



January 20, 2012

VIA E-MAIL (BLM_WY_LRMP_WYMail@blm.gov)
AND FIRST CLASS MAIL

Ms. Kristin Yannone
RMP Project Manager
Lander Field Office
1335 Main Street
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Re: Comments on the Draft Resource Management Plan and Environmental Impact Statement for the Lander Field Office Planning Area

Dear Ms. Yannone:

Thank you for the opportunity to comment on the Draft Resource Management Plan (“RMP”) and Environmental Impact Statement (“EIS”) for the Lander Field Office Planning Area. We commend the Bureau of Land Management (“BLM”) for proposing a plan that strikes the appropriate balance between resource protection and resource development. Although the BLM is proposing to open over 96 percent of the planning area’s federal mineral estate to oil and gas leasing, it would concentrate development in a limited number of “designated development areas.” Furthermore, the Draft RMP prioritizes the protection of critical wildlife habitat, national historic trails and other sensitive landscapes and values by proposing a series of innovative special designations. See Draft RMP at 75. We fully support those designations, which are the focus of our comments.

I. BLM SHOULD DESIGNATE THE BEAVER RIM MLP IN THE FINAL RMP.

We strongly endorse the designation of the Beaver Rim Master Leasing Plan (“MLP”). MLPs are a central component of the BLM’s oil and gas leasing reforms. See IM 2010-117. They are designed to help the BLM “strategically plan” for leasing and development in areas (like Beaver Rim) with important resource values, such as critical wildlife habitat, significant cultural resources and sensitive visual resources. If developed and implemented properly, MLPs should result in fewer protests and litigation from the public, while ensuring that measures are in place to protect wildlife, wilderness values and other important resources on the public lands.

When developing MLPs, the BLM is required to complete three primary steps:

- First, the BLM must fully **identify the “important national and local resource[s]”** located in MLP areas. IM 2010-117 at II.A; see also 40 C.F.R. § 1502.15 (requiring a “succinct” description of “the environment of the area(s) to be affected or created by the alternatives under consideration.”); *N. Plains Res. Council v. Surface Transp. Bd.*, No. 97-70037, slip op. at 28 (Dec. 29, 2011 9th Cir.) (requiring the collection of “baseline data” “before a project is approved”

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because while “[m]itigation measures may help alleviate impact *after* construction, [they] do not help to evaluate and understand the impact before construction.” (emphasis in original)). Such resources include lands with wilderness characteristics, cultural resources, “wildlife habitat, migration corridors, and rare plants.” IM 2010-117 at II.A.

- Second, the BLM must **identify and evaluate “potential conflicts”** between oil and gas activity and the protection of those resources. IM 2010-117 at II.A; *see also* 40 C.F.R. § 1502.14, 1502.16 (requiring an evaluation of the direct, indirect and cumulative impacts of federal actions). *Id.*
- Third, the BLM must **identify and evaluate “planning decisions” to address resource conflicts.** IM 2010-117 at II.B; *see also* 40 C.F.R. § 1502.14(f), 1502.6(h) (requiring consideration of measures to “mitigate adverse environmental impacts”). Planning decisions specifically identified in the IM include phased leasing, capping surface disturbance pending satisfactory reclamation and directional drilling. *See* IM 2010-117 at II.B.

In the Draft RMP, the BLM has largely complied with each of these steps. First, it has identified the following important resource values in Beaver Rim: visual resources, geological resources, sensitive soils, Native American or culturally significant sites, unique vegetation communities, wild horse migration routes and the headwaters of the Platte River. Draft RMP at 73. The Draft RMP provides some additional background on those values:

[Beaver Rim] contain[s] Native American sacred sites and important visual resources. The topography of the area is such that surface disturbances such as oil and gas and other mineral development could be highly visible and would present a sharp contrast with the surrounding areas. The southern boundary is immediately to the north of the swath of land that makes up the visual setting for the NHTs. The importance of the visual resources in the area stems from the geologic features of the Rim (and the Native American concerns that arise because of the Rim's visual importance) and nearby setting of the NHTs. The area also lies within greater sage-grouse Core Area, as does all of the land on top of the Rim up to the Granite Mountains.

