

**WYOMING OUTDOOR COUNCIL • THE WILDERNESS SOCIETY
• GREATER YELLOWSTONE COALITION**

September 16, 2009

Via Federal Express

Mr. Don Simpson, State Director
Bureau of Land Management
5353 Yellowstone Road
P.O. Box 1828
Cheyenne, WY 82003

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**RE: PROTEST OF LEASE PARCELS TO BE OFFERED AT
THE BLM'S OCTOBER 2, 2009 COMPETITIVE OIL & GAS
LEASE SALE.**

Dear Mr. Simpson:

In accordance with 43 C.F.R. §§ 4.450-2 and 3120.1-3, the Wyoming Outdoor Council, Greater Yellowstone Coalition, and The Wilderness Society protest the sale of several lease parcels scheduled to be offered by the Bureau of Land Management (BLM) at the October 2, 2009 competitive oil and gas lease sale. Some of these parcels are located in the BLM Rawlins Field Office near the Adobe Town and Encampment River Wilderness Study Areas (WSA). Others are located in the Lander, Cody, and Worland Field Offices where resource management plan (RMP) revisions are underway.

I. THE PARTIES.

The **Wyoming Outdoor Council (WOC)** is a non-profit conservation organization with approximately 1,300 members in Wyoming, other states and abroad. The Wyoming Outdoor Council is dedicated to the protection and enhancement of Wyoming's environment, communities and quality of life. We have members that live in the Field Office areas where the protested parcels are located. Wyoming Outdoor Council members utilize land and water resources within and near these areas for hiking, fishing, camping, recreational and aesthetic purposes. The Wyoming Outdoor Council is actively involved in BLM oil and gas activities throughout Wyoming and participates in all aspects of BLM oil and gas projects by involving its staff and members in submitting comments and attending public meetings. The Wyoming Outdoor Council's long-standing commitment to environmentally sound oil and gas leasing and development throughout Wyoming stems over many years. Consequently, the Wyoming Outdoor Council and its members would be adversely affected by the sale of the lease parcels at issue here, and it has an interest in this lease sale.

The **Greater Yellowstone Coalition (GYC)** is a non-profit conservation organization with hundreds members in Wyoming and other states dedicated to

protecting the lands, waters, and wildlife of the Greater Yellowstone Ecosystem, now and for future generations. GYC is actively involved in energy development issues on federal lands in the region and its staff and members fully participate in all aspects of BLM oil and gas projects by submitting comments and attending public meetings. It has members that live in both the Cody and Worland field offices and many GYC members live near and use these parcels and other nearby lands for hiking, hunting, photography, fishing, and other forms of quiet recreation. Thus, GYC and its members would be negatively impacted by the sale of these lease parcels and have an interest in this sale.

Founded in 1935, **The Wilderness Society's (TWS)** mission is to protect wilderness and inspire Americans to care for our wild places. Its goal is to ensure that future generations enjoy the clean air and water, beauty, wildlife, and opportunities for recreation and spiritual renewal provided by the nation's pristine forests, rivers, deserts, and mountains. In addition, The Wilderness Society works constantly to ensure the proper care and management of our public lands. Headquartered in Washington, D.C., TWS has eight regional offices across the country, and a Wyoming office and staff located in Lander. Nationally, there are over 500,000 members and activists of the Wilderness Society, with hundreds of members in Wyoming. Thus, The Wilderness Society and its members would be adversely affected by the sale of the parcels it protests, and it has an interest in this lease sale.

II. RECENT BLM DIRECTION ON LEASE PROTESTS.

Before turning to the substance of our protest we would like to point out the provisions made in recent BLM direction regarding oil and gas lease sale protests. On February 13, 2009 then-BLM-acting-director Ron Wenker sent a memorandum to all BLM State Directors. In this memorandum the State Offices of the BLM are directed to provide briefing papers to the Washington office regarding potential controversies or issues that may surround lease parcels proposed for sale. And after any protests are filed the BLM is to update its initial briefing papers. This briefing is to contain an analysis of several issues and the controversies surrounding them. These issues include whether the parcels are located in citizen proposed wilderness areas (CWP), whether the parcels involve species listed under the Endangered Species Act or BLM sensitive species, and whether the parcels have roadless characteristics. In this protest we will focus substantially on these issues and ask that the BLM Wyoming State Office fully convey the concerns raised here to the Washington office, as required by the February 13 memorandum. Other issues mentioned in the memorandum may also be in play here—such as impacts to municipal watersheds or parcels of concern to the State or Governor.

III. ONE OF THE PROTESTED PARCELS SHOULD NOT BE OFFERED FOR SALE BECAUSE IT IS LOCATED IN A CWP.

Lease parcel WY-0910-054 lies in the Adobe Town CWP.¹ Exhibit 1. This parcel is located in the Rawlins and Rock Springs Field Offices.

¹ Hereinafter we will simply refer to the lease parcel numbers by the last three numbers in their designation, not the entire designation. Thus, lease parcel WY—0910-054 will be referred to simply as parcel 054.

We believe this lease parcel has wilderness values that should be protected or unroaded characteristics that should be maintained, two concerns that must be reported to the Washington office. Attached as Exhibit 2 are excerpts from a book that document the remarkable wilderness characteristics in this area. In addition, Biodiversity Conservation Alliance submitted to the BLM *A Citizens' Wilderness Inventory of Adobe Town* in 2002 documenting wilderness qualities in this area. In January 2004, the Wyoming Wilderness Association submitted the list of Citizen Wilderness Proposals in the state to the BLM Wyoming State Office. Thus, the BLM has been apprised of the wilderness values in this area.

Even if the BLM did not feel this area possessed *all* of the wilderness values that citizens had advanced, in many cases it recognized the areas possessed *some* of these values; and moreover, the mere fact that BLM may not believe this area should be designated a WSA does not relieve it from protecting important wilderness—that is multiple use—values that may exist in the area. These issues will be discussed more fully below.

The remarkable wilderness quality attributes of the Adobe Town parcel have been further documented in a protest of this lease sale that has been filed by Biodiversity Conservation Alliance. We incorporate the description of those wilderness values into this protest by this reference and ask that they be fully considered.

In addition, the parcel in the Adobe Town area is in the Rare or Uncommon Area that has been designated by the State of Wyoming through its Environmental Quality Council (EQC). Exhibit 3. In making this decision, the EQC stated that the *entire* Adobe Town Area “exhibits surface geological, historical, archeological, wildlife, and scenic values that is very rare or uncommon when compared to other areas of the state or the region. These values are seldom found within the state and could become extinct or extirpated if left unprotected.” *Id.* at 19. This emphasizes the wilderness and unroaded values that characterize this parcel in this CWP.

Despite the presence of these wilderness or unroaded values there are no stipulations attached to the lease that would specifically seek to protect wilderness values. Even if the BLM cannot designate new WSAs, there is no doubt it nevertheless has continuing authority and responsibility to protect wilderness values as part of its general multiple use management authority and responsibility. This authority is specifically afforded through the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1732(a), and BLM instruction memorandum (IM) 2003-275 also supports this authority.² Thus, even if the BLM does not feel this area potentially qualifies as wilderness, that does not mean it does not contain wilderness quality values that should be recognized in management decisions such as this leasing decision.

² BLM must also maintain on a continuing basis an inventory of the public lands and their resources and other values including outdoor recreation and scenic values. 43 U.S.C. § 1711(a). This would certainly include maintaining an inventory of wilderness values sufficient to inform management decisions.

These wilderness values, as expressed in the Wilderness Act, would include an area untrammelled by man, areas where man is only a visitor who does not remain, and area of primeval character and influence, lacking in permanent improvements or human habitation, an area generally appearing to have been affected by the forces of nature, with the imprint of man's work being substantially unnoticeable, and which has outstanding opportunities for solitude or primitive and unconfined types of recreation. 16 U.S.C. § 1131(c). We believe this lease parcel contains these values (*see* Exhibits 2 and 3 and the discussion of this area in the Biodiversity Conservation Alliance protest that has been incorporated by reference)—at a minimum the area is very remote with the work of man being substantially unnoticeable with outstanding opportunities for primitive and unconfined types of recreation—and thus these values should be recognized in the stipulations that are attached to this lease parcel so that these important values can be protected in the future should development occur. But that is currently lacking, and thus this lease parcel should not be offered for sale until it contains stipulations sufficient to ensure the wilderness values in the CWP are protected.

We recognize that stipulations are attached to this parcel that would seek to protect the Monument Valley Area and Visual Resource Management (VRM) Class I and II areas. While these may be important provisions for protecting some wilderness values we do not feel they are sufficient to ensure protection of all wilderness values in the CWP. While the management direction for the Monument Valley Management Area as specified on page 37 of the Record of Decision (ROD) and Green River Resource Management Plan (RMP) specifies that BLM will seek to protect scenic and several other values in this area this could fall short of ensuring protection of wilderness values such as protecting a primeval character, ensuring the area is shaped by forces of nature, keeping the imprint of man substantially unnoticeable, and protecting solitude. This is especially true since portions of parcel 054 are apparently located in the Rawlins Field Office, not the Rock Springs Field Office, so it is unclear to what extent the referenced Green River RMP will apply to all of this parcel. Likewise, efforts to meet VRM requirements may not ensure that all wilderness type values are protected. Until stipulations specifically directed at protecting wilderness values are attached to this parcel, it should not be offered for sale.

This parcel is also probably located in the Adobe Town Dispersed Recreation Area recognized in the Rawlins RMP ROD. Yet no stipulations are attached to the parcel in recognition of its presence in a BLM special management area. Obviously wilderness-type values cannot be protected when there is no relevant stipulation at all. It appears based on Map 2-58 in the Rawlins RMP ROD that this parcel may be located in the "front country" recreation opportunity spectrum classification for this area. Management for front country status will not ensure that wilderness values are preserved. *See* Rawlins RMP ROD at Appendix 37. That said, Table A37-1 makes it clear that wilderness quality values may well exist in this area, such as a "generally natural environment with moderate evidence of the sights and sounds of man." These wilderness values should specifically be preserved through appropriate stipulation before this lease parcel is offered for sale.

The BLM has become somewhat oriented toward the use of Best Management Practices (BMPs) as means to protect resources when development projects are approved, as conditions of approval (COA) to any drilling proposals. BLM has adopted a number of BMPs, available at <http://www.blm.gov/nhp/300/WO310/O&G/ Ops/operations.html> and <http://www.blm.gov/nhp/300/WO310/O&G/Ops/VRM BMP Part 4 slideshow.pdf>. See also Onshore Oil and Gas Order No. 1 § III.F and IM No. 2007-021. While the use of these BMPs could well help protect wilderness quality values on the lease parcel, that is far from assured. There is no guarantee what if any BMPs will be applied that are oriented toward protection of wilderness values. Lacking the assurance built into a stipulated requirement attached to the lease, it is possible that any requirements that BLM might later want to require will be challenged by the lessee, perhaps successfully. *Assuring* BLM has retained rights sufficient to protect wilderness values should guide the conditioning of this lease parcel, not more speculative and uncertain future BMP conditioning that is not buttressed by a stipulation. This is necessary to meet BLM's multiple use obligations, and thus is appropriate for stipulation.

Finally, as noted above we believe this parcel falls in the State's Adobe Town Rare or Uncommon Area. Yet there are no stipulations in place that specifically seek to protect and ensure this status. While as discussed above some of the stipulations that are attached may protect the status of this area in a tangential or unintended way, we believe the BLM must *specifically* seek to abide by and ensure that the State's policy for this area is met. We recognize that a State Rare or Uncommon Designation does not dictate or limit oil and gas development decisions; however, *we are not saying that oil and gas development is precluded by this designation*. What we are saying is that the BLM must *recognize* the values the State has recognized and *specifically* seek to ensure they are maintained, even if oil and gas development were to occur. As currently stipulated that need is not met with respect to this parcel and thus the parcel should not be offered for sale until this need is assured. Rare or Uncommon designation may not prohibit oil and gas develop but that is not the same thing as saying this designation represents *no* guidance whatsoever about oil and gas development—*anything* that could harm the rare or uncommon values that led to the designation must be conditioned to the extent possible to prevent such harms so that the rare or uncommon values can be maintained. That is currently lacking relative to this lease parcel and thus it should not be offered for sale until this is corrected. It goes without saying that the BLM owes substantial deference to State management plans in an area and currently there is no indication the BLM even recognizes or is aware of the State's management goals in this area—it is dead silent on the Rare or Uncommon designation, which is unacceptable.

IV. THREE OF THE PROTESTED PARCELS SHOULD NOT BE OFFERED FOR SALE BECAUSE THEY ARE LOCATED ADJACENT TO A BLM WSA BUT THE PARCELS HAVE NO STIPULATIONS ATTACHED THAT WOULD ENSURE PROTECTION OF THE WILDERNESS VALUES OF THIS WSA.

Lease parcels 051, 052, and 053 are located just outside of the BLM's Encampment River Wilderness Study Area (WSA) in the Rawlins Field Office. Exhibit 1. Obviously the BLM recognizes this area as having wilderness quality values. Yet no stipulations are attached to the protested parcels which would ensure protection of wilderness values in the adjacent WSA if development were to occur on the parcels. The BLM has an obligation to protect wilderness values from non-impairment under the terms of the FLPMA and internal BLM policy, yet here there is no assurance these wilderness values can be protected should development of the lease parcels be desired by a lessee. Until this problem is corrected through appropriate stipulation these parcels should not be offered for sale.

V. LEASE PARCELS IN AREAS UNDERGOING RMP REVISIONS SHOULD NOT BE OFFERED FOR SALE UNTIL THE RMPs ARE REVISED.

Lease parcels 057, 063, 064, and 065 are in the Bighorn Basin where a unified RMP revision of the Cody and Worland Field Offices RMPs is underway. Lease parcels 056, 058, 059, 060, 061, and 062 are in the Lander Field Office which also has an RMP revision underway.

The BLM should not offer these parcels for sale while an RMP revision is underway. Authority for this view is provided by IM Nos. 2004-110 and 2004-110 Change 1. Under IM 2004-110, additional NEPA documentation prior to leasing is needed when there are significant new circumstances or information that bear on the environmental consequences of leasing that are not within the scope previously analyzed in the existing RMP. Existing NEPA documentation supporting an RMP and its decisions relative to leasing become insufficient when the analysis of impacts fails to identify stipulations that would retain BLM's "full authority to protect or mitigate effects to other resources."

At a minimum, the BLM's existing analysis of impacts in the 1990 Cody RMP, 1998 Grass Creek RMP, and 1987 Lander RMP are completely out of date relative to impacts to the greater sage-grouse and stipulations needed to protect that species. As shown in Exhibits 4 and 5, at a minimum parcels 056, 058, 059, 060, 061, 062, and 063 are located in sage-grouse core areas recognized by the State of Wyoming, and which BLM also recognizes. In addition, parcels 056, 058, 059, 060, 061, and 062 contain various stipulations that recognize a need for protection of sage-grouse using the area. But as will be discussed in detail in the next section, these stipulations are completely unsupported by current science, and the scientific basis for the stipulations provided for in the current RMPs is simply no longer of any validity. Thus, under the terms of IM

2004-110 the BLM should not offer these parcels for lease until it revises the current RMPs and ensures there is an adequate analysis of impacts to the sage grouse and the RMP is sufficient to “retain BLM’s full authority to protect or mitigate effects on other resources.” Issues related to the sage-grouse and our understanding of the inefficacy of the current standard sage-grouse stipulations are “significant new circumstances or information” that bear on the environmental consequences of leasing that are not within the broad scope previously analyzed in the existing RMPs.

Similarly, IM 2004-110 Change 1 provides that BLM State Directors “have discretion to temporarily defer leasing on specific tracts of land based on information under review during planning.” Certainly issues related to the sage-grouse, the current status of sage-grouse science, the efficacy of the current sage-grouse protective stipulations, and the State’s core area protective policies and approach will be key and very prominent considerations in all of the above RMP revisions. These are issues “under review during planning.” Thus, it is appropriate to temporarily defer leasing the contested parcels. IM 2004-110 Change 1 “re-emphasizes the importance of considering temporary deferral of oil, gas, and geothermal leasing in those areas with active land use planning activities.” Yet here there is no indication that BLM has even considered the “importance” of deferring leasing of the challenged parcels. It must give this consideration priority in order to comply with the IM, and that appears lacking here. The IM specifically directs that, “[a]ll [State Offices] are to consider temporarily deferring oil, gas, and geothermal leasing on federal lands with land use plans that are currently being revised or amended.” There is no indication here that BLM has made this required consideration. Thus, the contested parcels should not be offered for sale.

We would emphasize that the analyses in the Documentations of Land Use Plan Conformance and NEPA Adequacy (DNA) that were prepared in support of offering these lease parcels for sale are simply wrong if they claim that there are no new circumstances not addressed in current NEPA documentation. There is no credible way to sustain this claim with respect to the sage-grouse, as will be discussed in more detail below.

Furthermore, in a February 2, 2009 letter to the BLM, Governor Freudenthal made apparent his concern about leasing in the Bighorn Basin while the RMP revision is underway. Exhibit 6. He noted the “changed physical and social landscape in the BLM’s Bighorn Basin Resource Area.” He was especially concerned about impacts to wildlife, including the sage-grouse. He noted that the provisions in IM 2004-110 Change 1 “functionally gives the BLM the latitude to ensure a full range of alternatives is available to it during the RMP revision process” specifically due to the potential irreversible commitment of resources that leasing represents and the possibility of significantly impacting other resources. He also noted that deferral of leasing could help ensure compliance with the Council on Environmental Quality regulations that prohibit taking actions that limit the choice of reasonable alternatives until a record of decision is issued for an RMP revision, citing 40 C.F.R. § 1506.1.

Additionally, we also note that while the Pinedale RMP was under revision the BLM did not engage in any leasing in that area. There is local precedent for not engaging in leasing during an RMP revision. The same policy should apply in the Lander, Cody, and Worland Field Offices until the Lander and Bighorn Basin RMPs are revised.

VI. THE CHALLENGED LEASE PARCELS SHOULD NOT BE OFFERED FOR SALE UNTIL IMPACTS TO THE SAGE-GROUSE ARE SUFFICIENTLY MITIGATED.

Many of the lease parcels challenged above are in State-recognized sage-grouse core areas. Exhibits 4 and 5. Many of the other parcels are stipulated as follows relative to the sage-grouse:

Lease Parcel Number	Area of Concern	Timing Limitation Stipulation (TLS) for Nesting Sage-Grouse	Controlled Surface Use (CSU) Limitation on Development Within 0.25 Miles of a Lek	CSU Stipulation Protecting Threatened, Endangered or Special Status Species	In Core Area?
051	Encampment River WSA	X		X	
052	"	X	X	X	
053	"	X	X	X	
054	Adobe Town	X		X	
056			X	X	
058	Lander RMP	X	X	X	X
059	"	X		X	X
060	"	X	X	X	X
061	"	X		X	X
062	"	X		X	X
063	Bighorn Basin RMP				X

Parcels 051, 052, 053, 054, 058, 059, 060, 061, and 062 have a stipulation attached that would protect nesting sage-grouse during a specified time period. The stipulation does not say at all what will actually be done to protect the sage-grouse, but the Rawlins RMP ROD states this limitation will only apply within a 2 mile perimeter of occupied sage-grouse leks. Rawlins RMP ROD at 2-55. This same limitation also seems to apply in the Lander Field Office. This is far too limited a level of protection. An increasing array of scientific studies, including the studies of Matthew Holloran in the Pinedale area and David Naugle and his associates in the Powder River Basin area, have uniformly shown that this stipulation is insufficient for sage-grouse protection. The Wyoming Game and Fish Department has gone on record that greater levels of protection are required. In a January 29, 2008 memorandum the Wyoming Game and Fish

Department stated that, "all areas within at least 4-miles of a lek should be considered nesting and brood-rearing habitats in the absence of mapping." Exhibit 7 at 6. The Wyoming Game and Fish Department has developed stipulations based on the most current science that call for a number of strict protections for the sage-grouse. Exhibit 8. *See also* Exhibit 9 (Wyoming Governor's Executive Order regarding sage-grouse, with map showing sage-grouse core areas); Exhibit 10 (memorandum of understanding with the Western Association of Fish and Wildlife Agencies stating the comprehensive conservation strategy BLM has agreed to will be "premised on the best available science").

It is clear that the stipulation attached to these parcels is insufficient to protect the sage-grouse and this has recently been recognized by the Interior Board of Land Appeals in two decisions that overturned BLM oil and gas development decisions in the Powder River Basin due to a failure to fully consider the most recent scientific evidence regarding the sage-grouse. *Yates Petroleum*, 176 IBLA 144 (2008); *William P. Maycock et al.*, 177 IBLA 1 (2009). Given these limitations in the provisions to protect the sage-grouse, a BLM sensitive species entitled to special management consideration, these parcels should not be offered for sale until these problems are corrected and a stipulation sufficient to protect sage-grouse nesting activities is attached. As is clear from the science, in order to protect nesting sage-grouse the area of the timing limitation should extend out at least three and probably four miles from a lek.

Lease parcels 052, 053, 056, 058, and 060 also contain a controlled surface use stipulation intended to protect sage-grouse leks. But this stipulation suffers from the same limitations just described—the best available science uniformly shows this stipulation is not effective in protecting sage grouse during mating activities. With respect to the 0.25-mile no surface occupancy (NSO) stipulation, research has shown that impacts from natural gas development extend out to a minimum of 4-miles and the memorandum states that "Walker et al. (2007) indicates that the current 0.25 mile buffer lease stipulation is insufficient to adequately conserve breeding sage-grouse populations" in areas subject to full coalbed methane (CBM) development. Exhibit 7 at 3. Development within 2-4 miles of a lek is "known to decrease breeding populations." *Id.* at 4. The Wyoming Game and Fish Department and WAFWA developed figures showing estimated lek persistence under various NSO stipulations, and one projection is that a 0.25-mile buffer will only allow for 5 percent of the leks to persist and another projection is that this buffer will only allow for 4 percent of the leks to persist. *Id.* at 4, 5. The current best available science makes it clear that the 0.25-mile buffer is almost wholly ineffective and that a greater NSO buffer is needed. At a minimum a 0.6 mile NSO buffer is needed around all suitable nesting and brood rearing habitat in order to protect females. *Id.* at 5. But in fact, "all areas within at least 4 miles of a lek should be considered nesting and brood rearing habitats in the absence of mapping. *Id.* at 6.

We are aware that in addition to the specified stipulations, Lease Notice Number 3 has also been attached to these lease parcels. But a mere lease notice does not relieve the BLM from attaching stipulations to leases that will adequately protect the sage-grouse. "An information notice has no legal consequences, except to give notice of

existing requirements” and only “convey[s] certain operational, procedural, or administrative requirements relative to lease management within the terms and conditions of the standard lease form. Information notices shall not be a basis for denial of lease operations.” 43 C.F.R. § 3101.1-3. “The issuance of an Information Notice therefore establishe[s] no binding policy or practice” Continental Land Resources, 162 IBLA 1, 5 (2004). Thus, the BLM must attach *stipulations* to these lease parcels that are sufficient to protect the sage-grouse, and these stipulations must reflect the most up-to-date science.

