GREATER YELLOWSTONE COALITION • WYOMING OUTDOOR COUNCIL • POWDER RIVER BASIN RESOURCE COUNCIL • CLARK RESOURCE COUNCIL

RECEIVED
JUN 08 2012
BY: 775-6203 EMN
1433 hrs.
JUN 08 2012

June 8, 2012

Via Telefax

Mr. Don Simpson, State Director
Bureau of Land Management
5353 Yellowstone Road
Cheyenne, WY 82009

RE: PROTEST OF A PARCEL TO BE OFFERED AT BLM'S AUGUST 7, 2012 COMPETITIVE OIL & GAS LEASE SALE

Dear Mr. Simpson:

In accordance with 43 CFR 3120.1-3, the Greater Yellowstone Coalition, the Wyoming Outdoor Council, the Powder River Basin Resource Council and the Clark Resource Council protest the following parcel being offered at the Bureau of Land Management's (BLM) August 7, 2012 competitive oil and natural gas lease sale. We protest the sale of lease parcel WY-1208-115 Sections 006 and 018 (totaling 1299.30 acres), which are located within the Bighorn Basin Draft Resource Management Plan's proposed Absaroka Front Management Area (AFMA) in the Cody Field Office.

I. THE PARTIES

The **Greater Yellowstone Coalition** (GYC) is a non-profit conservation organization with more than 500 members in Wyoming 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 the Cody Field Office and many GYC members live near and use this parcel 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 this lease parcel and have an interest in this lease sale.

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. It has members that live in the Cody Field Office where the protested parcel is 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 parcel at issue here, and it has an interest in this lease sale.

The **Powder River Basin Resource Council** (PRBRC) is committed to the preservation and enrichment of Wyoming's agricultural heritage and rural lifestyle. PRBRC and its approximate 1,000 members support the conservation of Wyoming's unique land, mineral, water, and clean air resources consistent with responsible use of those resources to sustain the livelihood of present and future generations. PRBRC strives to educate and empower Wyoming's citizens through community organizing to raise a coherent voice in the decisions that will impact their environment and lifestyle.

The **Clark Resource Council** (CRC) is affiliated with the Powder River Basin Resource Council. Clark Resource Council includes approximately 100 members who are dedicated to maintaining the special places and values of the land and community of the Beartooth Front. Clark Resource Council is dedicated to responsible energy development and recognizes the need to balance energy exploration and natural resource preservation for future generations. Clark Resource Council believes these sustainable assets also provide a healthy environment for viable communities.

II. PROTEST OVERVIEW

Our protest of the August 2012 Competitive Oil and Gas Lease Sale pertains to the sale of lease parcel WY-1208-115 T.057N R.102W Sections 006 and 018 (totaling 1299.30 acres). Due to the proximity of these agency-managed surface sections within the delineated Absaroka Front Management Area, the sale of this parcel warrants special attention. As part of the Greater Yellowstone Ecosystem, the public lands of the Absaroka Front Management Area provide vital habitat for a rich diversity of wildlife, as well as great recreational and hunting value for both locals and visitors. It is our collective opinion that strong conservation prescriptions for this landscape are warranted and oil and gas development should be avoided.

In particular, we oppose the lease sale of the identified parcels for reasons discussed in further detail below. To summarize, our points of disagreement include: lease parcels should not be sold within the Absaroka Front Management Area; lease parcel sales should be deferred while the Bighorn Basin Resource Management Plan is currently under revision and the Environmental Impact Statement is still pending; lease parcels should not be sold in overlapping crucial wildlife habitat; lease parcels should not be sold that pose a direct negative impact to golden eagle nest occupation; lease parcels should not be sold that impact a National Historic Trail; the BLM is not in compliance with its oil and gas leasing reform as directed by the Secretary of the Interior; the

BLM should analyze site-specific impacts through the NEPA process prior to this lease sale; and lease parcels should not be sold in an area of unstable geology where a history of high pressure gas reservoirs and loss of circulation events have occurred, and where contamination of groundwater is threatening human health and the environment.

The BLM has a mandatory duty to protect lands for "multiple use," including the wildlife and human recreational values mentioned above. The lands within the protested parcel provide habitat for a number of species, ranging from mule deer to severely imperiled species, such as greater sage-grouse in the sagebrush country. One section also contains an actively used golden eagle nest. These lands serve as quiet places of natural beauty. They offer solitude, and as such, they provide excellent recreational opportunities for hiking, birding, wildlife viewing, hunting, fishing, and enjoyment of open spaces.

Unnecessary oil and gas development along the Absaroka-Beartooth Front threatens all of the above mentioned resources. Oil and gas development has already caused, and will continue to lead to, fragmented habitat and surface disturbances through well pad construction, oil and gas well rigs, increased vehicular traffic, miles of roads, pipelines and power lines, and noise from generators and compressor stations. All of these associated activities serve to disrupt habitat, destroy nesting and brood rearing habitat, and disturb wildlife. These activities can significantly impact elk, mule deer, pronghorn antelope, and sage-grouse, as well as many other resident species, and impair natural characteristics, such as opportunities for solitude, and opportunities for primitive or unconfined recreation.

Through extensive planning during the Bighorn Basin Draft Resource Management Plan, BLM managers identified the region containing the protested parcel as having special wildlife and recreational qualities. As a result of this heightened recognition of the value of this resource, conservation measures were crafted within a proposed Absaroka Front Management Area as part of the proposed alternative of the Draft RMP. We are concerned that without a No Surface Occupancy (NSO) stipulation on this lease, the sale of this parcel would put sensitive resources at risk and surrender surface use rights to energy development, thus in turn limiting the BLM's ability to protect lands and resources for unique conservation purposes. This parcel warrants site-specific NEPA analysis, particularly before being delegated to a single, industrial use within the proposed Absaroka Front Management Area.

