

July 30, 2008

Tom Foertsch
BLM Casper Field Office
2987 Prospector Dr.
Casper, WY 82609

Re: Reynolds Ranch ISR Project Environmental Assessment

Dear Mr. Foertsch:

The following scoping comments are submitted on behalf of the Wyoming Outdoor Council for consideration during the environmental review for the Reynolds Ranch uranium in-situ recovery (ISR) project (hereinafter, Reynolds Ranch Project) .

SPECIFIC ISSUES THE BLM SHOULD CONSIDER.

We believe the Bureau of Land Management (BLM) must ensure that it fully complies with its regulations at 43 C.F.R. Subpart 3809. We think it is especially important that BLM ensure this project does not cause unnecessary or undue degradation as defined in those regulations. 43 C.F.R. § 3809.5. We especially urge the BLM to ensure that any proposed activities are “reasonably incident” to mining operations before permitting them. Issues related to unnecessary or undue degradation will be discussed further below.

The regulations also specify a number of “performance standards” that must be met. We urge the BLM to ensure careful adherence to those. We particularly note that the regulations require that, “[o]perators shall not knowingly disturb, alter, injure, or destroy any scientifically important . . . historical or archeological site, structure, building or object on Federal lands.” 43 C.F.R. § 3809.420(b)(8). The Public Scoping Statement for this project recognizes the potential impacts of this project to the Bozeman Trail. We urge the BLM to prevent such impacts.

The Public Scoping Statement makes it clear that the Reynolds Ranch Project is essentially part and parcel of the existing Smith Ranch/Highland mine, an expansion of that project. Consequently we urge the BLM to seek ways to minimize the environmental impacts of this project by ensuring that existing infrastructure, processes, etc. are utilized to the maximum extent possible, where such “sharing” could reduce

impacts. This would seem to be a very practical, and likely economical, way to minimize the environmental impacts of this project. That said, the Public Scoping Statement says that it is planned to transport uranium charged resin beads to the Smith Ranch central processing plant using the Ross Road, and then the transport the stripped beads back to the Reynolds Ranch satellite facility. This proposal clearly raises a number of significant issues that should be dealt with, including the potential for spills and massive amounts of dust (PM₁₀) being generated. The movement of nuclear materials should be minimized.

As the Public Scoping Statement says, this project will also be subject to licensing by the Nuclear Regulatory Commission (NRC). The NRC is currently engaged in preparing a Generic Environmental Impact Statement (EIS) for in-situ uranium processing and mining that will have nationwide applicability, or at least applicability in many parts of the west, including Wyoming. The Wyoming Department of Environmental Quality (DEQ) is apparently a cooperator in the preparation of that EIS. Because of this companion effort that will have substantial influence or applicability to the Reynolds Ranch Project it seems to us inappropriate for the BLM to approve this project until the NRC Generic EIS is complete and the BLM has a better sense of what NRC requirements will apply. Thus, we urge the BLM to not move forward on the environmental review for this project until the NRC Generic EIS is complete. At a minimum, the BLM must fully recognize this companion National Environmental Policy Act (NEPA) process that is ongoing side-by-side with BLM's analysis and account for it in the Reynolds Ranch Project environmental analysis.

A PRIMARY PURPOSE OF AN ENVIRONMENTAL ASSESSMENT IS TO DETERMINE WHETHER AN ENVIRONMENTAL IMPACT STATEMENT IS NEEDED AND IN THIS CASE AN EIS IS LIKELY REQUIRED.

BLM plans to prepare an environmental assessment (EA) for the Reynolds Ranch Project. A primary purpose of an EA is to determine if a project may have significant impacts on the environment, and if it may, an EIS must be prepared. See 40 C.F.R. § 1508.13 (a finding of no significant impact can only be made if the agency determines the action "will not" have a significant effect on the environment). Thus, BLM must engage in a careful and rational analysis of potential impacts, and if impacts may be significant, an EIS must be prepared for the Reynolds Ranch Project. In making the determination of the potential significance of impacts, BLM should consider the important resource values, any special management designations, and the presence of sensitive species in this area. It is very likely there "may" be significant impacts to the human environment, and this is especially true when the impacts of the existing Smith Ranch facility are factored into the analysis, as they must be (see below). Furthermore, we would note that it would fly in the face of the whole purpose of NEPA so assume *a priori* that this project will not have significant impacts and thus to prejudge that only an EA is needed. We ask that the BLM only pursue an EA after it first determines in a thorough, carefully documented, and public manner that this project will not have significant impacts, as required by the CEQ regulation cited above. In making the significance determination, BLM must carefully consider and weigh the significance criteria specified at 40 C.F.R. § 1508.27. The

context of this project must be defined in terms of the likely significant increase in in-situ mining proposals throughout Wyoming and other parts of the West.

