

00108

**NATIONAL WILDLIFE FEDERATION®**

Rocky Mountain Natural Resource Center
2260 Baseline Road, Suite 100
Boulder, Colorado 80302
303-786-8001
www.nwf.org

FAX TRANSMISSION

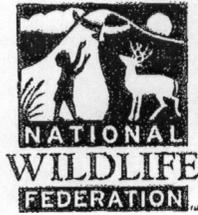
Send To: Bureau of Land Management Casper Field Office
Attention: Linda Slone
Office Location:
Fax Number: 307-261-7587

From: Kathleen C. Zimmerman
From: (fax number) 303-786-8911
Office Location
Phone Number 303-786-8001
Date: October 19,2006
Total Pages: 9, including cover

Message:

These comments were also submitted via the online portal at <http://www.blm.gov/rmdcasper/comments/slone.htm> . However, much of the formatting was lost. Therefore, I am faxing this copy that should be easier to read.

00108



NATIONAL WILDLIFE FEDERATION®

Rocky Mountain Natural Resources Center
2260 Baseline Road, Suite 100
Boulder, Colorado 80302
303-786-8001
www.nwf.org



WYOMING WILDLIFE FEDERATION

Wyoming Wildlife Federation
P.O. Box 106
Cheyenne, Wyoming 82003
307-637-5433
www.wyomingwildlife.org

October 19, 2006

Linda Slone, RMP Project Manager
Bureau of Land Management Casper Field Office,
2987 Prospector Drive
Casper, WY 82604-2968

Dear Ms. Slone:

The following comments are submitted on behalf of the National Wildlife Federation (NWF) and the Wyoming Wildlife Federation (WWF) on the Draft Resource Management Plan and Environmental Impact Statement for the Casper Field Office Planning Area (DEIS).

INTRODUCTION

The Federal Land Policy Management Act (FLMPA) and related regulations require the Bureau of Land Management (BLM) to manage the public lands **and their** resources pursuant to a Resource Management Plan (RMP). All future actions on the Casper Resource Area must conform to the terms and conditions established **in the** RMP. Given the importance of this planning document, BLM must ensure careful adherence to the legal requirements of both FLPMA and the National Environmental Policy Act (NEPA). In addition to strict compliance with the letter of these laws, we encourage BLM to honor their spirit **as well**. One of the underlying goals of both NEPA **and** FLPMA is to achieve environmentally sound management of the Nation's lands and natural resources,

NWF **and** WWF **are** extremely concerned about **the** tone of the **draft** document. For example, while it is true that FLPMA states that the public lands are **to be managed** for "minerals, **food**, and fiber," 43 U.S.C. §1701(a)(12), the very same section **of** the Act also requires that

00108

October 19, 2006

Page 2

“management be on the basis of multiple use¹ and sustained yield,” *id.* at §1701(a)(7), that these lands be:

managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that where appropriate will preserve and protect certain public lands **in** their natural condition; that will provide food and habitat for fish and wildlife **and** domestic animals; and that will provide for outdoor recreation and **human** occupancy and use.

Id. at §1701(a)(8). The multiple use directive of **FLPMA** precludes a conclusion that public lands **are** intended solely, or even primarily, for consumptive uses, such as mineral extraction, timber production, and livestock grazing. Yet, in the Statement of Need for the proposed action to revise the existing RMP, the DEIS argues that the fundamental policies regarding management of the public lands have changed and that energy minerals development has become the priority use on these lands, DEIS at 1-5. While the Statement of Need may accurately reflect the desires of **the current** Administration, it is not a true statement of the statutory and regulatory framework governing public lands management.