Given this level of importance, the Parties are filing this Protest and request that BLM remove the listed parcel from the upcoming sale.

III. ISSUES WARRANTING PARCEL PROTEST

Lease Parcels Should Not Be Sold in the Absaroka Front Management Area

The suggested lease parcel WY-1208-115 T.057N R.102W (Sections 006 and 018) is located in the proposed Absaroka Front Management Area (AFMA) — an area that conservation groups have asked the BLM to designate as "administratively unavailable for mineral leasing", pursuant

to Alternative B of the draft Bighorn Basin Resource Management Plan (RMP). These comments in support of the proposed AFMA are part of the public record for the Bighorn Basin RMP revision. BLM resource planners in the Cody Field Office have also acknowledged the unique resource value of this area and therefore included a recommendation for the creation of the AFMA with a variety of stipulations in the Draft Bighorn Basin RMP. It would be inappropriate and premature to offer this parcel for leasing until final decisions are made in the RMP about the availability of this area for leasing.

The Protested Lease Parcel Should Not Be Offered for Sale During a Pending RMP Revision

Designation of the 106,354-acre Absaroka Front Management Area has been proposed in both Alternative B and Alternative D, the preferred alternative, of the Bighorn Basin draft RMP, suggesting a high probability that the AFMA will be included in the record of decision and Final RMP. Wyoming Governor Mead has also endorsed protection of the AFMA. In his comments to the BLM Bighorn Basin RMP planning team, the Governor noted:

> The Absaroka Front Management Area (AFMA) has received significant attention throughout the planning process. The AFMA is a place special for its abundance of wildlife including deer, elk, bighorn sheep, moose, grizzly bears, and greater sage-grouse. The same could be said of the entire Bighorn Basin. It is a land of wide open spaces from the badlands of the interior to the magnificent rim of the highlands. In contrast to current management, the BLM's Preferred Alternative, Alternative D, provides for stronger protection of wildlife and habitat. Cooperators, including the State of Wyoming, are unified in their support for the protections embodied in Alternative D of the Draft RMP and DEIS for the AFMA. Alternative D seeks a balanced approach to management of the AFMA and includes a mix of protective stipulations as well as designating areas that are unavailable for mineral leasing. I encourage the BLM to select this portion of Alternative D in order to protect the AFMA.[1]

The particular management prescriptions for the AFMA have yet to be determined. The range of management prescriptions includes language from making the AFMA "administratively unavailable for mineral leasing," to incorporating a mixture of stipulations: controlled surface use (CSU), timing limitation stipulations (TLS), NSO and unavailable for leasing. As previously mentioned, we support managing the AFMA as "administratively unavailable for mineral leasing," pursuant to Alternative B. The ramifications of this approach would preclude leasing parcel WY-1208-115 T.057N R.102W Sections 006 and 018. In the event that the Final RMP includes Alternative D stipulations for management of the AFMA, we would like to see the proposed lease parcels managed with an NSO stipulation.

Until the Bighorn Basin RMP Revision process has been completed, the protested lease parcel should not be offered for sale. Authority for this view is provided by Instruction Memoranda

---

[1] Governor Mead, Matthew. Bighorn Basin Draft Resource Management Plan and Draft Environmental Impact Statement Comments. Public Record. September 7, 2011.

(IM) 2004-110 and 2004-110 Change 1. 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." Decisions concerning management of the AFMA should defer leasing of the contested tract until the completion of the RMP revision process. For precedent, during the Pinedale RMP revision process, the BLM did not engage in leasing in that area. As a matter of practice, the BLM should avoid leasing parcels in the Worland and Cody Field Offices until the Bighorn Basin RMP is revised.

Lease Parcels Should Not Be Sold in Overlapping Crucial Wildlife Habitat

As shown in the accompanying maps (1, 32 and 35), the protested parcel – WY-1208-115 Sections 006, 018 – overlap with crucial wildlife habitat, notably: crucial winter range for mule deer; a key habitat area for sage grouse; a golden eagle's nest on sections 006 (to be discussed in further detail in a subsequent section below); and important habitat for grizzly bears. The Wyoming Game and Fish Department and the BLM have acknowledged the extraordinary wildlife habitat values of the AFMA. The BLM's EA stipulations that would be attached to these parcels reinforce this.[2] These stipulations include: TLS to protect nesting greater sage-grouse; TLS to protect nesting long billed curlew; TLS to protect big game crucial winter range; and, CSU for areas that may now or hereafter contain plants, animals, or the habitats determined to be threatened, endangered, or other special status species (including the grizzly bear). The conservation of habitat for these species in an area currently proposed for special management (i.e., the AFMA) should supersede oil and gas development interests.[3]

The biological importance of the AFMA for wildlife formed the basis for our recommendation in the Draft RMP comment period that this area be unavailable to future mineral leasing. Considering that the BLM might ultimately agree that the occurrence of overlapping wildlife crucial ranges presents a sufficient reason not to engage in leasing in an area, we would argue the protested lease parcel should not be offered for sale.

What's more, issues related to sage-grouse, the current status of sage-grouse science, and the efficacy of the current sage-grouse protective stipulations are prominent considerations in the current RMP revision process. As referenced above in IM 2004-110 Change 1, these are issues "under review during planning." At present, both the BLM and Forest Service are undergoing a scoping process to incorporate greater sage-grouse conservation measures into Land Management Plans through forthcoming Environmental Impact Statements (EIS's) and Supplemental Environmental Impact Statements (SEIS's).[4] With the protested lease parcel (WY-1208-115 Sections 006, 018) existing within a greater sage-grouse key habitat area, we believe the BLM should implement a precautionary approach and defer this parcel until a new greater sage-grouse conservation strategy has been finalized.

