

TROUT UNLIMITED

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To: Don Simpson	From: Cathy Purves
Fax: 307-775-6203	Pages: 25 including cover
Phone:	Date: November 17, 2008
Re: December 2, 2008 WY BLM O/G Lease Sale	cc:

Comments:

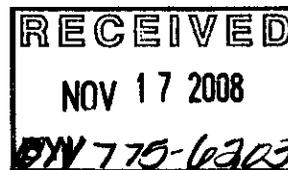
Hello Don,

Please find attached a copy of Trout Unlimited and accompanying parties' protest to the upcoming sale of oil and gas lease parcels in Wyoming.

Thank you,

Cathy Purves

307-332-6700 ext. 10



facsimile





***Via Fax (307)-775-6203
And Overnight Mail***

November 16, 2008

Don Simpson
Director
Bureau of Land Management
Wyoming BLM State Office
5353 Yellowstone Road
Cheyenne, WY 82009

RE: Protest for December 2, 2008 BLM Competitive Oil & Gas Lease Sale

Specific Protests to Parcel Numbers: WY-0812-177; WY-0812-178; WY-0812-179; WY-0812-180; WY-0812-181; WY-0812-182; WY-0812-183; WY-0812-186; WY-0812-187; WY-0812-188; WY-0812-189; WY-0812-190; WY-0812-191; WY-0812-192

Dear Mr. Simpson,

Please accept the following protest from Trout Unlimited, Wyoming Wildlife Federation, and the National Wildlife Federation, pursuant to 43 C.F.R. §§4.450-2 and 3120.1-3, to the Bureau of Land Management's oil and gas lease sale for the above-mentioned parcels scheduled to be offered at the December 2, 2008 Competitive Oil and Gas Lease Sale.

Trout Unlimited (TU), Wyoming Wildlife Federation (WWF), and the National Wildlife Federation (NWF) specifically protests these identified 14 parcels due to their location in sensitive fisheries and wildlife ecosystems. We would also like to express concern over the number of parcels being offered in this sensitive area so soon after the August 5 lease sale and without the full and appropriate analysis required under NEPA. We feel the BLM is not able to adequately assess the larger landscape size impacts that are already beginning to appear in southwestern Wyoming and will continue to occur to these unique ecological landscapes when acreages are being sold off at this fast pace and include such high rates of energy development activity.

This is especially relevant in light of the Government Accounting Office (GAO) recently releasing a report that took issue with the number of leases sold against the number of wells actually permitted and drilled. This report (GAO October 2008)

presented numerous case examples of the BLM basically selling off more than they could manage.

With all due respect, all three organizations feel the BLM should withdraw these 14 parcels from the December sale until a more accountable inventory of the number of leases and drilling activity is conducted. The Rock Springs field office's guiding management document (Green River Resource Management Plan, 1997) identifies areas in which these parcels are located as significant resource areas and with specified strict surface management restrictions, including No Surface Occupancy (NSO). The public at large and elected officials have consistently objected to lease sales in this area. Governor Dave Freudenthal has also strenuously objected to such sales, as has the Wyoming Game and Fish Department. As a multiple-use agency, the BLM has ignored the numerous other renewable resources that occupy this area, apparently intent upon selling off as many lease parcels as possible prior to the end of this year. Both TU and WWF strongly object to the offering of these lease parcels at any time period and we ask that the BLM withdraw this area from current and all future lease sales.

We ask that these parcels be withdrawn for the following reasons:

- ◆ The proposed parcels offered for sale are located within unique and crucial wildlife habitats, migration corridors, and contain wildlife and fisheries species that are threatened, endangered, and/or are sensitive.
- ◆ The BLM's consideration of the direct, indirect and cumulative impacts to wild and native fish and their watersheds, and to wildlife resources and their habitats, as required by the National Environmental Policy Act (42 U.S.C. § 4321, et seq) are no longer being considered based on the number of accelerated lease sales thus far sold in 2008 and analysis for these sales now are either outdated, inadequate or lacking a discussion of significant new information based on cumulative and landscape scale impacts.
- ◆ Projects already approved and under development in these sensitive resource areas are in violation of mitigation and monitoring stipulations.
- ◆ Parcels in this lease sale are located in areas that the BLM office has recognized and designated as special management areas restricting surface use, with specific NSO and avoidance language outlined in the BLM's RMP.
- ◆ Most parcels offered in this area contain streams and rivers that support sensitive Colorado River cutthroat trout populations, including conservation populations which would be threatened by oil and gas activities.
- ◆ All parcels in this area are located in a groundwater aquifer recharge zone and require analysis and cumulative impact assessments prior to any sale.
- ◆ The lack of consideration and vulnerability analysis from climate change and its risk factors to wildlife and fisheries habitat should be included in any analysis prior to any sale.
- ◆ The BLM's lack of analysis of the overlapping impacts associated with different extractive energy projects (including oil, uranium, oil shale and geothermal) projected to occur within many of these lease parcel locations.
- ◆ Lack of updated analysis of air quality issues associated with the increased number of permitted wells that have the potential to impact soils, plants, water, wildlife, fisheries, livestock and human health without proper air quality assessments and updated air quality monitoring equipment and analysis.

- ◆ The BLM's consideration and analysis of the economic impacts to the outdoor recreation industry, which includes hunting, fishing, tourism and local communities, is inadequate as it applies to the lease parcels being offered in high recreation use areas.

Interests of the Protesting Party

Trout Unlimited is a private, non-profit conservation organization that has more than 155,000 members nationwide dedicated to conserving, protecting and restoring North American's trout and salmon fisheries and their watersheds. Since 1959, TU has dedicated staff and volunteers toward the protection of sensitive ecological systems necessary to support robust native and wild trout and salmon populations in their respective range. TU recognizes that the value of public lands is unparalleled in providing habitat to coldwater fisheries, drinking water and wildlife habitat. TU's conservation program includes public lands and recognizes that public lands play a vital role in protecting and securing habitat for the survival and restoration of wildlife and fisheries. TU's conservation program recognizes that anglers alone don't utilize public lands and that many people who fish on public lands also hunt. TU therefore believes that actions taken on public lands are ultimately reflected in the quality of fish and wildlife habitat and populations.

In Wyoming, TU has more than 1,300 members and 13 state chapters whose members actively utilize and enjoy the resources of the many streams and rivers and their respective watersheds and those values these watersheds provide, including clean water, clean air, fishing, hunting, outdoor recreation and wildlife viewing opportunities. TU members are active participants in a variety of outdoor recreational and business pursuits within and near most of these lease sale parcels. TU has invested significant financial resources toward the combined restoration and rehabilitation efforts in the Little Mountain Watershed Enhancement Project which will be placed in jeopardy from oil and gas development. And finally, TU believes the impacts from the development and production of these oil and gas leases will adversely affect our members, as well as other non-members who hunt, fish, recreate and do business in and around lease sale areas.

The Wyoming Wildlife Federation is Wyoming's oldest sportsmen's advocacy group organizing itself around wildlife and wildlife habitat protection issues since 1937. WWF has over 5,000 members and 15 affiliates, with many in Sweetwater County near the parcels protested herein. These members have a direct stake in oil and gas leasing. They have made clear their opposition to the proposed leasing of these parcels, and their opposition to any gas development in the greater Little Mountain area. As such, members who hunt and reside in these affected areas will be adversely affected by the lease sale in the form of lessened opportunities to hunt, decreased access to public lands, loss of sage grouse populations due to disruption of breeding, nesting, and seasonal habitat, and an overall loss in the herds of elk and mule deer in areas where winter habitat and parturition occur.

