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December 5, 2013

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ADMITTED IN WY, CO, MT AND ND

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

***SENT VIA CERTIFIED U.S. MAIL,  
RETURN RECEIPT REQUESTED***

**RE: Protest of Parcels Included in the Bureau of Land Management Wyoming State Office Notice of Competitive Oil and Gas Lease Sale, February 11, 2014 3100, WY-1402-062, 063 (923Roberts)**

Dear Mr. Simpson:

This office represents Antelope Coal Co. and Antelope Coal LLC (collectively referred to as "Antelope"). Pursuant to 43 C.F.R. § 3120.1-3, Antelope respectfully protests the Bureau of Land Management's ("BLM") inclusion of Parcel Nos. WY-1402-062 and WY-1402-063 ("the Parcels") in the competitive lease sale scheduled for Tuesday, February 11, 2014.<sup>1</sup>

While it is our understanding that the Parcels are to be withdrawn from the February 11, 2014 lease sale, Antelope nevertheless files this protest in order to preserve its rights to appeal pursuant to 43 C.F.R. §§ 3120.1-3 and 41.410, should withdrawal not occur.

<sup>1</sup> The July 2013 Environmental Assessment WY-070-EA13-180 refers to Parcel Nos. WY-1402-062 and WY-1402-063 as WY-1402-074 and WY-1402-075, respectfully. Certain parcels in the EA were deferred and the BLM revised the remaining parcel numbers accordingly. For purposes of this protest, Antelope will refer to the new Parcels Nos. WY-1402-062 and WY-1402-063.

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Antelope expressly asserts standing and reserves its right to appeal as a party to this matter that will be adversely affected if the BLM decides to lease the Parcels.

Antelope is the owner of the surface overlying the Parcels. Antelope is also the current lessee of Federal Coal Lease Nos. WYW-151643 and WYW-177903, which include lands also covered by the Parcels. As detailed in this letter, Antelope has significant plans for expansion of the Antelope Coal Mine into lands covered by and adjacent to the Parcels. Oil and gas exploration and production operations in the same vicinity present major economic, operational and safety concerns. We believe the BLM's current and previous resource planning for this area reflects similar concerns, consistent with withdrawing the Parcels from the sale.

Enclosed is a map labeled Exhibit 1 showing the overlap between the Parcels and the existing federal coal leases, as well as the existing coal mining permit boundary. As you can see, the Parcels are almost entirely within the existing active Antelope Coal Mine permit area, and significant portions of the Parcels overlap existing federal coal leases.

To summarize, Parcel No. 1402-062 overlaps Federal Coal Lease No. WYW-151643 in Township 40 North, Range 71 West, 6th P.M., Section 4: Lots 5, 6, 11, 12, 15-18, and Section 5: Lots 5-7, 10-12, and 15. Parcel No. WY-1402-063 overlaps Federal Coal Lease No. WYW-177903 in Township 40 North, Range 71 West, 6th P.M. Section 8: Lots 9-11, 14-16, and Section 9: Lots 1-8. Additionally, in November of 2012, Antelope submitted an application to the BLM for a lease by modification for approximately 857 acres adjacent to Federal Coal Lease No. WYW-177903 ("Antelope LBM"). It is our understanding the Antelope LBM application is awaiting environmental assessment and approval by the BLM. However, once approved, the Antelope LBM will extend the boundary of WYW-177903 to include Section 7: Lots 12, 18, Section 8: Lot 13, and Section 17: Lots 1-12 — all of which overlap portions of the Parcels.

In addition to overlapping federal coal leases, the Parcels are almost entirely within the Antelope Coal Mine permit boundary, which was recently expanded by approval of mine plan modification issued by the BLM on November 26, 2013. A copy of the recent BLM mining plan approval document is enclosed for your reference. Active blasting and other open-pit mining operations are currently taking place within the permit boundary area. Such operations require a safety perimeter in which oil and gas exploration and production operations cannot take place. As a result, the conflict between coal mining and oil and gas exploration cannot be presently resolved in this case, and therefore the Parcels should not be leased for oil and gas at this time.

