

Appendix B – Public Response Documents

Public Response Document 00031

10-19-2007 11:58am From:BJM - KEMMERER FIELD OFFICE 3078284539 T-344 P.002/004 F-878

00031



**United States Department of the Interior**  
BUREAU OF RECLAMATION  
Upper Colorado Region  
Provo Area Office  
302 Euc. 8660 South  
Provo, Utah 84606-7317

IN REPLY REFER TO  
PRO-770  
ENV 6.00

OCT 11 2007

Ms. Michele Easley  
RMP Project Manager  
Kemmerer RMP and EIS  
Kemmerer Field Office  
Bureau of Land Management  
312 Highway, 189 North  
Kemmerer, WY 83101-9711

Subject: Bureau of Reclamation, Provo Area Office Comments on Draft Resource Management Plan and Environmental Impact Statement for the Kemmerer Field Office Planning Area

Dear Ms. Easley:

The Bureau of Reclamation, Provo Area Office (Reclamation) has reviewed the subject document and finds that it adequately portrays the management interaction between the Bureau of Land Management and Reclamation with regard to Reclamation lands in the project area. We noted a few minor editorial comments during our review and these are enclosed for your consideration.

We appreciate the opportunity to participate in this RMP/EIS process as a cooperating agency. If you need any additional information, please contact Ms. Beverley Heffeman at 801-379-1161.

Sincerely,  
  
Bruce C. Barrett  
Area Manager

Enclosure

RECEIVED  
BUREAU OF RECLAMATION  
OCT 11 10 41:50 AM

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1. P. xv, List of Acronyms, and global throughout the document: As indicated in our review of the preliminary draft EIS, 'USBR' is not the correct acronym for our bureau. Globally throughout the document, the official bureau designation is 'Bureau of Reclamation' (not preceded by U.S.) and the 'acronym' is simply the word 'Reclamation.'
2. P. xv, List of Acronyms, an acronym appears for 'U.S. Department of Revenue.' Such a Department does not exist at the Federal level; we believe this should be 'Wyoming Department of Revenue.'
3. P. ES-6, 2<sup>nd</sup> paragraph, line 4, and P. 1-14: As 2 examples following on Comment 1 above, 'U.S.' should globally be deleted before 'Bureau of Reclamation.'
4. P. 3-110, Table 3-27: We recommend adding the following sentence to footnote 1 to further clarify: 'Lands originally withdrawn for the Green River Project, which was never built, are now managed as part of the Seedskaadee Project.'

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ANADARKO PETROLEUM CORPORATION  
300 WERNER COURT, SUITE 200 • CASPER, WY 82401

**Anadarko**

October 10, 2007  
Via fax: 307 828-4539  
Email: kemmerer\_wymail@blm.gov

Ms. Michele Easley  
Team Lead - Kemmerer RMP Revision  
312 Hwy 189 N  
Kemmerer, WY 83101-9711

RE: Kemmerer Field Office Draft EIS and RMP

Dear Ms. Easley:

Anadarko Petroleum Corporation (APC) appreciates the opportunity comment on the referenced document. APC has considerable interests as a federal mineral lessee and fee land owner in the Kemmerer Resource Management planning area that will be affected by future management decisions.

APC's status as a fee mineral and surface owner is noted, because management decisions made on federal lands can and do impact activities on fee lands. This is especially true in those areas commonly referred to as the "checkerboard lands."

As the Bureau of Land Management (BLM) has recognized, because of the alternating ownership pattern, BLM's management options on the federal lands are constrained by its lack of authority over the adjacent fee lands. Conversely, on the checkerboard lands, the BLM's application of restrictions such as no surface occupancy, seasonal timing limitations, prohibition on disruptive activities, National Historic Preservation Act (NHPA) eligibility criteria or visual resource management (VRM) on federally approved use authorizations has the potential to affect the use and enjoyment of adjacent fee lands. Excessive use of management actions that deny use of the federal surface in the checkerboard area can impact federal mineral resources (e.g. drainage of fluid minerals). As such, APC requests BLM to more thoroughly examine the effectiveness and impacts to mineral resources of surface use and leasing restrictions on federal lands within the checkerboard area.

**Valid Existing Rights**

APC finds that the document, overall, gives scant attention to documenting the feasibility of successfully implementing components of each alternative when valid existing lease rights are recognized. For example, BLM is proposing, to various degrees, under each alternative, Visual Resource Management (VRM) ratings of Class I or II for protection of resources such as national historical sites. On page N-2 BLM declares that surface disturbing activities will be prohibited in Class I or II VRM areas. Given that of the 1.6 million acres in the planning area 1.1 are currently leased (RFD Page 4-1) for oil and gas

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development, BLM must disclose the effect that recognition of valid existing rights will have on the successful implementation of surface use restrictions described under each alternative (e.g. no surface disturbance allowed in VRM Class I and II management areas). Or, in the alternative, BLM should disclose the economic impact to the government of compensating lessees for loss of lease rights.

**Energy Policy and Conservation Act (EPCA)**

Overall, APC finds that the incorporation of EPCA and subsequent internal guidance (L.M. 2003-233 Integration of the Energy Policy and Conservation Act Inventory Results into the Land Planning Process) into the DEIS is deficient! EPCA directs BLM to identify the nature and extent of any restrictions to oil and gas resource development. This directive is further clarified by L.M. 2003-233 through the requirement to review all lease stipulations to ensure they are the least restrictive necessary to accomplish the desired resource protection. [Given the directive to ensure that lease restrictions are the least restrictive necessary, coupled with different objectives and goals for each alternative APC does not believe that BLM can make the statement that EPCA Inventory has been integrated into the DEIS and that the "findings are common to all alternatives (page 2-4). HAPC requests that BLM clearly disclose in the FEIS how it reviewed all stipulations and potential conditions of approval for existing leases to ensure their appropriateness (i.e. least restrictive necessary) for each alternative.

**Leasing within the Mechanically Mineable Trona Area**

The State of Wyoming has adopted new drilling rules that define safe drilling practices using current technology within the Mechanically Mineable Trona Area. APC references the BLM to the following Wyoming Oil and Gas Conservation Commission's (WOGCC) Rules:

- Chapter 1. Section 2 (qq) Definitions
- Chapter 1. Section 2 (TT) Definitions
- Chapter 1. Section 2 (bbb) Definitions
- Chapter 3. Section 27 Open Flows and Control of "Wild" Wells
- Chapter 3. Section 22 (d) General Drilling Rules
- Chapter 3. Section 18 (h)(i) Plugging of Wells, Stratigraphic Tests, Core, or Other Exploratory Holes (Form 4)
- Chapter 3. Section 8 (j) Application for Permit to Drill or Deepen a Well (Form 1)

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These rules cover numerous aspects of drilling within the MMTA. As referenced in the WOGCC definition for the Special Sodium Drilling Area A, the intent of the special drilling rules is to protect the trona mineral resource and more importantly insure miner safety. APC believes these rules provide an effective mechanism for the safe development of trona in areas with oil and gas potential. ]

In the DEIS on page BLM concludes that that current technology does not provide the ability to safely develop trona and oil & gas concurrently. However, the above referenced rules contradict that statement. The WOGCC Special Sodium Drilling were developed upon recommendations by the trona mining companies, the oil and gas industry and the State of Wyoming to allow for the safe development of both resources. APC recommends that BLM adopt rules for the MMTA area. However, should BLM not adopt rules similar to WOGCC's on federal lands, the BLM must include in the final EIS an analysis of the potential drainage of federal minerals, as well as the loss of federal revenue from existing and future oil & gas production on intervening fee lands. Additionally, BLM must also address in the final EIS what it plans to do with the leases that are now indefinitely suspended. APC does not believe BLM can or should manage the two resources by indefinitely suspending the right of the old oil and gas leases. In particular, BLM should clearly state whether it has decided to prohibit oil and gas leasing and development in favor of trona development, along with the basis for that decision. ]

Currently, BLM has chosen to manage development within the MMTA through the suspension of oil & gas leases. Although BLM has authority to suspend leases and control the timing of lease actions, this authority is not unfettered. Federal leases grant certain rights. In particular, a lessee is granted:

"... the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold subject to: Stipulations attached to the lease; restrictions deriving from specific, nondiscretionary statutes; and such reasonable measures as may be required by the authorized officer to minimize adverse impacts to other resource values, land uses or users not addressed in the lease stipulations at the time operations are proposed. To the extent consistent with lease rights granted, such reasonable measures may include, but are not limited to, modification to siting or design of facilities, timing of operations, and specification of interim and final reclamation measures. At a minimum, measures shall be deemed consistent with lease rights granted provided that they do not: require relocation of proposed operations by more than 200 meters; require that operations be sited off the leasehold; or prohibit new surface disturbing operations for a period in excess of 60 days in any lease year."

43 C.F.R. § 3101.1-2. (emphasis added).

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Requiring an indefinite (Page 4-33) suspension of leases obviously runs afoul of this provision and likely impermissibly interferes with the contract rights granted to the lessees, potentially rising to the level of a takings. BLM has failed in the DEIS to address this issue and its potential economic impact both from the perspective of the lessee and the government. APC requests that BLM specifically address its legal basis for holding leases in suspension indefinitely. BLM should also disclose the potential costs to the federal government should it be determined BLM lacks the authority to indefinitely suspend leases.

Finally, if BLM decides to include in the final EIS and the accompanying Record of Decision a decision to refrain from fluid mineral leasing in the MMTA, due to not accepting the WOGCC concurrent development rules, BLM should at a minimum allow for the removal of any such ban based upon a demonstration that new or existing technology will provide the ability to safely develop trona and oil and gas resources concurrently.

Offsite Mitigation

APC is appreciative of BLM's effort to recognize the voluntary nature of offsite mitigation; however, the language on page 2-52 which directs BLM personnel to "utilize" offsite mitigation for "necessary" purposes is concerning (Page 2-52). "Utilize appropriate voluntary offsite compensatory mitigation to reduce impacts if necessary after all onsite mitigation has been accomplished or if onsite mitigation is not feasible." Is it BLM's intent to "utilize" offsite mitigation to reduce impacts from oil and gas development projects to less than "significant" levels under the NEPA? [It is imperative that BLM disclose, in the RMP, the situation or circumstances under which it would be "necessary" to "utilize" voluntary offsite mitigation. Additionally, BLM must disclose the limitations on the "necessary" application of voluntary offsite compensatory mitigation due to valid existing lease rights.]

Chapter 4 Environmental Consequences

Chapter 4

Page 4-10 The BLM also will facilitate discussions with stakeholders to implement mitigation measure beyond the BLM's authority to reduce proposed emissions including considering a program to offset emissions from proposed projects and reducing emissions from existing sources such as retrofits with more stringent BACT."

Although BLM correctly identifies that emission offsets are beyond their authority it must be disclosed that even the Wyoming Department of Environmental Quality can not require emission offsets without a non-attainment State Implementation Plan approved by the Environmental Protection Agency.]

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Page 4-16 "Moreover, the prohibition of surface-disturbing activities on highly erosive soils with 10 percent or more slope . . ."

The slope restriction for Alternative B applies solely to "highly erosive soils" whereas slope restrictions for Alternatives A, C, and D apply to all soil types. APC recommends that slope restrictions for all alternatives apply only to "highly erosive soils".

Page 4-23 "Areas within ¼ mile of water bodies and wetlands are designated as NSO for fluid minerals to protect these resources and those that depend on them."

BLM should allow site specific determination on distance setbacks from water bodies and wetlands. Factored into BLM's determination should be variables such as amount and nature of surface disturbance, application of Best Management Practices (BMP), soil types, slope and other factors that serve to regulate the amounts of sedimentation that may reach areas of concern. Furthermore, BLM must provide justification for limiting this restriction on no surface disturbance to only the fluid mineral program. How is the disturbance caused by oil and gas exploration and development distinct from that of other activities such that an NSO would be warranted?

Page 4-23 "Alternative B has the least amount of changes to surface water quality . . . due to . . . the prohibition of surface disposal of produced waters on federally administered soil resources, which protects local streams."

Although APC opposes Alternative B, implementation of Appendix D – Water Disposal Requirement provides sufficient protection measures, including a back stop (i.e. requirement for identifying an alternative method of disposal that can be used at any time) such that surface discharge should not be prohibited under any alternative.

Page 4-23 "Requiring the lining of reserve pits and secondary containment on all facilities where oil or hazardous materials are stored or potential release may occur, minimize the adverse impacts on groundwater quality from oil and gas operations."

APC believes it is inappropriate to require mandatory lining of all reserve pits under Alternative B or D. Implementation of site specific pit siting analysis, taking into consideration factors such as ground water depth, ground water classification and quality, native soil materials, pit contents, etc., can protect ground water in a manner sufficiently equal to the standard to require lining of all pits.

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Kemmerer Field Office Draft EIS and RMP

Page 4-58 "Based on the definition of surface-disturbing activity (mechanized actions), oil and gas development is identified as the primary source of surface disturbance in the planning area"

The determination that oil and gas development is the primary source of surface disturbance in the planning area is inappropriately constrained by BLM by limiting it to the definition surface-disturbing activity. BLM needs to provide a comparative description with other management actions being considered that have effects similar to surface disturbing activities by mechanized actions. For instance, how do effects via mechanical action of hoof by wildlife and domestic livestock compare in impacts to soils, vegetation and water quality/quantity (compaction, erosion, INNS spreading, sedimentation, vegetative alteration, etc.) to that of activities that meet the definition of surface-disturbing activity? This comparison should be part of the methods and assumptions section.

Page 4-63 "This alternative prohibits surface-disturbing activities in areas identified as having fragile, chemical and biological crust, nonproductive, or low reclamation potential soil characteristics."

APC believes the prohibition on surface-disturbing activities in areas with fragile, chemical and biologic crust, nonproductive, or low reclamation potential unnecessarily limits or restricts opportunities to address these resources on a site specific basis and limit the potential to develop new BMPs to mitigate concerns with these resources.

Page 4-68 "Placing salt and mineral supplement outside of riparian and wetland communities is one way of reducing livestock use of riparian and wetland areas."

This statement is more suited for a consideration to manage impacts rather than a method or assumption to determine the extent and nature of impacts. This statement should either be removed or all mitigation measures that reduce impacts to riparian and wetland areas should be listed in the methods and assumptions section.

Page 4-68 "Surface runoff to streams generally increases as livestock stocking rates increase"

Concurrent with increased runoff to streams is the increased potential for accelerated sediment loading to streams. This fact should be included as part of the methods and assumptions description.

Page 4-95 "Interim and (or) final reclamation of surface disturbance from drilling activities would be required within one year of completion of these activities." (emphasis added)

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It is inappropriate to single out one type of surface disturbing activity (oil and gas) for this restriction. Surface disturbances requiring reclamation, causation aside, should be held to the same standard. Additionally, BLM must clarify if this statement refers to merely surface grading and seeding or attainment of successful vegetation such that lessees can be relieved from further liabilities.

Page 4-97 "Restrictions around raptor nests are more extensive under Alternative B, since all buffers are 1/2 miles, resulting in fewer direct impacts to nesting raptors.

APC believes that BLM's methodology for providing increasing raptor protection under each alternative by increasing the distance at which activity is prohibited is unsupported by the analysis in the document. Common sense dictates that there is a point at which removing disturbances to a point further away provide little or no additional benefits to protection of nesting raptors. BLM has failed to provide any evidence to identify the appropriate distance at which the point occurs; rather BLM assumes that with increasing distance the effectiveness protection continues to increase on a linear fashion. BLM should provide this information in the final EIS or remove the statement.

Page 4-107 "Surface disturbing activities or other disruptive activities, including ROW, in special plant areas would adversely impact special status species."

APC was unable to find a definition of disruptive activity in the document. It is our understanding that disruptive activities commonly refer to those effects associated with human presence. BLM needs to provide a definition of disruptive activities and then qualify how these activities may impact special status plants.

Page 4-111 "No new fluid mineral leasing occurs on currently unleased areas with potential habitats for federally listed species."

APC believes this provision is overly restrictive especially in light of the assumption identified on Page 4-108 which states, "The existing provisions in place (e.g., presence/absence surveys by a qualified botanist during the appropriate phenological stage [e.g., blooming] for positive identification and conducted prior to proposed actions) to protect special status species are carried out and conditional monitoring is conducted (e.g., grazing and surface disturbance reclamation) to ensure special status species are not jeopardized." BLM should not be imposing restrictions on energy development above that necessary to ensure listed plants are not jeopardized. Additionally, BLM needs to assess the impacts of possible drainage from fee minerals adjacent to these non-lease areas.

Page 4-134 "Alternative B prohibits rather than avoids surface disturbance or occupancy to protect associated nesting and brood-rearing habitats . . ."

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APC believes that this alternative is overly restrictive and should not be considered as part of an approved plan. BLM first needs to consider the impacts caused to fee lands and minerals adjacent to federal surface where this prohibition is imposed. Potential impacts such as restrictions on granting access to private lands to utilize the surface or develop the minerals must be addressed. Second, BLM must address the impacts that would be caused to the federal government if it could not protect itself from fluid mineral drainage. Finally, BLM should review the status and long term trend of greater-sage grouse in existing fields using Wyoming Game and Fish Data. BLM could utilize such data in its analysis to determine the persistence of greater-sage grouse in developed fields.

Page 4-141 "While Alternative D does not put a cap on the percentage of special status species habitat fragmented (as in Alternative B), avoidance of fragmentation, similar to Alternative C, provides greater beneficial impacts to greater sage-grouse than Alternative A, which does not address habitat fragmentation."

APC prefers BLM's management scheme for habitat fragmentation as described in Alternative D over that of Alternative B. Imposition of a cap on habitat fragmentation will not allow BLM the flexibility to implement adaptive management should impacts to wildlife resources be adequately reduced through other mitigating actions.

Page 4-161 "Under Alternative B, trail segment are ranked according to management level with restrictions based on their rankings. This alternative protects the physical evidence of NHTs . . . by prohibiting all surface disturbing activity that do not benefit the preservation and (or) interpretation of trails within the following distances (emphasis added).

The obvious interpretation of this restriction is to protect the physical evidence of the trail which APC interprets to be the trail trace which is defined on page 4-160 as the outer edges of the overall trace. BLM provides no justification that if the goal is to protect the trail trace, why it is necessary to limit surface disturbance up to 1 mile on each side of the trail segment. Should BLM claim that historic resources, that would threaten the preservation of the trail if destroyed, exist within the one mile or less of the trail trace then an exception should be made to allow the restriction to be waived. This would be based upon a finding that historic properties did not exist outside the trail trace. Otherwise, other trail values such as setting and feeling are protected via consultation with the State Historic Preservation Officer and implementation of mitigation for contributing trail segments.

Page 4-161 "First, preserve the viewshed within 10 miles of high management level segments . . . so developments do not dominate the visible area to detract from the feeling or sense of the historic period of the trail setting.

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Applying a preservation principle to visual intrusions of 10 miles is without justification as it is not supported by any objective analysis. Obviously, a large facility such as a power plant, major gas plant, wind farm might be visible to a degree that would "detract" from a feeling or sense of the historic period of the trail setting. However, BLM provides little or no analysis or discussion that smaller facilities such as well heads would even be recognizable or visible at a distance of ten miles or even detract from a feeling or sense of a historic period given the lack of dominance at that distance. BLM needs to provide a more detailed analysis of the impacts on setting from different types and sizes of facilities in order to justify this restriction at the 10, 5 or 3 mile limit.

Page 4-163 "Crossings at right angles to trails could be permitted on a case-by-case basis."

APC recommends that this restriction be limited only to those segments of National Historic Trails that contribute to the trails overall eligibility. There is no reason for BLM to restrict crossings to those portions of the trails that do not contribute or where the trail trace is non-existent.

Page 4-205 "Alternative B also preserves the viewshed within 10 miles of the Bridger Antelope Trap . . . and Gateway petroglyphs by prohibiting ROW corridors and other developments with structures greater than 12-feet high."

The list of resources described in this section of the document are all national historic sites and as such BLM should adhere to the Section 106 process (NHPA) for management direction and authority (i.e. eligibility criteria such as setting and feeling) rather than imposing an additional management layer as proposed by incorporating BLM's VRM management system to protect these resources. The goal for managing national historic sites should be limited to that necessary to protect the factors that make the site eligible. This approach is consistent with Instruction Memorandum 2003-233, Integration of the Energy Policy and Conservation Act Inventory Results into the Land Planning Process, which states that lease stipulations are to be reviewed to ensure those utilized are the least restrictive necessary to accomplish the desired protection. Therefore, imposing additional restrictions or management layers, as is the case with imposition of the VRM system, undermines the Section 106 process which appropriately determines the due and necessary level of protection and/or mitigation for national historic properties.

Page 4-218 "Under Alternative B, 30,913 acres of BLM-administered surface . . . of white-tailed prairie dog complexes . . . are designated ACECs and protected with restriction on surface-disturbing activities. In addition, the proposed ACEC under Alternative B will prohibit mineral development."

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Although BLM states that the area has low potential for mineral development, BLM must discuss the impacts to the federal mineral estate from drainage of fluid mineral resulting from placing the federal sections off limit to mineral development (i.e. checkerboard lands). Additionally, the U.S. Fish and Wildlife Conservation Assessment for White-tailed Prairie Dogs (USFWS 2004) cite a single reference (preliminary study) describing the potential impacts from oil and gas development. Unfortunately, the study could not rule out the effect of plague on the study results. APC asks that until further studies are completed documenting significant impacts to colony populations, that BLM continue to apply Best Management Practices as a conservation strategy (USFWS 2004).

Page 4-222 "Under Alternative B, 201,660 acres of BLM-administered surface . . . are designated the Fossil Basin ACEC or established as an MA (Map 62). Anticipated benefits under Alternative B include greater preservation and protection of the fossil resources in the area, compared to other alternatives. Potential adverse impacts from designating the Fossil Basin ACEC or establishing the area as an MA include restricting other resource uses in the area. The proposed area is a mixture of low, moderate, and high oil- and gas-development potential; low occurrence potential for coal; and low, moderate, and high occurrence potential for phosphate. The relatively large size of the proposed area and occurrence and development potential of minerals could adversely impact mineral development."

APC is unable to identify the nature or extent of restrictions on mineral development under an ACEC or MA designation; therefore we are unable to provide meaningful comment. Does BLM's designation as an ACEC or MA automatically default to a no surface use standard? APC refers BLM to previous comments regarding restricting or denying access to the federal mineral estate within the checkerboard lands.

Finally, the joint comments provided by the Public Lands Advocacy and the Petroleum Association of Wyoming on the Draft Kemmerer Resource Management Plan and Environmental Impact Statement (October 11, 2007), are incorporated into this comment letter in their entirety.

Sincerely,

Tom Clayton  
Regulatory Analyst

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## Appendix B – Public Response Documents

### Public Response Document 00033

<b>Barringer, Debra S.</b>	00033
<b>From:</b> Michele_Easley@blm.gov	
<b>Sent:</b> Wednesday, October 10, 2007 1:34 PM	
<b>To:</b> Barringer, Debra S.; Terry, Madeline	
<b>Subject:</b> Fw: T23N R116W	
Please add this to comments received on Cultural Resources/NHT from Russ Tanner.	
Michele Easley Planning and Environmental Coordinator BLM, Kemmerer Field Office 312 Highway 189 North Kemmerer, WY 83101 307.828.4524 307.371.1005 (cell) ----- Forwarded by Michele Easley/KFO/WY/BLM/DOI on 10/10/2007 01:33 PM -----	
"RussTanner" <rtanner@wyoming.com>	
10/10/2007 01:16 PM	To: <michele_easley@blm.gov> cc: <Lynn_Harrell@blm.gov>, "David Welch" <welchdj@cccast.net>, <hartley430@sweetwaterhsa.com> Subject: T23N R116W
I would like to also express some concern regarding the 500 ft. protection buffer under Alternative D in T23N R116 W. Perhaps just refreshing my memory about that area would resolve my concern. My recollection is that east of the highway the trail is basically two-track roads, in some cases surrounded by privately land. Then to the west there is the reservoir with ranch lands along the bottom then the trail is again two-track perhaps having been bladed somewhat especially in the White Hill area. Is this right?	
I guess I'd just bring this area to your attention as a place to reconsider.	
1	

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Public Response Document 00034



Dave Freudenthal, Governor

Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.