Contrary to the inferences in the draft document, nothing in the Energy Policy **and** Conservation Act Reauthorization of 2000 or the Energy Policy Act of 2005 has established energy extraction as the dominant use on the public lands. *See* DEIS at 1-5. Yet, nearly every discussion in the DEIS revolves around how management tools and resources can be bent to the will of energy development. In the discussion of alternatives eliminated from consideration, for example, the DEIS states that an alternative requiring the use of directional drilling techniques was discarded because “it would not meet the Nation’s energy needs” and would not “lead to the maximum ultimate recovery of the oil and gas resource with minimum waste.” DEIS at 2-6. This statement is wrong for so many reasons. First, directional drilling currently is being employed **in** natural gas formations very similar to those described as being present in the Casper Resource Area.² Second, the DEIS assumes that drilling technology is static. The revised Casper RMP, once adopted, will be in place for twenty years or more. Surely drilling technology will change

¹ The definition of multiple use in **FLPMA** is lengthy. Key provisions include the following: (1) public lands and their resource values must be managed so that they “best meet the present and future needs of the American people;” (2) some land be used “for less than all of the resources;” and (3) all resources must be managed “without permanent impairment of the productivity of the land and the quality of the environment **with** consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or greatest unit output.” 43 U.S.C. § 1702(c).

² *See* IM 2004-194 (identifying **drilling** multiple wells from a single pad as “typical” BMP that should be considered); *see also* *Shell Rocky Mountain Production, LLC v. Ultra Resources, Inc.*, 415 F.3d 1158 (10th Cir. 2005) (stating that both **industry** parties to the litigation acknowledge BLM’s authority to “restrict and limit the number of surface drillsite locations for wells within the area which could mean that one vertical and multiple directional wells may need **to** be drilled from a single drilling pad.”).

October 19, 2006

Page 3

over that time. Finally, the purpose of **this** RMP is not to “maximize gas recovery” within the Resource Area. BLM has obligations to sustain other resources within the planning area. Where directional drilling will mitigate impacts to other resources, its use should be considered. In determining whether directional drilling will be required, BLM must assess its effectiveness, its cost, the public benefit, and the availability of other mitigation measures. IM 2004-194.

Even where the agency has attempted to make some accommodations for wildlife within the planning area, those measures seem to have **been** selected, not on the basis of their importance to wildlife, but because they will result in little inconvenience to energy production. All of the eight “habitat fragmentation blocks” designated in the Preferred Alternative occur in areas of **low** coal, oil, and gas resources.³ Sage-grouse in the Bates Hole Special Management Area receive greater protection than birds on other lands within the planning area. This decision does not seem to flow from a determination that sage-grouse in Bates Hole represent a particularly important segment of the population or that these birds are more vulnerable for some reason. Instead, the determination seems to have been made that more effective protections for sage-grouse will not be imposed in areas where energy development is more likely to occur. While NWF and WWF welcome the special management guidelines for Bates Hole, we fail to understand why sage-grouse, as a sensitive species, do not receive these same conservation measures throughout the planning area.

In the fall of 2005, Representative Pombo offered a provision in the House version of the Deficit Reduction Act that could have resulted in the fire sale of millions of acres of public lands to mining companies and other private developers. This proposal was met with swift and vigorous opposition from people across the country, including more than 750 hunting and fishing organizations that joined NWF in a letter to Congress. NWF and WWF do not believe that Americans who rallied to prevent the sale of public lands to hard rock mining companies and real estate developers did so in order to let BLM give the oil and **gas** industry *de facto* control of those same lands. Responsible energy development is **an** important component of public lands management, but it cannot be allowed to trump all other resource values. We urge BLM to consider whether the Preferred Alternative represents an appropriate balance of consumptive uses with recreational and wildlife values,

SPECIFIC COMMENTS AND QUESTIONS

NWF and WWF support the designation and conservation of “habitat fragmentation blocks.” However, we have some concerns about the selection of these blocks.

³ **This** is also true of the sixteen habitat fragmentation blocks identified in **the** so-called “Conservation Alternative,” Alternative B. Given the low potential for energy minerals development in all sixteen blocks, there appears to **be** little justification for not including all of them in the final RMP.

