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VALLEY COALITION • BIODIVERSITY CONSERVATION ALLIANCE •
AUDUBON WYOMING • NATURAL RESOURCES DEFENSE COUNCIL •
JACKSON HOLE CONSERVATION ALLIANCE • NATIONAL
WILDLIFE FEDERATION**

June 16, 2007

Pinedale RMP/EIS
Attn: Kellie Roadifer
BLM Pinedale Field Office
1625 West Pine Street
P.O. Box 768
Pinedale, Wyoming 82941

**Re: Comments on the Draft Environmental Impact Statement for the Pinedale
Resource Management Plan Revision**

Dear Ms Roadifer:

Please accept the following comments on the above referenced draft environmental impact statement for the Pinedale Resource Management Plan revision (hereinafter referred to as the "RMP DEIS").

The RMP DEIS presents four alternatives for consideration: the no action alternative (continuation of the existing 1988 Pinedale Resource Management Plan (RMP)), an alternative that would reduce environmental protections greatly and give industry great latitude and minimal oversight in all aspects of oil and gas development (Alternative 2), an alternative that would require a much greater degree of environmental protection from the impacts of oil and gas development (Alternative 3), and BLM's preferred alternative (Alternative 4). In these comments we will focus on Alternatives 3 and 4 with respect to issues related to oil and gas development. As will be apparent from our comments regarding Alternative 4, Alternative 2 is even less suitable as an RMP for the Pinedale Field Office and in our view should not be considered for adoption as the RMP. And few if any members of the public or others are advocating for continuation of the existing RMP (Alternative 1). Thus we do not address Alternatives 1 and 2 in these comments and focus solely on Alternatives 3 and 4 in the context of oil and natural gas development issues.

I. Incorporation And Adoption Of Expert Comments By Reference.

During the last few weeks the following comments have been submitted to the Bureau of Land Management (BLM) regarding the RMP DEIS by experts in various relevant fields. Those expert comments include the following:

- Comments of Dr. William Alldredge regarding big game issues.
- Comments of Dr. Clait Braun regarding sage grouse issues.
- Comments of Dr. Carl Wambolt regarding sagebrush ecology and management.
- Comments of Ms. Cindy Copeland and Ms. Megan Williams regarding air quality issues.
- Comments of Messrs. Don Duerr and Steven Greb regarding water quality and quantity issues.
- Comments of Drs. Michelle Haefele and Joe Kerkvliet, regarding socio-economic issues.

All of these comments are incorporated into these comments by this reference. We request that the BLM consider them fully as components of these comments. Attached as Appendix 1 is a brief summary of some, but by no means all, of the significant conclusions contained in each of the various expert comments. The various expert comments are also attached hereto as the following:

- Exhibit 1, comments of Dr. William Alldredge.
- Exhibit 2, comments of Dr. Clait Braun.
- Exhibit 3, comments of Dr. Carl Wambolt.
- Exhibit 4, comments of Ms. Cindy Copeland and Ms. Megan Williams.
- Exhibit 5, comments of Messrs. Don Duerr Seven Greb.
- Exhibit 6 comments of Drs. Michele Haefele and Joe Kerkvliet.

II. Alternative 3 Will Lead To Virtually As Much Fossil Fuel Production As Alternative 4 But With Far Greater Accompanying Environmental Protection, Therefore It Should Serve As The Starting Point For The Pinedale Resource Management Plan.

Alternative 4 is the BLM's preferred alternative identified in the RMP DEIS. Alternative 3 is the 'conservation alternative' and "provid[es] the maximum level of environmental protection for all competing resources while allowing for the production of oil and gas resources." RMP DEIS at iv.¹ As will be documented in more detail below, Alternative 3 would clearly provide far greater protection for numerous environmental resources, values, and services, ranging from cleaner air to much healthier wildlife populations, than would Alternative 4.

And this greatly enhanced level of environmental protection could be achieved along with nearly the same level of oil and natural gas produced. Pursuant to Alternative 4 it is

¹ Hereinafter, the page numbers where a particular point is referenced or supported in the RMP DEIS will simply be cited without mention of the RMP DEIS. So, rather than stating that a particular proposition can be found at RMP DEIS page 2-93, the citation will simply reference the page, 2-93, for example.

estimated 19,168 billion cubic feet of natural gas has and will be produced between 2001 and 2020. A10-3 to A10-4. Pursuant to Alternative 3 16,730 billion cubic feet of natural gas would be produced in this period. Id. Thus, Alternative 3 would lead to the production of over 87 percent as much natural gas as Alternative 4, but accompanied by far greater protection of environmental resources, services, and values.

With respect to oil, the numbers are similar. Alternative 3 would lead to the production of over 86 percent as much oil as Alternative 4 in the 2001 to 2020 time period (129.8 million barrels vs. 149.9 million barrels). A10-4 to A10-5.

Given these levels of production coupled with the far greater level of environmental protection afforded by Alternative 3 it is impossible to see how Alternative 4 could be deemed the BLM's preferred RMP relative to Alternative 3. Quite simply, given the nearly equivalent oil and gas production coupled with the benefit of far greater environmental protection, Alternative 3 must serve as the point of departure for development of the Pinedale RMP.

The BLM of course is under numerous legal mandates to ensure protection of the natural environment. Perhaps more importantly, there can be no doubt there is deep, consistent and widespread public demand across the nation that environmental protections be ensured for the public lands. Such views are also widely held by citizens in the Upper Green River Valley. Balanced against this are laws and policies oriented toward ensuring domestic production of minerals. But there is little to balance here. We can have our cake and eat it to: we can achieve virtually as much oil and gas production with far greater environmental protection if Alternative 3 serves as the basis for development of the RMP rather than Alternative 4.

It is easy to see why nearly 90 percent as much oil and natural gas would be produced under Alternative 3 relative to Alternative 4 when the following is considered. Approximately two-thirds of the wells that would be drilled in the Pinedale Field Office under the new RMP would be drilled in the Jonah and Pinedale Anticline Fields. A10-1. Under Alternative 3, both of these fields would be designated "Intensively Developed Field[s]" where emphasis would be "placed on efficient and complete development and production of the oil and gas resource." Map 2-8, 2-47. These two fields are the only areas of the Field Office where the potential for conventional natural gas development through 2020 is "very high" and they constitute the majority of the areas with "high" development potential. Map 4-1. Clearly Alternative 3 focuses development in the most productive areas, which allows production of virtually the same amount of fossil fuels pursuant to this Alternative as would be produced by Alternative 4, without opening up numerous marginal areas where environmental impacts are greatly magnified, as Alternative 4 does.

Essentially the BLM's initial decision to select Alternative 4 as its preferred alternative comes down to a determination that it is so crucial to increase natural gas production in the Pinedale Field Office by less than 13 percent that this course of action must be pursued even though environmental impacts are greatly increased and environmental protections greatly reduced. The BLM has yet to provide a rational explanation for this decision and we ask that it do so in the final EIS if not sooner. Why is increasing natural gas production by a mere 12.8 percent justified given the admittedly much more severe environmental impacts that would occur

pursuant to Alternative 4? How can this decision be sustained in light of national legislative commands to protect the natural environment while pursuing domestic mineral production? What exact and needed benefits will production of 2,438 billion cubic feet of additional natural gas produced over the course of 20 years afford this country and how exactly do those benefits compare to the reduction in environmental services, values, and resources that will be lost as a result of the increased environmental damage that would occur pursuant to Alternative 4? Quite simply, what are the costs and benefits of this tradeoff?

We would note that 2,438 billion cubic feet of natural gas produced over the course of twenty years represents 121.9 billion cubic feet of natural gas per year on average, or 0.6% percent of current annual U.S. consumption, which is approximately 21.86 trillion cubic feet.² What impact on the price of natural gas would a 0.6 percent decline in supply have, and what impact on availability of natural gas would a 0.6 percent decline create? It seems unlikely that either the price or availability of natural gas would be significantly affected by such a small reduction in production.³ It seems like we would be giving up much to get very little or no additional benefit in return if Alternative 4 is selected as the RMP. In contrast, Alternative 3 would more fully maximize benefits.

The comments of Drs. Michele Haefele and Joe Kerkvliet, Exhibit 6, provide further analysis of this issue on pages 7-8 of those comments, and we ask that they be fully considered.

III. Review Of The Provisions In Alternatives 3 And 4 Relative To Oil And Gas Development.

Pursuant to Alternative 4 (BLM's preferred alternative), the BLM would partition the Pinedale Field Office into four management areas for purposes of oil and gas development and management: Intensively Developed Fields (175,750 acres), Minimally Developed Areas (672,470 acres), Unavailable Areas (156,900 acres), and Large Block No Surface Occupancy (NSO) areas (205,100 acres). v, 2-20, 2-120 to 2-122, Map 2-9. Each of these areas would be subject to particular management requirements. Fundamentally, other than the leasing availability provisions, the only protection that would apply would be "performance-based objectives" that the BLM has developed. v, 2-20, Appendix 3. These performance based objectives will be discussed in Section V of these comments.

Intensively Developed Fields would be open to leasing and development that would be guided by the environmental document authorizing field development (i.e., the Pinedale Anticline environmental impact statement (EIS) or supplemental EIS, Jonah Infill EIS, and the Big Piney-LaBarge Coordinated Activity Plan) as well as the performance-based objectives in Appendix 3. 2-47. Emphasis would be on "efficient and complete development and

² See http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2007/ngvir2006/ngvir2006.pdf (Energy Information Administration, Natural Gas Year-in-Review, March 2007)

³ On June 8, 2007, there were 2,255 billion cubic feet of natural gas in storage. http://tonto.eia.doe.gov/dnav/ng/ng_stor_wkly_s1_w.htm. The average annual production loss from the Pinedale Field Office of 121.9 billion cubic feet of natural gas represents only five percent of the amount of natural gas currently in storage. Again, it seems difficult to believe that this minor reduction in the amount of natural gas produced under Alternative 3 versus Alternative 4 would have much if any impact on either the availability of natural gas or its price.

production” of oil and natural gas. 2-47, 2-120. Intensively Developed Fields would include not only the Pinedale Anticline and Jonah Fields but also the Big Piney-LaBarge, Deer Hills, and Castle Creek fields. Map 2-9. Exceptions to protective stipulations so as to allow year-round drilling and development would be considered. 2-120. Lands subject to these provisions would cover nearly 11 percent of the total land surface in the Pinedale Field Office and 20 percent of the federally-owned surface lands administered by the BLM in the Pinedale Field Office. 1-1, 2-120 to 2-122. Allowance would be made for these intensively developed areas to be “enlarged as appropriate.” 2-47. Yet, the Draft RMP fails completely to define the process by which this enlargement could be done and this undefined allowance makes it impossible for the RMP DEIS to fully and effectively evaluate the geographic extent and environmental impacts under the “intensively developed” management regime.