The National Wildlife Federation is a national member-supported non-profit conservation, education and advocacy organization. NWF is associated with conservation organizations in 47 states and territories, including WWF in Wyoming. NWF is dedicated to conserving wildlife and other natural resources, and believes that hunting, fishing and trapping are legitimate recreational pursuits and useful wildlife

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management practices. NWF works to promote responsible management of wildlife on public lands.

The protesters have well established histories of participation in BLM planning and management activities, including Wyoming oil and gas lease planning decisions and the planning process for the Green River Resource Area management plan. Members of all three organizations have visited and used BLM lands for fishing, hunting, wildlife viewing, and other activities, and will continue to use these areas in the future. Mineral development in these important wildlife and fisheries habitats will harm our members' interests in the continued use of those areas and the wildlife they support. This is especially true if mineral development is allowed to proceed, as proposed, in these sensitive areas of the greater Little Mountain area.

Applicable Statutory, Regulatory and Executive Requirements

The Green River Resource Area Management Plan of 1997 (RMP) which the above mentioned leases would fall under includes strong resource protection language for the areas in where these lease parcels are located. The BLM made a commitment to the resource area when it approved in the Record of Decision (ROD) that certain management protections would be offered for several unique and special areas in this region (Currant Creek Watershed, Sage Creek Watershed, Red Creek Watershed, Greater Red Creek ACEC, and two Special Management Areas). Already drilling has been approved and seismic operations continued until November 15, 2008 in these sensitive areas. Our organizations expressed concerns during scoping comments submitted back in February 2008 about the potential for full field development and the lack of a landscape scale analysis on the Baxter Natural Gas Proposal. Because of the potential for increased further development, we requested an Environmental Impact Statement (EIS) be completed rather than a lesser Environmental Analysis (EA). BLM ignored our concerns and our requests were denied. In June 2008, we again submitted comments on seismic operations being planned in this area (June 9, 2008; comments submitted to Jeromy Caldwell, Rock Springs BLM by TU). In July we protested the August 5 BLM Oil and Gas Lease sale based on the same level of concerns about the sensitive ecosystem in which those lease parcels were located. Finally, both organizations submitted scoping comments on the Horseshoe Basin Seismic Exploration Project in August 2008 about the effects on the neighboring and connected landscape of the Pine Mountain region. Now further development in this highly fragile ecosystem continues to be approved and leases continue to be sold. Clearly lacking is any landscape scale cumulative impact analysis on this area. We therefore ask that the BLM adhere to their agency responsibility and be accountable for protection commitments they made on behalf of the public's natural resource when they approved the ROD for the Green River RMP of 1997.

Further lease sales will place the BLM in the position of violating NEPA regulatory measures based on the lack of analysis for the major federal actions that have continued throughout the course of this year in the Rock Springs resource area. NEPA directs federal agencies to prepare a detailed environmental impact statement for major federal actions that significantly affect the quality of the human environment (42 U.S.C. § 4332(C)(i)). While the BLM contends that leasing does not constitute an environmental impact, the fact that the BLM sells these leases and then claims they cannot prevent development once the leases are sold is clearly an irresponsible action by the BLM to the public's resources and to the public's trust.

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I. Resource Management Plans Protect Certain Unique Areas with Specific Restrictions

All fourteen of the lease parcels in this area are located within the Rock Springs BLM Field office and are under jurisdiction of the Green River Resource Area Management Plan of 1997 (RMP). As mentioned above, the BLM made a public commitment to this resource area when it approved resource protection language in the Record of Decision (ROD). The decision to place protective measures on these unique and special areas in this region (the Currant Creek Watershed, Sage Creek Watershed, Red Creek Watershed, Greater Red Creek ACEC, and two Special Management Areas) was based not only on the recognized quality of the resource by the BLM but also recognition from the WGFD, other state and federal agencies, and the public.

Impacts associated with oil and gas development on crucial big game winter habitat and migration, on sage grouse populations, and on fisheries and aquatic habitats are well documented in scientific literature. The BLM has not fully analyzed these impacts in a cumulative and landscape scale analysis for these leases to be considered for sale. TU and WWF strongly feel, along with an increasing public interest, that further lease sales only results in the total destruction of this sensitive ecosystem in the southwestern portion of Wyoming.

Conservation populations of Colorado River cutthroat trout (CRCT), nationally important trophy big game management areas, limited populations of the sensitive midget faded rattlesnake, declining and potentially listed populations of sage grouse and pygmy rabbits, and crucial winter range for mule deer and elk all contribute to this distinctive and irreplaceable wildlife assemblage.

TU and WWF respectfully requests that the lease parcels within this geographic area be pulled from the sale due to the overwhelming sensitivity of the numerous wildlife and fisheries resources dependent on this ecosystem.

II. Executive Order 13443 Mandates Consideration of Wildlife and Outdoor Recreation

On August 16, 2007, President Bush signed Executive Order 13443, which directs federal agencies to "...manage wildlife habitat on public lands in a manner that expands and enhances hunting opportunities, including through the use of hunting in wildlife management planning." (E.O. 13443, *Facilitation of Hunting Heritage and Wildlife Conservation*, § 2(c) (August 16, 2007). The Executive Order further requires that agencies "...evaluate the effect of agency actions on trends in hunting participation and, where appropriate, to address declining trends, implement actions that expand and enhance hunting opportunities for the public" (*Id.* § 2(a)).

A draft report recently released by the Sporting Conservation Council (July 2008), which is the result of the E.O. 13443, has recognized that energy development and its' current fast pace places wildlife habitats in the West in an uncertain status, especially for the protection of wildlife habitat in the future. The report identified specific goals including one that states the BLM should consider temporary deferral of energy

leasing to preserve options for game/wildlife species, populations and habitat conservation.

TU, WWF, and NWF feel that with this upcoming sale of leases in this area the BLM is in clear violation of the President's Executive Order. Indeed, we feel strongly that the increased development scenario that will accompany the sale of these leases will actually decrease hunting opportunities rather than "enhance hunter opportunities" as the Order specifies. Big game hunting in this region is incredibly important. The thriving elk herd in the Little Mountain area produces trophy-class bulls, and licenses for the area are extremely difficult to draw. In 2008, a resident elk hunter had only a 6% chance of drawing a license to hunt bull elk on Little Mountain. Most of the area within these parcels is winter-yearlong habitat for elk. The habitat improvements noted earlier have been effective in changing elk habitat on a landscape scale on Little Mountain. Leasing and subsequent development would lower the quality of elk habitat by increasing road density, fragmenting elk habitat, and creating year-round disturbance. Illegal elk kills are also a major concern.

The mule deer herd in this area is also a matter of significant concern. Again, winter-yearlong habitat is affected. And again, the value of habitat improvements funded by hunters and anglers, with the intent of improving habitat for mule deer and other wildlife, would be negated by gas development. This area is managed as a trophy area for mule deer, and licenses are highly sought-after. A resident deer hunter had only a 9% chance of drawing a license in this area. The habitat improvements noted above have been effective in changing deer habitat on a landscape scale on Little Mountain. Leasing and subsequent development would lower the quality of mule deer habitat by increasing road density, fragmenting elk habitat, and creating year-round disturbance. Illegal deer kills are also a major concern.