In addition to concerns about the above stipulations, we also believe that the stipulation oriented toward protection of special status species that is made applicable to sage-grouse in some of the protested parcels suffers from significant problems. Relative to the sage-grouse this problem applies to parcels 051, 052, 053, 054, 056, 058, 059, 060, 061, and 062. This stipulation, which applies to BLM special status species as well as threatened or endangered species listed under the Endangered Species Act (ESA), by its terms applies almost solely to threatened and endangered species and not special status species like the sage-grouse. There is some question as to whether this stipulation will have much effect in protecting special status species. The only provision that seems to apply to the sage-grouse is a statement that “modifications” to exploration and development proposals may be “recommend[ed]” so as to “avoid BLM-approved activity that will contribute to a need to list such a species or their habitat.” But it is our view that the BLM has far greater obligations to sensitive species than just keeping them off the ESA list. Under BLM’s Special Status Species Management Manual (BLM Manual § 6840), BLM states that it is in its interest “to undertake conservation actions for [sensitive species] *before* listing is warranted.” BLM Manual § 6840.06.2 (emphasis added). And it is also in BLM’s interest to “undertake conservation actions that improve the status of such species so that their Bureau sensitive recognition is no longer warranted.” *Id.* With respect to the management of sensitive species, the BLM shall manage their habitats “to minimize or eliminate threats affecting the status of the species or to improve the condition of the species[‘] habitat” by engaging in several activities, including “[e]nsuring that BLM activities affecting Bureau sensitive species are carried out in a way that is consistent with its objectives for managing those species and their habitats” *Id.* § 6840.06.2.C and 6840.06.2.C.2. We do not believe the current stipulation meets these requirements for protecting BLM sensitive species and thus these parcels should not be offered for sale until the stipulation is modified to be in accordance with BLM’s sensitive species manual, so as to adequately protect the sage-grouse. The stipulation is both too conditional (“modifications,” “recommended”) and too off-point (only prevention of ESA listing is sought) to meet BLM’s obligations relative to special status species.

Moreover, the BLM must ensure that it complies with the State’s direction for management of sage-grouse core areas. We do not believe that if parcels 058, 059, 060, 061, 062, and 063 were leased as currently configured this would be assured. Compliance with the Wyoming State Executive Order (EO) regarding sage-grouse and sage-grouse core areas would not be ensured. The EO provides that new development within core areas should only be authorized or conducted when it can be demonstrated

that the activity “*will not* cause declines in greater sage-grouse populations.” Exhibit 9 (emphasis added). There is no doubt the BLM is on record that it will comply with the State’s core area management direction. State Director Simpson has assured the Governor of Wyoming that,

I am aware of your Sage-Grouse Implementation Team’s work to define “core areas” for sage-grouse within the Powder River Basin and across Wyoming. We have received maps of the core areas identified by the Team along with recommendations to you and understand that the U.S. Fish and Wildlife Service have provided an endorsement of both the areas and strategy. Consequently, it seems appropriate to base our management strategy on these “core areas.”

Letter from Donald A. Simpson to Wyoming Governor Dave Freudenthal, dated June 12, 2008 (emphasis added). Attached as Exhibit 11. Thus, the BLM must assure that new developments in core areas “*will not*” cause population declines in the sage-grouse. The stipulations currently attached to these parcels do not ensure this outcome.

Attached as Exhibit 12 is a letter from the U.S. Fish and Wildlife Service to the Wyoming Game and Fish Department that outlines what is necessary in its view to comply with and implement the State’s core area policy. While this letter was specifically focused on wind energy projects, it also has relevance to BLM oil and gas leasing. In a core area, unless it can be demonstrated a project will have “no impact to sage-grouse” the project “negates the usefulness of the core area concept as a conservation strategy and brings into question whether adequate regulatory mechanisms are in place to protect the species.” *Id.* at 1, 3. The potential benefits of the core area strategy “will only be realized if the integrity of the core area approach is maintained.” *Id.* at 2. And not adhering to science based conservation measures and allowing mitigation of impacts in core areas as an option to using accepted conservation measures are “the greatest threats to the integrity of the core areas.” *Id.* Ensuring the conservation of the sage-grouse in core areas *is* the mitigation for allowing greater flexibility outside of core areas, and therefore allowing impacts in core areas “destroys the function and value” of the core area strategy. *Id.* The burden of proof to show that development in core areas is consistent with sage-grouse conservation lies on the proponent of a project, and this burden “underlies all forms of development—not just wind power.” *Id.* Thus, it is clear that the BLM cannot go forward with leasing parcels in sage-grouse core areas until it stipulates the parcels in a way that ensures development on the lease “*will not*” have impacts to sage-grouse using the core areas, which currently is clearly not the case since only the scientifically discredited historical stipulations are applied.

Given the above problems, the challenged lease parcels should not be offered for sale until adequate protection is afforded to the sage-grouse so as to meet the BLM’s obligation to minimize impacts resulting from oil and gas development.³ In addition, the

³ See BLM Gold Book at 37; Onshore Oil and Gas Order No. 1 § IV; 43 C.F.R. § 3101.1-2; 43 C.F.R. § 2920.7(b)(2); BLM Standard Lease Form 3100-11 § 6, all requiring BLM to minimize the impacts of oil and gas development.

above discussion clearly shows that the existing Lander, Cody, and Grass Creek RMPs have outdated analyses of issues related to the sage-grouse, and thus leasing should not occur in these areas until the RMPs are revised.

VII. THE DNAs UNDERLYING THE DECISIONS TO OFFER THE CONTESTED PARCELS ARE OUT OF COMPLIANCE WITH CURRENT LAW AND THUS THESE DNAs CANNOT SERVE AS THE BASIS FOR SALE OF THE CONTESTED PARCELS.

The DNAs supporting the sale of the challenged lease parcels are legally deficient. The DNA's invoke the decision by the Tenth Circuit Court of Appeals in *Park County Resource Council, Inc. v. U.S. Dep't of Agriculture*, 817 F.2d 609 (10th Cir. 1987) as allowing leasing to go forward with no site-specific analysis. The DNAs answer the question of whether the leasing action is substantially the same as previously analyzed actions by responding that *Park County* supports a decision that "site specific NEPA analysis is not possible absent concrete proposals" and "[f]iling of an Application for Permit to Drill is the first useful point at which a site specific environmental appraisal can be undertaken." And thus the DNAs engage in no such site-specific analysis. These exact same claims invoking *Park County* to support them are then made relative to the question of whether the direct and indirect impacts of the current action are substantially unchanged from those analyzed in existing NEPA documents. And thus, again, no site-specific analysis is made part of the DNAs. To the extent the DNAs supporting the sale of the above contested parcels are based on the same or similar claims they are based on a statement of the law that is incorrect. *Park County* has effectively been overruled by the Tenth Circuit Court of Appeals, or at a minimum it has been strongly limited and confined to its own unique facts.

On April 28, 2009 the Tenth Circuit Court of Appeals issued its decision in *State of New Mexico v. Bureau of Land Management*. The court addressed the issue of "whether our precedents create a hard rule that no site-specific EIS is ever required until the permitting stage, or a flexible test requiring site-specific analysis as soon as practicable." *State of New Mexico v. Bureau of Land Management*, 565 F.3d 683, 716 (10th Cir. 2009). The court, after reviewing *Park County* and its later decision in *Pennaco Energy, Inc. v. U.S. Dep't of Interior*, 377 F.3d 1147 (10th Cir. 2004), a case which began the erosion of *Park County's* precedential value, held that "[t]aken together, these cases establish there is no bright line rule that site-specific analysis may wait until the APD stage." *State of New Mexico* at 717-718. "[A]ssessment of all "reasonably foreseeable" impacts must occur at the earliest practical point, and must take place before an "irretrievable commitment of resources is made." *Id.* at 718 (citations omitted). Applying this standard "necessarily requires a fact-specific inquiry." *Id.* And when the court applied this standard, it stated "we conclude that issuing an oil and gas lease without [a no surface occupancy, or NSO] stipulation constitutes such a [irretrievable] commitment [of resources]." *Id.* Because in the absence of an NSO stipulation the BLM cannot prevent surface disturbance, the BLM "was required to analyze any foreseeable impacts of such use before committing the resources." *Id.*

The court then considered whether the impacts that might result from the leasing of the parcel that was under consideration in *State of New Mexico* were reasonably foreseeable at the leasing stage, thus making NEPA analysis at that stage practicable. Because considerable exploration had already occurred in the area, a natural gas supply was known to exist beneath the parcels, production levels from nearby wells were sufficient to create concrete plans for development by the lessee, and a gas pipeline was planned, the court concluded that impacts were reasonably foreseeable before the lease was issued and thus "NEPA required an analysis of the site-specific impacts . . . prior to its issuance." *State of New Mexico* at 718-719.

Before issuing the contested leases here the BLM must engage in a similar fact-specific inquiry to determine whether environmental impacts to these parcels are foreseeable enough that they could be analyzed before the irreversible and irretrievable commitment of resources represented by leasing is made. The BLM cannot rely, as it has almost uniformly in the past, on any claims in a DNA that it is absolved from any site specific analysis until the APD stage, citing *Park County* to support this claim. *Park County* is no longer good law in that regard, it has been effectively overruled or at least confined to its unique facts, and the BLM must ensure that its DNA analyses conform with the requirements established (actually reaffirmed) in *State of New Mexico* before it can use these DNAs as support for sale of the contested parcels. Under *State of New Mexico*, the BLM can only avoid a site specific environmental analysis prior to leasing if it can rationally demonstrate, after a "fact-specific inquiry," that environmental impacts that may flow from the leasing decision are not reasonably foreseeable. That is a difficult standard to meet and as shown by *State of New Mexico*, the courts in the Tenth Circuit will be likely to require full NEPA compliance at the leasing stage where potential development can be reasonably discerned.

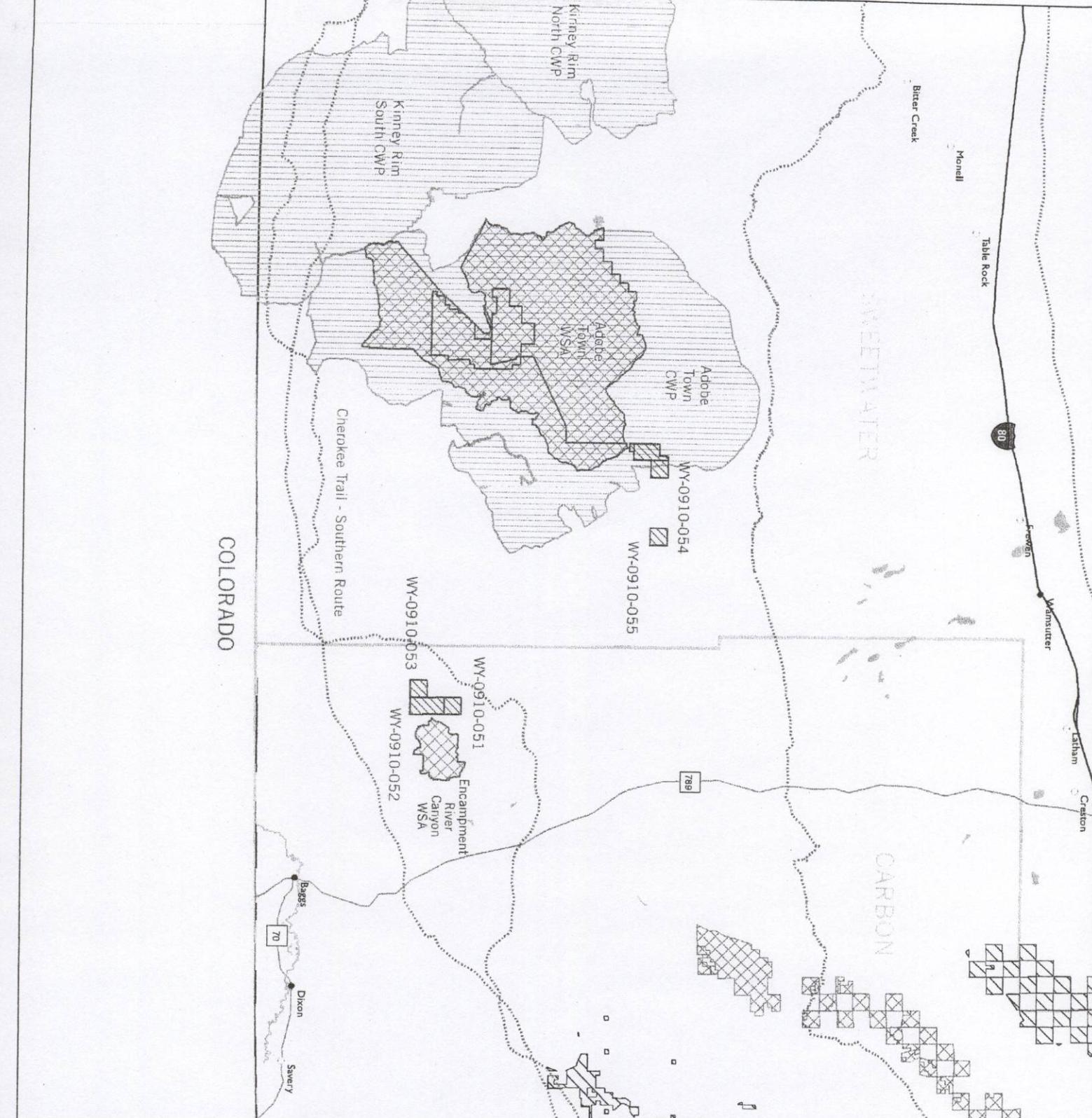
VIII. CONCLUSION AND REQUEST FOR RELIEF

For the foregoing reasons the Parties request that the protested parcels not be offered for sale at the October 2, 2009 Competitive Oil and Gas Lease Sale.

Respectfully submitted,



Bruce Pendery,
Staff Attorney for the Wyoming Outdoor Council
And on Behalf of All Parties



**Adobe Town Area
Lease Parcels
Federal Lease Sale
Wyoming BLM, October 2, 2009**

Lease Parcels
Downloaded from BLM on August 19, 2009

- Wilderness quality & wildlife habitat areas**
- Designated Wilderness Area
 - BLM Wilderness Study Area
 - Citizens Wilderness Proposal Area
 - USFS Roadless Area
 - BLM ACEC
 - National Wildlife Refuge
 - USFS NRR/RN/SA
 - State Wildlife Habitat Area
 - National Historic Trails
 - National Wild & Scenic River
- Land Ownership & Administrator**
- Bureau of Land Management
 - Department of Defense
 - Indian Reservation
 - NPS NRA/Historic Site
 - NPS National Park or Monum
 - USFS National Forest
 - USFS National Grassland
 - Wyoming State Land
 - Wyoming State Park
- Data Sources: BCA, BLM, NPS, SDVC, USFS

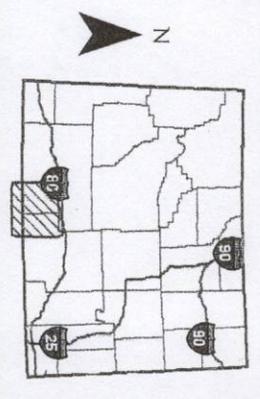
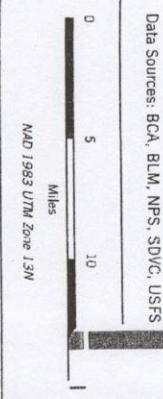


Exhibit 1

Adobetown

Location: 50 miles southeast of Point of Rocks.

Size: 85,710 acres.

Administration: BLM (Rock Springs Field Office, Rawlins Field Office).

Management status: Adobetown Wilderness Study Area (85,710 acres including 1,280 acres of state land).

Ecosystem: Wyoming Basin saltbush-greasewood desert and sagebrush steppe.

Elevation range: 6,420 feet to 7,125 feet.

System trails: None.

Maximum core to perimeter distance: 4.2 miles.

Activities: Hiking, backpacking, horseback riding, rockhounding, big game hunting (antelope and mule deer), wildlife viewing, photography.

Best season: April through October.

Maps: BLM 1:100,000 scale Kinney and Baggs.

TRAVELERS ADVISORY:

BAD WATER

Adobetown encompasses a series of arc-shaped rims that rises near the center of the Washakie Basin, sculpted by the intermittent waterways of Sand Creek and its tributaries. The rims rise 500 feet above a low-lying plain of desert brush, sculpted by erosion into a fantastic landscape of spires, balanced rocks, keyholes, and cliffs. Above the rims, a high and windswept plateau stretches westward, covered with stabilized sand dunes and alkali flats that fill with water when it rains.

The bedrock that forms Adobetown is tuffaceous sandstone belonging to the Adobe Town member of the Washakie formation. It is made up of volcanic sediments that were deposited in the Washakie Basin by a long-extinct river that flowed down from the north. Tuffaceous sandstone is soft in character and easily eroded by wind and water. In many places, its surface has been scored with vertical and horizontal grooves that give it the appearance of adobe masonry. Isolated pillars of sandstone rise as much as 2 miles east of the rimrock, and many pinnacles are clustered in groupings reminiscent of long-abandoned cities.

Paleontologists have discovered Pleistocene animal fossils within this area. Among the finds include the titanothera, a giant tapir that reached weights of

ACCESS: The western unit of the roadless area can be accessed from I-80 via the Bar X Road (County 21) north of its junction with County 20. The western edge of this roadless unit is characterized by checkerboard land ownership, which makes legal public access difficult. The Luman Road (County 20) stretches along the south boundary of the eastern unit. Both roads are suitable for passenger cars, but they turn to sloop in the rain.

Day Hike

Luman Dunes

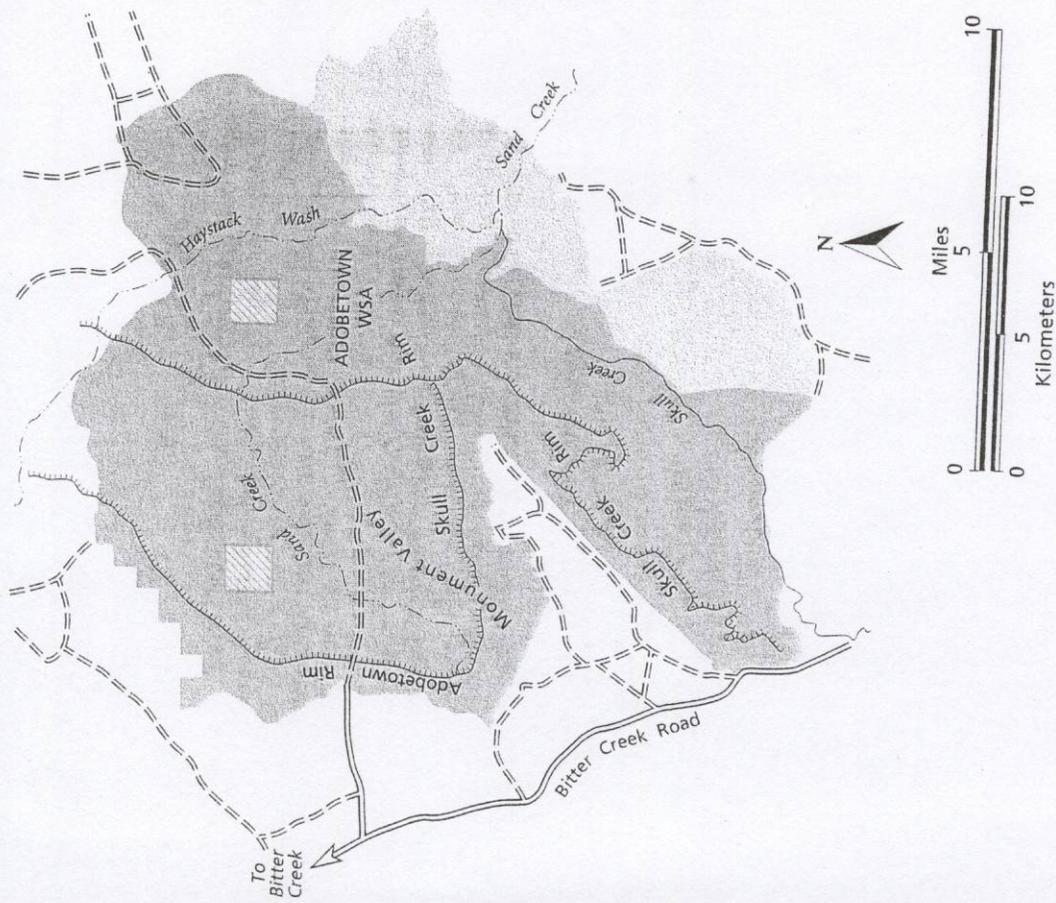
Distance: 4.0 miles or more, round trip.
Moderate.

Maximum elevation: 6,624 feet, 6,650 feet.
Level Lake.

Directions: To reach the starting point for the Luman Dunes hike, take I-80 to exit "Bar X Road." After exiting, drive to the north side of the underpass and follow road west for a short distance to intersect the Bar-X Road. This fair-weather road is north 23.5 miles to a junction with Luman Road (County 20). Turn right on Luman Road and drive east for 2.5 miles to park at the road's first southward bend.

The trail rambles through the dunes to the south of Luman Rim. To begin the hike, head north toward the distant cliffs of the Luman Rim. You will see prominent dunes stabilized by desert grassland and shrub steppe. Once you reach the active dunes in the heart of the basin, turn east and follow the ridge of migration. You can follow the sand as far as you wish. To return to the parking area, take a bearing on the collection of low buttes and hills at the end of the road. Hike to these hills, where you will strike the Luman Road. Turn westward to your vehicle.

Exhibit 2



up to 4 tons and could reach a height of 8 feet at the shoulder. Also found here were bones of the uintather, a woolly rhinoceros. Fossil turtle shells are also common. Archaeologists have unearthed evidence of constant human activity in this area over the course of the last 12,000 years. Adobetown is considered to have an unusually high density of archaeological sites, most of which have yet

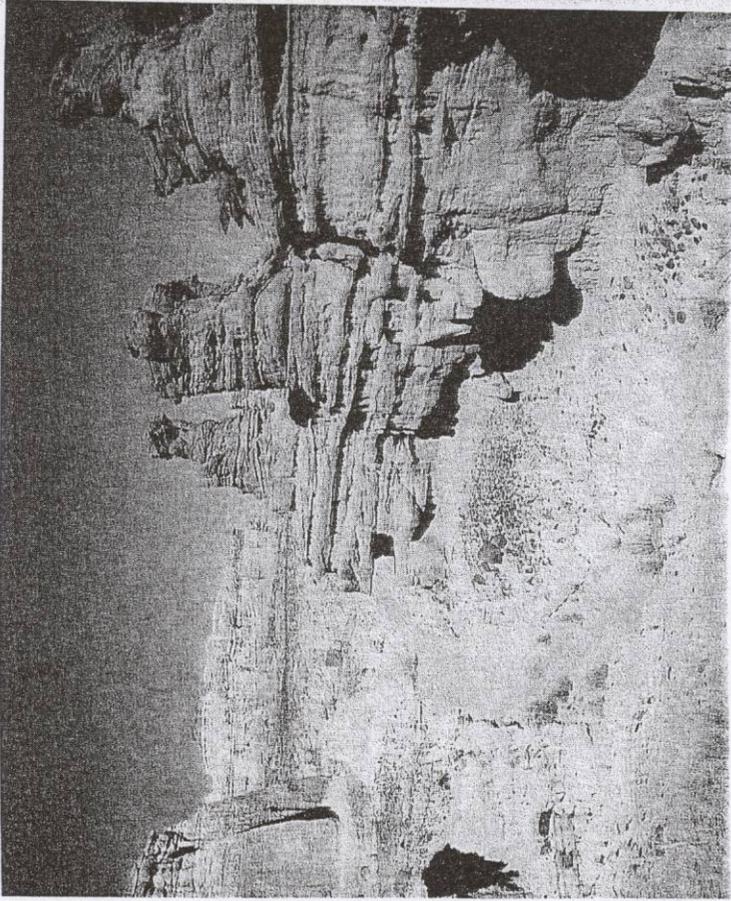
to be cataloged. Visitors should bear in mind that both vertebrate fossils and human artifacts are protected under the Antiquities Act, and it is a federal crime to collect or disturb them. Fossils and human artifacts are a priceless and irreplaceable record of Wyoming's history, and scientists can only interpret these artifacts within the context of their original position within the rock strata.