Minimally Developed Areas would also be available for new leasing. 2-120. Likewise, existing leases could be developed under their lease terms. Id. And if development in the “Minimally Developed” area reached one bottom-hole well per 160 acres, or an even lesser density under vaguely defined circumstances, the area could be converted into an Intensively Developed Field. 2-47, 2-121. No explanation is given as to why 160-acre spacing was chosen as the trigger for re-classification or why it is based on bottom-hole well density rather than well spacing on the surface, which has far more relevance to most if not all environmental impacts. Management would generally focus on “traditional multiple use management, and accommodating all approved uses to the extent possible,” 2-47, which means in effect that while stipulations and conditions of approval might be required of new leases or development, the same management approach that has led to the massive development in the Pinedale Anticline and Jonah fields would continue to prevail in much of the Field Office. Lands subject to these provisions would cover nearly 42 percent of the total land surface in the Pinedale Field Office and 73 percent of the federally-owned surface lands administered by the in the Pinedale Field Office. 1-1, 2-120 to 2-122. Essentially this designation would apply to lands in the western part of the Pinedale Field Office and to lands surrounding the Jonah and Pinedale Anticline fields.

“Large Block NSO Areas” would be available for leasing, but subject to a NSO stipulation. 2- 48, 2-121. Existing leases would be managed under existing lease terms and stipulations. Id. That said, it appears—but is not absolutely certain; this should be clarified—that existing leases would be subject to somewhat intensive regulation and management, including efforts to protect wildlife habitat, require best management practices (BMP), and the imposition of needed conditions of approval (COA). 2-121. Moreover, the NSO stipulation applicable to new leases in these areas unfortunately is far from absolute; the NSO stipulation could be “lifted” if operators propose such and if it appears drainage of federal oil and gas is occurring. 2-48, 2-121. Furthermore, these lands could be converted to Intensively Developed Fields if the above-mentioned 160-acre per well bottom-hole spacing is reached. Id. Management emphasis in these areas would be on environmental protection, particularly relative to protection of wildlife habitat, 2-47, but this nominally guiding management approach would be subject to being lifted or waived if drainage is occurring or if development in the area reaches certain levels. In effect, in both cases the exceptions may swallow the rule. Lands subject to these provisions would cover nearly 13 percent of the total land surface in the Pinedale Field Office and 22 percent of the federally-owned surface lands administered by the BLM in the

Pinedale Field Office. 1-1, 2-120 to 2-122. Essentially this classification would apply to a strip of lands in the central portion of the Pinedale Field Office. Map 2-9.

Last, lands in Unavailable Areas would be subject to the following management. These lands would be unavailable for new leasing, including a decision to not re-offer leases that expire. 2-49, 2-122. Existing leases could be developed pursuant to the terms of the lease, including allowance for exploration and development following discovery. Id. Again, it appears—but is not certain; this should be clarified—that existing leases might be subject to somewhat intensive management so as to protect the environment. Id. As with NSO areas, the unavailability designation could be “lifted” if it is determined drainage is occurring. Id. And again, if development reached a 160-acre down-hole spacing the area could be converted into an Intensively Developed Field. 2-49. As with the NSO areas, management emphasis would nominally be on environmental protection, particularly relative to wildlife habitat protection. 2-49. Lands subject to these provisions would cover less than 10 percent of the total land surface in the Pinedale Field Office and 17 percent of the federally-owned surface lands administered by the BLM in the Pinedale Field Office. 1-1, 2-120 to 2-122. Essentially this classification applies to the southern part of the Wind River Front, but not the entire Front, and a small part of the LaBarge Creek area.

Pursuant to Alternative 4, various provisions are made for the protection of wildlife in the four management areas. 2-143 to 2-153. Specific provisions are made for sage grouse, big game habitats, sensitive species habitats, raptors and other wildlife issues. With respect to the validity and viability of these provisions we direct the BLM to the comments submitted by Drs. Carl Wambolt, William Alldredge, and Clait Braun regarding some of these issues, which we incorporate completely into these comments by this reference and which we have attached as Exhibits 1, 2 and 3. As noted in the comments submitted by these experts, the environmental analysis in the RMP DEIS is woefully inadequate with respect to big game, sage grouse, and sagebrush habitats, and protection of these resources.

Other provisions in Alternative 4 include opening the Field Office to oil and gas geophysical exploration activities under far less restrictive provisions than apply to Alternative 3, making coal resources available for leasing and development, which would not be allowed under Alternative 3, and withdrawing only 13,770 additional acres from mineral entry compared to 65,750 acres withdrawn pursuant to Alternative 3. 2-83 to 2-84, 2-122 to 2-123. In addition, only 2 miles on either side of the Lander Trail would be protected to conform with a Visual Resource Management Class II designation. v.

Pursuant to Alternative 3, the Pinedale Field Office would be divided into three management areas for purposes of oil and gas development and management. Intensively Developed Fields would cover 78,070 acres of the Field Office, Minimally Developed Areas would cover 498,790 acres, and Unavailable Areas would encompass 606,500 acres.

Management within these areas would be as described above for the similarly designated area under Alternative 4. Intensively Developed Fields would be given over to oil and gas development first and foremost. Minimally Developed Areas would receive limited additional protection and would still be subject to conversion to Intensively Developed Field status if down-

hole well density reached one well per 160 acres. 2-47, 2-82. Unavailable Areas would not be subject to new leasing but existing leases could be developed pursuant to the lease terms and governing National Environmental Policy Act (NEPA) documents; and, as with Alternative 4, there are at least two major loopholes in the nominal protection from future leasing: ‘unavailable areas’ can be converted to Intensively Developed Fields where leasing is allowed if well density reaches the specified threshold, and if drainage of oil and gas is determined to be occurring, the unavailability designation can be “lifted.” 2-49, 2-82 to 2-83. One important provision relative to Unavailable Areas that appears in Alternative 3 but not Alternative 4 is that non-producing leases within unavailable areas “would be exchanged for leases outside Unavailable Areas,” on a case-by-cased basis with willing participants. 2-83. We strongly support this proactive provision and ask that it be included in all alternatives and expanded beyond unavailable areas to also include non producing leases with minimal stipulations (i.e. no NSO or timing stipulations) in large block NSO areas.

As with Alternative 4, various provisions are made for the protection of wildlife in the specified management areas. 2-99 to 2-106. Specific provisions are made for sage grouse, big game habitats, sensitive species habitats, raptors, and other wildlife issues. With respect to the validity and viability of these provisions we direct the BLM to the comments submitted by Drs. Carl Wambolt, William Alldredge, and Clait Braun regarding some of these issues, which we incorporate completely into these comments by this reference and which we have attached as Exhibits 1, 2, and 3. An area of 3 miles on either side of the Lander Trail would be protected so as to conform with a Visual Resource Management Class II designation. iv.

IV. Needed Modifications To Alternative 3 That Could Make It Acceptable For Adoption As The Pinedale RMP.

As discussed above, Alternative 3 would achieve over 87 percent of the natural gas production and over 86 percent of the oil production of Alternative 4 yet as just shown it would do so with far greater provisions for environmental protection in place. Put simply, nearly twice as much land would be placed in the maximally protected Large Block NSO or Unavailable categories (606,500 acres versus 362,000 acres) with very little impact on fossil fuel production. Consequently, Alternative 3 should serve as the starting point for the revised Pinedale RMP.

It should also be noted that Alternative 3 would be consistent with the BLM’s off-site mitigation and habitat enhancement efforts for lands in the Pinedale Field Office, including the Jonah Infill Office, the likely Pinedale Anticline off-site mitigation fund and program, and the Wyoming Landscape Conservation Initiative (WLCI). It has been recognized by the BLM and Wyoming Game and Fish Department (WYGFD) that a limiting factor for these off-site mitigation efforts has been finding large undeveloped habitat areas that are not leased (i.e. not threatened with future development undermining the long-term benefit of any habitat enhancement project). Thus, Alternative 3 by making approximately half the resource area unavailable for leasing would ensure over time (as some leases in these areas expire or are traded/bought out) that the BLM has sufficient areas that are near existing fields for these off-site mitigation and WLCI programs. Alternative 4 would not create sizeable unavailable, undeveloped areas and so is fundamentally inconsistent with the BLM’s stated goals and intents

under the WLCI, Jonah off-site mitigation program, and the likely Pinedale Anticline off-site mitigation program.

There are, however, several ways in which Alternative 3 should be improved to further ensure the remarkable environmental values in the Upper Green River Valley are fully protected. Areas of improvement for Alternative 3 that should be adopted to create an acceptable RMP are discussed below.

A. Loopholes Must Be Closed.

The most critical need relative to the improvement of Alternative 3 so as to make it satisfactory as the RMP for the Pinedale Field Office is to close the loopholes that currently make the nominally Unavailable Areas (606,500 acres) potentially available for development, perhaps even at intensive levels.⁴ There is no assurance intensive development will not occur due to loopholes in the nominal protection, and thus this otherwise somewhat strong provision may be illusory. The BLM should eliminate this possibility.

The two loopholes that must be closed were mentioned above. First, the provision allowing conversion of these “unavailable” lands to an Intensely Developed Field if down-hole well spacing reaches one well per 160 acres must be eliminated. Second, the provisions allowing this designation to be “lifted” if drainage of oil and gas is determined to be occurring must be modified.

As will be discussed in considerable detail below, the BLM is not required to passively accept conversion of an area to an Intensely Developed Field condition even if leases are already in place. The BLM has more than sufficient authority—and indeed an obligation—to not allow well density to reach the one well per 160 acres threshold that would trigger conversion to an Intensely Developed Field. More specifically, it need not allow the density of surface disturbance to reach a level that would interfere with or prohibit the achievement of its stated management objectives for Unavailable Areas (and Large Block NSO Areas), which is environmental protection. Rather than passively accepting or allowing the creation of high density well fields in areas that the BLM has determined should be managed to “provid[e] the maximum level of environmental protection,” 2-19, BLM can and must set limits on the density of permissible development in Unavailable and Large Block NSO Areas so as to allow it to maintain the management focus it has determined is appropriate in these areas.

Presumably at a minimum well pad density should not be allowed to exceed a density of one pad per 160 acres in these areas, and in many areas, such as big game crucial winter ranges, big migration corridors, big game parturition areas, the scenic and historic corridor along the Lander Trail, and Class II visual resource management areas, as well as many other areas, the acceptable well density should be set at a lesser density. This again is particularly true relative to the acceptable level of surface disturbance. Again, the sources of BLM’s authority—and its obligation—to set limits on the acceptable density of development will be discussed in considerable detail below, and consequently the BLM should establish acceptable well densities in the RMP for the Unavailable Areas designated pursuant to Alternatives 3 and 4 and Large

⁴ This same problem applies equally to Large Block NSO areas established pursuant to Alternative 4.

Block NSO Areas designated pursuant to Alternative 4. In fact, the agency should do likewise for the Minimally Developed Areas. If leaseholders in these areas need to develop at a greater density than the RMP allows, particularly relative to the acceptable density of surface disturbance, then a plan amendment would be required and this would be incorporated into the NEPA review for the required field development plan. It is crucial that the RMP make clear that conversion to an Intensely Developed Field could only occur with future NEPA analysis, particularly since this conversion would not be in conformity with the specifically stated management direction for these areas, which is environmental protection. See 43 U.S.C. § 1732(a) (management of the public lands must be in accordance with the provisions in an RMP); 43 C.F.R. § 1610.5-3(a) (management actions must conform to the RMP).

