Biodiversity Conservation Alliance

Working to Protect Native Species and Their Habitats

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December 1, 2011

HDD Resource Advisor,
BLM Pinedale Field Office
PO Box 768
Pinedale, Wyoming 82941

Comments of Biodiversity Conservation Alliance et al. on the May 2012 Lease EA

Dear HDD Resource Advisor:

The following are the comments of Biodiversity Conservation Alliance, Rocky Mountain Wild, Western Watersheds Project, and New Mexico Sportsmen on the Wyoming BLM's November 2011 Lease Sale EA. For many years, the BLM has prioritized oil and gas leasing and development over other multiple uses such as wildlife, watersheds, and public recreation. It is time for the BLM to restore some balance among resource uses in Wyoming, and render extractive industries more compatible with maintaining healthy ecosystems and public enjoyment of the land. We support the adoption of a modified version of Alternative B with an expanded list of lease deferrals and strengthened and expanded lease stipulations, as outlined below. Please address the concerns raised in these comments prior to rendering a decision as to which parcels to include in the May 2012 Competitive Oil and Gas Lease Sale.

Sage Grouse

Parcels 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18,19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 36, 37, 38, 40, 42, 47, 48, 49, 50, 51, 52, 53, 57, 58, 59, 60, 61, 69, 72, 73, 74, 75, 76, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 412, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 168, 169, 190, 211, 214, 215, 217, 218, 220, 221, 222, 223, 224, 225, 226, 227, 232, 233, and 250 are in sage grouse Core Areas according to our maps. Under Instruction Memorandum No. WY-2010-013, lands falling within sage grouse Core Areas that are primarily under BLM ownership and are not extensively leased should not be offered for oil and gas leasing.

EXHIBIT L

We agree with BLM's proposal to delete Parcels 26, 28, 29, 39, 40, 81, 82, 83, 84, and 85, which fall within Core Areas. We also agree with BLM's proposal to defer the offering of Parcels 47, 48, 49, 51, 57, 58, 59, 60, 73, 74, 75, 76, 78, 86-92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124-132, 133, 134-155, 168, 169, 190, 220-222, 225, 226, and 227, which fall entirely or partially within Core Areas. It is a wise decision to defer the long-term commitment of mineral leases at least until the sage grouse RMP amendment process is completed, in order to avoid foreclosing conservation options that may be selected for implementation under the RMP amendments.

The BLM apparently proposes to auction Parcels 4, 5, 6, 7, 8, 9, 11, 12, 13-19, 25, 27, 30, 33, 50, 52, 53, 61, 69, 72, 168, 203, 204, 211, 212, 215, 232, and 233, which are entirely or partially within Core Areas. These parcels should be deferred from sale even if they fall within checkerboard ownership areas because the BLM has know way of predicting that the privately owned minerals in checkerboard areas will be leased and ultimately developed. The decision not to defer Parcels 50, and 61 is especially puzzling because these parcels are adjacent to or nearby parcels currently proposed for deferral, which would theoretically be part of a large contiguous block of unleased (or soon-to-be-unleased) land in Core Areas. Additionally, the decision to allow Parcel 72 is also puzzling because this parcels falls within a Core Area that is being considered as a sage grouse ACEC under the sage grouse RMP amendment process, which is proposed for removal from future leasing.

Lease parcels should also be screened against Sage Grouse ACECs proposed in the context of the statewide Sage Grouse Plan Amendments EIS process. Many of the proposed ACECs have for proposed management withdrawal from future oil and gas leasing. Parcels in each of these areas should be deferred pending the outcome of the Sage Grouse Plan Amendments process, so that a proper decision can be made regarding whether or not to lease them and/or appropriate stipulations can be attached, per IM 2004-110 Change 1. BLM should also consider whether any parcels fall within proposed Sage Grouse ACECs. In the forthcoming RMP revisions, it is our expectation that the BLM will be considering the designation of several Core Areas as Sage Grouse ACECs, to be managed for no future leasing for oil and gas development.

We request that all parcels listed above be deferred from the lease sale pending analysis of whether large-block unleased parcels inside Core Areas are being leased, pursuant to the 2010 Interior Department leasing IM. BLM should do its best to keep largely unleased areas of public land in Core Areas unleased, regardless of mineral ownership patterns. Wyoming sage-grouse populations are some of the largest left in the nation and were relatively stable until the last decade, when sage-grouse populations experienced major declines range-wide. The Wyoming Game and Fish Department reported that since 1952, there has been a 20% decline in the overall Wyoming sage-grouse population, with some fragmented populations declining more than 80%;[1]

[1] WGFD. 2000. Minutes of the Sage-Grouse Conservation Plan meeting, June 21, 2000, Casper, WY. Cheyenne: Wyoming Game and Fish Department. A copy is attached to the BCA June 2008 Lease Protest as Exhibit 32.

one of WGFD's biologists reported a 40% statewide decline over the last 20 years.[2] Since these figures were published, grouse populations have continued to decline. These declines are attributable at least in part to habitat loss due to mining and energy development and associated roads, and to habitat fragmentation due to roads and well fields. Oil and gas development poses perhaps the greatest threat to sage-grouse viability in the region. The area within 2 to 3 miles of a sage-grouse lek is crucial to both the breeding activities and nesting success of local sage-grouse populations. In a study near Pinedale, sage-grouse from disturbed leks where gas development occurred within 3 km of the lek site showed lower nesting rates (and hence lower reproduction), traveled farther to nest, and selected greater shrub cover than grouse from undisturbed leks.[3] According to this study, impacts of oil and gas development to sage-grouse include (1) direct habitat loss from new construction, (2) increased human activity and pumping noise causing displacement, (3) increased legal and illegal harvest, (4) direct mortality associated with reserve pits, and (5) lowered water tables resulting in herbaceous vegetation loss. These impacts have not been thoroughly evaluated with full NEPA analysis.

In addition, Parcels 2, 3, 12, 30, 31, 32, 39, 41, 42, 43, 44, 45, 46, 56, 62, 64, 65, 67, 68, 77, 94, 165, 171, 172, 173, 174, 179, 180, 181, 191, 192, 194, 196, 197, 203, 204, 205, 207, 208, 209, 210, 212, 213, 216, 229, 230, 231, 235, 236, 237, 239, 240, 246, and 248 are outside designated sage grouse Core Areas but contain or are in close proximity to one or more occupied sage grouse leks. The current standard sage grouse stipulations that apply outside Core Areas are biologically inadequate. BLM should not issue these sage grouse parcels unless a rigorous set of stipulations, far stronger than those provided in the EA, are applied to the parcels. This should include either the following combination:

- 2-mile No Surface Occupancy buffers surrounding leks;
- 3-mile Timing Limitation Stipulations surrounding leks during the breeding and nesting season prohibiting not just construction and drilling activities but also production-related vehicle traffic and human presence;
- No overhead powerlines within 5 miles of leks,

or new Timing Limitation Stipulations that extend 3 miles from the lek and restrict production-related activities in addition to drilling and construction, as has been proposed by BLM under the Lander RMP DEIS (Record 4095)[4], paired with a prohibition n overhead power lines within 5 miles of leks. If these stipulations are implemented together with even stronger measures for Core and Connectivity Areas, the BLM could make a credible case that impacts from leasing would not result in significant impacts.

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[2] Christiansen, T. 2000. Sage-grouse in Wyoming: What happened to all the sage-grouse? Wyoming Wildlife News 9(5), Cheyenne: Wyoming Game and Fish Department. A copy is attached to the BCA June 2008 Lease Protest as Exhibit 33.

[3] Lyon, A.G. 2000. The potential effects of natural gas development on sage-grouse (*Centrocercus urophasianus*) near Pinedale, Wyoming. M.S. Thesis, Univ. of Wyoming, 121 pp. A copy is attached to the BCA June 2008 Lease Protest as Exhibit 34.

[4] BLM. 2011. Lander Draft RMP and EIS at 106.

Outside Core Areas, current sage grouse lease stipulations provide an NSO stipulation of ¼ mile around active sage grouse leks. This is a ridiculously inadequate amount of protection for the lekking grouse during the breeding period, nevermind for hens nesting on lands surrounding the lek. Studies have shown that the majority of hens nest within 3 miles of a lek, and that a 5.3-mile buffer would encompass almost all nesting birds in some cases. For Core Areas, the most scientifically supportable metric for NSO buffers would be 2 miles from the lek to protect breeding birds (after Holloran 2005, finding impacts from post-drilling production extend 1.9 miles from the wellsite)[4] and 5.3 miles to protect nesting birds, with the understanding that the impacts of drilling and production activity would extend into the NSO buffer area from wells arrayed along its edge.

Because leks sites are used traditionally year after year and represent selection for optimal breeding and nesting habitat, it is crucially important to protect the area surrounding lek sites from impacts. In his University of Wyoming dissertation on the impacts of oil and gas development on sage grouse, Matthew Holloran stated, "current development stipulations are inadequate to maintain greater sage-grouse breeding populations in natural gas fields."[5] (Notably, these exact stipulations are being applied by BLM in this lease sale for non-Core Area sage grouse habitat parcels). The area within 2 or 3 miles of a sage-grouse lek is crucial to both the breeding activities and nesting success of local sage-grouse populations. Dr. Clait Braun, the world's most eminent expert on sage-grouse, has recommended NSO buffers of 3 miles from lek sites, based on the uncertainty of protecting sage-grouse nesting habitat with smaller buffers.[6] Thus, the prohibition of surface disturbance within 3 miles of a sage-grouse lek is the absolute minimum starting point for sage-grouse conservation.

