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Lander Field Office
1335 Main Street
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VIA EMAIL: BLM_WY_LRMP_WYMail@blm.gov

RE: Draft Environmental Impact Statement/Revision to Lander RMP

Dear Mr. Carlton:

On behalf of Public Lands Advocacy and the Petroleum Association of Wyoming, following are comments on the Draft Environmental Impact Statement and Revised Resource Management plan (DEIS) for the Lander Field Office. PLA is a nonprofit trade association whose members include independent and major oil and gas producers as well as nonprofit trade and professional organizations that have joined together to foster environmentally sound exploration and production on public lands. PAW is Wyoming's largest and oldest petroleum industry trade association dedicated to the betterment of the state's oil and gas industry and public welfare. PAW members, ranging from independent operators to integrated companies, account for approximately ninety percent of the natural gas and two-thirds of the crude oil produced in Wyoming. Many of our members have a direct interest in how BLM plans to manage lands within the Lander Field Office and, consequently, convened an ad hoc group to work together to review and prepare joint detailed comments on the DEIS. We, therefore, request that in addition to PLA and PAW, Marathon Oil Company be recognized as a commenter associated with this comment letter. Our comments identify several issues and concerns with respect to the draft environmental impact statement.

GENERAL

Prior to 1995, there were over 70 provinces in the United States containing hydrocarbon-bearing basins. Periodically, the U.S. Geological Survey Central Energy Team provides an assessment of hydrocarbon reserves in the United States. In 1995, the USGS conducted one of these assessments and discovered an additional 29 basins which contain large amounts of hydrocarbon deposits, which included the Wind River Basin. These new basins were added primarily as a result of new technological advances. In the interest of sustained domestic energy production and the reliance upon direct and indirect revenue from these activities by local communities, the State of Wyoming, as well as the Federal Treasury, a major consideration within the BLM's planning process must be how to contend with this declining production of oil and gas resources by providing for new exploration prospects, notably shale resources occurring in the planning area, with unbiased and balanced constraints as well as

broad opportunities for Enhanced Oil Recovery (EOR) which could result in an additional 3.5 billion barrels of oil being produced.

It is also important to note that the Wind River Basin is surrounded by 9.13 million acres of federally managed lands that have no or very limited mineral leasing or development, i.e., Yellowstone National Park, and the Shoshone and Bighorn National Forests, respectively. (See Figure 1) Therefore, it is crucial that BLM provide for continued oil and gas development within the Basin as well as new exploratory opportunities, fully acknowledging the clearly visible demonstration that development of oil and gas resources and other uses, including maintaining and protecting aesthetic values, are not mutually exclusive and able to successfully co-exist.

ALTERNATIVES

While BLM may have met the requirements of the National Environmental Policy Act (NEPA) in terms of the range of alternatives, it has failed to meet its public disclosure requirements under NEPA. (See below) Moreover, the Preferred Alternative D is not consistent with BLM's multiple-use mandate under the Federal Land Policy and Management Act (FLPMA) because it would unduly inhibit the development of energy resources within the planning area. As described, BLM would preclude leasing and development and their associated revenues to the State and counties which rely heavily upon resource production. In so doing, not only tax and royalty revenue will be foregone, but fewer jobs would be available. BLM has an obligation to take into account the needs of the local communities located within the FO area to ensure BLM's management decisions do not have a deleterious impact on the local economy.

NEPA COMPLIANCE

The purpose of the National Environmental Policy Act (NEPA) is to promote informed decision-making by federal agencies by making detailed information concerning significant environmental impacts available to both agency leaders and the public. The DEIS has conspicuously failed to provide the scientific materials required to demonstrate that the agency has made informed decisions regarding the broad imposition of new, highly restrictive lease stipulations. Simply imposing new stipulations to presumably protect wildlife, cultural resources, visual and air quality values does not meet the NEPA mandate to provide the public and stakeholders with the analysis upon which such decisions are based. In other words, NEPA directly requires that the analysis materials must be included in the DEIS to demonstrate that changes in management are warranted. BLM has failed to meet this requirement, which is a fatal flaw of the planning documents.

As discussed below in our comments on the Reasonably Foreseeable Development scenario, BLM has failed to account for the increased potential for oil and gas exploration and development opportunities that have recently become available from shale formations as well as other previously available but unexplored geologic formations through the application of new technologies and techniques. In so doing, BLM has chosen to select the most restrictive of alternatives, which would limit future activity to currently producing areas. This management approach is unacceptable and ignores the agency's multiple-use mandate required by the Federal Land and Policy Management Act (FLPMA), which provides that where there are competing resource uses in the same area, BLM is required to manage the resources to best

meet multiple use and sustained yield. Moreover, FLPMA at Section 102.12 requires that “*the public lands be managed in a manner which recognizes the Nation’s need for domestic sources of minerals, food, timber, and fiber from the public lands...*” These requirements are absent from the BLM’s analysis and proposed RMP.

Other critically important materials excluded from the DEIS, and therefore unavailable for public review and consideration, include Oil and Gas Best Management Practices, Cultural Resource Consultation procedures, and Special Status Species Consultation procedures. All of this information must be provided in order for the public to clearly understand BLM’s proposed management of public lands.

FLPMA SECTION 204

We remind BLM that under Section 204 of FLPMA, only the Secretary of Interior has the authority to close areas of 5,000 acres or more from oil and gas leasing and development. Further, before so doing the Secretary is legally obligated to meet the requirements identified below before moving forward with such closures. Specifically, notice of the proposed withdrawal must be published in the *Federal Register* and hearings must be held. In particular, the notice must describe and include:

- The proposed use of the land;
- An inventory and evaluation of current natural resource uses along with the value of the land and adjacent public and private land that may be affected;
- Identification of current users and how they will be affected;
- Analysis of the manner in which the existing and potential uses are incompatible with proposed uses;
- Analysis of the manner in which such lands will be used in relation to the specific requirements for the proposed uses;
- A statement as to whether suitable alternative sites are available;
- A statement of consultation with other federal, regional, state and local governments;
- A statement regarding the potential effects of the withdrawal on state, local and regional economies;
- A statement of the length of time needed for the withdrawal;
- The time and place of hearings regarding the withdrawal;
- The place where records of the withdrawal can be examined; and
- A report prepared by a qualified mining engineer, engineering geologist, or geologist, which includes information on mineral deposits, mineral production, existing mining claims, and an evaluation of future mineral potential.

FLPMA also requires the Secretary of the Interior to comply with certain procedural requirements before making a management decision that completely eliminates a major use of the public lands for a period of two or more years on a tract of land more than 100,000 acres in size. See 43 U.S.C. § 1712(e). Oil and gas development is defined as a principal or major use of the public lands in accordance with 43 C.F.R. § 1702(l). Under Alternatives B and D, the BLM would make over 100,000 acres unavailable to oil and gas leasing for a period of two years or more, yet BLM appears to have ignored the explicit requirements of FLPMA. If BLM moves forward with its intent to close large areas to future oil and gas development, BLM is

required to notify Congress of its intent before the Lander RMP is finalized and a record of decision published. We have found no evidence that the Department has complied with the above requirements.

VALID EXISTING RIGHTS

Chapter 1, Page 9, Planning Criteria, “*The plan will recognize valid existing rights.*”

COMMENT: While we strongly support BLM’s commitment to recognizing valid existing rights, we are concerned that the DEIS fails to disclose what actually constitutes “valid existing rights.” It should be noted in the FEIS that 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 unilaterally deny development on existing leaseholds. We recommend that BLM clearly state in the FEIS that the new restrictions proposed in the Preferred Alternative will not apply to lands already under oil and gas lease. Moreover, it must be made clear that BLM has no authority to impose these new restrictions through Conditions of Approval (COA) on applications for permit to drill (APD) if they would abrogate the valid existing lease rights. Once a lease has been issued, stipulations may not be legally modified absent voluntary agreement by the lessee. Therefore, in accordance with 43 CFR 3101 and federal case law, we recommend that BLM clearly disclose its limited authority to add conditions of approval to a drilling permit, i.e., conditions must remain consistent with the terms of the issued lease.

These principles are particularly important given the fact that new protections identified in the draft RMP could very much impose significant limitations on existing leases that were not anticipated at the time the leases were acquired from the federal government in good faith. Such qualifiers are consistent with current rules and policies of the BLM and must be clearly disclosed in the planning documents. An acceptable example of appropriate language is included in the Rawlins RMP adopted in 2008, page 20.

LEAST RESTRICTIVE STIPULATIONS

The Preferred Alternative, Alternative D closes *approximately 110,014 acres of federal mineral estate to oil and gas leasing in the planning area (plus additional acreage associated with Boysen Reservoir that was not included in the draft RFD scenario for oil and gas [Map 144]).* While the Preferred Alternative leaves the remaining federal mineral estate open to oil and gas leasing, it is subject to significant increases in constraints: *1,470,338 acres are subject to moderate constraints, and 1,182,711 acres are subject to major constraints (plus additional acreage associated with an NSO in the Green Mountain area that was not included in the draft RFD scenario for oil and gas [Map 144]).*

COMMENT: The planning area includes approximately 2,809,101 acres of federal mineral estate under the jurisdiction of the Lander Field Office. Nearly half this acreage is subject to significant constraints, including overlapping timing limitations, controlled surface use and no surface occupancy stipulations.

COMMENT: The DEIS ignores long-standing BLM policy which directs that “*the least restrictive stipulation that effectively accomplished the resource objectives or uses for a given alternative*”

should be used." Additionally, Section 363 of the Energy Policy Act of 2005 also requires federal land management agencies to ensure that lease stipulations are applied consistently and to ensure that the least restrictive stipulations are utilized to protect many of the resource values to be addressed. As such, it is necessary for BLM to demonstrate that less restrictive measures were considered but found insufficient to protect the resources identified. A statement that there are conflicting resource values or uses does not justify the application of restrictions. Discussion of the specific requirements of a resource to be safeguarded, along with a discussion of the perceived conflicts between it and oil and gas activities must be provided. Clearly, an examination of less restrictive measures must be a fundamental element of a balanced analysis and documented accordingly in the FEIS.

ISSUES ADDRESSED

Those planning issues determined to be within the scope of the EIS are used to develop one or more of the alternatives or are addressed in other parts of the EIS...Scoping is a collaborative public involvement process to identify planning issues to be addressed in the planning process. As part of the scoping process, the BLM solicited comments and issues (including during five public scoping meetings [see Chapter 5]) from the public, organizations, tribal governments, and federal, state, and local agencies, as well as from BLM specialists.

During the scoping period, the key planning issues identified for developing alternatives in this Draft RMP and EIS are listed below:

Energy and Minerals Management

- *What areas are suitable or not suitable for energy and mineral resource development?*
- *What areas should be offered for oil and gas leasing with Master Leasing Plans?*
- *What level of development should be allowed in areas suitable for energy and mineral resource development?*

COMMENT: Several comments submitted by PLA and PAW were omitted from the list of issues BLM chose to include in the planning process. Specifically, the issues we raised included the following:

- How will socio-economic considerations and benefits from oil and gas activities be addressed in the DEIS
- How will effects on opportunities to explore for, lease and develop oil and gas resources resulting from restrictive surface management decisions
- How will opportunities to explore for and develop oil and gas resources be affected by the management of other surface resource management decisions

Our purpose in raising these issues was an effort to ensure the DEIS appropriately addressed the concerns of the oil and gas industry during the planning process. It is apparent that BLM chose not to fully analyze impacts on existing and future oil and gas activities, instead giving priority to wildlife and other issues. While we support the concept of Designated Development Areas (DDA) in the DEIS, it is evident from our review of the DEIS that BLM has sought to develop needless and unsupported restrictions on oil and gas exploration, development and production activities outside DDAs. In so doing, BLM gratuitously seeks in the Preferred Alternative to limit its management flexibility as well as oil and gas leasing and development opportunities by

arbitrarily closing lands to oil and gas leasing, imposing unwarranted and onerous stipulations for the Greater Sage-grouse and other wildlife species, and by proposing impossible to meet reclamation standards, to mention a few. We recommend that BLM carefully consider our comments below and accept our recommendations for improvements and that they be included in the FEIS and Record of Decision for the Lander RMP.

REASONABLY FORESEEABLE DEVELOPMENT

2.4.6. Evaluate Oil Shale Production *The very southern portion of the planning area has potential for oil shale or other unconventional oil and gas production (BLM 2009c). However, the potential is not high. The areas are remote from existing oil and gas transportation facilities and have very limited water, a requirement for oil shale production. Consequently, the BLM determined that the likelihood for commercially viable oil shale production was too remote and speculative to support analysis. Should oil shale production become viable in the future, an EIS would determine if such an action is in compliance with the RMP's goals and objectives and whether the RMP would need to be amended. Accordingly, BLM determined that analyzing oil shale was not reasonable.*

COMMENT: We do not support BLM's conclusion that the potential for development of oil shale "is not high" given the rate of horizontal exploration shale wells being drilling in the area. The Wind River Basin has shale resource potential in the Mowry Shale, the Cody Shale (Niobrara equivalent) and the Waltman Shale. There may also be potential in the far west part of the basin for shale resource in the Phosphoria.

