in which the landmark is located, and*

(2) The proposed boundary and any comments received thereon shall be submitted to the Associated Director for National Register Programs, NPS, who may approve the boundary without reference to the Advisory Board or the Secretary.

(3) NPS will provide written notice of the approved boundary to the same parties specified in paragraph (d)(1) of this section and by publication in the Federal Register.

This is the process for creating a formal boundary for an NHL. Until such a time as this process is completed, BLM's cultural staff follows the consensus process in the Wyoming State Protocol and the regulations for the National Historic Preservation Act (36 CFR Part 800 .4(c) (2) and Wyoming State Protocol Section VII B-C). This has allowed BLM to comply with the Section 106 consultation process.

Two prior attempts have been made to define a boundary for the South Pass NHL. On October 31, 1968 the BLM filed an application, Serial No Wyoming 15857 to withdraw 3,326.34 acres which was published in the Federal Register on November 7, 1968. The notice in the Federal Register stated, "The applicant desires the land to preserve those segments of the Oregon Trail which have historical value." On October 10, 1970 the Secretary of the Interior approved the BLM's withdrawal and published in the Federal Register notice, Public Land Order (PLO) 4915. The PLO, entitled Withdrawal for Protection of Nation Historic Site, officially withdrew "...from all forms or appropriate under the public land laws, including the mining laws... for protection of segments of the historic Oregon Trail" the aggregate 3,326.64 acres. A parcel of 480 acres, within the 3,362.64 acres, is located within the jurisdiction of the BLM Rock Spring Field Office and was reviewed by the BLM in a memorandum to the District Manager in Rawlins from the Acting Chief, Branch of Lands and Minerals Operations. The memo states "The subject lands were withdrawn for protection of segments of the historic trail and associated landmarks." In a separate memo to the District Manager in Rawlins regarding Wyoming 15857 from the District Manager in Rock Springs he states, "I have reviewed the subject withdrawal of 480 acres which serves to protect the South Pass landmark of the Oregon Trail. Enclosed is a description of this physical landmark extracted from the National Park Service Comprehensive Management and Use Plan, Oregon National Historic Trail, August 1981." The attached map draws a boundary entitled "Withdrawal Boundary" of 480 acres where the Continental Divide crosses the Emigrant Trail, T27N R101W 6th Meridian. After the BLM review in 1982 the District Manager recommended the continued withdrawal of the 480 acres under BLM jurisdiction.

Section 3.4.1 of the EA describes PLO 4915 and explains that the withdrawal was to protect a historical site on the summit of South Pass. The withdrawal described was not intended to create an NHL and clearly did not go through any of the scrutiny required by the formal nomination process noted in this same letter.

While being recommended by the Secretary of the Interior as a National Historic Landmark, South Pass did not become officially an NHL until 1965 when the Agency requested a plaque and certificate. As a registered NHL, South Pass has been on the National Register of Historic Places since 1965. We refer you to the EA Section 3.4.3.

On January 13, 1985 the National Park Service attempted to "...establish boundaries for all National Historic Landmarks for which no specific boundary was identified at the time of designation..." NPS notified land owners (letter to Blair and Hay Land and Livestock Co. attached) and provided "...them with an opportunity to make comments on the proposed boundary." NPS nominated 5,760 acres however they received stiff opposition to the nomination from local land owners. As a result of the opposition the proposed boundary was never designated.

This boundary proposal was never formalized and is only one of several boundaries that have been proposed for the South Pass National Historic Landmark. All of the previous boundary proposals were not completed and did not go through any of the scrutiny required by the formal nomination process noted in this same letter. Most proposals are decades old and have been dropped from consideration.

If the BLM considers it necessary to establish a boundary for protecting the important features of the South Pass NHL, it seems reasonable and defensible to use the boundary associated with the 480 acre parcel as approved by the Secretary of the Interior on October 10, 1970 and then further reviewed and approved by the BLM in 1982. It also represents a boundary that is less contentious because it has been approved by the Secretary of Interior, and includes the critical aspect of South Pass—where trails across the prairie came together at the most passable point of the Continental Divide. The ACEC has its own set of protective measures as defined in the Green River Resource Management Plan. Fremont understands that while two attempts have been made at establishing the South Pass NHL boundary the only official withdrawal to protect the South Pass landmark of the Emigrant Trail in effect and officially approved by the BLM is the 480 acre parcel. As such, this should be the "administrative" boundary until such time the NPS recommends and the Secretary of the Interior endorses a new boundary for the South Pass NHL.

