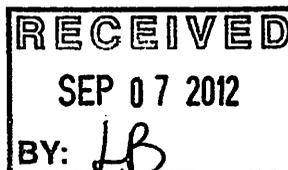


September 7, 2012

VIA FACSIMILE (307-775-6203)

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



Re: **Protest of the Bureau of Land Management's Decision to Offer Fifteen (15) Parcels In Wyoming's November 2012 Oil and Gas Lease Sale**

Pursuant to 43 C.F.R. §§ 4.450-2 and 3120.1-3, The Wilderness Society ("TWS"), Wyoming Outdoor Council ("WOC"), Biodiversity Conservation Alliance ("BCA"), Natural Resources Defense Council (NRDC) and Wyoming Wilderness Association (WWA) (collectively, "Protestors") protests the Bureau of Land Management's decision to offer fifteen parcels in Wyoming's November 2012 oil and gas lease sale.¹ Those parcels are assigned the following numbers in the Sale Notice, and unless otherwise noted are referred to throughout this protest as the "Protested Parcels":

	PARCEL NUMBER	FIELD OFFICE
1	WY-1211-15	Rawlins
2	WY-1211-16	Rawlins
3	WY-1211-17	Rawlins
4	WY-1211-18	Rawlins
5	WY-1211-19	Rawlins
6	WY-1211-21	Rawlins
7	WY-1211-23	Rawlins
8	WY-1211-24	Rawlins
9	WY-1211-25	Rawlins
10	WY-1211-26	Rawlins
11	WY-1211-27	Rawlins
12	WY-1211-28	Rawlins
13	WY-1211-29	Rawlins
14	WY-1211-30	Rawlins
15	WY-1211-31	Rawlins

INTRODUCTION

I. INTERESTS OF THE PROTESTORS

TWS protects wilderness and inspires Americans to care for our wild places. TWS represents more than one-half million members and supporters nationwide, all of whom have a great interest in the protection and enhancement of the natural values and recreational opportunities provided by our public lands, including lands that are Included In or may be affected by Wyoming's November 2012 lease sale.

¹ The Protested Parcels total approximately 17,561 acres.

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 Rawlins Field Office where the protested parcels are located. Wyoming Outdoor Council members utilize land and water resources within and near these areas for hiking, fishing, camping, recreational, and aesthetic purposes. The Wyoming Outdoor Council is actively involved in BLM oil and gas activities throughout Wyoming and participates in all aspects of BLM oil and gas projects by involving its staff and members in submitting comments and attending public meetings. The Wyoming Outdoor Council's long-standing commitment to environmentally sound oil and gas leasing and development throughout Wyoming stems over forty-five years. The Wyoming Outdoor Council submitted comments on the environmental assessment (EA) prepared for the November 2012 competitive oil and gas lease sale. Consequently, the Wyoming Outdoor Council and its members would be adversely affected by the sale of the lease parcels at issue here, and it has an interest in this lease sale.

BCA is a nonprofit conservation group that works to protect wildlife and wild places in Wyoming and surrounding states. A large plurality of BCA members live within the bounds of the Rawlins Field Office, and many of our members visit and enjoy Adobe Town and the Kinney Rim lands affected by this lease sale. BCA submitted comments on the November 2012 EA, and has a strong interest in ensuring that oil and gas development proceeds responsibly and in a manner that protects sensitive lands and wildlife.

NRDC is a non-profit environmental membership organization with more than 300,000 members throughout the United States and many members in Wyoming. NRDC has had a longstanding and active interest in the protection of the public lands in Wyoming. With its nationwide membership and a staff of lawyers, scientists, and other environmental specialists, NRDC plays a leading role in a diverse range of land and wildlife management and resource development issues. Over the years, NRDC has participated in a number of court cases involving resource development issues throughout the American West, including Wyoming.