As mentioned above, withdrawal of the Parcels from the sale is consistent with BLM's resource planning for the area. Specifically, the 1985 Buffalo Resources Management Plan stated BLM's policy in this regard as follows:

**On coal leases for which mining and reclamation plans have been approved, authorize oil and gas drilling and production only where such activities would not conflict with coal mining. In cases where conflicts cannot be resolved, oil and gas drilling and production will be deferred.**

Rationale: On a coal lease for which a mining and reclamation plan has already been approved, new oil and gas activity could require costly changes in planning and mining operations or could result in a loss of coal. Simultaneous development could occur in cases where oil and gas activity would not interfere with mining operations. Delaying oil and gas drilling and production in cases where conflicts could not be resolved would ensure efficient development and conservation of both resources.

*See Buffalo RMP (1985), Paragraph MM-4 at page 15.*

The Approved Resource Management Plan for Public Lands dated April 2001 confirmed BLM's policy on this issue:

Any oil and gas lease offer tracts that conflict with coal mining are pulled out of the offer. In the Powder River Basin, oil and gas and coal frequently occur in the same place. The public interest is best served by optimizing the development of both resources in an environmentally sound manner. In order to do this, the list of competitive oil and gas lease offers is reviewed against existing coal leases that have approved mining and reclamation plans. If a company expresses interest for a specific tract that has been pulled, we consult with the coal operator to determine if oil and gas drilling and production could be conducted without interfering with coal operations. Where possible, oil and gas leases are issued with specific conditions to help prevent a development conflict with coal. In such cases the following stipulation is attached to the lease.

**Surface occupancy or use will be restricted or prohibited on this lease (oil and gas lease) owing to conflicts with ongoing coal activities. Prior to surface use, an acceptable plan of mitigation of anticipated impacts must be negotiated between the oil and gas and the coal lessees and approved by the authorized officer. This stipulation may affect development, operations and maintenance of facilities.**

*See Approved Resource Management Plan for Public Lands by the BLM Buffalo Field Office (April 2001) at page 10; see also id. at Appendix D, page 27 ("On existing coal leases with approved mining and reclamation plans, authorize oil and gas drilling and production only where such activities would not conflict with coal mining. In cases where oil and gas conflicts cannot be resolved, oil and gas drilling and production will be deferred.")*

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The conflict between the Parcels and the Antelope Coal Mine is exactly the type contemplated by the 1985 Buffalo Resource Management Plan and April 2001 Approved Resource Management Plan quoted above. Oil and gas leases on the Parcels would be in direct conflict with ongoing coal mining operations, for which mining and reclamation plans have been approved. This conflict cannot be resolved until coal mining and reclamation in the area is fully completed. Oil and gas exploration should therefore be deferred, and the BLM should withdraw the Parcels from the lease sale.

Additionally, the Draft Resource Management Plan and Environmental Impact Statement for the Buffalo Field Office Planning Area ("Draft Buffalo RMP") also discusses BLM's policy goals for coal resource management: "The BLM goal for coal resource management in the Buffalo planning area is to meet reserve needs to maintain currently operating mines, consistent with environmental protections, coal resource conservation, and fair market value return to the government and public." *See* Buffalo Draft RMP (June 2013) at page 261. Consistent with meeting the goal of maintaining currently operating mines, oil and gas operations should be avoided on the Parcels in this case.

The July 2013 Environmental Assessment WY-070-EA13-180 ("EA") also states that BLM must assure the maximum economic recovery for coal leases:

BLM administers the Federal Coal Leasing Program under the MLA as amended by the Federal Coal Leasing Amendments Act of 1976. The 1976 Federal Coal Leasing Amendment Act (FCLAA) amended the MLA specific to coal. It required diligent development and continued operations on coal leases, required the public get fair market value (FMV) for leases sold, and required that BLM assure maximum economic recovery.

*See* EA, § 3.3.2 at page 24.

In Appendix D of the April 2001 Approved Resource Management Plan, the BLM recognized several problems that arise from oil and gas development, specifically coal bed methane drilling, adjacent to producing coal mines that could hinder maximum economic recovery from a coal lease:

One problem is from the drilling of the coal bed methane wells immediately in front of the active mining operations. Since it takes many years to produce the coal bed methane, the coal companies are hindered by the coalbed methane operators and either have to buy the oil and gas wells out at inflated prices or bypass the coal which is not in the federal interest. The legal rights to the mineral estate (either coal or oil and gas) rests in the time at which each lessee received the lease (first in time, first in right--FITFIR). If the coal company acquired the lease after the oil and gas company, the coal estate is in jeopardy and vice versa.

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See Appendix D of the Approved Resource Management Plan for Public Lands by the BLM Buffalo Field Office (2001) at page 28. Similarly, should the BLM lease the Parcels in this case, it would hinder the ability of Antelope to achieve the maximum economic recovery, both for itself through recovery of the mineral resource, and the public through royalties.