00108

October 19,2006

Page 4

In the DEIS, BLM stresses the importance of preventing habitat fragmentation in maintaining populations of big game and other wildlife species. In several sections of the draft document, BLM cites causes of fragmentation such as wildfire, development of rights-of-way (ROWs) and corridors, roads, fences, wind energy, minerals, well pads, pipelines, and recreation facilities. Impacts of fragmentation include population isolation, edge impacts such as nest predation and parasitism, encroachment of **INPS**, disruption of migration patterns and in some cases mortality. BLM recognizes that any surface development will result in habitat fragmentation and, in turn, adversely impact wildlife. Because habitat fragmentation is an inevitable result of oil and gas development, BLM has devised a strategy to minimize fragmentation – by maintaining intact blocks of native vegetation – which it includes under Alternatives B, C, and E (Preferred Alternative).

Under Alternative B, “areas currently identified with low development potential for coal and oil and gas resources with public surface ownership greater than 50% would be managed to maintain intact blocks of native vegetation when contiguous acreages of greater than 10,000 acres is present.” Within these blocks, several restrictions would apply including the following: (1) areas would be closed to oil and gas and to geophysical operations on public surface; (2) blocks would be withdrawn from the operation of the public land laws related to locatable minerals; (3) blocks would be closed to mineral material disposal; (4) blocks would not be open to wind/renewable energy development; (5) blocks would remain open to livestock grazing; (6) for areas outside of big game crucial winter ranges or outside a ½-mile radius of sage-grouse leks, surface-disturbing activities would be subject to Controlled Surface Use (CSU) stipulations; and (7) ROW and similar facilities would be located adjacent to other facilities in corridor fashion, where practical. Where existing oil and gas leases occur within these blocks, activities would be “managed intensively” and leases would not be renewed. Under the Preferred Alternative, **only** eight blocks containing large areas of important big **game** crucial winter **range** or sage-grouse leks/habitats would receive special protection. The boundaries of five of those eight habitat fragmentation blocks would be adjusted and only restrictions 1-5 would apply. All allowed surface-disturbing activities within the adjusted blocks would be subject to a CSU stipulation, minimizing surface disturbance to meet management objectives.

NWF and WWF agree that fragmentation of habitat represents a severe impact on wildlife populations. We support this effort to secure blocks of land within the planning area that remain relatively undisturbed. Still, we have some questions regarding this effort:

1. The DEIS states that the boundaries of five of the eight habitat fragmentation blocks under the Preferred Alternative will be “adjusted.” Can BLM better explain how and why the boundaries of these five blocks will be ‘adjusted’ and provide a map with the proposed boundaries of the habitat fragmentation blocks under the Preferred Alternative?
2. We would like clarification on exactly what areas within the habitat fragmentation blocks will be closed to development. Under the Preferred Alternative, the DEIS states that

October 19,2006

Page 5

areas within the habitat fragmentation blocks will be closed to oil and gas development, but also states that all allowed surface-disturbing activities within the adjusted blocks would be subject to a CSU stipulation. How can surface-disturbing activities be subject to a CSU stipulation if oil and gas leasing is closed in the blocks?

3. **How** was the determination made to include only blocks 3, 5, 8, 11, 13, 14, 15, and **16** in the Preferred Alternative? Although these blocks appear to incorporate much of the big game critical winter range contained within the **16** blocks, they do not appear to conserve a large portion of the sage-grouse leks (such as those located within habitat block **7**).
4. The DEIS cites habitat fragmentation as a threat and management challenge for almost every species discussed. Given the importance of reducing the potential for habitat fragmentation, are the eight blocks of land set aside under the Preferred Alternative enough to offset the short-term and long-term disturbances from activities elsewhere in the planning area? The number of acres of disturbance under the Preferred Alternative is 2nd **only** to Alternative D, which emphasizes consumptive uses.
5. **As** BLM acknowledges in the **DEIS**, habitat fragmentation on private lands in the proximate areas is likely to continue, if not accelerate, over the life of the plan. Therefore, does the Preferred Alternative do enough to reduce the cumulative impacts of habitat fragmentation across the landscape (including BLM and non-BLM lands) on species diversity? NWF and WWF believe Alternative B would better protect against the cumulative effects of habitat fragmentation across the landscape.