REQUIREMENTS THE BLM MUST COMPLY WITH DURING SCOPING.

The “scoping” stage requires the BLM to make two determinations: (1) what is the scope of the project – in this case the Reynolds Ranch Project– to be analyzed and (2) what are the issues that will be analyzed “in depth.” 40 C.F.R. § 1501.7(a). Other environmental reviews (such Biological Assessments and consultation for species listed pursuant to the Endangered Species Act (ESA)) should be identified so that they can be done concurrently and integrated with the environmental review. We believe the issues identified in these comments are within the legal scope of the Reynolds Ranch Project, and therefore they should be analyzed in depth by the BLM.

In determining the scope of this project, BLM must consider “connected actions,” “cumulative actions,” and “similar actions.” 40 C.F.R. § 1508.25. Whether the existing Smith Ranch/Highlands project is viewed as a connected action, similar action, or a cumulative action may not be critical; but what clearly is critical is that the impacts of this project be fully reflected in the Reynolds Ranch environmental review. Given the specific nature the Smith Ranch/Highlands project, accounting for its impacts should be feasible in a detailed and quantitative manner. General statements about the impacts of that project being additive to the impacts of the Reynolds Ranch Project would not be sufficient in our view to meet the requirements of NEPA. In this case a thorough and quantitative assessment of the joint impacts of these closely related projects should be possible and we ask that such an analysis be done.

The BLM must bear in mind that the “primary purpose” of an environmental review is to “insure that the policies and goals defined in [NEPA] are infused into the ongoing programs and actions of the Federal Government.” 40 C.F.R. § 1502.1. The policies and goals of NEPA include,

- Encouraging a “productive and enjoyable harmony between man and his environment”,
- Promoting “efforts which will prevent or eliminate damage to the environment and biosphere”,
- Using “all practicable means and measures . . .to create and maintain conditions under which man and nature can exist in productive harmony . . .”,
- Fulfilling “the responsibilities of each generation as trustee of the environment for succeeding generations”,
- Assuring “all Americans safe, healthful, productive and esthetically and culturally pleasing surroundings”,
- Allowing beneficial use of the environment “without degradation . . . or other undesirable or unintended consequences”,
- Preserving “important historic, cultural and natural aspects of our national heritage . . .”,
- Achieving a “balance between population and resource use . . .”, and

- Enhancing “the quality of renewable resources” and maximizing recycling of depletable resources.

42 U.S.C. §§ 4321-4331. Thus, the needs that BLM must identify for analysis in its environmental analysis include the above goals and policies, and we ask BLM to “insure” that these goals and policies are “infused” into the Reynolds Ranch Project environmental review and decision document, as required by NEPA and its implementing regulations. See generally 40 C.F.R. §§ 1500.2(f) (all possible means are to be used to protect the environment), 1502.1 (policies of NEPA are to be infused into the ongoing programs and actions of agencies).

NEPA requires BLM to make a number of considerations that we specifically urge BLM not to overlook. NEPA requires the BLM to “insure that presently unquantified environmental amenities and values” are given consideration, “recognize the worldwide and long-range character of environmental problems and thus support international efforts to prevent declines in the world environment,” and “initiate and utilize ecological information in the planning and development of resource-oriented projects.” 42 U.S.C. § 4332, 40 C.F.R. § 1507.2. See also BLM Handbook H-1790-1.V. B.2.a.(3). Thus, in preparing the Reynolds Ranch Project environmental review, BLM should consider, analyze, and wherever appropriate facilitate, international efforts to prevent environmental decline or regulate nuclear materials. The environmental analysis supporting the Reynolds Ranch Project should also explicitly address unquantified environmental values and ensure they are given equal emphasis relative to economic analyses, and ensure up-to-date ecological information is utilized in developing the environmental analysis and decision document. Even if the BLM pursues this project through an Environmental Assessment (EA) rather than an EIS, we ask that it make these considerations at least in terms of determining the environmental significance of this project (the “will not” have significant environmental impacts determination discussed above).

