

**APPENDIX J**

**COMMENT LETTERS**

## COMMENTS AND RESPONSES

The DEIS was sent to 48 individuals, organizations or agencies and the BLM and WWDO received 11 comment letters regarding the proposed project. An index to the letters received is presented in this Chapter followed by a table with responses addressing each comment by resource. The letters received are reproduced verbatim in the following pages with the comment numbers identified. Numbers have been inserted on each letter to indicate the letter number, page and individual comments in that letter. Responses to comments are provided by comment number to the right of each letter. Letters are listed in order of receipt.

### Comment Letter Index

Letter Number	Date Received	Organization or Individual
1	1/4/2008	Mr. and Mrs. Lewis
2	1/29/2008	Wyoming Game and Fish Department Cheyenne, Wyoming
3	2/19/2008	Hot Springs County Farm Bureau Federation Thermopolis, Wyoming
4	2/22/2008	U.S. Department of Interior Fish and Wildlife Services Cheyenne, Wyoming
5	2/22/2008	Wyoming Game and Fish Department Cheyenne, Wyoming
6	2/25/2008	U.S. Army Corps of Engineers Cheyenne, Wyoming
7	2/25/2008	Wyoming Game and Fish Department Cheyenne, Wyoming
8	3/3/2008	Ivy Sinn
9	3/3/2008	William Lee Hill
10	3/7/2008	U.S. Environmental Protection Agency Denver, Colorado
11	3/19/2008	Williston Basin Interstate Pipeline Company Glendive, Montana

### Response to Comments by Resource

Several comments received addressed similar concerns or issues; therefore they were sorted by resource and provided a single response (Table 1).

**Table 1. Comments Received and Responses by Resource.**

Letter #/ Comment #	Comment	Response
<b>Water Quality</b>		
4.4	Although oilfields provide produced water discharges to "water-starved" tributaries of the Bighorn River, the DEIS does not provide information on the water quality of these produced water discharges. Cottonwood Creek, a tributary of the Bighorn River and approximately 15 miles upstream of the project area, receives oilfield produced water discharges containing elevated selenium (references Western EcoSystem Technology, Inc 2002). DEIS should assess the effect of elevated selenium discharges upstream of the project area and if this selenium loading will contribute selenium to the irrigation water used in the project area	<p><b>Comments 4.4 and 4.5</b>                      Oilfield discharges have been ongoing for 80+ years. The Draft Environmental Impact Statement discussion regarding water quality at the measured/diversion point considers the upstream impact of discharge water that reaches the Bighorn River. Selenium concentrations as measured and described in the DEIS are within acceptable limits (&lt;20ppb) for irrigation purposes.</p>
4.5	DEIS does not specifically reference the concentrations of selenium (16 to 35 µg/l) mobilized through the percolation of irrigation water through the soil as reported in the U.S. Bureau of Reclamation (USBR) (US Department of the Interior 1988b).	
4.1	Recommends the implementation of a program to include monitoring of water quality in the Bighorn River immediately downstream of the project area to determine if irrigation is mobilizing selenium and causing adverse effects to sensitive species of fish	<p><b>Comments 4.1, 4.6, and 4.7</b>                      BLM will exercise no regulatory authority post-transfer. Water quality monitoring, regulation, and enforcement will continue to be performed by federal and state agencies with jurisdiction by law.</p>
4.6	DEIS acknowledges selenium in irrigation return flows could reach wetlands and lead to bioaccumulation in wildlife, but states that an assessment of this bioaccumulation risk is "beyond the scope of this study". Waterborne selenium greater than 2 µg/L could result in impacts to fish and aquatic birds inhabiting wetlands in the project area receiving the irrigation return flows or seepage from irrigated soils. Impoundments of drainages receiving irrigation return flows could increase the waterborne selenium concentrations through evaporative concentration and create a hazard for migratory aquatic birds. Food chains established in these impoundments can then serve as a route of exposure to sensitive species of aquatic birds inhabiting these impoundments. Monitoring selenium bioaccumulation in wetlands and impoundments in the project area is critical to prevent adverse impact to sensitive aquatic migratory birds.	

**Table 1. Comments Received and Responses by Resource.**

Letter #/ Comment #	Comment	Response
4.7	Monitoring of selenium bioaccumulation in Fivemile and Tenmile creeks is critical to prevent adverse impacts to sensitive species of fish using these streams	<p><b>Comments 2.4, 7.3, and 7.12</b>                      The land will be conveyed in accordance with Public Law 106-485. The DEIS states that known resource impacts will be mitigated (e.g., cultural resources). Impacts to associated aquatic environments have been estimated in the DEIS based on the anticipated development scenario to the degree possible given the uncertainty inherent in the prediction of development. Impacts will be addressed with more specificity in future water permitting processes (e.g., Section 404 permit).</p> <p><b>Comment 10.1</b>                      The DEIS presents an analysis of the investment and operating costs of sprinkler irrigation as this is the most likely development scenario. A comparison with the costs of flood irrigation would not be relevant to BLM's decision.</p>
2.4	The conveyance of these public federal lands to the Westside Irrigation District is premature until all potential environmental consequences have been thoroughly explored and mitigation alternatives have been identified. The existing fishery and aquatic resources found in the Bighorn River have already experienced severe dewatering and water quality impacts due to drought, irrigation and land management practices. Those impacts are associated with precisely the kinds of effects that seem likely to result from the eventual conversion of lands in the proposed sale to cultivation and irrigation. Any additional degradation of water quality and quantity either in magnitude or duration would cause additional undesirable, long-term negative permanent effects to public trust fishery and wildlife resources	
7.3	How sediment and other minerals such as selenium will be reduced before return flows reach the Bighorn River	
7.12	Water quality- Bighorn River is presently listed as "Waters with Water Quality Threat" for coliform bacteria; it also has documented high sediment and water clarity issues. An estimated increase of 10% water degradation is unacceptable and could place some fish and aquatic invertebrate species at risk that do not tolerate high levels of sediment for extended periods of time (irrigation season). Implantation of sprinkler irrigation system for this project was mentioned as a way to reduce water quality degradation and should be a mitigation element of this project.	
10.1	EPA Recommendation - BLM should assist WID to respond in the Final EIS re: whether or not investment by WID members in sprinkler system is likely to occur. An analysis of the capital investment and operating costs favoring either sprinkler or flood irrigation such as increased labor and land leveling associated with flood irrigation would be relevant to the individual irrigator's choice of irrigation method. BLM could also investigate a voluntary agreement, such as a restrictive covenant to use	

**Table 1. Comments Received and Responses by Resource.**

Letter #/ Comment #	Comment	Response
	only sprinkler irrigation methods as a condition of the land sale to private parties.	
10.4	Based on the concerns identified, EPA is rating this Draft EIS as "Environmental Concerns-Insufficient Information (EC02). The "EC" rating means that EPA's review of the Draft SEIS has identified potential impacts to water quality that should be avoided in order to fully protect the environment. The "2" rating means that additional information is needed regarding which appropriate measures will be required to address potential excursions of water quality standards. EPA recommends that the Final EIS clearly stat that discharges with the potential to cause or contribute to water quality standards excursions are allowed only where subject to water quality based-effluent limitations as stringent as necessary to meet the standards.	<b>Comment 10.4</b> Water quality impacts will be addressed with more specificity in future water permitting processes (e.g., Section 404 permit).
<b>Surface Hydrology</b>		
7.1	Concern: the amount of water that will be needed for this irrigation project to be taken from an already water depleted Bighorn River system	<b>Comments 7.1, 7.2, 7.4, 7.5, 8.1, and 8.4</b> The DEIS is not intended to provide an exhaustive analysis of the water resources impacts from diversion of the Bighorn River. Given the uncertainty of the type of crop, the type of irrigation system, and the acres to be irrigated, a hydrological analysis was made with best available information under the assumption that the crops would be typical of this area of the Bighorn Basin. The DEIS analyzed sprinkler irrigation as a likely post-sale agricultural use; however the proposed land transfer may not include the irrigation of new lands. DEIS Section 3.3.1 states "The Bighorn River below Boysen Reservoir has an average discharge of 1.387 cfs, or 1,004,000 acre-feet per year. The Bighorn River between Thermopolis and Kane (near Bighorn Lake) mean annual discharge exceeds 1,100 cfs 90 percent of the time."  The proposed Westside (irrigation) project would divert a
7.2	Impact on aquatic habitat of the withdrawal of this additional irrigation water	
7.4	ES-3 states..."there is ample water in the Bighorn River to meet the future requirements associated with the WID Project." This statement raises the question of "what is ample?" There may be ample water to meet project demands but the amount of water left in the Bighorn River after diversion was never mentioned.	
7.5	Flows in Table 3-1 on page 3-7. Based upon our fisheries and water management experience we feel that these flows incorrectly represent present or historic water conditions within and below the project area. Only actual instream flow measurements and analysis of those measurements using the latest in scientific approach will determine available flow and impacts to aquatic habitats of the species that exist in this reach. In our letter dated August 27, 2004, We recommend such a study be included to determine aquatic impacts and recommended that in-stream flows be measured and analyzed with the latest scientific approach	