The Niobrara shale is being drilled in the eastern Wind River Basin by Bill Barrett at the NMGU 11-H-29-34-87 (sec 29-34N-87W). This horizontal Niobrara test is just east of the Lander planning area (see attached figure for township & range). Bill Barrett has three more Niobrara horizontal locations staked in that area. The chalk content (CaCO₃) decreases in the Niobrara as you move west from the Powder River Basin into the Wind River Basin. It decreases even more as you move into the central and western Wind River Basin. As this occurs, the Niobrara interval becomes part of the Lower Cody Shale. The chalk is the Niobrara reservoir in the Powder River Basin and DJ Basin, so is entirely possible that the Niobrara in the Wind River Basin is viable. Even though the chalk may decrease, it is possible that the shale, silts and sands may produce in this interval similar to the Baxter and Mancos in SW Wyoming, western Colorado and northeast Utah. The kerogen in the Mowry and Niobrara are more oil prone in the eastern Wind River Basin and becomes more gas prone in the central and western Wind River Basin. At great depth in the deep Wind River Basin, it all gets cracked to gas regardless of whether it is oil or gas prone kerogen. The Waltman Shale has oil prone kerogen and is present only in the northeast portion of the Lander planning area and to further to the east. The Waltman Shale was never buried deep enough to crack the oil to gas, thus it is an oil play if it exists.

COMMENT: The RFD significantly understates the potential oil and gas opportunities that could be available from shale resources and other previously untapped geologic formations through the application of new technologies and techniques. We recommend BLM utilize updated geologic data and recognize the future needs of increased exploration and development activities in the area before finalizing the planning document. Substantial exploratory work in the various shale formations of the Basin is currently underway by a variety of operators. While

this exploratory work is still in the initial stages, every opportunity must be provided for full evaluation of the shale resource potential in the planning area. Initial test wells in the Mowry Shale for example have confirmed the presence of hydrocarbons. Additional exploration and refinement of drilling and production techniques in the shale formations could potentially lead to large scale economic production opportunities now that the presence of the resource has been confirmed. Much of this evaluation work is occurring on existing leases. These evaluation efforts would be prematurely and inappropriately impacted if BLM fails to recognize the importance of Valid Existing Rights.

As clearly demonstrated by the variety of new exploration and development projects being conducted operators in the Lander FO, the RFD substantially understates the potential for shale resource development, both oil and gas. While admittedly these shale resource plays may prove uncertain in the Wind River Basin, it is unrealistic to categorize them as “very low for the planning period”.

COMMENT: The Lander Draft RMP/EIS fails to contemplate and plan for the utilization of Enhanced Oil Recovery (EOR) via CO2 injection that is currently taking place in existing oil fields within the Plan Area and that is expected to expand in the future. A CO2 pipeline (and other necessary infrastructure for conducting CO2 flooding operations) has been developed in the Beaver Creek Field and CO2 flooding is being conducted in this Field. With the development of this pipeline, the use of CO2 flooding is expected to expand within the Plan Area over the next several years as some fields initiate tertiary recovery. Consequently, oil production in existing fields within the Plan Area is also anticipated to increase due to the efficiency of EOR. EOR is, and will be an important element of oil production in the Plan Area and should be properly accounted for in the Lander Draft RMP/EIS. Accordingly, we strongly recommend that BLM address the use of EOR/CO2 injection techniques in the Lander Draft RMP/EIS. Specifically, BLM needs to plan for new and expanded pipelines and other infrastructure required to transfer adequate volumes of CO2 into/out of oil fields located within the Plan Area, as well as pipelines and infrastructure necessary to transfer increased volumes of produced oil since existing pipeline ROWs may be inadequate to support the transport of increased oil production out of the Plan Area. Additionally, existing pipelines are not designed to transport CO2. With this in mind, it is necessary for BLM to plan for the use of EOR/CO2 injection within the Lander Draft RMP/EIS.

MASTER LEASING PLAN

Chapter 2, Page 78m Beaver Rim Master Leasing Plan, Apply an MLP to 143,448 acres in the Beaver Rim Are...Alternative D applies an MLP only to the Beaver Rim area (143,448 acres; see Map 143) to reduce resource conflicts. Approximately 29,505 acres within the MLP are open to oil and gas leasing subject to an NSO stipulation and 113,943 acres are open to leasing subject to CSU stipulations. Management within the MLP stipulates other requirements designed to protect resource values where there may be a conflict with oil and gas development, such as requiring watershed monitoring to ensure effectiveness of watershed protections.

COMMENT: We find no value in BLM identifying a Master Leasing Plan area. While we support the MLP being incorporated into the Lander DEIS/RMP revision as opposed to a separate NEPA analysis, the only thing accomplished by this designation is that it puts a needless spotlight on

an area that is designated an ACEC and a portion of which is proposed for a NNL. Obviously, the area would likely be subject to the same management objectives even if it were not identified as an MLP. Clearly, through BLM's planning process, all resource values must be considered and the addition of another layer of analysis is duplicative and a waste of staffing and financial resources.

AIR QUALITY

EPA/DEQ vs. BLM jurisdiction

With respect to the State's responsibility to Air Quality implementation, **Title I of the Clean Air Act (CAA), § 107, 42 United States Code (U.S.C.), § 7407** states that : *"Each State shall have the primary responsibility for assuring Air Quality within the entire geographic area comprising such State by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient Air Quality standards will be achieved and maintained within each Air Quality control region in such State."*

COMMENT: As provided by law, the State of Wyoming has accepted and already bears the responsibility to protect the quality of air throughout the State as primary implementers of the National Ambient Air Quality Standards (NAAQS). The Clean Air Act (CAA) section 107, 42 U.S.C., § 7416, requires "...such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section." Therefore, as part of the State's delegated authority, its emission standards are as good as or more stringent than federal standards.

The State's responsibility is realized through comprehensive regulations administered by the Wyoming Department of Environmental Quality (WYDEQ) and with oversight of the Environmental Protection Agency (EPA). The State regulations which require the oil and gas industry to attain and/or maintain the air quality are accomplished through WDEQ/EPA oversight of oil and gas activities within the planning area. Consequently, we strongly object to the proposal contained in the DEIS/RMP whereby BLM is seeking to promulgate additional air standards that obviously duplicate existing state and federal laws through additional agencies.

COMMENT: Given current economic constraints, the federal deficit, anticipated budget shortfalls, and BLM's lack of adequate budget and staffing levels, it is both unacceptable and unsuitable for BLM to attempt to extend its oversight to include media that are already adequately regulated by other agencies and which effectively protect air quality.

BLM has proposed additional controls and programs which are intended to further protect the air quality of the planning area. However, the DEIS failed to address the costs associated with each proposed program in the alternatives. Specifically, the FEIS must disclose the cost associated with each alternative to implement the plan and the extent of additional manpower required to manage the proposed additional standards, monitoring, stipulations, modeling, closures, construction, reclamation, etc. BLM has also failed to address the loss of good-paying jobs, federal state and local tax revenue and royalties from the various industries that will occur with each alternative. The significant socio-economic impact of additional restriction, regulation, oversight, and enforcement of an air quality program that is already addressed by other agencies was not considered in the RMP/EIS.

It is necessary for BLM to assess and disclose the associated costs of each alternative and to solicit public comments. However, such an effort was not undertaken in the DEIS/RMP. We recommend that such an analysis be prepared prior to issuance of the FEIS.

DESIGNATED DEVELOPMENT AREAS (DDA) – DELINEATION AND WILDLIFE STIPULATIONS

Page 77, Table 2.6: *Alternative D establishes DDAs for intensive mineral exploration, development, and production (381,403 acres).*

Page 52, Part 2.6.4.1: *[Under Alternative D] In areas of high mineral potential, DDAs are established which emphasize mineral use.*

COMMENT: We support BLM's establishment of DDAs. Continuing to manage areas already experiencing oil and gas development with a focus on current and future oil and gas exploration and development is a practical approach that will protect existing development while limiting impacts on other land use values.

While the Draft RMP states that DDAs are established in areas of high mineral potential, the process for delineation of DDA boundaries (i.e. areas of high mineral potential) is not further specified. We recommend that BLM explain how it determined which areas have high mineral potential during this process. As such, we urge BLM to provide clarification for the DDA boundary delineation process and modify existing DDA boundaries to include all areas with high mineral potential.

Additionally, we suggest BLM include a 2-mile buffer zone around areas currently experiencing mineral exploration and development to allow for the expansion of development in these areas without requiring a RMP amendment. Delineating DDA boundaries using a 2-mile buffer around the outer boundary of existing fields is more practical and consistent with BLM's intent to manage these areas for intensive mineral exploration, development, and production rather than drawing boundaries at the edge of existing fields. Another advantage in utilizing a buffer zone around existing fields would be the inclusion of areas with high potential for further exploration and development, which would allow operators to maximize the development of valuable oil and gas resources within the Planning Area. Many large oil and gas fields in Wyoming tend to have smaller satellite deposits of oil and gas near these larger fields. Establishing a 2-mile buffer area around the outer boundary of existing fields would allow more efficient development of these satellite deposits. The 2-mile buffer will also allow efficient development of additional infrastructure associated with the larger developed fields included within the DDA boundaries.

COMMENT: The concept and intent behind DDAs is very similar to that of *Oil and Gas Management Areas* (OGMAs) established in the Big Horn Basin Draft RMP/EIS – “*Delineate OGMAs and manage these areas primarily for oil and gas exploration and development.*” Since the Lander (Lander RMP), Worland (Big Horn Basin RMP), and Cody field office (Big Horn Basin RMP) boundaries are adjacent to each other and within the same district (Wind River/Bighorn Basin District), it makes sense to use consistent terminology in both RMPs. To improve consistency and reduce confusion, we recommend BLM use the same terminology (DDAs or OGMAs) to identify these areas in each RMP.

Page 77, Table 2.6: *“Federal lands and mineral estate not inside a DDA may be designated and managed as DDAs if project specific environmental analysis determines adverse impacts to other resources can be successfully mitigated, and if geology and/or reservoir analysis determines that extraction efficiently and adequately produces the mineral resource. Designation of new areas as DDAs or expansion of existing DDA requires an RMP amendment.”*

COMMENT: In addition to establishing DDAs in areas currently experiencing intensive mineral exploration, development, and production, DDAs should have the ability to expand in the future as existing fields expand and new fields are developed. As currently written, Alternative D allows BLM to expand or designate new DDAs if certain standards and requirements are satisfied. While we support this premise, as proposed it would appear that the only option for expanding or designating DDAs may only be completed through the time consuming and often cumbersome RMP amendment process. Future expansion of DDAs to include expanded areas of oil and gas development within the Lander Resource Management Plan (RMP) Area is consistent with BLM’s intent to manage areas of high mineral potential primarily for exploration and development. As such, we encourage BLM to streamline the DDA expansion and designation process under Alternative D. We also recommend that BLM retain flexibility to administratively expand existing, or designated new DDAs upon a showing cause without conducting a RMP amendment.

Page 77, Table 2.6: *“New fluid and solid mineral leases and mineral material disposals within DDAs will include standard [Wyoming] stipulations such as CSU and TLS. Exceptions to these stipulations are routinely authorized through an expedited approval process unless BLM identifies a site-specific real time need for the stipulation.”*

COMMENT: Appendix I of the RMP specifies that all site construction, drilling, completion, surface facility activities, pipeline/flow line, and plug and abandon stipulations and/or COAs will be applied within DDAs. We do not expect or suggest that such operations located within DDAs should be approved completely free of all stipulations, such as stipulations required under separate federal laws. However, the application of discretionary stipulations on these operations within DDAs may compromise the valid existing lease rights held by operators. Further, the application of all standard Wyoming stipulations on these operations would likely curtail mineral production (in some cases significantly) and limit potential production of these areas. Consequently, we advocate that BLM limit the application of standard stipulations (e.g. CSU and TLS) within DDAs to only those absolutely necessary such that maximum mineral production potential may be achieved in these areas, as intended by BLM.

Page 77, Table 2.6: *“Wildlife seasonal protections for operations and maintenance actions determined to be detrimental to wildlife will not be applied inside DDAs.”*

COMMENT: Not applying seasonal wildlife protections to operations and maintenance actions inside DDAs is consistent with BLM’s intent to manage these areas of high mineral potential primarily for exploration and development and emphasize mineral use. Additionally, it is important to note that conducting vital operations and important maintenance actions is essential to maintaining the functionality, integrity, and safety of such operations. As such, we support the management decision under Alternative D and agree that wildlife seasonal

protections for wildlife should not be applied inside DDAs for routine maintenance and certain critical operations.

As currently delineated under Alternative D, DDA boundaries do not overlap with the Wyoming Governor's Sage-grouse Core Areas (Core Areas), which comprise nearly three-quarters (3/4) of the entire Planning Area. As a result, excluding DDAs from the application of wildlife seasonal protections, including Sage-grouse, is consistent with the Wyoming Governor's Sage-grouse Core Area Strategy (EO 2011-5). We support BLM's decision to adopt Sage-grouse management policies consistent with EO 2011-5.