John Corra, Director

October 9, 2007

Michele Easley  
 Kemmerer RMP and EIS  
 Bureau of Land Management,  
 312 Highway 189 North  
 Kemmerer, WY 83101

RE: Comments Pertaining to the Draft Kemmerer Resource Management Plan (RMP) and Environmental Impact Statement (EIS)

Dear Ms. Easley:

These comments regarding the Kemmerer draft RMP and EIS are specific to the agency's statutory mission within State government which is protection of public health and the environment. These comments are meant to assist in defining the Official State Position, in conjunction with all other agency comments.

**Air Quality:**

During development of the RMP, the WDEQ-AQD agreed with BLM that quantifying emissions and qualitatively addressing potential air quality impacts was appropriate to provide the basis for alternative comparison within the RMP, so long as quantitative air quality impact analyses would be performed at the project level prior to project approval. Since that point in time, it has become evident that project-specific air quality impact analyses would be eliminated if oil and gas wells are authorized through Categorical Exclusion 3 under Section 390 of the 2005 Energy Policy Act upon approval of the RMP.

The WDEQ-AQD finds that the RMP air quality analysis is not specific enough in the absence of quantitative air quality impact analyses to adequately address air quality impacts from oil and gas development. The WDEQ-AQD is raising this issue with respect to the Kemmerer RMP where individual oil and gas development projects within the Kemmerer Field Office area are likely to be concentrated and of greater intensity. The WDEQ-AQD will also be raising this issue with respect to other RMP revisions where individual oil and gas development projects are likely to be both widely separated throughout the planning area as well as concentrated and of greater intensity. While the level of reasonably foreseeable oil and gas development varies for each RMP, potential air quality impacts are of concern to the WDEQ-AQD for each RMP revision.

Herschler Building • 122 West 25th Street • Cheyenne, WY 82002 • <http://deq.state.wy.us>

ADMIN/OUTREACH ABANDONED MINES AIR QUALITY INDUSTRIAL SITING LAND QUALITY SOLID & HAZ WASTE WATER QUALITY  
304-N. 322-7207 304-N. 322-6146 304-N. 322-7001 304-N. 322-7000 304-N. 322-7276 304-N. 322-7276 304-N. 322-7276

When specific oil and gas development is identified at the implementation stage, the WDEQ-AQD expects the BLM to conduct quantitative air quality impact analyses that are proportional to the type (e.g., Coalbed natural gas, oil or gas) and intensity (i.e., development pace and scale) of the project based on the locations and emission levels of proposed project sources, surrounding geographical and topographical characteristics, and the site-specific meteorology. The quantitative air quality impact analyses should be conducted to estimate impacts to air quality (e.g., ambient air quality standards) and air quality related values (e.g., visibility, atmospheric deposition). If the quantitative air quality impact analysis shows that significant impacts are possible, air quality mitigation measures must be considered. If such a need becomes evident during the life of the RMP, the WDEQ-AQD expects the BLM to consult with WDEQ-AQD on the necessary air quality impact analyses and mitigation measures. Without the above quantitative air quality analysis, it is the WDEQ-AQD's position that a RMP could be in violation of the National Environmental Policy Act and the associated Council on Environmental Quality regulations.

**Soils, Surface Water and Groundwater Protection:**

1. Table 2-3, "Detailed Table of Alternatives," page 2-37

A. Goal PR:4 should include an additional numbered objective titled: "Minimize degradation of soils." Under the "Management Actions Common to all Alternatives," the following management actions should be included -

i. Require and ensure the reporting of spills and releases of chemicals, petroleum products, and produced water to the Wyoming DEQ.

ii. Restore soils impacted by accidental and unintentional spills and leaks of chemicals, petroleum products, and produced water.

2. Table 2-3, "Detailed Table of Alternatives," page 2-39

A. Goal PR:5 should include an additional numbered objective titled: "Minimize degradation of surface water and groundwater resources." Under the "Management Actions Common to all Alternatives," the following management actions should be included -

i. Require and ensure the reporting of spills and releases of chemicals, petroleum products, and produced water to the Wyoming DEQ.

ii. Treat or control surface water and groundwater that has been impacted by spills or other releases of chemicals, petroleum products, and produced water on Federal lands.

3. Recognizing both state and federal requirements for remediation of impacted soils, surface water and groundwater, the objectives discussed in 1. and 2. above should be identified and treated equally in Table 2-3, as well as in the narrative discussion of Resource Management Alternatives (Chapter 2), Affected Environment (Chapter 3), and Environmental Consequences (Chapter 4).

4. Section 3.1.3 (page 3-15) mentions the Clean Water Act (CWA) and antidegradation of surface waters. The Wyoming DEQ is also responsible for the protection of groundwater. It is a violation

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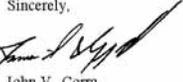
of Wyoming's regulations to alter the physical or chemical properties of groundwater above prescribed standards, or to degrade groundwater beyond its class of use. Please include a discussion of protection of groundwater similar to the discussion on surface water.

5. Section 4.1.3 (page 4-18) presents a discussion of surface water and groundwater quality and quantity. Surface water acts as a major groundwater recharge source in some areas, and therefore, if surface water quantities are reduced groundwater quantities will also be affected. This also works in the reverse where groundwater recharges or adds to surface water. If groundwater quantities are impacted, there may be a corresponding impact to surface water quantities. Please add a discussion concerning this potential.

6. In Appendix D, Water Disposal Requirements (page D-1), there is no mention of the protection of surface water or groundwater. Please address protection of all surface water and groundwater from produced water disposal activities including the management of contaminants potentially associated with produced water (e.g., hydrocarbons).

We appreciate the opportunity to comment in this process and look forward to working with you in the future. If you have any questions about the content of this letter, please contact Todd Parfitt at 307-777-7555.

Sincerely,



John V. Corra  
Director

Cc Governor's Planning Office  
Todd Parfitt, DEQ  
Dave Finley, AQD  
Paige Smith, AQD  
John Wagner, WQD  
Kevin Frederick, WQD  
Mark Thiesse, WQD  
Tom Schroeder, ISA  
Bob Bennett, BLM

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## Appendix B – Public Response Documents

### Public Response Document 00035



United States Department of the Interior  
00035

FISH AND WILDLIFE SERVICE

Ecological Services  
5353 Yellowstone Road, Suite 308A  
Cheyenne, Wyoming 82009

In Reply Refer To:

OCT -5 2007

ES-61411/W.02/WY07FA0476

Memorandum

To: Michele Easley, RMP Project Manager, Kemmerer Field Office, Kemmerer, Wyoming  
From: Brian T. Kelly, Field Supervisor U.S. Fish and Wildlife Service, Wyoming Field Office, Cheyenne, Wyoming  
Subject: Comments on the Draft Environmental Impact Statement and Draft Biological Assessment for the Kemmerer Resource Management Plan Revision

Thank you for the opportunity to review the U.S. Bureau of Land Management's (BLM or Bureau) Draft Environmental Impact Statement (DEIS) and Draft Biological Assessment (draft BA) for the Kemmerer Resource Management Plan (RMP) revision received by our office on July 16, 2007. The DEIS describes management alternatives for the Kemmerer RMP planning area and describes Bureau activities and their effects to resources in Lincoln, Sweetwater, and Uinta counties, Wyoming. The draft BA for the Kemmerer RMP was received by the U.S. Fish and Wildlife Service (USFWS or Service) on June 27, 2007. The draft BA describes potential effects to listed species from activities described in the DEIS. Our comments on the DEIS and the draft BA follow.

The Service provides recommendations for protective measures for threatened and endangered species in accordance with the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). Protective measures for migratory birds are provided in accordance with the Migratory Bird Treaty Act (MBTA), 16 U.S.C. 703, and the Bald and Golden Eagle Protection Act (BGEPA), 16 U.S.C. 668. Wetlands are afforded protection under Executive Orders 11990 (wetland protection) and 11988 (floodplain management), as well as section 404 of the Clean Water Act. Other fish and wildlife resources are considered under the Fish and Wildlife Coordination Act, 48 Stat. 401, as amended (16 U.S.C. 661 *et seq.*).

The Bureau has stated "the Preferred Alternative of the DEIS (Alternative D)" is an indication of the agency's preliminary preference because it reflects the best combination of decisions to achieve the Bureau's goals and policies, meets the purpose and need, addresses the key planning issues, and considers the recommendations of cooperating agencies and BLM specialists. Therefore, the Service has focused its review of the DEIS on the environmental consequences of Alternative D. The Service anticipates that the Bureau will initiate formal section 7 consultation with the Service over this alternative.

General Comments

1. The DEIS and draft BA make numerous references to the bald eagle as a federally-listed species. On July 9, 2007, the Service published a Federal Register notice (72 FR 37346) announcing that the bald eagle (*Haliaeetus leucocephalus*) would be removed from the list of threatened and endangered species under the Act on August 8, 2007. However, the protections provided to the bald eagle under the BGEPA and the MBTA will remain in place. The term "disturb" under the BGEPA has recently been defined as: "to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior (72 FR 31332). To assist with the de-listing transition, the Service has developed National Bald Eagle Management Guidelines to advise land managers when and under what circumstances the protective provisions of the MBTA and BGEPA may apply to their activities. These guidelines are available on our web page at <http://www.fws.gov/migratorybirds/baldeagle.htm>. The Service intends to update these guidelines as more information becomes available through adaptive management. Please be advised that the Service's Wyoming Ecological Services Office, in collaboration with the Wyoming Game and Fish Department will be modifying these guidelines in the near future to ensure they adequately address the unique conditions of our state. We will notify you of these "Wyoming" guidelines as soon as they become available. Additionally, the Service has proposed a permit structure under the BGEPA that is similar to the permit structure that exists under the Endangered Species Act for when impacts are unavoidable. However, this structure is currently undergoing public comment and is not yet in place. Please contact the Wyoming Ecological Services Office if you have any questions regarding this permit structure, the de-listing decision, or require technical assistance regarding any planned or ongoing activities that cannot be conducted in compliance with the MBTA, BGEPA, or the National Bald Eagle Management Guidelines.
2. Some conservation measures included in the DEIS Appendix A are not consistent with the terms and conditions of the Bureau's statewide programmatic species-specific section 7 consultations (programmatic BOs). The Service encourages the Bureau to ensure that the conservation measures included in the Final Environmental Impact Statement (FEIS) and the RMP BA are consistent with the terms and conditions of the programmatic species-specific BOs. For example, the DEIS Appendix A does not contain the conservation measure from the programmatic black-footed ferret (*Mustela nigripes*) consultation which reads "Discovery of a live black-footed ferret outside of the Experimental Non-essential population areas in Wyoming would have profound importance to the species' recovery. Reporting of such a discovery by staff, contractors, permittees, etc. will be fully encouraged by Bureau Staff and Management."
3. Regarding threatened and endangered species, it is the Service's understanding that the Bureau is committed to ensuring that surveys are conducted in potential habitat of listed species or assuming species presence prior to conducting activities that may affect listed species. The Service recommends clearly stating this in the FEIS and draft BA.

## Appendix B – Public Response Documents

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4. The Service realizes that the Bureau is currently continuing to prepare a final BA which will analyze the impacts to threatened and endangered species from implementation of the Kemmerer RMP revision. The Service suggests that coordination be continued between the Bureau and the Service until a final BA has been completed for this project and the Service has determined that it has received all information necessary to complete a Biological Opinion (BO) pursuant to section 7 of the Act.

### Specific Comments

#### DEIS Page 3-72, 6<sup>th</sup> Paragraph.

The DEIS contains the phrase "a recovery plan for Ute ladies'-tresses... the only federally listed species potentially occurring in the planning area..." The Service recommends that the Bureau modify this phrase to clarify that the Ute ladies'-tresses may be the only listed plant species potentially occurring in the planning area but that it is not the only listed species potentially occurring in the planning area.

#### DEIS Page 4-50, 3<sup>rd</sup> Paragraph.

The DEIS states that "... terms and conditions identified in Statewide ... Biological Opinions (BOs) for listed plant and wildlife species within the planning area also will be implemented, as appropriate." The Service wishes to clarify that in order for the Bureau to remain in compliance with the Act regarding any potential take of listed species from Bureau-authorized actions, all terms and conditions included in incidental take statements resulting from current biological opinions must be followed.

#### DEIS, Page 4-78, Section 4.4.4.1 4<sup>th</sup> and 5<sup>th</sup> bullets.

Bullet 4 states that "Activities affecting water quantity are regulated by the Wyoming State Engineer's Office" and bullet 5 states that "Activities affecting water quality are regulated by the Wyoming DEQ [Division of Environmental Quality]". The Service wishes to clarify that although these activities are regulated by other agencies, the Bureau is still obligated to analyze effects of these activities and to consult with the Service in accordance with section 7 of the Act if these activities (1) "may affect" listed species and (2) are approved/permited/or authorized by the Bureau or would not occur "but for" the Bureau's approval/permitting/or authorization of a plan involving these activities.

#### DEIS, Page 4-140.

The DEIS states that "Under Alternative D, there are no specific management actions for gray wolves..." The Service recommends that the Bureau revise this statement. The Bureau has completed statewide programmatic section 7 consultation over the impacts to gray wolves from Bureau-authorized actions identified in Wyoming Resource Management Plans. Conservation measures that the Bureau is committed to carrying out to minimize impacts to gray wolves are contained in the DEIS Appendix pages A-13 through A-14.

#### DEIS, Appendix page A-3

Conservation measure 10 incorrectly refers to conservation measure "13 below". The Service recommends that the Bureau correct that portion of conservation measure 10 to correctly refer to conservation measure "9 above".

#### Draft BA, Page 5-6, Table 3.

Note 6 of Table 3 states that "Potential water depletion for fire management is not included in calculations due to the non-predictive nature of unplanned fire and the negligible water depletion

associated with planned fire". Although depletions may be negligible, the Service recommends that the Bureau modify Table 3 to include projected water depletions of the Colorado River basin resulting from planned fire management actions.

#### Draft BA, Page 9-1, Table 4.

Table 4 of the draft BA lists the effects determinations of No Effect (NE), Not Likely to Adversely Affect (NLAA), and Likely to Adversely Affect (LAA) for many listed species but does not provide these determinations for the endangered Colorado River fishes. The Service recommends that the Bureau expand Table 4 by listing the Bureau's determinations for the downstream endangered Colorado River fishes next to the corresponding programs for which the Bureau's determinations are based.

As stated previously, the Service realizes that the Bureau is continuing to prepare the next draft of the BA for the Kemmerer RMP. The Service wishes to continue coordination efforts with the Bureau until a complete and adequate BA has been prepared. If you have questions regarding the comments or suggestions contained in this correspondence regarding the DEIS or the draft BA for the Kemmerer RMP revision, please contact Alex Schubert of the Cheyenne Field Office at (307) 772-2374, extension 238.

cc: BLM, Endangered Species Coordinator, State Office, Cheyenne, WY (J. Carroll)  
BLM, Wildlife Biologist, Kemmerer Field Office, Kemmerer, WY (L. Oles)  
BLM, Wildlife Biologist, Kemmerer Field Office, Kemmerer, WY (P. Schuette)  
WGFD, Statewide Habitat Protection Coordinator, Cheyenne, WY (V. Stelter)  
WGFD, Non-Game Coordinator, Lander, WY (B. Oakleaf)

## Appendix B – Public Response Documents

Public Response Document 00036

**eog resources**

00036

EOG Resources, Inc.  
600 Severnport, Street  
Suite 400A  
Denver, CO 80202  
Wor 303.572.8600  
Fax 303.624.1400

October 8, 2007

*Via Overnight Delivery and Electronic Mail*

Bureau of Land Management  
Kemmerer Field Office  
Michele Easley - Team Leader  
312 HWY 189N  
Kemmerer, WY 83101

Re: EOG Resources, Inc.'s Comments Regarding the Draft Resource Management Plan and Environmental Impact Statement for the Kemmerer Field Office Planning Area

Dear Ms. Easley:

EOG Resources, Inc. (EOG) offers the following comments on the Draft Resource Management Plan and Environmental Impact Statement for the Kemmerer Field Office Planning Area (RMP DEIS). EOG produces significant oil and natural gas from the Moxa Arch Natural Gas Field and owns and operates other oil and gas leases within the Kemmerer Resource Area. EOG submits these comments to the Bureau of Land Management (BLM) because of the significant impact the revised Kemmerer Resource Management Plan (RMP) will have upon EOG's future operations in the planning area.

**GENERAL COMMENTS**

The BLM's analysis in the RMP DEIS is overly vague, ambiguous, and potentially inadequate to fulfill its purpose under the National Environmental Policy Act of 1969 (NEPA) and the Federal Land Policy and the Federal Land Policy Management Act of 1976 (FLPMA). In a number of respects, the BLM's analysis does not provide EOG with a sufficient understanding of how its existing lease rights or potential future operations may be impacted by the adoption of the revised resource management plan. Further, EOG has serious concerns that under both Alternatives B and D the BLM is proposing management directives limiting or precluding EOG's rights under its existing leases, or is proposing to later adopt conditions of approval (COAs) that are inconsistent with EOG's rights. As discussed in more detail below, the BLM must present substantially more analysis in the Final EIS for the revised Kemmerer RMP

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in order to comply with its procedural obligations under NEPA. In particular, the BLM must provide additional analysis regarding:

- The areas open for oil and gas leasing and development and the restrictions that may be placed on future oil and gas leases. The generalized categories of available with standard, moderate, and major constraints do not provide EOG sufficient information to analyze how future oil and gas operations will be impacted.
- The BLM's Reasonable Foreseeable Development Scenario is far too low and does not account for proposed activities, potential infill operations, or development of unconventional wells using new technology.
- How existing lease rights will be protected throughout the life of the plan.

**Role and Purpose of a Resource Management Plan**

Pursuant to FLPMA, the BLM is required to develop land use plans to guide the agency's management of federal lands under its administration. *See* 43 U.S.C. 1711 (2006). Land use plans, known under the BLM's regulations as RMPs are designed to "guide and control future management actions." *See Norton v. Southern Utah Wilderness Society*, 542 U.S. 55, 59 (2004) (citing 43 U.S.C. § 1712; 43 C.F.R. § 1610.2). "Generally, a land use plan describes, for a particular area, allowable uses, goals for future condition of the land, and specific next steps." *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. at 59 (citing 43 C.F.R. 1201.0-5(k)). FLPMA requires the BLM to manage federal lands and minerals "in accordance with" the RMPs developed by the BLM after appropriate notice and comment. 43 U.S.C. § 1732 (2006); 43 C.F.R. § 1610.5-3(a) (2006). Nonetheless, the Supreme Court of the United States, in a unanimous decision, recently recognized that under FLPMA and the BLM's own regulations that land use plans are not ordinarily the medium for making affirmative decisions. *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. at 69. The Supreme Court further recognized that the development of RMPs is only the "preliminary step in the overall process of managing public lands." *Norton v. Southern Utah Wilderness Alliance*, 542 at 69. Finally, the BLM's Land Use Planning Handbook specifies that RMPs are not normally used to make site-specific implementation decisions. *See* BLM Handbook H-1601-1, II.B.2.a, pg. 13 (Rel. 1-1693 3/11/05). The BLM must ensure that it leaves itself sufficient flexibility to manage the public lands in light of ever-changing resource demands, uses, and technologies. The management objectives, goals, and actions established in the revised Kemmerer RMP must be sufficiently flexible to manage the Kemmerer Planning Area for at least the next decade.

Appropriately, the BLM eliminated from detailed study alternatives that would have required specific technologies or technological mitigation measures. As the BLM observed on page 2-5 of the RMP DEIS, blanket technology restrictions limit the BLM's flexibility to manage projects based on site-specific or unique situations. Similarly, the BLM must ensure that

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the RMP provides BLM with sufficient flexibility to adapt to new and evolving situations. The BLM should not utilize the land use planning process to impose site-specific COAs or unreasonably limit future management actions with limiting language in the revised Kemmerer RMP.

### Existing Lease Rights

The BLM should also be aware that some of EOG's leases in the Kemmerer Resource Area pre-date FLPMA and are not subject to stipulations because they were issued prior to the enactment of FLPMA. As such, development on these leases is only subject to the limitations in 43 C.F.R. § 3101-1.2 (2006). EOG also owns or has a contractual interest in other leases which post-date FLPMA within the Kemmerer Planning Area. As development operations are proposed in the future, the BLM cannot attempt to impose stipulations or COAs on EOG's existing leases that are inconsistent with its valid existing contractual rights. Once the BLM has issued a federal oil and gas lease without a no surface occupancy stipulation (NSO), and in the absence of a nondiscretionary statutory prohibition against development, the BLM cannot completely deny development on the leasehold, nor impose mitigation measures inconsistent with the BLM's authority under 43 C.F.R. § 3101.1-2. See, e.g., *National Wildlife Federation, et al.*, 150 IBLA 385, 403 (1999). Only Congress has the right to completely prohibit development once a lease has been issued. *Western Colorado Congress*, 130 IBLA 244, 248 (1994). Further, the BLM cannot adjust EOG's valid and existing rights.

Congress made it clear when it enacted FLPMA that nothing therein, or in the land use plans developed thereunder, was intended to terminate, modify, or alter any valid or existing property rights. See 43 U.S.C. § 1701 note (2006). Because the authority conferred in FLPMA is expressly made subject to valid existing rights, 43 U.S.C. § 1701 note, an RMP prepared pursuant to FLPMA, after lease execution and after drilling and production has commenced, is likewise subject to existing rights. See *Colorado Environmental Coal., et al.*, 165 IBLA 221, 228 (2005). The Kemmerer RMP, when revised, cannot defeat or materially restrain EOG's valid and existing rights to exploit its leases or has a contractual interest in through COAs or other means. See *Colorado Environmental Coal., et al.*, 165 IBLA 221, 228 (2005) (citing *Colorado Environmental Coal.*, 135 IBLA 356, 360 (1996) *aff'd*, *Colorado Environmental Coal. v. Bureau of Land Management*, 932 F.Supp. 1247 (D.Colo. 1996)).

In order to ensure the protection of existing lease rights, the BLM promulgated policies regarding the contractual rights granted in an oil and gas lease. First, the BLM's own Planning Manual specifically mandates the protection of existing lease rights. "All decisions made in land use plans, and subsequent implementation decisions, will be subject to valid existing rights. This includes, but is not limited to, valid existing rights associated with oil and gas leases. . . ." See BLM Manual 1601 – Land Use Planning, 1601.06.G (Rel. 1-1666 11/22/00). BLM Instruction

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Memorandum 92-67 similarly states that "[t]he lease contract conveys certain rights which must be honored through its term, regardless of the age of the lease, a change in surface management conditions, or the availability of new data or information. The contract was validly entered based upon the environmental standards and information current at the time of the lease issuance." As noted in the BLM's Instruction Memorandum, which is binding upon the agency, the lease constitutes a contract between the federal government and the lessee which cannot be unilaterally altered or modified by the BLM.

### Categorical Exclusions

In developing the Kemmerer RMP, the BLM must provide for and allow itself sufficient flexibility to utilize the categorical exclusions developed by Congress to streamline oil and gas permitting on federal lands. In Title III of the Energy Policy Act of 2005, Congress developed five separate categorical exclusions intended to facilitate the production of domestic energy sources, without compromising the necessary protection for other resources. See Energy Policy Act of 2005, Pub. L. No. 109-58, § 390(b) 119 Stat. 594, 748 (2005) (30 U.S.C. § 15942(b)). As the BLM is aware, categorical exclusions are applied to actions which are considered so insignificant and routine that they do not individually or cumulatively have a significant impact on the human environment. See 40 C.F.R. § 1508.4 (2006). After carefully studying the issue, Congress determined that certain oil and gas activities, such as drilling individual infill wells in an area where a site-specific environmental impact statement (EIS) or environmental assessment (EA) has previously been prepared, are so inconsequential that additional NEPA documentation is not required. Although the use of categorical exclusion is not required, Congress expressed a clear preference for the BLM to utilize categorical exclusions by creating a rebuttable presumption for their use. See Energy Policy Act of 2005, Pub. L. No. 109-58, § 390(b) 119 Stat. 594, 747-48 (2005) (30 U.S.C. § 15942(b)). In order to avoid potential litigation from those opposed to the use of categorical exclusions, and in order to comply with Congress' unequivocal directive, the BLM must incorporate the Energy Policy Act of 2005 categorical exclusions into the Kemmerer RMP and develop an overall management goal encouraging their use.