For the past ten years, as a non-profit conservation group, the Wyoming Wilderness Association has worked to protect the special wild places on Wyoming public lands. Many of our over 700 members live in proximity to the Rawlins Field Office and enjoy hunting, hiking and fishing on the primitive lands where these protested November 2012 lease sale parcels are located. WWA has a strong interest in insuring that these important landscapes are recognized and duly managed for the biological, geological, cultural and aesthetic values that make them one of a kind.

II. AUTHORIZATION TO FILE THIS PROTEST

Nada Culver is Senior Counsel and Director of TWS's BLM Action Center, and is authorized to file this protest on behalf of TWS and its members. Bruce Pendery is Staff Attorney of WOC, and is authorized to file this protest on behalf of WOC and its members. Erik Molvar is Executive Director of Biodiversity Conservation Alliance and is authorized to file this protest on behalf of BCA and its members. Rebecca Riley is an Attorney at NRDC, and is authorized to file this protest on behalf of NRDC and its members. Tony Ferlisi is the BLM Outreach Coordinator at WWA, and is authorized to file this protest on behalf of WWA and its members.

STATEMENT OF REASONS

I. THE PROPOSED LEASE SALE VIOLATES FLPMA AND BLM MANUALS 6310 AND 6320.

A. The BLM Has Not Fulfilled Its Duty to Inventory and Consider the Wilderness Characteristics of the Protested Parcels.

Each of the Protested Parcels is located either adjacent or near to the Adobe Town Wilderness Study Area ("WSA"). Under the Federal Land Policy and Management Act ("FLPMA"), the BLM must maintain a current wilderness inventory for the Protested Parcels (as it must for all public lands) and consider that inventory during the land use planning process. 43 U.S.C. § 1711(a); see also *Ore. Natural Desert Ass'n v. BLM*, 625 F.3d 1092, 1122 (9th Cir. 2010) (confirming the obligation of BLM to consider wilderness characteristics in its planning process). Furthermore, the BLM must comply with its own policies that detail how to comply with FLPMA obligations on conducting inventories for wilderness characteristics and considering those inventories during land use planning. Because the BLM has not complied with FLPMA or BLM Manuals 6310 and 6320, it may not offer the Protested Parcels in the November 2012 lease sale.

1. The BLM has not properly considered the wilderness characteristics of parcels 15-19, 21 and 23-28.

In 2002, the BLM determined that all or portions of parcels 15-19, 21 and 23-28 contained wilderness characteristics. Final November 2012 Lease Sale Environmental Assessment ("Final EA") at 73. However, because those parcels were either already leased or adjacent to leased lands, the BLM eliminated alternatives from the Rawlins RMP Final EIS that would have protected their wilderness characteristics. *Id.* Because that decision was and remains inconsistent with the BLM's obligations under FLPMA and Manuals 6310 and 6320, the BLM must withdraw parcels 15-19, 21 and 23-28 from the sale.

Manuals 6310 and 6320 prohibit the BLM from treating "undeveloped possessory interests (e.g., mineral leases) . . . as impacts to wilderness characteristics because these rights may never be developed." Manual 6310 at 10; see also *id.* at 3 (requiring the BLM to "document existing conditions as opposed to potential future conditions."). Yet, in the Final EA, the BLM has repeated the error it committed in the Rawlins RMP; and "because of preexisting oil and gas leases", it has refused to consider measures to protect those characteristics of parcels 15-19, 21 and 23-28. Final EA at 73. Thus, the BLM must remove parcels 15-19, 21 and 23-28 from the lease sale and reevaluate their management, in accordance with the requirements of Manuals 6310 and 6320.

Additionally, Manual 6320 prohibits the BLM from treating "external" impacts, such as oil and gas activity, as a "determining factor [in whether the lands can be effectively managed to protect their wilderness characteristics] . . . unless these impacts are pervasive and omnipresent." Manual 6320 at 3. Neither the Rawlins RMP nor the Final EA contain evidence that oil and gas activity in the vicinity of parcels 15-19, 21 and 23-28 is "pervasive or omnipresent" (or so much so) that the lands, in particular those lands adjacent to the Adobe Town WSA, cannot "be effectively managed to protect their wilderness characteristics." *Id.* Consequently, the BLM may not base its decision to ignore and sacrifice the wilderness characteristics of those parcels in favor of oil and gas leasing on the existence of undocumented "external" impacts.