It should also be recognized, however, that establishment of DDAs within Core Area boundaries would not conflict with EO 2011-5 for areas already disturbed or approved for development prior to August 1, 2008. EO 2011-5 states that "areas already disturbed or approved for development within Core Population Areas prior to August 1, 2008 are not subject to new sage-grouse stipulations with the exception existing operations may not initiate activities resulting in new surface occupancy within 0.6 mile perimeter of a sage-grouse lek (EO 2011-5, Attachment B, paragraph 11)." EO 2011-5 further states that "[i]t is assumed that activities existing in Core Population Areas prior to August 1, 2008 will not be managed under Core Population Area stipulations. Examples of existing activities include oil and gas, mining, agriculture...and other uses that were in place prior to the development of the Core Population Areas. Provided these activities are within a defined project boundary (such as a recognized federal oil and gas unit, drilling and spacing unit, etc.), they should be allowed to continue within the existing boundary, even if the use exceeds recommended stipulations recognizing that all applicable federal actions shall continue (EO 2011-5, pg. 2, Item 2)." Consequently, it would be appropriate for existing fields within the Lander RMP Area (including those within Core Area boundaries) that were disturbed or approved for development prior to August 1, 2008, to be designated as DDAs because such designation would not conflict with EO 2011-5. Designating these existing fields as DDAs is consistent with BLM's intent to emphasize intensive mineral exploration, development, and production in these areas of high mineral potential.

LANDS WITH WILDERNESS CHARACTERISTICS

Page 72, Table 2.12, Goal PR 8 and 8.1: *Maintain existing wilderness characteristics associated within identified areas (outside of WSAs) found to contain wilderness characteristics. Maintain wilderness characteristics in areas managed as non-WSA lands with wilderness characteristics.*

Page 72, Table 2.12:

Alternative A – *Lands with wilderness characteristics are not specifically managed. Portions of the area identified as the Little Red Creek Complex are contained within the Whiskey Mountain ACEC and managed in accordance with ACEC prescriptions (Map 12).*

Alternative B – *The following areas will be managed as non-WSA lands with wilderness characteristics: Little Red Creek Complex including Red Creek, Torrey Rim, and Glacier Trail (5,490 acres) (Map 13).*

Alternative C – Do not separately manage areas as non-WSA lands with wilderness characteristics.

Alternative D – The following areas will be managed as non-WSA lands with wilderness characteristics: Little Red Creek Complex including Red Creek and portions of Torrey Rim (4,954 acres) (Map 14).

Page 72, Table 2.12:

Alternative A and C – Travel management actions for the Whiskey Mountain ACEC portion of the Little Red Creek Complex are in the Special Designation Section. Limit motorized travel in the non-ACEC portion of the Little Red Creek Complex to existing roads and trails.

Alternative B – Close the Little Red Creek Complex to motorized and mechanized travel.

Alternative D – Close the Little Red Creek Complex to motorized travel and limit mechanized travel to designated routes. Closures will be located at strategic locations on BLM-administered lands; motorized travel will be allowed on some roads up to the identified closure points.

Page 72, Table 2.12:

Alternatives A and C – No similar action

Alternative B and D – Manage recreational use in the Little Red Creek Complex to maintain wilderness characteristics

COMMENT: We acknowledge that BLM has the responsibility to maintain an inventory of lands with wilderness characteristics (LWCs), and must inventory and study its roadless areas for wilderness characteristics under FLPMA. However, it is improper for LWCs to receive the same protection as a Wilderness Study Area (WSA). Consequently, BLM should not be imposing special management for LWCs that are located outside of designated WSAs, because the agency does not have the authority to provide non-WSA LWCs special protection at the expense of other valuable resources.

Additionally, the 2011 Continuing Resolution passed by Congress April 14, 2011 (*Department of Defense and Full-Year Continuing Appropriations Act of 2011*) specifically prohibits the use of federal funds to implement DOI Secretarial Order 3310 (the “Wild Lands” policy) during this fiscal year. Consequently, BLM staff may not take action to re-inventory public lands with potential wilderness characteristics, protect multiple use LWCs as “wild lands,” or otherwise implement the “wild lands” policy into RMPs. While this Congressional mandate will expire at the end of the fiscal year, it is currently in effect. In a memo to BLM Director Bob Abbey dated June 1, 2011, Secretary Salazar confirmed that, pursuant to the 2011 Continuing Resolution BLM will not designate any lands as “wild lands,” (i.e. LWCs outside of Wilderness Areas and WSA’s) and outlined how DOI will work in collaboration with members of Congress, states, tribes and local communities to identify public lands that may be appropriate candidates for congressional protection under the *Wilderness Act*. Secretary Salazar stated “I am confirming

today that, pursuant to the *2011 Continuing Resolution*, the BLM will not designate any lands as wild lands.”

While BLM may work with Congress to identify public lands for permanent protection under the *Wilderness Act*, the authority to designate Wilderness Areas and protect LWCs under the *Wilderness Act* remains exclusively with Congress. As such, BLMs designation and special management of non-WSA LWCs in the Lander Draft RMP/EIS (i.e. the Little Red Creek Complex) as identified in Record #'s 1048-1051 in Table 2.12, is in direct conflict with a Congressional mandate and DOI policy, and is well beyond the reach of BLM authority. For these same reasons, BLMs express goal to “*maintain wilderness characteristics in areas managed as non-WSA lands with wilderness characteristics*” is an unacceptable attempt to circumvent the Congressional process established under the *Wilderness Act* and should be removed from the RMP.

Furthermore, at the direction of Secretary Salazar, BLM asked state and local officials across the West to recommend areas that deserve wilderness protection earlier this year. Wyoming’s Congressional delegation, along with 14 other U.S. Representatives, Wyoming Governor Mead, the Wyoming County Commissioners Association, and all 23 Wyoming County Commissioners opposed the designation of any additional Wilderness Areas in Wyoming as well as administratively created “de facto” Wilderness Areas. Consequently, Wyoming BLM did not identify or recommend any new areas in Wyoming for Wilderness protection to DOI. As a result, DOI’s “*Preliminary Report on BLM Lands Deserving Protection as National Conservation Areas, Wilderness or Other Conservation Designations (November, 2011)*,” did not identify any new areas in Wyoming.

For the foregoing reasons, the designation and special management of non-WSA LWCs in the Lander Draft RMP/EIS (i.e. the Little Red Creek Complex) is unacceptable, unauthorized, and must be removed from the RMP.

SAGE GROUSE CORE AREAS AND STIPULATIONS

Sage Grouse xxxix: *The BLM recognizes the Wyoming Governor’s designation of the Sage-grouse Core Area and will cooperate with the State of Wyoming to manage these areas for healthy sage-grouse populations.*

Page xli: *Under Alternative D, the Wyoming Governor’s Greater Sage-grouse Core Area strategy is incorporated into management actions.*

COMMENT: We support BLMs recognition and adoption of the Sage-grouse Core Areas in the Lander Draft RMP, as well as BLMs commitment to cooperate with the State of Wyoming in Core Area management. Consistent and cooperative management of Core Areas between state and federal agencies will improve efficiency, effectiveness and predictability of such management. Additionally, consistent management across the state is a practical approach that will illustrate Wyoming’s dedication to protecting Sage-grouse and help achieve the ultimate goal of preventing the Sage-grouse from being listed as threatened or endangered under the ESA.

COMMENT: Sage-grouse management policies and stipulations contained within Wyoming RMPs must be consistent with EO 2011-5. In accordance with BLM IM No. 2012-043 (*Greater Sage-Grouse Interim Management Policies and Procedures*), BLM's Wyoming Sage-grouse policy has expressly adopted EO 2011-5 to replace BLM IM No. 2012-043 in Wyoming for interim Sage-grouse management as it has been developed for the conservation of Sage-grouse in coordination and concurrence with the USFWS. Consequently, EO 2011-5 provides definitive Sage-grouse management policies and procedures in Wyoming while BLM develops applicable land use plans. Adoption of EO 2011-5 for interim management by BLM, as well as USFWS concurrence with EO 2011-5, are clear indications that the policies and procedures contained within EO 2011-5 are adequate and effective. It also illustrates that BLM supports EO 2011-5 and is agrees with the policies and stipulations it establishes.

The recently released *BLM National Greater Sage-grouse Land Use Planning Strategy* (BLM IM No. 2012-044) does not conflict with, nor prohibit the BLM from adopting Sage-grouse management policies and procedures consistent with EO 2011-5 in the Lander RMP or other RMPs across Wyoming. Additionally, the conservation measures provided in Attachment 1 (*Goals and Objectives, National Technical Team*) of BLM IM No. 2012-044 must not replace the conservation measures provided for by EO 2011-5. BLM IM No. 2012-044 directs that all BLM State and Field Offices that contain Greater Sage-grouse habitat must only **consider and analyze** the conservations measures developed by the Sage-grouse National Technical Team (NTT), as appropriate, through the land use planning process (i.e. incorporate into one or more alternatives for analysis). It also allows for adjustments to be made to conservation measures in order to address local ecological site variability, implementation of any of the measures must be consistent with applicable statutes and regulations, and individual plans may develop goals and objectives that differ and are specific to individual planning areas (BLM IM No. 2012-044, pg. 1). BLM IM No. 2012-044 merely establishes a policy and process for the consideration of Sage-grouse conservation measures in one or more alternatives during the land use planning process. It does not recommend preferred conservation measures or require their adoption. For example, BLM could consider the conservation measures provided in BLM IM No. 2012-044 in Alternative B (most resource restrictive alternative), and include conservation measures consistent with EO 2011-5 in Alternative D (preferred alternative). As such, the adoption of conservation measures and policies provided by EO 2011-5 would be consistent with the process and strategy in IM No. 2012-044.

Finally, the conservation measures identified by the NTT in Attachment 1 of BLM IM No. 2012-044 exceed those provided in EO 2011-5, and are therefore more restrictive than necessary to effectively protect Sage-grouse. For example, the NTT suggests BLM “*exclude energy development and other large scale disturbances from priority habitats, and where valid existing rights exist, minimize those impacts by keeping disturbances to 1 per section with direct surface disturbance impacts held to 3% of the area or less.*” On the other hand, EO 2011-5 establishes a **5% disturbance cap** for **suitable Sage-grouse habitat** (unsuitable habitat is not included in the disturbance calculation). By adopting EO 2011-5, the State of Wyoming, Wyoming Sage Grouse Implementation Team (SGIT), Wyoming Game and Fish Department (WGFD), USFWS, and BLM have all previously determined that the conservation measures in EO 2011-5 adequately and successfully protect Sage-grouse. While BLM may consider the overly and needlessly restrictive conservation measures outlined by the NTT during the planning process as directed by the IM, they should not be included in the agencies preferred

alternative or adopted in the RMP. Adoption of these conservation measures would be unnecessary and unjustified.

To achieve consistency with interim Sage-grouse management on federal lands in Wyoming (i.e. EO 2011-5), as well as Sage-grouse management on state and fee lands throughout Wyoming, we strongly recommend BLM adopt Sage-grouse management policies and conservation measures in the Lander RMP that are consistent with EO 2011-5 to the maximum extent possible considering other existing laws and requirements (valid existing rights, etc.). Such a management strategy is consistent with BLM IM No. 2012-044 and is in the best interest of Sage-grouse and all parties involved.

COMMENT: While BLM asserts that the Core Area strategy is incorporated into management actions under Alternative D, a comparison of Sage-grouse stipulations under Alternative D to Sage-grouse stipulations under EO 2011-5 (Core Area strategy) indicates there are several discrepancies between Alternative D and EO 2011-5. While BLM is not bound by EO 2011-5 and has its own federal policies to comply with (e.g. State and National Sage-grouse IM's), for the reasons described above, we urge BLM to manage Sage-grouse as consistently as possible with EO 2011-5. Consistent Sage-grouse management between the State and BLM will improve efficiency, effectiveness and certainty of such management. Additionally, development consistent with the stipulations set forth in EO 2011-5 has been deemed sufficient to demonstrate that the activity will not cause declines in Sage-grouse populations (EO 2011-5, page. 3, #4). It should also be noted that BLM's representative on the *Wyoming Sage Grouse Implementation Team* (appointed by Wyoming Governor Freudenthal to develop Wyoming's Sage-grouse management strategy – EO 2011-5), stated publicly that BLM is committed to complying with EO 2011-5 to the greatest extent possible. As such, we recommend that BLM review and modify Sage-grouse stipulations provided for under Alternative D to improve consistency with EO 2011-5. The stipulation-by-stipulation analysis below highlights discrepancies that need to be addressed.

Sage-grouse Core Area Stipulations (Lander Draft RMP v. EO 2011-5)

Page 106, Table 2.6: *Alternative D: Prohibit surface-disturbing or surface occupancy on or within a 0.6-mile radius of the perimeter of occupied or undetermined greater sage-grouse leks in Core Area (Map 65).*

Page 106, Table 2.6: *Alternative D: Prohibit disruptive activities between 6 p.m. and 8 a.m. from March 1 to May 15 on or within 0.6-mile radius of the perimeter of occupied or undetermined greater sage-grouse leks in Core Area (Map 65).*

EO 2011-5, Page 9, #2: *Within 0.6 miles of the perimeter of occupied sage-grouse leks (within Core Areas) there will be no surface occupancy (NSO). NSO means no surface facilities including roads shall be placed within the NSO area. Other activities may be authorized with the application of appropriate seasonal stipulations, provided the resources protected by the NSO are not adversely affected.*

COMMENT: The 0.6-mile radius stipulation is generally consistent except where BLM has extended the 0.6-mile NSO to “undetermined” leks in addition to “occupied” leks. BLM has failed to provide scientific justification for extending this major constraint on land use to

“undetermined” leks. Under EO 2011-5, protecting leks determined to be “occupied” has been widely accepted as adequate and protection of “undetermined” leks is not necessary to protect Sage-grouse populations. We recommend that BLM remove “undetermined” leks from this stipulation to achieve consistency with EO 2011-5 and eliminate the overly broad and unnecessary application of a stipulation that may significantly limit potential surface uses in these areas.