### Sufficiency of Detail in Kemmerer RMP/DEIS

In general, the Kemmerer RMP DEIS provides insufficient information regarding potential impacts to oil and gas leasing and development. The descriptions of the proposed management actions do not provide EOG with the necessary information to assess how such actions may impact EOG's existing or future operations within the planning area. The BLM's analysis in Chapter 4 is often vague and cursory, even for a broad programmatic document such as a RMP. The BLM must provide additional detailed analysis regarding the potential impacts the revised resource management plan may have upon future oil and gas leasing and development.

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For example, the general categories of “Administratively Available Subject to Moderate Constraints” and “Administratively Available Subject to Major Constraints” are insufficient to provide EOG, other operators, members of the general public, or even the BLM the necessary information to evaluate the proposed RMP and anticipate how new restrictions will impact existing or potential future operations in the planning area. The BLM should have separately mapped and identified—as the BLM did in the Pinedale Draft RMP/EIS (2007)—areas with NSO stipulations, seasonal limitations, and controlled surface use stipulations under each alternative. Depending on the number of overlapping stipulations, operators such as EOG could have made their own determinations on the nature of the proposed leasing constraints and whether they are moderate or major. In particular the BLM should have identified NSO areas. There is a vast difference between timing and controlled surface use stipulations and NSO stipulations. The BLM must provide this information in the Final EIS for the Kemmerer RMP or otherwise provide useable information regarding the types of stipulations being proposed. The existing overly generalized information is vague, ambiguous, and completely inadequate.

As discussed in more detail below, the BLM also failed to map or otherwise clearly identify the crucial wildlife habitat areas that will be closed to all motor vehicle access seasonally under most if not all of the alternatives. See RMP DEIS, pgs. 4-103 – 4-104. Further, the BLM does not clearly state whether such areas will be closed to all activities, including routine oil and gas maintenance and production activities in the description of the alternatives in Chapter 2, but only obliquely mentions the seasonal closure in Chapter 4 when discussing potential environmental impacts to wildlife. See RMP DEIS, pgs. 4-103 – 4-104. The BLM’s Final EIS for the Kemmerer RMP must include this information.

The BLM must also separately map crucial winter range and winter range for each of the big game species within the planning area. Each species has vastly different habitat types and needs, and each respond differently to temporal occupancy and potential stresses. The operators must be able to determine what species may be impacted, and whether there are overlapping crucial winter habitats. As also noted below with respect to specific management actions, the BLM inconsistently uses the terms “crucial winter range” and “winter range” in the RMP DEIS. Unfortunately, the BLM has also not mapped or identified winter range. Without this information EOG cannot assess whether its operations will be impacted.

### CHAPTER 1 – PURPOSE AND NEED FOR ACTION

The text on page 1-14 indicates that a letter from the United States Fish and Wildlife Service (USFWS) dated March 23, 2004, identifying endangered, threatened, proposed, and candidate species potentially in the planning area, is contained in Appendix C to the RMP DEIS. No such letter is attached; Appendix C only contains a copy of the letter from the USFWS dated

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March 17, 2004. The BLM should include both letters from the USFWS in the Final EIS for the Kemmerer RMP.

### CHAPTER 2 – RESOURCE MANAGEMENT ALTERNATIVES

#### Section 2.2 Alternative Components

##### Energy Policy Conservation Action Study

In Section 2.2.3 of the RMP DEIS, pgs. 2-3 – 2-4, the BLM indicates that it integrated the results of the original Energy Policy Conservation Action (EPCA) study into the Reasonably Foreseeable Development (RFD) Scenario for the Kemmerer RMP as required by BLM Instruction Memorandum 2003-233 and 2003-234 (Aug. 4, 2003). The BLM should also carefully review the results and analysis contained in the Scientific Inventory of Onshore Federal Land’s Oil and Gas Resources and the Extent and Nature of Restrictions or Impediments to Their Development (2006) (EPCA II) prepared in compliance with § 604 of the Energy Act of 2000, Pub. L. No. 106-469, and § 364 of the Energy Policy Act of 2005, Pub. L. No. 109-58. The EPCA II study demonstrates the significant negative impacts that stipulations have upon oil and gas leasing and development. The EPCA II study demonstrates that only 15% of lands containing natural gas resources within the entire Green River Basin are available with Standard Lease Terms and that 76% of the lands are encumbered with restrictions to development. The EPCA II Study further determined that 37% of the percent of the natural gas underlying federal lands in the Green River Basin is inaccessible between three (3) and six (6) months each year, and up to 9% of the natural gas in the area is inaccessible a full nine (9) months of the year. See EPCA II, pgs. 122 – 125. The EPCA II study indicates that 19.5% of the oil and gas resources in the Greater Green River Basin is unavailable for leasing, or available only with NSO stipulations. See *Id.* at 122. That equates to 5,629 billion cubic feet of natural gas unavailable because of leasing restrictions alone. Another 47,829 billion cubic feet is only available with significant leasing restrictions. The EPCA study also demonstrates that 37% of the Wyoming Thrust Belt region, which also partially overlaps the Kemmerer Planning Area, is unavailable for oil and gas leasing or only available with a NSO Stipulation. See EPCA II, pg. 115. Only 13.2% of the Wyoming Thrust Belt region is available with standard lease terms. *Id.* The EPCA II study determined that an overwhelming 69% of the overall Wyoming Thrust Belt Region was administratively unavailable for oil and gas leasing when it included the 32% currently unavailable due to ongoing planning efforts. *Id.* That equates to 144 billion cubic feet of natural gas unavailable because of leasing restrictions. *Id.* The BLM should carefully consider the impacts more restrictive stipulations will have upon oil and gas development in the Kemmerer Resource Area and, as required by the Energy Policy Act of 2005, ensure that stipulations imposed are only as restrictive as necessary. See Energy Policy Act of 2005, Pub. L. No. 109-58, § 363(b)(3), 119 Stat. 594, 723 (2005).

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### Section 2.3 – Alternatives Considered, but Not Carried Forward for Detailed Analysis

From a NEPA standpoint, the BLM has developed and analyzed a range of alternatives in the Kemmerer RMP DEIS. By including alternatives that are likely to have either more significant or less significant environmental impacts than the No Action Alternative, the BLM has provided a basis for informed comparison between various management scenarios for the public and the agencies. Further, the BLM properly considered, but did not analyze in detail, various alternatives that do not meet the purpose and need of the proposed RMP Revision, or the BLM's obligation to foster the development of domestic energy sources under the Mineral Leasing Act (MLA), FLPMA, or the Energy Policy Act of 2005. For example, the BLM properly eliminated from detailed study a proposed alternative that would have closed the entire Kemmerer Resource Area to oil and gas leasing. In addition to the reasons identified on pages 2-5 of the RMP DEIS, the BLM should inform the public that only the Secretary of the Interior could withdraw the entire planning area from oil and gas leasing under FLPMA, and that withdrawals can only be made using specific procedures mandated by FLPMA. 43 U.S.C. § 1714(a), (b) (2006) (requiring withdrawals to be made by the Secretary of the Interior, or a person in the Secretary's office who has been appointed by the President with the advice and consent of the Senate and listing the requirements necessary for the Secretary to withdraw public lands).

### Section 2.4.2 – Alternative B (Conservation Alternative)

Overall, Alternative B is overly restrictive, unnecessarily limits oil and gas development in the Kemmerer Resource Area, and should be eliminated from further consideration. As discussed in more detail below, oil and gas development is the primary employment and tax revenue in southwest Wyoming. The BLM's adoption of Alternative B would have devastating economic impacts upon the region, State of Wyoming, and even the nation. Oil and gas development, even on existing leases, would be significantly hampered by the BLM's Management actions for Air Quality, Soils, Minerals, Biological Resources, Heritage Resources, Lands and Realty, Travel Management, and Visual Resources. Although EOG understands the importance of having a wide range of alternatives to satisfy the requirements of NEPA, the BLM must not adopt Alternative B.

### Section 2.4.4 – Alternative D (Preferred Alternative)

Of the alternatives presented in the Kemmerer RMP DEIS, Alternative D offers the most balanced future management direction for the Kemmerer Resource Area. EOG is concerned, however, that even this alternative may unreasonably and illegally interfere with EOG's existing

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lease and contractual rights. The BLM must ensure that its preferred alternative protects and honors valid existing lease rights.

### Section 2.5 – Details of Alternatives

In the comments that follow, EOG discusses each of the general goals and objectives developed by the BLM for each of the individual Resource Topics identified in Table 2-3 of the RMP DEIS. EOG then provides comments on the specific management actions identified for each alternative under each of the individual Resource Topics.

#### 1000 Physical Resources – Air Quality

As the BLM partially recognizes in Appendix J to the Kemmerer RMP DEIS, and more directly indicates in Chapter 3, the BLM does not have any direct authority over air quality or air emissions under the Clean Air Act (CAA), 42 U.S.C. §§ 7401 et seq. Under the express terms of the CAA, the EPA has the authority to regulate air emissions. In Wyoming, the Environmental Protection Agency (EPA) has delegated its authority to the State of Wyoming. See RMP DEIS, pg. 3-10, Appd. J, Pgs. J-5, J-7. The BLM has confirmed its lack of authority to regulate air emissions in recently released project-level documents. See Draft Supplemental Environmental Impact Statement for the Pinedale Anticline Oil and Gas Exploration and Development Project (PAPA SDEIS), pg. 4-62 ("Air pollution impacts are limited by state and federal regulations, standards, and implementation plans established under the Clean Air Act and administered by the applicable air quality regulatory agency (WDEQ/AQD and EPA) . . . The applicable air quality regulatory agencies have the primary authority and responsibility to review permit applications and to require emission permits, fees, and control devices prior to construction or operation."). The Secretary of the Interior, through the Interior Board of Land Appeals (IBLA) has similarly recognized:

In Wyoming, ensuring compliance with Federal and State air quality standards, setting maximum allowable limits (NAAQS and WAAQS) for six criteria pollutants CO (carbon monoxide), SO<sub>2</sub> (sulfur dioxide), NO<sub>x</sub>, ozone and particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>), and setting maximum allowable increases (PSD Increments) above legal baseline concentrations for three of these pollutants (SO<sub>2</sub>, NO<sub>x</sub>, and PM<sub>10</sub>) in Class I and Class II areas is the responsibility of WDEQ [Wyoming Department of Environmental Quality], subject to EPA oversight.

*Wyoming Outdoor Council, et al., IBLA No. 2006-155, Order at \*12 (June 28, 2006).* The BLM does not have authority to regulate emissions in Wyoming.

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With respect to potential visibility impacts, the BLM's authority is unequivocally limited by existing federal law. Under the CAA, a federal land manager's authority is strictly limited to considering whether a "proposed major emitting facility will have an adverse impact" on visibility within designated Class I areas. 42 U.S.C. § 7475(d)(2)(B) (2006). Under the CAA, the regulation of potential impacts to visibility and authority over air quality in general, rests with the WDEQ. 42 U.S.C. § 7407(a) (2006). The goal of preventing impairment of visibility in Class I areas will be achieved through the regional haze state implementation plans (SIPs) that are being developed. 42 U.S.C. § 7410(a)(2)(J). Although federal land managers with jurisdiction over Class I areas may participate in the development of regional haze SIPs, as noted above, the BLM has no such jurisdiction in Wyoming. 42 U.S.C. § 7491 (2006). Accordingly, the BLM has no authority over air quality and cannot impose emissions restrictions, either directly or indirectly, on natural gas operations in southwest Wyoming, particularly if the overall goal is to reduce potential visibility impacts.

With these limitations in mind, the BLM must revise its air quality management goals and objectives in Table 2-3. The BLM's first proposed Goal PR:1 states as follows: "Minimize the impact of management actions in the planning area on air quality by complying with all applicable air quality laws, rules, and regulations." See RMP DEIS, pg. 2-35. Similarly, the BLM's second proposed Goal PR:2 states "Implement management actions in the planning area to improve air quality as practicable." *Id.* Because the BLM cannot regulate air emissions, Goals PR:1 and PR:2 are inappropriate. At a minimum, the BLM should more carefully define its lack of authority with respect to air quality "management actions." The BLM cannot attempt to impose air emission regulations through its normal management responsibilities. Further, even assuming the BLM had the authority to regulate air quality or emissions, the management goal is poorly worded and could lead to increased litigation. Opponents to natural gas development could, and likely would, suggest the above goals prevent the BLM from authorizing any actions that may lead to increased emissions within the planning area. Opponents to natural gas development have used similarly phrased language in the existing Pinedale RMP and Buffalo RMP to suggest not only that BLM has authority over air quality, but that the BLM cannot authorize actions which may impact air quality. The BLM must revise its air quality goals to state that BLM's only management goal, objective, or action will be to ensure that the WDEQ is invited to participate in the NEPA process as part of the State of Wyoming's cooperating agency status. In the event the BLM unwisely retains the potentially illegal objectives contained in the RMP DEIS, the BLM must include clear language in the RMP disavowing any attempt by BLM to regulate air emissions or air quality in the planning area.

Similarly, the BLM must revise, or delete entirely, its management objectives under each of the alternatives because they are entirely beyond the BLM's authority. For example, the BLM's first management objective for air quality (identified as PR:1.1) is to "Maintain concentrations of criteria pollutants associated with management action in compliance with

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applicable state and federal Ambient Air Quality Standards (AAQS)." See RMP DEIS, Table 2-3, pg. 2-35. Both the BLM and the IBLA have recognized that the WDEQ, with oversight from the EPA, has the authority to enforce AAQS in Wyoming. Similarly, despite the fact that only the WDEQ has the authority to enforce Prevention of Significant Deterioration (PSD) Increments in Wyoming, BLM's second Objective (identified as PR:1.2) is to "Maintain concentrations of pollutants associated with management actions in compliance with the applicable Prevention of Significant Deterioration (PSD) increment." See RMP DEIS, Table 2-3, pg. 2-35. Objective PR:2.1 even more inappropriately indicates it is BLM's responsibility to "reduce visibility-impairing pollutants in accordance with the State of Wyoming's Regional Haze State Implementation Plan (SIP)." See RMP DEIS, Table 2-3, pg. 2-35. Opponents to development may suggest these Management Objectives prohibit the BLM from authorizing any actions which may increase emissions or have potential visibility impacts in the planning area. The BLM must revise or delete Goals PR:1 and PR:2 and modify or delete all four of the Objectives (PR:1.1, PR:1.2, PR:2.1, PR:2.2) identified under the air quality section of Table 2-3.

### Alternative B and Alternative D

Given the BLM's lack of authority over air quality, and as described more specifically below, the BLM must eliminate or carefully redraft its proposed air quality management actions under Alternative B and Alternative D. Because the BLM does not have authority over air quality issues and specifically because the BLM cannot regulate air emissions in Wyoming, the BLM must delete entirely proposed management actions designed to "reduce emissions from existing sources." See RMP DEIS, Table 2-3, pg. 2-36, Record No. 1011. Such a management action is potentially illegal and beyond the BLM's statutory or regulatory authority.

Similarly, the BLM must delete the proposed management action that would require or consider programs to offset emissions proposed by the RMP under both Alternatives B and D. See RMP DEIS, Table 2-3, pg. 2-36, Record No. 1011. The BLM does not have the authority to implement, regulate, or monitor an emissions offsetting or trading program. Further, this management action also improperly assumes the Kemmerer RMP either studied or proposes specific emissions. As the BLM is aware, the Kemmerer RMP itself will not authorize specific actions. As the Supreme Court of the United States made clear, RMPs only provide general guidance, they are not ordinarily the means to take affirmative actions. *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. at 69. The BLM must delete entirely the vague, ambiguous and potentially illegal emissions offset/trading management action considered under Alternatives B and D.

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### 1000 Physical Resources – Soils

#### Alternative B

Under Alternative B, the BLM would improperly prohibit surface disturbing activities in areas with slopes over 10 percent and would “prohibit surface-disturbing activities in areas of sensitive, highly erodible, and excessively steep slopes or greater without adequate mitigation developed for site-specific erosion control.” *See, e.g.*, RMP DEIS, Table 2-3, pg. 2-38, Record No. 1021. The BLM has not, however, mapped areas with erodible characteristics or fragile soils making it impossible for EOG to understand how this limitation would impact its operation or its existing lease rights. As evident from Map 5, the limitation on areas with slopes over ten percent would virtually eliminate operations in huge portions of the planning area. The BLM has not identified potential methods that would be considered “adequate” to protect soil resources, or developed objective criteria to evaluate the success of mitigation measures. EOG is concerned that absence clarification and objective criteria, this proposed management action will become a prohibition on all surface-disturbing activities on areas with slopes over 10%. Such a restriction is inappropriate given the multitude of construction techniques and best management practices that have been developed and are routinely used to prevent unnecessary soil erosion and to facilitate timely and efficient reclamation.

#### Alternative D

On page 2-38 the BLM proposes a management action under Alternative D that would “Ensure protection of the Green River and Bear River sub-basins from increased erosion and sedimentation.” *See* RMP DEIS, pg. 2-38, Table 2-3, Record No. 1021. The use of the term “ensure” is unreasonable and unnecessary. The BLM should remove the word ensure and change the sentence to read “Protect the Green River and Bear River sub-basins from increased erosion and sedimentation, to the extent feasible and practical.”

#### Alternative B and Alternative D

Under Alternatives B and D, the BLM would prohibit stockpiling topsoil in mounds greater than four feet in depth for a period longer than one year. *See* RMP DEIS, Table 2-3, pg. 2-38, Record No. 1022. Although EOG understands and supports the BLM’s desire to maintain topsoil health, the BLM must accept that this limitation may not be feasible in all situations. Further, the requirement may actually lead to more surface disturbance if operators are required to spread topsoil out over large distances. Under certain circumstances, this requirement may also create additional truck traffic and associated air emissions if the operators are unable to store topsoil on-site due to site-specific conditions. The BLM should revise this requirement to ensure

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that it has the flexibility to waive or modify this requirement as dictated by site-specific conditions and limitations.

### 1000 Physical Resources – Water

#### Alternative B

Under Alternative B, the BLM would exclude surface-disturbing operations within ¼ mile of all wetlands, riparian areas, aquatic habitat, and 100-year floodplains. *See* RMP DEIS, Table 2-3, pg. 2-41, Record No. 1032. Existing stipulations and BLM practices allow operations within 500 feet of wetlands and riparian areas. Given existing best management practices and construction techniques that protect surface water and riparian areas, in addition to limitations, mitigation measures, and permitting requirements imposed by the WDEQ and the Army Corps of Engineers under the Clean Water Act, the ¼ mile limitation is unreasonable and unnecessary.

Similarly, under Alternative B the BLM proposes unnecessarily prohibiting road crossings in all wetlands, riparian areas, or floodplains by stating: “No new permanent facilities, including road crossing, are allowed in floodplains, riparian areas, or wetlands.” *See* RMP DEIS, Table 2-3, pg. 2-42, Record No. 1033. Such a restriction is unreasonable and unnecessary, especially given the extensive and adequate permitting and mitigation requirements imposed by the WDEQ and particularly the Army Corps of Engineers under Section 404 of the Clean Water Act.

The BLM’s proposal to “Prohibit disposal of produced waters to streams or other flow-connected surface features” under Alternative B is unreasonable and unnecessarily restricts the BLM’s ability to manage operations in the future. *See* RMP DEIS, Table 2-3, pg. 2-42, Record No. 1036. The BLM should retain as much flexibility as possible by reserving unto itself the possibility of authorizing surface discharge under the appropriate circumstances. It is foreseeable that produced water within the planning area may actually benefit riparian areas, wildlife, or livestock.

#### Alternative B and Alternative D

The BLM proposes a management action under both Alternative B and Alternative D that would protect aquifer recharge areas. It states the goal as to: “Maintain aquifer recharge areas to protect groundwater and surface water quality through maintenance of the vegetative cover and soil structure that contributes to recharge and limitations to surface-disturbing activities.” *See* RMP DEIS, Table 2-3, pg. 2-42, Record No. 1035. Unfortunately, the BLM has not identified or mapped “aquifer recharge areas.” As such, EOG cannot anticipate the impacts such limitations or restrictions may have on its operations or on its unstipulated oil and gas leases and contract

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interests. BLM must identify known aquifer recharge areas and delineate potential restrictions in said areas. Absent this information, EOG cannot ensure that its existing lease rights will be adequately protected, or understand how future operations may be impacted. As discussed above, the BLM must honor valid existing rights.

### Alternative D

The BLM appropriately provides sufficient authority and flexibility for the agency to approve surface discharge of produce water, in connection with the WDEQ and State Engineer's Office, on a case-by-case basis and depending upon site-specific conditions. See RMP DEIS, Table 2-3, pg. 2-42, Record No. 1036. The BLM must also acknowledge the central role the WDEQ plays in approving and monitoring surface discharge permits under the Clean Water Act.

### **2000 Mineral Resources – Oil and Gas Leasing**

#### Valid Existing Lease Rights

The BLM partially recognizes that existing oil and gas leases within the Kemmerer Resource Area must be honored. See RMP DEIS, pg. 4-27 ("Constraints will not affect existing leases"). However, the BLM must indicate more clearly that the revised RMP for the Kemmerer Field Office cannot modify or alter existing lease rights by developing a Goal specifically addressing existing lease rights. The BLM should develop more accurate and unequivocal statements regarding existing lease rights as the BLM included in the recently released Draft EIS for the Pinedale RMP. In the Draft EIS for the Pinedale RMP released in February of 2007, the BLM stated that "Surface use and timing restrictions resulting from this RMP cannot be applied to existing leases." See Pinedale RMP Draft EIS (2007), pg. 2-8. The Draft RMP for the Pinedale Resource Area also recognized that surface use restrictions, timing limitation stipulations, and NSO stipulations, as well as the creation of areas unavailable for leasing restrictions cannot be retroactively applied to valid existing oil and gas leases. "Surface use restrictions, including timing limitation stipulations (TLS), NSO stipulations, and controlled surface use (CSU) stipulations, as well as unavailable for leasing designations, cannot be retroactively applied to valid, existing oil and gas leases or to valid, existing use authorizations (e.g., Application for Permit to Drill [APD])." See Pinedale RMP Draft EIS, pg. 4-46. The BLM cannot adjust a lessee's valid and existing rights. Congress made it clear when it enacted FLPMA that nothing therein, or in the land use plans developed thereunder, was intended to terminate, modify, or alter any valid or existing property rights. See 43 U.S.C. § 1701 note (2006). In order for the public to be fully informed, the Kemmerer RMP should contain similar statements and guarantees.

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As the BLM is aware, once federal oil and gas leases are issued without NSO stipulations, and in the absence of a nondiscretionary statutory prohibition against development, the agencies cannot completely deny development on the leasehold. See, e.g., *National Wildlife Federation, et al.*, 150 IBLA 385, 403 (1999). Only Congress has the right to completely prohibit development once a lease has been issued. *Western Colorado Congress*, 130 IBLA 244, 248 (1994). In the Final EIS, the BLM should discuss the fact that an oil and gas lease is a contract between the federal government and the lessee, and that the lessee has certain rights thereunder. See *Mobil Oil Exploration & Producing Southeast, Inc. v. United States*, 530 U.S. 604, 620 (2000) (recognizing that lease contracts under the Outer Continental Shelf Lands Act give lessees the right to explore for and develop oil and gas); *Oxy USA, Inc. v. Babbitt*, 268 F.3d 1001, 1006-7 (10th Cir. 2001) (noting that the Tenth Circuit has long held that federal oil and gas leases are contracts), *rev'd on other grounds, BP America Prod. Co. v. Burton*, 127 S. Ct. 638 (2006).

The BLM has specifically adopted and promulgated policies and directives regarding the contractual rights granted in an oil and gas lease. BLM Instruction Memorandum 92-67 states that "[t]he lease contract conveys certain rights which must be honored through its term, regardless of the age of the lease, a change in surface management conditions, or the availability of new data or information. The contract was validly entered based upon the environmental standards and information current at the time of the lease issuance." As noted in the BLM's policy, the lease constitutes a contract between the federal government and the lessee which cannot be unilaterally altered or modified by the BLM. In the Final EIS for the Kemmerer RMP and in the revised RMP itself, the BLM should make it absolutely clear that it intends to honor valid and existing lease rights.