The BLM NEPA Handbook requires BLM to identify the purpose and need of the project being analyzed. We think it is fundamentally inappropriate to define the purpose and need for this project in terms so narrow that the project is defined as only having the purpose of allowing minerals to be developed. “One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing ‘reasonable alternatives’ out of consideration (and even out of existence.)” Davis v. Mineta, 302 F.3d 1104, 1119 (10th Cir. 2002) (invalidating a NEPA analysis partially on this basis) (quoting Simmons v. United States Army Corps of Eng’rs, 120 F.3d 664, 669 (7th Cir. 1997)). The BLM should view the purpose and need for this project to also include environmental protection as a critical companion to any need for minerals development. BLM cannot claim the purpose and need for the Reynolds Ranch Project is essentially solely defined by, and constrained by, whatever rights and desires the mineral rights holder may have.

It is rarely possible for the BLM (or any other Federal agency) to obtain perfect amounts of information. However, BLM must not allow this fact to stymie

environmentally informed decision-making by BLM. CEQ regulations essentially establish a presumption in favor of obtaining information that is essential to reasoned decision-making. See 40 C.F.R. § 1502.22. BLM should take steps to gather needed information in all but the narrow range of exceptions permitted by the CEQ regulations. But if BLM concludes information is not essential to reasoned consideration of alternatives, or the cost of obtaining the information is exorbitant, or the means for acquiring the information are unknown, the BLM must nevertheless abide by CEQ guidance in this regard, namely that “credible scientific evidence” be presented relative to reasonably foreseeable significant adverse impacts (including low likelihood but catastrophic impacts) so that the impacts can be assessed based on approaches that are “generally accepted in the scientific community.” See 40 C.F.R. § 1502.22(b). See also 40 C.F.R. § 1502.24 (requiring professional and scientific integrity in an EIS). Among other things, to meet these requirements, BLM must establish the baseline condition of all resources in the Reynolds Ranch Project area in order to evaluate environmental conditions and impacts in an informed manner. Reinforcing these responsibilities are the requirements of the Data Quality Act, 44 U.S.C. § 3516, which require agencies to ensure the quality and reliability of data and information they rely on. Given that nuclear materials are at issue here, the need to consider the possibility of catastrophic problems, such as terrorism, is heightened.

ALTERNATIVES.

The CEQ regulations require a reasonable range of alternatives to be presented and analyzed in an environmental review so that issues are “sharply defined” and there is “a clear basis for choice among options” 40 C.F.R. § 1502.14. And even if an EIS is not prepared, BLM must consider a reasonable range of alternatives where there are unresolved conflicts over resources use. 42 U.S.C. § 4332(2)(E). CEQ regulations and court decisions make clear that the discussion of alternatives is “the heart” of the NEPA process. Environmental analysis must “[r]igorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14(a). Such objective evaluation is gravely compromised when agency officials bind themselves to a particular outcome or foreclose certain alternatives at the outset. As discussed above, one alternative we believe the BLM should consider is not approving this project until the NRC has finalized its Generic EIS so that any provisions made in it can be fully incorporated into BLM’s analysis and decision document. We also ask that BLM consider alternatives that seek to minimize new construction and disturbance by using the existing Smith Ranch infrastructure to the maximum extent possible.

“IN MANAGING THE PUBLIC LANDS THE SECRETARY SHALL, BY REGULATION OR OTHERWISE, TAKE ANY ACTION NECESSARY TO PREVENT UNNECESSARY OR UNDUE DEGRADATION OF THE LANDS”.

This provision from FLPMA is a mandatory requirement applicable to all resource uses and decisions affecting BLM lands. 43 U.S.C. § 1732(b). Consequently, it must serve as a bedrock for all analyses in the Reynolds Ranch Project environmental analysis, and activities undertaken pursuant to the decision document. It is crucial to

recognize that unnecessary or undue degradation must be prevented; the Reynolds Ranch environmental analysis and decision document must provide that both prongs of this standard are met. Clearly, the BLM bears a heavy responsibility before it can authorize activities that may degrade the public lands.

Recognizing the dual obligation imposed by FLPMA's unnecessary or undue degradation clause, the court in Mineral Policy Center v. Norton, 292 F.Supp.2d 30, 42 (D.D.C. 2003) held 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. We urge the BLM to ensure this dual standard is met.

Despite this clearly established law, the BLM has often persisted in misstatements of the governing legal standard. It often continues to view its dual mandate under FLPMA as a unitary obligation (it still claims that unnecessary degradation and undue degradation are one and the same), and then incorrectly proceeds to claim that only things not necessary for mining are prohibited unnecessary and undue degradation. 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. The court clearly held that the undue degradation prohibition relates to degradation of the environment on the public lands, not what is or is not necessary for mining. It is impossible for the BLM to fully recognize let alone abide by its legal obligations if it persists in stating its legal obligations in an impermissibly constrained manner.

