October 18, 2006

Casper RMP/EIS
BLM Casper Field Office
2987 Prospector Drive
Casper, Wyoming 82604-2968

To whom it may concern:

Please accept the following comments on the Draft Resource Management Plan and Environmental Impact Statement for the Casper Field Office Planning Area (Casper RMP/EIS) on behalf of the Sierra Club and Wyoming Outdoor Council.

Executive Summary

We believe the list of things that will be sought to be achieved by the new Resource Management Plan (RMP) must be modified. Casper RMP/EIS at ES-1.[1] In addition to citing the provision in the Federal Land Policy and Management Act (FLPMA) at 43 U.S.C. § 1701(a)(12) that mandates management of the public lands for minerals, food, and fiber, the Bureau of Land Management (BLM) must also recognize the co-equal requirement also specified in FLPMA that

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

43 U.S.C. § 1701(a)(8). In addition, BLM has protective mandates pursuant to a number of environmental laws and policies that it should explicitly recognize as what is being sought to be achieved by this planning effort.[2]

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[1] Hereinafter, rather than specifying that the page number being referred to as the "Casper RMP/EIS", we will simply cite the page number. So, for example, the citation will simply be "ES-1" rather than "Casper RMP/EIS at ES-1."

[2] See, e.g., 16 U.S.C. §§ 1531(b), 1536(a)(1) (Endangered Species Act (ESA) requires BLM to further the purposes of the ESA, which include conservation of the ecosystems upon which endangered species

In this regard, BLM is approaching its protective obligations in negative way. See, e.g., ES-2 ("How should special status species conservation strategies be applied given BLM's requirement for multiple use and sustained yield?"). Actually, the answer to this particular question is quite simple. At least with regard to listed species, BLM's multiple use management obligations have been modified, and listed species are to receive first priority. Tennessee Valley Authority v. Hill, 98 S.Ct. 2279, 2297 (1978) (Supreme Court determines that section 7 of the ESA "reveals an explicit congressional decision to require agencies to afford first priority to the declared national policy of saving endangered species."). BLM should recognize the strong protective obligations it operates under pursuant to literally dozens of laws (including FLPMA) and simply implement those commandments, not seek to diminish them based on other laws or obligations, none of which amended protective statutes like the ESA.

On page ES-2, BLM asks rhetorically, "What areas, if any, contain unique or sensitive resources requiring special management?" Part of the answer to this question can be found in FLPMA, which requires that in land use planning BLM "give priority to the designation and protection of areas of critical environmental concern." 43 U.S.C. § 1712(c)(3) (emphasis added). Thus, BLM's command under FLPMA is to give priority to designating areas of critical environmental concern (ACEC); this is the type of special management for unique or sensitive resources that must be given emphasis (priority) in the planning process. Emphasizing other forms special management to protect unique or sensitive resources simply does not comply with the direction in FLPMA. As will be discussed below, BLM has failed to meet this obligation.

BLM states that it will "comply" with FLPMA, the National Environmental Policy Act (NEPA), and other laws. ES-2. We believe BLM must also ensure that it complies with the intent of these laws, and does not simply meet bare legal requirements. Specifically, we believe that BLM must fully comply with the policies of NEPA and its ends, which are specified in sections 101 and 102(1) of NEPA. 42 U.S.C. §§ 4331(a)-(b), 4332(1). While it has become popular to claim that NEPA is merely procedural, in fact BLM is legally obligated to meet the requirements of sections 101 and 102(1). 40 C.F.R. §§ 1500.1(c) (NEPA is intended to make public officials "take actions that protect, restore, and enhance the environment"), 1500.2(a) (federal agencies are to act "in accordance with the policies set forth in [NEPA]"), 1500.2(f) (federal agencies are to "Use all practicable means . . . to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions"), 1502.1 (the primary purpose of an EIS is to infuse the policies and goals of NEPA into programs and actions of the Federal government), 1502.1(d) (an EIS must state how it and decisions based on it "will or will not achieve the requirements of sections 101 and 102(1) of [NEPA]") (emphasis added). See also 42 U.S.C. § 4332(1) (Congress directs that "to the fullest

depend); 42 U.S.C. §§ 7401(b)(1), 7470(2) (purposes of the Clean Air Act (CAA) include promoting public health and welfare and the preservation, protection, and enhancement of air quality in protected areas and other areas with special value); 33 U.S.C. §§ 1251(a), 1251(a)(1)-(3) (the objective of the Clean Water Act is to restore the chemical, physical, and biological integrity of the Nation's waters, and it establishes goals for zero discharge of pollutants and protection of fish and wildlife).

extent possible" actions of federal agencies under the laws of the United States "shall be interpreted and administered in accordance with the policies set forth in this chapter."). Consequently, we believe BLM must reveal in the EIS how the proposed land use plan will comply with the requirements established in section 101 of NEPA, including, for example, the requirement to "preserve important historical, cultural, and natural aspects of our national heritage." 42 U.S.C. § 4331(b)(4). The draft EIS fails to do this in any explicit fashion. Likewise, BLM must ensure it complies with the policies established by FLPMA, including, as mentioned above, the requirement to ensure its management actions protect the natural qualities of the public lands under consideration here. 43 U.S.C. § 1701(a)(8).

Purpose and Need for Action—Chapter 1

The purpose for the revision of the Platte River RMP (now the Casper RMP) is stated on page 1-4. Again, and as noted above, the purpose is selectively defined as providing a recognition of this nation's need for minerals and food and fiber, but it pointedly leaves out other just-as-applicable purposes of this land use plan established by FLPMA, such as the need to protect environmental values. 43 U.S.C. § 1701(a)(8). This oversight must be corrected, and full and complete portrayal of the purpose of the land use plan must be presented and pursued. As noted above, in additions to pursuit of the policies established in FLPMA, these include the policies established by NEPA, the CAA, the ESA, and the Clean Water Act, among others. Until this correction is made, the purpose of this effort is improperly defined. While the purpose statement states that there is a need to "provide for compliance" with various laws, policies and regulations, this blanket statement is insufficient when BLM has singled out one particular aspect of law and policy (the need to provide minerals and food and fiber) for special mention and left all other particulars relating to environmental protection which are at least as firmly established in law and policy unmentioned and unacknowledged. This must be corrected so that BLM has a clear recognition of what the purpose of this effort is, and does not impermissibly limit the purpose.

Similarly, in the statement of need for this RMP revision, BLM attempts to make a case that this nation's fundamental policies have switched in favor of minerals development. <u>See</u> 1-5 ("For example, the EPCA Reauthorization of 2000, coupled with the Nation's growing demand for domestic energy, resulted in <u>different priorities</u> than were foreseen when the existing plan was established in 1985." (emphasis added)). There is no basis for this claim. NEPA, including its implementing regulations, has not been changed. FLPMA has not changed. The ESA has not changed. The CAA has not changed (if anything, it was greatly strengthened in 1990). The Clean Water Act has undergone only very minor amendment. There is no basis for claiming this nation now has different priorities than the priorities established by the laws that are in place—all of those laws. At most, legislation like the Energy Policy Act of 2005 has <u>refined</u> or <u>restated</u> the long-standing policy of allowing for leaseable minerals development on public lands, for example, but it in no way <u>trumps</u> laws like the ESA and NEPA, creating purported "different priorities." This misstatement must be corrected and the need for this project

redefined in a way that recognizes the equal applicability and relevance of all of the environmental laws of this nation.

An important stated need for the RMP revision is new data that has become available. In this regard a number of documents are cited. 1-5. Throughout these comments various scientific and other studies will be cited and are attached hereto. We ask that these scientific studies be treated as new data triggering a need for this RMP revision, and that these data be addressed in the Casper RMP/EIS.

In addition to new data, BLM also lists a number of new and revised policies that it is responding to. This list seems somewhat selective to us. For example, BLM Instruction Memorandum (IM) 2004-194, relating to the requirement to use best management practices (BMP) is not listed. We believe that it is important for BLM to ensure this list is all-inclusive, otherwise we believe there is a danger of overlooking important policies. More importantly, we want to reemphasize that even if there are number of new and revised policies in place those cannot trump, usurp, or negate long-standing policies, particularly if the long-standing policy is of a "higher order" of law. So, for example, a BLM IM (or a policy statement from the President such as his National Energy Policy developed in 2001) cannot trump an Act of Congress, such as the ESA, and court decisions interpreting such a law. We believe BLM must recognize this hierarchy of law and policy before it simply bows to "new and revised policies" as a basis for changing management direction.

Furthermore, we believe there is an important missing category of "new and revised policies," namely decisions rendered by the U.S. Courts and the Interior Board of Land Appeals (IBLA), both of which issue decisions interpreting the law that are binding on BLM. We believe that BLM must modify the list of "new and revised policies" so as to also recognize and include important court and IBLA decisions that have been rendered since the 1985 RMP. So, for example, in Kern v. U.S. Bureau of Land Management, the court determined that

> An agency may not avoid an obligation to analyze in an EIS environmental consequences that foreseeably arise from an RMP merely by saying that the consequences are unclear or will be analyzed later when an [environmental assessment] is prepared or a site-specific program proposed pursuant to the RMP. "[T]he purpose of an [EIS] is to evaluate the possibilities in light of current *and contemplated* plans and to produce an informed estimate of the environmental consequences . . . . Drafting an [EIS] necessarily involves some degree of forecasting."

284 F.3d 1062, 1072 (9th Cir. 2002) (emphasis added by court) (citation omitted). As will be discussed below, BLM in many instances in the Casper RMP/EIS has impermissibly attempted to delay environmental analysis, contrary to requirements of Kern. This emphasizes the need for BLM to ensure it is fully aware of and complies with IBLA and court decisions as it crafts this RMP. There are of course many other examples of court and IBLA decisions that have been rendered since 1985 that BLM should recognize as

creating a need for RMP revision, and which guide and define management obligations and limits. Moreover, since BLM has a large number of lawyers available to it through it's and the Department of the Interior's Solicitor offices, it has the skills and personnel at hand to locate these decisions and interpret their requirements.

On page 1-10 several "key planning issues" are identified. This list seems unduly limited. Clean water and clean air are key issues by definition under the Clean Water Act and CAA. With respect to energy development, the numerous toxic and hazardous wastes generated by these activities are certainly an important issue, especially given BLM's trust responsibilities for the health of the public lands relative to hazardous wastes under the Comprehensive Environmental Response Compensation Liability Act (CERCLA). Providing fish and wildlife habitat is an unduly foreshortened view; another key issue is also to support fish and wildlife populations that meet ecological and societal needs. Habitat without animals is an empty outcome. And as noted above, BLM's statement regarding the relative importance of special status species versus multiple use management is easily answered at least relative to listed species; listed species clearly get priority. This wording must be reworked to accurately reflect the degree of discretion that BLM has, which is little.[3]

On pages 1-10 to 1-11 several issues that were not "carried forward for detailed study" are listed. Several of these clearly should be addressed in the Casper RMP/EIS. BLM apparently decided it did not need to "consult, work, and coordinate with" agencies and/or other authorities. Yet under FLPMA, BLM is given special responsibility to consider and ensure consistency with local plans, 43 U.S.C. § 1712(c)(9); we do not see how it can do this if it is not consulting with these entities. BLM claims that it can be excused from analyzing "impacts from specific actions or activities" and that it can postpone these analyses to the future. Yet as noted above, at a minimum BLM must analyze "environmental consequences that foreseeably arise from an RMP" and cannot put those analyses off. Kern, 284 F.3d at 1072. BLM should make clear that impacts that foreseeably arise from the RMP will be analyzed in the EIS, and in fact conduct such analyses. Certainty is not the standard for whether an analysis will be conducted. The failure to analyze air quality impacts is an especially egregious example of BLM's failure to do this, and this will be discussed in more detail below. BLM claims it is excused from ensuring the RMP "is compatible with specific regulations, policies, mandates, guidance, or plans" and adopting or integrating such into the RMP. This is far too broad an exclusion from EIS analysis requirements for at least two reasons. First, under FLPMA, BLM must "provide for compliance" with not only pollution control laws, but also related "standards" and "implementation plans." 43 U.S.C. § 1712(c)(8). This certainly demands that pollution control requirements be subject to "detailed study in the EIS" and does not allow for them to not be carried forward. Second, as noted above, BLM is under a special obligation to consider and ensure consistency with state and local plans and other policies. Id. § 1712(c)(9). Given this obligation, it is impossible to see how BLM can legitimately refuse to consider in detail in the EIS how the RMP can be

[3] BLM's Special Status Species Management Manual establishes similar obligations relative to many species.

made compatible with "specific regulations, policies, mandates, or plans . . ." of other governmental entities.