Until such a time as there is a formal boundary it will be necessary to comply with Section 106 using the consensus determination process.

The 1986 document refers to one of several proposed boundaries for the South Pass National Historic Landmark. This proposal was dropped by the National Park Service from further consideration in the 1980s. The BLM is initiating efforts concerning establishment of formal boundaries for the South Pass National Historic Landmark. This effort will be done in cooperation and consultation with the NPS National Historic Landmarks Program, NPS Long Distance Trails Office, private land owners in the area and others. The National Park Service National Historic Landmarks Program and the Bureau of Land Management are planning to initiate a study in 2006 to recommend formalized boundaries for the NHL.

Please refer to the end of this Appendix to review the attachment.

Attachments to Letter 27

Notes
of the
Reddy Mtns

Some writers, notably unacquainted as to the physical characterisation of the terrain of the great Lewis Pass. Some disputed the fact that Robert Stuart and his six companions, commonly referred to as the "Astorians" were not the first white men to behold and traverse the famous gateway and the continental divide.

Stuart even though unacquainted with the route traveled by his little party did record and leave a very detailed and descriptive travel journal. So complete that it is an easy matter to take it in hand and follow the historic track in almost the very first steps they made throughout their journey. This writer has did just that, not only once but on numerous occasions, checking and rechecking. Stuart and his party definitely traversed the historic Lewis Pass. Not in the same line as did the covered wagon emigrants and others.

From every indication, taken from best stated facts and extremely careful research his ever night camp of Oct. 21, 1812 was located approximately one mile north by east of the famous Pacific Spring that issue forth into a small slough like has some two miles west of the apex of the continental divide as marked by the United States Geological Survey at that place. Egan Meeker made his determination of the highest point in 1852 and later came back in 1896 and set up the huge shoulder-monument, which bears the following inscription:

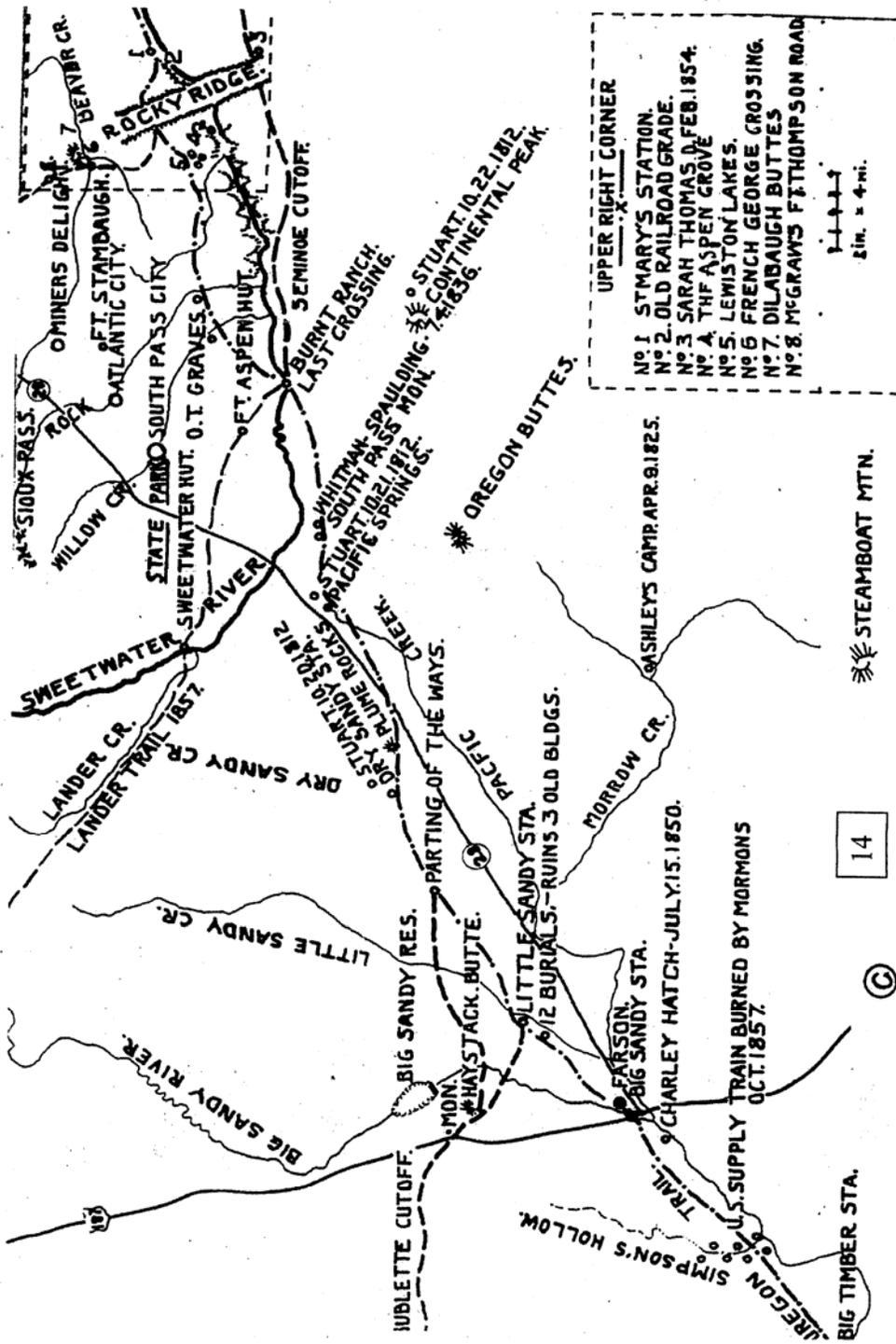
"Oregon Trail 1843"