We urge BLM not to define "unnecessary or undue degradation" by default, in a negative fashion, in the Reynolds Ranch Project environmental analysis and decision document. BLM must reject the position that essentially anything the operator proposes is "necessary" or "due" and therefore any resulting degradation of the public lands is not "unnecessary" or "undue." We urge the BLM to independently review what is proposed and ensure it is truly necessary before permitting it, and to make the further independent determination that any resulting impacts are not causing a prohibited undue level of environmental disturbance.

Therefore, we urge BLM to require, in a direct and positive fashion, that exploration activities in the Reynolds Ranch Project area not cause unnecessary or undue degradation, and to ensure that this is the case. Given the direct, unambiguous command from Congress to do whatever is needed to prevent unnecessary or undue degradation, the Reynolds Ranch Project environmental analysis and decision document should define, and prevent, unnecessary or undue degradation in an equally direct, positive fashion. See also Kendall's Concerned Area Residents, 129 IBLA 130, 138 (1994) ("If there is

unnecessary or undue degradation, it must be mitigated” and “[i]f unnecessary or undue degradation cannot be prevented by mitigation measures, BLM is required to deny approval of the plan.”).

THE REQUIRMENT TO MANAGE THE PUBLIC LANDS FOR MULTIPLE USE AND SUSTAINED YEILD HAS SUBSTANTIVE COMPONENTS THAT BLM MUST ABIDE BY.

Under FLPMA, specific management actions like the Reynolds Ranch Project must be done pursuant to multiple use and sustained yield principles. 43 U.S.C. § 1732(a). The definition of multiple use in FLPMA is long, but key provisions include the following: (1) Public lands and their resource values must be managed so that they “best meet the present and future needs of the American people;” and (2) There must be harmonious and coordinated resource management that is done “without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or greatest unit output.” 43 U.S.C. § 1702(c). This definition gives substance to the requirement for management actions to be done pursuant to multiple use principles.

The Reynolds Ranch Project must “best” meet the present and future needs of the American people. The Reynolds Ranch Project cannot adequately meet these needs, or generally meet these needs, or largely meet these needs, it must “best” meet them. FLPMA explicitly requires that what is “best” must be viewed from the perspective of the present and the future and all alternatives, including the proposed action, must be designed to satisfy this requirement. What is best now may not meet future needs, and since future needs may be unknown in some respects, the only way to “best” insure that future needs are met is to develop and select alternatives that have a large built in margin of safety. To achieve a large built in margin of safety the environmental analysis and decision document should emphasize resource and ecosystem protection, which will best ensure that future options are retained. Furthermore, what is “best” must be determined with reference to the needs of the American people as a whole, not a small subset of the American people, including the needs solely of Cameco Resources, Inc.

Since the definition of multiple use specifically provides that it is appropriate to not provide all resources in all areas, even within the Reynolds Ranch Project area the environmental analysis should identify areas where development is inappropriate and the decision document should prohibit development in these areas. Areas where the impacts of development would be visible for long periods or from long distances should be avoided. Areas with historical values that could be compromised should not be available for such activities, unless surface impacts are greatly reduced or eliminated. Sage-grouse leks, wintering areas and other crucial habitat should be off-limits to development; this is in accordance with the definition of multiple use in FLPMA and the specific command to approach management on the basis of multiple use, as defined. BLM’s authority to protect these areas is bolstered by the requirement to prevent unnecessary or undue

degradation, and in the vast majority of circumstances, if not all, the operator would still be able to develop uranium.

It is also important to emphasize that under FLPMA the Reynolds Ranch Project environmental analysis and resulting decision document must consider and be based on the relative value of the resources involved. By this legally required measure, rare, unique, and sensitive native species have a relative value far in excess of more common or easily replaced public land resources, or resources that can be provided from other lands. Accordingly, the alternatives considered by BLM, and particularly the preferred alternative, must give special emphasis to protecting and providing for relatively rare resources

In addition to the requirement to manage for multiple use and sustained yield, Congress declared a policy in FLPMA that public lands are to be “managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values” as well as to “preserve and protect certain public lands in their natural condition” and provide “food and habitat for fish and wildlife.” 43 U.S.C. §1701(a)(8) (emphasis added). Consequently, Congress has made clear that strong environmental protection must be provided for in the Reynolds Ranch Project environmental analysis and decision document.