III. NEPA Requires that the BLM Consider All Relevant Factors

We reiterate our contention that the BLM is not considering all applicable and statutory requirements as required by NEPA. NEPA requires that a federal agency decision, such as a decision by the BLM to offer parcels for mineral lease, be based on all relevant factors and be supported by the facts in the record. See *Penaco Energy, Inc. v. U.S. Dep't of the Interior*, 377 F.3d 1147, 1156 (10th Cir. 2004). An agency decision is arbitrary and capricious if:

The agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs contrary to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Colorado Envtl. Coalition v. Dombeck, 185 F.3d 1162, 1167 (10th Cir. 1999) (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983)).

TU, WWF and NWF believe the BLM has failed to consider important aspects of protecting crucial wildlife habitat and important streams and river segments located in all of these parcels offered for sale, and therefore, that the decision to lease these parcels

in the immediate environment of these unique systems is arbitrary and capricious. Further, both organizations believe the NEPA documents on which the BLM is relying highlight significant impacts to fisheries and wildlife as a result of mineral development (Green River RMP in particular).

IV. NEPA Requires Supplemental Environmental Analysis When New Information is Available

The "fundamental objective" of NEPA is to ensure that a federal agency "will not act on incomplete information only to regret its decision after it is too late to correct." *Southern Utah Wilderness Alliance v. Norton*, 457 F. Supp.2d 1253, 1261 (D. Utah 2006) (quoting *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 374 (1989)) (citation omitted). Therefore, "[i]f there remains a 'major federal action' to occur, and if ... new information is sufficient to show that the remaining action will 'affect the quality of the human environment' ... to a significant extent not already considered, a supplemental EIS must be prepared." *Id.* at 1264 (quoting *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371(1989)). Specifically, an "agency must be alert to new information that may alter the results of its original environmental analysis, and continue to take a 'hard look' at the environmental effects of [its] planned actions." *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 557 (9th Cir. 2000).

Oil and gas development continues to increase in Wyoming at a pace and to the degree that was not anticipated when the BLM developed their land use plans. In deciding to lease these parcels for the December 2 lease sale, the BLM has relied on outdated environmental analyses for the areas where these parcels are located. Considerable scientific research and literature has accumulated recently with respect to wildlife and fisheries and energy development's impacts to habitats. This data cannot be ignored by the BLM. Further, where the BLM has enacted specific protection measures in sensitive habitats in the recently approved EA for the Baxter Natural Gas project (June 2008), problems with contamination of soils and lack of monitoring are already cropping up. Clearly, the BLM is not able to manage what they are already authorizing and further sales of leases in this area should not occur until the BLM can document what impacts are currently being experienced. It appears that even with strict stipulations for drilling, they are unable to prevent surface and subsurface damage (WGFD and citizen field observations of Devon's drilling practices, November 2008).

Both the Governor of Wyoming and the WGFD have significant concerns about the long-term and cumulative impacts that would occur in some of the more sensitive habitat areas where these parcels are proposed for the December 2 lease sale. In numerous letters from the Governor regarding the lease sales and consequential projects, including scoping comments on the Baxter Natural Gas Project (February 8, 2008 comments), concerns about impacts to recreation, hunting, fishing, waters, and air quality have been strong. The Governor specifically addressed concerns about the BLM approving projects that are out of compliance, as did the WGFD. In WGFD's letters dated January 30, 2008, June 6, 2008, and most recent November 16, 2008 their concerns to the Rock Springs BLM field office regarding the proposed projects and lease sales have been some of the strongest and adamant in recent history. The long-term and cumulative impacts that would result from development in the south Rock Springs areas around Little Mountain and Pine Mountain areas the WGFD brought up apparently did little good. The GRRMP of 1997 recognized the importance of protecting this area

but did not adequately determine the cumulative impacts, the conflicting impacts and the interrelationship among various energy extractive industries (such as coalbed methane, uranium, oil shale and geothermal) and the overall landscape of future scenarios of oil and gas development. Further data has become available since the completion of many of the RMP within these lease parcels that indicate several wildlife and fish species would most likely be harmed by energy development's impacts (Hall Sawyer, 2007. WEST, Inc. Annual Report on Mule Deer Impacts in the Pinedale Anticline; Joel Berger, 2007. Reports on Antelope avoidance behavior due to oil and gas drilling; and Hollarahn's study on sage grouse abandonment of habitat near oil and gas projects, 2006 and 2007).

Proper consideration of new information (on Colorado River Cutthroat Trout, effects from coalbed methane development, climate change, wildlife and fisheries impacts, and economic impacts) is vital because this new data was not taken into account either when the BLM completed the environmental analysis for the current RMPs. The recent decision of the Interior Board of Land Appeals in *Center for Native Ecosystems*, has confirmed the need to complete additional analysis before leasing, stating that "whether more NEPA analysis based on new information is required depends on the nature of the NEPA analysis already completed, and the nature of the information available at the time of the agency action." 170 IBLA 331, 346 (2006). As in *CNE*, because the BLM's existing NEPA documentation contains no analysis of significant new information from CDOW and other sources regarding impacts to CRCT, elk, mule deer, antelope, and greater sage-grouse, BLM must complete further NEPA analysis prior to issuing leases.

As the Tenth Circuit Court of Appeals recently clarified, *Park County Resource Council v. United States Dept. of Agriculture*, 817 F.2d 609 (10th Cir. 1987) does not excuse the BLM from its obligation to analyze these consequences prior to leasing. *Pennaco Energy, Inc. v. United States Dept. of the Interior*, 377 F.3d 1147, 1162 (10th Cir. 2004). *Park County* may allow the agency to forego preparation of an Environmental Impact Statement if and when it has prepared an extensive environmental assessment covering the leases in question. This, however, is not the case; the December 2008 parcels appear to have had no NEPA documentation prepared for them save out-of-date RMP documents that do not (and cannot) account for significant new developments and information since 1998 or before—including increased recreational demand, greatly increased levels of mineral development, and declining populations of greater sage-grouse and new scientific information regarding the species' vulnerability to adverse effects from mineral development.

Nor does reliance on RMP documents alone suffice for the core NEPA function of adequate consideration of alternatives. See *Pennaco Energy*, 377 F.3d at 1162 (explaining that documents such as "Determinations of NEPA Adequacy" cannot satisfy NEPA's "hard look" standard). Because none of the December 2008 lease parcels are entirely No Surface Occupancy ("NSO") leases, leasing, which confers specific rights to develop that the BLM cannot readily deny, is a concrete federal action with readily foreseeable environmental effects, and cannot legally go forward without NEPA analysis. See 43 C.F.R. § 3101.1-2.

NEPA's implementing regulations further underscore an agency's duty to be alert to, and to fully analyze, potentially significant new information. "[I]f there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, a supplemental EIS must be prepared for an old EIS so that the agency has the best possible information to make any necessary substantive changes in its decisions regarding the proposal." Council on Environmental Quality, *NEPA's Forty Most Asked Questions*, available at <<http://www.nepa.gov/nepa/regs/40/40p3.htm>> (last visited Oct. 22, 2007) (citing 40 C.F.R. § 1502.9(c)). Such is the case with the expansion of oil and gas leasing in Wyoming and the water and air quality impacts that are becoming increasingly common.

Irretrievable Commitment of Resources at Leasing Phase

Our organization's leasing concerns discussed below are amplified by the BLM's practice of vesting development rights at the time of lease issuance, regardless of specific resource concerns that might arise between the time of leasing and the time of actual development. This practice can lead to situations where the agency is precluded from imposing necessary stipulations for protection of resources because such stipulations are perceived to infringe on the vested rights of the lessee. Based on the fast pace of leasing and the quantity of the leases that are being sold, the BLM has an obligation to the resource to protect it until a full evaluation of the current impacts can be assessed.