The modern mammals of Adobetown feature wild horses, pronghorn antelope, and mule deer. The wild horse population ranges between 300 and 500 animals, which can be found both above and below the breaks. In this open country of sagebrush and greasewood, the horses are easy to spot, especially due to their deeply colored white and coal-black pelage, which contrasts sharply with the dun colors of the landscape. The pronghorns belong to the Bitter Creek herd, some 11,000 strong. About 450 antelope summer within the proposed wilderness, while up to 1,200 head can be found here during the winter. Adobetown also offers outstanding habitat for mule deer. The resident population numbers around 200 head, augmented by migrant animals that move in during the winter.

The cliffs and pinnacles of Adobetown offer superior nesting sites for raptors, and its diverse array of avian predators is highlighted by golden eagles and ferruginous hawks. The ferruginous hawk has been granted Category II status under the Endangered Species Act—which means that ferruginous hawks are in danger of extinction but scientists lack sufficient population data to list the species as Endangered. The population decline of this hawk has been largely attributed to human disturbance in nesting areas, which has been linked to a nest failure rate of 55 percent in recent years. Scientists estimate that 22 nesting pairs of ferruginous hawks call Adobetown home.

If the U.S. Congress follows the BLM's recommendation, only 10,920 acres of Adobetown will be designated as wilderness and 69,430 acres will be released from wilderness consideration. Monument Valley, the Adobetown Rim, and vast acreages of sagebrush flats would be released for industrial exploitation. Views from the resulting shrunken wilderness would ultimately include a maze of drilling sites, roads, pipelines, and other artifacts of the oil extraction industry. Lost in the process would be miles of the most spectacular cliffs, canyons, buttes, and pinnacles in the area, a landscape worthy of National Park status. Due to the wide-open character of this landscape, it would be difficult to find a corner of the recommended wilderness area where the sights and sounds of industrial activity would be imperceptible. Thus, the preferred alternative presented within the EIS is a boon for the oil industry and a disaster for the American public.

There are almost no signs of past human activity within the Adobetown WSA. Several jeep trails descend from the rims to cross the vast plains of Sand Creek, but these roads would soon be swallowed up by the desert if they were closed. Small reservoirs are scattered across the landscape, built by stockmen to



Pillars near the Adobetown Rim.

retain water from the infrequent cloudbursts that occur here. Most have been abandoned, and their dams are camouflaged by a mantle of sagebrush. Wild horse traps can also be found within the breaks. Cattle and domestic sheep are still grazed throughout the wilderness study area, and this grazing would continue under wilderness designation.

The major man-made intrusions within the proposed wilderness take the form of active and abandoned drilling sites, unimproved roads and jeep tracks, and seismographic lines associated with oil and gas exploration. Major oil reserves have been discovered along the northwestern edge of the WSA, and pockets of natural gas have been located along the western and southern margins. Petrologists estimate that between 1 and 2 trillion cubic feet of natural gas may exist beneath Adobetown, at an average depth of 15,000 feet. Adobetown is underlain by low-grade oil shales, buried beneath 3,000 feet of overburden. It is not economical to mine these oil shales today, but it may become

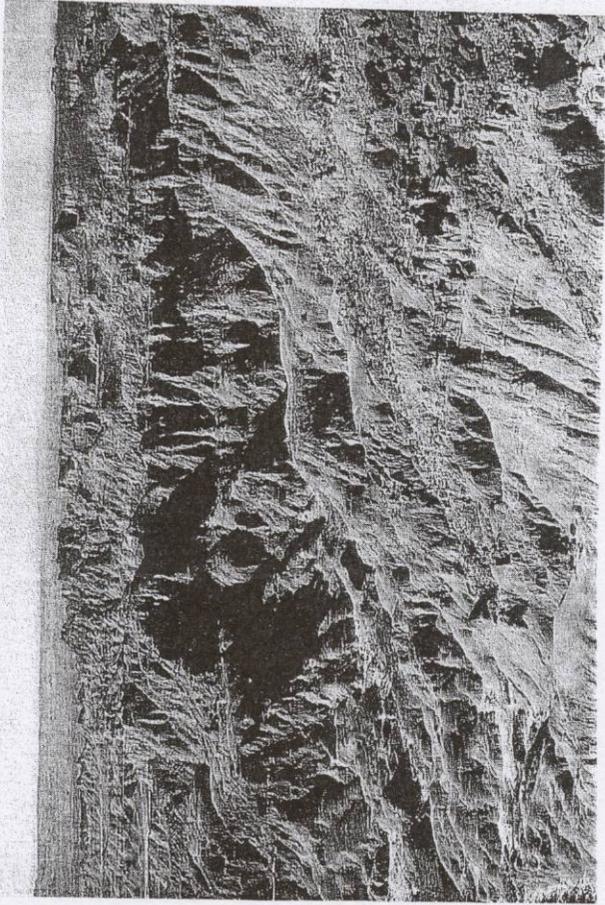
profitable in the decades to come. As for other subsurface minerals, Adobetown has low potential, and the entire region was withdrawn from development by Executive Order in 1930.

The western half of the proposed wilderness has several oil and gas leases that were filed before the Federal Land Planning and Management Act (FLPMA). By law, the holders of these leases may explore for and develop oil and gas wells despite any future wilderness designation. It is important to note that there is no current oil and gas drilling in the Adobetown area, and many of the neighboring wells have been abandoned as uneconomical. However, according to the EIS, "it is quite probable that development would occur," and gas drilling is currently accelerating in the local area. When the BLM developed its wilderness recommendations, natural gas potential was given priority over public recreation and environmental quality. In short, the Adobetown recommendations are one more in a long line of sellouts in which government officials sacrifice the public interest in the name of corporate profit.

RECREATIONAL USES: Adobetown offers limitless opportunities for off-trail hiking and explorations among the pinnacles and draws of its many rims. The open country both above and below the rims is well suited to horse travel, and it affords access to scenic overlooks and spectacular canyons. The vast extent of this roadless area makes multi-day trips a possibility. Remember that there is no water, and you will need to carry at least a gallon a day per person. The trophy antelope hunting in this area is considered to be of high quality, and trophy mule deer lurk amid the badlands. The Adobetown area receives an estimated 25 visitor days per year from off-road vehicle users, which would be displaced to neighboring areas if Adobetown is granted wilderness status.

ACCESS: Adobetown lies far from any pavement, in the heart of a vast and empty landscape of sagebrush desert. Ranches are few and far between, and there are no services within 50 miles. Carry an extra spare tire, extra fuel, and plenty of water and food in case you get stuck. All roads in this area become completely impassable when wet, and four-wheel-drive and high clearance vehicles are strongly recommended even in dry weather. Clear out if wet weather threatens, and be prepared to effect a self-rescue should you run into trouble.

The Bitter Creek Road runs south from I-80 to Adobetown, providing good fair-weather access for all vehicles. More difficult roads run southeast to the Adobetown Rim, and the jeep roads that follow the Adobetown and Skull Creek Rims should be attempted only by experienced four-wheel-drive users. The faint jeep tracks that lead to the Sand Creek flats are difficult and dangerous to attempt, even with a tank.



The towering badland breaks of the Skull Creek Rim.

Day Hike and Scramble Route

Monument Valley Loop

Distance: 6.5 miles round trip.

Difficulty: Moderately strenuous.

Starting and minimum elevation: 6,960 feet, 6,840 feet.

Topo map: Monument Valley.

Getting there: Drive I-80 east from Point of Rocks to the Bitter Creek Road, exit 142. Drive south on this broad, gravel road that becomes impassable in wet weather. You will reach the Bitter Creek railway siding after 7 miles; just beyond it, bear left at the split to stay on the Bitter Creek Road. It winds south through empty country for another 21.5 miles to reach the Eversole Ranch. Drive through the ranch compound, then bear left. Continue straight ahead (south) as the Bitter Creek Road bends away to the west. You are now following BLM 4412, which may be deeply rutted and turns to mud when it gets wet. After 3.6 miles, turn left on a major road that leads east 4.4 miles to a pump station on the Adobetown Rim. Park just beyond the pump station.

This off-trail ramble leads through the spectacular pinnacles of the Adobetown Rim. The trek begins by descending eastward from the Adobetown Rim along the roadbed. The road swings south near the bottom of the grade; leave the road here and drop into the wash to the north. Follow the watercourse down-

ward through gabled pillars and pinnacles. When the wash emerges onto the flats, abandon it and hike eastward along the base of the rock formations. As the outcrops subside into sandy slopes, a low and rock-guarded gap appears to the northeast. Cross through the gap and turn northwest, following the base of a sage-clad hill.

You will ultimately strike a wash that runs north through a narrow canyon; follow it through the rocks. It emerges at the base of a low wall of battlements that trend east-west. Hike northwest along the base of the badlands, crossing undulating terrain en route to a long ridge of spires that extends like a bony finger into the basin. Upon reaching this ridge, take time to explore the maze of canyons and spires at its base. Then round the toe of the ridge and begin a westerly climb above a basin crowded with needle-shaped tors. Take advantage of gradual slopes to ascend from one level to the next. Just below the rounded crest of the Adobetown Rim, you will be able to turn southeast along a shelf encrusted with weathered towers. It will soon become necessary to climb atop the rims, and the last leg of the trip follows them southeast with many a westward detour to avoid eroded gullies.

Day Hike

East Fork Point

Distance: 3.4 miles total.

Difficulty: Moderate.

Starting and minimum elevation: 7,055 feet, 6,990 feet.

Topo map: Prehistoric Rim.

Getting there: From Bitter Creek, drive past the Eversole Ranch as for the Monument Valley hike, and continue south on BLM 4412 from the major road junction. After 8 miles, you will see a ranch just ahead. Turn left (east) on a graded road and follow it to the old oil well site at its end. Drive northeast from the drilling pad on a two-rut jeep road that is difficult to find initially but is obvious once you're on it. After 1.4 miles, you will reach a junction near Windy Reservoir. Continue north and drive another 3.0 miles to reach a split. Turn right and drive east for 1.2 miles to park beside an outcrop atop the Skull Creek Rim.

This loop trek stays atop the Skull Creek Rim for aerial views of the colorful breaks and spectacular rock formations. To begin, hike north on the level mesa top. Upon reaching a fence, follow the horse trail that skirts east around its end, then continue north along the rim as pinnacles crowd the draw below. A horse trail soon leads down to the next terrace; hike toward the squat butte that rises to the north (marked "East Fork Point" on the map). From its east side, you will have superb northward views encompassing the Adobetown Rim, as well as the more colorful lower rims that stretch northward to the horizon.

Red Creek Badlands

54

Location: 30 miles south of Green River.
Size: 11,420 acres.

Administration: BLM (Rock Springs Field Office).

Management status: Red Creek Badlands WSA (8,020 acres), unprotected roadless lands (3,400 acres).

Ecosystem: Wyoming Basin sagebrush steppe ecosystem, dominated by juniper scrub.
Elevation range: 7,000 feet to 7,900 feet.

System trails: None.

Maximum core to perimeter distance: 1.7 miles.

Activities: Hiking, horseback riding, big game hunting, rockhounding.

Best season: April through October.

Maps: Firehole Canyon 1:100,000; Red Creek Ranch and Richards Gap 1:24,000.

TRAVELERS ADVISORY: BAD WATER

Looking north from the Skull Creek Rim.

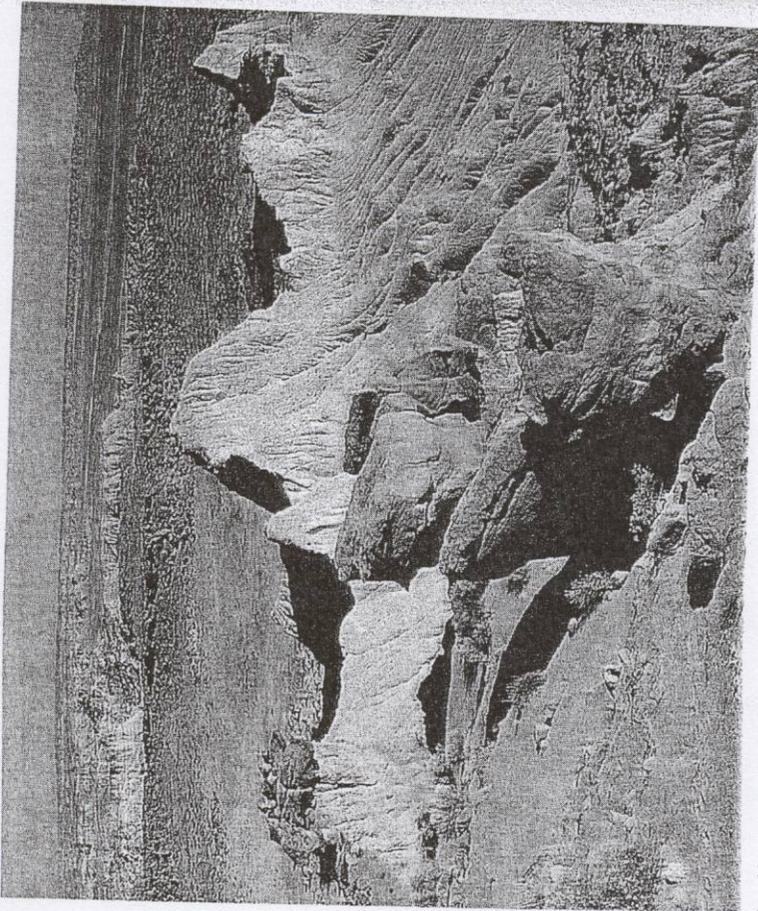
After taking in the view, double back to the south, hiking atop a lower rim-rock that demarcates a hoodoo-filled canyon below. Hike all the way around its rim, then continue eastward to visit the many promontories that jut out high above the breaks. You will ultimately arrive at a point farthest east where the mesa dissolves into unattainable pinnacles. From here the views stretch eastward across the vast basin of Sand Creek, whose broad wash can be seen snaking across the plain. The main bulwark of the Skull Creek Rim now stretches to the south, a towering wall of pinnacles and cliffs reminiscent of the Grand Canyon.

After traveling south, turn westward along the rim of the next major canyon. Follow it past the deep chasms of its mouth and the striking pedestals of its headwaters. This rim leads back to the craggy butte at the edge of the higher shelf where you will find your vehicle.

Red Creek flows through a big basin guarded by lofty breaks that slope down into a maze of minor buttes, ridges, and draws on the basin floor. The badlands are made up of the red sandstones and shales of the Wasatch formation, colorful and highly susceptible to erosion. They offer an excellent landscape for short and medium range forays into the backcountry.

Juniper scrub dominates the badlands and is intermixed with sagebrush, mountain mahogany, and greasewood along the major draws. Cottonwoods can be found beside the major washes, where groundwater is available. Spring willow can also be found along some of the major washes. It is not a willow at all, but a flowering shrub whose closest relatives live in the rainforests of Central America. The northernmost stands of piñon pine are thought to occur within these badlands. Red Creek, which runs through the area, is home to the Colorado cutthroat trout, a rare subspecies that is a focus for recovery efforts.

The Red Creek Badlands lies within the Red Creek Area of Critical Environmental Concern, which was established to manage the watershed to reduce its output of salinity and silt. The area was recommended for non-wilderness, primarily because BLM once foresaw a potential need to build erosion control structures that would slow the flow of silt and salts into the Green River. Saline runoff is now recognized as a natural part of the Green River aquatic system,



BEFORE THE WYOMING ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

APR 10 2008

Terri A. Lorenzon, Director
Environmental Quality Council

IN THE MATTER OF THE PETITION)
OF BIODIVERSITY CONSERVATION)
ALLIANCE FOR DESIGNATION OF)
"ADOBE TOWN" AS VERY RARE)
OR UNCOMMON)

EQC DOCKET NO. 07-1101

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

THIS MATTER came before the Environmental Quality Council (EQC) on October 24 and October 25, 2007, for an evidentiary hearing and the record was closed on October 25, 2007. Council members present at the hearing included Richard C. Moore, P.E., Chairman and Presiding Officer, John N. Morris, Kirby L. Hedrick, Dennis M. Boal, and Mark W. Gifford. Terri A. Lorenzon, Executive Director of EQC and Bridget Hill, Assistant Attorney General were also present. Deborah A. Baumer from the Office of Administrative Hearings served as the Hearing Examiner in the proceeding. The Petitioner, Biodiversity Conservation Alliance (BCA) and seven other conservation groups appeared by and through Erik Molvar, Director of BCA. Written opposition to the Petition was received from the Wyoming Mining Association, Sweetwater County, the Sweetwater County Conservation District, the Rock Springs Grazing Association, and a coalition referred to as the Oil and Gas Operators. EQC received a 26 page written comment with three attachments from BCA, as well as over 250 written comments in support of the Petition for designation as very rare or uncommon. The EQC received a 29 page written comment from the Oil and Gas Operators, along with eight exhibits. Written comments were also received from the Office of State Lands and Investments and the Wyoming Outdoor Council. The EQC reconvened on November 28, 2007 for deliberations. Council member Sara

- **Exhibit 3** -

Flitner read the transcript and was present for deliberations. Council member F. David Searle recused himself in this matter. The Council has considered the evidence and argument of the parties, and makes the following:

I. JURISDICTION

“The council shall act as the hearing examiner for the department and shall hear and determine all cases or issues arising under the laws, rules, regulations, standards or orders issued or administered by the department or its air quality, land quality, solid and hazardous waste management or water quality divisions.” Wyo. Stat. Ann. § 35-11-112(a) (LEXIS 2006).

The council shall, “Designate at the earliest date and to the extent possible those areas of the state which are very rare or uncommon and have particular historical, archeological, wildlife, surface geological, botanical or scenic value. When areas of privately owned lands are to be considered for such designation, the council shall give notice to the record owner and hold hearing thereon, within a county in which the area or a major portion thereof, to be so designated is located, in accordance with the Wyoming Administrative Procedures Act.” Wyo. Stat. Ann. § 35-11-112(a)(v) (LEXIS 2006).

The EQC enacted rules of procedure for designation hearings and these rules are contained in Chapter VII of the DEQ Rules of Practice and Procedure.

On November 6, 2006, BCA, along with seven other conservation groups, filed a Petition with the EQC seeking designation of approximately 180,910 acres of land located in Sweetwater County, Wyoming as very rare or uncommon. For convenience, this acreage will be referred to in this document as the area in and around Adobe Town. Therefore, the EQC has jurisdiction to hear and decide this matter.

II. STATEMENT OF THE CASE

BCA and seven other conservation groups filed a Petition with the EQC to designate 180,910 acres in Sweetwater County, Wyoming, which includes the boundary in and around an area known as "Adobe Town," as very rare or uncommon. On June 21, 2007, the EQC considered the petition at a public meeting held in Rock Springs, Wyoming pursuant to Chapter VII, Section 6 of the DEQ Rules of Practice and Procedure. Notice of the meeting was provided to the petitioner and surface and mineral owners "whose lands or minerals are within the area proposed for designation". The EQC heard a presentation on the petition from BCA and comments from a number of citizens and organizations present at the meeting. At the conclusion of the meeting, the EQC accepted the petition and determined that a formal hearing on the proposed designation should be held. At the designation hearing in September, 2007, the EQC heard comments supporting the designation and comments opposing designation of all or some of the acreage proposed for designation. A number of oil and gas operators, as well as the Wyoming Mining Association and the Rock Springs Grazing Association opposed the designation. The Petitioner asserted the entire 180,910 acres has scenic, surface geological and fossil values, archeological and historical features, as well as a sensitive wildlife habitat.

III. ISSUES AND CONTENTIONS

The sole issue in this case is whether the Petitioner has proven, by a preponderance of the evidence, that the areas in and around Adobe Town meet the requirements to be designated as very rare or uncommon pursuant to the Environmental Quality Act, Wyo. Stat. Ann. § 35-11-112 (a)(v) (LEXIS 2006) and Chapter 7 of the EQC Rules and Regulations governing very rare or

uncommon designations. If so, the Council must decide what effect such a designation has on the area.

IV. FINDINGS OF FACT

1. On November 6, 2006, BCA and seven other conservation groups including the Wyoming Wilderness Association, Wilderness Society, Wyoming Chapter of the Sierra Club, Friends of the Red Desert, Wyoming Outdoor Council, Center for Native Ecosystems and Natural Resources Defense Council, submitted a Petition to the EQC for Designation of an Area Known as Adobe Town as Very Rare or Uncommon.
2. On June 18, 2007, the EQC received a written objection to the designation from the Wyoming Mining Association. The Mining Association took the position that the designation was "nothing more than a covert effort to prohibit domestic mining and oil and gas development in the area, especially on federal lands." The Mining Association further argued that a portion of the lands are amply protected by an existing Wilderness Study Area (WSA) designation and the majority of the land outside the WSA area is currently leased and subject to valid existing federal lease rights which must not be infringed upon. The Mining Association opposed the designation because the Petition included over 50,000 acres within the Land Grant checkerboard area and would result in impossible administration of the checkerboard area.
3. On June 21, 2007, the EQC considered the petition at a public meeting held in Rock Springs, Wyoming pursuant to Chapter VII, Section 6(b) of the DEQ Rules of Practice and Procedure. The Petitioner presented information on the attributes of the Adobe Town area and argued that these attributes warranted taking the petition through the formal designation process.

Comments were accepted from those present who supported the petition and those who opposed the petition.

4. The EQC received written opposition to the designation from a coalition of oil and gas developers including Anadarko Petroleum Corporation, Devon Energy Company, Samson Oil and Gas, Questar Exploration and Production Company and Yates Petroleum Corporation collectively referred to as Oil and Gas Operators (Operators) at the June 21st meeting and at the later hearing on the Petition. The Operators opposed the designation asserting they are “actively pursuing projects and investing millions of dollars into these leases to develop the commercial gas resources which are present in the area. BCA’s Petition here is a thinly veiled attempt to thwart mineral development under the Operators’ valid leases.” The Operators also opposed the designation alleging the proposed lands were already fully protected, do not qualify under the standards set forth in the statute and EQC’s Rules. Additionally, the Operators argued the land encompasses almost exclusively BLM administered land and would render any state designation ineffectual and impossible to administer and the term “very rare or uncommon” is vague and cannot be implemented in a manner that is not inherently arbitrary and capricious. At the conclusion of the meeting, the Council voted to accept the petition and move forward with a formal hearing on whether the Adobe Town area should be designated as very rare or uncommon.