While the habitat fragmentation blocks will serve to protect some significant wildlife habitats within the planning area, crucial big game ranges and important sage-grouse areas fall outside these blocks. Little protection is afforded these lands under the Preferred Alternative. For example, the sole mitigation measure imposed on oil and gas development in crucial big game winter ranges is a seasonal stipulation limiting construction activities from November 15 to April 30. While NWF and WWF believe that seasonal stipulations are an important component of conserving big game populations, they have not proved sufficient to sustain big game populations in *the* face of intense energy development. *See* Hall Sawyer *et al.*, Sublette Mule Deer Study (Phase II): *Long-term monitoring plan to assess potential impacts of energy development on mule deer in the Pinedale Anticline Project Area* (Oct. 2005). NWF and WWF urge BLM to adopt and implement the Wyoming Game and Fish Department's (WGFD's) *Recommendations for Development of Oil & Gas Resources Within Crucial & Important Wildlife Habitats* 2004 [found at: <http://gf.state.wy.us/downloads/pdf/og.pdf>].⁴

⁴ Full compliance with FLPMA's consistency provision regarding state plans and policies requires BLM to ensure that its land management plans embrace state management guidelines. 43 U.S.C. §1712(c)(9).

October 19,2006

00108

Page 6

NWF and WWF are also concerned about the efficacy of the mitigation measures to conserve sage-grouse and sage-grouse habitat included in the Preferred Alternative. These measures are not supported by the most recent science. See Matthew J. Holloran, *Greater Sage-Grouse Population Response to Natural Gas Field Development in Western Wyoming* (Ph.D. dissertation 2005); Rusty C. Kaiser, *Recruitment by greater sage-grouse in association with natural gas development in western Wyoming* (M.S. thesis August 2006); David E. Naugle *et al.*, *Sage-grouse Population Response to Coal-bed Natural Gas Development in the Powder River Basin: Interim Progress Report on Region-wide Lek-count analyses* (May 26,2006). In order for BLM to comply with both its National Sage-Grouse Habitat Conservation Strategy and WGFD's Wyoming Sage Grouse Conservation Plan, the sage-grouse mitigation measures contained in Alternative B must be part of the final RMP. BLM itself has designated the Greater sage-grouse as a "sensitive" species.⁵ In doing so, the agency made a commitment to use "all methods and procedures which are necessary to improve the condition of special status species and their habitats to a point where their special status recognition is no longer warranted." BLM Manual 6840 at .01. Pursuant to BLM policy, "[l]and use plans shall be sufficiently detailed to identify and resolve significant land use conflicts with special status species without deferring conflict resolution to implementation-level planning." *Id.* at .21J. The Preferred Alternative fails to meet these commitments.

BLM must also adopt the provisions in Alternative B relative to black-footed ferret management rather than the provisions included in the Preferred Alternative. BLM has an obligation under the Endangered Species Act (ESA) to use its programs "in furtherance of the purposes" of the ESA. 16 U.S.C. § 1536(a)(1). The purposes of the ESA include the conservation of ecosystems on which listed species depend. *Id.* § 1531(b). Conservation under the ESA means the use of "all methods and procedures" that are necessary to bring a species to the point where the protections of the ESA are no longer needed. *Id.* § 1532(3). Given these obligations, at a minimum, BLM should adopt the provisions of Alternative B and affirmatively seek to further the recovery of the black-footed ferret.