The following morning (Oct 22, 1812) Stuart states in his travel journal, "We set out at daylight and at a distance 5 miles from camp found a small stream of water and breakfasted. As the ground lay and the terrain, offering a natural travel route actual measurement between his previous night's camp site is five miles and two tenths. To prevent day Decker Spring, the only spring of water in the immediate area. They were not equipped with a pedometer or other present day measuring devices. However, throughout the stated distances one finds him very accurate.

In the distance from camp that morning he crossed the line of the later famous Oregon, overland stage, Pony Express routes and that of the first trans continental telegraph line one mile west of the famous Meeker monument.

Attachment 1

As far as known, no other vehicle would come into
or pass through it until an unknown year later when the
geological Smith brigade of men they or may not passed
this way out of the pass travelling in a westerward direction.
In entering the South Pass from there Oct 20, over night
camp ground. In the immediate vicinity of the
later Dry Sandy stage and ferry express station they no doubt
looked to their right approximately one half mile distant
and gazed on the especially formed and colored Plume Rock
as named and named by J. W. Brewster a westerward traveller
in 1849 (see Brewster's sketches and descriptions) - next they pass
through the beautiful 'Red Rock' area to the west of State High
28 as it ascends to the top of the ridge from the North Pacific
dry drainage area.
Stuart and party missed seeing the boggy Pacific Spring