Lease Parcels Should Not Be Sold That Threaten Golden Eagle Nest Occupation

[2] DOI-BLM-WY-OSO-EA12-17 Appendix B p.6.
[3] Ibid.
[4] Federal Register. Vol. 76 No.237. December 9, 2011 77009

Since filing an initial objection to the lease sale of parcel WY-1208-115 sections 006, 018 during the Environmental Assessment comment period for the Wind River/Bighorn Basin District portions of the August 2012 Lease Parcel Review, we have learned of a golden eagle nest on section 006 that shows recent occupation. This golden eagle nest has been field checked by our staff and members. GPS coordinates (12 06 39452E 49 78672N), a map, and a photograph are provided for supplemental confirmation. Any golden eagle behavior associated with this nest is protected under the "disturb" clause of the Bald and Golden Eagle Protection Act.

> The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c), enacted in 1940, and amended several times since then, prohibits anyone, without a permit issued by the Secretary of the Interior, from "taking" bald eagles, including their parts, nests, or eggs. The Act provides criminal penalties for persons who "take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or any manner, any bald eagle ... [or any golden eagle], alive or dead, or any part, nest, or egg thereof." The Act defines "take" as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb."
>
> For purposes of these guidelines, "disturb" means: "to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior."
>
> In addition to immediate impacts, this definition also covers impacts that result from human-induced alterations initiated around a previously used nest site during a time when eagles are not present, if, upon the eagle's return, such alterations agitate or bother an eagle to a degree that interferes with or interrupts normal breeding, feeding, or sheltering habits, and causes injury, death or nest abandonment.[5]

The leasing of WY-1208-115 Section 006 and any subsequent drilling activity would likely directly impact the nesting and fledging success of this golden eagle nest — a direct violation of the "disturb" clause of said act. A BLM technical note prepared in cooperation with Hawk Watch International demonstrated that during the greatest oil and gas development expansion (1999–2002) in the Rawlins, Wyoming and Price, Utah, Field Offices, golden eagles used nest clusters that were farther from oil and gas development hotpots than were unused clusters.[6] The report explained that as more oil and gas development occurred, golden eagle nest cluster use decreased, and nesting activity declined within 0.8 km. Golden Eagle nest cluster use increased within 2.0 km, as did activity within 0.8 km and 2.0 km, when there was a greater density of primary and secondary roads (i.e., roads that were not constructed to access oil and gas well sites).[7]

---

[5] Bald and Golden Eagle Protection Act of 1940. http://www.fws.gov/midwest/Eagle/guidelines/bgepa.html
[6] BLM Technical Note 432. Raptor Nesting Near Oil and Gas Development: An Overview of Key Findings and Implications for Management Based on Four Reports by Hawk Watch International.
[7] Ibid.

The golden eagle nest in WY-1208-115 Section 006 is located at the top of a cliff within an east-west canyon that cuts through the center of the section. Due to the topography of this section, all golden eagle flight activity would come in close proximity of any proposed oil or gas well sights, causing the birds to shun the nest. For this reason, oil and gas activity in this area is an inappropriate use of this section of public land and would have direct impacts on a valuable, and protected, wildlife resource. Hence, the lease sale of this parcel should be abandoned.

It is also noteworthy that there are no stipulations attached to this parcel related to the golden eagle nest. The lease sale of a parcel holding a golden eagle nest — an action that could likely lead to future "disturbance" in violation of the Bald and Golden Eagle Protection Act — is a poor precedent to set on behalf of a federal land agency such as the BLM. In the event that any future energy development activity directly impacts golden eagles in the area, the species also has further protection under the federal Migratory Bird Treaty Act. The BLM, therefore, should abandon the sale of the aforementioned parcel so as to avoid potential negative impacts to nesting golden eagles.

A Lease Parcel That Impacts a National Historic Trail Should Not Be Sold

According to Map 73 of the draft Bighorn Basin RMP, the Nez Perce National Historic Trail lies in close proximity to the proposed lease parcel WY-1208-115 Sections 006, 018. The Nez Perce National Historic Trail runs through T.0570N, R.1020W, less than three miles from said parcel. Section 2 [16 U.S.C. § 1241] of the National Trails System Act of 1968, which created the National Historic Trail System, explains that historic trails are established:

> (a) In order to provide for the ever-increasing outdoor recreation needs of an expanding population and in order to promote the preservation of, public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas and historic resources of the Nation...[8]

Section 3 [16 U.S.C. § 1242] of the National Trails System Act further explains: "National historic trails shall have as their purpose the identification and protection of the historic route and its historic remnants and artifacts for public use and enjoyment."[9] Allowing oil and gas development in close proximity to the Nez Perce National Historic Trail appears to contradict the intention of the National Trails System Act of 1968. The BLM, therefore, should abandon the sale of the aforementioned parcel so as to avoid impacts to Nez Perce Historic Trail.

BLM Is Not In Compliance With New Direction from Interior Secretary Salazar on Oil and Gas Leasing Reform

[8] The National Trails System Act (P.L. 90-543, as amended through P.L. 111-11, March 30, 2009) (also found in United States Code, Volume 16, Sections 1241-1251).
[9] Ibid.