5. The areas identified by BCA to be included in the very rare or uncommon designation include an area currently designated by the federal government as a Wilderness Study Area (WSA) and consisting of approximately 86,000 acres. Additionally, BCA identified nearly 95,000 acres surrounding the WSA area. The Petitioner designated these areas as Area A, Area

B, Area C, Area D, Area E and Area F. These areas are marked on the maps used in the hearing and are contained in the record. Each area will be discussed separately below.

6. The area proposed for designation is described as follows:

Bounded by roads and pipelines, as follows. T17N R97W: Sec. 36 S1/2. T17N R96W: Sec. 22 SE1/3; Sec. 24 SW1/3; Sec. 28 SE1/2; Sec. 32 S2/3; and Sec. 26, 34, & 36. T17N R95W: Sec. 30 SW1/2; Sec. 32 SW1/2. T16N R97W: Sec. 8 SE1/8; Sec. 18 SE1/3; Sec. 25 S1/2; Sec. 27 SE1/4SE1/4; Sec. 33 SE1/4 & Sec. 2, 10, 12, 14, 16, 20, 22, 24, 26, 28, 30, 32, 34, 35, and 36. T16N R96W: Sec. 29 S1/2; Sec. 27 SE 7/8 & Sec. 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 25, 26, 28, 30, 31, 32, 33, 34, 35, & 36. T16N R95W: Sec. 8 W1/3; Sec. 20 W1/3; Sec. 19 SE5/8; Sec. 29 W1/3; Sec. 29 SE1/5; Sec. 28 SW1/3; Sec. 33 W2/3 & Sec. 6, 18, 30, 31, & 32. T15N R98W: Sec. 12 E1/2; Sec. 13 SE1/2; Sec. 24 NW1/4, NE1/4, SE1/4; Sec. 25 E1/3; Sec. 36 E1/3. T15N R97W: Sec. 5 SE1/4, E1/2 of SW1/4; Sec. 7 NE1/4, SW1/4, SE1/4 & Sec. 1, 2, 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, & 36. T15N R95W: Sec. 4 SW7/8; Sec. 3 S1/2; Sec. 2 SW1/8; Sec. 11 SW2/3; Sec. 13 SW1/4; Sec. 14 NW1/8, SE1/8; Sec. 15 NW7/8; Sec. 22 SW7/8; Sec. 23 SE2/3; Sec. 24 SW2/3; Sec. 25 all but NE1/4NE1/4 & Sec. 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, 20, 21, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36. T15N R94W: Sec. 30 SW1/4SW1/4 & Sec. 31 W1/3. T14N R94W: Sec. 6 NW1/4. T14N R95W: Sec. 1 NW7/8; Sec. 10 NW2/3; Sec. 11 N1/3; Sec. 12 NW1/4NW1/4, SW1/4NW1/4, NE1/4NW1/4; Sec. 16 NW1/3; Sec. 17 NW7/8 & Sec. 2, 3, 4, 5, 6, 7, 8, 9 & 18. T14N R96W: Sec. 24 NW1/3; Sec. 25 NW1/8; Sec. 26 N1/3; Sec. 27 N1/3 & SW1/4; Sec. 34 W1/2 & Sec. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 28, 29, 30, 31, 32, 33. T14N R97W: Sec. 18 NE3/4; Sec. 19 NE1/4NE1/4; Sec.20 NE2/3; Sec. 29 NE1/3; Sec. 31 S1/2 except SE1/4SW1/4 & NW1/4SE1/4; Sec. 32 SE3/4 & Sec. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36. T14N R98W: Sec. 1 E1/3; Sec. 12 E2/3; Sec. 13 NE1/3; Sec. 36 SE1/3. T13N R98W: Sec. 1 NE1/4NE1/4, E1/2 of SE1/4; Sec. 12 NE1/4NE1/4. T13N R97W: Sec. 6 all but SE1/4SW1/4; Sec. 7 E1/2, NE1/4NW1/4, S1/2 of NE1/4, NE1/4SW1/4; Sec. 18 E1/2; Sec. 19 NE1/4NE1/4; Sec. 29 E3/4; Sec. 32 NE1/3; Sec. 33 N2/3; Sec. 34 all but SW1/4SW1/4 & Sec. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 35, 36. T13N R96W: Sec. 3 W3/4; Sec. 10 NW2/3; Sec.15 NW1/4; Sec. 16 N2/3; Sec. 17 all but SE1/4SE1/4; Sec. 20 W1/2; Sec. 29 W1/3; Sec. 31 all but SW1/4SW1/4; Sec. 32 SW2/3 & Sec. 4, 5, 6, 7, 8, 9, 18, 19, and 30. T12N R96W: Sec. 5 N1/4; Sec. 6 NE1/8. T12N R97W: Sec. 1 NW1/4NW1/4; Sec. 2 N1/3; Sec.3 NE1/6. All of T15N R96W

7. The legal description above differs from the legal description published in the public notice for this case. The differences are typographical corrections and the elimination of several

parcels of private land that were inadvertently included in the original description. BCA did not petition for designations of private lands.

8. The EQC and the hearing participants referred to maps of the Adobe Town area throughout the hearing process. Two maps are attached to this order. The first map that is attached was prepared for the EQC by the Bureau of Land Management Office in Rock Springs, Wyoming. This map is easily identified by the statement above the legend on the map which reads "This map was made at the request of the EQC using data provided by BCA and the BLM". This map is Attachment 1.

9. The second map that is attached was created by BCA at the request of the Council after the Council made its decision on the designation. This map is identified by the logo and information in the upper right-hand corner. The logo is "Adobe Town Proposed Very Rare or Uncommon Area". Below this logo are two notations. These notations state "Cherry-stem exclusions eliminated" and "BLM Inventory area labeled". The cherry stems that were removed were jagged black lines that indicated roads in the Adobe Town area. It was decided that these roads did not need to be excluded from the designation. This map also differs from the original map of the area to be designated as there is a correction of the boundary line on the western-most portion of the southern boundary of Area B. The corrected boundary runs east across a small "hook" shaped piece of land from the point where the boundary of Area C meets the southern boundary of Area B. This piece of land was erroneously included in Area B on the original map. The corrected map, that is attached, had the boundary line excluding the piece of land. This map is Attachment 2.

10. In reaching their decision in this matter, the EQC relied on the maps as showing the boundary of the area designated. The legal description appearing in paragraph 5 of this order generally describes the lands included in the designation as well as the boundary.

11. A third map that was used in the hearing process is a USGS Map of the Kinney Rim. This map is produced by the BLM and is readily available.

12. The WSA area consists of 86,000 acres and was estimated to contain 30 archeological sites per square mile. It is marked by stabilized sand dunes. The Skull Creek Rim is located in this area with buttes and pinnacles containing bands of uncommon colors such as pink and purple. It is the most visited area contained in the Petition due to its very scenic and photographic values. The WSA area also has historical value as mentioned in literature. Opposition to the designation of this area focused on the fact that the area is already designated as a WSA by the Federal Government and therefore, fully protected. The opposition also warned the EQC that overlapping designations may lead to conflict. However, no evidence was submitted by any party to support this contention as to how or what the conflict would be.

13. Area A is commonly referred to as the Haystacks. Area A received the most opposition to its designation as very rare or uncommon. It is located to the north of the WSA and is a checkerboard area, where every other section is private. BCA only requested the state and federal portions of the checkerboard to be designated as very rare or uncommon, leaving the private sections of the checkerboard out of the designation. The Petitioner argued the Haystacks area is a unique geological feature, has spectacular scenic values with pinnacles and spires and is an important habitat for nesting raptors and golden eagles. The Haystacks surface is a crucial winter range for mule deer and contains fossiliferous characteristics very rare or uncommon in Wyoming. The opposition focused on a fear that the checkerboard area would prove to be a

management nightmare and impossible to administer, that legal and liability issues arise surrounding access to the area and that the area is not uncommon because it is seen in other areas of Wyoming. The EQC strongly disagrees with the opposition and finds that the designation has no effect on management or access to the area and is very rare or uncommon in this state.

14. Area B is east of the Willow Creek Rim featured by a high sharp escarpment that is uncommon in the area and overlooks badlands that have a deeply eroded maze of canyons and ridges. BCA designated Area B due to its scenic and wildlife values as the area is a nesting site for golden eagles. BCA admitted that the features of Area B were not very rare in Wyoming, but argued the area was uncommon and the view shed needed to be protected. The EQC finds the area contains a scenic vista overlooking the entire Adobe Town area. A compelling case was made that the area contains fossiliferous features, historical, geological, wildlife, and paleontological values. The EQC rejects the opposition's argument that the only reason the area has been designated by BCA is to hinder oil and gas development. The EQC also rejects the oppositions "fear" that BLM would not re-nominate leases as they expire in the area due to a very rare or uncommon designation. No evidence was submitted to support these contentions.

15. Area C is located to the east of the WSA and contains sage grouse leks. Area D is located to the southeast of the WSA and contains rare mountain plover nesting habitats. Both areas are scenic and a designation protects the vista from Skull Creek Rim. The opposition focused on BCA understating the oil and gas development in both areas and the "fear" the BLM would not re-nominate leases as they expire in the area due to a very rare or uncommon designation. The EQC finds the designation affects non-surface coal mining operations and the opposition did not adequately make a case supporting their "fear" being justified.

16. Area E is to the south of the WSA and marked by the Powder Rim. The area has scenic values and contains juniper woodlands which support a botanical value. As a result, the area contains migratory songbirds not found elsewhere in Wyoming. The area also contains unique, geological features and has high aesthetic, photographic and scenic values. Additionally, Area E is a crucial winter range for mule deer. This area is very uncommon in Wyoming.

17. BCA argued Area F should be designated because of its archeological, historical paleontological and cultural values. It is covered with stabilized sand dunes ideal for archeological digs. It is a possible archeological site, and the EQC visited this area on its ground tour. The EQC finds the area is very scenic as it lies squarely between the Skull Creek Rim and Adobe Town Rim and contains the values stated in the Petition.

18. BCA also argued the entire proposed area is very rare or uncommon in terms of probable vertebrate fossil yield classification, rated at 5 by the BLM which is the highest classification. BCA argued the entire area has geological values and therefore should be designated. BCA also argued that in order to keep the view shed of the Skull Creek Rim in the WSA, its scenery is fully dependent on the lands that are outside the WSA.

19. On behalf of the Operators, Samson senior geologist, Greg Anderson, showed that BCA understated the value of the gas reserves in Areas B, C and D where wells currently produce gas. Anderson also believed if the designation was granted, BLM would not re-nominate those tracts of leases that expired. Anderson admitted that there was no real basis or evidence that the Operators would be negatively impacted by the designation, just a "fear" that this would happen.

20. The Operators also argued the EQC must evaluate the criteria, "weigh" the factors and look at the "intent" of the Petitioner. The Operators argued the intent of the Petitioner was to

oppose or hinder oil and gas development. The Operators failed to convince the EQC that the intent of the Petitioner should lead the EQC to deny the designation.

21. Jim Magagna (Magagna), Vice President of the Wyoming Stockgrowers Association commented in opposition to the designation for fear there would be a public expectation on how the area would be managed, i.e., that people do not want to walk through sheep or cattle to get to the area. Magagna admitted, however, that under the applicable statutes and rules, agriculture is clearly exempt from any impact from the designation.

22. Marion Loomis (Loomis), Executive Director of Wyoming Mining Association also commented in opposition to the designation. Loomis admitted they have no mines planned in the area, but the designation would preclude them from ever trying to develop a mine. Loomis stated that a designation in the past killed a mine and that features in the Adobe Town area are not uncommon because they were also found in the Bighorn Basin area. The EQC finds Loomis' fears were not justified and were not supported by evidence. The EQC also finds the entire Adobe Town area to be very rare or uncommon.

23. John Hay (Hay), from the Rock Springs Grazing Association, a surface and mineral owner in the checkerboard area north of the WSA, commented in opposition to the designation stating that energy development should be the top priority and should be accommodated. Hay commented that a designation would make it impossible to manage the area for multiple use purposes and the designation would have a negative impact on agricultural operations. According to Hay, it would be difficult to do any structural development, such as fences, wells, springs and weed control. The EQC does not find Hay's comments persuasive or supported by any evidence.

24. Professor Jason Lillegraven, Professor Emeritus in geology and zoology at the University of Wyoming, discussed the paleontological and geological importance of the Adobe Town area. Professor Lillegraven showed that Adobe Town is beyond rare, it is unique, because it is composed of rocks of early late Eocene age and Uintan age that are in stratigraphic order. This is the only place in Wyoming where you find fossiliferous deposits of this age. The entire Haystacks area and Adobe Town Rim contain these deposits.

25. Throughout the two days of public comment, citizens testified to the reasons they believed the Adobe Town area should be protected. These reasons included the fossils that can be seen in the area, the rugged nature of the desert terrain, the harsh beauty of the rock features such as hoodoos, and the scenic vistas. People described taking their children to the area for hiking and exploration. Comments were received from university students who grew up hiking and hunting in the Adobe Town area and who frequently return to the area. One comment described the observations of an Israeli general who described the spiritual nature of this desert and compared Adobe Town to places in the Mideast where major religions were born. In summary, there was a diversity of comments from people who were familiar with the area, all in support of the designation.

26. The EQC also considered an October 24, 2007 letter from Sweetwater County and the Sweetwater County Conservation District generally opposing a very rare or uncommon designation for all areas outside the WSA for a number of reasons including the designation would interfere with range projects, would interfere with existing oil and gas rights, would interfere with local governments control of predators, noxious weeds and wild horses, did not meet the statutory criteria, would result in denial of mining permits, and was just another effort to propose wilderness management on lands that had been evaluated and rejected as having

wilderness characteristics. The EQC finds no evidence was submitted to support the “fears” of Sweetwater County and the Sweetwater County Conservation District.

27. All findings of fact set forth in the following conclusions of law section shall be considered a finding of fact and are fully incorporated into this paragraph.

V. CONCLUSIONS OF LAW

A. Principles of Law

28. BCA bears the burden of proof in the proceedings herein. “The general rule in administrative law is that, unless a statute otherwise assigns the burden of proof, the proponent of an order has the burden of proof.” *JM v. Department of Family Services*, 922 P.2d 219, 221 (Wyo. 1996) (citation omitted); *Penny v. State ex rel. Wyoming Mental Health Prof. Licensing Board*, 120 P.3d 152, (Wyo. 2005).

29. “The EQC shall:

(v) Designate at the earliest date and to the extent possible those areas of the state which are very rare or uncommon and have particular historical, archeological, wildlife, surface geological, botanical or scenic value. When areas of privately owned lands are to be considered for such designation, the council shall give notice to the record owner and hold hearing thereon, within a county in which the area, or a major portion thereof, to be so designated, is located, in accordance with the Wyoming Administrative Procedures Act.” Wyo. Stat. Ann. § 35-11-112(a)(v) (LEXIS 2006).

30. In 1993 the Wyoming Supreme Court found that the phrase “very rare or uncommon” was too amorphous to allow such a designation without the benefit of corresponding standards created by the Council. *Matter of Bessemer Mt.*, 856 P.2d 450, 453 (Wyo. 1993). Accordingly, the Court directed the Council to adopt the factors and criteria that will serve as the standards for the classification of lands as “very rare or uncommon.” *Id.* at 455. As a result, the Council

adopted Chapter 7 of the Department of Environmental Quality's Rules of Practice and Procedure. These rules set forth the process for designating "very rare or uncommon areas" as well as the criteria for such a designation.

31. When considering whether to grant the designation the EQC must follow a two-tiered review process. First, the EQC must determine if the area has some "particular historical, archaeological, wildlife, surface geological, botanical or scenic value." WYO. STAT. § 35-11-112(a)(v). Second, if one or more of those values is found to exist, the EQC must determine whether that particular value is "very rare or uncommon." The EQC's rules set out detailed factors that the EQC must consider for each statutory value, which are generally set forth below. See Rules of Practice and Procedure, Ch. VII, § 11 for additional detail. The EQC must consider the significance and the weight of all specifically identified factors that are set forth in the rules.

A. Historical, Prehistorical, or Archaeological Value:

- Whether the area is mentioned prominently in historic journals or other historic literature;
- Whether the area is important because it is associated with cultural or religious traditions and practices;
- Whether the area has received a designation pursuant to state or federal laws that provide for protection – such as National Historic Landmarks, National Historic Sites, or the National Register of Historic places; and
- Whether the area contains buildings, structures, artifacts, or other features that are significant in the history or prehistory of the state.

B. Wildlife value:

- Whether the area includes lands that are considered irreplaceable fish or wildlife habitat;
- Whether the area includes preserves or easements which have been established and used for the protection of habitat for wildlife;
- Whether the area includes lands that G&F has designated as crucial or vital habitat for resident species;
- Whether the area contains or may affect Class I fisheries;

- Whether the area includes fragile lands that offer unique wildlife or scientific values;
- Whether the area includes federally designated critical habitat for threatened or endangered plant or animal species;
- Whether the area contains an active bald or golden eagle nest; and
- Whether the area includes bald or golden eagle roost and concentration areas used during migration and wintering.

C. Surface Geological Value:

- Whether the area has unique surface geological formations that expose upheavals and faults that are indicative of sub-surface geological features;
- Whether the area has significant paleontological resources; and
- Whether the area has geological features with unusual or substantial recreational, aesthetic, or scientific value.

D. Botanical Value: – Petitioner has not asserted a particular Botanical value.

E. Scenic Value:

- Whether the area includes lands within or adjacent to a corridor for a river designated as a National Wild and Scenic River or a corridor for a National Scenic Byway;
- Whether the area had been the subject of substantial artistic attention in the works of artists, sculptors, photographers, or writers; and
- Whether the area has substantial aesthetic value and its value would be apparent to a reasonable person.

As noted above, if the EQC finds that the area is eligible for designation because it possesses one or more of the above described values, the EQC must then consider if the area is “very rare or uncommon.” The rules set out the following factors to be considered when making this determination.

F. Very Rare or Uncommon:

- Whether the area exhibits historical, archaeological, wildlife, surface geological, botanical or scenic values that are very rare or uncommon when compared with other areas of the state or a region therein;
- Whether the area contains historical, archaeological, wildlife, surface geological, botanical or scenic values seldom found within the state or a region therein; and

- Whether the area contains historical, archaeological, wildlife, surface geological, botanical or scenic values known or suspected to be declining which, if left unprotected could become extinct or extirpated.

32. After applying these criteria, the EQC shall make their decision in a public meeting. Thereafter, the EQC shall issue a written decision. The decision may be to designate all or a portion of the area or to deny the Petition. The EQC must issue a written statement of the reasons for the decision and serve the Petitioner with a copy of the decision and statement of reasons.

33. The only other statutes that relate to the "very rare or uncommon" designation are WYO. STAT. ANN. §§ 35-11-406(m) and 35-11-1001. WYO. STAT. ANN. § 35-11-406 (m)(iv) provides that the director of the Department of Environmental Quality (DEQ) may deny an application for a mining permit if "the proposed mining operation would irreparably harm, destroy, or materially impair any area that has been designated by the council a rare or uncommon area and having particular historical, archaeological, wildlife, surface geological, botanical or scenic value [.]". WYO. STAT. ANN. § 35-11-1001 provides that any person having a legal interest in the mineral rights for which the State has prohibited mining operations based on a "rare or uncommon" designation may petition the district court to determine whether the prohibition constitutes an unconstitutional taking without compensation.

34. In addition to these statutory provisions, the EQC's rules related to "rare or uncommon" areas provide some additional guidance related to the effect of the designation. Specifically, the rules state, "[t]hese rules apply only to the Land Quality Article, Article 4, of the Environmental Quality Act. The scope of these rules is limited to areas sought to be designated for purposes

related to the permit approval and denial process contained in W.S. § 35-11-406(m) for noncoal mining operations.” DEQ RULES OF PRACTICE AND PROCEDURE, Ch. VII, § 2.

35. “Non-coal mining operations” does not include oil and gas operations. Specifically, the Environmental Quality Act provides that nothing in the act “limits or interferes with the jurisdiction, duties or authority of ... the oil and gas supervisor or the oil and gas conservation commission,” WYO. STAT. ANN. § 35-11-1104 (Emphasis added). Additionally, WYO. STAT. ANN. § 35-11-401 provides “nothing in this act shall provide the land quality division regulatory authority over oil mining operations as defined in W.S. 30-5-104(d)(ii)(F).” “Oil mining operations” are defined as “operations associated with the production of oil or gas from reservoir access holes drilled from underground shafts or tunnels.” WYO. STAT. ANN. § 30-5-104(s)(ii)(F).

36. Thus, considering the language of the statute a “very rare or uncommon” designation means that the area has a “particular historical, archaeological, wildlife, surface geological, botanical or scenic value.” WYO. STAT. ANN. § 35-11-112(a)(v). However, the effect of a “very rare or uncommon” designation appears to be confined to mining permits issued by the DEQ. Indeed, the statutes do not indicate any other restrictions on the use of land that has been designated “very rare or uncommon.”

B. Application of Principles of Law

37. Wyo. Stat. Ann. § 35-11-112(a)(v) (LEXIS 2006) requires that the EQC designate any area of the state as very rare or uncommon if it meets the criteria set forth in the statute and further defined by the EQC’s rules and regulations. The Petitioner must demonstrate that the Petition complies with the requirements of the statute.

38. The designation protects the area from non surface coal mining only. The designation would prevent surface mining for oil shale and uranium, as well as gravel pit mining. The designation does not limit oil and gas leasing, exploration, drilling, production or related construction. The designation does not limit or curtail any type of access to private in-holdings or for purposes other than non-coal surface mining on public lands, including livestock grazing.
39. The Petitioner has proven that the area referred to as Adobe Town and included in the WSA should be considered as very rare or uncommon. The Petitioner has proven that the area has very scenic values, archeological values, is mentioned prominently in journals and is the subject of artistic and photographic attention. The WSA is very rare or uncommon and deserves the designation.
40. Likewise the Petitioner has proven that Area A deserves the very rare or uncommon designation due to its historical, geological, wildlife and scenic values. This area covers the Haystacks region and is beyond rare or uncommon.
41. A compelling case was made by the Petitioner for Area B to be considered rare or uncommon due to its historical, wildlife, geological, scenic and paleontological values.
42. Areas C and D contained botanical, geological, wildlife, and photographic values. These two areas are not common in the State of Wyoming.
43. Area E should be designated for its paleontological and scenic values
44. Finally, Area F should be designated because of its archeological, historical paleontological and cultural values.
45. The designation does not prevent the construction of roads, agricultural use or change the current use. The only effect this designation has is to provide a higher level of scrutiny when it comes to non-coal mine permits.

46. The Adobe Town Area, including Areas A, B, C, D, E, and F, exhibits surface geological, historical, archaeological, wildlife, and scenic values that is very rare or uncommon when compared with other areas of the state or the region. These values are seldom found within the state and could become extinct or extirpated if left unprotected.