Finally, if leases covering parcels 15-19, 21 and 23-28 have recently expired, and those leases are now being reoffered, then the BLM can no longer claim that "existing leases" are preventing it from managing those parcels for the protection of wilderness characteristics. Under current guidance, the BLM must consider new information affecting the management of wilderness characteristics prior to approving "project-level decisions." See Instruction Memorandum ("IM") 2011-154 ("BLM will continue to consider the wilderness characteristics on public lands as part of its multiple-use mandate in developing and revising land use plans and when making subsequent project level decisions."); Manual 6320 at 3 ("The BLM must determine how lands with wilderness characteristics will be managed . . . based on present knowledge of the resources, ongoing uses, and valid existing rights in the area."). Moreover, "[w]hile an RMP may designate land as 'open' to possible leasing, such a designation does not mandate leasing," and "there is no presumed preference for oil and gas development over other uses." IM 2010-117 at 2, 3. Thus, as required by current guidance, the BLM must defer parcels 15-19, 21 and 23-28 from the lease sale, so that the management of their wilderness characteristics can be reconsidered.

2. The BLM has not properly inventoried parcels 29-31 for wilderness characteristics.

Parcels 29-31 are located in the Kinney Rim citizen wilderness proposal area. Final EA at 51-52. The BLM's wilderness inventory for this area was conducted in 2002, and does not comply with Manual 6310.² See *N. Plains Res. Council v. Surface Transp. Bd.*, 668 F.3d 1067, 1086-87 (9th Cir. 2011) (rejecting agency's reliance on "stale" inventory data). Moreover, the findings of the 2002 inventory are explicitly contradicted by the BLM's Draft Programmatic EIS for Oil Shale and Tar Sands ("Oil Shale PEIS"). Thus, the BLM cannot rely on the findings of the 2002 inventory to support its decision to lease parcels 29-31.

In the 2002 inventory, the BLM cited linear disturbances and grazing features as evidence that the Protested Parcels lack the requisite "naturalness." However, those features are the very sorts of "human works" that are deemed "acceptable" by Manual 6310 "so long as they are substantially unnoticeable." Manual 6310 at 6-7; see also *id.* at 7 ("Avoid an overly strict approach to assessing naturalness."). Thus, the 2002 inventory is fundamentally inconsistent with the requirements of Manual 6310.

Moreover, the 2002 inventory is contradicted by the findings of the Oil Shale PEIS, where the BLM determined that the Protested Parcels do in fact contain wilderness characteristics. Oil Shale PEIS at 3-36. As noted in the Oil Shale PEIS, the Adobe Town Very Rare or Uncommon area is "located within a much larger area of land that has been identified as having wilderness characteristics." *Id.* at 3-34. That "much larger area" includes parcels 29-31, which would not be available for oil shale leasing under the Oil Shale PEIS's preferred alternative.

While the Wyoming State Office recently rejected the findings of the Oil Shale PEIS concerning the presence of wilderness characteristics in the lands surrounding the Adobe Town WSA, claiming that the findings are "not accurate",³ it has yet to provide the public with documentation showing why the Oil

² The BLM conducted the 2002 inventory in accordance with IM 2003-275 – Change 1, which expired on Sept. 30, 2004. See Rawlins Final RMP at A38-152 (explaining that "the Adobe Town fringe areas . . . do not possess wilderness characteristics" because they do not meet the criteria set forth in IM 2003-275 – Change 1).

³ BLM, Decision – May 2012 Protests at 21, available at <http://www.blm.gov/pgdata/etc/medialib/blm/wy/programs/energy/og/leasing/protests/2012/may.Par.31663.File.dat/MayProtest-Decision.pdf>.