On January 6, 2010, Secretary of the Interior Ken Salazar announced reforms aimed at how the BLM conducts oil and gas leasing on the public lands and minerals estate. The leasing reform effort establishes requirements that are directed at the general competitive oil and gas lease sale process. The reform came as a result of the December 2008 oil and gas lease parcel sales in Utah. Interior Secretary Salazar explained:

> The previous Administration's 'anywhere, anyhow' policy on oil and gas development ran afoul of communities, carved up the landscape, and fueled costly conflicts that created uncertainty for investors and industry. We need a fresh look – from inside the federal government and from outside – at how we can better manage Americans' energy resources. The new guidance BLM is issuing for field managers will help bring clarity, consistency, and public engagement to the onshore oil and gas leasing process while balancing the many resource values that the Bureau of Land Management is entrusted with protecting on behalf of the American people.[10]

This new policy, as codified in BLM Instruction Memorandum (IM) 2010-117, directs the BLM to establish an interdisciplinary team to carefully review proposed lease parcels, to conduct an on-the-ground reconnaissance of parcels, to seek the involvement of interested groups and individuals, to prepare an environmental review document to evaluate stipulations (with opportunities for public review of the draft document), and to use the environmental review and public involvement as a means to address important resource values and the identification of appropriate mitigation measures for the protection of the environment.[11] Given the fact that the BLM makes no mention of stipulations to protect a golden eagle nest on section 6 of the protested parcel, there is indication that the proposed parcel has not been field-checked for this and other natural resource concerns. We objected to the lease of this section during the initial Environmental Assessment for the August 7, 2012 proposed lease parcel sale. This objection provides further justification to establish an interdisciplinary team to carefully review the proposed lease parcel. This parcel should not be offered for sale until compliance with the new policy is assured.

Lease Parcels Should Not be Sold in an Area of Geology where High Pressure Gas Reservoirs and Loss of Circulation Events have Occurred, Resulting in Impacts to Human Health and the Environment

The geology of the northwest corner of the BLM's Cody Field Office has a history of environmental contamination from industrial energy production. The Crosby 25-3 gas well blowout on August 11, 2006 less than two miles north of the protested lease parcel WY-1208-115 Section 006 is indicative of the risk associated with natural gas development in the local geology. A drilling rig operated by Windsor of Wyoming LLC encountered an over-pressured zone at a depth of 8,500 feet, resulting in eight million cubic feet of explosive methane and

[10] Press Release: Secretary Salazar Launches Onshore Oil and Gas Leasing Reforms to Improve Certainty, Reduce Conflicts and Restore Balance on U.S. Lands. http://www.doi.gov/news/pressreleases/Secretary-Salazar-Launches-Onshore-Oil-and-Gas-Leasing-Reforms.cfm

[11] Ibid.

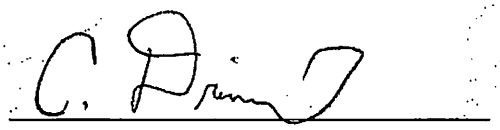
vaporized drilling fluids released into the atmosphere. Ultimately, twenty-five homes in the Line Creek sub-division were evacuated for three days.

Two months after the Crosby 25-3 gas well blowout, Teracon, an environmental consulting company hired by Windsor, drilled groundwater monitoring wells at locations around the blowout site. Ground water contamination was immediately detected and continues to be evident to this day. Additionally, three other toxic spills and illegal dumping of drilling fluids have affected this region. Consequently, human and environmental health has been jeopardized. Due to the geology where high pressure gas reservoirs and loss of circulation events have occurred, parcel WY-1208-115 sections 006 and 018 should not be offered for competitive lease sale.

IV. CONCLUSION AND REQUEST FOR RELIEF

For the foregoing reasons the Parties request that the protested parcel not be offered for sale at the August 7, 2012 Competitive Oil and Gas Lease Sale.

Respectfully submitted,



Charles Drimal,
Wyoming Public Lands Advocate
Greater Yellowstone Coalition

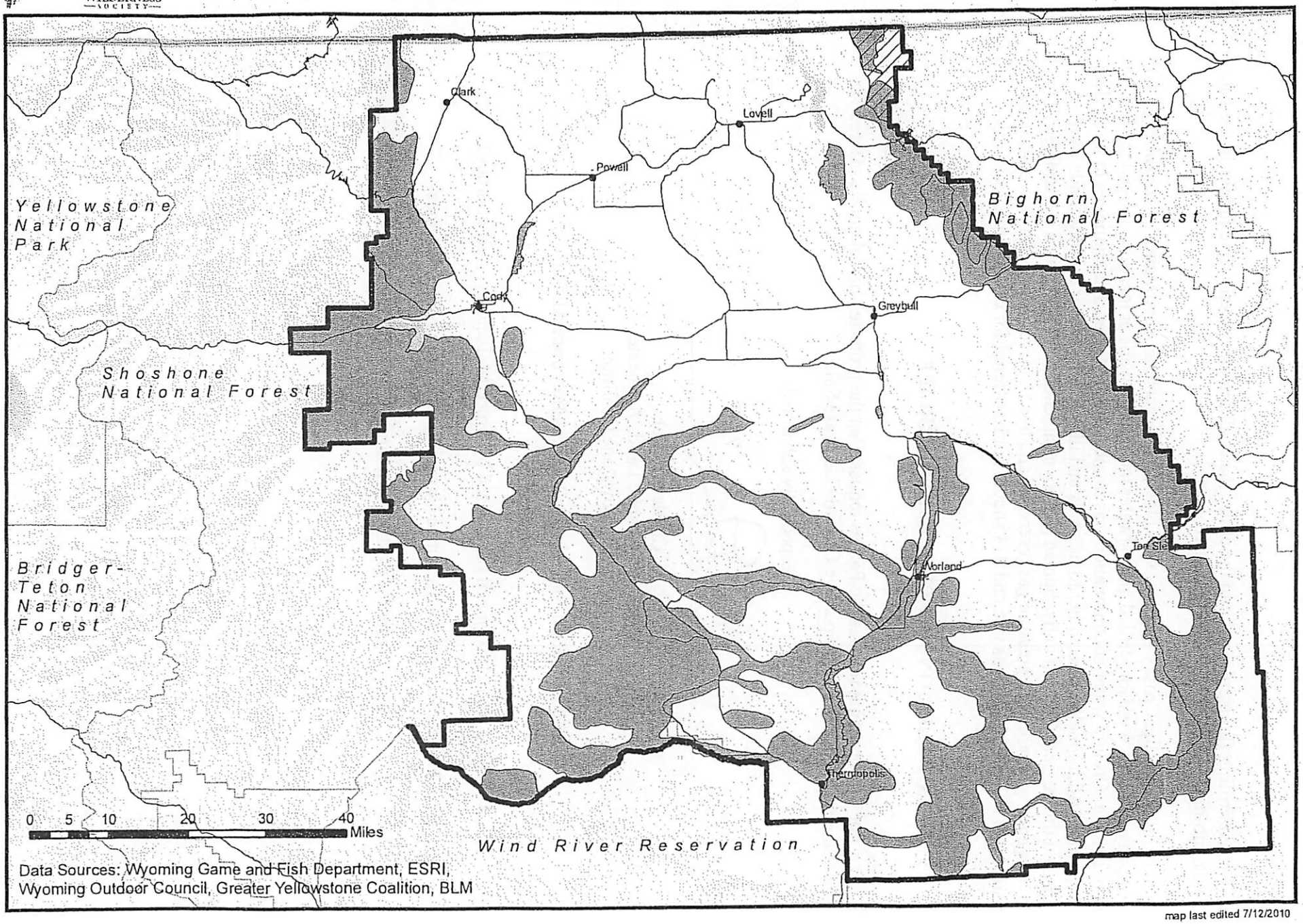
And on Behalf of and with Authorization from All Parties