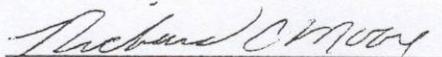
DECISION

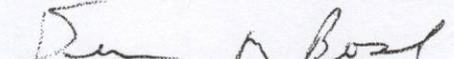
Pursuant to the authority vested in the Environmental Quality Council by WYO. STAT. ANN. § 35-11-112(a)(v) (LEXIS 2006), the Council hereby grants the Petition to Designate Adobe Town as Rare and Uncommon. The entire area was observed by the Council and planned with great caution and deliberation. The area as designated is very unique and spectacular and should be protected as very rare or uncommon.

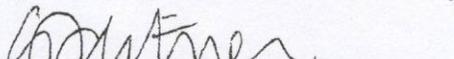
ORDER

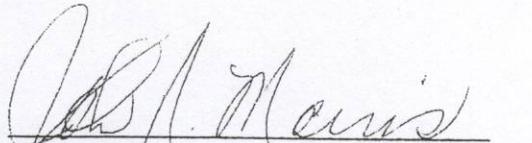
IT IS THEREFORE ORDERED that the Petition for Designation as Very Rare or Uncommon is hereby granted in its entirety as presented to this Council.

DATED this 10th day of ~~March~~^{April}, 2008.

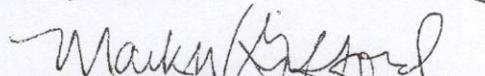

Richard C. Moore, P.E., Chairman

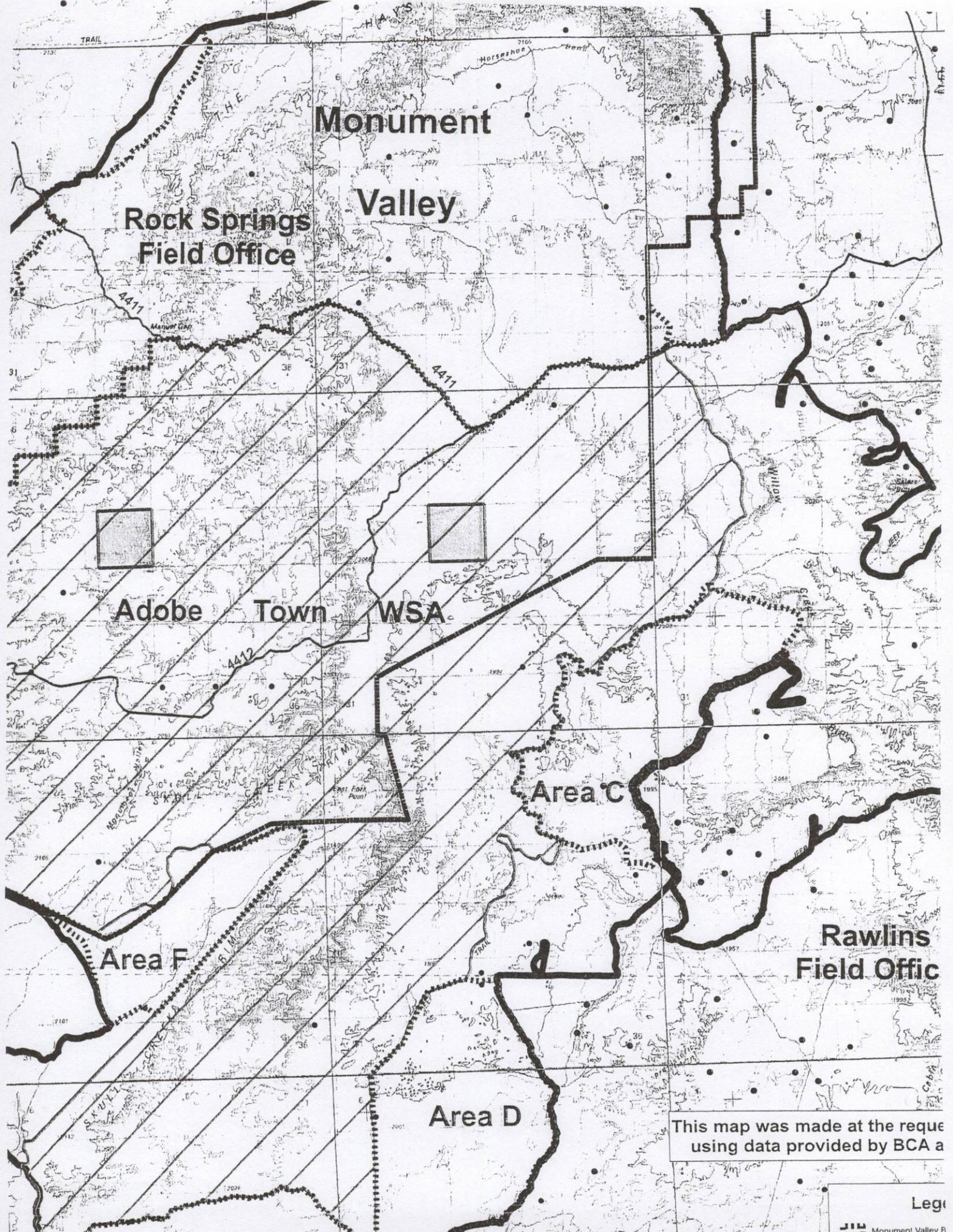

Dennis Boal, Secretary


Sara Flitner


John Morris - Approved as to form


Kirby Hedrick


Mark Gifford



Monument Valley

Rock Springs
Field Office

Adobe Town WSA

Rawlins
Field Office

Area C

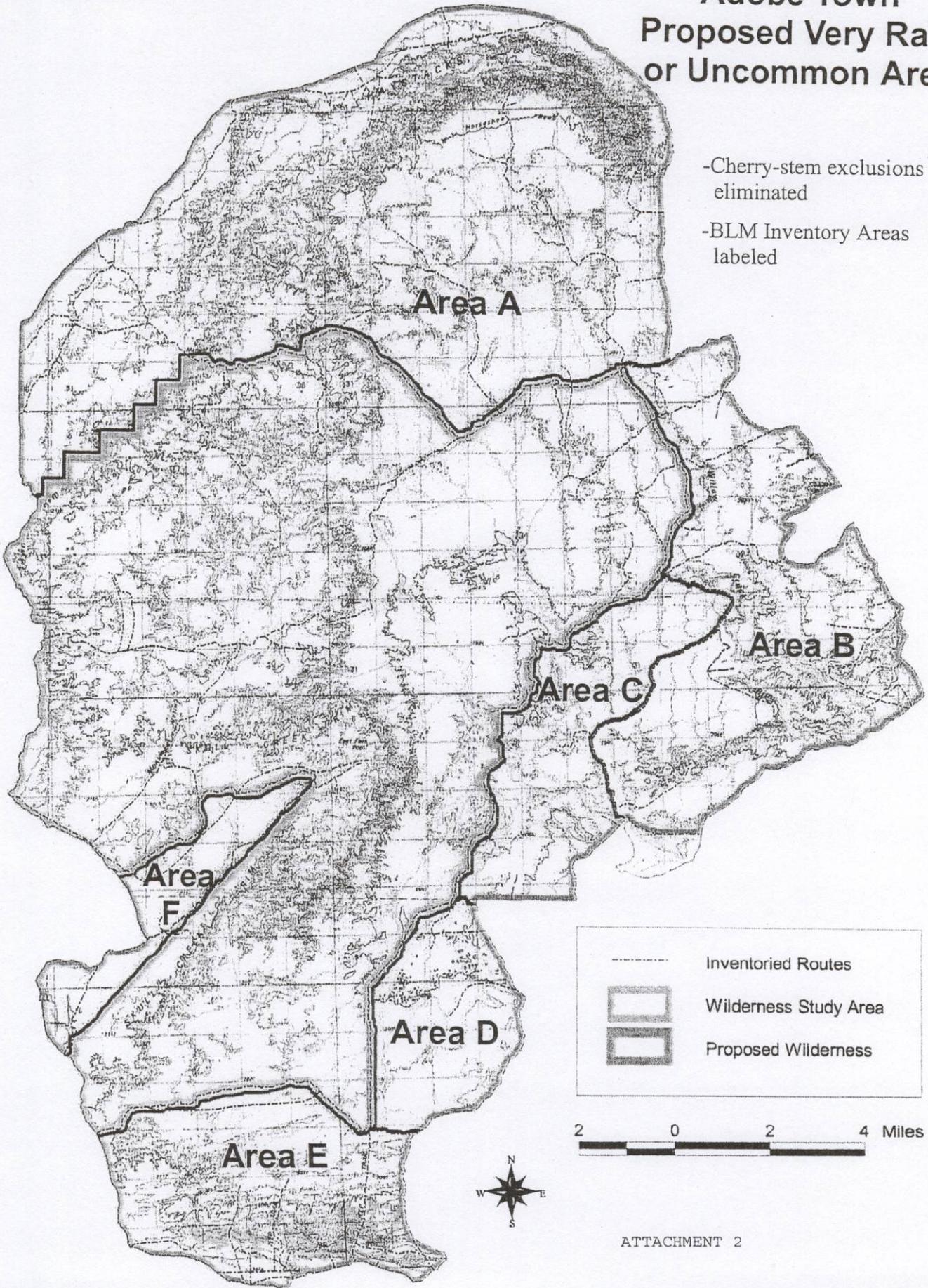
Area D

Area F

This map was made at the request of
using data provided by BCA a

Adobe Town Proposed Very Rare or Uncommon Area

- Cherry-stem exclusions eliminated
- BLM Inventory Areas labeled



Sweetwater Canyon Area Lease Parcels

Federal Lease Sale
Wyoming BLM, October 2, 2009

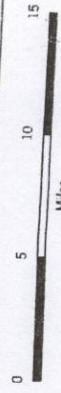
Lease Parcels
Downloaded from BLM on August 19, 2009

Selected Important Wildlife Areas

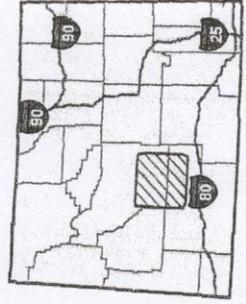
- Sage Grouse Core Area
- Antelope Crucial Range
- Antelope Parturition Area
- Elk Crucial Range
- Elk Parturition Area
- Mule Deer Crucial Range
- Mule Deer Parturition Area
- Big Game Migration Corridors*

*This data layer is intended to illustrate general regions that encompass clusters of corridors rather than specific locations of individual corridors.

Data Sources: BLM, SDVC, USGS, WGFD



Miles
NAD 1983 UTM Zone 13N



EARTHJUSTICE

Doug Prilugh, September 8, 2009

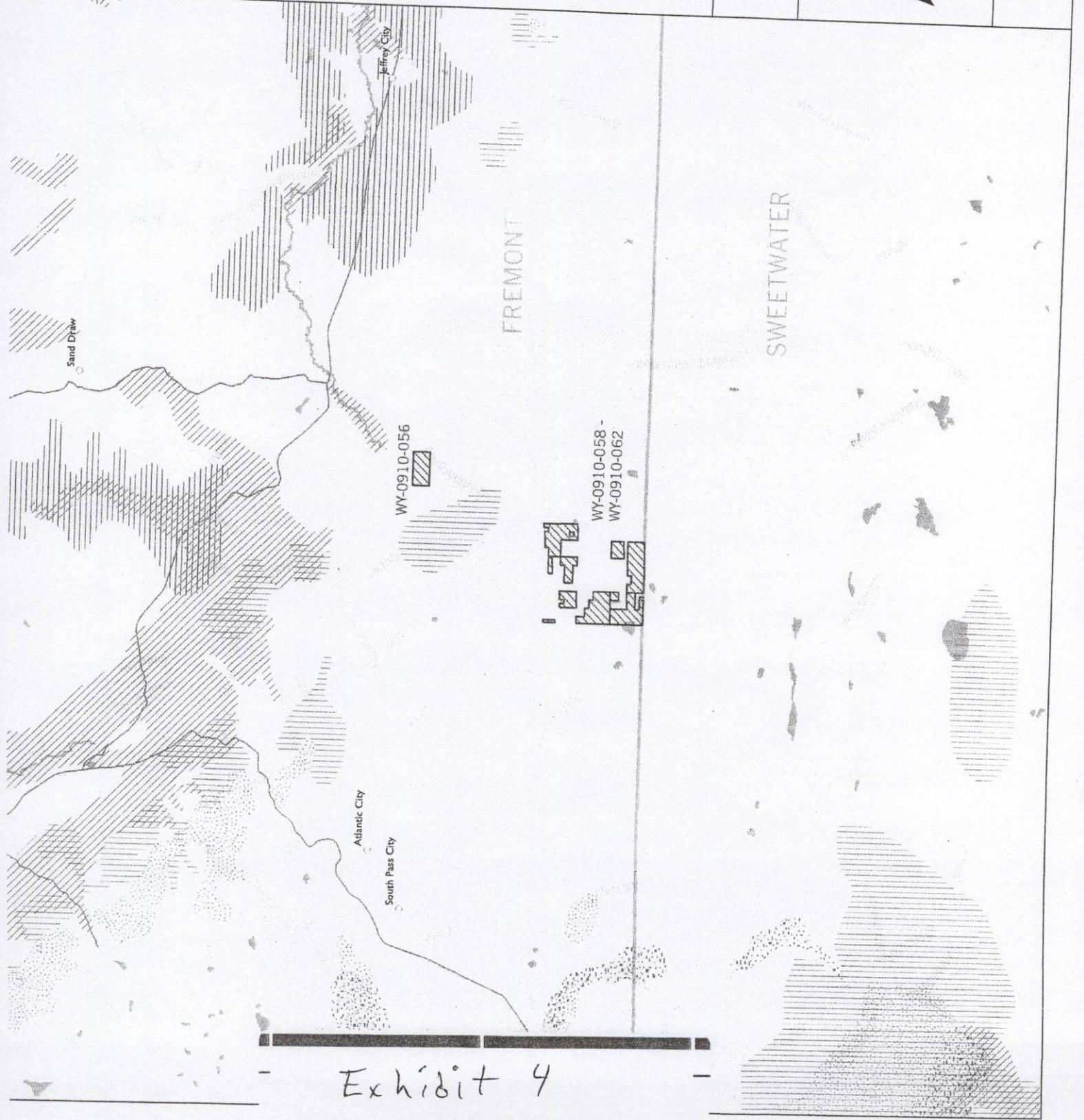


Exhibit 4

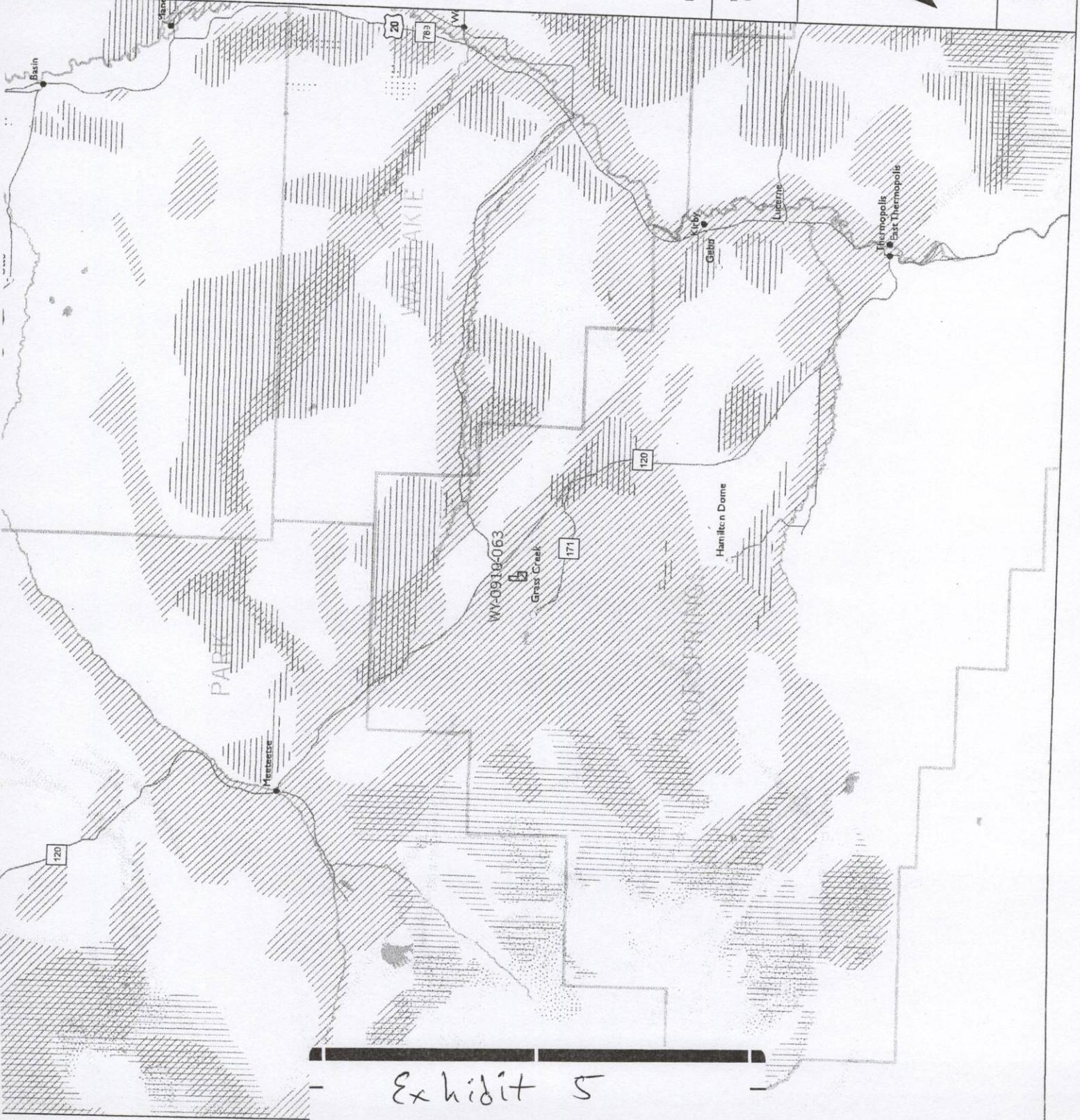
**Grass Creek Area
Lease Parcels**
Federal Lease Sale
Wyoming BLM, October 2, 2009

Lease Parcels
Downloaded from BLM on August 19, 2009

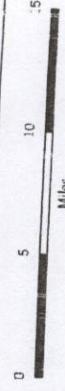
Selected Important Wildlife Areas

- Sage Grouse Core Area
- Antelope Crucial Range
- Antelope Parturition Area
- Elk Crucial Range
- Elk Parturition Area
- Mule Deer Crucial Range
- Mule Deer Parturition Area
- Big Game Migration Corridors*

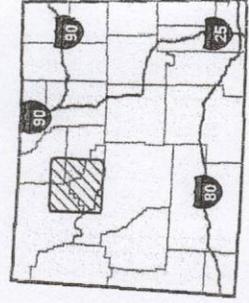
*This data layer is intended to illustrate general regions that encompass clusters of corridors rather than specific locations of individual corridors.



Data Sources: BLM, SDVC, USGS, WGFD



MAD 1983 UTM Zone 13N



EARTHJUSTICE

Doug Pflugh, September 8, 2009

Exhibit 5

DAVE FREUDENTHAL
GOVERNOR

THE STATE  OF WYOMING

STATE CAPITOL
CHEYENNE, WY 82002

Office of the Governor

February 2, 2009

Don Simpson, State Director
Bureau of Land Management
P.O. Box 1828
Cheyenne, WY 82003

RE: February 3, 2009 Competitive Oil & Gas Lease Sale

Dear Mr. Simpson:

I write to request the deferral of eight parcels that are proposed for lease in the February 3, 2009 Competitive Oil & Gas Lease Sale. Three of the parcels are within the Cody Field Office and adjacent to the Shoshone National Forest: WY-0902-124, -125 and -126 (Cody Parcels). The remaining five parcels are within the Rock Springs Field Office and are either within or directly adjacent to the Jack Morrow Hills Coordinated Activity Plan boundary: WY-0902-108, -109, -110, -111, and -112 (JMH Parcels).

Cody Parcels

The last revision of the Cody Resource Management Plan (RMP) was completed in 1990. Since that time, the Bighorn Basin Resource Area has experienced significant change. Grizzly bear populations have increased substantially, resulting in the bear's removal from the endangered species list and a return to full state management of the species. Gray wolves were reintroduced into Yellowstone National Park and have experienced significant population increases and dispersed widely throughout the Greater Yellowstone Area. Increasing grizzly bear and wolf populations have affected elk, moose and mule deer populations, and in turn, have complicated the already tenuous allocation of forage between livestock and wildlife. Beyond forage concerns, increasing wolf and grizzly bear numbers have resulted in greater livestock depredation and considerably altered livestock operations. The proliferation of the pine beetle has significantly impacted white bark and other species of pine trees, which has the potential to affect grizzly bear populations and other consumptive uses of the BLM's forest resources. The area has also seen noteworthy increases in off highway vehicle and other recreational uses and – as evidenced by the February 2009 Lease Sale - oil and gas development has seen significantly renewed interest. Change, it seems, is the only constant.

The Cody Parcels are seemingly at the crossroads of the changed physical and social landscape in the BLM's Bighorn Basin Resource Area. According to the Wyoming Game and Fish

Don Simpson, State Director
February 2, 2009
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Department – who apparently was only given the opportunity to review parcels -124 and -125 - the three Cody Parcels are used by grizzly bears in the Spring, have been regularly frequented by at least one wolf pack, represent crucial habitat for elk, moose and mule deer, encompass elk and moose parturition areas, contain sage grouse wintering habitat and at least one of the parcels is used by bighorn sheep and potentially peregrine falcons, which were only recently removed from the endangered species list.

Traditionally, I have been cautious to only request lease deferrals in instances where there is legal or practical justification for such a remedy. Here, BLM Instruction Memorandum (IM) 2004-110 Change 1 vests discretion in the State Director to “consider temporarily deferring oil, gas and geothermal leasing on federal lands with land use plans that are currently being revised or amended.” This IM functionally gives the BLM the latitude to ensure that a full range of alternatives is available to it during the RMP revision process – as the leasing of oil and gas resources has the potential to irretrievably commit lands to a certain use and significantly impact allocations for other resources - and is an extension of the Council on Environmental Quality’s view that no action should be taken that would limit the choice of reasonable alternatives until a final Record of Decision is issued. 40 C.F.R. § 1506.1.

Given the increasing value of the Cody Parcels to wildlife and recreational users and the changed circumstances that have arisen with increasing populations of wolves (which arguably did not exist on the parcels in 1990) and grizzly bears, I am concerned that the existing management prescriptions set forth in the 1990 Cody RMP – for oil and gas and seemingly every other resource – are antiquated and in need of alteration through the RMP revision process. This is especially true to protect historic uses like livestock grazing on these and adjacent allotments. Therefore, in consideration of IM 2004-110 and 40 C.F.R. § 1506.1, respectfully request that the Cody Parcels be deferred until the Final Environmental Impact Statement for the Bighorn Basin RMP has been completed and the Record of Decision has been issued.