**Table 1. Comments Received and Responses by Resource.**

Letter #/ Comment #	Comment	Response
	in order to determine aquatic impacts. We continue to recommend this study be completed.	total of 83 cfs or 18,600 acre-feet per year. Although this is less than 2% of the estimated average annual flow available, it is understood that a thorough hydrologic analyses and modeling will be part of Section 404 Permitting. Allocation and adjudication of water rights is the responsibility of the Wyoming State Engineer.
8.1	Current level of Big Horn River is low due to drought, farmers on water restrictions, where is water going to come from? Cannot irrigate his own acreage and concerned over water level for fish and wildlife	
8.4	Current flow in Big Horn River cannot sustain 16,500 acres more of irrigation	
<b>Water Rights</b>		
1.1	Westside Irrigation Project has been pushed forward by Worland, WY, to develop land on the west side of BH Canal, which have no legal water rights in the BH Canal prior to this movement	<b>Comment 1.1</b> Refer to Water Rights section on page #3-10. If the project pursues irrigation of these lands Westside Irrigation District could apply to the Wyoming State Engineer to utilize their 1974 and 1976 water rights for the lands west of the Bighorn Canal. Use of the Big Horn Canal as a water source is considered unlikely.
1.2	Landowner west of BH Canal, founder of West Side project, excluded from West Side Water Rights	<b>Comments 1.2, 1.3, and 1.4</b> Beyond the scope of this analysis.
1.3	Lottery overlooks existing land owners, excluding them from water rights	
1.4	Request water rights for 70 plus acres west of BH Canal and be permitted to pump water on such land - if West Side is approved	

**Table 1. Comments Received and Responses by Resource.**

Letter #/ Comment #	Comment	Response
<b>Aquatic environment</b>		
4.8	<p>DEIS states that there would be unnoticeable effects on sediment loads or water quality and that there would be "no significant impact to the fish populations in the Bighorn River." This conclusion is based on the information provided in the Westside Irrigation Project Planning Report/Draft Environmental Statement (US Department of the Interior 1988a), which is based on selenium information available in the late 1980s. Significant new information is now available on selenium bioaccumulation and toxicology. Numerous researchers have estimated the toxicity threshold for selenium below 5pbb (Hamilton 2003, Lemly 2002, Olilendorf 2002, Peterson and Nobeder 1992, Hermanutz et al 1992).</p>	<p><b>Comments 4.8 and 4.9</b>                      BLM agrees with the Wyoming Game and Fish Department comments and concerns that any further water consumption from the Bighorn River, and the return flows from irrigation, could cause impacts to fish or aquatic life. The anticipated impacts are estimated in the DEIS based on best available data and expert opinion, at a sufficient level of detail to provide an informed decision. Aquatic impacts analyzed in the Draft EIS for the Westside Land Conveyance Project are based on the stated intent and premise that the lands will be used for irrigated agriculture of cash crops. Irrigation would be accomplished via pumps in the Bighorn River, pipelines, and center pivot sprinklers. The sprinkler system of irrigation produces little runoff to carry sediment to the river. If the saline soils are irrigated sufficiently to leach salts down past the root level, the salts and selenium would travel downhill as groundwater to either accumulate in wetlands or reach the river. Quantifying impacts to water quality is difficult, but could be assumed to be negative to some extent. We also agree that there will likely be impacts to juvenile fish and aquatic invertebrates by entrainment in the pumps required by sprinkler irrigation systems. We agree that the potential impacts of the pumps should be mitigated through the use of Best Management Practices. These topics will be more thoroughly and more appropriately addressed in the environmental analysis for the diversion system permitting process (Section 404 Permitting).</p>
4.9	<p>DEIS should address the risk of selenium bioaccumulation in sensitive fish and aquatic migratory birds in the small wetlands and impoundments in project area and Fivemile and Tenmile creeks</p>	<p>(This cell is merged with the response for comment 4.8)</p>

**Table 1. Comments Received and Responses by Resource.**

Letter #/ Comment #	Comment	Response
4.10	<p>According to the Fish Survey Report conducted by Western EcoSystems Technology, Inc in 2006 and appended to the DEIS, sensitive species such as sturgeon chub, plains minnow, and western silvery minnow were not found in the Bighorn River. However, high flows occurring during the survey limited the sampling effort and surveys were not conducted in the lower reaches of Fivemile and Tenmile creeks. It should be noted that the plains minnow could also inhabit the quiet lower reaches of tributaries that were not surveyed.</p>	<p>Wyoming Game and Fish (Mark Smith) was contacted regarding the methodology, study period, and target species for the fish study. Even with the high water levels that occurred during the survey, most of the common species were detected as confirmed by Mr. Smith (personal communication 8 Nov 2005). We acknowledge the possibility that species of very low occurrence may not be represented in the survey, however the lack of information on their occurrence in literature supports conclusions drawn in the DEIS.</p>
4.11  7.6	<p>DEIS should include monitoring of wetlands and streams to determine if selenium bioaccumulation will cause adverse impacts to sensitive species of fish and migrating aquatic birds</p> <p>Impacts to fisheries are not based on actual river flow and discharge information. The hypothetical modeling suggested that water availability on the Bighorn River in July at Fifteen Mile Creek would be 950 cfs and that the maximum WID Project depletion was estimated at 83 cfs. This represents 11.4% depletion and is very measureable. Impacts of this level of depletion on aquatic habitat were not determined. Project related effects that influence the timing, duration, and/or magnitude of both water quantity and/or quality can be expected to have negative effects on the river fishery</p>	<p>Refer to response to comment numbers 4.1, 4.6 and 4.7 under Water Quality regarding BLM's regulatory authority and future water permitting processes (e.g. , Section 404 permit).</p> <p>Refer to response to comment numbers 7.1, 7.2, 7.4, 7.5, 8.1, and 8.4 under Surface Hydrology.</p>
7.7	<p>Error in Appendix E, page 5: sturgeon chub collected in 2001 - not 1960's</p>	<p>Corrected.</p>
7.8	<p>Study should be conducted of effects of water reductions on backwaters and side channels throughout the lower Bighorn River (to Big Horn Lake)</p>	<p>Refer to response to comment numbers 7.1, 7.2, 7.4, 7.5, 8.1, and 8.4 under Surface Hydrology.</p>
7.9	<p>Fish sampling should not be used as a census of species that utilize river and would be impacted by the project. Many species show seasonal migration upstream and may not be found in late summer. Additionally, the amount of sampling is likely insufficient to find rare species.</p>	<p>Refer to response for comment number 4.10.</p>

**Table 1. Comments Received and Responses by Resource.**

Letter #/ Comment #	Comment	Response
7.10	Misidentification of "common shiners" in Appendix E, page 7	Discussion regarding the identification of the common shiners is provided on page 4, Appendix E.
7.11	The portion of the river fishery focused on in the EIS is connected and interdependent upon the Bighorn River downstream so that every species found in the river below Lower Hanover Diversion should be considered as potentially impacted by this development.	Refer to response for comment number 4.10. The DEIS focuses on the portion of the river with a greatest potential for impact. Species below Hanover Diversion may be impacted by irrigation. A thorough hydrologic analyses and modeling will be part of Section 404 Permitting.
<b>Wetlands</b>		
4.2	DEIS water quality impacts are based solely on Bighorn River and excludes wetlands and tributary systems	Refer to response for comment numbers 2.4, 7.3, and 7.12 under Water Quality as well as the response for comment numbers 7.1,7.2,and 7.3 under Surface Hydrology.
4.3	Recommends monitoring program should include wetlands and existing impoundments in and adjacent to the project area as well as streams receiving irrigation return flows and or drainwater to determine if selenium poses a bioaccumulation risk to sensitive species of fish and aquatic migratory birds	Refer to response to comment numbers 4.1, 4.6, and 4.7 under Water Quality.
10.2	Executive Order 11990 encourages federal agencies to avoid and minimize wetlands losses and to preserve and enhance the natural and beneficial values of wetlands for various actions, including disposal of Federal lands. Alternative 2 would best meet this national policy objective. The Final EIS should identify the necessary mitigation for wetland area replacement that would be needed should BLM modify the proposed action in a manner that affects these wetlands	Refer to response to comment numbers 2.4, 7.3, and 7.12 under Water Quality.

**Table 1. Comments Received and Responses by Resource.**

Letter #/ Comment #	Comment	Response
<b>Land Use</b>		
11.1	Williston Basin would pursue the option of submitting an application to the BLM for a perpetual easement for two existing permits (WYW-001185 and WYW-0275301) - please provide forms	<b>Comments 11.1, 11.2, and 11.3</b> DEIS page 4-15, states existing Rights Of Way holders will be provided options to address existing ROWs. Valid existing rights will transfer with the land.
11.2	The main concern of WBIP is the proposed use of the land after it is turned over to Westside Irrigation District. The existing natural gas pipelines were installed at the required depths of BLM. If the new landowners are allowed to level the ground, upgrade small areas of unsuitable soil and contour drainages, the integrity and safety of our pipelines will likely be in jeopardy	
11.3	Cost of lowering or rerouting existing pipeline needs to be addressed	
<b>Mitigation</b>		
4.12	Selenium mobilization into wetlands and streams can be minimized by implementing irrigation practices that do not result in deep percolation of irrigation water and subsequent leaching of salts and selenium. If possible, areas with elevated selenium in the soil should not be irrigated	<b>Comments 4.12, 4.13, 4.14, and 4.15</b> DEIS addresses the land transfer from BLM to private ownership, and foreseeable connected actions. The declared intended use of the transferred land is crop production. Analysis was made with best available information under the assumption that the crops would be typical of this area of the Bighorn Basin. A thorough analyses and modeling, and associated mitigation, will be part of Section 404 Permitting process once specifics are known.
4.13	Construction of impoundments in the project area should be prohibited to prevent a selenium source and route of exposure to aquatic migratory birds	
4.14	DEIS does not include measures to offset the impact of contaminants particularly selenium to sensitive species of fish and aquatic migratory birds	
4.15	DEIS should include a description of measures that can be taken to reduce selenium mobilization and bioaccumulation in project area and adjacent wetlands and streams	
2.2 5.5	Recommend a priority list of areas that could be acquired be developed, along with a list of willing sellers in these areas, prior to the sale of project lands	
2.3 5.4	Request all undeveloped WID-retained lands, stock driveways, and project roads remain open for public access, year round	Identifying lands for potential acquisition with funds from the Westside transfer would likely inflate the perceived value of the identified lands.
		BLM will exercise no regulatory authority post-transfer.