Wyoming Outdoor Council (authorized by Bruce M. Pendery, staff attorney)

Powder River Basin Resource Council (authorized by Deb Thomas)

Clark Resource Council (authorized by Deb Thomas)

Wildlife Habitat - Mule Deer



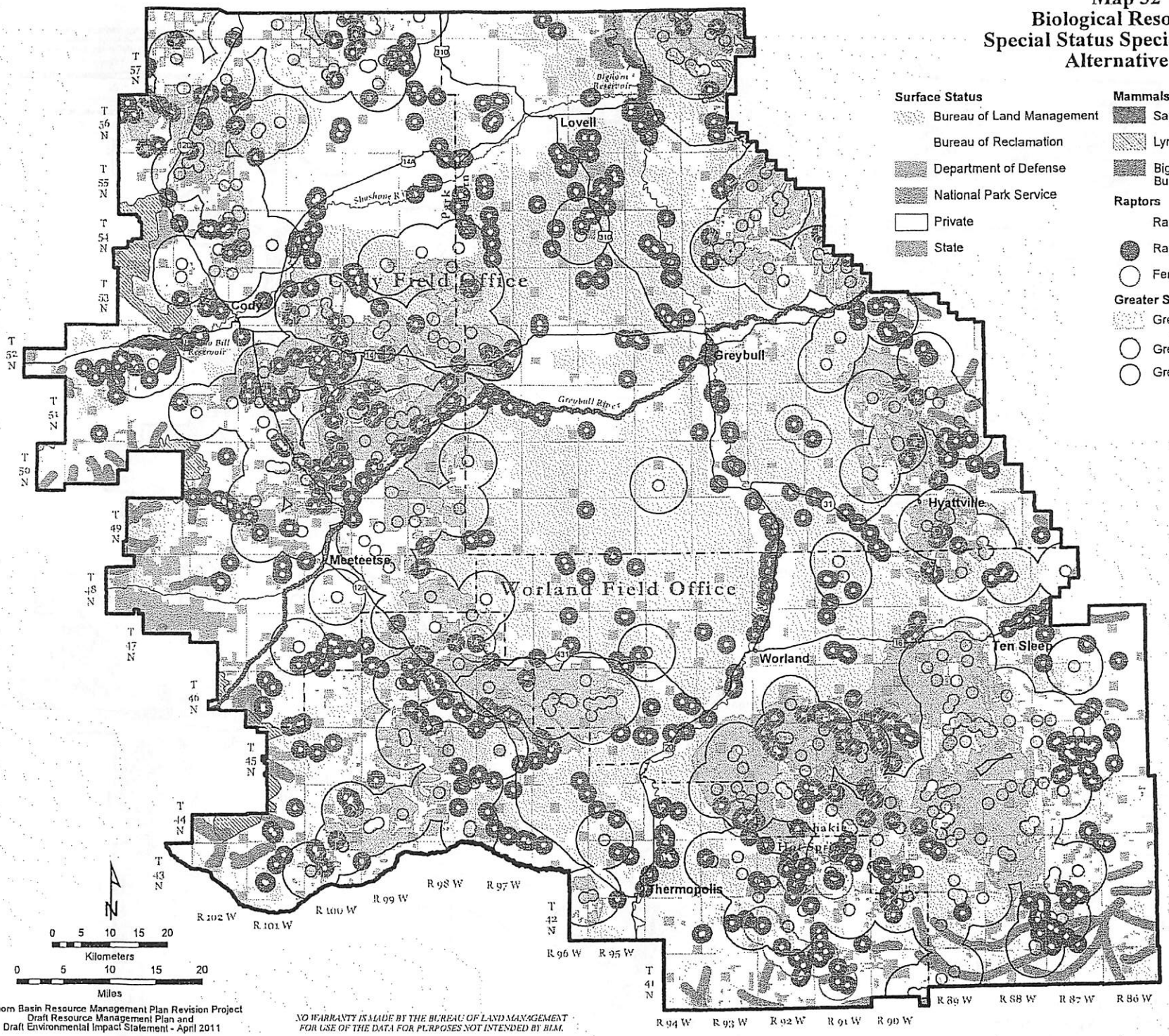
Data Sources: Wyoming Game and Fish Department, ESRI, Wyoming Outdoor Council, Greater Yellowstone Coalition, BLM