Additionally, the 0.6-mile stipulation under Alternative D prohibits “surface-disturbing” activities in addition to “surface occupancy.” Since it is possible to have surface disturbing activities without actually occupying the surface (e.g. buried pipelines, buried power lines), this is a notable discrepancy between the Draft RMP and EO 2011-5 in that it will significantly restrict potential surface uses in these areas. EO 2011-5 prohibits *surface occupancy*, but does not prohibit *surface disturbing activities*. Rather, EO 2011-5 allows for authorization of “other activities” if protected resources are not adversely affected. Consequently, EO 2011-5 provides much greater flexibility in the application of this stipulation and potential land use. We recommend that BLM remove “surface-disturbing” activities from this stipulation to achieve consistency with EO 2011-5 and increase flexibility in the application of this stipulation and potential land use in these areas.

Alternative D establishes an entirely new Sage-grouse stipulation that is not included in EO 2011-5. Record #4096 prohibits “*disruptive activities between 6 p.m. and 8 a.m. from March 1 to May 15 on or within 0.6-mile radius of the perimeter of occupied or undetermined greater sage-grouse leks in Core Area (Map 65).*” Alternative D already prohibits “*surface-disturbing or surface occupancy on or within a 0.6-mile radius of the perimeter of occupied or undetermined greater sage-grouse leks in Core Area.*” This night-time stipulation is unjustified and unwarranted and must be eliminated from Record #4096 in its entirety.

Page 106, Table 2.6, “*Prohibit surface-disturbing and/or disruptive activities from March 1 to July 15 in suitable greater sage-grouse **nesting/early brood-rearing habitat** in Core Area (Map 65).*”

EO 2011-5, Page 9, #3, “*Activity will be allowed from July 1 to March 14 (i.e. not be allowed from March 15 to June 30) outside of the 0.6 mile perimeter of a lek in Core Population Areas where **breeding, nesting and early brood-rearing habitat** is present. Activities in unsuitable habitat may also be approved year-round (including March 15 to June 30) on a case-by-case basis.*”

COMMENT: Under Alternative D, the prohibition on surface disturbing/disruptive activities in nesting/early brood-rearing habitat is 30-days longer than that under EO 2011-5 (it starts 15 days sooner and ends 15 days later). While there may be some discrepancy in nesting/brood-rearing seasons due to elevation, geography, etc., the overall length of the season will be consistent regardless of location. For example, Sage-grouse in lower elevations tend to start mating approximately two weeks earlier than Sage-grouse at higher elevations; but, the overall length of the mating season remains the same. EO 2011-5 states that “adjustments to the stipulations may be necessary based upon local conditions and limitations.” We are not opposed to starting or ending this TLS on different dates than EO 2011-5 to account for geographic differences in Sage-grouse behavior. However, we oppose implementing a TLS for nesting/early-brood rearing habitat that is an entire month longer than deemed adequate

under EO 2011-5. This discrepancy is not biologically justified. If the *Wyoming Sage Grouse Implementation Team* (SGIT) has determined that a 3 ½ month TLS for nesting/early-brood rearing is adequate throughout Wyoming, it is also be adequate in the Lander RMP Area. We recommend that BLM revise this Sage-grouse TLS so that the overall duration is consistent with EO 2011-5, 3 ½ months rather than 4 ½ months.

Density of Surface Disturbance in Sage-grouse Core Area (Lander Draft RMP v. EO 2011-5)

Page 107, Table 2.6. *“In greater sage-grouse Core Area, limit the density of disturbances to an average of one disturbance location per 640 acres. The one location and cumulative value of existing disturbances will not exceed 5 percent of the sagebrush habitat within those same 640 acres.”*

Manage Core Area as subunits to facilitate project co-location and reduce habitat fragmentation. Concentrated energy production locations and/or transmission structures may exceed 1 per 640 acres in a localized area provided the cumulative un-reclaimed disturbance average does not exceed 5 percent of the sagebrush habitat within the subunit.

EO 2011-5, Page 8-9, #2. *“Surface disturbance will be limited to 5% of suitable sage-grouse habitat per an average of 640 acres. The DDCT process will be used to determine the level of disturbance. Distribution of disturbance may be considered and approved on a case-by-case basis. Unsuitable habitat should be identified in a seasonal and landscape context, on a case-by-case basis, outside the 0.6 mile buffer around leks. Acres of development in unsuitable habitat are not considered disturbance acres.”*

COMMENT: The major discrepancy between these stipulations is the difference between “sagebrush habitat” (Alternative D) and “suitable sage-grouse habitat” (EO 2011-5). EO 2011-5 establishes a process for application of the density of disturbance stipulation (i.e. 5% surface disturbance per 640 acres) in that it is applied only to suitable sage-grouse habitat and acres of development; it is inappropriate to consider “unsuitable habitat” as part of disturbance acres. On the other hand, Alternative D appears to apply the density of disturbance stipulation (i.e. 5% surface disturbance per 640 acres) to all “sagebrush habitat” within those 640 acres. As currently written, Alternative D would potentially include both suitable and unsuitable Sage-grouse habitat in the 5% disturbance calculation. This application is scientifically flawed because it will potentially result in the protection of sagebrush habitat that is unsuitable Sage-grouse habitat – not all sagebrush habitats are suitable Sage-grouse habitat. As a result, well locations will be unnecessarily restricted by the protection of unsuitable Sage-grouse habitat which will not provide additional benefits to Sage-grouse populations. We recommend that BLM modify this density of disturbance stipulation to be consistent with EO 2011-5 (i.e. change “sagebrush habitat” to “suitable Sage-grouse habitat”). This will ensure that only sagebrush habitat determined to be suitable Sage-grouse habitat will be considered in the density of disturbance calculation.

Sage-grouse Non-Core Area Stipulations (Lander Draft RMP v. EO 2011-5)

Page 106, Table 2.6. *“Prohibit surface-disturbing or surface occupancy on or within ¼-mile radius of the perimeter of occupied or undetermined greater sage-grouse leks outside Core Area (Map 65).”*

Page 106, Table 2.6. “Prohibit surface-disturbing and/or disruptive activities from March 1 to July 15 within 2 miles of **occupied or undetermined leks** or in important **connectivity habitat** outside Core Area (Map 65).”

Page 106, Table 2.6. “Prohibit disruptive activities between 6 p.m. and 8 a.m. from March 1 to May 15 on or within ¼-mile radius of the perimeter of **occupied or undetermined greater sage-grouse leks** outside Core Area (Map 65).”

Page 3, EO 2011-5, #7. For activities outside of Core Population Areas, no more than a one-quarter (1/4) mile **no surface occupancy** standard and a two (2) mile seasonal buffer should be applied to **occupied leks**. Incentives to enable development of all types outside Core Population Areas should be established (these should include stipulation waivers, enhanced permitting processes, density bonuses, and other incentives). It is recognized that some incentives may result in reduced numbers of Sage-grouse outside of Core Population Areas.

COMMENT: EO 2011-5 establishes a *maximum NSO standard* (1/4 mile) and seasonal buffer (2-miles) for **occupied leks** that may be applied outside of Core Areas. It does not mandate the application of any such stipulations outside of Core Areas. Similar to the Core Area stipulations discussed above, EO 2011-5 does not provide for non-Core Area stipulations that extend to “undetermined leks” (only “occupied leks”) or that prohibit “surface-disturbing and/or disruptive activities” (only “no surface occupancy”). EO 2011-5 does not establish a night time stipulation for leks within Core Areas, let alone for leks located outside of Core Area boundaries (see Record #4096 under Alternative D). Finally, EO 2011-5 provides that “incentives to enable development outside Core Areas should be established,” illustrating that development outside of Core Areas should be promoted to the greatest extent possible. Consequently, the non-Core Area stipulations under Alternative D (Record #'s 4094, 4095, and 4096) are much more restrictive than non-Core Area stipulations allowed under EO 2011-5. The non-Core Area stipulations provided for in EO 2011-5 have been deemed adequate to protect Sage-grouse by the SGIT and it is the State’s policy to promote development outside of Core Area boundaries. Consequently, the broad expansion of these stipulations would significantly restrict development outside of Core Areas under Alternative D which is unnecessary and unwarranted.

As such, we recommend that BLM modify the non-Core Area stipulations under Alternative D to be consistent with EO 2011-5: eliminate “surface disturbing” and “undetermined leks” from Record #4094; eliminate “undetermined leks” from Record #4095; and eliminate Record #4096 in its entirety.

Connectivity Habitat (Lander Draft RMP v. EO 2011-5)

Page 106, Table 2.6. “Prohibit surface-disturbing and/or disruptive activities from March 1 to July 15 within 2 miles of **occupied or undetermined leks** or in important **connectivity habitat** outside Core Area (Map 65).”

EO 2011-5, Page’s 13, #3b. For protection of **connectivity corridors** (Figure 1), a controlled surface use (CSU) buffer of 0.6 miles around leks or their documented perimeters is required. In addition, a March 15 to June 30 timing limitation stipulation is required within nesting habitat within 4 miles of leks.

COMMENT: The timing limitation stipulation for connectivity habitat under Alternative D (Record #4095) is 30-days longer than that under EO 2011-5. For reasons discussed above, it is necessary for BLM to modify this stipulation so that the overall duration of the timing limitation is consistent with EO 2011-5 (i.e. 3 ½ months rather than 4 ½ months).

Winter Concentration Areas (Lander Draft RMP v. EO 2011-5)

Page 103, Table 2.6. *“Prohibit surface-disturbing and disruptive activities in greater sage-grouse winter concentration areas, as they are identified, from November 15 to March 1”.*

EO 2011-5, Page 9, #3. *“In areas used solely as winter concentration areas, exploration and development activity will be allowed March 14 to December 1 (i.e. will not be allowed December 2 to March 13).”*

COMMENT: We are not opposed to shifting the TLS for winter concentration areas forward two weeks to account for geographic differences in Sage-grouse behavior and biological requirements, provided that the overall duration of the TLS is consistent with EO 2011-5. The 3 ½ month winter concentration TLS provided for under Alternative D is consistent with EO 2011-5. If the SGIT has determined that a 3 ½ month TLS for winter areas is adequate throughout Wyoming, then it is also appropriate for the Lander RMP Area. Consequently, we are not opposed to this justifiable discrepancy.

Noise Level (Lander Draft RMP v. EO 2011-5)

Page 108, Table 2.6, *“Limit noise sources to 10 dBA above natural ambient noise (approximately 39 dBA) measured at the perimeter of occupied greater sage-grouse leks.”*

EO 2011-5, Page 9, #6. *“New noise levels, at the perimeter of a lek, should not exceed 10 dBA above ambient noise (existing activity included) from 6:00 p.m. to 8:00 a.m. during the initiation of breeding (March 1 – May 15). Ambient noise levels should be determined by measurements taken at the perimeter of a lek at sunrise.”*

COMMENT: EO 2011-5 limits application of the Sage-grouse noise level stipulation with time of day (6:00pm to 8:00am) and seasonal restrictions (March 1 – May 15). Alternative D does not contain either of these restrictions. Consequently, the noise level stipulation under Alternative D is applied more broadly and is more restrictive than that under EO 2011-5. For reasons discussed above, we recommend that BLM modify the noise level stipulation under Alternative D to obtain consistency with EO 2011-5: include time of day and seasonal restrictions on the application of the stipulation.

ACRES OPEN TO OIL AND GAS LEASING WITH MAJOR/MODERATE CONSTRAINTS; ACRES ADMINISTRATIVELY UNAVAILABLE TO OIL AND GAS LEASING

Page 75, Table 2.6:

	Alternative A	Alternative D
Acres federal mineral estate closed to oil and gas leasing (Record #2012).	25,136	110,014
Acres federal mineral estate open to oil and gas leasing subject to major constraints (Record #2011).	337,481	1,182,711
Acres federal mineral estate open to oil and gas leasing subject to moderate constraints (Record #2010).	1,715,341	1,470,338
Acres federal mineral estate open to oil and gas Leasing subject only to standard lease stipulations (Record #2009).	731,144	46,039

Page 40, Part 2.6.1.3, *“Moderate Constraints apply less restriction on development [than major constraints] and usually limit the time of construction and operation activities or require specific mitigation or lease stipulations”.*

Page 40, Part 2.6.1.3, *“Major Constraints include more stringent restrictions on oil and gas development such as NSO restrictions or overlapping timing limitation stipulation (TLS) restrictions, and usually occur in areas with more sensitive resource values.”*

COMMENT: Wyoming BLM needs to settle upon a consistent definition of what constitutes moderate and major constraints. As noted below, the definitions contained in the Big Horn Basin Draft RMP/EIS differ from those provided in the Lander Draft RMP/EIS.

Big Horn Basin Draft RMP/EIS, Page 4-48, *“Moderate Constraints – Any stipulations or COA which may restrict the timing or placement of oil and gas development, but would not otherwise restrict the overall development; include all TLS, CSUs, areas where surface-disturbing activity is avoided, and VRM Class II areas.”*

Big Horn Basin Draft RMP/EIS, Page 4-48, *“Major Constraints – Any stipulations or COA which may restrict the timing or placement of oil and gas developments and may result in an operator dropping the development proposal; Include NSOs, areas of overlapping TLS that last more than 6 months, areas closed to surface-disturbing activity, areas where surface-disturbing activity is prohibited, and VRM Class I areas. Leaseholders have the right to explore, develop, and produce mineral resources from any valid, existing lease, even if the area containing the lease was proposed to be closed to future leasing.”*

In the interest of consistency throughout the State of Wyoming, it is crucial for BLM to adopt a uniform set of definitions for use in all RMPs in order to avoid confusion for those parties who must comply with BLM's land use decisions.