The Beaver Rim area has the only known locations of Yermo (a species listed as threatened) in the world. The two Yermo sites are managed as open to oil and gas leasing subject to no surface occupancy (NSO) stipulations. In addition, there are a number of unique plant communities including types of trees and shrubs that would not be anticipated from the type of vegetation found in the surrounding areas of sagebrush steppe. The small pockets of vegetation vary in size from a half acre to several acres and contain Douglas fir, limber pine (a BLM-sensitive species), juniper, and cottonwood.

Id. at 296.

Second, the BLM has evaluated potential conflicts between those values and oil and gas activity and determined that additional protections are necessary. *See, e.g.* Draft RMP at 720 (noting “beneficial impact” of MLP to “unique plant communities”). Finally, in order to protect Beaver Rim’s important resources values, the BLM has proposed several protections beyond the standards set of oil and gas lease stipulations, including phased leasing “starting in the CSU areas outside of crucial winter range”

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and phased development throughout Beaver Rim. Draft RMP at 81. We support those protections, but recommend that the BLM designate a broader portion of Beaver Rim as VRM Class II, in order to provide the area's scenic and cultural values with greater protection from oil and gas development.

II. BLM SHOULD ADOPT THE PROPOSED MANAGEMENT FOR LEASING IN DUBOIS, BUT MUST ADDRESS THE POTENTIAL FOR DEVELOPMENT OF EXISTING LEASES.

We also support the proposed management for oil and gas leasing in Dubois. Although the BLM originally agreed to prepare a MLP for Dubois, it chose instead to close the area to leasing in the preferred alternative. Draft RMP at 21. We support the decision to close Dubois to leasing, since it will provide the area's "high value wildlife resources" (gray wolf, grizzly bear, Canada lynx, "the largest wintering elk herd outside of elk feeding grounds" and "the nationally famous bighorn sheep herd in the Whiskey Mountain area") with maximum protection from the potential impacts of leasing. See Draft RMP at 21.

However, we disagree with the BLM's conclusion that "[a]n MLP would provide no distinct management under either Alternative B or D since the Dubois area is closed to leasing under" those alternatives. *Id.* This conclusion assumes that an MLP would only address the impacts of oil and gas leasing in Dubois and not the impacts of development on existing leases. This is not true, however, since the IM clearly directs the BLM "take the initiative to strategically plan for leasing *and development* in areas that have the potential for oil and gas development but have not been fully leased." IM 2010-117 (emphasis added); see *id.* at II.B ("For existing leases in the MLP area, new or modified plan decisions should be applied as conditions of approval. . ."). Since Dubois contains several existing oil and gas leases, see Draft RMP at Map 33, the BLM must address the potential impacts of their development in the Draft RMP.

Thus, while we fully support the BLM's decision to close Dubois to leasing, we firmly believe that it must also adopt measures to address the potential impacts of developing existing leases on the area's "high value wildlife resources." Such measures could include those set forth in IM 2010-117, as well as measures proposed elsewhere by the BLM to address similar conflicts. In particular, we believe that the BLM should consider adopting the following measure proposed by the BLM in the Bighorn Basin Draft RMP: "Protect important habitats, including in areas unavailable to leasing on existing leases . . . to the extent this restriction does not violate the leaseholder/operator lease rights, by applying an NSO restriction and prohibiting surface-disturbing activities." Bighorn Basin Draft RMP/EIS at 2-53. As the BLM acknowledges in the Draft RMP, "[p]rohibiting surface disturbance or occupancy is more restrictive and provides more protection for wildlife than avoiding surface disturbance or occupancy." Draft RMP at 789. Thus, it is critical that the BLM address the development of existing leases in Dubois in the Final RMP.

III. BLM SHOULD MANAGE LANDS TO PROTECT THEIR WILDERNESS CHARACTERISTICS, IDENTIFYING ADDITIONAL LANDS AND ENSURING THAT THE FINAL RMP PROVIDES STRONG PROTECTION FOR LANDS WITH WILDERNESS CHARACTERISTICS.