**Table 1. Comments Received and Responses by Resource.**

Letter #/ Comment #	Comment	Response
5.1	Cannot support until proper wildlife mitigation measures are conveyed within the DEIS	DEIS Section 5.2.2.2 presents mitigation for wildlife habitat loss. DEIS Section 5.3.3.2 provides further actions that private land owners could voluntarily implement to further reduce impacts to wildlife. [Also, refer to response below.]
5.2	WID agreed to most aspects of the Department's requested mitigation measures, with other aspects still needing some additional agreement. Until these mitigation measures can be agreed upon in writing by all parties, and incorporated into the DEIS, we cannot support this project	BLM will exercise no regulatory authority post-transfer.
5.3	Although the DEIS (mitigation section 5.3.3.2) refers to fencing, damage, and retirement of domestic sheep AUM's as suggested mitigation, it is not conveyed as required mitigation. When the DEIS uses phrases such as "could be employed" and "may be a requirement", it does not hold any assurance that these mitigation measures will actually be implemented.	DEIS Section 5 notes suggested mitigation only. BLM will exercise no regulatory authority post-transfer.
5.6	We recommend WID agree to require all persons who purchase lands within the project area, as a condition of their deed, to indemnify and hold WGFD harmless for any wildlife damage, as long as big game populations do not exceed stated objectives by more than 10%, as determined by WGFD	Refer to DEIS page 5-5
5.7	WID agreed to acquire 200 domestic sheep AUMs to mitigate lost pronghorn and mule deer crucial habitats	Refer to DEIS page 5-5
5.8	WID needs to provide detailed map showing which lands are most likely to be developed for farming of areas likely to be farmed	Refer to DEIS page 2-5 and 2-6

**Table 1. Comments Received and Responses by Resource.**

Letter #/ Comment #	Comment	Response
5.9	BLM needs to provide boundaries of adjacent/nearby allotments containing sheep AUMs	<p><b>Comment 5.9 and 5.10</b>                      DEIS Section 5.2.2.2 addresses general mitigation measures for wildlife habitat loss. A thorough analysis and modeling will be part of the Section 404 Permitting process once specifics of land utilization are known.</p>
5.10	WGFD will assist in identifying which domestic sheep AUMs need to be acquired on adjacent, off-site crucial winter ranges, to mitigate for lost pronghorn and mule deer habitats. This issue needs to be resolved, including signed agreements for acquiring domestic sheep AUMs off-site, before any big game crucial winter range in the project area is developed. If sufficient domestic sheep AUMs are not available, or if not available from allotments which WGFD determine could provide crucial pronghorn winter range, cattle AUMs from appropriate allotments for potential acquisition by WID would be identified by WGFD.	
5.11	Prior to development WID should contract a survey to determine the presence or absence of mountain plover, long-billed curlew, and burrowing owl. If they occur in the area, a plan for avoiding or minimizing impacts, or if necessary, mitigating impacts should be developed.	Refer to DEIS sections 3.6.5.2 and 3.6.5.3.
5.12	Buffer strips, which will run the length of many of the main drainages, should be fenced to control livestock grazing, and to provide nesting cover for migratory and upland birds. Grazing management plans need to be developed for these buffer strips, to provide specific vegetation goals. Stubble height requirements of grazed plants need to be established.	<p><b>Comment 5.12, 5.13, and 5.14</b>                      DEIS Section 5.3 discusses potential impacts from the connected action and states these impacts may be avoided by conservation practices for protecting resources or through land management practices. The potential impacts presented included wetlands in close proximity of the project area. A thorough analyses and modeling will be part of the Section 404 Permitting process once specifics of land utilization are known.</p>
5.13	Wetlands and catchment basins should be developed on the lower reaches of major drainages. Since most of the major drainages have very large watersheds, wetlands or catchment basins will have to be developed on side drainages located between irrigated fields and the major drainages	
5.14	formal agreements will need to be developed to identify the location of these buffer strips and potential catchment basins/wetlands by WGFD personnel, and the commitment of WID funds, equipment, and personnel made to complete these developments	
5.15	WID should agree to use WGFD fence specifications on allotment boundaries, right-of-ways, stock driveways, and pasture division fences to facilitate passage of wildlife	Refer to DEIS Sections 5.2.2.2 and 5.3.3.2

**Table 1. Comments Received and Responses by Resource.**

Letter #/ Comment #	Comment	Response
5.16	Recommend WID provide funds necessary to support an employee qualified to develop grazing plans; coordinate and oversee development of wetlands, catchment basins, and buffer strips fencing; monitor effects of project development on runoff flows and wildlife distribution; and solicit cost-share funds to enhance habitat conditions in project area	<p><b>Comment 5.16, 5.17, and 5.18</b>                      BLM will exercise no regulatory authority post-transfer. Public Law 106-485 does not specify or limit post-transfer land use.</p>
5.17	Employee hired by WID, but work with WGFD personnel. Salary and benefits for a 5-6 month position will likely cost \$12-15,000 a year. WID would also need to cover vehicle, vehicle supplies, and office supplies. This assistance would begin the year the first irrigation water is applied to project lands and remain in effect for minimum of 15 years or until project development is completed, if prior to 15 years.	
5.18	Recommend formal agreements need to be signed by all participating parties for all items that we have agreement on (i.e., fencing standards, use of low-pressure overhead sprinkler irrigation systems only, no more than one residence per 160 acres, a process for handling damage, AUM purchases, access, and other habitat mitigation) including parties responsible for enforcement if agreements are not honored.	
<b>Connected Action</b>		
6.1	Provide history and referenced letters regarding the change in status for the Army Corps of Engineers from cooperating agency to agency consulted. As cooperating agency, we requested a more detailed analysis of the potential direct, secondary, and cumulative effects of water depletions on the Bighorn River aquatic ecosystem. As consulting agency - do not have any substantive comments on environmental consequences of the Proposed Action (Alternative 1) or BLM's Preferred Irrigable Land Alternative (Alternative 2) as related to wetlands and other waters of the U.S.	<p><b>Comment 6.1, 6.2, and 6.3</b>                      The DEIS is not intended to provide an exhaustive analysis of the water resources impacts from diversion of the Bighorn River. Determinations of specific development activities such as river diversion and irrigation will not be made until after ownership is transferred. DEIS section 1.3.2 acknowledges that post transfer development activities may require additional analyses and modeling to obtain necessary permits.</p>
6.2	Analysis presented in the DEIS may not be adequate to fulfill the Corps' responsibilities under NEPA for connected actions that require Section 404 of the Clean Water Act	

**Table 1. Comments Received and Responses by Resource.**

Letter #/ Comment #	Comment	Response
6.3	Request more specific language in DEIS regarding the requirements that additional studies will be necessary to fully comply with NEPA in Section 1.3.2	The following was inserted into section 1.3.2 of the DEIS: "A Section 404 permit may require additional studies and NEPA analysis to evaluate the details of the connected action."
10.3	The Final EIS should describe specialty crops that are economically and agronomically feasible on these lands, and that have potential to reduce water quality impacts. Increased energy cost is also an item high on the list of the specialty crop industry concerns in the U.S., including impacts on production, processing, and marketing practices, transportation and energy conservation. The agricultural industry is also interested in the potential for using specialty crop resources to provide alternative energy sources such as crops used to produce cellulosic ethanol. Improving water use efficiency is another critical component of the long-term viability of the specialty crop industry according to the Department of Agriculture.	<b>Comment 10.3 and 9.1</b> The DEIS evaluated crops traditionally grown in the region to provide a comparative evaluation of the connected action. Specialty crops will have different economic, environmental and agronomic effects than traditional crops. Determinations of specific development activities will not be made until after land ownership is transferred, and BLM will exercise no regulatory authority post-transfer. Public Law 106-485 does not specify or limit post-transfer land use. DEIS section 1.3.2 acknowledges that post transfer development activities may require additional analyses and modeling to obtain necessary permits.
9.1	Desired organic crops should be considered to reduce the already significant imprint of pesticides in both counties	
<b>General</b>		
3.1	Applaud BLM for willingness to meet the needs and desires of citizens of Wyoming to increase acreage of production agricultural land	
3.2	It is pleasing to see federally administered lands being privatized, put into crop production and consequently added to the tax rolls of the county	
3.3	Support Alternative #1 - 16,500 acre transfer	Public Law 106-485 states "acreage may be added to or subtracted from the land to be conveyed as necessary to satisfy any mitigation requirements under the National Environmental Policy Act of 1969." WID has proposed using the land for "irrigated crop production". It is reasonable to consider transferring only irrigable acres which minimizes impacts to non irrigable land.

**Table 1. Comments Received and Responses by Resource.**

Letter #/ Comment #	Comment	Response
8.2	Will land be developed into 10 acre "ranchettes"? Unless there is a land swap there is no need for the BLM who is entrusted for caring for federal lands in the name of the people of the united States to transfer lands to a private party	<b>Comment 8.2 and 8.3</b> The land transfer is directed by Public Law 106-485 without specifying or limiting post-transfer use, imposing restrictions on development, nor providing for any public interest requirement.
8.3	Disapprove of transfer unless it benefits wildlife or more than a few individuals	

### **Comment Letters**

Following are the comment letters reproduced verbatim. Individual comment numbers from Table 1 are provided to the right in each letter.

1.0

Basin, WY  
12/21/07  
Near Andrew Trach  
B.M., Worland, WY.