Under the BLM's regulations governing fluid mineral leases, a lessee has the "right" to use the leased lands subject only to stipulations contained in the lease, restrictions deriving from nondiscretionary statutes, and "such reasonable measures as may be required by the authorized officer." 43 C.F.R. § 3101.1-2. The regulations go on to state, however, that the additional reasonable measures can only be imposed if "consistent with lease rights granted." *Id.* As mentioned earlier, we often hear from agency personnel (and this was heard often from the Rock Springs BLM personnel during the August and November 2008 public gatherings) when considering the addition of new stipulations to an existing lease is that the agency's "hands are tied" because the new stipulations are viewed as impermissibly encroaching the vested right of the lessee to develop. In other words, the BLM irretrievably and irreversibly commits resources at the point of leasing, making it extremely difficult or impossible to impose additional stipulations at a future date. See *Penaco Energy, Inc. v. U.S. Dep't of Interior*, 377 F.3d 1147, 1160 (10th Cir. 2004). This is supported by the BLM's Handbook for Planning for Fluid Mineral Resources, which states, "In the fluid minerals program, [the point of irreversible] commitment occurs at the point of lease issuance." U.S. Dep't of Interior, Bureau of Land Management, *Handbook H-1624-1, Planning for Fluid Mineral Resources*.

Companies that are conducting seismic and drilling activities recently approved by the Rock Springs field office have already sought exemptions for access to sensitive areas. The Horseshoe Basin seismic operations are one example. We will continue to remain concerned that the use of a proponent's request for exemptions once the lease has been sold will result in further deterioration of those sensitive habitats and there will be little recourse for remediation, enforcement or halting the injurious activity. This concern is based on the numerous exemptions thus far granted in various BLM resource areas. Within the Rawlins resource area, the BLM has granted exemptions to more than

82% of the requests. The same is happening in the Pinedale resource area where drilling and development is occurring at a pace that neither the BLM nor the state regulatory agencies can keep up with. BLM offices often lack a sufficient number of mitigation compliance officers or lack them entirely, such as is the case in the Pinedale BLM office. Winter ranges that have been compromised by drilling, drought and general development need better protection than that which already exists yet even with scientific evidence that these impacts are occurring, there is little to stop requests from being granted once the area has been leased.

Though BLM maintains that exemptions are granted only if they are valid and do not impact wildlife, recent incidents of companies arbitrarily violating access restrictions appear to continue (Rock Springs field office-reports of energy company staking areas for seismic operations in a closed wildlife area prior to the completion of an EA, June 2008; Pinedale field office – reports of energy company illegally opening closed wildlife area gates for company access without the BLM's approval, May 2008). Whether these incidents occur due to the lack of personnel available to monitor the situation or whether there was some miscommunication among the involved parties is irrelevant. The point is that violations occur once a lease has been granted and even in the most highly sensitive wildlife areas, resources become the victims of a mismanaged system.

The practice of vesting development rights at the time of lease issuance is still cause for concern for us, in that should a site-by-site analysis reveal that a particular parcel is not appropriate for surface occupancy, or other types of impacts, the BLM would be unable to effectively protect the resource. This is of particular concern where sensitive wildlife and fish species have isolated patches of secure habitat that have yet to be fragmented (such as those parcels in southwest Wyoming). Should this happen, populations of these sensitive species would face a distinct and significant threat for survival due to the negative impacts associated with oil and gas development.

TU, WWF, and NWF highlight the concerns above to underscore the importance of ensuring that the BLM has taken an adequate hard look at existing and new information prior to offering parcels of public land for mineral leasing.

I. Lease Sales would irreparably harm the Colorado River Cutthroat Trout populations in the Rock Springs resource area.

All three organizations protest the offering of these 14 lease parcels because they are located within watersheds known to be occupied by CRCT and the BLM has not taken a hard look at new information concerning the impacts of oil and gas development on the CRCT in these areas. We also protest those lease offerings located in areas where coldwater recreational fish exist that have the potential to be impacted by the sedimentation issues faced in the Flaming Gorge watershed. Additionally, both organizations are concerned about the lease offerings in sensitive ecosystems that would irreparably harm coldwater fish species and their aquatic environment.

TU, WWF and NWF have reason to be concerned about the lease offerings even with the stipulations that have been attached to the lease offerings. Efforts by the BLM to minimize impacts have not been very successful thus far as witnessed last week in the Baxter well projects and in the Pinedale area with significant increases in air quality

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issues, including ozone violations, benzene contamination of water wells, groundwater contamination issues, and big game wildlife impacts due to the increased presence of oil and gas activities.

Within the described stipulations, a general "one-size-fits-all" stamp of restrictions is attached to all the lease parcels being offered in this December sale. This may be acceptable to those parcels located in areas that have minimal wildlife and ecological concerns (i.e., low soil erosion, no sensitive species issues, lack of crucial wildlife habitats or multiple species crucial wildlife habitat) but for areas that have a high ecological sensitivity due to the presence of Colorado River cutthroat trout, crucial big game winter range, multiple big game habitat overlaps, high soil sedimentation and erosion potential, valuable aquifer and groundwater regimes, and the presence of sensitive, threatened or endangered species, these general stipulations are unacceptable.

A. Analysis of Colorado River Cutthroat Trout in Parcels Offered for Sale

While all three organizations have a high level of concern regarding impacts to streams, TU in particular is concerned that important conservation populations of CRCT could be jeopardized if these parcels are leased for mineral development. The BLM's existing NEPA analyses in the Rock Springs field office has not taken a hard look at all relevant factors concerning impacts to conservation populations of the CRCT. These leases being offered in this area are located in prime riparian and aquatic habitat that supports CRCT populations. And while there is some recognition that significant potential impacts will occur to aquatic habitats from oil and gas development, there lacks discussion of how specifically these impacts would affect CRCT and how proposed mitigation will protect conservation populations of this species. In light of the known impacts, we believe that the decision to lease parcels within CRCT watersheds is arbitrary and capricious.

The Currant Creek watershed is one of the two watersheds (the other is Sage Creek) in the Greater Red Creek ACEC that supports several CRCT populations. The BLM has specific management guidelines outlined in the GRRMP of 1997 which expressly state that management actions will be in support of watershed stability and CRCT habitat management objectives. This area is also described as an avoidance area for rights-of-way and surface disturbing activities. Recognition of the high sediment loads that can occur in these watersheds from gully, rill, channel or accelerated sheet erosion makes any construction activity liable for contributing toward soil erosion impacts.

We are particularly concerned about lease parcels within the Currant Creek watershed, which is managed as no surface occupancy (NSO). The BLM management actions for the Currant Creek Watershed are written as follows: "All BLM-administered public lands within this watershed are closed to: 1) surface disturbing activities; 2) mineral material sales; and 3) mineral location. A withdrawal from entry under land laws and mineral location will be pursued. This area is also an exclusion area for rights-of-way," (Green River RMP 1997, page 28). However, within the August 2008 BLM

Competitive Oil and Gas Lease Sale Notice, parcels in that drainage had specific language directing the lessee to "work with the BLM, local governments and land users to develop a transportation plan for the area prior to development," (BLM Notice of Competitive Oil and Gas Lease Sale, August 5, 2008, page 59). The transportation plan includes proposed roads, with high traffic, and electric power transmission lines. The BLM is in direct contradiction and violation to their Record of Decision for the Green River Resource Management Plan of October 1997, which is the managing document for the area.