Other important findings on the negative impacts of oil and gas operations on sage-grouse and their implications for the species are contained in three studies recently accepted for publication.[7] Sage-grouse mitigation measures have been demonstrated to be ineffective at maintaining this species at pre-development levels in the face of oil and gas development by Holloran (2005) and Naugle et al. (2006). Naugle found an 85% decline of sage-grouse populations in the Powder River Basin of northeastern Wyoming since the onset of coalbed methane development there. BLM has repeatedly failed to provide any analysis, through field experiments or literature

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[5] M. Holloran. Dec. 2005. Greater Sage-Grouse Population Response to Natural Gas Field Development in Western Wyoming, at 57. This study is attached to the BCA June 2008 Lease Protest as Exhibit 35.

[6] C. Braun. May 2006. A Blueprint for Sage-grouse Conservation and Recovery. Grouse, Inc. This study is available online at http://www.voiceforthewild.org/SageGrouseStudies/Braunblueprint2006.pdf.

[7] Doherty, K.E., D.E. Naugle, B.L. Walker, and J.M. Graham. 2008. Greater sage-grouse winter habitat selection and energy development. Journal of Wildlife Management 72:187-195. Attached to the BCA June 2008 Lease Protest as Exhibit 37.

Walker, B.L., D.E. Naugle, and K.E. Doherty. 2007. Greater sage-grouse population response to energy development and habitat loss. Journal of Wildlife Management 71:2644-2654. Attached to the BCA June 2008 Lease Protest as Exhibit 38.

Walker, B.L., D.E. Naugle, K.E. Doherty, and T.E. Cornish. 2007. West Nile virus and greater sage-grouse: estimating infection rate in a wild bird population. Avian Diseases 51:In Press. Attached to the BCA June 2008 Lease Protest as Exhibit 39.

reviews, examining the effectiveness of the standard quarter-mile buffers where disturbance would be "avoided." There is substantial new information in recent studies to warrant supplemental NEPA analysis of the impacts of oil and gas development to sage-grouse. It is incumbent upon BLM to consider the most recent scientific evidence regarding the status of this species and to develop mitigation measures which will ensure the species is not moved toward listing under the Endangered Species Act. It is clear from the scientific evidence that the current protections are inadequate and are contributing to the further decline of the bird's populations. This information constitutes significant new information that requires amendment of the Resource Management Plans before additional oil and gas leasing can move forward.

Wyoming Game and Fish Department biologists have reached a consensus that the Timing Limitation Stipulations proposed for sage-grouse in this lease sale are ineffective in the face of standard oil and gas development practices. These stipulations have likewise been condemned as inadequate by the U.S. Fish and Wildlife Service and renowned sage-grouse expert Dr. Clait Braun. The BLM itself has been forced to admit that "New information from monitoring and studies indicate that current RMP decisions/actions may move the species toward listing…conflicts with current BLM decision to implement BLM's sensitive species policy" and "New information and science indicate 1985 RMP Decisions, as amended, may not be adequate for sage grouse."[8] Continued application of stipulations known to be ineffective in the face of strong evidence that they do not work, and continuing to drive the sage-grouse toward ESA listing in violation of BLM Sensitive Species policy, is arbitrary and capricious and an abuse of discretion under the Administrative Procedures Act.

The restrictions contained in IM No. WY-2010-012 come nowhere close to offering sufficient on-the-ground protection to sage-grouse leks. Within Core Areas, the IM allows surface disturbing activity and surface occupancy just six tenths (0.6) of a mile from "occupied or undetermined" leks,[9] a far cry from the science-based 3-mile buffer recommended by field biologists. Even less protective, restrictions outside Core Areas allow surface disturbing activities and surface occupancy as close as one quarter (0.25) of a mile from leks.[10] BLM has too great an abundance of data to the contrary to continue with scientifically unsound stipulations as used in IM WY-2010-012 and the current Notice of Competitive Oil and Gas Lease Sale. This is especially clear in light of the U.S. Fish and Wildlife Service's recent finding that listing the greater sage-grouse as endangered or threatened under the Endangered Species Act is warranted, but precluded by other priorities. If the BLM and other federal agencies intend to keep the sage-grouse from accelerating beyond other listing priorities, more protective measures, in adherence with the scientific recommendations of Holloran, Braun, and others, must be undertaken now.

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[8] Sage-grouse plan amendment land user information meeting PowerPoint, available online at http://www.blm.gov/pgdata/etc/medialib/blm/wy/information/NEPA/bfodocs/sagegrouse.Par.94571.File.dat/May28_InfoMtg.pdf. Site last visited 7/16/2008.

[9] Instruction Memorandum No. WY-2010-012, available at http://www.blm.gov/pgdata/etc/medialib/blm/wy/resources/efoia/IMs/2010.Par.61358.File.dat/wy2010-012.pdf.

[10] *Id*.

The vague stipulations included in BLM's Notice of Competitive Oil and Gas Lease Sale for particular parcels do little to clarify to the interested public or potential lessees what restrictions might actually apply to protect sage-grouse populations. For example, for some parcels, BLM imposes a Timing Limitation Stipulation and a Controlled Surface Use Stipulation. Such acceptable plans for mitigation of anticipated impacts must be prepared prior to issuing the lease in order to give the public full opportunity to comment, and to abide by the Department of Interior's stated new policy to complete site-specific environmental review at the leasing stage, not the APD stage. Without site-specific review and opportunity for comment, neither the public nor potential lessees can clearly gauge how restrictive or lax "acceptable plans for mitigation" might be, and whether they comply with federal laws, regulations, and agency guidelines and policies. Thus, absent such review, the leases should not issue at all.

BLM has the scientific information needed to recognize that any use of these parcels will result in further population declines, propelling the sage-grouse ahead of other "priorities" on the ESA "candidate list." Again, it is in all interested parties favor (conservation groups, potential lessees, BLM and other federal agencies) for BLM to determine specific "modifications" prior to issuing leases, such as NSO restrictions. If the BLM fails to do so through site-specific environmental review before the APD stage, the agency will violate the "jeopardy" prohibition in the Endangered Species Act and will not adhere to the directive of Secretary Salazar and the Department of Interior's announced leasing reforms.

BCA recommends against the sale of any lease parcels which contain sage-grouse leks, nesting habitat, breeding habitat, wintering habitat and brood-rearing habitat. We request that these parcels be withdrawn from the lease sale. Failing withdrawal of the parcels, parcel-by-parcel NEPA analysis should occur (we have seen no evidence of this in the May 2012 Leasing EA), and NSO stipulations must be placed on all lease parcels with sage-grouse leks. In addition, three-mile buffers must be placed around all leks. It is critical that these stipulations be attached at the leasing stage, when BLM has the maximum authority to restrict activities on these crucial habitats for the protection of the species, and that no exceptions to the stipulations be granted. BLM's failure to do so will permit oil and gas development activities which will contribute to declining sage-grouse populations and ultimately listing by the U.S. Fish and Wildlife Service as a threatened or endangered species, in violation of BLM's duty to take all actions necessary to prevent listing.

Big Game

Parcels 3, 24, 30, 31, 32, 39, 40, 41, 42, 43, 62, 63, 64, 65, 66, 70, 72, 93, 94, 95, 147, 148, 149, 155, 158, 176, 182-187, 189, 199, 211, 213, 214, 215, 219, 216, 232, 235, 237, and 244 appear to involve antelope crucial winter range. Of these, Parcels 39 and 40 are slated for deletion, and Parcels 93, 94, 95, 147, 148, 149, and 155 are slated for deferral, with which we agree. In addition, Parcels 157, 158, 159, 171, 172, 173, 174, 196-202, 217, 228, 241, 242, 244, and 245 are mule deer crucial winter range. Parcels 9, 11, 12, and 223 are in big game parturition range. In addition, Parcels 80, 81, 82, 83, 84, 85, and 101 are in parturition ranges but are proposed for deletion or deferral from the lease auction, which ameliorates any concerns we might have about these parcels at this time. It would be prudent for BLM not to commit these lands for a 10-year period during which the leaseholders would possess some right to explore and produce oil and

gas on their leaseholds. A comprehensive analysis of the level of crucial winter range conservation necessary to maintain herd populations at or above targets needs to be undertaken; we urge BLM to defer such parcels until this analysis is complete, in order to avoid foreclosing on options for conservation.

BCA was a party to an appeal filed with the Interior Board of Land Appeals of the BLM's denial of their Protest filed against the June 6, 2006 lease sale. In its April 2008 Decision,[11] the Board inquired into whether BLM had complied with the Memorandum of Understanding between BLM and the Wyoming Game and Fish Department in regarding lease parcels in big game crucial winter range and parturition areas. The BLM is required to have a rational basis for its decision to issue leases in crucial wildlife habitat, and that basis must be supported by the agency's compliance with applicable laws. While the Board held that failure of BLM to follow the directives contained in Instruction Memorandum No 2004-110 Change 1 was not, standing alone, proof of the violation of law or discretionary policy, it was probative of whether BLM had a rational basis for its decision. The Board found that the appeal record presented no evidence of compliance with the Memorandum of Understanding.

The Parties recommend against selling the lease parcels listed above because BLM has again failed to comply with the Memorandum of Understanding and therefore has not provided a rational basis for its decision to offer lease parcels in areas with big game crucial winter range and parturition areas. Until such time as BLM complies with the Memorandum of Understanding it has no rational basis for its decision and the decision is arbitrary and capricious. We request that the parcels be withdrawn from the upcoming lease sale.

While BCA strongly recommends against the offering of any of these lease parcels for sale, at the minimum, all such parcels in big game crucial winter range and parturition areas should have No Surface Occupancy (NSO) stipulations applied to them. NSOs provide the only real protection for big game. Recent studies on the impacts of oil and gas development and production on big game in Wyoming show that the impacts have been huge.[12] Not only have impacts to big game been significant, but they have occurred in spite of the application of winter

[11] IBLA 2007-136 (174 IBLA 174), decided April 4, 2008.