Page 127, Table 2.26, Record #6009. “*Under current management (Alternative A) 23,114 acres are identified by BLM for withdrawal, while BLM proposes to pursue withdrawals on 42,855 acres under Alternative D.*”

COMMENT: There are 84,878 more acres ***closed to oil and gas leasing***, and 19,741 more acres ***proposed for withdrawal*** under Alternative D than Alternative A (i.e. under current management). BLM states that 36,928 acres proposed for withdrawal are for habitat protection (Page 624, Table 4.14) but provides no discussion or justification for the proposed increase. On the other hand, BLM clearly points out that nearly 100% of the additional acres closed to oil and gas leasing under Alternative D are closed to protect special status species and bighorn sheep related tourism (Page 54, Part 2.6.4.5) in the Dubois area (Map 3).

We are not opposed to providing additional protection to wildlife and wildlife habitat when it is scientifically justified to ensure the success of the species. However, increasing acreage *withdrawn* and/or *closed to oil and gas leasing* will decrease management flexibility in the Plan Area and significantly limit opportunities to utilize other valuable resources in the area. As such, we recommend that BLM re-evaluate the number of acres *withdrawn* and *closed to oil and gas leasing* and consider opening these areas to potential leasing subject to the standard lease form and moderate/major constraints. There are numerous circumstances in which oil and gas development may be allowed subject to moderate or major constraints (e.g. wildlife stipulations, COA), while at the same time adequately protecting other land use values in the area (e.g. big game). Additionally, keeping acres open to oil and gas leasing and utilizing moderate/major constraints on oil and gas leasing to manage resources within those acres provides the BLM with greater management flexibility. In this regard, it is in everyone's best interest to limit the number of acres withdrawn or closed to oil and gas leasing. With this in mind, we recommend BLM take a hard look at acres proposed for withdrawal and closed to oil and gas leasing and only close areas truly needed to protect other land use values. In many circumstances, the use of lease stipulations will provide adequate resource protection, making withdrawal or closure unnecessary. Finally, as raised earlier in these comments, in order to withdraw areas greater than 5,000 acres from mineral leasing, BLM must meet the requirements of Section 204 of FLPMA.

The number of acres open to oil and gas leasing subject to ***major constraints*** increases dramatically, 845,230 acres, under Alternative D, , while the number of acres subject only to ***standard lease stipulations*** and ***moderate constraints*** decreases significantly under Alternative D, 685,105 and 245,003 acres respectively, for a total of 930,108 acres. It is clear that in addition to increasing the number of acres closed to oil and gas leasing, remaining acres open to oil and gas leasing are being subjected to severe increases in restrictions in the form of major constraints. Under Alternative D there is a shift of almost 1 million acres from standard lease stipulations and moderate constraints to major constraints. By definition, placing major constraints on these additional acres will significantly limit oil and gas development within the Planning Area. While we concur with BLM's management approach to utilize standard lease stipulations and moderate/major constraints rather than administratively closing areas to oil

and gas leasing up front, this huge increase in the use of major constraints is unjustified and unwarranted. There are numerous circumstances in which oil and gas development may be allowed subject to standard lease stipulations and/or moderate constraints (e.g. wildlife stipulations, COA), while at the same time adequately protecting other land use values in the area (e.g. big game). Additionally, keeping acres open to oil and gas leasing and utilizing standard lease stipulations and/or moderate constraints on oil and gas leasing to manage resources within those areas, rather than major constraints, provides the BLM with greater management flexibility. As such, we recommend that BLM re-evaluate the considerable increase in the use of major constraints and only use these limiting constraints when no other options are available to protect other land use values.

BIG GAME STIPULATIONS

Page 96, Table 2.6: *Under both Alternatives A and D, “Prohibit surface-disturbing activities within identified **big game crucial winter range** (Maps 50-54) from November 15 to April 30 unless an exception, waiver, or modification is granted.” [Note: Under Alternative D, wildlife seasonal protections for operations and maintenance actions determined to be detrimental to wildlife will not be applied inside DDAs].*

Page 96, Table 2.6: *Under both Alternatives A and D, “Prohibit surface-disturbing activities within identified **big game parturition areas** (Maps 50-54) from May 1 to June 30 unless an exception, waiver, or modification is granted.” [Note: Under Alternative D, wildlife seasonal protections for operations and maintenance actions determined to be detrimental to wildlife will not be applied inside DDAs].*

COMMENT: In general, we support BLM’s approach under Alternative D to keep areas designated as big game crucial winter range and parturition areas open for oil and gas exploration and development for a portion of the year, rather than withdrawing them or closing them entirely to oil and gas leasing. Utilizing a seasonal TLS is an effective way to minimize impacts to big game populations that depend on these habitats, while at the same time allowing for the development of valuable oil and gas resources located within these areas.

However, implementing a 4 ½ month TLS for crucial winter range and a 2 month TLS for parturition areas will significantly constrain oil and gas development in these large areas. Consequently, we recommend that BLM limit the expanse of these habitat areas to the area absolutely necessary for big game sustainability. We further recommend that BLM utilize WGFD *Big Game Crucial Habitat Priority Areas* (CHPA) as a guide for identification of these areas. *Big Game CHPAs* include crucial winter ranges, parturition areas, and migration routes with a ½ mile buffer for big horn sheep, elk, mule deer, pronghorn, moose, and mountain goat. Consequently, consistency with CHPAs will provide adequate protection of these important habitat areas. A comparison of big horn sheep, elk, moose, mule deer, and pronghorn big game crucial winter range and parturition habitat identified in the Draft RMP/EIS (Maps 50-54) to WGFD *Big Game CHPAs* reveals that the BLM’s crucial habitat areas are generally consistent with WGFD crucial ranges in the Lander Region. We acknowledge this consistency and commend BLM for deferring to the lead authority in wildlife management in Wyoming. A map and narrative description of WGFD *Habitat Priority Areas* in the Cody Region is available on-line at: <http://gf.state.wy.us/habitat/PriorityAreas/Cody/index.asp>.

Wildlife Seasonal Protections – Limiting Access to Existing Well Locations

Page 77, Table 2.6. *“Wildlife seasonal protections for operations and maintenance actions determined to be detrimental to wildlife will not be applied inside DDAs.”*

Page 98, Table 2.6: *Alternative D – Outside of DDAs, wildlife seasonal protections from surface-disturbing and disruptive activities apply to maintenance and operations actions when the activity is determined to be detrimental to wildlife.*

Alternative A – *Wildlife seasonal protections for surface-disturbing and disruptive activities do not limit maintenance and operation actions unless specifically identified in project analysis.*

Page 1321 (Glossary):

Disruptive Activities – *Those public land resource uses/activities that are likely to alter the behavior, displace, or cause excessive stress to existing animal or human populations occurring at a specific location and/or time. In this context, disruptive activity(ies) refers to those actions that alter behavior or cause the displacement of individuals such that reproductive success is adversely affected, or an individual’s physical ability to cope with environmental stress is compromised. This term does not apply to the physical disturbance of the land surface, vegetation, or features. Examples of disruptive activities may include noise, human foot or vehicle traffic, domestic livestock roundups, or other human presence regardless of the activity. When administered as a land use restriction (e.g., No Disruptive Activities), this term may prohibit or limit the physical presence of sound above ambient levels, light beyond background levels, and/or the nearness of people and their activities. The term is commonly used in conjunction with protecting wildlife during crucial life stages (e.g., breeding, nesting, birthing, etc.), although it could apply to any resource value on the public lands. The use of this land use restriction is not intended to prohibit all activity or authorized uses.*

COMMENT: Some maintenance and operations actions are required to maintain the continued integrity, functionality, and safety of oil and gas operations. This is true regardless of whether operations are being conducted inside or outside of DDAs. As proposed under Alternative D, BLM assumes discretionary authority to prevent access to existing well locations for maintenance and operation during certain times of the year to protect wildlife (e.g. winter, breeding, or parturition seasons). This discretionary authority must be limited. In order to conduct safe and effective oil and gas operations, it is imperative for operators to have, at a minimum, limited access to well locations year-round to perform inspections, maintenance and other obligatory operations. BLM must recognize that certain inspection and maintenance activities must be conducted regularly and cannot be delayed. We recognize that limits on some disruptive activities and access to well locations during critical seasons may be warranted, such as prohibiting drilling and construction activities (e.g. well pads, roads, pits) or limiting the number of trips allowed in the winter on big game crucial winter range when warranted. However, it could constitute an act of agency negligence that may result in major safety and environmental hazards if BLM moves ahead with its intent to completely restrict all access for the maintenance and operation of developed projects.

COMMENT: While basic maintenance and operation actions may constitute *disruptive activity* by definition (e.g. alter behavior), they are minimally disruptive and generally will not cause true

detriment to wildlife populations. However, the definition of *detriment* is open to interpretation and could be liberally construed to include very minor impacts on wildlife, such as altered behavior, that will not have a lasting or measurable effect on wildlife populations (e.g. temporary displacement or heightened alert of individual animals). Consequently, as currently written, even where a minor degree of temporary impact exists, BLM may apply seasonal wildlife protections under Alternative D and limit these basic maintenance and operation actions. Therefore, we strongly recommend that BLM modify this proposal under Alternative D to allow reasonable access to existing well locations year-round for maintenance and operation of developed projects, even in wildlife sensitive habitats; basic maintenance and operation activities necessary to maintain safe, effective, and environmentally sound operations must not be subject to wildlife seasonal restrictions, inside or outside of DDAs.

We are not opposed to limiting ***disruptive activities*** to a reasonable degree provided it can be scientifically justified as necessary to protect wildlife populations. For example, reducing the number of trips allowed in the winter on big game crucial winter range is reasonable. However, we are concerned BLM may endeavor to completely restrict all minimally disruptive activities under current definitions. Therefore, we urge BLM to modify the definition of ***disruptive activities*** to expressly exclude access to locations for the maintenance and operation of developed projects.

Special Status Species – Mountain Plover

Part 3.4.9, Pages 368-372. *“The mountain plover is identified as a “proposed threatened” species and a “BLM sensitive/special status species” in several places throughout the Draft RMP/EIS including Table 3.41 (page 368), and on pages 371 and 372.”*

Page 103, Table 2.6:

Alternative A – *To protect mountain plover habitat, including a ¼-mile buffer, prohibit surface-disturbing and disruptive activities from April 10 to July 10 unless surveys indicate the absence of breeding/nesting mountain plovers. Mineral and realty actions in these areas are managed with Category 1 restrictions (an area managed with Category 1 restrictions is open to all mineral and realty actions, such as oil and gas leasing, subject to standard stipulations – pg. 39).*

Alternative D – *Same as Alternative A*

Page 108, Table 2.6:

Alternative A – *To minimize raptor use, require anti-perching devices on new overhead powerlines and wind energy met towers in...mountain plover...habitats on a case-by-case basis.*

Alternative D – *Same as Alternative A, plus work with ROW holders to install anti-perching devices on existing overhead powerlines in these habitats.*

Page 108, Table 2.6:

Alternative A – Allow above ground low voltage utility lines or require burying lines in...mountain plover...habitats on a case-by-case basis.

Alternative D – Same as Alternative

COMMENT: After a thorough review of all available scientific and commercial information, the U.S. Fish and Wildlife Service (USFWS) determined that the mountain plover is not threatened or endangered throughout all or a significant portion of its range and does not warrant protection under the ESA. On May 11, 2011, USFWS announced their withdrawal of the proposed listing of the mountain plover as a threatened species. As such, classification of the mountain plover as a “proposed threatened” species is inaccurate and must be revised throughout the Draft RMP/EIS. Additionally, as a result of this USFWS determination, mountain plover stipulations are no longer necessary and should be removed.

The USFWS determined that the mountain plover did not merit listing because threats to the species are not as significant as earlier believed and currently available data do not indicate that the threats to the species and its habitat, as analyzed under the five listing factors described in section 4(a)(1) of the ESA, warrant listing under the ESA. The USFWS estimates the current mountain plover breeding population to be over 20,000 birds, more than double the estimate cited in the USFWS’s 2002 proposal to list the mountain plover as a threatened species. The mountain plover’s geographically widespread breeding and wintering ranges and its ability to use a variety of habitats contributes to its security. Mountain plovers have adapted to many human activities, using crop fields for breeding and wintering, and benefitting from some cattle grazing practices. The USFWS has concluded that human land use changes, alone or in combination with climate change, are not likely to result in significant population-level impacts to the mountain plover in the foreseeable future.

Based on the USFWS’s recent findings and determination regarding the mountain plover, the stipulations and protections imposed for the mountain plover under Record #'s 4073, 4102 and 4103 are no longer warranted or scientifically justified. As a result, special management and protection of the mountain plover is not justified. Therefore, we strongly encourage the elimination of special management and protection for the mountain plover as currently proposed under all Alternatives.