The RMP states that activities within the Currant Creek Watershed are to have no negative impacts to the watershed, fisheries, wildlife, and scenic objectives (GRRMP 1997, page 28). Watershed and riparian conditions are important for the health and well being of both terrestrial and aquatic species. This juniper woodland – desert area has sensitive soils. The drainages are especially sensitive and when disturbed will cause sediment and nutrient loading in excess throughout the Currant Creek and Marsh Creek watersheds. Channel erosion is probable causing faster stream flows and altering of vegetation. Cumulative affects from habitat fragmentation and degradation, increased truck traffic, vegetation removal, as well as climate change will impact these watersheds and will raise sediment and nutrient loads in the streams and tributaries.

The nature of the highly erodible soils in these lease areas south of Rock Springs create a significant concern for TU and WWF due to the potential for sedimentation loading, headcutting problems, contamination problems and the general declination of a premier cutthroat trout fishery. Additional concerns include air quality emissions, contamination opportunities from infrastructure development, the impacts from heavy truck traffic and the declining stability of a supportive streamside vegetation community.

In the past, sudden event thunderstorms have created significant damage to the drainages and creeks in the area. Trout Creek suffered a significant setback when such a sudden event storm occurred 3 or 4 years ago that destroyed the headwaters of Trout Creek, decimating the CRCT population. Trout in this stream are currently in the low population numbers. Any future event that impacts these streams after oil and gas development occurs would be significantly worse, perhaps eliminating the population entirely.

Also of concern within the southwestern lease parcel locations are the numerous and important headwater springs that exist here. Because of the gaining reaches that exist throughout the area, even BLM staff have expressed concerns about potential impacts of exploration and production activities as they affect the ephemeral drainages, hillsides, and overall landscape area. BLM has not properly evaluated the potential landscape scale impacts of the proposed lease action on the hydrological and aquatic environment, and must provide a detailed description of the subsurface hydrology of the project area, with characterization of the aquifers affected by the proposed activities. The aquifer characterization should identify the differing geological formations and provide quantitative descriptions of the geohydrological characteristics of each formation.

Finally, the entire Greater Red Creek ACEC is located within an aquifer recharge zone which plays a significant role in supporting the unique trout fisheries and aquatic

diversity found here. Any endeavor that involves surface disturbing activities and subsurface activities must be thoroughly analyzed and considered inappropriate if the potential exists for contamination or deterioration of the groundwater features.

B. Background Information on the Colorado River Cutthroat Trout

The CRCT is a subspecies of cutthroat that originally ranged throughout Colorado, Wyoming, Utah, New Mexico and quite possibly Arizona in the coldwater stream reaches of these states. See Behnke, Robert, *Trout and Salmon of North America* (2002). Due largely to impacts created by humans, CRCT populations have decreased in the last 150 years and now occupy less than eight percent of their original range (from an estimated 21,386 miles of historically occupied habitat to 3,022 miles of currently occupied habitat). See Hirsch, Christine, L., et al, *Colorado River Cutthroat Trout Conservation Agreement Status Report, Range-wide Status of CRCT* (2005).

CRCT presently occur in three states in the West (Colorado, Wyoming and Utah), and all three states have primary responsibility under their respective state wildlife laws to manage and conserve populations of CRCT. Additionally, federal agencies that play a role in their protection include the U.S. Forest Service, the BLM, the National Park Service, and Tribal Governments.

Headwater streams typically provide habitat for CRCT populations and these stream reaches are typically small with stream widths less than 15 feet and depths less than three feet. Due to the small stream reaches, any degradation or catastrophic event will have immediate and long-term consequences to the fisheries population, and typically result in total fish loss. Such an event was witnessed in a tributary of LaBarge Creek in the 1970's by the Wyoming Game and Fish Department, when an oil spill into the stream killed all the CRCT. This population never recovered (Binns, WGFD, 1977). In Colorado, eight spills have been reported to the Colorado Oil and Gas Commission from 2005 to 2007 in the Parachute Creek Basin. Though some were considered small spills, due to the nature of the stream size that CRCT depend on, these spills actually can cause significant damage. Oil tankers also have contributed to serious fish kills in Colorado in the last 15 years. See J. Woodling, *Roan Plateau Comment Report* (August 2007). An oil tanker overturned along the side of Clear Creek west of Denver, emitting gallons of gasoline and killing thousands of trout for several miles. A second oil tanker crashed into Cochetopa Creek, also killing fish for several miles.

CRCT populations are not tolerant of sediment loads which can occur with road traffic, construction activities, sudden weather events, spills, steep slopes, etc. Such erosion events can cover eggs from spawning, literally wiping out the following year's crop of fish. Oil and gas leasing means an increase in roads, truck traffic, construction activities, toxic spill potential, and loss of water due to dewatering of streams for a variety of activities including dust suppression.

C. New Significant Information Exists Concerning Impacts to Colorado River Cutthroat Trout

A Colorado River Cutthroat Trout Conservation Team was formed in 1999 and consists of fisheries and other resource professionals from Colorado, Wyoming, Utah, the Departments of Agriculture and Interior, and the Ute Indian Tribe. The establishment

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of the CRCT Conservation Team has led to a more complete assessment of the CRCT's population status, abundance and distribution, giving rise to new information not available when the GRRMP was completed. Also, since completion of the Rock Springs GRRMP of 1997, the BLM has recognized CRCT as a sensitive species, and the State of Wyoming has designated the CRCT as a species of special concern. See CRCT Conservation Team, *Conservation Agreement and Strategy for Colorado River Cutthroat trout [Oncorhynchus clarkii pleuriticus] in the States of Colorado, Utah and Wyoming*, p. 3 (June 2006). The BLM, through its Wyoming State Director, is a participant in the CRCT Conservation Team and a signatory to the Team's Conservation Agreement, which obligates the BLM to ensure implementation of CRCT conservation actions detailed in the Team's Conservation Strategy.

Even though the U.S. Fish and Wildlife Service concluded in April 2004 that a citizen-based petition to list the CRCT was unwarranted, the ongoing threats to CRCT habitats remain a serious concern. Annual assessments are provided on the status of the CRCT on a state-by-state basis and provide a means for establishing collaborative efforts for planning on-going and future CRCT conservation measures. According to the CRCT Conservation Agreement report (2005) there are 22 conservation populations of CRCT in the Upper Green River watershed basin which includes populations in the southwestern portion of Wyoming.

A conservation population is defined as a known (genetically tested) or suspected to be at least 90 percent genetically pure or otherwise determined to be important for conservation. Concentrations of CRCT located in Wyoming occur in the Upper Green River drainages, the Blacks Fork drainages, the Flaming Gorge (east) drainages, and the Little Snake River drainages. With the amount of oil and gas development and industrial and residential development occurring within these watershed drainages, this places Wyoming in a precarious situation as the status of the CRCT is challenged from various types of development encroachment.

Recent scientific findings regarding climate change also amounts to new significant information that the BLM must consider prior to offering public lands for lease. TU has conducted several different analysis vulnerability scenarios for CRCT based on current data availability and is able to provide local extirpation estimates of conservation populations for CRCT. TU's analysis is based on the combined threat of global warming-induced environmental change and the current likelihood of population persistence.

TU's climate change analysis models three future conditions expected to have the greatest impact on trout – warmer summer temperatures, increased winter flooding, and increased wildfires. The analysis is conducted at the subwatershed scale (10,000 – 40,000 acres). The population persistence analysis is grounded in conservation biology principles on the relationship between patch size and population viability. Specifically, TU's analysis integrates data on population size (abundance), occupied stream habitat, and watershed patch size.