Section 201 of the Federal Land Policy and Management Act ("FLPMA") mandates that the BLM inventory the resources and values of the public lands. 43 U.S.C. § 1711. In the land use planning process, including revision of RMPs, Section 202 of FLPMA requires that the BLM take into account the inventory and determine which multiple uses are best suited to which portions of the planning area. 43

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U.S.C. § 1712. The BLM's mandate of multiple-use and sustained yield, as well as other relevant law and BLM's current guidance, provides for inventory and protection of wilderness values.

The BLM's current guidance on inventory and management of lands with wilderness characteristics, Instruction Memorandum ("IM") 2011-154, reiterates the agency's obligations under FLPMA "to conduct and maintain inventories" and "to consider identified lands with wilderness characteristics in land use plans and when analyzing projects under the National Environmental Policy Act." In the Draft RMP, the BLM notes that it is currently updating its wilderness inventory "to ensure consistency with the direction contained in the Wilderness Act and FLPMA", Draft RMP at 277; this update should also comply with the specific guidance set out in IM 2011-154 and should include proactive efforts to identify areas outside those identified by citizens in order to comply with the agency's obligations to maintain a current inventory of lands with wilderness characteristics. See *Oregon Natural Desert Ass'n v. BLM*, 531 F.3d 1114, 1119 (9th Cir. 2008) (confirming requirement to inventory for wilderness characteristics); Bighorn Basin Draft RMP at 3-168 (identifying 571,288 acres of lands with wilderness characteristics, including lands over and above those identified by citizens and submitted to BLM).

The only lands with wilderness characteristics outside wilderness study areas considered for protection are in the Little Red Creek Complex. See Draft RMP at 33, 44, 53. Alternative B would manage 5,490 acres to protect their wilderness characteristics, while the Preferred Alternative would manage 4,954 acres. In addition, the management provided for these lands in the Preferred Alternative is not as strong as that proposed in Alternative B and management for non-wilderness study area ("WSA") lands with wilderness characteristics is not clearly set out in any alternative. In addition to evaluating further lands that should be protected for wilderness characteristics, the BLM should strengthen the management prescriptions to clarify that these lands will be managed:

- As right-of-way exclusion areas, or should be ROW avoidance areas and explicitly closed to renewable energy development;
- As closed to mineral leasing;
- To minimize unnecessary routes, include motorized and mechanized route closures;
- To limit motorized travel from designated routes the length of one vehicle, which adequately serves the needs of campers, hunters, and day users, while preventing proliferation of illegal, unnecessary routes; and
- As VRM Class II.

Recommendations: The BLM should expand and reevaluate its inventory to identify additional lands with wilderness characteristics outside WSAs, consider managing those lands, and strengthen the management prescriptions for lands with wilderness characteristics to ensure the wilderness qualities of LWCs, and the resources that depend on them, are adequately protected.

IV. THE BLM SHOULD FINALIZE THE PROPOSED MANAGEMENT FOR NATIONAL HISTORIC TRAILS.

A. The Draft RMP Implements the BLM's Legal and Policy Obligations for the National Landscape Conservation System.

In the Lander Draft RMP, the BLM has proposed two special designations to recognize and protect the length of the California, Mormon Pioneer, Oregon and Pony Express National Historic Trails ("NHTs") in

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the Lander Field Office (approximately 95 miles): (1) the South Pass Historical Landscape Area of Critical Environmental Concern (“ACEC”); and (2) the Heritage Tourism and Recreation Management Corridor (“HTRMC”).¹ We support these designations as innovative approaches to protecting NHTs, as well as the BLM’s deliberate attempt to set positive precedent for the management of historic trails throughout the country. See Draft RMP at 1256 (“Upcoming RMPs could look to this RMP for guidance and ideas about how to best manage the NHTs while still allowing development that would not adversely impact the NHTs.”). NHTs are part of the BLM’s National Landscape Conservation System (“NLCS”). 16 U.S.C. § 7202(b)(1)(D). Pursuant to Secretarial Order 3308, lands within the NLCS are to be managed with a priority on protecting the values for which they were designated – i.e., conservation of historical values.