COMMENT: Identification of the mountain plover as a “BLM sensitive/special status species” is no longer warranted in light of USFWS’s recent findings and determination. By definition, the “sensitive species” designation includes species that could easily become endangered or extinct in the state (BLM Manual 6840). Criteria for designating sensitive species include species: under status review, numbers are declining so rapidly that Federal listing may be necessary, populations are small or widely dispersed, or that inhabit ecological refugia or other specialized or unique habitats (BLM Manual 6840). The mountain plover does not meet any of these criteria. As such, it is essential for BLM to remove the mountain plover from the sensitive species list and eliminate protections afforded to the mountain plover in the Draft RMP/EIS based on its status as a sensitive species.

Special Status Species – Pygmy Rabbit

Part 3.4.9, Pages 368-372. *“The pygmy rabbit is identified as a “BLM sensitive/special status species” in several places throughout the Draft RMP/EIS including Table 3.41 (page 368) and on page 372.”*

Page 108, Table 2.6:

Alternative A – *On a case-by-case basis, avoid surface-disturbing activities in occupied pygmy rabbit habitats.*

Alternative D – *Prohibit surface-disturbing activities within 200 feet of occupied pygmy rabbit habitat.*

Page 108, Table 2.6.:

Alternative A – *To minimize raptor use, require anti-perching devices on new overhead powerlines and wind energy met towers in...pygmy rabbit habitats on a case-by-case basis.*

Alternative D – *Same as Alternative A, plus work with ROW holders to install anti-perching devices on existing overhead powerlines in these habitats.*

Page 108, Table 2.6:

Alternative A – *Allow above ground low voltage utility lines or require burying lines in...pygmy rabbit habitats on a case-by-case basis.*

Alternative D – *Same as Alternative A*

COMMENT: Upon completing a status review (12-month finding) of the pygmy rabbit in September, 2010, the USFWS concluded it does not warrant protection under the ESA in California, Nevada, Oregon, Idaho, Utah, Wyoming, and Montana. In reaching this conclusion the USFWS found that “based on a review of the best scientific and commercial information available, there has been some loss and degradation of pygmy rabbit habitat range wide, but not to the magnitude that constitutes a significant threat to the species. The comparison of available historical and current data indicates that pygmy rabbits seem to occur in a similar distribution pattern, and they have been documented as occurring in new locations. The USFWS further concluded that “*the information does not indicate pygmy rabbits are significantly impacted by sagebrush loss or modification from various actions, hunting, research activities, predation, disease, or inadequacies of existing regulatory mechanisms across its range. Additionally, the available information does not indicate other potential threats such as inter- and intra-specific competition, stochastic events, mortality caused by collisions with vehicles, recreational activities, and habitat modifications due to climate change significantly impact the species.*”

Based on the USFWS’s 12-month finding regarding the pygmy rabbit, the stipulations and protections imposed for the pygmy rabbit under Record #'s 4102, 4103 and 4104 are not warranted or scientifically justified because the USFWS concluded that the pygmy rabbit: is not

threatened or endangered. Consequently, special management and protection of the pygmy rabbit is not justified and special management and protection for the pygmy rabbit as currently proposed under all Alternatives must be eliminated.

COMMENT: Identification of the pygmy rabbit as a “BLM sensitive/special status species” is not warranted in light of USFWS’s 12-month finding. By definition, the “sensitive species” designation includes species that could easily become endangered or extinct in the state (BLM Manual 6840). The pygmy rabbit does not meet any of these criteria. As such, it is essential for BLM to remove the pygmy rabbit from the sensitive species list and eliminate protections afforded to the pygmy rabbit in the Draft RMP/EIS based on its status as a sensitive species.

A copy of the 12-month finding and other information about the pygmy rabbit is available on the Internet at <http://www.fws.gov/nevada> or at <http://www.regulations.gov>.

Special Status Species – White-Tailed Prairie Dog

Part 3.4.9, Pages 368-372, *“The white-tailed prairie dog is identified as a “BLM sensitive/special status species” in several places throughout the Draft RMP/EIS including Table 3.41 (page 368) and on page 372.”*

Page 103, Table 2.6, *“Require black-footed ferret surveys before authorizing surface-disturbing activities in prairie dog towns suitable as potential habitat for black-footed ferrets, unless cleared by the USFWS.”*

Page 109, Table 2.6:

Alternative A – Avoid surface-disturbing activities in occupied white-tailed prairie dog colonies where possible.

Alternative D – Same as Alternative A

Page 108, Table 2.6:

Alternative A – To minimize raptor use, require anti-perching devices on new overhead powerlines and wind energy met towers in...prairie dog...habitats on a case-by-case basis.

Alternative D – Same as Alternative A, plus work with ROW holders to install anti-perching devices on existing overhead powerlines in these habitats.

Page 108, Table 2.6:

Alternative A – Allow above ground low voltage utility lines or require burying lines in...prairie dog...habitats on a case-by-case basis.

Alternative D – Same as Alternative A

Page 338, Table 3.34: *“The prairie dog is identified as a “designated pest” on the Wyoming Weed and Pest Control Act Designated List.”*

COMMENT: Upon completing a status review (12-month finding) of the white-tailed prairie dog (WTPD) in May, 2010, the USFWS concluded it does not warrant protection under the ESA. As part of the review, the USFWS assessed potential impacts to the WTPD including oil and gas exploration and development, development of oil and other minerals, agricultural land conversion, and grazing. The USFWS concluded that “although these impacts have affected some populations of WTPDs, none have reduced the populations throughout all or a significant portion of the species’ range indicating that protection under the ESA is warranted. While WTPD populations are likely below historic levels, their overall distribution has not substantially changed. Large acreages of occupied habitat exist across the species’ range, particularly in Wyoming.” The USFWS also expressly stated that while oil and gas activities have the greatest potential to impact the WTPD due to its widespread distribution and extent of development, large populations of WTPDs persist in many of these areas and it does not expect oil shale, tar sands, coal and other mineral extraction activities to impact a large portion of the species’ range.

Based on the USFWS’s 12-month finding regarding the WTPD, the stipulations and protections imposed for the WTPD under Record #'s 4102, 4103 and 4105 are overbroad and are not warranted or scientifically justified. The USFWS concluded that the WTPD is not threatened or endangered; overall distribution has not substantially changed; large acreages of WTPD habitat exists across the species’ range in Wyoming; and potential impacts, including oil and gas development, have not reduced populations throughout a significant portion of its range. Therefore, the elimination of special management and protection for the WTPD as currently proposed under all Alternatives, *except* when WTPD protection is specifically associated with the protection of black-footed ferret habitat (e.g. Record #4068) must be eliminated. The black-footed ferret is currently listed as endangered under the ESA and prairie dog towns (black and white-tailed prairie dogs) are critical to the establishment of black-footed ferret populations. Consequently, we recognize the need to protect prairie dog towns suitable as potential habitat for black-footed ferrets. However, not all prairie dog towns are suitable as potential habitat for black-footed ferrets. We recommend that BLM limit the application of prairie dog stipulations (Record #'s 4102, 4103, and 4105) to prairie dog habitats that are suitable as potential habitat for black-footed ferrets. Broader application of prairie dog stipulations is not warranted or justified.

COMMENT: Identification of the WTPD as a “BLM sensitive/special status species” is not warranted in light of USFWS’s 12-month finding. By definition, the “sensitive species” designation includes species that could easily become endangered or extinct in the state (BLM Manual 6840). The WTPD does not meet any of these criteria. As such, it is essential for BLM to remove the WTPD from the sensitive species list and eliminate protections afforded to the WTPD in the Draft RMP/EIS based on its status as a sensitive species, *except* when protection is specifically associated with the protection of potential habitat for black-footed ferrets.

A copy of the 12-month finding and other information about the WTPD is available on the Internet at <http://www.fws.gov/mountain-prairie/species/mammals/wtprairiedog/75FR30338.pdf> or at <http://www.fws.gov/mountain-prairie/species/mammals/wtprairiedog/>.

RECLAMATION OBJECTIVES AND STANDARDS

Page 66, Table 2.9, Record #1022:

Alternative A – *Conform reclamation to specific requirements developed and included as mitigating measures during the authorization process specific to area potential and site-specific objectives.*

Alternative B – *Focus reclamation practices on restoring surface-disturbing activities to an ecological condition equal to or better than pre-disturbance composition and production levels.*

Alternative C – *Focus reclamation on stabilizing soils and establishing ground cover sufficient to reduce and/or prevent accelerated soil erosion and noxious weed infestation.*

Alternative D – *Utilize the reclamation objectives identified in Appendix D (p. 1391) on a site-specific basis.*

Appendix D – Reclamation Objectives and Standards (Tables on Pages 1391-1392):

Interim Reclamation Standards for DDAs – *Reclamation will be considered successful 3 years after seeding if the following criteria are met: Percent Ground Cover – 80 percent of the Erosion indicator as listed on NRCS Reference Sheet for Ecological Site is met.*

Interim Reclamation Standards for non-DDAs – *Reclamation will be considered successful 5 years after seeding if the following criteria are met: Percent Ground Cover – At least 90 percent of the Erosion indicator as listed on NRCS Reference Sheet for Ecological Site is met.*

Final Reclamation Standards for DDAs – *Reclamation will be considered successful after receipt of project abandonment if the following criteria are met: Percent Ground Cover – 90 percent of the Erosion indicator as listed on NRCS Reference Sheet for Ecological Site is met.*

Final Reclamation Standards for non-DDAs – *Reclamation will be considered successful after receipt of project abandonment if the following criteria are met: Percent Ground Cover – 100 percent of the Erosion indicator as listed on NRCS Reference Sheet for Ecological Site is met.*

COMMENT: We are opposed to the overall approach and establishment of reclamation objectives and standards provided for under Alternative D. The *Reclamation Objectives and Standards* (Lander Draft RMP/EIS, Appendix D) implemented under Alternative D, establish rigid, one-size-fits-all time periods for achieving interim reclamation standards (e.g. percent ground cover, plant species composition). While the time period for achieving interim reclamation standards is different within (3-years) and outside (5-years) of DDAs, these time periods do not account for site-specific variables. There are a variety of factors influencing reclamation success that will vary at each location including climate, geography, soil conditions, vegetative types, topography, and weather to name a few. Consequently, a rigid time period for meeting interim reclamation standards is not reasonable or practical in application and is an unworkable approach to reclamation management.

Under some circumstances, due to site-specific variables that are impossible to control, the rigid reclamation standards provided in Appendix D will be impossible to attain. As a result, a flexible approach to reclamation management is necessary. A flexible approach that establishes long term goals and objectives (e.g. soil stabilization, prevention of invasive non-native species, groundcover and species composition requirements based on pre-disturbance/background conditions) is more practical and will be more effective because it will allow reclamation standards to fit site-specific conditions. Therefore, we recommend that BLM discard the rigid reclamation standards in Appendix D, including the 3 and 5 year time periods, percent ground cover, and plant species composition, and adopt a flexible approach that will adapt to site-specific conditions.

Finally, the adoption of the 3 and 5 year time period for interim reclamation, and other reclamation standards in Appendix D, have not been justified by BLM and appear arbitrary. No justification has been provided for establishing a longer time period for completing interim reclamation standards outside of DDAs (5-years) than inside DDAs (3-years). Further, no justification has been provided for adopting either time period or any of the reclamation standards in Appendix D. BLM has failed to provide any reasoning to support these onerous standards. If BLM chooses to adopt these rigid standards, the agency must provide clear and concise justification and support for their adoption based upon sound science.

COMMENT: All reclamation standards in Appendix D relate to NRCS Ecological Site Descriptions (ESDs). Seven precipitation zones exist within the Plan Area with many more ESDs likely in each zone. Given that ESD development is in flux across Wyoming and that quality varies by NRCS Major Land Resource Area (three of which are in the Planning Area), strict use of ESDs as a benchmark for establishing reclamation standards is impractical and unpredictable. We recommend that a project proponent be given the option to use ESDs or Vegetation Reference Areas (VRAs) to establish reclamation standards. This flexibility is especially critical if a site does not match any recognized ESDs within the Plan Area.

COMMENT: ESD standards (e.g. percent ground cover) provided in Appendix D are generally higher than other BLM field offices. However, there is no justification for this discrepancy. It would be more practical and consistent with other field offices to reduce each percent ground cover standard by 10 percent and base them on a percentage of existing background cover/pre-disturbance conditions rather than a fixed percentage of ground cover that does not account for site-specific variables. Ground cover standards of 100 percent (Final Reclamation – non-DDA), 90 percent (Final Reclamation – DDA), 80 percent (Interim Reclamation – non-DDA), and even 70 percent (Interim Reclamation – DDA) are very difficult if not impossible to attain throughout arid portions of Wyoming. In many instances pre-disturbance ground cover will be far less than these percentages. We recommend that ground cover standards be based upon a percentage of existing background cover (i.e. the percentage of ground cover existing in the natural environment pre-disturbance). Again, the rigid reclamation standards provided in Appendix D are unreasonable and impractical in application. Consequently, we strongly recommend that BLM re-evaluate the overall approach to reclamation management in Alternative D and establish flexible reclamation standards based on long-term goals and objectives that will adjust to site-specific conditions. If BLM persists in going establish rigid reclamation standards for ground cover, it is crucial for these standards to be based upon a reasonably attainable percentage of background cover.