[2] Berger, J., K. Murray Berger and J. Beckmann. 2006. Wildlife and Energy Development: Pronghorn of the Upper Green River Basin – Year 1 Summary. Wildlife Conservation Society, Bronx, NY. Berger, K., J. Beckmann, J. Berger. 2006. Wildlife and Energy Development: Pronghorn of the Upper Green River Basin – Year 2 Summary. Wildlife Conservation Society, Bronx, NY. These reports are attached to the BCA June 2008 Lease Protest as Exhibits 17 and 18.

Sawyer, H., R. Neilson, D. Strickland and L. McDonald. Oct. 2005. Sublette Mule Deer Study (Phase II): 2005 Annual Report. Sawyer, H., R. Neilson, D. Strickland and L. McDonald. 2006. Sublette Mule Deer Study (Phase II): 2006 Annual Report. Sawyer, H., R. Neilson, F. Lindzey and L. McDonald. Winter Habitat Selection of Mule Deer Before and During Development of a Natural Gas Field. Copies of these reports are attached to the BCA June 2008 Lease Protest as Exhibits 19, 20 and 21.

Powell, J.H. 2003. Distribution, habitat use patterns, and elk response to human disturbance in the Jack Morrow Hills, Wyoming. MS Thesis, Univ. of Wyoming, 52 pp. A copy of this study is attached to the BCA June 2008 Lease Protest as Exhibit 22.

Sawyer, H., and R. Nielson. 2005. Seasonal distribution and habitat use patterns of elk in the Jack Morrow Hills Planning Area, Wyoming. Cheyenne: WEST, Inc., 28 pp. A copy of this report is attached to the BCA June 2008 Lease Protest as Exhibit 23.

timing limitations, demonstrating that these stipulations alone do not provide adequate protections for big game.

A further noteworthy factor is that timing limitations apply only during oil and gas development, not during the production phase. Once production begins, there are no stipulations in place for the protection of big game. It is therefore imperative that stipulations adequate to protect big game be applied at the ***leasing*** stage, not the APD stage. *See Center for Native Ecosystems,* IBLA 2003-352, November 22, 2006.

Attached to some of the parcels listed above is a timing limitation stipulation prohibiting drilling between November 15 and April 30 for "protecting big game on crucial winter range." These are, however, not total prohibitions on drilling during the stressful winter period. Exceptions to the stipulations are regularly—almost automatically—granted anytime a lessee requests it. See, for example, http://www.wy.blm.gov/pfo/wildlife/exceptions.php (Pinedale Field Office winter range stipulation exceptions) which shows that ***123*** exceptions were granted for the winter of 2006-2007. Similar statistics are available for other Wyoming Field Offices. The enthusiasm with which the Pinedale FO has granted ***winter-long*** exceptions to the stipulation for drilling on crucial winter range further illustrates the totally discretionary nature and consequent ineffectiveness of this stipulation. Under the Lander RMP EIS, BLM proposes a Timing Limitation on surface disturbing and disruptive activities during the winter season of use in the agency's Preferred Alternative. Disruptive activities would include vehicle traffic and human presence at the wellpad, which disturb wintering big game. These are the type of TLS stipulations that need to be applied to winter range, parturition areas, and migration corridors for the upcoming lease sale.

Just as important, traditional stipulations do not limit operational and production aspects of oil and gas development. *See*, for example, Jack Morrow Hills CAP EIS at A5-3. Obviously, if the stipulation does not reserve authority to BLM at the ***leasing stage***, BLM must allow development despite severe impacts to winter ranges and big game, except for being able to require very limited "reasonable measures." These reasonable measures cannot be nearly broad enough to ensure crucial winter ranges and parturition areas are protected at the operation ***and*** production stage. *See* 43 CFR 3101.1-2.

The Wyoming Game and Fish Commission (WG&F) has a formal policy relative to disturbance of crucial habitats, including crucial winter ranges.[13] Crucial habitat is habitat "which is the determining factor in a population's ability to maintain and reproduce itself . . . over the long term." *Id*. at 7. WG&F further describes big game crucial winter ranges as vital habitats. Vital habitats are those which directly limit a community, population, or subpopulation (of species), and restoration or replacement of these habitats may not be possible.[14] The WG&F has stated

[13] Wyoming Game and Fish Department. April 1998. Policy No. VII H, Mitigation, attached to the BCA June 2008 Lease Protest as Exhibit 24.

[14] Wyoming Game and Fish Department. Dec. 2004. Recommendations for Development of Oil and Gas Resources within Crucial and Important Wildlife Habitats, at 3. This document is attached to the BCA June 2008 Lease Protest as Exhibit 25.

that there should be "no loss of habitat function" in these vital/crucial habitats, and although some modification may be allowed, habitat function, such as the location, essential features, and species supported must remain unchanged. Mitigation Policy at 5.

Furthermore, Wyoming Game and Fish released the recommended minimum standards to sustain wildlife in areas affected by oil and gas development. Their policy recognized the ineffectiveness of winter range stipulations standing alone as currently applied. Mitigation Policy at 6. In all cases, Wyoming's new mitigation policy recommends going beyond just the winter drilling timing limitations, which BLM currently applies to lease parcels on crucial winter range. In addition to the winter timing limitations, the Mitigation Policy includes a suite of additional standard management practices. Mitigation Policy at 9-11, 52-58. These additional management practices include planning to regulate the pattern and rate of development, phased development, and cluster development, among many other provisions. Mitigation Policy at 52.

Clearly, the timing limitation stipulation applicable to the Crucial Winter Range Parcels is not in compliance with the State of Wyoming's policies and plans regarding the protection of wildlife. The timing stipulation, standing alone, does not ensure protection of habitat function. There is absolutely no guarantee, or even the remote likelihood that the location, essential features, and species supported on the crucial winter range will remain "unchanged."

Scientific literature makes it clear that there will be loss of function if significant exploration and development occurs on the leaseholds. In prior Protests the parties have submitted substantial evidence showing that big game species are negatively affected by oil and gas drilling on winter ranges. *See* the studies referenced above. These studies document the negative effects of oil and gas drilling on big game winter ranges and winter range use, as well as on big game migration routes, even when winter timing stipulations are in effect. Parcels 8, 9, 12, 13, 14, 15, 16, 17, 18, 20, 26, 27, 28, 36, 37, 38, 39, 40, 44, 53, 55, 61, 101, 102, 103, 109, 112, 114, 118, 119, 120, 121, 122, 135, 136, 140, 142, 145, 150, 151, 153, 154, 174, 198, 204, 213, 217, 222, 223, 231, 236, 243, 244, and 246 intersect identified big-game migration corridors. Parcels 26, 28, 37, 38, 39, and 40 are proposed for deletion from the lease auction, and Parcels 101, 102, 103, 109, 112, 114, 118, 119, 120, 121, 122, 135, 136, 140, 142, 145, 150, 151, 153, 154, and 222 are earmarked for deferral, which would take care of any issues regarding impacts to big game migrations. For parcels intersecting migration corridors to be offered at auction, special timing limitation stipulations should be attached that prevent construction, drilling, or production-related activity and vehicle traffic on the lease during the migration periods. To these parcels, BLM should attach stipulations that prohibit not just construction activity but also project-related vehicle traffic and human presence at the wellsite within 0.5 mile of the migration corridor during its season(s) of use.

The findings in the scientific and popular literature have been confirmed in recent BLM NEPA documents. The Green River EIS/RMP/ROD is replete with documentation of the importance of crucial winter ranges, and their ongoing loss, despite the stipulation required by BLM. Green River EIS/RMP at 347-349. ("Probably the single most important factor affecting antelope populations are weather," at 438-441.) (" . . . oil and gas development in Nitchie Draw causing forage loss and habitat displacement;" "Displaced wildlife move to less desirable habitat where

animals may be more adversely stressed . . .;" "Long-term maintenance and operations activities in crucial wildlife habitats would continue to cause displacement of wildlife from crucial habitats, including . . . crucial big game winter habitats;" "Surface disturbing activities would continue to cause long-term loss of wildlife habitat," etc.) The Jack Morrow Hills EIS also documents the importance of crucial winter ranges, particularly to elk, and the sensitivity of wildlife on winter ranges not only to drilling during the winter period, but also due to ongoing displacement and disturbance of wildlife from oil and gas development. Jack Morrow Hills EIS at 4-61 to 4-64, 4-80 to 4-88. The Rawlins Draft RMP further documents the negative effects of oil and gas drilling on big game when on winter ranges. Rawlins RMP Draft EIS at 3-131 to 3-136.

Given this evidence and the simple fact that each well pad converts 3-5 acres of crucial winter range to bare ground for extended periods of time, there is no rational basis for BLM to claim that it meets Wyoming's mitigation policy. It is impossible for crucial winter ranges to remain "unchanged" in terms of the location, essential features, and species supported, even if drilling does not take place during the timing stipulations. What is worse, however, is the fact that drilling ***does*** take place during the timing stipulations when they are waived, as they frequently are. Crucial winter ranges will clearly not remain "unchanged" because BLM has not retained the authority to condition well operations (lasting for decades) at the leasing stage.

The Federal Land Policy and Management Act (FLPMA) requires BLM to "coordinate the land use inventory, planning, and ***management activities*** of [public lands] with the land use planning and management programs of . . . the States and local governments . . . by, among other things, considering the policies of approved State and tribal resource management programs." 43 USC 1712I(9) (emphasis added). BLM must give special attention to "officially approved and adopted resource related plans." 43 CFR 1601.0-5(g). BLM must remain apprised of State land use plans, assure they are considered, and resolve to the extent practical, inconsistencies between state and federal plans. 43 USC 1712I(9).