Oil and gas leasing in the area of the Parcels would either be closed or subject to major constraints under each alternative considered by the Draft Buffalo RMP. See generally Draft Buffalo RMP, Mineral Resources Maps 13-16. Additionally, the Draft Buffalo RMP analysis indicates the BLM considers potential for oil and gas to be very low in the lands at issue. See *id.* at Map 17. On the other hand, the area is in the fairway of leasable coal resources. See *id.* at Map 11. Copies of these maps are enclosed for ease of reference.

The Casper Field Office, which apparently reviewed the Parcels for lease, has parallel policies to the Buffalo Field Office policies discussed above. The Casper Record of Decision and Approved Casper RMP (December 2007) ("Casper RMP") states that "conventional oil and gas drilling and production activities will not be authorized when there are conflicts with coal mining." Casper RMP at P.2-15.

We recognize the BLM is a multiple use agency with a mandate to allow simultaneous resource development, and that the existence of a coal lease does not preclude leasing other federally owned minerals for development on the same lands. However, as you know, the leasing of multiple minerals for simultaneous development must be done with appropriate stipulations attached. In this case the Parcels have been offered for lease with a surface use and occupancy stipulation prohibiting oil and gas operations, "including drilling for, removing, or disposing of oil and/or gas contained in the Federal coal leases WYW-151643 & WYW-177903 unless a plan for mitigation of anticipated impacts is developed between the oil and gas and the coal lessees, and the plan is approved by the Authorized Officer." No plan for mitigation to the coal resource could be developed in light of the existing approved mining plan and active mining occurring in the vicinity of the Parcels.

The enclosed map shows the mined out areas of Antelope Coal Mine in the vicinity of the Parcels. Currently, reclamation activities are taking place in Township 40 North, Range 71 West, 6th P.M., Sections 4 and 5 in areas covered by Parcel No. WY-1402-062. Open pit mining operations are presently occurring in Township 40 North, Range 71 West, 6th P.M., Section 9: NE $\frac{1}{4}$ NE $\frac{1}{4}$ , and active mining operations will continue to encroach into various portions of Parcel No. WY-1402-063 for at least the next 15 years. Given this timing, it will never be possible to both mine the coal resource and permit oil and gas exploration and production activities within the 10-year primary term of any oil and gas lease that could be issued. The only feasible way to allow oil and gas exploration and production activities inside the area of the currently permitted coal mining boundary is to first mine the coal resource, allow complete reclamation, then commence oil and gas exploration after the reclamation period has ended.

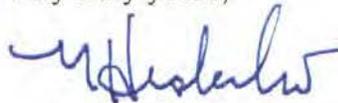
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In addition to the economic, operational, and safety concerns discussed above, the BLM may risk violating the National Environmental Policy Act ("NEPA") if the Parcels are included in the competitive lease sale scheduled for Tuesday, February 11, 2014. Proposals to develop subsurface minerals where the BLM manages the subsurface rights trigger NEPA. *See* BLM, National Environmental Policy Act Handbook H-1790-1 at 16 (2008). A site-specific NEPA analysis therefore must be performed before the BLM leases the Parcels. *See, e.g., Sierra Club v. Peterson*, 717 F.2d 1409, 1415 (D.C. Cir. 1983). The BLM may rely on an existing analysis if it provides the requisite hard look at site-specific impacts. *See id.* at 22.

However, the current NEPA analyses are insufficient to address the possible effects of modern oil and gas exploration and production activities in the immediate vicinity of coal mining operations. A hard look at the impacts of unconventional oil and gas development and high volume hydraulic fracturing inside a permitted coal mine boundary is required by NEPA before BLM proceeds with leasing the Parcels. Appendix G to the July 2013 EA, the Hydraulic Fracturing White Paper ("White Paper"), discusses some aspects of hydraulic fracturing, but does not adequately examine the other possible effects of horizontal drilling through actively mined coal seams. The only places the 13-page White Paper discusses coal at all are where it discusses the availability and consumption of water by various industries, including the coal industry (at pages 2-4); fracture growth (at page 8); and fluid leak and recovery (flowback) of HF fluids (at pages 8-9). These discussions may be sufficient under normal circumstances, but are too brief and are not specific enough to drilling within an active surface coal mining operation to satisfy the BLM's NEPA requirements.