Resource Management Alternatives—Chapter 2

On pages 2-5 to 2-6 BLM discusses the elimination from consideration of an alternative that would have required the use of directional drilling. This decision needs to be reconsidered. Specifically, while directional drilling, like almost anything else, probably cannot be required all the time, it certainly can and should be used to the maximum extent possible; it has wide applicability. Thus, we request that BLM consider as a sub-alternative to all alternatives a requirement to use direction drilling to the maximum extent possible. See 43 C.F.R. §§ 1610.4-5 (requiring all reasonable variations on an alternative to be considered as a sub-alternative). See also IM 2004-194 (identifying requiring drilling multiple wells from a single pad as a "typical" BMP that should be considered). BLM's attempt to frame the use of directional drilling as only something that can be required in every case creates a false choice that of course must be rejected; requiring the use of direction drilling to the maximum extent possible creates a real choice that should be fully considered by BLM.

BLM indicates that the reason directional drilling cannot be used is that the natural gas deposits being sought are in "deep formations with limited porosity", thus requiring fraccing to stimulate production. Yet we would note that directional drilling is being used very heavily by Shell, Ultra, Anschutz, and Questar on the Pinedale Anticline field in the Pinedale Field Office, and natural gas deposits in this area are both very deep and in formations of limited porosity. These conditions alone do not mean that the use of directional drilling is impractical, less economical, etc. We request that BLM consider the conditions that occur in the Pinedale Anticline and compare them to the likely conditions in the Casper Field Office, and make decisions regarding the viability of directional drilling accordingly. On page 2-6 BLM states that directional drilling can be eliminated from consideration because it would not meet the nation's energy needs and would not lead to maximum recovery with minimum waste. We request that BLM eliminate these self-serving and highly biased comments from the EIS. This is a totally incomplete picture and statement of the obligations BLM must meet. As discussed throughout these comments, BLM has equally binding obligations to protect the environment, and thus whether directional drilling might lead to less than absolute maximum recovery is simply not the basis for decision-making. In fact, at a minimum, the bases to decide whether to use it or not are outlined in IM 2004-194 (BLM must consider the effectiveness of the BMP, balance increased costs versus "the benefit to the public and resource values" of requiring the BMP, the availability of other mitigation alternatives, and other factors). IM 2004-194 at 2. These are the considerations that should determine whether directional drilling will be required, not a singular focus on the amount of gas recovered and the economic considerations of gas companies.

On page 2-28 goals and objectives for air quality are presented. An additional goal should be added to this list. Namely the requirement to protect visibility in Class I and

other sensitive areas should be recognized and pursued. 42 U.S.C. §§ 7470(2), 7491(a)(1) (both establishing protective goals for these areas).

On page 2-29 it is stated that within one year of approval of the RMP background air quality will be defined and a monitoring system established. These activities must be done as part of the RMP process, and not postponed. Under FLPMA, the RMP must "provide for compliance" with the CAA, and it is impossible to see how this can be done if basic background conditions are not even known. 43 U.S.C. § 1712(c)(8). As noted above, Kern prohibits BLM from postponing analyses to the future that can be accomplished in the RMP EIS. BLM has air quality monitoring data available from Pinedale and numerous other locations, and if these are the best data available, BLM must use it, not put off the analysis. Furthermore, the failure to have "define[d] the background air quality associated with federal actions approved under the RMP" violates NEPA in a number of respects—there is no baseline against which to measure the impacts of the proposed action, a fundamental flaw. Halfmoon Bay Fisherman's Marketing Assoc. v. Carlucci, 857 F.2d 505 (9th Cir. 1989). In Record No. 1005 BLM states that it will "encourage" efforts to reduce emissions. It must do more than this, under FLPMA it must "provide for compliance" with the CAA.

Page 2-30. BLM states monitoring relative to air quality will be pursued. It can and should do much more that would ensure there is timely installation of monitors. Namely, it can require companies that are operating in the area to install and maintain monitors. This is being done in the Pinedale Field Office and probably elsewhere. Given BLM's obligation to provide for compliance with the CAA, this is well within its authority, and given the tremendous profits being reaped by oil and gas companies operating on the public lands, they are in a position to afford this. BLM also states with respect to alternatives B and E that it will consider implementing mitigations relative air pollution. BLM should be more specific about what will be required. At a minimum, we believe that BLM should require the establishment of an office similar to what has been established for the Jonah Infill project (the Jonah Interagency Mitigation and Monitoring Office—JIO) to ensure that the maximum control of air pollutants is put in place. Specifically, at a minimum, BLM should require the use of flareless completions, and the adoption of Tier 2 compliant technology for drill rigs, as well as compliance with the Wyoming Department of Environmental Quality's "presumptive BACT" (best available control technology) for oil and gas operations. Moreover, BLM should explicitly adopt and state as its governing management requirement relative to air pollution that it will "provide for compliance" with the CAA, as required by FLPMA. See also 43 C.F.R. § 2920.7(a)(3) (BLM will "require compliance" with the CAA when establishing terms and conditions for land use authorizations).

Page 2-31. With respect to assessments of soils limitations relative to Alternative E (as described for Alternative C), we believe that the 20 acre trigger for conducting assessments and inspections must be viewed from a cumulative perspective. In other words, these potential triggers should not be viewed from the perspective of each individual action (for example, individual oil and gas wells), but rather should be viewed from the perspective of the totality of actions being pursued (for example, all wells

drilled in a field in a given year, or the total of road building that is conducted in a given year). If this approach is not taken, very few actions will be subject to these provisions and they will be largely meaningless. In addition, we believe the provision specified for Alternative B that highly erosive soils (575,788 acres) will be deemed No Surface Occupancy (NSO) must be adopted regardless of what alternative is selected. BLM has an obligation to take "any" action that is needed to prevent "unnecessary or undue degradation" of the public lands." 43 U.S.C. § 1732(b). The loss of soils is a fundamental impact affecting entire ecosystems and their function. BLM has presented no analysis whatsoever showing that these admittedly "highly erosive" soils will not be unnecessarily or unduly degraded by allowing "surface-disturbing activities," as it would permit under Alternative E. BLM recognizes in the EIS, and there is no denying, that soils are the prerequisite for desired vegetation (whether Desired Plant Community—DPC—or Desired Future Condition—DFC) and indirectly for supporting wildlife populations, in addition to contributing to air quality problems if they are eroded. If these highly erosive soils are eroded, there is a high probability of INPS invasion, something BLM recognizes throughout the EIS as being severe environmental degradation. Streams could be choked and polluted by the sediment washed into them if these soils erode through lack of adequate protection. Thus, it is clear that allowing "surface-disturbing activities" on these "highly erosive" soils could lead to unnecessary or undue degradation of the public lands, something BLM has a mandatory statutory obligation to prevent, and which the EIS provides no evidence whatsoever will be prevented by the provisions under Alternative E, although Alternative B clearly would prevent such impacts since NSO would be required. <u>See</u> <u>Mineral Policy Center v. Norton,</u> 292 F.Supp.2d 30, 41-43 (holding that the unnecessary and undue degradation clause imposes the obligation to prevent <u>both</u> unnecessary degradation and undue degradation, and that undue degradation is environmentally "excessive" impact).

Page 2-32. It is indicated that under Alternative E (described under Alternative A) that surface disturbance of slopes greater than 25 percent could be allowed as a routine matter ("NSO or other surface disturbance is allowed on slopes of more than 25 percent with permission from the authorized officer."). This provision is contrary to the provisions in Appendix I, which clearly state that surface disturbance is "prohibited" (subject to well documented provisions for exception) on slopes greater than 25 percent. Appendix I at I-2. The "Wyoming Bureau of Land Management Mitigation Guidelines for Surface-Disturbing and Disruptive Activities" are applicable throughout BLM lands in Wyoming, and thus the Casper RMP/EIS cannot cast these provisions aside. The provision for Alternative B reflects the provision in Appendix I (slopes greater than 25 percent are NSO), and thus should be adopted by BLM. With respect to the provisions for reseeding, BLM must adopt the standard for reclamation provided for in the Mineral Leasing Act. BLM must "ensure the complete <u>and</u> timely" reclamation of any lease that is developed. 30 U.S.C. § 226(g) (emphasis added). Furthermore, BM must ensure complete adherence to the provisions in its newly revised "Gold Book." Under these authorities, BLM must use locally adapted varieties in all cases, not just when "practical." All seed must be certified weed free in all cases. And, BLM must require the use of containerized shrubs, not seed, in order to ensure timely return of sagebrush habitats.

Page 2-33. The same comments just made regarding the need to comply with the Mineral Leasing Act reclamation standard and the provisions in the Gold Book also apply with reference to the provisions to require retreatment of reclaimed areas that are not adequately reclaimed. Under these authorities BLM must adopt the reclamation provisions applicable to Alternative B and not those applicable to alternative E (as described under Alternative C). BLM has shown by this analysis that both more complete and more timely reclamation is possible than would occur under its preferred alternative, and thus it must adopt this approach (Alternative B) to more complete and timely reclamation in order to comply with the Mineral Leasing, as well as BLM's Gold Book. BLM has presented no analysis showing that there is any reason whatsoever to allow for slower and less complete reclamation, although it is perhaps implied that BLM wants to "cut some slack" for companies having more difficulty with reclamation (or who are not pursuing reclamation with conviction or adequate resources), but this rationale is not enough to meet BLM's obligation to provide for complete and timely reclamation. We appreciate that BLM will seek to limit total long-term surface disturbance on each section of land (80 acres, 12.5% of a 640 acre section) and urge BLM to retain such a limitation, although we believe BLM could and should be able to further limit disturbance (for example, by greater use of a requirement for directional drilling), while still allowing activities to occur; moreover, this limit would be greatly improved if it also limited the number of surface disturbances adding up to 80 acres, because of the problems of habitat fragmentation created by numerous small disturbances. We would suggest that in addition to a limitation on the number of acres disturbed BLM should also limit the total number of disturbances that can occur per section (160 one-half acre disturbances might well do more harm than one 80 acre disturbance). We also appreciate that BLM will close and reclaim unused roads. We encourage BLM to make this a priority. The provision for Alternative E (described under Alternative A) allowing "case-by-case" determinations of short and long-term disturbance "where warrant[ed]" should be abandoned and the provision under Alternative B adopted. BLM will be blind to the impacts of implementation of this RMP if it does not measure short and long-term cumulative disturbance, which is clearly contrary to both FLPMA and NEPA. See 40 C.F.R. § 1505.2(c). Unless cumulative short and long-term disturbance levels are measured, BLM will be in no position to make any informed assessment of the effects of its management actions in future project specific analyses. Again, it will be blind, which is exactly what NEPA and FLPMA are intended to prevent.

Page 2-34. We support BLM's plans to require storm water permits on all projects greater than one acre and urge that this provision be maintained. Sedimentation from surface-disturbing project is a severe problem and must be guarded against. Likewise, we support the use of pitless drilling technology and urge that it be adopted as a land use plan decision and requirement. This provision should be required for all drilling, only being waived when it is shown there is no likelihood of impacts to water or soils. Given the vast array of toxic and hazardous chemicals used in drilling and stored or deposited in pits, the presumption should be that there is a potential for adverse impacts, not that there is no potential for such impacts.

Page 2-39. BLM should revise the terminology used to describe the protections under which oil and gas drilling and development can occur. The term "constraints" is pejorative and this is especially true of the term "major constraints." This language colors and biases the consideration of protections for other resources that BLM has an equal (and in some cases greater) obligation to provide for. BLM has presented no objective data showing that simple seasonal restrictions are a "constraint" on development. They may require some changes in plans or careful, thoughtful foresight, but there is no objective evidence that seasonal stipulations have hampered oil and gas development in any way. Likewise, there is no objective evidence presented showing that NSO stipulations are any significant "constraint" on development. We would note that any such leases would be bought by a willing buyer, so the only way that BLM can show that any stipulations on a lease have caused any limitation on development would be to come forward with data from past lease sales showing that, for example, leases with NSO stipulations were not sold, and showing that leases that have been sold with NSO and overlapping seasonal stipulations have not been subject to development at the same rate as other leases. Until then BLM should present the acreages available with simple, non-pejorative language: open subject to the terms and conditions of the standard lease form, open subject to seasonal stipulations, open with NSO or overlapping seasonal stipulations. BLM will apparently require directional drilling on a case-by-case basis, which we agree should be a requirement on the table for every application for permit (APD) to drill that is filed. But we think BLM should take this provision farther. It should state that directional drilling will be required if the analysis prescribed by IM 2004-194 (comparison of costs versus the benefits to the public and resource values) shows that directional drilling is appropriate. BLM should commit in the land use plan to conducting the analysis prescribed by IM 2004-194 for every APD that is filed, and require directional drilling to the maximum extent practicable. BLM should provide clarifying language and requirements relative to the provision that would allow geophysical exploration to occur in NSO areas. NSO areas have been deemed that precisely because they have special resource values that must be protected—in fact it has been determined that the only way these values can be protected is through NSO. Appendix I at 1-5 to -6. Thus, BLM should state as a land use plan decision that geophysical exploration will only be allowed if the special values for which the area was designated NSO can be shown to not be negatively affected by geophysical activities; the more general reference to no significant impacts being required should be retained, but the more specific values of the area should specially noted, provided for, and fully protected.[4]

Page 2-42. The term "wildland industrial interface" where full fire suppression will be applied is troubling. What does this term mean? It does not appear in the glossary. Does it include oil and gas wells; oil and gas fields? BLM appears to be taking the well known "wildland urban interface" where special efforts to deal with wildfires are widely—perhaps uniformly—acknowledged to require special attention and expanding it greatly. Creating this whole new category seems entirely inappropriate. If it includes oil and gas wells, BLM could be essentially abandoning or making moot the use of prescribed and

[4] We would note that "no significant impact" means there will no significant potential impacts. 40 C.F.R. § 1508.13.