Additionally, by making allowance for conversion of areas to Intensely Developed Fields, the BLM must ensure the RMP EIS considers the environmental impacts of such a conversion. The RMP EIS currently provides no analysis of the impacts of such a conversion. This must be corrected in the final EIS. The BLM clearly anticipates such conversions, otherwise it would not have made the rather specific provisions it has made for such conversions. Consequently the environmental impacts of these conversions must be considered in the RMP EIS.

The second major loophole that would detract from the potential protections of Alternative 3 are the provisions that would allow ‘lifting’ of the nominal protection of an Unavailable Area designation if drainage of oil and gas is determined to be occurring.⁵ A number of provisions are provided as to how and when this designation could be “lifted” in a drainage situation, but they are inconsistent and thus create confusion. Compare 2-48 (Large Block NSO provisions), 2-49 (Unavailable Areas provisions that appear less protective than the Large Block NSO provisions), and 2-83 (Unavailable Areas provisions that differ from the analogous provisions on page 2-49). The BLM should engage in a careful analysis of when and where drainage is likely to be a problem. Is drainage already determined to be a problem anywhere in the Pinedale Field Office? Given that in at least some areas natural gas production is coming from “tight sands” and very disconnected pockets (lenses) of natural gas, drainage would seem to not be a real issue in at least some areas. And at a minimum, if significant drainage is determined to be occurring, the RMP should establish that the first tier response to deal with this issue will not be lifting the unavailable for leasing designation, rather the first response should be to seek to capture the gas through drilling from an area with existing development, likely through directional drilling. Furthermore unitization should be pursued for the area in question as it would allow the BLM to require coordination in the extraction of natural gas underlying multiple contiguous leases – potentially negating the need for lifting of RMP protections.⁶ That is, all options for maintaining the area as unavailable for leasing should be explored first prior to lifting this designation; designating these areas as free from future leasing is the management direction BLM has determined is most appropriate and it should aggressively seek to maintain that status and management direction. Additionally, prior to lifting any such designation the BLM should provide in the RMP that any such modification will be

⁵ Again, this discussion applies equally to the Large Block NSO Areas designated pursuant to Alternative 4.

⁶ We would note that unitization has been pursued by the BLM in other areas as a means to protect surface resources, including the Otero Mesa area in New Mexico, the Little Snake Field Office in Colorado, and the Roan Plateau in Colorado.

subject to full compliance with NEPA, including provisions for public participation in the decision-making.

B. The BLM Must Fully Recognize And Exert Its Retained Rights Where Leases Have Been Issued.

Sitting as something like an 800 pound gorilla in the background of any alternative the BLM may adopt as the RMP is the question of how existing leases will be managed. Approximately 70 percent of the Pinedale Field Office has already been leased. Map 1-3. Thus, regardless of what provisions may apply to future leasing, such as designating an area unavailable for future leasing or allowing leasing only with NSO stipulations, the management of existing leases may well be the most significant question any alternative must address, and the RMP DEIS is insufficient in this regard.

To the extent that the BLM addresses this issue, and it seems to do so only here and there throughout the RMP DEIS rather than in a carefully structured, cohesive (and easily located) fashion, it appears that the BLM misapprehends its legal rights and indeed obligations regarding areas of the Pinedale Field Office that have already been leased. The BLM appears to take the position that it has very limited rights to control the pace, location, and numerous other environmentally significant aspects of oil and gas development if an area has been leased. This is an incorrect view of BLM's rights and indeed its obligations under the law and to the American public, and this misapprehension of the BLM's legal rights and obligations relative to areas already leased for oil and gas development should be corrected in the final EIS and most importantly in the RMP.

As noted above, the provisions applicable to the various area designations in the various alternatives (Intensely Developed Field, Large Block NSO Area, Unavailable Area, and Minimally Developed Area) are clear that existing leases could be developed. Perhaps more significant is language like this that appears here and there throughout the RMP DEIS: "It is important to recognize that the authorized officer has limited authority to modify the site location and design of facilities, control of the rate of development and timing of activities, or require other mitigation under sections 2 and 6 of the [standard lease terms] (BLM form 3100-11) and 43 Code of Federal Regulations (CFR) § 3101.1-2." A7-1. As will be discussed in some detail below, this is a total misstatement of the BLM's retained rights after a federal oil and gas lease has been issued and a complete failure to recognize the scope of the BLM's obligations to protect the natural environment in areas that have been leased. This incorrect view and related statements must be corrected if Alternative 3, or any other Alternative, is to serve as the legally required guidance relative to oil and gas development in the Pinedale Field Office.

There is no question that the BLM is legally empowered and in fact obligated to protect the natural environment even after a lease has been issued. The NEPA itself establishes important national policies for environmental protection and Congress "directs that, to the fullest extent possible . . . the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in [NEPA]." 42 U.S.C. § 4332(1). See also *id.* § 4331 (presenting the environmental protection policies of NEPA). The Council on Environmental Quality regulations reinforce this obligation to protect the natural

environment. See, e.g., 40 C.F.R. §§ 1500.2(f) (Federal agencies “shall to the fullest extent possible . . . 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 upon the quality of the human environment”); 1502.1 (“The primary purpose of an [EIS] is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government”). The courts too have recognized that the purposes and goals of NEPA control BLM’s oil and gas development activities. Getty Oil Co. v. Clark, 614 F.Supp. 904, 920 (D. Wyo. 1985) (“The Secretary is not only permitted, but is required, to take environmental values into account in carrying out his regulatory functions, unless there is a clear and unavoidable statutory authority prohibiting the Secretary from complying with NEPA’s mandate.”). Thus, the BLM should interpret its obligations where leases have been issued in light of the policies established by NEPA.

In addition to NEPA, the Federal Land Policy Management Act (FLPMA), BLM’s organic law relative to its mission and purpose, establishes a requirement to fully protect the natural environment in areas that have been leased. “[I]t is the policy of the United States 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 will provide food and habitat for fish and wildlife and domestic animals” 43 U.S.C. § 1701(a)(8). The BLM is required to manage the public lands under a multiple use mandate, which requires among other things the “harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment” Id. § 1702(c). And last, “[i]n managing the public lands the Secretary [of the Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the [public] lands.” 43 U.S.C. § 1732(b).

With respect to this last requirement it is probably important to emphasize to BLM that FLPMA’s mandate to prevent unnecessary or undue degradation imposes dual requirements on the BLM, it must prevent both unnecessary degradation as well as undue degradation. Mineral Policy Center v. Norton, 292 F.Supp.2d 30, 42 (D.D.C. 2003). We would also note that this decision stands as the final word as to what the unnecessary or undue degradation clause means—the Department of the Interior did not appeal this decision, and thus it is the final word as to the Department’s responsibilities and has been accepted by the Department. Addressing this dual requirement, the court made plain that “Congress’s intent was clear: Interior is to prevent, not only unnecessary degradation, but also degradation that, while necessary to mining, is undue or excessive.” Id. That is, while unnecessary degradation may only prevent activities that are not generally recognized or used to pursue mining operations, the undue degradation prohibition establishes a further requirement to prevent activities that would unduly harm or degrade the public land. As stated by the court, “FLPMA, by its plain terms, vests the Secretary of the Interior with the authority—and indeed the obligation—to disapprove of an otherwise permissible mining operation because the operation, though necessary for mining, would unduly harm or degrade the public land.” Id. Despite this clearly established law, the BLM, through its Director, has persisted in misstatements of the governing legal standard, and this must be corrected. See 1-15 (Policy Statement from BLM Director Kathleen Clarke stating that mineral use authorizations will be made in a manner “to prevent unnecessary and undue degradation.” (emphasis added)). The BLM’s attempts to read the plain language of FLPMA in the

conjunctive rather than the disjunctive were firmly rejected by the Mineral Policy Center court. It is impossible for the BLM to fully recognize let alone exert its retained rights when it persists in stating its legal obligations in an impermissibly constrained manner. FLPMA, like NEPA, provides the BLM with authority, and indeed an obligation, to protect the natural environment even in areas that have already been leased.

Furthermore, a host of other laws impose a requirement on BLM to consider environmental conservation as a key component of oil and gas development in the Pinedale Field Office.⁷ Thus, it is clear that the BLM is under an obligation to ensure environmental protection even in areas that have been leased. Unfortunately, and as noted, it does not appear that the BLM fully recognizes the rights it retains despite issuing a lease, or the obligations it operates under to protect the natural environment in areas that have been leased.

In addition to the legal obligations noted above, a host of BLM policies, regulations, and contractual provisions relative to oil and gas development allow and in fact demand protection of the natural environment in areas that have been leased. Quite simply, the BLM has retained very substantial rights to condition development so as to protect the natural environment even though it has leased lands for oil and gas development. The BLM's standard lease form (form 3100-11) contains the following reservations of authority to BLM:

- Lease Terms Section 4: “Lessor reserves the right to specify rates of development and production in the public interest”
- Lease Terms Section 6: “Lessee must conduct operations in a manner that minimizes adverse impacts to the land, air, water, to cultural, biological, visual, and other resources Lessee must take reasonable measures deemed necessary by lessor to accomplish the intent of this section. To the extent consistent with lease rights granted, such measures may include, but are not limited to, modification to siting or design of facilities, timing of operations, and specification of interim and final reclamation measures.”
- Lease Terms Section 7: “To the extent that impacts from mining operations would be substantially different or greater than those associated with normal drilling operations, lessor reserves the right to deny approval of operations.”

Clearly the BLM has retained very substantial rights under the standard lease, and under those retained rights the BLM has more than adequate authority to ensure that it fully complies

⁷ For example, the purposes of the Endangered Species Act “are to provide a means whereby the ecosystems upon which [listed] species depend may be conserved and to provide a program for the conservation of such [species], and the Secretary of the Interior shall “utilize [programs administered by him] in furtherance of the purposes of this chapter.” 16 U.S.C. §§1531(b), 1536(a)(1). The objective of the Clean Water Act is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). The purposes of the Clean Air Act are “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare” 42 U.S.C. § 7401(b)(1). See also id. §§ 7470(2), 7491(a)(1) (directing that air quality in protected landscapes and airsheds be protected). Under the National Historic Preservation Act, prior to the approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as maybe necessary to minimize harm to such landmark” 16 U.S.C. 470h-2(f). This is a small sampling of the numerous environmental protection statutes BLM operates under.

with the laws and policies noted above by asserting these retained rights and the need to adhere to legal obligations when development is proposed on a lease. More specifically, these retained rights provide the BLM with more than sufficient authority to protect Large Block NSO and Unavailable Areas even though the area has been leased, so as to achieve the explicit management direction for these areas stated in the RMP.