WILDLIFE RESOURCES.

The following concerns regarding wildlife touch on a number of issues. One common need, however, is the following. When considering impacts to wildlife, BLM must do more than consider just the area actually impacted by uranium development. BLM must ensure its analysis of impacts to wildlife considers indirect, connected, related, long-term, and cumulative impacts in as quantitative, and scientifically supported, a manner as possible. BLM must also ensure that it fully complies with BLM Manual MS-6840 (Special Status Species Management).

ESA Candidate and BLM Sensitive Species

BLM must ensure full compliance with BLM Manual MS-6840.06.E (Special Status Species Management). BLM Manual MS-6840.06.E requires that “protection provided by the policy for candidate species shall be used as the minimum level of protection for BLM sensitive species”—that is:

Consistent with existing laws, the BLM shall implement management plans that conserve candidate species and their habitats and shall ensure that actions authorized, funded, or carried out by the BLM do not contribute to the need for the species to become listed.

BLM Manual MS-6840.06.C & .06.E. See BLM Manual MS-6840.06.C (1&3) (discussing BLM’s responsibility to confer with U.S. Fish & Wildlife Service regarding individual species’ needs). BLM Manual MS-6840.06.C.2 imposes a series of additional

substantive obligations on the BLM regarding candidate [and therefore sensitive] species management:

2. For candidate species [and sensitive species] where lands administered by the BLM or BLM authorized actions have a significant effect on their status, [the BLM shall] manage the habitat to conserve the species by:
 - a. Ensuring candidate [and BLM sensitive species] are appropriately considered in land use plans (BLM 1610 Planning Manual and Handbook, Appendix C).
 - b. Developing, cooperating with, and implementing range-wide or site-specific management plans, conservation strategies and assessments for candidate [and sensitive] species that include specific habitat and population management objectives designed for conservation, as well as management strategies necessary to meet those objectives.
 - c. Ensuring that BLM activities affecting the habitat of candidate [and sensitive] species are carried out in a manner that is consistent with the objectives for managing those species.
 - d. Monitoring populations and habitats of candidate [and sensitive] species to determine whether management objectives are being met.

The term “conservation” is defined in the BLM’s special status species manual and specifically with respect to special status species (as opposed to ESA listed species) it means “to use, and the use of, methods and procedures such that there is no longer any threat to their continued existence or need for continued listing as a special status species.” (emphasis added).

What this means is that at a minimum, the BLM must seek to “conserve” sensitive species that occur in the Reynolds Ranch Project area in a manner which contributes to their removal from BLM’s sensitive species list. That is, the requirement established by the BLM Manual is not only to prevent threats to the continued existence of these species or their listing under the ESA, but also to remove them from the BLM sensitive species list. This is an affirmative obligation established by the BLM manual—the BLM must put in place specific habitat and population management objectives designed to remove these species from the special status species list, that is, to conserve them.

In addition, the special status species manual requires that “BLM activities affecting the habitat of candidate species [and consequently sensitive species] [be] carried out in a manner that is consistent with the objectives for managing those species.” That is, the BLM must ensure that activities that affect sensitive species are done in a manner that is consistent with these species being removed from the sensitive species list, that is, with their conservation.

The need to adhere to these requirements certainly applies to the sage-grouse, and could well also apply to the white-tailed prairie dog, which is also a BLM sensitive species now being reconsidered for listing under the ESA. The burrowing owl may also occur in this area.

Ferruginous Hawks and Other Raptors

The environmental analysis should determine whether these species are or could be using the Reynolds Ranch Project area and ensure that BLM meets its duties to provide management protections for these species that meets the requirements of the Sensitive Species Manual. BLM must ensure that no extreme noise occurs during nesting season or near to occupied nests. The environmental analysis should examine whether habitat that could potentially be occupied by raptors, such as previously utilized nests, should receive protection so as to ensure the continued viability of raptors in the area. It should consider all biological needs of raptors and develop suitable protections for all significant life-stages of the various raptors, all of which should be included in the decision document. For BLM sensitive species, pursuant to the provisions in the BLM sensitive species manual, the BLM’s management actions must be directed at removing these species from the sensitive species list. Additionally, the environmental analysis should address compliance with the Bald Eagle Protection Act and Migratory Bird Treaty Act and the decision document should specify the means by which BLM will ensure compliance with these laws as well as pursue (or facilitate) enforcement of them, relative to raptors as well as other bird species protected by these laws.