"let burn" fires across literally millions of acres of land. That would be totally inconsistent with the need expressed throughout the Casper RMP/EIS to restore natural fire regimes as much as possible. Furthermore, can BLM afford to take on this task in terms of personnel and financing? It is well know that this past summer BLM and other agencies were hard pressed to keep up with the demand for firefighters and fire suppression. BLM could be creating a totally unworkable situation if it is going to try to fully suppress all fires in the general vicinity of the thousands of wells already in place and planned for the planning area. This issue must at least be considered by BLM and options for dealing with it considered. For example, it may well be appropriate to require oil and gas companies to provide there own firefighters (or at least to fund additional firefighters) if additional effort must be expended due to their decision to build where they have chosen to build. The prohibition on heavy equipment near sage grouse leks is a good provision, however, other crucial sage grouse habitat should also be protected. Furthermore, the plan should provide for how these limitations will be communicated to firefighters, impressed upon them, and enforced. We doubt that many firefighters will be reading the Casper RMP/EIS; it is crucial its provisions relative to fire be communicated to and impressed upon the rank and file firefighters, as well as the "fire bosses."

Page 2-46. It is not clear to us why Alternative E (as expressed under Alternative D) should provide for so much lesser protection of floodplains and incised streams than Alternative B does. Especially when Alternative E provides for protecting just as much lotic and lentic habitat as does Alternative B. Throughout the Casper RMP/EIS the critical importance of riparian and wetland habitats is emphasized. They are by far the most important habitats for providing a host of resource values, especially wildlife related values. Thus, we believe that floodplain connectivity and incised streams should receive as much enhancement under the preferred alternative as they do under Alternative B, just as is the case for the closely related lotic and lentic habitats.

Page 2-47. While BLM may not be able to pursue instream flows, it can encourage the Wyoming Game and Fish Department to pursue such flows, and BLM should commit to doing that in the RMP. BLM must commit to adopting the Wyoming Game and Fish Department's "Minimum Recommendations for Development of Oil and Gas Resources Within Crucial and Important Wildlife Habitats on BLM Lands," as appears to be provided for under Alternative B, but not the preferred alternative. Attached as Exhibit 1 are detailed arguments as to why the BLM must adopt this guidance, or at a minimum consider it when APDs are processed. Fundamentally the provision in FLPMA at 43 U.S.C. § 1712(c)(9) requiring BLM to act consistently with state and local plans and other policy requires BLM to adopt the Minimum Recommendations report. While the appeal to the IBLA presented in Exhibit 1 is related to lease parcels sold in the Rawlins Field Office, the arguments and law discussed therein are just as applicable to leases that might be sold in the Casper Field Office. Consequently we ask that BLM consider the arguments in Exhibit 1 and adopt the Minimum Recommendations report, or at least commit to fully consider it when APDs are processed, and to make this requirement a land use plan decision. The statement regarding negotiating easements under Alternative E is very unclear; it is not clear what this applies to or what the "program needs" are.

Page 2-48. Provision is made for designation of blocks of contiguous sagebrush habitat as off-limits to development. This is a very important concept and we congratulate BLM for pursuing it. Unfortunately, however, far less habitat would be protected under Alternative E than Alternative B. We believe this needs to be corrected and the provisions of Alternative B adopted in the preferred alternative. Throughout these comments we will raise points that support this contention. One of these points is that by definition all of these areas have "low development potential for coal and oil and gas resources." 2-48. On this basis alone we therefore see no valid reason for not fully protecting as much of this habitat as possible. It is relatively cost free, yet the benefits to wildlife (and users and appreciators of wildlife) would be tremendous. This opportunity should not be missed. Again, we will return the importance of fully protecting these large blocks of sagebrush habitat throughout these comments.

Page 2-49. Under Alternative E BLM will manage forests for wood products while Alternative B would manage them for ecological health and diversity. We urge BLM to adopt the emphasis of Alternative B rather than that in Alternative E. Apparently, forest management under Alternative E focuses on disease control and promoting the use of small diameter wood. 2-50. The EIS presents no basis that we are aware of to support this emphasis. See 3-37 to 3-39 (providing no indication these are issues or problems that need to be addressed through management or that these are the best means to meet defined needs). Yet it provides substantial support for the need to focus forest management on protecting ecological health and function. See, e.g., 3-34 to 3-36 (emphasizing the need to prevent fragmentation and protect biological diversity).

Page 2-51. It is stated that vegetation mosaics will be created in forests. What this means needs to be explained and limits on the degree "mosaics" are created needs to be specified in the RMP. "Mosaics" can be another way of saying "habitat fragmentation"—something BLM wants to prevent—so there needs to be definition of and limitation on the number or types of mosaics that are permissible. Likewise, the impact of "mosaics" on biological diversity needs to be considered and appropriately provided for in the plan—while creating "edge" can favor some species, often these species are habitat generalists that are in no need of management emphasis, while mosaics/edge can be very unfavorable for species that have more specialized habitat needs, such as old growth forests. These issues need to be carefully considered before BLM commits to a management regime of creating mosaics, a consideration that is not apparent in the Casper RMP/EIS. It is stated that "silvicultural treatments will be applied as needed to achieve objectives." This is a remarkably broad statement that contains no standards, no definitions, or any other indication of what exactly is permissible or impermissible under the plan. Because there are no sideboards for this provision, it should be eliminated. Plan provisions should provide actual guidance to future management, not a virtual "anything is possible" authorization.

On page 2-51 an important concern is made apparent. Under both Alternatives B and E, sagebrush communities would managed toward a Desired Plant Community (DPC) while under Alternative A, these communities are managed toward a Desired Future Condition (DFC). Especially in Chapter 4 (the environmental consequences chapter), there are

repeated statements or strong implications that environmental impacts are less when DPC is managed for rather than DFC, and this is used repeatedly to argue that the impacts of Alternative E are not so bad. Yet there is a problem here. As far as we can tell, neither of these terms are defined, except in the context of riparian functionality classifications. Glossary-10. Obviously a concept that is defined for riparian vegetation has no relevance relative to sagebrush communities and the various other upland plant communities where DPC is asserted to be a better outcome than DFC. This needs to be corrected and a careful definition provided of what exactly these concepts mean in the context of upland vegetation. This failure has totally hindered our ability to meaningfully and effectively review the Casper RMP/EIS due to the pervasive invocation of claims that DPC is environmentally better than DFC. Therefore, we request that definitions be provided and the public afforded additional opportunities to review the Casper RMP/EIS. Furthermore, even if it were assumed that the definition of DPC relative to riparian communities also applies to other plant communities, what exactly it means is totally unapparent. Essentially, the DPC can be any of a number of (unstated) plant communities that a "management plan" (which is apparently not in existence yet) identifies as "best" for a site. Glossary-10. This provides no basis whatsoever for making any statements regarding (1) what management will apply in the plant community, (2) what it will seek to achieve, and (3) what the environmental impacts will be. For this term to have any utility at all, BLM needs to provide guidance regarding what the management objectives are for sagebrush (and other) plant communities. For example, the objective might be to manage for native species and naturally occurring plant communities that are within the range of variability in communities that occurred under pre-settlement conditions. This would provide some indication of what the objectives are for the plant community and thus what is being sought to be achieved, and thus provide a basis for making claims that environmental impacts are greater or lesser. It would also provide guidance on what management actions should seek to achieve, and why. This would not prevent pursuing other plant communities under certain conditions (such as crested wheatgrass plantings in sagebrush habitat), but it would be recognized that these plant communities are not generally as desirable as the defined desired plant community, they are not the overarching goal. But as DPC is currently defined (for riparian areas), none of this guidance is available; it is a totally empty concept at present waiting to be filled in the future. That is not planning, even at a "strategic" level. With respect to DFC, under the current definition, it does not appear to have any applicability at all, except to riparian habitat. Glossary-10 to -11.

With respect to the statement that riparian habitats will be protected with various special management actions applied, BLM should also make clear that the BLM standards and guidelines (and the fundamentals of rangeland health) will be applied and must be adhered to, and that the DFC for riparian communities defined in the Glossary will be achieved.

Page 2-52. BLM states that under Alternative B 1,700 acres of salt cedar will be eradicated, while under Alternative E the plan is to develop a plan to reduce unknown amounts of salt cedar. We urge BLM to pursue the approach under Alternative B in its preferred alternative. Throughout the EIS, BLM emphasizes the special importance of

riparian habitats, and their need for special management. Given this recognition, BLM should commit to the well defined management action defined under Alternative B that would have vast benefits for riparian habitats in the planning area rather than establishing a plan to develop a plan that would lead to no known benefits or particular outcomes. BLM should view elimination of salt cedar (tamarisk) as a special opportunity—it occurs in well defined areas and the ecological values of eliminating it are clear and well defined, unlike other INPS that BLM might focus on, which often may have little or no chance of being eradicated. With regard to INPS management, we urge BLM to give special emphasis to the Level II weed management areas rather than Level I. As indicated, when small isolated patches of weeds can be found, control and eradication may in fact be possible and cost effective, whereas when weeds become widespread there may be little or no chance of effectively controlling or eradicating them in an environmentally acceptable manner—BLM should make cold, calculated determinations of the relative values of different weed control efforts and purse the options that are most effective.

Page 2-53. Here, for most classes of wildlife, BLM makes an assertion that management for the class is "encompassed" in other management actions and that no special management will be attempted. This claim is also evident on page 2-54. BLM must provide a rational basis for this claim. It should not just be assumed that this wide array of species is being provided for through other management. At a minimum, BLM's Special Status Species manual requires species-specific management actions relative to listed, proposed, candidate, and sensitive species. BLM Manual § 6840.06.E (providing that sensitive species shall be managed at a minimum level of protection as that afforded candidate species).

Page 2-54. The management provision for raptors provided for under Alternative B should be adopted rather than the provisions under Alternative E (as described under Alternative D). At a minimum, BLM should adopt the provisions relative to raptors from the Wyoming Game and Fish Department's (WGFD) Minimum Recommendations report, which require that noise levels at raptor nests be kept to 49 dBA or less, and that buffer areas be determined through consultation with state and federal wildlife agencies, i.e., the WGFD and the U.S. Fish and Wildlife Service. Further guidance relative to raptor protection provided by the Fish and Wildlife Service will be discussed below. BLM should adopt the buffers recommended by these agencies as they are the experts on wildlife management, whereas BLM, as it unfortunately claims time and time again, only has special expertise relative to habitat issues.

Page 2-55. Under the Bates Hole provisions in Alternative E for sage grouse, it is stated sage grouse winter habitat and wintering birds will be protected "where possible." This condition should be eliminated because it makes this provision totally ineffective and speculative. At a minimum, BLM should state when and where it will not be possible to apply this protection, and why that is the case.

Page 2-56. We request that BLM consider and adopt the protections for sage grouse that have recently been put forth in several publications. First, attached as Exhibit 2 is a

recent publication by Dr. Clait Braun that BLM should consider and adopt provisions from. We would note that BLM cites at least four of Dr. Braun's publications in the EIS, thus it recognizes his expertise relative to sage grouse. Additionally, Dr. David Naugle of the University of Montana has recently published articles regarding the impacts of coalbed methane (CBM) development in the Powder River Basin on sage grouse. We request that BLM avail itself of this new research, which shows that CBM development is having severe impacts on sage grouse, and adjust its stipulations accordingly. Last, we request that BLM consider the Ph.D dissertation of Matthew Holloran regarding the impacts of oil and gas development on sage grouse on the Pinedale Anticline. Available at http://www.voiceforthewild.org/SageGrouseStudies/Matt_Holloran_Version4.pdf. His research shows severe impacts on sage grouse from oil and gas development. We believe that if this new research is considered, it is apparent that at a minimum the protections for sage grouse provided for under Alternative B must be adopted rather than the minimal protections provided by Alternative E, in order for BLM to comply with both its National Sage-Grouse Habitat Conservation Strategy and the WGFD's Wyoming Sage-Grouse Conservation Plan.