Courts have similarly recognized that once the BLM has issued an oil and gas lease conveying the right to access and develop the leasehold, the BLM cannot later impose unreasonable mitigation measures that take away those rights. See *Conner v. Burford*, 84 F.2d 1441, 1449-50 (9th Cir. 1988); 43 C.F.R. § 3101.1-2 (2006) (BLM can impose only "reasonable mitigation measures . . . to minimize adverse impacts . . . to the extent consistent with lease rights granted"). EOG has serious concerns that under both Alternatives B and D the BLM could adopt management directives that will attempt to either preclude or limit EOG's rights under its existing leases, or will later adopt COAs that are inconsistent with EOG's rights. Should the BLM deny or unreasonably delay EOG's ability to develop its leases, the BLM's action may constitute a taking in violation of the Fifth Amendment to the U.S. Constitution. The Federal Court of Claims has recognized that a temporary taking occurs when the BLM prohibits oil and gas development on a lease for a substantial period of time. *Bass Enterprise Prod. Co. v. United States*, 45 Fed.Cl. 120, 123 (Fed.Cl. 1999). A lessee who can demonstrate a taking of an oil and gas lease is entitled to damages in the fair market rental value of the leasehold. See *Bass Enterprise Prod. Co. v. United States*, 48 Fed.Cl. 621, 625 (Fed.Cl. 2001). If the BLM denies all

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development opportunities on EOG's leases, EOG will be able to demonstrate a taking. The BLM must not adopt an alternative that unconstitutionally takes EOG's property and contract rights.

### Lands Unavailable for Future Leasing Under Alternative B

The overall minerals management under Alternative B is inappropriate because it unreasonably limits oil and gas development. The BLM is significantly limiting potential future oil and gas development in the Kemmerer Planning Area by making over 710,000 acres unavailable for future leasing and over 750,000 acres available only with major constraints. Approximately ninety-three percent (93%) of the BLM administered mineral estate in the Kemmerer Planning Area will be unavailable for future leasing or only available with significant constraints. See RMP DEIS, Table 2-3, pg. 2-44, Record Nos. 2008, 2009. Alternative B eliminates almost the entire planning area from mineral development and must not be selected. Development in the Moxa Arch Area has been under development for many years, and operations in these areas must be allowed to effectively continue.

As the BLM is aware, mineral exploration and production is identified as a principal or major use of federal lands under FLPMA, 43 U.S.C. § 1702(i), and federal agencies are required to expedite projects which increase domestic energy production, Executive Orders 13211, 13212, and 13302. The adoption of Alternative B would significantly curtail domestic production compared to both the baseline scenario and any of the other alternatives analyzed by the BLM. The adoption of Alternative B would potentially eliminate over 4,000,000 barrels of oil and 329 billion cubic feet of natural gas from the domestic supply. See Kemmerer Final Reasonably Foreseeable Development Scenario for Oil and Gas (Final RFD Report), pg. 8-32. 1 BCF of natural gas is the average annual amount used by 13,700 Wyoming households. See Energy Information Administration (2002 use rates). The loss of such enormous energy supplies is contrary to the best interest of the nation, and inconsistent with the Energy Policy Act of 2005.

The removal of vast areas of land from future oil and gas development and potential restrictions on existing leases under Alternative B would also significantly restrict regional earnings, jobs, and tax revenue. According to the information presented in the RMP DEIS, the adoption of Alternative B would reduce regional earning by approximately thirty percent (30%), reduce local jobs, and reduce tax revenue by thirty-six percent (36%). See RMP DEIS, pg. 4-242. The BLM cannot adopt an alternative that would reduce economic development, decrease domestic energy supplies, and harm the local tax base.

Further, the BLM has not analyzed or disclosed the potential impacts the restrictions on future leasing may have upon operations on existing leases. As the BLM indicated on Figure 3-1 of the Mineral Assessment Report, pg. 17, and Figure 4-3 of the Final RFD Report, pg. 4-4, a

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significant extent of the Kemmerer Resource Area is under lease. Some of these leases, however, are isolated making them virtually impossible and not economically feasible to develop. Any responsible oil and gas producer who decides to take the risk of exploring by drilling a wildcat area must do so only after assembling a large enough block of leasehold acreage so that, if the drilling is successful, it can obtain an adequate return on the high risk dollars invested. The BLM has, in other contexts, recognized this need for control of a reasonable acreage block. See *Prima Oil & Gas Co.*, 148 IBLA 45, 51 (1999) (BLM policy to suspend leases when "a lessee is unable to explore, develop, and produce leases due to the proximity, or commingling of other adjacent Federal lands needed for logical exploration and development that are currently not available for leasing"). The BLM must recognize, study, and report what is the economic impact its decision to close significant portions of the planning area to leasing, or to make significant portions only available with major constraints, will have upon future exploration and development in the area. It is not enough for the BLM to simply assert that existing lease rights will be protected, the BLM must analyze how existing lease rights will be impacted by future limitations on leasing and development and what protection it will afford to said existing leases in the above described scenario.

### Withdrawal Procedures Under FLPMA

Under Alternative B and D, the Department of the Interior would be required to comply with the formal withdrawal requirements imposed by FLPMA. Under FLPMA a withdrawal is defined as:

withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land, other than "property" governed by the Federal Property and Administrative Services Act, as amended (40 U.S.C. 472) from one department, bureau or agency to another department, bureau or agency.

43 U.S.C. § 1702(j) (2006). If Alternative B is selected, the BLM would make a total of 710,058 acres unavailable to oil and gas leasing and, under Alternative D BLM would make a total of 181,716 acres unavailable for oil and gas leasing. Because such decisions constitute a withdrawal, the Department of the Interior will be required to comply with the procedural provisions of Section 204 FLPMA. 43 U.S.C. § 1714 (2006). Among the other requirements imposed on the Department of the Interior is the requirement for the Secretary of the Interior, as compared to the Director of the BLM or a State Director, to make all withdrawals of federal lands. 43 U.S.C. § 1714(a) (2006). The Secretary—or a designee in the Secretary's office appointed by the President and confirmed by the Senate—alone is authorized to make

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withdrawals under FLPMA. The Secretary is also required to provide notice of the proposed withdrawal in the Federal Register and conduct hearings regarding the withdrawal. 43 U.S.C. § 1714(b)(1) and (h) (2006). Finally, the Secretary is required to notify both houses of Congress of the proposed withdrawal. See 43 C.F.R. § 1610.6 (2006). The notice must include information: (1) regarding the proposed use of the land; (2) an inventory and evaluation of the current natural resource uses and value of the land and adjacent public and private land which may be affected; (3) an identification of present users and how they will be affected; (4) an analysis of the manner in which the existing and potential uses are incompatible with or in conflict with the proposed uses; (5) an analysis of the manner in which such lands will be used in relation to the specific requirements for the proposed uses; (6) a statement as to whether suitable alternative sites are available; (7) a statement of the consultation which has been or will be had with other federal, regional, state, and local government bodies; (8) a statement regarding the potential effects of the withdrawal on the state, local, and regional economy; (9) a statement of the length of time needed for the withdrawal; (10) the time and place of the hearings regarding the withdrawal; (11) the place where the records of the withdrawal can be examined; and (12) a report prepared by a qualified mining engineer, engineering geologist, or geologist, which shall include information on mineral deposits, mineral production, existing mining claims, and an evaluation of future mineral potential. 43 U.S.C. § 1714(c)(2) (2006). The Department of the Interior has also adopted regulations regarding the withdrawal procedures. 43 C.F.R. part 2300 (2006). To date, the BLM and Department of the Interior have not complied with these requirements. Adopting these above-referenced withdrawals in Alternatives B and D without complying with the appropriate procedures is illegal and, as such, Alternative B and D must not be selected as currently drafted. See, e.g., *Mountain States Legal Found. V. Hodel*, 668 F.Supp 1466 (D.Wyo 1987); *Mountain States Legal Found. V. Andrus*, 499 F.Supp 383 (D.Wyo 1980).

### Alternative B – Other Restrictions

EOG is opposed to the proposed prohibition on leasing within potential habitat for federally listed species. See RMP DEIS, Table 2-3, pg. 2-44, Record No. 2010. The prohibition on leasing within potential habitat for listed species is unnecessary for several reasons. First, as the BLM indicates in the RMP DEIS, “no critical habitat occurs in the planning area.” See RMP DEIS, pg. 3-77. Further, because the Endangered Species Act is a nondiscretionary statute, the BLM retains sufficient authority to impose mitigation measures sufficient to protect any listed species, should they actually occur within a leased area. See 43 C.F.R. § 3101.1-2 (2006); *Wyoming Outdoor Council v. Bosworth*, 284 F.Supp.2d 81, 91-92 (D.D.C. 2003). Further, even if development was precluded on portions of a lease because of future designations for critical habitat or if listed species were located within a lease parcel, the operators may still be able to develop resources from leased areas using directional techniques, communitization agreements, or unit agreements. Foreclosing future leasing unnecessarily limits the BLM’s ability to manage lands within the Kemmerer Resource Area for multiple uses and must be avoided.

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EOG is also opposed to the proposal under Alternative B to prohibit fluid leasing within five (5) miles of “high level management trail segments.” See RMP DEIS, Table 2-3, pg. 2-44, Record No. 2011. With respect to the national historic trails, EOG is first concerned that the BLM has not identified which lands will be made unavailable for future leasing in order to protect “high-level management trail sections.” Although EOG can generally discern where the lands will be made unavailable to future leasing using Map 9, EOG can only theorize why the lands have been made unavailable to lease. In the Final EIS for the Kemmerer RMP, the BLM should separately map and identify the various segments of the “high-level management trail sections” and the lands surrounding said trails that will be made unavailable for lease in a separate map. Maps 58, 59, and 60 do not provide adequate information because they do not clearly delineate which lands will be made unavailable for lease. Additionally, EOG does not believe the proposal to make large areas of the Kemmerer RMP unavailable for future leasing and development in order to protect historic trails is necessary. As noted above, such a decision could also constitute a withdrawal and trigger procedural and substantive limitations under FLPMA. The BLM must not illegally attempt to withdraw lands from leasing or mineral entry. The BLM, operators, and the Wyoming State Historic Preservation Office have a long history of working together to develop operations in a manner that allows for continued development while still protecting historic resources.

### Alternative D

On Page 2-45 the BLM indicates that certain recreation areas would be administratively unavailable for oil and gas leasing under Alternative D. Specifically, the proposed management action reads as follows: “Areas set aside specifically for public recreation purposes would be administratively unavailable for oil and gas leasing.” See RMP DEIS, Table 2-3, pg. 2-45, Record No. 2013. EOG reviewed maps 43, 44, and 45, but it is not clear which areas are specifically for public recreation. Therefore, EOG is not able to determine impacts to existing leases. The BLM must provide this information in order for EOG to understand how its existing lease rights or operational plans will be impacted. The BLM must provide this information in a useable format.

### **4000 Biological Resources – Goals and Objectives**

#### BR:3-5.1, BR:3-5.1, BR:6.2, BR:7.7, BR:8.2

The BLM has not adequately addressed or explained its scientific rationale for ensuring that no greater than 12.5 percent net loss of crucial habitat occurs in the planning area over the life of the plan. See RMP DEIS, Table 2-3, pgs. 2-50 – 2-51. Is this limitation based on any particular study? Further, the BLM must not enforce this generalized management objective in a manner which compromises existing lease rights. Once the BLM has issued an oil and gas lease

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conveying the right to access and develop the leasehold, the BLM cannot later impose unreasonable mitigation measures that take away those rights. *See Conner v. Burford*, 84 F.2d 1441, 1449-50 (9th Cir. 1988); 43 C.F.R. § 3101.1-2 (2006) (BLM can impose only “reasonable mitigation measures . . . to minimize adverse impacts . . . to the extent consistent with lease rights granted”). Further, once the BLM has issued a federal oil and gas lease without NSO stipulations, and in the absence of a nondiscretionary statutory prohibition against development, the BLM cannot completely deny development on the leasehold. *See, e.g., National Wildlife Federation, et al.*, 150 IBLA 385, 403 (1999). Only Congress has the right to completely prohibit development once a lease has been issued. *Western Colorado Congress*, 130 IBLA 244, 248 (1994). Finally, because the authority conferred in FLPMA is expressly made subject to valid existing rights, 43 U.S.C. § 1701, an RMP prepared pursuant to FLPMA, after lease execution and after drilling and production has commenced, is likewise subject to existing rights.

The BLM has also not explained how the BLM would track and identify disturbance in crucial wildlife habitat. Would the habitat be credited back once reclamation has successfully taken place? How would past disturbance in the planning are be treated? This vague management goal must be deleted.

#### 4000 Biological Resources – Management Actions

##### Offsite Compensatory Mitigation

On page 2-52 the BLM states that it will “utilize appropriate voluntary offsite compensatory mitigation if necessary after all onsite mitigation has been accomplished or if onsite mitigation is not feasible.” *See* RMP DEIS, pg. 2-52, Record No. 4004. As recognized in BLM Washington Office Instruction Memorandum 2005-069 (Sept. 30, 2006), “Offsite mitigation is to be entirely voluntary on the part of the applicant.” The BLM does not have the authority to require offsite mitigation. Further, offsite mitigation is not appropriate for most oil and gas projects. Oil and gas development is an integral part of the BLM’s mission. Federal oil and gas lessees have not just the right, but the obligation to maximize the recovery of oil and gas resources from public lands, and should not be required to fund offsite mitigation every time development operations are proposed. As recognized by the BLM Wyoming State Director in 1995, “compensation, as a form of off-site mitigation, is not to be a routine operation of BLM in Wyoming.” *See* BLM Wyoming Instruction Memorandum WY-96-21 (Dec. 14, 1995). The BLM must clearly state in the Kemmerer RMP that offsite compensation is entirely voluntary and that it is not appropriate for every natural gas development project within the Kemmerer Planning Area. Further, the BLM should clearly indicate in the Kemmerer RMP that offsite mitigation should only be used as a last resort. BLM Washington Office Instruction Memorandum 2005-069 (Sept. 30, 2006). Further, offsite mitigation should only be considered if it could effectively offset the impacts of a proposed action. Offsite mitigation must not be

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routinely imposed simply to satisfy cooperating agencies; it must be used as a last resort, and only when it can be objectively determined to mitigate potential impacts.

In many areas, the imposition of mandatory offsite mitigation could actually make operations uneconomic, resulting in the loss of tax revenue and domestic energy supplies. Although the BLM indicates in the RMP DEIS that offsite mitigation is voluntary, it implies in several places that operations will only be approved if offsite mitigation has been established. *See, e.g.,* RMP DEIS, pgs. 2-50 – 2-53. The BLM should also clearly indicate in the revised Kemmerer RMP that offsite mitigation will be based upon assessments of site-specific strategies designed to ensure long-term species viability rather than the funding of studies and project administration. Finally, the BLM should develop and endorse policies enabling offsite mitigation to be effectively used across agency boundaries to ensure the objectives of the offsite mitigation appropriately address the impacted resources.

##### Disruptive Activity in Big Game Crucial Winter Range

On page 2-53 of the RMP DEIS, the BLM identifies the following management action for all alternatives: “Avoid disruptive activity in big game crucial winter range November 15 to April 30.” *See* RMP DEIS, pg. 2-53, Record No. 4012. The BLM should clarify and define the term “disruptive activity” in order to provide public land uses, including oil and gas lessees, greater assurance on the BLM’s intentions. As the BLM is aware, current seasonal stipulations in the existing Kemmerer RMP prohibit construction and drilling activities in specific crucial winter ranges, but do not prohibit routine production operations necessary to safely maintain facilities. It would be inappropriate for the BLM to preclude all production operations in crucial winter range areas. Such a decision would essentially preclude year-round production operations and would lead to a significant decrease in domestic energy production. Moreover, many species such as pronghorn antelope and mule deer have been found to habituate to increased traffic so long as the movement remains predictable. *See* Reeve, A.F. 1984. *Environmental Influences on Male Pronghorn Home Range and Pronghorn Behavior*. PhD. Dissertation; Irby, L.R. *et al.*, 1984; “Management of Mule Deer in Relation to Oil and Gas Development in Montana’s Overthrust Belt” *Proceedings III: Issues and Technology in the Management of Impacted Wildlife*. The BLM must ensure that its management actions are clearly understood, that existing lease rights will be maintained, and that production operations are allowed to continue throughout the year.

The BLM must also separately map big game crucial winter range by species. Map 22 only identifies collective crucial winter range for all big game species. Mule deer, elk, moose, and pronghorn antelope have different crucial winter range habitats, and thus the BLM has previously applied different seasonal restrictions for each species. Operators such as EOG are unable to accurately determine how future operations may be impacted by seasonal stipulations

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for each species given the information presented in the RMP DEIS. The BLM must provide more detailed maps of identified big game crucial winter range for each species. *See, e.g.,* Pinedale RMP Draft EIS (2007), Maps 3-15, 3-16, 3-17, 3-18, 3-19.

#### 4000 Biological Resources – Vegetation Resources

On page 2-54 of the RMP DEIS, the BLM identifies a management action for both Alternative B and D that would require the reestablishment of diverse native plant communities on disturbed soils within three years of initial seeding. *See* RMP DEIS, pg. 2-54, Record No. 4013. In this proposed management action the BLM must acknowledge the significant role weather and drought conditions play in successful reclamation efforts, especially in southwest Wyoming. The BLM must also allow itself sufficient authority to manage areas that cannot be successfully reclaimed despite diligent efforts of oil and gas operators.

The BLM also identifies a proposed management action under Alternatives B and D that would require the maintenance of large, contiguous blocks of federal lands and maintaining “connections” between these areas by managing and minimizing projects and disturbance. *See* RMP DEIS, pg. 2-54, Record No. 4014. The BLM has not adequately explained what activities will be allowed within those large block areas. Will all operations be impacted? Will the BLM honor valid existing rights? On what study or information does BLM base the need for this action? The BLM has also not specifically mapped areas within the planning area the agency intends to manage as large, undisturbed areas. The BLM should identify, to the extent possible, areas it intends to manage for enhanced vegetation communities so operators and the public can better understand how their use of the public lands may be impacted. Map 21 would appear to indicate that BLM intends to manage large portions of the central portion of the planning area as an undeveloped large block area, which is inconsistent with BLM’s multiple management objectives, and would potentially violate EOG’s existing lease and contractual rights. If there are specific areas BLM intends to prohibit development, it should clearly identify said areas in order to provide operators and the public the opportunity to comment and, if necessary, pursue other options to protect existing rights. In particular, EOG is concerned because the lands north of the Moxa Arch area appear to be contained within a “large block area.” Existing leases in this area and other “large block areas” must be honored by the BLM. As discussed above, once the BLM issues a federal oil and gas lease without a NSO stipulation, it cannot completely prohibit or unreasonably interfere with future operations.

#### 4000 Biological Resources – Fish Resources

BLM proposes management actions under both Alternatives B and D to apply seasonal limitations for surface-disturbing activities within the floodplain or 1,000 feet of fish bearing streams. *See* RMP DEIS, pg. 2-58, Record No. 4024. EOG supports the BLM’s proposed

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objective under Alternative D, which would only prohibit disturbing activities on a case-by-case basis as determined necessary in consultation with the Wyoming Game and Fish Department (WGFD), but does not support the proposed action under Alternative B that would prohibit all disruptive activities within 1,000 feet of the floodplain of fish-bearing streams. The management action under Alternative B is unnecessarily restrictive and unreasonably interferes with the BLM’s ability to manage public lands in the future. This proposal also ignores the fact that operators can adequately protect said streams with best management practices and do not need to avoid stream crossings altogether. The objective presented under Alternative D is far more reasonable as it provides the BLM the ability to modify or alter the restriction based on site-specific NEPA analysis. The BLM must, however, identify potential fish-bearing streams within the planning area to give operators the necessary information to determine how the proposed management action could impact future oil and gas operations and existing leases. Absent this information, EOG cannot evaluate how its operations or future operations could be impacted.

#### 4000 Biological Resources – Migration Corridors

The BLM proposes a management actions under Alternatives B that would “Identify and preserve traditional migration and travel corridors for big game wildlife species and migratory birds.” *See* RMP DEIS, Table 2-3, pg. 2-59, Record No. 4027. EOG opposes the management action under Alternative B that would “preserve” migration corridors—and presumably prohibit all other multiple uses—particularly when the BLM has not identified migration corridors. EOG’s interpretation is reinforced by the BLM’s description of Alternative B. *See* RMP DEIS, pg. 2-19. The BLM again appears to be withdrawing lands from a principal or major use in violation of FLPMA. The BLM cannot unreasonably limit operations on existing oil and gas leases.

The BLM should map or otherwise identify all known migration corridors in the Final EIS for the Kemmerer RMP in order to provide EOG and the public the information to assess how the management action may impact its operations and existing property rights. Absent this information the BLM’s analysis is incomplete, and EOG cannot evaluate how its lease rights will be impacted.

Similarly, under Alternative D, the BLM proposes to “Identify and work collaboratively to develop management of migration corridors for big game wildlife species and migratory birds to reduce conflicts.” *See* RMP DEIS, Table 2-3, pg. 2-59, Record No. 4027. As noted above, the BLM has not mapped and identified wildlife migration corridors. Moreover, the BLM has not provided any indication of the process it will use to “develop management of migration corridors,” or explained why such management was not developed as part of the RMP revision. Finally, by postponing decisions regarding migratory corridors the BLM has not provided EOG

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with sufficient information to evaluate how the management of migratory corridors will impact oil and gas operations.

### 4000 Biological Resources – Special Status Species (Wildlife)

#### Alternative B

The restrictions on development attributable to wildlife management actions under Alternative B are unnecessarily restrictive and must not be selected by the BLM. The various wildlife-related prohibitions and restrictions would significantly reduce potential domestic energy production from the Kemmerer Resource Area. When evaluating the proposed new management actions, the BLM must acknowledge the BLM cannot impose new or unreasonable restrictions on existing leases. See *Conner v. Burford*, 84 F.2d 1441, 1449-50 (9th Cir. 1988); 43 C.F.R. § 3101.1-2 (2006) (BLM can impose only “reasonable mitigation measures . . . to minimize adverse impacts . . . to the extent consistent with lease rights granted”). Further, the BLM’s authority under FLPMA is expressly made subject to valid existing rights. 43 U.S.C. § 1701 note (2006). The revised Kemmerer RMP, developed after lease execution and after drilling and production has commenced, is therefore subject to existing rights. See *Colorado Environmental Coal., et al.*, 165 IBLA 221, 228 (2005).

On Page 2-62 the BLM proposes a management action under Alternative B to avoid **habitat fragmentation** and prohibit disturbance on more than three percent (3%) of “available habitat.” See RMP DEIS, Table 2-3, pg. 2-62, Record No. 4039. The BLM similarly notes in the written description of Alternative B: “Alternative B also restricts habitat fragmentation to no more than three percent (3%) of available habitats in identified special status species habitats.” See RMP DEIS, pg. 2-19. This objective is unreasonably restrictive and not supported by reasoned analysis. Further, other than Map 25, which maps some, but not all special species habitat, the BLM has not identified “special status species habitats” making it impossible for EOG to meaningfully understand how this management action might impact existing or future operations. Given the fact that several BLM Wyoming Sensitive Species are sagebrush obligate species, this proposed management action may cap surface disturbing operations at three percent (3%) across the vast majority of the planning area. Such a restriction is not reasonable and is inconsistent with the BLM’s obligation to manage lands for multiple use. On what objective study or information is the three percent limit based upon?

EOG objects to the BLM’s proposed management actions for **sage grouse** under Alternative B because they are unreasonably restrictive. See RMP DEIS, Table 2-3, pg. 2-62, Record No. 4040. The BLM has also failed to demonstrate such restrictions are necessary in the Kemmerer Resource Area because the agency has not presented data regarding sage grouse population in the area. Information released from the WGFD in March of 2007 noted that while

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there have been historic declines in sage grouse populations, there have been mid-term and short-term increases in populations. See Tom Christiansen, Brief Status of Sage-grouse Population Trends and Conservation Planning in Wyoming as of March 16, 2007, and 2007 Sage-grouse Hunting Season Proposal (attached). Cooperative efforts between the BLM, State of Wyoming, and many others are working and should be allowed to continue. The BLM should also consider the impacts hunting sage grouse has upon the overall population, as well as the economic impact limitations on oil and gas activities, as compared to hunting activities, will have upon the State of Wyoming and the local area.