Shale PEIS—an official statement from the BLM’s national office—is inaccurate. Thus, as required by Manual 6310 and FLPMA, the BLM must defer the Protested Parcels from the lease sale in order to update its wilderness inventory for the area.

B. The Rawlins RMP Is Flawed and Cannot Support A Decision to Lease the Protested Parcels.

The BLM may not implement land use plans that violate applicable law. 43 U.S.C. § 1732(a); *see also New Mexico ex rel. Richardson v. BLM*, 565 F.3d 683, 711 (10th Cir. 2009) (“Accordingly, the option of closing the Mesa is a reasonable management possibility. BLM was required to include such an alternative in its NEPA analysis, and the failure to do so was arbitrary and capricious.”). Here, the Rawlins RMP does not comply with applicable law, because it opens lands with wilderness characteristics to oil and gas leasing without first considering “measures to provide protection for any wilderness characteristics of lands in addition to the previously established WSAs.” Rawlins Final RMP at 2-11; Final EA at 73. That decision violated FLPMA, as well as the National Environmental Policy Act (“NEPA”). *See New Mexico ex rel. Richardson*, 565 F.3d at 711 (requiring the BLM to consider a “no leasing” alternative for an environmentally sensitive area); 40 C.F.R. § 1502.14(a) (requiring consideration of a reasonable range of alternatives). Consequently, the BLM must defer the Protested Parcels from the lease sale until it brings the Rawlins RMP into compliance with applicable law (and policy).

Moreover, the Rawlins RMP does not adequately protect the wilderness characteristics from the impacts of oil and gas leasing and development, as claimed in the Final EA. Final EA at 74 (“One of those stipulations is a Controlled Surface Use [‘CSU’] stipulation that provides for the protection of the Adobe Town Dispersed Recreation Use Area” and “provides a mechanism to impose measures on development proposals to protect DRUA values.”). In fact, the BLM admitted that the “Approved RMP was selected from an alternative in the Proposed RMP/Final EIS that *did not include management for wilderness characteristics*.” Rawlins ROD and Approved RMP at 1-3 (emphasis added); *see also id.*, at A37-1-3 (providing that designation of the Dispersed Recreation Management Area “will not limit mineral leasing or development nor will it sunset existing leases” and providing that the “primitive” opportunity class will be applicable only to the Adobe Town WSA). Thus, the Final EA tiers to an unlawful RMP, which failed to consider any alternatives to protect lands with wilderness characteristics in the Rawlins Field Office.

II. OFFERING THE PROTESTED PARCELS IN THE NOVEMBER 2012 LEASE SALE WOULD VIOLATE NEPA.

A. The Final EA Lacks A Reasonable Range of Alternatives.

The BLM has not evaluated a reasonable range of alternatives for protecting the wilderness characteristics of the Protested Parcels. Under NEPA, the BLM must consider a broad range of alternatives to mitigate environmental impacts. 40 C.F.R. § 1502.14(a); *see also Theodore Roosevelt Conservation P’ship v. Salazar*, 661 F.3d 66, 72-73 (D.C. Cir. 2011) (requiring the BLM to consider a reasonable range of alternatives for oil and gas activity); IM 2010-117 (requiring consideration of “alternatives to the proposed action that may address unresolved resource conflicts.”). Additionally, under current policy, the BLM must fully “consider” wilderness characteristics during planning actions and evaluate a range of measures to protect wilderness characteristics during the leasing process, including measures not contained in existing RMPs. *See* IM 2011-154 at Att. 2; IM 2010-117 at III. E., F.

A "rule of reason" is used to determine if an adequate range of alternatives have been considered, and this rule is governed by two guideposts: (1) the agency's statutory mandates; and (2) the objectives for the project. *New Mexico ex rel. Richardson*, 565 F.3d at 708. Here, there is no doubt that BLM's legal mandates under FLPMA and NEPA require it to fully consider the protection of wilderness values, and under IM 2010-117, the agency cannot treat leasing as the sole objective of oil and gas lease sales; instead, it must treat the "protection of other important resources and values" as an equally important objective.