TU has completed these analyses across the entire range of CRCT and has found that 43 percent of the remaining conservation populations do not meet minimum habitat requirements for persistence. Of the populations that do meet these minimum

requirements, over 20 percent are at high or moderate risk from climate change impacts. When taken in light of the fact that less than ten percent of the historic range is currently occupied, every remaining population is critical to the survival of the species.

These findings also make clear that if interested parties, including the BLM, are to maintain the CRCT as a viable native species, populations will need more habitat options than are currently available. In other words, we not only need to protect existing habitat, but we also need to restore other areas that have already been lost both in terms of populations and habitat. Given current habitat degradation and global warming-induced environmental change, sites that offer potential habitat for the future should not be further degraded or lost, because connectivity between isolated populations of CRCT will be critical to future survival of the species. It will also be necessary for all CRCT populations to have access to thermal refugia and new habitats after fires and floods.

The CRCT Conservation Teams' Conservation Strategy presents several different strategies for ensuring the long-term viability of the CRCT throughout their historic range, including recognition of the need to manage entire watersheds, rather than individual parcels of land, for CRCT conservation. "Impacts outside the riparian zone should be considered as part of CRCT management. Land management agencies should work to mitigate adverse impacts of watershed activities on water quality, instream habitat, channel morphology, riparian areas, and population stability." *Id.* at 18. Further, "[...]and management decisions likely to affect CRCT populations will include both pre- and post-project evaluation and monitoring to ensure that the habitat elements for CRCT are protected. Timber management, road construction, mineral development, and their associated impacts should be analyzed and mitigated prior to implementation.... This amounts to administrative restoration, where adverse impacts are mitigated at the plan level." *Id.* at 20.

In other words, the importance of watershed-level planning to the conservation of the CRCT has been highlighted in the Conservation Strategy – a type of planning that is explicitly rejected by the FEIS in favor of site-specific analysis of water impacts. In Colorado, the BLM itself stated in a 2002 report evaluating Areas of Critical Environmental Concern that entire watersheds in which CRCT reside are considered important to the long-term functionality of vital ecosystem processes which maintain upland and stream habitats important to these fish. See U.S. Dep't of Interior, Bureau of Land Management, *Roan Plateau RMP Amendment: Evaluation of Proposed Areas of Critical Environmental Concern* (Aug. 2002). The BLM also concluded in this document that "conservation populations are important in the overall conservation of the species and are given the highest priority for management and protection. These populations are unique and irreplaceable". This assessment should be considered relevant for the consideration of withdrawing these 14 lease parcels in southwestern Wyoming where the entire watershed in which CRCT reside will be threatened with any type of increased development.

Additionally, road building and mining operations alter the hydrology of watersheds and have been well documented to be harmful to fish and other aquatic life¹. A 1996 report on the conservation status of the CRCT estimated that roads have affected seven percent of all pure and hybrid populations and one percent of all unknown populations of CRCT.² Given that CRCT occupies less than five percent of its historic range in Wyoming, this damage estimate is cause for concern. It is undisputed that stream sedimentation caused from erosive soils and slopes are harmful to native trout. Increased sedimentation reduces dissolved oxygen, raises stream temperature, and often covers or buries trout spawning grounds, removing any reproduction potential. Oil and gas development inherently bring in the added impact of roads, erosion, dust pollution, culvert barriers, and runoff pollution. Examples of devastating impacts to a species population were witnessed this past winter in Colorado. Several recent drilling mud spills (November 2007-February 2008; Colorado Oil and Gas Conservation Commission reports) which occurred this past winter in the Roan Plateau dumped more than 1.2 million gallons of contaminated drilling mud into tributaries that contain CRCT populations. Analysis still continues on those impacts to the fisheries ecosystem.

Moreover, springs from aquifers that supply water to these CRCT streams could be impacted by groundwater extraction in many of these areas. Headwaters of the Middle and West Fork of Carrant Creek, Sage Creek, Gooseberry Creek, Trout Creek, and the Marsh Creek springs region and headwaters, and the numerous other sensitive streams occupy these lease parcels. In addition, this entire watershed area is known as a groundwater recharge area. Little is known about the impacts from groundwater contamination but what is known is that groundwater provides much of the surface water that flows in streams. Reduced stream flows harm fisheries, and in stream reaches that contain sensitive trout species such as CRCT, harmful effects will be felt sooner rather than later and often can be long-lasting. In instances of oil and gas development, traditional gas plays require a certain amount of pumping water from the ground. In coalbed methane plays, however, the volumes of groundwater required for extraction of the gas are significantly higher, especially during early stages of production. Depletion of an aquifer during CBM development is much more significant and can contribute to a much bigger challenge than traditional gas development. See Trout Unlimited, *Gone to the Well Once Too Often, the Importance of Groundwater to Rivers in the West* (Feb. 2007). Since so much exploratory drilling is being planned, this is significant for all types of oil and gas drilling.

In summary, our organizations are extremely concerned with the prospect of oil and gas development in watersheds containing CRCT because of the outdated and inadequate analysis contained in the GRRMP. Significant new information exists requiring the BLM to undertake supplemental environmental analysis.

¹ Eaglin, Gregory S. and Wayne A. Hubert. 1993. "Effects of Logging and Roads on Substrate and Trout in Streams of the Medicine Bow National Forest, Wyoming." *North American Journal of Fisheries Management*, Laramie, Wyoming: Fish and Wildlife Service; 13(4):844-847.; "Summary of Historical and Legal Context for Water/Road Interaction". Technology and Development Program, US Department of Agriculture. Ronald Copstead, P.E. San Dimas Technology and Development Center, December 1997.

² Young, M.K., R.N. Schmal, T.W. Kohley, and V.G. Leonard. 1996. Conservation status of Colorado River cutthroat trout. General Technical Report RM-282. Ft. Collins, CO: U.S. Dept. Agriculture, Forest Service, Rocky Mtn. Forest and Range Experiment Station. 32 pp.

II. New Information regarding wildlife impacts requires additional NEPA analysis

The Greater Little Mountain Area is an area of tremendous value to both terrestrial wildlife resources and the users of those resources. Leasing of the above-mentioned parcels would create irreparable damage to wildlife habitat. Moreover, it would negate the value of over \$2.0 million in habitat restoration projects funded by various private groups, state and federal agencies, including the BLM. These habitat improvements have been critical to restoring habitat values for elk, mule deer, Colorado River cutthroat trout and a host of sensitive species.

The BLM is required to consider the direct, indirect and cumulative impacts that will occur from the proposed oil and gas drilling assumed to occur with the sale of these lease parcels. Although the potential impacts of oil and gas seismographic activity, exploration, development, and production were lightly considered in the GRRMP, several new studies revealing alarmingly adverse impacts to wildlife populations from energy development are now available, requiring the BLM to consider this data in supplemental analysis prior to offering these parcels for lease.