Page 2-57. BLM should adopt the provisions of Alternative B relative to black-footed ferret management rather than the provisions in Alternative E (as described under Alternative D). BLM has an obligation under the ESA to use its programs "in furtherance of the purposes" of the ESA. 16 U.S.C. § 1536(a)(1). The purposes of the ESA—which BLM must seek to implement as its first priority, as recognized in TVA v. Hill, noted above—include the conservation of ecosystems listed species depend on (not just designated critical habitat), and providing a program for the conservation of listed species. Id. § 1531(b). Conservation under the ESA means the use of "all methods and procedures" that are necessary to bring a species to the point where the protections of the ESA are no longer needed. Id. § 1532(3). Given these obligations, BLM should clearly adopt the provisions of Alternative B and affirmatively seek to further the recovery of the black-footed ferret.

Page 2-58. BLM makes a statement regarding paleontological resources that we strongly support: BLM will seek to "instill a conservation ethic within the public regarding paleontological resources." This statement is laudable and certainly should be part of BLM's mission and land use plan. We request that this same statement be adopted as a goal/objective for all resources, particularly wildlife resources. BLM should actively seek to instill conservation values—given the vast array of environmental laws that have been enacted, this is clearly a national priority that should be furthered.

Page 2-60. A number of references are made to protections that will be applied to "paleontological values." These references should be expanded to also include historical and cultural values/resources, as well as archeological resources/values.

Page 2-61. We are astounded that no visual landscapes in the entire Casper Field Office area are deemed deserving of Class I designation and protection. Certainly, at a minimum, the various special designation areas (ACECs, etc.) should receive this designation to fully protect not only the resources but also the values that are being

protected. Likewise, National Historic Trails should be afforded Class I status, at least in areas where the trails are intact and the surrounding area is largely as it appeared in the 1800s, so as to fully comply with the letter and spirit of the Nationals Historic Trails Act. Furthermore, we believe the protections afforded under Alternative B should be adopted rather than the much more limited protections of Alternative E. We do not believe that there is any support from anyone but those seeking maximum industrial development for designating virtually half of BLM surface lands and the minerals estate as being managed to allow for an industrial landscape. This is a remarkably unbalanced approach that could lead toward a fundamental change in the landscape of Wyoming, and we urge BLM to abandon this attempt to allow a large part of Wyoming to be turned into landscape one might find in New Jersey. There is no support for that.

Page 2-62. In setting up the discussion regarding land resources, BLM uses very troubling language. BLM repeatedly makes statements regarding "internal and external customers," "major ROW customers," etc. This language is offensive coming from an agency that is charged with representing and protecting the interests of the citizens of the United States. In contrast to this highly offensive language (it is offensive because it indicates BLM has lost perspective; it indicates BLM views its obligations as owing to certain money-spending or economically powerful "customers" and not the citizens of this country), we note this goal regarding recreation resources: "Manage recreation resources on public lands to provide a diverse array of benefits to the public, including economic, environmental, personal, and social benefits." (emphasis added). This is an appropriate statement that should be replicated in all goals and objectives stated in the RMP, and which should guide the BLM management plan when it is adopted.

Page 2-64. BLM should insert a statement regarding livestock management that BLM's standards and guidelines and the fundamentals of rangeland health will be applied and be abided by. These regulations are binding obligations on BLM that it cannot avoid; BLM's attempt to abandon these regulations has been totally rejected by the Idaho U.S. District Court, so BLM must continue to recognize these obligations.

Page 2-65. While we appreciate the difficulty inherent in managing the scattered land holdings in the Casper Field Office (especially in the eastern portions), we believe the statement that disposal of 224,834 acres will be pursued needs to be clarified. Certainly BLM cannot dispose of these lands by sale as a general matter, yet no distinction is made between disposal via sale versus disposal via exchange. This needs to be corrected and some clarity of what methods will be favored provided. We would note that it is national policy "the public lands [will] be retained in federal ownership" unless disposal of "a particular parcel" is found to be in the national interest through the planning process. 43 U.S.C. § 1701(a)(1) (emphasis added). We think is very important for BLM to make it clear that this effort to "dispose" of lands will not become some sort of fire-sale under any circumstances, but rather will be used as a means to achieve a more rational land ownership pattern, with at least some guidance provided in the RMP as to what BLM will be seeking and demanding as a condition of disposal.

With regard to some of these parcels we have specific comments. One of the key criteria the BLM should consider is public accessibility. Many of the tracts in Platte, Goshen, and Converse Counties are accessible for public recreation, and are some of the only places the public has to recreate. Examples include prairie tracts at the base of the Laramie range in Platte County, Table Mountain in Goshen County, and the Pine Ridge country in northwestern Converse County. Tracts adjacent to Glendo State Park are integral to management of the state park. Tracts are also adjacent to Ayers Natural Bridge County Park in Converse County. Some other tracts we are concerned about include tracts attached to the LaBonte and Downs roadless areas on the Medicine Bow National Forest and Thunder Basin National Grasslands. BLM tracts in both of these areas add to the wild nature and roadless character of these places. Both LaBonte Canyon and Downs are being managed by the Forest Service for backcountry no-motorized recreation, but the BLM failed to examine how its adjacent tracts could be managed in coordination and conjunction with the Forest Service's management.

Page 2-66. The provision allowing disposal within 5 miles of communities needs an acreage figure attached to. This could potentially be a huge expanse of BLM lands, so BLM needs to specify precisely just how many acres are potentially "on the blocks" and make a determination of whether disposal of that much land is in the public interest and in accordance with the RMP. Furthermore, the definition of "communities" is far too broad, apparently including any residential development and subdivision. Allowing these kinds of developments—often inholdings, isolated rural developments, a couple of houses, etc.—is a prescription for large headaches for BLM and the public that BLM should not facilitate. This is a prescription for creating more firefighting obligations and costs for BLM. This is a prescription for greater habitat fragmentation, which BLM claims it wants to avoid. This is a prescription for more law enforcement requirements. Etc, etc. While we appreciate that real communities (towns and cities) may have legitimate needs for expansion and development, we think it is a mistake to facilitate this kind of expansion at untold numbers of isolated "satellite developments."

Pages 2-67 to 2-68. We support continuation, and in some cases expansion, of the various withdrawals in protected areas like National Wildlife Refuges.

Pages 2-72 to 2-73. We support the provisions relative to OHVs in Alternative B relative to Alternative E. We believe it is crucial to maximize the amount of land where OHV use is only permitted on designated roads and trails, rather than being allowed on "existing" roads and trails. As recognized in Chapters 3 and 4 of the EIS, the existing roads and trails category is essentially unenforceable because new roads and trails can and are created all the time, creating a perpetually new and expanding pool of "existing" roads. BLM needs to get away from this self-defeating approach as soon as possible and move to the maximum amount of OHV use on designated roads and trails only, which is an enforceable provision. OHV enthusiasts will suffer few if any hardships with this approach; many hundreds if not thousands of miles of roads would be available for their activities. This approach does of course require more work on the part of BLM, but this is good work that BLM should be willing to give a high priority to—OHV use is

probably second only to oil and gas development in terms of the impacts it is having on public lands.

Page 2-75. With respect to the provisions related to adjustment of grazing leases (permits) and management of livestock grazing, BLM must again specifically incorporate and abide by its Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration. As noted above, BLM efforts to abandon these sensible requirements have been stopped by the U.S. District Court in Idaho. Thus, the fundamentals and standards and guidelines remains BLM's law relative to livestock grazing, and consequently these regulatory provisions must be adopted in the land use plan relative to livestock grazing and carefully implemented and abided by. In particular, we note that BLM must "take appropriate action as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform with the guidelines . . . ." 43 C.F.R. § 4180.2(c). See also id. § 4180.1 (requiring the same actions relative to the nationally applicable Fundamentals of Rangeland Health). Significant progress toward fulfillment of the standards and guidelines must be achieved. Id. § 4180.2(c). These binding, non-discretionary standards must be recognized and adopted in the Casper RMP.

Pages 2-83 to 2-84. We support establishment of the Bates Hole Special Management Area, although as discussed above we believe it should be designated an ACEC. We also support special emphasis on protection of sage grouse in this area. The provisions requiring controlled surface use of surface disturbing activities and engaging in intensive management should be maintained.

Page 2-85. The black-tailed prairie dog ACEC should be established. BLM is missing a prime opportunity to provide enhanced protection for a keystone species of the sagebrush ecosystem. See page 3-115 (describing the critically important functions and values of prairie dog colonies). Providing special protection to the black-tailed prairie dog would not only protect this species that has been reduced to a mere shadow of its pre-settlement populations (black-tailed prairie dog populations have been reduced by 99 percent on the Great Plains), it would also be beneficial to a number of other species, such as the burrowing owl and ferruginous hawk (BLM sensitive species) and perhaps even to the endangered black-footed ferret. 3-115. BLM has identified biological diversity as a key consideration, and protection for black-tailed prairie dogs is a means to maintain diversity. 3-34 to 3-36. Moreover, as a BLM sensitive species (Table 3-23), BLM owes black-tailed prairie dogs special management consideration, not just management for "multiple uses" as provided by Alternative E. Since the same management requirements that apply to candidate species also apply to sensitive species pursuant to BLM's sensitive species manual, BLM must engage in a host of activities to protect the species, which collectively dictate designation of the ACEC, or certainly special management area protection. See Special Status Species Manual §§ 6840.06.C.2.a to .d (requiring proactive, focused management of special status species, not "multiple use" management, as provided for by Alternative E). In 1998 a petition was filed by the National Wildlife Federation to list the Black-tailed Prairie Dog as an endangered species. As a way to

avert this listing, the 11 states which have black-tailed prairie dogs agreed to put together state management plans for the black-tailed prairie dogs. In Wyoming this plan was never written. This means that BLM has a responsibility to fill in this gap left by the State of Wyoming.

Page 2-88. The North Platte River ACEC should be designated. The provision in Alternative E is unsatisfactory because it would only protect a fraction of the area. Given the great public interest in and use of this area, it should be fully protected. The National Historic Trails that track along the river and Blue Ribbon fisheries in the area are additional reasons for protection.

Page 2-92. The South Bighorns/Red Wall ACEC should be designated as provided for in Alternative B. This area contains a plethora of resource values, ranging from wildlife habitat for a number of species, to unique plant communities (curl-leaf mountain mahogany), to a "dense and diverse range of cultural and historical resources rivaling that found anywhere within in Wyoming," to existing developed campgrounds in the area associated with a national backcountry byway. This area is in close proximity to the famous Hole in the Wall. In addition, the Nature Conservancy, in its study Ecoregional Conservation in the Northern Great Plains Steppe, dated March 1, 1999 identified Buffalo Creek, Wyoming, which is the same area. According to the Nature Conservancy this site is an excellent example of a bluebunch-wheatgrass community, because of shallow soils in the area. The World Wildlife Fund in conjunction with the Northern Plains Conservation Network has also identified this area as one of the ten best remaining examples of northern mixed grass prairie left in North America. Its study Ocean of Grass: A Conservation Assessment for the Northern Great Plains, completed in 2003 stated, "[t]his area rated high due to significant mountain plover habitat, significant prairie dog acreage, relatively intact grasslands, and large contiguous acreage in BLM lands." Given that this area meets the relevance and importance criteria for designation as an ACEC, BLM must give "priority" to such designation, and not seek to minimize this needed protection.

Page 2-96. With respect to historic trails, an additional goal and objective should be stated: compliance with the letter and spirit of the National Historic Trails Act. We believe the provisions under Alternative B better meet the standards and intent of the National Historic Trails Act than do the provisions of Alternative E, and we ask for BLM to engage in a careful analysis of this question.

Page 2-98. We believe the provision that BLM will "Cooperatively manage" trails pursuant to the agreement with the National Park Service should be changed to a statement that BLM will "abide by" or "comply" with the terms of this agreement.

Page 2-99. BLM should recommend all six segments of waterways for Wild and Scenic River designation. BLM recognizes that all six segments are eligible for this designation. 3-124. Yet it claims they do not meet suitability factors. Id. BLM provided no details regarding why these segments were deemed non-suitable, stating in a conclusory manner that the "review team" made a non-suitable determination. Having no details of this

determination to review, there is little for the public to react to other than bare statements regarding the three factors that are presented. However, at a minimum, Factors 2 and 3 cannot serve as a basis for a non-suitability determination. Factor 2 is presented as demanding exclusion if there is any level of development in the area, any mixed ownership of land, and the presence of so called "incompatible uses." This is a total misapprehension of the Wild and Scenic Rivers Act. For example, the Little Miami River outside of Cincinnati, Ohio has long been designated a recreation river (it was designated in 1968 when the Wild and Scenic Rivers Act was enacted), yet it flows through almost entirely private lands (it is unlikely it flows across any federal lands), it flows through numerous small towns (in this part of Ohio, a "small" town is probably anything less than 20,000 people, far larger than many communities in Wyoming), and it is adjacent to literally countless factories, farms, railroads, etc. (this Wild and Scenic River is in the industrial heartland). Thus, BLM's claim that mixed land ownership and "incompatible land uses" in the area disqualifies the segment is without foundation. BLM is attempting to apply wilderness designation standards to these segments, but that is not necessarily the standard that applies, unless the river is being considered for wild river status. Likewise, claims that Factor 3 prevents these segments from being suitable is unfounded for the same reasons. There is no requirement that BLM be able to manage these river segments solo. Again, the Little Miami River stands as an example. There are probably no federal agencies that own lands along this river, yet is has been designated and is carefully managed, and greatly treasured by people in the area.