Yet, in the Final EA, the BLM has failed to evaluate an adequate range of alternatives that would protect the wilderness characteristics of the Protested Parcels from the impacts of the lease sale. Such alternatives include offering the Protested Parcels with a no-surface occupancy stipulation or deferring the parcels (at a minimum) until the current Visual Resource Management plan amendment is finished. Because the BLM has not considered those alternatives, or additional alternatives to protect the wilderness characteristics of the Protested Parcels, it must defer the Protested Parcels from the lease sale.

B. The Proposed Lease Sale Will Improperly Limit the Range of Alternatives for the Rawlins Field Office's Visual Resource Management RMP Amendment.

The BLM is currently preparing an amendment to the Rawlins RMP to revise visual resource management (VRM) classifications for the Rawlins Field Office, based on a current visual resources inventory. The inventory was necessitated because the Rawlins Field Office had not properly updated its inventory when preparing the Rawlins RMP. The Director granted protests regarding VRM Classifications and committed the Rawlins Field Office to completing an inventory and updating the classifications of visual resources.⁴ The updated inventory, completed in February 2011, found that much of the area around the Adobe Town WSA remains relatively pristine and undeveloped and therefore qualifies for VRM Class II management.⁵

The management objective for VRM Class II areas "is to retain the existing character of the landscape" and any "level of change to the characteristic landscape should be low." BLM Manual H-8410-1 at V.B.2. However, by intensively leasing these lands under their current VRM classification (Class III), the BLM is ignoring new information and foreclosing opportunities to manage these areas to protect their visual resources. By essentially locking in the current VRM Class III classification and predetermining the outcome of the VRM process, the BLM is in violation of NEPA, which provides that:

(a) Until an agency issues a record of decision as provided in Sec. 1505.2 (except as provided in paragraph (c) of this section), *no action concerning the proposal shall be taken which would:*

1. Have an adverse environmental impact; or

⁴ Director's Protest Resolution Report for Rawlins RMP, p. 140, available at: http://www.blm.gov/pgdata/etc/medialib/blm/wo/Planning_and_Renewable_Resources/wvomlng.Par.46496.File.pdf/Rawlins_Directors_Protest_Resolution_Report_12.24.08.pdf

⁵ To be clear, the BLM has an obligation under the terms of the negotiated settlement for the Rawlins RMP to consider expanding VRM Class I management beyond the Adobe Town WSA. The findings of the visual resources inventory in no way limit that obligation.

2. *Limit the choice of reasonable alternatives.*

....

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

3. Is justified independently of the program;
4. Is itself accompanied by an adequate environmental impact statement;
and
5. *Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.*

40 C.F.R. § 1506.1 (emphases added). While the agency has discretion in determining where this standard applies, there is no question in this context that leasing the Protested Parcels will limit the choice of alternatives and prejudice the ultimate decision in the ongoing VRM Amendment to the Rawlins RMP.

III. BLM IS VIOLATING A BINDING SETTLEMENT AGREEMENT.

By proceeding with leasing the Protested Parcels, the Rawlins Field Office is violating the terms of the settlement agreement that resolved litigation over the Rawlins RMP. In the settlement agreement (copy attached for reference), which the parties signed on February 7, 2012, the BLM agreed to comply with the following terms: (1) consider designating the Adobe Town Dispersed Recreation Area as VRM Class II; (2) considering designating areas surrounding the Adobe Town WSA as VRM Class I; and (3) comply with the requirements of IM 2011-154 (now also incorporated in BLM Manuals 6310 and 6320). However, since approving the settlement agreement, the BLM has not only failed to comply with its own policies on lands with wilderness characteristics but also is foreclosing its ability to reconsider VRM classifications, as discussed in detail above. Leasing the Protested Parcels will violate the intent of the settlement agreement.