For the reasons above, Antelope respectfully requests that the BLM withdraw Parcel Nos. WY-1402-062 and WY-1402-063 from the competitive lease sale scheduled for Tuesday, February 11, 2014. If you have any questions, feel free to contact me at 307-672-5858, or Ms. Alison Gee, Manager, Land and Oil & Gas, at 307-685-6120. Thank you for your time and consideration.

Very truly yours,



Nicholas Haderlie

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NICHOLAS HADERLIE  
CHIEF ENGINEER

UNITED STATES

DEPARTMENT OF THE INTERIOR

This mining plan approval document is issued by the United States of America to:

Antelope Coal, LLC  
P.O. Box 3008  
Gillette, WY 82717-3008

for a mining plan modification for Federal Leases WYW163340 and WYW177903 at the Antelope Coal Mine for the West Antelope II amendment. This mining plan approval supplements all previous mining plan approvals for the Antelope Coal Mine. The approval is subject to the following conditions. Antelope Coal, LLC is hereinafter referred to as the operator.

1. Statutes and Regulations.--This mining plan approval is issued pursuant to Federal Leases WYW163340 and WYW177903; the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.); and in the case of acquired lands, the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351 et seq.). This mining plan approval is subject to all applicable laws and regulations of the Secretary of the Interior which are now or hereafter in force; and all such laws and regulations are made a part hereof. The operator shall comply with the provisions of the Federal Water Pollution Control Act (33 U.S.C 1251 et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.), and other applicable Federal laws.
2. This document approves the mining plan modification for Federal Leases WYW163340 and WYW177903 at the Antelope Coal Mine and authorizes coal development or mining operations on the federal leases within the area of mining plan approval. This authorization expands the approved mining plan area into the following Federal coal lands:

Federal coal lease WYW163340;

T. 41 N., R. 71 W., 6<sup>th</sup> P.M., Wyoming

Sec. 9: Lots 9 through 16;

Sec. 10: Lots 11 through 16;

Sec. 11: Lots 13;

Sec. 14: Lots 3, 4;

Sec. 15: Lots 1 through 5, 12, 13;

Sec. 20: Lots 14 through 16;

Sec. 21 Lots 1 through 16;

Sec. 22 Lots 2, 7, 8, 14 through 16;

Sec. 27 Lots 6 through 11;

Sec. 28 Lots 1 through 8;

Sec. 29 Lots 1 through 3, 6 through 8.

Federal coal lease WYW177903;

T. 40 N., R. 71 W., 6<sup>th</sup> P.M., Wyoming

Sec. 5: Lot 18;

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- Sec. 8: Lots 1 through 3, 6 through 11, 14 through 16;
- Sec. 9: Lots 2 through 16;
- Sec. 10: Lots 5, 6, 11 through 14;
- Sec. 14: Lot 13;
- Sec. 15: Lots 2 through 7, 10 through 16.

These lands encompass 4,746 acres, more or less, and are shown on the mining plan approval area map attached hereto as Attachment A.

3. The operator shall conduct coal development or mining operations only as described in the complete permit application approved by the Wyoming Department of Environmental Quality/ Land Quality Division (WDEQ), except as otherwise directed in the conditions of this mining plan approval.
4. The operator shall comply with the terms and conditions of the leases, this mining plan approval and the requirements of the Wyoming Permit No. 525-T8 issued under the Wyoming State program, approved pursuant to the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.).
5. This mining plan approval shall be binding on any person conducting coal development or mining operations under the approved mining plan and shall remain in effect until superseded, canceled, or withdrawn.
6. If during mining operations unidentified prehistoric or historic resources are discovered, the operator shall ensure that the resources are not disturbed and shall notify WDEQ and the Office of Surface Mining Reclamation and Enforcement (OSM). The operator shall take such actions as are required by WDEQ in coordination with OSM.
7. The Secretary retains jurisdiction to modify or cancel this approval, as required, on the basis of further consultation with the U.S. Fish and Wildlife Service pursuant to section 7 of the Endangered Species Act, as amended, 16 U.S.C. 1531 et seq.