DEPARTMENT OF INTERIOR  
BUREAU OF LAND MANAGEMENT

2008 JAN -4 A 10:35

RECEIVED  
WORLAND WYOMING

The U.S. government, opposed sub-  
leasing in past years.

Westside Irrigation Project has  
been pushed forward, by Worland, WY,  
to develop land westside of BH Canal  
which have, no legal water rights in the  
BH Canal, prior to this movement.

1.1

There, exist, a few private land-  
owners, like ourselves (Jerry & Nora Lewis),  
who own land, west of BH Canal.

Jerry Lewis was one of the original  
founders of the West Side project. When  
it looked like West Side would "fly"  
many years later, Sam Olmstead, like Jerry  
Lewis, (North of the Washakie County line) were  
excluded from West Side water rights.

1.2

We have since opposed Westside Project  
which is bent on, subleasing new ground,  
which has no water rights & excluding  
existing land owners, west of BH Canal!

In drought years, it becomes evident  
that BH Canal water, should be reserved,  
for those, with original water rights.

It should not be approved, if  
it excludes present Land Owners  
west of BH Canal, from water rights  
granted to the Westside Lottery. 1.3

As Land Owners, west of BH Canal,  
we request, that we receive water rights  
for 70 plus acres, west of Big Horn Canal,  
to be permitted to pump water on such  
land if West Side, is approved. 1.4

Truly

Marvin J. Lewis  
1201 Hwy 20 So  
Basin, WY 82410



WYOMING GAME AND FISH DEPARTMENT

5400 Bishop Blvd. Cheyenne, WY 82008

Phone: (307) 777-4600 Fax: (307) 777-4610  
DEPARTMENT OF INTERIORS  
BUREAU OF LAND MANAGEMENT  
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RECEIVED  
WORLAND WYOMING

January 29, 2008

WER 2480.01  
Bureau of Land Management  
Worland Field Office  
Proposed Direct Sale of Public Land  
Westside Irrigation District  
Big Horn and Washakie Counties

Andrew Tkach  
Bureau of Land Management  
Worland Field Office  
PO Box 119  
Worland, WY 82401

Dear Mr. Tkach:

The staff of the Wyoming Game and Fish Department has reviewed the proposal by Westside Irrigation District in Big Horn and Washakie Counties. We offer the following comments for your consideration.

Terrestrial Considerations:

The Department would again like to reiterate wildlife concerns, issues, and mitigation measures directly related to the conveyance of BLM lands to the Westside Irrigation District (WID) as part of the Westside Irrigation Project (WSIP). These same comments were submitted (8/27/04) to the Worland BLM office as part of the WSIP Scoping Notice. We expect to provide further substantive comments (including how the existing multi-pronged mitigation agreement has been dealt with) in the next couple of weeks, as our personnel review the DEIS on the WSIP.

In spring 2004, WGFD and Worland BLM personnel, as a result of routine coordination and subsequent updates of WGFD seasonal ranges, jointly revised seasonal ranges for the Basin mule deer herd unit. As a result, the current project area now supports crucial mule deer winter range for the Basin mule deer herd unit, in addition to existing pronghorn crucial winter range for the 15-Mile pronghorn herd.

2.1

Public Law 106-485 provides that proceeds from the sale of these lands are to be used for the acquisition of land in the BLM Worland District that will benefit public recreation, public access, fish and wildlife habitat, or cultural resources. However, there is no provision that these private land rights have to be acquired within any given time frame. Also, there are no preliminary agreements currently in place that provide assurance that access rights to private

2.2

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Mr. Andrew Tkach  
January 29, 2008  
Page 2 - WER 2480.01

land, or landlocked public lands, can be obtained within the Worland BLM District. We recommend a priority list of areas that could be acquired be developed, along with a list of willing sellers in these areas, prior to the sale of project lands. We request, and are willing to work with the BLM, to identify a priority list of areas to acquire, but the WID needs to determine if there are willing sellers in these areas. This would provide some assurance that this mitigation measure can actually be accomplished, and within a reasonable time frame. In addition, we request all undeveloped WID-retained project lands, stock driveways, and project roads remain open for public access, year-round.

2.3

Aquatic Considerations:

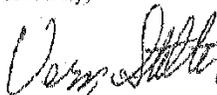
The conveyance of these public federal lands to the Westside Irrigation District is premature until all potential environmental consequences have been thoroughly explored and mitigation alternatives have been identified. The existing fishery and aquatic resources found in the Bighorn River have already experienced severe dewatering and water quality impacts due to drought, irrigation and land management practices. Those impacts are associated with precisely the kinds of effects that seem likely to result from the eventual conversion of lands in the proposed sale to cultivation and irrigation. Any additional degradation of water quality and quantity either in magnitude or duration would cause additional undesirable, long-term negative, permanent effects to public trust fishery and wildlife resources.

2.4

In consideration of these concerns, we recommend that no further action be taken on the public land conveyance to the private sector until after all these impacts have been considered and addressed in a public forum such as a formal EIS process. Failure to link this transfer with a full environmental review carries considerable risk for future conflicts that would be best to minimize or avoid.

Thank you for the opportunity to comment.

Sincerely,

  
JOHN EMMERICH  
DEPUTY DIRECTOR

JE:VS:gfb

cc: USFWS

3.0

Hot Springs County Farm Bureau Federation  
PO Box 1326  
Thermopolis, Wyoming 82443  
February 14, 2008

DEPARTMENT OF INTERIOR  
BUREAU OF LAND MANAGEMENT

2008 FEB 19 A 8:50

RECEIVED  
WORLAND WYOMING

Bureau of Land Management  
Mr. Don Ogaard, Project Manager  
Worland Field Office  
PO Box 119  
Worland, Wyoming 82401

Dear Bureau of Land Management,

Hot Springs County Farm Bureau Federation is pleased to comment on the proposed Draft Environmental Impact Statement (DEIS) for the Westside Irrigation District Land Conveyance Project, Big Horn and Washakie Counties, Wyoming.

We are an agricultural based organization representing the general agricultural industry of Hot Springs County, and currently hold a membership of 190 members. Our voting membership is tied to production agriculture and holds a keen interest in water/land issues in our part of the world.

We applaud the Bureau of Land Management's willingness to meet the needs and desires of the citizens of Wyoming to increase acreage of production agricultural land. It is our belief that private property ownership is a key part of the American dream. It is also pleasing to see federally administered lands being privatized, put into crop production, and consequently added to the tax roles of the county.

3.1

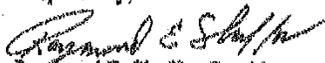
3.2

It is our position to support Alternative #1, conveying 16,500 Acres to private ownership, as our preferred choice. It is also our observation that adjudicating water from the Big Horn River, to be put to beneficial use, is the preferred use of unclaimed water in the river. This proposed project is welcomed as a good example of government working with people rather than standing in opposition to a good, viable use of land in our great country.

3.3

Once again, thank you for the opportunity to comment.

Respectfully,



Raymond E. Shaffer, President  
Hot Springs County Farm Bureau Federation

4.0



United States Department of the Interior

FISH AND WILDLIFE SERVICE

DEPARTMENT OF INTERIOR  
MANAGEMENT

Ecological Services  
5353 Yellowstone Road - Suite 308  
Cheyenne, Wyoming 82009

2008 FEB 27 A 8 46

RECEIVED  
WORLDAN WYOMING

FEB 22 2008

In Reply Refer To:

ES/G1411/W.02/WY08FA.0055

FEB 23 2008

Memorandum

To: Don Ogaard, Project Manager, Bureau of Land Management, Worland  
Field Office, Worland, Wyoming

From: *for* Brian T. Kelly, Field Supervisor, U.S. Fish and Wildlife Service,  
Wyoming Field Office, Cheyenne, Wyoming *Scott Hicks*

Subject: Comments on DEIS for Westside Land Conveyance Project

We have reviewed the Draft Environmental Impact Statement (DEIS) for the Westside Land Conveyance Project in Big Horn and Washakie Counties, Wyoming. The DEIS assesses the impacts of the Congressionally-mandated transfer of public land to the Westside Irrigation District for agricultural purposes.

We are providing you with comments concerning contaminants and wetlands. The U.S. Fish and Wildlife Service (Service) provides recommendations for protective measures for migratory birds in accordance with the Migratory Bird Treaty Act (MBTA), 16 U.S.C. 703 and the Bald and Golden Eagle Protection Act (BGEPA), 16 U.S.C. 668. Wetlands are afforded protection under Executive Orders 11990 (wetland protection) and 11988 (floodplain management), as well as section 404 of the Clean Water Act. Other fish and wildlife resources are considered under the Fish and Wildlife Coordination Act and the Fish and Wildlife Act of 1956, as amended, 70 Stat. 1119, 16 U.S.C. 742a-742j.

**General Comments:** The assessment of water quality impacts resulting from the irrigation of the project area relies on data from a planning report/draft environmental statement for the Westside Irrigation Project that was prepared in the 1980's (US Department of the Interior 1988a). Selenium data provided in the planning report/draft environmental statement shows that selenium mobilization and bioaccumulation may pose a risk to sensitive species of fish and aquatic migratory birds. The planning report/draft environmental statement states that monitoring of trace elements would be conducted at the U.S. Geological Survey (USGS) gauging station at Kane, located approximately 60 to 65 river miles downstream of the project area, to provide baseline

information and to confirm estimated project effects. The planning report/draft environmental statement also states that if the monitoring program shows contaminant problems, remedial measures would be developed and implemented by the U.S. Bureau of Reclamation and the State of Wyoming. According to the USGS, monitoring of trace elements at the Kane station was done as part of the USGS National Water-Quality Assessment Program (NAWQA); however, monitoring was discontinued after completion of the Yellowstone River Basin Study (M. Clark, U.S. Geological Survey, personal communication).