Chapter 3—Air Quality and Air Pollution

BLM's air quality analysis in the Casper RMP/EIS is totally inadequate and must be totally revised. First, BLM presents no data regarding the concentrations of criteria pollutants that are predicted from implementation of the RMP, and in conjunction with other emissions sources. All it does is present the total amounts of pollutants that will be generated. 3-7, 3-8, Appendix J. Knowing only the total amount of pollutants that will be generated does not allow any statement to be made regarding what the concentrations of pollutants will be. If the concentrations of the pollutants are totally unknown, nothing can be said about whether CAA standards (National Ambient Air Quality Standards—NAAQS) will or will not be violated. The quantity of air pollution generated is apples, while the NAAQS are expressed in concentrations, that is, they are oranges. Having made no attempt to compare oranges to oranges, BLM cannot make any objective statements regarding whether the NAAQS will or will not be violated, it can only engage in speculation.

BLM's claim that it is "likely" NAAQS will not be violated under the preferred alternative is nothing but speculation—it does not know and cannot know this given that all it has presented are the amounts of pollution that will be generated. 4-11. This also makes it impossible for BLM to ensure that its land use plan will "provide for compliance" with the CAA, as required by FLPMA. Again, BLM has no idea of whether this will be the case when it is not even addressing or predicting the relevant measure, concentrations. The NAAQS are health based standards, 42 U.S.C. § 7409(b)(1), and an EIS must evaluate impacts to human health. 40 C.F.R. §§ 1502.16(a)-(b), 1508.8. See

also id. § 1508.27(b)((2) (significance partly defined by impacts to human health and safety). An EIS is invalid if it fails to consider the health effects of air pollution, and even a marginal degradation of air quality is environmentally significant. Public Citizen v. Department of Transp., 316 F.3d 1002, 1024 (9th Cir. 2000), rev'd on other grounds, 541 U.S. 752 (2004). Thus, BLM's failure—actually, its inability given that concentrations were not determined—to consider the human health effects of the activities pursued under its RMP that create air pollution violates NEPA.

BLM seems to feel it can be excused from conducting a meaningful analysis of air quality impacts because site-specific data are not available and because later analyses will be conducted. 4-5, J-9. This is incorrect for several reasons. BLM has provided no evidence that it cannot make any meaningful predictions of future emissions concentrations simply because the precise locations of future development are not known. BLM has predicted areas of high, medium, and low oil and gas potential. It plans to designate two special management areas dedicated to oil and gas production (Salt Creek and Wind River Basin). It knows precisely where oil and gas development pressure is greatest based on APD filings. With respect to CBM, BLM acknowledges that most development will occur in the Antelope Creek and Dry Fork of the Cheyenne River, so it knows exactly where that development is most likely. 4-25. Thus, BLM can make reasoned projections about where development is likely to occur and what the level is likely to be, and thus engage in a "quantitative" analysis that predicts concentrations of pollutants so that meaningful comparisons to the NAAQS can be made. Furthermore, there is nothing to stop BLM from analyzing two or three development scenarios so as to make reasoned analyses about what pollution concentrations will be. For example, one scenario (a low pollution concentration scenario) might assume uniform distribution in the planning area of all 1,813 wells that are projected to be drilled, and another scenario might assume that the vast majority of development will occur almost entirely in high potential areas (such as Salt Creek and Wind River Basin).[5] We would also note that even when a development proposal has become specific, BLM still engages in highly "stylized" analyses; it does not engage in an analysis based on the exact location of each well. See, e.g., Final Air Quality Technical Support Document for the Jonah Infill Drilling Project Environmental Impact Statement at 33 (describing the 1 mile by 1 mile "patch" of 128 wells used to make ozone predictions). It still makes assumptions about the nature of the development even at the project level. As noted in Kern v. Bureau of Land Management (discussed above), BLM is not excused from engaging in needed analyses in an RMP EIS just because all the details of development are not yet known. It is also not excused by potential future DEQ analyses. Among other things, DEQ analyses are limited to major sources of air pollution, yet the dominant contributor to air pollution in the planning area will be oil and gas wells, which are minor sources of air pollution not subject to intense DEQ analysis.[6] When BLM seeks to claim information is impossible to present in an EIS, the CEQ NEPA regulations nevertheless require BLM to engage in an analysis of impacts "based upon theoretical approaches or research methods

[5] There is no doubt that oil and gas development will create the majority of the air pollution problems for most pollutants. Table 3-3, page 3-7.

[6] Oil and gas wells only need to apply the "presumptive BACT" required by DEQ, but there is no analysis of impacts to Class I areas, the amount of increment consumption, consideration of cumulative impacts, etc.

generally accepted in the scientific community." 40 C.F.R. § 1502.22(b)(1). Such an approach might well be like the scenarios suggested above, consultation with scientists would confirm or rebut this; in any event BLM has provided no indication that its approach is "generally accepted in the scientific community," as it must if it wants to avoid this analysis.[7]

A second major shortcoming in BLM's air quality analysis is that ozone and ozone impacts are totally ignored. This is unacceptable given that ozone is a criteria pollutant with an established NAAQS. NEPA requires consideration of potentially significant environmental impacts, and ozone pollution certainly falls into that category. The Rawlins Field Office draft RMP/EIS showed that ozone levels were already 94% of the NAAQS in southern Wyoming. In the Pinedale Field Office, exceedances of the ozone NAAQS are being monitored by BLM. Yellowstone National Park is seeing increasing ozone pollution. http://www2.nature.nps.gov/air/who/npsPerfMeasures.cfm. Given this, ozone is clearly of increasing environmental concern, and BLM cannot just ignore consideration of it in the Casper RMP/EIS.

If BLM does not have data regarding ozone emissions and status in the Casper Field Office, it must acquire such data or use the best data that is available, which may well be the data from recent BLM EISs such as the Jonah Infill Project, Rawlins draft RMP/EIS, etc. Furthermore, in conducting an ozone analysis, BLM cannot rely on the "Scheffe method," which is the method it has typically used. Dr. Scheffe himself, the developer of the this method, is on record stating its invalidity, Exhibit 3, and other more appropriate methods, such as CAMQ, are readily available, Exhibits 4 and 5.

Last, we would like to note that on September 21, 2006 EPA adopted a new far more stringent NAAQS for PM2.5. http://www.epa.gov/pm/actions.html BLM should correct the tables in the Casper RMP/EIS to reflect this, and conduct the needed environmental analysis based on this new standard.

Chapter 3—Leasable Minerals, Oil and Gas

On page 3-21 BLM states that it authorizes geophysical exploration via sundry notices. This seems like an inappropriate use of a sundry notice to us, and we believe that environmental assessments under NEPA must be used, unless perhaps a categorical exclusion is available.

Chapter 3—Fire Management and Ecology

We request that BLM consider several recent articles published in Science, this nation's premier scientific journal, regarding fire management. Exhibits 6 and 7. The work of Westerling shows that increasing wildfire incidence and intensity may largely be due to increasingly warm temperatures and earlier snow melts, and that "land use history had

[7] That EPA and DEQ may acquiesce to BLM's approach is not dispositive. BLM must show general acceptance in the scientific community of the approach it has chosen. The scientific community is far broader than just the two agencies.

little impact on fire risks", which indicates "ecological restoration and fuels management alone will not be sufficient to reverse current wildfire trends." The work of Donato brings into question the efficacy of post-fire salvage logging as an ecological restoration tool relative to allowing natural recovery. We ask that BLM consider these reports in designing its fire management plans for the Casper planning area.

Chapter 3—Biological Resources

With respect to the discussion of fragmentation on page 3-34 to 3-35, we believe there is a need for a separate consideration of the impacts of habitat fragmentation created by oil and gas development. See 4-59 (noting that oil and gas leasing is of particular concern relative to fragmentation). Furthermore, we believe that with respect to fragmentation, several vegetation types require special consideration and protection. Table 3-15 on page 3-37 shows the size of various vegetation types in the planning area. A number of these vegetation types are quite small, occupying tiny percentages of the planning area. Given these small areas, fragmentation could have a disproportionate impact on these habitat types. Therefore, they should receive special protection against fragmentation. We believe BLM should set numerical standards for the level of fragmentation that are acceptable. For example, limits on the number of miles of roads per square mile of land should be established.

On page 3-38 to 3-39, BLM engages in an analysis and uses language that seems entirely designed to justify logging in lodgepole pine habitat types. It uses non-scientific language such as "unbalanced" and "struggling" to characterize these stands, presenting no evidence there are in fact any particular "problems" in this vegetation type. The lodgepole pine and ponderosa pine vegetation types only occupy 66,000 acres in the planning area, so it would seem impossible to us to reach conclusions regarding the status of these vegetation types just based on their status on BLM lands. Rather, we encourage BLM to take a regional perspective so as to appropriately define any "problems" that are apparent. Moreover, we believe that BLM must consider the impact of global warming in creating any "mature, heavily stocked stands," etc. There is increasing evidence showing that global warming is having dramatic impacts on western forests and western forest ecology, and BLM must design its management regime cognizant of this new science. Exhibits 6, 7, and 8. Quite simply, the role of classical silviculture (i.e., logging) in managing forests needs to be carefully evaluated in light of this new evidence.

We note that on pages 3-41 and 3-42, BLM highlights the great importance of mesic upland shrub habitats and xeric upland shrub habitats. Yet these vegetation types only occupy 3.4% of the planning area. Table 3-15. This highlights the need for BLM to take special steps to ensure this habitat is not damaged. We encourage BLM to set numerical standards regarding the amount of this habitat that can be disturbed in order to ensure these important values are not lost.

With respect to sagebrush habitats, BLM repeatedly makes statements they are "mature and often decadent" and similar other pejorative, non-scientific statements. These

statements are clearly intended to provide a rationale for engaging in various management activities. We ask BLM to reconsider whether there are really any "problems" with these sagebrush stands. In particular, we ask BLM to reconsider the role of fire in this ecosystem. The most recent science of Baker shows that fires typically are only of very long intervals in the sage brush ecosystems, and "a program of prescribed burning is unwarranted or inadvisable if maintaining and restoring sagebrush landscapes and sagebrush-dependent species is the goal." Exhibit 9. Consequently, we ask BLM to reconsider its management plans for the sagebrush ecosystem, particularly the role of fire and advisability of prescribed burning, and provide careful documentation showing that these management activities are in fact effective in maintaining and restoring sagebrush habitats. Frankly, many of the techniques used to "improve" sagebrush habitats had their origins in 1960s and 1950s, a time when eradication of sagebrush and replacement by grass (typically introduced grasses) was the goal and outcome for which these techniques were developed, so BLM needs to provide careful assurance that these techniques that are now put forward as means to improve sagebrush habitats do in fact improve sagebrush habitats, and are in fact effective.

Pages 3-44 to 3-46 establish the extreme importance of riparian habitats for maintaining ecological health. This fact supports a number of claims and concerns raised in these comments, such as focusing on salt cedar (tamarisk) eradication as being a particularly appropriate place for BLM to focus its INPS control efforts. On page 3-46, compliance with the Standards for Healthy Rangelands is repeatedly referred to as a "goal." This needs to be corrected. As discussed above, compliance with the standards is a non-discretionary duty that must be abided by. In addition, Executive Orders related to wetlands and riparian areas mandate that BLM protect these areas—these are also binding obligations BLM must recognize and abide by. It is stated on page 3-46 that "the condition of riparian areas is one reason some grazing allotments have not met rangeland health standards . . . ." This statement needs to be quantified—how many acres or miles have been assessed, and how many are failing to meet the standards, and what actions is BLM taking to meet the requirement to modify livestock grazing management within one year, as required by rule?[8]

On page 3-47, INPS are discussed. Apparently 41 species are "the focus of control efforts within the planning area." BLM must consider whether it is practical (financially and in terms of personnel) to "focus" on this number of weed species. We doubt that BLM can afford to "focus" nearly the attention that would be required to deal with all these species. Rather, as has been mentioned, BLM should identify species where its efforts can really make a difference and pursue INPS management on that basis. Salt cedar is an obvious target because of its well-defined areas of occurrence and the extreme importance of riparian areas for many values. Also on this page, BLM falls into the use

[8] This same comment applies generally to all livestock grazing issues, not just those in riparian areas. How many acres have been assessed? How much of this land is failing to meet standards? How much of this is due to livestock grazing? For areas where livestock grazing is the source of the problem, what actions have been taken and will be taken (within the required timeline) to correct these problems. BLM needs to provide quantitative information regarding how the fundamentals of rangeland health and standards and guidelines are being implemented, and how they will be implemented in the future under the new plan.

of pejorative, non-scientific terminology such as "infested." We urge BLM to strike this kind of language from the document, it is non-scientific and tends to infuse in weed control efforts something of a war mentality rather than being a carefully designed management program. At a minimum, terms like "infest" need to be defined in they are going to be used.