*Ned Frazier for*

Principal Deputy Assistant Secretary,  
Land and Minerals Management

*11/26/13*

Date

Attachment

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Antelope Coal Mine CLOUD PEAK ENERGY SERVICES, INC. (NYSE:CLD) 1402-062-063-064-065-066-067-068-069-070-071-072-073-074-075-076-077-078-079-080-081-082-083-084-085-086-087-088-089-090-091-092-093-094-095-096-097-098-099-100

Objection to Oil and Gas Lease Sale February 11, 2011 Exhibit 1

Oil & Gas Parcel 1402-062 Boundary  
 Oil & Gas Parcel 1402-063 Boundary

Federal Coal Lease WY177903  
 Federal Coal Lease WY151643  
 Antelope LBM Boundary  
 Antelope Permit Boundary

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**Antelope Coal Mine**  
 P.O. BOX 3005  
 GILLETTE, WYOMING 82716  
 (307) 687-8000

**CLOUD PEAK ENERGY**  
 GILLETTE, WYOMING

**Objection to Oil and Gas Lease Sale**  
 February 11, 2013

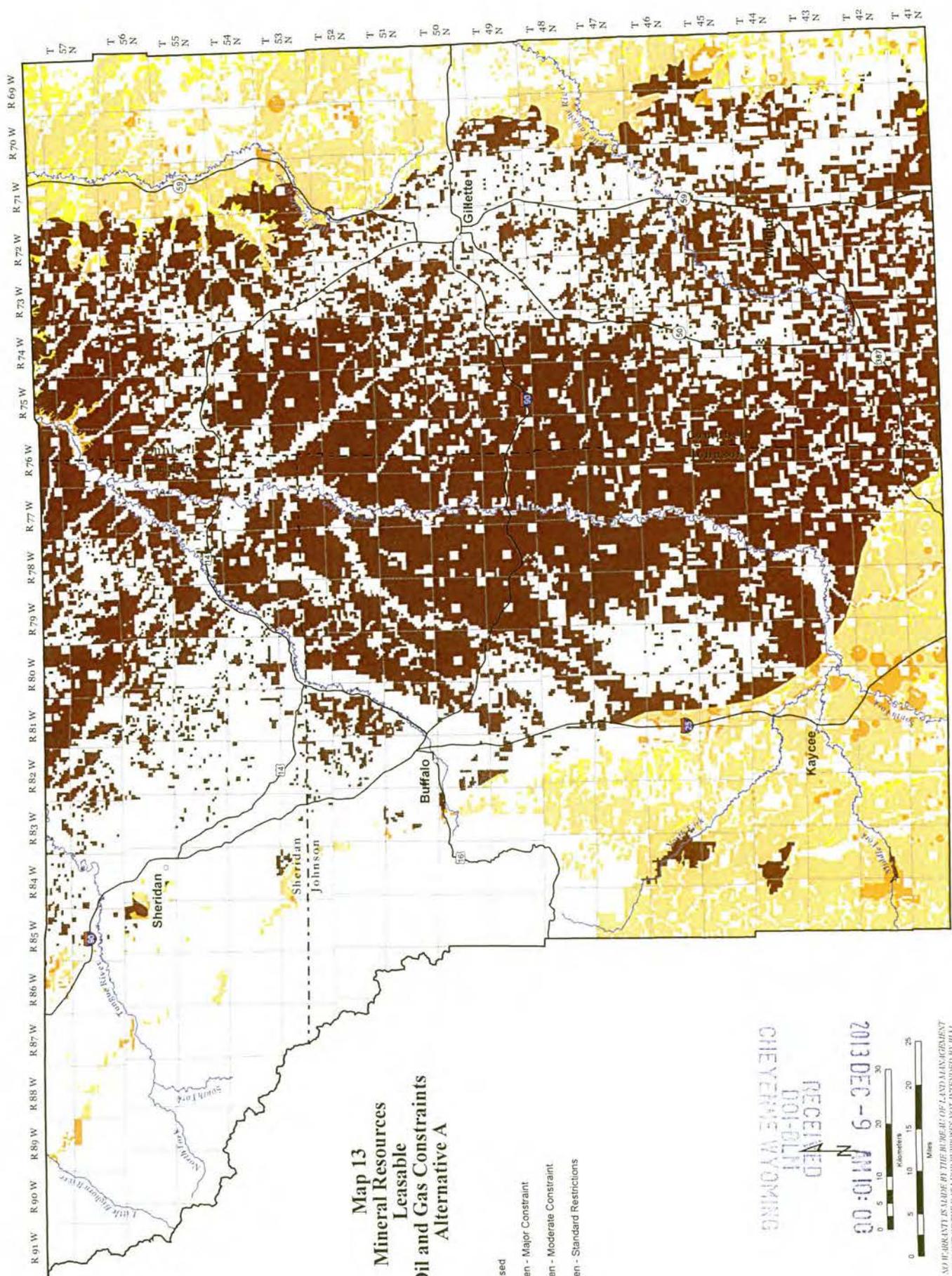
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**Exhibit 1**