COMMENT: The percent ground cover standards are inexplicably linked to the Erosion Indicators on the NRCS Reference Sheet. There are 17 categories on the Reference Sheet (e.g. Factor 8 – Soil surface resistance to erosion). It is unclear what and how many factors on the Reference Sheet are being referred to in Appendix D, and how a ground cover percentage value is calculated using this method (values can range from 0.5 to 2.0 for each factor). Reference to Erosion Indicators is confusing and difficult to evaluate, making it difficult to determine and achieve these reclamation standards. It would be more practical and effective to base ground cover standards on the percentage of background cover and eliminate the reference to Erosion Indicators.

COMMENT: Clarity is needed on the percentage cap for invasive non-native species (INNS) in a 500 square foot area that is established for interim and final reclamation in Appendix D. As written, it is unclear where the 500 square foot area is located. Appendix D should state that the 500 square foot area is within the larger reclaimed unit to clarify.

Appendix D – Reclamation Objectives and Standards (Page 1391):

COMMENT: Paragraph 2 states that “*the reclamation plan will provide comprehensive as well as detailed site-specific reclamation procedures, methods and actions to successfully meet the objectives and standards for any surface disturbance.*” It should be clearly stated when a comprehensive vs. a site-specific reclamation plan is needed. For instance, it is uncertain whether a comprehensive plan could be developed for a given field with an allowance for the use of site specific plans to be used only when site conditions are such that additional information is required for that specific location.

The following discrepancies and inconsistencies in paragraph 2 require clarification:

- Ecological Site Description (ESD) and Soil Map Unit (SMU) are referred to as singular entities while referenced plant communities are plural or multiple. Both ESDs and SMUs could be multiple entities as well.
- What does the term “referenced” mean in regards to plant communities?
- The use of the term “environmentally sound” is ambiguous and can be interpreted in a variety of ways.

The phrase “mostly native” as used in the first bullet point on page 1391, is ambiguous because it is hard to quantify “mostly.” BLM needs to further define this phrase and define when the use of non-native plant species is allowed under this definition.

The term “*successional*” should be inserted between vegetative and process (i.e. “vegetative successional process”) in line 4 of the second bullet point on page 1391 to clarify the statement.

A comma should be inserted between “continuity” and “minimize” to clarify line 2 of the third bullet point on page 1391.

Despite the use of the term “*approximately*” in line one of the fourth bullet point on page 1391, achievement of “same composition” is impossible regardless of efforts taken to reclaim a

disturbed area. We recommend the following modification to this sentence: “...will support similar composition, life forms, and density of organisms that were originally present.”

Appendix D – Reclamation Objectives and Standards (Page 1394):

COMMENT: The phrase “near future” as used in the fourth bullet point on page 1394 is ambiguous and requires definition to help those submitting reclamation reports determine what information to include in the report.

The last paragraph on page 1394 states that “any time 15 percent or more of a reclaimed area is re-disturbed, monitoring will be reinitiated.” The re-initiation of monitoring is unclear under this provision. If 15 percent or more of a reclaimed area is re-disturbed, does that mean that interim reclamation for the entire site (100 percent) starts over and the time period for interim reclamation (i.e. 3 or 5 years) starts over? Or, is interim reclamation only reinitiated for the portion of the area that has been re-disturbed? This must be clarified.

SURFACE DISTURBANCE AND USE – RIPARIAN/WETLAND AREAS

Page 81, Table 2.13:

Alternative A – *Apply a 500-foot riparian-wetland setback*

Alternative B – *Apply a 1,320-foot riparian-wetland setback*

Alternative C – *Same as Alternative A*

Alternative D – *Apply a riparian-wetland setback greater than 500 feet where NEPA analysis determines that a larger area is needed to protect riparian-wetland resources.*

COMMENT: We recognize the value and delicacy of riparian-wetland areas in the ecosystem. Consequently, we are not opposed to the implementation of reasonable policies and stipulations necessary for protecting these habitats. However, the protection for riparian-wetland areas has been unnecessarily and unjustifiably expanded under Alternative B. Administratively preventing surface use within 1,320 feet of riparian-wetland areas via a setback is excessive and unnecessary to protect these areas from impacts under most circumstances. Rather, a 500-foot setback, in combination with the implementation of other BMPs and mitigation actions, provides adequate protection and the management flexibility necessary to account for site specific circumstances. The 1,320-foot setback and stipulation under Alternative B unduly restricts the possibility of conducting activities or utilizing resources within this acreage and eliminates management flexibility to account for site-specific conditions. We strongly oppose the language in Alternative B and urge BLM to adopt the language contained in Alternative A.

Page 94, Table 2.19:

Alternative A – *Prohibit surface-disturbing activities within 500 feet of surface water, riparian-wetland areas, and playas unless activities are determined to be necessary and when impacts*

can be mitigated. Mineral and realty actions in these areas are managed with Category 4 restrictions (Map 5).

Alternative B – Prohibit surface-disturbing activities within 1,320 feet of surface water, riparian-wetland areas, playas, and 100-year floodplains, where mapped. Mineral and realty actions in these areas are managed with Category 4 restrictions (Map 5).

Alternative C – Same as Alternative A, unless on a site-specific basis a lesser distance is shown to provide equivalent protection of surface water, riparian-wetland areas, and playas.

Alternative D – Same as Alternative C in DDAs; Same as Alternative A in all other areas

COMMENT: Again, the protection for riparian-wetland areas has been unnecessarily and unjustifiably expanded under Alternative B. Administratively preventing surface-disturbing activities within 1,320 feet of riparian-wetland areas via a surface-disturbance stipulation is not necessary to protect these areas from impacts under most circumstances. Rather, a 500-foot setback and surface-disturbance stipulation (Alternatives A, C, and D), in combination with the implementation of other BMPs and mitigation actions, provides adequate protection and the management flexibility necessary to account for site specific circumstances. The 1,320-foot surface-disturbance stipulation under Alternative B needlessly restricts the possibility of conducting activities or utilizing resources within this acreage and eliminates management flexibility to account for site-specific conditions. Additionally, allowing the 500-foot stipulation to be modified as circumstances justify as provided under Alternative C increases management flexibility and further allows BLM to account for site specific circumstances. We strongly oppose the language in Alternative B and urge BLM to adopt the language contained in Alternative C for all areas within the Plan Area (i.e. inside and outside of DDAs), not just in DDAs (i.e. Alternative D).

TABLE 2.28 - RIGHTS-OF-WAY AND CORRIDORS

COMMENT: BLM has failed to provide justification or any scientific basis for the proposed increase in ROW Avoidance Areas or Exclusion Areas. This significant increase could seriously impact a company's ability to obtain the ROWs needed to construct or complete a project on an existing lease. We are concerned by the absence of any provision that would allow a project proponent to work with BLM to select the most reasonable ROW needed for a project, both in terms of environmental concerns and economic feasibility and viability. We recommend that in addition to reconsidering the placement of avoidance and exclusion areas under all alternatives, BLM needs to develop exception criteria which would allow reasonable negotiation for future ROWs.

We also point out that a lessee is permitted to use surface lands under lease for purposes for which the land was leased. Moreover, within a unitized area IBLA has found that if a unitized area is producing, rights-of-way are not required for facilities and roads within the unit. Clearly, BLM must acknowledge operators' valid existing rights, including those for on-lease pipelines and ancillary facilities.

SOILS

Table 2.8 - Soil

COMMENT: We are concerned that the DEIS fails to clarify whether surface disturbing activities will be allowed when needed within DDAs in accordance with BLM discretion. In so doing, it will be made public that year-round activities may be authorized, particularly in DDAs under Alternative D.

COMMENT: The DEIS fails to justify the prohibition of surface disturbing activities on slopes over 15 percent as proposed under Alternative B. In addition to being unjustified, such a restriction is inconsistent with the WY BLM Standard Lease Stipulations and should be eliminated.

COMMENT: The BLM must ensure its requirements for reclamation are consistent with the existing BLM policy as expressed in Wyoming Instruction Memorandum 2009-022. Because only general information is included in the draft RMP, it is unclear how it will impact operations. Further, the BLM should not impose these specific erosion control measures in a broad planning document such as an RMP. Erosion mitigation measures can be best determined on a case-by-case basis once development is proposed on a particular lease or field area and the BLM and proponents are able to evaluate site-specific reclamation conditions and criterion.

COMMENT: We object to the statement on page 68 that BLM may arbitrarily require additional bonding for site reclamation. Most companies already have bonds in accordance with 43 CFR 3104. In order for BLM to increase bond amounts, it must follow the procedures established in the rule as well as prove it is necessary as required.

Chapter 3, Part 3.1.3, Page 256, *“The discharge of produced water can cause increased erosion and salinization.”*

COMMENT: Although surface discharge of produced water may increase erosion and salinization, it can also decrease erosion by stabilizing the banks of ephemeral and intermittent drainages. In many areas, discharge of produced water creates wetlands and riparian zones along former lightly vegetated stream banks. This decreases natural erosion of soils and promotes establishment of both fish and wildlife habitat. Wetlands created by produced water discharges, slow and filter natural runoff, thus reducing soil transport and improving water quality. Examples of this phenomenon are present in the Coal Draw, Five Mile Creek, Dry Creek, and Mexican Draw drainages of the Wind River Basin. There are also many examples of this phenomenon in the Big Horn Basin.

Chapter 3, Part 3.1.3, Page 256, *“In the last few years, the storm water discharge requirements have been imposed for most surface-disturbing activities that would affect one acre or more. Storm water discharge permit requirements have substantially reduced impacts from erosion from major surface-disturbing activities.”*

COMMENT: We are pleased to see that BLM recognizes the benefits that the Wyoming Storm Water Program provides in relation to stabilization of disturbed areas and the minimization of runoff and soil transport from sites disturbed by oil and gas activities.

Chapter 3, Part 3.1.3 and 3.1.4

COMMENT: The draft RMP fails to expound on the degradation of soil and water quality due to natural causes in the planning area. Although BLM does recognize the natural erosion potential of poorly developed and highly erosive soils, it fails to quantify the impacts of natural erosion vs. those from manmade disturbances. Many watersheds in Wyoming, including the Wind River Basin, naturally contribute extremely high sediment loads into the watersheds. This is demonstrated by the sediment transport of creeks and rivers during spring runoff and after significant precipitation events. Much of this erosion occurs in mountain areas consisting of designated wilderness, in badlands, and in other areas that have not been disturbed by man. It is likely these natural events contribute much more erosion and soil transport than activities associated with energy development.

The document also fails to quantify the effects of erosion and degradation of water quality due to prescribed fires, and wildfires that the BLM and Forest Service promote. The Forest Service 'Let Burn Policy' in wilderness and some forest areas results in very intense erosion from these previously vegetated areas. This in turn results in significant degradation of the natural soil and water quality.

WATER

In general, we point out that the Wyoming DEQ has primacy, and therefore, regulates all surface discharge of water through its Wyoming Pollutant Discharge Elimination System Permit process. BLM must make it clear in the FEIS that it has no authority over surface discharge of produced water. Consequently, we recommend BLM include the following language in the FEIS, *"the Wyoming DEQ regulates all surface discharge of water, including water produced from oil and gas development and storm water discharges, through the Wyoming pollutant discharge elimination system permit process."*

Chapter 3, Part 3.1.4 Water, Pages 260 and 261 *"Standards for water quality are promulgated by standards set forth in the Clean Water Act (33 United States Code [U.S.C.] 1215 et seq.), which requires that water quality be maintained or improved for outstanding (Class 1) and most of the high-quality (Class 2) waters. All other waters must be maintained against degradation and are assessed by Wyoming DEQ to determine if water quality meets the requirements for the class into which Wyoming has assigned the water body. For example, Class 2AB waters support game fish (Wyoming DEQ 2008a). Water quality is evaluated to see if it supports the use identified for that class of water. Meeting this "use support" is an indicator of water quality."*

COMMENT: While this statement may be generally true, it does not account for the many incorrect water body classifications found in Chapter #1 of the Wyoming DEQ Water Quality Rules and Regulations. During the Wyoming DEQ Triennial Review completed in 2001, many water bodies had their classifications upgraded from Class 4 to Class 3B, and Class 2 to Class 2AB. These stream classification changes were not justified by a Use Attainability Analyses; they were simply changed by default to a higher water classification. As a result, many of these streams are misclassified and have been assigned higher 'use support' than can actually be achieved, or which could be supported by the natural chemical, physical, and biological characteristics of these streams. Many currently classified 2A and 2AB waters could not be

used as a drinking water sources due to the limited natural flow of these streams. Also, many streams or segments of many streams, currently classified as 2AB do not support and cannot support game fish. Subsequent Use Attainability Analyses completed by industry and the DEQ have resulted in reclassifying some of these streams to the correct water quality and use designations. However, many of these water bodies continue to be misclassified, only because Use Attainability Analyses have not been completed to return them to the correct use designations which may actually be attainable.

Chapter 3, Part 3.1.4, Page 261 *“Point source and nonpoint source pollution affect water quality. Point source pollution is conveyed from a discrete location such as a pipe, tank, pit, or ditch. Discharge of produced water, which contains high levels of salt, can cause water quality problems and soil salinization from the deposition of salts. Nonpoint source pollution is from a diffuse source, such as runoff from cultivated fields or grazed land.”*

COMMENT: The document fails to recognize that produced water can also be of very good quality and can improve the natural water quality of a water body. Naturally occurring ephemeral and intermittent streams can accumulate large natural deposits of salts in their streambeds. When a natural runoff event would occur, a heavy salt load was flushed down the stream, resulted in natural poor water quality. If and when these streams become perennialized due to produced water discharges, the salts are continually flushed through the system; resulting in a perennial water source that is of higher quality than the natural ephemeral and intermittent flow of the stream.