On page 3-50, the problems created by tamarisk are identified in some detail. Again, this provides support for our view that BLM should focus INPS efforts on this species and establish specific goals for its eradication as is done under Alternative B.

On pages 3-52 to 3-53, issues related to fish species are discussed. It appears based on this discussion that even if BLM lands may provide only a small area of fish habitat, these areas may be important "refugia" or otherwise provide protected areas that can better support fish. BLM should at least consider this issue. On page 3-53, a number of potential management actions that can benefit fish are identified; BLM should fully consider applying these on its lands, even if they are relatively small areas, especially if its lands are disproportionately valuable for fish.

On page 3-54, the results of the Bates Hole and Rattlesnake Hills studies are discussed. BLM fails to answer a critical question here: what was the difference in these two areas that most likely lead to the differential number of years in which sagebrush over-utilization occurred? Does one area have drastically more mule deer, or is it much more heavily grazed by livestock?, for example. The answer to this and related questions needs to be provided so as to understand the significance of these differences. Moreover, under the livestock grazing standards and guidelines, management action is probably called for, and BLM should commit to taking such action. Moreover, BLM should establish 35 percent utilization of sagebrush as a management standard throughout the planning area, with a commitment to take needed management actions if this standard is exceeded.

On page 3-55 activities that have degraded wildlife habitat are mentioned. BLM needs to recognize that there are many <u>indirect</u> impacts to wildlife habitat, especially from oil and gas development. Exhibits 10, 11 and 12. BLM should take steps to control these indirect impacts, and these studies may be helpful in that regard.[9]

On page 3-56 BMPs are discussed. The WGFD's Minimum Recommendations report is even mentioned. But as mentioned above, from what we have seen BLM never implements any of the BMPs in the WGFD report. It totally ignores it. As discussed above, this is contrary to the law, and BLM should at least consider the BMPs in the WGFD report, and should in fact adopt them when APDs are processed. The RMP should so provide.

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[9] The 2005 Annual Report from the Pinedale Anticline mule deer study, Exhibit 12, is of special significance. This report demonstrates the extraordinary impacts oil and gas development can have on mule deer. This study should be considered not only relative to assessing indirect impacts from oil and gas development, but also more generally in a consideration of the stipulations that should be put in place to protect big game, particularly mule deer.

On page 3-57 “management challenges” facing big game are mentioned. Oil and gas development is notably absent from this discussion. But oil and gas development may well be the most significant challenge big game species are facing. Exhibits 10, 11, and 12.

On page 3-59, the poor conditions of many ranges for mule deer and pronghorn are mentioned. This heightens the need to designate as many blocks of sagebrush habitat for protection as possible, as Alternative B would do relative to what is provided for under Alternative E. Furthermore, the plan must address and seek to resolve what is an apparent difference of opinion: the WGFD apparently has herd population objectives that BLM feels cannot be supported by current habitat conditions (in fact, BLM feels the habitat cannot meet current populations, which are generally below the WGFD objectives). Again, this needs to be resolved because BLM cannot allow for overuse of these lands, which would lead to prohibited unnecessary or undue degradation of the public lands.

On page 3-60 the importance of beaver in often benefiting riparian habitats is discussed. Given this, BLM should state what it will do to favor beaver presence on its lands, or where they are deemed a problem, what it will do to discourage them. This represents a specific example of the need for BLM make some provisions for management of wildlife besides big game and a few select other species; its claims that for furbearers no additional management direction is needed and that they are taken care of by other management actions are not persuasive when BLM is elsewhere recognizing the important values of some of these species in a habitat it views as probably the most crucial habitat in the planning area. <u>See</u> 2-53.

On page 3-61, the gray wolf is referred to as a “predatory” species because this is how Wyoming law defines it. The gray wolf is a species managed by the U.S. Fish and Wildlife Service pursuant to the ESA, and BLM should recognize this. Wyoming’s attempts to have the wolf delisted and impose its categorization of the wolf on its management have been uniformly rejected. There is no telling if or when Wyoming will resume management of the wolf. Consequently BLM should not recognize Wyoming’s classifications, and rather focus on the classification that counts: gray wolves are an experimental population in Wyoming and are managed under the terms of the ESA.

On page 3-63 a brief mention is made of the Migratory Bird Treaty Act (MBTA). BLM should recognize that the MBTA prohibits it and its permitees from taking migratory birds. A number of BLM-authorized activities, such as cell phone towers and power lines, may well result in take, and BLM should state what it will do or require to monitor any takings and what actions it will take if takings become apparent.

BLM states that several bat species are “a management priority” on page 3-64. Yet again, BLM makes no specific provisions for how it will manage these species or their habitats. <u>See</u> 2-53 to 2-54. This must be corrected. If these species are a priority (many are sensitive species), at a minimum, BLM can seek to identify the caves these species are using and protect them (often by prohibiting public entry by constructing gates that

allow bat passage) when caves are identified. See 3-82. It can also take steps to protect them from the wind turbines that kill them. Id.

On page 3-65 BLM states what it views as its obligations under its special status species manual. These species are to be "considered" and management is to be "consistent" with their conservation. Actually, BLM's obligations are more stringent than that. For sensitive and candidate species, it must, for example, develop management plans and conservation strategies, develop "specific habitat and population management objectives," "ensure" that its management actions are consistent with the stated objectives for the species, and engage in monitoring to ensure management objectives are met. Special Status Species Management Manual § 6840.06.C.2.a-d. BLM should restate the language on page 3-65 to carefully adhere to that used in the Special Status Species Management Manual, and ensure through land use plan decisions that it adheres to these requirements. Also on this page, BLM mentions that it manages habitat while WGFD manages wildlife populations. It should also be mentioned that the Fish and Wildlife Service manages listed species and migratory birds; BLM must not lose sight of this and should fully support the Service's management objectives in the RMP.

On page 3-66 specific threats are identified to Porter's sagebrush, namely oil and gas development. This seems to be a clear case where a new, special stipulation should be developed and put in place. All known locations of this species should be off limits to leasing and development, and the "geologic structure [where this species occurs] identified as a high priority for gas exploration and development" should be subject to this stipulation. Likewise, special stipulations should be developed for William's wafer-parsnip and Laramie false sagebrush because the threats to both species are well defined, namely limestone quarrying. 3-66 to -67.

In general, with respect to the special status plant species described on pages 3-65 to -69, it cannot be claimed that these species' protection is assured through general purpose vegetation management and that all that is required to meet their needs is to limit livestock water development and salt placement. 2-55. The discussion on these pages makes it clear that these species have very specialized, and very well defined, habitat needs. Therefore, BLM must put in place far more specific management practices designed to protect these species in order to comply with its Special Status Species Management Manual.

On page 3-73 the status of sage grouse is discussed. Certain areas are clearly extremely important for these birds: Bates Hole, Shirley Basin, Rattlesnake Hills, South Bighorns, and Laramie Range foothills. Given these well defined areas of special importance, BLM must maximize protection for this species in this area. This supports the need to fully designate all blocks of sagebrush habitat for protection and to fully protect all potential ACECs and/or special management areas, as is done under Alternative B relative to Alternative E. BLM must do this to comply with the WGFD sage grouse plan, its own sage grouse plan, and its Special Status Species Management Manual. It is also noted on this page that winter concentration areas have not been well defined yet. BLM needs to state what it is doing and will do to remedy this situation, as winter concentration areas

have become recognized as very important for ensuring the health of sage grouse populations. More generally, BLM needs to state what is doing and will do to map sage grouse leks and brood rearing areas, as well as mapping winter concentration areas and important winter habitat.

On page 3-77, the Fish and Wildlife Service's publication "Guidelines for Raptor Protection from Human and Land Use Disturbances" is mentioned, but only in the context of what are typical nesting periods for these species. This publication needs to be discussed much more thoroughly. What provisions for protection of raptors does it make? How do they compare to BLM stipulations for protecting raptors? If BLM stipulations do not fully embrace the Fish and Wildlife Service guidelines, why is that case, what biological basis is there for any differences? We would note that the Fish and Wildlife Service is given special authority to manage these species under the MBTA, so BLM must fully consider its guidelines, and can only reject these views of the expert wildlife agency if it offers a careful explanation as to why they should not apply on BLM lands. BLM mentions that it establishes buffer zones around raptor nests; are these consistent with the Fish and Wildlife Service guidelines? More generally, these guidelines should be considered as a source of new stipulations for raptor protection, and BLM should fully evaluate and to the maximum extent possible adopt these guidelines as stipulations governing land-disturbing activities. It is also mentioned on this page that raptors are impacted by powerlines and collisions with wind turbines. This raises takings issues under the MBTA, which as discussed above BLM must fully consider and take steps to prevent.

On page 3-80 it is stated that the yellow-billed cuckoo has known occupied habitat in the Sybille Creek and east slope of the Laramie Range areas. This would seem to provide all the specificity that is required to provide for special management of this BLM sensitive species, as required by the BLM Special Status Species Management Manual. The RMP should so provide for such special management in these areas. Surface disturbing activities in these areas should be subject to stipulations designed to ensure this species is not harmed. Likewise, Lewis's woodpecker breeding populations have been "confirmed" in the planning area. To the extent these locations are well defined and on BLM lands (or BLM mineral estate), BLM should put in place protections in the RMP designed to protect this species. It is also mentioned that sagebrush obligate species (e.g., Brewer's sparrow, sage thrasher, sage sparrow, sage grouse) require "intact" sagebrush habitats. This again emphasizes the need for BLM to designate the largest number of intact sagebrush blocks for protection as is possible. BLM will not be meeting its duties under its Special Status Species Management Manual if it fails to do so.

On page 3-81 the black-footed ferret is mentioned, including their presence in the Black-Footed Ferret Management Area and near proximity to the planning area. Yet the EIS is silent regarding BLM's views about this, blandly stating that they may move into the planning area. BLM, should <u>encourage</u> the expansion of ferret populations into the planning area. It should openly welcome and embrace this species into the planning area. What a success that would be! It should take no steps (like allowing prairie dog control) that would hinder expansion into the planning area. BLM has a responsibility to do this

under the provisions of section 7(a)(1) of the ESA, as discussed above (BLM must further the purposes of the ESA, which include protecting the ecosystems upon which listed species depend and facilitating recovery and delisting). It also has these duties under its Special Status Species Management Manual. Further down on page 3-81, BLM notes that white-tailed prairie dogs (itself a sensitive species) occur in the ferret experimental release area. If these colonies occur on BLM land, BLM must provide for special protection of them. Also on page 3-81 the Preble's meadow jumping mouse is discussed. It states that delisting has recently been proposed. We believe this assertion is out of date. The Fish and Wildlife Service has recently engaged in an intense analysis of whether the mouse is a "good" species, and the weight of science is showing that it is indeed a separate and unique species, which would preclude delisting. BLM must ensure this discussion is up to date.

On page 3-82, the critical importance and value of black-tailed prairie dog colonies is recognized by BLM. This recognition just emphasizes the need to protect the single prairie dog colony that would be protected under Alternative B, but not under Alternative E, as an ACEC. In fact, it makes it clear that protection should be expanded even further. At a minimum, the large complexes that are present on BLM lands should be protected. At most these represent a few thousands of acres out the 1.4 million acres of BLM land in the planning area, a tiny fraction. Certainly there must be room to protect this tiny amount of land in the RMP without significantly disrupting other activities. BLM should reevaluate the protection of black-tailed prairie dog colonies and provide a full explanation of why they are being protected or not, particularly in light of their recognized value as "important habitats for future black-footed ferret populations." It is also recognized on page 3-82 that one of the management challenges facing special status species is "lack of cottonwood and willow regeneration." This just reemphasizes the need for BLM to provide for specific measures to control tamarisk (which greatly inhibits cottonwood regeneration), as is done under Alternative B, but not Alternative E.

Chapter 3—Heritage and Visual Resources

On page 3-84 it is said that section 110 of the National Historic Preservation Act requires BLM to "identify and manage" cultural resources. Actually, section 110 requires much more. It requires that "to the maximum extent possible" BLM will "minimize" harm to cultural resources, and work with the Advisory Council on Historic Preservation to accomplish this. 16 U.S.C §470h-2(f). BLM should recognize this substantive obligation and fully abide by it. It must make sure the RMP reflects that BLM is doing everything possible to minimize harm to cultural resources. Thus, for example, the Cedar Ridge Traditional Cultural Property must be protected as an ACEC, and the National Historic Trails must be given the protections afforded under Alternative B. Anything less shows that BLM is not doing "to the maximum extent possible" what it can to "minimize" harm to these properties (if these more protective measures under Alternative B were not even possible, BLM could not even propose them).