The BLM sometimes invokes its regulation at 43 C.F.R. § 3101.1-2 (see quote from RMP DEIS cited above) as imposing limits on its ability to condition development, claiming that (in the absence of a stipulation or non-discretionary statute) it can only impose “reasonable measures” demanding no more than that lease operations be moved no more than 200 meters, leasehold operations be prohibited for no more than 60 days, or that operations be moved off the leasehold. This is an incorrect view of this regulation. In adopting this regulation, BLM commented that “the authority of the Bureau to prescribe ‘reasonable,’ but more stringent, protection measures is not affected by the final rulemaking.” Oil and Gas Leasing, Geothermal Resources Leasing, 53 Fed. Reg. 17,340, 17,341 (May 16, 1988). Quite simply, this regulation establishes a floor, not a ceiling. Furthermore, as noted above, the specific terms of the standard lease certainly do not limit BLM’s authority to this degree. It may be worth noting that the standard lease form and the regulation were both adopted in 1988; BLM certainly developed one in full recognition of the other. Consequently, the standard lease and the 3101.1-2 regulation must be considered together to determine the BLM’s retained rights. The 3101.1-2 regulation does not stand as the sole word as to what constitutes “reasonable measures,” and in any event it too hardly constrains the BLM’s rights to condition development (reasonable measures “are not limited to” modifying siting or design of facilities, timing of operations, and specification of reclamation, and the specific reasonable measures are “at a minimum” of what is within BLM’s authority). Perhaps the BLM recognizes these broad retained rights. In a moment of candor in the RMP DEIS, BLM stated: “The oil and gas lease is a binding agreement between BLM and the lessee that does not authorize subsequent surface disturbing activity. All surface disturbing activities . . . require additional authorization(s) issued subsequent to leasing.” A3-2. The BLM should expand on this statement so as to make clear that it also retains—and will exert—the various rights described herein.

It may be worth noting what rights BLM conveys when it issues a lease and what rights it has retained. The BLM only conveys three limited rights when it issues a lease:

- An “exclusive right” to remove all of the oil and gas on the leasehold. Form 3100-11.
- The right to “use” as much of the leasehold as “necessary” to recover all of the leased resource. 43 C.F.R. 3101.1-2.
- The right to build and maintain “necessary” improvements. Form 3100-11.

Thus, the only rights a lessee has are a right to exclude others from developing the lease, a right to use no more of the lease than is “necessary” to retrieve the leased oil and gas, and a right to build only “necessary” improvements. The operators have certainly not been conveyed a right to develop the oil and gas in exactly the manner they desire or on a timeline they desire. In contrast to the limited rights that have been conveyed, under the standard lease form and the 3101.1-2 regulation, the BLM has specifically retained the right to condition development based on the following:

- Applicable laws.
- Terms, conditions, and stipulations in the lease.
- Regulations and formal orders in effect when the lease is issued.
- Regulations and orders issued afterward, if not inconsistent with lease rights and provisions in the lease.
- Specific, non-discretionary statutes.
- Reasonable measures.

The limited conveyance of rights under a federal oil and gas lease and the government's high degree of retained authority to condition development on leases was long ago recognized by the Supreme Court:

Unlike a land patent, which divests the Government of title, Congress under the Mineral Leasing Act has not only reserved to the United States the fee interest in the leased land, but has also subjected the lease to exacting restrictions and continuing supervision by the Secretary. . . . In short, a mineral lease does not give the lessee anything approaching the full ownership of a fee patentee, nor does it convey an unencumbered estate in the minerals.

Boesche v. Udall, 373 U.S. 472, 477-78 (1963). In addition, the court noted that “[r]ecognition of the Secretary’s power here serves to protect the public interest in the administration of the public domain.” Id. at 484. Clearly, the BLM has more than sufficient authority to regulate development of an oil and gas lease in order to meet its legal obligations under numerous environmental laws and policies to protect the natural environment, as well as to maintain its management direction for Large Block NSO and Unavailable Areas.⁸ Or said differently, where the emphasis is on “providing contiguous wildlife habitat, wildlife refuge areas and migration routes, public land recreation opportunities, opportunities for appropriate non-surface-disturbing activities, and maintenance or improvement of current resource conditions,” as it is in Large Block NSO Areas and Unavailable Areas, 2-47, 2-49, then BLM has more than sufficient authority to pursue these objectives despite leases being in place because what has been conveyed is an interest “subject[] . . . to exacting restrictions and continuing supervision,” not “an unencumbered estate in the minerals.”

In addition to the provisions in the standard lease form, the Mineral Leasing Act itself and BLM’s regulations relative to the conditions under which oil and gas development may be pursued are replete with retained authority to condition development of leases, and indeed a responsibility to do so in order to protect the natural environment. “Each lease shall contain provisions for the purpose of insuring the exercise of reasonable diligence, skill, and care in the operation of said property” 30 U.S.C. §187 (emphasis added). “The Secretary of the

⁸ BLM sometimes attempt to invoke BLM Instruction Memorandum (IM) 92-67 (issued December 3, 1991) as limiting its ability to condition development on a lease. But this IM is of no moment. For one it expired on September 30, 1992. Moreover, it is totally inconsistent with the decision in Mineral Policy Center v. Norton (discussed above), a decision that BLM did not appeal and which therefore stands as the final legal authority as to what BLM’s obligations are under the FLPMA unnecessary or undue degradation clause. A BLM IM, of course, cannot stand in the way of a U.S. District Court decision, especially one from the District of Columbia where BLM is headquartered.

Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out the and accomplish the purposes of this chapter, also to fix and determine the boundary lines of any structure, or oil and gas field . . .” Id. § 189. “The Secretary of the Interior, for the purpose of encouraging the greatest ultimate recovery of [leasable minerals], and in the interest of conservation of natural resources, is authorized to waive, suspend, or reduce the rental, or minimum royalty, or reduce the royalty on the entire leasehold . . .” Id. § 209 (emphasis added). “The Secretary of the Interior . . . shall regulate all surface disturbing activities conducted pursuant to any lease issued under this chapter, and shall determine reclamation and other actions as required in the interest of conservation of surface resources.” Id. § 226(g) (emphasis added) (also requiring approval of a plan of operations and “complete and timely” reclamation and restoration of lease tracts).

Clearly the Mineral Leasing Act gives the BLM broad authority to condition oil and gas development in the interest of conservation, and this authority has been recognized by the courts. Copper Valley Machine Works, Inc. v. Andrus, 653 F.2d 595 (D.C. Cir. 1981) (determining that the “ordinary meaning” of the term “in the interest of conservation” in section 209 of the Mineral Leasing Act allows suspension of operations so as to protect the environment); Getty Oil Co. v. Clark, 614 F.Supp. 904 (D. Wyo. 1985) (holding sections 189 and 209 of the Mineral Leasing Act provide broad grants of authority allowing conditioning of development to protect the environment, even allowing denial of drilling operations to protect wilderness values when a suspension is requested by the lessee; also determining that NEPA imposes responsibility to consider environmental values in carrying out the Mineral Leasing Act).

As noted, BLM regulations regarding the conditions under which oil and gas development can occur are also replete with provisions allowing the BLM to condition the time, place, and manner of oil and gas development. “The authorized officer is authorized and directed to “. . . require compliance with lease terms, with the regulations in this title and all other applicable regulations promulgated under the cited laws, and to require that all operations be conducted in a manner which protects other natural resources and the environmental quality . . .” 43 C.F.R. § 3161.2. “Before approving operations on a leasehold, the authorized officer shall determine . . . that the proposed plan of operations is sound both from a technical and environmental standpoint.” Id. “All operations will be conducted in a manner “which protects other natural resources and environmental quality . . .” Id. § 3162.1(a) (also requiring the operating rights owner to comply with all applicable laws, regulations, lease terms, Onshore Oil and Gas Orders, Notices to Lessees, “and with other orders and instructions of the authorized officer”). “The operator shall conduct operations in a manner which protects the mineral resources, other natural resources, and environmental quality.” Id. § 3162.5-1(a) (also requiring compliance with orders, applicable laws, regulations, lease terms and the drilling/operations plan). “The operator shall exercise due care and diligence to assure that leasehold operations do not result in undue damage to surface or subsurface resources or surface improvements.” Id. § 3162.5-1(b).

And as also noted above, section 4 of the standard lease form clearly allows the BLM to regulate the pace of development. This authority is bolstered by many other provisions of law and policy noted above, and the courts have recognized that BLM has an obligation to consider regulating the pace of development in a NEPA analysis. In Northern Plains Resource Council v.

BLM, No. CV 03-69-BLG-RWA (D. Mont. February 25, 2005) and Northern Cheyenne Tribe v. BLM, No. CV 03-78-BLG-RWA (D. Mont. February 25, 2005) the court held that the BLM violated NEPA by not considering alternatives for phased development in the context of a coalbed methane development project.

The BLM itself has also recognized the need to consider phased and/or paced development alternatives, including as a component of development on the Pinedale Anticline. In the Pinedale Anticline Draft EIS, the BLM acknowledged that “BLM can regulate the manner and pace of development” and that pursuant to Interior Board of Land Appeals decisions, “consider[ing] staggering development over time [is] an “*obvious* alternative.”” Pinedale Anticline Draft EIS at 2-43 (citing Wyoming Outdoor Council, 147 IBLA 105 (1998) and Powder River Basin Resource Council, 120 IBLA 47 (1991)). See also Pinedale Anticline Draft EIS at 2-2 (paced development is consistent with lease rights granted and required to meet the requirement to prevent unnecessary or undue degradation).

We engage in this lengthy and somewhat detailed review of relevant law and policy so as to emphasize that the BLM certainly has the authority, and indeed an obligation, to fully protect the natural environment even in the 70 percent of the Pinedale Field Office that has already been leased and especially in Unavailable Areas and Large Block NSO Areas because the specific, stated objectives of the RMP in these areas are to provide such protection. Clearly the BLM should provide a clear, unequivocal statement of the degree to which it has retained rights under the standard lease form and specify precisely the means by which it will exercise those retained rights so as to meet the management objectives for the various oil and gas management areas specified in the RMP. Absent such clear statements of what precise management will apply to existing leases it is difficult to see how the oil and gas management areas can achieve the stated management direction applicable to them with any assurance. Specific means by which this retained authority should be exercised, such as by requiring the use of phased or paced development, will be discussed next.

C. Means By Which The BLM Can Meet Its Obligations To Protect The Natural Environment In Areas That Have Been Leased, And By Which It Can Meet Its Stated Management Objectives In Unavailable Areas And Large Block NSO Areas.

There are numerous means by which the BLM can protect the natural environment in areas that have already been leased, or in areas that might be leased in the future, in full compliance with the rights BLM has retained pursuant to its standard lease form. Pursuing these actions would help ensure the agency meets its legal obligations under numerous statutes enacted to protect the natural environment. See 1-11 to 1-23 (reviewing many of these legal obligations). And perhaps most importantly, these are means by which the BLM’s stated objectives for Unavailable Areas and Large Block NSO Areas can be achieved despite some or all of the management area having been leased. 2-47, 2-49 (providing statements of management goals for Unavailable Areas and Large Block NSO Areas, which are to give emphasis to protection of the natural environment, especially wildlife values). These provisions should be incorporated into Alternative 3 so as to make it acceptable as the RMP for the Pinedale Field Office.

1. *Paced and Phased Development*

One of the most important means by which the environmental values in Large Block NSO and Unavailable Areas can be protected is by adopting specific provisions requiring phased and/or paced development in these areas. This is an “obvious” way to ensure that well density does not exceed the trigger for converting these areas—areas that are explicitly devoted to environmental protection—to one or more Intensively Developed Fields. As noted above, section 4 of the standard lease form specifically allows regulation of the rate of development, and BLM has recognized the validity of this approach in the Pinedale Anticline EIS. The BLM should make specific provision for phased and paced development in the RMP as a requirement for development of existing leases in the Large Block NSO and Unavailable Areas. The Interior Board of Land Appeals recently recognized that section 4 of the standard lease form allows the BLM to protect resources, even after a lease has been issued. National Wildlife Federation et al., 169 IBLA 146, 164 (2006).