map last edited 7/12/2010

Partruition Habitat

Crucial Winter Range

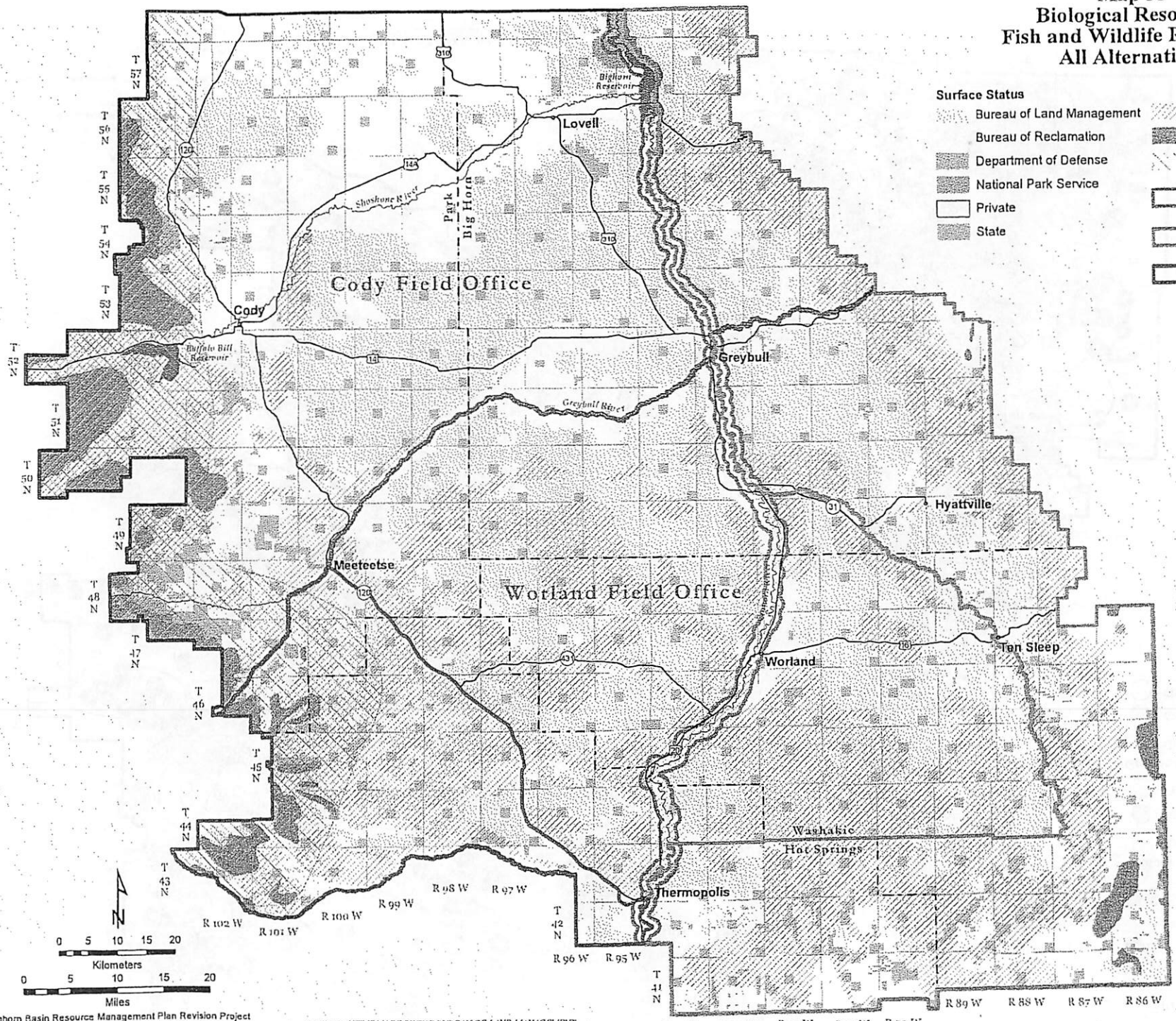
Map 32
Biological Resources
Special Status Species-Wildlife
Alternative B



Bighorn Basin Resource Management Plan Revision Project
Draft Resource Management Plan and
Draft Environmental Impact Statement - April 2011

NO WARRANTY IS MADE BY THE BUREAU OF LAND MANAGEMENT FOR USE OF THE DATA FOR PURPOSES NOT INTENDED BY BLM.