-  Federal Coal Lease WYW177903
-  Federal Coal Lease WYW151643
-  Antelope LBM Boundary
-  Antelope Permit Boundary
-  Oil & Gas Parcel 1402-062 Boundary
-  Oil & Gas Parcel 1402-063 Boundary





**Map 13**  
**Mineral Resources**  
**Leasable**  
**Oil and Gas Constraints**  
**Alternative A**

- Closed
- Open - Major Constraint
- Open - Moderate Constraint
- Open - Standard Restrictions

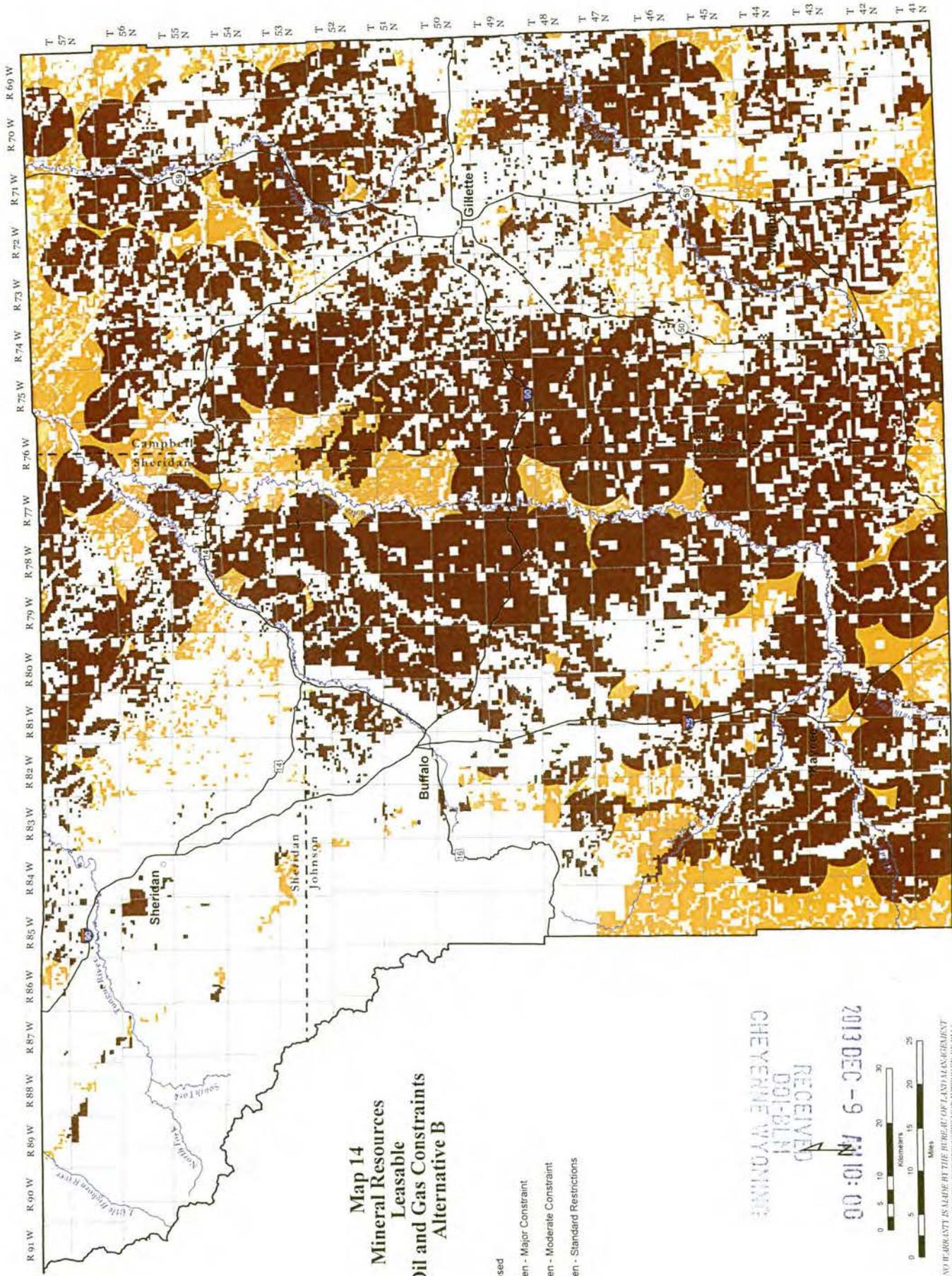
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 Buffalo Draft Resource Management Plan and  
 Environmental Impact Statement - June 2013