On page 3-90, it is stated that the 2004 VRM inventory showed "the majority of the planning area should be classified as VRM Class II and Class IV." This is nothing but an

assertion sustained by no objective evidence. What is the current status of most BLM lands in this area? We suspect that the vast majority are Class I (the landscape "appears unaltered by humans") or at worst Class II (the existing character of the landscape is largely unaltered and activities do not attract the attention of the casual observer). If this is the case, what is the basis for fundamentally reworking the visual character of the landscape to predominantly Class III and Class IV? What is the authority directing that radical transformation be pursued as a management objective? We do not think it can be found in FLPMA—the national policy is to manage the public lands in a way that will "protect" their "scenic" values and "preserve and protect" some public lands in their "natural condition"; to manage public lands without "permanent impairment of the . . . quality of the environment"; and to prevent unnecessary or undue degradation of the public lands. 43 U.S.C. §§ 1701(a)(8), 1702(c), 1732(b). Again, what authority does BLM claim for pursuing a management plan that would allow the public lands to be transformed permanently from an essentially natural visual environment into an industrial viewshed? We do not think it can be found, or at a minimum it is tempered by other directives such as those just cited, and thus we ask BLM to reconsider its management direction regarding visual resources. We believe the management direction should be that existing natural visual environments will be protected and maintained to the maximum extent possible and that transformations to lower visual Classes will only be allowed when the maximum level of mitigation possible is applied to the activity. This is certainly consistent with the direction under IM 2004-194 relative to oil and gas operations, at a minimum. More generally, BLM should emphasize that visibility classes are binding management requirements.

Chapter 33—Lands and Reality

On page 3-103, certain areas especially susceptible to OHV impacts are mentioned. We believe this emphasizes the need for these areas to be given special management designation (ACEC) and/or the need for limiting OHVs to designated roads and trails only.

On pages 3-105 to 3-107, issues related to grazing are discussed. BLM gives more attention to the I, M, C classifications that date to the early 1980s than it does to its new grazing regulations adopted in 1995. This needs to be corrected. As emphasized several times, BLM's standards and guidelines for grazing administration (and its Fundamentals of Rangeland Health) form the basic direction and requirements that BLM must pursue and abide by relative to livestock grazing, not the old I, M, C categories. These categories can only be given management focus to the extent they do not prevent or hinder BLM from pursuing its responsibilities relative to grazing management defined in its regulations. On pages 3-105 over to page 3-106, BLM states that the rangeland health standards are "guidelines" that are specified in Allotment Management Plans or "management agreements." This is total misstatement of the requirements of BLM's grazing regulations. As discussed above, the standard and guidelines are binding, non-discretionary obligations that must be met and if they are not, livestock grazing management changes must be made within a specified timeframe and the options that are available for the changes in livestock management are also specified. 43 C.F.R. §§

4180.1, 4180.2(c). BLM also states that management emphasis is on I and M allotments; this is incorrect, management emphasis is and must be on any allotment that has been determined to not be meeting the standards and guidelines. BLM states that 22 out of 26 allotments that have been evaluated are not meeting the standards and guidelines and this is due to livestock grazing. 3-106. It does not state what if any actions have been taken to correct these problems (as it must do), and we request that BLM state what actions have been taken. It is not relevant that only portions of the allotments were not meeting standards, BLM must still take action once a violation of the standards is determined. BLM states that where the rangeland health standards are being violated "guidelines or BMPs will be implemented." These must be implemented within one year, and BLM must so commit. Moreover, "guidelines or BMPs" can only be used to remedy the problems if they are among those allowed for at 43 C.F.R. 4180.2(c) (i.e., they must be provided for in sections 4110, 4120, 4130, or 4160 of the grazing regulations). We appreciate that range condition seems to be improving in the Casper Field Office area, but this needs to be reconciled with the fact that 24 out of 26 allotments that have been evaluated are not meeting the standards and guidelines. There seems to be a disconnect here, and this should be resolved—are the range condition surveys measuring the specified rangeland health markers? If not, they may not have much relevance for management decision-making.

Chapter 3—Special Designations

On pages 3-114 to 3-119 the various special management areas are described. Many of these descriptions support our view that the protections afforded by Alternative B should be adopted by BLM rather than the provisions of Alternative E. The Alcova Fossil Area contains tracks that are "one of only four such trackway occurrences known worldwide; The Bates Hole area contains sagebrush habitats that "represent the best quality greater sage grouse habitats in the planning area and some of the finest habitats in Wyoming;" the Cedar Ridge TCP is "high importance" to the Eastern Shoshone people; the South Bighorns/Red Wall has important habitat for big game and raptors, unique plant communities, a "dense and diverse range of cultural and historical resources rivaling that found anywhere within Wyoming," and there are two existing BLM campgrounds in the area.

With respect to the two oil and gas special management areas (Wind River Basin, and Salt Creek), we believe BLM must rethink whether it can allow oil and gas leasing in these areas to occur with nothing more than standard stipulations. Allowing development on these terms will lead to unnecessary or undue degradation of the public lands in that many, many other leases are being issued with greater stipulations. Under BLM policy (IMs) those leases could not be issued with additional stipulations unless the stipulations were absolutely necessary to prevent unnecessary or undue degradation. BLM policy prohibits attaching stipulations "just because it wants to." Thus, BLM cannot decide that leases can be issued in these areas with few stipulations when it has determined in other areas under exactly the same circumstances that additional stipulations were required to meet its statutory obligations. Moreover, BLM is not excused from many other obligations. It must still comply with its Special Status Species Management Manual. It

must still consider and comply with state policies to the maximum extent possible, including the Wyoming Game and Fish Minimum Recommendations report. IM 2004-194 still applies, as does the Gold Book. While BLM can emphasize energy development in these areas, it cannot establish what could be "leasing and development without rules" areas.

Chapter 4—Mineral Resources

Pages 4-34 to 4-39 discuss some important issues relative to oil and gas development. On pages 4-34 to -35 BLM attempts to argue that NSO is a "major restriction[]" on oil and gas development and that overlapping timing limitation stipulations create problems for oil and gas companies. These assertions are remarkably evidence-free and totally subjective speculation that is essentially a rote repetition of petroleum industry claims. There is no objective support presented for the claim that NSO and overlapping timing limitation stipulations "have the potential of resulting in adverse impacts to the oil and gas exploration and development." A very small part of the planning area will be NSO, and no evidence is presented showing overall oil and gas production will be limited. BLM must come forward with such evidence if it wants to make broad claims such as these. That timing limitation stipulations may create smaller timeframes within which to drill means nothing absent evidence this is creating real problems on a broad scale. BLM must present evidence showing that companies cannot plan for and deal with these limitations before it can claim there is any impact of any significance. That the companies don't like them is not enough; there must be objective evidence showing a reduction in drilling rates due to these limitations before this claim can be made. Companies have been eagerly buying leases with overlapping timing limitation stipulations at virtually every BLM lease sale, so obviously they do not view these limitations as such an encumbrance that they cannot develop the lease. BLM's whole premise in this discussion is that anything but drilling with no rules creates adverse impacts to the oil and gas industry. But that is a false basis for impacts analysis—BLM should recognize (and support, since it has a responsibility to faithfully execute the laws of the United States) that the environment in which oil and gas development will proceed is one where environmental protection is assumed and will be given a high priority. The dozens of laws enacted in the last 40 years to protect the environment stand as testament to this national will and direction. We request that BLM totally revise this impacts analysis based on the reality that environmental protection is an overarching national priority and thus does not represent a "major restriction" or other similar pejorative classification. Furthermore, we ask that BLM recognize that many environmental protections may actually reduce costs, making oil and gas development even more appealing. This reality has been recognized in BLM's national BMPs presented on its website and referenced in IM 2004-194. For example, if multiple wells are drilled from a well pad, fewer roads need to be built and drilling rig moves are much shorter and more efficient which may make the development more economically viable, not less.

The discussion of "impacts" resulting from Alternative B makes it clear that there would be few impacts resulting from this alternative relative to oil and gas development. The proposed South Bighorns/Red Wall ACEC and the habitat fragmentation blocks "contain

the bulk of the acreage closed to oil and gas leasing" but these areas have "low to very low or no development potential . . . ." 4-37. The 580,007 acres of habitat fragmentation blocks have "low to very low to no development potential . . . ." The Sand Hills SMA "would have only minor impact" on development. The Muddy Mountain EEA "will not have a substantial impact on development." The Bates Hole SMA would have limited impacts since "this area [has] very low to no development potential." 4-38. The Cedar Ridge ACEC "has a very low to no development potential for oil and gas." Of the 575,778 acres of highly erosive soils that would be subject to NSO only 6,661 acres "have a high development potential." Of the 1,782,953 acres of BLM mineral estate within 4 miles of sage grouse leks, only 12,015 acres "have a moderate development potential" and would be subject to NSO. Of the 80,285 acres of BLM mineral estate within ¼ mile of historic trails subject to NSO, only 2,517 acres "have a high development potential" and only 4,213 acres "have a moderate development potential." The NSO associated with the Jackson Canyon ACEC and the Muddy Mountain elk crucial winter range "will have a limited impact" on oil and gas development. Thus it is clear that Alternative B will have only the most minor of impacts on oil and gas development and BLM's claim that "Alternative B would have the greatest adverse impacts on oil and gas development" is taken totally out of context. Furthermore, the minor—trivial—impacts on oil and gas development that would occur under Alternative B reemphasize our claims throughout these comments that BLM should adopt the protection measures in Alternative B relative to special management area designation, sagebrush habitat block protection, etc. It is clear the alternative will only have minor impacts on oil and gas development, and BLM states repeatedly throughout the EIS that oil and gas is by far the major development activity that will occur (coal, locatable minerals, salable minerals, etc. development will be relatively minor activities, and thus are not great issues relative to selecting Alternative B).

We must take exception with BLM's claim in Table 4-7 that only 190 wells would be drilled under this alternative. What is the basis for this claim? What objective proof is there that this alternative will reduce drilling by 90% over the current plan and the preferred alternative? This claim seems preposterous, and we would like to see the objective basis for it. As just described, many of the "major" limits on development in Alternative B would occur in areas with minor and even no development potential, and if BLM is assuming that every area subject to overlapping timing limitation stipulations will see almost no development, it needs to come forward with evidence of that.

Chapter 4—Biological Resources

On page 4-59 it is stated that conservation measures identified in biological assessments "are applied to surface-disturbing and disruptive activities . . . ." What does this mean? Will these conservation measures be applied as stipulations, conditions of approval? We support BLM doing this, but think it should specify in more detail what exactly will be done and make it a land use plan decision. BLM cites Sierra Club v. Peterson for certain propositions. We believe BLM should note and abide by other determinations made by this same court. BLM cannot rely on a "prophecy that exploration activity . . . will be insignificant and generally fruitless." 717 F.2d at 1413. If BLM "asserts that it cannot

accurately evaluate the consequences of drilling . . . activities until site-specific plans are submitted" then BLM "may delay preparation of an EIS provided that it reserves both the authority to *preclude* all activities pending submission of site-specific proposals and the authority to *prevent* proposed activities if the environmental consequences are unacceptable." Id. at 1415. BLM cannot selectively abide by court decisions.

On page 4-61 it is pointed out that roads have the greatest fragmentation effects. Oil and gas activities are especially problematic in this regard, especially in large blocks of contiguous habitat. 4-59. This strengthens the need to adopt the provisions of Alternative B rather than those of Alternative E that relate to fragmentation, such as the protection of blocks of undisturbed sagebrush habitat.

On page 4-67 and in various other places in the EIS BLM makes clear that it intends to manage forests for commercial purposes, for logging and timber removal. This being the case, BLM needs to fully evaluate the impacts of logging and biomass removal, which it has failed to do. These include impacts such as nutrient removal, erosion (especially on steep slopes), impacts on the regeneration of forests, and numerous other well-recognized impacts that result from logging. On page 4-68 it is stated that fragmentation effects will be corrected "eventually." BLM has to do better than this. Does this mean 5 years? 10 years? 100 Years? 1000 Years?

Page 4-68 The conclusion regarding the impacts of silvicultural treatments on forest health (especially the consequences of fuel reduction and claims regarding future susceptibility to fire) need to be reevaluated in light of recent scientific studies. Exhibits 6, 7, and 8. Likewise the claim on page 4-69 that the impacts to forests, woodlands, and forest products will be greatest under Alternative B needs to be reevaluated in light of this new science.