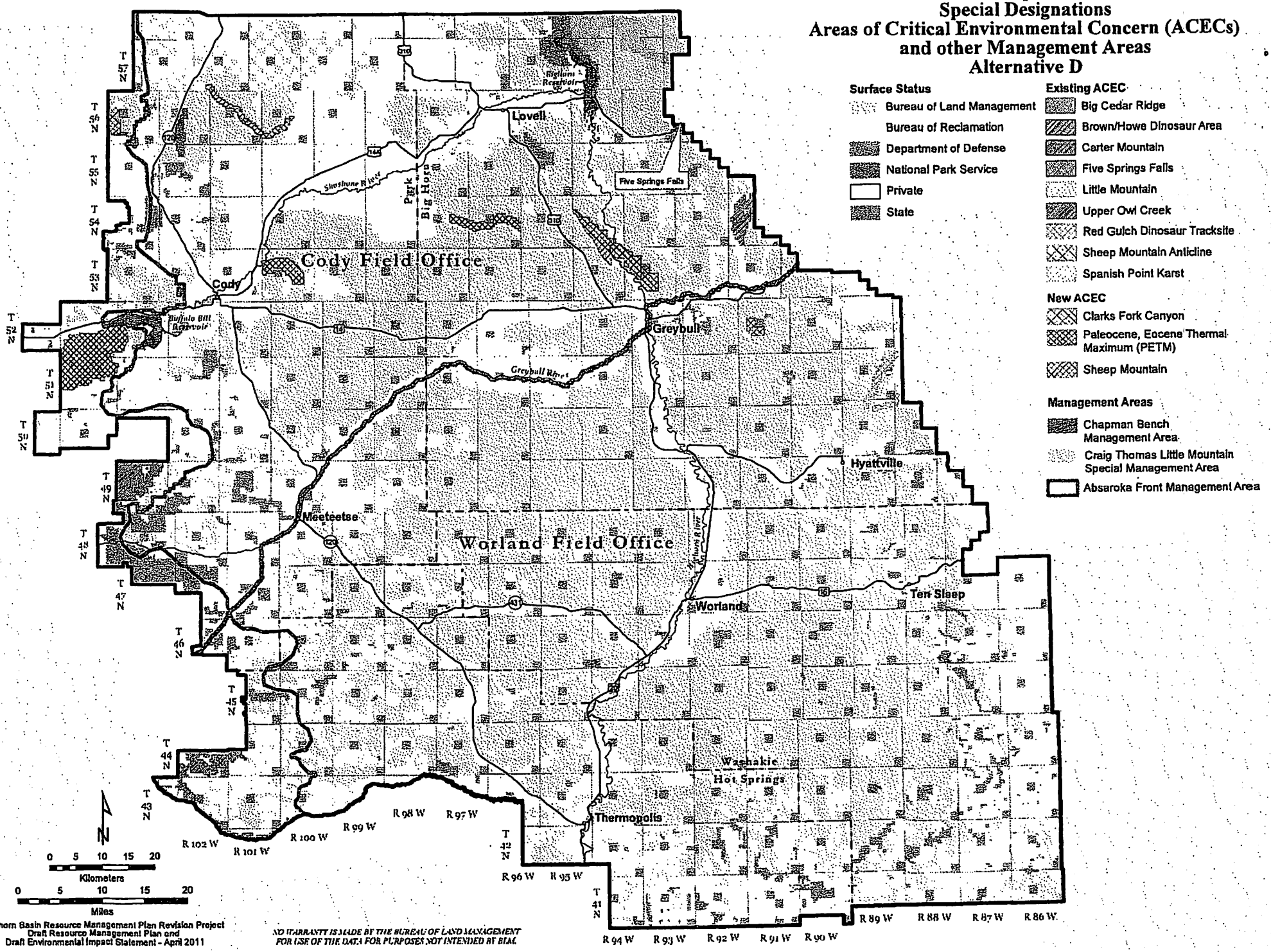
Map 35
Biological Resources
Fish and Wildlife Resources
All Alternatives



Bighorn Basin Resource Management Plan Revision Project
Draft Resource Management Plan and
Draft Environmental Impact Statement - April 2011