Sage-grouse

The sage-grouse too usually receives special protective measures, and BLM must ensure full compliance with its Sensitive Species Manual relative to this species, as well as other BLM guidance and guidance from the Wyoming Game and Fish Department. The BLM should ensure protection for leks, and certainly BLM must prevent disturbance during the sage-grouse courtship period and near sage-grouse nests. However, focusing exclusively on limited elements of a species’ ecological needs (courtship and nesting) not only might fail to protect the species, it might also blind BLM to other critical factors affecting the species.

For example, it is well known that sage-grouse chicks need access to wet meadow areas so they can find high-protein insects to support early growth. Dense stands of sagebrush are critical winter habitat. Thus, these areas should be protected from disturbance. It is also well known that the sage-grouse may qualify for listing as a

threatened or endangered species, so BLM has heightened obligations to protect the species. Furthermore, the appropriate means to protect sage-grouse is to not only focus management efforts (and protective measures) on particular habitat needs (e.g., protecting leks), but also to ensure sagebrush habitats, an increasingly imperiled ecosystem, are protected. The same, of course, is true for many other species, including such sagebrush obligate species as Brewer's sparrow, sage sparrow's, and sage thrashers; and of course the same is true for species dependent on other habitats and ecosystems. In this regard we request BLM to consider the following report: Knick, S.T., et al. 2003. Teetering On The Edge Or Too Late? Conservation And Research Issues For Avifauna Of Sagebrush Habitats. The Condor 105: 611-634 (documenting the importance of sagebrush habitats and threats to them, particularly with reference to sagebrush obligate bird species). We also request that the BLM ensure that it complies with its evolving and developing Wyoming Landscape Conservation Initiative.

The sage-grouse is of course a special case at this point. The BLM in the Powder River Basin is actively taking steps to increase protections for sage-grouse beyond the "classic" and "standard" stipulations that have been used because it has become apparent these protection are simply not enough to protect the bird. The Casper Field Office should fully consider the actions being considered in the Powder River Basin (Buffalo Field) office in the Reynolds Ranch Project environmental analysis. It should fully consider whether the protections specified in the Casper RMP are sufficient to protect the sage-grouse and help prevent its listing under the ESA.

Furthermore, as the BLM knows there is an increasing effort to ensure the protection of sage-grouse on a "landscape scale," with this being done through the protection of large "core areas." Attached for BLM's consideration are two documents that discuss core areas in more detail. We request that the BLM determine if sage-grouse core areas exist in the Reynolds Ranch Project area, and if there are that it take steps to fully protect the sage-grouse in this area.

Mule Deer, Elk, and Pronghorn

In developing the Reynolds Ranch Project environmental analysis, BLM should consider and utilize data available from the Wyoming Game and Fish Department to determine protections for game species (and other species). While specifically applicable to oil and gas development, we particularly direct the BLM to the Wyoming Game and Fish Department's publication "Recommendations for Development of Oil & Gas Resources within Crucial & Important Wildlife Habitats ." Relative to big game, we urge the BLM to protect more than "critical" big game winter ranges. This approach is biologically and ecologically unsupportable and results in unnecessarily and unduly restricted protections. We therefore request that protective measures be considered not just for "critical" winter ranges, but also for all winter range areas in the Reynolds Ranch Project area, and other significant habitats such as parturition habitats. Consideration of the above issues is necessary to prevent unnecessary or undue degradation of wildlife on the public lands. At a minimum the BLM should fully implement the protective provisions specified in the Casper RMP. It should also ensure that noise from this project

does not disturb big game, especially during critical periods such as parturition. The impact of noise on hunters and the hunting experience must also be fully considered and mitigated.

RIPARIAN HABITAT ISSUES, WATER QUALITY, AND COMPLIANCE WITH THE CLEAN WATER ACT.

The Clean Water Act and Water Quality Issues

The Clean Water Act (CWA) establishes many requirements that BLM must consider in the environmental analysis and adhere to in the decision document. It is imperative that BLM insure that waters in the Reynolds Ranch Project area comply with State water quality standards and that those standards are not violated by uranium development activities. It is critical to recognize that State water quality standards “serve the purposes” of the CWA, which, among other things, is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters. . .” 33 U.S.C. §§ 1313(c)(2)(A), §1251(a). That is, a purpose of water quality standards is to protect aquatic ecosystems, and BLM must ensure this comprehensive objective is met by ensuring water quality standards are complied with. Water quality standards are typically composed of numeric standards, narrative standards, designated uses, and an antidegradation policy. All too often, however, only numeric standards are viewed as “water quality standards.” That narrow view is incorrect. The Supreme Court held in PUD No. 1 of Jefferson County v. Washington Dep’t of Ecology, 511 U.S. 700 (1994), that all components of water quality standards are enforceable limits. Consequently, the decision document must ensure all components of State water quality standards are met, not just numeric standards.