EOG also opposes the proposed management action imposing unnecessarily restrictive **noise limitations** within the Kemmerer Resource Area. Under Alternative B, the BLM would impose noise limitation levels at 49 decibels measured only 150 feet from the noise source. See RMP DEIS, Table 2-3, pg. 2-63, Record No. 4041. The BLM’s proposed management action, however, does not provide the BLM with the flexibility to consider the impacts of local terrain and topography or weather conditions. The BLM has also not explained how background noise levels would be measured or quantified to determine whether or how noise levels have been impacted by a new facility. The BLM has also not explained how the new management action would be applied to existing facilities in the resource area. Finally, as the BLM should be aware, 49 decibels is a very, very low threshold, and the BLM has not explained or justified the benefit of this restriction in unpopulated areas. Just for the sake of comparison, a soft whisper approximates 20 decibels and the sound of leaves rustling, or very soft music easily reaches 30 decibels. Normal human speech is usually as high as 60 decibels and the sound of lawnmowers or shop tools usually reaches 90 decibels. Limiting noise levels from facilities to only 49 decibels as measured 150’ from the noise source is unreasonably restrictive.

EOG is also opposed to the proposed prohibition on **structures taller than 12 feet** and the use of **guy wires** in occupied sagebrush obligate habitat (virtually the entire planning area) under Alternative B. See RMP DEIS, Table 2-3, pg. 2-63, Record No. 4042. Once again the proposed management action does not leave the BLM the flexibility it requires to effectively manage the public lands. Perhaps most concerning, however, is the fact the prohibition appears to apply to even temporary structures such as oil and gas drilling rigs that are both over 12 feet in height and require the use of guy wires during drilling operations. If the prohibition applies to even temporary structures, the BLM’s management action would preclude oil and gas development in the entire resource area, would violate existing lease rights, and would cause devastating negative impacts to the local economy and the production of domestic energy. The BLM must delete entirely the proposed management action.

For similar reasons, EOG encourages the BLM to delete or significantly modify the multiple inflexible management actions regarding **pygmy rabbit habitat, white-tailed prairie dog habitat, and migration corridors** under Alternative B. See RMP DEIS, Table 2-3, pg. 2-

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64, Record Nos. 4044, 4045, 4046. Under Alternative B, the BLM would prohibit any and all surface disturbing operations in identified pygmy habitat, white-tailed prairie dog colonies over 100 acres in size and would “preserve” migration corridors, regardless of site-specific conditions. *Id.* The BLM’s proposal to prohibit surface-disturbing activities in identified pygmy habitat, white-tailed prairie dog habitat, and migration/travel corridors is unreasonable, unnecessary, and impermissibly limits the BLM’s ability to manage the lands within the Kemmerer Planning Area. The potential restrictions are particularly concerning because the BLM has not mapped or identified such areas in the RMP DEIS, making it impossible for EOG or the public to know how or whether such restrictions will impact: (i) EOG’s existing or proposed operations, (ii) the public, or (iii) the local economy. Such restrictions may also impermissibly interfere with EOG’s existing lease rights—the BLM cannot impose management actions through COAs or otherwise that are inconsistent with EOG’s existing rights. Further, such management actions are not justified by the current status of the species concerned, and unnecessarily restrict future management actions. The USFWS recently determined that it was not necessary to list either the white-tailed prairie dog or the pygmy rabbit as endangered or threatened species. The FWS issued a Notice of 90-day Petition Finding determining that the White-Tailed Prairie Dog (*Cynomys leucurus*) should not be listed as an endangered or threatened species on November 9, 2004. *See* 69 Fed. Reg. 64889 (Nov. 9, 2004). Similarly, the FWS issued a Notice of 90-day Petition Finding regarding the Pygmy Rabbit (*Brachylagus idahoensis*) on May 20, 2005, that indicated that there was not sufficient scientific or commercial information determining that listing the Pygmy Rabbit (*Brachylagus idahoensis*) was warranted. *See* 70 Fed. Reg. 29253 (May 20, 2005). All three management actions under Alternative B must be eliminated or significantly modified.

### Alternative D

Generally, the BLM’s proposed management actions under Alternative D are more acceptable to EOG because they provide the BLM with the flexibility to make site-specific decisions rather than applying mandatory blanket prohibitions that curtail the BLM’s ability to manage future operations. The BLM must be allowed to make decisions based on site-specific and changing conditions.

On Page 2-62 the BLM proposes a management action under Alternative D to avoid **habitat fragmentation** through various means. *See* RMP DEIS, Table 2-3, pg. 2-62, Record No. 4039. This management action is generally acceptable and consistent with existing BLM practices, although it should be revised slightly to provide the BLM additional flexibility. BLM should insert the word “reasonable” into the management action and include a specific reference to the consideration of safety and engineering practices. As such, the BLM’s management action should provide as follows: “Avoid habitat fragmentation through *reasonable* attenuation, siting, and consolidation of roads, energy facilities, and other development, *with consideration for*

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*engineering feasibility and safety*, in special status species habitat, unless appropriate mitigation is initiated.” Further, other than Map 26, which identifies some but not all, of the special status species habitat, the BLM has not identified “special status species habitats” making it impossible for EOG or the public to meaningfully understand how this requirement might impact existing or future operations. If the BLM only intends to limit surface disturbing operations in the habitat identified in Map 26, the BLM should clearly indicate as such. Given the fact that several BLM Wyoming Sensitive Species are sagebrush obligate species, this proposed objective presumably applies to the entire resource planning area.

EOG is concerned with aspects of the BLM’s proposed management actions for **sage grouse** under Alternative D because they are unreasonably restrictive. *See* RMP DEIS, Table 2-3, pg. 2-62, Record No. 4040. Under the second bullet of Record 4040, Alternative D, surface disturbing and disruptive activities are to be avoided “in suitable greater sage-grouse nesting and early brood-rearing habitats within 2 miles of an occupied lek, or in identified greater sage-grouse nesting and early brood-rearing habitats outside the 2-mile buffer from March 15 through July 15”. Nesting and early brood-rearing habitats outside the 2-mile buffer have not been identified by the BLM. Therefore the impacts of this decision cannot be determined or analyzed. The language under this bullet is so broad that it could have wide spread adverse impacts on oil and gas operations. The BLM must remove this text from the management action until such time as all habitats have been mapped and impacts can be properly analyzed. In addition, the overlapping constraints of this management action (Record 4040) would potentially limit drilling operations to a 3-month window. Although EOG is generally able to plan its operations to meet seasonal requirements, it will not be able to do so if the location and extents of the specified habitats have yet to be identified. The BLM must also acknowledge that limiting operations to a 3-month time frame in some yet-to-be-identified areas would result in increased adverse impacts to other resources in those areas. Oil and gas operations would necessarily be temporally and spatially compressed. The BLM has also failed to demonstrate such proposed restrictions are necessary in the Kemmerer Resource Area because the agency has not presented data regarding sage grouse population in the Kemmerer Resource Area. Information released from the WGFD in March of 2007 noted that while there have been historic declines in sage grouse populations, there have been mid-term and short-term increases in populations. *See* Tom Christiansen, Brief Status of Sage-grouse Population Trends and Conservation Planning in Wyoming as of March 16, 2007, and 2007 Sage-grouse Hunting Season Proposal (attached). Cooperative efforts between the BLM, State of Wyoming, and many others are working and should be allowed to continue. Appropriately, the BLM has provided for sufficient flexibility under Alternative D to modify or change the restrictions based on site-specific information or changing conditions.

EOG also opposes the proposed management action imposing unnecessarily restrictive **noise limitations** within the Kemmerer Resource Area. Under Alternative D, the BLM would “Locate facilities or reduce noise levels to 49 dB or less as measured 900 feet from the noise

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source to minimize the impacts of continuous noise on species relying on aural cues for successful breeding.” See RMP DEIS, Table 2-3, pg. 2-63, Record No. 4041. The BLM’s proposed management action, however, does not provide the BLM with the flexibility to consider the impacts of local terrain and topography or weather conditions. The BLM has also not explained how background noise levels would be measured or quantified to determine whether or how noise levels have been impacted by a new facility. The BLM has also not explained how the new management action would be applied to existing facilities in the resource area. The BLM has also failed to explain why this management action is necessary, how the BLM selected the distance of 900 feet, the 49 dB limit, or specifically analyzed the feasibility of this management action on oil and gas operations. What study supports the 49 dB limit and determined that 50 dBs and greater could cause harm to sage grouse breeding? When evaluating this proposed management action, the BLM must also recall that it cannot attempt to impose mitigation measures which are inconsistent with existing lease rights. Once the BLM has issued an oil and gas lease conveying the right to access and develop the leasehold, the BLM cannot later impose unreasonable mitigation measures that take away those rights. See *Conner v. Burford*, 84 F.2d 1441, 1449-50 (9th Cir. 1988); 43 C.F.R. § 3101.1-2 (2006) (BLM can impose only “reasonable mitigation measures . . . to minimize adverse impacts . . . to the extent consistent with lease rights granted”). Finally, as the BLM should be aware, 49 decibels is a very, very low threshold. Just for the sake of comparison, a soft whisper approximates 20 decibels and the sound of leaves rustling, or very soft music easily reaches 30 decibels. Normal human speech is usually as high as 60 decibels and the sound of lawnmowers or shop tools usually reaches 90 decibels. Limiting noise levels from facilities to only 49 decibels as measured 900 feet from the noise source is unreasonably restrictive. From a practical perspective, EOG questions whether this restriction is even feasible or whether it constitutes an illegal taking of EOG’s existing lease rights and a *de facto* withdrawal of lands from leasing and development in violation of FLPMA.

EOG is also opposed to the management action requiring the avoidance of **structures taller than 12 feet** and the use of **guy wires** in occupied sagebrush obligate habitat under Alternative D. See RMP DEIS, Table 2-3, pg. 2-63, Record No. 4042. Once again the proposed management action does not leave the BLM the flexibility it requires to effectively manage the public lands. Perhaps most concerning, however, is the fact the prohibition appears to apply to even temporary structures such as oil and gas drilling rigs that are both over 12 feet in height and require the use of guy wires during drilling operations. If the requirement applies to temporary structures, the BLM’s management action could preclude oil and gas development in the entire resource area, would violate existing lease rights, and would cause devastating negative impacts to the local economy and the production of domestic energy. The BLM must delete entirely the proposed management action, or at least clarify that it does not apply to temporary structures.

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EOG opposes the proposed extension of the seasonal stipulation for **burrowing owls** under Alternative D. The BLM indicates on page 2-63 that “exception of burrowing owl (April 1 through September 15 or whenever the young have fledged) and northern goshawk (April 1 through August 31.” See RMP DEIS, Table 2-3, pg. 2-63, Record No. 4043. The current stipulation for burrowing owl is April 1 through August 15th. The BLM has not justified this proposed extension to the seasonal limitation with any empirical evidence or studies, or analyzed how existing or future oil and gas operations will be impacted. What is the rationale for extending this stipulation by 30 days? Is the decision based on sound empirical science, or just opinion? Unless new science confirms the need for an additional 30 days, the stipulation should remain April 1 through August 15th.

EOG is also opposed to the proposed stipulation for **Northern Goshawk**. See RMP DEIS, Table 2-3, pg. 2-63, Record No. 4043. The Kemmerer Field Office has never put a Northern Goshawk stipulation on an EOG lease or a condition of approval on a drilling permit. What is the rationale for adding the Northern Goshawk now and what is the basis for the April 1 through August 15 constraint?

Finally, EOG requests more information regarding the BLM’s proposal to expand the seasonal limitations relating to Prairie Falcon. The BLM proposes increases to the current stipulation for Prairie Falcon nests from April 1 through July 15 to April 1 to July 31. See RMP DEIS, Table 2-3, pgs. 2-63 – 2-64, Record No. 4043. The BLM must explain the decision to increase the stipulation. As currently presented without information, analysis or support, EOG is opposed to the modification to the existing prairie falcon stipulation.

EOG also has concerns regarding the BLM’s proposed management actions for **pygmy rabbit habitat and white-tailed prairie dog habitat** under Alternative D, which generally require the avoidance of surface disturbing activities in identified pygmy rabbit habitat and the avoidance of activities that could result in the collapse of white-tailed prairie dog burrows. See RMP DEIS, Table 2-3, pg. 2-64, Record Nos. 4044, 4045. Such management actions are not justified by the current status of the species concerned, and may unnecessarily restrict future management actions. The USFWS recently determined that it was not necessary to list either the white-tailed prairie dog or the pygmy rabbit as endangered or threatened species. The USFWS issued a Notice of 90-day Petition Finding determining that the White-Tailed Prairie Dog (*Cynomys leucurus*) should not be listed as an endangered or threatened species on November 9, 2004. See 69 Fed. Reg. 64889 (Nov. 9, 2004). Similarly, the USFWS issued a Notice of 90-day Petition Finding regarding the Pygmy Rabbit (*Brachylagus idahoensis*) on May 20, 2005, that indicated that there was not sufficient scientific or commercial information determining that listing the Pygmy Rabbit (*Brachylagus idahoensis*) was warranted. See 70 Fed. Reg. 29253 (May 20, 2005). To the extent the BLM insists on maintaining the management actions they must be significantly revised in order to provide the BLM more flexibility. The BLM should

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also include language clarifying that BLM will consider engineering and safety concerns. The BLM must also expressly acknowledge existing lease rights.

The BLM should therefore revise the proposed management action for pygmy rabbits (See RMP DEIS, Table 2-3, pg. 2-64, Record No. 4044) under Alternative D as follows: “To the extent reasonable, feasible, and consistent with engineering and safety concerns and existing rights, avoid surface-disturbing activities in occupied pygmy rabbit habitats, unless appropriate mitigation occurs, or activities are otherwise justified and reasonable based on site-specific conditions.”

The management action for white-tailed prairie dog colonies (See RMP DEIS, Table 2-3, pg. 2-64, Record No. 4045) under Alternative D should similarly be revised as follows: “To the extent reasonable, feasible, and consistent with engineering and safety concerns and existing rights, avoid activities that could result in the collapse of burrows in occupied white-tailed prairie dog colonies over 200 acres or greater, unless appropriate mitigation occurs, or activities are otherwise justified and reasonable based on site-specific conditions.”

Absent these modifications, the proposed management actions under Alternative D may lead to increased litigation and/or the imposition of unreasonable requirements.

EOG also has concerns regarding the BLM’s proposed management action to “Identify and develop management for **traditional migration and travel corridors** for special status species.” See EMP DEIS, Table 2-3, pg. 2-65, Record No. 4046. The BLM must ensure that any proposed “management” honors existing lease rights. Further, this proposed management action is unduly vague because the BLM has not identified or mapped potential “migration or travel corridors.” The public in general and EOG in particular cannot specifically evaluate the impacts to the human environment from these maps. Finally, the BLM’s proposed management action is vague because the BLM’s use of the term “special status species” is not consistent. If BLM only intends the term to apply to designated BLM Wyoming Sensitive Species, the proposed management action would not apply to big game migration corridors as no big game species are identified as BLM Wyoming Sensitive Species. See RMP DEIS, pg. 3-79. The BLM must revise or delete this vague and ambiguous management action, and specifically must delineate proposed migration corridors or, at least, identify the species for which the management action will apply.

EOG also opposes the BLM’s prohibition on surface disturbing operations within ¼ of a mile of **burrowing owl nests** from April 1 through September 15. See RMP DEIS, Table 2-3, pg. 2-63, Record No. 4043. In recent discussions with the BLM in Kemmerer Wyoming, BLM staff have indicated the seasonal restriction for burrowing owl would not only be applied to active raptor nests, as is clearly indicated in the RMP DEIS, but would be applied in any

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potential habitat for burrowing owl, which the BLM defines as a prairie dog colony with more than 10 burrows. Clearly the RMP does not contemplate this action and does not analyze the impacts of such a decision on the human environment as required by NEPA. EOG also objects to this management action because it increases the seasonal stipulation by 30 days without any supporting study or criteria for the proposed extension. BLM has failed to justify such a restriction and failed to provide operators or the public sufficient notice of this significant change to the existing management actions. The BLM must not impose such an unreasonable restriction in the Kemmerer RMP.

### 5000 – Heritage Resources (Cultural)

Under Alternatives B and D the BLM proposes to prepare a Class I overview to proactively identify zones of high, medium, and low probability for cultural sites. See RMP DEIS, Table 2-3, pg. 2-67, Record No. 5006. Although EOG does not oppose this management action, the BLM should have prepared the cultural overview as part of the BLM’s planning process. EOG is, however, opposed to the requirement if BLM will not approve future operations in the Kemmerer Planning Area until after the Class I overview has been completed. A delay in approval of operations until after a Class I overview is completed would infringe upon EOG’s existing lease rights. If a Class I overview has already been completed, the BLM should disclose its completion to the public—even if the BLM appropriately elects not to disclose its contents in order to protect sensitive cultural resources.

The BLM should also define low, medium, and high management levels for National Historic Trails in the glossary or better explain the distinction between the various levels in the Final EIS for the Kemmerer RMP. See RMP DEIS, Table 2-3, pg. 2-69, Record No. 5010. The current classifications have not been explained or justified.

### 6000 – Land Resources (Travel Management)

Under all of the proposed alternatives, the BLM indicates that it intends to “Retain current **livestock trails**. Livestock trails width is ½ mile from the mapped centerline.” See RMP DEIS, Table 2-3, pg. 2-76, Record No. 6019. The BLM has not clearly indicated how the currently identified livestock trails (Map 42) will be managed in the future. Will the trails simply be allowed to exist? Will other multiple uses of the public lands be able to use said trails? Will BLM prevent other resources users within the 1 mile area surrounding trails? How will oil and gas development on existing leases within the 1 mile trail area be impacted? Given the significant size of the proposed management action—1 mile total width—the BLM must identify the trails impacted by this designation and analyze its potential impact on oil and gas operations. This is particularly important if the BLM intends to apply this restriction upon any livestock trail within the planning area, as compared to only those identified in Map 42. The

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BLM must clarify this proposed management action, and analyze its impact upon oil and gas operations.

The BLM must be willing to work with oil and gas lessees and operators to design access routes to proposed oil and gas development projects. In particular, EOG urges the BLM to revise the proposed management action **restricting future open road construction within big game winter range** under Alternative B and Alternative D. See RMP DEIS, Table 2-3, pg. 2-86, Record No. 6041. Under Alternative B, the BLM proposes the following management action: "Travel management planning in big game winter ranges will minimize open road density to meet an objective of less than ½ mile of open road per square mile." *Id.* Under Alternative B, the BLM proposes the same management action, but would establish an "average of 2 miles of open road per square mile will not be exceeded." *Id.* First, BLM should define the term winter range and map areas impacted by the management action. From the current description, the management action may apply to all potential big game winter range rather than just designated crucial winter range indicated on Map 22. Absent a clear definition and an accurate map, EOG and the public cannot clearly understand how the restriction will impact its operations and the human environment as required by NEPA.

Further, the term "open road" is not defined in the glossary. Assuming open road means all types of roads (including well access roads), this management action is unduly restrictive and unreasonable. The BLM must provide additional analysis justifying its proposed management action. How will the BLM determine the "average"? Will it be the average across all big game winter range? Will the BLM be maintaining an up-to-date database of all roads to determine the average? How will BLM measure the roads and keep the database up to date? Without the measurement data, the BLM and potentially operators such as EOG will be open to litigation, especially if there are varying opinions about interpretation or management of the restriction. Given the ambiguous nature of this proposed management action, it should be deleted entirely, or modified into a non-binding management goal or objective.

The BLM must also insert flexibility into the proposed management actions under Alternative B and D. Using qualitative terms like "minimize" could lead to increased appeals and litigation as a means to delay legitimate development activities within the area. As currently drafted, the BLM has little flexibility under Alternative B. Similarly, the proposed management action under Alternative D is equally inflexible. As drafted, the management action states that the average of 2 miles of open road per square mile will not be exceeded regardless of existing lease rights or site-specific conditions. The BLM must insert additional flexibility into the proposed management action. The proposed management action under Alternative D (See RMP DEIS, Table 2-3, pg. 2-86, Record No. 6041) should be revised as follows: "Travel management planning in big game winter range will minimize, to the extent practical and feasible given due regard to existing rights, engineering practices, and safety concerns, open road density to meet an

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objective of an average of less than 2 miles of open road per square mile, unless otherwise justified by site-specific conditions." Absent this minor modification, the management action is unreasonably restrictive and does not provide the BLM with the flexibility it needs to manage the Kemmerer Planning Area.

EOG also urges BLM not to select the unduly restrictive management action/limitation for road construction proposed under Alternative B, which unnecessarily restricts road construction to ½ mile of road per square mile (See RMP DEIS, Table 2-3, pg. 2-86, Record No. 6041). Not only has the BLM failed to justify this proposed requirement, such a restriction will hamper other management actions within the planning area including recreation, oil and gas development, and grazing operations. BLM has not analyzed the negative impact to the human environment, socioeconomic effects, etc., if said limitation was imposed. For example, if this restriction was in place prior to the existing oil and gas fields being discovered (i.e. Moxa Arch Field), it would be easy to calculate how many wells would not have been drilled because of this proposed management alternative and then calculate the socioeconomic impacts.

Finally, EOG is concerned that future limitations on road construction could impact EOG's valid and existing lease rights or its rights as the operator or designated agent to drill in units such as the Emigrant Springs, Cow Hollow, Whiskey Buttes, and Bruff Units. While the issuance of the oil and gas leases does not guarantee access to the leasehold, a federal lessee is entitled to use such part of the surface as may be necessary to produce the leased substance. 43 C.F.R. § 3101.1-2 (2006). With respect to approved units, the IBLA has noted that "[w]hen a federal unit has been approved and the unitized area is producing, rights-of-way are generally not required for production facilities and access roads within the unit area." *Southern Utah Wilderness Society, et al.*, 127 IBLA 331, 372 (1993). The BLM must recognize the lessee's right to use the lands included within their leasehold or units in order to develop the oil and gas resources. Obviously, if lessees are not allowed access to their lease parcels, or are prohibited from installing pipelines necessary to transport the produced resource, they are deprived of the economic benefit of the lease. In such situations the lessee, the public, the State of Wyoming, and the federal government will be deprived of the economic benefit of potential oil and gas development.

EOG is also concerned regarding the existing and proposed **seasonal limitations on motor vehicle travel**. Under Alternatives A, B, and D, the BLM proposes various seasonal restrictions on motor vehicle travel within the planning area. See RMP DEIS, Table 2-3, pg. 2-87, Record No. 6044. EOG strenuously opposes the proposed management action under Alternative B that would limit motor vehicle operations in big game winter range by proposing the following: "Motor vehicle travel is seasonally limited in all crucial big game winter range areas. Public access to the area is closed from November 15 to April 30 (exemptions apply)." *Id.* The proposed management action would essentially preclude oil and gas production

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operations and would significantly decrease domestic energy production. Oil and gas operators would be forced to shut-in wells during large portions of the year if well locations cannot be accessed and monitored for safety and operations purposes. Shutting in wells for long periods of time would not only decrease domestic energy production during the winter months when oil and gas resources are particularly needed, it may damage and even destroy the reservoir leading to long-term losses of domestic energy supplies. Such a restriction would conflict with EOG's existing lease rights and may constitute a taking of EOG's property rights. Further, such a restriction is inconsistent with the National Energy Policy and the Energy Policy Act of 2005.

EOG is also opposed to the right-of-way (ROW) exclusion areas proposed under Alternatives B and D as indicated on Map 40 and Map 41. EOG is particularly opposed to the 452,208 acres of ROW exclusion areas under Alternative B, and the off-highway vehicle closure areas under Alternative D to the extent such restrictions will impact oil and gas operations. The BLM has failed to justify the necessity of the proposed rights-of-way exclusion areas and has not adequately considered the impacts such exclusion areas will have upon oil and gas leasing and development. The BLM must specifically recognize that new restrictions on rights-of-way do not apply to valid existing leases. Once the BLM has issued an oil and gas lease conveying the right to access and develop the leasehold, the BLM cannot later impose unreasonable mitigation measures that take away those rights. See *Conner v. Burford*, 84 F.2d 1441, 1449-50 (9th Cir. 1988); 43 C.F.R. § 3101.1-2 (2006) (BLM can impose only "reasonable mitigation measures . . . to minimize adverse impacts . . . to the extent consistent with lease rights granted"). Further, as discussed above, a federal lessee is entitled to use such part of the surface as may be necessary to produce the leased substance. 43 C.F.R. § 3101.1-2 (2006). With respect to approved units, the IBLA has noted that "[w]hen a federal unit has been approved and the unitized area is producing, rights-of-way are generally not required for production facilities and access roads within the unit area." *Southern Utah Wilderness Society, et al.*, 127 IBLA 331, 372 (1993).