FLPMA requires the BLM to manage public lands under multiple-use principles unless an area has been designated by law for specific uses, in which case the BLM must manage the land for those specific uses. 43 U.S.C. § 1732(a). In other words, the BLM manages NHTs not under the FLPMA multiple-use mandate, but rather under the language of the legislation establishing the NHTs, the National Trails System Act (“Trails Act”), 16 U.S.C. § 1241 *et seq.* (1968). The language in FLPMA is explicit:

The Secretary shall manage the public lands under the principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 1712 of this title when they are available, *except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.*

FLPMA, 43 U.S.C. § 1732(a) (emphasis added).² Since the Trails Act requires the BLM to develop “a protection plan for any high potential historic sites or high potential route segments” of NHTs, 16 U.S.C. § 1244(f)(3), the BLM must prioritize such a protection plan over other uses in the Lander RMP.³

Secretarial Order 3308 speaks to the management of the NLCS. The Order states in pertinent part that “the BLM shall ensure that the components of the NLCS are managed to protect the values for which they were designated, including, where appropriate, prohibiting uses that are in conflict with those values.” The 15-Year Strategy for the NLCS reinforces this by stating the “conservation, protection, and restoration of the NLCS values is the highest priority in NLCS planning and management, consistent with the designating legislation or presidential proclamation.” NLCS Strategy at 8.

¹ We are aware of concerns for the potential impacts of the designations on energy development and ability to construct range fences. See “Historic trails preservation stirs debate in BLM’s Lander resource management plan,” Casper Star-Tribune, Jan. 17, 2012, available at http://trib.com/news/state-and-regional/historic-trails-preservation-stirs-debate-in-blm-s-lander-resource/article_8fd345d3-dd87-5e0d-a557-280ae5412940.html. However, as documented throughout the Draft RMP, the restrictions on energy development are entirely justified by the significance of the NHTs, their well-preserved landscape and the fact that “[t]he potential for oil and gas along the NHTs in the planning area is rated as ‘very low’ or ‘none’ . . .” Draft RMP at 1045. Furthermore, the proposed management for the designations specifically allows “[r]ange projects . . . consistent with VRM Class objectives. . .” Draft RMP at 163; see also *id.* at 193 (proposing essentially identical management for the ACEC). Thus, fears of the designations barring construction of range fences are entirely unfounded.

² See also IM 2009-215, “Planning for Special Designations within the National System of Public Lands.”

³ “[T]he entire section of the four NHTs within the planning area was designated as a High Potential Segment. . . .” Draft RMP at 448.

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In addition, the 15-Year Strategy for the NLCS provides that “conservation, protection, and restoration of NLCS values is the highest priority in NLCS planning and management, consistent with the designating legislation or presidential proclamation.” NLCS Strategy at 8. The Strategy specifically instructs BLM to “not authorize discretionary uses that cannot be managed in a manner compatible with the designating proclamation or legislation.”

Accordingly, the standard approach to multiple-use management does not apply to these trails and BLM can best fulfill the NLCS Act, Secretarial Order 3308, BLM policy and the mandates of FLPMA and the Trails Act by taking steps to manage these NLCS units in the context of the broader multiple-use lands in which they are located.

B. The Proposed Designations for the NHTs Protect Wildlife, Recreation and Additional Values of the Public Lands.

We also support the trails designations, because they will protect non-historic values of the public lands, including critical wildlife habitat and recreational opportunities. As documented in the Draft RMP, the trails corridor contains citizen proposed wilderness areas, Greater sage-grouse core areas and crucial winter range for elk, mule deer and pronghorn, all of which stand to benefit from the major (but entirely appropriate) constraints on oil and gas, wind energy and transmission line development proposed for the designations in the Draft RMP. *See, e.g.*, Draft RMP at Maps 12, 53, 65.