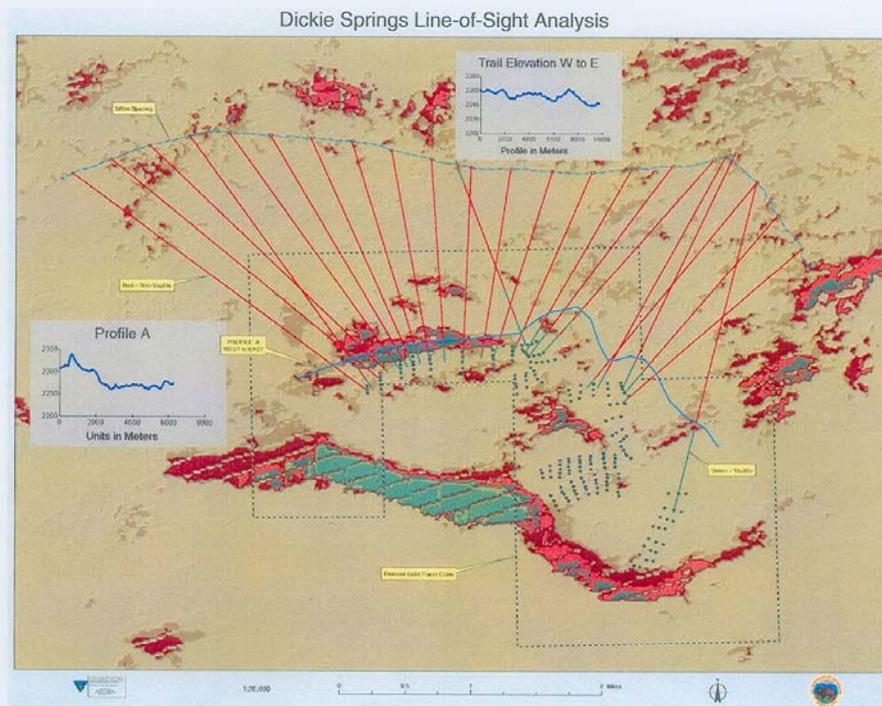


Attachment 2

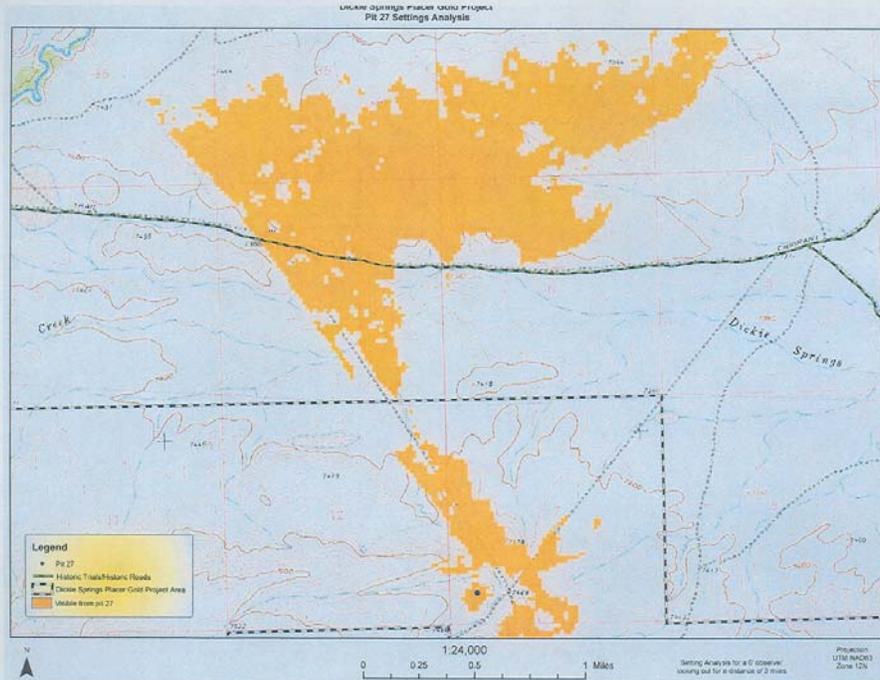
Fremont Gold EA- Did the Visual Analysis Model Work?

By Colleen Sievers and Terry Del Bene (April 19, 2005)

An issue has been raised as to whether the elements of the project will be visible from the trail. This was confirmed last summer by joint visits between the Oregon-California Trails Association and the BLM cultural resource specialist. However, despite these assurances the question persists. Recently the NEPA coordinator commissioned a settings analysis based on a small sample of points hereafter referred to as the line-of-site. This analysis, though no where near the rigorous standards we use for our settings analysis tied to consultations, has been brought forth as indicating the project is not visible.



We could take significant time showing how this model is not good science for the purposes of analyzing whether a series of points will be visible from a continuous line.. In order to test the model we decided to return to the field and look at the project in relationship to the trail. As we often do we did back-sight analysis from project elements to the trail. Since visibility is a two-way street this allows us to determine which segments of trail are modeled as visible from specific points of a proposed activity.