The Service recommends the implementation of a water quality monitoring program for the Westside Irrigation Project. The monitoring program should include monitoring of water quality in the Bighorn River immediately downstream of the project area to determine if irrigation is mobilizing selenium and causing adverse effects to sensitive species of fish. Monitoring at the Kane gauging station as proposed in the planning report/draft environmental statement (US Department of the Interior 1988a) is unlikely to capture any changes in the Bighorn River caused by irrigation return flows and mobilization of contaminants due to the distance of the Kane station from the project area (60 to 65 river miles).

4.1

Failure to monitor water quality in the Bighorn River immediately downstream of the project area would make it very difficult to detect contamination prior to when extensive resource impacts may occur and could require costly remediation. In 1983, the Service discovered mortality, embryonic deformities, and reproductive failure in waterfowl at the Kesterson National Wildlife Refuge in the western San Joaquin Valley in California. Research studies conducted by the Service showed that the mortality and reproductive impairment was caused by selenium leached from soils by irrigation and deposited in wetlands. The Department of the Interior (DOI) initiated a program in late 1985 to identify the nature and extent of water-quality problems induced by irrigation drainage that might exist in the western states. The DOI effort identified several irrigation projects with selenium contamination, including the Kendrick Irrigation Project, located west of Casper, Wyoming (Sec et al. 1992). Extensive efforts and resources were invested into investigations and remediation planning to initiate corrective action on the selenium contamination problems identified at the Kendrick irrigation project. An effective selenium monitoring program will not only help to prevent selenium contamination and bioaccumulation, but it is also cost effective in the long-term.

Additionally, the DEIS conclusion regarding water quality impacts is based solely on the Bighorn River and excludes wetlands and tributary streams. The Service recommends that the monitoring program should also include wetlands and existing impoundments in and adjacent to the project area as well as streams receiving irrigation return flows and drainwater to determine if selenium poses a bioaccumulation risk to sensitive species of fish and aquatic migratory birds.

4.2

4.3

Page 3 -- 8, 3.3.2 Water Quality, fourth paragraph: Although oilfields provide produced water discharges to "water-starved" tributaries of the Bighorn River, the DEIS does not provide information on the water quality of these produced water discharges.

4.4

Cottonwood Creek, a tributary of the Bighorn River and approximately 15 miles upstream of the project area, receives oilfield produced water discharges containing elevated selenium. Selenium concentrations ranging from 29 to 69 µg/L have been reported at the mouth of Cottonwood Creek as it enters the Bighorn River (Western EcoSystems Technology, Inc. 2002). The DEIS should assess the effect of elevated selenium discharges upstream of the project area and if this selenium loading will contribute selenium to the irrigation water used in the project area.

Page 4 -- 2, 4.2.2 Geology and Soils, third paragraph: The DEIS states that irrigation of the saline soils in the project area would lead to salt wasting and mobilization of selenium into the groundwater and to wetlands within the project area. However, the DEIS does not specifically reference the concentrations of selenium (16 to 35 µg/L) mobilized through the percolation of irrigation water through the soil as reported by the U.S. Bureau of Reclamation (USBR) (US Department of the Interior 1988b). The DEIS acknowledges that selenium in irrigation return flows could reach wetlands and lead to bioaccumulation in wildlife, but states that an assessment of this bioaccumulation risk is "beyond the scope of this study." Waterborne selenium greater than 2 µg/L could result in impacts to fish and aquatic birds inhabiting wetlands in the project area receiving the irrigation return flows or seepage from irrigated soils. Impoundment of drainages receiving irrigation return flows could increase the waterborne selenium concentrations through evaporative concentration and create a hazard for migratory aquatic birds. Food chains established in these impoundments can then serve as a route of exposure to sensitive species of aquatic birds inhabiting these impoundments.

4.5

Monitoring of selenium bioaccumulation in wetlands and impoundments in the project area is critical to prevent adverse impacts to sensitive aquatic migratory birds. Selenium can concentrate in the food chain up to 300,000 times the concentration in the water (Bosser et al. 1993). For example, the Service documented selenium-induced deformities and poor reproductive success in American avocets and eared grebes at the Kendrick irrigation project, located west of Casper, Wyoming (See et al. 1992). The median concentration of dissolved selenium in water samples from two closed basin ponds were 38 and 54 µg/L. (See et al. 1992).

The DEIS also states that selenium and salts may reach the Bighorn River but that bioaccumulation should not be an issue. The Hydrology Appendix (US Department of the Interior 1988b) reports waterborne selenium concentrations within the project area as follows: (a) Fivemile Creek near confluence with Bighorn River, 9.5 µg/L; (b) Tenmile Creek near confluence with Bighorn River, 4.7 µg/L; (c) drain near Mauderson, 12.9 µg/L; (d) drain near Fivemile Creek, 8.1 µg/L. Although dilution of selenium in the Bighorn River may decrease the risk of bioaccumulation, the elevated selenium concentrations in Fivemile and Tenmile creeks poses a risk to fish using these streams as spawning habitat. The toxic effects of selenium to sensitive species of fish include: damage to gills and internal organs, teratogenic deformities, and impaired reproduction (Lemly 2002). These effects can go undetected because the "primary point of impact is the egg" which receives the selenium from the female (Lemly 2002). Selenium effects to internal organs can also cause an increase in energy requirements thus making fish more

4.6

susceptible to Winter Stress Syndrome which occurs when the water temperature drops in the autumn and causes increased metabolism (Lemly 2002). Mortality usually occurs as a result of Winter Stress Syndrome. Monitoring of selenium bioaccumulation in Fivemile and Tennile creeks is critical to prevent adverse impacts to sensitive species of fish using these streams. 4.7

Page 4 – 10, 4.6.3 Aquatic Resources, Fisheries: The DEIS states that there would be unnoticeable effects on sediment loads or water quality and that there would be “no significant impact to the fish populations in the Bighorn River.” This conclusion is based on the information provided in the Westside Irrigation Project Planning Report/Draft Environmental Statement (US Department of the Interior 1988a), which is based on selenium information available in the late 1980’s. Significant new information is now available on selenium bioaccumulation and toxicology. Numerous researchers have estimated the toxicity threshold for selenium below 5 ppb (Hamilton 2003, Lemly 2002, Ohiendorf 2002, Peterson and Noboker 1992, Hermannutz et. al. 1992). 4.8

Although the risk of selenium bioaccumulation is lower in flow-through wetlands (e.g., Bighorn River) than in closed-basins or terminal sinks and wetlands with minimal flow-through (Seiler 1995), the DEIS should assess the risk of selenium bioaccumulation in sensitive fish and aquatic migratory birds in the small wetlands and impoundments within the proposed project as well as Fivemile and Tennile creeks. Selenium mobilized into these small wetlands and impoundments could increase due to lower flow through and evaporative concentration. Additionally, elevated selenium in Fivemile and Tennile creeks were documented during the planning phase of the Westside Irrigation Project (US Department of the Interior 1988b). According to the Fish Survey Report conducted by Western EcoSystems Technology, Inc. in 2006 and appended to the DEIS, sensitive fish species such as sturgeon chub, plains minnow, and western silvery minnow were not found in the Bighorn River. However, high flows occurring during the survey limited the sampling effort and surveys were not conducted in the lower reaches of Fivemile and Tennile creeks. It should be noted that the plains minnow could also inhabit the quiet lower reaches of tributaries that were not surveyed. 4.9

The DEIS should include monitoring of wetlands and streams to determine if selenium bioaccumulation will cause adverse impacts to sensitive species of fish and aquatic migratory birds. 4.10

Page 4 – 11, 4.6.4 Wetlands, third paragraph: See comment above on selenium bioaccumulation in wetlands and risk to aquatic migratory birds. 4.11

Page 4 – 26, 4.13 Adverse Effects Which Cannot Be Avoided: The DEIS states that “wetlands within the project area would be indirectly impacted by the alteration of the surface runoff and potential contaminants.” Selenium mobilization into wetlands and streams can be minimized by implementing irrigation practices that do not result in the deep percolation of irrigation water and subsequent leaching of salts and selenium. If possible, areas with elevated selenium in the soils should not be irrigated. Construction of 4.12

impoundments in the project area should be prohibited to prevent a selenium source and route of exposure to aquatic migratory birds. | 4.13

**Page 5-1, Chapter 5.0 - Mitigation:** The DEIS describes mitigation and potential conservation measures that will be implemented to offset adverse environmental impacts resulting from the proposed action. However, the DEIS does not include measures to offset the impacts of contaminants, particularly selenium, to sensitive species of fish and aquatic migratory birds. The DEIS should include a description of measures that can be taken to reduce selenium mobilization and bioaccumulation in the project area and adjacent wetlands and streams. | 4.14  
| 4.15

If you have questions regarding our comments, please contact Pedro 'Pete' Ramirez of my staff at the letterhead address or phone (307)772-2374 extension 236.

cc: WGFD, Non-Game Coordinator, Lander (B. Oakleaf)  
WGFD, Statewide Habitat Protection Coordinator, Cheyenne (V. Stelter)

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- Besser, J.M., T. J. Canfield, and T. W. LaPoint. 1993. Bioaccumulation of organic and inorganic selenium in a laboratory food chain. *Environmental Toxicology and Chemistry* 12: 57-72.
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U.S. Department of the Interior. 1988b. Westside Irrigation Project, Big Horn Basin Division Pick-Sloan Missouri Basin Program, Wyoming, Hydrology Appendix to the Planning Report/Draft Environmental Statement. Bureau of Reclamation Missouri Basin Region, Billings, MT, Bureau of Land Management, Grass Creek Resource Area, Worland, WY and State of Wyoming Water Development Commission, Cheyenne, WY.