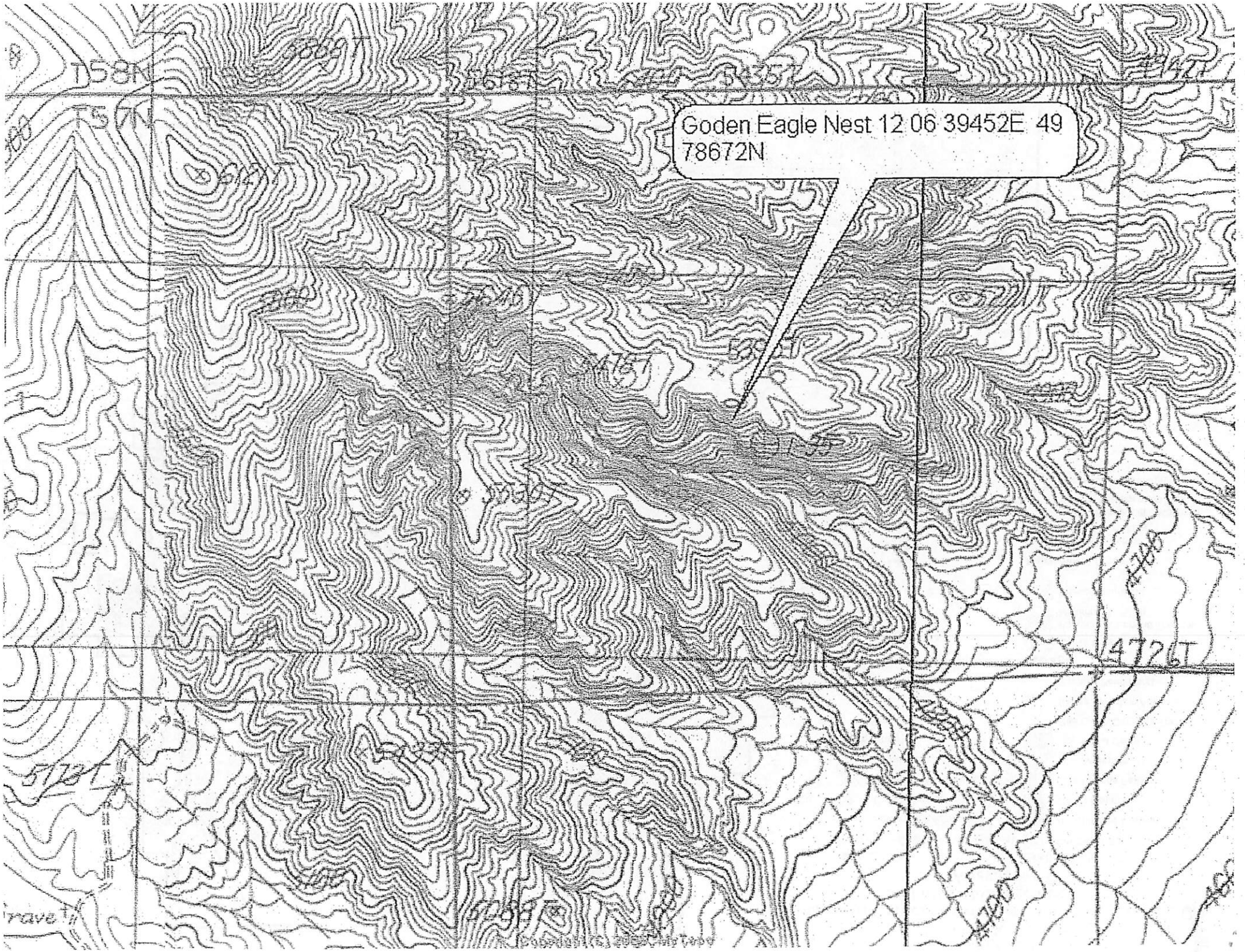
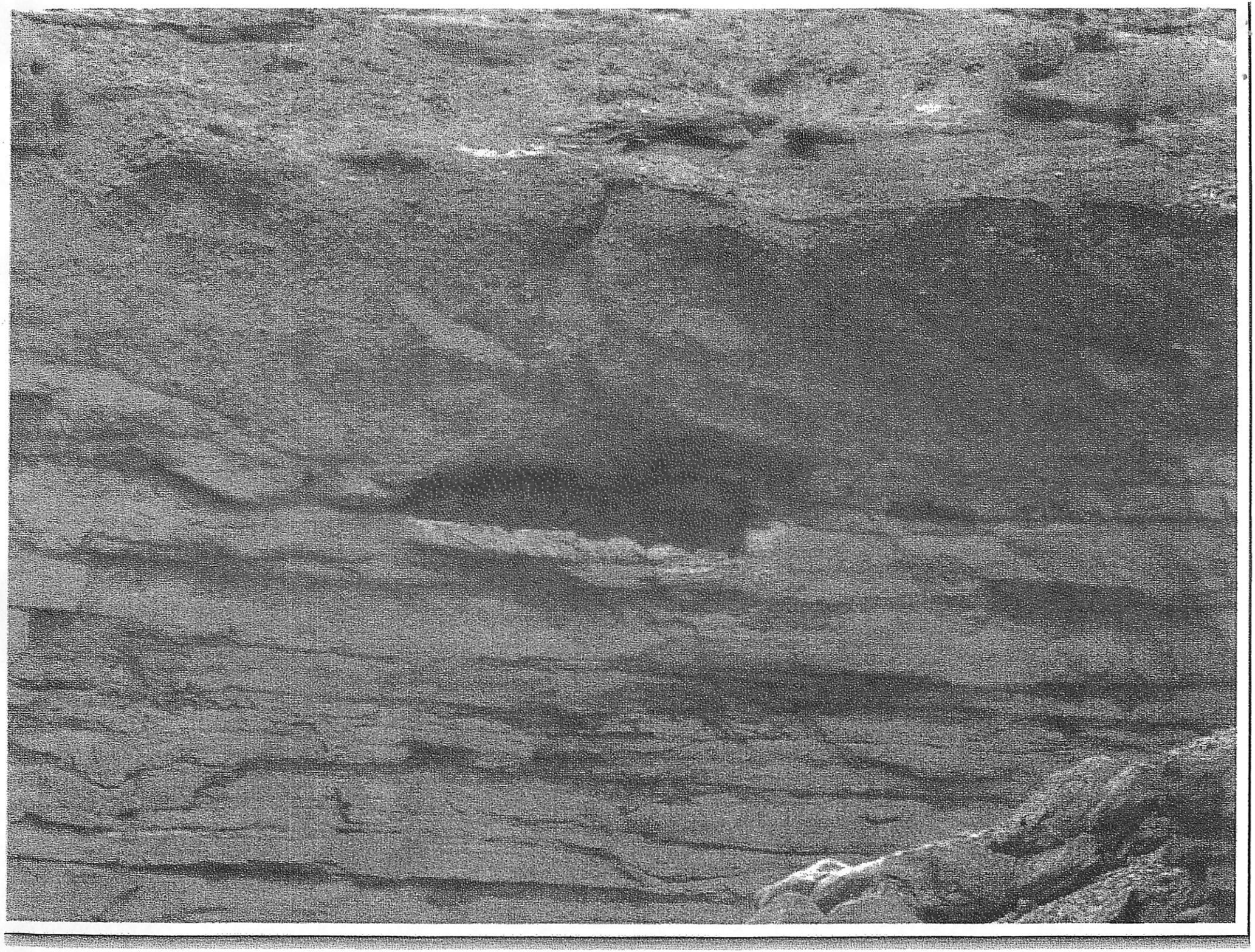
NO WARRANTY IS MADE BY THE BUREAU OF LAND MANAGEMENT FOR USE OF THE DATA FOR PURPOSES NOT INTENDED BY BLM.

Map 70
Special Designations
Areas of Critical Environmental Concern (ACECs) and other Management Areas
Alternative D



Bighorn Basin Resource Management Plan Revision Project
Draft Resource Management Plan and
Draft Environmental Impact Statement - April 2011

NO WARRANTY IS MADE BY THE BUREAU OF LAND MANAGEMENT FOR USE OF THE DATA FOR PURPOSES NOT INTENDED BY BLM.


Goden Eagle Nest 12 06 39452E 49
78672N
T58N
T57N
4726T