2. *Clustered Development and Directional Drilling*

Another important means to achieve environmental protection is to require clustered development and the related technique of requiring directional drilling. Again, there is no doubt that imposing such requirements in the Large Block NSO and Unavailable Areas is well within the BLM’s retained rights under a federal oil and gas lease. We urge revision of Alternatives 3 and 4 to include clear requirements that development in these areas will be limited to no greater than 160-acre per well surface spacing, or less if needed to protect environmental values, as a way to compel utilization of clustered development and directional drilling. Oil and gas lessees may have a right to retrieve all the oil and gas on a leasehold, but they do not have a right to do it exactly when, where, and how they chose; specifying when, where, and how oil and gas development occurs is well within BLM’s authority, and in fact it, in the words of the Mineral Leasing Act, it has an obligation to “regulate” oil and gas development in this way. Consequently, the BLM should recognize and assert its rights in the RMP, and require clustered development and the use of directional drilling in the Large Block NSO and Unavailable Areas designated in the RMP. This is necessary to ensure the stated management objectives for these areas are met and maintained, as well as to prevent unnecessary or undue degradation of the public lands.

3. *Lease Suspension*

Lease suspension is another means at BLM’s disposal to ensure full environmental protection is maintained in management areas with a conservation focus, specifically Large Block NSO and Unavailable Areas. As noted above, the Mineral Leasing Act gives the BLM authority to suspend leases “in the interest of conservation,” a term that includes conservation of environmental values. The BLM should utilize this authority to fully protect Large Block NSO and Unavailable Areas, and the RMP should make provisions in this regard so as to meet the management objectives for these areas. The BLM has exercised this authority in other areas, such as during development of the Jack Morrow Hill Coordinated Activity Plan, and is contemplating using it in the Pinedale Anticline Supplemental EIS for interim protection of some Pinedale Anticline flank areas that are leased.

4. *Unitization*

Another mechanism that could be utilized to protect Unavailable and Large Block NSO areas, not to mention Minimally Developed areas, would be to require unitization of leases. This would allow lease holders to enjoy the benefits of development of leases while protecting sensitive areas. While there may be some limits on the ability to require unitization, the BLM could certainly urge operators to enter into voluntary unitization agreements and use other mechanism (pooling orders) to pursue unified development in sensitive areas. Unitization is a key component of the development plan on the Roan Plateau in Colorado which seeks also to protect the natural environment in that area, and BLM should thoroughly consider that model. Pursuing unitization would allow for orderly development with less infrastructure and disturbance, while helping to eliminate issues such as those related to drainage.

5. *Additional Conditions of Development*

Other means to protect the natural environment that are well within BLM's retained rights to require include limitations on well pad size, requiring closed-loop drilling fluid systems, the use of remote well monitoring and car pooling and other traffic reduction techniques, and requirements to bury utility lines. The BLM should require these and other techniques and provisions as prerequisites to development on existing leases in Large Block NSO and Unavailable Areas. In addition, because it also has authority to require these provisions in Minimally Developed Areas and Intensively Developed Fields, it should require them as necessary to protect environmental values in these areas, too.

6. *Retention and Enforcement of Lease Stipulations*

One of the most important means by which the BLM can ensure that the natural environment is protected is to ensure that timing stipulations oriented toward the protection of wildlife crucial ranges are not abandoned and are in fact vigorously enforced. The WGFD recognizes the importance of these stipulations in its report Recommendations for Development of Oil & Gas Resources within Crucial & Important Wildlife Habitats, available at <http://gf.state.wy.us/downloads/pdf/og.pdf>. The stated intent of Large Block NSO and Unavailable Areas is to protect wildlife habitat, provide refuge areas, and protect migration routes. 2-47, 2-49. Given this management focus, the BLM should expressly state in the RMP that permit waivers and exceptions to these lease timing stipulations will not be allowed in these areas. With waivers or exceptions to timing stipulations elsewhere in the planning area (i.e., in minimally and intensively developed areas) the RMP must state more clearly the extremely limited and carefully specified conditions under which these exceptions could occur, as well as how the WGFD and the general public will be able to participate in the decision-making. Requiring these stipulations as provisions on any new leases that are issued in the Pinedale Field Office should also be maintained in all crucial wildlife habitats wherever they may be located. This issue will be discussed further Section V of these comments where the BLM's proposed "performance based" mitigation in Appendix 3 is discussed.

7. *Lease Buyout and Trade*

Last, the BLM should fully consider and make provision for lease buyout and trades, particularly in areas devoted to conservation of environmental values. While we realize that lease buyouts might require Congressional authorization or that means to acquire or provide these monies might be beyond what the RMP can specifically require, the BLM certainly at a minimum can provide in the RMP that lease buyout will always be considered and explored when development in management areas devoted to conservation is proposed. And pursuing trades of leases from willing traders is certainly well within the BLM's authority without additional Congressional authorization, and BLM should make provision in the RMP to fully explore and utilize this obvious means of environmental protection to the maximum extent possible in management areas devoted to conservation. Specifically, the RMP should delineate priority areas for lease buyouts and trades to be considered, such as existing leases in unavailable areas, Areas of Critical Environmental Concern (ACEC), and in some cases large block NSO areas. By removing leases in these areas, the BLM would be ensuring that there are sufficient large block habitat areas relatively near existing fields for use of off-site mitigation funds on habitat improvement projects, and would better ensure the management objectives for these areas are adhered to.

D. Protection Of Special Places

There are a number of special places in the Pinedale Field Office that the RMP should ensure receive protection. A number of these are recognized in the RMP DEIS. Alternative 3 provides for far greater protection of these areas than does Alternative 4, and thus it is clearly preferable to Alternative 4, which provides considerably lesser protection or no protection to these areas. In addition to the special places recognized in the RMP DEIS there are, however, several other areas that warrant special protection in the RMP. Below, we first address the areas that are not recognized in the RMP DEIS and then address protection of areas that are recognized in the RMP DEIS.

1. *Special Areas Not Recognized In The RMP DEIS That Must Be Protected*

The compact disc (CD) included herewith includes a slide presentation developed by the Upper Green River Valley Coalition. We incorporate this entire slide presentation, including the commentary included with it, into these comments by this reference and ask that the BLM fully consider it as part of these comments. Slide number 33 shows several special areas that should be protected from the impacts of oil and gas development. These areas include the entire Wind River Front, greater Trappers Point migration bottleneck, the Ryegrass Area, Cottonwood Area, and the Fontenelle elk winter range. Three of these areas, Ryegrass, Cottonwood, and Fontenelle are not specifically recognized at all in the RMP DEIS, and these areas will be addressed here. We will consider the Wind River Front and Trappers Point areas below in the section addressing areas that are recognized in the RMP DEIS.

One of the areas discussed in the Upper Green River Valley Coalition slide presentation that is not recognized in the RMP DEIS is the **Ryegrass Area**, an area generally west of the Green River and east of the Wyoming Range near Daniel, Wyoming. Much of the Ryegrass

Area would be designated an Unavailable Area pursuant to Alternative 3, although the northern, western, and southern perimeters of it would be a Minimally Developed Area. Compare CD Slide 33 with Map 2-8. Pursuant to Alternative 4, much of this area would be designated a Large Block NSO Area, although again the perimeter would be a Minimally Developed Area. There are a number of reasons this entire area should be protected from any future leasing, including leasing subject to an NSO stipulation:

- Considerable portions of this area are not currently leased, meaning the BLM has a rare opportunity to protect an area from leasing and the resource management difficulties that leasing creates. Map 1-3. This also presents an opportunity to facilitate meaningful and effective off-site mitigation due to development in other areas.
- There is little in the way of existing oil and gas development in the area. Map 3-5; CD slide 35. Most the area only has a moderate development potential and some of it only has a low potential. Map 4-1.
- This area is entirely occupied by greater sage grouse nesting and brood rearing habitats as recognized under Alternative 3 and this is true of the vast majority of the area even under Alternative 4. Maps 2-28 and 2-36.
- This area contains several significant historic sites, including Fort Bonneville, the Prairie Mass site, and the Father DeSmet Monument. Map 3-1.
- The area contains significant expanses of unbroken sagebrush habitat. Map 3-11. Thus this could be an important area for use of off-site mitigation funds for either lease purchase/retirement or habitat improvement projects.
- There are several sensitive plant locations in the area. Map 3-12.
- Almost the entire area is crucial mule deer winter range. Maps 3-16, 3-19.
- Much of the area is moose crucial winter range. Maps 3-18, 3-19.
- Much of the area has at least two and in some areas three overlapping crucial ranges, some the greatest concentrations of overlapping crucial ranges in the Pinedale Field Office. CD slide 17.
- The area has a very high terrestrial vertebrate species richness. CD slide 34.

Given this remarkable concentration of biological and cultural values, all of the Ryegrass Area should be designated as Unavailable for future leasing. The loopholes currently present in the provisions applicable to Alternative 3, particularly allowance for conversion to an Intensively Developed Field, should be eliminated. And, BLM should exert its retained rights on existing leasing by taking actions that include but are not limited to requiring phased development, directional drilling, and full compliance with wildlife protective stipulations, as discussed above.

A second area of tremendous value that does not receive the full protection it needs under the current RMP DEIS is the **Cottonwood Area**, just south of the Ryegrass area. CD slide 33. Much of the Cottonwood Area would be designated an Unavailable Area pursuant to Alternative 3, although the northern perimeter of it would be a Minimally Developed Area. Compare CD Slide 33 with Map 2-8. Pursuant to Alternative 4, almost the entire area would be designated a Minimally Developed Area. Compare CD slide 33 with Map 2-9. There are a number of reasons this entire area should be protected from any future leasing, including leasing subject to an NSO stipulation:

- There is little in the way of existing oil and gas development in the area. Map 3-5; CD slide 35. This area only has a moderate development potential. Map 4-1.
- This area is entirely occupied by greater sage grouse nesting and brood rearing habitats as recognized under Alternative 3 and this is true of the vast majority of the area even under Alternative 4. Maps 2-28 and 2-36.
- The area contains significant expanses of unbroken sagebrush habitat. Map 3-11. Thus this could be an important area for use of off-site mitigation funds for either lease purchase/retirement or habitat improvement projects.
- There are several sensitive plant locations in the area. Map 3-12.
- Some of this area is crucial pronghorn winter range. Maps 3-15, 3-19.
- There is crucial elk winter range in the area. Maps 3-17, 3-19.
- Some of the area is moose crucial winter range. Maps 3-18, 3-19.
- Some of this area has two overlapping crucial ranges for wildlife. CD slide 17.
- There are large pronghorn parturition areas in the Cottonwood area and some elk calving areas. Map 3-20.
- The area has a very high terrestrial vertebrate species richness. CD slide 34.

Given this remarkable concentration of biological values, all of the Cottonwood area should be designated as Unavailable for future leasing. The loopholes currently present in the provisions applicable to Alternative 3, particularly allowance for conversion to an Intensively Developed Field, should be eliminated. And, BLM should exert its retained rights on existing leasing by taking actions that include but are not limited to requiring phased development, directional drilling, and full compliance with wildlife protective stipulations, as discussed above.