CONCLUSION

For the foregoing reasons, the BLM must defer the Protested Parcels from the November 2012 lease sale.

Sincerely,

Nada Culver
Director and Senior Counsel, BLM Action Center
The Wilderness Society
1660 Wynkoop Street, Suite 850
Denver, CO 80202
303-650-5818 Ext. 117

Bruce Pendery
Staff Attorney and Program Director
Wyoming Outdoor Council
444 East 800 North
Logan, UT 84321
435-752-2111

Erik Molvar
Executive Director
Biodiversity Conservation Alliance
P.O. Box 1512
Laramie, WY 82073
307-742-7978

Rebecca Riley, Attorney
Natural Resources Defense Council
2 N. Riverside Plaza, Suite 2250
Chicago, Illinois 60606

Tony Ferlisi
BLM Outreach Coordinator
Wyoming Wilderness Association
PO Box 1714
Lander, WY 82520

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Natural Resources Defense Council,)
The Wilderness Society,)
Biodiversity Conservation Alliance,)
Wyoming Outdoor Council, and)
Wyoming Wilderness Association,)

Plaintiffs,)

v.)

Case No. 1:10-cv-00734 (BAH)

United States Bureau of Land Management,)
and Ken Salazar, in his official capacity as)
Secretary of the Interior,)

Defendants,)

State of Wyoming, BP American)
Production Co., Burlington Resources)
Oil & Gas Co. LP, Devon Energy Corp.,)
Anadarko Petroleum Corp., and Samson)
Resources Co.,)

Intervenor-Defendants)

SETTLEMENT AGREEMENT

WHEREAS, on December 24, 2008, the U.S. Bureau of Land Management (“BLM”) approved the Rawlins Resource Management Plan (“Rawlins RMP”), which provides direction for management of all resources on BLM-administered land in the Rawlins RMP Planning Area;

WHEREAS, on May 6, 2010, Plaintiffs Natural Resources Defense Council, The Wilderness Society, Biodiversity Conservation Alliance, Wyoming Outdoor Council, and Wyoming Wilderness Association (collectively “Plaintiffs”) filed a Complaint for declaratory and injunctive relief against Ken Salazar, in his official capacity as Secretary of the Department of the Interior, and the U.S. Bureau of Land Management (collectively “Defendants”);

WHEREAS, Plaintiffs allege that the approval of the Rawlins RMP and actions taken to implement that plan violated the National Environmental Policy Act ("NEPA"), and the Federal Land Policy and Management Act ("FLPMA");

WHEREAS, on October 5, 2010, the State of Wyoming, Burlington Resources Oil & Gas Company LP, Devon Energy Corporation, Anadarko Petroleum Corporation, BP American Production Company, and Samson Resources Company were granted status as Intervenors in this action; and

WHEREAS, Defendants and Plaintiffs (the "Settling Parties"), through their authorized representatives, and without any admission or final adjudication of the issues of fact or law with respect to Plaintiffs' claims, have reached a settlement in this action;

NOW, THEREFORE, THE SETTLING PARTIES HEREBY STIPULATE AND AGREE AS FOLLOWS:

1. Defendants commit to complete the ongoing Continental Divide – Creston Natural Gas Project photochemical grid modeling as funding allows, where the 12- and 36-kilometer domains encompass the entire Rawlins Field Office planning area in the model's analysis and prediction of cumulative air quality impacts from oil and gas development, within two years of the execution of this agreement.
2. For two years from the date of executing this agreement, Defendants commit to maintaining BLM-sponsored air quality monitoring stations as funding allows. BLM commits to seeking additional funding for installation of additional stations, as determined necessary and appropriate by the BLM and the 3-State monitoring group, within two years of the execution of this agreement. The 3-State monitoring group is comprised of the states of Utah, Wyoming, and Colorado, and

the BLM is engaged in ongoing consultation with EPA Region 8 concerning the work of the monitoring group.