## WYOMING GAME AND FISH DEPARTMENT

5400 Bishop Blvd. Cheyenne, WY 82006

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RON LOVERCHECK  
ED MIGNERY

February 22, 2008

WER 2480.02  
Bureau of Land Management  
Worland Field Office  
Draft Environmental Impact Statement  
Westside Irrigation District  
Land Conveyance Project  
Big Horn and Washakie Counties

**5.0**

Don Ogaard, Project Manager  
Bureau of Land Management  
Worland Field Office  
PO Box 119  
Worland, WY 82401

Dear Mr. Ogaard:

The staff of the Wyoming Game and Fish Department has reviewed the Draft Environmental Impact Statement for the Westside Irrigation District Land Conveyance Project in Big Horn and Washakie Counties. We offer the following comments for your consideration.

Based on this DEIS, we cannot support this project as stated until proper wildlife mitigation measures are conveyed within the DEIS. Until so, the No Action Alternative would provide the least amount of impacts to wildlife and will be supported by the Department.

5.1

Numerous correspondences (meetings, letters, etc.) have occurred over the past 20+ years between WGFD, BLM and the Westside Irrigation District (WID) regarding terrestrial and aquatic mitigation measures associated with this project. We have continued to focus on 6 mitigation measures we feel are needed to offset most terrestrial wildlife impacts associated with this project. Based on a 1998 WID Development Proposal, WID determined, after consultation with us, that a wildlife mitigation plan is both prudent and essential to our acceptance of this development. Within this proposal, WID agreed to most aspects of the Department's requested mitigation measures, with other aspects still needing some additional agreement. Until these mitigation measures can be agreed upon in writing by all parties, and incorporated into the DEIS, we cannot support this project. We are willing to further meet with BLM and WID to discuss these needed and previously-agreed to wildlife mitigation measures, and to insure they will be included as part of the mitigation section of the DEIS and subsequently implemented.

5.2

Although the DEIS (Mitigation section 5.3.3.2) refers to fencing, damage, and retirement of domestic sheep AUM's as suggested mitigation, it is not conveyed as required mitigation.

5.3

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*"Conserving Wildlife - Serving People"*

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Mr. Don Ogaard  
February 22, 2008  
Page 2-- WER 2480.02

When the DEIS uses phrases such as "could be employed" and "may be a requirement", it does not hold any assurance that these mitigation measures will actually be implemented.

The following comments regarding this project are basically reiterations of concerns, issues, and mitigation measures most recently submitted and documented in our memo (dated 2/10/99) to Joe Wildman of WID, as well as to the BLM Worland Field Office scoping notice (dated 8/24/04).

Mitigation Measures for Terrestrial Wildlife

Access: Public Law 106-485 provides that proceeds from the sale of these lands are to be used for the acquisition of land in the BLM Worland District that will benefit public recreation, public access, fish and wildlife habitat, or cultural resources. However, there is no provision that these private land rights have to be acquired within any given time frame. Also, there are no preliminary agreements currently in place that provide assurance that access rights to private land, or landlocked public lands, can be obtained within the Worland BLM District. We recommend a priority list of areas to be acquired be developed, along with a list of willing sellers in these areas, prior to the sale of WSIP lands. We are willing to work with BLM, to identify a priority list of areas to acquire, but the WID needs to determine if there are willing sellers in these areas. This would provide some assurance that this mitigation measure can actually be accomplished, and within a reasonable time frame. In addition, we request all undeveloped WID-retained project lands, stock driveways, and project roads remain open for public access, year-round. 5.4

Damage: As stated in previous comments regarding this project, we recommend WID agree to require all persons who purchase lands within the project area, as a condition of their deed, to indemnify and hold WGFD harmless for any wildlife damage, as long as big game populations do not exceed our stated population objectives by more than 10 percent, as determined by WGFD. 5.5

Habitat Mitigation: Both pronghorn and mule deer crucial winter range occur within the project area. Nearly all crucial pronghorn and mule deer winter range occurring in the project area is sagebrush/grassland range that occurs on more level, deep-soil sites: these sites are the most likely to be developed for farming. As discussed in earlier correspondence regarding this project, WID agreed to acquire at least 200 domestic sheep Animal Unit Months (AUMs) (i.e., 1,000 domestic sheep head months), to mitigate lost pronghorn and mule deer crucial habitats. 5.7

WID needs to provide a detailed map showing which lands are most likely to be developed for farming, and from BLM, the boundaries of adjacent/nearby allotments containing domestic sheep AUMs. We can then help identify which domestic sheep AUMs need to be acquired on adjacent, off-site crucial winter ranges, to mitigate for lost pronghorn and mule deer habitats. 5.8

This issue needs to be resolved, including signed agreements for acquiring domestic sheep AUMs off-site, before any big game crucial winter range in the project area is developed. If sufficient domestic sheep AUMs are not available, or if not available from allotments which we determine could provide crucial pronghorn winter range, cattle AUMs from appropriate allotments for potential acquisition by WID would be identified by WGFD. 5.9  
5.10

Mr. Don Ogaard  
February 22, 2008  
Page 3-- WER 2480.02

Although not addressed in earlier correspondence, there is the possibility of three sensitive species (i.e., mountain plover, long-billed curlew, and burrowing owl) occurring in the WSIP area. Prior to development, WID should contract a survey to determine the presence or absence of these species. If they occur in the WSIP area, a plan for avoiding or minimizing impacts, or if necessary, mitigating impacts should be developed. | 5.11

Buffer Strips and Catchment Basins: If the WSIP area is developed, we feel it is essential that buffer strips, which will run the length of many of the main drainages, be fenced to control livestock grazing, to provide nesting cover for migratory and upland birds. Grazing management plans need to be developed for these buffer strips, to provide specific vegetation goals. Stubble height requirements of grazed plants need to be established. | 5.12

Our previous letters state that wetlands and catchment basins should be developed on the lower reaches of major drainages. Since most of the major drainages have very large watersheds, wetlands or catchment basins will have to be developed on side drainages located between irrigated fields and the major drainages in the project area. Formal agreements will need to be developed to identify the location of these buffer strips and potential catchment basins/wetlands by WGFD personnel, and the commitment of WID funds, equipment, and personnel made to complete these developments. | 5.13  
| 5.14

Fencing: WID should agree to use WGFD fence specifications on allotment boundaries, right-of-ways, stock driveways, and pasture division fences to facilitate passage of wildlife. | 5.15

Monitoring and Mitigation: We recommend that WID provide funds necessary to support an employee qualified to develop grazing plans; coordinate and oversee development of wetlands, catchment basins, and buffer strip fencing; monitor effects of project development on runoff flows and wildlife distribution; and solicit cost-share funds to enhance habitat conditions in the project area. We prefer that the employee be hired by the WID and work closely and cooperatively with WGFD personnel. Salary and benefits for a 5-month to 6-month position will likely cost \$12,000 to \$15,000 a year. WID would also need to cover the additional costs of a vehicle, vehicle supplies, and office supplies. This assistance would begin the year the first irrigation water is applied to project lands, and remain in effect for a minimum of 15 years, or until project development is completed, if prior to 15 years. | 5.16  
| 5.17

We further recommend formal agreements need to be signed by all participating parties for all items that we have agreement on (i.e., fencing standards, use of low-pressure, overhead sprinkler irrigation systems only, no more than one residence per 160 acres in perpetuity, a process for handling damage, AUM purchases, access, and other habitat mitigation), including parties responsible for enforcement if agreements are not honored. | 5.18

Mr. Don Ogaard  
February 22, 2008  
Page 4- WER 2480.02

Thank you for the opportunity to comment.

Sincerely,



JOHN EMMERICH  
DEPUTY DIRECTOR

JE:VS:gfb

cc: USFWS



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, OMAHA DISTRICT  
WYOMING REGULATORY OFFICE  
2232 DELL RANGE BOULEVARD, SUITE 210  
CHEYENNE WY 82009-4942

6.0

February 25, 2008

Wyoming Regulatory Office

Mr. Andrew Tkach  
U.S. Bureau of Land Management  
Worland Field Office  
P.O. Box 119  
Worland, Wyoming 82401

Dear Mr. Tkach:

This letter is in response to a request we received on January 14, 2008, for comments on the *DRAFT Environmental Impact Statement for the Westside Land Conveyance Project* (DEIS) dated December 2007. The project area covers approximately 16,500 acres located west of the Bighorn River north of Worland in Bighorn and Washakie Counties, Wyoming.

In previous correspondence dated February 23, 2007, we commented on the preliminary DEIS and identified topics that should be analyzed in the DEIS regarding future actions that are connected to the proposed land transfer. Those actions would arise when the Westside Irrigation District initiates development of a water supply and distribution system for lands that would be converted to production of agricultural commodities. The DEIS identifies 9,300 acres of land suitable for irrigation and estimates that an annual water supply of 18,600 acre-feet from the Bighorn River would be required. As a cooperating agency, we requested a more detailed analysis of the potential direct, secondary, and cumulative affects of water depletions on the Bighorn River aquatic ecosystem.

6.1

We recognized that our previous request would expand the scope of analysis beyond that identified by the U.S. Bureau of Land Management (BLM) in the preliminary DEIS, which is limited primarily to the land transfer and future resale of those lands. As the lead federal agency, the BLM is responsible for defining the scope of the DEIS and a meaningful analysis of future actions that would arise after changes in land use may not be possible at this time as described in a letter from your office to ours dated May 30, 2007. In response to that position, we agreed to modify our status from a cooperating agency to an agency consulted as documented in our letter to your office dated July 3, 2007.