Another area shown in the Upper Green River Valley Coalition slide presentation that was not fully considered in the RMP DEIS is the **Fontenelle Elk Winter Range Area**. Much of the Fontenelle Area would be designated as Unavailable for future leasing pursuant to Alternative 3, which is commendable. Compare CD Slide 33 with Map 2-8. Pursuant to Alternative 4, however, most of this area would be given the minimal protection of a Minimally Developed Area. Compare CD slide 33 with Map 2-9. There are a number of reasons this entire area should be protected from any future leasing, including leasing subject to an NSO stipulation:

- Considerable portions of this area are not currently leased, meaning the BLM has a rare opportunity to protect an area from leasing and the resource management difficulties that leasing creates. Map 1-3. This also presents an opportunity to facilitate meaningful and effective off-site mitigation due to development in other areas.
- There is little in the way of existing oil and gas development in the area. Map 3-5; CD slide 35. Most the area only has a low development potential. Map 4-1.
- Significant portions of this area would be designated a Class II Visual Resource Management class pursuant to Alternative 3, and this is largely true pursuant to Alternative 4 as well. Maps 2-22 and 2-30. Not leasing in this area will make it more viable to achieve this management direction.
- Much of this area is a right-of-way avoidance area under both Alternatives 3 and 4. Maps 2-24 and 2-32. Not leasing in this area will make it more viable to achieve this management direction.

- There are sensitive cultural sites in this area and under Alternative 3 a significant area would be recognized as an important component of the Sublette Cut-off of the Oregon Trail. Maps 2-25 and 2-34. There are also significant historic sites in the area including Names Hill and Seedskeedee/Fontenelle. Map 3-1.
- There are large areas of pronghorn crucial winter range in this area. Map3-15.
- A significant portion of the area is crucial mule deer winter range. Maps 3-16, 3-19.
- Almost the entire area is crucial elk winter range.
- Much of the area has at least two and in some areas three overlapping crucial ranges, some the greatest concentrations of overlapping crucial ranges in the Pinedale Field Office. CD slide 17.

Given this remarkable concentration of biological and cultural values, all of the Fontenelle Area should be designated as Unavailable for future leasing. The loopholes currently present in the provisions applicable to Alternative 3, particularly allowance for conversion to an Intensively Developed Field, should be eliminated. And, BLM should exert its retained rights on existing leasing by taking actions that include but are not limited to requiring phased development, directional drilling, and full compliance with wildlife protective stipulations, as discussed above.

2. *Special Areas Recognized In The RMP DEIS That Must Be Fully Protected.*

Two special areas that are recognized in the RMP DEIS are also addressed in the Upper Green River Valley Coalition slide presentation: the Wind River Front and Trappers Point. Pursuant to Alternative 3, the 9,540 acres Trappers Point ACEC and the 358,400 acres Wind River Front Management Area would be established. 2-108, 2-110, Map 2-26. Pursuant to Alternative 4, the Trappers Point ACEC would only be 4,160 acres and the Wind River Front Management Area would be reduced to 201,240 acres by eliminating its northern half. 2-155, 2-156, Map 2-33. The greater protections afforded by Alternative 3 should be adopted in the RMP rather than the minimalist provisions in Alternative 4.

Pursuant to Alternative 3, the entire **Trappers Point** migration bottleneck is designated an area Unavailable for future leasing. Even under Alternative 4 most of it is designated as Unavailable for future leasing and the remainder is designated a Large Block NSO area. Maps 2-8, 2-9, 2-26, 2-33. The ACEC is limited to the areas designated Unavailable under either alternative; the Large Block NSO areas are not deemed suitable for ACEC designation pursuant to Alternative 4. *Id.* However, this differential treatment does not comport with the management goals established for these areas. The management emphasis in both the Unavailable areas given ACEC designation and the Large Block NSO area not afforded ACEC designation is to “provid[e] contiguous wildlife habitat, wildlife refuge areas and migration routes” 2-47, 2-49. Given there is no difference in management emphasis in these areas there can be no rational basis for designating the Unavailable Areas an ACEC while not designating the Large Block NSO areas an ACEC. Furthermore, the entire area meets the relevance and importance criteria. A4-3. Given this, the entire Trappers Point migration bottleneck should be designated an ACEC regardless of what alternative is selected as the RMP. The BLM recognizes this entire area is “a major funnel, or bottleneck, for mule deer and pronghorn in their winter migrations to and from winter range” and the area is threatened with

constriction due to development, and contains very significant archeological sites. 3-136. Thus, maximum protection is required.

Likewise the entire **Wind River Front** should be given special management protection. Pursuant to Alternative 3, the entire Wind River Front is designated an Unavailable Area, and BLM's corresponding designation of the entire Wind River Front as a special Management Area reflects this management emphasis. Maps 2-8, 2-26. In contrast, pursuant to Alternative 4 the northern half of the Wind River Front that is eliminated from special Management Area designation is assigned to a Large Block NSO Area. Maps 2-9, 2-33. Yet as noted above, the management emphasis in Large Block NSO Areas is exactly the same as the management emphasis in Unavailable Areas, so it is arbitrary to provide differing special area management designations in areas that are supposed to have the same management emphasis, one oriented toward environmental protection. 2-47, 2-49. This is especially true given that under the direction provided by the Pinedale Anticline EIS the entire Wind River Front is afforded special protection. The BLM has provided no rationale, and thus acted arbitrarily, by specifying different management direction for the northern and southern half of this area when the stated management goal for the entire area is the same: the protection of environmental values, 2-47, 2-49, particularly since the entire area has been afforded special protection for some time now. In fact, the BLM recognizes this entire area contains "world-class" geological features, contains streams with Wild and Scenic Rivers values, important semi-primitive recreation opportunities, and "encompasses migration corridors for big game and for crucial winter ranges for moose, elk, and mule deer. It also supplies wintering and breeding habitats for sage grouse." 3-136. See also Maps 2-28, 2-36, 3-16, 3-17, 3-18, and 3-19.

The Upper Green River Valley Coalition's slide presentation provides considerable additional evidence as to why the entire Wind River Front should be given special Management Area designation. The entire area is a highly important, and well documented, migration corridor. CD slides 8, 9, 26, and 27. Wetlands and riparian areas occur throughout the Wind River Front. CD slide 28. It is a very important aquifer recharge area. CD slide 29. Much of it has steep slopes making surface disturbance inappropriate. CD slide 30. The area has extremely high vertebrate species richness. CD slide 34. Clearly the existing management direction that the entire Wind River Front should not be available for leasing should be maintained, and this area should be deemed Unavailable for leasing, and all of it should be afforded special protection.

Finally, we would note that the BLM determined this entire area met both the relevance and importance criteria for designation as an ACEC. A4-4. Having made that determination, the BLM was required to designate this entire area an ACEC. The basis for this claim will be elaborated on below. Instead, however, the BLM simply asserted with no supporting analysis whatsoever that "[i]t was determined that management actions other than ACEC designation are more appropriate to protect the values." Id. This bald assertion does not justify the BLM's refusal to designate this area as an ACEC, and again this will be discussed more fully below.

In addition to the areas recognized in both the Upper Green River Valley Coalition slide presentation and the RMP DEIS, there are several other areas of significance addressed in the

RMP DEIS that should receive full protection. Three significant areas in this regard are the Miller Mountain Area, Ross Butte Area, and the White-tailed Prairie Dog ACEC.

The **Miller Mountain** Management Area should receive the increased protection that would be afforded pursuant to Alternative 3—particularly designation as an area unavailable for oil and gas leasing—for the following reasons:

- A significant portion of the area, particularly the western portion, is not currently leased, giving the BLM an unusual opportunity to protect an area from the impacts of potential oil and gas development without having to deal with the issues that are created after an area is leased. Map 1-3. And as noted above, this could present opportunities for meaningful and effective off-site mitigation due to development elsewhere.
- There is also little existing oil and gas development in the area. Map 3-5, CD slide 35. The area has only a low potential for oil and gas development. Map 4-1.
- As recognized on page 3-136 of the RMP DEIS the area has numerous significant environmental values, including remoteness, a high quality visual environment that is an extension of the Lake Mountain Wilderness Study Area, crucial elk habitats, Canada lynx habitat, high value as a popular hunting area, potential Colorado River Cutthroat Trout habitat, significant riparian and stream habitats, and a rich cultural history, including historic Fort Hill.
- The area is intended to be a right-of-way exclusion area pursuant to both Alternatives 3 and 4, which may be difficult to accomplish if the area does not receive the full protection afforded by Alternative 3. Maps 2-24 and 2-32.
- The area contains a significant array of varying plant communities. Map 3-11.
- The entire area is mule deer winter/yearlong range. Map 3-16.
- As noted, the area contains extensive areas of crucial elk ranges. Maps 3-17, 3-19, and 3-20.

For these reasons, the Miller Mountain area should receive the enhanced protection afforded by Alternative 3. We would note, however, that the BLM simply asserts that the area did not meet the ACEC importance criteria. A4-2. Absent some explanation as to how this determination was made—and an opportunity for the public to comment on this determination—there is no rational basis presented in the RMP DEIS for not designating this area an ACEC. We ask that such an explanation and opportunity for public comment be provided, and that absent such the area be designated an ACEC.

Likewise, the **Ross Butte** area should receive the enhanced protection afforded by Alternative 3 rather than the lesser protection provided by Alternative 4. Alternative 3 would designate the area an ACEC and make it Unavailable for oil and gas development while Alternative 4 would only give the area Management Area status and would allow oil and gas leasing in the area. The Ross Butte should receive the increased protection that would be afforded under Alternative 3 for the following reasons:

- Considerable portions the area appear to be unleased, giving the BLM an unusual opportunity to protect an area from the impacts of potential oil and gas development

without having to deal with the issues that are created after an area is leased. Map 1-3. This could also be useful relative to off-site mitigation activities.

- There is also little existing oil and gas development in the area. Map 3-5, CD slide 35. The area has only moderate to low potential for oil and gas development. Map 4-1.
- As recognized on page 3-135 of the RMP DEIS, the area is virtually roadless and “offers wide scenic vistas similar to the Painted Desert of Arizona” in an area “which is unique to the field office area.” 3-135.
- The soils in the area are unstable, but they provide unique habitat for BLM sensitive endemic plant species. Id.
- There are important archeological sites. 3-135 to 3-136. There is a need for management of uncontrolled OHV use in the area. Id.
- Most or all of the area is intended to be a right-of-way exclusion area pursuant to both Alternatives 3 and 4, which may be difficult to accomplish if the area does not receive the full protection afforded by Alternative 3. Maps 2-24 and 2-32.
- There are important developed recreation sites in the area. Map 3-6.
- There are also substantial numbers of sensitive plant species locations in the area. Map 3-12.
- Much of the area is crucial pronghorn winter range. Maps 3-15, 3-19.
- Much of the area is crucial mule deer winter range. Maps 3-16, 3-19.
- There is crucial moose winter range in or immediately adjacent to the area. Maps 3-18, 3-19.