Regarding recreation and heritage tourism values, our research with the Church of Latter Day Saints (LDS - the Mormon Church), which operates several facilities and campgrounds along the Oregon/Mormon Trail stretch of the RMP area, indicates that in 2011 they attracted approximately 39,000 visitors and 42,000 trekkers to these facilities in the proposed HTRMC.⁴ The trekkers are predominantly 14 – 18 year olds and the average stay is three days for these groups. These visitation numbers are extraordinary. By comparison, the National Historic Trails Interpretative Center in Casper, operated by the BLM, only logged 21,469 visitors in fiscal year 2011. The LDS visitation numbers – over 91,000 – demonstrates the strong recreational value of the remote and largely undeveloped portions of these historic trails. Repeatedly, LDS leaders indicated that their visitors come to the sites because of the opportunity to experience the environment of the historic trail—views, wildlife, weather and lack of development—that is essentially unchanged from what it was like on the NHTs 150 years ago. They noted that these Church activities would not be occurring if the corridor was developed or marred by intrusive human activity. These visitation numbers may also represent an economic contribution to local communities that is not well captured in traditional tourism calculations. It certainly represents the potential for future growth of heritage tourism along this corridor.

Additionally, the designations include areas that are prized by sportsmen. The Lander-based One Shot Antelope Hunt is internationally renowned for its antelope hunting, and the hunt areas in these designation locations provide some of the highest hunter success rates in the state. The One-Shot itself draws up to 800 visitors in Lander for a lengthy stay in the fall. Overall, according to data from the Wyoming Fish & Game Department, hunters in pursuit of game within the trails corridor contributed as

⁴ Personal communication from Sister Jean Fenn, Co-Director of Martin’s Cove Mormon Handcart Historical Site to Stephanie Kessler, Jan. 11, 2012.

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much as \$7.5 million dollars to local economies in 2010⁵ and this continues to be an annual revenue source to local communities. Thus, the trails designations provide the BLM with the opportunity to protect multiple important values of the public lands, not just historic values.

V. BLM SHOULD APPLY SEASONAL WILDLIFE RESTRICTIONS THROUGHOUT THE LIFE OF OIL AND GAS PROJECTS.

The BLM has traditionally limited seasonal wildlife restrictions to the initial phases of oil and gas projects. See Wyoming Fish & Game Dept., Recommendations for Development of Oil and Gas Resources Within Important Wildlife Habitats at 14 (Mar. 2010)⁶ (“Mitigation has generally not been required during the production phase, as evidenced in prior NEPA documents. . .”). This has helped avoid some project-related impacts to wildlife, particular during the drilling phase. However, as recognized by the Wyoming Fish and Game Department, “[o]il and gas operations also disturb and displace wildlife throughout a production life of up to 40 years and longer.” *Id.* at 13. This is because “human and vehicular activity,” which continues throughout the production life of oil and gas projects, “are the primary impact imposed on big game and are . . . more expansive and deleterious than direct habitat loss associated with longer term infrastructure occupation and shorter term vegetation modifications.”⁷ Thus, we fully support the BLM’s commitment in the Draft RMP to applying “wildlife seasonal protections from surface-disturbing and disruptive activities . . . to maintenance and operations actions when the activity is determined to be detrimental to wildlife. . .” Draft RMP at 98.

VI. CONCLUSION

Thank you again for the opportunity to comment on the Lander Draft RMP/EIS. We look forward to working with you to finalize this important plan.

Sincerely,

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⁵ 2010 Hunting Expenditures in the Southern Lander Field Office, January 2012; a report by Tony Ferlisi, Wyoming Wilderness Association (attached)./

⁶ Available at <http://gf.state.wy.us/downloads/pdf/og.pdf>.

⁷ BLM White River Field Office, EA for the May 2012 Oil and Gas Lease Sale at 38 (Dec. 2011), available at http://www.blm.gov/pgdata/etc/medialib/blm/co/information/nepa/white_river_field/completed_2012_documents.Par.85739.File.dat/doiblmco11020110178ea_public%20review%20draft%202012_1_12.pdf.

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Attachment

2010 HUNTING EXPENDITURES IN THE SOUTHERN LANDER FIELD OFFICE

The aim of this analysis is to give a reasonable estimate of hunter expenditures relative to a specific region of the Wind River Basin. This brief analysis should provide a rough estimate of the money flowing from hunters of three specific, primary big game species to local communities.