This is one of the Rock Springs Field Office's standard model back-sight analyses. This indicates that Pit #27 as plotted by the project proponent will be visible from roughly 0.7 miles of trail. To verify this model one needs to find the pit and see if it is visible from those areas of trail. Since this stake was still in position in the field it was possible to use this as a test example without having to reestablish the point through other means.

Methodology- On April 18, 2005 Colleen Sievers and Terry Del Bene, BLM cultural resource specialists visited the project area. Much of the project area was still sealed off by snow drifts and mud. We could access the northernmost group of wells. The sites we could get to are on private land but should suffice to demonstrate the efficacy of the model. The same model shows many sites within public land as being similarly visible. Several stakes were still standing. We used these to assess if the project was visible. Our methodology was to place one person with binoculars, camera, radio, and G.P.S. unit at each stake. Another person with binoculars, camera, radio, and G.P.S. was on the trail. Each investigator would use the radio to inform the other what was visible from their perspective. This way the discussion of visibility was interactive as one or the other investigator moved to a new location.



Photo Point #1 on the Trail

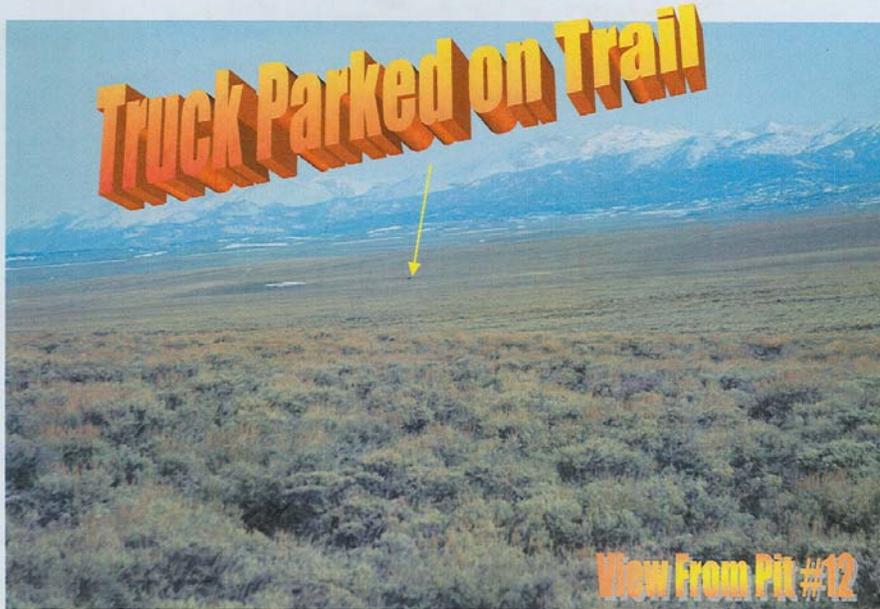


Pit #12 Stake

We chose two trail markers which were visible from the project to be our photo-points for shooting images back from the trail. After the first hour the day turned mostly cloudy and not the best for photography and the images looking from the trail tend to be in shadow.

The individual on the trail could drive the trail while in radio contact to determine when the vehicle was in sight. This helped us assess the accuracy of the amount of trail visible.

Observations-



We confirmed that pits #12, 13, 27, and 28 as well as one other without a label were visible from the trail. We also found an unlabeled stake which was not visible as predicted by the original settings analysis. Pit #27 was visible for roughly 0.8 miles of trail, as predicted in the original settings analysis. The original setting model was fairly accurate for both predicting that pits would be visible from the trail and the location of the segments visible. The standard settings model omitted roughly 0.1 miles of trail or roughly 12.5% of the actual visible trail. The settings performed for the Line-of-Sight model missed all visual connections. Accordingly we must reject the Line-of-Sight model which shows that none of the project is visible.