The BLM should clearly map the Slate Creek, Rock Creek, and Bridger Creek areas so that the public and operators are aware of where seasonal limitations may be imposed under Alternatives A and D. Absent this information EOG cannot assess how its operations will be impacted. Further, the information closing the three areas identified in Record No. 6044 is inconsistent with the information on pages 4-103 – 4-104 indicating that four—not three—areas will be closed to seasonal motor vehicle use. See, e.g., RMP DEIS, pg. 4-103 ("Alternative D closes four big game crucial winter ranges to motorized vehicles annually from January 1 to April 30, although exemptions apply."). BLM must make accurate and complete information available to the operators and the public in the Final EIS and proposed management plan for the Kemmerer Resource Area.

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### 6000 – Land Resources (Visual Resource Management)

The BLM's proposed visual resources management under Alternative B is unnecessarily restrictive. Placing visual resource management (VRM) I or II restrictions on significant portions of the planning area would significantly restrict or eliminate oil and gas development, even on existing leases. See RMP DEIS, Table 2-3, pgs. 2-89 – 2-90, Record No. 6052. Further, although the BLM identified the number of acres impacted by each VRM classification under Alternative D, it failed to provide similar information for the remaining alternatives. The maps provided by the BLM provided general information, but not an overall evaluation of the lands the BLM will essentially preclude oil and gas development on using VRM classifications. See RMP DEIS, pg. 4-206 (noting that most surface disturbing operations will be prohibited in areas of high visual resource value). In particular, operators may not be able to develop existing leases if the BLM is precluded from approving ROWs to facilitate development across newly created VRM I and II areas that did not exist at the time the lease was granted. The imposition of unreasonable restrictions on existing leases or federal units may result in illegal takings of EOG's contractual and property rights. Finally, the BLM has not adequately studied the potential economic or socioeconomic impacts such closures would have upon the public or the human environment as required by FLPMA and NEPA.

EOG is strenuously opposed to the viewshed protection measures for national historic trails and cultural resources proposed under Alternative B, and is concerned the proposed viewshed protection measures associated with Alternative D may be unnecessarily restrictive. See RMP DEIS, Table 2-3, pg. 2-92 – 2-94, Record Nos. 6053, 6054, 6055. The BLM should clarify how such management actions will impact existing operations and the production of domestic energy resources. Although the BLM has proposed more balanced VRM restrictions under Alternative D, the BLM must specifically state that new VRM restrictions will not apply to existing leases and federal units. The BLM cannot impose mitigation measures which are inconsistent with existing lease rights.

### 7000 – Areas of Critical Environmental Concern

Alternative B creates far too many Areas of Critical Environmental Concern (ACECs) and other special management areas, including several ACEC which the BLM itself has determined do not meet the required relevance and importance criteria. See 43 C.F.R. § 1610.7-2 (2006); ACEC Nomination/Determination for the Kemmerer RMP. Although it may have been appropriate from a NEPA perspective to consider numerous ACEC designations, the BLM must not select an alternative that creates ACECs that do not meet the minimum qualifications. In particular, EOG opposes the proposed creation of ACECs for white-tailed prairie dog habitat under Alternative B. See RMP DEIS, Table 2-3, pg. 2-96, Record No. 7009. The proposed White-tailed prairie dog ACECs do not meet a sufficient number of the criteria necessary to

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establish an ACEC, and may unnecessarily restrict the BLM's management of the Kemmerer Planning Area. Finally, as a designated BLM Wyoming Sensitive Species, the BLM has sufficient authority to protect white-tailed prairie dogs without the creation of unnecessary ACECs.

EOG is also concerned regarding the BLM's decision to delay the determination of specific ACECs for special status plants and cushion plant communities. See RMP DEIS, Table 2-3, pg. 2-95, Record Nos. 7004, 7005, 7006, 7007. The BLM should take advantage of the ongoing RMP revision process to make final determinations regarding these proposed ACECs. Doing so will provide finality and certainty for the public and oil and gas operators. Absent a decision on the proposed cushion plant ACECs, the BLM may face increased litigation and administrative appeals as the BLM attempts to make site-specific decisions. The BLM has not justified its decision to delay making final determinations regarding the proposed cushion plant ACECs. The BLM should utilize the current revision process to make final decisions rather than unnecessarily delaying the decision.

### 8000 – Socioeconomics (Social and Economic Conditions)

EOG strongly supports the proposed management action under Alternatives D and C to incorporate the national energy plan into the Kemmerer Field Office land use planning efforts. See RMP DEIS, Table 2-3, pg. 2-103, Record No 8007. For similar reasons, EOG is opposed to the proposed management action under Alternative B to minimize domestic energy production. *Id.* The proposed management action under Alternative B would unnecessarily increase the importation of energy resources and is inconsistent with existing BLM directives.

### Table 2-4 – Summary of Environmental Consequences

In addition to disclosing the number of acres with high potential for oil and gas impacted by the proposed management actions, the BLM should disclose the number of acres with moderate potential, see Mineral Assessment Report pg. 67, fig. 4-14, and the number of areas with high potential for oil and gas activities, see Final RFD Report, pg. 7-8, fig. 7-6. Although the BLM may not consider certain lands within the Moxa Arch area as having high potential for oil and gas, the BLM recognizes the area has high potential for future oil and gas development activities. This fact is particularly important given the ongoing analysis for the Moxa Arch Natural Gas Infill Development Project currently being analyzed by the Kemmerer Field Office. Given the importance of development within the Moxa Arch area, the BLM should include acres with moderate potential in a summary table.

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### CHAPTER 3 – AFFECTED ENVIRONMENT

Overall, the analysis of the potentially affected environment contained in the Kemmerer RMP DEIS is thorough and complete. The BLM has provided a detailed and informative description of the existing conditions in resource area and the various cumulative impact areas.

#### Section 3.1.1 Air Quality

Air quality in southwestern Wyoming continues to be an important issue for oil and gas operators, the public, and regulatory agencies. Fortunately, according to the analysis in the RMP DEIS, air quality in southwest Wyoming is good. See RMP DEIS, pg. 3-4 (“Air quality in the study area is considered to be good.” Emissions data collected near Jonah Field demonstrate compliance with all National and Wyoming Ambient Air Quality Standards (NAAQS/WAAQS). See RMP DEIS, pgs. 3-5. Unfortunately, the BLM does not adequately explain this information.

With respect to visibility, the information in the RMP DEIS as well as information from the recently released Supplemental PAPA SDEIS indicates that visibility in the area is generally improving. See RMP DEIS, pgs. 3-5 – 3-7. Data from the IMPROVE sites in the Bridger Wilderness Area, North Absaroka Wilderness Area, and Yellowstone National Park demonstrate that visibility on the 20% cleanest days and 20% middle days has generally improved since the early 1990s and is, in fact, near record high levels. See PAPA SDEIS, pgs. 3-58 – 3-59. The IMPROVE monitoring data indicates dramatic improvements in visibility on the cleanest and middle days in the last 2-3 years despite increased oil and gas development in the Kemmerer and Pinedale Resource Areas. *Id.* Similarly, the analysis in the recently released Draft EIS for the Eagle Prospect Exploratory Wells Project, jointly prepared by the BLM and Forest Service, affirmatively states that visibility in Bridger Wilderness has improved since 1989. See Eagle Prospect DEIS, pg. 3-11 (reflecting data through 2006). The BLM should explain that visibility in the project area is improving despite ongoing and increased levels of oil and gas activities.

Appropriately, the BLM recognizes in the RMP DEIS that the WDEQ, not the BLM, has the regulatory authority and responsibility, with EPA oversight, to enforce air quality standards. See RMP DEIS, pg. 3-10. The BLM must consider this limitation when designing potential mitigation measures both at the resource management stage, and when approving project or site-specific level activities.

#### Section 3.2.2 – Leasable Mineral Resources Oil and Gas

As discussed in more detail in Section 4.2.2 below, the BLM's RFD Scenario for the Kemmerer Planning Area is unreasonably low. The baseline or unconstrained RFD Scenario for the Kemmerer Planning Area anticipates only 2,040 wells (947 federal and 1,093 state and fee).

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The Moxa Arch Area Infill Development Project, currently being analyzed by the Kemmerer Field office anticipated 1,861 wells alone. This would potentially allow only 180 wells for all of the rest of the planning area for the life of the Kemmerer RMP, an extremely unreasonable expectation based on historic drilling levels. The BLM's projection of future oil and gas activity does not properly account for the currently anticipated level of development, much less potential development stemming from improved technology.

On page 3-21, Section 3.2.2, the BLM states "The majority of federal mineral estate in the planning area (1,118,602 acres or 71%) is considered by the BLM to have low development potential for oil and gas resources." See RMP DEIS, pg. 3-21. The BLM's impact analysis should focus on oil and gas occurrence potential and existing lease rights rather than simply existing development potential. Development "potential" may change with the advent of new technology. The BLM's statement is also misleading given the agency's determination that lands within the Moxa Arch area have a high potential for oil and gas development activities. See Final RFD Report, fig. 7-6, pg. 7-8. The above statement is vague and may give the public the incorrect impression that oil and gas activities are not likely to occur within the Kemmerer Planning Area.

Importantly, the BLM has recognized the crucial role oil and gas development plays in the economical well being of the residents of southwest Wyoming. See RMP DEIS, pg. 3-23. The BLM must remember the importance of oil and gas development to the local economy when developing future management actions, and must not restrict such operations in the revised Kemmerer RMP. Each alternative must clearly show how the local, state, and national economies would be impacted so that the public can make informed comments regarding the BLM's proposed management plan.

### Section 3.5.1.2 – National Historic Trails

The BLM should have included a more detailed map of National Historic Trails (NHT) in the Kemmerer planning area. While Map 28 shows the general NHTs within the planning area, the specific trails, or more importantly specific sections of the trails, are not separately mapped. Because the BLM proposes differing levels of protection for various sections of the trails, a more detailed map should have been included in the RMP DEIS. Maps 58, 59, and 60 contain additional information regarding the proposed management levels of certain trails, but without the section designations used on pages 3-96 – 3-100, the maps are not useful. The BLM did include a slightly more detailed map in the AMS. See AMS pg. 9, fig. 2. More detailed information is necessary for the operators to understand how new management actions for NHTs may impact oil and gas operations. Absent this information it is impossible for EOG to ensure that its existing leasing rights will be protected, or understand how the BLM's management activities will impact its existing or planned operations.

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### Section 3.6.3 – Rights-of-Way Corridors

The BLM should map and identify the rights-of-way exclusion and avoidance areas (to the extent possible or not seasonally dependent) as they exist under Alternative A. Although Map 46 identifies some areas closed to off-highway vehicles, the map does not identify the rights-of-way exclusion areas. See RMP DEIS pg. 3-115, Map 46; compare Maps 40 (Alternative B), Map 41 (Alternative D). Without a map of rights-of-way exclusion areas under the existing RMP or No Action Alternative, it is difficult to compare and contrast the various alternatives.

### Section 3.8 – Socioeconomic Resources

The BLM's analysis in the Kemmerer RMP DEIS demonstrates the importance of oil and gas leasing and development to the local economy. See RMP DEIS, pg. 2-149. The BLM should not take any actions which may adversely impact this important engine for the local economy. In particular, the BLM's analysis demonstrates how the mining and oil and gas industries contribute substantially to state and local revenues. See RMP DEIS, pg. 2-169 – 2-172. "Natural gas was the largest contributor to state severance taxes within all three counties." See RMP DEIS, pg. 3-170 (emphasis added). The BLM should not prescribe any management actions that will impede or limit oil and gas production and thereby: (i) decrease federal, state, and local tax revenues, (ii) decrease employment; and (iii) adversely impact local economies.

## CHAPTER 4 – ENVIRONMENTAL CONSEQUENCES

Generally, the Kemmerer RMP DEIS adequately discloses the potential environmental impacts associated with the proposed revision to the Kemmerer RMP and informs the public of the potential consequences of the BLM's management objectives. The DEIS provides generalized information for the BLM to make a decision regarding the Kemmerer RMP Revision.

In several places within the Kemmerer RMP DEIS the BLM incorrectly cites the *Sierra Club v. Peterson* case as decision by the United States Court of Appeals for the Tenth Circuit. In fact, the *Sierra Club* decision was issued by the United States Court of Appeals for the D.C. Circuit and should be cited as follows: *Sierra Club v. Peterson*, 717 F.2d. 1409 (D.C. Cir. 1983).

### Section 4.1.1 – Air Quality

The BLM states on page 4-7 that minerals development and production will have the greatest impact on air quality within the planning area. In fact, previous modeling performed by the State of Wyoming, EPA, and the Forest Service indicates that 90% of the air quality impact

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at the Bridger Wilderness area is attributable to distant sources outside of Wyoming, and not local sources within southwest Wyoming. See The Southwest Wyoming Regional CALPUFF Air Quality Modeling Study: Final Report (SWWYTAF) (February 2001). Oil and gas development may contribute to emissions in the region, but the SWWYTAF study indicates that the overwhelming majority of sources impacting air quality in Wyoming, and particularly the Kemmerer Resource Area, are outside of Wyoming. The statement on page 4-7 should be revised to reflect the information from the SWWYTAF study.

Section 4.1.2.3 states that “Allowable uses and management actions that could impact air quality include management actions that reduce emissions or may result in increased emissions.” See RMP DEIS, pg. 4-7. The Final EIS for the Kemmerer RMP must acknowledge that the BLM can manipulate direct impacts to air quality only by analyzing different numbers of wells corresponding to different alternatives. Assuming emissions associated with a single typical well are relatively the same among all wells analyzed, total emissions from oil and gas activities would essentially vary according to total well counts as they vary by alternative. Although the RMP does not authorize or approve a specified number of wells by the selection of a particular alternative, the impacts that would result from a specified number of wells limits the useful life of the analysis that supports the RMP. By severely underestimating the number of wells that could be drilled in the planning area, particularly in the Moxa Arch area, the analysis contained in the DEIS is constrained to a time frame much less than its 20-year projection.

The DEIS must also disclose that the BLM does not compile a list or database of emissions sources within the planning area. Oil and gas operators are under no obligation to provide specific emissions data resulting from its equipment or operations to the BLM. In fact, the BLM has made no such request for emissions data to the oil and gas operators in the planning area.

### Section 4.1.3 – Surface Water Quality

The analysis of water quality is confused by the misuse of terminology that inappropriately describes beneficial impacts as actions that reduce negative impacts. In Section 4.1.3, page 4-17, the BLM states as follows: “Beneficial impacts to surface water quality include actions that minimize, reduce, or prevent offsite erosion or the disposal of supplemental water that is of lower quality than the ambient water quality of the receiving water.” See RMP DEIS, pg. 4-17. Impacts result from actions. Impacts are not intrinsically “actions” themselves. This sentence should be revised to state that “actions that minimize, reduce, or prevent offsite erosion or the disposal of water that is of lower quality than the ambient water quality of the receiving water would diminish adverse impacts to surface water quality.”

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### Section 4.1.3.1 – Methods and Assumptions

The sixth bullet under the heading “Section 4.1.3.1,” the second bullet point on page 4-19, discusses erosive soils in the Kemmerer Planning Area and notes that the locations of highly erosive soils have not been mapped. It also states that soils “must be determined on a project-specific basis” because erosive soils are difficult to protect through the implementation of standard BMPs. EOG concludes that the decision implementing the new RMP will likely include a provision requiring oil and gas operators to conduct soils surveys throughout a project area. EOG contends, however, that a detailed soil survey would not be needed to determine where erosive soils exist in its project areas. Oil and gas development has occurred within the Kemmerer Planning Area for decades. Past development in the Moxa Arch area, for example, has provided oil and gas operators as well as the BLM with observable evidence of the locations of erosive soils. Surveys conducted by a soil scientist are not needed for identification of those areas where erosion and sediment transport are more likely to occur. BMPs have been and will be determined and applied on a site-specific basis. Unlike administrative determinations of “grazing allotments,” for example, neither the BLM nor EOG need a map to inform them of the locations of erosive soils. A requirement to conduct a formal soils survey where samples would be taken and analyzed is not needed to protect soil or water resources.

EOG supports the position taken under Alternatives A and D, where completed soils surveys and site observations would be utilized to address soil protection and develop mitigation. Level III soils surveys would not provide new useful data that would measurably contribute to soils protection by minimizing erosion.

The seventh bullet under the heading “Methods and Assumptions” on page 4-19 lists factors that affect the amount of sediment delivery, including the amount of disturbed surface, soil type (erosive or not), overland flow characteristics, proximity of established channels, vegetation characteristics, and effectiveness of BMPs. EOG emphasizes that site-specific BMPs developed during the onsite inspection in addition to the Storm Water Pollution Prevention Plans developed to comply with State of Wyoming requirements address the factors listed above, resulting in minimal offsite impacts due to sediment delivery.

The eighth bullet point under the heading “Methods and Assumptions” on page 4-19 contains contradictory text and requires clarification. It seems to advocate the limited application of water to the surface to aid reclamation, but continues to state that there are limits to produced water disposal on the surface, and produced water quality is too saline. What would be the source of water that the BLM would recommend for use in reclamation? Since produced water is transported by truck in the Moxa Arch area, is the BLM considering trucking water into a location for reclamation purposes? EOG cannot determine the appropriateness of applying

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such a requirement or the circumstances when such a requirement may be justifiable. EOG requests either an explanation or deletion from the final EIS.

In the final bullet on page 4-19 under the above heading, the BLM indicates that mineral development is the primary activity with a potential to impact shallow groundwater, the BLM has not presented analysis to justify its conclusion. On page 4-18, however, the DEIS states that “Direct impacts to groundwater quality and quantity could result from changes in the number of (water) wells, including water supply (wells), water disposal, oil and gas wells drilled, the condition and uses of existing (oil and gas) wells, the number of springs developed, water conservation efforts, and the amount of water that infiltrates the ground before flowing to the surface water system.” EOG inserted the text in parentheses for clarification of the text in the DEIS. Three of the listed factors that have the potential to impact groundwater are associated with oil and gas development: water disposal; oil and gas wells drilled; and the condition and uses of existing wells. With respect to oil and gas wells drilled, casing and cementing requirements are approved by the appropriate regulatory authority to ensure that no contamination of shallow fresh water zones would result. The procedures that regulate drilling an oil and/or gas well are strictly regulated by the BLM and the State of Wyoming. Fresh water encountered during drilling operations is reported to the BLM. Further, the disposal of produced water by subsurface injection in Wyoming is strictly regulated by the State of Wyoming and/or Environmental Protection Agency. Subsurface injection of produced water typically occurs in deep formations well below fresh water aquifers. Permit approval is thorough and arduous, ensuring that fresh water would not be contaminated. Therefore, the likelihood of contamination of groundwater from drilling new development wells or an injection well is remote. Cross-contamination to a water well has been known to occur if the casing integrity (condition) of an older oil and gas well were compromised at shallow depth. Thus, possible groundwater contamination from oil and gas development is unlikely. The determination that “mineral development is the primary activity with a potential to impact shallow groundwater” is speculative and should be removed unless documentation can be provided within the text of the EIS.

Further, as the BLM is aware, there are extensive procedures and regulations currently in place to protect ground and surface water resources. *See, e.g.*, 43 C.F.R. § 3162.5-2(d) (2006) (requiring wells to be isolated from fresh-water); Onshore Order No. 7. The BLM should reference these safeguards in the Final EIS for the Kemmerer RMP.

### Section 4.1.3.2 – Analysis of Alternatives, Surface Water Quality

On page 4-21 the BLM makes the following statement in the first paragraph following the heading “Surface Water Quantity: “. . . activities, such as reclamation and proper grazing management, can improve vegetative cover and channel morphology, resulting in beneficial

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impacts.” *See* RMP DEIS, pg. 4-21. The described activities diminish adverse impacts rather than result in beneficial impacts. The confusion between the beneficial impacts and the mitigation of adverse impacts is concerning because it portrays a fundamental misrepresentation of what actions may result in adverse impacts, what actions may result in beneficial impacts, and what actions may mitigate or diminish adverse impacts. The BLM should correct these confusing statements in the Final EIS for the Kemmerer RMP.

### Section 4.1.3.2 – Alternative B

Page 4-21 contains the following statement: “Surface dischargers of produced water from oil and gas wells are permitted by the WDEQ through a WYPDES permit that requires compliance with specific water quality standards to assure the produced water quality disposed of on the surface is suitable for beneficial uses, such as agricultural and livestock, and does not result in a violation of water quality standards in the receiving stream.” EOG agrees that the permitting process works to maintain surface water quality in the state and therefore, the constraint against the release of produced water on the surface (if state permit requirements are met) must be removed from Alternative B.

### Section 4.2.2 – Leasable Oil and Gas

#### Section 4.2.2.1 – Methods and Assumptions

As discussed above, the general categories of “Administratively Available Subject to Moderate Constraints” and “Administratively Available Subject to Major Constraints” are insufficient to provide EOG, other operators, or members of the general public the necessary information to evaluate the proposed RMP and anticipate how new restrictions will impact existing or future operations in the planning area. *See* RMP DEIS, pg. 4-28. The BLM must separately map and identify—as the BLM did in the Pinedale Draft RMP/EIS (2007)—areas with NSO stipulations, seasonal limitations, and controlled surface use stipulations under each alternative. Depending on the number of overlapping stipulations, operators such as EOG must be able to make their own determinations on the nature of the proposed leasing constraints and whether they are moderate or major. In particular, the BLM should have identified NSO areas. There is a vast difference between timing and controlled surface use stipulations and NSO stipulations. The BLM must provide this information in the Final EIS for the Kemmerer RMP or otherwise provide useable information regarding the types of stipulations being proposed. The existing overly generalized information is vague, ambiguous, and completely inadequate.

On page 4-28, the first bullet reads: “About 1,577,402 acres of federal mineral estate in the planning area have a moderate-to-high potential for the occurrence of oil and gas. Most of the planning area has a low development potential for oil and gas (BLM 2006b).” *See* RMP DEIS,

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pg. 4-28. Impacts to oil and gas should be based on existing leases and occurrence potential rather than development potential. Development “potential” changes with each advent of new technology. The BLM should clarify or delete this statement.

### The Reasonably Foreseeable Development Scenario

The BLM’s RFD Scenario for the Kemmerer Resource Area is inaccurate and far too low, particularly given the information BLM’s already gathered on plans for additional development in the Moxa Arch area. The BLM’s unconstrained projection for oil and gas development in the Kemmerer Resource Area projects a total of 2,680 wells in the planning area, of which 1,221 will be drilled on federal lands/minerals. See Final RFD Report, pg. 8-23; RMP DEIS, pg. 4-32. Of these wells, the BLM projects 1,740 wells within the Moxa Arch area, which is an unreasonable projection in light of the fact the operators in the Moxa Arch area have specifically proposed, and the BLM is currently analyzing, the development of at least 1,861 wells in the Moxa Arch area. See Notice of Intent Moxa Arch Area Infill Development Project, 70 Fed. Reg. 58738, 58739 (Oct. 7, 2005). Given the fact the BLM is aware of proposed development in the Moxa Arch area exceeding that analyzed in the RFD Scenario, the BLM must update and correct the RFD Scenario in the Final EIS for the Kemmerer RMP.

EOG has also attached hereto and incorporates herein by this reference, a detailed report regarding the sufficiency of BLM’s RFD Scenario. As analyzed in detail in the attached report, the BLM’s RFD Scenario did not comply with the BLM’s requirements under Washington Office Instruction Memorandum 2004-089 (January 16, 2004) or the BLM’s Land Use Planning Handbook H-1624-1, Planning for Fluid Minerals Resources, Chapter III, B.1, 2, 4, (Release 1-1583, 5/7/90), as modified.