BLM's Timing Limitation Stipulations for the relevant December 2008 proposed lease parcels apply only to construction and initial drilling, despite substantial evidence that ongoing operations have continuous impacts on wildlife. The limited scope of these TLS means that in most cases the stipulations will apply only in the first year of construction and drilling. This is despite the fact that oil and gas operations can last for over twenty years. Colorado Oil and Gas Conservation Commission, *In the Matter of Changes to the Rules and Regulations of the Oil and Gas Conservation Commission of the State of Colorado*, Testimony of the Colorado Division of Wildlife Regarding Timing Limitations 7 (Docket # 0803-RM-02) (April 18, 2008). Ongoing operations are spread out both spatially and temporally, continually displacing animals throughout their duration. *Id.* at 7. The TLS do nothing to alleviate the cumulative effects of oil and gas development on big game through habitat loss, avoidance of areas around development sites, and habitat fragmentation. *Id.* at 8. Research indicates that increased densities of big game on remaining unaffected habitat will predictably result in reduction in survival because of increased animal density in these areas. *Id.* In addition, because much of the land in relevant areas, including the Little Mountain Area, has already been leased without TLS stipulations, and because the BLM generally takes the position it lacks the authority to retroactively apply TLS stipulations on previously leased lands, the effects of the proposed TLS will be undermined by operations on leased parcels not subject to the stipulations. *See id.* at 9. Finally, a 1996 GAO report indicated that ongoing stipulations like the TLS are frequently either not applied as required or not properly enforced by BLM field offices, suggesting that the BLM may lack the on-the-ground capacity to effectively manage stipulations like TLS that require careful, ongoing supervision. *See id.* at 7.

BLM NEPA documents fail to explain how TLS stipulations will protect big game from the human activity associated with ongoing oil and gas development. Factors involved in big game avoidance of ongoing human activity include the intensity, frequency, duration, location, and time of year of the activity. Clearly, the TLS stipulations have no effect on the frequency, duration, and location of the development activity. And, they have only limited mitigating impact on the intensity and time of year in the first year of construction and drilling. The BLM does not explain how the limited mitigation of only some of the impacting big game avoidance of development activity will adequately protect wildlife on or near the proposed lease parcels.

Located within these 14 lease parcels are crucial big game habitat, parturition areas, and migration corridors supplying the connectivity access necessary for maintaining herd health. Parturition areas supply secure cover and nutritional components necessary for calving and fawning and growing elk, mule deer, moose and pronghorn antelope. Important big game migration areas meander through these many parcels, providing direct links between mountain forest areas for summer range and lower elevation sagebrush and grasslands for crucial winter range. The BLM should be referencing and utilizing the WGFD's publication "Recommendations for Development of Oil and Gas Resources within Crucial and Important Wildlife Habitats" (2004; currently undergoing revision). In addition, the BLM should fully consider and abide by the Western Governors Association's "Mitigation Corridors Initiative" (approved May 2008). Both these documents place guiding emphasis with respect to the needs of big game species in heavily impacted areas. Further, the Rock Spring's BLM office is headquarters for the Wyoming Landscape Conservation Initiative and the recommendations that will be forthcoming from this group on landscape scale planning should be utilized.

Increased levels of natural gas development result in a decrease in available big game and sage grouse habitat. Loss of important critical habitat pushes big game into smaller and lesser quality habitat, which can lead to less than healthy animals going into winter conditions, fewer young being produced, an increase in disease potential, and encroachment of wildlife onto private properties. Fragmentation of habitat occurs when drilling increases and important migration corridors are often lost or blocked. According to several studies in western Wyoming, mule deer and pronghorn antelope are being significantly and negatively affected by natural gas development in prime wildlife habitat. See Sawyer, Hall, et al., *Mule deer and pronghorn migration in western Wyoming*, in *Wildlife Society Bulletin* 2005, 33(4):1266-1273 (2005); Sawyer, Hall, et al., *Winter Habitat Selection of Mule Deer Before and During Development of a Natural Gas Field*, in *The Journal of Wildlife Management* 70(2):396-403; (2006). These studies showed that changes in habitat use began immediately (during the first year of gas development), and that mule deer were less likely to occupy areas, even if it was high quality habitat, in close proximity to well pads. Well pads and the infrastructure activities that go along with natural gas development all contribute to the movement of mule deer and antelope off of high quality habitat areas. Research showed that distribution of big game shifted to less quality and less preferred habitat, ultimately and potentially placing these animals at survival risk. The results of the Sawyer 2006 Annual Mule Deer Report suggest that mule deer abundance in the developed gas field steadily declined by 46

percent over the first four years of gas development. This is a conservative estimate, because the study did not include deer that moved or died.

Habitat abandonment has also occurred in areas where natural gas development is occurring. The findings from an antelope study conducted in Wyoming by the Wildlife Conservation Society (2006) found that habitat fragmentation may be leading to habitat abandonment. Energy development includes a number of impacts to wildlife habitat, including well pad development, roads, heavy and constant traffic, pipelines and storage infrastructure, and all of these contribute to wildlife habitat fragmentation.

Finally, many of these parcels are home to several wildlife species that are on the federal Threatened and Endangered Species list or are considered sensitive or species of concern by the state of Wyoming and/or federal agencies. These parcels also include areas that have been identified by the Wyoming Game and Fish Department as key habitat for fish and wildlife species of greatest conservation need (WGFD 2007). During scoping comments for the Baxter Exploratory Project (Rock Springs Field Office, February 2008) and the Rubicon 3D Seismic project (Rock Springs Field Office, May 2008), the WGFD strenuously opposed the development of oil and gas within the southwestern portion of Wyoming (Little Mountain area). The WGFD August lease protest letter and their protest to this lease sale continues to stress their stated concerns about impacts to big game migration routes, crucial winter range for big game, Colorado River cutthroat trout and the aquatic systems, sage grouse and significant impacts to prized hunt areas. Additionally and more importantly, the WGFD requested that these areas be withdrawn from leasing (WGFD letters to BLM; February 2008; May 2008, August 2008; November 2008). As mentioned previously, equally concerned is the Governor of Wyoming, who also provided letters of concern about the on-going quest for oil and gas development in this sensitive ecological system in southwestern Wyoming.

The greater sage grouse and pygmy rabbit are moving toward being listed under the ESA. Recognized as BLM sensitive species, the BLM must provide management actions that assist toward reducing these species from the sensitive species list. Known to be declining in the West, greater sage grouse populations are being impacted by oil and gas development. This species has petitions filed to have the sage grouse listed under the ESA and it is irresponsible on behalf of the BLM to consider leasing areas that contain sage grouse habitat. Wyoming Governor Freudenthal's Greater Sage Grouse Core Area Protection Executive Order of 2008 must be a part of the analysis included in any lease sale decision. The National Sage Grouse Habitat Conservation Strategy must also be considered in this course of lease sale analysis. Approving the surface disturbing activities associated with oil and gas development in this area does not necessarily place the BLM in a position of meeting its obligation toward those management objectives. Wildlife species known to exist within the proposed December 2 lease sale include:

- ◆ Elk, mule deer, antelope and their overlapping crucial winter range areas in the Rock Springs resource area;
- ◆ Greater Sage Grouse populations occupy habitat in the Rock Springs resource area;

- ◆ Nesting raptor habitat (including the Ferruginous Hawk, a species of concern) in the Rock Springs resource area;
- ◆ Roundtail Chub, Bluehead Sucker, and Flannelmouth Sucker are potentially found in the Rock Springs resource area and remain species of federal concern, including proposals for listing under the ESA (2003). The Colorado River Fish and Wildlife Council (CRFWC) of which Wyoming is a participatory, directed in 2001 that a conservation agreement be developed to address the status and management implications for these three species.
- ◆ Pygmy rabbit, a threatened species, has been identified in the Rock Springs resource area;
- ◆ Midget faded rattlesnake and Wyoming pocket gopher, both proposed listed species, have been identified in the Rock Springs resource area;
- ◆ A host of additionally identified wildlife and plant species that are considered threatened, sensitive or endangered under state and federal regulations.