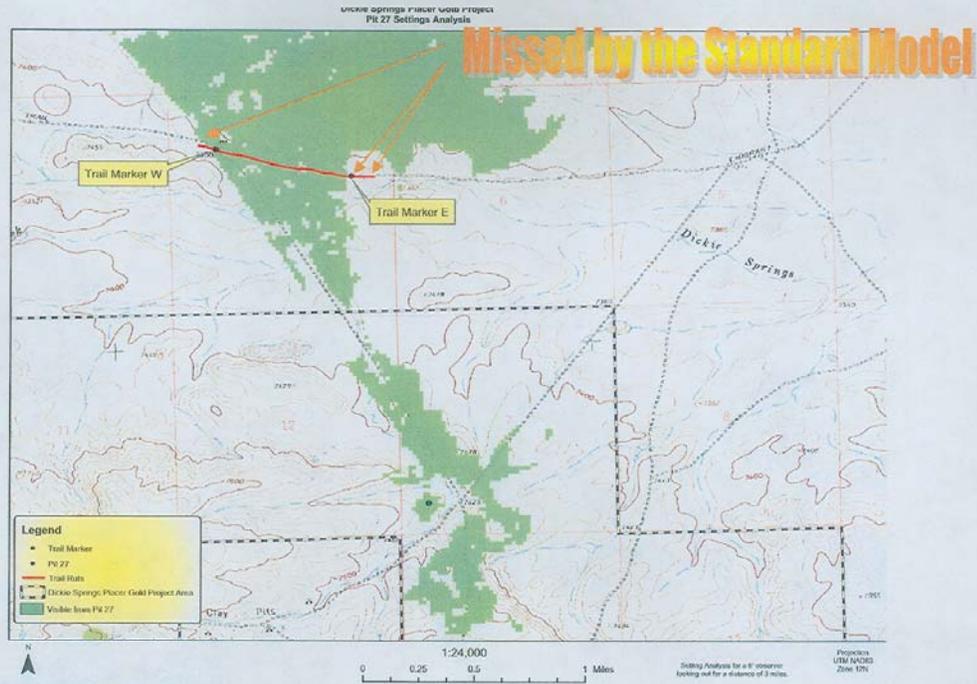
View From Pit #27- Arrow Points to Truck Parked Behind Westernmost Trail Marker



View From Pit #27- Arrow Points to Truck Behind Easternmost Trail Marker (Note: line of the trail ruts is visible.) Distance to trail marker is roughly 1.7 miles while the distance to the nearest trail is roughly 1.4 miles



Blow-up image of truck at the westernmost trail marker from Pit #27. The white stripe in the door of the truck is the trail marker. Note the ruts behind the truck.



Pit #27 Standard Settings Analysis Compared with Visual Study Results.



View toward project from easternmost trail marker.

Modeling Visibility- We placed two blue tarps (each 20 feet by 40 feet) at the Pit #27 location with the pit stake in the center. This particular pit is about average visibility for the sample examined and was neither the most visible nor the least visible. It is the sample setting analysis presented above. The tarps cover an area of 1,600 square feet which is between the two estimates for what a 3-to-1 sloped pit to a depth of eight feet deep. The draft EA estimates the pits will actually average roughly 400 square feet with the amount of collateral damage due to the excavation equipment and spoil piles being unknown. Until these issues are resolve the visibility model is considered extremely preliminary. When more accurate figures are available the experiment will be repeated with appropriate sized tarps.



The tarps were clearly visible from the trail to both investigators with the **unaided** eye at a distance of roughly 1.7 miles.





Findings- This field check was confirmed that the standard settings analysis was correct when it indicated a sample of the pits examined will be visible from the trail. A series of pits of the size modeled would have some visual impacts to the setting of the trail. The smaller the overall footprint of the project the less likely it will be visible to the casual observer. The model uses a blue tarp which would be more visible than the natural colors of the replaced top soil. This will need to be considered in the visual modeling regarding effects of the project.

The standard trail setting analysis continues to be an accurate tool. The area is smooth and rolling terrain and does not present topographic features or clusters of tall vegetation which would reduce the overall efficacy of the digital elevation model employed. The small degree of error in the standard model is a reason why we check the projects in the field, as originally was done with the Oregon-California Trails Association last summer.

The area we examined has few visual intrusions in the setting. There is a stock fence which tends to blend in with the setting and is not a major detriment to appreciation of the National Historic Trail System. There are other areas modeled as visual which have no such fences which are within the South Pass National Historical Landmark. We are confident that the digital elevation model used for the settings analysis will be as accurate in those areas as it was for this test of the model.