There is no indication that BLM's winter timing stipulation is based on consideration of Wyoming's 1998 Mitigation Policy, or its new programmatic standards policy. It is apparent there has been no attempt to resolve inconsistencies between what BLM's stipulation provides and what Wyoming's mitigation policy requires. There are certainly inconsistencies. BLM's timing stipulation attempts to prohibit drilling during limited periods, yet this prohibition is frequently waived.[15] Indeed, quite recently the WG&F asked BLM in Wyoming not to grant any waivers of stipulations last winter due to the lack of quality forage for big game in their winter range and the anticipated impacts that year-round drilling will have on big game under those conditions. BLM has refused to accede to this request and has proceeded to grant waivers and exceptions. Wyoming's mitigation policy specifically seeks to fill gaps left by the timing stipulation, by requiring a number of standard management practices on crucial winter ranges in ***all*** cases. These recommendations are standing policy which WG&F expects to be applied in every instance of leasing in crucial winter range.

[15] Rocky Mountain News, Nov. 13, 2006, *BLM grants drilling rights: 13 permits for gas run counter to will of Wyoming officials*. Copy attached to the BCA June 2008 Lease Protest as Exhibit 26.

The inconsistencies are even more glaring when one considers the fact that BLM's timing stipulation does not regulate the production phase. Until BLM considers and attempts to resolve these inconsistencies, it cannot allow the sale of the Crucial Winter Range Parcels to go forward. To do so would be a violation of NEPA.

Furthermore, the timing stipulation attached to the Crucial Winter Range Parcels is inconsistent with the policy of the BLM Wyoming State Office, as enunciated in the Revised Umbrella Memorandum of Understanding (MOU) between BLM and Wyoming Game and Fish Department.

The various requirements in the WG&F minimum programmatic standards for oil and gas development establish "sideboards" as to what actions need to be taken to prevent unnecessary or undue degradation. BLM has not considered these standards from the perspective of its FLPMA-imposed requirement to prevent unnecessary or undue degradation. BLM is not meeting its duty to take "any" action that is necessary to prevent unnecessary or undue degradation. 43 USC 1732(b). Once again, this failure is most apparent where application of the winter timing stipulation does not even regulate ongoing operations such as production. BLM has an independent duty under FLPMA to take any action necessary to prevent unnecessary or undue degradation, in addition to its NEPA duty to coordinate its activities with the State of Wyoming and comply with the MOU. Since BLM has given up its ability to require restrictions in the future by not imposing sufficient stipulations at the leasing stage, the effect of this failure to require adequate restrictions at the leasing stage violates FLPMA by permitting unnecessary or undue degradation when oil and gas development commences.

The parties also recommend against the sale of the Crucial Winter Range Parcels on the basis that their sale would cause unnecessary or undue degradation of public lands. "In managing the public lands the [Secretary of Interior] **shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands."** 43 U.S.C. § 1732(b) (emphasis added). BLM's obligation to prevent unnecessary or undue degradation is not discretionary; it is mandatory. "The court finds that in enacting FLPMA, Congress's intent was clear: **Interior is to prevent, not only unnecessary degradation, but also degradation that, while necessary . . . is undue or excessive**." *Mineral Policy Center v. Norton,* 292 F.Supp.2d 30, 43 (D.D.C. 2003) (emphasis added). The BLM has a statutory obligation to demonstrate that leasing will not result in unnecessary or undue degradation.

Wyoming Pocket Gopher

Due to the lack of a "hard look" at impacts to Wyoming pocket gopher on a parcel-by parcel basis, it is difficult to comment on this Lease EA. Based on the geographic distribution of the parcels and our knowledge of known Wyoming pocket gopher occurrences, Parcels 5 through 66 are particularly likely to contain important Wyoming pocket gopher habitat, and Parcels 67, 68, 69, 70, 72, 73, 74, 75, 76, 93, 94, 95, 110, and 111 also potentially contain Wyoming pocket gopher habitat, all of which is of critical conservation concern. As BLM is no doubt aware, BCA authored a petition to list the Wyoming pocket gopher as Threatened or Endangered under the

Endangered Species Act.[16] The U.S. Fish and Wildlife Service's recently released finding that the Wyoming pocket gopher is not warranted for Endangered Species Act protections[17] only heightens the fact that this incredibly rare species faces a grim long-term prognosis due to direct conflicts in its limited range with oil and gas development. As a BLM Sensitive Species, the BLM should refrain from approving or conducting any activity that could harm Wyoming pocket gophers or their habitat. Stipulations and mitigation measures proposed to date cannot guarantee adequate protection for the species, as so little data has been collected to establish its breeding patterns and habitat continuity, among other variables. The Leasing EA provides no analysis whatsoever on impacts to pocket gophers. More needs to be done.

First, it was our understanding that the leasing reforms would analyze leases on a case-by-case, site specific basis before the leasing decision is made, instead of deferring site visits until the APD phase. Second, as no specific representations are made in the EA concerning how locations will be "adjusted to minimize habitat loss," it is impossible for either the reader or the BLM to reach any conclusion whatsoever regarding the effectiveness of these "adjustments" and therefore conclude whether or not significant impacts are likely to occur. These parcels should therefore be deferred until a real impact analysis is undertaken.

These leases should not issue pending site-specific NEPA analysis; no analysis has been done at the RMP level. Wyoming pocket gophers are one of the rarest mammals in North America, if not the rarest. This naturally uncommon species is extremely vulnerable to habitat loss due to mining and energy development and associated roads, and to habitat fragmentation due to roads and well fields. Oil and gas development poses perhaps the greatest threat to Wyoming pocket gopher viability. Both breeding and foraging activities of Wyoming pocket gopher populations are impacted by above and below ground disturbances associated with oil and gas exploration, drilling and associated activities. Impacts of oil and gas development to Wyoming pocket gopher include (1) direct habitat loss from new construction, (2) increased human activity and pumping noise causing generally known and unknown behavioral changes, (3) direct mortality associated with reserve pits, crushing due to vehicular movements and construction activities, and (4) lowered water tables resulting in herbaceous vegetation loss. These impacts have not been thoroughly evaluated with full NEPA analysis.

More information is needed about Wyoming pocket gophers to confidently assess the spatial dynamics of populations. Factors such as low dispersal ability, high inbreeding, and high variation over small geographic areas suggest that Wyoming pocket gopher meta-population structures could easily be disrupted when local populations are isolated over relatively short distances.[18] The continuity of suitable habitat thus becomes an important component in the conservation of Wyoming pocket gopher populations. Very little is known regarding

[16] *See* http://www.voiceforthewild.org/petitions/Final%20WPG%20Listng%20Petition.pdf.
[17] *See* http://edocket.access.gpo.gov/2010/pdf/2010-8578.pdf.
[18] Patton, J.L. and R.E. Dingman. 1968. Chromosome studies of pocket gophers, genus *Thomomys*. I. The specific status of *Thomomys umbrinus* (Richardson) in Arizona. Journal of Mammalogy 49:1-13.

survivorship and mortality in Wyoming pocket gophers.[19] Most do not live more than two breeding season, but they are capable of living longer under favorable circumstances.[20] Climate may be a factor in *T. clusius* survival and recruitment.[21] Researchers also stated that sub-adult pocket gophers appeared to experience unusually heavy mortality when forced to live in marginal habitats.[22]

Mammologists and other wildlife and soil scientists recognize pocket gophers for their positive impacts on the ecosystems they inhabit. These effects primarily result from extensive tunneling activity, which can affect soil formation, hydrology, and nutrient flows. In addition, pocket gophers' consumption of below-ground plant biomass can alter the competitive interactions of plants and thereby influence above-ground vegetation.[23] Like other "ecosystem engineers" (e.g., ants, beavers, prairie dogs), pocket gopher activities can drive ecosystem function, making them important to native ecosystems. The extensive burrow systems provide habitat for numerous other burrowing and opportunistic species. Abandoned pocket gophers provide habitat for salamanders, snakes, insects, and other rodents.[24]

In addition, pocket gophers serve as prey for a number of birds and mammals, but it is suspected that natural predation is not a factor limiting pocket gopher distribution and abundance.[25] Since gophers evolved with natural predators, it is unlikely such predation would play a role in population declines unless accompanied by other extenuating circumstances.[26] Such extenuating circumstances might include increased predation from generalist predators whose distributional expansion has been facilitated by human alteration of the landscape (e.g., feral cats, coyotes, raccoons).[27] Three-dimensional structures associated with oil and gas development, like power

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[19] Keinath, D.A. and G.P. Beauvais. 2006. Wyoming pocket gopher (*Thomomys clusius*): a technical conservation assessment. USDA Forest Service, Rocky Mountain Region, available online at http://www.fs.fed.us/r2/projects/scp/assessments/wyomingpocketgopher.pdf.

[20] Reid 1973. "Population biology of the northern pocket gopher." In Pocket Gophers and Colorado Mountain Rangeland. Experiment Station Bulletin. Fort Collins, CO:Colorado State University. Pp. 21-41.
Clark, T.W. and M.R. Stromberg. 1987. Mammals in Wyoming. University Press of Kansas, Lawrence, KS.

[21] Vaughan, T.A. 1967. Food habits of the northern pocket gopher on shortgrass prairie. The American Midland Naturalist 77:176-189.

[22] Howard, W.E. and H.E. Childs. 1959. Ecology of pocket gophers with emphasis on *Thomomys bottae mewa*. Hilgardia 29:277-358.

[23] Keinath, D.A. and G.P. Beauvais. 2006. Wyoming pocket gopher (*Thomomys clusius*): a technical conservation assessment. USDA Forest Service, Rocky Mountain Region, available online at http://www.fs.fed.us/r2/projects/scp/assessments/wyomingpocketgopher.pdf.

[24] Center for Native Ecosystems, Forest Guardians, Michael C. McGowan, and Jacob Smith. 2003. Petition for a Rule to List *Thomomys talpoides macrotis* (Northern Pocket Gopher, subspecies macrotis) as Threatened or Endangered under the Endangered Species Act, 16 U.S.C. § 1531 et seq. (1973 as amended) and for the Designation of Critical Habitat. March 20, 2003; Armstrong, D.M. 1987. Rocky Mountain Mammals. Colorado Associated University Press.