For these reasons, the Ross Butte area should receive the enhanced protection afforded by Alternative 3. The BLM recognizes that the area meets the relevance and importance criteria for ACEC designation. A4-3. Despite this, the BLM asserts without any explanation that “[i]t was determined that management actions other than ACEC designation are more appropriate to protect the values.” Id. As will be discussed below, having determined that the area met the relevance and importance criteria the BLM was not at liberty to give this area lesser protection than ACEC designation.

Alternative 3 would designate a **White-Tailed Prairie Dog ACEC** while Alternative 4 would not provide any special management oriented toward this BLM sensitive species. The protections afforded by Alternative 3 should be adopted by the BLM regardless of what Alternative is ultimately selected as the RMP.

The BLM recognizes that this ACEC meets the relevance and importance criteria for ACEC designation. A4-3. As will be discussed below, having made this determination, the BLM is required to designate the White-Tailed Prairie Dog ACEC.

It should be pointed out that the areas where white-tailed prairie dog habitat exists extend considerably to the west and southwest of areas currently known to have white-tailed prairie dog towns. Compare Map 2-26 with Map 3-21. Thus, it is likely that significant white-tailed prairie dog colonies will be found in these areas. One potential significance of this is that this ACEC does not necessarily create potential conflicts with the oil and gas development occurring in the Pinedale Anticline field; or at least there is not necessarily complete overlap between any efforts to protect prairie dogs through this ACEC designation and oil and gas development. Moreover,

as noted above, even with the designation of this ACEC (and other protected areas), Alternative 3 would nevertheless lead to the production of over 87 percent as much natural gas as Alternative 4, so obviously the designation of this ACEC would not lead to significant impacts on oil and gas production. Potential impacts on oil and gas development are not a reason to forgo protection of white-tailed prairie dog habitat through an ACEC. Furthermore, given that substantial white-tailed prairie dog habitat is found well west of the Pinedale Anticline field, it is apparent this ACEC could be formed in areas that have not been as heavily leased as many areas (Map 1-3), in areas where there is not substantial current oil and gas field development (Map 3-5), and in areas with low to moderate oil and gas development potential (Map 4-1). In short, this ACEC could be formed without necessarily creating a great deal of conflict with oil and gas development.

It must also be reiterated again that the white-tailed prairie dog is a BLM sensitive species. For this reason the BLM must ensure that it complies with provisions in the BLM Special Status Species Management Manual 6840. Pursuant to the Special Status Species Manual, BLM must afford sensitive species the same protections afforded candidate species, at a minimum. Candidate species must be provided management strategies necessary to meet specific habitat and population management objectives and the BLM must ensure all management actions are consistent with those objectives. BLM Manual § 6840.06.C.2.b-c. Designating the White-Tailed Prairie Dog ACEC would help ensure these obligations are met, while a complete failure to protect white-tailed prairie dog habitat, as proposed in Alternative 4, clearly does not meet these obligations.

In addition to these three relatively large potential protected areas, a number of other areas would receive protection pursuant to Alternative 3, including the Upper Green River ACEC, New Fork Potholes ACEC, CCC Ponds ACEC, Boulder Lake Special Recreation Management Area, the Scab Creek Special Recreation Management Area, Green River and New Fork River Special Recreation Management Area, Beaver Creek ACEC, and the Rock Creek ACEC. These areas receive considerably less protection pursuant to Alternative 4, and/or much smaller areas are protected. All of these areas should be afforded the protections provided by Alternative 3.

The **Upper Green River ACEC** (Special Recreation Management Area under Alternative 4) is located in an area that would be Unavailable for oil and gas leasing pursuant to Alternative 3 and in a Large Block NSO Area under Alternative 4. As noted several times above, given that the management objectives for Unavailable and Large Block NSO areas are exactly the same, the fact this area is in a Large Block NSO Area under the provisions of Alternative 4 provides no justification for the lesser protection. The Upper Green River area is remote, stunning and of great recreational value. 3-54. The **CCC Ponds** and the **New Fork Potholes** are also located in areas that are devoted to environmental protection (Unavailable under Alternative 3 and Large Block NSO under Alternative 4). The CCC Ponds are recognized by the BLM as “a local recreation haven.” 3-137. The New Fork Potholes are recognized as a “unique subsection of the Wind River Front” due to the large number of glacial potholes, which attract abundant waterfowl and provide habitat for many other species of wildlife. 3-136. The New Fork Potholes area meets both the relevance and importance criteria for designation as an ACEC. A4-2. “The values in this area need special emphasis to be effectively managed.” *Id.* The **Rock Creek ACEC** is important for the protection of quality habitat for the Colorado River

Cutthroat Trout and crucial winter range for elk, and the **Beaver Creek ACEC** serves similar crucial functions. 3-135. Both of these areas meet the relevance and importance criteria for designation as an ACEC. For these reasons all of these areas should receive the greater protections afforded by Alternative 3.

Finally, while not specifically involving a special management area, we would like to endorse the visual resource management classification provisions in Alternative 3 relative to those in Alternative 4. Maps 2-22 and 2-30. The classifications pursuant to Alternative 3 would provide much greater assurance that the management goals for the Lander Trail and Wind River Front are fully realized. The Lander Trail must be preserved in a status to protect its historical values and the management goal for the Wind River Front area is to recognize its special scenic, wildlife, and even cultural values. Managing the more extensive areas as VRM Class II pursuant to Alternative 3 would achieve these underlying management goals for these areas to a much greater degree than would Alternative 4. Alternative 4 provides almost no protection of the visual environment along the Lander Trail, and treats the “Wind River Front” as nothing more than a narrow strip of land adjacent to the National Forest when in fact, in the popular and cultural concept of the area, it is all BLM lands east of U.S. Highway 191, as Alternative 3 recognizes. We would also note that Alternative 3 would do a far better job of protecting the visual environment in the Ross Butte, Miller Mountain, and Green-New Fork River corridors than would Alternative 4, which again is more in alignment with the special management goals for these areas.

Pursuant to the FLPMA, the BLM must “give priority to the designation and protection of areas of critical environmental concern.” 43 U.S.C. § 1712(c)(3). ACECs are areas where special management attention is required “to protect and prevent irreparable damage.” *Id.* § 1702(a).

The BLM recognized in the table presented in Appendix 4 in the RMP DEIS that many of the ACECs considered met BLM’s relevance and importance criteria. Having recognized this, the BLM was required to designate these areas meeting the relevance and importance criteria as ACECs in order to meet its obligation to give “priority” to designating ACECs.

The BLM seems to have declined to designate many of these areas as ACECs because of a belief that alternative management is sufficient for these highly relevant and important fragile resources. This is plainly wrong; one does not give priority to the creation of something (an ACEC) by not creating it or by creating something else. One gives priority to designating ACECs by doing just that when the area meets the relevance and importance criteria, as many of these areas do. Why does BLM feel it need not designate an area an ACEC when the area meets BLM’s own relevance and importance criteria; how is that giving “priority” to creation and protection of ACECs, as required by the FLPMA?

The BLM seems to believe that the language in 43 U.S.C. § 1702(a) about special management being “required” can absolve it from designating ACECs (i.e., giving priority to them) when it can find some other way to protect these lands. But such a view is plainly wrong. BLM can always find other ways to protect areas besides designating them as ACECs through its general multiple use authority, but such an effort thwarts the express command of Congress to

give “priority” to designating ACECs not other special management areas, many of which are often purely of BLM’s own creation with no defined or certain management requirements or standards. Furthermore, any time an area is “developed” or is “used” or where “no development” must be ensured, ACEC designation is “required” because these circumstances create a need for “special management attention” so as to protect any recognized important resource values. 43 U.S.C. § 1702(a). That is, ACECs are not to be designated only when required for protection of the resources, but rather the requirement to designate attaches when development or use will occur in an area that meets the relevance and significance criteria. The requirement also attaches if use will occur in an area that meets the criteria when no development must be ensured to protect the resources. BLM recognizes that nearly all of the ACECs at issue here are likely to be “developed” or “used” to some degree. Consequently these lands require special management attention to protect and prevent irreparable damage to the resources in these areas that BLM recognizes are important and relevant. Thus, they must be designated ACECs as commanded by the FLPMA.

V. Appendix 3 Must Be Entirely Revised Or Abandoned.

Appendix 3 of the RMP DEIS seems to be intended to provide the core provisions regarding mitigation of the impacts of development, particularly oil and gas development, for Alternatives 2, 3, and 4. Many of the provisions in this appendix are so vague, discretionary and non-binding that they provide no assurance that any mitigation will actually be applied or required, nor do they provide any measure of what constitutes compliance with them or what must be achieved. If these provisions are retained in the RMP they should be reworded so that the following, at a minimum, are readily discernible:

- All vague, non-binding and discretionary language should be eliminated. (“maximum extent practicable,” “could be considered,” “should be avoided,” “minimized by any reasonable measure,” “reclamation in critical wildlife habitats may be required . . .,” “as soon as practicable,” etc., etc.). Such provisions entirely fail to specify what if anything will be done with respect to mitigation. Provisions may be applied, or they may not be, and no one knows. What they must achieve is almost entirely unknown. And given BLM’s recent propensity in the Pinedale Field Office to use the categorical exclusions from NEPA analysis available under section 390 of the Energy Policy Act of 2005 when development is pursued on a site-specific basis, there is no guarantee whatsoever the application of these vague provisions will even be considered in the future, as BLM claims will be the case, thus absolving it of a need to engage in “prescriptive” mitigation at the RMP level. All provisions should be specified in clear, mandatory terms so that there is clarity about what is required, when it will be required, and so on.
- Clear standards for what must be achieved should be specified. In particular, ecologically functioning sagebrush habitat must be the specified goal and standard for acceptable reclamation. See expert comments of Drs. Carl Wambolt, Clait Braun, and William Alldredge (Exhibits 1, 2, and 3). Anything less (or more vague) provides no assurance that BLM lands in the Pinedale Field Office will provide anything like their current ecological values and services for literally

hundreds of years. What a “seed mix proven effective for the predisturbance wildlife use” means is entirely unclear. A3-8. Does this mean ecologically functional sagebrush habitat must be reestablished or would simply planting sagebrush seeds be sufficient, regardless of whether they actually established? This uncertainty must be eliminated and clear standards and measures of success provided.

- Clear and specified means for monitoring compliance with the “guidelines” must be specified. The questions of “who, what, when and where” must be answered for the provisions in Appendix 3 to have any utility whatsoever. Currently there is no such clarity. As recently demonstrated in BLM’s document prepared by the Pinedale Field Office entitled “Commitments Made In Decision Documents Not Yet Achieved” (May, 2006), BLM has a poor history of complying with mitigation measures in this area, so it is crucial that specific measures be provided for monitoring and assurance of compliance with mitigation measures.
- What precisely the goal of mitigation is must be specified. For example, it is not apparent that BLM would have any clear goal regarding big game crucial winter ranges that are affected by oil and gas development. Again, in many circumstances the goal of mitigation must be to restore ecologically functioning sagebrush habitats.