The State’s antidegradation policy is also a critical component of water quality standards. See 40 C.F.R. § 131.12 and applicable State regulations. The environmental analysis should consider the requirements of the antidegradation policy and the decision document should assure these requirements are met.

In addition to the antidegradation policy’s protections for waters that are meeting water quality standards, where State water quality standards have not been achieved despite implementation of point source pollution controls, section 303(d) of the CWA requires a State to develop a list of those still-impaired waters, with a priority ranking, and to set total maximum daily loads (TMDLs) of pollutants for the stream “at a level necessary to implement the applicable water quality standards. . . .” 33 U.S.C. §1313(d)(1)(C). Consequently, to the extent waters within the BLM’s jurisdiction have been identified as water quality impaired segments, or contribute stream flow to such segments, the Reynolds Ranch Project decision document should require affirmative steps toward reducing that impaired status, regardless of whether the State has made a specific allocation of pollutant load to BLM lands at the time the ROD is adopted. If any specific load allocation has been made by the State of Wyoming for activities on BLM lands, BLM should obviously ensure that these are complied with.

The Reynolds Ranch Project environmental analysis should consider the requirements of sections 401 and 404 of the CWA and the decision document should ensure full compliance with these requirements. Section 401 requires State certification of compliance with State water quality standards prior to authorization of actions on BLM lands. 33 U.S.C. § 1341. The decision document should fully implement this requirement. Section 404 requires permits before discharges of dredged or fill material can be made into navigable waters, and BLM, through the decision document, should assist the EPA and Army Corps of Engineers with implementation and enforcement of this requirement, which, of course, is a powerful means for the protection of wetlands. See 33 U.S.C. § 1344.

As the Public Scoping Statement makes clear, ensuring that groundwater is not polluted by this project is an especially crucial consideration. We urge the BLM to ensure that in fact the goal “to return the aquifer to the baseline conditions that existed prior to the start of uranium recovery” is in fact met, and we believe the decision document must ensure there is well defined, mandatory mitigation that will achieve this standard. If the secondary standard of a “pre-mining “class of use”” is pursued we think clarification is needed. The Public Scoping Notice says this secondary standard might be pursued “if approved.” How, when, where, and by whom would this approval take place? What standards would apply to approval? The environmental analysis and especially the decision document must make these things clear in detail, and be binding and certain. Furthermore, we think a “secondary standard” should be just that, secondary. We feel the environmental analysis and decision document should make clear that returning to pre-existing baseline conditions will be the norm and allowing secondary standards will only be permitted under limited circumstances that do not threaten environmental contamination or degradation. And last, what is a “class of use”? This needs to be made clear so that the public understands exactly what a secondary standard might imply.

Riparian Areas

The Reynolds Ranch Project area likely contains remarkable riparian areas that are vitally important to the ecological health of the region. Properly managing riparian areas is a critical component of managing for biological diversity and for meeting many other needs. Only about 1% of the lands managed by the BLM are wetlands, yet these are some of the most ecologically important landscapes under BLM jurisdiction

Because of the critical importance of these areas, two Executive Orders require their protection. Executive Order 11988 (1977) requires federal agencies to avoid adverse impacts associated with the occupancy of floodplains. Executive Order 11990 (1977) requires federal agencies to minimize the destruction, loss, or degradation of wetlands, and to preserve and enhance the natural and beneficial value of wetlands. Further, all federally approved activities must include all practical measures to minimize adverse impacts to wetlands and riparian areas. The decision document must prohibit disturbance in riparian areas and wetlands to ensure these critical resources are fully protected.

INVASIVE SPECIES, NOXIOUS WEEDS, AND MANAGEMENT OF NATIVE VEGETATION.

We ask that BLM ensure the decision document provides for compliance with Executive Order 13112, which established requirements and procedures Federal agencies are to adhere to relative to invasive species. Section 2 of the Executive Order requires BLM to identify actions that may affect the status of invasive species and to then:

Use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded; (v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (vi) promote public education on invasive species and the means to address them

Just as important, the Executive Order requires BLM to “not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.” The environmental analysis should fully analyze the extent of the invasive species problem in this area, the causes, and options for both restoration and prevention in the future.