[25] Chase, J.D., W.E. Howard, and J.T. Roseberry. 1982. Pocket Gophers. *In*: Wild Mammals of North America. Johns Hopkins University Press, Baltimore, MD.

[26] Keinath, D.A. and G.P. Beauvais. 2006. Wyoming pocket gopher (*Thomomys clusius*): a technical conservation assessment. USDA Forest Service, Rocky Mountain Region, available online at http://www.fs.fed.us/r2/projects/scp/assessments/wyomingpocketgopher.pdf.

[27] *Id.*

lines and buildings, create raptor perches.[28] Such development has transformed pocket gopher habitat from a largely flat plane to a world with increased opportunities for raptor predation. In the event that Wyoming pocket gopher populations become small and/or isolated, even natural predation events could cause a marked population decline.[29]

Pocket gophers are strongly fossorial, living most of their lives in burrow systems and underground tunnels.[30] Based on the very limited information base, the Wyoming pocket gopher appears to segregate from northern pocket gophers by preferentially occupying dry, gravelly, shallow-soil ridge tops rather than deeper soiled swales and valley bottoms,[31] but this information is tenuous and useful mainly to inform further investigation. The long distance movement and dispersal capabilities of Wyoming pocket gophers are limited since they stay underground most of the time, foraging above-ground only at night or on overcast days.[32] Plus, the energetic costs of burrowing are high enough to be a physiological limitation to movement.[33]

Other species of pocket gophers may have longer-distance dispersals beneath snow, but this is unlikely for Wyoming pocket gophers because the species' preferred habitat is presumed to be dry ridges with low snow accumulation and wind scouring that tends to deposit existing snow in depressions.

A suitable landscape for Wyoming pocket gophers may be loosely defined as a dry upland with gravelly, yet still tractable, soils and relatively high productivity of grasses and forbs (high food availability). Given the species' small home ranges, the continuous area of such habitat capable of supporting a local population of Wyoming pocket gophers may be relatively small. However, long-term persistence of the gophers would likely depend on larger areas of such habitat arranged in patches of sufficient proximity to allow dispersal between patches. Other than coarse scale habitat availability, it is unclear what limits the structure and growth of populations. The extremely varied diets of various pocket gopher species have led to the conclusion that food is seldom a limiting factor in pocket gopher distribution, but the nature and amount of vegetation may affect local population densities.[34]

The Wyoming pocket gopher is known to occur only in Sweetwater and Carbon Counties in Wyoming. As its range is currently defined, the Wyoming pocket gopher appears to occur primarily on multiple-use lands managed by the BLM. These lands are extensively intermixed

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[28] Bureau of Land Management. 2006. Scoping Notice, Continental Divide - Creston, Carbon County, Wyoming..
[29]Wilcove, D.S. 1985. Nest predation in forest tracts and the decline of migratory songbirds. Ecology 66:1211-1214; Sinclair, A.R.E., R.P. Pech, C.R. Dickman, D. Hik, P. Mahon, and A.E. Newsome. 1998. Predicting Effects of Predation on Conservation of Endangered Prey. Conservation Biology 12:564.
[30] Keinath, D.A. and G.P. Beauvais. 2006. Wyoming pocket gopher (*Thomomys clusius*): a technical conservation assessment. USDA Forest Service, Rocky Mountain Region, available online at http://www.fs.fed.us/r2/projects/scp/assessments/wyomingpocketgopher.pdf.
[31] Clark, T.W. and M.R. Stromberg. 1987. Mammals in Wyoming. University Press of Kansas, Lawrence, KS.
[32]Verts, B.J. and L.N. Carraway. 1999. *Thomomys talpoides*. Mammalian Species 618:1-11.
[33]Vleck, D. 1979. The energy cost of burrowing by the pocket gopher *Thomomys bottae*. Physiological Zoology 52:122-136.
[34] Miller, R.S. and R.A. Ward. 1964. Ectoparasites of pocket gophers from Colorado. The American Midland Naturalist 64:382-391.

with parcels of private land. A variety of biological factors can make animals intrinsically susceptible to disturbance, including narrow distribution, habitat specificity, restrictive territoriality and area requirements, susceptibility to disease, low dispersal capability, high site fidelity, and low reproductive capability. After reviewing available information, researchers considered the intrinsic vulnerability of Wyoming pocket gophers to be moderate due to highly limited distribution, limited dispersal ability, and the uncertainty surrounding many aspects of their biology.[35]

Small mammals with restricted distributions and/or narrow habitat requirements are more vulnerable than others to habitat loss.[36] The paucity of information regarding Wyoming pocket gophers requires extreme caution when proposing to disturb potential habitat. Habitat destruction is the primary threat to *T. clusius*. Habitat fragmentation and isolation also threaten *T. clusius*. Continued oil and gas development creates increasingly dense road networks, diminishes corridors for dispersal, and further separates populations. Roads act as barriers to finding mates, leading to inbreeding and loss of gene flow within individual populations. Habitat fragmentation results in shrinking islands of intact habitat with increased exposure to edge effects. The impacts of disturbances associated with oil and gas development will only increase under the February sale of parcels containing Wyoming pocket gophers and habitat.

Development is not just destroying and fragmenting habitat, it is also degrading it. Soil disturbances typical of oil and gas development projects, motorized vehicle impacts, and other activities are known to exacerbate the introduction and subsequent spread of noxious weeds. Noxious weeds limit population density in fossorial mammals.[37] In addition, herbicide use that invariably precedes and follows most forms of development also degrades pocket gopher

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[35] Keinath, D.A. and G.P. Beauvais. 2006. Wyoming pocket gopher (*Thomomys clusius*): a technical conservation assessment. USDA Forest Service, Rocky Mountain Region.
Available online: http://www.fs.fed.us/r2/projects/scp/assessments/wyomingpocketgopher.pdf

[36] Hafner, D.J. 1998. Rodents of Southwestern North America. *In*: D.J. Hafner, E. Yensen, and G.L. Kirkland, Jr., editors. North American rodents: status survey and conservation action plan. IUCN/SSC Rodent Specialist Group, IUCN, Gland, Switzerland and Cambridge, U.K.

Hafner, David J., Eric Yensen, Gordon L. Kirkland, Jr., Joseph G. Hall, Joseph A. Cook, and David W. Nagorsen. 1998. "Executive Summary." In North American rodents: status survey and conservation action plan. D. J. Hafner, E. Yensen, and G. L. Kirkland, Jr., eds. IUCN/SSC Rodent Specialist Group, IUCN, Gland, Switzerland and Cambridge, U.K., x + 171 pp. Pp. 66-67. Pp.vii.

Hafner, David J. 1998. "Rodents of Southwestern North America." Ch. 3. In North American rodents: status survey and conservation action plan. D. J. Hafner, E. Yensen, and G. L. Kirkland, Jr., eds. IUCN/SSC Rodent Specialist Group, IUCN, Gland, Switzerland and Cambridge, U.K., x + 171 pp. Pp. 66-67. Pp. 10-17.

Hafner, David J. 2001. New Mexico Natural Heritage Program, pers. comm., 5 December 2001.

[37] Slobodchikoff, C.N., A. Robinson, and C. Schaack. 1988. Habitat use by Gunnison's prairie dogs. Pp. 403-408 in R.C. Szaro, K.E. Severson, and D.R. Patton, technical coordinators. Management of amphibians, reptiles, and small mammals in North America. Proceedings of the symposium. 19-21 July 1988, Flagstaff, Arizona. USDA Forest Service General Technical Report RM-166. November 1988. USDA Forest Service, Rocky Mountain Forest and Range Experiment Station, Fort Collins. 458.

habitat.[38] Finally, individual pocket gophers are killed in the pursuit of commercial and industrial development.

The Wyoming BLM assigned the Wyoming pocket gopher to its sensitive species list. The BLM developed the list to "ensure that any actions on public lands consider the overall welfare of these sensitive species and do not contribute to their decline". In addition, the Wyoming Game and Fish Department includes the Wyoming pocket gopher on a long list of species of concern under Wyoming's Comprehensive Wildlife Conservation Strategy.[39] The BLM's sensitive species management includes "developing conservation strategies" and "prioritizing what conservation work is needed." BLM's inclusion of parcels with Wyoming pocket gophers and habitat in the February 2010 lease sale does not indicate the agency is adhering to its own management standards.

The Wyoming Natural Diversity Database has assigned the Wyoming pocket gopher a rank of G2/S2.[40] The G2 refers to a relatively high probability of global extinction, based primarily on the species' extremely small global range. The S2 refers to a relatively high probability of extinction from Wyoming, based largely on range restriction, but also considering apparently low range occupation, uncertain abundance trends, and moderate biological vulnerability. Further, the Database assigned a Wyoming Significance Rank of Very High to the Wyoming pocket gopher, which reflects the extremely high contribution of Wyoming population segments to continental persistence of the species.[41]

To date, there are no management plans or conservation strategies pertaining explicitly to the Wyoming pocket gopher, although one status assessment has been drafted with support of the Wyoming BLM State Office and the Wyoming Natural Diversity Database.[42] There appear to be

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[38] Reid 1973. "Population biology of the northern pocket gopher." In Pocket Gophers and Colorado Mountain Rangeland. Experiment Station Bulletin. Fort Collins, CO:Colorado State University. Pp. 21-41; Hansen, R.M. and A.L. Ward. 1966. Some relations of pocket gophers to rangelands on Grand Mesa, Colorado. Colorado Agricultural Experiment Station Technical Bulletin 88:1-22; Tietjen, H.P. 1973 Control of pocket gophers. Pp. 73-81 in Pocket Gophers and Colorado Mountain Rangeland; Chase, J.D., W.E. Howard, and J.T. Roseberry. 1982. Pocket Gophers. *In*: Wild Mammals of North America. Johns Hopkins University Press, Baltimore, MD; Miller, R.S. 1964. Ecology and distribution of pocket gophers (Geomyidae) in Colorado. Ecology 45:256-272; Tietjen, H.P., C.H. Halvoran, P.L. Hegdal, and A.M. Johnson. 1967. 2,4-D herbicide, vegetation, and pocket gopher relationships: Black Mesa, Colorado. Ecology 48(4):634-643.