We have reviewed the DEIS from the perspective of a consulting agency and do not have any substantive comments on environmental consequences of the Proposed Action (Alternative 1) or the BLM's Preferred Irrigable Land Alternative (Alternative 2) as related to wetlands and other waters of the U.S. However, it is important to reiterate that the analysis presented in the DEIS may not be adequate to fulfill the Corps' responsibilities under the National Environmental Policy Act (NEPA) for connected actions that require authorization under Section 404 of the

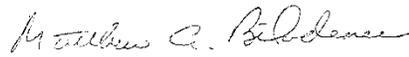
6.2

Clean Water Act. We recommend that the BLM incorporate more specific language in the DEIS regarding the requirement that additional studies will be necessary to fully comply with NEPA for other federal actions that occur after the land transfer. This could be accomplished by adding text regarding NEPA compliance responsibilities of other federal agencies in the context of obtaining a Section 404 permit at the third paragraph in section 1.3.2.

6.3

Thank you for the opportunity to comment on the DEIS and your assistance in identifying requirements of the U.S. Army Corps of Engineers' regulatory program. Please contact Mr. Thomas Johnson at (307) 772-2300 and reference file NWO-2004-40211-RWY if you have any questions.

Sincerely,



Matthew A. Bilodeau  
Program Manager  
Wyoming Regulatory Office

✓  
Copy Furnished:

Phil Ogle, Deputy Director  
Wyoming Water Development Office  
6920 Yellowtail Road  
Cheyenne, Wyoming 82002



WYOMING GAME AND FISH DEPARTMENT

5400 Bishop Blvd. Cheyenne, WY 82006

Phone: (307) 777-4600 Fax: (307) 777-4610

Web site: <http://gf.state.wy.us>

GOVERNOR  
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ED MIGNERY

February 25, 2008

7.0

WER 2480.02  
Bureau of Land Management  
Worland Field Office  
Draft Environmental Impact Statement  
Westside Irrigation District  
Land Conveyance Project  
Big Horn and Washakie Counties

Don Ogaard, Project Manager  
Bureau of Land Management  
Worland Field Office  
PO Box 119  
Worland, WY 82401

Dear Mr. Ogaard:

The staff of the Wyoming Game and Fish Department has aquatic comments in addition to those in our February 22, 2008 letter that we would like to submit for the Draft Environmental Impact Statement for the Westside Irrigation District Land Conveyance Project in Big Horn and Washakie Counties.

**Aquatic Considerations:**

We have reviewed the draft EA for this land conveyance and continue to have aquatic concerns centered primarily around: 1) the amount of water that will be needed for this irrigation project to be taken from an already water depleted Bighorn River system; 2) the impact on aquatic habitat of the withdrawal of this additional irrigation water; 3) how sediment and other minerals such as selenium will be reduced before return flows reach the Bighorn River. | 7.1  
| 7.2  
| 7.3

The draft EA states on page ES-3: "Impacts to surface hydrology were modeled based upon a hypothetical irrigation system using the Bighorn River as the source of water. The total water demand for crop production during an irrigation season is estimated to be 18,600 acre-feet per year. The results determined there is ample water in the Bighorn River to meet the future requirements associated with the WID Project." This statement raises the question of what is ample? There may be ample water to meet project demands but the amount of water left in the Bighorn River after diversion was never mentioned. | 7.4

The sponsors have conveyed that no study of flows were completed and only modeling was used to predict what water is available in the Bighorn River during normal and drought years

*"Conserving Wildlife - Serving People"*

Mr. Don Ogaard  
February 25, 2008  
Page 2- WER 2480.02

as listed in Table 3-1 on page 3-7. Based upon our fisheries and water management experience we feel that these flows incorrectly represent present or historic water conditions within and below the project area. Only actual instream flow measurements and analysis of those measurements using the latest in scientific approach will determine available flow and the impacts to aquatic habitats for the species that exist in this reach. In our letter dated August 27, 2004, we recommend such a study be included to determine aquatic impacts. We continue to recommend this study be completed.

7.5

It was also stated on page ES-4: "The fish populations that occur in the Bighorn River exist within the already fluctuating water levels. The additional depletions to the WID lands will not result in a measurable change in water volume in the river over existing conditions. It is not expected that fish in the Bighorn River would be impacted by a reduction in water volumes greater than the existing conditions." Again, these statements about fisheries impacts are not based on actual river flow and discharge information. We agree that this river experiences extreme water level fluctuations especially in the area from below Lower Hanover Diversion Dam to the confluence of the Nowood River and includes the project area. This is the exact reason we are so concerned with aquatic impacts of this project. We have noted near complete dewatering in portions of this reach with conditions compounded by the extended drought presently occurring. The hypothetical modeling suggested that water availability on the Bighorn River in July at Fifteen Mile Creek would be 950 cfs and that the maximum WID Project depletion was estimated at 83 cfs. This represents an 1.4% depletion and is very measurable. Impacts to aquatic habitat of this level of depletion were not determined. Project related effects that influence the timing, duration, and/or magnitude of both water quantity and/or quality can be expected to have negative effects on the river fishery.

7.6

The Bighorn River below Lower Hanover currently supports twelve species of greatest conservation need in Wyoming (Wyoming Comprehensive Wildlife Conservation Strategy) including species that are near extirpation (e.g., sturgeon chub collected in 2001, not 1960's as stated in Appendix E, page 5). While data on the life history requirements of many of these fish are lacking, our data suggests that small backwaters and side channels of the Bighorn River are one of the most preferred habitats. These habitats are greatly reduced or eliminated with even small reductions in discharge. Loss of these habitats could be very detrimental to the species richness of the Bighorn River. A study of how water reductions during critical periods impact backwaters and side channels throughout the lower Bighorn River (to Big Horn Lake) should be conducted. Many of the native large bodied species in the Bighorn River (e.g., channel catfish, river carpsucker) exhibit upstream migrations for spawning followed by fry or juvenile out-migration. During extreme low water periods such as drought years the ability of these fish to use upstream habitats is limited by flow, effectively reducing the available spawning habitat of these fish. Additionally if adult fish are able to spawn upstream but flow in late summer is insufficient for out-migration of juveniles, mortality will undoubtedly increase. Although these fish have evolved with natural fluctuation in the hydrograph, increasing the number and duration of years with reduced summer flows, in combination with degraded water quality, will impact the fishery.

7.6

7.8

The fish sampling conducted should not be used as a census of the species that utilize the river and would be impacted by the project. Many species show seasonal migrations upstream

7.9

Mr. Don Ogaard  
February 25, 2008  
Page 3- WFR 2480.02

to find rare species. Combined with the miss-identification of some fish as "common shiners" (Appendix E, page 7), the list of species should be viewed as a small snapshot. As further evidence, the same summer this study was conducted (2005) a University of Wyoming student captured a *Hybognathus spp.* (plains minnow or western silvery minnow) fish in the river between Worland and Rairden (Jerry Wilhite, 2007 UW Thesis). Because the portion of the river fishery focused on in the EIS is connected and interdependent upon the Bighorn River downstream every species found in the river below Lower Hanover Diversion should be considered as potentially impacted by this development.

7.10

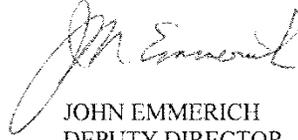
7.11

Regarding water quality impacts to the Bighorn river, environmental impacts as stated on page ES-3 indicated: "Degradation of water quality in the Bighorn River in the form of increased sediment load, total dissolved solids, and pesticide residues caused by the additional return flows are estimated to be proportional to the percentage of land added to agricultural production. This would translate to an approximate 10 percent increase of water degradation above the current conditions resulting from flood irrigation practices in the entire watershed." The Bighorn River is presently listed on the Wyoming Department of Environmental Quality (WYDEQ) 2006 303D list as "Waters with Water Quality Threat" for coliform bacteria; it also has documented high sediment and water clarity issues. An estimated 10% increase in water degradation is unacceptable and could place some fish and aquatic invertebrate species at risk that do not tolerate high levels of sediment for extended periods of time (irrigation season). Implementation of a sprinkler irrigation system for this project was mentioned as a way to reduce water quality degradation and should be a mitigation element of this project.

7.12

Thank you for the opportunity to comment.

Sincerely,



JOHN EMMERICH  
DEPUTY DIRECTOR

JE:VS:gfb

cc: USFWS

**Gretchen Norman**

**From:** Andrew\_Tkach@blm.gov  
**Sent:** Friday, March 07, 2008 2:59 PM  
**To:** Gretchen Norman  
**Subject:** Fw: Westside Irrigation Plan Comments

8.0

**Follow Up Flag:** Follow up  
**Flag Status:** Red

----- Forwarded by Andrew Tkach/WFO/WY/BLM/DOI on 03/07/2008 02:55 PM -----

03/03/2008 07:43 PM  
To  
cc  
Subject  
Westside Irrigation Plan

Dear Andrew,

I have a couple of concerns regarding the proposed transfer of up to 16,500 acres of public lands in the Big Horn and Washakie counties to the Westside Irrigation District. First, we are in the middle of a drought, the Big Horn River is the lowest I have ever seen it, and farmers have had water restrictions. Where is the water going to come from to irrigate 16,500 more acres? I live on the river and there are times when we have problems getting water out of the river to water our acreage. The flow is already dangerously low to sustain fish and wildlife species. 8.1

Second, will the land just end up in a developer's hands and we see a bunch of 10 acre "ranchettes." Unless there is a land swap there is no need for the BLM who is entrusted for caring for federal lands in the name of the people of the United States to transfer lands to a private party. 8.2

Unless there is a direct benefit for wildlife or the public (not just a limited few) the BLM should not go through with this proposed transfer. 8.3  
Water is above all else the main issue. With current flow the Big Horn River can not sustain 16,500 more acres of irrigation. 8.4

Thank you for your consideration in this matter.