Given this new information not previously considered by the BLM, TU, WWF, and NWF protest the offering of all identified parcels at the lease sale until such information can be fully analyzed by the BLM.

III. New Information regarding climate change requires additional NEPA analysis

As applicable federal law, implementing regulations and memoranda, and court precedent make clear, the BLM must analyze the impacts arising out of new information not previously available when original NEPA documents were drafted. With respect to the December 2 lease sale, new information has become available regarding the impacts of climate change on fish and wildlife and their habitats that was not included in the BLM's previous analyses of impacts from oil and gas development on the sale parcels. The existing NEPA documents relied upon by the BLM in conjunction with this lease sale do not address impacts from climate change and specifically do not account for the severe drought encountered in Wyoming during the past decade. The BLM's reliance on upon land use plans that authorize leasing but do not analyze the cumulative impacts of climate change represents a NEPA violation and additional NEPA analysis is required before the irrevocable commitment of leasing is made.

IV. New information regarding economic impacts requires additional NEPA analysis

Social consequences of degrading the greater Little Mountain Area by leasing will be significant, and primarily (though not exclusively) tied to the area's value for elk and deer hunting. This area is extremely popular with local hunters, but also with campers and other recreational users, wildlife watchers, etc. It is vitally important to families in Sweetwater and surrounding counties. Public opposition to leasing by virtue of its anticipated degradation of recreational values is significant. More than 200 people attended meetings held in Rock Springs regarding the leasing of these parcels in August and November 11, 2008. In attendance was the BLM Field Manager and staff who witnessed this continuing increased level of concern from the public. None expressed support for leasing in the Greater Little Mountain Area.

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The importance of hunting and fishing to residents and nonresidents of Wyoming cannot be overestimated. Hunting and fishing continue to provide a valuable economic return to the state of Wyoming. Many retail businesses would not be able to survive without the income from hunters, anglers, snowmobilers, hikers, outfitters, etc. Counties and communities have vested interests in the renewable economic opportunities these resources supply. Natural resources such as these provide valuable cultural and heritage continuity between the past and future generations of people who want to enjoy these significant values provided by the Wyoming outdoors.

Significant new information exists regarding the economic benefits of hunting and fishing since individual BLM resource areas' analysis in their management plans. In the latest national survey of fishing, hunting and wildlife-associated recreation for activities in 2006, expenditures from fishing and hunting significantly increased. In Wyoming, more than 320,000 people participated in fishing and hunting activities in 2006. Additionally, 716,000 people participated in some form of wildlife watching activity (USFWS 2006 National Survey of Fishing, Hunting, and Wildlife Associated Recreation). A total of 3,358,523 hunting and fishing recreation days were provided to the public. Based on the number of recreation days and average expenditure per day, hunters, anglers and trappers expended approximately \$350 million in pursuit of their sport (WGFD, 2005).

Numerous polls exist that query the Wyoming resident about protection of special places from the impacts of oil and gas development. In a Rocky Mountain survey conducted by the Theodore Roosevelt Conservation Partnership (2007) 86 percent of the public surveyed favored limiting or banning energy development on certain public lands that are unique and have special fish and wildlife management resources or that offered unique opportunities for sportsmen.

Potential loss of this revenue affects not only the state but each county, town and local businesses that depend on these industries for their source of income. For many communities, these revenues are the major source of income. In addition, the WGFD is funded by revenues from the sale of hunting and fishing licenses. It is not difficult to imagine what would happen to local communities and the state's wildlife management agency should the loss of revenue from these hunting, fishing, and tourism activities occur. The BLM must update its economic analysis of hunting and fishing revenue and the potential loss of this revenue in light of the known impacts that will be experienced by big game.

Considerable amounts of time and money have been spent by state and federal agencies, volunteers, and organizations implementing habitat restoration and protection measures that seek to enhance and stabilize elk habitat and CRCT populations in the 18,000 acres-plus that the BLM plans to lease in December. Since 1990, conservation and rehabilitation projects benefiting this area have topped more than \$2 million, funded by the state, the BLM, TU, other conservation groups and the Wyoming Game and Fish Department.

As emphasized earlier, several areas within the lease parcels are also extremely popular and prized big game hunting areas. Elk Hunt Area 31, south of Rock Springs, is a limited quota region that represents one of those coveted once-in-a-lifetime desert draw tags that people plan for and spend thousands of dollars in revenue achieving their

hunt experience. Other big game species that have limited quota stipulations include mule deer and antelope in the south Rock Springs area.

V. New information regarding air quality impacts requires additional NEPA analysis

Impacts to air quality are being documented on a regular basis in Wyoming and natural gas development has been the primary contributor to this degradation. It is well documented and is a serious concern, both because it impairs visibility in what once was a state that prided itself on clean air, but also because of the human and animal health threats it imposes. Further leasing will only contribute to these serious threats and we request that these parcels be withdrawn from this sale as well as future sales.

The Clean Air Act, 42 U.S.C. § 7475(d)(2)(B), requires both the BLM and the Forest Service to "protect the air quality related values (including visibility)" of lands within "Class I" airsheds. The FS and the BLM have acknowledged that air quality impacts are a potential concern in Wyoming and with the pace and extent of oil and gas lease sales and drilling activity that could occur with these lease sales, extensive and more detailed cumulative analysis needs to be conducted and monitored.

New and previously not seen in Wyoming are on-going air quality impacts attributed from the oil and gas expansion. In particular, Wyoming's Pinedale area is now being plagued by huge increases in ozone levels in addition to water contamination. The Wyoming Department of Environmental Quality (WDEQ) began monitoring elevated ozone levels in Sublette County where the Jonah and Pinedale Anticline oil and gas development is occurring. During a two week time period between February and March 2008, the WDEQ issued an unprecedented five ozone warnings. These accelerated ozone levels were directly attributable to the oil and gas development that occurs there (WDEQ, 2008; EPA 2008). It is incumbent upon the BLM in Wyoming to require updated air quality emissions studies and analysis. The BLM must consider cumulative impacts to air quality stemming from the existing and proposed development in the Rock Springs area, coupled with the reasonably foreseeable future development (RFD) in the area, as provided in the GRRMP. All three organizations feel that the GRRMP did not account for those types of air quality impacts, even under an RFD scenario. The latest findings of the true emission impacts from oil and gas development to air in the last few years show that emissions from gas wells and associated production activities and storage facilities have been shown to contain benzene, ozone, and other VOCs that have resulted in human health impacts. As stated earlier, Pinedale has been a recipient of these incidents.

Air quality is a serious and prevailing issue now in this state. It is unacceptable that the BLM continue to hold these oil and gas lease sales without consideration of the future impacts to our air quality.

Conclusion

We have raised some serious and numerous issues in this protest letter. TU, WWF and NWF believe that future lease sales the BLM conducts need to provide full

transparency and not sell leases because they have merely been nominated. A full accountability for the public's resource should be undertaken prior to any lease sale.

We have referenced the progressively accumulating letters from our Governor, state agencies, legislative representatives and the public who have requested no further leasing of this incredibly valuable resource area south of Rock Springs. We once again respectfully request that the BLM cancel and withdraw those 14 leases we have referenced in this letter and to permanently remove this area from further leasing in the future.

We appreciate the time the BLM has taken to review our protest letter and are hopeful that these leases will be withdrawn.

We respectfully remain,



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Congresswoman Barbara Cubin
Congresswoman-elect Cynthia Lummis

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