Hunting is an important part of the culture and economy of the Wind River Basin. Even though hunting license revenues directly support a number of jobs in the Wind River Basin, this analysis only focuses on expenditures by hunters that flow into local communities in the southern half of the Field Office. Some of the more significant categories of expenditures by hunters include guide and pack services, equipment, groceries, lodging, restaurant services, gasoline, taxidermy, meat processing, and gifts or souvenirs.⁸

METHODOLOGY

The Oregon/Mormon Pioneer/Pony Express Trail corridor was analyzed to determine hunter expenditures in 2010. To determine hunter expenditures for this area, the number of resident and nonresident hunters for three primary big game species in 2010 (**Step 1**) was multiplied by the 2010 Wyoming average per hunter expenditure of a resident and nonresident hunter for each species (**Step 2**).

Step 1. Number of resident and nonresident hunters for each species.

Relevant hunt areas were first selected, then the number of resident and nonresident hunters within each of the hunt areas was determined. Figure 1 shows the relevant hunt areas by species for the Trail Corridor. The number of resident and nonresident hunters by species in 2010 for each relevant hunt area was taken from the Wyoming Game and Fish Department's 2010 harvest report.⁹

Figure 1. Hunt areas relevant to the Historic Trails Corridor.

Elk	23, 24, 25, 128
Deer	88, 89, 94, 96, 97, 160,
Pronghorn	64,65, 66, 68, 69, 72, 106

Step 2. Wyoming average per hunter expenditures in 2009.

Expenditures by elk, deer and pronghorn hunters.

⁸ Responsive Management 2004, *Wyoming Resident and Nonresident Deer, Elk, and Antelope Hunter Expenditure Survey*. p. ii. http://www.responsivemanagement.com/download/reports/WY_Hunter_Expend_Survey_Report.pdf (Accessed January 10, 2012).

⁹ Wyoming Game and Fish Department, *2010 Annual Report of Big and Trophy Game Harvest*. <http://gf.state.wy.us/wildlife/hunting/stats/harvest/2010/index.asp>

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The Wyoming Game and Fish Department (WGFD) commissioned a study² that analyzed hunting related expenditures from elk, deer, and pronghorn hunters in Wyoming for the 2003 hunting season. The Wyoming average per hunter expenditure for residents and nonresidents during the 2003 hunting season was determined by dividing the total statewide expenditure¹⁰ for each species of both residents and nonresidents by the number of resident and nonresident licenses issued¹¹, respectively. Figure 3 shows the resident and nonresident average per hunter expenditure for elk, deer, and pronghorn for 2003. The 2010 resident and nonresident average per hunter expenditure for elk, deer, and pronghorn were derived from the 2003 expenditure figures by correcting for inflation using the Consumer Price Index (2004 expenditure = 2003 expenditure x 1.033; 2005 expenditure = 2003 expenditure x 1.068; 2006 expenditure = 2005 expenditure x 1.03; 2007 expenditure = 2006 expenditure x 1.03; 2008 expenditure = 2007 expenditure x 1.04; 2009 expenditure = 2008 expenditure x 1.04; 2010 expenditure = 2009 expenditure x 1.05). Figure 4 shows the 2010 average resident and nonresident per hunter expenditure for elk, deer, and pronghorn.

Resident Elk	\$1012.86
Non-resident Elk	\$1149.81
Resident Deer	\$821.24
Non-resident Deer	\$670.13
Resident Pronghorn	\$364.89
Non-resident Pronghorn	\$698.41

Figure 3. Wyoming average per-hunter expenditures in 2003.

Resident elk	\$1303.31
Nonresident elk	\$1479.54
Resident deer	\$1056.74
Nonresident deer	\$862.30
Resident pronghorn	\$469.53
Nonresident pronghorn	\$898.69

Figure 4. Wyoming average per-hunter expenditure in 2010.

RESULTS

Our estimate of expenditures to local communities in the Wind River Basin from those who hunt elk, mule deer and/or antelope which rely on the National Historic Trails Corridor is **\$ 7,434,198.14**.

¹⁰ *Id.* at iv.

¹¹ *Id.* at iv.