3. For two years from the date of executing this agreement, Defendants will require all BLM-approved energy development projects in the Rawlins RMP planning area to comply with all air quality regulations, standards, and additional requirements, as determined applicable by the Wyoming Department of Environmental Quality ("WDEQ").

4. In the course of the programmatic sage-grouse RMP amendment being conducted in Wyoming (*see* 75 FR 30054-30055, May 28, 2010), the BLM commits to consider, at a minimum, the following proposed management actions in the range of reasonable alternatives:

- a. Within Cores, prohibition of surface disturbing activity or surface occupancy within 2 miles of leks.
- b. Within Cores, application of timing stipulations within 3 miles of active leks.
- c. Within Cores, no authorization for new transmission corridors within 2 miles of active leks.
- d. Within Cores, no exceptions for drilling/production/exploration units or project area boundaries when applying Core Area protections.
- e. Outside Cores, no surface occupancy within 0.6 mile of active leks.

5. Defendants commit to consider designation of the Adobe Town Dispersed Recreation Area as Visual Resource Management ("VRM") Class II during the new plan review and Environmental Impact Statement (EIS) to establish VRM class designations for the Rawlins Field Office ("VRM Plan Review and EIS").

6. Defendants commit to consider expansion of VRM Class I area beyond boundaries of Adobe Town Wilderness Study Area ("WSA") in the VRM Plan Review and EIS.

7. In its planning and project decision-making within the Rawlins RMP planning area, Defendants commit to follow the guidance provided in BLM Instruction Memorandum 2011-154 (“Requirement to Conduct and Maintain Inventory Information for Wilderness Characteristics and to Consider Lands with Wilderness Characteristics in Land Use Plans,” July 25, 2011) as long as this IM is not superseded and remains in effect, including these requirements:

- a. Maintain on a continuing basis an inventory of all public lands and their resources and other values. This inventory requirement includes maintaining information regarding wilderness characteristics.
- b. Consider the wilderness characteristics on public lands as part of its multiple-use mandate in developing and revising land use plans and when making subsequent project level decisions.
- c. Analyze the potential effects of proposed actions and alternatives for land use plan decisions on lands with wilderness characteristics when they are present.

8. Nothing in this Settlement Agreement modifies or amends the Rawlins RMP. The Rawlins RMP remains in full force and effect unless and until lawfully amended, maintained, or revised, and nothing in this Settlement Agreement creates additional obligations or requirements for currently pending or future site-specific or field-wide projects, permits, or analyses. Except as necessary to enforce the terms of this Settlement Agreement against the parties hereto, this Settlement Agreement is not admissible nor shall it be considered for any purpose in any proceeding before any court or administrative agency.

9. No provision of this Settlement Agreement shall be interpreted as, or constitute, a commitment or requirement that Defendants take action in contravention of the APA, FLPMA, or NEPA, or any other law or regulation, either substantive or procedural. Nothing in this

Settlement Agreement shall be construed to limit or modify the discretion accorded to Defendants by the APA, BLM regulations, FLPMA, or NEPA, or general principles of administrative law with respect to the substance of any final determination, or, subject only to the specific commitments in paragraphs 1 through 7 of this Settlement Agreement, the procedures to be followed in making any determination required herein.

10. Nothing in this Settlement Agreement shall be interpreted as, or shall constitute, a requirement that Defendants are obligated to pay any funds exceeding those available, or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable appropriations law.

11. This Settlement Agreement was negotiated to avoid further litigation only. This Settlement Agreement has no precedential value and does not represent an admission or waiver by any Settling Party to any fact, claim, liability or defense relating to any issue in this lawsuit and may not be used as evidence of such fact, claim, liability or defense in any litigation.

12. Plaintiffs agree to dismiss the action without prejudice and each Settling Party shall bear its own attorneys' fees and costs.