On pages 4-73 and 4-74 the impacts of Alternative B on grassland and shrub communities is discussed and on pages 4-76 and 4-77 this discussion is repeated for Alternative E. We believe there is an important missing element of these discussions, namely a consideration of the impacts of oil and gas development. There is no doubt that oil and gas development will be the most pervasive land disturbing activity in the planning area and that it has significant impacts on grass and shrub lands. Given this, the impacts of oil and gas development should be addressed separately. There is no basis for lumping all "surface-disturbing activities" together as one, as though they have no unique impacts. Certainly the impacts of 1800 wells with probably hundreds of miles of roads are not the same as the impacts of a single coal mine. If BLM is not going to present any separate assessment of the impacts of oil and gas development, it must articulate a rational basis for not doing so. This same problem also is apparent for a number of other resources, including the discussions on pages 4-90 and 4-101,[10]

[10] We note that on this page BLM acknowledges that "oil and gas development is anticipated to be the greatest single contributor to disturbance of wildlife habitat in the planning area." BLM cites to the WGFD Minimum Recommendations report for a further discussion of the important impacts of oil and gas development on wildlife. These points emphasize the need for a separate treatment of oil and gas development impacts that is not combined with an assessment of general surface-disturbing activities.

Page 4-113. The discussion of impacts is almost totally unhelpful because it does not even discuss impacts to wildlife. What are the anticipated impacts to wildlife reproduction, distribution, physiological condition (stress and reproduction, for example), behavior (avoidance of areas), etc. These are impacts to wildlife. At most this discussion only indicated whether wildlife will be "OK" or "not OK" which is not helpful and does not meet the requirements of NEPA. The discussion mostly focuses on what will be done, not on the impacts of what will be done.

Pages 4-127 to 4-132. The discussion of the impacts of Alternative E (and this applies to all other impacts discussions) again is almost no discussion of impacts at all. It is almost entirely a comparison of the relative impacts of Alternative E compared to Alternative A. About all that can be said is that the impacts of E may not be quite as great as A, but we have little idea just how great the impacts of either are. While it may be appropriate to compare the relative impacts of the alternatives, some indication of the absolute impacts on wildlife (not acres) of each alternative is also required in order to have an understanding of what will occur under each alternative. Will there be more or fewer deer? Furthermore, by definition, Alternative A (the present management regime) cannot serve as the basis for impacts comparison. BLM has already determined that no action (Alternative A) is totally inappropriate and will not be pursued. 1-5 (BLM has decided to revise the existing plan because it is severely out of date and "no longer serve[s] as a useful guide for resource management"), 2-2 (Alternative A does not meet the purpose and need of RMP revision but is included only because that is required).

Chapter 4—Cumulative Impacts

On page 4-296 to 4-299 BLM misinterprets how to estimate cumulative impacts. It attempts to estimate these by considering various land use plans (Table 4-22). But the CEQ regulations are clear, cumulative effects include the impacts of reasonably foreseeable future actions, not the actions themselves. Considering only a number of pending BLM land use plans is far off the mark in terms of consideration of the impacts of future actions. Many, many other future actions are pending and well-defined. At a minimum BLM must consider the impacts of many of the numerous projects that are currently undergoing NEPA review by BLM that are presented monthly in its "Hot Sheet" ("Wyoming BLM Land Use Planning and Projects"—published monthly by the BLM Wyoming State Office"). Many of these projects clearly relate to and could affect the Casper Field Office. Furthermore, the BLM's attempt to claim that these plans are "strategic in nature" and therefore impacts "cannot be quantified" also misses the mark. BLM must attempt to assess the cumulative impacts in as much detail as possible. As noted in Kern, this may involve some degree of prognostication—BLM cannot avoid its duty to make an assessment of what the impacts will be.

On pages 4-301 to 4-308, BLM engages in a far too circumscribed an analysis of what the cumulative impacts may be. It considers only seven very narrow categories of impacts that ignore many significant impacts. While impacts on INPS may be of significance, what about impacts on the intactness of sagebrush ecosystems, the

functioning condition of riparian habitats? These are at least as significant as a narrow focus on INPS. The "cumulative impact" on "oil and gas well development" is not even an environmental impact, and furthermore, the analysis does not even consider cumulative impacts on well numbers, it only considers the number of wells that might be built in the Casper Field Office. What about the number of wells projected from the Lander RMP, Newcastle RMP, and Rawlins RMP, actions BLM itself says are reasonably foreseeable future actions that should be considered in the cumulative impacts analysis. BLM claims the impacts of the limited number of wells it considers on INPS, special status plants, and a few other resources "are described under the appropriate cumulative impacts section" but many resources are ignored. What will the impacts of the cumulative number of wells be on visibility in Class I areas, for example? What will the impacts of these numbers of wells be on habitat fragmentation and crucial winter ranges? These are important issues that BLM itself recognizes, yet there is no consideration of these cumulative impacts on these resources or conditions. BLM narrowly focuses on the impacts of "water depletion on downstream special status species" but any number of other water quality and quantity issues are ignored. What will the cumulative impact be on the flow and water quality of the Platte River, for example. What about the cumulative impacts on other watersheds. The discussion of cumulative fragmentation impacts differs not at all from what appears in the direct impacts analysis in Chapter 4; there is just a restatement of how many acres will or will not be protected in contiguous blocks under the various alternatives. How intact will the sagebrush ecosystem be if the Casper RMP is implemented in conjunction with the Newcastle, Lander, Rawlins, and Buffalo RMPs? That would reflect cumulative impacts. All in all the cumulative impacts analysis is totally unhelpful and unilluminating. We are left totally uninformed regarding the status of big game populations if the "reasonable foreseeable actions" listed in Table 4-22 are implemented. We have no idea what the impacts on biological diversity are likely to be if the reasonably foreseeable actions are implemented. We have no idea how many acres of land will be off limits to oil and gas development and how much will be open with minimal limitations. We have no idea what the cumulative impacts on National Historic Trails will be if the Casper RMP is implemented in conjunction with the Lander RMP. How many acres of land are anticipated to converted from a current status and/or management classification of Class II to Class III or IV, not just from implementation of the Casper RMP/EIS, but cumulatively? That is the kind of information the cumulative impacts analysis needs to provide, but currently fails to do.

Chapter 4—Irreversible and Irretrievable Impacts

BLM inappropriately attempts to limit the consideration of irreversible and irretrievable commitments of resources by claiming that because "the decision does not authorize on-the-ground activities" many impacts are not irreversible or irretrievable. This is totally inappropriate. For one, many decisions in the land use plan are in fact final. Visual status classifications are final. The decision to designate contiguous tracts of sagebrush for protection or not is final. The determination of whether areas are open or closed to OHV use is final. The decision whether to designate an ACEC or not is final. The decision to greatly emphasize oil and gas development in the Salt Creek Wind River

Basin areas is final. Furthermore, the plan will guide, limit and significantly define all future actions. Thus, in the future, even if a specific decision has not been made to allow an oil and gas well in a particular sage grouse habitat, the decision will have been made to only avoid surface disturbing activities within ¼ mile of the perimeter of a lek (Alternative E) rather than to prohibit disturbance within ½ mile of the perimeter of a lek (Alternative B). Once the well is in place under these conditions it will have ongoing impacts for many years. This will have irreversible and irretrievable consequences for sage grouse populations. BLM must revise its analysis of irreversible and irretrievable commitments to present a good faith estimate of impacts not just on commodities (coal, mineral materials), but to also include an analysis of irreversible and irretrievable effects on resources such as cultural resources, wildlife, and visual quality.

Under NEPA, BLM must also "provide a detailed statement" in an EIS on "the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity." 42 U.S.C. § 4332(2)(C)(iv). This discussion is totally absent from the Casper RMP/EIS and we request that such a careful statement be provided. Any claims that this discussion can be found here and there throughout the EIS are insufficient, the law is clear, a "detailed statement" on this issue must be provided, and that is not accomplished by disconnected and disparate statements. Even if these exist, it is BLM's obligation to pull them together into a detailed and understandable assessment of this issue. Additionally, this statement has particular importance due to BLM's obligation under FLPMA to manage its lands for "sustained yield." Sustained yield "means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources on the public lands . . . ." 43 U.S.C. §1702((h). BLM is obviously planning to allow a number of "local short-term uses" of lands in the planning area, yet under its sustained yield mandate it has an obligation to provide for and ensure "maintenance and enhancement of long-term productivity." BLM needs to provide a careful discussion and assessment of these issues in the context of a discussion of the irretrievable and irreversible commitment of resources.

Appendix L

BLM should commit to adopting and requiring these mitigation measures to the maximum extent possible. Many of these measures are being required by BLM as part of the Record of Decision for the Jonah Infill Project

Appendix U

The provisions for intensive management should be adopted widely, not just in the few specified special management areas. The protected contiguous blocks of sagebrush should certainly be subject to these requirements. Prairie dog colonies, especially if they may be areas that can be occupied by black-footed ferrets, should be subject to these requirements. We are also puzzled that no "intensive management" is specified relative to wildlife. We believe this should be corrected and specific additional measures for the protection of wildlife incorporated into this appendix.

Miscellaneous Issues

In 2005, the State of Wyoming enacted the Wyoming Surface Owner Accommodation Act that governs relations been oil and gas companies and private landowners on "split estates." W.S. §§ 30-5-401 to -410. We request that BLM abide by this new law, and provide a discussion in the Casper RMP/EIS of how it will do this. Attached to these comments as Exhibit 13 are comments we presented to BLM for its assessment of its split estate policies, and we ask that these also be considered by BLM.

We also request that BLM define and discuss in the RMP what it means by a "valid existing right" under an oil and gas lease. This is a critically important issue that will govern all future processing of oil and gas development proposals (APDs), and thus is very appropriate for consideration and definition at the RMP level. This issue should not be left to "case-by-case" definition out of view of the public at the APD level. This is an issue that needs to be transparently considered by the BLM in the RMP because the RMP is the overarching guidance for management in this area, and this is an overarching issue.

We specifically request that BLM consider the relationships and interactions between terms in BLM's standard lease form (especially section 6) and its regulation at 43 C.F.R. § 3101.1-2. We request that BLM address the provision in the standard lease form and the regulation stating that "reasonable measures" that BLM can require include certain measures "but are not limited to" those measures. Similarly, we request that BLM address the language in the regulation stating that "at a minimum" certain reasonable measures are consistent with the lease rights granted. It is our view that BLM has retained substantial rights to condition oil and gas exploration and development activities, and that view is supported by the language in both the standard lease form and in the regulation. Under the standard lease form, the objective is to "minimize" environmental impacts, and BLM is given the right to require reasonable measures that are deemed necessary to meet the "intent" of minimizing impacts, but those measures "are not limited to" modifications of siting, design, or timing of operations, or the specification of reclamation measures. Under the regulation, BLM is likewise "not limited to" modifying siting, design, timing, and reclamation measures, and the specified reasonable measures that are deemed consistent with the lease rights granted are "at a minimum" of BLM authority. And overlying all of this is the obligation to prevent unnecessary or undue degradation of the public lands pursuant to FLPMA, which is clearly a nondiscretionary statutory command, as recognized in the regulation. Consequently, we ask that BLM discuss and provide as land use plan decisions what other reasonable measures it may impose that are consistent with lease rights. It is our view that BLM has far more retained rights to condition development than it typically claims. But under the mandates and intent of numerous statutes (FLPMA, CAA, ESA, etc., etc.), we believe BLM has a responsibility to assert that it has the <u>maximum</u> retained rights possible, and additionally under these statutes BLM must use this retained authority to <u>maximize</u> environmental protection.

Throughout these comments we have indicated that various stipulations should be considered and adopted by BLM in the RMP. Examples include the mitigation measures provided for in the WGFD's Minimum Recommendations report and the Fish and Wildlife Service guidelines publication regarding raptor protection. See also Exhibits 2 and 12. We request that BLM engage in a careful analysis in the Casper RMP/EIS of whether it can and should require additional stipulations besides those provided for in BLM's standard stipulation package (Appendix I). The RMP stage is exactly the time and place to engage in such an analysis. If stipulations are not provided for and authorized in the RMP, they will almost certainly never be considered or even be possibilities at the APD stage. We believe this analysis should be guided by the impacts anticipated for various resources, as well as the degree of retained rights BLM enjoys, as discussed in the prior paragraph.

We have referenced the WGFD's Minimum Recommendations report many times in these comments. We reiterate that we believe BLM should formally adopt and abide by these guidelines as a land use plan decision. However, the Minimum Recommendations report is an important asset from another perspective as well. Namely, it contains an annotated bibliography of at least a hundred scientific reports documenting impacts that may result from oil and gas development. We request that BLM consider these reports as it revises its impacts analysis with respect to oil and gas development impacts on wildlife, and as it considers what new stipulations should be required as land use plan decisions.

Last, attached as Exhibit 14 is a report on economic issues prepared by the Wilderness Society that we request BLM to consider as it revises the Casper RMP/EIS.

We appreciate your consideration of these comments and look forward to remaining involved in this process.

Sincerely,

Bruce Pendery,
And on behalf of:

Kirk Koepsel
Sierra Club