Regards,

Ivy Sinn, MPA

**Nadine wilson**

---

**From:** Tina\_Warren@blm.gov  
**Sent:** Monday, March 03, 2008 9:32 PM  
**To:** admin@west-inc.com  
**Subject:** Westside Project Forwarded

**9.0**

"William Hill" To

03/03/2008 09:32 PM bcc  
Subject  
public comment

>From Bill Hill, 1125 Wilson Drive, Worland, WY 82401 307 347-4933

I have reviewed the EIS for the Westside Irrigation Project.

Development of this project is an important step to contribute irrigable land to Washakie and big HornCounty.

While the development of traditional crops is possible, I would hope that Westside considers the development of organic crops to reduce the already significant imprint of pesticides in both counties.

9.1

William Lee Hill



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8  
1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

DEPARTMENT OF INTERIOR  
BUREAU OF LAND MANAGEMENT

2008 MAR 12 A 9 11

RECEIVED  
WORLAND WYOMING

March 7, 2008

Ref: EPR-N

Don Ogaard, Project Manager  
Worland Field Office  
Bureau of Land Management  
101 South 23<sup>rd</sup> Street  
P.O. Box 119  
Worland, WY 82401

10.0

Re: Draft Environmental Impact Statement for the  
Westside Land Conveyance Project, Big Horn and  
Washakie Counties, Wyoming, CEQ # 20080015

Dear Mr. Ogaard,

In accordance with our responsibilities under Section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4332(2)(C) and Section 309 of the Clean Air Act, 42 U.S.C. Section 7609, the U.S. Environmental Protection Agency Region 8 (EPA) has reviewed the Bureau of Land Management's (BLM) Draft Environmental Impact Statement for the Westside Land Conveyance Project and offers the following comments for your consideration.

Public Law 106-485 directs the Bureau of Land Management to convey about 16,500 acres of public lands in Big Horn and Washakie Counties to the Westside Irrigation District (WID). The DEIS analyzed three alternatives: 1) Alternative 1 evaluates the transfer of all of the 16,500 acres of land identified in the legislation, 2) Alternative 2 evaluates the transfer of only those lands suitable for irrigation consisting of approximately 11,576 acres, and 3) Alternative 3 is the no action alternative. The BLM's Preferred Alternative is Alternative 2 -- the transfer of only those lands suitable for irrigation. The Draft EIS did not fully analyze the impacts of crop production because following transfer of these lands to private ownership, BLM stated it would not impose any regulatory control over the irrigation development.

**Water quality impacts:** Irrigation practices on these lands, which have not been previously used for crop production, is projected to cause degradation of water quality in the Big Horn River. According to information provided in the Draft EIS, if flood irrigation methods are used, then an increase in river sediment and pesticide load of approximately ten percent could occur. In contrast, if sprinkler irrigation methods are implemented, this is expected to increase sediment and pesticide load in the river by only two percent. This difference in water quality impacts results from having substantially lower return flows using sprinkler or pressure delivery methods compared to gravity flood irrigation.

*EPA Recommendation:* BLM should assist WID to respond in the Final EIS regarding whether or not investment by WID members in sprinkler irrigation equipment is likely to occur. An analysis of the capital investment and operating costs favoring either sprinkler or flood irrigation, such as increased labor and land leveling associated with flood irrigation, would be relevant to the individual irrigator's choice of irrigation method. BLM could also investigate a voluntary agreement, such as a restrictive covenant, to use only sprinkler irrigation methods as a condition of the land sale to private parties.

10.1

**Impacts to wetlands:** The lands within Alternative 1 contain wetland areas; however, there are no wetlands within the lands composing the smaller Alternative 2 area. Approximately 3.8 acres of palustrine-type wet meadow areas are within the boundaries of the lands associated with Alternative 1.

*EPA Recommendation:* Executive Order 11990 encourages federal agencies to avoid and minimize wetlands losses and to preserve and enhance the natural and beneficial values of wetlands for various actions, including disposal of Federal lands. Alternative 2 would best meet this national policy objective. The Final EIS should identify the necessary mitigation for wetland area replacement that would be needed should BLM modify the proposed action in a manner that affects these wetlands.

10.2

**Connected action of crop production:** The Draft EIS recognizes that there is a connected action of crop production that will result after implementing the proposed action. According to the CEQ regulations implementing NEPA, connected actions are those that are closely related and therefore should be discussed in the same impact statement. (40 CFR 1508.25(a)(1)). Water quality impacts from the project vary widely depending on the connected actions of private farmers, specifically depending upon the irrigation and crop production methods. It is also recognized based on an economic analysis provided in the Draft EIS, that WID members face uncertainty due to financial difficulties, since their land investment costs could exceed their estimated annual rate of return. (DEIS, at page 4-19.) In order to overcome this financial challenge, the DEIS indicates that higher value specialty crops may be grown on these lands by WID members in addition to seeking financing at lower interest rates. Highly efficient irrigation practices which may be applied to specialty crops at this location could further reduce sedimentation and pesticide residuals arriving in the Big Horn River.

*EPA Recommendation:* The Final EIS should describe specialty crops that are economically and agronomically feasible on these lands and their potential to reduce water quality impacts. Increased energy cost is also an item high on the list of the specialty crop industry concerns in the U.S., including impacts on production, processing and marketing practices, transportation and energy conservation. The agricultural industry is also interested in the potential for using specialty crop resources to provide alternative energy sources such as crops used to produce cellulosic ethanol. Improving water use efficiency is another critical component of the long-term viability of the specialty crop industry according to the Department of Agriculture. (See: "U.S. Specialty Crops, An Update on Opportunities and Challenges", USDA, May 2007, at: <http://nareccab.ree.usda.gov/nal>.)

10.3

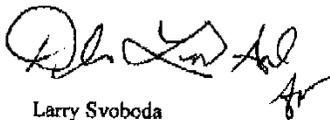
EPA's rating

In accordance with our responsibilities under the Clean Air Act Section 309, it is EPA's responsibility to provide an independent review and evaluation of the potential environmental impacts of this project. Based on the concerns identified, EPA is rating this Draft EIS as "Environmental Concerns - Insufficient Information" (EC-2). The "EC" rating means that EPA's review of the Draft SEIS has identified potential impacts to water quality that should be avoided in order to fully protect the environment. The "2" rating means that additional information is needed regarding which appropriate measures will be required to address potential excursions of water quality standards. EPA recommends that the Final EIS clearly state that discharges with the potential to cause or contribute to water quality standards excursions are allowed only where subject to water quality based-effluent limitations as stringent as necessary to meet the standards. For further questions regarding this rating, please see the attached description of EPA's EIS rating system.

10.4

If you have any questions regarding our comments or this rating, please contact Wes Wilson at 303-312-6362 or me at 303-312-6004.

Sincerely,



Larry Svoboda  
Director, NEPA Program  
Office of Ecosystems Protection and Remediation

Enclosure

## U.S. Environmental Protection Agency Rating System for Draft Environmental Impact Statements

### Definitions and Follow-Up Action\*

#### Environmental Impact of the Action

**LO -- Lack of Objections:** The Environmental Protection Agency (EPA) review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

**EC -- Environmental Concerns:** The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts.

**EO -- Environmental Objections:** The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no-action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

**EU -- Environmentally Unsatisfactory:** The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

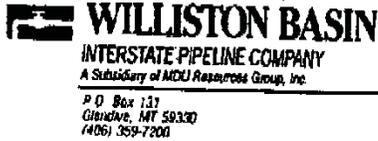
#### Adequacy of the Impact Statement

**Category 1 -- Adequate:** EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis of data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

**Category 2 -- Insufficient Information:** The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses or discussion should be included in the final EIS.

**Category 3 -- Inadequate:** EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the National Environmental Policy Act and or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

\* From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment. February, 1987.



11.0

March 19, 2008

Bill Hill, Field Manager  
Bureau of Land Management  
Worland Field Office  
PO Box 119  
Worland, Wyoming 82401-0119

RE: Draft Environmental Impact Statement  
Westside Land Conveyance Project

Dear Mr. Hill,

Williston Basin Interstate Pipeline Company has been reviewing the above mentioned impact study. WBIP has a few concerns with the outcome of this sale and conveyance of public land to individuals.

WBIP has two existing BLM Permits that cover our natural gas pipelines through the proposed area in question. These are BLM Permits WYW-001185 and WYW-0275301. After reviewing the options in the report (see section 4.7 Land Use), WBI would pursue the option of submitting an application to the BLM for a perpetual easement for both existing permits. Please provide the required forms.

11.1

The main concern of WBIP is the proposed use of the land after it is turned over to Westside Irrigation District. The existing natural gas pipelines were installed at the required depths of BLM. If the new landowners are allowed to level the ground, upgrade small areas of unsuitable soils and contour drainages (see section 2.2 Alternative Development and Evaluation), the integrity and safety of our pipelines will likely be in jeopardy.

11.2

Granted, this will not affect the entire pipeline. However, there will be the potential of the existing pipeline's needing to be lower or rerouted. The responsibility of this cost will need to be addressed.

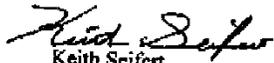
11.3

**WILLISTON BASIN INTERSTATE PIPELINE COMPANY**

If you should need additional information or have any questions please contact me at 1-406-359-7223 or write to P.O. Box 131, Glendive, Montana 59330-0131.

Thank you for your cooperation.

**WILLISTON BASIN INTERSTATE PIPELINE COMPANY**



Keith Seifert  
Pipeline Engineering Manager