The flip side of preventing invasive species from becoming established is protecting native plant species and communities, especially rare and special status species. The BLM should conduct surveys to determine the location and characteristics of native plant communities and rare or special status species. The survey results should be presented in the environmental analysis, and the decision document should establish standards for protecting native plant communities and rare or special status species. It should seek to protect dense stands of sagebrush that could serve as sage-grouse wintering habitat, and recognize the special value of these stands. BLM’s grazing regulations and the Public Rangelands Improvement Act establish that native species and plant communities are to be given preference over non-native species and communities (whether invasive or intentionally created), so the decision document should establish standards to ensure these requirements are met, particularly relative to any reclamation requirements (i.e., introduced species should not be permitted for reclamation purposes).

CULTURAL AND PALEONTOLOGICAL RESOURCES.

Most if not all historical, archeological, and paleontological resources (hereinafter, “cultural resources”) are strictly non-renewable: once marred or destroyed,

they are forever lost to future generations. Such fragility demands utmost care and humility from BLM managers and planners. The Reynolds Ranch Project environmental analysis should reflect—and the decision document should require—this conservative approach to managing these priceless and irreplaceable resources. As the Public Scoping Statement makes clear, this area may have value for preservation of segments of the Bozeman Trail.

BLM's multiple-use mandate requires land managers to consider the value of cultural resources in their decision-making process. Unfortunately, these resources are frequently given short shrift in this calculus. Their value is not easily measured, and as a result they are sacrificed in pursuit of more obviously economically profitable resources. The Reynolds Ranch Project environmental analysis should ensure this problem is avoided. BLM's preparation of the Reynolds Ranch Project environmental analysis provides an excellent opportunity for the agency to address concerns about these resources and to implement policies that will protect and preserve cultural resources.

The BLM's management of cultural resources is governed and guided by a host of laws, orders, and regulations. These include, but are not limited to, the Antiquities Act of 1906, the National Historic Preservation Act (NHPA), Executive Order 11593, the Archaeological Resources Protection Act (ARPA), and the Native American Graves Protection and Repatriation Act (NAGPRA). BLM's decisions regarding cultural resource management are also governed by the FLPMA and NEPA. The BLM must adhere to these and other laws when preparing and implementing the Reynolds Ranch Project environmental analysis and decision documents, and must provide evidence of cultural resource consideration as part of this process.

As noted above, the BLM's multiple-use mandate requires managers to balance resource use and resource preservation. But not only must the BLM examine the effects of the Reynolds Ranch Project on cultural resources, it must evaluate whether or not it possesses sufficient information to assess these potential resource conflicts. If the agency lacks enough information to make informed decisions, it must collect data according to a plan and schedule established at the outset of this environmental review process.

The Reynolds Ranch Project environmental analysis must ensure there is a sufficient inventory of cultural resources and their values prior to authorizing ground-disturbing activities and it should be used proactively by the BLM in its management in order to avoid resource conflicts. Clearly BLM must fully comply with the need to consult with the State Historic Preservation Office prior to authorizing activities that may harm resources eligible for the National Register of Historic Places, and ensure full compliance with the National Historic Preservation Act. As noted in Southern Utah Wilderness Alliance et al., 164 IBLA 1, 24 (2004), "BLM cannot avoid the consultation requirement by simply stating that it has determined that there is "No Potential to Effect," and therefore nothing more is required."

Another concern is consultation with Native American tribes during the Reynolds Ranch Project environmental review process. BLM is required to consult with tribes under FLPMA, NEPA, American Indian Religious Freedom Act, NAGPRA, and Executive Order 13007, in order to learn of tribal concerns and places of traditional religious or cultural importance to the tribe. The BLM must specifically request the views of tribal officials, and must solicit the views of traditional leaders or religious leaders. BLM must be diligent in its pursuit of this information.

The Reynolds Ranch Project environmental analysis document should identify areas where cultural sites are at risk, and the decision document should employ measures to protect these resources. The areas designated should be of sufficient size to allow viable protection of the resources; designation of just the site itself may not allow for effective management.

CONCLUSION.

Thank you for considering these comments, and we look forward to continuing involvement in the development of the Reynolds Ranch Project environmental analysis and decision document.

Sincerely,

Bruce Pendery,
Staff Attorney and Director of Public Lands

cc: Nuclear Regulatory Commission
Wyoming DEQ