Attachment to Letter 38



IN REPLY REFER TO:
H32 (413)

United States Department of the Interior

NATIONAL PARK SERVICE
P.O. BOX 37127
WASHINGTON, D.C. 20013-7127

JAN 13 1982

Blair and Hay Land & Livestock Company
P.O. Box 247
Rock Springs, Wyoming 82901

RE: South Pass
Fremont County, Wyoming

Dear Sirs,

The National Park Service has been working to establish boundaries for all National Historic Landmarks for which no specific boundary was identified at the time of designation and, therefore, are without a clear delineation of the amount of property involved. The benefits now afforded such properties by the National Historic Preservation Act of 1966, as well as the possible application of other statutes, make it essential that we define specific boundaries for each landmark.

In accordance with the National Historic Landmark Program regulations, the National Park Service notifies owners, public officials, and other interested parties and provides them with an opportunity to make comments on the proposed boundaries. We are requesting your comments on the proposed boundary for the landmark stated above and described in the enclosed form.

National Historic Landmark designation has several possible implications, most of which derive from the automatic listing of landmarks in the National Register of Historic Places. Landmarks are eligible to be considered for Federal grants-in-aid for historic preservation. All landmarks receive limited protection through comments by the Advisory Council on Historic Preservation on the effect of federally funded, assisted, or licensed undertakings on historic properties.

A landmark property which is depreciable may be subject to certain provisions of the Tax Reform Act of 1976, as amended by the Revenue Act of 1978 and the Tax Treatment Extension Act of 1980, and the Economic Recovery Act of 1981. These acts contain provisions intended to encourage the preservation of depreciable historic structures by allowing favorable tax treatments for rehabilitation. Beginning January 1, 1982, the Economic Recovery Tax Act replaced the rehabilitation tax incentives available under the prior law with a 25 percent investment tax credit for rehabilitations of certain historic commercial, industrial, and residential rental buildings. This can be combined with a 15-year cost recovery period for the adjusted basis of the historic building. Historic buildings with certified rehabilitations receive additional tax savings because owners are allowed to reduce the basis of the building by one half the amount of the credit. The Tax Extension Act of 1980 includes provisions regarding charitable

contributions for conservation purposes of partial interests in historically important land areas or structures. Section 9 of the Mining in National Parks Act of 1976 allows the Secretary of the Interior to request comments from the Advisory Council on Historic Preservation on any surface mining activity that might irreparably damage a National Historic Landmark. If a landmark contains coal resources, certain provisions of the Surface Mining and Control Act of 1977 make it less likely that surface mining of the coal will be permitted by the State or Federal government.

We will be happy to receive any comments you care to make on the proposed boundaries within 60 days of the date of this letter. Please address your reply to: Jerry L. Rogers, Associate Director, Cultural Resources, and Keeper of the National Register of Historic Places, National Park Service, P.O. Box 37127, Washington, DC 20013-7127; Attention: Chief of Registration.

Because National Historic Landmarks possess significance for all Americans, they are among the most important of the tangible reminders of our country's rich heritage. Designation honors both the landmarks themselves and the individuals and organizations who have worked to preserve them.

We are pleased to inform you of the status of the pending National Historic Landmark boundary delineation and look forward to your reply. If you have any questions, our staff will be happy to assist you (202-343-9549).

We appreciate your interest in the National Historic Landmark Program and your cooperation in this project.

Sincerely,



Carol D. Shull
Chief of Registration
National Register of Historic Places
Interagency Resources Division

Enclosure

Fourteen (14) pages of an attachment to Letter 38 which was submitted by Fremont Gold was withheld because it contained confidential information not subject to public disclosure pursuant to the National Historic Preservation Act, Archaeological Resource Protection Act, Freedom of Information Act, and the United States Code.

This page left blank intentionally.

|

**APPENDIX C
ERRATA**

| **This page left blank intentionally.**

Page 33, Section 3.4.3, add the following at the end of the first partial paragraph:

The following photographs (circa 1967) are of the monument that was placed at South Pass, Wyoming recognizing it as a Registered National Historic Landmark. The monument states, "South Pass has been designated a Registered National Historic Landmark under the provision of the Historic Sites Act of August 21, 1935. This site possesses exceptional value in commemorating and illustrating the history of the United States. U.S. Department of the Interior National Park Service 1965".