JMH Parcels

Since the signing of the JMH Record of Decision nearly three years ago, I have been adamant that BLM aggressively engage its responsibility to fully implement the decision. In the context of the JMH Record of Decision, such implementation is almost wholly dependent on monitoring and sound adaptive management principles, especially for oil and gas leasing and development in “Area 2.”

On two separate occasions, I have requested that certain lease parcels with high habitat values for sage grouse be deferred from leasing until the JMH Coordinated Activity Plan Working Group was established and monitoring data was available to support additional leasing in the area. Because these parcels were located in “Area 1,” which is the least restricted area for oil and gas leasing and development, the leasing was allowed to proceed. Given the fact that the

Don Simpson, State Director
February 2, 2009
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JMH Parcels in the February 2009 Lease Sale are located in "Area 2" and the reality that the JMH Working Group has only held two very preliminary meetings, with no discernable monitoring plan or data having been collected to date – deferral of the JMH Parcels seems not only justified, but required.

I have frequently expressed my concerns that adaptive management would only work with robust monitoring and data collection – not only in the context of oil and gas development, but other resource allocations as well. To date, the express requirements and the strongly worded suggestions for monitoring and data collection outlined in the JMH Record of Decision have resulted in limited results. In the absence of a monitoring plan and even initial datasets, the concept of adaptive management seems to have ground to a halt. Consequently, the allocation of resources must also be slowed – including decisions to affect very sensitive surface resources through oil and gas leasing and eventual development – until the necessary planning and data are available to demonstrate the appropriateness of such actions. As mentioned previously, this is especially true in "Area 2," which has express adaptive management driven requirements that must be in place before oil and gas leasing and development are authorized – namely the Working Group and actual data.

Beyond the adaptive management sections of the JMH Record of Decisions, the JMH Parcels also suffer other infirmities. It appears that the required protections for steep slopes are not attached to the JMH Parcels. Further, the protections outlined for overlapping sensitive resources also appear to be lacking for the JMH Parcels, along with specific stipulations to protect sage grouse.

Taken collectively, there are significant issues that clearly point the BLM in the direction of precluding oil and gas leasing on the JMH Parcels at this time. As such, in consideration of the express requirements of the JMH Record of Decision I respectfully request that the BLM defer the JMH Parcels from oil and gas leasing until the necessary prerequisites for functional adaptive management are in place and the appropriate lease terms have been added to the parcels to protect sensitive resources within the JMH.

Thank you for your time and attention to this important matter.

Best regards,

A handwritten signature in black ink, appearing to read "Dave Freudenthal", written in a cursive style.

Dave Freudenthal
Governor



WYOMING GAME AND FISH DEPARTMENT

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CLIFFORD KIRK
FRED LINDZEY
RON LOVERCHECK
ED MIGNERY

January 29, 2008

MEMORANDUM

TO: Terry Cleveland and John Emmerich
FROM: Tom Christiansen and Joe Bohne
COPY TO: Jay Lawson, Bill Rudd, Reg Rothwell, Bob Oakleaf
SUBJECT: Multi-State Sage-Grouse Coordination and Research-based
Recommendations

As assigned by Assistant Director Emmerich, we have been working with other state fish and wildlife agencies in WAFWA Sage-Grouse Management Zones 1 and 2 (MT, CO, UT, SD, ND, WY) in order to coordinate interpretation of recent sage-grouse research related to oil and gas development.

Attached for your review, please find the latest and final document capturing the multi-state interpretation of the recent science related to sage-grouse conservation and oil and gas development. It has been well scrutinized by staff from MT, WY, CO, ND and UT and there is consensus on the content by the participants. South Dakota was unable to attend the initial meeting in Salt Lake City on January 8-9, but they have been provided with meeting notes and the resulting document.

It is our recommendation that WGFD acknowledge this document as the correct interpretation of the recently published sage-grouse research and use this information to update and augment department documents and policies. It should be used in the forthcoming discussions with the BLM regarding their update to their sage-grouse Instruction Memorandum. In addition, we suggest that in order for this document to serve the broadest purpose for sage-grouse conservation four additional actions are needed. First, the document should be shared with Governor Freudenthal's staff. Second, we recommend that the Director's Office enter into discussions with MT FWP Director Jeff Hager to ensure consistency in the application of these recommendations between our border states, and especially with the WY and MT BLM State Field Offices. Third, we recommend the document be submitted to WAFWA's Sage-Grouse Technical Committee as well as the WAFWA Executive Committee for their consideration and use. Finally, we recommend this document be included with other materials sent to the USFWS for consideration in their review of the status of sage-grouse and measures in place to conserve those populations.

We look forward to your direction on how to proceed.

"Conserving Wildlife - Serving People"

Exhibit 7

**Using the Best Available Science to Coordinate Conservation Actions that
Benefit Greater Sage-Grouse Across States Affected by Oil & Gas Development in
Management Zones I-II (Colorado, Montana, North Dakota, South Dakota, Utah,
and Wyoming)**

Background

Greater Sage-grouse are widely considered in scientific and public policy arenas to be a species of significant conservation concern. Loss, degradation and fragmentation of important sagebrush grassland habitats have negatively impacted sage-grouse populations. Much of this loss of habitat function is occurring in Sage-grouse Management Zones (MZ) 1 and 2 (Stiver et al. 2006) in Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming as a result of oil and gas development (Connelly et al. 2004). Oil and gas development is rapidly increasing within these areas. In response to those concerns, states and provinces are in various stages of completing or updating management plans in order to provide for long-term sage-grouse conservation. Special emphasis is being placed on oil and gas development as it rapidly spreads across much of the eastern range of sage-grouse.

The recent decision by B. Lynn Winmill, Chief U.S. District Judge (2007), which remands the original 2005 not warranted decision back to the USFWS for reconsideration, has highlighted the need for States to coordinate their application of best available science. Representatives from the state agencies with authority for managing fish and wildlife from the major sage-grouse and energy producing states comprising MZ 1 and 2 and sage-grouse researchers who have published new findings, met on January 8 and 9, 2008 in Salt Lake City. The objectives of the meeting were to better understand the application of most recent peer-reviewed science within the context of oil and gas development and coordinate and compare implementation of conservation actions utilizing that information.

Review Process

The participants at this meeting represented technical science and management advisors from each of the states. Researchers having the most recently peer reviewed and published articles concerning sage grouse and oil and gas development were invited to present their findings and answer questions. State agency participants agreed that the goal was not to establish state or regional policy or to determine the management actions that will be implemented in any or all states within MZ 1 or 2. Rather, the goal was to reach agreement on the conservation concepts and strategies related to oil and gas development that are supported by current published peer-reviewed and unpublished literature. If implemented, these concepts and strategies likely will not eliminate impacts to sage-grouse populations that result from energy development. However, when used in combination with other conservation measures, these actions may enhance the likelihood that sage-grouse populations will persist at levels that allow historical uses such as grazing and agriculture and maintain their current distribution and abundance, thereby avoiding the need to list sage-grouse under the federal Endangered Species Act.

Each researcher was invited to present their findings and to answer questions posed by the states. Following this, each state provided an overview of their review of the science and their resulting management actions and recommendations. The group then collectively reviewed, debated and agreed on the concepts and strategies supported by that science. The focus of the meeting was on five key issues: core areas, no-surface-occupancy zones, phased development, timing stipulations, well-pad densities, and restoration. Scientific data are available to inform many other issues related to sage-grouse management and conservation that were not reviewed (e.g., BMPs).

Core Areas

Identification and protection of core areas, sometimes also referred to as crucial areas, will help maintain or achieve target goals for populations including distribution and abundance.

Full field energy development appears to have severe negative impacts on sage-grouse populations under current lease stipulations (Lyon and Anderson 2003, Holloran 2005, Kaiser 2006, Holloran et al. 2007, Aldridge and Boyce 2007, Walker et al 2007, Doherty et al. 2008). Much of greater sage-grouse habitat in MZ 1 and 2 has already been leased for oil and gas development. These leases carry stipulations that have been shown to be inadequate for protecting breeding and wintering sage-grouse populations during full field development. (Holloran 2005, Walker et. al. 2007, Doherty et al. 2008) New leases continue to be issued utilizing these same stipulations. To ensure long-term persistence of populations and meet goals set by the states for sage-grouse, identifying and implementing greater protection within core areas from impacts of oil and gas development is a high priority.

In order to conserve core areas it is essential that they be identified and delineated. Sage-grouse populations occur over large landscapes comprising a series of leks and lek complexes with associated seasonal habitats. Therefore, core areas should capture the range required by a defined population to maintain itself. This concept is consistent with Crucial Wildlife Habitats recently endorsed by the Western Governor's Association (2007). Criteria that could be used to identify and map core areas include, but are not limited to: (1) lek densities, (2) displaying male densities, (3) sagebrush patch sizes, (4) seasonal habitats (breeding, summering, wintering areas), (5) seasonal linkages, or (6) appropriate buffers around important seasonal habitats.

Research indicates that oil or gas development exceeding approximately 1 well pad per square mile with the associated infrastructure, results in calculable impacts on breeding populations, as measured by the number of male sage-grouse attending leks (Holloran 2005, Naugle et al. 2006). Because breeding, summer, and winter habitats are essential to populations, development within these areas should be avoided. If development cannot be avoided within core areas, infrastructure should be minimized and the area should be managed in a manner that effectively conserves sagebrush habitats within that area.

No Surface Occupancy (NSO)

At the scale that NSOs are established, they alone will not conserve sage-grouse populations without being used in combination with core areas. The intent of NSOs is to maintain sage-grouse distribution and a semblance of habitat integrity as an area is developed.

Breeding Habitat - Leks

Research in Montana and Wyoming in coal-bed methane natural gas (CBNG) and deep-well fields suggests that impacts to leks from energy development are discernable out to a minimum of 4 miles, and that some leks within this radius have been extirpated as a direct result of energy development (Holloran 2005, Walker et al. 2007). Walker et al. (2007) indicates that the current 0.25-mile buffer lease stipulation is insufficient to adequately conserve breeding sage-grouse populations in areas having full CBNG development. A 0.25-mi. buffer leaves 98% of the landscape within 2 miles open to full-scale energy development. In a typical landscape in the Powder River Basin, 98% CBNG development within 2 miles of leks is projected to reduce the average probability of lek persistence from 87% to 5% (Walker et al. 2007). Only 38% of 26 leks inside of CBNG development remained active compared to 84% of 250 leks outside of development (Walker et al. 2007). Of leks that persisted, the numbers of attending males were reduced by approximately 50% when compared to those outside of CBNG development (Walker et al. 2007).

The impact analyses provided in Walker et al. (2007) are based on a 7-year dataset where probability of lek persistence is strongly related to extent of sagebrush habitat and the extent of energy development within 4 miles of the lek and the extent of agricultural tillage in the surrounding landscape. The estimated probabilities of lek persistence are only reliable for the length of the dataset, and it is not understood how other stressors (e.g., West Nile virus [Naugle et al. 2004], invasive weeds [Bergquist et al. 2007]) will cumulatively impact sage-grouse over longer time periods. While increased NSO buffers alone are unlikely to conserve sage-grouse populations, results from Walker et al. 2007 suggest they will increase the likelihood of maintaining the distribution and abundance of grouse and should increase the likelihood of successful restoration following energy development.

Additional information provided in Walker et al. (2007) allows managers and policy makers to estimate trade-offs associated with allowing development within a range of different distances from leks (Figures 1a and 1b). These probabilities will also need to be applied over larger landscapes in future analyses to better understand projected region- and state-wide population impacts under current and future development scenarios. Walker et al. (2007) studied lek persistence from 1997-2005 in relation to coal bed natural gas (CBNG) development in the Powder River Basin. These models are based on projected impacts of full-field development within (a) 2 miles and (b) 4 miles of the lek. We present results from these models (rather than models with impacts at smaller scales)

because development within 2 and 4 miles of leks are known to decrease breeding populations as measured by the number of displaying males (Holloran et al. 2005, Walker et al. 2007), and 52% and 74-80% of hens are known to nest within 2 and 4 miles of leks, respectively (Holloran and Anderson 2005, Colorado Greater Sage-Grouse Conservation Plan Steering Committee 2008). Sizes of NSO buffers required to protect breeding populations may be underestimated because leks in CBNG fields have fewer males per lek and a time lag occurs (avg. 3-4 years) between development and when leks go inactive. As a result, it is expected that not only will lek persistence decline, the number of males per lek will also decline. In contrast, sizes may be overestimated where high lek densities cause buffers from adjacent leks to overlap. Additional time is required to develop models demonstrating the probabilities of lek persistence at well-pad densities less than full development.

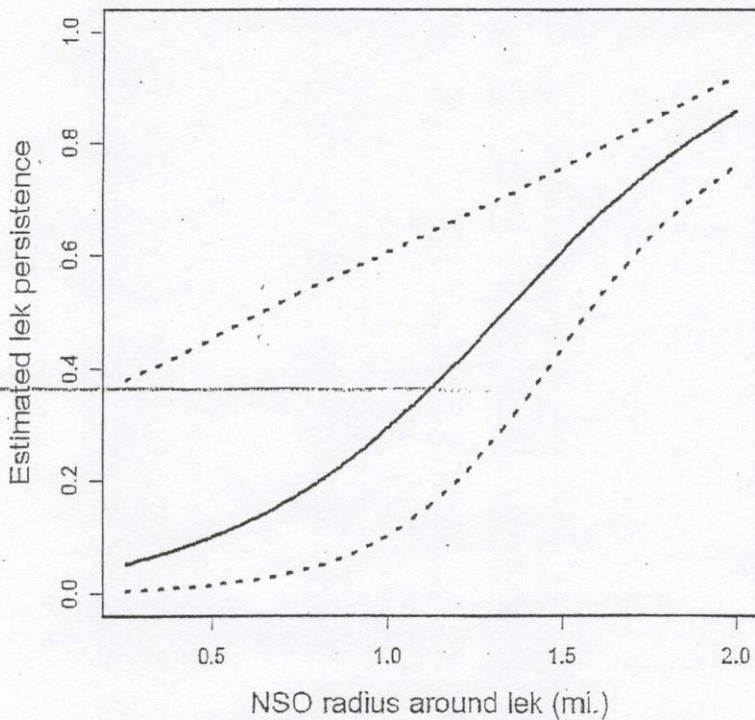


Figure 1a. Estimated probability of lek persistence (dashed lines represent 95% CIs) in fully-developed¹ coal-bed natural gas fields within an average landscape in the Powder River Basin (74% sagebrush habitat, 26% other habitats types) with different sizes of no-surface-occupancy (NSO) buffers around leks, assuming that only CBNG within 2 miles of the lek affects persistence. Buffer sizes of 0.25 mi., 0.5 mi., 0.6 mi., and 1.0 mi. result in estimated lek persistence of 5%, 11%, 14%, and 30%. Lek persistence in the absence of CBNG averages ~85%.

¹ Defined as entire area outside the NSO buffer, but within 2 miles, being within 350 meters of a well.

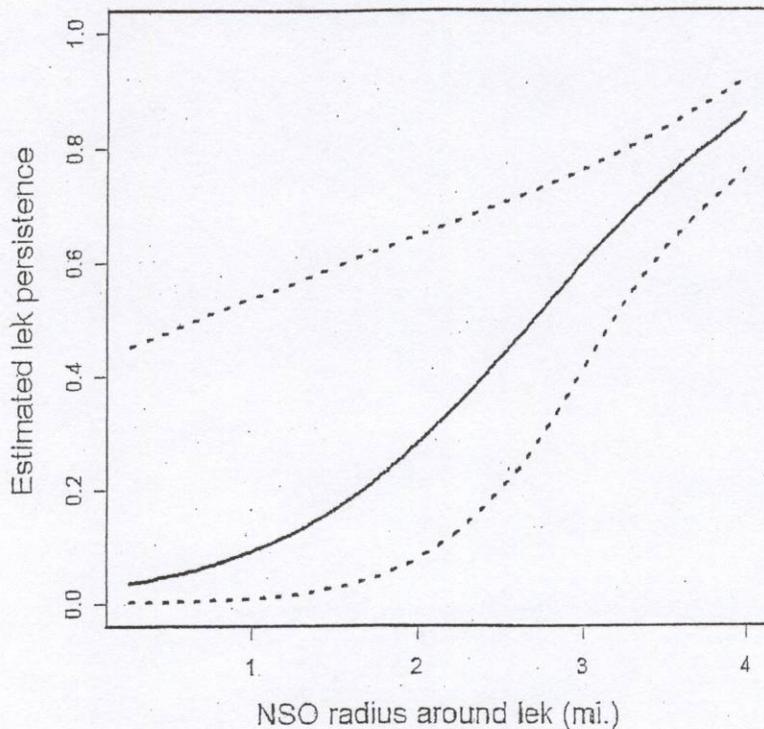


Figure 1b. Estimated probability of lek persistence (dashed lines represent 95% CIs) in fully-developed² coal-bed natural-gas-fields within an average landscape in the Powder River Basin (74% sagebrush habitat, 26% other habitats types) with different sizes of no-surface-occupancy (NSO) buffers around leks, assuming that only CBNG within 4 miles of the lek affects persistence. Buffer sizes of 0.25 mi., 0.5 mi., 0.6 mi., 1.0 mi., and 2.0 mi. result in estimated lek persistence of 4%, 5%, 6%, 10%, and 28%. Lek persistence in the absence of CBNG averages ~85%.

Figures 1a and 1b provide an illustration of the trade-offs between differing NSO buffers in relation to lek persistence in developing CBNG fields. The group does not offer a specific NSO recommendation but provides these graphs to guide decision-making.

Breeding Habitat - Nesting and Early Brood-rearing

Yearling female greater sage-grouse avoid nesting in areas within 0.6 miles of producing well pads (Holloran et al. 2007), and brood-rearing females avoid areas within 0.6 miles of producing wells (Aldridge and Boyce 2007). This suggests a 0.6-mile NSO around all suitable nesting and brood-rearing habitats is required to minimize impacts to females during these seasonal periods. In areas where nesting habitats have not been delineated, research suggests that greater sage-grouse nests are not randomly distributed. Rather, they are spatially associated with lek location within 3.1 miles in Wyoming (Holloran and Anderson 2005). However, a 4-mile buffer is needed to encompass 74-80% (Moynahan

² Defined as entire area outside the NSO buffer, but within 4 miles, being within 350 meters of a well.

2004, Holloran and Anderson 2005, Colorado Greater Sage-Grouse Conservation Plan Steering Committee 2008). These suggest that all areas within at least 4-miles of a lek should be considered nesting and brood-rearing habitats in the absence of mapping.

Winter Habitat

NSO or other protections may also need to be considered for crucial winter range. Survival of juvenile, yearling, and adult females are the three most important vital rates that drive population growth in greater sage-grouse (Holloran 2005, Colorado Greater Sage-Grouse Conservation Plan Steering Committee 2008). Although overwinter survival in sage-grouse is typically high, severe winter conditions can decrease hen survival (Moynahan et al 2006). Crucial wintering habitats can constitute a small part of the overall landscape (Beck 1977, Hupp and Braun 1989). Doherty et al. (2008) demonstrated that sage-grouse avoided otherwise suitable wintering habitats once they have been developed for energy production, even after timing and lek buffer stipulations had been applied (Doherty et al. 2008). For this reason, increased levels of protection may need to be considered in crucial winter habitats.

Phased Development

Population-level impacts and avoidance associated with energy development have been documented (Braun et al. 2002, Lyon and Anderson 2003, Holloran 2005, Kaiser 2006, Holloran et al. 2007, Aldridge and Boyce 2007, Walker et al 2007, Doherty et al. 2008). Phased development maximizes the amount of area within a landscape that is not being impacted by development at any one time, and can occur at multiple spatial scales (e.g., phased development of separate fields in a landscape, phased development of infrastructure within a single unit or field, or phased development within a single lease). Unitization, clustering, and geographically staggered development are all forms of phased development. As a tool to minimize impacts to sage-grouse, developing oil and gas resources by employing one of these phased methods may help maintain large, functional blocks of sage-grouse habitat.

Timing Stipulations

As with NSOs, at the scale that timing stipulations are established, they alone will not conserve sage-grouse populations without being used in combination with core areas. The intent of timing stipulations is to help maintain sage-grouse distribution and a semblance of habitat integrity as an area is developed. Timing stipulations are of lesser value at the scale of full-field development.

Breeding Habitat - Leks

Traffic during the strutting period when males are on a lek results in declines in male attendance when road-related disturbance is within 0.8 miles (Holloran 2005). The distance traveled by males from the lek during the breeding season has been reported in varying ways but generally averages 0.6 miles from a lek (Colorado Greater Sage-Grouse

Conservation Plan Steering Committee 2008 - see Appendix B). Additionally, females breeding on leks within 1.9 miles of natural gas development had lower nest initiation rates and nested farther from the lek compared to non-impacted individuals (Lyon and Anderson 2003), suggesting disturbance to leks influence females as well. Local variations may influence the application of specific dates, which are typically within a window of March 1 and May 31.

Breeding Habitat - Nesting and Early Brood-rearing

Often, timing stipulations (periods where no activity that creates disturbance are allowed) for breeding habitat have been applied using a radius around a lek. However, nesting and brood-rearing habitat is not uniformly distributed around the lek. Mapping of habitat would allow for more accurate application of this stipulation. Research on the distribution of nests relative to leks and on the timing of nesting indicates that timing stipulations to protect nesting hens and their habitat should be in place from March through June in mapped breeding habitat or (when nesting habitat has not been mapped) within 4 miles of active lek sites (Moynahan 2004, Holloran et al. 2005, Colorado Greater Sage-Grouse Conservation Plan Steering Committee 2008).

Winter Habitat

Research suggests that no surface occupancy should also be applied to important wintering habitats (Doherty et al. 2008), but if development occurs, impacts would be reduced if development activities were avoided between December 1 and March 15.

Well-Pad Densities

Leks tend to remain active when well-pad densities within 1.9 miles of leks are less than 1 pad per square mile (Holloran 2005) but leks tend to go inactive at higher pad densities (Holloran 2005, Naugle et al. 2006).

Restoration

The purpose of restoration in sage-grouse habitat should be the removal of infrastructure associated with energy development from the land surface and subsequent re-establishment of native grasses, forbs, and shrubs, including sagebrush, to promote natural ecological function. Restoration should reestablish functionality of seasonal habitats for sage-grouse. Thus a field should not be considered restored until sagebrush-grassland habitats have been reestablished.

Future Needs

Time did not allow for a detailed discussion of specific Best Management Practices for oil and gas development and restoration, seasonal habitat mapping, or future research. These topics are all recognized as needing action in the immediate future.

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Appendix 1.