13. Within five (5) days of the full execution of this Agreement, and pursuant to Federal Rule of Civil Procedure 41(a), the parties shall file with the United States District Court for the District of Columbia the Agreed Order attached to this Agreement as Exhibit A. Should the Court, for any reason, modify, alter, or refuse to enter the Agreed Order that is attached hereto, this Agreement will be void.

14. In the event that Plaintiffs believe BLM has failed to comply with any term or condition of this Agreement, the Settling Parties shall use their best efforts to settle and resolve the controversy. To that end, Plaintiffs shall commence an informal dispute resolution period, to be

no shorter than thirty (30) days, by giving written notice to Defendants stating the nature of the matter to be resolved. The Settling Parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests in the ongoing integrity of this Agreement, attempt to reach a just and equitable solution satisfactory to all parties. If, after implementation of the informal dispute resolution process in this Paragraph, Plaintiffs maintain that Defendants have not performed the obligations established in Paragraphs 1 through 7 of this Agreement, Plaintiffs may move for a judicial determination of that fact and for a rescission of the Agreement which, if granted, would entitle Plaintiffs to reopen the litigation settled by this Agreement. Reopening the litigation in this manner shall be the sole judicial remedy for a breach of this Agreement.

15. Any notices required or provided for by this Agreement shall be in writing, effective upon receipt, and sent to the following:

a. For Plaintiffs:

Rebecca J. Riley
Natural Resources Defense Council
2 N. Riverside Plaza, Suite 2250
Chicago, IL 60606

Sharon Buccino
Natural Resources Defense Council
1152 15th Street, NW, Suite 300
Washington, DC 20005

John Persell
Biodiversity Conservation Alliance
412 South 2nd Street
Laramie, WY 82070
or
P.O. Box 1512
Laramie, WY 82073

b. For Defendants:

Joanna K. Brinkman

United States Department of Justice
Environment & Natural Resources Division
Natural Resources Section
601 D Street NW
Washington, DC 20004

Philip C. Lowe
United States Department of Interior
Rocky Mountain Regional Solicitor's Office
755 Parfet Street, Suite 151
Lakewood, CO 80215

16. The Settling Parties agree that Plaintiffs' sole recourse for any challenge to the legal sufficiency of any agency action taken pursuant to paragraphs 1 through 7 of this Agreement is to challenge BLM's issuance of a final decision document through initiation of a new administrative proceeding under procedures provided by the Department of Interior or in a lawsuit under the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Plaintiffs retain the right to assert all claims in, and Defendants retain the right to assert all defenses to, any such administrative proceeding or lawsuit.

17. Nothing in this Agreement shall be read to preclude any Plaintiff from challenging leases, permits, or other decisions not explicitly cited in Plaintiffs' complaint in the above-captioned case.

18. The undersigned representatives of each Settling Party certify that they are fully authorized by the Settling Party or Parties they represent to agree to the terms herein.

19. This Settlement Agreement may only be supplemented, modified, or amended by written agreement of the Settling Parties.

20. This Settlement Agreement represents the entirety of the Settling Parties' commitment with regard to settlement.

IT IS HEREBY AGREED.

IGNACIA S. MORENO
Assistant Attorney General

Dated: February 7, 2012

/s/ Joana K. Brinkman

JOANNA K. BRINKMAN
Natural Resources Section
Environment & Natural Resources Div.
United States Department of Justice
P. O. Box 663
Washington, D. C. 20044-0663
Telephone: (202) 305-0476
Fax: (202) 305-0267
joanna.brinkman@usdoj.gov

Attorneys for Federal Defendants

Dated: February 7, 2012

/s/ Rebecca J. Riley

REBECCA J. RILEY
Natural Resources Defense Council
2 N. Riverside Plaza, Suite 2250
Chicago, Illinois 60606
Telephone (312) 651-7913
Fax (312) 234-9633
E-mail: riley@nrdc.org

Attorney for Plaintiffs