Chapter 3, Part 3.1.4, Pages 262 and 263. *“Point source discharges of produced water can cause soil erosion. The BLM preferred method to **discharge** produced water in the planning area is reinjection. However, the State of Wyoming permits point source discharges where water containing high levels of selenium is being discharged pursuant to WYPDES permits, such as in the Gun Barrel Oil and Gas Unit in the northeast portion of the planning area. The BLM is working with the operator in the Gun Barrel Unit area to decrease soil erosion resulting from state-authorized discharges.”*

COMMENT: This paragraph is confusing and should be re-written to clarify the issues. In the second sentence, it appears the BLM is attempting to say that their preferred method to **dispose** of produced water in the planning area is by reinjection. Also, the BLM insinuates that a high level of selenium in the produced water is causing erosion problems in the Gun Barrel Oil and Gas Unit. It is also unclear whether the origin of selenium is the produced water or the soil over which the produced water traverses. It is highly unlikely that Selenium, in itself, is the sole cause of erosion. The stated erosion problem may be caused by the presence of produced water, but erosion should not be caused simply by the presence of selenium. The language in this section is confusing as to the issue the BLM is trying to communicate to the public.

The language in the document does not communicate the actual level of selenium it is referring to as ‘high.’ Chapter #1 of the WDEQ Water Quality Rules and Regulations establishes a chronic aquatic life standard of 5 micro grams per liter for selenium. If elevated levels of selenium are detected in the produced water discharge, a selenium monitoring requirement and 5 micro grams per liter effluent limit is added to the WPDES permit. The burden is on the WPDES permittee to treat the water to 5 micro grams per liter or less, or cease the surface discharge. In some instances the operator may complete a Use Attainability

Analysis (UAA) to establish a higher selenium effluent limit, but only if the UAA provides credible scientific data showing that the elevated selenium limit is not a threat to the aquatic life living in the water body and the selenium is not bioaccumulating to unsafe levels in the water body food chain.

Chapter 4, Part 4.1.4, Page 594 *“Other beneficial impacts to water quality result from management that limits the discharge of lower-quality water (e.g., water produced during minerals activities that has higher solids or salts) than the receiving water, or the discharge of water that degrades riparian-wetland and recharge areas. For example, management actions that stabilize watersheds or improve degraded portions of watersheds beneficially impact surface water quality. Therefore, the more an alternative limits surface disturbance that would result in adverse sedimentation or limits the release of lower quality water, the more beneficial the impacts to water quality.”*

COMMENT: The statements above suggest that discharge of produced water from oil and gas activities is always a negative to the environment and water quality. BLM fails to mention the benefits of produced water discharges to the environment. In many areas produced water is the only water available to wildlife, thus improving habitat for wildlife. BLM also fails to recognize the benefits of riparian areas and wetland that are created by discharges of produced water. In many areas there would be no aquatic life, wetlands, riparian zones and associated biota if it were not for the presence of produced water. BLM must recognize the benefits of the additional water supplies provided by produced water include irrigation use, which in turn provides additional forage and critical wildlife habit, including alfalfa fields which can be heavily utilized by sage grouse during early and late brood rearing periods.

Chapter 4, Part 4.1.4.3.1 – Impacts to Ground Water Quality and Quantity, *“Produced water from oil and gas wells, including CBNG and conventional production, would have the greatest potential to impact groundwater quality and quantity where the wells are in areas with shallow depth to groundwater. Water produced from future CBNG wells in the planning area is expected to be of essentially the same quality and quantity as produced water from conventional or deep oil and gas wells”.*

COMMENT: It cannot be expected that produced water from CBNG will be of the same quality and quantity as produced water from conventional or deep oil and gas wells. CBNG produced water in the Powder River Basin is not of the same quality as produced water from conventional oil and gas wells. As a practical matter, CBNG water quality greatly varies from one area to another in the Powder River Basin. Furthermore, CBNG development usually shows a dramatic reduction in produced water quantity/discharge over time, while conventional oil development results in increased produced water production/discharge over time. Both conventional and coalbed methane produced water quality can differ significantly from one producing reservoir to another.

GEOPHYSICAL

Chapter 2, Page 74, *“Encourage geophysical operators to share scientific information in order to minimize surface impacts.”*

COMMENT: This section is absurd and must be eliminated entirely from the FEIS. First, we take issue with Lander BLM's assertion that geophysical operations cause surface impacts. Hundreds of thousands of miles of geophysical data have been acquired in the Rockies with virtually no resulting environmental disturbance or damage. In fact, the Department of Interior has adopted a categorical exclusion for geophysical activities that do not involve road construction because it has recognized that virtually no surface impact results from such activities. Moreover, as land manager, BLM must recognize that acquisition of geophysical data is crucial to ensuring the energy industry's ability to more clearly focus on those areas with high potential for petroleum resources. In areas where this scientifically valid approach has been employed, it has been clearly demonstrated that fewer wells are required to locate and produce the targeted resource due to improved subsurface structure information. Obviously fewer wells result in less surface land being needed to develop energy resources. It is necessary for Lander BLM to recognize that advances in technology have evolved to the point where surface disturbance from 3D geophysical activity is nearly eliminated and any minor residual disturbance is certainly very short term in nature.

Second, we are unaware of any legal authority under which BLM can encourage operators to share seismic data with others. BLM's participation in seismic acquisition is limited to permit approval. Acquisition of seismic information is accomplished through business agreements that are designed explicitly to protect confidentiality. It is not within BLM's purview to encourage companies to share their findings.

Chapter 2, page 76, *"The planning area is open to geophysical exploration except for lands identified as closed to mineral leasing or NSO to oil and gas leasing. Geophysical exploration is subject to motorized travel limitations and restrictions on surface disturbing and disruptive activities."*

COMMENT: As pointed out in our comments above, geophysical exploration has virtually no impact on surface resources. Thus, BLM's requirement to preclude seismic exploration on unleased lands or lands leased subject to NSO stipulations is entirely unwarranted. While it may seem reasonable initially to preclude geophysical exploration on closed areas, such an approach fails to recognize that these areas could be within a region or area of high potential for mineral occurrence. By allowing this minimal impact exploration technique to take place on areas closed to leasing, it will enable companies to obtain a clear picture of the entire geologic structure being targeted, which will in turn result in fewer wells being drilled on adjacent leased areas.

BLM must also recognize that through the use of horizontal drilling techniques, it is possible for companies to develop mineral resources under NSO areas. Once again, acquisition of geophysical data is crucial in pinpointing the targeted formation, which will lessen the surface impacts associated with exploratory drilling outside the NSO area. Clearly, geophysical exploration is a win-win prospect for both BLM and the energy company. Geophysical exploration is conducted without impact to the environment or wildlife and surface impacts associated with drilling activities are minimized all around. We recommend BLM eliminate these limitations.

COMMENT: With respect to motorized travel limitations, geophysical activity is a BLM permitted activity. Rather than subjecting geophysical operators to the same travel restrictions

as unpermitted activities, it would be much more logical for BLM to work with the geophysical company to identify certain areas which need to be avoided. We recommend BLM remove this restriction in order to preserve management flexibility.

CONGRESSIONALLY DESIGNATED TRAILS

Chapter 2, Page 159, *“Recognize Trails-related lands outside the South Pass Historical Landscape ACEC as a Heritage Tourism and Recreation Corridor (Map 127) This Corridor includes: • Lands within ¼ mile of the CDNST from Happy Springs Oil Field east to the Lander Field Office boundary (the “CDNST ERMA” segment – 4,589 acres) • Lands within 5 miles on each side of the NHTs and the remainder of the CDNST not within the above mentioned “CDNST ERMA” (547,640 acres)”*

Chapter 2, Page 163, *“Manage the Heritage Tourism and Recreation Management Corridor as VRM Class II. The designated utility crossings and the CDNST ERMA are VRM Class III. • On a case-by-case basis, remove or reclaim visually intrusive existing roads, facilities, and ROWs not necessary to attain NHT or CDNST management objectives”*

Chapter 2, Page 164, *“The CDNST ERMA: Oil and gas leasing, non-energy leasable minerals, mineral material disposals, and realty actions: • 0 to ¼ mile on each side of the segment is CSU to ensure resource protection, human health and safety, and to reduce resource use/user conflicts. The remainder of the Heritage Tourism and Recreation Corridor Oil and gas leasing: • 0 to 3 miles on each side of the Trails and all Trail-related SRMAs is NSO (Map 127). • 3 to 5 miles on each side of these Trails are CSU to ensure that a project causes no more than a weak contrast upon the Trails, as defined in the BLM Visual Resource Manual.”*

COMMENT: The DEIS has provided no basis for the significant changes in management currently utilized under Alternative A, Current Management, to the proposals under Alternative D or Alternative B, which would prohibit surface activities within 3 to 5 miles of historic trails. The DEIS also fails to refine such restrictions to the most important trail segments, particularly in terms of setting and contributing segments, which are of primary importance in trail management. We also point out that BLM has failed to distinguish management between Congressionally designated trails and historic trails. Congress has not authorized protection measures for simple historic trails. In addition, it must be noted that Congress not only limited special protection of designated trails to a ¼ mile on either side; no provisions were made that gave BLM unilateral authority to expand these protective corridors and to impose them on undesignated trails. We also remind BLM that such prohibitions cannot be imposed on existing oil and gas leases due to valid existing rights. We oppose this new management approach and urge BLM to retain its current management as described under Alternative A.

Chapter 2, Page 165, Geophysical – *“0 to 1 mile on each side of the Trails are closed (Map 127). • Between June 1 and October 31, Trail-related SRMAs are closed to avoid conflicts with the heavy recreational use period.”*

COMMENT: This restriction is unwarranted and fails to take into account the fact that geophysical exploration involves minimal surface use of given areas for a very short time. In addition, BLM has selected the very season during which most geophysical activities are conducted in Wyoming, Consequently, the activity which best serves BLM's objectives to reduce

future surface disturbance would be precluded throughout broad areas of the planning area during their most productive times of the year. We recommend that BLM eliminate this restriction from the FEIS.

VISUAL RESOURCE MANAGEMENT

Chapter 2, Page 124. *“Prohibit surface disturbing activities within important scenic areas (VRM Class I and II visual resources). Grant exceptions if it can be demonstrated through a visual simulation and contrast rating worksheet...”*

COMMENT: BLM has failed to provide maps which clearly identify where these areas are located. New maps must be provided in order for the public and stakeholders to understand where these restrictions will be imposed. In addition, we question the Lander FO’s assumption that it can deviate from the BLM Manual under Section 8410.6 which expressly allows for some modification to areas classified as VRM Class II. While we support the use of exceptions as provided in the DEIS, the proposed management exceeds BLM’s current policy and must be eliminated.

COMMENT: BLM proposes to significantly expand its use of VRM Class II throughout the planning area. Given that much of the Lander FO is currently under lease for oil and gas, BLM must recognize that it is legally restricted from imposing restrictions that abrogate valid existing lease rights. It would appear that BLM failed to consider this fact in the analysis. We strongly recommend that BLM reconsider its expansion of VRM II to exclude areas currently under lease.

Chapter 2, Page 124. *“Work with private landowners and partners to pursue conservation easements on lands adjacent to managed as VRM Class I and II visual resources.”*

COMMENT: We are strongly opposed to any action by BLM that would pressure private land owners to set aside their lands simply to achieve consistency with BLM’s management objectives. Such decisions must be made freely by landowners without undue influence from a government entity such as BLM. We recommend this objective be eliminated because it would encourage BLM management goals on private lands.

CONCLUSION

In closing, the undersigned organizations have found fundamental flaws in the Lander DEIS which require correction and improvement before the DEIS and Plan are finalized and a Record of Decision is issued. First and foremost, BLM failed to comply with NEPA’s most basic tenet by omitting the scientific and socio-economic validation required to demonstrate the agency has made *“informed decisions”* regarding the broad application new, highly restrictive lease stipulations under all alternatives considered in detail except Alternative A, Current Management. As pointed out in our comments, BLM’s approach of broadly modifying existing management without providing the public and stakeholders with the scientific analysis upon which such decisions were based constitutes a direct violation of NEPA. These significant flaws extend to all sections of the DEIS, ranging from alternative development; socio-economic analysis; air quality analysis and mitigation; inadequate RFD scenario; designation of core

wildlife areas, stipulations and mitigation; as well as the broadened application of VRM classes I and II and the expansion of right-of-way avoidance and exclusion areas.

We strongly recommend that BLM correct these flaws before finalizing the RMP Revision by incorporating the missing scientific information which demonstrates that BLM has the basis for making new planning decisions and by developing a new preferred alternative based upon the range of alternatives included in the DEIS that provides adequate opportunities for future oil and gas development along with other multiple uses within the planning area as directed by FLPMA.

We appreciate this opportunity to provide you with our views. Please do not hesitate to contact us if you have any questions or would like to discuss our concerns and comments in greater detail.

Sincerely,



Claire Moseley
Public Lands Advocacy



Cheryl Sorensen
Petroleum Association of Wyoming



Randy Meabon
Marathon Oil Company

Cc: Don Simpson, WY BLM State Director
Larry Claypool, WY NLM Deputy State Director