Participants (Alphabetical)

Dr. Tony Apa, Colorado Division of Wildlife
Mr. Joe Bohne, Wyoming Game and Fish Department
Mr. Tom Christiansen, Wyoming Game and Fish Department
Mr. Jeff Herbert, Montana Department of Fish, Wildlife and Parks
Mr. Bill James, Utah Division of Wildlife Resources
Mr. Rick Northrup, Montana Department of Fish, Wildlife and Parks
Mr. Dave Olsen, Utah Division of Wildlife Resources
Mr. Aaron Robinson, North Dakota Game and Fish
Ms. Pam Schnurr, Colorado Division of Wildlife
Mr. T.O. Smith, Montana Department of Fish, Wildlife and Parks
Mr. Brett Walker, Colorado Division of Wildlife

Invited Guests

Dr. Matt Holloran, Wyoming Wildlife Consultants, LLC
Dr. David Naugle, University of Montana

7/31/08

Stipulations for Development in Core Sage Grouse Population Areas.

Goal for stipulations is to maintain existing habitat function by permitting development activities that will not cause declines in sage grouse populations.

A. Oil and Gas Lease Stipulations:

1. One well pad per 640 acres. No more than 11 well pads within 1.9 miles of the perimeter of occupied sage grouse leks with densities not to exceed 1 pad per 640 acres (Holloran 2005). Clustering of well pads may be considered and approved on a case-by-case basis.
2. Surface disturbance will be limited to < 5% of sagebrush habitat per 640 acres. Distribution of disturbance may be considered and approved on a case-by-case basis.
3. No Surface Occupancy within 0.6 mi of the perimeter of occupied sage grouse leks (Carr 1967, Wallestad and Schladweiler 1974, Rothenmaier 1979, Emmons 1980, Schoenberg 1982 as analyzed by Colorado Greater Sage Grouse Conservation Plan Steering Committee 2008).
4. Locate main haul trunk roads used to transport production and/or waste products to a centralized facility or market point ≥ 1.9 miles from the perimeter of occupied sage grouse leks (Lyon and Anderson 2003). Locate other roads used to provide facility site access and maintenance ≥ 0.6 miles from the perimeter of occupied sage grouse leks. Construct roads to minimum design standards needed for production activities while minimizing surface disturbance and traffic.
5. Locate electrical supply lines at least 750 m (0.5 miles) from the perimeter of occupied sage grouse leks. Design electrical lines to be raptor-proof by installing anti-perching devices, or burying them when possible.
6. Exploration and development activity will be allowed from July 1 to March 14. In Core Population Areas that also contain sage grouse winter concentration areas,

exploration and development activity will be allowed only from July 1 to December 1 in the winter concentration areas.

7. Limit noise sources to 10 dBA above natural, ambient noise (~39 dBA) measured at the perimeter of a lek from March 1 to May 15 (Inglefinger 2001, Nicholoff 2003).

B. Wind Energy

There is no published research on specific impacts of wind energy on sage grouse. Wind energy facilities should be designed to reduce habitat fragmentation and mortality to sage grouse. Tubular tower designs to reduce raptor perches and noise reduction to minimize disturbance to nesting birds are encouraged. Design criteria for these projects should include minimizing the facility footprint (including the road network required to service the generators) in sage-grouse habitat. Leasing in Core Population Areas should only be approved through a review process as described below. Wind farm permitting should include a requirement to acquire data on sage grouse response to development and operation.

C. In-situ Uranium

There is no published research on specific impacts on sage grouse. Since development scenarios (well density, roads, activity) are similar to oil and gas, assume impacts are similar to oil and gas development. Use same stipulations used for oil and gas. In-situ uranium permitting should include a requirement to acquire data on sage grouse response to development and operation.

D. Sagebrush treatment

Sagebrush eradication projects should not be authorized. Treatments to enhance sagebrush/grassland may be considered through the review process described below.

E. Reclamation

Reclamation should re-establish native grasses, forbs and shrubs during interim and final reclamation to achieve cover, species composition, and life form diversity commensurate with the surrounding plant community or desired condition. Landowners should be consulted on desired plant mix on private lands

F. Transmission Line Rights of Way

To the extent possible, new rights of way should be authorized parallel and adjacent to existing rights of way. Above ground towers should be designed to minimize raptor perching. Any new rights of way not sited parallel and adjacent to existing rights of way should be routed at least 750 m (0.5 miles) from the perimeter of occupied sage grouse leks.

G. Other Activities

Applications to conduct any other surface activity not described previously will be evaluated on a case by case basis and forwarded, as necessary, to the Wyoming Game and Fish Department Habitat Protection Program Supervisor for consideration of stipulations needed to prevent declines in sage grouse populations in core sage grouse population areas. All surface activities should be designed to reduce habitat fragmentation and mortality to sage grouse. Design criteria for all activities should include minimizing the footprint of the activity in sage-grouse habitat.

Review Process

Development proposals incorporating less restrictive stipulations may be considered depending on site-specific circumstances. The company proposing to

develop within Core Population Areas and requesting exceptions to the standard stipulations bears the responsibility to demonstrate that the alternative development proposal will not cause declines in sage grouse populations occupying the proposed area of development.

Proposals to deviate from standard stipulations will be considered by a team including the Wyoming Game and Fish Department and appropriate land management agencies, with input from the U.S. Fish and Wildlife Service. Project proponents need to demonstrate that the project area meets at least one of the following conditions:

- 1) No suitable habitat is present in one contiguous block of land that includes at least a 0.6-mile buffer between the project area and suitable habitat;
- 2) No sage grouse use occurs in one contiguous block of land that includes at least a 0.6 mile buffer between the project area and adjacent occupied habitat, as documented by total absence of sage grouse droppings and an absence of sage grouse activity for the previous ten years;
- 3) Provision of a development/mitigation plan that has been implemented and demonstrated not to cause declines in sage grouse populations through credible monitoring data compiled and analyzed during the implementation period.

References and Literature Cited

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- Emmons, S. R. 1980. Lek attendance of male sage grouse in North Park, Colorado. Thesis, Colorado State University, Fort Collins, Colorado, USA.
- Holloran, M. J. 2005. Greater sage-grouse (*Centrocercus urophasianus*) population response to natural gas field development in western Wyoming. Dissertation. University of Wyoming, Laramie, USA.
- Inglefinger, F. M. 2001. The effects of natural gas development on sagebrush steppe passerines in Sublette County, Wyoming. M.S. Thesis, Univ. of Wyoming, Laramie. 110pp.
- Lyon, A. G. and S. H. Anderson. 2003. Potential gas development impacts on sage grouse nest initiation and movement. *Wildlife Society Bulletin* 31:486-491.
- Nicholoff, S. H., compiler. 2003. Wyoming Bird Conservation Plan, Version 2.0 Wyoming Partners In Flight. Wyoming Game and Fish Department, Lander, Wy.
- Rothenmaier, D. 1979. Sage grouse reproductive ecology: breeding season movements, strutting ground attendance and nesting. Thesis, Univ. of Wyoming, Laramie, Wyoming, USA.
- Schoenberg, T. J. 1982. Sage grouse movements and habitat selection in North Park, Colorado. Thesis, Colorado State University, Fort Collins, Colorado, USA.
- Wallestad, R. O., and P. Schladweiler. 1974. Breeding season movements and habitat selection of male sage grouse. *Journal of Wildlife Management* 38:634-637.

DAVE FREUDENTHAL
GOVERNOR



STATE CAPITOL
CHEYENNE, WY 82002

Office of the Governor

STATE OF WYOMING EXECUTIVE DEPARTMENT EXECUTIVE ORDER

Order 2008-2

GREATER SAGE-GROUSE CORE AREA PROTECTION

WHEREAS the Greater Sage-Grouse (*Centrocercus urophasianus*) is an iconic species that inhabits much of the sagebrush-steppe habitat in Wyoming; and

WHEREAS the sagebrush-steppe habitat type is abundant across the state of Wyoming; and

WHEREAS the state of Wyoming currently enjoys robust populations of Greater Sage-Grouse; and

WHEREAS the state of Wyoming has management authority over Greater Sage-Grouse populations in Wyoming; and

WHEREAS the U.S. Department of the Interior has been petitioned to list the Greater Sage-Grouse as a threatened or endangered species in all or a significant portion of its range, including those populations in Wyoming; and

WHEREAS the listing of the Greater Sage-Grouse would have a significant adverse affect on the custom and culture of the state of Wyoming; and

WHEREAS the listing of the Greater Sage-Grouse would have a significant adverse affect on the economy of the state of Wyoming, including the ability to generate revenues from state lands; and

WHEREAS the Wyoming State Legislature has appropriated significant state resources to conserve Greater Sage-Grouse populations in Wyoming; and

WHEREAS the state of Wyoming has endeavored to conserve Greater Sage-Grouse populations in order to retain management authority over the species through its statewide sage grouse working group, local sage grouse working groups and the efforts and initiatives of private landowners and industry; and

WHEREAS the Governor's Sage Grouse Implementation Team developed a "Core Population Area" strategy to weave the many on-going efforts to conserve the Greater Sage-Grouse in Wyoming into a statewide strategy; and

WHEREAS on April 17, 2008, the Office of the Governor requested that the U.S. Fish and Wildlife Service review the "Core Population Area" strategy to determine if it was a "sound policy that should be moved forward"; and

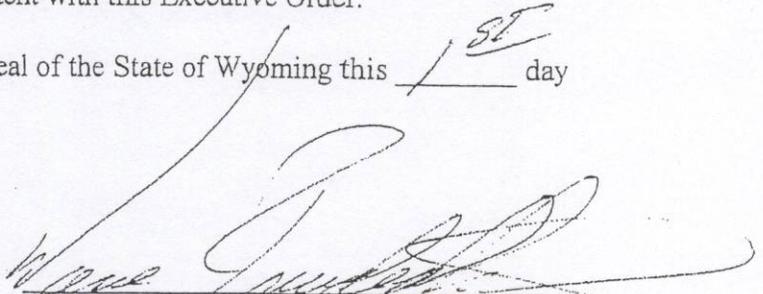
WHEREAS on May 7, 2008, the U.S. Fish and Wildlife Service responded that the "core population area strategy, as outlined in the Implementation Team's correspondence to the Governor, is a sound framework for a policy by which to conserve greater sage-grouse in Wyoming".

NOW, THEREFORE, pursuant to the authority vested in me by the Constitution and Laws of the State, and to the extent such actions are consistent with the statutory obligations and authority of each individual agency, I, Dave Freudenthal, Governor of the State of Wyoming, do hereby issue this Executive Order providing as follows:

1. Management by state agencies should, to the greatest extent possible, focus on the maintenance and enhancement of those Greater Sage-Grouse habitats and populations within the Core Population Areas identified by the Sage Grouse Implementation Team and modified through additional habitat and population mapping efforts.
2. Current management and existing land uses within Core Population Areas should be recognized and respected by state agencies.
3. New development or land uses within Core Population Areas should be authorized or conducted only when it can be demonstrated by the state agency that the activity will not cause declines in Greater Sage-Grouse populations.
4. Funding, assurances (including state-conducted efforts to develop Candidate Conservation Agreements and Candidate Conservation Agreements with Assurances), habitat enhancement, reclamation efforts, mapping and other associated proactive efforts to assure viability of Greater Sage-Grouse in Wyoming should be focused and prioritized to take place in Core Population Areas.
5. State agencies should use a non-regulatory approach to influence management alternatives within Core Population Areas, to the greatest extent possible. Management alternatives should reflect unique localized conditions, including soils, vegetation, development type, climate and other local realities.
6. Incentives to enable development of all types outside Core Population Areas should be established (these should include stipulation waivers, enhanced permitting processes, density bonuses, and other incentives). However, such development scenarios should be designed and managed to maintain populations, habitats and essential migration routes outside Core Population Areas.

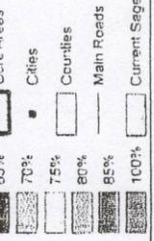
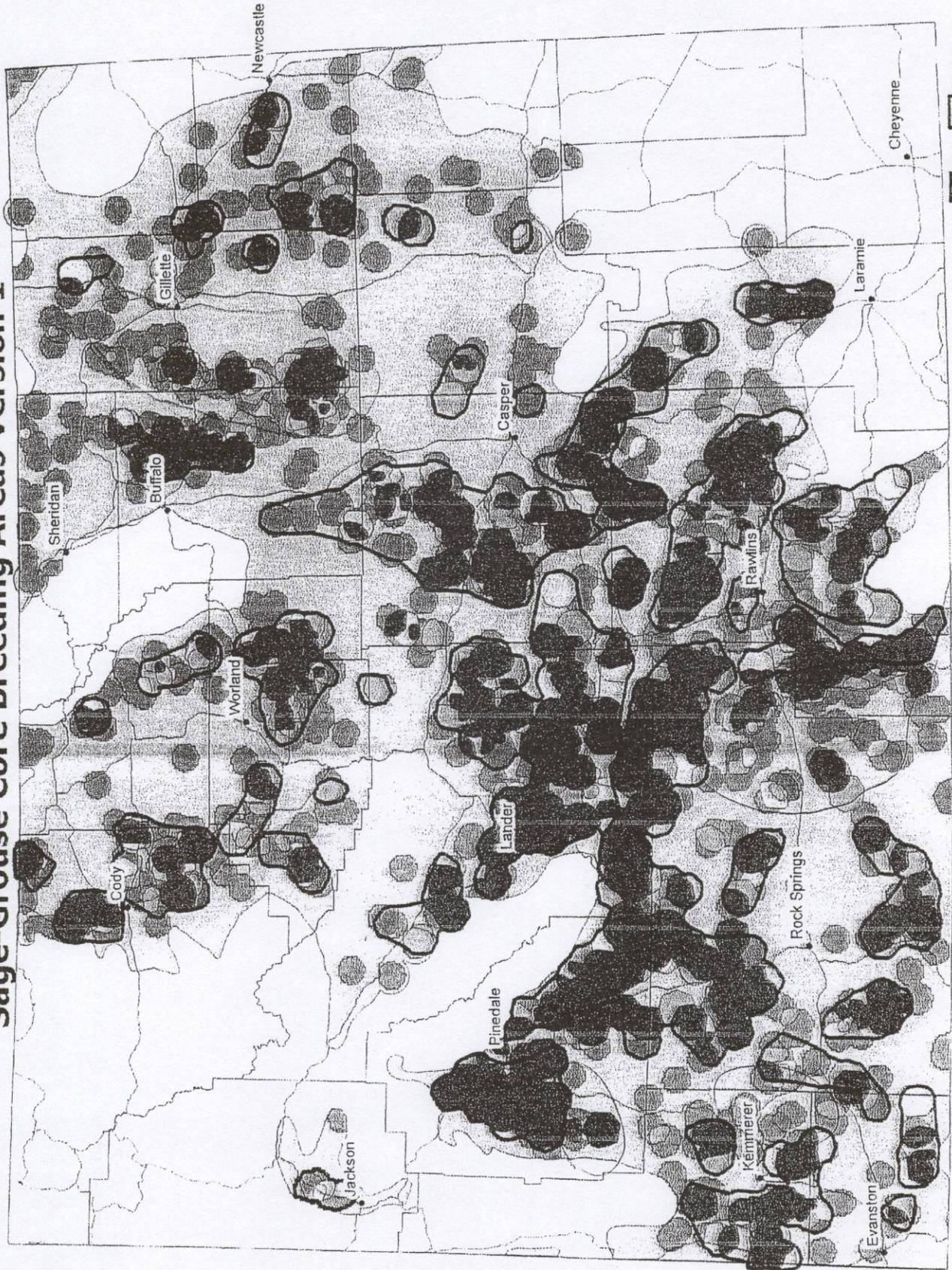
7. Incentives to accelerate or enhance required reclamation in habitats adjacent to Core Population Areas should be developed, including but not limited to stipulation waivers, funding for enhanced reclamation, and other strategies.
8. Existing rights should be recognized and respected.
9. On-the-ground enhancements, monitoring, and ongoing planning relative to sage grouse and sage grouse habitat should be facilitated by sage grouse local working groups whenever possible.
10. Fire suppression efforts in Core Population Areas should be emphasized, recognizing that other local, regional, and national suppression priorities may take precedent. However, public and firefighter safety remains the number one priority on all wildfires.
11. State agencies work collaboratively with the U.S. Fish and Wildlife Service, Bureau of Land Management, U.S. Forest Service, and other federal agencies to ensure, to the greatest extent possible, a uniform and consistent application of this Executive Order to maintain and enhance Greater Sage-Grouse habitats and populations.
12. State agencies shall work collaboratively with local governments and private landowners to maintain and enhance Greater Sage-Grouse habitats and populations in a manner consistent with this Executive Order.

Given under my hand and the Executive Seal of the State of Wyoming this 1st day of August, 2008.



Dave Freudenthal
Governor

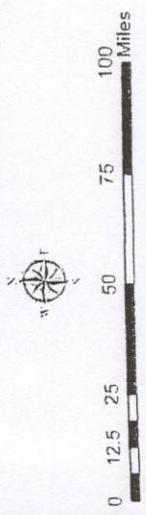
Sage-Grouse Core Breeding Areas Version 1



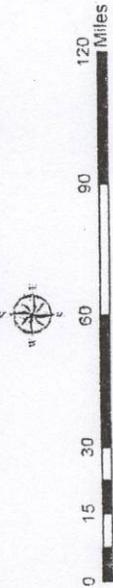
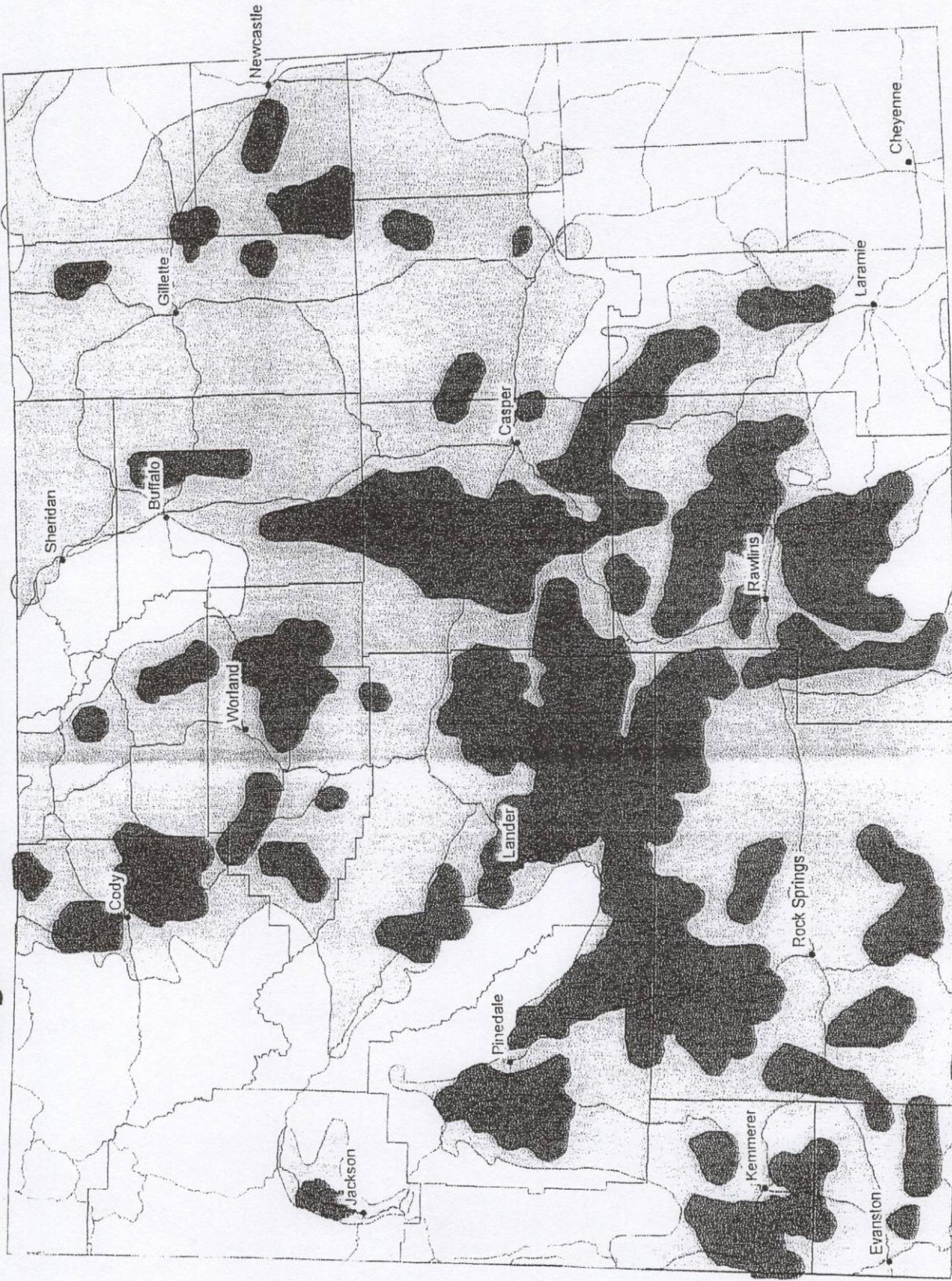
Percent of Sage-Grouse Density

Note: The higher density numbers contain all lower numbers. Example 85% density includes 65%-85%.

Core Areas shown were delineated by the Governor's Sage-Grouse Implementation Team during their 03.17.08 meeting in Lander, WY.



Sage-Grouse Core Breeding Areas Version 1



Core Areas shown were delineated by the Governor's Sage-Grouse Implementation Team during their 03.17.08 meeting in Lander, WY.



Nyssa Whitford
 Nongame GIS Analyst
 Lander Regional Office
 03.18.08

DONALD KOCH, (CA)
President

LARRY L. KRUCKENBERG, (WY)
Secretary

STEPHEN BARTON, (VA)
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JEFF HAGENER, (MT)
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PAUL CONRY, (HI)
Third Vice President

5400 Bishop Blvd., Cheyenne, Wyoming 82006, 307-777-4569, www.wafwa.org

November 14, 2008

Mr. Dale Hall, Director
U. S. Fish and Wildlife Service
1849 C Street, NW
Washington, DC 20240

SENT VIA FAX

Dear Director Hall:

Attached please find your copy of the executed Memorandum of Understanding (MOU) between the Western Association of Fish and Wildlife Agencies (WAFWA), U. S. Fish and Wildlife Service, Bureau of Land Management, U.S. Forest Service, U.S. Geological Survey, Natural Resources Conservation Service, and the Farm Service Agency.

The purpose of this MOU is to provide for coordination and support to implement sage-grouse conservation efforts in the West. This MOU replaces the Sage-grouse Conservation Planning MOU that was signed in 2000 and provided for the development of the *Greater Sage-grouse Conservation Assessment* and the *Sage-grouse Comprehensive Conservation Strategy*, as well as enhanced coordination between the members of WAFWA and its federal partners.

The implementation of the MOU requires two preliminary steps. The first is the establishment of an Executive Oversight Committee (EOC). The second is the establishment of the Range-wide Interagency Sage-grouse Conservation Team (RISCT). Under the terms of the MOU, the Service should appoint a representative for each team. The MOU suggests that the EOC appointee be an upper level agency person; the RISCT appointee should be a technical or operational expert from your agency.

Please provide your appointments and contact information to Larry Kruckenberg, WAFWA Secretary, at larry.kruckenberg@wgf.state.wy.us, when available.

WAFWA looks forward to working with your agency in our collective efforts to conserve sage-grouse and our sagebrush habitats.