The BLM should include specific information in the Final EIS, the Record of Decision, and the actual RMP for the Kemmerer Planning Area confirming the nature of the RFD Scenario and the fact that the RFD Scenario is not a planning decision or limitation on the level of development that can be authorized within the Kemmerer Resource Area. The RFD is defined by the BLM as a “baseline scenario of activity assuming all potentially productive areas can be open under standard lease terms and conditions, except those areas designated as closed to leasing by law, regulation or executive order.” BLM Instruction Memorandum 2004-089, Attachment 1-1 (January 16, 2004). The RFD is neither a Planning Decision nor the “No Action Alternative” in the NEPA document. “In the NEPA document, the RFD based on scenarios adjusted under each alternative to reflect varying levels of administrative designations, management practices, and mitigation measures.” BLM Instruction Memorandum 2004-089, Attachment 1-1 (January 16, 2004). The RFD is based on review of geologic factors that control potential for oil and gas resource occurrence and past and present technological factors that control the type and level of oil and gas activity. The RFD also considers petroleum engineering

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principles and practices and economics associated with discovering and producing oil and gas. BLM Instruction Memorandum 2004-089, Attachment 1-3 (January 16, 2004).

The IBLA has made clear in six separate decisions that the RFD Scenario is not a planning decision, nor is it a limit on future development. *National Wildlife Fed’n*, 170 IBLA 240, 249 (2006) (holding with respect to the Great Divide RMP that the RFD Scenario is not a limitation on development); *Wyoming Outdoor Council, et al.*, 164 IBLA 84, 99 (2004) (holding with respect to the Pinedale RMP that the RFD Scenario does not establish “a point past which further exploration and development is prohibited”); *Southern Utah Wilderness Alliance*, 159 IBLA 220, 234 (2003) (holding that the Book Cliffs RMP did not establish a well limit); *Theodore Roosevelt Conservation Partnership, et al.*, IBLA Docket No. 2007-208, Order at \*22 (September 5, 2007); *Wyoming Outdoor Council, et al.*, IBLA Docket No. 2006-155, Order at \*26 - 27 (June 28, 2006) (determining RFD Scenario for Pinedale RMP is not a limitation on future development); *Biodiversity Conservation Alliance, et al.*, IBLA No. 2004-316, Order at \*7 (Oct. 6, 2004) (citing *Southern Utah Wilderness Alliance*, 159 IBLA at 234) (holding with respect to the Great Divide RMP that the “RFD scenario cannot be considered to establish a limit on the number of oil and gas wells that can be drilled in a resource area.”). As indicated by the number of decisions cited above, the purpose of the RFD Scenario continues to be a source of confusion, and litigation, for some groups and individuals. In order to prevent future litigation and appeals, the BLM must include language in the Kemmerer RMP itself describing the purpose of the RFD Scenario, and the fact that the RFD Scenario is not a planning decision or limitation on future development.

### Section 4.2.2.2 – Analysis of Alternatives

In its discussion of **directional drilling** on page 4-29, the BLM should also discuss information regarding limitations on the BLM’s ability to mandate directional drilling. The IBLA has determined that the BLM does not have the authority to require the movement of proposed operations more than 200 meters, unless a nondiscretionary statute is implicated. See *Colorado Envtl. Coal., et al.*, 169 IBLA 137, 144 (2006) (holding that BLM cannot require relocation of a proposed well by 200 meters); see also 43 C.F.R. § 3101.1-2 (2006). The BLM properly notes that directional drilling increases costs and longer drilling times associated with directional drilling. See RMP DEIS, pg. 4-29. The BLM should also analyze the potential for lost reserves when casing cannot be brought to the bottom of the hole. See Pinedale RMP DEIS, pg. 4-49 (2007). The BLM should also note that directional drilling can lead to increased air emissions by as much as 20% as compared to vertical drilling given the increased drilling times and load factors on drilling rig engines. See, e.g., Record of Decision for the Jonah Infill Drilling Project, pg. 13.

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The BLM indicates on page 4-29 of the RMP DEIS that “Air emissions from drilling and production activities are allowed up to applicable standards and guidelines, which represent an additional limiting factor for oil and gas development within the planning area.” See RMP DEIS, pg. 4-29. The BLM previously recognized in the RMP DEIS that the WDEQ, not the BLM, has the regulatory authority and responsibility, with EPA oversight, to enforce air quality standards. See RMP DEIS, pg. 3-10. Because the BLM does not have authority over air emissions, this statement is inappropriate and must be removed. Moreover, ambiguous and inaccurate statements such as this may be used by opponents to oil and gas development to somehow suggest the BLM has a role in regulating air emissions. Challengers to the Jonah Infill Drilling Project and the Powder River Basin Coalbed Natural Gas (CBNG) EIS used similar language in the applicable RMPs to suggest the BLM should regulate air quality. The BLM should avoid needless litigation by clarifying or deleting this statement.

The BLM states on page 4-30 that “NSO restrictions for fluid minerals for protecting 24 acres around bald eagle roosts are the same under all alternatives.” See RMP DEIS, pg. 4-30. This statement is unclear because the BLM did not impose a 24-acre NSO stipulations in the detailed list of management actions in Table 2-3. The BLM should clarify this statement.

### Alternative B

The overall minerals management proposal under Alternative B is inappropriate because it unreasonably limits oil and gas development. The BLM is significantly limiting potential future oil and gas development in the Kemmerer Planning Area by making over 710,000 acres unavailable for future leasing and over 750,000 acres available only with major constraints. Approximately ninety-three percent (93%) of the BLM administered mineral estate in the Kemmerer Resource Area will be unavailable for future leasing or only available with significant constraints. See RMP DEIS, Table 2-3, pg. 2-44, Record Nos. 2008, 2009. Alternative B would eliminate or reduce the number of wells drilled and producing wells within the planning area by 50% compared to the baseline scenario. See RMP DEIS, Table 4-8, pg. 4-32. The Alternative would unnecessarily decrease the number of natural gas wells (excluding CBNG production) by 49%. See RMP DEIS, pg. 4-32.

The BLM also inappropriately failed to disclose the impacts Alternative B would have upon actual oil and gas production in the RMP DEIS. Instead, the BLM only disclosed that information in the Final RFD Report, a document that is not routinely reviewed by members of the public. The BLM must include the impacts each of the proposed alternatives would have upon actual production numbers and explain the profound impacts the different alternatives would have upon domestic local, county, state economies as well as domestic energy production.

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In particular the BLM should disclose the profoundly negative impacts Alternative B would have upon domestic energy production. According to the BLM’s analysis, 503.2 billion cubic feet of natural gas would not be recovered under Alternative B as compared to the baseline scenario. See RFD Final Report, pg. 8-32. Similarly, 328.88 billion cubic feet of natural gas would not be recovered under Alternative B compared to No Action Alternative. One billion cubic feet (1 BCF) of natural gas is the annual amount used by 13,700 Wyoming households. See Energy Information Administration (2002 use rates). The BLM’s management under Alternative B could potentially significantly disrupt households across the entire State of Wyoming. Alternative B would also result in the recovery of significantly lower amounts of oil from the planning area. Under Alternative B, approximately 6.2 million barrels of oil would not be recovered compared to the baseline scenario, and approximately 4 million barrels of oil would not be recovered compared to the No Action Alternative. See Final RFD Report, pg. 8-23. The loss of domestic energy would have profoundly negative impacts upon the local, state, and regional economies, and will result in the importation of energy resources from other countries. The BLM must not adopt Alternative B and must select a more balanced management approach that fosters energy production, while still maintaining an appropriate balance with other resource uses.

### Alternative D

Although the BLM makes more lands available for lease under Alternative D, the Preferred Alternative still unreasonably interferes with oil and gas development. Under Alternative D, 12% of the Kemmerer Resource Area would be unavailable for leasing and 18% would only be available with major constraints. See RMP DEIS, Table 4-6, pg. 4-30.

By contrast, on page 4-33 the BLM incorrectly states that under Alternative D only 1% of the federal mineral estate is unavailable for oil and gas leasing to protect other resources. See RMP DEIS, pg. 4-33. In fact, as correctly noted in Table 4-6, 12% of the Kemmerer Resource Area is unavailable for oil and gas leasing. See RMP DEIS, Table 4-6, pg. 4-30. Even lands administratively unavailable for oil and gas leasing to protect other resources—whether the areas are withdrawn from leasing to facilitate trona mining or the lands are withdrawn to preserve wilderness characteristics—other resources are always preserved at the expense of oil and gas leasing and development when lands are withdrawn from leasing. The statement on page 4-33 should be corrected.

The RFD Scenario for Alternative D is also unreasonably low. The BLM predicts a total of 858 producing conventional natural gas wells in the planning area between now and 2020. The BLM is currently evaluating the Moxa Arch Area Infill Natural Gas Project that entails approximately 1,861 wells, 695 of which will be located on federal minerals. Given the fact that over 1,850 wells (700 federal on federal minerals) are reasonably expected to be drilled in the

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Moxa Arch area alone, and given the numerous other oil and gas fields located within the planning area, the BLM's RFD Scenario is unreasonably low. See Final RFD Report, figs. 4-1 (Map of existing fields), 4-2 (Map of existing wells), pgs. 4-7 – 4-40 (describing historic production in the Kemmerer Resource Area). The BLM must update the RFD Scenario for Alternative D.

### Section 4.4 – Biological Resources

The BLM has not provided the public or operators sufficient information to evaluate how future oil and gas leasing and development will be impacted by management actions creating large blocks of contiguous habitat. On page 4-50, under the heading Habitat Fragmentation and Biological Diversity, the BLM states, "For these reasons and to minimize habitat fragmentation, large blocks of contiguous habitat with low oil and gas development potential are administratively unavailable for oil and gas leasing in alternatives B and D." See RMP DEIS, pg. 4-50. The BLM, however, failed to identify or separately map these areas. Although Maps 9 and 11 indicate lands unavailable for future leasing, Map 21 identifies very different lands as "Contiguous Vegetation Blocks (Alternative B and D)." The BLM should clarify that only those lands identified in Maps 9 and 11 would be unavailable for oil and gas leasing in the Final EIS for the Kemmerer RMP, and clarify how the Contiguous Vegetation Blocks on Map 21 would be managed. As stated above, the BLM cannot manage operations on existing leases within the Contiguous Vegetation Blocks in a manner inconsistent with valid lease rights.

#### Section 4.4.2.1 – Methods and Assumptions

In the second bullet-point under Section 4.4.2.1, the BLM states that "Based on the definition of surface-disturbing activity (mechanized actions), oil and gas development is identified as the primary source of surface disturbance in the planning area." See RMP DEIS, pg. 4-58. This statement is not consistent with the BLM's analysis as presented in Appendix M – Surface Disturbance and Reasonably Foreseeable Actions. The information in Appendix M indicates that wind energy development will disturb 67,200 acres of short-term disturbance from BLM actions and 141,360 acres of short-term disturbance from non-BLM actions. See RMP DEIS, Appd. M, pg. M-4. Comparatively, oil and gas operations will disturb only 11,243 acres from BLM actions and 15,495 acres from non-BLM actions. The BLM should correct the statement on page 4-58.

#### Section 4.4.2.2 – Analysis of Alternative (Alternative B)

On page 4-63 the BLM indicates "interim reclamation of surface disturbance occurs within the first planting season after the rig is moved off location. Final abandonment of well locations will occur within the first planting season once the well has been plugged." See RMP

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DEIS, pg. 4-63. Although final reclamation begins within the first planning season, final abandonment does not occur until vegetation reaches a specified threshold (approximately 80% cover) and the operator's bond is released. Similar incorrect statements are also contained in the description of potential impacts under Alternative B on page 4-112 (second paragraph, second sentence) and page 4-148 (second full paragraph, second sentence).

On page 4-64 the BLM indicates that under Alternative B, "several areas within BLM-administered lands are given special designation for protection of sensitive resources. . . . In comparison with other alternative, Alternative B also limits habitat fragmentation . . . by maintaining large contiguous blocks" of plant communities on BLM-administered land. See RMP DEIS, pg. 4-64. Similar statements are contained throughout Chapter 4 in the BLM's description of potential impacts associated with Alternative B. If Alternative B is selected, the BLM must ensure that it honors existing rights and does not unreasonably interfere with oil and gas operations in order to maintain large contiguous blocks of vegetation.

#### Section 4.4.2.2 – Analysis of Alternatives (Alternative D)

Similarly on page 4-67, the BLM states that under Alternative D, "several areas within BLM-administered lands are given special designation for protection of sensitive resources. . . . In comparison with other alternatives, Alternative B also limits habitat fragmentation . . . by maintaining large contiguous blocks" of plant communities on BLM-administered land. See RMP DEIS, pg. 4-67. Similar statements are contained throughout Chapter 4 in the BLM's description of potential impacts associated with Alternative D. BLM must ensure that it manages existing and future oil and gas operations in a manner consistent with existing lease rights. Once the BLM has issued a federal oil and gas lease without a NSO stipulation, and in the absence of a nondiscretionary statutory prohibition against development, the BLM cannot completely deny development on the leasehold. See, e.g., *National Wildlife Federation, et al.*, 150 IBLA 385, 403 (1999). Once the BLM has issued an oil and gas lease conveying the right to access and develop the leasehold, the BLM cannot later impose unreasonable mitigation measures that take away those rights. See *Comer v. Burford*, 84 F.2d 1441, 1449-50 (9th Cir. 1988); 43 C.F.R. § 3101.1-2 (2006) (BLM can impose only "reasonable mitigation measures . . . to minimize adverse impacts . . . to the extent consistent with lease rights granted"). Further, the authority conferred in FLPMA is expressly made subject to valid existing rights, 43 U.S.C. § 1701, an RMP prepared pursuant to FLPMA, after lease execution and after drilling and production has commenced, is likewise subject to existing rights. See *Colorado Environmental Coal., et al.*, 165 IBLA 221, 228 (2005).

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### Section 4.4.5.2 – Analysis of Alternatives (Impacts Common to All Alternatives)

In the fourth paragraph on page 4-85, the BLM states that “oil and gas development is anticipated to be the greatest single contributor to disturbance of wildlife habitat in the planning area.” This statement is not consistent with the BLM’s analysis as presented in Appendix M – Surface Disturbance and Reasonably Foreseeable Actions. The information in Appendix M indicates that wind energy development will disturb 67,200 acres of short-term disturbance from BLM actions and 141,360 acres of short-term disturbance from non-BLM actions. See RMP DEIS, Appd. M, pg. M-4. Comparatively, oil and gas operations will disturb only 11,243 acres from BLM actions and 15,495 acres from non-BLM actions. The BLM should correct the statement on page 4-85.

### Section 4.4.5.2 – Analysis of Alternatives (Alternative D)

On page 4-103 the BLM indicates that “Alternative D closes four big game crucial winter ranges to motorized vehicles annually from January 1 to April 30, although exemptions apply.” See RMP DEIS, pg. 4-103. Similar statements are found on page 4-104. The BLM has not clearly mapped or identified these areas, explained the exemptions that might apply, or analyzed how oil and gas operations may be impacted by these seasonal closures. In the absence of this information, EOG cannot evaluate how its operations or future plans may be impacted and the BLM’s NEPA analysis is incomplete. The BLM must include this information in the Final EIS for the Kemmerer RMP, or face potential protests and appeals.

### Section 4.4.8.2 – Special Status Species Wildlife (Sage Grouse)

In recent months several organizations opposed to oil and gas development, and even certain BLM Field Offices, have placed undue reliance on the Holloran (2005) study regarding the potential impacts of natural gas development activities on sage-grouse. In discussing the Holloran study, and any potential conclusions derived therefrom, the BLM should specifically disclose the fact that BLM purposefully waived the seasonal and timing stipulations normally associated with sage-grouse leks and specifically allowed the operators to drill near an active lek during the strutting season in order to assess the potential impacts. The conclusion in the Holloran study that existing stipulations are not adequate therefore appears unfounded and outdated. Moreover, even prior to the release of the Holloran study, the BLM issued new policies increasing protections for sage-grouse. The new protections include new surface use restrictions, timing limitations, and additional surveys prior to operations in sage-grouse habitat. See Wyoming Instruction Memorandum 2004-057 (August 16, 2004). These mitigation measures were eventually incorporated into the existing Kemmerer RMP through a maintenance action. The BLM has also incorporated aspects of the new instruction memorandum into Alternative D.

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### Section 4.5 – Heritage Resources

#### Section 4.5.1.1 – Methods and Assumptions

The BLM states on page 4-152 that all “surface-disturbing activities could adversely impact cultural resources.” While this statement may be true, the BLM should also disclose that given the procedural protections imposed by the National Historic Preservation Act (NHPA) and the consultation process, surface-disturbing operations may actually lead to the discovery and protection of potentially unknown cultural resources. Several recent BLM NEPA documents have recognized the important role surface-disturbing operations, particularly oil and gas operations, have played in the discovery of cultural resources and the subsequent information gained. See, e.g., Final EIS for the Jonah Infill Drilling Project, pgs. 3-73, 3-81. The BLM should correct this statement; it is incorrect to assume surface-disturbing operations automatically lead to the destruction of cultural resources.

#### Section 4.5.1.2 – Analysis of Alternative (National Historic Trails)

On pages 4-161 – 4-162 of the RMP DEIS, the BLM describes the onerous restrictions it intends to place on the management of NHTs within the planning area under Alternative B. Unfortunately, the BLM does not adequately describe either how oil and gas operations will be adversely impacted, or how the BLM will ensure that existing lease rights are protected. All too often the BLM imposes significant COAs or other limitations on actual operations in an effort to comply with new management directives, regardless of existing lease rights or stipulations. The BLM must acknowledge that the authority conferred in FLPMA is expressly made subject to valid existing rights, 43 U.S.C. § 1701 note, an RMP prepared pursuant to FLPMA, after lease execution and after drilling and production has commenced, is likewise subject to existing rights. See *Colorado Environmental Coal., et al.*, 165 IBLA 221, 228 (2005). The BLM’s proposed management of historic trails cannot apply to existing leases.

Further, on page 4-162 the BLM states—without analysis or support—that the restrictive measures proposed under Alternative B would “result in beneficial impacts compared to Alternative A.” See RMP DEIS, pg. 4-162. While this statement may reflect a one-sided and non-development view of the situation, it does not accurately represent the actual situation. The proposed management directives under Alternative B, including those for NHTs, will have profoundly negative impacts upon the recovery of domestic energy resources, including the loss 328.88 billion cubic feet of natural gas compared to No Action Alternative. As discussed below, Alternative B would also lead to a 30% decrease in regional earnings compared to Alternative A, and a 36% reduction in tax revenue. See RMP DEIS, pg. 4-242. How can the BLM described such impacts as beneficial? The BLM must correct the statement on page 4-162.

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### Section 4.6 – Land Resources

#### Section 4.6.6.2 – Travel Management Analysis of Alternative (Alternative D)

On page 4-200, the BLM describes the potential impacts associated with travel management under Alternative D. In particular the BLM indicates that seasonal road closures will take place from January 1 to April 30 and that road density in big game winter range will be limited to two (2) miles per square mile. See RMP DEIS, pg. 4-200. The BLM's analysis is completely inadequate. The agency has not mapped roads or areas where seasonal road closures will take place. The BLM has also not identified big game winter range. Is the big game crucial winter range identified in Map 22 the same as all big game winter range? Further, the BLM has not adequately explained how the two (2) miles of open road per square mile will be measured or implemented, nor has the BLM dited any study to explain the benefits of such a proposed restriction. The term "open road" is not defined in the glossary. Assuming that a road means all types of roads, including oil and gas access roads, this management action is far too restrictive and the BLM has not adequately explained how oil and gas operations will be impacted. Further, the BLM has not indicated how surface access will be treated on existing oil and gas leases. An oil and gas lease provides the lessee with the right to use so much of the surface as is reasonably necessary to conduct oil and gas operations. 43 C.F.R. § 3101.1-2 (2006). The BLM cannot impose limitations on the lessee's rights to use the surface that impede or materially interfere with existing lease rights. Once the BLM has issued an oil and gas lease conveying the right to access and develop the leasehold, the BLM cannot later impose unreasonable mitigation measures that take away those rights. See *Conner v. Burford*, 84 F.2d 1441, 1449-50 (9th Cir. 1988); 43 C.F.R. § 3101.1-2 (2006) (BLM can impose only "reasonable mitigation measures . . . to minimize adverse impacts . . . to the extent consistent with lease rights granted"). Further, the authority conferred in FLPMA is expressly made subject to valid existing rights, 43 U.S.C. § 1701, an RMP prepared pursuant to FLPMA, after lease execution and after drilling and production has commenced, is likewise subject to existing rights. See *Colorado Environmental Coal., et al.*, 165 IBLA 221, 228 (2005). The BLM should provide more analysis on how this proposed management action would impact oil and gas leasing and development, particularly operations on existing leases, and specifically explain that existing leases will not be impacted. The BLM must also map the areas that will be subject to seasonal closures. Absent this information, EOG cannot meaningfully comment on how the proposed action will impact its operations and the BLM's NEPA analysis is inadequate.

#### Section 4.6.7.2 Off-Highway Vehicles (Analysis of Alternatives, Alternative D)

The BLM should provide more analysis regarding how the seasonal closures for off-highway vehicles will impact oil and gas operations under Alternative D. See RMP DEIS, pg 4-203. The BLM's analysis is cursory at best, providing only a summary of the number of acres

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impacted by the seasonal restrictions. The BLM does not indicate how the restriction may impact other resource uses. EOG owns and operates oil and gas leases within the area designated for seasonal closures to off-highway vehicles. Given EOG's existing lease rights, the BLM cannot impose limitations that impede or interfere with EOG's ability to conduct oil and gas operations. Once the BLM has issued an oil and gas lease conveying the right to access and develop the leasehold, the BLM cannot later impose unreasonable mitigation measures that take away those rights. See *Conner v. Burford*, 84 F.2d 1441, 1449-50 (9th Cir. 1988); 43 C.F.R. § 3101.1-2 (2006) (BLM can impose only "reasonable mitigation measures . . . to minimize adverse impacts . . . to the extent consistent with lease rights granted"). Further, the authority conferred in FLPMA is expressly made subject to valid existing rights, 43 U.S.C. § 1701, an RMP prepared pursuant to FLPMA, after lease execution and after drilling and production has commenced, is likewise subject to existing rights. See *Colorado Environmental Coal., et al.*, 165 IBLA 221, 228 (2005).

### Section 4.6.8. – Visual Resource Management

The BLM's proposed visual resources management under Alternative B is unnecessarily restrictive. Placing VRM I or II restrictions on significant portions of the planning area would significantly restrict or eliminate oil and gas development, even on existing leases. See RMP DEIS, Table 2-3, pgs. 2-89 – 2-90, Record No. 6052, see also RMP DEIS pgs. 2-204 – 4-206. Further, although the BLM identified the number of acres impacted by each VRM classification under Alternative D, it failed to provide similar information for the remaining alternatives. The maps provided by the BLM provided general information, but not an overall evaluation of the lands the BLM will essentially preclude oil and gas development on using VRM classifications. See RMP DEIS, pg 4-206 (noting that most surface disturbing operations will be prohibited in areas of high visual resource value). In particular, operators may not be unable to develop existing leases if the BLM is precluded from approving ROWs to facilitate development across newly created VRM I and II areas that did not exist at the time the lease was granted. The imposition of unreasonable restrictions on existing leases may result in illegal takings of EOG's contractual and property rights.

EOG is strenuously opposed to the viewshed protection measures for national historic trails and cultural resources proposed under Alternative B, and is concerned the proposed viewshed protection measures associated with Alternative D may be unnecessarily restrictive. See RMP DEIS, Table 2-3, pg. 2-92 – 2-94, Record Nos. 6053, 6054, 6055, see also RMP DEIS pgs. 4-204 – 4-206, Maps 55, 57. The BLM should clarify how such management actions will impact existing operations and the production of domestic energy resources. Although the BLM has proposed more balanced VRM restrictions under Alternative D, the BLM must specifically state that new VRM restrictions will not apply to existing leases. The BLM cannot impose mitigation measures which are inconsistent with existing lease rights. Because the authority

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conferred in FLPMA is expressly made subject to valid existing rights, 43 U.S.C. § 1701, an RMP prepared pursuant to FLPMA, after lease execution and after drilling and production has commenced, is likewise subject to existing rights. *See Colorado Environmental Coal., et al.*, 165 IBLA 221, 228 (2005).