**Map 14**  
**Mineral Resources**  
**Leasable**  
**Oil and Gas Constraints**  
**Alternative B**

- Closed
- Open - Major Constraint
- Open - Moderate Constraint
- Open - Standard Restrictions

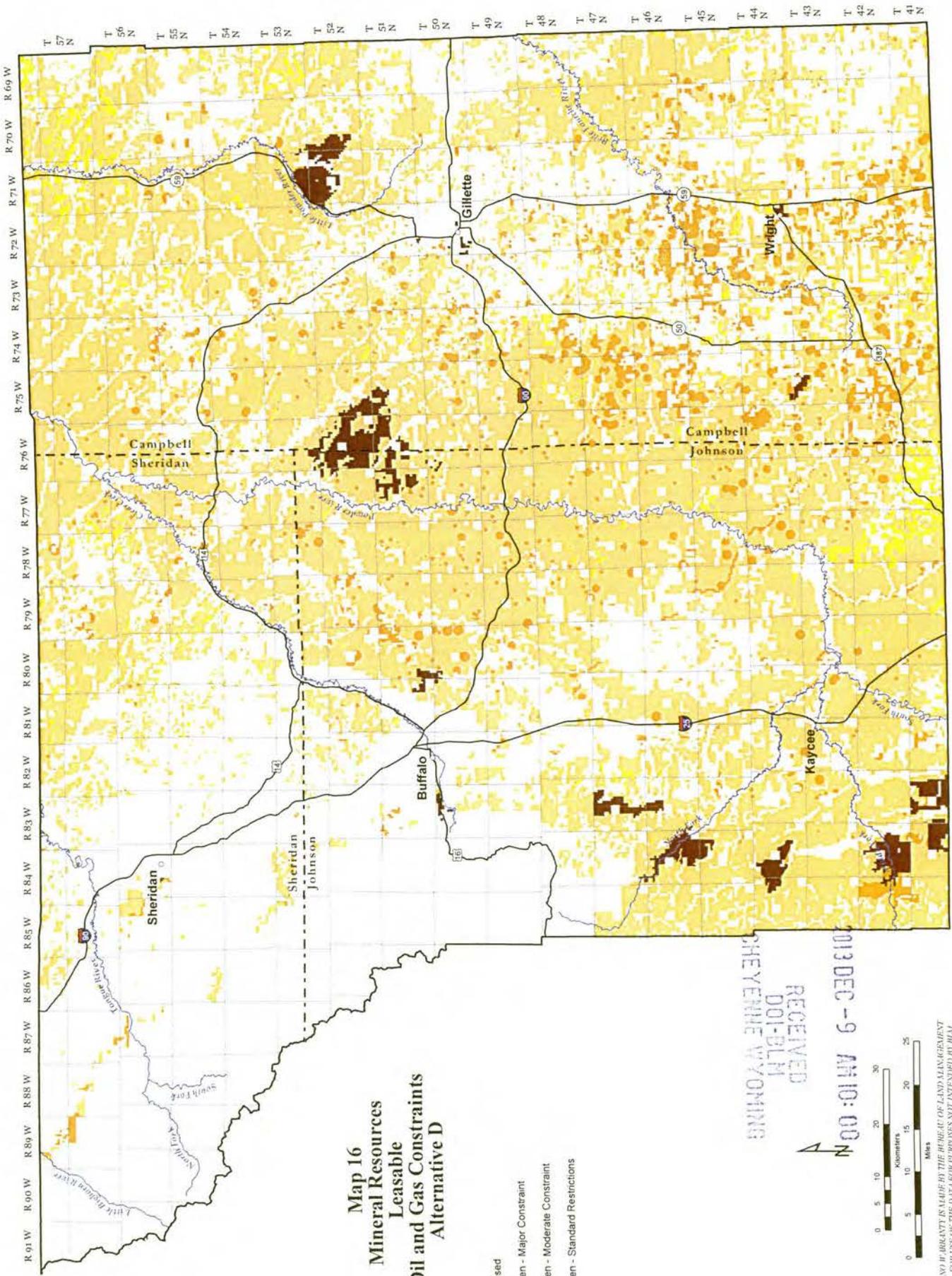
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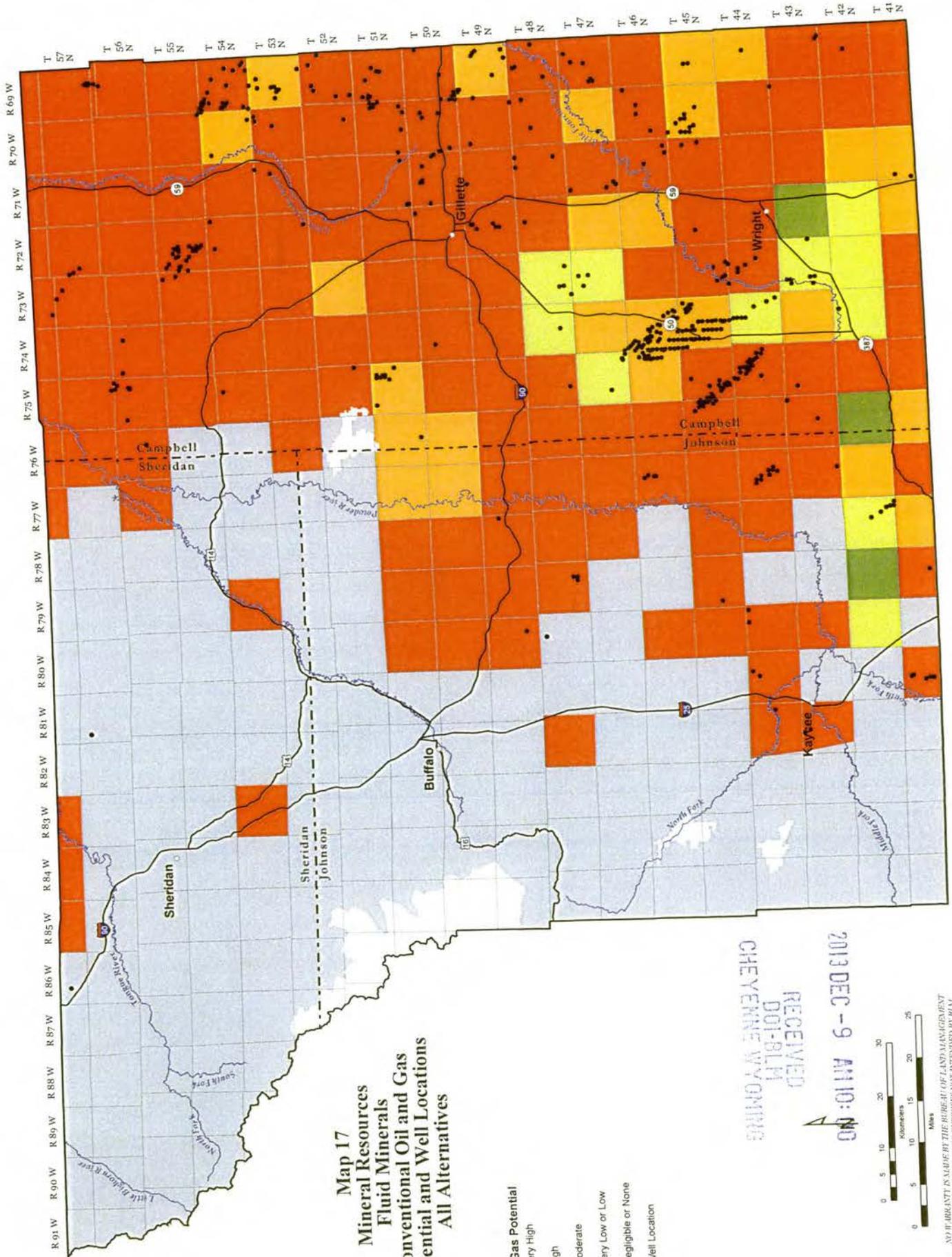
**Map 16**  
**Mineral Resources**  
**Leasable**  
**Oil and Gas Constraints**  
**Alternative D**

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- Open - Moderate Constraint
- Open - Standard Restrictions

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**Map 17**  
**Mineral Resources**  
**Fluid Minerals**  
**Conventional Oil and Gas**  
**Potential and Well Locations**  
**All Alternatives**

- Oil and Gas Potential:
  - Very High
  - High
  - Moderate
  - Very Low or Low
  - Negligible or None
- Well Location

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