[39] Wyoming Game and Fish Department. 2005. A Comprehensive Wildlife Conservation Strategy for Wyoming. Wyoming Game and Fish Department, Cheyenne, WY. Approved July 12, 2005.32
S.P. 1958. The bobcat of North America: its history, life habitats, economic status and control, with lists of currently recognized subspecies. The Stackpole Company Harrisburg, Pennsylvania and The Wildlife Management Institute, Washington, D.C., 193 pp.

[40] http://uwadmnweb.uwyo.edu/wyndd/; Keinath et al. 2003.

[41] Keinath, D.A. and G.P. Beauvais. 2003[a]. Wyoming Animal Element Ranking Guidelines. The Wyoming Natural Diversity Database, University of Wyoming, Laramie, WY.
Keinath, D.A., B.H. Heidel, and G.P. Beauvais. 2003[b]. Wyoming Plant and Animal Species of Concern: November 2003. The Wyoming Natural Diversity Database, University of Wyoming, Laramie, WY.

[42] Beauvais, G.P. and D. Dark-Smiley. 2005. Species assessment for Wyoming Pocket Gopher (*Thomomys clusius*) in Wyoming. Report prepared for the Wyoming State Bureau of Land Management, Cheyenne, Wyoming by the Wyoming Natural Diversity Database, Laramie, WY.

insufficiently described mechanisms by which conservation of Wyoming pocket gophers could be achieved should oil and gas development occur within their known and potential range. However, the primary concern stated by most studies of the species is the lack of information on its biology and ecology. Without gathering the needed information, conservation mechanisms' efficacy cannot be determined. Biodiversity Conservation Alliance asks the Wyoming BLM State Office to withdraw parcels containing known and potential Wyoming pocket gophers and habitat while adequate information is gathered and evaluated and the USFWS completes its review of our petition for listing under the ESA.

Negative impacts of oil and gas operations on Wyoming pocket gopher and their implications for the species are named in virtually every scientific Wyoming pocket gopher (*Thomomys clusius*) conservation assessment and survey. Wyoming pocket gopher mitigation measures are essentially non-existent due to their extremely limited range and a paucity of scientific knowledge concerning its ability or inability to adapt to changing habitat conditions. BLM has failed to provide any analysis, whether field experiments or literature reviews, that describes if and how disturbance to *T. clusius* habitat would be "avoided." There is substantial new information in recent studies to warrant supplemental NEPA analysis of the impacts of oil and gas development to Wyoming pocket gopher. It is incumbent upon BLM to consider the most recent scientific evidence regarding the status of this species and to develop mitigation measures, if possible, which will ensure the species is not moved toward listing under the Endangered Species Act. It is clear from the scientific evidence and a total absence of meaningful BLM (state and federal levels), Wyoming Game and Fish, and U.S. Fish and Wildlife Service conservation measures for the Wyoming pocket gopher that current protections are non-existent, thereby allowing if not encouraging habitat degradation and destruction. New and continuing Wyoming pocket gopher survey information constitutes significant new information that requires amendment of the Resource Management Plans before additional oil and gas leasing can move forward.[43]

For example, the BLM itself has been forced to admit that "New information from monitoring and studies indicate that current RMP decisions/actions may move the species [greater sage grouse] toward listing…conflicts with current BLM decision to implement BLM's sensitive species policy" and "New information and science indicate 1985 RMP Decisions, as amended, may not be adequate for greater sage grouse." Continued application of stipulations known to be ineffective in the face of strong evidence that they do not work, and continuing to drive the greater sage grouse toward ESA listing in violation of BLM Sensitive Species policy, is arbitrary and capricious and an abuse of discretion under the Administrative Procedures Act. We hold that, in the case of the Wyoming pocket gopher, relevant stipulations do not exist. Further, we hold that a total absence of stipulations serves to drive the Wyoming pocket gopher toward ESA

[43] Keinath, D.A. and G.P. Beauvais. 2006. Wyoming pocket gopher (*Thomomys clusius*): a technical conservation assessment. USDA Forest Service, Rocky Mountain Region, available online at http://www.fs.fed.us/r2/projects/scp/assessments/wyomingpocketgopher.pdf.

Keinath, D.A., H. Griscom, and A. Redder. 2008. Survey for Wyoming pocket gopher (*Thomomys clusius*) in central Wyoming. Report prepared for The Nature Conservancy - Wyoming Field Office by the Wyoming Natural Diversity Database - University of Wyoming, Laramie, Wyoming, available online at ftp://ftp.wygisc.uwyo.edu/pub/gis/wyndd/THCLReport07_15Feb07.pdf.

listing in violation of BLM Sensitive Species policy, is arbitrary and capricious, and is an abuse of discretion under the Administrative Procedure Act.

No lease parcels which contain known and potential Wyoming pocket gopher habitat should be offered until a full NEPA analysis on impacts to this BLM Sensitive Species is performed and appropriate stipulations are formulated and attached to ensure the viability of pocket gopher populations in the area.. We request that these parcels be withdrawn from the lease sale. Failing withdrawal of the parcels, it is critical that NEPA analysis occur on each parcel before leasing, and NSO stipulations be placed on all lease parcels containing known and potential Wyoming pocket gopher habitat. These stipulations should be attached at the leasing stage, when BLM has the maximum authority to restrict activities on these crucial habitats for the protection of the species, and that no exceptions to the stipulations be granted. BLM's failure to do so will permit oil and gas development activities which will directly and indirectly negatively impact Wyoming pocket gopher populations and habitat and increase the potential for listing by USFWS as a Threatened or Endangered species, in violation of BLM's duty to take all actions necessary to prevent listing.

The following information represents Wyoming pocket gopher survey data collected in 2008 by consulting firm, Hayden-Wing Associates, LLC.[44]

The Wyoming pocket gopher (*Thomomys clusius*) is the only known vertebrate species endemic to Wyoming—apparently only in south-central Wyoming and in specifically Sweetwater and Carbon counties.[45] One of our petitions primary rationales for the species' listing under the Endnagered Species Act is the potential negative effects of energy development taking place within their known range.[46] Energy development is also named as a "more likely" threat than even agriculture to the Wyoming pocket gopher in the Wyoming Natural Diversity Database Wyoming pocket gopher Conservation Assessments.[47]

Important White-Tailed Prairie Dog Habitat

A number of the analyzed parcels are located within important white-tailed prairie dog habitat (parcels 25, 26, 30, 31, 32, 35, 36, 38, 44, 57, 67, 79, 80, 82, 83, 90, 92, 100, 113, 114, 153, 156, 158, 161, 162, 163, 164, 165, 216, 232, 233, 234, 235, 236) . GIS data for this analysis was obtained from various sources; details on the data sources will be provided upon request. Oil and gas development authorized by the leasing of these parcels is likely to have significant direct, indirect, and cumulative impacts on white-tailed prairie dog and other species

[44] Wyoming (Thomomys clusius) Surveys in South-Central Wyoming Prepared for Petroleum Association of Wyoming 951 Werner Court Suite 100 Casper, Wyoming 82601 Prepared by Hayden-Wing Associates, LLCP.O. Box 1689 Laramie, Wyoming 82073 November 2008.

[45] Clark, T.W. and M.R. Stromberg. 1987. Mammals in Wyoming. University Press of Kansas, Lawrence, Kansas.

[46] Biodiversity Conservation Alliance. Petition to List Wyoming Pocket Gopher as Threatened or Endangered under the Endangered Species Act. Submitted to U.S. Fish & Wildlife Service: August 7, 2007.

[47] Wyoming Pocket Gopher (*Thomomys clusius*): *A Technical Conservation Assessment. Prepared for the USDA Forest Service, Rocky Mountain Region, Species Conservation Project August 31, 2006 Douglas A. Keinath and Gary P. Beauvais, Ph.D. Wyoming Natural Diversity Database, University of Wyoming, 1000 E. University Ave. — Dept. 3381, Laramie, Wyoming 82071. *Peer Review Administered by Society for Conservation Biology

that rely on white-tailed prairie dogs, including black-footed ferrets. The studies listed below contain information on:

- the status of the white-tailed prairie dog
- the impacts of oil and gas development on the white-tailed prairie dogs
- the efficacy of application of various protective measures (including protective measures applied to the protested parcels as lease stipulations and notices) in mitigating impacts of oil and gas development on white-tailed prairie dogs
- expert recommendations on how best to minimize and mitigate impacts of oil and gas development on white-tailed prairie dogs
- information essential to analysis of the direct and indirect impacts of the oil and gas development on the protested parcels on white-tailed prairie dogs
- information essential to analysis of the cumulative impacts of oil and gas development on the protested parcels, and other past, present and reasonably foreseeable activities, including grazing, climate change, plague, shooting etc., on white-tailed prairie dog populations

This information is essential to adequate NEPA analysis of the likely direct, indirect, and cumulative impacts of oil and gas development on the analyzed parcels on the white-tailed prairie dog, and associated species, including black-footed ferret. In addition, this information is crucial to any effort to develop a range of alternatives for oil and gas development, and to develop and analyze the likely effectiveness of lease notices and stipulations applied to the protested parcels to mitigate impacts of oil and gas development on white-tailed prairie dogs to insignificance. The information in these documents constitutes the best available science on white-tailed prairie dogs, and the impacts of oil and gas development on white-tailed prairie dogs. The BLM has not considered the information contained within these documents as part of a National Environmental Policy Act (NEPA) analysis of the impacts of oil and gas development authorized by the leasing of the protested parcels on white-tailed prairie dogs or associated species, including black-footed ferrets. We hereby incorporate the following documents by reference:

Center for Native Ecosystems et al. 2002. ESA petition to list the white-tailed prairie dog, submitted to U.S. Fish and Wildlife Service on July 11, 2002.
http://nativeecosystems.org/wp-content/uploads/wtpd-esa-listing-petition.pdf

Center for Native Ecosystems. 2003. Nominations for the designation of Areas of Critical Environmental Concern for 25 large white-tailed prairie dog complexes. Submitted to Wyoming Bureau of Land Management on January 21, 2003
http://nativeecosystems.org/wp-content/uploads/acec-nomination.pdf
http://nativeecosystems.org/wp-content/uploads/acec-map.pdf

Wyoming BLM prepared a programmatic Biological Evaluation of the impacts of Wyoming BLM's oil and gas program on white-tailed prairie dog. The BE which can be foud at
http://www.blm.gov/pgdata/etc/medialib/blm/wy/wildlife/wt-

prdog.Par.20150.File.dat/WTPDbio-eval.pdf, concludes that the BLM's oil and gas program in Wyoming will contribute to the need to list the white-tailed prairie dog under the Endangered Species Act.

The BE makes the following determination on p. 3-14:

"Implementation of energy and mineral resource management actions may impact and is likely to contribute to the need for Federal listing of the WTPD for the Great Divide (Rawlins FO), Green River (Rock Springs FO), Kemmerer, and Pinedale RMPs. This determination is based on the limited ability for the BLM to provide minimization of direct effects of oil and gas development to the WTPD through implementation of the conservation strategies (section 4.0) and the potential to damage or destroy suitable occupied and unoccupied WTPD habitat on split estates. In addition, each of these FOs have WTPD complexes located in areas of potential mineral development."

The BE recommends the following Best Management Practices for oil and gas development to remedy this situation on p. 4-2:

"No further oil and gas exploration and development should be allowed into occupied prairie dog colonies, or the BLM should apply a Condition of Approval (COA) on all Applications for Permit to Drill (APDs) within areas containing known populations of WTPDs that protects rearing of young from April 1 through July 15. When possible, a No Surface Occupancy stipulation should be applied to all occupied and recovering prairie dog habitat for well pads or ancillary facilities (e.g. compressor stations, processing plants, etc.) within 1/8th mile of WTPD habitat. When possible, no seismic activity should be allowed in occupied or recovering prairie dog habitat."

Though BLM has prepared new RMPs since this BE was written, none of the new RMPs incorporated the above BMPs recommended in the BE. They should be incorporated now prior to issuing any leases in these areas.

Wilderness

Parcels 62, 63, 64, 65, 66, 69, 73, 74, 75, 76, and 94 fall within or partially within the Kinney Rim South and Kinney Rim North citizens' proposed wilderness areas. Parcels 45 and 46 fall within the Adobe Town citizens' proposed wilderness; only the portion of Parcel 46 that is inside the WSA is marked for deletion. Parcels 45, 46, and 62-66 also fall within the Adobe Town Dispersed Recreation Use Area as outlined in the Rawlins Resource Management Plan. Parcels 73-76 are recommended for deferral under the BLM's Proposed Alternative, which we support and which takes care of our concerns regarding these parcels for now. Parcels 150, 151, 153, and 154 fall within the Elk Mountain citizens' proposed wilderness, but these parcels are earmarked for deferral from the lease auction, with which we concur. Parcel 78 falls within the Oregon Buttes Badlands and Big Empty citizens' proposed wilderness areas, bit it is proposed for deletion from the lease sale, which we also support. Parcels 156, 158, 160, 161, 162, 163, 164, 165, 167, 184, 185, 188, and 189 fall within the Devils Playground citizens' proposed wilderness area. We would like to have the opportunity to accompany BLM on a site visit of all parcels

proposed to be auctioned in citizens' proposed wilderness should there be an inclination to move forward with leasing these parcels at some point in the future.

These citizens' proposed wilderness units, involving both the deferred parcels and the parcels not proposed for deferral, have not been inventoried by BLM since approximately 2003 (and it is questionable whether a thorough field agency has ever been attempted by the agency), and the 2003 inventory does not follow the guidelines of the new inventory manual. The Devils Playground expansions and Elk Mountain unit have not to our knowledge ever been inventoried by BLM subsequent to citizens' proposed wilderness submissions. These parcels should be deferred pending analysis for 'Wild Lands' eligibility. In addition, BLM has the option to manage these plans to protect the wilderness characteristics that are documented to occur here. We recommend all these parcels not already slated for deletion be deferred pending new wilderness inventories to be conducted pursuant to BLM IM 2011-154 or deleted.

These parcels will hereinafter be referred to as the Special Values Parcels. Because all of these parcels lie in or very near Citizens Proposed Wilderness areas or BLM Wilderness Study Areas they clearly have special values, such a wildness and remoteness characteristics and the ecological services typical of such areas (such as greater biological diversity and better water quality), even if BLM does not recommend them for wilderness designation. The fact that BLM did not recommend CWP areas for wilderness designation does not change these special and unique wilderness values. We are certain BLM is well aware of these special values, as well as the WSA areas it has recommended for wilderness designation.

The impacts to these wilderness-quality lands has not been analyzed thoroughly, either in the EA, or in RMP-level NEPA documents thus far. Leasing these parcels without No Surface Occupancy (NSO) stipulations could irretrievably destroy the wilderness character of these areas. Therefore, BLM will violate NEPA if these lands are leased in this sale. Before leasing these parcels, BLM must analyze impacts to visitors' experiences, recreation values, and scenic values. *See e.g., Pennaco Energy, Inc. v. Department of the Interior*, 377 F.3d 1147 (10th Cir. 2004). The regulations implementing NEPA provide that federal agencies shall, to the fullest extent possible, "[u]se the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment." 40 C.F.R. § 1500.2(e). Such alternatives should include reasonable alternatives to a proposed action that will accomplish the intended purpose, are technically and economically feasible, and yet have a lesser impact. *Id.*; *Headwaters, Inc. v. BLM*, 914 F.2d 1174, 1180-81 (9th Cir. 1990); *City of Aurora v. Hunt*, 749 F. 2d 1457, 1466-67 (10th Cir. 1984). The purpose of NEPA's alternatives requirement is to ensure agencies do not undertake projects "without intense consideration of other more ecologically sound courses of action, including shelving the entire project, or of accomplishing the same result by entirely different means." *Envnt'l Defense Fund, Inc. v. U.S. Army Corps of Eng'rs*, 492 F.2d 1123, 1135 (5th Cir. 1974); *see also Or. Envtl. Council v. Kunzman*, 614 F.Supp. 657, 660 (D. Or. 1985) (stating that the alternatives that must be considered under NEPA are those that would "avoid or minimize" adverse environmental effects).

The Green River and Rawlins RMPs were adopted substantially before BLM's latest wilderness inventory manual. The Green River RMP in particular is quite old and the NEPA analysis that was conducted is even older than the plans. These plans were approved ***before*** oil and natural gas of the current scale and impact was on the BLM's radar screen. While there has been oil and gas development in Wyoming for decades, today's pace of leasing and drilling wasn't foreseen, indeed, couldn't have even been contemplated, at the time these management plans were developed. It is undeniable that BLM has been under intense pressure to lease every acre of public land which has any potential for future oil and gas development.

In its initial inventorying of the CWP proposed lands in the 1970s under the Wilderness Act of 1964, BLM determined that they did not possess wilderness qualities. Since that time, new information has been provided to BLM regarding these proposed wilderness areas. In approximately 1992 the Sierra Club submitted a citizens' wilderness proposal to BLM which included the Cedar Mountain and Honeycombs areas. In 2004 a more comprehensive citizens' proposal for wilderness areas was submitted to BLM by the Wyoming Wilderness Association. BLM has had an opportunity to reassess these areas for their wilderness qualities since receiving the Wyoming Wilderness Association submission, and should have its own analysis on record. Many years have passed since the initial assessment and inventory by BLM in the 1970s.

Under the Federal Land Policy and Management Act (FLPMA) BLM was required to inventory all roadless areas on public lands over 5000 acres under its jurisdiction and to identify lands which have wilderness characteristics as described in the Wilderness Act of 1964. 43 U.S.C. § 1782(a). In addition, under 43 U.S.C. 1711(a), BLM is required to maintain an inventory of all public lands and their resource and other values, which is to be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values.

It is imperative that these parcels be withdrawn from the lease sale until such time as BLM has met its legal obligation under FLPMA to re-evaluate these lands for potential inclusion as 'Wild Lands.' At the very least, BLM should consider a "no action" alternative before selling these leases. At the lease stage, the "no action" alternative is, of course, the option of not selling the lease. 42 U.S.C. § 4332(2)(E); 40 C.F.R. § 1502.14(d). Alternatively, BLM should consider an alternative whereby BLM subjects these lease parcels to NSO stipulations. In both situations, BLM would preserve its ability to preclude surface use of these parcels and thereby preserve its ability to properly account for wilderness values through site-specific NEPA analysis.

IM 2004-110 Change 1 requires BLM to "evaluate the application of BMPs when taking leasing actions." (See also WO IM 2004-194.) The Documentation of Land Use Plan Conformance and NEPA Adequacy (DNA) prepared by the Field Offices where these parcels are located give no indication there was any evaluation of applying BMPs to the CWP and WSA parcels in order to protect their values. Because neither the DNAs nor the underlying Resource Management Plans (RMPs) evaluated the application of BMPs to these parcels, IM 2004-110 Change 1 (Change IM) was violated. No evaluation of the potential application of BMPs has occurred prior to offering the parcels for sale.