Underlying the “performance based” guidelines in Appendix 3 seems to be a philosophical view that there is a need for “adaptability” that is somehow not available with respect to “prescriptive” standards, particularly any “prescriptive” standards developed and applied at the RMP or leasing stage. There is no basis for this claim; “performance based” standards seem to primarily be a means for BLM to avoid stating clearly what must be achieved and the provisions by which a stated goal will be achieved. They contribute primarily toward making the RMP process a considerably less meaningful or useful exercise. They are mostly a mechanism to create uncertainty as to what, when, and where things will be done or actions taken. As discussed in detail above, BLM has more than sufficient retained authority when it issues an oil and gas lease to later require any number of provisions that are deemed necessary to protect the environment. This is true even if stipulations have been attached to a lease. So, for example, if as result of decisions made in the RMP BLM attaches a stipulation prohibiting drilling in big game crucial winter range from November 15 through April 30 as a requirement for issuing leases in crucial winter ranges, this does not mean it is prohibited from taking other actions in the future that may be necessary to protect big game winter range, or other environmental values. It has more than sufficient authority to later “adapt” as needed, and the attachment of the stipulation does not change this fact. The stipulation simply codifies a long-standing view (strongly endorsed by the WGFD) that such stipulations are needed at a minimum to protect big game winter ranges.

The BLM should recognize these points and ensure that the RMP “prescribes” mitigation that is clearly needed, particularly any mitigation that is required to ensure the management direction for a particularly oil and gas management area is achieved. Fulfilling the management direction established in the RMP, particularly for Unavailable Areas and Large Block NSO Areas, and meeting other environmental protection responsibilities should be the overarching objective of mitigation, not “adaptability” per se. “Prescriptive” measures will often better

ensure these overarching requirements are met if for no other reason than that by attaching them as a condition of leasing there is no question that BLM has retained rights to specify the nature of development. And, again, the BLM retains more than sufficient authority to “adapt” in the future, as conditions warrant. Furthermore, as noted above, the Mineral Leasing Act requires that “[e]ach lease shall contain provisions for the purpose of insuring the exercise of . . . care in the operation” of a lease, and BLM is required to “regulate” surface disturbing activities on a lease “in the interest of conservation of surface resources.” 30 U.S.C. §§ 187, 226(g) (emphasis added). Consequently the BLM must ensure that sufficient “prescriptive” measures as are needed are attached to leases at the leasing stage so as to meet these and other obligations, and the RMP should unequivocally require such.

Last, we would note that with respect to minerals Appendix 3 provides that “[e]ach new lease would be reviewed on its own merits to ensure the appropriate protective measures/stipulations are applied (see Appendices 2, 5, 12, and 18).” A3-8. We believe this is a crucial provision and BLM should emphasize it to a much greater degree. It is crucial that the stipulations provided in Appendix 2, the Best Management Practices specified in Appendix 5, the seasonal stipulations specified in Appendix 12, and the protections specified in Appendix 18 for listed species be fully applied at the leasing stage when there is no question BLM enjoys its maximum rights to condition development and thus protect the natural environment. BLM should firmly commit to applying the provisions in these Appendices at the leasing stage as needed. If it pursues “performance based” guidelines, they should be coupled with sufficient “prescriptive” measures so as to ensure protection of the natural environment, which is clearly BLM’s obligation under numerous legal authorities, and which should be the basis for all management actions at least in the Unavailable Areas and the Large Block NSO Areas, where environmental protection is the explicitly stated management objective.

VI. The RMP DEIS Does Not Provide Sufficient Site-Specific Environmental Analysis To Support The Use Of Categorical Exclusions From NEPA Analysis, And BLM Should Commit To Not Using The RMP EIS To Support The Use Of Categorical Exclusions.

As BLM knows, the Energy Policy Act of 2005 provided for the use of categorical exclusions from NEPA analysis of oil and gas development under certain circumstances. 42 U.S.C. §§ 15942(b)(1)-(5). BLM has increasingly availed itself of these categorical exclusions from NEPA analysis in the Pinedale Field Office, especially for proposed drilling on the Pinedale Anticline and Jonah fields.

The provision at 42 U.S.C. § 15942(b)(3) states that a categorical exclusion can be available where there is “an approved land use plan” in place prepared within the last five years that “analyzed such drilling as a reasonably foreseeable activity.” It is our view that the RMP DEIS does not analyze any drilling as a reasonably foreseeable activity except in the most vague and general ways. BLM anticipates that a certain total numbers of wells will be drilled in the Field Office as a whole, but it makes no analysis of the particular impacts of well drilling, even at a scale as coarse as a field of development (for example, the Pinedale Anticline field). While the impacts of oil and gas development on resources in the Pinedale Field Office as a whole are analyzed to some degree, there is, for example, no consideration of what the impacts of drilling

would be on the Trappers Point migration bottle neck, or the important resource values in the Ross Butte area, or of impacts to the northern part of the Wind River Front that would be opened to leasing for the first time in many years, or of impacts to white-tailed prairie dog populations, or of impacts to mule deer crucial winter ranges in the Ryegrass area, and on and on. Additionally, many environmental impacts are simply not considered at all, such as the potential impacts of converting Large Block NSO and Unavailable Areas to Intensively Developed Fields.

Given this complete lack of environmental analysis at a site-specific level, BLM should commit to not utilizing categorical exclusions from NEPA analysis by tiering to the revised Pinedale RMP. The RMP simply does not support a decision to not engage in future, site-specific, NEPA analysis, and the RMP should so provide. We would note that the use of categorical exclusions are “subject to a rebuttable presumption” that they should apply, 42 U.S.C. § 15942(a), and the BLM should state in the RMP that the presumption that a categorical exclusion could be used pursuant to 42 U.S.C. § 15942(b)(3) has been rebutted because the environmental analysis in the RMP EIS is simply not specific enough or site-specific enough to support the use of such a categorical exclusion.

VII. BLM Should Consider A No Leasing Alternative In The Pinedale RMP EIS.

BLM’s no action alternative in the RMP DEIS is continuation of the existing 1988 Pinedale RMP. We request that in addition to this alternative, a no future oil and gas leasing alternative be considered in the RMP. Consideration of such an alternative would provide a better and more accurate picture of baseline environmental conditions and environmental impacts than the existing “no action” alternative does. Providing an analysis of the consequences of such a no action alternative would provide BLM with a far truer picture of many baseline conditions, allowing for a far more useful analysis of the environmental consequences of the various “action alternatives.” Consideration of such an alternative is certainly envisioned by both NEPA and the Council on Environmental Quality regulations implementing NEPA, and is demanded by various court decisions.

Thank you for considering these comments.

Sincerely,

Bruce Pendery,
Attorney at Law, Wyoming Outdoor Council
And on Behalf of the Above Organizations

Enclosures

cc: Bob Bennett, BLM State Director
Governor Dave Freudenthal
John Cora, DEQ
Terry Cleveland, WGFD
Larry Svoboda, EPA

APPENDIX 1

SUMMARY OF SOME SIGNIFICANT CONCLUSIONS IN THE EXPERT COMMENTS INCORPORATED BY REFERNECE

Comments of Dr. William Alldredge Regarding Big Game—Exhibit 1.

Significant points raised in Dr. Alldredge’s comments include but are not limited to the following:

- The RMP DEIS fails to provide adequate baseline information regarding big game from which comparisons of impacts can be made.
- The analysis in the RMP DEIS fails to adequately consider the direct, indirect, and cumulative impacts of actions authorized by the RMP on big game populations and habitats and does not consider relevant science in these regards.
- The RMP DEIS fails to adequately present or consider needed monitoring, mitigation and reclamation relative to protecting big game and big game habitats.
- The RMP DEIS fails to consider any alternative that would effectively protect big game habitats.

Comments of Dr. Clait Braun Regarding Sage Grouse—Exhibit 2.

Significant points in Dr. Braun’s comments include but are not limited to the following:

- The RMP DEIS does not fully evaluate or protect the crucial ranges of sage grouse, wintering, lek areas, nesting, and brood rearing, all of which must be provided in suitable condition to maintain sage grouse populations.
- Minimum viable population sizes have not be adequately determined or analyzed.
- BLM continues to adhere to a 0.25 mile development exclusion perimeter around leks even though the scientific literature shows this has no validity and that a 3 mile perimeter is needed.
- Monitoring provisions for sage grouse need to be substantially improved.
- There is a special need to identify winter concentration areas and fully protect them.

Comments of Dr. Carl Wambolt Regarding Sagebrush Ecology and Management—Exhibit 3.

Significant points in Dr. Wambolt’s comments include but are not limited to the following:

- It is likely BLM has utilized methods that overestimate sagebrush cover, causing it to pursue actions to reduce sagebrush cover that are not warranted.
- Sagebrush “treatments” are often ineffective and typically do not increase the cover of grasses or forbs relative to untreated areas; in fact they may reduce grass and forb cover.
- Sagebrush habitats support a large array of native species of plants and wildlife and this important ecological service is not adequately acknowledged or analyzed in the RMP DEIS.

- Fire is an infrequent ecological factor in sagebrush ecosystems and claims that increasing fire frequency in these habitats will “improve” them are scientifically unfounded.
- Sagebrush is important forage plant for many species, including due to the fact that it is abundant, an important consideration for any plant species to be deemed an important forage species. But this is not recognized in the RMP DEIS.
- Mature sagebrush communities provide many important ecological functions that can be lost with sagebrush “improvement” activities, not the least of which is the provision of crucial winter ranges for several species.

Comments of Ms. Cindy Copeland and Ms. Megan Williams Regarding Air Quality—Exhibit 4.

Significant points in these comments include but are not limited to the following:

- BLM can and should conduct a quantitative analysis of air quality impacts and issues as a component of the RMP revision process.
- BLM has failed to adequately consider and utilize existing air quality analyses applicable to the Pinedale Field Office, including the Pinedale Anticline Draft Supplemental EIS and the Jonah Infill EIS.
- The numerous severe impacts to air quality, such as exceedances of the ozone standard and modeled violations of Class II increments, that are occurring in the Pinedale Field Office are not adequately considered or addressed in the RMP DEIS.
- The BLM’s emissions inventory is inadequate.
- There is a need for enforceable limits on emissions as part of mitigation of impacts to air quality.

Comments of Messrs. Don Duerr and Steven Greb Regarding Water Quantity and Quality—Exhibit 5.

Significant points in these comments include but are not limited to the following:

- The Pinedale Field Office has many “high sensitivity” aquifers, and given the level of development contemplated, especially relative to oil and natural gas development, these aquifers require protection.
- Oil and gas development and maintenance operations utilize many toxic or hazardous chemicals that must be carefully controlled and regulated to prevent environmental and public health impacts. The RMP DEIS fails to analyze these impacts.
- The RMP DEIS fails to adequately analyze the impacts of leaking oil and gas waste or reserve pits and the impacts of the massive amounts of produced water that will be generated.
- Water depletions are also not adequately considered in the RMP DEIS. Impacts of depletions on drinking water wells are of special significance. Impacts of draw downs of water tables are not addressed.

Comments of Drs. Michele Haefele and Joe Kerkvleit Regarding Socio-Economics—Exhibit 6.

- It appears that economic modeling (IMPLAN) may be used inappropriately or without full recognition of limits to the model.
- The BLM has generally failed to adequately recognize, consider and analyze non-market values in its socio-economic analysis.
- Rapid oil and gas development has a number of negative socio-economic consequences that are not adequately recognized in the RMP EIS—the RMP EIS tends to emphasize positive aspects of oil and gas development while discounting or ignoring negative consequences.