For similar reasons, EOG is concerned about the National Historic Trails/Cultural Resources Sites Viewsheds imposed under Alternatives B and D. *See* RMP DEIS, pgs. 4-204 – 4-206, Maps 58, 59, and 60. The BLM has not explained how oil and gas operations, or other uses of the public lands, will be impacted by the viewshed designations. Will all surface disturbing operations be prohibited? Will the areas be treated essentially as NSO or VRM I areas? EOG owns existing mineral leases within the viewsheds proposed under Alternative B, C, and D and is strenuously opposed to any mitigation measures or prohibitions impacting its contractual obligation to develop oil and gas from its leasehold. Once again, the BLM cannot impose restrictions or mitigation measures inconsistent with existing lease rights.

### Section 4.7 – Special Designations

Alternative B creates far too many ACECs and other special management areas, including several ACECs which the BLM itself has determined do not meet the required relevance and importance criteria. *See* 43 C.F.R. § 1610.7-2 (2006); ACEC Nomination/Determination for the Kemmerer RMP. Although it may have been appropriate from a NEPA perspective to consider numerous ACEC designations, the BLM must not select an alternative that creates ACECs that do not meet the minimum qualifications. In particular, EOG opposes the proposed creation of ACECs for white-tailed prairie dog habitat under Alternative B. *See* RMP DEIS, Table 2-3, pg. 2-96, Record No. 7009. The proposed White-tailed prairie dog ACECs do not meet a sufficient number of the criteria necessary to establish an ACEC, and may unnecessarily restrict the BLM's management of the Kemmerer Resource Area. As a designated BLM Wyoming Sensitive Species, the BLM has sufficient authority to protect white-tailed prairie dogs without the creation of unnecessary ACECs. Finally, the BLM has not analyzed how the proposed ACEC designation would impact oil and gas operations. Several of the proposed ACEC polygons lie within the boundary of the Moxa Arch Area Natural Gas Field and the lands within said polygons have already been leased. The BLM cannot impede or interfere with existing oil and gas operations, especially those on existing leases.

### Section 4.8 – Socioeconomic Resources

#### Section 4.8.2.2 – Analysis of Alternatives

The BLM's analysis demonstrates that impacts to oil and gas development within the planning area have the most significant impact to local and regional economy. Limitations on oil

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and gas development lead to significant adverse impacts to local earnings and tax revenue. *See* RMP DEIS pg. 4-242. Under Alternative B, the regional earnings and output would decrease by one-third (1/3). *Id.* "As Table 4-15 shows, the difference between the alternatives is due entirely to the difference in oil and gas activity; earnings from recreation and livestock grazing are identical (to one decimal point)." *Id.* Regional jobs would also decrease by one-quarter (1/4). Perhaps most alarmingly, projected tax revenues for the local, state, and Federal governments would be reduced by 36%, which could lead to increased property taxes for local citizens, or decreased government services. *Id.* Table 4-22 demonstrates the significant beneficial cumulative impacts of oil and gas development in the region, and particularly demonstrates the significant reduction in earnings, output, employment and particularly tax revenues under Alternative B. The BLM must not adopt Alternative B given the profoundly negative impacts its adoptions would have upon the local, regional, and national economy.

### Section 4.9 – Cumulative Impacts

The cumulative impact analysis is limited by an unrealistically low estimate of projected oil and gas wells over the planning period; therefore, the cumulative environmental impacts that are associated with the various alternatives analyzed in the RMP DEIS will not correspond to actual future conditions. The BLM must update the cumulative impacts analysis in the Final EIS for the Kemmerer RMP.

The cumulative impacts analysis is incomplete. The cumulative impacts discussion is limited to seven issues identified during scoping and does not address each of the resources analyzed in the DEIS. Although the analysis of cumulative impacts correctly addresses these issues, a complete analysis of cumulative impacts necessarily includes each of the resources subject to management decisions in the revised RMP. Issues identified during scoping must not preclude the consideration and evaluation of issues that are identified during the analysis process and impacts that may result from implementation of the alternatives. Issues identified during scoping should drive the development of alternatives, not the analysis of cumulative impacts.

### APPENDIX L – AIR QUALITY MITIGATION MATRIX

As discussed above, the BLM does not have any direct authority over air quality or air emissions under the CAA. 42 U.S.C. §§ 7401 et seq. Under the express terms of the CAA, the EPA has the authority to regulate air emissions, but has delegated its authority to regulate emissions with the state to the State of Wyoming. *See* RMP DEIS, pg. 3-10, Appd. J, Pgs. J-5, J-7. The BLM has similarly confirmed in recently released project-level documents, that is has no authority to regulate air emissions. *See* PAPA SDEIS, pg. 4-62 ("Air pollution impacts are limited by state and federal regulations, standards, and implementation plans established under the Clean Air Act and administered by the applicable air quality regulatory agency

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(WDEQ/AQD and EPA) . . . The applicable air quality regulatory agencies have the primary authority and responsibility to review permit applications and to require emission permits, fees, and control devices prior to construction or operation.”). The Secretary of the Interior, through the IBLA has similarly recognized:

In Wyoming, ensuring compliance with Federal and State air quality standards, setting maximum allowable limits (NAAQS and WAAQS) for six criteria pollutants CO (carbon monoxide), SO<sub>2</sub> (sulfur dioxide), NO<sub>2</sub>, ozone and particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>), and setting maximum allowable increases (PSD Increments) above legal baseline concentrations for three of these pollutants (SO<sub>2</sub>, NO<sub>2</sub>, and PM<sub>10</sub>) in Class I and Class II areas is the responsibility of WDEQ, subject to EPA oversight.

*Wyoming Outdoor Council, et al.*, IBLA No. 2006-155, at 12 (June 28, 2006). The BLM does not have authority to regulate emissions in Wyoming.

With respect to potential visibility impacts, the BLM’s authority is unequivocally limited by existing federal law. Under the CAA, a federal land manager’s authority is strictly limited to considering whether a “proposed major emitting facility will have an adverse impact” on visibility within designated Class I areas. 42 U.S.C. § 7475(d)(2)(B) (2006). Under the CAA, the regulation of potential impacts to visibility, and authority over air quality in general, rests with the WDEQ. 42 U.S.C. § 7407(a) (2006). The goal of preventing impairment of visibility in Class I areas will be achieved through the regional haze SIPs that are being developed. 42 U.S.C. § 7410(a)(2)(J). Although federal land managers with jurisdiction over Class I areas may participate in the development of regional haze SIPs, as noted above, the BLM has no such jurisdiction in Wyoming. 42 U.S.C. § 7491 (2006). Accordingly, the BLM has no authority over air quality, and cannot impose emissions restrictions, either directly or indirectly, on natural gas operations in southwest Wyoming, particularly if the overall goal is to reduce potential visibility impacts.

Given the BLM’s complete lack of authority over air emissions, the BLM’s decision to include Appendix L without explanation or analysis is inappropriate. Although BLM may have an obligation under NEPA to discuss potential mitigation measures, 40 C.F.R. §§ 1502.14(f), 1508.25(b)(3), the BLM cannot impose the vast majority of the identified mitigation measures. For example, the BLM cannot impose requirements on the types of mobile drilling utilized within the Kemmerer Planning area or impose specifications on the use of SCR or other technologies. Air emissions are regulated solely by the WDEQ and the EPA. In fact, the EPA has the exclusive authority to impose emission requirements on mobile sources such as drilling rigs. See 42 U.S.C. § 7410 (2006) (noting that SIPs only apply to stationary sources).

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Given the BLM’s lack of authority over air emissions, the BLM should include a detailed introduction to Appendix L explaining that the information presented therein is for informational purposes only, and that the BLM does not have authority over air quality or air emissions.

### CONCLUSION

EOG Resources, Inc. appreciates the opportunity to submit its comments on the Draft Resource Management Plan and Environmental Impact Statement for the Kemmerer Field Office Planning Area and looks forward to participating in the BLM’s analysis of this important project.

Very truly yours,

EOG RESOURCES, INC.

James R. Schaefer  
Division Operations Manager

### Attachments:

1. Tom Christiansen, Brief Status of Sage-grouse Population Trends and Conservation Planning in Wyoming as of March 16, 2007
2. Tom Christiansen, 2007 Sage-grouse Hunting Season Proposal
3. Kemmerer Planning Area Reasonable Foreseeable Development Scenario Sufficiency Determination

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### Public Response Document 00037

00037

*Date of Submission:* 2007/10/10  
*Category:* RMP Revision Process

*Patnam* Lynn  
*Last Name* *First Name*

*Agency Organization*  
1324 Lincoln Heights Dr.  
*Address*

*Kamsracer* Wyoming 83101  
*City* *State* *Zip*

*Email*

*Comment:*  
I am very much concerned that the proposed revisions are going to restrict access to existing areas for the general public. I don't see a need for creating more ACEC's, more road closures and more restrictions controlling the use of the land by the public. In ten years of residency, I have noticed more and more road closures and am noticing less and less participation of use by the public. The game and fish is selling fewer hunting and fishing licenses and I believe it is because of more difficult access to BLM and National Forest Land. ACEC designation comes with all sorts of restrictions limiting access to the land which I oppose. I am not in favor of any more fences being built to control grazing as they are a proven impedence to the natural migration habits of the wildlife. I don't have a problem with development of energy sources provided drilling and exploration use one drilling location for multiple wells rather than one well per location. The number of wells from Shute Creek to the Jonah Field has become too numerous and drilling technology has improved so the number of drilling sites can be reduced. In summary, my greatest concern is a stifling number of restrictions being added that in the near future, access and use of BLM and National Forest Land will amount to travel on establish roads only and hunting, camping and sight seeing will be limited to photography from the road only. Thank you for the opportunity to express my opinion. Lynn M. Putnam

### Public Response Document 00038

00038

*Date of Submission:* 2007/10/07  
*Category:* National Historic Trails

*Turley* Paul  
*Last Name* *First Name*

*Agency Organization*  
POBx 1121  
*Address*

*Laramie* Wyoming 82073  
*City* *State* *Zip*

*Email*

*Comment:*  
Plan B seems the most reasonable. Paul

**Appendix B – Public Response Documents**

Public Response Document 00039

00039

*Uinta County Conservation District*

P.O. Box 370 ~ 100 East Sage Street ~ Lyman, WY 82937  
Phone: (307) 787-3794 ~ Fax: (307) 787-3810

October 11, 2007

Mary Jo Rugwell  
Field Manager  
Kemmerer Field Office  
Bureau of Land Management  
312 Highway 189 North  
Kemmerer, WY 83101-9711

Re: Comment on Kemmerer Draft Resource Management Plan (draft RMP) and Draft Environmental Impact Statement (DEIS)

Dear Mary Jo,

The Uinta County Conservation District is concerned with the area around the Smiths Fork River that has been proposed to be fully opened for off road vehicle use. The Smiths Fork River was placed on the Wyoming Department of Environmental Quality's 303(d) list of impaired waters in 2000 due to habitat degradation and excessive sediment in the stream. The Uinta County Conservation District currently has a watershed management plan through which we are making efforts to improve the quality of the water in the Smiths Fork River. UCCD feels that opening this area or any area next to the Smiths Fork River to off road vehicles will only contribute to the sediment loading in the river. UCCD would ask that the BLM consider designating off road vehicle use areas away from surface water.

If you have questions, please feel free to contact the District office.

Sincerely,



Shaun Sims  
Chairman

*Uinta County Conservation District*

*Board of Supervisors*

Shaun Sims  
Kelly Guild  
Spencer Eyr  
Kevin Condos  
Dennis Cornelison

This column intentionally left blank.

## Appendix B – Public Response Documents

### Public Response Document 00040

 THE STATE OF WYOMING	<p>00040</p> <p>STATE CAPITOL CHEYENNE, WY 82002</p>	
<p>DAVE FREUDENTHAL GOVERNOR</p> <p>Office of the Governor</p>		
<p>October 11, 2007</p>		
<p>Michele Easley, Team Leader BLM Kemmerer Field Office 312 Hwy 189N Kemmerer, WY 83101</p>		
<p>Re: Kemmerer RMP Draft EIS</p>		
<p>Dear Ms. Easley:</p> <p>Thank you for the opportunity to comment on the Kemmerer Resource Management Plan (RMP) Draft Environmental Impact Statement (Draft EIS). I commend you, Kemmerer Field Office Manager, Mary Jo Rugwell, and all participants for their time, energy and work on the Draft EIS. To date I have generally received positive reports regarding both the work and the professional relationship between the state and the BLM on this RMP process.</p> <p>The opportunity for the state to be a Cooperating Agency and for state agencies to actively participate and weigh in with their respective areas of expertise is extremely important. Through your revision process, you have demonstrated that, by collaborating early and often, many concerns can be identified and cooperatively addressed. We look forward to the continuing this relationship and to the opportunities to fully participate in the completion and implementation of the final RMP.</p> <p>My overriding request is that you carefully consider all the detailed comments submitted by each of the individual state and local agencies. Your inclusion of these comments will lead to a stronger and more complete document.</p> <p>While I remain generally supportive of the document overall, I am specifically requesting the following actions to address areas of particular concern to me:</p> <p><b>Coordination Meetings</b></p> <p>I commend your inclusion in Section 1.3.2, Resource Management Plan Implementation, of the requirement for annual coordination meetings between BLM and the RMP Cooperating Agencies.</p>		
<p>TTY: 777-7860</p>	<p>PHONE: (307) 777-7434</p>	<p>FAX: (307) 632-3909</p>

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Oct. 11, 2007  
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In addition to providing involvement on the implementation of the plan, these meetings provide an important opportunity for the state and local governments to identify and evaluate the specific repercussions of past and foreseeable activities on our people and our resources.

While the opportunity to identify these impacts would be important in ordinary circumstances, they are critical due to Section 390(b)(3) of the Energy Policy Act (EPAAct).

#### Energy Policy Act of 2005 Categorical Exclusions

Section 390(b)(3) of the EPAAct creates the potential for additional categorical exclusions (CX) for drilling under the umbrella activity level provided for in land use plans, including this RMP, without full National Environmental Policy Act (NEPA) impact analysis ever being done at either the project level or the land use plan level. The potential for significant detrimental impacts upon wildlife, air quality, and other resources without a single opportunity for full impact analysis at any level creates the potential for unacceptable results. Fortunately, these annual coordination meetings will allow state and local government participants to become aware of the conditions attached to Applications for Permit to Drill (APDs) for in-fill gas wells, the extent of any approved in-fill drilling, and the cumulative impacts of the CX-approved drilling. Hopefully, collaborative efforts between the BLM and cooperating agencies can overcome any shortcomings that might result from the use of Section 390(b)(3) CXs.

It is my continuing expectation that BLM's approval of applications under Section 390 (b)(3) categorical exclusions will never become "the rule" but will instead remain rare "exceptions to the rule." The "hard look" analysis required under NEPA, while admittedly complex at times, is generally the best course available to ensure that development happens in a responsible and orderly fashion. For that reason, I believe language needs to be included in the RMP to govern the administration of the categorical exclusions set forth in Section 390(b)(3) of the EPAAct and ensure that appropriate, site-specific analyses be completed. While I remain convinced that the only failsafe way to address my concerns is for Congress to amend the Act to remove Section 390(b)(3) authorizations, I appreciate your willingness to require administratively imposed cumulative and quantitative analyses, and, where necessary, appropriate mitigation.

#### Activity Plan Working Groups (APWG)

In addition to the requirement for annual coordination meetings, I also believe the planning and implementation of Activity Plans will benefit from the direct involvement of state and local officials. The involvement of state and local representatives provides an opportunity for the Kemmerer Field Office and coordinating agencies to share information and recommendations that will help achieve successful planning and implementation of potentially contentious activities. I request that you include the

## Appendix B – Public Response Documents

Michele Easley  
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APWG language that was agreed upon between the state and the BLM and is included in the specific comments submitted by the Wyoming Game and Fish Department.

### Social-Economic Impacts

The implementation of the RMP and subsequent planning for project level and site-specific decisions will create explicit social and economic impacts. Following discussions between the BLM Wyoming State Office and my office, agreement was reached to include language in all future Wyoming RMP's and RMP revisions prepared by BLM Field Offices in Wyoming to fully account for these impacts going forward. I request that the following language be included in an appropriate section of the RMP and suggest that either Section 1.3.2, Resource Management Plan Implementation, or Section 4.8, Socioeconomic Resources might be appropriate sections to consider:

Chapter 4 of the Kemmerer RMP analyzes the impacts associated with each of the Alternatives considered. This analysis includes an estimate of the social and economic impacts that are anticipated as a result of the Alternatives considered. It may also provide a suitable starting point for local governments to use in local planning efforts.

Further, BLM anticipates that site specific implementation or project analysis will occur in accordance with governing law and regulations as the RMP allocation decisions are implemented. This analysis process will provide an opportunity for the BLM, the State of Wyoming and the affected counties and communities to collaborate in disclosing the socio-economic impacts associated with the site specific action being analyzed.

The BLM Kemmerer FO, acknowledges that state and local governments may collect or develop more refined social and economic data and that local plans may be developed by the impacted counties, municipalities or communities that attempt to address social and economic matters affecting them. This planning effort by local governments may address some or all of the social and governmental services within their purview, and may contain the detailed budgetary requirements to carry the plan forward.

In closing, I again thank you for the opportunity to comment on this RMP Draft EIS and for your continued partnership in the management of Wyoming resources. As I have already mentioned state agencies are providing their own specific comments on the Kemmerer Draft EIS, and I encourage you to carefully consider their respective comments and incorporate their recommendations into the EIS wherever appropriate.

I appreciate the difficulty in crafting an RMP that allows multiple uses of our resources while simultaneously protecting against and mitigating the impacts that those multiple uses will have on our natural resource and human environment. I look forward

Michele Easley  
Oct. 11, 2007  
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to working with the Kemmerer Field Office on both the finalization of this document and more importantly the actual collaborative implementation of the Kemmerer RMP once it is completed.

Best regards,



Dave Freudenthal  
Governor

DF:SF:pjb

## Appendix B – Public Response Documents

### Public Response Document 00041

**EARY-WILLIAMS**  
PRODUCTION COMPANY  
A Gary-Williams Energy Corporation Subsidiary

00041

October 11, 2007

Kemmerer RMP and EIS  
Bureau of Land Management Kemmerer Field Office  
312 Hwy 189N  
Kemmerer, WY 83101 -9711

Re: DRAFT: Comments of Gary-Williams Production Co. on the Draft  
**Kemmerer Resource Management Plan and Environmental Impact  
Statement**

Dear Bureau of Land Management:

Gary-Williams Production Co. ("Gary-Williams") respectfully submits these comments on the Draft Resource Management Plan and Environmental Impact Statement for the Kemmerer Field Office Planning Area ("Draft RMP/EIS"). Gary-Williams joins in, agrees with, and hereby incorporates the comments submitted by the Independent Petroleum Association of Mountain States ("IPAMS"). In addition, Gary-Williams submits the following comments and asks that you give careful consideration to them. Please add these comments to the administrative record.

#### I. Comments

Gary-Williams believes in the responsible development of our Nation's energy resources and supports the BLM's effort to allow for production in an environmentally protective manner. We support the BLM's mission to prevent unnecessary and undue degradation. We also believe that where necessary and appropriate the BLM should regulate oil and gas development, however these regulations should not be unduly restrictive. Gary-Williams submits these comments in the spirit of cooperation with the BLM and we hope that they will assist the BLM in achieving the appropriate balance between non-mineral resource protection and energy development.

The Draft RMP/EIS proposes a land management strategy that will unduly restrict oil and gas development within the Kemmerer planning area. The proposed RMP contains a variety of restrictions, including visual resource management restrictions, wildlife timing stipulations, slope restrictions, historic trail buffers, special status species restrictions, travel management restrictions, and right-of-way corridor restrictions that will hamper efforts to develop domestic energy sources on BLM-administered land. These restrictions, particularly with respect to visual resource management ("VRM") restrictions and wildlife stipulations, will impose limitations that are greater than what is necessary to adequately protect the given resource.

370 17th Street, Suite 5300 / Denver, Colorado 80202-5653 / (303)628-3800

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#### A. Visual Resource Management

There is no analysis in the Draft RMP/EIS that supports the need for far-reaching VRM restrictions. As a result, it seems arbitrary to curtail surface use and to restrict potential development under such dramatic restrictions. Gary-Williams respectfully suggests that such extensive VRM restrictions are unwarranted.

The VRM restrictions in the Draft RMP/EIS are overly restrictive and exceed what is necessary to adequately protect the visual resource. Currently, under Alternative A (the no action alternative), the Kemmerer planning area would continue to be managed according to current VRM maps. Draft RMP/EIS at 2-89. Gary-Williams holds federal and fee leases covering a large area that is managed by the BLM's Kemmerer Field Office and a majority of Gary-Williams' leasehold interests fall within a Class III VRM area. See Draft RMP/EIS Map 54. An area that is designated as Class III VRM does not prohibit surface disturbing activities and allows for oil and gas development. See *id.* at N-2.

However, Alternative D (the preferred alternative) extensively modifies the VRM classes that apply to BLM-administered lands and established a VRM Class II area for a large section of land, including the area where Gary-Williams holds federal leases. Compare Draft RMP/EIS Map 57 (Alternative D) with Map 54 (Alternative A). Pursuant to the guidelines contained in Appendix N, surface disturbance will be prohibited in any Class II VRM. Draft RMP/EIS at N-2. Alternative D also preserves viewsheds within 3 miles or 1 mile of various historical sites where visual characteristics are uncompromised by modern intrusions. *Id.* at 2-92-93. BLM proposes to further protect this viewshed by limiting structures that are greater than 12-feet high, which can include infrastructure associated with oil and gas fields. *Id.* at 2-93, 3-127, 4-207.

Although the Draft RMP/EIS states that this "management action is intended to manage developments to maintain setting qualities and not to have an exclusion zone," the proposed restrictions will have an exclusionary effect. See *id.* at 2-92. In fact, the restrictions proposed in the Draft RMP/EIS will make it nearly impossible to develop resources within a vast section of one of the most prospective areas for oil and gas development in North America. The Class II designation, viewshed corridor restrictions, and the height restrictions from historic trails will significantly impair the ability to develop oil and gas in the planning area. The extensive VRM restrictions the BLM is proposing do not strike a balance between resource protection and energy development. The BLM should revise the proposed VRM restrictions proposed in Alternative D so that they protect visual resources without unduly hampering development efforts within the planning area.

#### B. Wildlife Timing Stipulations and Conditions of Approval

Gary-Williams supports the BLM's decision to regulate and protect wildlife where wildlife are present and are using potential habitat. However, rather than imposing blanket restrictions, BLM should utilize a more flexible and adaptive approach to wildlife timing stipulations and conditions of approval based on on-the-ground decision making.

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Under the preferred alternative, oil and gas development could potentially be limited to three months out of the year and BLM could impose substantial distance buffer requirements from different animal habitats. Draft RMP/EIS at 2-53. These restrictions will severely limit the acreage that is available for oil and gas development and are overly restrictive.

The BLM should revise the Draft RMP/EIS to require the BLM to maintain a flexible and site-specific approach to determining whether a wildlife timing stipulation is necessary in areas where there is potential, but unoccupied, habitat. By cultivating a more flexible and adaptive approach, BLM will be able to effectively regulate and protect wildlife, while at the same time facilitating the development of our Nation's energy resources.

### C. Purpose and Need

The Kemmerer field office needs to recognize the critical importance that federal minerals have on meeting the Nation's domestic need for energy in its purpose and need statement. The Draft RMP/EIS states that one of its purposes is to "recognize the Nation's needs for domestic sources of minerals . . . ." Draft RMP/EIS at 1-4. The purpose and need statement is inadequate. The BLM's purpose and need statement should recognize the importance of supporting energy development on BLM-administered lands. Hence, BLM should revise the purpose and need statement to state that a purpose and need is to facilitate the development of domestically available resources to supply the Nation's energy demands.

### II. **Conclusion**

Gary-Williams supports the BLM's mission to make federal resources available while preventing unnecessary and undue degradation, but the restrictions discussed in this comment letter and IPAMS comment letter are unduly restrictive. The BLM is proposing restrictions in the Draft RMP/EIS that exceed what is necessary to protect the given resource. BLM should recognize the importance of domestic oil and gas development efforts in the Draft RMP/EIS and should seek to facilitate, rather than hamper, these efforts by imposing reasonable land management restrictions within the Kemmerer Field Office planning area. The Draft RMP/EIS should be revised to reduce the proposed restrictions to achieve the appropriate balance between resource protection and energy development.

Thank you for this opportunity to comment. We hope that these comments are helpful to the BLM.

Sincerely,

Tim Howard  
Vice President  
Gary-Williams Production Company

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