The leases at issue here contain a number of stipulations intended to protect resources. Many of them are timing limitation stipulations intended to protect big game, sage grouse, or raptors. While these stipulations may help protect these specific resources temporarily, they do not prohibit development; as IM 2004-110 Change 1 recognizes, "[O]ften BMPs, applied as either stipulations or conditions of approval, are more effective in mitigating impacts to wildlife resources than stipulations such as timing limitations or seasonal closures." Thus, the existing stipulations attached to these parcels are not enough, standing alone, to meet the requirements of the Change IM. ***BMPs*** must also be ***evaluated*** before leases are offered for sale, and there is no indication this occurred for these parcels. Without identifying and evaluating the efficacy of BMPs before leases are offered for sale, BLM has no idea whether BMPs would be able to mitigate impacts within acceptable limits. *See e.g.*, 43 U.S.C. § 1732(b) (requiring BLM to prevent unnecessary or undue degradation.). Evaluating the lease stipulations proposed against those proposed by BLM under the Lander RMP DEIS, for example, would be an instructive exercise that might lead to a better decision.

There is no indication BLM identified or evaluated the BMPs referenced in IM 2004-194 in the context of the site-specific conditions and circumstances presented by the delineated lease parcels being offered for sale. BLM did not even evaluate the application of BMPs that should be "considered in nearly all circumstances," such as requirements for camouflage painting and construction of roads to a standard "no higher than necessary." Certainly such BMPs can be identified, evaluated, and required, as effectively at the leasing stage as the application for permit to drill (APD) stage. Indeed, a front-end analysis of BMPs provides a measure of certainty for the lessee and, most importantly, may reveal that BMPs, alone, may be inadequate to mitigate impacts within acceptable limits, thus indicating the need for more robust lease stipulations. Moreover, it may behoove BLM to require the BMPs as a lease stipulation rather than as a condition of approval. Additionally, front-end evaluation of BMPs may indicate that BLM may be unable to mitigate impacts within acceptable limits and, therefore, the lease should either be subject to an NSO stipulation or withdrawn from sale (i.e., through selection of a "no action" alternative).

There is no doubt that IM 2004-110 Change 1 is intended to apply to leasing. The IM specifically applies to fluid minerals ***leasing*** actions. It is not the intent of the Change IM with respect to BMP evaluation, that it be applied at the APD stage. That had already been very specifically accomplished with IM 2004-194 issued on June 22, 2004. The Change IM was issued on August 16, 2004, ***after*** IM 2004-194, to fill in gaps in the ***leasing*** program guidance provided by IM 2004-110. Thus, while BLM may further consider and refine BMPs at the APD stage, it nevertheless ***must*** evaluate their application at the leasing stage. There is no indication in the Documentations this was done for any of the parcels listed in the table above, despite the clear language in the Change IM that BLM "shall also evaluate the application of BMPs" at the leasing stage.

Additionally, there is no question that BLM has ongoing authority and responsibility to consider the wilderness values of an area, especially where an area has been proposed for wilderness consideration by private citizens. IM 2003-275 recognizes this authority and that citizens' wilderness proposal areas may contain a number of values that are not protected by the above

stipulations, such as providing solitude and preserving areas that do not have significant signs of human use or development. The stipulations which would be applied to these parcels do not protect these kinds of values which clearly exist in the CWP parcels. BLM's failure to evaluate BMPs as a way to protect these values violated IM 2004-110 Change 1 and IM 2003-275.

Interestingly, for Parcels 26, 38, 45, 46[48],62, 63, 64, 65, and 66, BLM's Appendix D states in relevant part, in response to whether parcels were within citizens' proposed wilderness, "Yes, but dropped during the RMP process. See RMP ROD Page 1-3, bullet 4 and Proposed RMP/Final EIS page 2-10 & 11 'Expanded Wilderness Study Area Alternative.'" Parcels 73-76 and 94 were not addressed in this table (despited being known by BLM to be part of citizens' proposed wilderness areas), an omission that reveals an apparent failure to take the legally required 'hard look.' When the Rawlins RMP ROD is consulted at the relevant page, it is noted that lands with wilderness characteristics were not considered for withdrawal from future leasing in cases where "valid existing lease rights prohibit implementation of management actions to protect the wilderness characteristics identified." Rawlins RMP ROD at 1-3.

First of all, because the lands being offered for lease in the May 2012 lease sale will not have any valid existing lease rights (being unheld by any corporation and available for auction once again), the idea that conservation protections are "prohibited" is absurd. Secondly, using an existing leasehold, using a paper right that has not been exercised (otherwise the lease in question would be "held by production" and ineligible for the lease sale) as a rationale for not protecting lands found to possess wilderness character is directly contrary to the directives of IM 2011-154, which state, "Undeveloped ROWs and similar undeveloped possessory interests (e.g., mineral leases) are not treated as impacts to wilderness characteristics because these rights may never be developed." IM 2011-154 at 8. Because BLM's earlier decision is inconsistent with present policy, a new wilderness inventory and determination is warranted, and these parcels should be deferred until such time as the additional analysis is completed.

BLM has the ongoing authority and responsibility to consider the wilderness values of an area before it authorizes the sale of leases which intrude upon Citizen Wilderness Proposal areas. The U.S. District Court for the District of Utah recently underscored this duty with its decision in *Southern Utah Wilderness Alliance v. Norton*, Case No. 2:04CV574 DAK. The Court held that BLM violated NEPA by issuing leases in areas proposed for wilderness without taking a hard look at the no-leasing alternative and by failing to consider significant new information about wilderness values and characteristics of the parcels. The Rawlins RMP contains a similar error of law. The BLM should take the hard look at a no-leasing alternative for these parcels and give adequate consideration to the wilderness values and characteristics of the parcels. All eight of the special values parcels should be withdrawn from the sale.

Historic Trails

Parcels 13, 14, 17, 18, 20, 29, 39, 35, 36, 63, 64, 65, 66, 211, 219, appear to be astride or extremely close to the Overland and/or Cherokee historic trails, which is currently being considered for National Historic Trail designation in the National Park Service's Oregon,

[48] Parcel 46 had two entries in the Appendix with conflicting information.

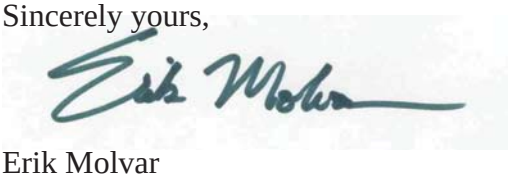
Mormon Pioneer, California, and Pony Express Trails expansion feasibility study. Parcels 14, 15, 16, 25, 62, 166, 182, 183, 212, 214, 215, 230, 231, appear to be within 5 miles of these trails. Parcels 26, 29, 38, 39, 40, are slated for deletion from the lease auction, which dispenses with our concerns regarding impacts to historic trails as long as BLM follows through with these deletions. In addition, a large number of parcels appear to be within 5 miles of the Oregon/Mormon/California/Pony Express NHTs and the Sublette Cuttoff within or near the South Pass Historic Landscape, but if BLM follows though with its proposal to defer or delete these parcels, that will take care of our concerns regarding these trails. The same is true for Parcels 168, 169, and 190. However, Parcels 192, 193, 194, 195, 205, 216, 208, 209, 238, 239, 240, 246, 247, 248, 249, 250, and 251 are within 5 miles of these trails and are proposed for leasing in the BLM's EA. Parcels 229, 230, 231, 232, 233, 234, 235, 236, 237, 241, 242, 243, 244, and 245 are across or within 5 miles of the Ham's Fork Cutoff. For these parcels, BLM should attach a new, stronger lease stipulation to protect the settings of these historic trails, along the lines of the measure that the BLM has proposed for implementation in the Lander RMP: three-mile No Surface Occupancy with an additional two mile CSU stipulation that prohibits surface occupancy if roads or developments are visible from the trail.

Parcels issued under a legally inadequate RMP

The Rawlins Resource Management Plan, approved in January 2009, is legally inadequate inasmuch as the EIS supporting the final ROD failed to consider an adequate range of alternatives. Among the alternatives which were reasonable and yet were not encompassed by the range of alternatives analyzed by BLM including but not limited to the Western Heritage Alternative. This alternative prescribed no future leasing in citizens' proposed wilderness as well as designation of a Powder Rim ACEC, neither of which was considered in detail under any alternative in the EIS. This alternative had broad public support (both within Wyoming and nationally), and was deemed worthy of detailed consideration by Governor Freudenthal in official public statements. The BLM's rationale for eliminating this alternative from detailed consideration was fatally flawed (i.e., the concept that not allowing surface occupancy for oil and gas development renders the alternative unreasonable is not supported by any fact or law, and is therefore arbitrary and capricious). Lease parcels to which this concern applies includes parcels in the Adobe Town citizens' proposed wilderness (45 and 46) and in the Kinney Rim South citizens' proposed wilderness (Parcels 62, 63, 64, 65, and 66). BLM had full authority to withdraw these lands from future reason for any reason it chose (or indeed, no reason at all) including the option of withdrawing the Adobe Town DRUA from future leasing, but failed to consider any of these options in the EIS, therefore leading to the legally flawed underpinning for this lease sale.

Conclusion
Thank you for considering our comments on the Lease Parcel Review EA. The BLM has done a good job deferring and deleting parcels to protect sage grouse Core habitats in some (but not all) areas. Even more work remains to be done on potential wilderness, big game crucial ranges, and other sensitive wildlife habitats. We believe that the BLM should also go farther, deferring additional parcels on sensitive lands as outlined above and also applying more protective stipulations to the parcels that are approved for sale.

Sincerely yours,



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