Sincerely,

Donald Koch
President

DK/SS:cc

Attachment (1)

ALASKA • ALBERTA • ARIZONA • BRITISH COLUMBIA • CALIFORNIA • COLORADO • HAWAII • IDAHO • KANSAS • MONTANA • NEBRASKA • NEVADA
NEW MEXICO • NORTH DAKOTA • OKLAHOMA • OREGON • SASKATCHEWAN • SOUTH DAKOTA • TEXAS • UTAH • WASHINGTON • WYOMING • YUKON

Delivering Conservation Through Information Exchange and Working Partnerships

- Exhibit 10 -

MEMORANDUM OF UNDERSTANDING

AMONG

WESTERN ASSOCIATION OF FISH AND WILDLIFE AGENCIES

and

U.S. DEPARTMENT OF AGRICULTURE, FOREST SERVICE

and

**U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND
MANAGEMENT**

and

**U.S. DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE
SERVICE**

and

U.S. DEPARTMENT OF THE INTERIOR, GEOLOGICAL SURVEY

and

**U.S. DEPARTMENT OF AGRICULTURE, NATURAL RESOURCES
CONSERVATION SERVICE**

And

U.S. DEPARTMENT OF AGRICULTURE, FARM SERVICE AGENCY

I. Purpose

The purpose of this Memorandum of Understanding (MOU) is to provide for cooperation among the participating State and federal land, wildlife management and science agencies in the conservation and management of Greater sage-grouse (*Centrocercus urophasianus*) sagebrush (*Artemisia* spp.) habitats and other sagebrush-dependent wildlife throughout the Western United States and Canada.

The sagebrush biome has experienced long-term downward trends in both the abundance and distribution of sagebrush plant communities and the wildlife that depend on them. Successful long-term conservation, recovery and restoration of these habitats and wildlife will require sustained, concerted and well-coordinated efforts among a spectrum of landowners, land managers, resource specialists, scientists and land users.

II. Background

In July 1999, responding to continuing range-wide declines in sage-grouse populations, member agencies of the Western Association of Fish and Wildlife Agencies (WAFWA) signed the "Memorandum of Understanding among Members of the Western Association of Fish and Wildlife Agencies for the Conservation and Management of Sage Grouse in North America." The 1999 MOU outlines the purpose, objectives, actions and responsibilities for cooperation among WAFWA members in further actions to conserve sage-grouse (Appendix A).

In 2000, interagency cooperation was extended further through a MOU among the WAFWA, U.S. Bureau of Land Management (BLM), U.S. Fish and Wildlife Service (FWS), and U.S. Forest Service (FS) (Appendix B). The major focus of the 2000 MOU, described in Section III (Actions), was on conservation planning for sage-grouse and sagebrush habitats. Although early in 2007 some local and state conservation planning remained incomplete, the December 2006 delivery by WAFWA to FWS of the Greater Sage-grouse Comprehensive Conservation Strategy (Comprehensive Strategy) marked the need to shift emphasis from conservation planning to conservation action implementation incorporating adaptive management principles to inform and guide future management practices.

III. Objectives

The U. S. Department of the Interior - BLM, FWS, Geological Survey (USGS), and, the U. S. Department of Agriculture - FS, Natural Resources Conservation Service (NRCS), and Farm Service Agency (FSA), and the WAFWA; hereafter referred to collectively as "the Parties," herein acknowledge and agree that:

- sage-grouse are an important component of sagebrush ecosystems, and serve as an important indicator of the overall health of this important Western North America biome, and
- cooperative efforts among the Parties, consistent with applicable statutory and regulatory requirements, are necessary to conserve and manage North America's sagebrush biome, ecosystems for the benefit of sage-grouse and all other sagebrush-dependent species, and to maintain the many other values sagebrush systems provide.

Providing for the long-term presence and abundance of sage-grouse and other sagebrush dependent species reflects the Parties commitment to understand and maintain all natural components and ecological processes and systems within the sagebrush biome. Specific objectives of this MOU are to:

- Implement the Comprehensive Strategy and provide for cooperation and integration in the development, implementation and evaluation of actions, premised upon the best available science, and designed to address conservation needs across geographic scales, to maintain, enhance and restore sagebrush habitats where possible.

- Implement conservation actions for other sagebrush-dependent species identified by the Parties as being "of conservation concern" and provide for cooperation and integration in the development, implementation, and evaluation of actions designed to address conservation needs across geographic scales, as appropriate, to maintain and increase, where possible, their respective distribution and abundance;
- Adopt an adaptive management approach to the implementation of the Conservation Strategy that acknowledges that in the face of uncertainties as outcomes from management actions and other events become better understood through monitoring, evaluation of actions, incorporation of new scientific understanding, and the sharing of data and information, we produce better understanding and improve the management and conservation of the sagebrush biome, sage-grouse and all other sagebrush-dependent species; and,
- Develop partnerships with agencies, organizations, tribes, communities, individuals and private landowners to cooperatively accomplish the preceding objectives.

IV. Actions

Primary, but not exclusive, emphasis under this MOU will focus on conserving both Greater sage-grouse and Gunnison sage-grouse (*C. minimus*) through the implementation of range-wide, State and local conservation strategies and/or plans for these species, including the Comprehensive Strategy. Management for the conservation or recovery of other sagebrush-dependent species of conservation concern shall be similarly guided by existing plans, premised upon the best available science, and approved by appropriate State, Provincial and/or Federal agencies.

Sage-grouse Working Groups

The States and Provinces will continue support for Working Groups to develop and implement State, Provincial, Management Zone, Agency, and Local Conservation Plans. Participation will be open to all interested parties including, but not limited to, landowners, land users, industry, other interested publics, and representatives of local, State, Federal and tribal governments, as appropriate. U.S. Federal Agency participation in working groups will be in a manner consistent with the Federal Advisory Committee Act.

Range-wide Interagency Sage-grouse Conservation Team

The Parties will establish a Range-wide Interagency Sage-grouse Conservation Team (RISCT or Team) to be composed of the voting members of the Sage and Sharp-tailed Grouse Technical Committee, and one (1) technical expert each from the BLM, FWS, FS, USGS, FSA, and NRCS. The RISCT will provide technical expertise to the Executive Oversight Committee in facilitating implementation of the Comprehensive Strategy, where consistent with applicable statutory authorities, and otherwise assisting with its implementation, evaluation and long-term success using adaptive management principles. Internal Team operational procedures will be determined by the RISCT. The RISCT will develop an initial plan of action for the implementation of the Strategy to the EOC six (6) months from the effective date of the MOU and report annually to the EOC for review, redirection and revision.

Executive Oversight Committee

The Parties will establish an Executive Oversight Committee (EOC) to be composed of the Director of each WAFWA member agency, or their designee, from each state and province within the range of the Greater sage-grouse, and one (1) management representative from each of the signatory federal agencies to this agreement, to periodically review overall progress in implementing the Comprehensive Strategy and conservation measures for other species of conservation concern in the sagebrush biome. Based on such review, the EOC will meet with the RISCT at least annually to provide general guidance, as needed, for continuing implementation of the Comprehensive Strategy and conservation measures for other species of conservation concern.

WAFWA Member Agencies

The member State and provincial agencies will, as appropriate and consistent with each State and provincial missions and authorities, provide for species management, population monitoring and evaluation consistent with adaptive management principles and guided by the best available science. Member agencies will consider the Comprehensive Strategy, State, Provincial, local working group plans and the most current sage-grouse guidelines to manage sage-grouse populations. Member agencies will work collaboratively to facilitate data and information management and access, to the extent possible; provide technical, management, and scientific information in support of understanding the sagebrush biome and sage-grouse populations; and where appropriate ensure that all products resultant from this MOU reflect the best available science and have received independent, scientific peer review where appropriate and applicable.

U.S. Federal Agencies

The BLM, FWS, FS, USGS, FSA and NRCS will as appropriate and consistent with each agency's mission and authorities, provide for habitat protection, conservation, habitat monitoring, restoration, and evaluation consistent with adaptive management principles and guided by the best available science of the sagebrush biome, for sage-grouse and other sagebrush dependent species of conservation concern, and consistent with the National Environmental Policy Act and other applicable laws, regulations, directives and policies. In doing so, these agencies will consider the WAFWA Greater Sage-Grouse Comprehensive Conservation Strategy, existing Guidelines to manage sage-grouse populations and their habitats (Connelly et al., 2000) and subsequent revisions thereof, State and Local Conservation Plans, and other appropriate information in their respective planning and implementation processes. Parties will work collaboratively to facilitate data and information management and access, to the extent possible; provide technical, management, and scientific information in support of understanding the sagebrush biome; and where appropriate ensure that all products resultant from this MOU reflect the best available science and have received independent, scientific peer review where appropriate and applicable.

V. Authorities

This MOU is among the BLM, FWS, FS, USGS, FSA, NRCS, and WAFWA under the provisions of the following laws:

Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);
Federal Advisory Committee Act (5 U.S.C. Public Law 92-463, App);

Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.);
Fish and Wildlife Act of 1956 (16 U.S.C. 742 et seq.);
Fish and Wildlife Coordination Act (16 U.S.C. 661-667);
Fish and Wildlife Improvement Act, 1978;
Forest and Rangeland Renewable Resources Research Act of 1978 (16 U.S.C. 1641-48);
Multiple-Use Sustained-Yield Act [of 1960] (16 U.S.C. 528-531);
National Forest Management Act of 1976 (16 U.S.C. 1600 et seq.);
National Wildlife Refuge Administration Act of 1966, as amended by the National Wildlife;
Nonindigenous Aquatic Nuisance Prevention and Control Act, 1990;
Office of Management and Budget, Final Information Quality Bulletin for Peer Review, 2004;
Organic Act (43 U.S.C 31 et seq., 1879);
Refuge System Improvement Act of 1997 (16 U.S.C 668dd et seq.);
Section 1231 of the Food Security Act of 1985, as amended (16 U.S.C. 3831); and
Water Resources Development Act, 1990.

VI. Approval

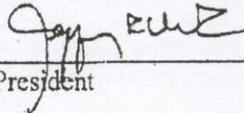
It is mutually agreed and understood by and between the Parties that:

1. This MOU is neither a fiscal nor a funds obligation document. Nothing in this agreement may be construed to obligate Federal Agencies or the United States to any current or future expenditure of resources in advance of the availability of appropriations from Congress. Any endeavor involving reimbursement or contribution of funds between the Parties to this MOU will be handled in accordance to applicable regulations, and procedures including those for federal government procurement and printing. Such endeavor will be outlined in separate agreements that shall be made in writing by representatives of the Parties and shall be independently authorized in accordance with appropriate statutory authority. This MOU does not provide such authority.
2. This MOU in no way restricts the Parties from working together or participating in similar activities with other public or private agencies, organizations and individuals.
3. This MOU is executed as of the date of the final signatory and expires five years from that date, at which time it will be subject to review, renewal or expiration.
4. Modifications, including but not limited to adding new partners to the agreement, within the scope of this MOU shall be made by the issuance of a mutually executed written modification prior to any changes being performed.
5. Any party to this MOU may withdraw with a 60-day written notice. Such withdrawal shall be effective 60-days from the date such written notice is provided to the other parties.
6. Any advertising done by any of the parties with respect to this MOU or any related activities shall be subject to review and approval, in advance, by the RISCT.
7. During the performance of the MOU the participants agree to abide by the terms of Executive Order 11246 on nondiscrimination and will not discriminate against any person because of race, age, color, religion, gender, national origin or disability.

- 8. No member of, or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this agreement, or to any benefit that may arise from, but these provisions shall not be construed to extend to this agreement if made with a corporation for its general benefits.
- 9. The Parties agree to implement the provisions of this MOU to the extent personnel and budgets allow. In addition, nothing in the MOU is intended to supersede any laws, regulations or directives by which the Parties must legally abide.

IN WITNESS THEREOF, the parties hereto have executed this Memorandum of Understanding as of the last written date below.

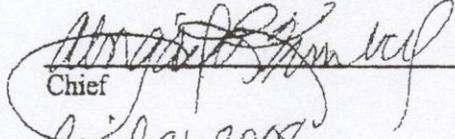
Western Association of Fish and Wildlife Agencies



 President

03/25/08
 Date

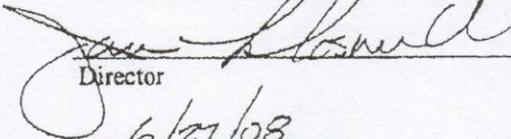
U.S. Department of Agriculture, Forest Service



 Chief

April 21, 2008
 Date

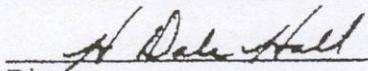
U.S. Department of the Interior, Bureau of Land Management



 Director

6/27/08
 Date

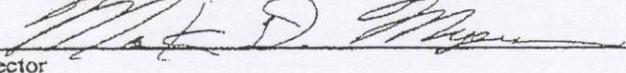
U.S. Department of the Interior, Fish and Wildlife Service



 Director

5/9/08
 Date

U. S. Department of the Interior, Geological Survey

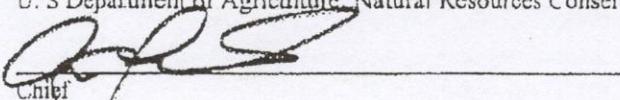


Director

MAY 09 2008

Date

U. S. Department of Agriculture, Natural Resources Conservation Service

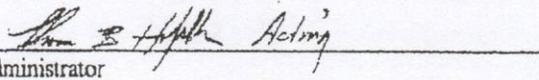


Chief

4/17/2008

Date

U. S. Department of Agriculture, Farm Service Agency



Administrator

9-18-2008
Date

Appendix A: 1999 WAWFA MOU
Appendix B: 2000 Interagency MOU

Reference Documents: Greater Sage Grouse Comp. Cons. Strategy
WAFWA Protocols and Guidelines as appropriate



1617 (910)
3160

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Wyoming State Office
P.O. Box 1828
Cheyenne, Wyoming 82003-1828



JUN 12 2008

Honorable Dave Freudenthal
Governor of Wyoming
State Capitol
200 West 24th Street
Cheyenne, WY 82002-0010

Dear Governor Freudenthal:

The Wyoming Bureau of Land Management (BLM) Buffalo Field Office is pursuing a modification to the 1985 Buffalo Resource Management Plan (RMP). As you know in 2003, the BLM approved a Record of Decision (ROD) for the Powder River Oil and Gas Project which included decisions to monitor and collect greater sage-grouse data to make modifications to our decisions, as necessary. The ROD also stated that BLM would manage activities to ensure that they do not contribute to the listing of the greater sage-grouse under the Endangered Species Act.

Our Buffalo Field Office began meeting with companies and other interested parties last week to discuss management strategies for oil and gas development, sage-grouse and other activities during the pendency of the longer termed RMP modifications. As we proceed, we need to ensure that our management of surface disturbing activities and sage-grouse, in the short run, are appropriate to ensure that we have adequate decision space while the RMP modification is undertaken. Put another way—what we authorize today may limit the options available to us during the RMP modification process, both in terms of future development and sage-grouse habitat protections, so we must proceed prudently with any authorizations. However, rumors surrounding this suggest that the BLM is not processing drilling permits and has imposed a moratorium: this is incorrect; the BLM is processing drilling permits.

I am aware of your Sage-Grouse Implementation Team's work to define "core areas" for sage-grouse within the Powder River Basin and across Wyoming. We have received maps of the core areas identified by the Team along with recommendations to you and understand that the U.S. Fish and Wildlife Service have provided an endorsement of both the areas and strategy. Consequently, it seems appropriate to base our management strategy on these "core areas." This allows us to preserve sufficient sage-grouse habitat, secure adequate decision space for our future RMP modification, and begin processing permits no later than mid-July. As the State completes its mapping and ground-truthing effort this fall, and as we meet with industry to discuss their interim proposals for development, we are quite interested in working with the State. We are looking forward to working with the Implementation Team, to ensure that our future management of surface disturbing activities and sage-grouse is sound.

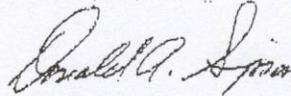
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As a rough timeline, we asked industry to submit their respective development proposals no later than mid-June, but were asked by the companies to extend the deadline to June 30. Giving us 2 weeks to analyze these proposals against the core area maps and strategy, with the input of the Implementation Team and others, we should have a good understanding of our strategy by mid-July—allowing us ample opportunity to process permits for this drilling season and protect key sage-grouse populations.

If you have any questions, please contact me.

Sincerely,



Donald A. Simpson
Acting State Director



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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

JUL 07 2009

Mr. Steve Ferrell
Director, Wyoming Game and Fish Department
5400 Bishop Blvd
Cheyenne, WY 82006

STEVE

Dear Director ~~Ferrell~~:

Thank you for your letter of July 7, 2009, regarding the State of Wyoming's Greater sage-grouse "Core Population Area Strategy" (Strategy) (Executive Order 2008-2). Your letter requests clarification from the U.S. Fish and Wildlife Service (Service) regarding our endorsement of the Strategy. Specifically, you would like our view of whether wind power can be developed in core areas in a way that the Wyoming Game and Fish Department and the State of Wyoming would maintain our endorsement. This letter is responsive to your request and provides an explanation of our concern about wind development in core areas. In summary, constructing wind farms in core areas, even for research purposes, prior to demonstrating it can be done with no impact to sage-grouse, negates the usefulness of the core area concept as a conservation strategy and brings into question whether adequate regulatory mechanisms are in place to protect the species. Both of these factors are critical in the Endangered Species Act (ESA) listing decision currently facing the Service.

Following are some specific reasons why we endorsed the Strategy when asked by the Governor's Office in 2008:

- A. In a general conservation context the Strategy is a science-driven, outcome-based and adaptive approach to the conservation of a species and its habitat. The Service is in the process of adopting a similar approach, currently called Strategic Habitat Conservation (SHC) for much of our conservation work. Therefore, as a general conservation paradigm we support such an approach.
- B. In the context of a potential listing under the ESA, the State's sage-grouse Strategy provides a useful framework to show how the threats to the species are being managed; and if the Strategy is adopted across different land ownerships in the state, could provide an important regulatory mechanism as well. As you know, to preclude listing under ESA, we must be able to show that threats to the species are effectively addressed by science-based conservation measures, and that adequate regulatory mechanisms are in place to ensure those actions occur. In regard to the latter, the actions of the State Board of Land Commissioners to adopt a process that ensures sage-grouse conservation measures are implemented on state land within core areas, and the regulatory authority of the Department of Environmental Quality Industrial Sighting Council (ISC) are noteworthy.

- Exhibit 12 -

- C. The Strategy provides the mechanism by which the state can be the most flexible in the application of the Statewide Candidate Conservation Agreement with Assurances (CCAA) that is currently being developed. The CCAA tool is important for private landowners in the state both for the conservation of the species and its habitat, and the assurances it provides the landowner if the species is ever listed.

In short, if implemented as envisioned by the State Sage-grouse Implementation Team (SGIT) and Governor's Executive Order, the Strategy is the type of action the Service looks for, both in conservation measures and regulatory process, to preclude listing a species under the ESA. However, it is important that I point out that these potential benefits of the Strategy will only be realized if the integrity of the core area approach is maintained. The Service feels that the greatest threats to the integrity of the core areas are: (1) not adhering to science-based conservation measures associated with development, and (2) allowing mitigation for impacts to core population areas as an option if the proposed development is counter to accepted conservation measures or when impacts are not known.

The foundation of the Strategy from the Service point of view is that development in the most important sage-grouse habitats (core areas and associated seasonal habitats) is done only when no impact to the species can be demonstrated. In essence, ensuring the conservation of sage-grouse in the core areas is mitigation for the greater development flexibility outside core areas provided for by the Strategy. Therefore, allowing impacts within core areas, for research or other reasons, destroys the function and value of the Strategy.

With respect to wind power development, your letter referenced the SGIT recommendations that were adopted by the State Board of Land Commissioners. Specifically, you asked whether we thought the reference in those recommendations to a "no impact/mitigation plan" as you termed it, was possible for wind power development. Your question is an excellent one, but the context of the SGIT's recommendations is critical to our answer to this question. The SGIT's recommendations, as noted in your letter, began by stating: "*Proposals to deviate from **standard stipulations** (emphasis added) will be considered by a team...*" Your letter appropriately raises questions about whether there is a scientific basis for standard stipulations for wind development different from other road-and-pad development on which the SGIT's recommendations are based, and therefore whether the ability to develop a mitigation plan even exists. In our judgment, we agree, no such data currently exist.

To the Service, the recommendations of the SGIT and Executive Order 2008-2 are clear with respect to deviation from standard stipulations. That is, the burden of proof that development does not affect sage-grouse rests with the industry or proponent in question, and any research they feel is necessary to convey this, should be conducted outside of core areas. This burden of proof to show that development in core areas can be done consistent with conserving sage-grouse underlies all forms of development—not just wind-power. The Strategy is clear on this point and is one of the key reasons for our endorsement.

In assessing the threats to sage-grouse to determine whether the species warrants listing under ESA, we view the science on the impacts of wind development on sage-grouse as being clearer than is being conveyed by some in the wind industry. While there is no doubt that we have more to learn, there exists a large body of empirical, peer reviewed, and published science on the negative impacts of road-and-pad based development on the behavior, movements, survival and productivity of this species. The Service in our 2005 decision to not list the species found that these developments, their associated

infrastructure, and the fact such development enhanced the spread of invasive species were among the primary threats to the species. In the past 4 years, since our 2005 finding, we have seen no science to change this view, only more science affirming it, while at the same time witnessing a significant increase in this type of potential development.

Regarding your second specific question on development levels outside core areas, the March 25, 2008 letter from the SGIT to the Governor states development should attempt to maintain populations, habitats and essential migration routes outside core areas wherever possible. How low lek persistence or population numbers can decline outside of core areas needs to be consistent with the recommendations of the SGIT. We encourage you to direct your request for specific numbers to the Governor's SGIT (of which the Service is a member) and species experts. Having said this, the Service has been developing, and will continue to develop, means by which we can provide for more strategic conservation of our trust species (e.g., migratory birds) outside of core areas to help meet the intent of item #6 in Executive Order 2008-2. Item #6 as you note, states that incentives to develop outside of core areas are an important component of the Strategy. Some of the flexibility resulting from our efforts we feel will be helpful to the energy industry and other development in the State.

Wyoming has set a national example by signing a Memorandum of Agreement (MOA) between your department, my agency and the Governor's Office to work together to conserve species in a manner that hopefully precludes the need for Federal listing. The approach taken to develop and implement the core area Strategy to date exemplifies the vision shared among us in signing the MOA. However, constructing wind farms in core areas, even for research purposes, prior to demonstrating it can be done with no impact to sage-grouse, negates the usefulness of the core area concept as a conservation strategy and brings into question whether adequate regulatory mechanisms are in place to protect the species.

Please know that my office remains committed to playing our role in helping to implement the sage-grouse core areas strategy as envisioned by the SGIT and the Executive Order and to work within our authorities to collaborate with you and others in helping to develop an environmentally-responsible wind industry and other development in Wyoming.

Sincerely,



Brian T. Kelly
Field Supervisor
Wyoming Field Office

cc: Deputy Chief of Staff, Wyoming Governor's Office (R. Lance)
Chair, Wyoming Sage-grouse Implementation Team (B. Budd)