⁵ Sensitive species are those species that:

- (1) could become endangered in or extirpated from a State, or within a significant portion of its distribution; (2) are under status review by the FWS and/or NMFS; (3) are undergoing significant current or predicted downward trends in habitat capability that would reduce a species' existing distribution; (4) are undergoing significant current or predicted downward trends in population or density such that federal listed, proposed, candidate, or State listed status may become necessary; (5) typically have small and widely dispersed populations; (6) inhabit ecological refugia or other specialized or unique habitats; or (7) are State listed but which may be better conserved through application of BLM sensitive species status.

BLM Manual 6840 (Glossary of Terms at 8).

October 19,2006

00108

Page 7

The DEIS misstates BLM's obligations with respect to livestock grazing on public lands. The Fundamentals of Rangeland Health and the standards and guidelines that flow from them are binding, non-discretionary requirements of livestock use. If these conditions are not met, management changes must be made within a specific timeframe. **43 C.F.R. §§ 4180.1 , 4180.2(c)**. We note with some despair that the DEIS indicates that 22 out of the 26 allotments that have been evaluated are not meeting the standards and guidelines and that this is due to livestock grazing.⁶ The DEIS does not state what, **if** any, actions have been taken to correct these problems. BLM must ensure that appropriate and timely management changes occur on these 22 allotments and the final environmental impact statement (EIS) should reflect those changes.

NWF and WWF are concerned about both the amount of land designated for disposal in the Preferred Alternative **as** well as the lack of criteria for this designation. FLPMA provides that "the public lands [will] be retained in federal ownership" unless disposal of a particular parcel" is found to be in the national interest. **43 U.S.C. §1701(a)(1)** (emphasis added). NWF and WWF understand the management challenges posed by the scattered land holdings that make up much of the Casper Resource Area. Nevertheless, we do not agree that this provides adequate justification for wholesale disposal of these holdings. Nor do we believe the mere fact that public lands lie within five miles of communities is a sufficient reason to discard these holdings. Many of these lands provide important wildlife habitat and recreational opportunities.⁷ Land exchanges rather than sales should be used to trade lands with little or no public value for private lands within the planning area in order to reduce the threat of habitat fragmentation and loss. Such exchanges should result in no net loss of public land holdings.

CONCLUSION

While Alternative B **is** superior to BLM's Preferred Alternative (Alternative E) in many ways, none of the alternatives in the **DEIS** describes with sufficient clarity how oil and gas development and other consumptive uses will be balanced with BLM's obligation under FLPMA to sustain the natural values of these public lands. Mechanisms available for resolving conflicts between development and other resource values should be clearly identified in the final **EIS** and adopted in the **RMP** . Closure of some lands to some uses, such as oil and gas development or logging or grazing, is specifically acknowledged as a means to achieve desired outcomes for other resource values. BLM Handbook H-1601-1.11.B.2. We commend **BLM** for exercising this authority with respect to some of the lands within the planning area. Directional drilling, phased development, and clustering industrial infrastructure are measures

⁶ The **DEIS** claims that range condition is improving in the planning area, but this conclusion is contradicted by the fact such a large percentage of allotments are not meeting the standards and guidelines.

⁷ For example, we note that many of the parcels identified for disposal west of Wheatland provide crucial winter range.

October 19, 2006

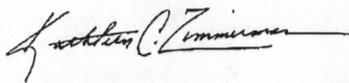
00108

Page 8

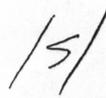
available to conserve surface resources on the lands that remain open. We believe BLM needs to take another, more thorough, **look** at the options available to it. Ultimately, the requirement for BLM to prevent unnecessary or undue degradation of the public lands and sustain the natural values of those lands should **propel** the agency's management choices.

Thank you for considering these comments.

Sincerely,



Kathleen C. Zimmerman
Land Stewardship Policy Specialist
National Wildlife Federation
Rocky Mountain Natural Resource Center
2260 Baseline Road, Suite 100
Boulder, Colorado 80302
303-786-8001



Mark Winland
President
Wyoming Wildlife Federation
P.O.Box 106
Cheyenne, Wyoming 82003
307-637-5433