Figure 3.1.a Close-up view of the plaque designating South Pass a Registered National Historic Landmark.

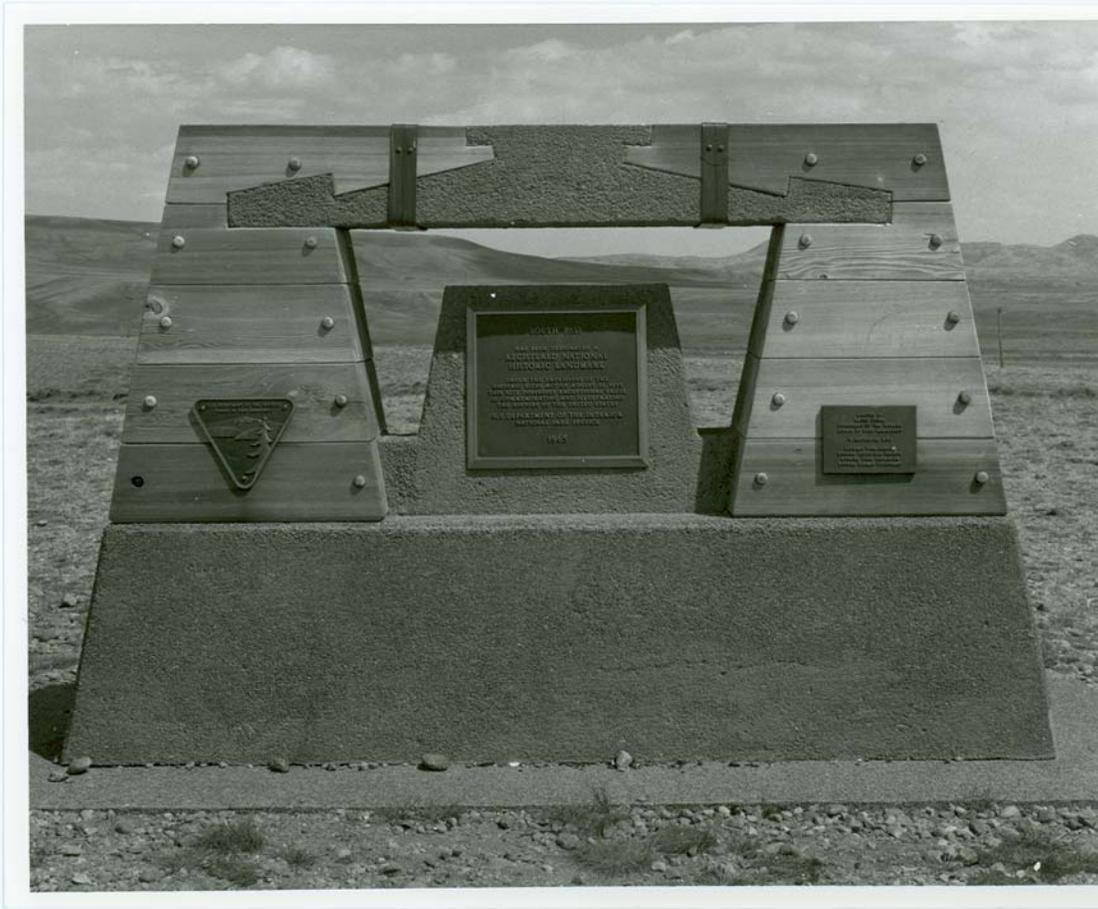


Figure 3.1.b Photograph of the monument placed at South Pass.

Page 35, paragraph 3, sentence 5: The sentence should read “These include that the agency official shall ‘to the maximum extent possible undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark which may be directly and adversely affected by an undertaking.’”

Page 83, 5.1 List of Preparers

Add the following individuals: BLM-WSO, Janet Kurman, Environmental Protection Specialist; BLM – WSO, Dale Wadleigh, Mining Engineer; BLM-WSO, Phil Perlewitz, Supervisory Mining Engineer